

of any license fee, the state auditor is hereby authorized and directed to refund to any such city or village the tax paid upon the portion refunded as herein provided.

Sec. 2. This act shall take effect and be in force from and after its passage.

Approved September 19, 1919.

CHAPTER 13—S. F. No. 7.

An act, entitled, "An act to provide for drainage of wet and overflowed lands and control of flood waters to protect cities, villages, highways and farm lands, and other property, from inundation and to authorize the organization of drainage and conservation districts to secure the construction and maintenance of such works and improvements as will secure the control of flood waters within the limits of such districts and conserve and utilize such waters for power purposes, fish production, or any other purpose consistent with the provisions of this act."

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

Section 1. Declaration and definition.—Drainage and flood control are clearly within the functions of governmental action, and the exercise of the right or authority to authorize or direct drainage carries with it the right to care for and control the waters thus gathered and turned into natural or artificial channels, and to assess against the land furnishing such waters and lands and property protected therefrom the cost of controlling the same, and all such waters after reaching any public ditch, stream or water course are hereby declared to be and become public waters and subject to control and use under the provisions of this act.

This act may be known and cited as the "Drainage and Conservency Act of Minnesota" and any districts organized hereunder shall be known as "Drainage and Conservency Districts" and such additional name as the order of the court may designate.

Whenever the term "publication" is used in this act and no manner specified therefor, it shall be taken to mean publication for once a week for three (3) consecutive weeks in one legal newspaper published and of general circulation in each county affected.

Whenever the term "public health" is used in this act, it shall be construed to include any act or thing tending to improve the general sanitary condition of the community whether by way of drainage, relieving low or wet land of stagnant and unhealthy conditions, or by preventing the flooding of any lands thereby producing or tending to produce unhealthful conditions, and whenever the terms "public welfare" or "public benefit" are used, it shall be construed to extend to and include any act or thing tending

to improve or benefit the general public either as a whole or any particular part or community, and shall be construed to include any improvement contemplated by this act which shall protect or reclaim and render suitable for cultivation tracts of land normally wet or subject to overflow.

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 division or subdivision.

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. Provided nothing herein contained shall be construed to abrogate the title of the state in the public waters, but the use and control of certain waters within the limitations and for the purpose herein specified may be granted to the district.

Sec. 2. Power granted to courts.—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 3 of this act, and the conditions stated therein are found to exist to establish a drainage and conservency district and define and fix boundaries thereof, which may be entirely 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 the petition is filed, for all or any of the following purposes:

(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 courses and regulating the use thereof, streams so diverted shall follow the natural course of drainage and terminate in the same natural

outlet, and as incident to and for the purpose of accomplishing and effectuating all the purpose of this act, may under the conditions specified herein, straighten, widen, deepen, or change the course or terminus of any natural or artificial water course and build, construct and maintain all necessary dykes, ditches, canals, levys, wall-embankment, bridges, dams, sluice ways, locks and other structures that may be found necessary and advisable to create, establish and maintain the necessary reservoirs or other structures, to hold, control and regulate any and all flood waters within said districts, and to 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, including dams for power purposes and conserve and utilize such waters for any purpose consistent with the purpose of this act. Provided, however, that the provisions of this act shall not be construed to authorize the diverting of the waters from one general water shed to another general water shed.

Sec. 3. Petition for organization of districts.—Before any district court shall establish any district as outlined in section 2 of this act, a petition shall be filed in the office of the clerk of said court, in any county containing territory included in said petition, signed by not less than 25 per cent of the resident freeholders of said district, but not in any event shall more than fifty (50) signers be required, or by the proper officials of any county, city or village authorized by resolution duly passed by the governing board of said county, city or village. Said petition may be signed by one or more such counties, cities or villages, and if signed by two or more counties, or by five (5) or more cities or villages, then the same need not be signed by any of the freeholders of said 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.
3. A general description of the nature and purpose 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 subdivision, 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 water-shed or drainage basin or all territory from which the water from natural or artificial channels find their course through one general stream or channel provided no district shall be

organized under the provisions of this act to include the whole valley of the Mississippi, but branches of such streams may be so organized and when reasons exist therefor and the commissioner of drainage and waters shall approve or request and the court so order, several tributaries may be organized in one district, including therein portions of the channels of said river upon which improvements are contemplated.

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 or signed by the requisite number of counties, villages or cities 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 petitions 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.

Sec. 4. Surety bond for expenses.—At the time of filing the petition provided for in section 3 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 it 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, it 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. 5. Notices of and hearing by court.—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 a judge 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; 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.

Sec. 6. Court to file findings—Designation by name—District office.—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 as ordered by the court and if upon said hearing the facts alleged in the petition are found by the court to exist and that the purpose of this act would be subserved by the creation of a drainage and conservancy district, comprising the whole or certain portions of the territory outlined in the petition, 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 become and be 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 for the purposes specified in this act 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 commissioners or officers who shall constitute the first board of directors, which shall be no less than three nor more than five, and shall name and appoint such officers, who shall be residents of 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 may at said hearing, or at any subsequent hearing ordered by the court, upon petition from residents of said territory, or from said board, be added to said district and the boundaries thereof fixed accordingly; and if, upon full hearing, the court shall 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 costs 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 of this state.

Sec. 7. Authorities of the 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 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 one thousand (\$1,000) 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 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 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.

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, and the compensation of the members shall be such as the board shall fix and not to exceed seven dollars (\$7.00) per day and expenses.

Sec. 8. Treasurer and chief 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 not be less than the total sum that shall at any time be likely to 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 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 expenses shall be taken and treated as a part of the costs of each particular improvement but the charges of the engineer that can be included as a part of the cost of any improvement together with his duties, shall as far as applicable, be governed by the provisions of section 5571 of the General Statutes of 1913 and amendments thereto, and neither the engineer or attorney shall receive any compensation except when employed in the construction of some specific improvement to which that expense can be charged. The chief engineer shall be superintendent of all the works and improvements and shall have general charge of all work pertaining to drainage and flood control done under proceedings had under this act, within the limits of said district and before any court or board of county commissioners shall order or authorize the construction of any drainage ditch within said district, notice shall be given to said engineer and he given an opportunity to be heard with reference to any objection thereto.

Sec. 9. **Terms of office of directors.**—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 two (2) years; two for four (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 (2) years; three for the period of four (4) years, and thereafter all shall hold their office for four years, and the district court of the county wherein said general office is located, shall have authority to fill all vacancies that occur in said board from any cause, 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. 10. **Establishment of district—Classes.**—After the organization of the board of directors of any drainage and conservancy district organized under the provisions of this act, said

board of directors shall upon filing with the clerk of the board a petition signed by not less than twenty-five (25) freeholders of the district, provided that in no event shall more than twenty-five (25%) per cent of the owners of the property affected be required or by the board of county commissioners of any county, or council of any city or village 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 control of the waters of any lake, pond, marsh, or body of water, river, stream, or water course within said district therein describing the need of the proposed improvements, the extent thereof, and describing in general terms the bodies of waters, streams, or water courses proposed to be improved, or reservoirs, or other improvements constructed, and if the construction of a ditch or drain as a part of the proposed improvement is contemplated, a description of the starting point, the general course and termination thereof shall be given therein setting forth the reasons and necessity for such improvements and that the same, if constructed, will benefit public health and general welfare of the inhabitants in that vicinity, and said petition is to be 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 and such as they shall approve, conditioned for payment of all costs and expenses in connection with such improvements in the event said petition as therein set forth or subsequently modified is not granted; it shall be the duty of said board of directors of said district to cause to be made at the earliest possible date by its engineer, all necessary surveys, maps, plats, profiles and plans covering said proposed improvements so as to fully inform said board as to the merits and practicability of the proposed improvements, and in making said survey, plats, profiles and report, said engineer shall, so far as practicable, conform to the requirements of section 5526, General Statutes of 1913 and amendments thereto, and said board shall have authority to correct, change or modify the proposed improvements as outlined in said petition, and if the report of said engineer is favorable to the construction of said improvements, and is approved by the board of directors, said board shall, with the least possible delay, appoint three (3) disinterested citizens of said state to act as viewers, and the viewers so selected shall, after subscribing an oath to faithfully and impartially perform their duties, proceed and personally inspect and examine all lands, highways and other property likely to be affected by such improvements, or that may be used or taken for the construction or maintenance thereof, and shall, in the performance of their duties, so far as practicable, comply with the provisions of section

5528, of the General Statutes of 1913 and amendments thereto, and make and file with the clerk of said board with such plans and specifications, a detailed statement showing the benefits and damage that will result to individuals, property, or corporations from the construction of said improvements, and a list of lands and other property, including highways and corporations that will be benefited or damaged, and the amount thereof, and all lands subject to assessment for the construction or maintenance of such improvements, and in compiling such a list and as a basis for estimating the benefits to the land, or the property affected by such improvement, the board shall classify the property into two (2) classes, as follows:

Class 1 shall include lands, roads, corporations or other property receiving benefits by way of drainage or control of flood waters which may include not only land or other property in the immediate vicinity of said improvement, or any part thereof, but property, land or waterpowers further down the valley to such extent as the board of viewers shall after investigation determine will be benefited thereby, and shall include all lands to which a drainage outlet is supplied by such improvements by way of increasing facilities for drainage or control of flood waters, provided the board of directors of the district may elect to levy no assessment under this section upon waterpowers, but collect for such improvements as otherwise provided in this act.

Class 2 shall include all lands within that portion of the district that has artificial drainage the run off waters from which will naturally pass through or which are brought thereto by ditches now constructed or which may hereafter be constructed or which pass through the common outlet that is being improved or in which such waters will be controlled. Class 2 shall only be assessable for the improvement of the main outlet of said district or the control waters therein, and any general expenses connected with the maintenance of said district, but in no event shall lands of this class be assessed more than twenty-five (25c) cents per acre. All lands falling within class 2 are hereby declared assessable as lands receiving benefits from the general plan of drainage and flood control and improvement of the public health and general welfare. Sections 5528 and 5529 of General Statutes 1913, together with amendments thereto, so far as applicable shall apply to and govern the work of the viewers under this act.

Sec. 11. Report of board and action by courts.—Before proceeding with the construction of any improvement, said board shall file in the office of the clerk of the district court of the county in which such improvement or some part thereof is to be located, the original petition filed with them, together with the report of the engineer and all plats connected therewith and

the report of the viewers on benefits and damages and a list of lands assessable, with a petition or report on behalf of said board, therein setting forth the nature and extent of said improvement in general terms, the necessity therefor, an estimate of the costs thereof, and that the same will be of public utility and will result in the improvement of the public health and general welfare—reference may be made to the reports of engineer and viewers for greater particularity, and asking that a time and place be fixed for a hearing upon said petition and said reports, and that at said hearing an order be made establishing the drain or improvement and authorizing the construction thereof, and confirming the report of the engineer and viewers and fixing the rights of the parties, and upon the filing of said petition and said report, the clerk of said court shall immediately notify the judge thereof, who shall within ten days thereafter, by order, fix a time and place within such district for a hearing upon said petition and reports of which due notice shall be given by the clerk of said court, by publication in at least one legal newspaper in each county affected by said improvement, therein, in general terms, describing the land, public roads and corporations in such county affected by said improvement and the land, if any, reported by said viewers as assessable for the construction and maintenance thereof, and giving notice of the pendency of such proceedings and the nature of the proposed improvement, and that plans and specifications thereof, including the engineer's and viewers' report are on file in his office subject to inspection and requiring all parties interested, as shown in said petition and reports, to appear before the court at the time and place designated in said notice, and present their objections, if any they have, and show cause why an order should not be made by said court granting such petition and confirming the report of said engineer and viewers, and ordering the establishment and construction of said improvement.

Sec. 12. Modifications, approval or rejection.—At the time and place specified in said notice, the court shall hear all parties interested for and against the granting of such petition and confirming said reports, and may order and direct the modification of said plans and specifications and the assessments of benefits and damages, and amend or change the list of property reported as assessable for the construction and maintenance thereof, or may recommit the same to the engineer or viewers, or both, for certain changes or information; and, if, upon full hearing, the court shall find that said improvement will be conducive to the public health and promote the general welfare, and cause the protection or reclamation of wet or overflowed lands or the control of flood waters in streams, channels and reservoirs, and the benefits resulting therefrom will be greater than the costs of

said construction and damages, then said court shall make its findings accordingly and order and direct the construction of said improvements and confirm the report to the engineer and the findings and report of said board or viewers with reference to benefits and damages and lands assessable, and the order of said court confirming such report as to benefits and damages, and as to the plans of said improvement, either as originally petitioned and reported, or as subsequently modified, and ordering and directing the construction of said improvement, shall fix and determine the rights of all parties in any manner affected by such improvement, including private or public corporations and public highways, provided, all parties or corporations affected by said order may have the right of appeal on the question of benefits and damages in the manner now provided for appeals in the case of judicial ditches, pursuant to the provisions of section 5534, G. S. 1913 and acts amendatory thereof, and from the order of said court approving the plans and directing the construction of said improvement. Provided; also, the board of said district shall have the right to appeal on the question of benefits and damages relating to any piece of property described in or referred to in said order, and from any order denying the petition for such improvement, and such appeal may be perfected as now provided by law in the case of appeal to the district court in judicial ditch proceedings and in all such cases such appellants shall be entitled to a jury trial if so demanded.

Provided, further, said board shall also have the right of appeal to the supreme court as provided in civil actions.

Sec. 13. Awarding of contracts.—The board of directors of any drainage and conservancy 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 said order pursuant to the provisions of section 16 of this act and under the conditions named in said section, may employ and use men and equipment under supervision of the chief engineer or other agents for the construction, repair or improvement of any portion of said work not let by contract.

Sec. 14. Right of entry.—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 an actual damage done, and any person or corporation preventing such entrance shall be guilty of a misdemeanor.

Sec. 15. Orders and decrees for various improvements.—In order to effect the drainage reclamation, irrigation or pro-

tection of land or other property within the limits of any drainage and conservency district, and to effectuate all the purposes of this act, the district court of the several districts in this state and the judges thereof in vacation where any portion of such judicial district extends, within the limits of any drainage and conservency district organized under the provisions of this act, are hereby fully empowered to make all necessary orders and decrees and direct the entry of all necessary judgments upon the filing of a petition as provided in section 11 of this act by the board of directors of any such district, and finding that grounds exist for the granting of such petition to order established and constructed any of the improvements specified in this act and authorize the board of directors of such district to cause to be constructed any such improvement and to clean out, straighten, widen, alter or deepen or change the course or terminus of any drain, ditch, river, creek or natural stream and to fix the height of water in any lake, pond or reservoir and cause the same to be raised or lowered and fill up or abandon or alter any ditch, drain, river or water course, pond, lake, or any natural or artificial basin or stream, and to divert or divide the flow of water in or out of any such lake, pond, reservoir or water course and to cause to be constructed and maintain any lateral ditches, sewers, canals, dykes, dams, sluiceways, reservoirs or flood basins and construct and maintain pumping stations and other similar works and any works of improvement that may be deemed necessary to secure the drainage of lands within the limits of said district, and the control of flood waters therein, either in the channels of any stream or waterway, or in any lake, pond, reservoir, or other structure for holding and controlling flood water, including the power to exercise the right of eminent domain for the purpose of enlarging any lake, pond or other body of water for reservoir purposes, or the flooding of land for the creation and establishment of reservoirs and the board of directors of any district organized under this act, upon being authorized by order or decree of the district court, shall have full authority to do and perform all things necessary to effectuate the purposes of this act and cause to be constructed and maintain any and all canals, levys, dykes, dams or sluiceways including reservoirs holding basins, flood-ways and pumping stations and any other work of improvement that may be deemed necessary and proper to be constructed for the purpose of securing drainage of wet and overflow lands and protection of lands and property within the limits of said district from flood and inundation and as such board under the provisions of this act may exercise the right of eminent domain in behalf of such district in acquiring the necessary land for the creation of reservoirs or other improvements along or in the vicinity of the channels or waterways within the

limits of said district, which authority may be exercised under the provisions of this act or under the provisions of chapter 41 of the General Statutes of 1913, and said board shall have full control thereof and shall have full authority to hold, operate, lease or control any waterpower created by any improvement authorized by this act and to enter into all contracts for the furnishing of water for irrigation, or for any other purposes, or for the leasing or furnishing of power, when authorized by order of the court, as hereinafter provided, and all sums realized from any such purpose shall be paid into the treasury of said district and be and become the property of said district, and may be used by said board to defray its general expenses and for the upkeep of any improvement made within said district and the improvement of the channel of any stream or waterway therein.

Sec. 16. Bids authorized.—After the order has been made by the district court directing the establishment of each improvement, as provided in section 12 of this act, it shall be the duty of the board of said district to call for bids for the construction of said work and give notice thereof specifying therein the time and place when bids will be open for the letting of a contract for the construction of said work; and said contract may be let in sections or as a whole as said board may direct, notice of which shall be published once each week for three (3) successive weeks in at least one newspaper published in any county where said improvement is to be made and in at least one of the papers in said state where notice of such contracts are usually published and at the time and place specified in said notice; said board may let said contract to the lowest responsible bidder, who shall give a bond with ample security, conditioned for the carrying out of said contract. Said contract shall be in writing and shall refer to the plans and specifications as approved by the court and prepared by the engineer, and shall be in such form as the attorney for said board shall direct and such as shall be approved by said engineer and said board, provided, that in all cases where a sudden emergency may arise rendering it necessary in order to protect the interests of the districts, work may be done under the direction of the board and engineer without contract to the extent that may be necessary to protect the interest of the district.

Sec. 17. Creation of reservoirs.—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 may petition the court a time and place within said county for a hearing on said petition, notice of which hearing shall be given by publication of said order in a weekly newspaper for two successive weeks in each county in which said reservoir and

waterpower or some part thereof is situated. If, upon said hearing, said court shall find that it is practical to utilize the waters of said reservoir for waterpower purposes and that the same will be of benefit to the public and to said district, he 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 90% of the reasonable value of the proposed water power; and upon the making of said order, the board of directors are hereby authorized to issue bonds of said district not to exceed such sum as specified in the order of the court in such denominations 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 the same shall be and constitute a first lien upon said water power and upon all of the property connected therewith and the income therefrom, 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.

Sec. 18. Removal of bridges.—In case it is necessary to pass any dredge boat or other equipment through a bridge or grade of any railroad company or other corporation, county, township, or municipality, the board of directors shall give twenty days' notice to the owner of said bridge or grade that the same shall be removed temporarily to allow the passage of such equipment or that an agreement be immediately entered into in regard thereto. The owner of said bridge or grade shall keep an itemized account of the cost of the removal, and, if necessary, of the replacing of said bridge or grade, and said actual cost shall be paid by the district. In case the owner of said bridge or grade shall refuse to provide for the passage of said equipment, the board of directors may remove such bridge or grade at its own expense, interrupting traffic in the least degree consistent with good work and without delay or unnecessary damage. In case they shall be prevented from doing so, the owner of said bridge or grade shall be liable for damage for the resulting delay.

Sec. 19. Gages, etc.—The board of directors shall also have the right to establish and maintain stream gages, rain gages, a flood warning service with telephone or telegraph lines or telephone or telegraph service, and may make such surveys and examinations of rainfall and flood conditions, stream flow, and other scientific and engineering subjects as are necessary and proper for the purpose of the district and they may issue reports of their findings.

Sec. 20. Contracts with U. S. government and individuals.—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 the state government of this or other states, with drainage, conservation, conservancy, or other improvement districts, in this or other states, for co-operation or assistance in constructing, maintaining 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 or 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.

Sec. 21. Rights of land owners to use of water.—The rights of land owners, municipalities, corporations, and other users of water to the waters of the district for water supply, industrial purposes, for waterpower, or for other purposes shall extend only to such rights as were owned by them prior to the organization of the district and the rights of all such parties as existing at the time of the organization of the district shall be recognized and observed by the managing authorities of this 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, as herein provided.

Sec. 22. Applications for use of water.—Persons, corporations, municipalities, or other parties desiring to secure such use of the waters or watercourses 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 use, or for watering stock.

Sec. 23. When contracts may be made.—The board of directors shall not sell, lease, assign or grant any permit or otherwise part with permanent control by the district of the use of the waters thereof, and all 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 rights 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.

Sec. 24. Regulations, rates, etc.—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, either within or without the districts including water power company, 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 be based upon either a unit price per cubic foot used or unit price for theoretical horsepower developed or other practical method, 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 had before the court, objections may be made and appeals taken in the same manner as in the case of the appraisal of benefits, but the rates 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. In case of failure of any user to pay for the use in the manner specified by order of the court, the board may compel payment or may enjoin further use until such payment is made. The rights under any lease or sale shall not extend to a change of use or of place, time or manner of use, except in so far as is specifically stated in the lease or other agreement.

Sec. 25. Assessments for benefits.—Whenever the board of directors of any district shall ascertain that any improvement will benefit lands or other property outside the district, they shall assess the same and report such facts to the court, together with their other findings and thereupon notice of the filing of such recommendation shall be served upon the parties interested and they shall be given the same notice of hearing upon said assessment as provided for in cases all parties affected by said proceedings are within the district, 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 in 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 a hearing had thereon 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.

Sec. 26. Various funds.—The moneys of any drainage and conservancy 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, secured 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 or the value thereof, fixed by the court in proceeding, as herein provided, and for the improvement and development of such property.

3. A construction and maintenance fund, which shall be supplied by sale of county bond and by special assessments to be levied as herein provided to supply funds for the construction and

upkeep of the improvements of the district including the reservoirs, ditches, dykes, canals, and other works, together with the expenses incident to, and connected therewith.

Sec. 27. 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 3 and 4 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, by warrant of the county auditor issued upon 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 levy of taxes or assessments or selling of bonds, or the borrowing of money. If the district is not organized, the costs shall be collected from the petitioners or their bondsmen; upon the organization of the district the court may upon ten days' notice to the county auditors of the counties affected 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 direct the auditor of each county to issue his warrant upon the treasurer for the proportion of the preliminary expenses assigned to that county by such order.

Sec. 28.—Preliminary expense fund established.—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 and a petition and bond has been filed with the clerk of said board as provided in section 10 of this act; 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, at least ten days' notice of which shall be given to the county auditor of each county affected, which fund 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 five thousand (5,000) dollars 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 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 with interest 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 other expense 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 and the board of directors for any such district is hereby authorized to include in their petition to the court asking the creation of a preliminary fund and request that the court shall include in said order in addition to the creation of said fund a further order authorizing the board of said district to levy upon the lands within the limits of said district an assessment of such sum as may be found necessary to reimburse the county for the sum advanced to create said preliminary fund, not to exceed however the sum of ten (10) cents per acre, and the court is hereby authorized to make such order and upon receipt thereof, the board of directors of such district shall cause to be levied upon the lands within the limits of said district, such assessments as the court shall authorize and shall file with the county auditors of the several counties a list of lands within the respective counties affected by said assessment and upon the filing thereof or as soon thereafter as may be necessary, it shall be the duty of the county auditor to levy such assessment upon the lands specified and spread the same upon the assessment roll as in the case of other taxes; and it shall be the duty of the county treasurer to collect and receive such assessment and credit the same to said district and deduct from such assessment any sum, if any there is due, to such county and account to said district for all sums remaining.

Sec. 29. Apportionment of 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 five 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 or a certified copy thereof, with the auditors of the respective counties affected together with 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 board of said counties and they are hereby authorized to provide the necessary funds to meet the proportionate share of the cost of said improvement as specified in said order in the same manner as now provided in the case of judicial ditch proceedings, under section 5542 of General Statutes of 1913, and amendments thereto. That immediately or at the earliest date possible, following the letting of a contract or contracts for the construction of said improvement, by the board of directors of said district, they shall cause to be made and filed with the clerk of said board and with the county auditor of each county affected a statement showing the total cost of said improvement including expenses as near as the same can be ascertained and the proportionate amount that each county affected shall be required to pay on the basis as fixed by the order of the court together with a list of all property benefited and assessable; and thereupon it shall become the duty of the county auditor of the respective counties to cause to be made and recorded the tabular statement and lien against the property benefited and the property subject to assessment within his county the amount to be paid by the property in said county, in accordance with the provisions of sections 5543 and 5544, of General Statutes of 1913, and acts amendatory thereof, and it shall be the duty of the county commissioners of said several counties to provide the fund to meet the proportionate share of the total cost of said improvement as shown by the report of the board of said drainage and conservancy district and the order of the court and they are hereby authorized to exercise all rights and authority in so doing, now granted to the board of county commissioners under the provisions of sections 5542 and 5543 of the General Laws of 1913 and acts amendatory thereof and other provisions of the General Statutes relating to county and judicial ditch proceedings. It shall be the duty of the respective county auditors and county treasurers to levy and collect the amount shown in said tabular statement and lien as provided in sections 5546 and 5548 of General Statutes of 1913 and acts amendatory thereof. All moneys received by the county treasurer of any county from the sale of bonds, assessments or otherwise for the benefit of the district shall be by the county treasurer of such county accounted for and paid over to the treasurer of such district.

Sec. 30. Assessments.—Upon the filing by the board of directors of a drainage and conservancy with the county auditor of any county of the statement as provided in section 30 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 lands and municipalities or other corporations as therein specified in accordance with the provisions of section 5551 of the General Statutes of 1913 and the said county auditors respectively, shall proceed to levy and collect the sums specified in said lists 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 such county out of its road and bridge fund or otherwise, as the 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 amounts of benefits received as fixed by the order of the court directing the construction of said improvement or subsequently determined on appeal.

Sec. 31. Issuance of orders.—The board of directors of any drainage and conservancy district is hereby authorized to issue the orders of said district in payment for any contracts for the construction of any improvement and also for all ordinary general expenses and all expenses incurred by contract or otherwise in making repairs 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 cent per annum until paid or until notice shall be given by the district that said funds are available provided the board of directors shall never at any time issue or have outstanding orders of said district exceeding the sum of five thousand (\$5,000.00) dollars, except orders issued in payment of construction on any improvement, the funds for which have been provided or arranged for.

Sec. 32. Upkeep and repair of district.—The board of directors of any drainage and conservancy 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 repair of such improvement, and upon filing a copy of said order and levy with the county auditor of each county affected by such 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 and order the board of directors of any drainage and conservancy 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 (\$5,000.00) dollars and the court shall by such order apportion the amount of such levy among the several counties according to the area or valuation 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 within 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 conservancy 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. 33. When repairs are to be made.—It shall be the duty of the board of directors of any drainage and conservancy district, upon being notified by the county board of any county, portions of which shall be within the limits of said district, that certain ditches, channels or watercourses within said county and district are in need of repair or improvement, to immediately or at the earliest possible date, investigate and report to said county commissioners the condition of said ditches, drains, or watercourses or other improvement needing repair and the amount and nature of the repairs required and the probable cost thereof; and upon said county providing the funds, it shall be the duty of the board to take charge of all matters pertaining to the making of said repairs, and let contracts therefor, or proceed to employ assistants and have said repairs made under the direction of the chief engineer; and in like manner it shall be the duty of the board of any drainage and conservancy district, organized under this act, upon the request of the county board in case of a county ditch, or of the district court in case of a judicial ditch, to take charge of the construction of any ditch then petitioned for; and thereafter, all work done upon the construction of any such ditch shall be under the supervision and control of the board of such drainage and conservancy district, who shall make

reports thereon to the county board or the court as may be required, and the engineer of said drainage and conservancy district shall have supervision of said work and perform all duties as assigned and specified, with reference to engineer in charge of county or judicial ditch proceedings and shall have and may exercise like authority.

Sec. 34. Board to have control of all contracts.—In all cases where contracts are let by the board of directors of any drainage and conservancy district, said board shall have full control of all matters pertaining thereto, and in the event of a contractor failing to complete said improvement within the time or in the manner specified in his contract, said board shall have full authority to extend said time or refuse said extension and cancel said contract, and readvertise and relet said contracts they may deem proper, or may require the bondsmen for said contractor to complete the same or proceed and have said contract otherwise completed at the expense of the contractor, and his bondsmen, and take any other action with reference thereto that occasion may require in the interest of the district and the provisions of section 5541 of the General Statutes of 1913, as amended by chapter 441 of the General Laws of 1917, shall apply to and govern the relations between the board of the district and the contractor including the examination and report of the engineer and the amount and time of payment so far as applicable, and in all cases the board of directors shall have full control of all agents and employees engaged or appointed by them, and may fix their compensation and remove them at pleasure. They shall keep an accurate account of all expenses incurred; and the time and expenses of all employees, including the expenses of the members of the board while engaged in any improvement, which shall be charged up to and be treated as part of the costs of said improvement and the compensation for such services members of the board of directors of any district for such services shall not exceed the sum of five (\$5.00) dollars per day and their necessary expenses for the time actually employed in performing his duties, of which accurate account shall be kept by the secretary.

Sec. 35. Neglect of affairs, etc.—The provisions of section 5569 of the General Statutes of 1913, relating to the obstruction or injury of work or neglect of duties by employees or officers, shall apply to any and all improvements made or authorized under the provisions of this act, and any other provision contained in the laws of this state relating to judicial or county ditches, providing for punishment for damages committed to or interfering with such work, shall apply to all improvements made under the provisions of this act.

Sec. 36. Report of directors.—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 other time as the court may direct, the financial condition of said district.

Sec. 37. Improper notices.—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 such subsequent notice. And if the publication of any notice in any county was defective or not made in time, re-publication of the defective notice need be had only in the county in which the defect occurred.

Sec. 38. Question of validity.—All cases in which there arises a question of the validity of the organization of conservancy districts shall be advanced as a matter of immediate public interest and concern, and heard in all courts at the earliest possible moment. The court shall be open at all times for the purpose of this act.

Sec. 39. Liberal construction to be given.—This act being necessary for securing the public health, safety, convenience or welfare, and being necessary for the prevention of 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. 40. Individual sections to stand.—In case any section or sections or part of any section of this act shall be found to be unconstitutional, the remainder of the act shall not hereby be invalidated, but shall remain in full force and effect.

Sec. 41. Reference to other chapters.—In all cases where reference is made to other chapters of the General Laws of 1913 or to other drainage laws of this state, and sections thereof are referred to such sections and provisions, shall so far as applicable, be treated and construed as having the same force and effect so far as the provisions of this act are concerned as though herein set forth.

Sec. 42. Continuation.—Nothing in this act contained shall be construed to interfere with the application and use of any other drainage law of this state and all proceedings now pending may be completed under such drainage law, and any proceedings hereafter instituted under such law may be conducted there under except where such proceedings are instituted within, or affect property within the limits of any district organized under the provisions of this act; notice of the institution of such proceedings shall be given to the board of said district and said board or its engineer given an opportunity to be heard with reference to such proceedings affecting, interfering with, or injuring the plans and work of such district. Provided, further, that all rights and privileges that may be acquired by any drainage and conservancy district organized under the provisions of this act, shall at all times be subject to regulation and control by act of the legislature and all such rights and interests that may be acquired by any district hereunder shall be subject to the right of the state to take over and acquire title thereto upon such conditions and compensation as the Legislature may specify.

Sec. 43. Districts already established.—Any drainage or flood control district heretofore or hereafter organized under chapter 442, of Laws 1917, may acquire the right to operate under and exercise all the rights and authorities of this act instead of chapter 442 as though organized hereunder by the governing board of said district, filing in the office of the clerk of the district court where the original petition for organization was filed, a petition to said court asking that said district be granted such authority, whereupon said clerk, with the consent of the judge of said court, shall fix time and place of hearing upon said petition, notice of which shall be given by publication for two successive weeks in one newspaper published in each county having territory within said district, and if at said hearing the court shall find that it is for the best interests of said district to be granted such authority, he may by order grant such petition, and thereupon and thereafter such district may exercise the authorities provided for in this act as though incorporated hereunder.

Sec. 44. This act shall take effect and be in force from and after its passage and approval.

Approved September 22, 1919.