

CHAPTER 68.

LEVEES, DITCHES, DRAINS AND WATER COURSES.

S. F. 16.

AN ACT to promote the public health, convenience and welfare, by leveeing, ditching and draining the lands of the state, and providing for the establishment of levees, drainage districts, or for the changing or [of] natural water courses to secure better drainage, and providing for the construction of ditches, drains and water courses and prescribing the method for so doing, and providing for the assessment and collection of the costs and expenses of the same, and issuing improvement certificates, or issuing and selling bonds therefor, additional to title ten (X), chapter two (2) of the code and code supplement.

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. Board of supervisors to establish drainage district. The board of supervisors of any county shall have jurisdiction, power and authority at any regular, special or adjourned session, to establish a drainage district or districts, and to locate and establish levees, and cause to be constructed as hereinafter provided any levee, ditch, drain or water course, or to straighten, widen, deepen or change any natural water course, in such county, whenever the same will be of public utility or conducive to the public health, convenience or welfare, and the drainage of surface waters from agricultural lands shall be considered a public benefit and conducive to the public health, convenience, utility and welfare.

SEC. 2. Proceedings—bond—survey. Whenever a petition signed by one or more of the land owners whose lands will be affected by, or assessed for the expenses of, the proposed improvement, shall be filed in the office of the county auditor setting forth that any body or district of land in the county, described by metes and bounds, or otherwise, so as to convey any [an] intelligible description of such lands, is subject to overflow or too wet for cultivation, and that the public benefit or utility, or the public health, convenience of [or] welfare will be promoted by draining, ditching, tiling or leveeing the same, or by changing a natural water course, and setting forth therein the starting point, route and terminus and lateral branches, if necessary, of the proposed improvement, and there is filed therewith a bond, in amount and with sureties to be approved by the county auditor and conditioned for the payment of all costs and expenses incurred in the proceedings in case the supervisors do not grant the prayer of said petition, the board shall at its first session thereafter, regular, special or adjourned, appoint a disinterested and competent engineer and place a copy of the petition in his hands and he shall proceed to examine and survey the lands described in said petition, and other lands if necessary, and locate such improvement or improvements as may be petitioned for along the route described in the petition or other route answering the same purpose if found more practicable or feasible, as will be for the public benefit or utility, or conducive to the public health, convenience or welfare and he shall make return of his proceedings to the county auditor, which return shall set forth a full and complete description of all lands which in his opinion will be affected by said improvement or improvements, and the names of the owners thereof, as they appear in the transfer books of the auditor's office, and he shall also return a plat and profile of said lands and proposed improvement or improvements with the levels and elevations of the same thereon, and how said different tracts of lands will be affected thereby, and the course and length of the drain or drains through each tract of land and its situation and elevation so far as he may deem necessary, together with the probable cost and such other facts and recommendations as he may deem material.

SEC. 3. Notice of hearing. Upon the filing of the return of the engineer, if the same recommends the establishment of the levee or drainage district, the auditor shall immediately thereafter cause notice in writing to be served upon the owner of each tract of land or lot within the proposed levee or

drainage district, as shown by the transfer books of the auditor's office, and also upon the person in actual occupancy of any lands or lots, and upon each lien holder or incumbrancer of any land through which or abutting upon which the proposed improvement extends as shown by the county records, of the pendency and prayer of said petition, the favorable report thereon by the engineer, the day set for hearing the same before the board of supervisors and all claims for damages must be filed in the auditor's office not less than five days before the day set for hearing upon the petition, which notice, as to residence as to the county, shall be served not less than twenty days prior to the time set for such hearing, in the manner that original notices are required to be served. In case any such owner, lien holder or incumbrancer is a non-resident of the county, such notice as to him shall be published once each week for two consecutive weeks in some newspaper of general circulation published in the county, the last of which publications shall be not less than twenty days prior to the day set for hearing upon the petition proof of such service to be made by affidavit of the publisher and filed with the county auditor.

SEC. 4. Claims for damages. Any person claiming damages as compensation for or on account of the construction of such improvement shall file such claim in the office of the county auditor at least five days prior to the day on which the petition has been set for hearing, and on failure to file such claim at the time specified, shall be held to have waived his rights thereto.

SEC. 5. Location—damages. The board of supervisors at the session set for the hearing on said petition, which session may be regular, special or adjourned, shall thereupon proceed to hear and determine the sufficiency of the petition in form and manner [matter], which petition may be amended as to form and substance at any time before final action thereon, and, if deemed necessary, the board may view the premises and if they shall find that such levee or drainage districts would not be for the public benefit or utility nor conducive to the public health, convenience or welfare, they shall dismiss the proceedings; but, if they shall find such improvement conducive to the public health, convenience or welfare or to the public benefit or utility and no claim shall have been filed for damages as provided in section four hereof, they may if deemed advisable locate and establish the same in accordance with the recommendations of the engineer; but if any claims have been filed for damages, as provided in section four hereof, then the board of supervisors shall proceed no further than to determine the necessity of the levee or drainage districts and further proceedings shall be continued to an adjourned, regular or special session, the date of which shall be fixed at the time of the adjournment; and the county auditor shall appoint three appraisers to assess such damages who shall be disinterested freeholders of the county and not related to any party interested in the proposed improvement nor themselves interested in a like improvement.

SEC. 6. Assessment of damages—appeal. The appraisers appointed to assess damages shall proceed to view the premises and determine and fix the amount of damages to which each claimant is entitled and shall, at least five days before the date fixed by the board to hear and determine the same, file with the county auditor reports in writing showing the amount of damages sustained by each claimant. Should the report not be filed in time or should any good cause for delay exist the board may postpone the time of final action on the subject and, if necessary, the auditor may appoint other appraisers. When the time for final action shall have arrived, and after the filing of the report of the appraisers, said board shall consider the amount of damages awarded in their final determination in regard to establishing such levee or drainage district, and if in their opinion the cost of construction and the amount of damages awarded is not excessive and a greater burden than should be properly borne by the land benefited by the improvement, they

shall locate and establish the same, and shall thereupon proceed to determine the amount of damages sustained by each claimant, and may hear evidence in respect thereto and may increase or diminish the amount awarded in respect thereto, and any party aggrieved may appeal from the finding of the board in establishing the improvement district or from its finding in the allowance of damages to the district court by filing notice with the county auditor at any time within ten days after such finding, at the same time filing a bond with the county auditor, approved by him, and conditioned to pay all costs and expenses of the appeal unless the judgment of the district court shall be more favorable to the appellant or appellants than the finding of the board, which appeal shall be tried in the district court as an ordinary proceeding, except that when the appeal is from the order of the board in establishing the levee or drainage district, it shall be tried in equity and the appearance term shall be the trial term.

SEC. 7. Damages, by whom paid—engineer. The amount of damages finally determined by the board in favor of any claimant or claimants shall be required to be paid in the first instance by the parties benefited by the said levee or drainage district, or secured to be paid upon such terms and conditions as the county auditor may deem just and proper, and after such damages shall have been paid or secured as aforesaid, the board shall divide said improvement into suitable sections, numbering the same consecutively from the source or beginning of the improvement downward towards its outlet and prescribe the time within which the improvement shall be completed and appoint a competent engineer to have charge of the work of construction thereof, who shall be required before entering upon the work to give a bond to the county for the use and benefit of the levee or drainage district to be approved by the auditor in such sum as the board may fix, conditioned for the faithful discharge of his duties.

SEC. 8. Letting work. The board shall cause notice to be given for four consecutive weeks in some newspaper published in the county wherein such improvement is located and such additional publication elsewhere as they may direct, of the time and place of letting the work of construction of said improvement, and in such notice they shall specify the approximate amount of work to be done in each section and the time fixed for the completion thereof and they shall award contract or contracts for each section of the work to the lowest responsible bidder or bidders therefor, or to the lowest responsible bidder considering the same as a whole, exercising their own discretion as to letting said work as a whole or in sections and reserving the right to reject any and all bids and re-advertise the letting of the work. Each person bidding for such work shall deposit in cash or certified check a sum equal to ten per centum of the amount of the bid, not in any event however to exceed ten thousand dollars, said deposit to be returned to him if his bid is not successful, and if successful to be retained as a guarantee only of his good faith in entering on said contract. The successful bidder shall be required to execute a bond with sufficient sureties in favor of the county for the use and benefit of the levee or drainage district in an amount equal to twenty-five per centum of the estimated cost of the work so let, or he may deposit such amount in cash with the auditor as security for the performance of his contract and upon the execution of such bond, or the making of such deposit, the deposit originally made with his bid shall be returned to him.

SEC. 9. Payment. The engineer in charge of the construction shall furnish the contractor monthly estimates of the amount of work done on each section and upon filing the same with the auditor, he shall draw a warrant in favor of such contractor, or deliver to him improvement certificates, as the case may be, for eighty per centum of the value of the work done according to the estimate, and when said improvement is completed to the satisfaction of the engineer in charge thereof and so certified by him to the board and

approved by it, the auditor shall draw a warrant in favor of said contractor upon the levee or drainage fund, or deliver to him improvement certificates, as the case may be, for the balance due.

SEC. 10. Failure to perform work—penalty. If any person to whom any portion of said work shall have been let shall fail to perform the same according to the terms specified in his contract, then the cash deposited by him shall be forfeited to the county, or recovery may be had in an action on the bond by the county, for the benefit of the levee or drainage district, for the damages sustained and the work shall be relet by the board in the manner hereinbefore provided.

SEC. 11. Changes in dimensions. If, after said contract shall have been let and the work begun, it shall become apparent to the engineer in charge that the dimensions of the levee, ditch or drain should be enlarged, deepened or otherwise changed for the better service thereof of the lands benefited, then the engineer shall report such fact to the supervisors, explaining to them the necessity for such change, and the board may by resolution authorize such change in the dimensions of said improvement as the engineer shall recommend, provided that before such action shall be taken, like notices shall be given and like proceedings had as hereinbefore provided for the establishment of the levee or drainage district.

SEC. 12. Assessment of costs and damages. When the levee or drainage district or other improvement herein provided for shall have been located and established as provided for in this act, or when it shall be necessary to cause the same to be repaired, enlarged, reopened or cleared from any obstruction therein, unless such repairs, reopening or clearing of obstructions can be paid for as hereinafter provided, the board shall appoint three commissioners, one of whom shall be a competent civil engineer and two of whom shall be resident freeholders of the county, not living within the levee or drainage district and not interested therein or in a like question, nor related to any party whose land is affected thereby; and they shall within twenty days after such appointment personally inspect and classify all the lands benefited by the location and construction of such levee or drainage district, or the repairing or reopening of the same, in tracts of forty acres or less according to the legal or recognized subdivisions in a graduated scale of benefits, to be numbered according to the benefit to be received by the proposed improvement; and they shall make an equitable apportionment of the costs, expenses, costs of construction, fees and damages assessed for the construction of any such improvement, or the repairing or reopening of the same, and make report thereof in writing to the board of supervisors. In making the said estimate the lands receiving the greatest benefit shall be marked on a scale of one hundred and those benefited in a less degree shall be marked with such percentage of one hundred as the benefit received bears in proportion thereto. This classification when finally established shall remain as a basis for all future assessments connected with the objects of said levee or drainage district, unless the board, for good cause, shall authorize a revision thereof. In the report of the appraisers so appointed, they shall specify each tract of land by proper description and the ownership thereof as the same appears on the transfer books in the auditor's office, and the auditor shall cause notice to be served upon each person whose name appears as owner and also upon the person or persons in actual occupancy of any such land in the time and manner provided for the establishment of a levee or drainage district, which notice shall state the amount of special assessments apportioned to such owner, upon each tract or lot, the day set for hearing the same before the board of supervisors and that all objections thereto must be made in writing and filed with the county auditor on or before noon of the day set for such hearing. When the day set for hearing shall have arrived, the board of supervisors shall proceed to hear and determine all objections made and filed to said report and may increase, diminish, annul or affirm the apportionment

made in said report or in any part thereof as may appear to the board to be just and equitable; but in no case shall it be competent to show that the lands assessed would not be benefited by the improvement, and when such hearing shall have been had the board shall assess such apportionment so fixed by it upon the lands within such levee or drainage district. If the first assessment made by the board of supervisors for the original cost or for repairs of any improvement as provided in this act is insufficient, the board may make an additional assessment and levy in the same ratio as the first for either purpose.

SEC. 13. Levy and collection of tax. In estimating the benefits as to the lands not traversed by said improvement they shall not consider what benefits such lands will receive after some other improvements shall have been constructed, but only the benefits which will be received by reason of the construction of the improvement in question as it affords an outlet for the drainage of such lands. Said tax shall be levied upon the lands of the owners so benefited in the ratio aforesaid and collected in the same manner as other taxes for county purposes, and the funds so collected shall be kept as a separate fund and shall be paid out only for purposes properly connected with such improvement on the order of the board of supervisors.

SEC. 14. Appeal—"Drainage Record." An appeal may be taken to the district court from the order of the board fixing the assessment of benefits upon the lands in the same manner and time as herein provided for appeals from the assessment of damages. The board shall provide a book to be known as the "Drainage Record" and the county auditor shall keep a full and complete record therein of all proceedings in each case and upon an appeal being taken shall make a full and complete transcript thereof and transmit the same to the clerk of the district court on or before the first day of the term to which the appeal shall be taken.

SEC. 15. Nuisance. Any ditch, drain or water course which is now or may hereafter be constructed so as to prevent the surface and overflow waters from the adjacent lands from entering the same is hereby declared a nuisance and may be abated as such; and any person or corporation diverting, obstructing, impeding or filling up any such ditch, drain or water course or breaking down any levee established under the provisions of this act without legal authority, shall be deemed guilty of a nuisance and criminally punished as such.

SEC. 16. Subsequent proceedings. In any proceedings heretofore or hereafter had for the establishment of a ditch, drain, levee or the changing of a natural water course, or the establishment of a levee or drainage district where an engineer has been appointed and has made a complete survey, return and plat thereof and for any reason the improvement has been abandoned and the proceedings dismissed and afterwards proceedings are instituted for the establishment of a levee or drainage district, or the changing [of] a natural water course, for the benefit or reclamation of the same territory surveyed in said former proceedings a part thereof, or the same with territory additional thereto, the engineer shall use the return, plat and profile made in said former proceedings, or so much thereof, as may be applicable.

SEC. 17. Relevy. Where proceedings have been had for the establishment of a ditch, drain, levee, change of natural water course or the establishment of a drainage district under the law as heretofore existing and such improvement has been established and constructed and taxes levied upon the land benefited thereby, or upon any portion thereof for the cost of such improvement, and where the levy so made cannot for any reason be enforced, the board shall proceed as to all lands benefited by said improvement in the same manner as if the appraisalment and apportionment of benefits had never been made; and they shall proceed in the manner hereinbefore provided, using as a basis the entire cost of such improvement, and in taxing up said benefits account shall be taken of the amount of tax, if any, that has been paid by those benefited and credit therefor shall be given accordingly.

SEC. 18. Establishment across right of way of railroad company. Whenever the engineer in charge shall make survey for the purpose of preparing his return, plat and profile of a proposed levee or drainage district or change of a natural water course and the same as surveyed would cross the right of way of any railroad company, it shall be the duty of the engineer in charge of the work to notify the railroad company by serving a written notice upon a station agent of such company or its lessee or receiver that he will meet the company at the place where the said proposed ditch, drain or water course crosses the right of way of said company, said notice fixing the time of such meeting which shall not be less than five days after the service of the same, for the purpose of conferring with such railroad company in relation to the place where and the manner and method in which such improvement shall cross such right of way. When the time shall arrive, fixed for such conference, unless for good cause some other time is agreed upon, it shall be the duty of the engineer in charge and the railroad company to agree, if possible, upon the place where, and the manner and method in which such improvement shall cross such right of way. If the engineer in charge and the railroad company cannot agree, or if the railroad company shall fail, neglect or refuse to confer with the engineer in charge, the county auditor shall at once notify the railroad commissioners in writing by registered letter of the failure of the engineer in charge and the railroad company to agree, and it shall be the duty of the railroad commissioners to proceed within thirty days to view the premises and hear the parties in relation thereto, giving to the county auditor and the railroad company notice by registered letter of the time when they will view the premises and hear the parties which notice shall be mailed to each party at least ten days prior to the time fixed for such hearing. At the close of the hearing it shall be the duty of the railroad commissioners to determine the place where, and the course, direction and manner in which such ditch, drain or water course shall cross such right of way and notify each party in writing of their decision and finding. The determination and finding of the railroad commissioners in relation thereto shall be final and binding upon the parties.

SEC. 19. Construction across right of way. Whenever the board of supervisors shall have established any levee or drainage district or change of any natural water course and the levee, ditch, drain or water course crosses the right of way of any railroad company, and the place where and the manner and method of crossing such right of way shall have been determined as provided in the preceding section, such railroad company shall within thirty days after being notified by the county auditor to construct the same and the time within which the work must be completed, proceed to construct such levee, ditch, drain or change of natural water course in accordance with the plans and specifications as shown by the plat and profile of the engineer. If such railroad company shall fail, neglect or refuse to do so within the time fixed in such notice, the auditor shall cause the work to be done under the supervision of the engineer in charge of the improvement and the railroad company shall be liable for the cost thereof, to be collected by the county in any court having jurisdiction. All other proceedings in relation to railroads shall be the same as provided for individual property owners within the district, except that the cost of constructing the improvement across its right of way shall be considered as an element of its damages by the appraisers thereof; and the commissioners to assess benefits shall fix and determine the actual benefits to the property of the railroad company within the levee or drainage district and make return thereof with their regular return. Such special assessment shall be a debt due personally from the railroad company, and unless the same is paid by the railroad company as a special assessment, it may be collected in the name of the county in any court having jurisdiction.

SEC. 20. Construction across highway. Where the board of supervisors shall have established any levee, drainage district or change of any

natural water course, and when such levee, ditch, drain or change of any natural water course crosses any public highway, the actual cost of constructing the same across such highway shall be paid by the township trustees from the road fund of such township; and whenever the making of such improvement across any highway necessitates the building of a bridge over the same, the board of supervisors shall build and construct the same and pay all costs and expenses thereof out of the county bridge fund. Whenever any highway within the levee or drainage district will be beneficially affected by the construction of any improvement or improvements in such district, it shall be the duty of the commissioners appointed to classify and assess benefits to determine and return in their report the amount of the benefit to such highway, and notice shall be served upon the clerk of the township in which said highway is located as provided in case of an individual property owner. At the time fixed for hearing upon such report the board of supervisors shall fix and determine the amount to be apportioned to the road district on account of such benefit; and the amount so fixed shall be paid to the county for the use and benefit of the levee or drainage district, from the road fund of such township or from the county road fund, or partly from each of said funds as the board may determine.

SEC. 21. Construction on or along highway. Whenever a levee or drainage district shall have been established by the board and it shall become necessary or desirable that the levee, ditch, drain or improvement should be located and constructed within the limits of any public highway, on either or both sides and along the same, it shall be so built as not materially to interfere with the public travel thereon; and the board of supervisors shall have power and authority to lay out and establish public highways along and upon any levee or embankment along any ditch or drain built under the provisions of this act, provided that when so established the same shall be worked as other highways and so as not to impair the levee, ditch or drain.

SEC. 22. Control—repairs. Whenever any levee or drainage district shall have been established and the improvement constructed as in this act provided, the same shall at all times be under the control and supervision of the board of supervisors and it shall be the duty of the board to keep the same in repair and for that purpose they may cause the same to be enlarged, reopened, deepened, widened, straightened or lengthened for a better outlet, and they may change or enlarge the same or cause all or any part thereof to be converted into a closed drain when considered for the best interests of the public rights affected thereby. The cost of such repairs or change shall be paid by the board from the drainage fund of said levee or drainage district, or by assessing and levying the cost of such change or repair upon the lands in the same proportion that the original expenses and cost of construction were levied and assessed, except where additional right of way is required or additional lands affected thereby, in either of which cases the board shall proceed as hereinbefore provided; provided, however, that if the repair is made necessary by the act or negligence of the owner of any land through which such improvement is constructed or by the act, or the negligence of his agent or employe, or if the same is filled and obstructed by the cattle, hogs or other stock of such owner, employe or agent, then the cost thereof shall be assessed and levied against the lands of such owner alone.

SEC. 23. Outlet for lateral drains. The owner of any land, lot or premises that have been assessed for the payment of the cost of the location and construction of any ditch, drain or water course as hereinbefore provided, shall have the right to use the ditch, drain or water course as an outlet for lateral drains from said land, lot or premises.

SEC. 24. Sub-drainage districts. If any person who owns land within the drainage district which has been assessed for benefits and which is separated from the ditch, drain or water course for which it has been assessed, by the land of another or others, shall desire to ditch or drain his said land

across the land of such other or others into such ditch, drain or water course and shall be unable to agree with such other or others on the terms and conditions on which he may enter upon their lands and construct such drain or ditch, he may proceed in the manner in this section provided, and the ditch or drain which he shall construct or cause to be constructed shall be considered to be conducive to the public health, welfare, convenience and utility to promote which said drainage district was established. He may file his petition with the county auditor asking the board to establish a sub-district within the limits of the original district for the purpose of securing more complete drainage, describing the lands to be affected thereby by metes and bounds or otherwise so as to convey an intelligible description of such lands; and the bond and all other proceedings shall be the same as herein provided for the establishment, formation and construction of original districts and improvement thereof, including the assessment of damages and the assessment of benefits and when established and constructed, it shall be and become a part of the drainage system of such drainage district and be under the control and supervision of the board of supervisors.

SEC. 25. Enlargement of water course or stream. When two or more districts shall have their outlet or discharge into the same natural water course or stream and it shall become necessary to deepen or enlarge said natural water course or stream, each district shall be assessed for the cost of such work in the same ratio to such total cost as the discharge of waters of such district bears to the combined discharge of waters of the several districts emptying into said natural water course or stream; but no district shall be liable to contribute for any improvement or costs and expenses incurred in improving said natural water course or stream above the point of discharge of the waters of such district into the same.

SEC. 26. New levee or drainage districts. If any levee, drainage district or improvement heretofore established, or which may hereafter be established, shall prove insufficient to protect or drain all of the lands necessarily tributary thereto, the board of supervisors, upon petition therefor as for the establishment of an original levee or drainage district, shall have the power and authority to establish a new levee or drainage district covering and including such old district or improvement, together with any additional lands deemed necessary; and whenever a new district shall be established as contemplated in this section and the new improvement shall extend into or along the former improvement, the commissioners of classification and benefits shall take into consideration the value of such old improvement in the construction of the new improvement and credit the same to the parties owning the old improvement as their interests may appear.

SEC. 27. Tax, how paid—improvement certificates. The special assessment for benefits made by the commissioners appointed for that purpose, as corrected and approved by the board of supervisors, shall be levied at one time by the board against the property so benefited, and when levied and certified shall be payable at the office of the county treasurer. If the owner of any parcel of land, lot or premises against which any such levy shall have been made and certified, which is embraced in any certificate provided for in this section, shall within thirty days from the date of such assessment promise and agree in writing endorsed upon such certificate, or in a separate agreement, that in consideration of having the right to pay his assessment in installments, he will not make any objection of illegality or irregularity as to the assessment of benefits, or levy of such tax upon and against his property, but will pay said assessment with interest thereon at such rate not exceeding six per centum per annum as shall be prescribed by resolution of the board, such tax so levied against the land, lot or premises of such owner shall be payable in ten equal installments, the first of which with interest on the whole assessment shall mature and be payable on the date of such assessment, and the others with interest on the whole amount

unpaid annually thereafter at the same time and in the same manner as the March semi-annual payment of ordinary taxes; but where no such terms and agreement in writing shall be made by the owner of any land, lot or premises then the whole of said special assessment, so levied upon and against the property of such owner, shall mature at one time and be due and payable with interest from the date of such assessment, and shall be collected at the next succeeding March semi-annual payment of ordinary taxes. All of such tax with interest shall become delinquent on the first day of March next after its maturity and shall bear the same interest with the same penalties as ordinary taxes. And the board may provide by resolution for the issuance of improvement certificates, payable to bearer or to the contractors who have constructed the said improvement or completed part thereof within the meaning of this act in payment or part payment therefor, each of which certificates shall state the amount of one or more assessments or part thereof made against the property designating it and the owners thereof liable to assessments for the cost of same, and said certificate may be negotiated. Such certificates shall transfer to the bearer, contractor or assigns all right and interest in and to the tax in every such assessment, or part thereof, described therein and shall authorize such bearer, contractor or assignee to collect and receive every assessment embraced in said certificate, by or through any of the methods provided by law for their collection, as the same mature. Such certificates shall bear interest not to exceed six per centum per annum, payable annually, and shall be paid by the taxpayer to the county treasurer who shall receipt for the same and cause the amount paid to be applied to the payment of the certificate issued therefor. Provided, that any person shall have the right to pay the full amount of the tax so levied against his property, together with interest thereon to date of payment at any time he desires so to do, even before the maturity of any certificates issued therefor. No certificate shall be issued or negotiated for the use of the drainage district for less than par value with accrued interest up to the delivery or transfer thereof. Should the costs of such work exceed the amount of benefits assessed and certificates issued, a new apportionment and levy of tax may be made and other certificates issued in like manner.

SEC. 28. Drainage bonds. If the board of supervisors shall determine that the estimated cost of reclamation and improvement of such district of land is greater than should be levied in a single year upon the lands benefited, instead of issuing improvement certificates as provided in the preceding section, it may fix the amount that shall be levied and collected each year and may issue drainage bonds of the county, bearing not more than six per centum annual interest and payable semi-annually in the proportions and at the times when such taxes shall have been collected, and may devote the same at par to the payment of the work as it progresses or may sell the same at not less than par and devote the proceeds to such payment; and if in the sale of said bonds a premium is received, such premium shall be credited to the drainage fund, and should the cost of such work exceed the estimate, a new apportionment of the tax may be made and other bonds issued and sold in like manner, but in no case shall the bonds run longer than fifteen years. Any property owner may pay the full amount of the benefit assessed against his property before such bonds are issued and receive a receipt in full therefor. The terms and times of payment of the bonds so issued shall be fixed by the board. Said bonds shall be issued for the benefit of the district numbered thereon and each district shall be numbered by the board of supervisors and recorded by the auditor, said record showing specifically the lands embraced in said district and upon which the tax has not been previously paid in full. In no case shall the amount of bonds exceed the benefits assessed. Each bond issued shall show expressly upon its face that it is to be paid only by a tax assessed, levied and collected on the lands within the district so designated and numbered, and for the benefit of which

district such bond is issued; nor shall any tax be levied or collected for the payment of said bond or bonds, or the interest thereon, on any property outside the district so numbered, designated and benefited.

SEC. 29. Establishment when owners mutually agree. Owners of land which requires combined drainage may provide for the establishment of a drainage district or location and construction of drains, ditches and water courses upon their own lands by mutual agreement in writing duly signed, acknowledged and filed with the county auditor; such agreement may include the location, the character of the work to be done, the adjustment of the damages, the classification of the lands to be benefited thereby, the amount of taxes or special assessments to be levied, when the same shall be levied, or so many of these or other provisions as may be agreed upon, and to such extent shall be as valid and binding as though performed in the mode and manner provided for in this act. Upon the filing of the agreement with the county auditor, the board of supervisors shall at the next session thereafter establish such drainage district, and locate the ditch, drain or water course provided for in said mutual agreement according to the terms thereof, and shall thereafter have full and complete jurisdiction of the parties and subject-matter, and order such procedure under the provisions of this act as may be required or necessary to carry out the object, purpose and intent of such agreement and to complete and construct the desired improvement and shall retain jurisdiction of the same as fully as in other cases made and provided for in this act.

SEC. 30. Establishment through two or more counties. When the desired levy [levee] or drainage district extends into or through two or more counties and embraces land in two or more counties, the petition of one or more owners of land to be affected or benefited by such improvement shall be presented to the county auditor of each county into or through which said levy [levee] or drainage district will extend, accompanied by a bond to be filed with the county auditor of each of the said counties at the time of filing such petition, conditioned as provided when the district is wholly within one county, in an amount and with sureties satisfactory to, and approved by, the board of supervisors. Upon the presentation of such petition and the approval of such bond, the board of supervisors of each of said counties shall appoint a commissioner, and the commissioners of the several counties thus appointed shall meet within ten days thereafter and appoint a competent engineer, and such commissioners and engineer shall together make a survey of the entire lands embraced in the district, and shall determine what improvement or improvements in the way of levees, drains, ditches or changing of natural water courses are necessary for the reclamation of the lands described in the said petition; the engineer shall make a plat of all of the lands of said district, showing thereon the proposed improvements, the elevations and levels of said lands, so far as he may deem necessary, and a profile of said levee, drains, ditches or changes in any natural water course and shall file a copy in the auditor's office of each of said counties together with a full return of said commissioners and engineer, explaining the situation, describing the lands, the improvements, what effect said improvements will have upon the lands of said district, the course and length of any levee, drain, ditch or change of any natural water course through each tract of land, the estimated cost of the same, the dimensions of said improvement together with the names of the owners of all lands included within said district, as shown by the transfer books in the auditor's office, and which in their opinion will be affected or benefited thereby, together with such other facts and recommendations as to them shall seem advisable, and especially whether or not in their judgment such levee or drainage district should be established. Immediately upon the filing of such return, plat and profile, if such recommends the establishment of the levee or drainage district, each county auditor of said counties shall cause the owners of the lands, as shown by the transfer books

in the auditor's office, and also the person in actual occupancy of any lots or lands in the district and also each lien holder or incumbrancer, as shown by the county records, of any land through or abutting upon which the proposed improvement extends, to be notified of the time and place where the boards of the several counties will meet in joint session for the consideration of said petition and return. Such notice shall be the same and served in the same time and manner as provided in this act when the levee or drainage district is wholly within one county.

SEC. 31. Claims for damages—where filed. Any person claiming damages as compensation for, or on account of, the construction of such improvement shall file his claim in writing therefor in the office of the county auditor of the county in which his land is situated, at least five days prior to the time at which the petition has been set for hearing, and on failure to file such claims at the time specified shall be held to have waived his right thereto.

SEC. 32. Hearing—appraisers. At the time set for hearing such petition the boards of the several counties shall meet at the place designated in said notice and sit jointly in considering the petition and proceed in the same manner as provided in section five of this act, except that if it becomes necessary to appoint appraisers, the boards of supervisors acting jointly shall appoint one appraiser from each county, and if said levee or drainage district extends into or through only two counties then the two appraisers shall choose a third, each of whom shall have like qualifications as provided where the improvement is wholly within one county and they shall then proceed in the same manner and make the same return as provided in section six of this act, except that a copy thereof shall be filed in the auditor's office of each of the several counties. After the filing of the report of such appraisers the further proceedings of the board[s] of supervisors acting jointly shall be the same, as in this act provided where the levee or drainage district is wholly within one county so far as applicable except as herein otherwise provided.

SEC. 33. Assessment of costs and damages—improvement certificates—bonds. If the boards of supervisors, acting jointly, shall establish the levee or drainage district, they shall appoint a commission, one of whom shall be selected from each county and in addition thereto a competent engineer, each of whom shall have the same qualifications as provided where the district is wholly within one county; and said commission shall within twenty days go upon and view the premises and classify the same as hereinbefore provided where the district is wholly within one county, and in addition thereto shall make and [an] equitable apportionment of the costs, expenses, costs of construction, fees and damages assessed for the construction of such improvement or of the repairing or reopening the same, and make report thereof as provided where the improvement is wholly within one county, except that a copy of said report shall be filed with each of the several county auditors. Immediately upon the filing of such report the several county auditors, acting jointly, shall cause notice to be served of the time when and the place where the boards of supervisors will meet and consider such report, which notice shall be the same and served in the same time and manner and all proceedings thereon shall be the same as provided where the district is wholly within one county, except after the amount to be assessed and levied against the several parcels or tracts of land shall have been apportioned and finally determined, the several boards of supervisors acting separately, and within their own counties, shall proceed to levy and collect the taxes thus apportioned in the same manner as provided where the district is wholly within one county, and they may issue improvement certificates or may sell bonds for the full amount of the benefits apportioned to such county.

SEC. 34. Letting work. If the boards of supervisors, acting jointly, shall establish such levee or drainage district, the auditors of the several

counties shall immediately thereafter, acting jointly, cause notice to be given of the time and place of the meeting of the boards for letting the contract or contracts for the construction of the improvement. The notices, bond and all other proceedings in relation to letting the contract or contracts shall be the same as in this act provided where the district is wholly within one county, except that the several boards shall act jointly.

SEC. 35. Supervising engineer—contractor, how paid. At the time of establishing the levee or drainage district the boards of supervisors shall appoint a competent engineer to have charge of the construction of the work, and they shall fix his compensation therefor, and he shall before entering upon and taking charge of said work give bond to the counties for the use and benefit of the levee or drainage district, approved by the boards of supervisors in such sum as they may direct, conditioned for the faithful discharge of his duties. The engineer in charge of the work shall furnish the contractor monthly estimates of the amount of work done on each section and the amount due from each county, a duplicate of which shall be filed with the auditor of each of the several counties. Upon the filing of such statement each auditor shall draw a warrant or deliver to him improvement certificates, as the case may be, in favor of the contractor for eighty per centum of the amount due from his respective county. When said improvement is completed to the satisfaction of the engineer in charge and accepted by the boards of supervisors, the engineer shall certify such fact to the several county auditors and each county auditor shall draw a warrant in favor of the contractor, or deliver to him improvement certificates, for the balance due from his respective county.

SEC. 36. Appeals. Any person or persons aggrieved shall have the right to appeal in the same time and in the same manner as provided when the district is wholly in one county, except that if the appeal is taken from the action of the boards in establishing the levee or drainage district, such appeal may be taken to the district court of either county in which the district or some part thereof is located. If said appeal is from the award of damages or assessment of benefits the appeal shall be taken to the district court of the county in which the land affected is located.

SEC. 37. District court to establish—when. Whenever the establishment of a levee or drainage district, extending into or through two or more counties, if petitioned for as hereinbefore provided and one or more of such boards of supervisors neglect, fail or refuse to take action thereon, the petitioner or petitioners may cause notice in writing to be served upon the chairman of such board or boards, demanding that action be taken upon the prayer of the petition within twenty days from and after the service of such notice; and if such board or boards shall neglect, fail or refuse to take action thereon within the time named, or if such action is taken and the boards of supervisors cannot agree as to the proper determination thereof, the petitioner or petitioners may cause such proceedings to be transferred to the district court of either of the counties into or through which such proposed district, or some part thereof, extends by serving notice upon the auditors of the several counties within ten days after the expiration of the time fixed by the notice, served upon the chairman of the board or boards, or within ten days after the failure of such boards to agree. Upon such notice being given the auditors shall, acting jointly, prepare and certify to the clerk of the district court a full and complete transcript of all proceedings had in such case, on or before the first day of the next succeeding term of said court. The clerk of the district court shall thereupon docket the case and the same shall be tried as in equity and the appearance term shall be the trial term, and the court shall enter judgment and decree dismissing the case or establishing such levee or drainage district and may by proper orders and writs enforce its judgment and decree.

SEC. 38. Special sessions of boards of supervisors. Whenever the district is located in two or more counties, the boards of supervisors shall have power and authority to adjourn from time to time and meet in special session and in all cases shall have the same jurisdiction, power and authority as provided where the improvement is wholly within one county, and all proceedings shall be the same so far as applicable and not herein otherwise provided.

SEC. 39. Cities and towns included. The board of supervisors shall have the same power, right and authority to establish a levee or drainage district that includes the whole or any part of any incorporated town or city, including cities acting under special charter, as they have to establish districts as hereinbefore provided, and they shall have the same power, right and authority with respect to the assessment of damages and benefits within such towns or cities as they have in other cases provided for in this act, and like notice to such city or town with respect to the establishment of such district and the apportionment and assessment of damages and benefits shall be given as is required by this act to be given to owners of property damaged or benefited by the establishment or construction of such improvement.

SEC. 40. Outlet in another state. Whenever a drainage district is established in any county in this state and no practicable or feasible outlet can be obtained except through the lands of an adjoining state, the board of supervisors of such county shall have power and authority to purchase a right of way for such outlet in such adjoining state and pay for the same out of the funds of such district.

SEC. 41. Watchmen. Whenever a levee has been established, or shall hereafter be established, and constructed in any county, the board of supervisors shall be empowered and authorized to employ one or more persons whose duty it shall be to watch such levee and make repairs thereon in case of emergency or cause the same to be made. And such employe shall file with the county auditor an itemized bill for services rendered, and cost and expense incurred in watching or repairing such levee, and the same shall be audited and allowed by the board as other claims and demands and the amount or amounts so allowed shall be paid by the county from the funds belonging to such levee district. If there are no funds on hand belonging to such district, the same shall be paid in the first instance by the county from the general fund and the board shall proceed to assess and levy a tax upon the lands in such district, which assessment and levy shall be apportioned to each tract of land in the same ratio that the original cost thereof was apportioned, and when collected the auditor shall draw a warrant thereon in favor of the county for the sum or sums so paid from the county funds.

SEC. 42. Fees and expenses. Any engineer employed under the provisions of this act shall receive such compensation per diem as shall be fixed and determined by the board of supervisors. Appraisers of damages and commissioners to assess benefits, other than the engineer, shall receive three dollars per day each, and all other fees and costs required under the provisions of this act shall be the same as provided by law for like services in other cases. Such costs and expenses shall be paid by the order of the board of supervisors out of the county treasury from the levee or drainage funds collected for that purpose upon warrants drawn by the county auditor.

SEC. 43. County auditor—compensation—Drainage record. Whenever a levee or drainage district or districts shall be petitioned for or established in any county, the board of supervisors shall allow the county auditor such compensation or furnish such additional help, as shall be just and reasonable, to be paid by the county; and the county auditor shall be the custodian of all papers and records pertaining to the levee or drainage matter in his county and shall keep the book known as the "Drainage Record" and shall record therein all of the proceedings of the board of supervisors per-

taining to the subject of levees or drainage, as well as the papers required to be issued or filed by the county auditor in such proceedings.

SEC. 44. Draining of highways. Whenever the township trustees of any township or townships shall desire to drain any highway within or under the jurisdiction of such trustees, and it becomes necessary to cross the lands of a private owner or owners to obtain a proper outlet and the trustees cannot agree with the owner or owners of such land as to how, where and upon what terms such drain may be constructed, such trustees may file in the office of the county auditor a petition describing the highway to be drained and the lands necessary to be crossed to obtain a proper outlet, the starting point, route and terminus of the desired drain, as near as may be, and asking the establishment of such drain. Upon the filing of such petition the county auditor shall appoint a commissioner, who shall be a competent engineer, and place a copy of the petition in his hands and he shall proceed to survey the proposed ditch or drain along the route described in the petition, or other route if found more practicable or feasible, and shall return a plat and profile thereof to the county auditor, and his return shall set forth a full and detailed description thereof, its size, dimensions, whether it will require a covered or open drain, its availability, necessity and probable cost, with a description of each tract of land or lot owned by different persons through which or abutting upon which the drain is proposed to be located and such other facts and recommendations as he may deem material; and he shall also apportion among the several townships, if more than one, the ratio of the cost of construction and expenses that shall be borne by each township. After the filing of such report the further proceedings shall be the same as provided in title eight (VIII), chapter one (1) of the code in relation to the establishment of highways, except that the costs, expenses and damages shall be paid by the township trustees from the road fund of such township or townships, or from the county road fund, or partly from each of said funds, as the board of supervisors may determine. If the board of supervisors shall establish such drain, the same shall be constructed by the board of supervisors in the same manner that other county work is done, and the cost thereof shall be paid from the road fund of such township or townships, or from the county road fund, or partly from each of said funds, as the board of supervisors may direct.

SEC. 45. Inspection. The board of supervisors of any county in or through which an improvement of the character provided for in this act extends, or shall extend, shall cause a competent engineer to inspect such improvement whenever they may deem it necessary, and he shall make report to such board of the condition of the improvement together with such recommendation as he deems necessary.

SEC. 46. Tax, a lien upon premises. The tax provided for in this act, when levied, shall be a lien upon all premises upon which the same is assessed to the same extent and in the same manner as taxes levied for county and state purposes.

SEC. 47. Defects in proceedings. The provisions of this act shall be liberally construed to promote the leveeing, ditching, draining and reclamation of wet, overflow or [of] agricultural lands; the collection of the assessments shall not be defeated, where the proper notices have been given, by reason of any defect in the proceedings occurring prior to the order of the board of supervisors locating and establishing the levee, ditch, drain or change of natural water course provided for in this act, but such order or orders shall be conclusive and final that all prior proceedings were regular and according to law unless they were appealed from. But if upon appeal the court shall deem it just and proper to release any person or modify his assessment or liability, it shall in no manner affect the rights or liability of any person other than the appellant; and the failure to appeal from the order of the board of supervisors of which complaint is made shall be a waiver of any

illegality in the proceedings and the remedies provided for in this act shall exclude all other remedies.

SEC. 48. Additional to statutes. The provisions of this act shall be construed as additional to chapter two (2) title ten (X) of the code and supplement, relating to the location, establishment and construction of levees, drains, ditches and water courses and shall not be held to repeal any of such provisions.

SEC. 49. In effect. This act, being deemed of immediate importance, shall take effect and be in force from and after its publication in the Register and Leader and the Des Moines Daily Capital, newspapers published at Des Moines, Iowa.

Approved April 29, A. D. 1904.

I hereby certify that the foregoing act was published in the Register and Leader and the Des Moines Daily Capital, May 3, 1904.

W. B. MARTIN,
Secretary of State.

CHAPTER 69.

PUMPING STATIONS IN LEVEE DISTRICTS.

H. F. 480.

AN ACT to establish and maintain pumping stations or plants in levee districts of the state, presenting the method of so doing. Additional to title ten (X) chapter two (2) of the code and code supplement.

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. Pumping stations. The board of supervisors of any county or counties in the state in which a drainage district has been or may hereafter be organized in the manner provided in chapter two (2) of title ten (10) of the code may provide for the establishment and maintenance of a pumping station when and where the same shall be necessary to secure a proper outlet for the lands comprising the district, and the costs of construction and maintenance of such pumping station or plant shall be levied upon and collected from the lands in the drainage district in the same manner as provided for the construction and maintenance of ditches as provided in title ten (10) chapter two (2) of the code, and code supplement—except the petition referred to shall require the signature[s] of fifty (50) per cent. of the land owners of such district.

SEC. 2. In effect. This act, being deemed of immediate importance, shall take effect and be in force from and after its publication in the Register and Leader and the Des Moines Daily Capital, newspapers published at Des Moines, Iowa.

Approved April 13, A. D. 1904.

I hereby certify that the foregoing act was published in the Des Moines Daily Capital April 15, 1904, and the Register and Leader April 16, 1904.

W. B. MARTIN,
Secretary of State.

CHAPTER 70.

DRAINAGE OF SURFACE WATERS.

S. F. 239.

AN ACT to define the rights of owners and proprietors of land in respect to surface waters. [Additional to chapter two (2) of title ten (X) of the code, relating to levees, drains, ditches and water courses.]

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. Owners may drain. Owners of land may drain the same in the general course of natural drainage, by constructing open or covered