

31-101. Ditches; drains; watercourses; county board; powers.

The county board of any county may, at any regular or special session, cause to be located and constructed, straightened, widened, altered, or deepened, any ditch, drain or watercourse, as hereinafter provided, when the same is necessary to drain any lots, lands, public or corporate road, or railroad, and will be conducive to the public health, convenience or welfare.

Source: Laws 1881, c. 51, § 1, p. 236; Laws 1911, c. 140, § 1, p. 453; R.S.1913, § 1718; C.S.1922, § 1665; C.S.1929, § 31-101; R.S.1943, § 31-101.

Annotations

1. Powers of county and county officers

2. Procedure

3. Miscellaneous

1. Powers of county and county officers

Void special assessment may be recovered from county. *McClary v. County of Dodge*, 176 Neb. 627, 126 N.W.2d 849 (1964).

County surveyor laying out drainage ditches and county commissioners in executing drainage contract under this article do not act as agents of the county, and there is no statutory provision making county liable for their neglect. *Thompson v. Colfax County*, 106 Neb. 351, 183 N.W. 571 (1921).

County board has authority to employ an engineer to survey and report upon location of drainage ditch. *Holmwig v. Dakota County*, 90 Neb. 576, 134 N.W. 166 (1912).

Before the amendment of 1911, county had no power to drain overflow lands. *Campbell v. Youngson*, 80 Neb. 322, 114 N.W. 415 (1907).

2. Procedure

Mode of procedure outlined in this article must be strictly followed. *Shanahan v. Johnson*, 170 Neb. 399, 102 N.W.2d 858 (1960).

Injunction lies to prevent construction of ditch under this article which floods lower riparian owners, until notice of time for hearing on damages is fixed. *Costello v. Colfax County*, 112 Neb. 40, 198 N.W. 357 (1924).

One whose land is traversed by a drainage ditch is entitled to recover the value of the land actually taken, together with any special damages to the remainder of the land caused by the construction of the improvement. *Gutschow v. Washington County*, 81 Neb. 275, 116 N.W. 46 (1908).

Chapter is constitutional, and provides due process of law. *Morris v. Washington County*, 72 Neb. 174, 100 N.W. 144 (1904); *Dodge County v. Acom*, 61 Neb. 376, 85 N.W. 292 (1901).

Mandamus will not lie to compel board to proceed, unless relator shows special interest. *Van Horn v. State ex rel. Allen*, 51 Neb. 232, 70 N.W. 941 (1897).

3. Miscellaneous

Original drain involved was constructed under this article. *Harms v. County Board of Supervisors*, 173 Neb. 687, 114 N.W.2d 713 (1962).

This act was not amended by sanitary district act. *Whedon v. Wells*, 95 Neb. 517, 145 N.W. 1007 (1914).

31-101.01. Drainage ditches and improvements; construction under prior law; treatment.

After June 30, 1972, no drainage ditches or other improvements shall be initiated under the provisions of sections [31-101](#) to [31-134](#). All drainage ditches or other improvements which have been approved as provided for by section [31-107](#) before July 1, 1972, shall not be affected by this section, and the legality of any such ditch or other improvement shall not be subject to any legal action based upon this section. Attempted initiations of drainage ditches or improvements under sections [31-101](#) to [31-134](#) which have not been completed before July 1, 1972, shall be null, void and of no effect.

Source: Laws 1969, c. 9, § 60, p. 134; Laws 1971, LB 544, § 6.

31-102. Ditch, defined; petition, how construed; requirements.

The word ditch, as used in sections [31-101](#) to [31-138](#), shall be held to include a drain or watercourse. The petition for any such improvement shall be held to include any side lateral, spur or branch ditch, drain or watercourse necessary to secure the object of the improvement, whether the same is mentioned therein or not; but no improvement shall be located unless a sufficient outlet is provided.

Source: Laws 1881, c. 51, § 2, p. 236; Laws 1911, c. 140, § 2, p. 453; R.S.1913, § 1719; C.S.1922, § 1666; C.S.1929, § 31-102; R.S.1943, § 31-102.

Annotations

Lateral does not qualify words following. *Omaha & N.P.R. Co. v. Sarpy County*, 82 Neb. 140, 117 N.W. 116 (1908).

31-103. Drainage improvements; costs and expenses; apportioned to county or railroad; when.

When the proposed improvement will drain the whole, or any part of any public or corporate road or railroad, or will so benefit any such road that the traveled track or roadbed thereof will be improved by its construction, there shall be apportioned to the county, if the road is a state or county road, or to the corporation, if a corporate road or railroad, a proper share of the costs and expenses thereof, as hereinafter provided.

Source: Laws 1881, c. 51, § 3, p. 236; Laws 1911, c. 140, § 3, p. 454; R.S.1913, § 1720; C.S.1922, § 1667; C.S.1929, § 31-103; R.S.1943, § 31-103.

31-104. Drainage improvements; petition for construction.

A petition for any such improvements shall be made to the county board, signed by one or more owners of lots and lands which shall be benefited thereby, which petition shall be filed with the county clerk, shall set forth the necessity of the proposed improvement and describe the route and termini thereof with reasonable certainty, and shall be accompanied by a good and sufficient bond signed by two or more sureties, to be approved by the county clerk, conditioned for the payment of all costs that may accrue in case the county board shall find against such improvement.

Source: Laws 1881, c. 51, § 4, p. 237; Laws 1911, c. 140, § 4, p. 454; R.S.1913, § 1721; C.S.1922, § 1668; C.S.1929, § 31-104; R.S.1943, § 31-104.

Annotations

Petition, stating ditch will drain lands owned by petitioners, is sufficient allegation of ownership. *Seng v. Payne*, 87 Neb. 812, 128 N.W. 625 (1910).

Petitioners are not liable for expenses of engineer after board finds for improvement. *State ex rel. Sullivan v. Ross*, 82 Neb. 414, 118 N.W. 85 (1908).

Description in petition was sufficient. *Dodge County v. Acom*, 61 Neb. 376, 85 N.W. 292 (1901).

Bond is jurisdictional; common law bond is sufficient. *Casey v. Burt County*, 59 Neb. 624, 81 N.W. 851 (1900).

If board has jurisdiction, irregularities in proceedings will not render assessment void. *Darst v. Griffin*, 31 Neb. 668, 48 N.W. 819 (1891).

Failure to make finding that petitioners are freeholders is not fatal. Objector must proceed promptly. *County of Dakota v. Cheney*, 22 Neb. 437, 35 N.W. 211 (1887).

31-105. Drainage improvements; survey; approval of county board.

The county clerk shall deliver a copy of the petition to the county board at its next meeting, which shall thereupon take to its assistance a competent surveyor or engineer, if in the opinion of the board his services are necessary, and at once proceed to view the line of the proposed improvement. The board shall determine by actual view of the premises along and in the vicinity thereof, whether the improvement is necessary, or will be conducive to the public health, convenience or welfare, and whether the line described is the best route. The board shall report its finding in writing, and order the clerk to enter the same on its journal.

Source: Laws 1881, c. 51, § 5, p. 237; Laws 1911, c. 140, § 5, p. 454; R.S.1913, § 1722; C.S.1922, § 1669; C.S.1929, § 31-105; R.S.1943, § 31-105.

Annotations

Statutory steps for levying of assessment must be strictly followed. *Shanahan v. Johnson*, 170 Neb. 399, 102 N.W.2d 858 (1960).

Hearing on claim for damage precedes construction of improvement. *Costello v. Colfax County*, 112 Neb. 40, 198 N.W. 357 (1924).

Where an inspection is made by two of three commissioners, a report of findings is sufficient. *Seng v. Payne*, 87 Neb. 812, 128 N.W. 625 (1910).

Board exercises legislative or ministerial function and may rescind order before rights of third parties vest. *State ex rel. Sullivan v. Ross*, 82 Neb. 414, 118 N.W. 85 (1908).

Finding as to necessity of ditch is not reviewable. *Dodge County v. Acom*, 61 Neb. 376, 85 N.W. 292 (1901).

Finding and entry that route is the best route is jurisdictional. *State ex rel. Union Pacific Railway Company v. Colfax County*, 51 Neb. 28, 70 N.W. 500 (1897).

31-106. Drainage improvements; change of proposed route; power of county board.

If the county board, upon actual view, shall find that the route proposed is not such as to best effect the object sought, it shall change the same and establish the route and determine the dimensions of the proposed improvements; *Provided*, any change so made shall not in any case exceed one hundred and sixty rods from the route described in the petition.

Source: Laws 1881, c. 51, § 6, p. 237; Laws 1911, c. 140, § 6, p. 455; R.S.1913, § 1723; C.S.1922, § 1670; C.S.1929, § 31-106; R.S.1943, § 31-106.

31-107. Drainage improvements; survey; plat; estimate of work required.

If the county board shall find for the improvement, it shall cause to be entered on its journal an order directing the county surveyor, or an engineer, to go upon the line described in the petition, or as changed by the board in accordance with section [31-106](#); to survey and level the same and set a stake at every hundred feet, numbering downstream; to note the intersection of section lines, road crossings, boundary lines, precinct and county lines; to make a report, profile and plat of the same; and to estimate the number of cubic yards for each working section as hereinafter provided.

Source: Laws 1881, c. 51, § 7, p. 238; Laws 1911, c. 140, § 7, p. 455; R.S.1913, § 1724; C.S.1922, § 1671; C.S.1929, § 31-107; R.S.1943, § 31-107.

Annotations

The county is authorized to employ an engineer, and the county, not petitioners, is liable. *Holmwig v. Dakota County*, 90 Neb. 576, 134 N.W. 166 (1912); *State ex rel. Sullivan v. Ross*, 82 Neb. 414, 118 N.W. 85 (1908).

Where a survey and plat of engineer is confirmed, it is deemed to be that of board. *Dodge County v. Acom*, 61 Neb. 376, 85 N.W. 292 (1901).

31-108. Drainage improvements; plat; profile; requisites; surveyor's report.

The plat provided for in section [31-107](#) shall be drawn upon a scale sufficiently large to represent all the meanderings of the proposed improvement, and shall show the boundary lines of each lot or tract of land, and of each road or railroad to

be benefited thereby, the name of the owner of each lot or tract of land as it then appears on the tax duplicate, the authority or company having in charge or controlling each public or corporate road or railroad, the distance in feet through each tract or parcel of land, and such other matters as the surveyor or engineer deems material. The profile shall show the surface, the grade line, and the gradient fixed. The surveyor or engineer shall file his report with the county clerk within thirty days after making the survey and level.

Source: Laws 1881, c. 51, § 9, p. 238; Laws 1911, c. 140, § 9, p. 456; R.S.1913, § 1725; C.S.1922, § 1672; C.S.1929, § 31-108; R.S.1943, § 31-108.

31-109. Drainage improvements; schedule of land benefited; apportionment; estimate of cost of construction; specifications.

The county board shall also by its order direct the surveyor or engineer to make and return a schedule of all lots, lands, public or corporate roads, or railroads that will be benefited by the proposed improvement, whether the same are abutting upon the line of the proposed improvement or not, an apportionment of a number of lineal feet and cubic yards to each lot, tract of land, road or railroad, according to the benefits which will result to each from the improvement, an estimate of the cost of location and construction to each, and a specification of the manner in which the improvement shall be made and completed.

Source: Laws 1881, c. 51, § 8, p. 238; Laws 1911, c. 140, § 8, p. 455; R.S.1913, § 1726; C.S.1922, § 1673; C.S.1929, § 31-109; R.S.1943, § 31-109.

Annotations

If land is benefited by the improvement it need not abut upon the line of a drainage district to be subject to special assessments. *Loup River Public Power Dist. v. Platte County*, 141 Neb. 29, 2 N.W.2d 609 (1942).

County board through surveyor or engineer shall schedule property benefited and property taken or damaged as well. *Costello v. Colfax County*, 112 Neb. 40, 198 N.W. 357 (1924).

31-110. Drainage improvements; hearing; notice.

Upon the filing of the report of the surveyor or engineer, the county clerk shall, without delay, fix a day for the hearing of the same, which shall not be more than forty days from the time of the filing of the report, and shall prepare a notice in writing, directed to the resident lot or land owners, and to the authorities or

municipal or private corporations affected by the improvement, setting forth the pendency, substance and prayer of the petition, together with a tabular statement of the apportionment as made by the surveyor or engineer in his report, and shall deliver the same to the sheriff, who shall serve a copy of the same upon each resident lot or land owner, each member of such public board or authority, and upon an officer or agent of such private corporation at least ten days before the time fixed for the hearing; *Provided*, the copies need contain only so much of the original notice as affects the interests of the persons so served. The county clerk shall in like manner notify each nonresident lot or land owner, or by publication in a newspaper printed and of general circulation in the county, for at least three consecutive weeks before the day set for the hearing, which notice shall be verified in the manner provided by law for the verification of notices by publication.

Source: Laws 1881, c. 51, § 10, p. 239; Laws 1911, c. 140, § 10, p. 456; R.S.1913, § 1727; C.S.1922, § 1674; C.S.1929, § 31-110; R.S.1943, § 31-110.

Annotations

Notice is jurisdictional to the owners whose lands are to be taken or damaged as well as to the persons on whose lands the cost is to be apportioned. *Costello v. Colfax County*, 112 Neb. 40, 198 N.W. 357 (1924).

31-111. Drainage improvements; hearing; procedure; order.

The county board shall meet at the office of the county clerk on the day fixed for the hearing, and shall first determine whether the requisite notice has been given. If it finds that due notice has not been given, it shall continue the hearing to a day to be fixed by the board, and order the notices to be served as provided in section [31-110](#). When the board finds that due notice has been given, it shall examine the report of the surveyor or engineer, including the apportionment made by him, and if it is in all respects fair and just, according to benefits, the board shall approve and confirm the same; but if it finds the apportionment to be unfair or unjust, it shall so order, and so amend the apportionment as to make it fair and just according to benefits.

Source: Laws 1881, c. 51, § 11, p. 240; Laws 1911, c. 140, § 11, p. 457; R.S.1913, § 1728; C.S.1922, § 1675; C.S.1929, § 31-111; R.S.1943, § 31-111.

Annotations

Findings cannot be attacked by injunction to avoid assessment. *Omaha & N.P.R. Co. v. Sarpy County*, 82 Neb. 140, 117 N.W. 116 (1908).

Board acts judicially in determining benefits, and on error proceedings to district court, findings have same weight as verdict. Dodge County v. Acom, 72 Neb. 71, 100 N.W. 136 (1904).

Jurisdictional steps of board set out and compliance therewith found to exist. Dodge County v. Acom, 61 Neb. 376, 85 N.W. 292 (1901).

31-112. Drainage improvements; compensation and damages for land taken or affected; application; when made.

At any time before the day set for hearing, after persons are notified as provided in section [31-110](#), any person or corporation whose lands are taken or affected in any way by the improvement may make application to the commissioners in writing for compensation and damages, and a failure to make such application shall be held a waiver of all rights thereto.

Source: Laws 1881, c. 51, § 12, p. 240; Laws 1911, c. 140, § 12, p. 457; R.S.1913, § 1729; C.S.1922, § 1676; C.S.1929, § 31-112; R.S.1943, § 31-112.

Annotations

Persons whose land will be damaged by construction of ditch must be compensated. Costello v. Colfax County, 112 Neb. 40, 198 N.W. 357 (1924).

Filing of claim waives irregularities in proceedings. Gutschow v. Washington County, 74 Neb. 794, 105 N.W. 548 (1905).

31-113. Drainage improvements; allowance of compensation and assessment of damages; when and how made.

The county board on actual view of the premises shall fix and allow such compensation for land appropriated and assess such damages as will in its judgment accrue from the construction of the improvement to each person or corporation making application as provided by section [31-112](#) and without such application to each person with an intellectual disability, person with a mental disorder, or minor owning lands taken or affected by such improvement.

Source: Laws 1881, c. 51, § 13, p. 240; Laws 1911, c. 140, § 13, p. 457; R.S.1913, § 1730; C.S.1922, § 1677; C.S.1929, § 31-113; R.S.1943, § 31-113; Laws 1986, LB 1177, § 13; [Laws 2013, LB23, § 6](#).

Annotations

Land damaged by the construction of a ditch which diverts the waters from one stream into another, causing the latter to overflow and flood such land, must be compensated for. *Costello v. Colfax County*, 112 Neb. 40, 198 N.W. 357 (1924).

Compensation includes value of the land actually taken and consequential damages, but, if special benefits exceed cost apportioned, excess is set off. *Gutschow v. Washington County*, 81 Neb. 275, 116 N.W. 46 (1908); 74 Neb. 800, 107 N.W. 127 (1906); 74 Neb. 794, 105 N.W. 548 (1905).

Special benefit is increased market value due to drainage. *Dodge County v. Acom*, 61 Neb. 376, 85 N.W. 292 (1901).

Land is appropriated though fee is not taken; land damaged, but not taken, is subject to special but not general benefits. *Martin v. Fillmore County*, 44 Neb. 719, 62 N.W. 863 (1895).

31-114. Drainage improvements; objections to apportionment, compensation, damages; when made; exceptions; hearing; costs.

A person or corporation party to the proceedings may file exceptions to the apportionment, or to any claim for compensation or damages at any time before the time set for the final hearing of the report and apportionment. The county board may hear testimony and examine witnesses upon all questions made by the exceptions, and for that purpose may compel the attendance of witnesses by subpoena, which the county clerk shall issue on demand. The decisions of the board on the exceptions shall be entered on its journal, and if it sustains the exceptions, the cost of the hearing thereon shall be paid out of the county treasury, and if it overrules the same, such cost shall be paid by the person or corporation filing the same.

Source: Laws 1881, c. 51, § 14, p. 241; Laws 1911, c. 140, § 14, p. 457; R.S.1913, § 1731; C.S.1922, § 1678; C.S.1929, § 31-114; R.S.1943, § 31-114.

31-115. Drainage improvements; appeal from order of county board; grounds; procedure.

Any person or corporation feeling aggrieved thereby may appeal to the district court within and for the proper county, from any final order or judgment of the board made in the proceedings and entered upon its journal determining any one of

the following matters: (1) Whether the ditch will be conducive to the public health, convenience or welfare; (2) whether the route thereof is practicable; (3) the compensation for land appropriated; and (4) the damage claimed to property affected by the improvement. The appeal may be taken and prosecuted in the manner provided by law for appeals from the decision of the county board on claims against the county.

Source: Laws 1881, c. 51, § 15, p. 241; Laws 1911, c. 140, § 15, p. 458; R.S.1913, § 1732; C.S.1922, § 1679; C.S.1929, § 31-115; R.S.1943, § 31-115.

Annotations

An attempt to appeal under this section confers no jurisdiction upon the district court to review an order of county board making assessments to construct a drainage ditch. *Loup River Public Power Dist. v. Platte County*, 141 Neb. 29, 2 N.W.2d 609 (1942).

The right to appeal from the assessment of benefits by the county board in the creation of a drainage district is not provided by this section. *Loup River Public Power Dist. v. Platte County*, 135 Neb. 21, 280 N.W. 430 (1938).

Finding of board that ditch is conducive to public health, etc., is final, and court cannot review. *Johannes v. Thayer County*, 83 Neb. 689, 120 N.W. 176 (1909); *Tyson v. Washington County*, 78 Neb. 211, 110 N.W. 634 (1907); *Dodge County v. Acom*, 61 Neb. 376, 85 N.W. 292 (1901).

31-116. Drainage improvements; appeal; effect upon progress of work; bond.

No appeal taken in pursuance of the provisions of section [31-115](#) shall in any manner affect the progress of the construction of the proposed improvement; *Provided*, the petitioners shall enter into a good and sufficient bond to be approved by the district court or by the judge thereof at chambers, and filed with the clerk of the court, conditioned for the payment of all damages and costs that the appellant may sustain on the trial of the appeal.

Source: Laws 1881, c. 51, § 16, p. 242; Laws 1911, c. 140, § 16, p. 458; R.S.1913, § 1733; C.S.1922, § 1680; C.S.1929, § 31-116; R.S.1943, § 31-116.

31-117. Drainage improvements; appeal; transcript; certification to county board.

The clerk of the district court, immediately after the close of the term at which the appeal is tried, as provided for in section [31-116](#), shall certify to the county board a full and complete transcript of the proceedings had upon such appeal in the district court, and the commissioners shall make such entry on their journals as may be necessary to give effect to the judgment of the district court.

Source: Laws 1881, c. 51, § 17, p. 242; Laws 1911, c. 140, § 17, p. 459; R.S.1913, § 1734; C.S.1922, § 1681; C.S.1929, § 31-117; R.S.1943, § 31-117.

Annotations

The portion of the report and apportionment of engineer and board, which affects property of appellant, must appear in record. Union Pac. R. Co. v. Colfax County, 84 Neb. 778, 122 N.W. 29 (1909).

31-118. Drainage improvements; advertisement for bids; awarding contract; conditions.

(1) Immediately after the transcript mentioned in section [31-117](#) is returned to the county clerk, immediately upon the filing of the bond mentioned in section [31-116](#), or, in case there is no appeal as hereinbefore provided, immediately after the hearing of the report mentioned in section [31-111](#), the county board shall proceed to advertise for sealed bids for the construction of the ditch in working sections not less in extent than the number of lineal feet apportioned to each lot or tract of land, public or corporate road, or railroad, and shall fix a time when the bids may be opened, giving not less than twenty days' notice thereof. The board shall attend at the time and place of opening the bids, shall let the contract or contracts to the lowest responsible bidder, shall take good and sufficient security for the faithful performance of such contract or contracts except as provided in subsection (2) of this section, and shall fix the time for the completion of such contract, not exceeding in any case one hundred fifty days from the time of entering into the same. No bid shall be entertained which exceeds the estimated cost of construction of the working section or sections upon which the bid is made.

(2) If a contract, the provisions of which are limited to the purchase of supplies or materials, is entered into pursuant to this section and if the amount of the contract is fifty thousand dollars or less, the person to whom the contract is awarded shall furnish the county with an irrevocable letter of credit, a certified check upon a solvent bank, or a performance bond in a guaranty company qualified to do business in Nebraska, as prescribed by and in a sum determined by the county board, conditioned for the faithful performance of the contract.

Source: Laws 1881, c. 51, § 18, p. 242; Laws 1911, c. 140, § 18, p. 459; R.S.1913, § 1735; C.S.1922, § 1682; C.S.1929, § 31-118; R.S.1943, § 31-118; Laws 1987, LB 211, § 3.

Annotations

Statutory steps must precede levy of valid assessment. *Shanahan v. Johnson*, 170 Neb. 399, 102 N.W.2d 858 (1960).

31-119. Drainage improvements; supervision of work; payment; progress certificates; exceptions.

The work shall be done under the supervision of the surveyor or engineer appointed by the county board, and when a part, not less than one-fourth of the portion included in any contract, is completed according to the specifications, he shall give the contractor a certificate thereof, showing the proportional amount which the contractor is entitled to be paid according to the terms of the contract. The county clerk shall, upon presentation of such certificate, draw his warrant upon the treasurer for seventy-five percent of said amount, and the treasurer will pay the same out of any funds in the treasury applicable to such purposes; *Provided*, no proportional amounts shall be certified or paid unless the whole of such contract exceeds two thousand lineal feet.

Source: Laws 1881, c. 51, § 19, p. 243; Laws 1911, c. 140, § 19, p. 459; R.S.1913, § 1736; C.S.1922, § 1683; C.S.1929, § 31-119; R.S.1943, § 31-119.

31-120. Drainage improvements; uncompleted contract; reletting; conditions.

Any contract not completed within the time specified shall be reestimated and relet to the lowest responsible bidder, but not for a sum greater than the estimate, nor a second time to the same party; *Provided*, the county board, may for a good cause, extend the time of any contractors not to exceed two years.

Source: Laws 1881, c. 51, § 20, p. 243; Laws 1885, c. 94, § 1, p. 373; Laws 1911, c. 140, § 20, p. 460; R.S.1913, § 1737; C.S.1922, § 1684; C.S.1929, § 31-120; R.S.1943, § 31-120.

Annotations

In absence of fraud, contract is valid though there was only one bid. *Gutschow v. Washington County*, 74 Neb. 378, 104 N.W. 602 (1905).

Section is directory, and is not exclusive means of ascertaining damages.
McDonald v. Dodge County, 41 Neb. 905, 60 N.W. 366 (1894).

31-121. Drainage improvements; assessments.

When the working sections are let, as hereinbefore provided, and the costs and expenses of location and construction, and all compensation and damages are ascertained, the county board shall meet and determine at what time and in what number of assessments it will require the same to be paid. The board shall order that the assessments as made by it shall be placed on the duplicate tax list against the lots and lands so assessed.

Source: Laws 1881, c. 51, § 21, p. 244; Laws 1909, c. 145, § 1, p. 504; Laws 1911, c. 140, § 21, p. 460; R.S.1913, § 1738; C.S.1922, § 1685; C.S.1929, § 31-121; R.S.1943, § 31-121.

Annotations

Statute impliedly confers power to impose a tax. *Morris v. Washington County*, 72 Neb. 174, 100 N.W. 144 (1904).

31-122. Drainage improvements; deficiencies; supplemental assessments.

In case of deficiencies appearing after the original assessment, supplemental assessments upon the proportional fixed by the main assessment may be made on the lands benefited to make up such deficiency, and the annual interest on such bonds shall be made from annual levies made upon the lands benefited on the proportional of the assessments.

Source: Laws 1911, c. 140, § 21, p. 461; R.S.1913, § 1739; C.S.1922, § 1686; C.S.1929, § 31-122; R.S.1943, § 31-122.

31-123. Drainage improvements; assessments; collection; liens; interest.

Where the county board has made an assessment it shall cause an entry to be made directing the clerk to make and furnish to the treasurer a special duplicate, with the assessment arranged thereon, as required by its order. The clerk shall retain a copy thereof in his office, and all assessments shall be collected and accounted for by the treasurer. In case such assessments, or any part thereof, are not paid by the party or parties owning or controlling the lots or lands against which such assessments are made in the manner contemplated by sections [31-101](#) to [31-138](#), such assessments shall be and remain a perpetual lien against the

premises so assessed; and the county treasurer shall proceed to advertise and sell said lots and lands, or such portions thereof as shall be necessary to pay such assessments, together with the costs, in the same manner as real estate is by law advertised and sold by him for the payment of delinquent taxes; *Provided*, the commissioners may extend the time of payment (without interest) of such assessments, to correspond with any extension of time that may be granted to any contractor under the provisions of section [31-120](#), and in case assessments are not paid when due, they shall draw nine percent interest per annum until paid.

Source: Laws 1881, c. 51, § 22, p. 244; Laws 1885, c. 94, § 2, p. 373; Laws 1911, c. 140, § 22, p. 461; R.S.1913, § 1740; C.S.1922, § 1687; C.S.1929, § 31-123; Laws 1933, c. 136, § 23, p. 536; C.S.Supp.,1941, § 31-123; R.S.1943, § 31-123.

Annotations

Section is constitutional. Legislature may authorize counties to make local improvements by special assessments. *Dodge County v. Acom*, 61 Neb. 376, 85 N.W. 292 (1901); *Darst v. Griffin*, 31 Neb. 668, 48 N.W. 819 (1891).

31-124. Drainage improvements; proceedings; irregularities; effect.

The collection of assessments to be levied to pay for the location or construction of any ditch shall not be enjoined nor declared void, nor shall such assessment be set aside in consequence of any error or irregularity committed or appearing in any of the proceedings provided by sections [31-101](#) to [31-138](#), and no injunction shall be allowed restraining the collection of any assessment until the party complaining shall first pay to the county treasurer the amount of his assessment, which amount so paid may be recovered from the county in an action brought for that purpose in case such injunction is made perpetual.

Source: Laws 1881, c. 51, § 28, p. 246; Laws 1911, c. 140, § 28, p. 464; R.S.1913, § 1741; C.S.1922, § 1688; C.S.1929, § 31-124; R.S.1943, § 31-124.

Annotations

Invalid special assessments under this section may be recovered from county. *McClary v. County of Dodge*, 176 Neb. 627, 126 N.W.2d 849 (1964).

This section is not broad enough to authorize reassessment of benefits. *Shanahan v. Johnson*, 170 Neb. 399, 102 N.W.2d 858 (1960).

Irregularities or failure to comply literally with provisions, where board has jurisdiction, is immaterial. *Dodge County v. Acom*, 61 Neb. 376, 85 N.W. 292 (1901).

Section does not apply where assessment is void. *Morris v. Merrell*, 44 Neb. 423, 62 N.W. 865 (1895).

31-125. Drainage improvements; bonds; when issued; rate of interest; installments.

When, in the judgment of the county board, the assessments are too large for immediate payment, the board may issue negotiable bonds of the county with interest coupons attached, which bonds and coupons shall be signed by the chairman of the board and countersigned by the county clerk of the county, and shall be paid in not to exceed ten installments, one bond maturing each year, to pay the costs and expenses of location and construction, and all compensation and damages ascertained.

Source: Laws 1909, c. 145, § 1, p. 504; Laws 1911, c. 140, § 21, p. 460; R.S.1913, § 1742; C.S.1922, § 1689; C.S.1929, § 31-125; R.S.1943, § 31-125; Laws 1969, c. 51, § 88, p. 330.

31-126. Drainage improvements; bonds; issuance; notice.

In the event of a county board determining to issue bonds, it shall give notice by publication once each week for three weeks of the proposed issue of bonds, and the amount thereof, at any time within sixty days after the date of the first publication of such notice.

Source: Laws 1911, c. 140, § 21, p. 461; R.S.1913, § 1743; C.S.1922, § 1690; C.S.1929, § 31-126; R.S.1943, § 31-126.

31-127. Drainage improvements; bonds; sale; lien; registration.

All bonds shall be sold at not less than par and shall be and remain a first lien upon the property found to be benefited, each part and parcel to remain under such lien until the amount apportioned thereto shall be paid. All bonds shall be registered as provided by law for the registration of municipal bonds.

Source: Laws 1911, c. 140, § 21, p. 461; R.S.1913, § 1744; C.S.1922, § 1691; C.S.1929, § 31-127; R.S.1943, § 31-127.

31-128. Drainage improvements; payment of assessments in cash; effect.

Any owner of any tract of land, or of an easement therein, may pay the whole of his assessment in cash, and in such case the bonds so issued shall not be a lien against the lands, lots or property of the owner.

Source: Laws 1909, c. 145, § 1, p. 505; Laws 1911, c. 140, § 21, p. 461; R.S.1913, § 1745; C.S.1922, § 1692; C.S.1929, § 31-128; R.S.1943, § 31-128.

31-129. Drainage improvements; bonds; limitation on amount.

Bonds so issued shall be limited to the amount actually required, after taking into consideration cash payment by property owners that may be made as provided in section [31-128](#).

Source: Laws 1909, c. 145, § 1, p. 505; Laws 1911, c. 140, § 21, p. 461; R.S.1913, § 1746; C.S.1922, § 1693; C.S.1929, § 31-129; R.S.1943, § 31-129.

31-130. Neglect of duty; penalty.

Any officer mentioned in sections [31-101](#) to [31-138](#) who shall neglect or refuse to perform any duty imposed upon him by the provisions of said sections, shall forfeit and pay a fine of twenty-five dollars for every such offense.

Source: Laws 1881, c. 51, § 23, p. 245; Laws 1911, c. 140, § 23, p. 462; R.S.1913, § 1747; C.S.1922, § 1694; C.S.1929, § 31-130; R.S.1943, § 31-130.

31-131. Drainage improvements; ditches in two counties; procedure.

When a ditch is proposed which will require a location in more than one county, application shall be made to the county board of each county so affected, and the surveyor or engineer shall make a report for each county. Application for damages shall be made, and appeals from the findings of the boards in joint session, locating and establishing such ditch, and from the assessment of damages or compensation, shall be taken to the district court in the county in which the lots or lands which are immediately affected are located. A majority of the boards of each county, when in joint session, shall be competent to locate and establish such ditch.

Source: Laws 1881, c. 51, § 24, p. 245; Laws 1911, c. 140, § 24, p. 462; R.S.1913, § 1748; C.S.1922, § 1695; C.S.1929, § 31-131; R.S.1943, § 31-131.

Annotations

County may establish a new system covering joint ditch, but may not evade expense of cleaning old ditch. *Morris v. Washington County*, 72 Neb. 174, 100 N.W. 144 (1904).

31-132. Repealed. Laws 1959, c. 132, § 34.

31-133. County ditch fund; borrowing from county general fund permitted; conditions.

The county board of any county in this state is hereby authorized, whenever it deems necessary, to create a county ditch fund, to consist of taxes collected from county levies, and all balances remaining unexpended of special ditch funds, arising from excess of assessments made on ditch improvements after the expenses thereof have been fully paid. The county board is hereby authorized, whenever necessary, to borrow from the county general fund for the benefit of the above-named ditch fund. All money so borrowed shall be, as soon as practicable, returned to the county general fund.

Source: Laws 1881, c. 51, § 26, p. 246; Laws 1911, c. 140, § 26, p. 463; R.S.1913, § 1750; C.S.1922, § 1697; C.S.1929, § 31-133; R.S.1943, § 31-133.

Annotations

It is the duty of the county to keep ditch free of obstructions. *Gray v. Chicago, St. P., M. & O. R. Co.*, 90 Neb. 795, 134 N.W. 961 (1912).

Ditch fund is for maintenance of ditch by county. *Gutschow v. Washington County*, 81 Neb. 275, 116 N.W. 46 (1908).

Borrowing from general fund is discretionary with board, and mandamus does not lie. *Hall v. State ex rel. Renard*, 54 Neb. 280, 74 N.W. 590 (1898).

31-134. Obstructing drainage ditch; penalty.

Any person or persons or association of any kind or any corporation, who shall either for himself or for another deposit within the banks, limits or right-of-way of any drain or ditch, that has been, or shall hereafter be constructed under the terms and provisions of sections [31-101](#) to [31-138](#), or within the banks of watercourses or draws, or within any road ditches along any public highways that lead or empty

into such drains or ditches, any brush, trees, hay, straw, manure or any other debris, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than ten dollars nor more than fifty dollars, and shall moreover be liable in damages to any party injured.

Source: Laws 1881, c. 51, § 27, p. 246; Laws 1905, c. 159, § 1, p. 608; Laws 1909, c. 142, § 1, p. 500; Laws 1911, c. 140, § 27, p. 464; R.S.1913, § 1751; C.S.1922, § 1698; C.S.1929, § 31-134; R.S.1943, § 31-134.

31-135. Drainage ditches; petition to clean and place in efficient condition.

In any county wherein a drainage ditch has been constructed under the provisions of sections [31-101](#) to [31-134](#), or by any drainage district which shall have been dissolved, a petition may be filed with the county clerk, signed by at least twenty-five percent of the landowners benefited by any such ditch, praying that the county board may cause such ditch to be cleared and placed in efficient condition and the cost thereof apportioned equitably.

Source: Laws 1911, c. 141, § 1, p. 465; R.S.1913, § 1752; C.S.1922, § 1699; Laws 1929, c. 130, § 2, p. 481; C.S.1929, § 31-135; R.S.1943, § 31-135; Laws 1949, c. 79, § 1, p. 212.

31-136. Drainage ditches; petition; survey; cost estimate.

Upon the filing of the petition provided for in section [31-135](#), it shall be the duty of the county board to cause a survey and estimate of the cost of such improvement to be made by some competent surveyor within sixty days thereafter.

Source: Laws 1911, c. 141, § 2, p. 465; R.S.1913, § 1753; C.S.1922, § 1700; C.S.1929, § 31-136; R.S.1943, § 31-136.

31-137. Drainage ditches; petition; hearing; notice.

Upon filing of the report and estimate of the surveyor in the office of the county clerk, it shall be the duty of the county board to set a day for hearing thereon, not more than forty days from the date of said filing, and to give notice by publication thereof for three weeks in some newspaper of general circulation in the county.

Source: Laws 1911, c. 141, § 3, p. 465; R.S.1913, § 1754; C.S.1922, § 1701; C.S.1929, § 31-137; R.S.1943, § 31-137.

31-138. Drainage ditches; petition; procedure; cost of improvement; how paid.

The proceedings in regard to the hearing by the county board on the petition and surveyor's report, orders of the county board, appeals, letting of contracts for cleaning ditches as provided for by sections [31-135](#) to [31-137](#), supervision thereof, assessment of cost and collection of the same shall be governed, so far as applicable, by the provisions of sections [31-101](#) to [31-134](#) relating to the original construction of ditches. Any expenses for clearing ditches and placing them in efficient condition shall be defrayed by a special tax on the lands benefited, apportioned as provided in sections [31-101](#) to [31-134](#), for the original cost of constructing the ditch or ditches.

Source: Laws 1911, c. 141, § 4, p. 465; R.S.1913, § 1755; C.S.1922, § 1702; C.S.1929, § 31-138; R.S.1943, § 31-138; Laws 1961, c. 138, § 1, p. 396.

31-139. Drainage ditch; transfer to drainage district; petition.

In any county wherein a drainage ditch has been constructed under the provisions of sections [31-101](#) to [31-134](#), or by any drainage district which shall have been dissolved, which benefits an area in part within or adjacent to the boundaries of a drainage district organized under Chapter 31, article 3 or 4, a petition may be filed with the county clerk, signed by at least three of the land owners within the district or the proposed district, praying that the county board cause such ditch to be transferred so as to become a part of and operated and maintained in the same manner as the ditch or ditches of a drainage district created under the provisions of Chapter 31, article 3 or 4. Such petition must bear the approval of a majority of the board of directors of such drainage district to which it is to be attached.

Source: Laws 1965, c. 155, § 1, p. 500.

31-140. Drainage ditch; transfer; hearing; notice.

Upon the filing of such petition it shall be the duty of the county board to set a day for hearing thereon, not more than fifty days from the date of such filing and to give notice by publication thereof for one week in some newspaper of general circulation in the county and the county clerk shall mail a copy of such notice to each of the landowners benefited by such ditch, as shown by the records of the office of the county treasurer, not less than ten days before such hearing.

Source: Laws 1965, c. 155, § 2, p. 501.

31-141. Drainage ditch; transfer; hearing; findings.

The county board may, after public hearing on the petition, thereupon change the boundaries of the original drainage district organized under the provisions of Chapter 31, article 3 or 4, so as to include the area benefited by the drainage ditch constructed under the provisions of sections [31-101](#) to [31-134](#), or by the drainage district which has been dissolved; *Provided*, that the county board shall first find and determine that such change of boundaries is just and will be conducive to the public health, convenience or welfare.

Source: Laws 1965, c. 155, § 3, p. 501.

31-142. Drainage ditch; transfer; powers of drainage district.

Upon the inclusion of any drainage ditch constructed under the provisions of sections [31-101](#) to [31-134](#), or of any drainage district which shall have been dissolved, which benefits an area in part within or adjacent to the boundaries of a drainage district organized under the provisions of Chapter 31, article 3 or 4, the board of directors of the district to which such transfer shall have been made shall operate and maintain the ditch so transferred in the same manner as the ditches originally constructed by such district and shall have the power to levy taxes upon the lands benefited thereby in the same manner as in the case of the ditch or ditches constructed by such district.

Source: Laws 1965, c. 155, § 4, p. 501.

31-201. Drainage by landowner; to what extent allowed.

Owners of land may drain the same in the general course of natural drainage by constructing an open ditch or tile drain, discharging the water therefrom into any natural watercourse or into any natural depression or draw, whereby such water may be carried into some natural watercourse; and when such drain or ditch is wholly on the owner's land, he shall not be liable in damages therefor to any person or corporation.

Source: Laws 1911, c. 142, § 1, p. 466; R.S.1913, § 1771; C.S.1922, § 1718; C.S.1929, § 31-301; R.S.1943, § 31-201.

Annotations

- 1. Drainage on own land**
- 2. Discharge on other land**
- 3. Natural watercourse**

4. Miscellaneous

1. Drainage on own land

Owners of land will not be held liable for damages to landowners downstream for draining waters into a natural drainageway that begins on the owner's property, as long as this is done in a reasonable and careful manner. *Romshek v. Osantowski*, 237 Neb. 426, 466 N.W.2d 482 (1991).

To relieve from liability, ditch or drain must be wholly on owner's land. *Bussell v. McClellan*, 155 Neb. 875, 54 N.W.2d 81 (1952).

Owner has right to discharge waters from a temporary pond or basin by means of an artificial channel on his own property in the natural course of drainage. *Pospisil v. Jessen*, 153 Neb. 346, 44 N.W.2d 600 (1950).

Drainage by landowner must be wholly on own land. *Skolil v. Kokes*, 151 Neb. 392, 37 N.W.2d 616 (1949).

Owner of land may dig ditches on his own land to relieve against seepage without liability for damages to adjoining landowners because of lowering of water table. *Halligan v. Elander*, 147 Neb. 709, 25 N.W.2d 13 (1946).

Owner has right to drain lagoons into natural drains on his own land, though same is then carried over other's land. *Arthur v. Glover*, 82 Neb. 528, 118 N.W. 111 (1908); *Aldritt v. Fleischauer*, 74 Neb. 66, 103 N.W. 1084 (1905); *Todd v. York County*, 72 Neb. 207, 100 N.W. 299 (1904).

2. Discharge on other land

A possessor of land may not divert water onto the land of another by means of a drainageway which did not exist in a state of nature. *Jameson v. Nelson*, 211 Neb. 259, 318 N.W.2d 259 (1982).

Waters which may be discharged hereunder without liability do not include waste irrigation waters in quantities which are injurious to neighboring land. *Peters v. Langrehr*, 188 Neb. 480, 197 N.W.2d 698 (1972).

Owner cannot cut channel across natural embankment and cause water to flow into basin partly on his land and partly on land of another to his damage. *Yocum v. Labertew*, 145 Neb. 120, 15 N.W.2d 384 (1944).

Construction of an open ditch enlarging a natural waterway will not be enjoined unless it is clearly shown that water normally carried will be diverted upon another's land to his damage. *Miksch v. Tassler*, 108 Neb. 208, 187 N.W. 796 (1922).

Owner cannot dam up natural drain so as to injure neighbor's land. *Mapes v. Bolton*, 89 Neb. 815, 132 N.W. 386 (1911).

Owners cannot collect and discharge surface water, contrary to natural drainage, upon another's land. *Shavlik v. Walla*, 86 Neb. 768, 126 N.W. 376 (1910).

The right of the upper proprietor to discharge water is not absolute; but the discharge must be done in a reasonable and careful manner and without negligence. *Hickman v. Hunkins*, 1 Neb. App. 25, 489 N.W.2d 316 (1992).

3. Natural watercourse

This section permits a landowner to divert water into a natural watercourse, which runs through his or her land, even if the water would otherwise never have reached the watercourse. *Bierbower v. Hanson*, 228 Neb. 716, 424 N.W.2d 132 (1988).

Under facts in this case, defendant obstructed waters that ran in the equivalent of a natural watercourse and plaintiff was entitled to injunction and consideration of issue relating to damages. *Paasch v. Brown*, 190 Neb. 421, 208 N.W.2d 695 (1973).

Proprietor of land cannot dam up and permanently obstruct a natural drain. *Town of Everett v. Teigeler*, 162 Neb. 769, 77 N.W.2d 467 (1956).

Where water is impounded by natural conditions, owner has no right to remove impediment to its flowage. *Rudolf v. Atkinson*, 156 Neb. 804, 58 N.W.2d 216 (1953).

Regardless of deed or contract, owner of land may exercise right to drain basin into natural watercourse as provided herein, and where such drain is wholly on owner's land, there is no liability for damages. *Bures v. Stephens*, 122 Neb. 751, 241 N.W. 542 (1932).

4. Miscellaneous

When a landowner substitutes a permanent artificial drainageway crossing his or her own land for a natural one obstructed by that landowner, the landowner impresses the artificial drainageway with a servitude in favor of the land drained thereby, and the upper proprietor (the owner of the land drained) may enforce this servitude against the substituting landowner and its successors in interest; the mere fact that the land through which the easement runs is later subdivided does not destroy the easement. *Nu-Dwarf Farms v. Stratbucker Farms*, 238 Neb. 395, 470 N.W.2d 772 (1991).

The protection afforded a defendant by this section is not absolute. A defendant can still be held responsible if plaintiff alleges and proves defendant acted negligently or without reasonable care. *Stuthman v. Adelaide D. Hull Trust*, 233 Neb. 586, 447 N.W.2d 23 (1989).

Alteration of natural drainage is acceptable where interests of good husbandry are served, circumstances are such that the alteration is necessary, and the particular alteration is reasonable under all the circumstances present. *Bohaty v. Briard*, 219 Neb. 42, 361 N.W.2d 502 (1985).

Construction of ditch from natural lake was not authorized. *Lackaff v. Bogue*, 158 Neb. 174, 62 N.W.2d 889 (1954).

This section does not control the drainage of natural lakes covering an area in excess of twenty acres. *Lackaff v. Department of Roads & Irrigation*, 153 Neb. 217, 43 N.W.2d 576 (1950).

City discharging water from its sewage disposal plant into a gully or creek for a period of over ten years, in open, notorious, peaceful, uninterrupted, and adverse manner, may acquire an easement for that purpose. *Hall v. City of Friend*, 134 Neb. 652, 279 N.W. 346 (1938).

Evidence in case did not bring it within provisions of above section. *Warner v. Berggren*, 122 Neb. 86, 239 N.W. 473 (1931).

When drainage districts are organized under this article and statutory notice is not given to mortgagees of record, special assessments are subject to liens of mortgages. *Board of Commissioners of Hamilton County v. Northwestern Mut. Life Ins. Co.*, 114 Neb. 596, 209 N.W. 256 (1926).

31-202. Watercourse, defined.

Any depression or draw two feet below the surrounding lands and having a continuous outlet to a stream of water, or river or brook shall be deemed a watercourse.

Source: Laws 1911, c. 142, § 2, p. 466; R.S.1913, § 1772; C.S.1922, § 1719; C.S.1929, § 31-302; R.S.1943, § 31-202.

Annotations

1. Watercourse

2. Not a watercourse

3. Miscellaneous

1. Watercourse

A watercourse need not flow continuously, but it must have a well-defined and substantial existence. *Northport Irr. Dist. v. Jess*, 215 Neb. 152, 337 N.W.2d 733 (1983).

Under facts in this case, defendant obstructed waters that ran in the equivalent of a natural watercourse and plaintiff was entitled to injunction and consideration of issue relating to damages. *Paasch v. Brown*, 190 Neb. 421, 208 N.W.2d 695 (1973).

Where springs are source of definite watercourse, owner of land does not have exclusive right to control and use. *Brummund v. Vogel*, 184 Neb. 415, 168 N.W.2d 24 (1969).

Regardless of depth, flow of surface water in well-defined course cannot be arrested. *Town of Everett v. Teigeler*, 162 Neb. 769, 77 N.W.2d 467 (1956).

Watercourse must be stream in fact as distinguished from mere surface drainage. *Reed v. Jacobson*, 160 Neb. 245, 69 N.W.2d 881 (1955); *Mader v. Mettenbrink*, 159 Neb. 118, 65 N.W.2d 334 (1954); *McGill v. Card-Adams Co.*, 154 Neb. 332, 47 N.W.2d 912 (1951).

Watercourse is defined, but a depression or draw is not. *Bussell v. McClellan*, 155 Neb. 875, 54 N.W.2d 81 (1952).

Watercourse is defined by statute, and may not be obstructed. *Courter v. Maloley*, 152 Neb. 476, 41 N.W.2d 732 (1950).

Artificial ditch may be a watercourse. *Jack v. Teegarden*, 151 Neb. 309, 37 N.W.2d 387 (1949).

A watercourse is a stream of water with a well-defined existence which makes it valuable to riparian owners along its course. *Cooper v. Sanitary Dist. No. 1*, 146 Neb. 412, 19 N.W.2d 619 (1945).

Ravine with well-defined banks of some fifteen feet in depth draining off surface water from tributary gullies is a watercourse within statutory definition. *Faiman v. City of Omaha*, 131 Neb. 870, 270 N.W. 484 (1936).

Drainage ditch fulfilled statutory requirements of a watercourse. *Barthel v. Liermann*, 2 Neb. App. 347, 509 N.W.2d 660 (1993).

2. Not a watercourse

To constitute a watercourse depression must have an outlet into a stream. *Skolil v. Kokes*, 151 Neb. 392, 37 N.W.2d 616 (1949).

Cutting a channel through a natural embankment to drain lake into a basin does not bring case under this section. *Yocum v. Labertew*, 145 Neb. 120, 15 N.W.2d 384 (1944).

A draw, although more than two feet deep where it enters land, does not continue to be a watercourse, where it flattens out and water runs wherever gravity will take it. *Hengelfelt v. Ehrmann*, 141 Neb. 322, 3 N.W.2d 576 (1942).

Where water collecting in basin was not drained into any natural watercourse, natural depression or draw draining into natural watercourse, did not bring case under above section. *Warner v. Berggren*, 122 Neb. 86, 239 N.W. 473 (1931).

Flow of water involved in action to enjoin maintenance of dam was diffused surface water and not a watercourse. *Muhleisen v. Krueger*, 120 Neb. 380, 232 N.W. 735 (1930).

Watercourse must be a stream in fact as distinguished from mere temporary surface drainage. *Miksch v. Tassler*, 108 Neb. 208, 187 N.W. 796

(1922).

3. Miscellaneous

Surface water is defined as water which appears upon the surface of the ground in a diffused state, with no permanent source of supply or regular course, which ordinarily results from rainfall or melting snow. In order to constitute an exception to the general rule that surface water may be repelled, at least some of the distinctive attributes of a watercourse must be demonstrated. *Shotkoski v. Prososki*, 219 Neb. 213, 362 N.W.2d 59 (1985).

In order to constitute an exception to the general rule that surface water may be repelled, at least some of the distinctive attributes of a watercourse must be demonstrated. *Grint v. Hart*, 216 Neb. 406, 343 N.W.2d 921 (1984).

The flow of surface water in any well-defined course, whether it be a ditch, swale, or draw in its primitive condition, and whether or not it is two feet below the surrounding land, cannot be arrested or interfered with to the injury of neighboring proprietors. *Barry v. Wittmersehouse*, 212 Neb. 909, 327 N.W.2d 33 (1982).

City discharging water from its sewage disposal plant into a gully or creek for a period of over ten years, in open, notorious, peaceful, uninterrupted, and adverse manner, may acquire an easement for that purpose. *Hall v. City of Friend*, 134 Neb. 652, 279 N.W. 346 (1938).

Owner of drainage ditch in continuous use for more than ten years acquires an easement for the purpose of drainage and damages are not recoverable by owner of servient estate against owner of easement unless latter was negligent in use. *Bures v. Stephens*, 122 Neb. 751, 241 N.W. 542 (1932).

31-202.01. Watercourses; obstructions; power of county board.

In all counties the county board shall have the power to cause all natural watercourses to be kept clean and free of obstructions.

Source: Laws 1951, c. 95, § 1, p. 263; Laws 1969, c. 246, § 1, p. 904.

31-202.02. Watercourses; obstructions; petition by landowners.

Whenever any natural watercourse in a county is filled with trees, silt, or debris in such a manner as to obstruct the natural flow thereof and cause damage by flooding of adjacent lands, any five landowners owning land in such county abutting on the natural watercourse may, by petition, request the county board to cause same to be cleaned out and rendered free of obstructions.

Source: Laws 1951, c. 95, § 2, p. 263; Laws 1972, LB 1053, § 1.

Annotations

Under the facts in this case, the depression or draw involved does not qualify as a watercourse as defined in this section. *Peters v. Langrehr*, 188 Neb. 480, 197 N.W.2d 698 (1972).

Where springs are source of definite watercourse, owner of land does not have exclusive right to control and use. *Brummund v. Vogel*, 184 Neb. 415, 168 N.W.2d 24 (1969).

31-202.03. Watercourses; obstructions; cost; special assessment.

The county board, upon receipt of a request pursuant to section [31-202.02](#), may, if the board finds natural flow is being obstructed, cause the natural watercourse to be cleaned out. The cost thereof shall be levied as a special assessment and apportioned among the property owners specially benefited thereby and collected in the same manner as special assessments are levied and collected for drainage improvements under sections [31-121](#) to [31-124](#).

Source: Laws 1951, c. 95, § 3, p. 264; Laws 1972, LB 1053, § 2; [Laws 2015, LB361, § 49](#).

31-203. Drainage supervisors, county board act as; powers.

The members of the county board shall be the drainage supervisors in and for their respective counties, and as such shall be a body politic and corporate, and shall be the corporate authorities of all the drainage districts within their respective counties.

Source: Laws 1911, c. 142, § 3, p. 467; R.S.1913, § 1773; C.S.1922, § 1720; C.S.1929, § 31-303; R.S.1943, § 31-203.

31-204. Drains or ditches; petition for construction or maintenance; bond for costs and expenses.

Any person or persons desiring the construction of any drain or drains, ditch or ditches, or the repair and maintenance of the same, may file a petition with the county board, accompanied with a good and sufficient bond, to be approved by such board, conditioned to pay all costs and expenses of a surveyor or engineer in surveying the proposed ditch or drain and the land affected thereby as hereinafter provided, in case such ditch or drain shall not be deemed necessary for the public

welfare, or for agricultural or sanitary purposes, by said board of drainage supervisors.

Source: Laws 1911, c. 142, § 4, p. 467; R.S.1913, § 1774; C.S.1922, § 1721; C.S.1929, § 31-304; R.S.1943, § 31-204.

31-205. Drains or ditches; petition; contents.

The petition shall set forth a description of the ditch or ditches, drain or drains, stating the boundaries of the ditch or drain, giving the number of sections or fractional parts thereof, and stating that the proposed drain or ditch shall empty into a watercourse or depression or draw whereby the water flowing therein will be carried into a natural watercourse; and that such drain or ditch is necessary for agricultural or sanitary purposes, and that it will be conducive to the public welfare.

Source: Laws 1911, c. 142, § 5, p. 467; R.S.1913, § 1775; C.S.1922, § 1722; C.S.1929, § 31-305; R.S.1943, § 31-205.

31-206. Drains or ditches; survey; estimates.

Whenever the petition and bond as provided for in sections [31-204](#) and [31-205](#) have been filed with the county board and the bond approved by it, the board shall cause said ditch or ditches, drain or drains, and the lands or lots affected thereby to be surveyed, and may for this purpose, in its discretion, employ a civil engineer or surveyor, other than the county surveyor. Such surveyor or civil engineer shall proceed to make such survey and estimates as the board may direct, and shall make and return to the board a map or plat of his or their survey and a full report of all estimates so required of him or them by the board.

Source: Laws 1911, c. 142, § 6, p. 467; R.S.1913, § 1776; C.S.1922, § 1723; C.S.1929, § 31-306; R.S.1943, § 31-206.

31-207. Drains or ditches; notice of hearing on petition; contents; service.

Upon the filing and examination of the report of the surveyor or civil engineer as provided in section [31-206](#), the county board shall examine the same and, if it finds that the ditch or ditches, drain or drains, is or are necessary for agricultural or sanitary purposes, that they will be conducive to the public welfare, and that the benefits to be derived therefrom will equal or exceed the cost of procuring the right-of-way therefor and the expense of constructing the same, the board shall cause the county clerk to notify all landowners whose lands or lots may be damaged, taken, affected or crossed by such ditch or drain at least five days prior to

the day set for hearing said matter. Such notice shall be given in writing by personal service, or by a copy thereof being left at the usual place of residence of the owner or owners of said lands or lots, if the owner or owners of the lands or lots are residents of the county, the notice to be served by the sheriff of the county, unless the owner or owners of the lands or lots shall in writing accept service thereof. If the owner or owners of such lands or lots are nonresidents of the county, then the notice shall be published once each week for three successive weeks in some newspaper published and of general circulation in the county, and if no newspaper is published in the county, such notice shall be published in some newspaper having a general circulation therein. The board shall also cause a notice to be served upon the occupant or occupants or agents, if any, of the lands or lots belonging to any nonresident owner or owners. The notice shall state the time and place when all matters relating to such ditch or drain will be heard, the land affected thereby, and the time of the appointment of the appraisers as hereinafter provided.

Source: Laws 1911, c. 142, § 7, p. 468; R.S.1913, § 1777; C.S.1922, § 1724; C.S.1929, § 31-307; R.S.1943, § 31-207.

Annotations

Word landowner embraces mortgagees of record and notice must be given to them of proposed organization of drainage district under this article before special assessments levied against land can become liens superior to their liens. Board of Commissioners of Hamilton County v. Northwestern Mut. Life Ins. Co., 114 Neb. 596, 209 N.W. 256 (1926).

31-208. Drains or ditches; appraisers; appointment.

At the time and place fixed in the notice as provided in section [31-207](#), the county board may again consider the question of public utility, if requested so to do by any interested party, and may also consider the advisability of such improvements, although it be found to be of public utility, and if no reconsideration is had on the question of public utility, and upon such hearing the construction of such improvements is deemed advisable, the board shall proceed to appoint three disinterested freeholders, residents of the county, who shall act as appraisers for that particular case.

Source: Laws 1911, c. 142, § 8, p. 469; R.S.1913, § 1778; C.S.1922, § 1725; C.S.1929, § 31-308; R.S.1943, § 31-208.

31-209. Drains or ditches; appraisers; oath; procuring right-of-way.

The appraisers shall first take and subscribe to an oath to well and truly perform the duties required of them as such appraisers, and they shall then proceed to procure the right-of-way for the ditch or ditches, drain or drains, from the owner or owners of the lands or lots which may be crossed by such ditch or drain so far as they may be able so to do by agreement with the owners, which release or releases of the right-of-way shall be in writing and duly acknowledged by the grantor or grantors, and shall upon consideration thereof and upon confirmation of the acts of the appraisers by the county board, be a perpetual bar to all claims for damages by the grantor or grantors, or their assigns, on account of the construction of such ditch or ditches, drain or drains. Such release or releases shall be filed and recorded in the office of the county clerk or register of deeds in and for the county in which said lands or lots are situated.

Source: Laws 1911, c. 142, § 8, p. 469; R.S.1913, § 1779; C.S.1922, § 1726; C.S.1929, § 31-309; R.S.1943, § 31-209.

31-210. Drains or ditches; failure of mutual agreement; right of eminent domain; procedure.

If the appraisers shall for any reason fail to procure the right-of-way for the proposed ditch or ditches, drain or drains, from any of the owners of the land crossed thereby, by a mutual agreement with such owners, the county board may acquire same by the exercise of the power of eminent domain. The procedure to condemn property shall be exercised in the manner set forth in sections [76-704](#) to [76-724](#).

Source: Laws 1911, c. 142, § 9, p. 469; R.S.1913, § 1780; C.S.1922, § 1727; C.S.1929, § 31-310; R.S.1943, § 31-210; Laws 1951, c. 101, § 71, p. 479; Laws 1961, c. 138, § 2, p. 396.

31-211. Drains or ditches; appraisal; costs; damages; assessments.

The appraisers shall ascertain as nearly as may be the actual cost of construction of the ditch or ditches, drain or drains, together with all costs relating thereto, including the costs of the surveyor and engineer and the costs of appraisal and advertising, and shall ascertain to the best of their judgment the amount of the benefits which will accrue to each tract of land to be benefited thereby, and shall appraise and determine the amount of damage sustained by each landowner whose premises may be crossed by the proposed ditch or drain and award the same, and shall assess to each tract of land benefited by the construction of such improvements, its proportionate share of the costs of the right-of-way thereof, the costs of construction and other expenses above mentioned. They shall thereupon make and file with the county clerk a full and complete report of their acts and doings in the premises, together with the releases obtained from the

property owners along the right-of-way of the proposed ditch or drain, and a statement of the amount or amounts to be paid for such release or releases. They shall also file an assessment roll therewith in which shall appear in proper columns the names of the owners, if known, and if unknown so stated, a description of the premises affected, the number of acres in each tract of land so affected and the value thereof, and if damages are allowed, the amount of the same, and if benefits are assessed the amount thereof.

Source: Laws 1911, c. 142, § 10, p. 470; R.S.1913, § 1781; C.S.1922, § 1728; C.S.1929, § 31-311; R.S.1943, § 31-211.

Annotations

Where notice to mortgagee was not given, lien of special assessments was subject to lien of the mortgage. Board of Commissioners of Hamilton County v. Northwestern Mut. Life Ins. Co., 114 Neb. 596, 209 N.W. 256 (1926).

31-212. Drains or ditches; highway benefits; assessment to county or township.

In case the public highways shall be benefited by the construction of such proposed ditch or ditches, drain or drains, the appraisers shall determine as nearly as may be the amount of such benefits so accruing to the township or county, as the case may be, and said township or county shall pay such pro rata share of the costs and expenses of the construction of the ditch or ditches, drain or drains.

Source: Laws 1911, c. 142, § 11, p. 471; R.S.1913, § 1782; C.S.1922, § 1729; C.S.1929, § 31-312; R.S.1943, § 31-212.

31-213. Drains or ditches; appraisers; report; assessment roll; when filed; confirmation.

The appraisers shall within twenty days from the date of their appointment file their report and assessment roll with the county clerk, and any person or persons or corporation owning land affected by the proceedings may, within thirty days from the date of the appointment of the appraisers, file with the county clerk objections to the report or assessment roll, or settlement made by the appraisers on any point, including the amount or amounts proposed to be paid for voluntary releases. If no objections are filed to the report and assessment roll, the county board at its next regular or adjourned session after the expiration of the time for filing objections, shall, if deemed advisable, confirm such report and assessment roll.

Source: Laws 1911, c. 142, § 12, p. 471; R.S.1913, § 1783; C.S.1922, § 1730; C.S.1929, § 31-313; R.S.1943, § 31-213.

31-214. Drains or ditches; report; assessment roll; notice of objections.

If objections are filed to any matter contained in the report or assessment roll, the county clerk shall thereupon issue a notice to all interested parties concerned therein, which notice shall be served upon such parties, if residents of the county, at least three days prior to the consideration of the matter by the county board, and if the interested parties are nonresidents, notice shall be published, in one issue of the official newspaper published and of general circulation in the county, at least ten days prior to the day when the matter will be heard by the county board.

Source: Laws 1911, c. 142, § 12, p. 471; R.S.1913, § 1784; C.S.1922, § 1731; C.S.1929, § 31-314; R.S.1943, § 31-214.

31-215. Drains or ditches; report; assessment roll; hearing on objections; procedure.

At the time fixed in the notice, or on any adjourned day thereafter, the board shall proceed to hear and determine all matters in relation to the objections, and for that purpose may take the sworn testimony of witnesses produced by interested parties to the controversy and may in its discretion change the amount of the assessment made, and the damages awarded by the appraisers.

Source: Laws 1911, c. 142, § 12, p. 471; R.S.1913, § 1785; C.S.1922, § 1732; C.S.1929, § 31-315; R.S.1943, § 31-215.

31-216. Drains or ditches; appeal from assessment; how taken; bond.

When the objections have been heard and determined by the board, any interested party may appeal therefrom to the district court by filing with the county clerk a written notice of the appeal within ten days from the date of such decision; *Provided*, they shall give a bond to be approved by the county clerk, conditioned to pay all costs of the proceedings on appeal, should the decision of the county board be sustained, and shall within thirty days file a transcript of the proceedings had upon the objection, with the clerk of the district court, where the matter shall be tried and determined as in ordinary civil cases.

Source: Laws 1911, c. 142, § 12, p. 472; R.S.1913, § 1786; C.S.1922, § 1733; C.S.1929, § 31-316; R.S.1943, § 31-216.

31-217. Drains or ditches; assessment; entry on tax books; how collected.

If no objections are filed to the report of the appraisers within the time as provided in section [31-213](#), or no appeal has been perfected from the decision of the county board upon objections determined by it, the county board shall direct the county clerk to place the assessment roll upon the tax book of the county against the lands or lots affected thereby together with the costs of all proceedings relating thereto, and shall confirm in whole or in part the report of the appraisers as to voluntary releases. The assessments to be made and placed upon the tax books of the county shall be collected by the county treasurer in the same manner as is provided for the collection of ordinary taxes.

Source: Laws 1911, c. 142, § 13, p. 472; R.S.1913, § 1787; C.S.1922, § 1734; C.S.1929, § 31-317; R.S.1943, § 31-217.

Annotations

Notice must be sent to mortgagees or organization of drainage district before special assessment can be levied. Board of Commissioners of Hamilton County v. Northwestern Mut. Life Ins. Co., 114 Neb. 596, 209 N.W. 256 (1926).

31-218. Drains or ditches; assessment; payment before entry on tax books allowed.

Any person or persons against whose land any assessment shall have been levied shall in his discretion have the right to pay to the county treasurer the amount of such assessment before the same has been placed upon the tax books of the county clerk.

Source: Laws 1911, c. 142, § 15, p. 473; R.S.1913, § 1788; C.S.1922, § 1735; C.S.1929, § 31-318; R.S.1943, § 31-218.

31-219. Drains or ditches; appraisers; compensation; expenses.

The appraisers shall receive the sum of three dollars per day for the time necessarily employed, together with necessary traveling expenses, with reimbursement for mileage to be made at the rate provided in section [81-1176](#), to be taxed as costs and to be paid from the money received from said special assessments as provided in section [31-211](#).

Source: Laws 1911, c. 142, § 14, p. 472; R.S.1913, § 1789; C.S.1922, § 1736; C.S.1929, § 31-319; R.S.1943, § 31-219; Laws 1981, LB 204, § 46; Laws 1996, LB 1011, § 19.

31-220. Drains or ditches; appraisers, employees, and contractors; entry on land authorized.

The drainage supervisors, any time after receiving any petition as provided in section [31-204](#), may authorize any appraisers or employees to go upon the lands affected for the purpose of examining the same and making a survey thereof. After the matter has been fully determined by the board or by the court on appeal, and condemnation or purchase money paid, the supervisors may authorize all contractors with their servants, teams, tools, instruments or other equipment to go upon the lands or lots for the purpose of constructing any ditch or ditches, drain or drains, and for this purpose may designate some responsible person to supervise the work.

Source: Laws 1911, c. 142, § 16, p. 473; R.S.1913, § 1790; C.S.1922, § 1737; C.S.1929, § 31-320; R.S.1943, § 31-220; Laws 1961, c. 370, § 2, p. 1144.

31-221. Injuring or obstructing watercourse, drain, or ditch; penalty; liability for costs of cleaning.

If any person or persons shall willfully fill up, injure or destroy any watercourse or any drain or ditch constructed as herein required, or willfully prevent or delay the construction or repair of any watercourse or any drain or ditch in the manner provided by sections [31-201](#) to [31-223](#), such person or persons shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not less than twenty-five dollars nor more than one hundred dollars, or be confined in the county jail not to exceed thirty days, and in addition thereto may be liable for the cost of cleaning out any such watercourse, drain, or ditch as determined by the court.

Source: Laws 1911, c. 142, § 17, p. 473; R.S.1913, § 1791; C.S.1922, § 1738; C.S.1929, § 31-321; R.S.1943, § 31-221; Laws 1965, c. 156, § 5, p. 503.

31-222. Drains or ditches; assessment; credit allowed for work done by persons assessed.

In case any person assessed for benefits shall contract to do any work on the ditch or drain, and the work is done according to contract, the drainage supervisors shall give said person or persons a receipt thereof to the amount earned by such work, and such receipt shall be received by the county treasurer as payment of so much of such assessment.

Source: Laws 1911, c. 142, § 18, p. 473; R.S.1913, § 1792; C.S.1922, § 1739; C.S.1929, § 31-322; R.S.1943, § 31-222.

31-223. Drains or ditches; additional assessments; levy; collection.

When the assessments as provided for in sections [31-201](#) to [31-222](#) shall be inadequate to complete the work proposed, or when assessments shall be necessary for the maintenance and repair of such ditches or drains, each tract of land shall be assessed by the county board such proportion of the additional costs as its original assessment bore to the total original assessment, and the said additional assessment shall be made and collected in the same manner as nearly as may be as the original assessment was made. In all subsequent matters in relation thereto, the same proceedings shall be had as hereinbefore required in regard to the original assessment.

Source: Laws 1911, c. 142, § 19, p. 474; R.S.1913, § 1793; C.S.1922, § 1740; C.S.1929, § 31-323; R.S.1943, § 31-223.

31-224. Watercourses, drains, or ditches; annual removal of rubbish by landowners or tenants; exceptions.

It shall be the duty of landowners in this state, or tenants of such landowners when in possession, owning or occupying lands through which a watercourse, slough, drainage ditch or drainage course lies, runs or has its course, to clean such watercourse, slough, drainage ditch or drainage course at least once a year, between March 1 and April 15, of all rubbish, weeds or other substance blocking or otherwise obstructing the flow of the water in such watercourse, slough, drainage ditch or drainage course, whenever such obstruction is caused by any of the acts of said owner or tenant, or with his knowledge or consent; *Provided, however,* this and sections [31-225](#) and [31-226](#) shall not apply to drainage ditches under control of any drainage company or corporation.

Source: Laws 1911, c. 143, § 1, p. 474; R.S.1913, § 1794; C.S.1922, § 1741; C.S.1929, § 31-324; R.S.1943, § 31-224.

Annotations

Owner of adjoining lands is required to maintain river in course to which diverted by authorized nonnegligent construction and is not entitled to recover for negligent maintenance. *Idlewild Farm Co. v. Elkhorn River Drainage District*, 116 Neb. 300, 216 N.W. 817 (1927).

In this section, the phrase "at least" prior to "once a year" indicates that a landowner may have a duty to clear the ditch more than once during the specified period of March 1 to April 15, if the flow of water again becomes

obstructed during this period. *Barthel v. Liermann*, 21 Neb. App. 730, 842 N.W.2d 624 (2014).

There is nothing in this section that can be interpreted to require a landowner to clean a drainage ditch outside the March 1 to April 15 period if the flow of water becomes obstructed at any other time during the year. *Barthel v. Liermann*, 21 Neb. App. 730, 842 N.W.2d 624 (2014).

This section imposes a duty upon a landowner to clean a drainage ditch once a year, between March 1 and April 15. *Barthel v. Liermann*, 21 Neb. App. 730, 842 N.W.2d 624 (2014).

Landowners do not have to cause the obstruction in a waterway before this section requires them to clear it; the obstruction need only have occurred with their knowledge or consent. Landowners who were aware of weeds and cattle obstructing the ditch had a duty to clean the ditch out under this section despite the fact that they did not affirmatively obstruct the ditch. *Barthel v. Liermann*, 2 Neb. App. 347, 509 N.W.2d 660 (1993).

31-225. Watercourses, drains, or ditches; annual clearing and deepening by landowner or tenant.

It shall be the duty of any landowner or tenant who shall occupy or use land through which a watercourse, slough, drainage ditch or drainage course shall run or have its course, and who shall plow over or plant crops in the bed of such watercourse, slough, drainage ditch or drainage course, to dig out or by other means deepen, at least once a year, between March 1 and April 15, to a depth at least equal to that of such watercourse, drainage ditch, slough or drainage course, before same was plowed or seeded to crop, if plowing and planting as aforesaid causes an overflow or flooding of other lands along the course of said drainage ditch, slough or drainage course.

Source: Laws 1911, c. 143, § 2, p. 475; R.S.1913, § 1795; C.S.1922, § 1742; C.S.1929, § 31-325; R.S.1943, § 31-225.

31-226. Watercourses, drains, or ditches; failure to clear after notice; penalty.

Any person or individual violating any provisions of sections [31-224](#) and [31-225](#), and who shall have been notified by an owner or tenant having the same watercourse, slough, drainage ditch or drainage course running through the land owned or occupied by such person or individual, at least ten days before the filing of a complaint, to remove an obstruction in such watercourse, slough, drainage ditch or drainage course, and who shall fail to comply with such notice, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not more than ten dollars and be liable for all damages caused by reason of such obstruction.

Source: Laws 1911, c. 143, § 3, p. 475; R.S.1913, § 1796; C.S.1922, § 1743; C.S.1929, § 31-326; R.S.1943, § 31-226.

31-227. Cities of the metropolitan class; county boards; concurrent jurisdiction over watercourses.

The city council of any city of the metropolitan class shall have concurrent jurisdiction with the county board of any county having a population of two hundred thousand inhabitants or more, and the power to cause all natural watercourses, as defined in section [31-228](#), which are within its corporate limits or within three miles thereof, to be kept clean and free of obstructions in such manner as to permit the natural flow thereof.

Source: Laws 1965, c. 156, § 1, p. 502.

31-228. Concurrent jurisdiction; watercourse, defined.

Any depression or draw two feet or more below the surrounding lands and having a continuous outlet to a stream of water, or river or brook shall be deemed a watercourse.

Source: Laws 1965, c. 156, § 2, p. 502.

31-229. Cities of the metropolitan class; obstructions; petition for removal.

Whenever any natural watercourse, as defined in section [31-228](#), within the corporate limits of a city of the metropolitan class, or within three miles thereof, is filled with trees, silt, or debris in such a manner as to obstruct the natural flow thereof and cause damage by flooding of adjacent lands, any five landowners owning land in the corporate limits of such city or within three miles thereof abutting on the natural watercourse may, by petition, request the city council to cause the same to be cleaned out and rendered free of obstructions.

Source: Laws 1965, c. 156, § 3, p. 503.

31-230. Cities of the metropolitan class; drainage; cleaning out watercourse; special assessments.

The city council of a city of the metropolitan class upon receipt of a request pursuant to section [31-229](#), may, if it finds that natural flow is being obstructed, cause the natural watercourse to be cleaned out. Except as provided in section [31-221](#), the cost thereof may be levied as a special assessment and apportioned among

the property owners specially benefited thereby and collected in the same manner as special assessments are levied and collected.

Source: Laws 1965, c. 156, § 4, p. 503; [Laws 2015, LB361, § 50.](#)

31-301. Drainage districts organized by proceedings in district court; formation; articles of association; contents.

A majority in interest of the owners in any contiguous body of swamp or overflowed lands in this state, situated in one or more counties in this state, may form a drainage district for the purpose of having such land reclaimed and protected from the effects of water, by drainage or otherwise. For that purpose they may make and sign articles of association, in which shall be stated the name of the district, the number of years the same is to continue, the limits of the proposed drainage district, which shall in no event embrace an area of less than one hundred and sixty acres, the names and places of residence of the owners of the land in the proposed district, the description of the several tracts or parcels of land situated in the district owned by those who may organize the district, and the name or names and the description of the real estate owned by such as do not join in the organization of the district but who will be benefited thereby. Such owners of real estate as are unknown may be set out in such articles as such. The articles shall further state that the owners of real estate so forming the district for such purposes are willing and obligate themselves to pay the tax or taxes which may be assessed against them to pay the expense of making the improvements that may be necessary to effect the drainage of the lands so formed into a district, as provided by law, praying that they may be declared a drainage district under sections [31-301](#) to [31-369](#).

Source: Laws 1905, c. 161, § 1, p. 610; Laws 1909, c. 147, § 1, p. 507; R.S.1913, § 1797; C.S.1922, § 1744; C.S.1929, § 31-401; R.S.1943, § 31-301.

Annotations

- 1. Constitutionality**
 - 2. Organization**
 - 3. Status as public corporation**
 - 4. Powers and restrictions**
 - 5. Miscellaneous**
- 1. Constitutionality**

Act sustained as constitutional as against claim that it gives legislative power to the courts. *Mooney v. Drainage District No. 1 of Richardson County*, 126 Neb. 219, 252 N.W. 910 (1934).

Drainage district act upheld as constitutional. *Drainage District No. 1 of Pawnee County v. Chicago, B. & Q. R. Co.*, 96 Neb. 1, 146 N.W. 1055 (1914); *O'Neill v. Leamer*, 239 U.S. 244 (1915).

Act, as amended in 1909, is constitutional, though it omits provisions to recover damages. *Nemaha Valley Drainage District No. 2 v. Marconnit*, 90 Neb. 514, 134 N.W. 177 (1912).

Title was sufficiently comprehensive to include assessment of public highways when benefited. *Drainage Dist. No. 1 of Richardson County v. Richardson County*, 86 Neb. 355, 125 N.W. 796 (1910).

Court performs judicial and not administrative functions. *Barnes v. Minor*, 80 Neb. 189, 114 N.W. 146 (1907).

Creation of such political administrative corporations is constitutional. *Neal v. Vansickle*, 72 Neb. 105, 100 N.W. 200 (1904).

2. Organization

Lands within district are not required to actually adjoin. *Petersen v. Thurston*, 157 Neb. 833, 62 N.W.2d 68 (1954).

The court acquires jurisdiction to organize district under this article by filing of articles of association and service of notice, and the court, having jurisdiction, may permit additional landowners in district to join in articles of association. *Henderson v. Holliman*, 108 Neb. 67, 187 N.W. 128 (1922).

Notice must be given to all owners of land within the district who have not signed the articles. *Latham v. Chicago, B. & Q. R. Co.*, 100 Neb. 173, 158 N.W. 923 (1916).

Articles of incorporation, if properly drawn, may take the place of petition or application, and the statute defines what they shall contain. *Drainage Dist. No. 1 of Otoe and Johnson Counties v. Wilkins*, 93 Neb. 567, 141 N.W. 151 (1913).

Court may refuse to declare the district organized, where petitioners are nonresidents of county. *Catron v. Dailey*, 84 Neb. 487, 121 N.W. 462 (1909).

3. Status as public corporation

Drainage district organized under this article is a public and not a private corporation, and it has no authority to engage in irrigation, or to consent to the diversion, for purposes of irrigation, of any waters carried in any drainage ditch. *Drainage Dist. No. 1 v. Suburban Irrigation Dist.*, 139 Neb. 333, 297 N.W. 645 (1941).

A drainage district is a public and not a private corporation. *Mooney v. Drainage District No. 1 of Richardson County*, 133 Neb. 197, 274 N.W. 467 (1937). Judgment vacated on rehearing, 134 Neb. 192, 278 N.W. 368 (1938).

Drainage district organized under this article is a public corporation. *O'Neill v. Leamer*, 93 Neb. 786, 142 N.W. 112 (1913), affirmed, 239 U.S. 244 (1915); *Drainage Dist. No. 1 of Richardson County v. Richardson County*, 86 Neb. 355, 125 N.W. 796 (1910).

4. Powers and restrictions

District is liable for failure to maintain and keep in repair its works. *McGree v. Stanton-Pilger Drainage Dist.*, 164 Neb. 552, 82 N.W.2d 798 (1957).

Power is conferred to drain swamp or overflowed lands. *Petersen v. Thurston*, 161 Neb. 758, 74 N.W.2d 528 (1956).

Duty is imposed upon district to maintain and keep system in repair. *County of Johnson v. Weber*, 160 Neb. 432, 70 N.W.2d 440 (1955).

Drainage district organized under this article has no authority to levy assessments on property outside of district. *Drainage Dist. No. 1 v. Village of Hershey*, 139 Neb. 205, 296 N.W. 879 (1941).

Drainage assessments levied by board cannot be enjoined unless void. *Richardson County v. Drainage District No. 1 of Richardson County*, 113 Neb. 662, 204 N.W. 376 (1925).

Petitioners cannot restrict powers of corporation as to manner of drainage. *Nemaha Valley Drainage Dist. No. 2 v. Marconnit*, 90 Neb. 514, 134 N.W. 177 (1912).

5. Miscellaneous

Proceedings for the establishment of a drainage district is purely statutory. *Kuhlman v. Folkers*, 179 Neb. 80, 136 N.W.2d 364 (1965).

Proceedings to form sanitary and improvement district are similar to proceedings under this article. *Zwink v. Ahlman*, 177 Neb. 15, 128 N.W.2d 121 (1964).

Assessment of benefit units for drainage improvement to streets and alleys of a village within a drainage district cannot be ascertained to an exact nicety of apportionment. *Drainage District No. 1 of Lincoln County v. Village of Hershey*, 145 Neb. 138, 15 N.W.2d 337 (1944).

Waters running in drainage ditches constructed and maintained by a drainage district organized under this article are not subject to legal appropriation under irrigation laws. *Drainage Dist. No. 1 v. Suburban Irrigation Dist.*, 139 Neb. 460, 298 N.W. 131 (1941).

Incorporation of drainage district and proceedings had pursuant to statute create contracts between the district and individual landowners which cannot be impaired by subsequent legislation. *Ritter v. Drainage Dist. No. 1 of Otoe and Johnson Counties*, 137 Neb. 866, 291 N.W. 718 (1940).

Landowners acquired vested property rights by payment of legal assessments on their lands to a public drainage district, and it could not discontinue operation. *Mooney v. Drainage District No. 1 of Richardson County*, 134 Neb. 192, 278 N.W. 368 (1938).

Drainage district is liable for damages caused by negligence in construction or maintenance. *Miller v. Drainage District No. 1 of Richardson County*, 112 Neb. 206, 199 N.W. 28 (1924).

31-301.01. Drainage districts; formation prohibited after June 30, 1972; exceptions.

After June 30, 1972, no new drainage districts shall be organized under the provisions of sections [31-301](#) to [31-377](#). Attempted formations of drainage districts under sections [31-301](#) to [31-377](#) which have not been completed before July 1, 1972, shall be null, void and of no effect for the purpose of organizing such district. All drainage districts having valid corporate existence before July 1, 1972, shall enjoy all rights, duties, powers and authorities conferred by sections [31-301](#) to [31-377](#) and shall not be affected by this section, nor shall the legality of formation, organization, or operation of any such district be subject to any legal action based on this section.

Source: Laws 1969, c. 9, § 61, p. 134; Laws 1971, LB 544, § 7.

31-302. Formation; articles; where filed.

After the articles of association shall be signed, the same shall be filed in the office of the clerk of the district court of the county in which such drainage district is located, or if such drainage district is composed of tracts, or parcels of land in two or more counties, then in the office of the clerk of the district court of the county in which the greater portion of such proposed drainage district may be situated.

Source: Laws 1905, c. 161, § 1, p. 611; Laws 1909, c. 147, § 1, p. 508; R.S.1913, § 1797; C.S.1922, § 1744; C.S.1929, § 31-401; R.S.1943, § 31-302.

Annotations

Articles should be filed in county having larger portion of lands. *Petersen v. Thurston*, 157 Neb. 833, 62 N.W.2d 68 (1954).

31-303. Formation; notice to landowners affected; summons; service by publication.

Immediately after such articles of association shall have been filed, the clerk of the district court of the county in which the proposed district is located, and in case the drainage district be composed of territory situated in different counties, the clerk of the district court of the county in which the greater portion of the land and of the proposed district shall be situated, shall issue a summons, as provided by law, returnable at the next term of the district court, directed to the several owners of real estate in the proposed district who may be averred to be benefited thereby but have not signed the articles of association, which shall be served as summons in civil cases. In case any owner or owners of real estate in the proposed district are unknown, or are nonresidents, they shall be notified in the same manner as nonresident defendants are by law notified in actions in the district courts of this state, setting forth in such notice that the articles of association have been filed, the purpose thereof, that the real estate of such owner or owners situated in the district, fully describing the same, will be affected thereby and rendered liable to taxation or assessment for the purposes of draining such district, and that application will be made to have the district declared a drainage district for the purposes of draining and reclaiming the same.

Source: Laws 1905, c. 161, § 2, p. 611; R.S.1913, § 1798; C.S.1922, § 1745; C.S.1929, § 31-402; R.S.1943, § 31-303.

Annotations

Notice must be given to owners of land who have not signed the articles of association. *Latham v. Chicago, B. & Q. R. Co.*, 100 Neb. 173, 158 N.W. 923 (1916).

Nonresident means not a resident of the state. *Catron v. Dailey*, 84 Neb. 487, 121 N.W. 462 (1909).

31-304. Formation; objections; hearing; judgment.

All owners of real estate situated in the proposed district who have not signed the articles of association and who may object to the organization of the drainage district, after having been duly summoned shall, on or before the second day of the term of court to which they have been summoned to appear, file their objection or objections in writing, if any they may have, why such drainage district should not

be organized and declared a public corporation of this state, and why their land will not be benefited by drainage, and should not be embraced in the drainage district and liable to taxation for draining the same. All such objections shall be heard by the court in a summary manner, without any unnecessary delay, and in case such objections are overruled, the district court shall, by its order duly entered of record, declare the drainage district a public corporation of this state. The fact that the district contains one hundred and sixty acres or more of wet, overflowed, or submerged lands shall be sufficient cause for declaring the public utility of such improvements, and shall be sufficient grounds for declaring the organization of a public corporation of this state. In case any owner of such real estate shall satisfy the court that his real estate, or a part thereof, has been wrongfully included in the district, and will not be benefited thereby, then the court may exclude such real estate as will not be benefited, and declare the remainder a district as prayed for.

Source: Laws 1905, c. 161, § 3, p. 612; R.S.1913, § 1799; C.S.1922, § 1746; C.S.1929, § 31-403; R.S.1943, § 31-304.

Annotations

District was organized properly. *County of Johnson v. Weber*, 160 Neb. 432, 70 N.W.2d 440 (1955).

Where portion of land will not be benefited, it may be excluded. *Petersen v. Thurston*, 157 Neb. 833, 62 N.W.2d 68 (1954).

Judgment sustaining objections to including lands in drainage district without prejudice to subsequent inclusion does not bar subsequent inquiry. *Shepherdson v. Fagin*, 116 Neb. 806, 219 N.W. 187 (1928).

After jurisdiction is acquired, the court may permit additional landowners in district to join in articles of association. *Henderson v. Holliman*, 108 Neb. 67, 187 N.W. 128 (1922).

This act does not contemplate that the question of damages by third persons shall be decided at the hearing upon the application for formation of district, and statute permitting intervention is not applicable. *Latham v. Chicago, B. & Q. R. Co.*, 100 Neb. 173, 158 N.W. 923 (1916).

Facts which court must find to enter order are properly raised by filing of articles. *Drainage Dist. No. 1 of Otoe and Johnson Counties v. Wilkins*, 93 Neb. 567, 141 N.W. 151 (1913).

31-305. Formation; articles; filing and recording.

Within twenty days after the district has been declared a corporation by the court, the clerk thereof shall transmit to the Secretary of State a certified copy of the record relating thereto, and the same shall be filed in his office in the same

manner as articles of incorporation are required to be filed under the general law concerning corporations. A copy of such record, together with a plat of the district, shall also be filed in the office of the county clerk of the county or counties in which the district, or any part thereof, is situated.

Source: Laws 1905, c. 161, § 4, p. 613; R.S.1913, § 1800; C.S.1922, § 1747; C.S.1929, § 31-404; R.S.1943, § 31-305.

31-306. First board of supervisors; election; number; basis of representation; succeeding boards, how chosen.

Within thirty days after the district court shall have declared any drainage district organized, the clerk of the court shall, upon fifteen days' notice, call a meeting of the owners of the real estate situated in the district, at the day and hour specified, in some public place in the county in which the district was organized, for the purpose of electing a board of five supervisors to be composed of owners of real estate in the district and a majority of whom shall be residents of the county or counties in which such district is situated. At such election every acre of land shall represent one share and each owner shall be entitled to one vote for every acre of land owned by him in such district. The five persons receiving the highest number of votes shall be declared elected as supervisors, and they shall immediately, by lot, determine their terms of office, which shall be respectively, one, two, three, four and five years, and until their successors are elected and qualified; *Provided, however,* at any time thereafter not more often than once in twelve months, upon the petition of the owners of at least twenty percent of the land acreage within the drainage district, an election shall be called for the selection of a new board, and upon the filing of such petitions with the secretary of the board, notice of such election shall be given by the secretary in the same manner and for the same time as is provided for at the original election under the notice given by the clerk of the district court. Special elections shall in all respects be governed by the provisions applicable to the regular election herein provided for.

Source: Laws 1905, c. 161, § 5, p. 613; Laws 1907, c. 152, § 1, p. 466; Laws 1911, c. 144, § 1, p. 476; R.S.1913, § 1801; C.S.1922, § 1748; C.S.1929, § 31-405; R.S.1943, § 31-306.

Annotations

Objections that subject of amendment was not referred to in original act, and not germane thereto, were not valid after inclusion in statutory revisions. *Lost Creek Drainage Dist. v. Kring*, 193 Neb. 450, 227 N.W.2d 421 (1975).

Where no resident owner signed the petition, court is justified in denying organization. *Catron v. Dailey*, 84 Neb. 487, 121 N.W. 462 (1909).

31-307. Supervisors; annual elections; notice.

Every year after the election of the first board of supervisors, at such time and place in the county in which the district was organized as the board of supervisors may designate, and upon not less than fifteen days' notice, unless waived in writing, such owners shall meet and elect one supervisor in the same manner as provided in section [31-306](#), who shall hold his office for five years and until his successor is elected and qualified. Notice may be given by personal service or by publication for two weeks in a newspaper in each county in the district and of general circulation therein, which notice shall be sufficient if it notifies the landowners of the district without naming them individually, of the time, place, and purpose of the meeting. The secretary of the board shall mail to the last-known post office address of each owner of land in the district a copy of a published notice. In case of a vacancy in any office of supervisor, the remaining supervisors may fill such vacancy until the next annual election when a successor shall be elected for the unexpired term.

Source: Laws 1905, c. 161, § 6, p. 613; Laws 1907, c. 152, § 2, p. 467; R.S.1913, § 1802; C.S.1922, § 1749; C.S.1929, § 31-406; R.S.1943, § 31-307.

Annotations

Objections that subject of amendment was not referred to in title to original act, and not germane thereto, were not valid after inclusion in statutory revisions. *Lost Creek Drainage Dist. v. Kring*, 193 Neb. 450, 227 N.W.2d 421 (1975).

31-308. Supervisors; oath; bond; auditing of accounts.

Each supervisor, before entering upon his official duties as such, shall take and subscribe an oath before some officer authorized by law to administer oaths, that he will honestly, faithfully, and impartially demean himself in office as supervisor of the various districts in which he was elected, and that he will not neglect any of the duties imposed upon him by law. The president and secretary of the drainage board shall each enter into a bond in the sum of ten thousand dollars to the district for the faithful performance of his duties as such officer. Each of the remaining members of the board shall give bond in the sum of twenty-five hundred dollars, conditioned in the same manner. All of such bonds shall be approved by the clerk of the district court, and the expense of such bonds shall be paid by the drainage district; *Provided, however*, upon the completion of the drainage improvements of

the district the amount of all of the bonds shall be reduced to the sum of fifteen hundred dollars each. All expenditures of the drainage district shall from time to time be audited by a committee of three elected by the landowners of each district at their annual meeting for the election of officers. Such auditing committee shall file written reports of its examinations with the secretary of the drainage district.

Source: Laws 1905, c. 161, § 7, p. 614; Laws 1911, c. 144, § 2, p. 477; R.S.1913, § 1803; C.S.1922, § 1750; C.S.1929, § 31-407; R.S.1943, § 31-308.

31-309. Officers and assistants; reports; compensation.

The board of supervisors shall, immediately after its election, choose one of its number chairperson and another secretary. The board may adopt a seal, with a suitable device, and shall keep a record of all its proceedings open to the inspection of all owners of real estate in the drainage district. At each annual meeting the board shall make a report of what work has been done and shall annually publish a statement of its receipts and expenditures in a legal newspaper printed, published, and of general circulation in the county in which the district was organized or, if none is printed and published in the county, in a legal newspaper of general circulation in such county where the district was organized. The supervisors shall receive two dollars per day compensation for time actually employed in the business of the district, not exceeding eighty dollars each per year, but reasonable allowance shall be made for necessary clerical work and assistance, and the secretary shall receive for his or her services such compensation as the board of supervisors may agree upon, payable out of the district drainage fund. The board of supervisors may employ an attorney to act for the district and to advise the board.

Source: Laws 1905, c. 161, § 8, p. 614; Laws 1909, c. 147, § 2, p. 508; R.S.1913, § 1804; C.S.1922, § 1751; C.S.1929, § 31-408; R.S.1943, § 31-309; Laws 1986, LB 960, § 22.

31-310. Topographical surveys; maps; profiles; plans.

The board of supervisors of any drainage district organized under the provisions of sections [31-301](#) to [31-305](#) shall cause a topographical survey to be made of the district by some competent engineer. The engineer shall make a complete topographical survey of the district and submit the same to the board of supervisors with maps and profiles of such survey and a full and complete plan for draining, reclaiming, and protecting the lands in the district from the overflow of, or damage by water or floods. The survey shall show the physical characteristics and location of any right-of-way, roadbed, bridge or bridges and other property or improvements in the district belonging to or under the control of any railroad company. The engineer shall report the location of any and all public highways

which may be crossed by the right-of-way of any ditch, levee, or other improvement planned for the district.

Source: Laws 1905, c. 161, § 9, p. 614; Laws 1909, c. 147, § 3, p. 509; R.S.1913, § 1805; C.S.1922, § 1752; C.S.1929, § 31-409; R.S.1943, § 31-310.

Annotations

Complete topographical survey was made. *Petersen v. Thurston*, 161 Neb. 758, 74 N.W.2d 528 (1956).

Feasibility of route is matter for consideration after organization of district. *Petersen v. Thurston*, 157 Neb. 833, 62 N.W.2d 68 (1954).

31-311. Estimates of cost.

The engineer shall also make an estimate of the cost of the entire drainage works and improvements required in the district to protect and reclaim the lands and property, showing the several items of the same.

Source: Laws 1905, c. 161, § 9, p. 614; Laws 1909, c. 147, § 3, p. 509; R.S.1913, § 1806; C.S.1922, § 1753; C.S.1929, § 31-410; R.S.1943, § 31-311.

Annotations

District engineer is required to make estimate of cost of entire project. *Petersen v. Thurston*, 161 Neb. 758, 74 N.W.2d 528 (1956).

31-312. Inspections and examinations.

The engineer shall go over and inspect and examine the lands in the district, the railroad rights-of-way, roadbeds, bridges, culverts, depot grounds, grades, and all other railroad, telephone and telegraph property in the district. He shall inspect and examine all other improvements, streets, highways and bridges belonging to any county, municipal or other corporation which may be affected by the proposed drainage and reclamation works and improvements, and also the streams, watercourses, ditches, ponds, lakes and bayous within the district or partly within and partly without the district.

Source: Laws 1905, c. 161, § 9, p. 614; Laws 1909, c. 147, § 3, p. 509; R.S.1913, § 1807; C.S.1922, § 1754; C.S.1929, § 31-411; R.S.1943, § 31-312.

Annotations

Inspection of lands affected was made. *Petersen v. Thurston*, 161 Neb. 758, 74 N.W.2d 528 (1956).

31-313. Assessment of benefits.

The engineer shall assess, as hereinafter directed and according to the rules hereinafter prescribed, the amount of benefits which will accrue to each tract or parcel of land and corporate property above named, by virtue of the works and improvements of the drainage district. Each tract or parcel of land, right-of-way, railroad bed, bridge, culvert and depot within the district shall bear its share of the entire cost and expenses incurred by the district in making such works and improvements in proportion to the benefits assessed, whether such improvements be made on the tract or parcel of land, right-of-way, or railroad bed, or not.

Source: Laws 1905, c. 161, § 9, p. 614; Laws 1909, c. 147, § 3, p. 510; R.S.1913, § 1808; C.S.1922, § 1755; C.S.1929, § 31-412; R.S.1943, § 31-313.

Annotations

It is sufficient if classification of benefits is made upon a uniform plan which is fair and just. *Petersen v. Thurston*, 161 Neb. 758, 74 N.W.2d 528 (1956).

Where drainage district levies assessment for special drainage benefits accruing to land, the levies are not void because an older drainage district previously levied and collected assessments on the same land. *Schobert-Zimmerman Drainage Dist. v. Soll*, 132 Neb. 629, 272 N.W. 775 (1937).

31-314. Estimate of benefits to property; how determined.

The engineer, in estimating the benefits to lands, streets, highways, railroad property, rights-of-way, railroad beds, not traversed by the works and improvements, shall not consider what benefits will be derived by such lands after other ditches, improvements, or drainage plans shall be constructed, but only the benefits which will be derived by the construction of the aforesaid works and improvements as they afford drainage or an outlet for drainage, or protection from overflow or damage by water.

Source: Laws 1905, c. 161, § 9, p. 614; Laws 1909, c. 147, § 3, p. 510; R.S.1913, § 1809; C.S.1922, § 1756; C.S.1929, § 31-413; R.S.1943, § 31-314.

Annotations

Engineer may estimate benefits before improvement is made. *Nemaha Valley Drainage Dist. v. Marconit*, 90 Neb. 514, 134 N.W. 177 (1912).

Lands of state held under contract for purchase are assessable, and sale for tax does not affect state's interest. *Morehouse v. Elkhorn River Drainage Dist. No. 2*, 90 Neb. 406, 133 N.W. 446 (1911).

31-315. Assessments; basis.

No assessment shall be made for benefits to any lands upon any other principle than that of benefits derived, but all assessments shall be made upon the basis of benefits derived and secured by reason of the construction of such improvements and works in affording drainage, or giving an outlet for drainage, protection from overflow, and damage from water.

Source: Laws 1905, c. 161, § 9, p. 614; Laws 1909, c. 147, § 3, p. 510; R.S.1913, § 1810; C.S.1922, § 1757; C.S.1929, § 31-414; R.S.1943, § 31-315.

Annotations

Assessments are made upon basis of benefits derived. *Petersen v. Thurston*, 161 Neb. 758, 74 N.W.2d 528 (1956).

Where board of supervisors of a drainage district assess property not within the district, and do not assess on basis of benefits derived, the order levying assessments is void and subject to collateral attack. *Drainage Dist. No. 1 v. Village of Hershey*, 139 Neb. 205, 296 N.W. 879 (1941).

Levy need not be confined to part actually overflowed if the whole is benefited. *Nemaha Valley Drainage Dist. No. 2 v. Higgins*, 90 Neb. 513, 134 N.W. 185 (1912).

Exact apportionment in detail is impossible, but it is sufficient if each tract as a whole is improved. Land appropriated for ditch must be excluded from land assessed. *Nemaha Valley Drainage District No. 2 v. Stocker*, 90 Neb. 507, 134 N.W. 183 (1912).

31-316. Estimate of benefits to highways and railroad property; how determined.

The benefits to public streets and highways, railroad property, right-of-way and roadbed, shall be assessed according to the increased efficiency and value added thereto by reason of, and the protection derived from, the aforesaid drainage works and improvements.

Source: Laws 1905, c. 161, § 9, p. 614; Laws 1909, c. 147, § 3, p. 510; R.S.1913, § 1811; C.S.1922, § 1758; C.S.1929, § 31-415; R.S.1943, § 31-316.

Annotations

Benefits accruing to railroad by drainage of flood waters may be assessed by drainage district. *Rudersdorf Drainage District v. Chicago, R. I. & P. Ry. Co.*, 118 Neb. 43, 223 N.W. 639 (1929); *Missouri Pacific Railroad Company v. Drainage District No. 5 of Richardson County*, 110 Neb. 762, 195 N.W. 113 (1923).

31-317. Classification of lands on basis of percentage of benefit.

The engineer shall also classify all lots, tracts, lands, and other property according to the benefit that each may receive from such drainage improvement, and the lots, tracts, and lands receiving the greatest percentage of benefits shall be classified at one hundred, those receiving a less percentage of benefit at such less number as its benefit may determine. The property of public and private corporations may be classified in a list by themselves, each according to the relation its total benefits bear to the total benefit in the district.

Source: Laws 1905, c. 161, § 9, p. 614; Laws 1909, c. 147, § 3, p. 510; R.S.1913, § 1812; C.S.1922, § 1759; C.S.1929, § 31-416; R.S.1943, § 31-317.

Annotations

If land outside the district will apparently benefit, the chairman of the board must petition the district court to annex it. *Lost Creek Drainage Dist. v. Elsam*, 188 Neb. 705, 199 N.W.2d 387 (1972).

Lands receiving greatest benefits are classified and assessed equally at one hundred. *Petersen v. Thurston*, 161 Neb. 758, 74 N.W.2d 528 (1956).

31-318. Maps, plans, and profiles; requisites; report; filing.

The maps hereinbefore provided for shall be drawn upon a scale sufficiently large to represent all the meanderings of the proposed improvements, and shall show the boundary lines of each lot, or tract of land, and of each street, road or railroad to be benefited thereby, the name of the owner of each lot or tract of land, as it then appeared on the deed records, the authority or company having in charge or controlling each public or corporate street, road or railroad, the distance in feet through each tract or parcel of land, the acreage thereof, and such other matters as the surveyor or engineer deems material. The profile shall show the surface, the grade lines, gradients, fixed and working sections. The report shall be filed with the board of supervisors of the district within sixty days after making such survey.

Source: Laws 1905, c. 161, § 9, p. 614; Laws 1909, c. 147, § 3, p. 511; R.S.1913, § 1813; C.S.1922, § 1760; C.S.1929, § 31-417; R.S.1943, § 31-318.

Annotations

Maps and profiles are required to be made. *Petersen v. Thurston*, 161 Neb. 758, 74 N.W.2d 528 (1956).

31-319. Drain commissioner; appointment; duties; tenure of office; oath; bond.

The board of supervisors of any district organized under sections [31-301](#) to [31-305](#) shall appoint some competent person to award all contracts contemplated in sections [31-301](#) to [31-369](#) to the lowest bidder, subject to the approval of the board of supervisors, except as herein otherwise provided, to be known as the drain commissioner. He shall hold his office for one year and until his successor is appointed and qualified. He shall have general superintendence of all works put under contract by the district, subject to the supervision and control of the board of supervisors. He shall report the same when completed according to the terms and stipulations of the contract, and certify the same to the board of supervisors, which shall review and accept or reject the work so completed. The drain commissioner shall, before entering upon the discharge of his duties, enter into bond with proper surety, subject to the approval of the board of supervisors, in any sum not less than two thousand dollars, nor more than ten thousand dollars, to the drainage district of which he shall be appointed, conditioned that he will faithfully and honestly perform all of the duties required of him by law, and deliver to his successor in office all instruments, papers, and documents that may have come to his hands by virtue of his office. He shall take and subscribe the oath required by section [31-308](#), which shall be endorsed upon his bond, and filed in the office of the county clerk of the county in which the district, or the greater part thereof, shall be situated.

Source: Laws 1905, c. 161, § 10, p. 616; R.S.1913, § 1814; C.S.1922, § 1761; C.S.1929, § 31-418; R.S.1943, § 31-319.

31-320. Land outside of district; inclusion; conditions; procedure.

If, upon the filing of the report of the engineer, together with the estimates as provided in section [31-311](#), it appears that lands, other than those incorporated by the court in the district, will be benefited by the drainage improvements of the district, the chairperson of the board of supervisors shall file a petition in the district court of the county where the district was originally organized, containing a description of the lands and the name or names of the owners as they appear on the tax duplicate of the county in which the lands are situated and their place or places of residence and alleging that such land will be benefited by the improvements and ought in justice bear its proportion of the expense and cost of such improvement and that such land was not incorporated within the limits of the drainage district as originally established by the court. If the names of the owners of any such tract or tracts of land are unknown, this fact shall be stated. The prayer of the petition shall be that such tract or tracts of land may be incorporated and made a part of the district. Upon the filing of such petition, duly verified, the clerk of the district court shall issue summons or notice to the parties interested as provided by section [31-303](#) with reference to the original petition for the establishment of the district, the same proceedings shall be had upon the petition and in the same court as upon the original petition for the establishment of the district, and the same provisions of law shall apply thereto insofar as the same are applicable. Upon the return day of such notice or summons, or at any other time to which the court shall adjourn the cause, the court shall have jurisdiction to try and determine such matter at chambers and to make all necessary orders, judgments, and decrees. The owners of such lands may by writing, duly verified, waive the issuance and service of all notice or process and consent that the court may at once upon the filing of the petition and waiver enter the necessary decree. Upon filing the petition it shall be the duty of the clerk to record the cause as a proceeding in and part of the original cause for the establishment of the district. After entering of the decree of the court, the land and all of the parties so brought into the district shall be subject to the same provisions of law as would have applied to them had they been incorporated in the original petition and decree entered thereon. No land shall be included in such drainage district or be subject to taxation for the drainage except wet, submerged, and swamp lands or land within a district subject to overflow.

Source: Laws 1905, c. 161, § 11, p. 616; R.S.1913, § 1815; C.S.1922, § 1762; C.S.1929, § 31-419; R.S.1943, § 31-320; [Laws 2018, LB193, § 67.](#)

If land outside the district will apparently benefit, the chairman of the board must petition the district court to annex it. *Lost Creek Drainage Dist. v. Elsam*, 188 Neb. 705, 199 N.W.2d 387 (1972).

Lands benefited may be brought in after organization. *Petersen v. Thurston*, 157 Neb. 833, 62 N.W.2d 68 (1954).

Lands subject to overflow from accumulated waters arising from rain and snow are within a district subject to overflow, and it was proper to include them in drainage district. *Shepherdson v. Fagin*, 116 Neb. 806, 219 N.W. 187 (1928).

31-321. Board of supervisors; right-of-way; right of eminent domain; procedure.

When the members of the board of supervisors, by order entered of record, have agreed upon a location or route for the ditch or ditches and formulated a plan for the other improvements contemplated, then the board in behalf of such district, shall have the right to acquire and if need be condemn any real estate, easement, or franchise, whether the same be within the limits of such district or outside its boundaries, that may be necessary for a right-of-way over or upon which to construct and maintain the ditches, dikes, drains, and other works contemplated by any of the provisions of sections [31-301](#) to [31-369](#). The procedure to condemn property shall be exercised in the manner set forth in sections [76-704](#) to [76-724](#).

Source: Laws 1905, c. 161, § 12, p. 618; R.S.1913, § 1816; C.S.1922, § 1763; C.S.1929, § 31-420; R.S.1943, § 31-321; Laws 1951, c. 101, § 72, p. 479.

Annotations

District is given power to acquire easements for rights-of-way. *County of Johnson v. Weber*, 160 Neb. 432, 70 N.W.2d 440 (1955).

District is given the power of eminent domain to acquire rights-of-way whether within or without the district. *Latham v. Chicago, B. & Q. R. Co.*, 100 Neb. 173, 158 N.W. 923 (1916).

This and following section are constitutional. *Drainage Dist. No. 1 of Pawnee County v. Chicago, B. & Q. R. Co.*, 96 Neb. 1, 146 N.W. 1055 (1914).

31-322. Right-of-way; obstruction in watercourses; condemnation; procedure.

The board of supervisors, in behalf of such district, shall have the right to acquire, and if need be, condemn in the same manner as is provided in section [31-321](#), any natural or artificial obstruction in any existing watercourse, and remove the same therefrom for the benefit of the district.

Source: Laws 1905, c. 161, § 12, p. 618; R.S.1913, § 1817; C.S.1922, § 1764; C.S.1929, § 31-421; R.S.1943, § 31-322; Laws 1951, c. 101, § 73, p. 480.

Annotations

Act, as amended 1909, is constitutional, though it omits provisions for recovery of damages. *Nemaha Valley Drainage Dist. No. 2 v. Marconnit*, 90 Neb. 514, 134 N.W. 177 (1912).

31-323. Engineer's report; objections to classification and assessments; hearing; time.

Within ten days after the filing of the report of the engineer with the chairman of the board of supervisors of the drainage district, the chairman of the board shall call a meeting at some public place in the county in which the district was organized, at which meeting the board shall fix the time and place in the county, not more than fifty nor less than forty days from the day of such meeting, for the hearing of all objections to the report of such engineer, and to the classification of the lands and other property therein, and all objections made by the owner or owners of any land, property, easement or franchise upon which the engineer proposes an assessment for benefits. At such meeting the board shall determine whether the classification is fair and just, whether the proposed assessment exceeds the benefits accruing to their respective lands and property from the drainage improvements, and all other matters and things connected with the proposed classification and assessment of benefits, in any way affecting such lands and property.

Source: Laws 1905, c. 161, § 13, p. 619; Laws 1909, c. 147, § 4, p. 511; R.S.1913, § 1818; C.S.1922, § 1765; C.S.1929, § 31-422; R.S.1943, § 31-323.

Annotations

Hearing on apportionments of benefits is to cover all objections by an owner of lands upon which the engineer recommends an assessment of benefits. *Lost Creek Drainage Dist. v. Elsam*, 188 Neb. 705, 199 N.W.2d 387 (1972).

31-324. Engineer's report; notice of hearing; form; publication.

The board of supervisors shall give notice of the meeting provided for in section [31-323](#) by causing a publication thereof to be made once a week for two consecutive weeks in some newspaper published in each county in the district, the last publication to be at least ten days before the day set for the hearing. It shall not be necessary in such notice for the board to name the parties interested, and the following form shall be sufficient:

Notice is hereby given to all parties interested in the following described lands and property in County, Nebraska, (here describe the lands and property) included within (here insert name of drainage district) that the engineer heretofore appointed to make a topographical survey of such drainage district and maps and profiles thereof, and a complete plan for draining, reclaiming, and protecting such district and an estimate of the cost of the proposed drainage improvements, and to assess benefits to the property and lands in such drainage district and to classify the same, filed a report with the board of supervisors of (here insert the name of the drainage district) on the day of 20...., and you and each of you are hereby notified that you may file objections to such report within the time fixed by law.

.....

Chairperson of the board of supervisors of Drainage District Number of County, Nebraska.

Source: Laws 1905, c. 161, § 13, p. 619; Laws 1909, c. 147, § 4, p. 512; R.S.1913, § 1819; C.S.1922, § 1766; C.S.1929, § 31-423; R.S.1943, § 31-324; [Laws 2004, LB 813, § 12.](#)

Annotations

Hearing on apportionments of benefits is in part to assess benefits to property in the district and to classify same. Lost Creek Drainage Dist. v. Elsam, 188 Neb. 705, 199 N.W.2d 387 (1972).

Assessment in excess of benefits, or without notice to owners, is void. Neal v. Vansickle, 72 Neb. 105, 100 N.W. 200 (1904).

31-325. Engineer's report; notice of hearing; record; contents; filing.

A copy of the above notice fixing the time and place of such hearing together with a resolution adopting the same shall be spread on the records of the board. The reports of the engineer shall be spread at large on the minutes of the

proceedings of the board of supervisors of the drainage district, and the maps and profiles shall be placed on file with the secretary of the board where all persons interested may have access to the same.

Source: Laws 1905, c. 161, § 13, p. 620; Laws 1909, c. 147, § 4, p. 512; R.S.1913, § 1820; C.S.1922, § 1767; C.S.1929, § 31-424; R.S.1943, § 31-325.

31-326. Engineer's report; objections; procedure; pleadings; hearing; adjournment.

The drainage district by its attorney or any owner of land or other property in the district whose land or property may be affected thereby may file objections to the surveyor's report or to any item of the classification or the assessment of benefits therein set out, within ten days after the last day of publication of the notice provided for in section [31-324](#). All objections shall be heard by the board of supervisors fully and fairly and as speedily as may be to carry out liberally the purposes and needs of such drainage district. It shall not be necessary for the drainage district to file any answer or other pleadings to the objections, claims or other pleadings filed by such persons in answer to the proposed assessment as provided in this section, but such matters shall be deemed denied, and the drainage district shall have the right to interpose any matters in defense thereto which it may have. The board of supervisors may adjourn any hearing or hearings for good cause from day to day, or to some future day as it may deem best, and the property owners, for good cause shown by affidavit of themselves or agents, may have the hearings adjourned for a period not to exceed two weeks.

Source: Laws 1905, c. 161, § 14, p. 621; Laws 1909, c. 147, § 5, p. 513; R.S.1913, § 1821; C.S.1922, § 1768; C.S.1929, § 31-425; R.S.1943, § 31-326.

Annotations

Determination of board levying drainage assessments cannot be enjoined unless void, especially when adequate remedy exists at law. *Richardson County v. Drainage Dist. No. 1 of Richardson County*, 113 Neb. 662, 204 N.W. 376 (1925).

31-327. Engineer's report; objections; hearing; procedure; findings; powers of the board.

At the time and place fixed in the notice, the board of supervisors shall meet for the hearing of the objections. If it finds that due notice has not been given as

required by section [31-324](#), it shall continue the hearing to a date to be fixed by the board, and order the publication of the notice as hereinbefore provided. When the board finds that due notice has been given, it shall proceed to hear any objection or objections that may have been filed upon which an issue has been made, and for that purpose shall have the power to subpoena, swear, and examine witnesses, and to do all things necessary and incidental to a proper hearing and adjudication of such issues. It shall examine the maps, profiles, plans and report of the engineer, the items of the estimated cost of the drainage improvement recommended, the classification of the land and property in the district, and the assessment of the benefits to the same as proposed by the engineer. The drainage board shall also have the power to establish the classification of the lands and property, and to determine and adjudicate, the total amount of the benefit that will accrue to each lot, tract, or parcel of land or other property in the district, from the drainage improvements. Whether an objection is sustained or overruled, the board may modify the report in any particular; but if the objections are overruled, the board may approve and confirm the report as to the property affected, and if it finds the classification of assessment of benefits to the lands and other property to be in any respect inequitable, either less than or in excess of the benefits accruing to the lands and property from the drainage improvements, or in any particular unfair and unjust, it shall so order, shall thereupon so amend, adjust and equalize the classification and benefits as may appear fair, just and equitable to them. When the board has adjusted, equalized and determined the classification of, and assessment of total benefits to the lands and other property as above required, it shall enter an order confirming the same. All pleadings and other papers filed in the matter of such hearings shall be filed with the secretary of the board of supervisors. Subpoenas and other process shall be issued by the secretary, who shall be empowered to administer oaths to witnesses, and to certify to records and papers under the seal of the drainage district.

Source: Laws 1905, c. 161, § 15, p. 622; Laws 1909, c. 147, § 6, p. 513; Laws 1911, c. 144, § 4, p. 481; R.S.1913, § 1822; C.S.1922, § 1769; C.S.1929, § 31-426; R.S.1943, § 31-327.

Annotations

Members of boards are not disqualified because they own property; findings sustained. Nemaha Valley Drainage Dist. No. 2 v. Marconnit, 90 Neb. 514, 134 N.W. 177 (1912); Nemaha Valley Drainage Dist. No. 2 v. Skeen, 90 Neb. 510, 134 N.W. 184 (1912).

31-328. Engineer's report; objections; hearing; costs; how taxed.

The costs of the hearing in case of contest shall be taxed and assessed as follows:

(1) If the matter shall be determined by the board against the party's contention objecting to the assessment, all costs upon the hearing of his objections shall be adjudged against such objector; and the board of supervisors shall have the right to recover the same from such objector or objectors for the benefit of the drainage corporation in a civil action for that purpose before any court of competent jurisdiction in the name of the drainage corporation;

(2) In case the matter is finally determined by the board of supervisors partly in favor of and partly against the contention of any objector or objectors, the costs shall be apportioned between the drainage district and the objectors as the board shall deem just and equitable; and

(3) In case the contention of the objectors is wholly sustained and the matter is fully determined in their favor by the board, the costs shall be paid by the drainage district.

The fees allowed upon such hearing shall be the same as those now allowed upon the trial of civil actions in county court.

Source: Laws 1905, c. 161, § 16, p. 623; R.S.1913, § 1823; C.S.1922, § 1770; C.S.1929, § 31-427; R.S.1943, § 31-328; Laws 1972, LB 1032, § 206.

31-329. Engineer's report; objections; decision; appeal; bond; procedure.

Any person or corporation who has filed objections and had a hearing, feeling aggrieved by the decision and judgment of the board of supervisors, may appeal to the district court within and for the county in which the drainage district was originally established, upon giving a bond conditioned the same as in appeals to the district court as from civil actions in county court in this state and payable to the drainage district, and in addition thereto conditioned that the appellant will pay all damages which may accrue to the drainage district by reason of such appeal. The bond shall be approved by the secretary of the board of supervisors and filed with the secretary within ten days after the rendition of the decision appealed from. Within ten days after the filing of the bond the secretary shall make and file a transcript of the proceedings appealed from, together with all the documents relating thereto, with the clerk of the district court in which the matter has been appealed. Upon the filing of the transcript and bond, the district court shall have jurisdiction of the cause, and the same shall be filed as in appeals in other civil actions to such court. The court shall hear and determine all such objections in a summary manner as in a case in equity and shall increase or reduce the amount of benefit on any tract where the same may be required in order to make the apportionment equitable. All objections that may be filed shall be heard and determined by the court as one proceeding, and only one transcript of the final

order of the board of supervisors, fixing the apportionments or benefits, shall be required. The clerk of the district court shall forthwith certify the decision of the court to the board of supervisors which shall take such action as may be rendered necessary by such decisions.

Source: Laws 1905, c. 161, § 17, p. 623; Laws 1909, c. 147, § 7, p. 515; R.S.1913, § 1824; C.S.1922, § 1771; C.S.1929, § 31-428; R.S.1943, § 31-329; Laws 1972, LB 1032, § 207; [Laws 2018, LB193, § 68.](#)

Annotations

Appeals from apportionment of benefits and classification may be taken to district court which is to determine all objections in a summary manner as in equity. *Lost Creek Drainage Dist. v. Elsam*, 188 Neb. 705, 199 N.W.2d 387 (1972).

Upon appeal to district court from board of supervisors of a drainage district, objections are heard and determined as in equity and upon appeal to the Supreme Court, cause is tried de novo. *Drainage Dist. No. 10 v. Canaday*, 188 Neb. 701, 199 N.W.2d 385 (1972).

Case is tried de novo upon appeal to the Supreme Court. *Petersen v. Thurston*, 161 Neb. 758, 74 N.W.2d 528 (1956).

Filing of transcript of proceedings upon objections of appellant gives jurisdiction. *Nemaha Valley Drainage Dist. No. 2 v. Marconnit*, 90 Neb. 514, 134 N.W. 177 (1912).

On appeal, district is the moving party and has the burden of proof. *Drainage Dist. No. 1 of Richardson County v. Bowker*, 89 Neb. 230, 131 N.W. 208 (1911).

Judicial hearing without a jury to determine special assessment is constitutional. *Drainage Dist. No. 1 of Richardson County v. Richardson County*, 86 Neb. 355, 125 N.W. 796 (1910).

31-330. Assessments levied; interest on bonds; bonds; installments; reassessment of benefits; return of surplus.

As soon as the board of supervisors has adjudicated, fixed, and established the classification and benefits as provided by sections [31-327](#) to [31-329](#), it may at once levy a tax on the lands and other property in the district to which benefits have been assessed, equal in amount to the cost of such drainage works and improvements as estimated by the engineer and as modified and confirmed by the board, plus the actual expenses of organizing the district, the probable working and administrative expenses, and damages (as estimated by the board of supervisors) in the completion of the works and improvements, and the carrying out of the objects

of the district. In case bonds are issued, as provided in section [31-336](#), then the amount of the interest (as estimated by the board of supervisors) which shall accrue on such bonds shall be included and added to the tax. The tax shall be apportioned to and levied on each tract of land or property in the district in proportion to the benefits assessed, and not in excess thereof. The board shall determine whether the tax shall be collected and paid in a single assessment, or by dividing into not to exceed twenty annual installments. If any assessment of benefits heretofore or hereafter made shall be found or declared to be invalid for any reason, either as to the whole assessment or the assessment as to any particular tract, interest, county, town or city, or other corporation, either to the whole of such assessment or to any part thereof, it shall be lawful and valid, and it shall be the duty of the board of the district to reassess such property or interest against which the former assessment has been found and declared to be invalid, after giving notice and taking the same steps and following the same procedure as required in making the original assessment of benefits. Such reassessment of benefits shall be made so as to do justice to all property, parties and interests, and shall take into consideration and give credit for all payments made under the assessment which has been found and declared to be valid. A new report of benefits, as to the part declared to be invalid, shall be made against the property or interest that was released by the finding of invalidity of the former assessment. In case any such drainage district shall have accumulated funds over and above the necessary cost of construction and upkeep, the board of supervisors of such district in its discretion may cause so much of such accumulated funds as are not required to be apportioned to each tract of land or property in the district prorated accordingly and in proportion to the benefits assessed and collected, and such board shall draw warrants on the treasurer of the drainage district for the payment of such accumulated funds to the proper owners.

Source: Laws 1905, c. 161, § 18, p. 624; Laws 1907, c. 152, § 3, p. 468; Laws 1909, c. 147, § 8, p. 516; R.S.1913, § 1825; Laws 1915, c. 27, § 1, p. 89; C.S.1922, § 1772; Laws 1925, c. 130, § 1, p. 343; C.S.1929, § 31-429; R.S.1943, § 31-330.

Annotations

Provisions for tax levies refer to property within the district. *Lost Creek Drainage Dist. v. Elsam*, 188 Neb. 705, 199 N.W.2d 387 (1972).

Reassessment of benefits is provided for when original assessment is invalid. *Shanahan v. Johnson*, 170 Neb. 399, 102 N.W.2d 858 (1960).

Drainage district is a department of government with sovereign power of taxation and, being a creature of the Legislature, is one over which the Legislature has full power. *Mooney v. Drainage District No. 1 of Richardson County*, 134 Neb. 192, 278 N.W. 368 (1938).

31-331. Assessments; certificate of levy to county clerk; form.

The levy of the tax when so fixed and determined, shall be evidenced and certified by the board of supervisors to the county clerk of each county in which lands of the district are situated, which certificate shall be substantially in the following form:

| | |
|---------------------------------------|-----|
| State of Nebraska,) | |
|) | ss. |
| County of) | |
| To, county clerk of the county: | |

This is to certify that by virtue of the provisions and terms of sections [31-330](#) and [31-331](#), the board of supervisors of (here insert name of drainage district) including lands and property in the counties of in the State of Nebraska, have determined to and do hereby levy the special tax provided for in such sections on the lands and property situated in your county, described in the following table, in which are (1) the names of owners of the lands and property as they appeared in the decree of the district court organizing the district or as then shown by the deed records of the county, (2) the description of the lands and property opposite the names of the owners, and (3) the amount of the tax levied on each tract of land or piece of property: (here insert table). The tax shall be collected and payable in annual installments, and the amount of each annual installment will be certified to you not later than September 1 in each year. Witness the signature of the chairperson of the board of supervisors, attested by the seal of the district and the signature of the secretary of the board on this day of A.D. 20.... .

| | | |
|-----------|--------|-------------|
| | | |
| Secretary | (Seal) | Chairperson |

The county clerk shall file the certificate in his or her office and record the same.

Source: Laws 1907, c. 152, § 3, p. 468; Laws 1909, c. 147, § 8, p. 517; R.S.1913, § 1826; C.S.1922, § 1773; C.S.1929, § 31-430; R.S.1943, § 31-331; Laws 1995, LB 589, § 6; [Laws 2004, LB 813, § 13.](#)

31-332. Additional assessments; notice of hearing; publication; erroneous assessments; correction.

If for any reason the cost of the drainage works and improvements exceeds the amount of the tax levied against the lands and property as above set out, the board of supervisors may levy such other and further installments as may be necessary to

complete the works and improvements, but the total amount of all such levies and installments shall in no event exceed the total amount of benefits assessed to the lands and property in the district, and such additional cost shall be apportioned to the lots, tracts, lands and property in the same proportion as in the first apportionment; *Provided*, the board of supervisors shall first give notice thereof by causing a publication to be made once a week for two consecutive weeks in some newspaper published in each county in the district, the last publication to be at least ten days before the day set for hearing. The board of supervisors may correct erroneous assessments and grant relief therefrom, and may correct clerical or other manifest errors in the schedules of the apportionment of the cost discovered after certification to the county clerk.

Source: Laws 1909, c. 147, § 8, p. 517; R.S.1913, § 1827; C.S.1922, § 1774; C.S.1929, § 31-431; R.S.1943, § 31-332.

Annotations

Provisions for tax levies refer to property within the district. *Lost Creek Drainage Dist. v. Elsam*, 188 Neb. 705, 199 N.W.2d 387 (1972).

31-333. Drainage tax; levy; certificate; form; extension on tax books; collection.

The board of supervisors shall annually thereafter determine, order, and levy the amount of the installment of the tax hereinbefore named which shall become due and be collected during the year at the same time that county taxes are due and collected, and in case bonds are issued, the amount of the interest which will accrue on such bonds shall be included and added to the tax. The annual installment and levy shall be evidenced and certified by the board, on or before September 20, to the county clerk of each county in which lands of the district are situated, which certificate shall be substantially in the following form:

| | |
|---------------------|-----------------------------|
| State of Nebraska,) | |
|) | ss. |
| County of) | |
| To | county clerk of the county: |

This is to certify that by virtue of the provisions of sections [31-330](#) to [31-333](#), the board of supervisors of drainage district, including lands and property in the counties of in the State of Nebraska, have determined to and do hereby levy the annual installment of the total tax, heretofore certified to you under the direction of such sections, on the lands and property situated in your county described in the following table in which are (1) the names of the owners of such

lands and properties as they appeared in the decree of the district court organizing the district or as shown by the certificate heretofore filed showing the total assessment against the property, (2) the description of the lands and property opposite the names of owners, and (3) the amount of the annual installment and interest levied on each tract of land or piece of property: (Here insert table). The installments of tax shall be collectible and payable the present year at the same time that county taxes are due and collected. Witness the signature of the chairperson of the board of supervisors and attested by the seal of the district and the signature of the secretary of the board this day of A.D. 20.... .

Secretary

Chairperson

(Seal)

The certificate shall be filed in the office of the clerk, and the annual installment of the total tax so certified shall be extended by the county clerk on the tax books of the county against the real property, right-of-way, road, or property to be benefited, situated in such drainage district, in the same manner that other taxes are extended on the tax books of the county in a column under the heading of Drainage Tax, and the taxes shall be collected by the treasurer of the county in which the real property is situated on which the tax is levied at the same time and in the same manner that the county taxes on such property are collected. The county clerk shall be allowed the same fees as he or she receives for like services in other cases.

Source: Laws 1907, c. 152, § 3, p. 469; Laws 1909, c. 147, § 8, p. 518; R.S.1913, § 1828; C.S.1922, § 1775; C.S.1929, § 31-432; R.S.1943, § 31-333; Laws 1961, c. 138, § 3, p. 397; Laws 1972, LB 1053, § 3; Laws 1992, LB 1063, § 24; Laws 1992, Second Spec. Sess., LB 1, § 24; Laws 1993, LB 734, § 35; Laws 1995, LB 452, § 8; Laws 1995, LB 589, § 7; [Laws 2004, LB 813, § 14.](#)

31-334. Drainage tax; levy insufficient; supplemental assessment; how levied and collected.

Whenever it shall appear to the satisfaction of the board of supervisors that the levy theretofore made will be insufficient to pay the cost of the improvement or to pay the interest and principal of the bonds which the district desires to issue to pay the cost of such improvement, and that therefor a supplemental assessment is necessary to be made as provided in section [31-332](#), the board shall, by a resolution duly passed and entered in the record of its proceedings, declare the amount of such deficit and the purpose to which such supplemental assessment should be applied, and shall thereupon cause a supplemental assessment roll to be made,

which shall apportion the amount necessary to be raised and declared as aforesaid upon the lands in the proportion of the former assessment, and shall set opposite each parcel of land (described by its legal description) the amount of such supplemental assessment expressed in dollars and cents. Upon such roll the real estate and the amounts of the several assessments may be described by current and usual abbreviations, if the board so desires. Thereupon the board shall proceed to enter judgment by confirmation upon such supplemental assessment roll, and such supplemental assessments shall be levied and certified in all respects as provided for herein. From time to time, and as often as occasion may arise, supplemental assessments may be levied as in this section provided. In the event that any supplemental assessment is levied before any bonds are issued by the district, it shall be divided into installments, payable when the installments of the first original assessment are payable, and shall be collected therewith, and together they shall constitute one fund against which drainage bonds may be issued as herein provided.

Source: Laws 1909, c. 149, § 2, p. 529; R.S.1913, § 1829; C.S.1922, § 1776; C.S.1929, § 31-433; R.S.1943, § 31-334.

31-335. Streets, highways, and railroad property; assessment; tax; collection.

When any ditch, drain, improved watercourse, dike, levee or other drainage improvement, located and established under sections [31-301](#) to [31-369](#), crosses, drains, or protects either in whole or in part any street, highway, public or corporate road of any railroad, or benefits any or either of such streets, roads or railroads, the board of supervisors shall apportion and set off to the county or a township, if a county road, or to a company, if incorporated, or a railroad, and to a city or village, if a street or alley, a portion of the cost and expense of the whole drainage improvements, the same as to private individuals, and in proportion to the benefits conferred by such drainage improvements on such street, roads and railroads. Any apportionment of the cost and expenses of the drainage improvements that may be levied as a special tax or assessment against the property of any incorporated road, or any railroad, or any telegraph or telephone company for benefits accruing to the property of such corporations situated within the physical boundaries of such drainage district, shall be enforced and collected in the same manner that county taxes are enforced against them under the general revenue laws of the state. Any apportionment of the costs and expenses aforesaid to a county, township, city or village, shall be filed as a claim with the county, township, city or village clerk, as the case may be, and may be enforced and collected as other judgments against such county, township or municipal corporation are enforced and collected.

Source: Laws 1905, c. 161, § 19, p. 624; Laws 1909, c. 147, § 9, p. 520; R.S.1913, § 1830; C.S.1922, § 1777; C.S.1929, § 31-434; R.S.1943, § 31-

Annotations

Creating liability against a village for benefits to streets and alleys for drainage improvement within a drainage district is not in contravention of the Constitution. *Drainage District No. 1 of Lincoln County v. Village of Hershey*, 145 Neb. 138, 15 N.W.2d 337 (1944).

Supervisors have power hereunder to assess railroad company. *Drainage Dist. No. 1 of Pawnee County v. Chicago, B. & Q. R. Co.*, 96 Neb. 1, 146 N.W. 1055 (1914).

Section is constitutional. County property may be assessed for special improvements, and assessments should be charged to county and not township. *Drainage Dist. No. 1 of Richardson County v. Richardson County*, 86 Neb. 355, 125 N.W. 796 (1910).

31-336. Bonds; authority to issue; terms.

The board of supervisors may, if in its judgment it seems best, issue negotiable bonds (1) not to exceed the amount of the total tax levy certified to the county clerk or clerks as provided by law, (2) in denominations of not less than one hundred dollars, (3) bearing interest payable semiannually, (4) to mature at annual intervals in not to exceed twenty years, and (5) with both principal and interest payable at the office of the county treasurer of the county in which the drainage district was organized, or at some convenient banking house or trust company office to be named in the bonds. The bonds and interest coupons shall be executed in the name of the district, and shall be signed by the chairman of the board of supervisors, attested with the seal of the drainage district and by the signature of the secretary of the board. Such bonds shall be made to run for not more than twenty years, and in case they are made to mature at different times within such period, the assessment shall be divided into as many installments as there are different dates of maturity. The installments shall be numbered consecutively as issued, and bear date at the time of their issue.

Source: Laws 1905, c. 161, § 20, p. 625; Laws 1907, c. 152, § 4, p. 470; Laws 1909, c. 147, § 10, p. 520; R.S.1913, § 1831; C.S.1922, § 1778; C.S.1929, § 31-435; R.S.1943, § 31-336; Laws 1947, c. 15, § 15, p. 91; Laws 1969, c. 51, § 89, p. 330.

31-337. Bonds; maturity; recitals.

The maturity of all bonds shall be fixed on July 1 of the year in which they mature and shall contain a recital that the same were issued in accordance with the

provisions of sections [31-336](#) to [31-348](#), and that they are to be paid out of a sinking fund to be created as provided in section [31-351](#).

Source: Laws 1905, c. 161, § 20, p. 626; Laws 1907, c. 152, § 4, p. 471; Laws 1909, c. 147, § 10, p. 521; R.S.1913, § 1832; C.S.1922, § 1779; C.S.1929, § 31-436; R.S.1943, § 31-337.

31-338. Bonds; issuance; resolution required; payment; record; contents.

Before issuing any bonds under the provisions of sections [31-336](#) to [31-348](#), the board of supervisors of the district shall by resolution duly engrossed in the minutes of a meeting to be specially held for that purpose, order and direct the issue thereof, specifying their number, amount, rate of interest, date of maturity, and place of payment. Such minutes shall be engrossed on the record of the board of supervisors, which minutes and the record of bonds shall at all times be open to the inspection of all parties interested in the district, either as taxpayers or bondholders. Upon the payment of any bond, an entry shall be made in the records accordingly.

Source: Laws 1905, c. 161, § 20, p. 626; Laws 1907, c. 152, § 4, p. 71; Laws 1909, c. 147, § 10, p. 521; R.S.1913, § 1833; C.S.1922, § 1780; C.S.1929, § 31-437; R.S.1943, § 31-338.

31-339. Bonds; sale; from what funds payable.

The bonds shall not be sold for less than par with accrued interest, shall show on their face the purpose for which they are issued, and shall be payable out of money derived from the drainage assessments or taxes.

Source: Laws 1907, c. 152, § 4, p. 471; Laws 1909, c. 147, § 10, p. 522; R.S.1913, § 1834; C.S.1922, § 1781; C.S.1929, § 31-438; R.S.1943, § 31-339.

31-340. Bonds and interest; annual tax levy to pay at maturity.

It shall be the duty of the board of supervisors in making the annual tax levy as provided in section [31-333](#), to take into account the maturing bonds and interest on all bonds, and make ample provisions in advance for the payment thereof.

Source: Laws 1907, c. 152, § 4, p. 472; Laws 1909, c. 147, § 10, p. 522; R.S.1913, § 1835; C.S.1922, § 1782; C.S.1929, § 31-439; R.S.1943, § 31-340.

31-341. Repealed. Laws 2001, LB 420, § 38.

31-342. Bonds; issuance; delivery of certified transcript.

The secretary of the board of supervisors of the drainage district in which bonds are issued shall furnish a duly certified transcript to the holder of any such bond on demand.

Source: Laws 1909, c. 147, § 10, p. 522; R.S.1913, § 1837; C.S.1922, § 1784; C.S.1929, § 31-441; R.S.1943, § 31-342; [Laws 2001, LB 420, § 24](#).

31-343. Bonds; payment of levy by landowner; effect; record.

Before such bonds are issued any person or corporation whose land or property has been assessed for benefits by the district may pay the total amount of the cost and expenses apportioned to and levied as a tax against such land and property or any lot, tract, or subdivision thereof as set out in the assessment roll. The amount of bonds to be issued shall be reduced by the amount thus paid. When such payment has been made to the board of supervisors, it shall place the sum so received in the depository provided for in section [31-350](#), and shall give to such owner an acquittance showing such payment. The lands and property upon which payment has been made shall be released from the lien of such drainage tax, and the bonds and interest thereon shall be chargeable solely against the lots, tracts, land and property upon which such payment has not been made. The drainage board shall certify to the county clerk a list of the lands and property upon which such payment has been made, which list shall be filed and recorded in the office of the county clerk.

Source: Laws 1905, c. 161, § 20, p. 627; Laws 1907, c. 152, § 4, p. 472; Laws 1909, c. 147, § 10, p. 522; R.S.1913, § 1838; C.S.1922, § 1785; C.S.1929, § 31-442; R.S.1943, § 31-343.

31-344. Bonds; issuance; resolution; contents; declarations.

Before issuing any bonds the board shall pass a formal resolution in which shall be found and declared (1) the total amount of the tax as confirmed (both by the original and the supplemented assessment, if any), (2) the total amount of the deductions, if any, thereon, (3) the estimated cost of collection, and (4) the total amount of the net tax available for the payment of the principal and the interest of the bonds the district intends to issue.

Source: Laws 1909, c. 149, § 1, p. 528; R.S.1913, § 1839; C.S.1922, § 1786; C.S.1929, § 31-443; R.S.1943, § 31-344.

31-345. Bonds; issuance; resolution; contents; pledge of funds.

The board shall then, in such resolution, divide the total levy theretofore made into convenient installments, and opposite each shall set the year in which they shall become payable respectively. The board shall then authorize the bonds which the district proposes to issue, fixing the terms, date and maturities thereof in such a manner that the installments of the tax will be sufficient to pay the corresponding installments of bonds as and when they become due. In the same resolution the board shall provide that in due time, manner and season it will cause the annual levy to be made in compliance with such resolution, and thereupon the fund, to the extent that it may be necessary to pay the bonds, shall be pledged and hypothecated to the payment of the bonds, which pledge and hypothecation, to the amount so expressed and declared, shall be superior to any other charge against the same.

Source: Laws 1909, c. 149, § 1, p. 528; R.S.1913, § 1840; C.S.1922, § 1787; C.S.1929, § 31-444; R.S.1943, § 31-345.

31-346. Board of supervisors; power to borrow money; purpose; limitation.

Before funds can be secured by the levy of a tax or the sale of bonds, the board of supervisors of such drainage district shall have power to borrow money and pledge the credit of the district for the payment of the same, with interest, in any sum not to exceed five thousand dollars, to pay the necessary cost and expenses of the organization and incorporation of the district and all other legitimate charges and expenses incurred by the board and its officers and employees in performing the services and duties required of them by sections [31-301](#) to [31-369](#).

Source: Laws 1909, c. 147, § 10, p. 523; R.S.1913, § 1841; C.S.1922, § 1788; C.S.1929, § 31-445; R.S.1943, § 31-346.

31-347. Bonds; sale; how made.

The board may sell the bonds from time to time in such quantities as may be necessary and most advantageous, to raise the money for the construction of the ditches and works, the acquisition of rights-of-way and property, and otherwise to fully carry out the objects and purposes of sections [31-301](#) to [31-369](#). Before making any sale the board shall at a meeting, by resolution, declare its intention to sell a specified amount of the bonds, and the day and hour and place of such sale, and shall cause such resolution to be entered in the minutes, and notice of the sale to be given by publication thereof at least twenty days in a daily newspaper published in the city of Lincoln, and in any other newspaper, at its discretion. The notice shall state that sealed proposals will be received by the board at its office,

for the purchase of bonds until the day and hour named in the resolution. At the time appointed the board shall open the proposals and award the purchase of the bonds to the highest responsible bidder, and may reject all bids; but the board shall in no event sell any of the bonds for less than par.

Source: Laws 1905, c. 161, § 22, p. 627; Laws 1907, c. 152, § 5, p. 472; R.S.1913, § 1842; C.S.1922, § 1789; C.S.1929, § 31-446; R.S.1943, § 31-347.

31-348. Bonds; sale; record.

The secretary shall keep a record of the bonds sold, their number, the date of sale, the price received, and the name of the purchaser.

Source: Laws 1905, c. 161, § 20, p. 626; Laws 1907, c. 152, § 5, p. 472; R.S.1913, § 1843; C.S.1922, § 1790; C.S.1929, § 31-447; R.S.1943, § 31-348.

31-349. Bonds; sale; proceeds; use.

The proceeds of the sale of bonds, or any of them, shall be used to pay for the works and improvements in the drainage of the district, and such costs, expenses, fees and salaries as may be authorized by law.

Source: Laws 1907, c. 152, § 5, p. 472; R.S.1913, § 1844; C.S.1922, § 1791; C.S.1929, § 31-448; R.S.1943, § 31-349.

31-350. Bonds; sale; proceeds; deposits and withdrawals.

The money derived from the sale of any bonds shall be deposited by the board of supervisors with some bank or trust company in any county in the district under such conditions as the board may prescribe, and may be withdrawn from such depository when ordered by the board on check or warrant signed by the chairman and countersigned by the secretary. Such depository shall execute and deliver to the board of supervisors of the drainage district a bond with good and sufficient securities, to be approved by the board of supervisors, conditioned that the depository shall account for, safely keep, and pay over, as required by law and as ordered by the board of supervisors, any and all money received by such depository on account for the drainage district.

Source: Laws 1907, c. 152, § 5, p. 473; R.S.1913, § 1845; C.S.1922, § 1792; C.S.1929, § 31-449; R.S.1943, § 31-350.

31-351. Assessments; lien; interest on delinquent assessments; collection; sinking fund to retire bonds.

All the assessments on real property and easements shall be a lien against the property assessed from and after the first Monday in April in the year in which it is assessed and shall draw interest at the rate of nine percent per annum from May 1 of the year following said assessment, and such lien is not removed until the assessments are paid or the property sold for the payment thereof. It shall be the duty of the county treasurers to collect such assessments in the same manner as other taxes against real estate are collected, and the revenue laws of the state for the collection and sale of land for such taxes are hereby made applicable to the collection of assessments under sections [31-301](#) to [31-369](#). When bonds have been issued by the drainage district, the taxes so collected to pay the same shall constitute a sinking fund to be used for the payment of such bonds and the interest thereon.

Source: Laws 1905, c. 161, § 21, p. 627; R.S.1913, § 1846; C.S.1922, § 1793; C.S.1929, § 31-450; Laws 1933, c. 136, § 24, p. 537; C.S.Supp.,1941, § 31-450; R.S.1943, § 31-351.

31-352. Watercourses; cleaning and changing.

In order to effect the drainage of the district, the board is authorized to clean out and remove all obstructions from the bed of any stream, creek, bayou, lagoon or other watercourse in the district; to straighten or shorten and deepen or widen the course of any stream or to abandon the bed of any stream and construct a new channel therefor; and to fill up any channel, or part of a channel, of any stream, creek, bayou, or other watercourse, in order to turn the direction of the volume of water, or to concentrate the water, so as to deepen and form a main channel.

Source: Laws 1905, c. 161, § 23, p. 628; R.S.1913, § 1847; C.S.1922, § 1794; C.S.1929, § 31-451; R.S.1943, § 31-352.

Annotations

Drainage district may be required to construct bridge occasioned by reason of failure to keep its drainage system in repair. *Ritter v. Drainage Dist. No. 1*, 148 Neb. 873, 29 N.W.2d 782 (1947).

Right of supervisors to keep drainage ditch in repair includes the right to straighten its channel or lengthen and better its outlet. *Richardson County v. Drainage District No. 1 of Richardson County*, 113 Neb. 662, 204 N.W. 376 (1925).

31-353. Crossing of highways or railroads; mutual agreement; condemnation.

The board shall have the power to construct the works across any street, avenue, highway, railway, canal, ditch or flume which the route of the ditches may intersect or cross, in such manner as to afford security for life and property, but the board shall restore the same, when so crossed or intersected, to its former state as nearly as may be, or in a manner not to impair its usefulness unnecessarily. Every company whose railroad shall be intersected or crossed by the works shall unite with the board in forming such intersections and crossings, and shall grant the privilege aforesaid. If such railroad company and the board, or the owners and controllers of such property, thing or franchise so to be crossed, cannot agree upon the amount to be paid therefor, or the points or the manner of such crossings, the same shall be ascertained and determined in all respects as is provided in respect to the taking of land.

Source: Laws 1905, c. 161, § 23, p. 628; R.S.1913, § 1848; C.S.1922, § 1795; C.S.1929, § 31-452; R.S.1943, § 31-353.

Annotations

Where erosion destroys highway and bridges over drainage ditch, drainage district is required to restore bridges and their approaches in such manner as to permit the maintenance of public highway over and across the same. *Ritter v. Drainage Dist. No. 1*, 148 Neb. 873, 29 N.W.2d 782 (1947).

If old bridge is rendered unnecessary, county must maintain. *Richardson County ex rel. Sheehan v. Drainage Dist. No. 1 of Richardson County*, 92 Neb. 776, 139 N.W. 648 (1913).

District must maintain bridge over a ditch crossing a highway. *State ex rel. Hutter v. Papillion Drainage Dist.*, 89 Neb. 808, 132 N.W. 398 (1911).

31-354. Public lands; grant of right-of-way.

The right-of-way is hereby given, dedicated and set apart, to locate, construct and maintain such works over and through any of the lands which are now or may be the property of the state.

Source: Laws 1905, c. 161, § 23, p. 629; R.S.1913, § 1849; C.S.1922, § 1796; C.S.1929, § 31-453; R.S.1943, § 31-354.

31-355. Bids for construction; award of contract; conditions; supervision of work.

(1) After the board of supervisors has certified the total levy of the costs and expenses of the drainage improvements to the county clerk as directed by law, it may proceed to let a contract for the construction of such improvements. The board shall give notice of its intention to let such contract by publication thereof for twenty days in the newspapers of general circulation in the county or counties in which the drainage district is situated and in such other newspapers as it may deem advisable. The notice shall call for sealed bids for the construction of such improvements or any part thereof, notify the public of the time and place where such bids will be received and opened, and notify the public where the plans and specifications may be seen. On the day fixed, the board shall open and consider the bids and may let the contract for the whole work, or any part thereof, to the lowest responsible bidder, may reject any and all bids and readvertise for proposals, or may proceed to construct the work under its own superintendent. Contract for the purchase of materials shall be awarded to the lowest responsible bidder. Except as provided in subsection (2) of this section, the person to whom a contract is awarded shall enter into a bond with good and sufficient surety in a sum not less than twenty-five percent of the contract price, conditioned for the faithful performance of such contract. The work shall be done under the direction and to the satisfaction of the drain commissioner, subject to the approval of the board.

(2) If a contract, the provisions of which are limited to the purchase of supplies or materials, is entered into pursuant to this section and if the amount of the contract is fifty thousand dollars or less, the bidder shall furnish the county with an irrevocable letter of credit, a certified check upon a solvent bank, or a performance bond in a guaranty company qualified to do business in Nebraska, as prescribed by and in a sum determined by the county board of supervisors, conditioned for the faithful performance of such contract.

Source: Laws 1905, c. 161, § 24, p. 629; Laws 1909, c. 147, § 11, p. 523; Laws 1911, c. 144, § 5, p. 483; R.S.1913, § 1850; C.S.1922, § 1797; C.S.1929, § 31-454; R.S.1943, § 31-355; Laws 1987, LB 211, § 4.

31-356. Sections, how construed; limitation on granted powers.

None of the provisions of sections [31-301](#) to [31-369](#) shall be construed as repealing or in anywise modifying the provisions of any other law relating to the subject of draining, reclaiming or protecting swamp, overflowed or submerged lands. Nothing herein contained shall be deemed to authorize any person or persons to divert the waters of any river, creek, stream, canal or ditch from its channel to the detriment of any person or persons having any interest in such river, creek, stream, canal or ditch, or the waters therein, unless previous compensation be ascertained and paid therefor, under the laws of this state authorizing the taking of private property for public use.

Source: Laws 1905, c. 161, § 25, p. 630; R.S.1913, § 1851; C.S.1922, § 1798; C.S.1929, § 31-455; R.S.1943, § 31-356.

31-357. Joint outlet of two districts; cost of improvements; how allocated.

When two or more districts shall have their outlet or discharge into the same natural watercourse 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 such natural watercourse or stream; but no district shall be liable to contribute for any improvement or costs and expenses incurred in improving such natural watercourse or stream above the point of discharge of the waters of such district into the same.

Source: Laws 1905, c. 161, § 26, p. 630; R.S.1913, § 1852; C.S.1922, § 1799; C.S.1929, § 31-456; R.S.1943, § 31-357.

Annotations

Drainage district cannot be released from private property rights established by judgment by subsequent legislation. *Mooney v. Drainage Dist. No. 1 of Richardson County*, 134 Neb. 192, 278 N.W. 368 (1938), reversing on rehearing, 133 Neb. 197, 274 N.W. 467 (1937).

Above section is not of such vital importance as to form inducement to passage of remainder of law, and even if invalid, would not excuse a duty enjoined by valid portion. *Mooney v. Drainage District No. 1 of Richardson County*, 126 Neb. 219, 252 N.W. 910 (1934).

31-358. Ditches, drains, or watercourses; use by landowners.

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 watercourse, as hereinbefore provided, shall have the right to use the ditch, drain or watercourse as an outlet for lateral drains from said land, lot or premises.

Source: Laws 1905, c. 161, § 27, p. 631; R.S.1913, § 1853; C.S.1922, § 1800; C.S.1929, § 31-457; R.S.1943, § 31-358.

Annotations

This section is only special provision conferring special rights in the use of drainage ditches, and does not authorize use for purpose of irrigation.

31-359. Subdistricts; creation by mutual agreement, district court action; procedure.

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 watercourse for which it has been assessed, by the land of another or others, shall desire to ditch or drain his land across the land of such other or others into such ditch, drain or watercourse, 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 drains or ditch, he may proceed in the manner herein 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 the drainage district was established. He may file his petition with the clerk of the district court asking the court to establish a subdistrict 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 intelligent description of such lands; and all 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. When established and constructed, it shall become and be a part of the drainage system of such drainage district, and be under the control and supervision of the board of supervisors.

Source: Laws 1905, c. 161, § 28, p. 631; R.S.1913, § 1854; C.S.1922, § 1801; C.S.1929, § 31-458; R.S.1943, § 31-359.

31-360. Treasurer; duties; collection of assessments; disbursement.

The treasurer of the county in which the drainage district, or the largest portion thereof, is situated, shall be ex officio treasurer of the district for the purposes of collecting and disbursing taxes or assessments. The treasurers of the counties in which the smaller parts of the district shall be situated shall pay over to him any and all funds collected and paid over to them for the benefit of the drainage district, and shall take the receipt of the treasurer therefor in duplicate. The original receipt the treasurer paying the money shall keep for his own protection, and the duplicate shall be filed in the office of the clerk of the county of which the person receiving such money shall be treasurer. It shall be the duty of the treasurer, who is ex officio treasurer of the drainage district, to pay any money in his hands, collected as aforesaid, upon warrants signed by the chairman and attested by the secretary of

the board of supervisors of the district, when the same shall be presented for payment.

Source: Laws 1905, c. 161, § 29, p. 632; R.S.1913, § 1855; C.S.1922, § 1802; C.S.1929, § 31-459; R.S.1943, § 31-360.

Annotations

County treasurer is ex officio treasurer of drainage district, which has no treasurer of its own. School District No. 22 of Harlan County v. Harlan County, 127 Neb. 4, 254 N.W. 701 (1934).

Drainage district is entitled to interest obtained by the county from the fund in the hands of treasurer as ex officio treasurer of the district. Nemaha Valley Drainage District No. 2 of Nemaha County v. Nemaha County, 100 Neb. 64, 158 N.W. 438 (1916).

31-361. Drainage district warrants; form.

All warrants issued by the board of supervisors of any drainage district shall be in the following form:

§

No.

Treasurer of the County of

Pay to dollars out of any money in the treasury belonging to Drainage District in the County of Given at the town of, State of Nebraska, by order of the board of supervisors of Drainage District.

Attest:

Secretary

Chairman

Source: Laws 1905, c. 161, § 29, p. 632; R.S.1913, § 1856; C.S.1922, § 1803; C.S.1929, § 31-460; R.S.1943, § 31-361.

31-362. Warrants; laws governing county warrants applicable.

The law of this state under which county warrants are issued, sold, transferred, assigned, presented for payment and paid, shall apply to all warrants issued by

virtue of the provisions of sections [31-301](#) to [31-369](#).

Source: Laws 1905, c. 161, § 30, p. 632; R.S.1913, § 1857; C.S.1922, § 1804; C.S.1929, § 31-461; R.S.1943, § 31-362.

31-363. Officers and employees; salaries.

The board of supervisors, except where otherwise provided, shall, by resolution, at the time of hiring or appointing, provide for the compensation for work done and necessary expenses incurred by any officer, engineer, attorney, or other employee, and shall also pay the fees of all court and county officers who may by virtue of sections [31-301](#) to [31-369](#) render service to the district.

Source: Laws 1905, c. 161, § 31, p. 632; Laws 1909, c. 147, § 12, p. 524; R.S.1913, § 1858; C.S.1922, § 1805; C.S.1929, § 31-462; R.S.1943, § 31-363.

Annotations

County is entitled to retain, as a part of its general fund, fees fixed by statute for all taxes and special assessments collected by county treasurer for drainage district. *Nemaha Valley Drainage District No. 2 of Nemaha County v. Nemaha County*, 100 Neb. 64, 158 N.W. 438 (1916).

31-364. Installations; repairs; assessment; tax levy; procedure.

If at any time after the final construction of such improvement the same shall become out of repair, obstructed, inefficient, or defective from any cause, except such as are the result of the use of said improvements as a joint outlet for other systems of drainage improvements, the board of supervisors, if in its discretion it is practicable and feasible to make such repairs, remove such obstructions, and correct such inefficiencies, may order an assessment upon the lands and property benefited by the drainage system, for the purpose of placing the same in proper and suitable condition for drainage purposes, using the original assessment upon the property in the district as a basis to ascertain the ratio that each separate tract or lot of land or property bears to the whole amount to be levied. The board shall fix and determine the amount of the assessment or tax that shall be levied against each separate piece of property in the district, which assessment shall be limited to the amount necessary to make and complete such repairs, remove such obstructions, or remedy any such defect or defects, and shall be levied and collected in the same manner as the other assessments for the location, construction and operation of said system of drainage are levied and collected as provided in sections [31-301](#) to [31-369](#); *Provided, however*, the board of supervisors of any such district, if it deems

advisable, or is ordered so to do by a majority vote at a landowners meeting of the district, instead of proceeding as above mentioned, shall, when it is found that funds are necessary for minor repairs and maintenance of its drains or ditches, or for the administration of the affairs of the district, or for upkeep or protection of its tools and machinery, levy a tax annually, sufficient in amount to pay for such items of expense, without the estimate of an engineer, and certify the same to the proper authorities, and the same shall be extended on the tax rolls of the county and collected as other taxes. All such annual assessments shall be based upon the original apportionment of benefits to the lands and property within the district, and apportioned as the original assessment. The board of supervisors shall also determine and certify to the said authorities at that time the amount each tract of land or separate property shall pay as its proportion of the funds so found necessary, and levied for said purposes. If the repair is made necessary by the act or negligence of the owner of any land or other property through which the improvement is constructed or by the act or negligence of his or its agent or employee, or if the same is filled and obstructed by the cattle, hogs, or other stock of such owner, employee or agent, then the cost thereof shall be assessed and levied against the lands or property of such owner alone.

Source: Laws 1905, c. 161, § 32, p. 633; R.S.1913, § 1859; C.S.1922, § 1806; Laws 1929, c. 126, § 1, p. 475; C.S.1929, § 31-463; Laws 1935, c. 74, § 1, p. 258; C.S.Supp.,1941, § 31-463; R.S.1943, § 31-364.

Annotations

Provisions for tax levies refer to property within the district. *Lost Creek Drainage Dist. v. Elsam*, 188 Neb. 705, 199 N.W.2d 387 (1972).

Board of supervisors was given power to order an assessment for the purpose of making repairs, even though district was dissolved by expiration of charter. *Wellensiek v. Drainage Dist. No. 1*, 172 Neb. 869, 112 N.W.2d 267 (1961).

A drainage district organized by proceedings in district court is required to repair its drainage system which has become out of repair, obstructed, inefficient, or defective from any cause. *Ritter v. Drainage Dist. No. 1*, 148 Neb. 873, 29 N.W.2d 782 (1947).

A landowner who, with his predecessors in title, has accepted the benefits of a legally organized drainage system for thirty years, and has paid all preceding assessments of taxes against his property for the construction, maintenance and repair of the drainage system, is estopped to question the validity of an order making an eleventh supplemental assessment. *Engles v. Drainage District No. 1*, 142 Neb. 876, 8 N.W.2d 166 (1943).

Legislature, by amendatory act, could not relieve district from duty to enlarge outlet to its drainage system imposed by court order. *Mooney v. Drainage District No. 1 of Richardson County*, 134 Neb. 192, 278 N.W. 368 (1938).

Enlargement of outlet of drainage district is improvement and repair within statute imposing mandatory duty on drainage district to keep system in condition. *Mooney v. Drainage District No. 1 of Richardson County*, 126 Neb. 219, 252 N.W. 910 (1934).

Right of supervisors to keep drainage ditch in repair includes the right to straighten its channel or lengthen and better its outlet. *Richardson County v. Drainage District No. 1 of Richardson County*, 113 Neb. 662, 204 N.W. 376 (1925).

31-365. Care of ditches; overseers; appointment; duties.

For the purpose of preserving any ditch, drain, dike, or other works constructed or erected under the provisions of sections [31-301](#) to [31-369](#), the board of supervisors shall have the power to appoint not more than three overseers of the respective districts, who shall hold their offices for the term of one year, whose duty it shall be to keep the ditches, drains, dikes, and other works erected or constructed for the reclamation of the lands in the drainage district, in good repair, and remove all obstructions from all ditches, drains, or watercourses within their respective districts. It shall also be the duty of the overseers to cause the arrest of all persons who shall be known to have filled up, or put any timber or brush into, or to have in any way obstructed any ditch, drain or watercourse, or have damaged any dike, or other work erected or constructed for the reclamation of lands as aforesaid, within their respective districts.

Source: Laws 1905, c. 161, § 33, p. 633; R.S.1913, § 1860; C.S.1922, § 1807; C.S.1929, § 31-464; R.S.1943, § 31-365; Laws 1972, LB 1032, § 208.

Annotations

A drainage district organized by proceedings in district court is required to remove all obstructions from its ditches and keep its works in good repair. *Ritter v. Drainage Dist. No. 1*, 148 Neb. 873, 29 N.W.2d 782 (1947).

Duty to maintain drainage ditch free from obstructions shows legislative intent not to permit maintenance of check for irrigation. *Drainage District No. 1 v. Suburban Irr. Dist.*, 139 Neb. 333, 297 N.W. 645 (1941).

It is duty of the board of supervisors of a drainage district to repair ditches which become ineffective. *Ritter v. Drainage Dist. No. 1 of Otoe and Johnson Counties*, 137 Neb. 866, 291 N.W. 718 (1940).

Court may order drainage district to enlarge outlet to drainage system to provide effective drainage. *Mooney v. Drainage District No. 1 of Richardson County*, 134 Neb. 192, 278 N.W. 368 (1938).

31-366. Injuring or obstructing ditch, drain, or watercourse; penalty.

If any person shall willfully obstruct or injure any ditch, drain, or watercourse, or damage or destroy any dike or other work constructed under the provisions of sections [31-301](#) to [31-369](#), he shall be liable to the drainage district for the full amount of the injury occasioned by the damage thereto, the same to be recovered by a civil action in the name of the district. In addition thereto he shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not exceeding the sum of one hundred dollars.

Source: Laws 1905, c. 161, § 34, p. 634; R.S.1913, § 1861; C.S.1922, § 1808; C.S.1929, § 31-465; R.S.1943, § 31-366.

31-367. Sections, how construed; judgments and decisions, effect; irregularities, rights of parties aggrieved.

Sections [31-301](#) to [31-369](#) shall be liberally construed to promote the drainage and reclamation of wet, overflowed or submerged lands. The establishment of said corporation, and the collection of assessments, shall not be defeated by reason of any defect in the proceedings occurring prior to the judgment of the court, or of the board of supervisors confirming and establishing the assessment of benefits and injuries, but such judgment shall be conclusive and final that all prior proceedings were regular and according to law. No person shall be permitted to take advantage of any error, defect, or informality, unless the person complaining thereof is directly affected thereby, at any stage of the proceedings. If the court or board of supervisors shall deem it just to release any person, or modify his assessment or liability, it shall in no manner affect the right or liability of any other person.

Source: Laws 1905, c. 161, § 35, p. 634; R.S.1913, § 1862; C.S.1922, § 1809; C.S.1929, § 31-466; R.S.1943, § 31-367.

Annotations

Sections 31-301 to 31-369 shall be liberally construed to promote drainage and judgments of court or board of supervisors establishing assessments of benefits and injuries shall be conclusive that all prior proceedings were regular and lawful. Only a person directly affected may take advantage of any error or defect, and modification as to his assessment shall not affect right or liability of another. *Lost Creek Drainage Dist. v. Elsam*, 188 Neb. 705, 199 N.W.2d 387 (1972).

31-368. Assessments; irregularities; effect; injunction, when allowed.

The collection of assessments to be levied to pay for the location, construction, maintenance or repair of any ditch, levee, dike or watercourse, shall not be enjoined or declared void, nor shall such assessment be set aside in consequence of any error, omission, or irregularity committed or appearing in any of the proceedings provided for in sections [31-301](#) to [31-369](#). No injunction shall be allowed restraining the collection of any assessment until the party complaining shall first pay to the county treasurer the amount of his assessment, which amount so paid may be recovered from the district in an action brought for that purpose in case the injunction is made perpetual.

Source: Laws 1905, c. 161, § 36, p. 635; R.S.1913, § 1863; C.S.1922, § 1810; C.S.1929, § 31-467; R.S.1943, § 31-368.

Annotations

Before injunction can be allowed, party complaining is required to first pay to county treasurer amount of assessment. *Richardson County v. Drainage District No. 1 of Richardson County*, 113 Neb. 662, 204 N.W. 376 (1925).

Constitutionality raised but not determined; even if void, invalidity would not render entire act void. *Drainage District No. 1 of Pawnee County v. Chicago, B. & Q. R. Co.*, 96 Neb. 1, 146 N.W. 1055 (1914).

31-369. Drainage district; name; corporate powers; liabilities.

Every district organized under the provisions of sections [31-301](#) to [31-369](#) shall be a body politic and corporate and shall be known by the corporate name of Drainage District Number of County, and shall have power and authority to take and hold real and personal property necessary for its use, to make contracts, to sue and be sued, have and use a corporate seal, and exercise any and all other powers, as a corporation, necessary to carry out the purposes of said sections. All such districts shall be liable for all injuries and damages, caused by the construction of said drainage improvements, arising by virtue of contract or tort.

Source: Laws 1905, c. 161, § 37, p. 635; Laws 1911, c. 144, § 6, p. 483; R.S.1913, § 1864; C.S.1922, § 1811; C.S.1929, § 31-468; R.S.1943, § 31-369.

Annotations

District was liable for all damages caused by construction of improvement. *Wellensiek v. Drainage Dist. No. 1*, 172 Neb. 869, 112 N.W.2d 267 (1961).

District is liable for damages caused by negligence in construction or maintenance. *Miller v. Drainage Dist. No. 1 of Richardson County*, 112 Neb. 206, 199 N.W. 28 (1924).

Damages to third parties are recoverable in proceedings other than those for the organization of the district. *Latham v. Chicago, B. & Q. R. Co.*, 100 Neb. 173, 158 N.W. 923 (1916).

District is a public corporation and may sue and be sued. *Nemaha Valley Drainage District No. 2 v. Marconnit*, 90 Neb. 514, 134 N.W. 177 (1912).

31-370. Drainage improvements; election required, when; notice; publication; change in plans.

In all districts organized under sections [31-301](#) to [31-369](#), the board of directors, having first adopted detailed plans and specifications of the work proposed to be done, having made an estimate of the total cost of such contemplated improvement, and having filed such plans, specifications, and estimated cost with the clerk of the county having the largest area of land of any county to be included in the drainage district, shall then publish once each week for three consecutive weeks in a newspaper in each county of such district a notice of an election to vote on the question of proceeding with such work and incurring the necessary liability in all cases in which the estimate of the contemplated work equals seven percent of the taxable value of the lands assessed for such improvement. The election shall be held in all respects as other elections provided for in sections [31-301](#) to [31-369](#) and [31-401](#) to [31-450](#). If the majority of the votes cast at such election are in favor of proceeding with the work and incurring the necessary liability, then the board, in proceeding therein, shall not incur indebtedness in a total sum in excess of the estimated cost so filed and published. No changes in such plans and specifications shall be made thereafter by the board which cost in the aggregate more than fifteen percent above such estimated cost. If a majority of the votes at such election vote against proceeding and incurring the liability, then the board shall abandon the work and shall thereupon certify to the county clerks a tax levy on all the tracts in the district by valuation sufficient to pay all the liabilities of the district to and including the date of such abandonment, and the levy shall be entered and collected as other general taxes and used to pay the liabilities.

Source: Laws 1929, c. 128, § 1, p. 478; C.S.1929, § 31-470; R.S.1943, § 31-370; Laws 1969, c. 247, § 1, p. 905; Laws 1979, LB 187, § 128; Laws 1992, LB 719A, § 121.

31-371. Refunding bonds; issuance; power of board; limitation; interest; term.

The board of supervisors of any drainage district in the State of Nebraska organized under and by virtue of the provisions of sections [31-301](#) to [31-369](#), and any amendments thereto, which has issued, or may hereafter issue valid interest-bearing bonds under the provisions of said sections, and which bonds are now or may hereafter be outstanding and unpaid, may take up and pay off any such bonds whenever the same can be brought about by lawful means, by the issue and sale or the issue and exchange therefor of the refunding bonds of such drainage district; but bonds so to be issued shall not exceed the amount lawfully owing and unpaid upon the bond or bonds so sought to be taken up and paid. Bonds so issued shall not bear interest greater in rate or amount per annum than the bonds so sought to be taken up and paid, and shall be made to run for not more than twenty years from date of issuance.

Source: Laws 1929, c. 132, § 1, p. 483; C.S.1929, § 31-471; R.S.1943, § 31-371.

31-372. Refunding bonds; issuance; resolution; notice; publication; procedure where no objections filed.

Whenever it is desired to issue refunding bonds under sections [31-371](#) to [31-374](#), the board of supervisors shall, by resolution entered in the minutes of its proceedings, direct public notice to be given, stating the amount of the indebtedness sought to be taken up and paid, the date it was issued, the rate of interest it bears, and if issued in installments the date when the various installments become due, that the same is sought to be taken up and paid off by the issuance and sale, or the issuance and exchange of refunding bonds bearing interest at an equal or less rate and amount per annum, and the date on which, and the place where any taxpayer of such drainage district may file objections to such proposed action. Such notice shall be signed by the president and secretary of the drainage district, and shall be published for four weeks in some newspaper of general circulation in the drainage district, and by posting a notice in three of the most public places in the district for at least thirty days prior to such date. If, after such publication and on the date for filing objections, no objections to such action by the board of supervisors are filed, then the board of supervisors may issue and sell, or exchange, as the case may be, the bonds authorized by sections [31-371](#) to [31-374](#), not exceeding the amount stated in such notice, nor exceeding the amount of an actual bonded indebtedness of the district then outstanding and unpaid, including any unpaid interest, if any, nor bearing interest greater in rate or amount than the bonds to be taken up, and thereby take up and pay off the bonds described in the notice.

Source: Laws 1929, c. 132, § 2, p. 484; C.S.1929, § 31-472; R.S.1943, § 31-372.

31-373. Refunding bonds; objections; hearing; determination; appeal; procedure.

If, on the day appointed in such notice, any written objections be filed, the objection or objections shall be heard and decided by the board of supervisors of such drainage district. From its decision an appeal may be taken to the district court in the manner of appeals from the county board.

Source: Laws 1929, c. 132, § 3, p. 485; C.S.1929, § 31-473; R.S.1943, § 31-373.

31-374. Refunding bonds; recitals; delivery; effect of issuance; payment.

The bonds so issued shall have recited therein the object of the issue, the title of the article under which the issue was made, stating the issue to be made in pursuance thereof, and shall also state the number, date, and amount of the bonds for which such issue is substituted and amount of the delinquent interest, if any. Such new bonds shall not be delivered until the surrender of the bond or bonds so designated, and they shall be paid and levy made and taxes collected for their payment in accordance with laws now governing the bonds heretofore issued under the provisions of sections [31-301](#) to [31-369](#). The assessment of benefits conferred and taxes levied by any such drainage district under the provisions of said sections shall remain valid and binding obligations upon the several tracts of land, but the time of payment of such taxes shall be extended to the same extent as the time of payment of the bonds refunded is extended by the issuing of such refunding bonds, and collection of such taxes shall be made as provided in said sections. The board of supervisors shall issue and file, with the county clerk of the county in which the drainage district was organized, a new certificate of levy of taxes, showing the changed dates when such taxes shall become due, otherwise in the same form and containing the same matter as in the certificate required to be issued by section [31-331](#), and such taxes shall be used to pay the principal of and the interest on said bonds as the same become due.

Source: Laws 1929, c. 132, § 4, p. 485; C.S.1929, § 31-474; R.S.1943, § 31-374.

31-375. Drainage district; dissolution; procedure; election; notice; effect; funds; distribution.

There being no outstanding indebtedness, the board of supervisors of any drainage district organized under sections [31-301](#) to [31-305](#) may, on its own motion or on the filing of a written request signed by fifteen electors of the district, order an election to be held to vote on the question of the dissolution of any such district. The secretary of any such drainage district shall file a certified copy of

such action by the board with the clerk of the district court of the county wherein the original petition for the incorporation of any such drainage district was filed, whereupon the clerk of the district court shall call an election and give notice to all persons interested in and owning land within the drainage district three successive weeks next preceding the election in a legal newspaper printed and published in the county wherein the district was originally incorporated. If no legal newspaper is printed and published in such county, such notice shall be placed in a legal newspaper of general circulation in the county wherein the district was originally incorporated. It shall be sufficient if the notice of such election shall be directed to all persons interested in the drainage district, identifying the same as it is referred to in the original petition for incorporation. The notice shall specify the day, hour, and place at which the election shall be held. The election shall be held in some public place in the county in which the district was organized. At such election every acre of land shall represent one share, and each owner shall be entitled to one vote for every acre of land owned by him or her in such district. If at the election a majority of the votes cast shall favor the dissolution, then such district shall stand dissolved, and the clerk of the district court shall certify such result and dissolution to the county clerk of each county wherein any portion of the lands of the drainage district lies. When any drainage district is dissolved as provided in this section, any remaining funds of the district shall be distributed to the counties in which the district is situated in the same proportion as the area of the district in each county bears to the total area of the district and shall be deposited in the general fund of the respective counties.

Source: Laws 1933, c. 51, § 1, p. 268; C.S.Supp.,1941, § 31-475; R.S.1943, § 31-375; Laws 1967, c. 187, § 1, p. 512; Laws 1986, LB 960, § 23.

Annotations

It is a condition to the right of dissolution that there be no outstanding indebtedness. *Ritter v. Drainage Dist. No. 1 of Otoe and Johnson Counties*, 137 Neb. 866, 291 N.W. 718 (1940).

31-376. Drainage district; located in more than one county; inactive for five years; county board; dissolve; procedure.

When any drainage district organized under the provisions of sections [31-301](#) to [31-305](#) is comprised of territory located in more than one county and is inactive for a period of at least five years, as determined by resolution of the county board of the county in which such district was organized, the county board may initiate action for dissolution of the district by filing a copy of its resolution with the clerk of the district court of the county in which the original petition for incorporation of

such district was filed. After the filing of such resolution, the procedure for dissolution and distribution of any remaining funds shall be the same as that provided in section [31-375](#).

Source: Laws 1967, c. 187, § 2, p. 513.

31-377. Drainage district; comprised of territory in one county; inactive for five years; county board; dissolve; funds; transfer to county general fund.

When any drainage district organized under the provisions of sections [31-301](#) to [31-305](#) or [31-401](#) to [31-408](#) is comprised of territory solely within one county and is inactive for a period of at least five years, as determined by resolution of the county board, the county board may order the district dissolved. The county board shall file copies of such order of dissolution with the county clerk and the county treasurer. Upon receipt of such order, the county treasurer shall transfer any remaining funds of the dissolved drainage district to the general fund of the county.

Source: Laws 1967, c. 187, § 4, p. 513.

31-378. Repealed. Laws 1999, LB 4, § 1.

31-401. Drainage district organized by vote of landowners; when formed.

Whenever it will be conducive to the public health, convenience or welfare, to drain any wet land, to drain any land subject to overflow by water, or any land which will be improved by drainage, to build or construct any dike or levee to prevent overflow by water, to construct, straighten, widen, deepen or alter any ditch, drain, stream or watercourse, to riprap or otherwise protect the bank of any stream or ditch, to construct, enlarge, extend, improve or maintain any system of drainage, to construct, enlarge, extend, improve or maintain any system of control of surface water or running water, or to do any two or more of said things jointly, then a drainage district may be formed and may proceed, as hereinafter provided, for the purpose of inaugurating, constructing, controlling and maintaining said work or works of public improvement.

Source: Laws 1907, c. 153, § 1, p. 474; R.S.1913, § 1866; C.S.1922, § 1813; C.S.1929, § 31-501; R.S.1943, § 31-401.

Annotations

District has no duty to maintain and keep in repair its works unless plans and specifications so provide. *McGree v. Stanton-Pilger Drainage Dist.*, 164 Neb. 552, 82 N.W.2d 798 (1957).

Legal existence of drainage district may be litigated in proceedings for assessment of benefits. *Prucka v. Eastern Sarpy Drainage Dist.*, 157 Neb. 284, 59 N.W.2d 761 (1953).

Plans must be in accordance with this section, but an estimate of cost of work is not required. *Chicago & N. W. Ry. Co. v. Payne Creek Drainage Dist.*, 148 Neb. 139, 26 N.W.2d 607 (1947).

A drainage district has a special right to have its drainage channel kept free from obstruction or interference. *Drainage District No. 1 v. Suburban Irr. Dist.*, 139 Neb. 333, 297 N.W. 645 (1941).

A drainage district organized under this article is liable for damages caused by the negligent construction of its works. *Compton v. Elkhorn Valley Drainage District*, 120 Neb. 94, 231 N.W. 685 (1930).

Damming of drainage channel to detriment of drainage district may be enjoined. *Flader v. Central Realty & Investment Co.*, 114 Neb. 161, 206 N.W. 965 (1925).

Drainage district is liable for damages caused by its negligence in the construction of its works, and action accrues when damage occurs. *Bunting v. Oak Creek Drainage District*, 99 Neb. 843, 157 N.W. 1028 (1916).

Constitutionality of act sustained, and general construction of act outlined. *White v. Papillion Drainage District*, 96 Neb. 241, 147 N.W. 218 (1914).

Act is constitutional. *O'Brien v. Schneider*, 88 Neb. 479, 129 N.W. 1002 (1911); *State ex rel. Harris v. Hanson*, 80 Neb. 724, 115 N.W. 294 (1908).

31-401.01. Drainage district formation; prohibited after June 30, 1972.

After June 30, 1972, no new drainage districts shall be organized under the provisions of sections [31-401](#) to [31-450](#). Attempted formations of drainage districts under sections [31-401](#) to [31-450](#) which have not been completed before July 1, 1972, shall be null, void and of no effect for the purpose of organizing such district. All drainage districts having valid corporate existence before July 1, 1972, shall enjoy all rights, duties, powers and authorities conferred by sections [31-401](#) to [31-450](#) and shall not be affected by this section, nor shall the legality of formation, organization, or operation of any such district be subject to any legal action based on this section.

Source: Laws 1969, c. 9, § 62, p. 135; Laws 1971, LB 544, § 8.

31-402. Formation; petition; contents.

When the district proposed contains real estate owned by less than twenty persons or corporations, one-fourth of said number shall be sufficient to petition for the formation of such district. When there are more than twenty such owners, ten or more owners of real estate therein may sign a petition for the formation of such district, and file said petition with the county clerk of the county having the largest body of land within the proposed district. The petition shall suggest the boundaries of the district, the number of directors that the district shall have if formed, and the amount of bond each shall give.

Source: Laws 1907, c. 153, § 2, p. 474; R.S.1913, § 1867; C.S.1922, § 1814; C.S.1929, § 31-502; R.S.1943, § 31-402.

Annotations

Number of signers is not required to be designated in the petition. *Chicago & N. W. Ry. Co. v. Payne Creek Drainage Dist.*, 148 Neb. 139, 26 N.W.2d 607 (1947).

Description in petition for formation of public highways of county named is sufficient. *Scottsbluff Drainage District v. Scotts Bluff County*, 113 Neb. 187, 202 N.W. 455 (1925).

Petition sustained as sufficient against collateral attack. *O'Brien v. Schneider*, 88 Neb. 479, 129 N.W. 1002 (1911).

Districts may cover portions of two counties and may overlap. *State ex rel. Sheffer v. Fuller*, 83 Neb. 784, 120 N.W. 495 (1909).

31-403. Formation; bond for expenses.

At the time of filing the petition the petitioners shall also file a bond, with surety or sureties to be approved by the county clerk, which bond shall run to the county and be conditioned to pay all expenses of the county by reason of such proceedings in case the district be not formed.

Source: Laws 1907, c. 153, § 3, p. 475; R.S.1913, § 1868; C.S.1922, § 1815; C.S.1929, § 31-503; R.S.1943, § 31-403.

Annotations

Bond signed by surety who was also a petitioner was sufficient. *Prucka v. Eastern Sarpy Drainage Dist.*, 157 Neb. 284, 59 N.W.2d 761 (1953).

Bond is valid, though conditioned to become void if the district be organized, or if petitioners pay costs. *O'Brien v. Schneider*, 88 Neb. 479, 129 N.W. 1002 (1911).

31-404. Formation; boundaries of district; hearings; directors; number; bond.

Thereupon the county board of such county shall take to its assistance the county surveyor of the county and shall determine whether or not the boundaries of the proposed district are reasonable and proper, and if the board finds that the boundary line of the district should be changed, it shall change the same and fix the boundary line where the same, in the judgment of the board, should be fixed with a view to promoting the interest of the drainage district, if formed, and with a view to doing justice and equity to all persons. Anyone asking shall be given a hearing as to the boundary. The board shall also determine the number of directors that the district shall have, if formed, and the amount of the bond to be given by each, and shall make a record of its action.

Source: Laws 1907, c. 153, § 4, p. 475; R.S.1913, § 1869; C.S.1922, § 1816; C.S.1929, § 31-504; R.S.1943, § 31-404.

Annotations

Board is required to determine that boundaries of district are reasonable and proper. *Chicago & N. W. Ry. Co. v. Payne Creek Drainage Dist.*, 148 Neb. 139, 26 N.W.2d 607 (1947).

Fact that all of petitioners did not sign bond is immaterial. *O'Brien v. Schneider*, 88 Neb. 479, 129 N.W. 1002 (1911).

County commissioners at any time before the rights of third parties have accrued may alter boundaries, but must give notice and describe boundaries. *State ex rel. Sheffer v. Fuller*, 83 Neb. 784, 120 N.W. 495 (1909).

In fixing boundaries, the board is required to determine the same with a view to promoting the interest of the district, and justice and equity to all persons. *State ex rel. Harris v. Hanson*, 80 Neb. 724, 115 N.W. 294 (1908).

31-405. Formation; notice of election; publication; contents; posting.

Thereupon the county clerk shall publish one notice once each week for three weeks in a newspaper published in the proposed district, and if the district embraces land in more than one county, then said notice shall be published in a legal newspaper published in the proposed district in each county. If no legal newspaper is published in the proposed district then the notice shall be published in a legal newspaper published in each of the counties having land within the proposed district. The notice shall state the filing of the petition; that it is filed

under the provisions of sections [31-401](#) to [31-450](#), giving the title thereof in full; the boundaries of the proposed district as fixed by the county board; that an election will be held at a certain place in the proposed district, which place shall be named in said notice, between the hours of 8 a.m. and 6 p.m., on a day named therein; that at said election the question of the formation of the proposed district shall be determined, and a board of directors elected, giving the number of such board, such board to take office contingently on the formation of the district; *Provided*, that if there is no newspaper published within the district or within the county, the county clerk shall prepare a copy of such notice, and cause it to be posted in three conspicuous and suitable places in the district.

Source: Laws 1907, c. 153, § 5, p. 475; R.S.1913, § 1870; C.S.1922, § 1817; Laws 1925, c. 87, § 1, p. 265; C.S.1929, § 31-505; R.S.1943, § 31-405.

Annotations

Notice of formation of district was properly published. *Prucka v. Eastern Sarpy Drainage Dist.*, 157 Neb. 284, 59 N.W.2d 761 (1953).

Where notice sets forth boundaries in detail as described in petition for organization of district, it is sufficient to meet requirements of this section as setting forth description. *Chicago & N. W. Ry. Co. v. Payne Creek Drainage Dist.*, 148 Neb. 139, 26 N.W.2d 607 (1947).

Notice should be given of change of boundaries. *State ex rel. Sheffer v. Fuller*, 83 Neb. 784, 120 N.W. 495 (1909).

First publication may be less than three weeks before election. *State ex rel. Harris v. Hanson*, 80 Neb. 724, 115 N.W. 294 (1908).

31-406. Formation; election; form of ballot.

Such election shall be by ballot which shall be signed by the voter, and shall have thereon a list of the land and lots which the voter claims the right to vote. The ballot shall be in the following form, and ballots at annual elections shall be in similar form.

| | | | | |
|--|---------|----|-------|-----------|
| List of Property on Which Vote is Based. | | | | |
| | | | | Number of |
| | Section | or | Town | Range |
| | | | or | Acres or |
| Description | or Lot | | Block | City |
| | | | | Lots |

| | | | | |
|---|-------|-------|-------|-------|
| | | | | |
| | | | | |
| | | | | |
| Total number of votes claimed on same | | | | |
| Nature of title to or interest in above | | | | |
| For formation of district | | | | |
| | | | | Yes |
| | | | | No |
| | | | Vote | |
| | | | for | |

| For board of directors if proposed district is formed. | Number of Votes |
|--|-----------------|
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| Signature of Voter | |

Source: Laws 1907, c. 153, § 6, p. 476; R.S.1913, § 1871; C.S.1922, § 1818; C.S.1929, § 31-506; R.S.1943, § 31-406.

Annotations

Mere fact that voter writes on the ballot the nature of the instrument by which he acquired title does not invalidate the ballot. *Chicago & N. W. Ry. Co. v. Payne Creek Drainage Dist.*, 148 Neb. 139, 26 N.W.2d 607 (1947).

31-407. Formation; election; eligibility to vote; manner of voting; canvassing board.

At all the elections the county clerk, or the county clerk of the county in which the greater portion of the land in such district is situated, and such assistants as he shall choose, shall constitute the election board and the canvassing board. Any person may cast one vote on each proposition to be voted on for each acre of land or fraction thereof, and for each platted lot which he may own or have an easement

in, as shown by the official records of the county where the land or lots may be. Any corporation, public, private or municipal, owning or having an easement in any land or lot, may vote at such election, the same as an individual may. The executor, administrator, guardian or trustee of any person or estate interested shall have the same right to vote. Should two or more persons or officials claim the right to vote on the same tract, the election board shall determine the party entitled to vote, and shall have the power to reject any ballot not cast by a person authorized to vote the same, which rejection may be made at the time such ballot is offered, or at the time of the canvass of the election. The board shall have the right to refer to the official records of the counties where the real estate may be, for information as to who are entitled to vote. The board shall sign a statement giving the result of the election, and the same shall be recorded in the office of the county clerk. At all elections following the election by which the district is organized, each voter shall have one vote for each unit of benefit then apportioned against the land owned by the voter.

Source: Laws 1907, c. 153, § 7, p. 477; R.S.1913, § 1872; C.S.1922, § 1819; Laws 1925, c. 87, § 2, p. 266; C.S.1929, § 31-507; R.S.1943, § 31-407; Laws 1951, c. 96, § 1, p. 265.

Annotations

When canvassing board certifies a true and correct exhibit of votes cast for formation of drainage district, naming the place of election and the date thereof, and the ballots are on file in county clerk's office, there is a sufficient compliance with this section. *Chicago & N. W. Ry. Co. v. Payne Creek Drainage Dist.*, 148 Neb. 139, 26 N.W.2d 607 (1947).

Corporation having an easement in district may vote. *State ex rel Gantz v. Drainage District No. 1 of Merrick County*, 100 Neb. 625, 160 N.W. 997 (1916).

In determining whether a district is organized, any person may cast one vote for each acre of land and each platted lot, which he may own or have an easement in. *Bunting v. Oak Creek Drainage District*, 99 Neb. 843, 157 N.W. 1028 (1916).

Permitting corporations and nonresidents, etc., to vote is constitutional. *State ex rel. Harris v. Hanson*, 80 Neb. 738, 117 N.W. 412 (1908).

31-408. Formation; election; affirmative vote; effect; preservation of records; transcript; filing.

If a majority of the votes cast at the election shall be in favor of the formation of the district it shall be conclusive that the formation of the district, and the work that may be done under the supervision of the board of directors, will be for the

public health, convenience and welfare. The county clerk shall thereupon file and preserve in his office all of the ballots, and record in his office all other records and proceedings in the matter, and the district shall thereupon be fully organized. If the district is in more than one county, the county clerk of the county in which the greater portion of the land in such district is situated, shall thereupon make a certified transcript of all record proceedings, and the board of directors of such district shall cause the transcript to be recorded in the office of the county clerk of each other county having land in the district.

Source: Laws 1907, c. 153, § 8, p. 478; R.S.1913, § 1873; C.S.1922, § 1820; Laws 1925, c. 87, § 3, p. 266; C.S.1929, § 31-508; R.S.1943, § 31-408.

31-409. Directors; qualification; officers; annual election; vacancies; term.

A majority of the directors shall be residents of the county or counties in which the district is located. Except as provided in section [31-409.03](#), any person or the officer or representative of any corporation owning or controlling any land assessed for benefits may be a director. The person elected a director receiving the least number of votes shall hold office for one year, the next higher for two years, and so on, and the term of each shall be adjusted so as to make the term of one director expire each year. The officers, consisting of a president, a treasurer, and a secretary, shall be chosen by the directors from their own number and for a term of one year. Unless the directors choose by February fifteenth of a given year to use the procedures provided in section [31-409.01](#), annual elections of directors shall be held on the second Tuesday of April each year, at the county courthouse or at such other place designated by the board pursuant to section [31-409.03](#). The annual election shall be omitted if such date occurs less than nine months after the first election. Vacancies in the office of directors may be filled by the remaining directors until the next election. All directors and officers shall hold office until their successors are elected and qualified.

Source: Laws 1907, c. 153, § 9, p. 478; R.S.1913, § 1874; Laws 1921, c. 275, § 1, p. 905; C.S.1922, § 1821; C.S.1929, § 31-509; R.S.1943, § 31-409; Laws 1951, c. 96, § 2, p. 265; Laws 1983, LB 191, § 1; Laws 1988, LB 1078, § 1; [Laws 2011, LB342, § 1](#).

Annotations

Remaining duly elected and qualified directors may fill vacancy by appointment of director who fails to qualify. *Chicago & N. W. Ry. Co. v. Payne Creek Drainage Dist.*, 148 Neb. 139, 26 N.W.2d 607 (1947).

31-409.01. Election by mail; procedure.

The directors may choose to hold the annual election required by section [31-409](#) by sealed mail ballot in accordance with this section. If the option authorized by this section is not exercised by February fifteenth of a given year, the procedure provided by section [31-409](#) shall be followed.

The secretary of the board shall, at least fifteen days prior to the election, mail to the last-known post office address of each person entitled to vote, a ballot which shall list the names and addresses of the candidates, allow room for write-in votes, and give instructions on how to vote and return the ballot.

Source: Laws 1983, LB 191, § 2.

31-409.02. Annual election; notice; contents.

Notice of an annual election held pursuant to section [31-409](#), [31-409.01](#), or [31-409.03](#) shall be published once each week for two consecutive weeks in a newspaper of general circulation in the district, or the precinct if the district has been divided into voting precincts as provided in section [31-409.03](#), designated by the district. The last publication shall not be less than thirty days prior to the election. The notice shall include the date and location or locations of the election and the hours for voting, the number of directors to be elected, the names of those whose terms will expire, and the procedure for filing as a candidate.

Source: Laws 1983, LB 191, § 3; Laws 1988, LB 1078, § 2; [Laws 2011, LB342, § 2](#).

31-409.03. Voting precincts; authorized; directors; how elected.

(1) The board of directors may divide the district into two or more voting precincts for the purpose of electing directors of the district. The precincts shall be established to include, as nearly as possible, equal acreage if the district levies taxes based on valuation or equal units of benefit if the district taxes on the basis of apportionment of benefits. Upon completion of the division the board shall prepare a subdivision plat and file the plat with the county clerk of each county containing affected land. The board shall provide for the phasing in of precinct voting for all elections subsequent to the decision to subdivide the district beginning with the first such election. After the board has divided the district pursuant to this subsection, the board shall not divide the district again or change the divisions until precinct voting is completely phased in and an election has been held for the directors to be elected in each precinct.

(2) When a district has been divided into two or more voting precincts, an equal number of directors shall be elected in each precinct and the remaining directors, if any, shall be elected at large. Each director elected by precinct shall own land assessed for benefits in the precinct from which he or she is elected. Precinct elections shall be held at a location within the precinct designated by the board or as provided in section [31-409.01](#).

Source: Laws 1988, LB 1078, § 3; Laws 1990, LB 81, § 2.

31-410. Directors; bond; conditions; recording.

Each member of the board of directors shall give bond in such amount as shall have been fixed by the county board of the county, conditioned to faithfully perform the duties of a director, and of such further office as he may be elected to, and to account for all funds or property coming into his hands. All of such bonds shall run to the district, shall be signed by a surety or sureties to be approved by the county clerk, and shall be filed and recorded in his office. When so filed such person so elected shall take and hold office until his successor is elected and qualified.

Source: Laws 1907, c. 153, § 10, p. 478; R.S.1913, § 1875; C.S.1922, § 1822; C.S.1929, § 31-510; R.S.1943, § 31-410.

Annotations

Where bond is filed, director is to be considered as public officer. *Prucka v. Eastern Sarpy Drainage Dist.*, 157 Neb. 284, 59 N.W.2d 761 (1953).

31-410.01. Board of directors; plans; notice; hearing.

The board of directors, having first, with the aid of such engineer, surveyor, and other assistants as it may have chosen, made detailed plans of the public works to be done in accordance with section [31-401](#), shall cause a notice to be inserted at least once in a newspaper of general circulation in the district stating the time and place where the directors shall meet for the purpose of conducting a public hearing on the proposed public works and the method of financing such works. All parties interested in the proposed public works may appear at such public hearing in person or by counsel or may file written objections thereto. The directors shall then proceed to hear and consider the same and determine whether to adopt the public works in accordance with the detailed plans presented at such hearing and whether to finance such works by benefits accruing to the several tracts of land within the district or by a tax levy upon the taxable value of the taxable property in the

district. The hearing may be continued from time to time upon notice given by publication at least once in a newspaper of general circulation in the district stating the time and place of such continuance.

Source: Laws 1969, c. 245, § 1, p. 896; Laws 1979, LB 187, § 129; Laws 1984, LB 897, § 1; Laws 1992, LB 1063, § 25; Laws 1992, Second Spec. Sess., LB 1, § 25.

31-411. Directors; duties; plans; apportionment of benefits; area method of allocation, authorized.

The board of directors having adopted the plans of public works and apportionment of benefits method of financing, shall apportion the benefits thereof accruing to the several tracts of land within the district which will be benefited thereby, on a system of units. The land least benefited shall be apportioned one unit of assessment, and each tract receiving a greater benefit shall be apportioned a greater number of units or fraction thereof, according to the benefits received. Nothing contained herein shall prevent the district from establishing separate areas within the district so as to permit future allocation of costs for particular portions of the work to specific areas. This area method of allocation shall not be used in any district which has heretofore made a final apportionment of units of benefits and shall not thereafter be changed except by compliance with the procedure prescribed in sections [31-411](#) to [31-412](#).

Source: Laws 1907, c. 153, § 11, p. 479; R.S.1913, § 1876; C.S.1922, § 1823; C.S.1929, § 31-511; R.S.1943, § 31-411; Laws 1961, c. 139, § 1, p. 403; Laws 1969, c. 245, § 2, p. 897; Laws 1972, LB 1053, § 5.

Annotations

Adoption of detailed plans is a jurisdictional requirement. *Prucka v. Eastern Sarpy Drainage Dist.*, 157 Neb. 284, 59 N.W.2d 761 (1953).

Assessing of one-half units not out of line proportionately with assessment of benefits for tract involved is not a jurisdictional defect. *Chicago & N. W. Ry. Co. v. Payne Creek Drainage Dist.*, 148 Neb. 139, 26 N.W.2d 607 (1947).

Compliance with requirement of first making detailed plans of the work to be done is a condition precedent to the apportionment of benefits to lands within a drainage district. *Haecke v. Eastern Sarpy County Drainage Dist.*, 141 Neb. 628, 4 N.W.2d 744 (1942).

Special taxes should not be levied in excess of benefits conferred. *Scottsbluff Drainage District v. Scotts Bluff County*, 113 Neb. 187, 202 N.W. 455 (1925).

Apportionment was unequal where lands were charged on the basis of one-fifth of their value, and railroad and county on total value of losses saved. *Chicago B. & Q. R. Co. v. Platte Valley Drainage District*, 113 Neb. 49, 201 N.W. 648 (1924).

Section is constitutional, though it does not require notice before adopting plan of drainage, or that apportionment precede construction of improvements, etc. *O'Brien v. Schneider*, 88 Neb. 479, 129 N.W. 1002 (1911).

Section sustained as constitutional against claim of taking property without due process of law. *State ex rel. Harris v. Hanson*, 80 Neb. 738, 117 N.W. 412 (1908).

31-411.01. Apportionment of benefits; report; filing; notice; publication.

The directors, having adopted the apportionment method of financing and having completed the apportionment of benefits, shall make a detailed report of the same and file such report with the county clerk. Thereupon the board of directors shall cause to be published, once each week for three consecutive weeks, in a newspaper of general circulation in the district, a copy of the apportionment and a statement of the total number of units of benefit in the district.

Source: Laws 1969, c. 245, § 3, p. 897.

31-411.02. Board of directors; plans; adoption; budget; notice; publication; contents; levy; limitation; map; county treasurer; compute tax; additional funds; election.

The board of directors having adopted the plans of public works and the tax levy method of financing shall prepare an itemized budget of funds necessary to carry out the authorities granted under sections [31-401](#) to [31-450](#) and transmit such budget to the county board of the county or counties involved. Thereupon the board of directors shall cause to be published, once each week for three consecutive weeks in a newspaper of general circulation in the district, a copy of the itemized budget of funds necessary to carry out the authorities granted under such sections and a statement of the total taxable value of the taxable property in the drainage district. If portions of the drainage district are in more than one county, the county assessors involved shall ratably apportion such amounts of the total budget requested between the counties based on the total taxable value of the taxable property within the drainage district and transmit and certify the prorated portion to the respective county boards of each county involved. The county board may levy a tax sufficient to raise the amount of funds requested but not to exceed ten and five-tenths cents on each one hundred dollars upon the taxable value of the taxable property in the drainage district. Such levy shall be subject to section [77-](#)

[3443](#). The tax so levied shall be collected in the same manner as other property taxes, and the proceeds therefrom shall be kept in a separate account identified by the official name of the drainage district. The county treasurer shall transfer such funds to the drainage district as requested by the board of directors.

The board of directors shall provide a legal description and map of the boundaries of the district and transmit such information to the county assessor of the county or counties involved who shall indicate for the use of the county treasurer such information on the tax rolls. The county assessor shall also provide the county treasurer with the taxable value of the taxable personal property of each property owner within the drainage district which shall also be taxed at the same rate as real property.

When the property tax rolls and the taxable value of the taxable personal property of each taxpayer are received by the county treasurer from the county assessor as required by sections [31-401](#) to [31-450](#), the county treasurer shall compute the tax due the drainage district from each taxpayer in accordance with the rate required to meet the budget request but not to exceed a levy of ten and five-tenths cents on each one hundred dollars upon the taxable value of the taxable property of the district. If a drainage district needs additional funds to pay outstanding warrants issued under section [31-416](#), the property owners within such district may, by majority vote of those voting in an election authorized by the board of directors of such district and conducted according to section [31-407](#), approve the issuance of bonds which shall be paid by an additional levy.

Source: Laws 1969, c. 245, § 4, p. 898; Laws 1971, LB 723, § 1; Laws 1972, LB 1195, § 1; Laws 1979, LB 187, § 130; Laws 1992, LB 1063, § 26; Laws 1992, Second Spec. Sess., LB 1, § 26; Laws 1996, LB 1114, § 52.

31-412. Apportionment; complaint; bond; conditions; transcript; filing; hearing.

Any person claiming to be aggrieved by such plan of public works or method of financing, or both, may file complaint with the county clerk within twenty days after the publication of the plan of public works and method of financing provided for by section [31-410.01](#), together with a bond running to the district, with surety or sureties to be approved by the county clerk, conditioned to pay all costs that may be adjudged against such complaint, if the appeal be not sustained. Thereupon the county clerk shall make a transcript of the objections and of the report of adoption of the plan of public works or method of financing, or both, and such appellant shall, within ten days thereafter, file such transcript, in the district court of the county, and such court shall hear and determine all such objections in a summary manner as in a case in equity. All objections that may be filed shall be heard and

determined by the court as one proceeding, and only one transcript of the adoption of the plan of public works shall be required.

Source: Laws 1907, c. 153, § 11, p. 479; R.S.1913, § 1877; C.S.1922, § 1824; C.S.1929, § 31-512; R.S.1943, § 31-412; Laws 1969, c. 245, § 5, p. 899.

Annotations

There is no requirement that the notice shall be signed by the board of directors. *Chicago & N. W. Ry. Co. v. Payne Creek Drainage Dist.*, 148 Neb. 139, 26 N.W.2d 607 (1947).

Detailed plans are essential to give landowner an intelligent basis upon which objection can be made to apportionment of benefits. *Haecke v. Eastern Sarpy County Drainage Dist.*, 141 Neb. 628, 4 N.W.2d 744 (1942).

Notice must be published during an entire week immediately before time specified for hearing. *Bancroft Drainage District v. Chicago, St. P., M. & O. Ry. Co.*, 102 Neb. 455, 167 N.W. 731 (1918).

31-413. Repealed. Laws 1969, c. 245, § 13.

31-414. Assessments and levies; basis; change of plans; enlargement or extension; new apportionment.

The apportionment, when finally adjusted, shall continue as the basis of all levies of special assessments to pay all expenditures for organization, construction, improvement, enlargement, extension, damages, costs, maintenance, bonds and interest thereon, and all other expenses; *Provided*, if (1) there is such a change of plans or enlargement or extension of the work of the district, (2) some of the tracts of land within the district are increased in value since the time of the original apportionment of benefits by the addition of improvements or otherwise, such as in either case to make a different apportionment necessary or desirable, then the board of directors as to the future expenditures shall make a new apportionment of benefits, in which event all the procedure prescribed in sections [31-411](#) to [31-412](#) for the original apportionment shall apply, or (3) the board of directors elects to use the tax levy method of financing, all expenditures for organization, construction, improvement, enlargement, extension, damages, costs, maintenance, bonds and interest thereon, and all other expenses shall be paid out of such levies.

Source: Laws 1907, c. 153, § 13, p. 480; R.S.1913, § 1879; C.S.1922, § 1826; C.S.1929, § 31-514; R.S.1943, § 31-414; Laws 1963, c. 169, § 1, p. 584; Laws 1969, c. 245, § 6, p. 899; Laws 1972, LB 1053, § 6; Laws 1979, LB 187, § 131.

Annotations

Provision for change of plans so that board may make new apportionment shows legislative intent of necessity for original detailed plan. *Haecke v. Eastern Sarpy County Drainage Dist.*, 141 Neb. 628, 4 N.W.2d 744 (1942).

Board may, upon change of plans or enlargement of work, make a new apportionment of benefits. *Sandy v. Western Sarpy Drainage District*, 102 Neb. 713, 169 N.W. 268 (1918).

31-414.01. Tax funds; held by county treasurer; use; financial operation; publish annually.

Tax funds transferred to and held by the treasurer of the drainage district shall be used for the specific purposes as listed in section [31-401](#). All expenditure of such funds shall be made by the board of directors upon the order of the board. The secretary of the drainage district shall once each year have published in a newspaper of general circulation in the drainage area a brief statement of the past year's financial operation of the district. Such statement shall be based on an annual audit of the district accounts.

Source: Laws 1969, c. 245, § 7, p. 900.

31-415. Real estate or easement; acquisition; eminent domain; procedure; release by guardian or conservator of person under disability.

The drainage district shall have power to purchase such real estate or easement therein as it may need, and if it cannot agree on the purchase price of any needed real estate or easement therein, it shall have power to condemn the same whether the property be within the limits of such district or outside its boundaries. The exercise of the right of eminent domain on areas outside the boundaries of the district shall be limited only to those projects which have been approved by the Department of Natural Resources. This limitation shall not apply to any drainage district subject to the supervision of the United States Army Corps of Engineers. The procedure to condemn property shall be exercised in the manner set forth in sections [76-704](#) to [76-724](#). If such drainage district finds it expedient or necessary for the maintenance of any part of its improvement already constructed to add thereto further construction in the nature of a settling basin into which waters will be permitted to flow for the purpose of dropping silt before finding their outlet into any part of the main or lateral ditches of such drainage district improvement, such drainage district, if not able to agree with the landowner on the yearly cash rental

of any premises taken and used for such purpose, shall have the right to condemn for the purpose of fixing the yearly rental for the land so taken. If such drainage district takes or damages any real estate of any minor or protected person, the guardian or conservator of such minor or protected person may agree and settle with the drainage district for all damages or claims by reason of taking such real estate or easement and may give valid releases and discharges therefor.

Source: Laws 1907, c. 153, § 14, p. 480; R.S.1913, § 1880; C.S.1922, § 1827; C.S.1929, § 31-515; Laws 1937, c. 76, § 1, p. 266; C.S.Supp.,1941, § 31-515; R.S.1943, § 31-415; Laws 1951, c. 101, § 74, p. 480; Laws 1969, c. 245, § 8, p. 900; Laws 1975, LB 481, § 20; [Laws 2000, LB 900, § 70.](#)

Annotations

Drainage district has power of eminent domain. *Quest v. East Omaha Drainage Dist.*, 155 Neb. 538, 52 N.W.2d 417 (1952).

Condemnation by right of eminent domain is not allowed except so far as it is necessary for the proper construction and use of the improvement for which it is taken. *Bunting v. Oak Creek Drainage District*, 99 Neb. 843, 157 N.W. 1028 (1916).

31-416. Claims; payment; warrants; registration; interest; use in payment of taxes.

All claims against drainage districts created by landowners shall be paid by warrants or orders, duly drawn on the treasurer of such drainage district, signed by the president of such district and countersigned by its clerk or secretary. When such warrants or orders have been issued and delivered, the same may be presented to the treasurer of the drainage district, and, if such be the fact, endorsed not paid for want of funds. Such orders or warrants shall be registered by the treasurer of the district, in the order of presentation, shall draw interest from the date of registration thereof, and shall be received by the county treasurer in payment of drainage district taxes due the general fund of such district.

Source: Laws 1921, c. 275, § 2, p. 905; C.S.1922, § 1828; C.S.1929, § 31-516; R.S.1943, § 31-416; Laws 1969, c. 51, § 90, p. 331.

31-417. Bonds; interest; issuance; requirements.

Whenever the drainage district shall need the sum of five thousand dollars or more, either for the purpose of paying outstanding warrants issued under section [31-416](#), or to refund bonds issued for the purpose of paying or providing funds for

the payment of work done under the provisions of sections [31-401](#) to [31-450](#), the board of directors may issue negotiable bonds for such sums as may be needed, not, however, exceeding the amount that the engineer of the district shall certify as being required in the case of an original issue of bonds, nor exceeding the amount of outstanding bonds in the case of refunding bonds. Such bonds shall be signed by the president, secretary and treasurer, under the corporate seal, with coupons attached, and shall be payable in not to exceed twenty annual installments. They shall be sold at not less than par.

Source: Laws 1907, c. 153, § 15, p. 481; Laws 1911, c. 145, § 1, p. 484; R.S.1913, § 1881; C.S.1922, § 1829; C.S.1929, § 31-517; Laws 1933, c. 23, § 1, p. 194; C.S.Supp.,1941, § 31-517; R.S.1943, § 31-417; Laws 1969, c. 51, § 91, p. 331.

Annotations

Bonds may not be issued in excess of amount that engineer certifies as being required. *Haecke v. Eastern Sarpy County Drainage Dist.*, 141 Neb. 628, 4 N.W.2d 744 (1942).

Section does not apply to drainage districts organized before its enactment. *Sandy v. Western Sarpy Drainage District*, 102 Neb. 713, 169 N.W. 268 (1918).

31-418. Bonds; notice of issuance; publication; contents.

The board of directors shall give notice by publication once each week for three consecutive weeks of the proposed issue of bonds and the amount thereof.

Source: Laws 1907, c. 153, § 15, p. 481; Laws 1911, c. 145, § 1, p. 485; R.S.1913, § 1882; C.S.1922, § 1830; C.S.1929, § 31-518; R.S.1943, § 31-418.

31-419. Repealed. Laws 1969, c. 245, § 13.

31-420. Deficit; assessment; apportionment.

If a deficit is caused by an appeal from the assessment of benefits and a charge thereon, or by reason of any assessment being uncollectible, or in any other manner whatsoever, then such deficit shall be a charge upon all the lands assessed according to the apportionment of benefits, the same as any other liability of the district.

Source: Laws 1911, c. 145, § 1, p. 485; R.S.1913, § 1884; C.S.1922, § 1832; C.S.1929, § 31-520; R.S.1943, § 31-420.

31-421. Bond issue; duties of treasurer; filing and recording.

The treasurer shall at the time of signing the bonds, and before the issue thereof, make a statement in writing and under oath of the same, giving the date, amount, maturity, rate of interest, and place of payment. Such statement shall be filed and recorded in the office of the county clerk.

Source: Laws 1907, c. 153, § 15, p. 481; Laws 1911, c. 145, § 1, p. 485; R.S.1913, § 1885; C.S.1922, § 1833; C.S.1929, § 31-521; R.S.1943, § 31-421; Laws 1969, c. 245, § 9, p. 901.

Annotations

Noncompliance with above section is an irregularity not affecting jurisdiction. *Scottsbluff Drainage District v. Scotts Bluff County*, 113 Neb. 187, 202 N.W. 455 (1925).

31-422. Borrowing money; interest; purposes; term of loan; provisions for payment; record.

The president, secretary and treasurer, when duly authorized by the board of directors, may borrow money, for not to exceed five years, on the note of the district signed by them, negotiable at not less than par and drawing interest, to pay the costs and expenses of organizing the district, and such further amounts, on the same terms, as may be necessary for the purpose of carrying on the objects and purposes of such organization, not exceeding, however, the cost of the drainage improvement as estimated by the engineer. The board of directors shall make suitable provision for the payment of such borrowed money, with interest thereon, within five years from the time of borrowing the same. The treasurer shall at the time of signing any such note and before the issue thereof, make a statement in writing and under oath of the same, giving the date, amount, maturity, rate of interest, payee, and time and place of payment. Such statement shall be filed and recorded in the office of the county clerk.

Source: Laws 1907, c. 153, § 16, p. 481; Laws 1909, c. 150, § 1, p. 530; R.S.1913, § 1886; C.S.1922, § 1834; C.S.1929, § 31-522; R.S.1943, § 31-422; Laws 1969, c. 51, § 92, p. 332.

Annotations

District may not borrow money in excess of the cost of improvement as estimated by the engineer. *Haecke v. Eastern Sarpy County Drainage Dist.*,

31-423. Preliminary expenses; payment.

The board of directors shall, out of the first money on hand, pay all the expenses of organization, of the county surveyor and county clerk, and other expenses.

Source: Laws 1907, c. 153, § 17, p. 482; R.S.1913, § 1887; C.S.1922, § 1835; C.S.1929, § 31-523; R.S.1943, § 31-423.

31-424. Bond principal and interest; apportionment of assessments; lien; interest; collection.

The board of directors shall each year determine the amount of money necessary to be raised to pay bonds and interest thereon under the apportionment method of financing, and shall apportion the same in dollars and cents against the tracts of land remaining charged therewith. The board of directors shall also annually determine the amount of money necessary to be raised by taxation during the coming year for other purposes, and shall apportion the same in dollars and cents to each tract benefited, according to the units of assessment as determined in accordance with section [31-411](#). The president and secretary shall thereupon return lists of such tracts, with the amounts of money chargeable to each, keeping the assessments to pay bonds and interest thereon separate in each case, to the county clerk of each county where lands are located, who shall place the same on the duplicate tax lists against the lands and lots so assessed. Such assessments shall be collected and accounted for by the county treasurer, at the same time as general realty taxes, and such assessments shall be and remain a perpetual lien against such real estate until paid, and shall draw interest at the rate of nine percent per annum from the date of delinquency until paid. All the provisions of law for the sale, redemption, and foreclosure in ordinary tax matters shall apply to these special assessments. The drainage district may file a claim against any county, city, village, railroad company, or other corporation, private or public, for the share of any annual apportionment to be paid by any such subdivision or corporation, and if the same is not paid, it may be recovered by action in court. The county treasurer shall on demand pay all funds in his hands to the credit of the drainage district, to the treasurer thereof.

Source: Laws 1907, c. 153, § 18, p. 482; R.S.1913, § 1888; C.S.1922, § 1836; C.S.1929, § 31-524; Laws 1933, c. 136, § 25, p. 537; C.S.Supp.,1941, § 31-524; R.S.1943, § 31-424; Laws 1969, c. 245, § 10, p. 901.

Annotations

Under former law interest at ten percent was computable on each assessment from first day of May following levy. *Scottsbluff Drainage District v. Scotts Bluff County*, 113 Neb. 187, 202 N.W. 455 (1925).

Requirement that a list of lands assessed shall be returned to county clerk, enables district to fix a lien upon lands of district generally and collect tax. *Bancroft Drainage District v. Chicago, St. P., M. & O. Ry. Co.*, 102 Neb. 455, 167 N.W. 731 (1918).

Rules for assessments and apportionment of benefits in general set out. *White v. Papillion Drainage District*, 96 Neb. 241, 147 N.W. 218 (1914).

A public highway is an easement which may be benefited by the construction of a drainage ditch, and county assessed therefor. *Cuming County v. Bancroft Drainage District*, 90 Neb. 81, 132 N.W. 927 (1911).

31-424.01. Budget; levy; collection; lien.

The board of directors shall each year determine the amount of money necessary to be raised to pay bonds and interest thereon and the amount of money necessary to be raised by taxation during the coming year for other purposes, and shall include such amount in the budget submitted under section [31-411.02](#) if the board of directors elects the tax levy method of financing. Such levies shall be collected and accounted for by the county treasurer, at the same time as general realty taxes, and such assessments shall be and remain a perpetual lien against such real estate until paid, and shall draw interest at the rate of nine percent per annum from the date of delinquency until paid. All the provisions of law for the sale, redemption, and foreclosure in ordinary tax matters shall apply to these special assessments. The drainage district may file a claim against any county, city, village, railroad company, or other corporation, private or public, for the share of any annual apportionment to be paid by any such subdivision or corporation, and if the same is not paid, it may be recovered by action in court. The county treasurer shall on demand pay all funds in his hands to the credit of the drainage district, to the treasurer thereof.

Source: Laws 1969, c. 245, § 11, p. 902; Laws 1979, LB 187, § 132.

31-425. Rules and regulations; powers of board; amendments; record.

The board of directors shall adopt and have recorded with the county clerk such rules and regulations as may be reasonable and proper for the work in hand, and

such rules shall provide what officers the district shall have. The rules may be changed from time to time but all amendments shall be duly recorded with the county clerk.

Source: Laws 1907, c. 153, § 19, p. 482; R.S.1913, § 1889; C.S.1922, § 1837; C.S.1929, § 31-525; R.S.1943, § 31-425.

31-426. Employees; contracts for construction and repair; estimates; letting; purchase of machinery; personal interest in contracts prohibited; effect.

The board of directors shall employ such engineer, surveyor, and other help, as it may deem necessary and proper, and shall proceed according to its best judgment to carry out such work of the character provided for by sections [31-401](#) to [31-450](#) as it deems advisable for the public health, convenience and welfare. The board of directors shall in its discretion, from time to time, determine whether the necessary work shall be done by hiring by the day, or by contract. Before any contract shall be let, estimates of the cost thereof shall be made, and the contract price shall not exceed the estimate. No officer or director shall be in any way interested in any such contract, and any such contract shall be void if any officer or director is interested therein, and no recovery shall be had thereon; *Provided, however,* that nothing in this section shall be construed to prevent the board of directors from hiring one of its members by the day to superintend maintenance work within the district. The board of directors shall likewise, when in its judgment it is for the best interest of the district, be empowered to purchase all necessary machinery and equipment for the purpose of maintaining, cleaning out or reconstructing existing ditches, or for the purpose of constructing new ditches within the district, and for such work may hire by the day, week or month, all necessary help.

Source: Laws 1907, c. 153, § 20, p. 483; R.S.1913, § 1890; Laws 1921, c. 280, § 1, p. 924; C.S.1922, § 1838; C.S.1929, § 31-526; R.S.1943, § 31-426.

Annotations

This section indicates necessity of first, with aid of engineer, making detailed plans of the public work to be done. *Haecke v. Eastern Sarpy County Drainage Dist.*, 141 Neb. 628, 4 N.W.2d 744 (1942).

District, through its officers, is given discretion to adopt and carry out plans for drainage, without ordinarily being required to preserve ditches in perpetuity after once constructed. *Compton v. Elkhorn Valley Drainage Dist.*, 120 Neb. 94, 231 N.W. 685 (1930).

31-427. Directors; compensation.

The board of directors shall receive two dollars per day compensation for time actually employed in the business of the district, not exceeding one hundred dollars each per year, but reasonable allowance shall be made for necessary clerical work and assistance.

Source: Laws 1907, c. 153, § 21, p. 483; R.S.1913, § 1891; C.S.1922, § 1839; C.S.1929, § 31-527; R.S.1943, § 31-427.

31-428. Repealed. Laws 1983, LB 191, § 5.

31-429. Draining lands into district ditches; requirements.

Lands within the drainage district which have been assessed for benefits may, under general rules and regulations to be made by the board of directors applicable to all similarly situated, be drained by the owners thereof by tiling or otherwise into the main or lateral drains. Owners of land within the district not assessed, or without the district, may drain such lands into the main or lateral drains of the drainage district upon contracting with the board of directors for the privilege, and paying therefor, but not otherwise.

Source: Laws 1907, c. 153, § 23, p. 483; R.S.1913, § 1893; C.S.1922, § 1841; C.S.1929, § 31-529; R.S.1943, § 31-429.

31-430. Power to cross highways and railroads.

The district may dig ditches and drains under and across railroads and public highways.

Source: Laws 1907, c. 153, § 24, p. 484; R.S.1913, § 1894; C.S.1922, § 1842; C.S.1929, § 31-530; R.S.1943, § 31-430.

Annotations

Section is constitutional and the county can impose no conditions. Douglas County v. Papillion Drainage District, 92 Neb. 771, 139 N.W. 718 (1913).

31-431. Records; filing; fees of county clerk.

The originals of all contracts of every kind in writing, made by or with the board of directors or officers, with reference to the construction or use of such public work, or the rights or obligations of the drainage district therein, shall be

filed and recorded with the county clerk, who shall receive for all services the fees allowed by law for similar services.

Source: Laws 1907, c. 153, § 25, p. 484; R.S.1913, § 1895; C.S.1922, § 1843; C.S.1929, § 31-531; R.S.1943, § 31-431.

31-432. Director conveying or losing interest in land; vacancy created.

If any director shall sell and convey his assessed realty and not be an officer of a company interested, he shall no longer serve as director or officer.

Source: Laws 1907, c. 153, § 26, p. 484; R.S.1913, § 1896; C.S.1922, § 1844; C.S.1929, § 31-532; R.S.1943, § 31-432.

31-433. Appeal; time; effect.

Any appeal to the Court of Appeals on any matter under sections [31-401](#) to [31-450](#) shall be taken within thirty days after the entry of the judgment, decree, or final order or within thirty days after the entry of the order overruling a motion for a new trial in such cause. Any such appeal shall not operate to stay proceedings.

Source: Laws 1907, c. 153, § 27, p. 484; R.S.1913, § 1897; C.S.1922, § 1845; C.S.1929, § 31-533; R.S.1943, § 31-433; Laws 1961, c. 138, § 4, p. 398; Laws 1987, LB 33, § 7; Laws 1991, LB 732, § 90; [Laws 1999, LB 43, § 19.](#)

31-434. Elections; voting by proxies; when permitted.

At all elections any person living outside the different counties owning or controlling assessed real estate may vote by proxy duly authorized in writing on file with the county clerk.

Source: Laws 1907, c. 153, § 28, p. 484; R.S.1913, § 1898; C.S.1922, § 1846; C.S.1929, § 31-534; R.S.1943, § 31-434.

31-435. Accounts; treasurer's annual report; neglect by officers; penalty.

The officers of the district shall keep good, complete and businesslike records of all receipts and disbursements, and the purpose thereof and of all business transacted, and all books, papers and vouchers shall at all times be subject to public inspection. The treasurer shall annually make detailed report in writing of all receipts and disbursements, which report shall contain a statement of the funds on hand belonging to the district, together with the amount if any in the hands of the

county treasurer, and all money received during the preceding year from all sources, and shall show all items of disbursement, the person or persons to whom, and the object for which the same has been paid out, including all compensation paid to officers of said district, and all other expenses of administration. The statement shall be verified under oath, and a copy of the same shall be filed with the county clerk of each county having land within said district, April 1 of each year, and the treasurer shall have such report subject to inspection at each annual meeting. If any such treasurer shall fail or neglect to make out such report or to file the same with the county clerk, or if any officer of such drainage district shall neglect or refuse to submit for inspection any records or papers of said district upon demand of any person interested, or shall otherwise neglect to perform any duties imposed upon him by this section, he shall be guilty of a Class V misdemeanor.

Source: Laws 1907, c. 153, § 29, p. 484; R.S.1913, § 1899; Laws 1915, c. 28, § 1, p. 90; C.S.1922, § 1847; C.S.1929, § 31-535; R.S.1943, § 31-435; Laws 1977, LB 40, § 117.

31-436. Drainage district; dissolution; procedure; distribution of funds; city of the metropolitan or first class; county; assume operation and maintenance; authorization; conditions.

(1) If there are no debts outstanding, the board of directors may, on its own motion or on the request in writing of ten electors, submit the question of dissolution of the district after due notice thereof is given by publication as provided in section [31-418](#). If three-fifths of the votes cast on the question at such election are in favor of such dissolution, the officers thereof shall cause a record of such election and the vote thereon to be made in the office of the county clerk of the proper county, and the drainage district shall thereupon stand dissolved.

(2) In case a drainage district is dissolved, as authorized in subsection (1) of this section, the funds on hand or to be collected shall be held by the treasurer until the distribution thereof is approved. The directors of the district shall petition the district court, of the county in which the petition to form the district was filed, for an order approving the distribution of such funds to the landowners as a dividend on the same basis as collected.

(3) Whenever the governing body of a metropolitan- or first-class city or a county shall find and determine by resolution that it is in the best interest of such city or county to assume the operation and maintenance of a drainage district, such drainage district shall transfer and convey its rights-of-way, real and personal property, and all of its assets to the city or county and the city or county shall assume the responsibilities and obligations of such district. Upon the adoption of such a resolution, the board of directors of the district shall pay all of the

outstanding obligations of the district, close out all of its affairs, and file a notice of dissolution of the district with the county clerk. Notwithstanding the provisions of subsection (2) of this section, all of the funds remaining after the obligations of the district are fully paid shall be transferred to the general fund of the metropolitan- or first-class city or the flood control levy fund of the county or city which has assumed the obligations and responsibilities of the district, and no dividends shall be paid to landowners upon such transfer of the assets, rights-of-way, and responsibilities of the district to a metropolitan- or first-class city or county as provided in this section.

(4) In the event that a transfer and conveyance of the real and personal property, assets, obligations, and responsibilities of the district is made to a metropolitan- or first-class city or a county or, as the case may be, to a city and a county, taxes shall no longer be collected by the district for the maintenance of the improvements of the district. The cost of maintaining the improvements shall be borne as a general obligation, or an obligation of the flood control fund, of the metropolitan- or first-class city or county, as the governing body of the city or county may determine or, if the improvements shall have been transferred to both a city and county and the city and county shall have entered into a contract as provided in subsection (5) of this section, the cost of maintaining the improvements shall be borne as provided in such contract.

(5) Notwithstanding the provisions of subsections (2) and (3) of this section, if both the governing body of a metropolitan- or first-class city and the governing body of the county shall find and determine by resolution that it is in the best interest of the city and the county, respectively, to assume the operation and maintenance of the same drainage district, and shall cause the city and county to enter into a contract between themselves concerning the responsibilities and obligations of the district to be assumed, and the rights-of-way, real and personal property, and all other assets of the district to be received, by the city and county, respectively, the board of directors of the district shall pay all of the outstanding obligations of the district, close out all of its affairs, file a notice of dissolution of the district with the county clerk, and transfer to the city and county, respectively, in accordance with the terms of such contract, the rights-of-way, real and personal property, and all other assets of the district, including, but not limited to, all funds remaining after the obligations of the district are fully paid. The city and county in such contract shall specify whether the funds thus to be transferred shall be transferred by the district to the general fund or the flood control fund of the city and county, respectively. No dividends shall be paid to landowners upon such transfer of the assets, rights-of-way, and responsibilities of the district as provided in this subsection.

436; Laws 1953, c. 99, § 1, p. 276; Laws 1971, LB 186, § 1; Laws 1980, LB 645, § 1.

Annotations

District is not ordinarily required to preserve ditches in perpetuity after once constructed. *Compton v. Elkhorn Valley Drainage Dist.*, 120 Neb. 94, 231 N.W. 685 (1930).

31-436.01. Drainage district; located in more than one county; inactive for five years; county board; dissolve; procedure; funds; distribution.

When any drainage district organized under the provisions of sections [31-401](#) to [31-408](#) is comprised of territory located in more than one county and is inactive for a period of at least five years, as determined by resolution of the county board of the county in which such district was organized, the county board may initiate action for dissolution of the district in the manner provided in subsection (1) of section [31-436](#). When any drainage district is dissolved as authorized in this section, any remaining funds of the district shall be distributed to the counties in which the district is situated in the same proportion as the area of the district in each county bears to the total area of the district, and shall be deposited in the general fund of the respective counties.

Source: Laws 1967, c. 187, § 3, p. 513.

31-437. Sections construed; limitation on powers.

None of the provisions of sections [31-401](#) to [31-450](#) shall be construed as repealing or in anywise modifying the provisions of any other act relating to the subject of drainage. Nothing therein contained shall be deemed to authorize any drainage district to divert the waters of any river, creek, stream, canal or ditch from its channel to the detriment of any person or persons having any interest in such river, creek, stream, canal or ditch or the waters therein, unless proper compensation be ascertained and paid therefor under the laws of this state relating to the taking of private property for public use. No change of the channel or location of any river or stream dividing counties shall operate to relieve either county from contribution to the building and repairing of any bridge over such river or stream, but said liability shall continue, notwithstanding work done under said sections may remove any river or stream from the boundary line between counties.

Source: Laws 1907, c. 153, § 31, p. 485; R.S.1913, § 1901; C.S.1922, § 1849; C.S.1929, § 31-537; R.S.1943, § 31-437.

Annotations

Right of landowner to recover compensation for taking of private property for public use is recognized. *Armbruster v. Stanton-Pilger Drainage Dist.*, 169 Neb. 594, 100 N.W.2d 781 (1960).

31-438. Enlarging district; procedure.

When it is deemed advisable by the board of directors of district to enlarge the boundaries thereof and the conditions mentioned in section [31-401](#) apply to such enlarged territory, a petition for the enlargement of the district, signed by a majority of the board of directors of the district and by ten owners of land within the territory proposed to be added to the district or, if there are less than twenty such owners, then by at least one-fourth of such owners, may be filed with the county clerk of the county where the original petition was filed. Upon the filing of a petition for the enlargement of a district, the county board, county surveyor, and county clerk of the county shall proceed in all respects as provided in sections [31-402](#) to [31-408](#), so far as applicable. The board of directors of the district, at the time of filing such petition for enlargement with the county clerk, may prescribe the conditions on which the additional territory is to be added, which conditions shall be based upon the work previously done by the district and with a view to equalizing assessments according to benefits, and such conditions shall be binding on the enlarged district if formed. Any person may appeal to the district court from the imposing of such conditions in the manner provided for appeals by section [31-412](#). The appeal shall be taken within thirty days from the time of completing the canvass of the votes of such election. The additional territory shall be deemed added to the district only if a majority of the votes voted thereon in the original district and a majority of the votes voted thereon in the proposed new territory shall each be in favor of such enlarged district. The board of directors of the original district shall constitute the board of directors of the enlarged district.

Source: Laws 1909, c. 150, § 1, p. 531; R.S.1913, § 1902; C.S.1922, § 1850; C.S.1929, § 31-538; R.S.1943, § 31-438; Laws 1989, LB 26, § 2.

31-439. Detaching territory; procedure.

Whenever the board of directors of any district deems it advisable to detach any portion of the district, which portion shall not have been apportioned for benefits, or having been apportioned, the amount having all been paid, the board of directors may submit at any annual election of the district the proposition of detaching such portion. If a majority of the votes cast on that question are in favor

of the proposition to detach, the same shall be deemed carried, and the territory shall thereupon cease to be within the drainage district, and shall stand in the same plight as if never attached. The officers of the district shall certify the same to the county clerk, who shall make a record thereof.

Source: Laws 1909, c. 150, § 1, p. 532; R.S.1913, § 1903; C.S.1922, § 1851; C.S.1929, § 31-539; R.S.1943, § 31-439.

31-440. Overlapping districts; assessments, how determined.

Two or more districts formed under the provisions of sections [31-401](#) to [31-408](#), or any district formed under the provisions of said sections, and any district formed under any other law of this state, may overlap each other. In such event any land in more than one district shall be assessable by each district for its equitable proportion of the benefits received from the improvements by such district.

Source: Laws 1909, c. 150, § 1, p. 533; R.S.1913, § 1904; C.S.1922, § 1852; C.S.1929, § 31-540; R.S.1943, § 31-440.

31-441. Changing voting place from county seat; procedure.

When a district has been formed, the board of directors shall have power by a three-fifths vote to declare the county seat an inconvenient place for holding elections, and shall certify the same to the proper county clerk. Thereupon all elections of the district other than those for enlarging the boundaries and those annual elections held pursuant to section [31-409.01](#) shall be held at a place to be designated each year by the board of directors and within the district, and the county clerk of the county previously having charge of the matter shall each year appoint three resident freeholders of the district to act as an election and canvassing board, and the parties so appointed, or if they fail to appear, any other parties chosen by electors present at the election, shall constitute the election and canvassing board, with the same powers given to the county clerk and his or her assistants by section [31-407](#).

Source: Laws 1909, c. 150, § 1, p. 533; R.S.1913, § 1905; C.S.1922, § 1853; C.S.1929, § 31-541; R.S.1943, § 31-441; Laws 1983, LB 191, § 4.

31-442. Fixing boundaries; procedure; petition; hearing.

Upon filing the petition mentioned in section [31-402](#), the county clerk shall designate and endorse thereon a day for the hearing and determination of said petition by the county board which shall not be less than fourteen days subsequent

to the filing of the petition, and the county board may pass on the petition and fix the boundaries at any time on or after the date fixed by the county clerk.

Source: Laws 1909, c. 150, § 1, p. 533; R.S.1913, § 1906; C.S.1922, § 1854; C.S.1929, § 31-542; R.S.1943, § 31-442.

31-443. Repealed. Laws 1951, c. 101, § 127.

31-444. Ditches; outlets beyond district boundaries; acquisition; procedure.

The drainage district may go beyond the limits of its district for an outlet to its drainage system, or for the purpose of conducting its main ditch or ditches, and may purchase, acquire, or condemn any needed real estate therefor. The procedure to condemn property shall be exercised in the manner set forth in sections [76-704](#) to [76-724](#).

Source: Laws 1909, c. 150, § 1, p. 534; R.S.1913, § 1908; C.S.1922, § 1856; C.S.1929, § 31-544; R.S.1943, § 31-444; Laws 1951, c. 101, § 75, p. 481.

31-445. Obstructing ditch, drain, or watercourse; penalty.

It shall be unlawful to obstruct in any manner the flow of water in any ditch, drain or watercourse constructed, improved or used by such drainage district, or to injure or disturb in any manner any dike, levee, or other work constructed in whole or in part, or owned by any drainage district. Any person violating any provision of this section shall be guilty of a misdemeanor, and shall upon conviction be punished by a fine not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding six months, and shall stand committed until the fine and costs are paid. He shall also be liable to the drainage district and to any person injured for all damages sustained by reason of such violation.

Source: Laws 1909, c. 150, § 1, p. 534; R.S.1913, § 1909; C.S.1922, § 1857; C.S.1929, § 31-545; R.S.1943, § 31-445.

31-446. Repealed. Laws 2001, LB 420, § 38.

31-447. Special assessment liens; vendor and purchaser; apportionment; filing with county clerk.

All special assessments provided for under sections [31-401](#) to [31-450](#) shall, as between vendor and purchaser, be a lien upon the real property involved from and upon the filing with the county clerk of the lists of the tracts, with the amount of

money chargeable to each, as provided for in section [31-424](#), or if the board of directors has elected the tax levy method of financing, all special assessments provided for under sections [31-401](#) to [31-450](#) shall, as between vendor and purchaser, be a lien upon the real property involved from and upon the filing with the county clerk of the property tax rolls and the taxable value of the taxable personal property of each taxpayer as provided for in section [31-411.02](#).

Source: Laws 1911, c. 145, § 1, p. 486; R.S.1913, § 1911; C.S.1922, § 1859; C.S.1929, § 31-547; R.S.1943, § 31-447; Laws 1969, c. 245, § 12, p. 903; Laws 1979, LB 187, § 133; Laws 1992, LB 1063, § 27; Laws 1992, Second Spec. Sess., LB 1, § 27.

31-448. Assessment of benefits to highways and public property; payment.

The assessment for benefits to public highways and streets and other public property that may have been benefited, shall be paid out of such fund of the county, city, village or other public corporation involved, as the officers thereof may deem most available for such purpose.

Source: Laws 1911, c. 145, § 1, p. 486; R.S.1913, § 1912; C.S.1922, § 1860; C.S.1929, § 31-548; R.S.1943, § 31-448.

31-449. Invalid assessment; reapportionment; relevy; how made.

If for any reason any apportionment of benefits or levy heretofore or hereafter made is or shall be invalid, a reapportionment of benefits and relevy shall be made, but no such reapportionment shall be made until at least ten days' notice by publication in a newspaper in each county involved shall be given of a hearing on such reapportionment, and notice shall be given of the same when made, and appeals may be taken therefrom as provided in the original apportionment. Such reapportionment and relevy shall be made on such terms and in such a manner as to do justice and equity to all persons and interests, having due regard to payments made, if any, under such invalid apportionment or levy.

Source: Laws 1911, c. 145, § 1, p. 486; R.S.1913, § 1913; C.S.1922, § 1861; C.S.1929, § 31-549; R.S.1943, § 31-449.

Annotations

Reassessment of benefits is provided for when original assessment is invalid. *Shanahan v. Johnson*, 170 Neb. 399, 102 N.W.2d 858 (1960).

Notice to landowners is required upon reapportionment of benefits. *Prucka v. Eastern Sarpy Drainage Dist.*, 157 Neb. 284, 59 N.W.2d 761 (1953).

31-450. Future districts; election; when held; notice; publication; limit of indebtedness; changing plans; abandonment.

In all districts hereafter organized, the board of directors, having first adopted detailed plans and specifications of the work proposed to be done, having made an estimate of the total cost of such contemplated improvement, and having filed such plans, specifications, and estimated cost with the clerk of the county having the largest area of land, shall then publish a notice once each week for three consecutive weeks in a newspaper in each county of an election to vote on the question of proceeding with such work and incurring the necessary liability in all cases in which the estimate of the contemplated work equals seven percent of the taxable value of the lands assessed for such improvement. The election shall be held in all respects as other elections provided for in sections [31-401](#) to [31-450](#). If a majority of the votes cast at such election are in favor of proceeding with the work and incurring the necessary liability, then the board, in proceeding therein, shall not incur indebtedness in a total sum in excess of the estimated cost so filed and published. No changes in such plans and specifications shall be made thereafter by the board which cost in the aggregate more than fifteen percent above such estimated cost. If a majority of the votes at such election vote against proceeding and incurring the liability, then the board shall abandon the work and shall thereupon certify to the county clerks a tax levy on all the tracts in the district by valuation sufficient to pay all the liabilities of the district, and the levy shall be entered and collected as other general taxes and used to pay the liabilities.

Source: Laws 1911, c. 145, § 1, p. 487; R.S.1913, § 1914; Laws 1921, c. 280, § 1, p. 924; C.S.1922, § 1862; C.S.1929, § 31-550; R.S.1943, § 31-450; Laws 1979, LB 187, § 134; Laws 1992, LB 719A, § 122.

Annotations

This section applies only when cost of contemplated work equals or exceeds twenty percent of the assessed value of the lands. *Chicago & N. W. Ry. Co. v. Payne Creek Drainage Dist.*, 148 Neb. 139, 26 N.W.2d 607 (1947).

This section indicates the necessity of first having adopted plans and specifications of the work proposed to be done and an estimate of the cost. *Haecke v. Eastern Sarpy County Drainage Dist.*, 141 Neb. 628, 4 N.W.2d 744 (1942).

One appealing from levy of assessment for alleged benefits by drainage district waives right to insist that no apportionment of benefits was made. *Rudersdorf Drainage District v. Chicago, R. I. & P. Ry. Co.*, 118 Neb. 43, 223 N.W. 639 (1929).

This section does not apply to drainage districts organized before its enactment. *Sandy v. Western Sarpy Drainage District*, 102 Neb. 713, 169 N.W. 268 (1918).

Section is constitutional. *State ex rel. Gantz v. Drainage District No. 1 of Merrick County*, 100 Neb. 625, 160 N.W. 997 (1916).

31-451. Repealed. Laws 1969, c. 138, § 28.

31-501. Sanitary drainage district in municipality; organization; petition for election.

Whenever one or more municipalities may be situated upon or near a stream which is bordered by lands subject to overflow from natural causes, or which is obstructed by dams or artificial obstructions so that the natural flow of waters is impeded so that drainage or the improvement of the channel of the stream will conduce to the preservation of public health, such municipalities and the surrounding lands deleteriously affected by the conditions of the stream, may be incorporated as a sanitary drainage district under sections [31-501](#) to [31-523](#) in the manner following: Any one hundred legal voters, residents within the limits of such proposed sanitary drainage district, may petition the county board of the county wherein they reside to cause the question to be submitted to the legal voters within the limits of such proposed sanitary drainage district whether they will organize as a sanitary drainage district under such sections. In the case of municipalities of less than one thousand inhabitants, as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, two-thirds of the legal voters, residents within the limits of such proposed sanitary drainage district, may petition the county board of the county wherein they reside to cause the question to be submitted to the legal voters within the limits of such proposed sanitary drainage district whether they will organize as a sanitary drainage district under such sections, and if a majority of those voting on the question are in favor of the proposition the district shall be organized.

Source: Laws 1891, c. 36, § 1, p. 287; R.S.1913, § 1922; Laws 1919, c. 142, § 1, p. 320; C.S.1922, § 1863; C.S.1929, § 31-601; R.S.1943, § 31-501; [Laws 2017, LB113, § 35](#).

Annotations

Sanitary District Act sustained as constitutional. *Whedon v. Wells*, 95 Neb. 517, 145 N.W. 1007 (1914).

31-502. Organization; petition; contents; territory included.

Such petition shall contain a definite description of the territory intended to be embraced in such district according to government survey, and the name of the proposed district; but no lands not included within any municipal corporation, or within three miles thereof, shall be included in any sanitary district, nor shall any lands not within an incorporated town be included within any sanitary district, unless the same be within three miles of the channel of such stream or of the area of lands subject to its overflow.

Source: Laws 1891, c. 36, § 1, p. 287; R.S.1913, § 1923; C.S.1922, § 1864; C.S.1929, § 31-602; R.S.1943, § 31-502.

31-503. Organization; hearing on petition; notice; publication; boundaries of district.

Upon the filing of such petition in the office of the county board it shall give notice in one or more newspapers daily, if there be a daily paper in said county, during twenty days prior to such meeting, of the time and place where the petition will be heard. At the time so fixed the board shall meet, and all persons in such proposed sanitary district shall have opportunity to be heard touching the location and boundary of the proposed district. Thereupon the county board shall by an order determine the boundaries of such district, whether described in such petition or otherwise.

Source: Laws 1891, c. 36, § 1, p. 288; R.S.1913, § 1924; C.S.1922, § 1865; C.S.1929, § 31-603; R.S.1943, § 31-503.

31-504. Organization; election; notice; publication; form of ballot; canvass; returns; vote required.

After such determination by the county board, or a majority thereof, it shall call a special election and submit to the legal voters of the proposed sanitary district the question of the organization of such district, and notice in a daily paper, if there be one, shall be given of such election twenty days prior thereto. At such election each legal voter resident within the proposed sanitary district shall have a right to cast a ballot with the words thereon, For sanitary district, or Against sanitary district, and the ballots cast shall be received, returned and canvassed in the same manner as upon county elections. The result shall be entered of record, and if a majority of the votes cast be in favor of the proposed district, such proposed district shall be deemed an organized sanitary district under sections [31-501](#) to [31-523](#).

Source: Laws 1891, c. 36, § 1, p. 288; R.S.1913, § 1925; C.S.1922, § 1866; C.S.1929, § 31-604; R.S.1943, § 31-504.

31-505. Sanitary district trustees; election; organization; officers; corporate powers.

Upon the organization of any such sanitary district the county board shall call an election for the election of trustees, who shall hold their offices until their successors are elected and qualified. Where such sanitary district does not contain a city of more than forty thousand inhabitants there shall be three trustees and where such sanitary district contains a city of more than forty thousand inhabitants there shall be five trustees. In districts having three trustees, at the first general state election held in November after the organization of the district, there shall be elected one trustee for a term of two years and two trustees for a term of four years, and thereafter their respective successors shall be elected for a term of four years at the general state election held in November immediately prior to the expiration of their respective terms. In districts having five trustees, at the first general state election held in November after the organization of the district, there shall be elected two trustees for a term of two years and three trustees for a term of four years, and thereafter their respective successors shall be elected for a term of four years at the general state election held in November immediately prior to the expiration of their respective terms. At the first meeting after election of one or more members, the board shall elect one of their number president and, in case they fail to elect, then the member who at his election received the highest number of votes shall be president of such board. Such district shall be a body corporate and politic by name of Sanitary District of, with power to sue, be sued, contract, acquire and hold property, and adopt a common seal.

Source: Laws 1891, c. 36, § 2, p. 288; R.S.1913, § 1926; C.S.1922, § 1867; C.S.1929, § 31-605; Laws 1943, c. 75, § 3, p. 259; R.S.1943, § 31-505; Laws 1949, c. 81, § 1, p. 214.

31-506. Trustees; general powers; clerk; engineer; publication of proceedings.

The board of trustees shall elect one of their members clerk and have the power to appoint, employ and pay an engineer, who shall be removable at pleasure. The clerk may be paid not to exceed three hundred dollars per year by said board. The board shall have power to pass all necessary ordinances, orders, rules and regulations for the necessary conduct of its business and to carry into effect the objects for which such sanitary district is formed. Immediately after each regular and special meeting of said board, it shall cause to be published, in one newspaper of general circulation in the district, a brief statement of its proceedings, including an itemized list of bills and claims allowed, specifying the amount of each, to whom paid and for what purpose; *Provided*, no publication shall be required unless

the same can be done at an expense not exceeding one-third of the legal rate for advertising notices.

Source: Laws 1891, c. 36, § 3, p. 289; R.S.1913, § 1927; C.S.1922, § 1868; C.S.1929, § 31-606; Laws 1943, c. 76, § 1, p. 261; R.S.1943, § 31-506.

Cross References

For legal rate for publishing notices, see section [33-141](#).

31-507. Trustees; drainage powers.

The board of trustees of any sanitary district organized under sections [31-501](#) to [31-523](#) shall have power to provide for the drainage of such district by laying out, establishing, maintaining and constructing one or more channels, drains or ditches for carrying off and disposing of the drainage and sewage of such district in a satisfactory manner, and for such purpose to straighten, widen, or deepen the channel of any stream, or remove any dam, so as to quicken and improve the flow of any stream, or effect satisfactory and efficient drainage.

Source: Laws 1891, c. 36, § 4, p. 289; R.S.1913, § 1928; C.S.1922, § 1869; Laws 1927, c. 144, § 1, p. 390; C.S.1929, § 31-607; R.S.1943, § 31-507.

31-507.01. Connection with sanitary sewer; permit required; violation; penalty.

It shall be unlawful for any person to connect any property to a sanitary sewer, maintained by any sanitary drainage district or which has been or may hereafter be acquired from such district by the municipality located within such district and which is being maintained by such municipality, without first having applied for and obtained a permit from such district or municipality to establish such connection. The issuance of such a permit may be conditioned upon the payment of a deferred assessment as provided in section [31-514](#). Each day that a connection made unlawful by this section continues shall be a separate violation of this section. Any person violating the provisions of this section shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not less than twenty-five dollars nor more than one hundred dollars for each violation.

Source: Laws 1957, c. 115, § 1, p. 395.

31-508. Ditches constructed from cities of 100,000 to 300,000 population; improvement beyond the district; plan and estimate; duty of Department of Natural Resources.

If a sanitary drainage district has constructed one or more channels, drains, or ditches from a city having a population of more than one hundred thousand and less than three hundred thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census to or beyond the boundaries of the district downstream and there remains from the lower terminus of such improvement a portion or continuation of the watercourse unimproved, the Department of Natural Resources shall investigate the conditions of such watercourse, and if the department determines that further improvement in such watercourse downstream is for the interest of lands adjacent to such watercourse below the point of the improvement, the department shall file a plan of such improvement in the office of the county clerk of each of the counties in which any of the lands to be benefited are situated and in which any portion of the watercourse to be improved is located. Such plan shall describe the boundaries of the district to be benefited and shall contain an estimate of the benefits that would accrue to the sanitary district by reason of such improvement as well as the cost thereof and an estimate of the special benefits that would accrue to lands adjacent to the watercourse by reason of improved drainage, such estimate being detailed as to the various tracts of land under separate ownership as shown by the records of the county in which such lands are situated.

Source: Laws 1927, c. 144, § 1, p. 390; C.S.1929, § 31-607; R.S.1943, § 31-508; Laws 1949, c. 81, § 2, p. 214; Laws 1969, c. 248, § 1, p. 906; [Laws 2000, LB 900, § 71](#); [Laws 2017, LB113, § 36](#).

31-509. Ditches constructed from cities of 100,000 to 300,000 population; improvement beyond the district; publication of notices; election; vote required; effect of negative vote; special assessment.

When the Department of Natural Resources files a report and estimate, the county clerk of such county shall publish a notice once each week for three weeks in a newspaper published in the county seat of each of the counties having land within the sanitary drainage district, which notice shall state the filing of the report and estimate, the boundaries of the district to be benefited, that an election will be held at the office of the county clerk between the hours of 8 a.m. and 6 p.m. on a day named in the notice, and that at the election the question of the formation of a sanitary drainage district to include the area described in the report will be determined. The election shall be held in accordance with sections [31-406](#) to [31-408](#), except that no directors shall be elected. If a majority vote for the creation of a district based on acreage represented, the sanitary drainage district shall have jurisdiction to make the improvements recommended by the Department of Natural

Resources and to levy a special assessment on the lands specially benefited. If a majority vote against the creation of a district, the work shall not be done.

Source: Laws 1927, c. 144, § 1, p. 390; C.S.1929, § 31-607; R.S.1943, § 31-509; Laws 1961, c. 138, § 5, p. 399; [Laws 2000, LB 900, § 72](#); [Laws 2015, LB361, § 51](#).

Annotations

Under former law, that part of statute precluding recovery of claim for damages is unconstitutional. *Cooper v. Sanitary Dist. No. 1*, 146 Neb. 412, 19 N.W.2d 619 (1945).

31-510. Borrowing money; bonds; interest; limit of indebtedness.

Such district may borrow money for corporate purposes and issue bonds therefor, but it shall not become indebted in any manner or for any purpose to an amount in the aggregate in excess of one and four-tenths percent of the taxable valuation of property in the district for county purposes.

Source: Laws 1891, c. 36, § 6, p. 290; R.S.1913, § 1929; C.S.1922, § 1870; C.S.1929, § 31-608; R.S.1943, § 31-510; Laws 1969, c. 51, § 93, p. 332; Laws 1979, LB 187, § 135; Laws 1992, LB 719A, § 123.

Annotations

Sanitary districts may borrow money for corporate purposes. *Lang v. Sanitary District of Norfolk*, 160 Neb. 754, 71 N.W.2d 608 (1955).

31-511. Bonded indebtedness; election required; manner of submission.

At the time of or before incurring any bonded indebtedness the question shall be submitted to the people in the manner provided by law in cases of borrowing money for internal improvements.

Source: Laws 1891, c. 36, § 7, p. 290; R.S.1913, § 1930; C.S.1922, § 1871; C.S.1929, § 31-609; R.S.1943, § 31-511.

Annotations

To carry bond issue, favorable vote of two-thirds of electors was required. *Lang v. Sanitary District of Norfolk*, 160 Neb. 754, 71 N.W.2d 608 (1955).

31-512. Contracts for work; how let; notice; rejection of bids.

All contracts for work to be done, the expense of which is more than fifteen hundred dollars, shall be let to the lowest responsible bidder, upon notice, of not less than twenty days, of the terms and conditions of the contract to be let. The board of trustees shall have power to reject any and all bids and readvertise for the letting of such work.

Source: Laws 1891, c. 36, § 8, p. 290; R.S.1913, § 1931; C.S.1922, § 1872; C.S.1929, § 31-610; R.S.1943, § 31-512; Laws 1959, c. 128, § 1, p. 464.

31-513. Annual tax levy; limit; certification to county clerk; collection; disbursement of funds.

(1) The board of trustees may levy and collect annually taxes for corporate purposes upon property within the limits of such sanitary district to the amount of not more than three and five-tenths cents on each one hundred dollars upon the taxable value of the taxable property of such district.

(2) The board of trustees shall, on or before September 20 of each year, certify the amount of tax to be levied to the county clerk who shall place the proper levy upon the county tax list, and the tax shall be collected by the county treasurer in the same manner as county taxes.

(3) The tax money collected by the levy shall be used exclusively for the purpose or purposes set forth in subsection (1) of this section. The county treasurer shall disburse the taxes on warrants of the board of trustees, and in respect to such fund, the county treasurer shall be ex officio treasurer of the sanitary district.

Source: Laws 1891, c. 36, § 9, p. 290; R.S.1913, § 1932; C.S.1922, § 1873; C.S.1929, § 31-611; Laws 1943, c. 73, § 1, p. 255; R.S.1943, § 31-513; Laws 1947, c. 113, § 1, p. 308; Laws 1951, c. 97, § 1, p. 266; Laws 1953, c. 287, § 51, p. 960; Laws 1955, c. 114, § 1, p. 305; Laws 1969, c. 248, § 2, p. 907; Laws 1969, c. 145, § 32, p. 692; Laws 1979, LB 187, § 136; Laws 1992, LB 1063, § 28; Laws 1992, Second Spec. Sess., LB 1, § 28; Laws 1993, LB 734, § 36; Laws 1995, LB 452, § 9.

31-514. Special assessments; power of board of trustees; limit; improvement out of district; deferred assessment; charges; payment.

The board of trustees shall have the power to defray the expenses of any improvement made by it in the execution of the powers hereby granted, by special assessment, by general taxation, or partly by special assessment and partly by general taxation, as it may determine by order. It shall constitute no defense to any tax or special assessment that the improvement, for which the same is imposed, lies partly outside of the limits of such district. No property shall be specially assessed more than it is benefited by the improvement for which the assessment is levied; *Provided*, that a deferred assessment, not exceeding the pro rata cost of the construction of sanitary sewers, may be made and collected solely in the form of a connection charge, if and when property not specially benefited is later connected to such sewer. The amount of such charge shall be fixed by the board of trustees at the same time such special assessments are made. Such deferred assessments shall not constitute a lien. The board of trustees shall make a detailed report of said deferred assessments and file such report with the county clerk in the county where the property is located.

Source: Laws 1891, c. 36, § 10, p. 291; R.S.1913, § 1933; C.S.1922, § 1874; Laws 1927, c. 144, § 2, p. 391; C.S.1929, § 31-612; Laws 1933, c. 136, § 26, p. 538; C.S.Supp.,1941, § 31-612; R.S.1943, § 31-514; Laws 1955, c. 115, § 1, p. 307.

31-515. Special assessments; levy; procedure; improvements recommended by Department of Natural Resources.

The proceedings for imposing of special assessment by the board of trustees shall be, as nearly as may be, according to those for special assessments by the mayor and council under the law governing cities of the first class. If improvements are recommended by the Department of Natural Resources and a sanitary drainage district is formed adjacent to a watercourse previously improved above such district pursuant to sections [31-508](#) and [31-509](#), the board of trustees shall advertise for bids for the construction of such improvements as are recommended by the department and in accordance with plans recommended by the department.

Source: Laws 1891, c. 36, § 10, p. 291; R.S.1913, § 1933; C.S.1922, § 1874; Laws 1927, c. 144, § 2, p. 391; C.S.1929, § 31-612; Laws 1933, c. 136, § 26, p. 538; C.S.Supp.,1941, § 31-612; R.S.1943, § 31-515; [Laws 2000, LB 900, § 73.](#)

Cross References

Special assessments in cities of the first class, see section [16-666](#).

31-516. Improvements recommended by Department of Natural Resources; board of trustees as board of equalization; notice of meeting; appeal.

Upon the completion of the improvement, notice shall be given that the trustees will sit as a board of equalization, at a day and hour in such notice stated, for the purpose of equalizing the assessments of such portion of the cost of such improvement as the report of the Department of Natural Resources finds to represent the special benefits of the land the drainage of which such improvements would improve. At such hearing such board of equalization shall hear all complaints with reference to the assessments proposed under the findings of the department. The trustees sitting as a board of equalization shall have power to increase or decrease such special assessments to the end that the property shall be assessed its equitable portion of the cost of such improvement, but not exceeding in the aggregate the percentage of the total cost recommended by the department to be assessed against such property and not exceeding in any case the actual special benefits accruing to such land. Notice of such meeting of the board of equalization shall be given by publishing a notice thereof in a paper, published in the county seat in each of the counties where any of the lands to be assessed are situated, once each week for three consecutive weeks. Appeals from the findings of such board of equalization may be taken in the manner provided for appeals from assessments of drainage districts organized under sections [31-401](#) to [31-450](#).

Source: Laws 1927, c. 144, § 2, p. 392; C.S.1929, § 31-612; Laws 1933, c. 136, § 26, p. 539; C.S.Supp.,1941, § 31-612; R.S.1943, § 31-516; [Laws 2000, LB 900, § 74.](#)

Cross References

Appeals, see section [31-412](#).

31-517. Improvements; costs borne by district.

All costs of the improvement other than the costs to be covered by special assessments as finally determined shall be borne by the sanitary district.

Source: Laws 1927, c. 144, § 2, p. 392; C.S.1929, § 31-612; Laws 1933, c. 136, § 26, p. 539; C.S.Supp.,1941, § 31-612; R.S.1943, § 31-517.

31-518. Delinquent assessments; interest; limit.

No special assessment levied for the purpose aforesaid shall draw interest at a rate exceeding nine percent per annum from the date of delinquency until paid.

Source: Laws 1927, c. 144, § 2, p. 392; C.S.1929, § 31-612; Laws 1933, c. 136, § 26, p. 539; C.S.Supp.,1941, § 31-612; R.S.1943, § 31-518.

31-519. Special assessments; payment; collection.

Where any special assessment is made under sections [31-501](#) to [31-523](#), the order making such assessment may provide that it be divided into equal annual installments, not more than twenty in number with interest at seven percent, payable on the whole amount unpaid annually with the installment that year falling due, and in such case the several installments of principal and interest shall be collected and payment enforced in the same manner as delinquent taxes, and sale of the land for a delinquent installment shall not be a discharge of the premises from installments subsequently to fall due; *Provided, however*, in case of special assessments, the owner of the premises may pay the entire assessment imposed at any time within ninety days after such special assessment is made.

Source: Laws 1891, c. 36, § 11, p. 291; R.S.1913, § 1934; C.S.1922, § 1875; C.S.1929, § 31-613; R.S.1943, § 31-519.

Cross References

Collection of delinquent real estate taxes, see Chapter 77, articles 17 and 18.

31-520. Property; right-of-way; how procured.

Such sanitary district may acquire by purchase, condemnation, or otherwise, real or personal property, right-of-way, and privilege, within or without its corporate limits, necessary for its corporate purposes.

Source: Laws 1891, c. 36, § 5, p. 290; R.S.1913, § 1935; C.S.1922, § 1876; C.S.1929, § 31-614; R.S.1943, § 31-520.

31-521. Power of eminent domain; procedure.

Whenever the board of trustees of any sanitary district shall by order determine to make any public improvement under sections [31-501](#) to [31-523](#) which shall require that private property be taken or damaged, the district may exercise the power of eminent domain for that purpose. The procedure to condemn property shall be exercised in the manner set forth in sections [76-704](#) to [76-724](#).

Source: Laws 1891, c. 36, § 12, p. 292; R.S.1913, § 1936; C.S.1922, § 1877; C.S.1929, § 31-615; R.S.1943, § 31-521; Laws 1951, c. 101, § 76, p. 481.

31-522. Repealed. Laws 1951, c. 101, § 127.

31-523. Right-of-way; cost; assessment; annulment; reassessment.

In the making of any special assessment for any improvement which requires the taking or damage of property, the cost of acquiring the right to take or to damage such property may be estimated and included in the assessment as a part of the cost of making such improvement. In the event that any tax or assessment levied by such trustees is by any court annulled for informality or irregularity, the same may be reassessed and reimposed by the board of trustees upon the same property, or other property, as may be equitable.

Source: Laws 1891, c. 36, § 14, p. 292; R.S.1913, § 1938; C.S.1922, § 1879; C.S.1929, § 31-617; R.S.1943, § 31-523.

Annotations

Reassessment of benefits is provided for when original assessment is invalid. *Shanahan v. Johnson*, 170 Neb. 399, 102 N.W.2d 858 (1960).

31-524. Municipalities adjacent to district; power of trustees; survey; report to county board.

Whenever a sanitary drainage district shall have been formed under sections [31-501](#) to [31-523](#), and trustees thereof have been elected, if such trustees find that municipalities, including cities of the second class and villages, in whole or in part outside of the boundaries of such sanitary district and depending upon the same watercourse or its tributaries for drainage, are inadequately supplied with sewage systems or sewage disposal plants, and that the absence thereof is detrimental to the sanitary conditions of the district or to such municipalities within the same watershed or lands adjacent thereto, the trustees may by resolution determine the existence of such conditions and shall thereupon cause a survey to be made of the territory affected by said conditions and the boundaries of such territory. The trustees shall thereupon file with the county board of the county wherein such district is situated a definite description of the territory affected by said conditions and the boundaries thereof.

Source: Laws 1919, c. 240, § 1, p. 1000; C.S.1922, § 1880; C.S.1929, § 31-618; R.S.1943, § 31-524.

31-525. Municipalities adjacent to district; inclusion; election; effect of affirmative vote.

Upon the filing of such description and boundaries with the county board, the county board shall call an election within the entire area and submit to the qualified voters therein the question of the enlargement of such district to include all the territory within the proposed new boundaries. If at such election a majority of the combined and total vote cast by the qualified voters residing within the original territory of such sanitary drainage district, and the territory proposed to be added thereto, shall be in favor of such enlargement, such district as so enlarged shall be deemed an organized sanitary drainage district and the trustees of such original district shall be the trustees of such enlarged district until their successors are duly elected and qualified.

Source: Laws 1919, c. 240, § 2, p. 1001; C.S.1922, § 1881; C.S.1929, § 31-619; R.S.1943, § 31-525.

31-526. Municipalities adjacent to district; inclusion; election; how conducted.

Such election shall be held in the same manner as elections for the original organization of a sanitary drainage district under sections [31-501](#) to [31-523](#).

Source: Laws 1919, c. 240, § 3, p. 1001; C.S.1922, § 1882; C.S.1929, § 31-620; R.S.1943, § 31-526.

31-527. Powers of sanitary district trustees over enlarged district; flood control.

The enlarged district and the trustees thereof shall possess all the powers and perform all the duties throughout such enlarged territory previously vested in and imposed upon said district, and the trustees thereof within the original territory of said sanitary drainage district; and no proceedings taken under sections [31-525](#) and [31-526](#) for the enlargement of any sanitary drainage district shall be construed as impairing or suspending in any manner the powers and jurisdiction of any sanitary drainage district previously existing or of the trustees thereof. The trustees of such sanitary district shall have power by resolution to define the flood area of any stream or watercourse within said district and to exclude from such area the construction of buildings or other improvements which, if constructed, might interfere with the flow of flood waters. To determine such flood area the trustees shall cause a survey to be made of the watershed in the vicinity and highwater marks reached by floods in the past, and compute the volume of water flowing in the valley under flood conditions and, based thereon, together with such other engineering data as may be available, specify the area requisite for confining flood waters within reasonable dike embankments set back from the natural banks of the

stream. Upon such area having been determined the district may acquire either a fee title to the property within such area or a perpetual easement therein for carrying flood waters and the construction of dikes, by purchase or condemnation proceedings. Any property within such flood area owned by the state or governmental subdivision of the state shall be available for the purpose of establishing and maintaining suitable control of flood waters without compensation for such use.

Source: Laws 1919, c. 240, § 4, p. 1001; C.S.1922, § 1883; Laws 1925, c. 129, § 1, p. 341; C.S.1929, § 31-621; R.S.1943, § 31-527.

31-528. Enlarged district; power to maintain adequate sewerage facilities; damages; payment to municipalities.

In addition to the powers of said district and of the trustees thereof as originally vested, such enlarged district and the trustees thereof shall have power and jurisdiction to provide and maintain adequate and suitable sewerage systems for the entire district; to provide and maintain sewage disposal or reduction plants; to enter upon any street, alley or public place in any municipality, city or village, within the limits of such enlarged district for the laying of sewers and the construction of sewerage systems. The district shall pay to such municipality, city or village, upon claim being filed therefor, the amount of any damage to any pavement or any public improvement. Such municipality, city or village shall not be entitled to any compensation for the use of its streets, alleys or public places except for damage to such public improvements.

Source: Laws 1919, c. 240, § 5, p. 1002; C.S.1922, § 1884; C.S.1929, § 31-622; R.S.1943, § 31-528.

31-529. Enlarged district; power to contract with cities for use of city sewers.

Such enlarged sanitary drainage district shall have power to enter into contracts with any or all municipalities wholly or partly within its territorial boundaries for the use in whole or in part of any sewerage system or sewerage mains in operation in said municipality or to be constructed or operated by such municipality.

Source: Laws 1919, c. 240, § 6, p. 1002; C.S.1922, § 1885; C.S.1929, § 31-623; R.S.1943, § 31-529.

31-530. Enlarged district; power to alter city sewers connecting with drainage district sewers.

Such enlarged sanitary drainage district shall have power to take charge of, reconstruct, divert, alter or disconnect any main line sewer in any municipality, city or village, or unite the same with the sewerage system of the district, or to use any appropriate means deemed necessary by the trustees of the district to establish and maintain proper and adequate sanitary and sewerage systems for the district.

Source: Laws 1919, c. 240, § 7, p. 1002; C.S.1922, § 1886; C.S.1929, § 31-624; R.S.1943, § 31-530.

31-531. Enlarged district; eminent domain; borrowing money; bonds; interest; issuance; election.

Such enlarged district shall have the power of eminent domain under the same conditions as the original sanitary drainage district. Such enlarged district may borrow money for corporate purposes and issue bonds therefor, but it shall not become indebted in any manner to an amount exceeding one and four-tenths percent of the taxable valuation of the property in the district for county purposes. Before incurring any indebtedness, the question shall be submitted to the certified voters of the district in the manner provided by law for submitting the question of bond issue by the county for internal improvements.

Source: Laws 1919, c. 240, § 8, p. 1002; C.S.1922, § 1887; C.S.1929, § 31-625; R.S.1943, § 31-531; Laws 1969, c. 51, § 94, p. 332; Laws 1979, LB 187, § 137; Laws 1992, LB 719A, § 124; [Laws 2001, LB 420, § 25.](#)

Cross References

Issuance of bonds by county for internal improvements, see section [10-401](#) et seq.

31-532. Enlarged district; procedure for apportioning benefits.

Such enlarged sanitary drainage district shall have power to defray the expenses of any improvement made by it and to defray the expenses of carrying into execution the powers hereby granted by general taxation or by special assessment or partly by special assessment and partly by general taxation as the trustees may by order determine. It shall constitute no defense to any tax or special assessment that the improvements for which the same is imposed lies partly or wholly outside the limits of such district. No property shall be assessed more than it is benefited by the improvement for which the assessment is levied. The proceedings for apportioning the benefits and imposing a special assessment by the trustees of such enlarged district shall be the same as those for apportioning benefits and levying of special assessments in sanitary drainage districts organized under sections [31-401](#) to [31-449](#).

Source: Laws 1919, c. 240, § 9, p. 1003; C.S.1922, § 1888; C.S.1929, § 31-626; R.S.1943, § 31-532.

31-533. Enlarged district; trustees; salary.

The trustees shall each receive as his salary the sum of seven hundred dollars per annum, payable quarterly.

Source: Laws 1919, c. 240, § 10, p. 1003; Laws 1921, c. 108, § 1, p. 382; C.S.1922, § 1889; C.S.1929, § 31-627; R.S.1943, § 31-533; Laws 1953, c. 100, § 1, p. 277.

31-533.01. Repealed. Laws 1961, c. 286, § 1.

31-534. Trustees; bond; amount; conditions; payment of premium.

Each trustee of any such district shall, prior to entering upon his office, execute and file with the county clerk of the county in which said district, or the greater portion of the area thereof, is located, his bond, with one or more sureties, to be approved by the county clerk, running to the State of Nebraska, in the penal sum of five thousand dollars, conditioned for the faithful performance by said trustee of his official duties and the faithful accounting by him for all funds and property of the district that shall come into his possession or control during his term of office. The premium, if any, on any such bond shall be paid out of the funds of the district. Suit may be brought on said bond by any person, firm or corporation that has sustained loss or damage in consequence of the breach thereof.

Source: Laws 1921, c. 108, § 2, p. 383; C.S.1922, § 1890; C.S.1929, § 31-628; R.S.1943, § 31-534.

31-535. Repealed. Laws 1981, LB 497, § 1.

31-536. Sanitary district; activities; discontinuance; election.

Any sanitary district organized under the provisions of sections [31-501](#) to [31-534](#), may discontinue its activities and work as an independent governmental subdivision of the state whenever the question of such discontinuance shall be submitted to and ratified by the electors of said district. The county board of commissioners or supervisors of a county in which a sanitary drainage district is located shall submit the question of discontinuance to the electors of the district any time after January 1, 1946, when there is filed with them either a resolution, by a majority of the district trustees, or a petition, by qualified electors of the district

equal in number to five percent of the votes cast for Governor in the district at the last preceding general election, asking for such submission.

Source: Laws 1941, c. 56, § 1, p. 255; C.S.Supp.,1941, § 31-630; Laws 1943, c. 75, § 1, p. 258; R.S.1943, § 31-536.

31-537. Sanitary district; activities; discontinuance; election; notice; form of ballot.

Upon filing such a resolution of the trustees or such a petition of the qualified electors with it, it shall be the duty of the county board, at least twenty days prior to the next state election, either primary or general, to submit at such election, after having published a notice of such submission, the question of the discontinuance of the activities and work of such sanitary district to the electors of such sanitary district in the following form: Shall Sanitary Drainage District No. discontinue its activities and work in order that the same shall be carried on by other governmental subdivisions, wholly or partly within the district, as provided by law? The ballots shall be prepared, the election conducted, and the vote canvassed as in county elections.

Source: Laws 1941, c. 56, § 2, p. 255; C.S.Supp.,1941, § 31-631; Laws 1943, c. 75, § 2, p. 258; R.S.1943, § 31-537.

31-538. Sanitary district; activities; discontinuance; effect on powers of trustees and property rights.

The result of such election shall be certified to the county board of the county in which such district is located, and if at such election a majority of the qualified electors actually voting in such sanitary district shall vote in favor of the discontinuance of the activities and work of the district, the trustees of such district shall thereupon cease the performance of their duties as such trustees, and the county board of the county in which such district is located shall thereupon act as trustees ex officio of the district and shall have all the powers, rights and authority previously vested by law in the trustees of the district, but without additional compensation; *Provided*, all tangible property within the territorial limits of any city or village within such district, and any tangible property serving a particular city or village, such as a sanitary sewage treatment plant, and which could be operated and maintained by the particular city or village so served, shall be transferred and assigned to such city or village which shall, upon an acceptance of such transfer or assignment by its council or board of trustees or other local governing body, be thereafter wholly operated and maintained out of funds appropriated and levied by such city or village.

Source: Laws 1941, c. 56, § 3, p. 256; C.S.Supp.,1941, § 31-632; R.S.1943, § 31-538.

31-539. Sanitary district; activities; discontinuance; effect on contract rights.

All lawful claims, rights and demands against such a district, and all contractual obligations of such a district, existing in any person at the time of discontinuance of the activities and work of such district, shall continue to subsist in such person and shall remain the charge and obligation of the sanitary district; and all claims and demands in favor of such district at the time of the discontinuance of its activities and work, shall subsist in its favor and may be collected in the same manner as might have been theretofore done by the district.

Source: Laws 1941, c. 56, § 4, p. 256; C.S.Supp.,1941, § 31-633; R.S.1943, § 31-539.

31-540. Sanitary district; activities; discontinuance; effect on power to levy taxes.

For the purpose of discharging obligations of such district incurred prior to the discontinuance of its activities and work as provided in sections [31-501](#) to [31-534](#), such district shall continue to have the power to levy taxes as provided in such sections, and thereafter the district shall have the power to levy and collect general taxes in an amount not to exceed one and seven-tenths cents on each one hundred dollars upon the taxable value of all the taxable property in such district and shall have the power to levy special assessments in the manner and to the extent previously vested in such district.

Source: Laws 1941, c. 56, § 5, p. 256; C.S.Supp.,1941, § 31-634; R.S.1943, § 31-540; Laws 1953, c. 287, § 52, p. 961; Laws 1979, LB 187, § 138; Laws 1992, LB 719A, § 125.

31-541. Sanitary district; activities; discontinuance; powers of county board; succession.

The county board of the county within which such district is located shall take possession of all rights and personal property, books, papers and records of such district, and shall discharge the duties within the territorial limits of such district imposed by law upon the district. For the discharge of such services the county board may employ such officers, servants and agents as may be necessary in the manner provided by law.

Source: Laws 1941, c. 56, § 6, p. 257; C.S.Supp.,1941, § 31-635; R.S.1943, § 31-541.

Annotations

In case of discontinuance of district, county board discharges duties of district. *Lang v. Sanitary District of Norfolk*, 160 Neb. 754, 71 N.W.2d 608 (1955).

31-542. Sanitary district; activities; discontinuance; trustees subsequently elected; powers and duties.

Trustees elected subsequent to the adoption of the resolution or the petition provided for in section [31-536](#) shall be bound thereby, and shall surrender their office as provided for in section [31-538](#).

Source: Laws 1941, c. 56, § 7, p. 257; C.S.Supp.,1941, § 31-636; R.S.1943, § 31-542.

31-542.01. Sanitary district; discontinuance; contract with city or village; public hearing; notice.

(1) Notwithstanding any of the provisions of Chapter 31, article 5, the board of trustees of any sanitary district heretofore or hereafter organized under any of such sections, which includes within its boundaries any incorporated city or village, shall have full power without further authorization to contract with any such city or village for said district to discontinue the operation of any sanitary sewer system located within or serving such city or village, including any and all sewage treatment works or plants, and to convey, sell or otherwise transfer all of the properties used or useful for that purpose to any such city or village upon such terms and conditions as may be agreed upon between such city or village and such sanitary district. The sanitary district shall thereafter cease to have the authority to maintain, operate, construct, or assume jurisdiction of any sanitary sewers or treatment works within such city or village and the area served by such sanitary sewer system; *Provided*, that nothing contained in this section shall be construed as prohibiting such sanitary district from constructing, maintaining, and operating a sanitary sewer system or any part thereof in the area outside of the corporate limits of such city or village, pursuant to the provisions of Chapter 31, article 5.

(2) Before exercising any of the powers contained in subsection (1) of this section, the board of trustees of any such sanitary district shall hold a public hearing. At such public hearing it shall hear any and all persons interested with respect to: (a) Whether the proposed transfer of property and jurisdiction will eliminate duplication and promote efficiency in the collection and treatment of

sewage in the area to be served by the existing sewerage system of such city or village and the sewage facilities which it is proposed be transferred to such city or village; (b) whether such city or village is capable of operating, maintaining, improving, financing, and otherwise providing for sewage collection and treatment in the geographic area in question; and (c) any other matters relating to the merits of the proposed transfer as they will affect the health and welfare of the inhabitants of the area to be served. Notice of such public hearing of the board of trustees shall be given by publication in a newspaper of general circulation in said district at least ten days prior to such hearing.

Source: Laws 1957, c. 114, § 1, p. 393; Laws 1961, c. 138, § 6, p. 399.

31-543. Repealed. Laws 1989, LB 31, § 1.

31-544. Repealed. Laws 1989, LB 31, § 1.

31-545. Repealed. Laws 1989, LB 31, § 1.

31-546. Repealed. Laws 1989, LB 31, § 1.

31-547. Repealed. Laws 1989, LB 31, § 1.

31-548. Repealed. Laws 1989, LB 31, § 1.

31-549. Sanitary district; extend beyond boundaries of municipality; inclusion by resolution of trustees.

Whenever a sanitary drainage district shall have been formed under sections [31-501](#) to [31-523](#), and trustees thereof have been elected, if such trustees find that a municipality formerly within the boundaries of such sanitary district has grown and enlarged its corporate limits beyond the boundaries of such sanitary district, the board of trustees may by resolution include the whole of the corporate area of such municipality within its boundaries by enlarging same.

Source: Laws 1955, c. 116, § 1, p. 308.

31-550. Sanitary district; enlarged district; resolution; file with county clerk.

The board of trustees shall cause a description of such enlarged district together with a certified copy of the resolution adopted to be filed with the county board of the county wherein such district is situated, and such district as so enlarged shall be deemed an organized sanitary drainage district and the trustees of such original

district shall be the trustees of such enlarged district until their successors are duly elected and qualified.

Source: Laws 1955, c. 116, § 2, p. 309.

31-551. Sanitary districts; natural resources district; contract for services; transfer of assets; assignment of obligations.

Notwithstanding any of the provisions of Chapter 31, article 5, the board of trustees of any sanitary district heretofore or hereafter organized under any of such sections which includes within its boundary or partially within its boundary a natural resources district, shall have full power without further authorization to contract with such natural resources district, for said sanitary district to discontinue all its activities, including the operation of any and all drainage systems located within or serving such sanitary district and including the right to construct sewers lying outside the limits of any corporate city or village, all as is provided for in said Chapter 31, article 5. Said contract may also authorize the transfer of all properties and assets used or useful by said sanitary district, and the assignment of all obligations and liabilities of said sanitary district, to such natural resources district upon such terms and conditions as may be agreed upon between such natural resources district and such sanitary district.

Source: Laws 1961, c. 140, § 1, p. 405.

31-552. Sanitary districts; transfer of assets; hearing; notice.

Before exercising any of the powers contained in section [31-551](#), the board of trustees of any such sanitary district shall hold a public hearing. At such public hearing it shall hear any and all persons interested with respect to:

(1) Whether the proposed transfer of property and jurisdiction will eliminate duplication and promote efficiency in the drainage in the area served by said sanitary district;

(2) Whether such natural resources district is capable of operating, maintaining, improving, financing and otherwise providing for drainage in said area; and

(3) Any other matters relating to the merits of the proposed transfer as they will affect the health and welfare of the inhabitants of the area to be served.

Notice of such public hearing of the board of trustees shall be given by publication in a newspaper of general circulation in said district at least ten days prior to such hearing.

Source: Laws 1961, c. 140, § 2, p. 405.

31-553. Sanitary districts; contract with natural resources district; dissolution of sanitary district; resolution; file with county clerk.

In event such contract, as provided in section [31-551](#), is entered into and in event all activities, liabilities, obligations and assets then possessed by said sanitary district are assigned and transferred to said natural resources district so that there are no further functions, activities or liabilities of said sanitary district existing then and in that event said sanitary district may be dissolved by a three-fourths vote of its board of trustees in which event a certified copy of said resolution of dissolution shall be filed in the office of the county clerk of the county in which said sanitary district is organized.

Source: Laws 1961, c. 140, § 3, p. 406.

31-601. Drainage districts; when public lands included; assessment.

Whenever any drainage district organized or incorporated in accordance with the laws of this state, whether heretofore or hereafter organized, shall include within its boundaries any school or university lands, or other public land, the title to which is in the State of Nebraska, the lands shall be subject to assessment for special benefits, which shall be apportioned to the land to the same extent and in the same manner as the private lands included in the district, and the proceedings to include such school, university, or other state lands in such drainage district, and to apportion and assess the benefits thereto, shall be the same in all respects as is provided by law for the including of private lands and the apportionment and assessment of the benefits thereto. The assessments apportioned and levied against any school, university, or public lands, the title of which is in the state, shall be and remain a perpetual lien against such real estate; and the leasehold interest of any lessee thereof, or his or her assigns, may be sold for taxes, and the assessments shall draw the same rate of interest as delinquent taxes, and all the provisions of law for the sale, redemption, and foreclosure of tax liens which apply to individual landowners within the drainage district shall apply to lessees of school, university, and other public lands. It is further provided that in the event any levies or assessments against the school, university, or other state lands are not paid when due and delinquent, the drainage district may file claims with the Director of Administrative Services for the share of any apportionment to be paid by the lands; and it shall be the duty of the director to draw warrants to be paid from such funds of the state as are available for the payment of such warrants and transmit the same to the treasurer of such drainage district; and the State Treasurer is hereby authorized and directed to pay the warrants for the purposes herein set forth.

Source: Laws 1925, c. 17, § 2, p. 86; C.S.1929, § 31-701; R.S.1943, § 31-601; [Laws 1999, LB 779, § 1.](#)

31-602. Assessments paid by state; subrogation; collection.

In the event the apportionment and assessments so levied have been paid by the state, the state or the fund from which payments have been made shall be subrogated to all the rights and remedies of the drainage district for the collection of the assessments and levies against lessees or their heirs or assigns.

Source: Laws 1925, c. 17, § 3, p. 87; C.S.1929, § 31-702; R.S.1943, § 31-602; [Laws 1999, LB 779, § 2.](#)

31-701. Repealed. Laws 1996, LB 1321, § 6.

31-702. Repealed. Laws 1996, LB 1321, § 6.

31-703. Repealed. Laws 1996, LB 1321, § 6.

31-704. Repealed. Laws 1996, LB 1321, § 6.

31-705. Repealed. Laws 1996, LB 1321, § 6.

31-705.01. Repealed. Laws 1996, LB 1321, § 6.

31-706. Repealed. Laws 1996, LB 1321, § 6.

31-707. Repealed. Laws 1996, LB 1321, § 6.

31-708. Repealed. Laws 1996, LB 1321, § 6.

31-709. Repealed. Laws 1996, LB 1321, § 6.

31-709.01. Repealed. Laws 1996, LB 1321, § 6.

31-710. Repealed. Laws 1996, LB 1321, § 6.

31-711. Repealed. Laws 1996, LB 1321, § 6.

31-711.01. Repealed. Laws 1996, LB 1321, § 6.

31-711.02. Repealed. Laws 1996, LB 1321, § 6.

31-711.03. Repealed. Laws 1996, LB 1321, § 6.

31-711.04. Repealed. Laws 1996, LB 1321, § 6.

31-711.05. Repealed. Laws 1996, LB 1321, § 6.

31-711.06. Repealed. Laws 1996, LB 1321, § 6.

31-711.07. Repealed. Laws 1996, LB 1321, § 6.

31-712. Repealed. Laws 1996, LB 1321, § 6.

31-713. Repealed. Laws 1996, LB 1321, § 6.

31-714. Repealed. Laws 1996, LB 1321, § 6.

31-715. Repealed. Laws 1996, LB 1321, § 6.

31-716. Repealed. Laws 1959, c. 130, § 5.

31-717. Repealed. Laws 1996, LB 1321, § 6.

31-718. Repealed. Laws 1996, LB 1321, § 6.

31-719. Repealed. Laws 1996, LB 1321, § 6.

31-720. Repealed. Laws 1996, LB 1321, § 6.

31-721. Repealed. Laws 1996, LB 1321, § 6.

31-722. Repealed. Laws 1996, LB 1321, § 6.

31-723. Repealed. Laws 1996, LB 1321, § 6.

31-724. Repealed. Laws 1996, LB 1321, § 6.

31-725. Repealed. Laws 1996, LB 1321, § 6.

31-726. Repealed. Laws 1996, LB 1321, § 6.

31-726.01. Repealed. Laws 1996, LB 1321, § 6.

31-727. Sanitary and improvement district; organized by proceedings in district court; purposes; powers; articles of association; contents; filing; real

estate; conditions; terms, defined.

(1)(a) A majority of the owners having an interest in the real property within the limits of a proposed sanitary and improvement district, situated in one or more counties in this state, may form a sanitary and improvement district for the purposes of installing electric service lines and conduits, a sewer system, a water system, an emergency management warning system, a system of sidewalks, public roads, streets, and highways, public waterways, docks, or wharfs, and related appurtenances, contracting for water for fire protection and for resale to residents of the district, contracting for police protection and security services, contracting for solid waste collection services, contracting for access to the facilities and use of the services of the library system of one or more neighboring cities or villages, and contracting for gas and for electricity for street lighting for the public streets and highways within such proposed district, constructing and contracting for the construction of dikes and levees for flood protection for the district, and acquiring, improving, and operating public parks, playgrounds, and recreational facilities.

(b) The sanitary and improvement district may also contract with a county within which all or a portion of such sanitary and improvement district is located or a city within whose zoning jurisdiction such sanitary and improvement district is located for any public purpose specifically authorized in this section.

(c) Sanitary and improvement districts located in any county which has a city of the metropolitan class within its boundaries or in any adjacent county which has adopted a comprehensive plan may contract with other sanitary and improvement districts to acquire, build, improve, and operate public parks, playgrounds, and recreational facilities for the joint use of the residents of the contracting districts.

(d) Nothing in this section shall authorize districts to purchase electric service and resell the same.

(e) The district, in lieu of establishing its own water system, may contract with any utilities district, municipality, or corporation for the installation of a water system and for the provision of water service for fire protection and for the use of the residents of the district.

(f) For the purposes listed in this section, such majority of the owners may make and sign articles of association in which shall be stated (i) the name of the district, (ii) that the district will have perpetual existence, (iii) the limits of the district, (iv) the names and places of residence of the owners of the land in the proposed district, (v) the description of the several tracts of land situated in the district owned by those who may organize the district, (vi) the name or names and the description of the real estate owned by such owners as do not join in the organization of the district but who will be benefited thereby, and (vii) whether the purpose of the corporation is installing gas and electric service lines and conduits,

installing a sewer system, installing a water system, installing a system of public roads, streets, and highways, public waterways, docks, or wharfs, and related appurtenances, contracting for water for fire protection and for resale to residents of the district, contracting for police protection and security services, contracting for solid waste collection services, contracting for access to the facilities and use of the services of the library system of one or more neighboring cities or villages, contracting for street lighting for the public streets and highways within the proposed district, constructing or contracting for the construction of dikes and levees for flood protection of the proposed district, acquiring, improving, and operating public parks, playgrounds, and recreational facilities, or, when permitted by this section, contracting with other sanitary and improvement districts to acquire, build, improve, and operate public parks, playgrounds, and recreational facilities for the joint use of the residents of the contracting districts, contracting for any public purpose specifically authorized in this section, or combination of any one or more of such purposes, or all of such purposes. Such owners of real estate as are unknown may also be set out in the articles as such.

(g) No sanitary and improvement district may own or hold land in excess of ten acres, unless such land so owned and held by such district is actually used for a public purpose, as provided in this section, within three years of its acquisition. Any sanitary and improvement district which has acquired land in excess of ten acres in area and has not devoted the same to a public purpose, as set forth in this section, within three years of the date of its acquisition, shall devote the same to a use set forth in this section or shall divest itself of such land. When a district divests itself of land pursuant to this section, it shall do so by sale at public auction to the highest bidder after notice of such sale has been given by publication at least three times for three consecutive weeks prior to the date of sale in a legal newspaper of general circulation within the area of the district.

(2) The articles of association shall further state that the owners of real estate so forming the district for such purposes are willing and obligate themselves to pay the tax or taxes which may be levied against all the property in the district and special assessments against the real property benefited which may be assessed against them to pay the expenses that may be necessary to install a sewer or water system or both a sewer and water system, the cost of water for fire protection, the cost of grading, changing grade, paving, repairing, graveling, regravelling, widening, or narrowing sidewalks and roads, resurfacing or relaying existing pavement, or otherwise improving any public roads, streets, or highways within the district, including protecting existing sidewalks, streets, highways, and roads from floods or erosion which has moved within fifteen feet from the edge of such sidewalks, streets, highways, or roads, regardless of whether such flooding or erosion is of natural or artificial origin, the cost of constructing public waterways, docks, or wharfs, and related appurtenances, the cost of constructing or contracting for the construction of dikes and levees for flood protection for the district, the cost

of contracting for water for fire protection and for resale to residents of the district, the cost of contracting for police protection and security services, the cost of contracting for solid waste collection services, the cost of contracting for access to the facilities and use of the services of the library system of one or more neighboring cities or villages, the cost of electricity for street lighting for the public streets and highways within the district, the cost of installing gas and electric service lines and conduits, the cost of acquiring, improving, and operating public parks, playgrounds, and recreational facilities, and, when permitted by this section, the cost of contracting for building, acquiring, improving, and operating public parks, playgrounds, and recreational facilities, and the cost of contracting for any public purpose specifically authorized in this section, as provided by law.

(3) The articles shall propose the names of five or more trustees who are (a) owners of real estate located in the proposed district or (b) designees of the owners if the real estate is owned by a limited partnership, a general partnership, a limited liability company, a public, private, or municipal corporation, an estate, or a trust. These five trustees shall serve as a board of trustees until their successors are elected and qualified if such district is organized. No corporation formed or hereafter formed shall perform any new functions, other than those for which the corporation was formed, without amending its articles of association to include the new function or functions.

(4) After the articles are signed, the same shall be filed in the office of the clerk of the district court of the county in which such sanitary and improvement district is located or, if such sanitary and improvement district is composed of tracts or parcels of land in two or more different counties, in the office of the clerk of the district court for the county in which the greater portion of such proposed sanitary and improvement district is located, together with a petition praying that the same may be declared a sanitary and improvement district under sections [31-727](#) to [31-762](#).

(5) Notwithstanding the repeal of sections [31-701](#) to [31-726.01](#) by Laws 1996, LB 1321:

(a) Any sanitary and improvement district organized pursuant to such sections and in existence on July 19, 1996, shall, after August 31, 2003, be treated for all purposes as if formed and organized pursuant to sections [31-727](#) to [31-762](#);

(b) Any act or proceeding performed or conducted by a sanitary and improvement district organized pursuant to such repealed sections shall be deemed lawful and within the authority of such sanitary and improvement district to perform or conduct after August 31, 2003; and

(c) Any trustees of a sanitary and improvement district organized pursuant to such repealed sections and lawfully elected pursuant to such repealed sections or in

conformity with the provisions of sections [31-727](#) to [31-762](#) shall be deemed for all purposes, on and after August 31, 2003, to be lawful trustees of such sanitary and improvement district for the term provided by such sections. Upon the expiration of the term of office of a trustee or at such time as there is a vacancy in the office of any such trustee prior to the expiration of his or her term, his or her successors or replacement shall be elected pursuant to sections [31-727](#) to [31-762](#).

(6)(a) A sanitary and improvement district that meets the requirements of this subsection shall have the additional powers provided for in subdivision (b) of this subsection, subject to the approval and restrictions established by the city council or village board within whose zoning jurisdiction the sanitary and improvement district is located and the county board in which a majority of the sanitary and improvement district is located. The sanitary and improvement district shall be (i) located in a county with a population less than one hundred thousand inhabitants, (ii) located predominately in a county different from the county of the municipality within whose zoning jurisdiction such sanitary and improvement district is located, (iii) unable to incorporate due to its close proximity to a municipality, and (iv) unable to be annexed by a municipality with zoning jurisdiction because the sanitary and improvement district is not adjacent or contiguous to such municipality.

(b) Any sanitary and improvement district that meets the requirements of subdivision (6)(a) of this section shall have only the following additional powers, subject to the approval and restrictions of the city council or village board within whose zoning jurisdiction such sanitary and improvement district is located and the county board in which a majority of the sanitary and improvement district is located. Such sanitary and improvement district shall have the power to (i) regulate and license dogs and other animals, (ii) regulate and provide for streets and sidewalks, including the removal of obstructions and encroachments, (iii) regulate parking on public roads and rights-of-way relating to snow removal and access by emergency vehicles, and (iv) regulate the parking of abandoned motor vehicles.

(7) For the purposes of sections [31-727](#) to [31-762](#) and [31-771](#) to [31-780](#), unless the context otherwise requires:

(a) Public waterways means artificially created boat channels dedicated to public use and providing access to navigable rivers or streams;

(b) Operation and maintenance expenses means and includes, but is not limited to, salaries, cost of materials and supplies for operation and maintenance of the district's facilities, cost of ordinary repairs, replacements, and alterations, cost of surety bonds and insurance, cost of audits and other fees, and taxes;

(c) Capital outlay means expenditures for construction or reconstruction of major permanent facilities having an expected long life, including, but not limited

to, street paving and curbs, storm and sanitary sewers, and other utilities;

(d) Warrant means an investment security under article 8, Uniform Commercial Code, in the form of a short-term, interest-bearing order payable on a specified date issued by the board of trustees or administrator of a sanitary and improvement district to be paid from funds expected to be received in the future, and includes, but is not limited to, property tax collections, special assessment collections, and proceeds of sale of general obligation bonds;

(e) General obligation bond means an investment security under article 8, Uniform Commercial Code, in the form of a long-term, written promise to pay a specified sum of money, referred to as the face value or principal amount, at a specified maturity date or dates in the future, plus periodic interest at a specified rate; and

(f) Administrator means the person appointed by the Auditor of Public Accounts pursuant to section [31-771](#) to manage the affairs of a sanitary and improvement district and to exercise the powers of the board of trustees during the period of the appointment to the extent prescribed in sections [31-727](#) to [31-780](#).

Source: Laws 1949, c. 78, § 1, p. 194; Laws 1955, c. 117, § 1, p. 310; Laws 1961, c. 142, § 1, p. 409; Laws 1967, c. 189, § 1, p. 518; Laws 1969, c. 250, § 1, p. 909; Laws 1969, c. 251, § 1, p. 918; Laws 1973, LB 245, § 1; Laws 1974, LB 757, § 7; Laws 1976, LB 313, § 1; Laws 1977, LB 228, § 1; Laws 1982, LB 868, § 1; Laws 1985, LB 207, § 1; Laws 1994, LB 501, § 1; Laws 1996, LB 43, § 5; [Laws 2003, LB 721, § 1](#); [Laws 2008, LB768, § 1](#); [Laws 2015, LB324, § 1](#).

Annotations

Five owners of an undivided two-fifths interest in a nonresidential lot within the sanitary improvement district satisfied the requirement in this section that five or more designated trustees be owners of real estate located in the proposed district. This section does not require that the trustees own a particular amount of land or a percentage of interest in such land, nor does it require the trustees to own developed land. Nothing in the record indicated that the qualifying interest was a sham or was obtained fraudulently. In re Petition of SID No. 1, 270 Neb. 856, 708 N.W.2d 809 (2006).

Initial trustees of a sanitary and improvement district must own real estate within the proposed district. In re Petition of SID No. 1, 270 Neb. 856, 708 N.W.2d 809 (2006).

Under subsection (1) of this section, owners representing a majority of the area within a proposed sanitary improvement district must sign the articles of association. In re Petition of SID No. 1, 270 Neb. 856, 708 N.W.2d 809 (2006).

A sanitary and improvement district is a political subdivision of the State of Nebraska. Sanitary and improvement districts have been termed quasi-municipal corporations. Taxpayer status is necessary in order to have standing to sue a sanitary and improvement district. *Rexroad, Inc. v. S.I.D. No. 66*, 222 Neb. 618, 386 N.W.2d 433 (1986).

S.I.D. warrants issued prior to effective date of Laws 1982, LB 868, are not by virtue of LB 868, investment securities. *S.I.D. No. 32 v. Continental Western Corp.*, 215 Neb. 843, 343 N.W.2d 314 (1983).

One of the specific purposes for the organization of SID No. 1 was to provide for public streets and highways. The statute imposes an affirmative duty upon the SID to pay for the construction, improvement, and maintenance of roads in the district organized for SID purposes. *SID No. 1 v. County of Adams*, 209 Neb. 108, 306 N.W.2d 584 (1981).

Streets were actually constructed by improvement districts, and were subject to zoning powers of city. *Jacobs v. City of Omaha*, 181 Neb. 101, 147 N.W.2d 160 (1966).

Description in boundaries of district could be amended even in Supreme Court on appeal. *Zwink v. Ahlman*, 177 Neb. 15, 128 N.W.2d 121 (1964).

31-727.01. District; filing requirements.

Within thirty days after July 10, 1976, as to existing districts, and within thirty days after the creation of districts thereafter created, the clerk of each district shall file with the register of deeds, clerk, election commissioner, sheriff, and planning department of each county or counties in which the district is located and, if the district is located in whole or in part within the zoning jurisdiction of a city, with the planning department of such city a statement containing the following information: (1) The district number; (2) the outer boundaries of the district; (3) the purpose or purposes for which the district was formed; (4) a statement that the district has the power to levy an unlimited property tax to pay its debt and its expenses of operation and maintenance; (5) a statement that the district is required to levy special assessments on property in the district to the full extent of special benefits arising by reason of improvements installed by the district; (6) that the annual budget of the district is filed with the county clerk, which budget shows the anticipated revenue and expenses, tax levy, and indebtedness of the district; (7) that the actual current tax levy amount of the district may be obtained from the county clerk; and (8) that a copy of the annual financial audit of the district is on file with the clerk of the district and the Auditor of Public Accounts. Such statement shall be supplemented and refiled to include any land added to the district after the original filing.

Source: Laws 1976, LB 313, § 10; Laws 1979, LB 187, § 141; Laws 1986, LB 484, § 1.

31-727.02. District; board of trustees; notice of meetings; minutes; clerk or administrator of district; duties.

(1) The clerk or administrator of each sanitary and improvement district shall notify any municipality or county within whose zoning jurisdiction such district is located of all meetings of the district board of trustees or called by the administrator by sending a notice of such meeting to the clerk of the municipality or county not less than seven days prior to the date set for any meeting. In the case of meetings called by the administrator, notice shall be provided to the clerk of the district not less than seven days prior to the date set for any meeting.

(2) Within thirty days after any meeting of a sanitary and improvement district board of trustees or called by the administrator, the clerk or administrator of the district shall transmit to the municipality or county within whose zoning jurisdiction the sanitary and improvement district is located a copy of the minutes of such meeting.

Source: Laws 1976, LB 313, § 11; Laws 1982, LB 868, § 2.

31-727.03. District; statements; filed; contents; late filing; fee; duties of real estate broker, salesperson, or owner; acknowledgment from purchaser; remedy.

(1) On or before December 31 of each year, the clerk of each sanitary and improvement district shall file with the register of deeds or, if none, the county clerk of the county or counties in which the sanitary and improvement district is located a statement updated each December 31 containing the following information:

(a) The names of the members of the current board of trustees of the district;

(b) The names of the current attorney, accountant, and fiscal agent of the district;

(c) The warrant and the bond principal indebtedness of the district as of the preceding June 30. Such statement shall contain an acknowledgment that the warrant and indebtedness are reflective of such date; and

(d) The current bond tax levy and the current operating levy of the district, as described in section [31-739](#), as of December 31.

For any late filing of the statement, the sanitary and improvement district shall be assessed a late fee of ten dollars per day, not to exceed a total of three hundred

dollars for each late filing.

(2) The real estate broker or salesperson or, if none, the owner shall distribute the most recent statement filed in accordance with this section to any prospective purchaser of any real estate located within a sanitary and improvement district.

(3) The real estate broker or salesperson or, if none, the owner shall obtain an acknowledgment from any purchaser of any real estate located within a sanitary and improvement district that the purchaser understands: (a) The property is located within a sanitary and improvement district; (b) sanitary and improvement districts are located outside the corporate limits of any municipality; (c) residents of sanitary and improvement districts are not eligible to vote in municipal elections; and (d) owners of property located within sanitary and improvement districts have limited access to services provided by nearby municipalities until and unless the property is annexed by the municipality. Such acknowledgment may be obtained separately from the disclosure required under section [76-2,120](#).

(4) The statement shall be distributed and the acknowledgment obtained on or before the date on which the purchaser becomes obligated to purchase such real estate. The exclusive remedy for failure to provide such statements and obtain such acknowledgments shall be an action for damages, and any such failure shall not affect title to the real estate or the validity of the conveyance.

Source: Laws 1976, LB 313, § 12; Laws 1977, LB 267, § 1; Laws 1979, LB 252, § 1; Laws 1979, LB 187, § 142; Laws 1980, LB 599, § 9; Laws 1991, LB 128, § 1; Laws 1992, LB 764, § 1; Laws 1996, LB 1362, § 4; [Laws 2015, LB324, § 2](#).

31-728. District; summons; notice to landowners, counties, and cities affected; contents.

Immediately after the petition and articles of association shall have been filed, as provided for by subsection (4) of section [31-727](#), the clerk of the district court for the county where same are filed shall issue a summons, as now provided by law, returnable as any other summons in a civil action filed in said court, and directed to the several owners of real estate in the proposed district who may be alleged in such petition to be benefited thereby, but who have not signed the articles of association, which shall be served as summonses in civil cases. In case any owner or owners of real estate in the proposed district are unknown, or are nonresidents, they shall be notified in the same manner as nonresident defendants are now notified according to law in actions in the district courts of this state, setting forth in such notice (1) that the articles of association have been filed, (2) the purpose thereof, (3) that the real estate of such owner or owners situated in the district, describing the same, will be affected thereby and rendered liable to taxation and special assessment in accordance with law for the purpose of

installing and maintaining such sewer or water system, or both, and maintaining the district, for constructing and maintaining a system of sidewalks, public roads, streets, and highways, public waterways, docks or wharfs, and related appurtenances, for the furnishing of water for fire protection, for contracting for gas and for electricity for street lighting for the public streets and highways within the district, for constructing or contracting for the construction of dikes and levees for flood protection for the district, for installing electric service lines and conduits, for the acquisition, improvement, and operation of public parks, playgrounds, and recreational facilities, and, where permitted by section [31-727](#), for the contracting with other sanitary and improvement districts for acquiring, building, improving, and operating public parks, playgrounds, and recreational facilities for the joint use of the residents of the contracting districts, (4) the names of the proposed trustees, and (5) that a petition has been made to have the district declared a sanitary and improvement district.

Within five days after the filing of the petition the clerk of the district court shall send notice of such petition to each county in which all or a portion of the proposed district lies and to each city in whose zoning jurisdiction all or a portion of the proposed district lies.

Source: Laws 1949, c. 78, § 2, p. 196; Laws 1955, c. 117, § 2, p. 312; Laws 1961, c. 142, § 2, p. 411; Laws 1967, c. 189, § 2, p. 520; Laws 1969, c. 250, § 2, p. 911; Laws 1973, LB 245, § 2; Laws 1974, LB 757, § 8; Laws 1980, LB 933, § 26.

Cross References

Methods of service, see sections [25-505.01](#), [25-506.01](#), and [25-540](#).

Return date of summons, see section [25-507.01](#).

Service on unknown defendants, see section [25-321](#).

31-729. District; formation; objections.

All owners of real estate situated in the proposed district who have not signed the articles of association and who may object to the organization of the district or to any one or more of the proposed trustees shall, on or before the time in which they are required to answer, file any such objection in writing, stating (1) why such sanitary and improvement district should not be organized and declared a public corporation in this state, (2) why their land will not be benefited by the installation of a sewer or water system, or both a sewer and water system, a system of sidewalks, public roads, streets, and highways, public waterways, docks or wharfs, and related appurtenances, and gas and electricity for street lighting for the public streets and highways within the district, by the contracting for solid waste collection services, by the construction or contracting for the construction of dikes and levees for flood protection for the district, gas or electric service lines and

conduits, and water for fire protection and the health and property of the owners protected, by the acquisition, improvement and operation of public parks, playgrounds, and recreational facilities, and, where permitted by section [31-727](#), by the contracting with other sanitary and improvement districts for the building, acquisition, improvement, and operation of public parks, playgrounds, and recreational facilities for the joint use of the residents of the contracting districts, (3) why their land should not be embraced in the limits of such district, and (4) their objections if any to any one or more of the proposed trustees.

Source: Laws 1949, c. 78, § 3, p. 196; Laws 1955, c. 117, § 3, p. 312; Laws 1961, c. 142, § 3, p. 412; Laws 1967, c. 189, § 3, p. 521; Laws 1969, c. 250, § 3, p. 912; Laws 1973, LB 245, § 3; Laws 1974, LB 757, § 9; [Laws 2015, LB324, § 3.](#)

Annotations

Landowner may object to inclusion of land within district. *Zwink v. Ahlman*, 177 Neb. 15, 128 N.W.2d 121 (1964).

31-730. Petition; objection; hearing; order creating.

Such petition, and objections if any, shall be heard by the court without any unnecessary delay and should the court determine that the formation of such district will be conducive to the public health, convenience, or welfare, the district court shall declare the sanitary and improvement district a public corporation of this state and shall declare five of the trustees nominated, or in case of objection thereto, other suitable trustees who shall be (1) owners of real estate located in the district or (2) designated to serve as a representative on the board of trustees if the real estate is owned by a limited partnership, a general partnership, a limited liability company, a public, private, or municipal corporation, an estate, or a trust, to be the board of trustees of such corporation to serve until their successors are elected and qualified. If any owner of real estate located in the proposed district satisfies the court that his or her real estate, or any part thereof, will not be benefited thereby, then the court may exclude such real estate as will not be benefited and declare the remainder a district as prayed for. No lands included within any municipal corporation shall be included in any sanitary and improvement district, and no tract of twenty acres or more which is outside any municipal corporation and is used primarily for industrial purposes shall be included in any sanitary and improvement district organized under sections [31-727](#) to [31-762](#) without the written consent of the owner of such tract.

Source: Laws 1949, c. 78, § 4, p. 197; [Laws 2003, LB 721, § 2.](#)

Annotations

The hearing before a trial court provided for in this section concerning the organization of sanitary and improvement districts is one in equity. In re Petition of SID No. 1, 270 Neb. 856, 708 N.W.2d 809 (2006).

Under this section, petitioners need not prove that the formation of a sanitary improvement district to install a sanitary sewer system is the only, the cheapest, or even the best means of tackling their waste system problems; they must show only that the sanitary improvement district will benefit the public health, convenience, or welfare. In re Petition of SID No. 1, 270 Neb. 856, 708 N.W.2d 809 (2006).

No land within a municipality may be included in the formation of a sanitary and improvement district. Sanitary & Improvement Dist. v. City of Ralston, 182 Neb. 63, 152 N.W.2d 111 (1967).

The hearing before district court is treated as one in equity. Zwink v. Ahlman, 177 Neb. 15, 128 N.W.2d 121 (1964).

31-731. District; formation; articles; filing and recording.

Within twenty days after the district has been declared a corporation by the court, the clerk thereof shall transmit to the Secretary of State a certified copy of the record relating thereto, and the same shall be filed in his office in the same manner as articles of incorporation are required to be filed under the general law concerning corporations. A copy of such record, together with a plat of the district, shall also be filed in the office of the county clerk of the county or counties in which the district, or any part thereof, is situated.

Source: Laws 1949, c. 78, § 5, p. 197.

31-732. District; body corporate; powers.

Such district shall be a body corporate and politic by name of Sanitary and Improvement District Number of County and shall have the power and authority to take and hold real and personal property necessary for its use, to make contracts, to sue and be sued, to have and use a corporate seal, and to exercise any and all other powers, as a corporation, necessary to carry out the purposes of sections [31-727](#) to [31-762](#).

Source: Laws 1949, c. 78, § 6, p. 197.

Annotations

A sanitary and improvement district, being a "body corporate and politic," cannot be considered unincorporated. *State ex rel. Scherer v. Madison Cty. Comrs.*, 247 Neb. 384, 527 N.W.2d 615 (1995).

The language "to sue and be sued" contained in this section should not be read so broadly as to confer standing on a sanitary and improvement district when common law standing requirements have not been met. *SID No. 347 of Douglas County v. City of Omaha*, 8 Neb. App. 78, 589 N.W.2d 160 (1999).

31-733. District; trustees; board; powers and duties; appointment of administrator; powers; duties; compensation.

Within thirty days after the district court has declared the district a public corporation, the trustees appointed by the court shall meet and elect one of their number chairperson and one of their number clerk of the district. Except as otherwise provided, the board shall (1) adopt a seal, bearing the name of the district, (2) keep a record of all of its proceedings which shall be open to inspection by all owners of real estate in the district, (3) have the power to pass all necessary ordinances, orders, rules, and regulations for the necessary conduct of its business and to carry into effect the objects for which the sanitary and improvement district was formed, and (4) have authority to appoint, employ, and pay an engineer or firm of engineers, an attorney, a fiscal agent, and such clerical help as may be needed, who shall each be removable at the pleasure of the board or administrator. The clerk of the board shall be paid a salary not to exceed twelve hundred dollars per year. Upon the appointment of an administrator for the district pursuant to sections [31-771](#) to [31-780](#), the authority of the trustees to exercise the powers granted in this section shall be suspended, except that the board shall continue in existence and the administrator shall periodically, but not less frequently than monthly, report to the board in writing on all decisions and actions taken by the administrator in managing the affairs of the district. The administrator shall, during the period of his or her appointment, possess exclusive authority to exercise the powers and duties conferred in sections [31-727](#) to [31-770](#). Each trustee shall be paid fifteen dollars for each meeting of the board which he or she attends, except that each trustee shall be paid for no more than twelve meetings in each calendar year. Each trustee shall be allowed reimbursement for mileage as provided in section [81-1176](#).

Source: Laws 1949, c. 78, § 7, p. 198; Laws 1982, LB 868, § 3; Laws 1994, LB 501, § 2; Laws 1995, LB 470, § 3.

Annotations

The board of trustees of a sanitary and improvement district has power to contract for fiscal and financial services in connection with the issuance and

sale of its bonds and warrants. *Hayes v. Sanitary & Improvement Dist.* No. 194, 196 Neb. 653, 244 N.W.2d 505 (1976).

31-734. District; chairperson, clerk, administrator; bond; premium.

The chairperson and clerk or administrator of any such district shall, upon assuming his or her respective office, execute and file with the county clerk of the county in which such district, or the greater portion of the area thereof, is located, a bond, with one or more sureties, to be approved by the county clerk, running to the State of Nebraska in the penal sum of five thousand dollars for the chairperson, twenty thousand dollars for the clerk, and twenty thousand dollars for the administrator, conditioned for the faithful performance of their official duties and the faithful accounting by them for all funds and property of the district that shall come into their possession or control during their term of office. The premium, if any, on any such bond shall be paid out of the funds of the district. Suit may be brought on such bonds by any person, firm, or corporation that has sustained loss or damage in consequence of the breach thereof.

Source: Laws 1949, c. 78, § 8, p. 198; Laws 1976, LB 313, § 2; Laws 1979, LB 252, § 2; Laws 1982, LB 868, § 4.

31-735. District; trustees; election; procedure; term; notice; qualified voters; reduction in number of trustees; procedure.

(1) On the first Tuesday after the second Monday in September which is at least fifteen months after the judgment of the district court creating a sanitary and improvement district and on the first Tuesday after the second Monday in September each two years thereafter, the board of trustees shall cause a special election to be held, at which election a board of trustees shall be elected. The board of trustees shall have five members except as provided in subsection (2) of this section. Each member elected to the board of trustees shall be elected to a term of two years and shall hold office until such member's successor is elected and qualified. Any person desiring to file for the office of trustee may file for such office with the election commissioner, or county clerk in counties having no election commissioner, of the county in which the greater proportion in area of the district is located not later than fifty days before the election. If such person will serve on the board of trustees as a designated representative of a limited partnership, general partnership, limited liability company, public, private, or municipal corporation, estate, or trust which owns real estate in the district, the filing shall indicate that fact and shall include appropriate documentation evidencing such fact. No filing fee shall be required. A person filing for the office of trustee to be elected at the election held four years after the first election of trustees and each election thereafter shall designate whether he or she is a

candidate for election by the resident owners of such district or whether he or she is a candidate for election by all of the owners of real estate located in the district. If a person filing for the office of trustee is a designated representative of a limited partnership, a general partnership, a limited liability company, a public, private, or municipal corporation, an estate, or a trust which owns real estate in the district, the name of such entity shall accompany the name of the candidate on the ballot in the following form: (Name of candidate) to represent (name of entity) as a member of the board. The name of each candidate shall appear on only one ballot.

The name of a person may be written in and voted for as a candidate for the office of trustee, and such write-in candidate may be elected to the office of trustee. A write-in candidate for the office of trustee who will serve as a designated representative of a limited partnership, a general partnership, a limited liability company, a public, private, or municipal corporation, an estate, or a trust which owns real estate in the district shall not be elected to the office of trustee unless (a) each vote is accompanied by the name of the entity which the candidate will represent and (b) within ten days after the date of the election the candidate provides the county clerk or election commissioner with appropriate documentation evidencing his or her representation of the entity. Votes cast which do not carry such accompanying designation shall not be counted.

A trustee shall be an owner of real estate located in the district or shall be a person designated to serve as a representative on the board of trustees if the real estate is owned by a limited partnership, a general partnership, a limited liability company, a public, private, or municipal corporation, an estate, or a trust. Notice of the date of the election shall be mailed by the clerk of the district not later than sixty-five days prior to the election to each person who is entitled to vote at the election for trustees whose property ownership or lease giving a right to vote is of record on the records of the register of deeds as of a date designated by the election commissioner or county clerk, which date shall be not more than eighty days prior to the election.

(2)(a) For any sanitary and improvement district, a person whose ownership or right to vote becomes of record or is received after the date specified pursuant to subsection (1) of this section may vote when such person establishes his or her right to vote to the satisfaction of the election board. At the first election and at the election held two years after the first election, any person may cast one vote for each trustee for each acre of unplatted land or fraction thereof and one vote for each platted lot which he or she may own in the district.

(b) This subdivision applies to a district until the board of trustees amends its articles of association pursuant to subdivision (2)(d) of this section. At the election held four years after the first election of trustees, two members of the board of trustees shall be elected by the legal property owners resident within such sanitary and improvement district and three members shall be elected by all of the owners

of real estate located in the district pursuant to this section. Every resident property owner may cast one vote for a candidate for each office of trustee to be filled by election of resident property owners only. Such resident property owners may also each cast one vote for each acre of unplatted land or fraction thereof and for each platted lot owned within the district for a candidate for each office of trustee to be filled by election of all property owners. For each office of trustee to be filled by election of all property owners of the district, every legal property owner not resident within such sanitary and improvement district may cast one vote for each acre of unplatted land or fraction thereof and one vote for each platted lot which he or she owns in the district. At the election held eight years after the first election of trustees and at each election thereafter, three members of the board of trustees shall be elected by the legal property owners resident within such sanitary and improvement district and two members shall be elected by all of the owners of real estate located in the district pursuant to this section, and at the election held six years after the first election of trustees and at each election thereafter, three members of the board of trustees shall be elected by the legal property owners resident within such sanitary and improvement district and two members shall be elected by all of the owners of real estate located in the district pursuant to this section. If there are not any legal property owners resident within such district or if not less than ninety percent of the area of the district is owned for other than residential uses, the five members shall be elected by the legal property owners of all property within such district as provided in this section.

(c) Any public, private, or municipal corporation owning any land or lot in the district may vote at an election the same as an individual. If more than fifty percent of the homes in any sanitary and improvement district are used as a second, seasonal, or recreational residence, the owners of such property shall be considered legal property owners resident within such district for purposes of electing trustees. For purposes of voting for trustees, each condominium apartment under a condominium property regime established prior to January 1, 1984, under the Condominium Property Act or established after January 1, 1984, under the Nebraska Condominium Act shall be deemed to be a platted lot and the lessee or the owner of the lessee's interest, under any lease for an initial term of not less than twenty years which requires the lessee to pay taxes and special assessments levied on the leased property, shall be deemed to be the owner of the property so leased and entitled to cast the vote of such property. When ownership of a platted lot or unplatted land is held jointly by two or more persons, whether as joint tenants, tenants in common, limited partners, members of a limited liability company, or any other form of joint ownership, only one person shall be entitled to cast the vote of such property. The executor, administrator, guardian, or trustee of any person or estate interested shall have the right to vote. No corporation, estate, or irrevocable trust shall be deemed to be a resident owner for purposes of voting for trustees. Should two or more persons or officials claim the right to vote on the same tract, the election board shall determine the party entitled to vote. Such board shall select

one of their number chairperson and one of their number clerk. In case of a vacancy on such board, the remaining trustees shall fill the vacancy on such board until the next election.

(d) For any sanitary and improvement district which has been in existence for at least ten years, which has less than seventy property owners entitled to vote for trustees, which has at least two resident property owners, and in which less than ten percent of the area of the district is owned for other than residential uses, the board of trustees may amend its articles of association as provided in section [31-740.01](#) to provide for a reduction in the number of trustees on the board from five members to three members to be effective at the beginning of the term of office for the board of trustees elected at the next election. At the next election and at each election thereafter, two members of the board of trustees shall be elected by the legal property owners resident within such sanitary and improvement district and one member shall be elected by all of the owners of real estate located in the district pursuant to this section. Every resident property owner may cast one vote for a candidate for each office of trustee to be filled by election of resident property owners only. Such resident property owners may also each cast one vote for each acre of unplatted land or fraction thereof and for each platted lot owned within the district for a candidate for the office of trustee to be filled by election of all property owners. For the office of trustee to be filled by election of all property owners of the district, every legal property owner not resident within such sanitary and improvement district may cast one vote for each acre of unplatted land or fraction thereof and one vote for each platted lot which he or she owns in the district.

(3) The election commissioner or county clerk shall hold any election required by subsection (1) of this section by sealed mail ballot by notifying the board of trustees on or before July 1 of a given year. The election commissioner or county clerk shall, at least twenty days prior to the election, mail a ballot and return envelope to each person who is entitled to vote at the election and whose property ownership or lease giving a right to vote is of record with the register of deeds as of the date designated by the election commissioner or county clerk, which date shall not be more than eighty days prior to the election. The ballot and return envelope shall include: (a) The names and addresses of the candidates; (b) room for write-in candidates; and (c) instructions on how to vote and return the ballot. Such ballots shall be returned in the return envelope to the election commissioner or county clerk no later than 5 p.m. on the date set for the election. If the ballot is not returned in the return envelope, such ballot shall not be counted. If more than one ballot is included in the same return envelope, such ballots shall not be counted and shall be reinserted into the return envelope which shall be resealed and marked rejected.

Source: Laws 1949, c. 78, § 9, p. 198; Laws 1971, LB 188, § 3; Laws 1974, LB 757, § 10; Laws 1976, LB 313, § 14; Laws 1977, LB 228, § 2;

Laws 1981, LB 37, § 1; Laws 1982, LB 359, § 1; Laws 1983, LB 433, § 71; Laws 1984, LB 1105, § 1; Laws 1986, LB 483, § 1; Laws 1987, LB 587, § 1; Laws 1987, LB 652, § 4; Laws 1992, LB 764, § 2; Laws 1993, LB 121, § 195; Laws 1997, LB 874, § 9; [Laws 1999, LB 740, § 1](#); [Laws 2005, LB 401, § 1](#); [Laws 2009, LB 412, § 1](#); [Laws 2015, LB 116, § 1](#); [Laws 2015, LB 149, § 1](#); [Laws 2016, LB 695, § 1](#).

Cross References

Condominium Property Act, see section [76-801](#).
Nebraska Condominium Act, see section [76-825](#).

31-735.01. Election of trustees; ballots; election board; duties.

At any election held to elect trustees of a sanitary and improvement district, the ballots shall be received, counted, and canvassed by an election board of two persons or more appointed by the election commissioner or the county clerk in counties having no election commissioner.

Source: Laws 1976, LB 313, § 15; Laws 1982, LB 359, § 2; Laws 1987, LB 652, § 5.

31-735.02. Election of trustees; certification of results.

For any sanitary and improvement district, the county clerk or election commissioner shall certify the results of the election to the district.

Source: Laws 1976, LB 313, § 16; Laws 1977, LB 228, § 3; Laws 1982, LB 359, § 3; Laws 1986, LB 483, § 2; Laws 1987, LB 652, § 6.

31-735.03. Election contests; Election Act applicable.

If an election is contested involving a sanitary and improvement district board of trustees, the Election Act shall apply.

Source: Laws 1976, LB 313, § 17; Laws 1994, LB 76, § 551.

Cross References

Election Act, see section [32-101](#).

31-735.04. District; location; basis for determination.

For purposes of sections [31-735](#) to [31-735.02](#) a sanitary and improvement district shall be deemed to be located in a county with a population of one hundred thousand or more if the greater proportion in area of the district is located in such county.

Source: Laws 1982, LB 359, § 4.

31-735.05. Election; when held; costs; election commissioner or county clerk; duties.

Not later than June first of each year, the election commissioner or county clerk shall determine which sanitary and improvement districts in the county are required to hold elections in such year and shall so notify the clerk of each such district on or before July first of such year. The entire costs of conducting the election shall be borne by the sanitary and improvement district holding the election, and such costs shall include all expenses such as procuring a list of the property owners of record in each such district, printing and mailing notices of the elections to such property owners, printing, preparing, and mailing ballots, paying compensation and mileage for the election boards conducting such elections, and also indirect expenses, such as the pro rata amount of any additional clerical expense or other miscellaneous expenses to be incurred by the election commissioner or county clerk in conducting all of such elections to be held in such calendar year. Within sixty days after the elections have been held, each district shall be charged and billed for all of the actual expenses incurred by the election commissioner or county clerk attributable to such district. Payment of the total amount billed to the district shall be in currency and made by the attorney for the sanitary and improvement district to the election commissioner or county clerk within sixty days after receipt of such billing.

Source: Laws 1982, LB 359, § 5; Laws 1986, LB 483, § 3; Laws 1987, LB 652, § 7.

31-735.06. Appointment of administrator; election of trustees; special election; when held.

Notwithstanding the appointment of an administrator for any district pursuant to sections [31-771](#) to [31-780](#), special elections shall be held for the election of members of the board of trustees for such district in the same manner and at the same time as such elections would be held under sections [31-735](#) to [31-735.03](#). In a district for which such an administrator has been appointed when the board of trustees of such district is not functioning, the administrator shall cause a special election of trustees to be held within sixty days after the issuance of a certificate of appointment of such administrator, at which election a board of trustees shall be

elected to a term of office which shall expire on the first Tuesday of the second September following the appointment of such administrator. The board of trustees shall have five members unless the board has amended its articles of association to decrease the number of trustees on the board to three members pursuant to subdivision (2)(d) of section [31-735](#).

Source: Laws 1982, LB 868, § 5; [Laws 2015, LB116, § 2](#).

31-736. District; acquisition of property; conditions.

Such sanitary and improvement district may acquire by purchase, condemnation, or otherwise, real or personal property, right-of-way, and privilege, within or without its corporate limits, necessary for its corporate purposes. Such acquisition by the district may be effected only after approval by the municipality or county having zoning jurisdiction over such property. The approval of plans and specifications for the public improvement or project, or the approval of plans and exact costs for public parks, playgrounds, and recreational facilities, as required by section [31-740](#), shall be deemed to be approval for the acquisition by the district of such fee title, easements, or other interests in such property as may be required for the public improvement or project.

Source: Laws 1949, c. 78, § 10, p. 199; Laws 1978, LB 708, § 1.

31-737. District; eminent domain; procedure.

Whenever the board of trustees or administrator of any sanitary and improvement district shall by order determine to make any public improvement under the provisions of sections [31-727](#) to [31-762](#) and [31-771](#) to [31-780](#) which shall require that private property be taken or damaged, the district may exercise the power of eminent domain. The procedure to condemn property shall be exercised in the manner set forth in sections [76-704](#) to [76-724](#).

Source: Laws 1949, c. 78, § 11, p. 199; Laws 1951, c. 101, § 79, p. 482; Laws 1982, LB 868, § 6.

31-738. District; state or public lands; right of eminent domain.

Whenever it shall be necessary, in making any improvement under the provisions of sections [31-727](#) to [31-762](#), to enter upon or cross any state or public lands, the district shall have the right to acquire a right-of-way across the same by the exercise of the power of eminent domain.

Source: Laws 1949, c. 78, § 12, p. 199; Laws 1951, c. 101, § 80, p. 482.

31-739. District; bonds; interest; tax levies; restrictions; treasurer; duties; collection of charges other than taxes; disbursement of funds.

(1) The district may borrow money for corporate purposes and issue its general obligation bonds therefor and shall annually levy a tax on the taxable value of the taxable property in the district sufficient to pay the interest and principal on the bonds. Such levy shall be known as the bond tax levy of the district. The district shall also annually levy a tax on the taxable value of the taxable property in the district for the purpose of creating a sinking fund for the maintenance and repairing of any sewer or water system or electric lines and conduits in the district, for the payment of any hydrant rentals, for the maintenance and repairing of any sidewalks, public roads, streets, and highways, public waterways, docks, or wharfs, and related appurtenances in the district, for the cost of operating any street lighting system for the public streets and highways within the district, for the building, construction, improvement, or replacement of facilities or systems when necessary to remove or alleviate an existing threat to public health and safety affecting no more than one hundred existing homes, for the cost of building, acquiring, maintaining, and operating public parks, playgrounds, and recreational facilities, or, when permitted by section [31-727](#), for contracting with other sanitary and improvement districts for building, acquiring, maintaining, and operating public parks, playgrounds, and recreational facilities for the joint use of the residents of the contracting districts, or for the cost of any other services for which the district has contracted or to make up any deficiencies caused by the nonpayment of any special assessments. Such levy shall be known as the operating levy of the district. On or before September 20 of each year, the clerk of the board shall certify the tax to the county clerk of the counties in which such district is located in order that the tax may be extended upon the county tax list. Nothing contained in this section shall authorize any district which has been annexed by a city or village to levy any taxes within or upon the annexed area after the effective date of the annexation if the effective date of the annexation is prior to such levy certification date of the district for the year in which such annexation occurs.

(2) The county treasurer of the county in which the greater portion of the area of the district is located shall be ex officio treasurer of the sanitary and improvement district and shall be responsible for all funds of the district coming into his or her hands. He or she shall collect all taxes and special assessments levied by the district and deposit the same in a bond sinking fund for the payment of principal and interest on any bonds outstanding.

(3) Except as provided in subsection (5) of this section, the trustees or administrator of the district may authorize the clerk or appoint an independent agent to collect service charges and all items other than taxes, connection charges, special assessments, and funds from sale of bonds and warrants, but all funds so

collected shall, at least once each month, be remitted to the treasurer to be held in a fund, separate from the general fund or construction fund of the district, which shall be known as the service fee fund of the district. The trustees or administrator may direct the district's treasurer to disburse funds held in the service fee fund to maintain and operate any service for which the funds have been collected or to deposit such funds into the general fund of the district.

(4) The treasurer of the district shall not be responsible for such funds until they are received by him or her. The treasurer shall disburse the funds of the district only on warrants authorized by the trustees or the administrator and signed by the chairperson and clerk or the administrator.

(5) If the average weekly balance in the service fee fund of a district for a full budget year does not exceed five thousand dollars, the trustees or administrator of the district may authorize the clerk to establish an interest-bearing checking account in the name of the district to be maintained as the district service fee fund and the district's treasurer shall disburse the balance of funds held in the service fee fund of the district to the clerk for deposit into the district service fee fund. Following the creation of the district service fee fund, all funds required to be deposited into the service fee fund shall be deposited into the district service fee fund and all disbursements which may lawfully be made from the service fee fund may be made from the district service fee fund as directed or approved by the trustees or the administrator.

Source: Laws 1949, c. 78, § 13, p. 200; Laws 1955, c. 117, § 4, p. 313; Laws 1961, c. 142, § 4, p. 412; Laws 1967, c. 189, § 4, p. 521; Laws 1969, c. 252, § 1, p. 921; Laws 1969, c. 250, § 4, p. 913; Laws 1969, c. 51, § 98, p. 334; Laws 1973, LB 245, § 4; Laws 1974, LB 757, § 11; Laws 1979, LB 187, § 143; Laws 1982, LB 868, § 7; Laws 1985, LB 207, § 2; Laws 1992, LB 1063, § 30; Laws 1992, Second Spec. Sess., LB 1, § 30; Laws 1993, LB 734, § 38; Laws 1995, LB 452, § 11; Laws 1996, LB 1362, § 5; Laws 1997, LB 531, § 1; [Laws 2003, LB 721, § 3.](#)

31-740. District; trustees or administrator; powers; plans or contracts; approval required; hearing; contracts authorized; audit; failure to perform audit; effect; connection with city sewerage system; rental or use charge; levy; special assessment.

(1) The board of trustees or the administrator of any district organized under sections [31-727](#) to [31-762](#) shall have power to provide for establishing, maintaining, and constructing gas and electric service lines and conduits, an emergency management warning system, water mains, sewers, and disposal plants and disposing of drainage, waste, and sewage of such district in a satisfactory manner; for establishing, maintaining, and constructing sidewalks, public roads, streets, and highways, including grading, changing grade, paving, repaving,

graveling, regravelling, widening, or narrowing roads, resurfacing or relaying existing pavement, or otherwise improving any road, street, or highway within the district, including protecting existing sidewalks, streets, highways, and roads from floods or erosion which has moved within fifteen feet from the edge of such sidewalks, streets, highways, or roads, regardless of whether such flooding or erosion is of natural or artificial origin; for establishing, maintaining, and constructing public waterways, docks, or wharfs, and related appurtenances; and for constructing and contracting for the construction of dikes and levees for flood protection for the district.

(2) The board of trustees or the administrator of any district may contract for access to the facilities and use of the services of the library system of one or more neighboring cities or villages, for solid waste collection services, and for electricity for street lighting for the public streets and highways within the district and shall have power to provide for building, acquisition, improvement, maintenance, and operation of public parks, playgrounds, and recreational facilities, and, when permitted by section [31-727](#), for contracting with other sanitary and improvement districts for the building, acquisition, improvement, maintenance, and operation of public parks, playgrounds, and recreational facilities for the joint use of the residents of the contracting districts, and for contracting for any public purpose specifically authorized in this section. Power to construct clubhouses and similar facilities for the giving of private parties within the zoning jurisdiction of any city or village is not included in the powers granted in this section. Any sewer system established shall be approved by the Department of Health and Human Services. Any contract entered into on or after August 30, 2015, for solid waste collection services shall include a provision that, in the event the district is annexed in whole or in part by a city or village, the contract shall be canceled and voided upon such annexation as to the annexed areas.

(3) Prior to the installation of any of the improvements or services provided for in this section, the plans or contracts for such improvements or services, other than for public parks, playgrounds, and recreational facilities, whether a district acts separately or jointly with other districts as permitted by section [31-727](#), shall be approved by the public works department of any municipality when such improvements or any part thereof or services are within the area of the zoning jurisdiction of such municipality. If such improvements or services are without the area of the zoning jurisdiction of any municipality, plans for such improvements shall be approved by the county board of the county in which such improvements are located. Plans and exact costs for public parks, playgrounds, and recreational facilities shall be approved by resolution of the governing body of such municipality or county after a public hearing. Purchases of public parks, playgrounds, and recreational facilities so approved may be completed and shall be valid notwithstanding any interest of any trustee of the district in the transaction. Such approval shall relate to conformity with the master plan and the construction

specifications and standards established by such municipality or county. When no master plan and construction specifications and standards have been established, such approval shall not be required. When such improvements are within the area of the zoning jurisdiction of more than one municipality, such approval shall be required only from the most populous municipality, except that when such improvements are furnished to the district by contract with a particular municipality, the necessary approval shall in all cases be given by such municipality. The municipality or county shall be required to approve plans for such improvements and shall enforce compliance with such plans by action in equity.

(4) The district may construct its sewage disposal plant and other sewerage or water improvements, or both, in whole or in part, inside or outside the boundaries of the district and may contract with corporations or municipalities for disposal of sewage and use of existing sewerage improvements and for a supply of water for fire protection and for resale to residents of the district. It may also contract with any corporation, public power district, electric membership or cooperative association, or municipality for access to the facilities and use of the services of the library system of one or more neighboring cities or villages, for solid waste collection services, for the installation, maintenance, and cost of operating a system of street lighting upon the public streets and highways within the district, for installation, maintenance, and operation of a water system, or for the installation, maintenance, and operation of electric service lines and conduits, and to provide water service for fire protection and use by the residents of the district. It may also contract with any corporation, municipality, or other sanitary and improvement district, as permitted by section [31-727](#), for building, acquiring, improving, and operating public parks, playgrounds, and recreational facilities for the joint use of the residents of the contracting parties. It may also contract with a county within which all or a portion of such sanitary and improvement district is located or a city within whose zoning jurisdiction the sanitary and improvement district is located for intersection and traffic control improvements, which improvements serve or benefit the district and which may be within or without the corporate boundaries of the district, and for any public purpose specifically authorized in this section.

(5) Each sanitary and improvement district shall have the books of account kept by the board of trustees of the district examined and audited by a certified public accountant or a public accountant for the year ending June 30 and shall file a copy of the audit with the office of the Auditor of Public Accounts by December 31 of the same year. Such audits may be waived by the Auditor of Public Accounts upon proper showing by the district that the audit is unnecessary. Such examination and audit shall show (a) the gross income of the district from all sources for the previous year, (b) the amount spent for access to the facilities and use of the services of the library system of one or more neighboring cities or villages, (c) the amount spent for solid waste collection services, (d) the amount spent for sewage

disposal, (e) the amount expended on water mains, (f) the gross amount of sewage processed in the district, (g) the cost per thousand gallons of processing sewage, (h) the amount expended each year for (i) maintenance and repairs, (ii) new equipment, (iii) new construction work, and (iv) property purchased, (i) a detailed statement of all items of expense, (j) the number of employees, (k) the salaries and fees paid employees, (l) the total amount of taxes levied upon the property within the district, and (m) all other facts necessary to give an accurate and comprehensive view of the cost of carrying on the activities and work of such sanitary and improvement district. The reports of all audits provided for in this section shall be and remain a part of the public records in the office of the Auditor of Public Accounts. The expense of such audits shall be paid out of the funds of the district. The Auditor of Public Accounts shall be given access to all books and papers, contracts, minutes, bonds, and other documents and memoranda of every kind and character of such district and be furnished all additional information possessed by any present or past officer or employee of any such district, or by any other person, that is essential to the making of a comprehensive and correct audit.

(6) If any sanitary and improvement district fails or refuses to cause such annual audit to be made of all of its functions, activities, and transactions for the fiscal year within a period of six months following the close of such fiscal year, unless such audit has been waived, the Auditor of Public Accounts shall, after due notice and a hearing to show cause by such district, appoint a certified public accountant or public accountant to conduct the annual audit of the district and the fee for such audit shall become a lien against the district.

(7) Whenever the sanitary sewer system or any part thereof of a sanitary and improvement district is directly or indirectly connected to the sewerage system of any city, such city, without enacting an ordinance or adopting any resolution for such purpose, may collect such city's applicable rental or use charge from the users in the sanitary and improvement district and from the owners of the property served within the sanitary and improvement district. The charges of such city shall be charged to each property served by the city sewerage system, shall be a lien upon the property served, and may be collected from the owner or the person, firm, or corporation using the service. If the city's applicable rental or service charge is not paid when due, such sum may be recovered by the municipality in a civil action or it may be assessed against the premises served as a special assessment and may be assessed by such city and collected and returned in the same manner as other municipal special assessments are enforced and collected. When any such assessment is levied, it shall be the duty of the city clerk to deliver a certified copy of the ordinance to the county treasurer of the county in which the premises assessed are located and such county treasurer shall collect the assessment as provided by law and return the assessment to the city treasurer. Funds of such city raised from such charges shall be used by it in accordance with laws applicable to its sewer service rental or charges. The governing body of any city may make all

necessary rules and regulations governing the direct or indirect use of its sewerage system by any user and premises within any sanitary and improvement district and may establish just and equitable rates or charges to be paid to such city for use of any of its disposal plants and sewerage system. The board of trustees may, in connection with the issuance of any warrants or bonds of the district, agree to make a specified minimum levy on taxable property in the district to pay, or to provide a sinking fund to pay, principal and interest on warrants and bonds of the district for such number of years as the board may establish at the time of making such agreement and may agree to enforce, by foreclosure or otherwise as permitted by applicable laws, the collection of special assessments levied by the district. Such agreements may contain provisions granting to creditors and others the right to enforce and carry out the agreements on behalf of the district and its creditors.

(8) The board of trustees or administrator shall have power to sell and convey real and personal property of the district on such terms as it or he or she shall determine, except that real estate shall be sold to the highest bidder at public auction after notice of the time and place of the sale has been published for three consecutive weeks prior to the sale in a newspaper of general circulation in the county. The board of trustees or administrator may reject such bids and negotiate a sale at a price higher than the highest bid at the public auction at such terms as may be agreed.

Source: Laws 1949, c. 78, § 14, p. 200; Laws 1955, c. 117, § 5, p. 314; Laws 1961, c. 142, § 5, p. 413; Laws 1963, c. 170, § 1, p. 585; Laws 1965, c. 158, § 1, p. 507; Laws 1967, c. 188, § 2, p. 515; Laws 1971, LB 188, § 4; Laws 1972, LB 1387, § 2; Laws 1973, LB 245, § 5; Laws 1974, LB 629, § 1; Laws 1974, LB 757, § 12; Laws 1976, LB 313, § 3; Laws 1979, LB 187, § 144; Laws 1982, LB 868, § 8; Laws 1985, LB 207, § 3; Laws 1994, LB 501, § 3; Laws 1996, LB 43, § 6; Laws 1996, LB 1044, § 92; Laws 1997, LB 589, § 1; Laws 1997, LB 874, § 10; [Laws 2002, LB 176, § 2](#); [Laws 2007, LB296, § 50](#); [Laws 2008, LB768, § 2](#); [Laws 2015, LB324, § 4](#); [Laws 2015, LB361, § 52](#).

Annotations

Section 39-1402 and this section authorize concurrent authority in a county and a sanitary and improvement district to maintain and improve public roads within the boundaries of the sanitary and improvement district. *SID No. 2 of Stanton County v. County of Stanton*, 252 Neb. 731, 567 N.W.2d 115 (1997).

The furnishing by a city of water or sewer services to persons outside the corporate limits of the city is contractual and permissive and not a duty imposed upon the city by statute. *Bleick v. City of Papillion*, 219 Neb. 574, 365 N.W.2d 405 (1985).

Under the provisions of this section, the authority of the city council, in the first instance, and the mayor thereafter to approve or disapprove

proposals for the construction of a recreational facility to be built by a sanitary and improvement district is limited to a determination of whether or not the proposals conform to the municipality's master plan and construction specifications and standards. S.I.D. No. 95 v. City of Omaha, 219 Neb. 564, 365 N.W.2d 398 (1985).

31-740.01. District; additional powers; amendment to articles of association; notice; objections; determination by district court.

Whenever a majority of the board of trustees shall deem it advisable to amend the articles of association of the district to include additional powers authorized by law, they shall first propose a resolution declaring the advisability of such amendment and setting out verbatim the proposed amendment to the articles of association, and also setting out the time and place when the board of trustees shall meet to consider the adoption of such amendment. Notice of the time and place when such proposed amendment shall be considered shall be given the same day each week for two consecutive weeks in a newspaper of general circulation published in the county where the district was organized, which publication shall contain the entire wording of the proposed amendment. The last publication shall be not less than five days nor more than two weeks prior to the time set for hearing on objections to the passage of such resolution, at which hearing the owners of property within the district may appear and make objections to the proposed amendment. If the owners representing a majority of the front footage of real estate within the district fail to sign and present to the board, on or prior to the hearing date, a written petition opposing the resolution, then a majority of the board of trustees, may pass the resolution and thereby adopt the proposed amendment, or amend and then pass the amended resolution, and thereby adopt the amendment as altered. The clerk of the district shall thereupon file a certificate with the county clerk and with the Secretary of State certifying such amendment to the articles, and, upon such filing, the articles of association shall be deemed to have been duly amended and the district shall thereafter have all powers included within the articles of association as amended. If, however, a petition opposing such amendment is signed by property owners representing a majority of the front footage of real estate within the district and is presented to the board on or prior to the hearing date, then the board of trustees shall not adopt the amendments to the articles of association unless and until they have submitted the issue to and received the approval of the district court which had formed the district in a proceeding wherein the objecting parties are named as parties defendant and are given the statutory time to plead or answer as in civil cases. At the hearing, the court may (1) disapprove such amendments if the court finds that such amendments will not be conducive to the public health, convenience, or welfare, or (2) approve the proposed amendments as originally submitted or alter the same, if the court finds that such amendments will be conducive to the public health,

convenience, or welfare. Proceedings before the court shall be conducted as in other civil cases, including the right of appeal.

Source: Laws 1961, c. 142, § 8, p. 416.

Cross References

Appeal, see sections [25-1901](#) to [25-1937](#).

Civil procedure, generally, see Chapter 25.

31-741. Contracts; bidding requirements.

All contracts for construction work to be done or materials or equipment purchased, the expense of which is more than twenty thousand dollars, shall be let to the lowest responsible bidder, upon notice of not less than twenty days, of the terms and conditions of the contract to be let. The board of trustees or the administrator shall have power to reject any and all bids and readvertise for the letting of such work or to negotiate any contract after an unsuccessful public letting.

Source: Laws 1949, c. 78, § 15, p. 201; Laws 1978, LB 634, § 2; Laws 1982, LB 868, § 9; Laws 1984, LB 910, § 2; [Laws 2002, LB 176, § 3](#); [Laws 2006, LB 1175, § 5](#).

31-742. Rules and regulations; service charges; recovery.

The board of trustees or the administrator may make all necessary rules and regulations governing the use of the installations and the operation and control thereof. The board or the administrator may establish an initial connection charge to be paid by any person, firm, or corporation connecting to the sewer or water system, or both, at the time of connection and establish just and equitable rates or charges to be paid to it for connections and the use of the water mains, disposal plant, and sewerage system by each person, firm, or corporation whose premises are served thereby. If the service or connection charge so established is not paid when due, such sum may be recovered by the district in a civil action, or it may be certified to the county assessor and assessed against the premises served, and collected or returned in the same manner as other district taxes are certified, assessed, collected, and returned. The district, through its board of trustees or the administrator, may make contracts or agreements whereby a person or corporation, public or private, furnishing water to the inhabitants of the district, shall turn off and refuse to sell water to any such water user who is delinquent in the payment of any sewer rental or service charges over forty-five days. Notice of such discontinuance of water service to such person or corporation and water user shall be given by certified or registered mail.

Source: Laws 1949, c. 78, § 16, p. 201; Laws 1955, c. 117, § 6, p. 315; Laws 1959, c. 129, § 2, p. 466; Laws 1982, LB 868, § 10.

31-743. District; septic tanks; discontinue use; when.

Whenever a sewer system has been established, and dwellings in the district shall connect therewith, all septic tanks shall be dispensed with. The board of trustees or the administrator shall have the authority to institute court proceedings in a court of competent jurisdiction to carry out the provisions of this section.

Source: Laws 1949, c. 78, § 17, p. 202; Laws 1982, LB 868, § 11.

31-744. District; trustees or administrator; improvements and facilities authorized; resolution; construction; acquisition; contracting; approval; cost; assessment.

Whenever the board of trustees or the administrator deems it advisable or necessary (1) to build, reconstruct, purchase, or otherwise acquire a water system, an emergency management warning system, a sanitary sewer system, a sanitary and storm sewer or sewage disposal plant, pumping stations, sewer outlets, gas or electric service lines and conduits constructed or to be constructed in whole or in part inside or outside of the district, a system of sidewalks, public roads, streets, and highways wholly within the district, public waterways, docks, or wharfs, and related appurtenances, wholly within the district, or a public park or parks, playgrounds, and recreational facilities wholly within the district, (2) to contract as permitted by section [31-740](#) with the county or city within whose zoning jurisdiction the sanitary and improvement district is located for intersection and traffic control improvements which serve or benefit the district and are located within or without the corporate boundaries of the district, (3) to contract, as permitted by section [31-727](#), with other sanitary and improvement districts for acquiring, building, improving, and operating public parks, playgrounds, and recreational facilities for the joint use of the residents of the contracting districts, or (4) to contract for the installation and operation of a water system, the board of trustees shall declare the advisability and necessity therefor in a proposed resolution, which resolution, in the case of pipe sewer construction, shall state the kinds of pipe proposed to be used, shall include cement concrete pipe and vitrified clay pipe and any other material deemed suitable, shall state the size or sizes and kinds of sewers proposed to be constructed, and shall designate the location and terminal points thereof. If it is proposed to construct a water system, disposal plants, pumping stations, outlet sewers, gas or electric service lines and conduits, or a system of sidewalks, public roads, streets, or highways or public waterways, docks, or wharfs, to construct or contract for the construction of dikes and levees for flood protection for the district or public parks, playgrounds, or recreational

facilities, or to contract, as permitted by section [31-727](#), with other sanitary and improvement districts for acquiring, building, improving, and operating public parks, playgrounds, and recreational facilities for the joint use of the residents of the contracting districts, the resolution shall refer to the plans and specifications thereof which have been made and filed before the publication of such resolution by the engineer employed for such purpose. If it is proposed to purchase or otherwise acquire a water system, a sanitary sewer system, a sanitary or storm water sewer, sewers, sewage disposal plant, pumping stations, sewer outlets, gas or electric service lines and conduits, or public parks, playgrounds, or recreational facilities or to contract, as permitted by section [31-727](#), with other sanitary and improvement districts for acquiring, building, improving, and operating public parks, playgrounds, and recreational facilities for the joint use of the residents of the contracting districts, the resolution shall state the price and conditions of the purchase or how such facility is being acquired. If it is proposed to contract for the installation and operation of a water system for fire protection and for the use of the residents of the district, to contract for the construction of dikes and levees for flood protection for the district or gas or electric service lines and conduits, to contract with a county within which all or a portion of such sanitary and improvement district is located or a city within whose zoning jurisdiction the sanitary and improvement district is located for any public purpose specifically authorized in this section, or to contract, as permitted by section [31-727](#), with other sanitary and improvement districts for acquiring, building, improving, and operating public parks, playgrounds, and recreational facilities for the joint use of the residents of the contracting districts, the resolution shall state the principal terms of the proposed agreement and how the cost thereof is to be paid. When gas or electric service lines and conduits are among the improvements that are proposed to be constructed, purchased, or otherwise acquired or contracted for, and no construction specifications and standards therefor have been established by the municipality having zoning jurisdiction over the area where such improvements are to be located, or when such service lines and conduits are not to be located within any municipality's area of zoning jurisdiction, the plans and specifications for and the method of construction of such service lines and conduits shall be approved by the supplier of gas or electricity within whose service or customer area they are to be located. The engineer shall also make and file, prior to the publication of such resolution, an estimate of the total cost of the proposed improvement. The proposed resolution shall state the amount of such estimated cost.

The board of trustees or the administrator shall assess, to the extent of special benefits, the cost of such improvements upon properties specially benefited thereby, except that if the improvement consists of the replacement of an existing facility, system, or improvement that poses an existing threat to public health and safety affecting no more than one hundred existing homes, the cost of such improvements may be paid for by an issue of general obligation bonds under

section [31-755](#). The resolution shall state the outer boundaries of the district or districts in which it is proposed to make special assessments.

Source: Laws 1949, c. 78, § 18, p. 202; Laws 1955, c. 117, § 7, p. 315; Laws 1961, c. 142, § 6, p. 414; Laws 1967, c. 189, § 5, p. 522; Laws 1969, c. 250, § 5, p. 914; Laws 1973, LB 245, § 6; Laws 1974, LB 757, § 13; Laws 1976, LB 313, § 4; Laws 1982, LB 868, § 12; Laws 1985, LB 207, § 4; Laws 1994, LB 501, § 4; Laws 1996, LB 43, § 7; Laws 1997, LB 531, § 2; Laws 1997, LB 589, § 2; Laws 1997, LB 874, § 11.

31-745. Resolution; notice; hearing.

Notice of the time and place, which place shall be in the county where the district is organized, when any such resolution shall be set for consideration before the board of trustees or the administrator, shall be given the same day each week two consecutive weeks in a newspaper of general circulation published in the county where the district was organized, which publication shall contain the entire wording of the resolution and be posted in three conspicuous places in the district. The last publication shall not be less than five days nor more than two weeks prior to the time set for hearing on objections to the adoption of any such resolution, at which hearing the owners of the property which might become subject to assessment for the contemplated improvement may appear and make objections to the proposed improvement. Thereupon the resolution may be amended and adopted or adopted as proposed.

Source: Laws 1949, c. 78, § 19, p. 203; Laws 1982, LB 868, § 13.

31-746. Resolution; objections; effect.

If a petition opposing the resolution, signed by property owners representing a majority of the front footage which may become subject to assessment for the cost of any improvements as set forth by the resolution, is filed with the clerk of the district within three days before the date of the meeting for the hearing on such resolution, such resolution shall not be adopted.

Source: Laws 1949, c. 78, § 20, p. 203; Laws 1955, c. 117, § 8, p. 316; Laws 1982, LB 868, § 14.

31-747. District; resolution; improvements authorized.

Upon compliance with the provisions of sections [31-744](#) to [31-746](#), the board of trustees or the administrator may by resolution order the making, reconstruction, purchase, or otherwise acquiring of any of the improvements provided for in sections [31-727](#) to [31-762](#).

Source: Laws 1949, c. 78, § 21, p. 203; Laws 1982, LB 868, § 15.

31-748. Improvements; contract; notice; bids.

After ordering any such improvements, as provided in sections [31-727](#) to [31-762](#), the board of trustees or the administrator may enter into a contract for the construction of such improvement in one or more contracts, but no work shall be done or contract let until notice to contractors has been published in a legal newspaper of general circulation in the county where the district is organized. The notice shall be published the same day each week two consecutive weeks in such paper and shall generally state (1) the extent of the work, (2) the kinds of material to be bid upon, including in such notice all kinds of material mentioned in the resolution as provided in section [31-744](#), (3) the amount of the engineer's estimate of the cost of such improvements, (4) the time when bids will be received, and (5) the amount of the certified check or bid bond required to accompany the bids. Each bid shall be accompanied in a separate sealed envelope by certified check or bid bond in an amount to be named in the notice, which amount shall be not less than five percent of the engineer's total estimate of the cost, and shall be made payable to the treasurer of the district as security that the bidder to whom the contract may be awarded will enter into a contract to build the improvements in accordance with the notice to contractors and give bond in the sum named in such notice for the construction of such improvements as the notice required. Checks or bonds accompanying bids not accepted shall be returned to the bidders. The work provided for in this section shall be done under written contract with the lowest responsible bidder on the material selected after the bids are opened and in accordance with the requirements of the plans and specifications. The board of trustees or the administrator may reject any or all bids received and advertise for new bids in accordance with this section.

Source: Laws 1949, c. 78, § 22, p. 203; Laws 1979, LB 252, § 3; Laws 1982, LB 868, § 16.

31-748.01. Completion of contract; notice to district; objections; final payment; interest.

If the contractor has furnished the district all required records and reports, the district shall after July 10, 1984, pay the contractor interest at the rate specified in section [39-1349](#), as such rate may from time to time be adjusted by the Legislature, on any contract amount retained and the final payment due the contractor beginning twenty days after completion of the work covered by the contract under section [31-748](#). The contractor shall notify the district in writing that the work has been completed and the district, within twenty days after receipt of such notice,

shall give written notice to the contractor of any objections by the district to acceptance of the work.

Source: Laws 1963, c. 168, § 1, p. 583; Laws 1969, c. 253, § 1, p. 923; Laws 1984, LB 734, § 1.

31-749. Improvements; engineer; certificate of acceptance; cost; statement; special assessment; notices; hearing; appeal; hearing in district court.

After (1) the completion of any work or purchase, (2) acquiring a sewer or water system, or both, or public parks, playgrounds, or recreational facilities, (3) contracting, as permitted by section [31-727](#), with other sanitary and improvement districts to acquire public parks, playgrounds, and recreational facilities for the joint use of the residents of the contracting districts, or gas or electric service lines or conduits, or (4) completion of the work on (a) a system of sidewalks, public roads, streets, highways, public waterways, docks, or wharfs and related appurtenances or (b) levees for flood protection for the district, the engineer shall file with the clerk of the district a certificate of acceptance which shall be approved by the board of trustees or the administrator by resolution. The board of trustees or administrator shall then require the engineer to make a complete statement of all the costs of any such improvements, a plat of the property in the district, and a schedule of the amount proposed to be assessed against each separate piece of property in such district. The statement, plat, and schedule shall be filed with the clerk of the district within sixty days after the date of acceptance of: The work, purchase, or acquisition of a sewer or water system, or both; the work on a system of sidewalks, public roads, streets, highways, public waterways, docks, or wharfs and related appurtenances, or dikes and levees for flood protection for the district; or as permitted by section [31-727](#), the acquisition of public parks, playgrounds, and recreational facilities whether acquired separately or jointly with other districts. The board of trustees or administrator shall then order the clerk to give notice that such statement, plat, and schedules are on file in his or her office and that all objections thereto or to prior proceedings on account of errors, irregularities, or inequalities not made in writing and filed with the clerk of the district within twenty days after the first publication of such notice shall be deemed to have been waived. Such notice shall be given by publication the same day each week two consecutive weeks in a newspaper of general circulation published in the county where the district was organized and by handbills posted along the line of the work. Such notice shall state the time and place where any objections, filed as provided in this section, shall be considered by the board of trustees or administrator. The cost of such improvements in the district which are within the area of the zoning jurisdiction of any municipality shall be levied as special assessments to the extent of special benefits to the property and to the extent the costs of such improvements are assessed in such municipality. The complete statement of costs and the schedule of proposed special assessments for such

improvements which are within the zoning jurisdiction of such municipality against each separate piece of property in districts located within the zoning jurisdiction of such municipality shall be given to such municipality within seven days after the first publication of notice of statement, plat, and schedules. When such improvements are within the area of the zoning jurisdiction of more than one municipality, such proposed special assessments schedule and statement need be given only to the most populous municipality. Such municipality shall have the right to be heard, and it shall have the right of appeal from a final determination by the board of trustees or administrator against objections which such city has filed. Notice of the proposed special assessments for such improvements against each separate piece of property shall be given to each owner of record thereof within five days after the first publication of notice of statement, plat, and schedules and, within five days after the first publication of such notice, a copy thereof, along with statements of costs and schedules of proposed special assessments, shall be given to each person or company who, pursuant to written contract with the district, has acted as underwriter or fiscal agent for the district in connection with the sale or placement of warrants or bonds issued by the district. Each owner shall have the right to be heard, and shall have the right of appeal from the final determination made by the board of trustees or administrator. Any person or any such municipality feeling aggrieved may appeal to the district court by petition within twenty days after such a final determination. The court shall hear and determine such appeal in a summary manner as in a case in equity and without a jury and shall increase or reduce the special assessments as the same may be required to provide that the special assessments shall be to the full extent of special benefits, and to make the apportionment of benefits equitable.

Source: Laws 1949, c. 78, § 23, p. 204; Laws 1955, c. 117, § 9, p. 317; Laws 1961, c. 142, § 7, p. 415; Laws 1965, c. 157, § 1, p. 504; Laws 1967, c. 190, § 1, p. 524; Laws 1971, LB 188, § 5; Laws 1973, LB 245, § 7; Laws 1974, LB 757, § 14; Laws 1976, LB 313, § 5; Laws 1979, LB 252, § 4; Laws 1982, LB 868, § 17; [Laws 2015, LB361, § 53.](#)

Annotations

A fiscal agent of a sanitary and improvement district has standing to appeal the decision of the district's board as a person feeling aggrieved. *City of Omaha v. S.I.D. No. 287*, 214 Neb. 371, 334 N.W.2d 429 (1983).

Review by a court of the decision of a sanitary and improvement district board is as in an equity action. The court may fully review the evidence and reach conclusions independent of that board. *City of Omaha v. S.I.D. No. 287*, 214 Neb. 371, 334 N.W.2d 429 (1983).

Assumed, for purposes of this case, sanitary and improvement district was required to notify city of Omaha of apportionment hearing. *Pedersen v. Westroads, Inc.*, 189 Neb. 236, 202 N.W.2d 198 (1972).

31-750. Assessments; hearings; adjustment.

The hearing on the proposed assessment shall be held by the board of trustees or the administrator sitting as a board of adjustment and equalization at the time and place specified in such notice and not less than twenty days nor more than thirty days after the date of the first publication, unless such session be adjourned, with provisions for proper notice of such adjournment. At such meeting, the proposed assessments shall be adjusted and equalized with reference to benefits resulting from the improvement and shall not exceed such benefits.

Source: Laws 1949, c. 78, § 24, p. 205; Laws 1982, LB 868, § 18.

31-751. Special assessments; equalization; levy; certified; manner; collection.

After the equalization of such special assessments as required by sections [31-727](#) to [31-762](#), such special assessments shall be levied by the board of trustees or the administrator upon all lots or parcels of ground within the district which are benefited by reason of such improvement, such levy to be made within six months after acceptance of the improvement by the board of trustees or the administrator. All such special assessments shall be levied within eighteen months after commencement of construction. Failure to levy assessments within such six-month or eighteen-month period shall not invalidate assessments made after the six-month or eighteen-month period. Such special assessments may be relieved, if for any reason the levy thereof is void or not enforceable. Such levy shall be enforced as other special assessments and any payments thereof under previous levies shall be credited to the person or property making the same. Not less than eleven and not more than twenty days after the levying of any special assessment, the clerk of the district shall certify such levy to the county treasurer and county clerk of the county. If a notice of appeal from such levy has been filed with the clerk, he or she shall note on the certificate of levy that an appeal has been commenced and that the amounts of the assessments are subject to redetermination pursuant to the appeal. All receipts given by the county treasurer for special assessments as to which an appeal is pending shall show thereon that the special assessment amount is subject to redetermination by the appeal. Upon termination of any appeal, the clerk of the district shall so certify to the county clerk and county treasurer. All assessments made for such purposes shall be collected in the same manner as general taxes and shall be subject to the same penalties or may be collected pursuant to section [77-1917.01](#).

Source: Laws 1949, c. 78, § 25, p. 205; Laws 1971, LB 188, § 6; Laws 1976, LB 313, § 6; Laws 1982, LB 868, § 19.

Cross References

31-752. Improvements; assessment of benefits; exempt property; cost; interest; rate.

The board of trustees or the administrator shall not cause to be assessed for any of the improvements herein provided, property by law not assessable, or property not included within the district defined in the preliminary resolution, and shall not assess property not benefited; *Provided*, in cases when such exempt property has been specially benefited by the improvements, the owner of such property shall pay the district a sum equivalent to the amount the property has been specially benefited, which amount may be recovered by the district in an action against the property owner. If the parties do not agree as to the amount of the special benefits, the amount may be determined by the district court in an action brought by the district for such purpose. The board of trustees or the administrator may find that any part or all of such improvements made are of general benefit to the district except that the board or administrator shall levy special assessments on all lots, parcels, or pieces of real estate specially benefited to the extent of the special benefits to such property. The cost of such improvements shall be paid from the assessments levied against all the property in the district, in the manner provided by section [31-755](#), or may be paid from unappropriated money in its general fund. The cost of the improvements shall draw interest at the rate of six percent per annum from the date of acceptance thereof by the board or administrator until warrants are issued in payment of the contract price.

Source: Laws 1949, c. 78, § 26, p. 206; Laws 1955, c. 117, § 10, p. 317; Laws 1961, c. 138, § 9, p. 402; Laws 1961, c. 141, § 2, p. 407; Laws 1967, c. 191, § 1, p. 526; Laws 1982, LB 868, § 20.

31-753. Special assessments; installment payment; interest; delinquent; collection.

All special assessments provided for in section [31-739](#) shall become due in fifty days after the date of the levy and may be paid within that time without interest, but if not so paid they shall bear interest thereafter on a per annum basis until delinquent at the greater of (1) the rate of interest accruing on construction fund warrants registered against such district sixty days prior to the actual levy of the special assessments or (2) the average rate of interest accruing on the construction fund warrants issued to pay for the improvements for which the special assessments are to be levied adjusted to the next greater one-half percent. Such assessments shall become delinquent in equal annual installments over such periods of years, not exceeding twenty, as the board of trustees or the administrator may determine at the time of making the levy. Delinquent installments shall bear interest at the rate of two percent per annum above the rate set by the district on

such installments before delinquency, except that no such rate shall exceed the rate specified in section [45-104.01](#), as such rate may from time to time be adjusted by the Legislature. If three or more installments shall be delinquent, the board of trustees or the administrator may declare all of the remaining installments to be at once delinquent and such installments declared delinquent shall bear interest at the rate specified in section [45-104.01](#), as such rate may from time to time be adjusted by the Legislature, until paid and may be collected the same as other delinquent installments may be collected.

Source: Laws 1949, c. 78, § 27, p. 206; Laws 1961, c. 141, § 3, p. 408; Laws 1971, LB 188, § 7; Laws 1972, LB 1442, § 1; Laws 1976, LB 313, § 7; Laws 1980, LB 933, § 27; Laws 1981, LB 167, § 28; Laws 1982, LB 868, § 21; Laws 1997, LB 531, § 3; [Laws 1999, LB 806, § 1.](#)

31-754. Special assessments; sinking fund; transfer of funds.

All special assessments provided by sections [31-727](#) to [31-762](#) and all connection charges collected shall, when levied, constitute a sinking fund for the purpose of paying the cost of the improvements herein provided for with allowable interest thereon and shall be solely and strictly applied to such purpose to the extent required; but any excess thereof may be by the board or the administrator, after fully discharging the purposes for which levied, transferred to such other fund or funds as the board of trustees or the administrator may deem advisable.

Source: Laws 1949, c. 78, § 28, p. 206; Laws 1982, LB 868, § 22.

31-755. Improvements; bonds; warrants; procedure; issuance; negotiability; extension of due date; hearing; interest; levy; sinking fund; tax.

For the purpose of paying the cost of the improvements herein provided for, the board of trustees or the administrator, after such improvements have been completed and accepted, shall have the power to issue negotiable bonds of any such district, to be called sanitary and improvement district bonds, payable in not to exceed thirty years. Each issue of general obligation bonds shall mature or be subject to mandatory redemption so that the first principal repayment is made not more than five years after the date of issuance and so that at least twenty percent of the district's bonds then outstanding shall be repaid within ten years after the date of issuance. Such bonds shall bear interest payable annually or semiannually. Such bonds may either be sold by the district or delivered to the contractor in payment for the work but in either case for not less than their par value. For the purpose of making partial payments as the work progresses, warrants may be issued by the board of trustees or the administrator upon certificates of the engineer in charge showing the amount of work completed and materials necessarily purchased and delivered for the orderly and proper continuation of the project, in a sum not to

exceed ninety-five percent of the cost thereof. Warrants issued prior to July 10, 1976, for capital outlays of the district shall become due and payable twelve months after April 21, 1982, and warrants issued on or after July 10, 1976, for capital outlays of the district shall become due and payable not later than five years from the date of issuance, except that such warrants need not be retired on such date or within such five-year period and shall not be in default if the district court of the county determines, upon application to it by the district, that the district does not have the funds to retire such warrants and either (1) the district is unable to sell its bonds in amount sufficient to retire such warrants or (2) an unreasonably high tax levy, as compared to the levy on other similar property in the county, would be required in order to cover the debt service requirements on bonds issued to retire such warrants. Such application may be filed either before or within ninety days after the due date of the warrants, and no warrant for which an extension application has been made to the district court and a hearing date set by the court shall be in default while such application is pending before the court. Notice of the filing of such application and the time and place of the hearing thereon shall be published in a newspaper of general circulation in the county the same day each week three consecutive weeks. Within five days after the first publication of such notice, the district shall cause to be mailed, by United States certified mail, a copy of such notice to each holder of warrants covered by the application whose name and post office address are known to the district. Prior to the hearing, proof of such mailing shall be made by affidavit of a trustee of the district or the administrator or the district's attorney that such mailing was made and further that the district, its trustees or administrator, and its attorney, after diligent investigation and inquiry, were unable to ascertain and do not know the name and post office address of any holder of such warrants other than those to whom notice has been mailed in writing or who have waived notice in writing or entered an appearance in the proceeding. Upon making such determination, the district court may make such orders concerning retirement of the warrants as it determines proper under the circumstances of the district including ordering an increase in the tax levy of the district to provide funds for warrant redemption, except that no court-ordered tax levy for redemption of warrants shall cause the total tax levy of the district to be unreasonably high as compared with the tax levy of other similar property in the county. Such warrants shall draw interest, at such rate as fixed by the board of trustees or the administrator and endorsed on the warrants, from the date of presentation for payment and shall be redeemed and paid from the proceeds of special assessments or from the sale of the bonds issued and sold as provided in this section or from any other funds available for that purpose. Bonds to redeem such warrants shall be issued as soon as economically feasible, and to the extent warrants are not redeemed from bond proceeds or other funds available for such purpose, the district shall make a tax levy to provide a sinking fund for warrant redemption, except that such obligation shall not require a total tax levy by the district which shall be unreasonably high as compared with the tax levy on other similar property in the county. The board of trustees or the administrator shall after

August 26, 1983, pay to the contractor interest at the rate specified in section [39-1349](#), as such rate may from time to time be adjusted by the Legislature, on the amounts due on partial and final payments, beginning thirty days after the certification of the amounts due by the engineer in charge and approval by the board of trustees or the administrator and running until the date that the warrant is tendered to the contractor. Warrants issued for operation and maintenance expenses of the district shall be issued not later than sixty days following the date upon which the district is in receipt of a bill for the amount of operation or maintenance expenses owed and such warrants shall become due and payable not later than three years from the date of issuance. If a warrant for operation or maintenance expenses is not issued within such sixty-day period, the amount owed by the district shall bear interest from the sixty-first day until the date upon which the warrant is issued at a rate equivalent to one and one-half times the rate specified in subsection (2) of section [45-104.02](#). The district shall agree to pay annual or semiannual interest on all capital outlay warrants issued by the district and shall issue warrants to pay such interest or shall issue its warrants in return for cash to pay such interest. Interest on capital outlay warrants shall be represented by coupons payable to bearer attached to each warrant, but coupons shall not be issued for interest accruing after the due date of such warrant. All coupons shall show on their face the number of the warrant to which they appertain and that the coupon shall not be valid for payment of any interest after the warrant has been called for redemption or redeemed. Warrant interest coupons not paid when due for lack of funds shall be registered, bear interest, and be paid the same as is provided in section [10-209](#) for bond coupons. Warrants issued to pay interest on capital outlay warrants shall become due and payable in the same time as capital outlay warrants. The district may, if determined appropriate by the board of trustees or the administrator, pay fees to fiscal agents in connection with the placement and registration of ownership of warrants issued by the district. The board of trustees or the administrator shall levy special assessments on all lots, parcels, or pieces of real estate benefited by the improvement to the extent of the benefits to such property. The special assessments when collected shall be set aside and constitute a sinking fund for the payment of the interest and principal of such bonds. In addition to the special assessments provided for in this section, there shall be levied annually a tax upon the taxable value of all the taxable property in such district which, together with such sinking fund derived from special assessments, shall be sufficient to meet payments of interest and principal on all bonds as such become due. Such tax levy shall be known as the sanitary and improvement district bond tax levy and shall be payable annually in money.

Source: Laws 1949, c. 78, § 29, p. 206; Laws 1955, c. 117, § 11, p. 318; Laws 1965, c. 157, § 2, p. 505; Laws 1965, c. 158, § 2, p. 509; Laws 1967, c. 192, § 1, p. 528; Laws 1971, LB 1, § 2; Laws 1975, LB 112, § 7; Laws 1976, LB 313, § 8; Laws 1978, LB 870, § 1; Laws 1979, LB 187, § 145; Laws 1982, LB 868, § 23; Laws 1983, LB 303, § 2; Laws 1992, LB 719A, § 127; Laws 1996, LB 1321, § 1; Laws 1996, LB 1362, § 6.

Annotations

The Nebraska statutes governing sanitary and improvement districts grant a priority of payment in favor of bonds over warrants so as to require that bonds be fully paid according to their terms prior to utilizing revenues for payment of warrants when an S.I.D. is bankrupt. *Hollstein v. First Nat. Bank of Aurora*, 231 Neb. 711, 437 N.W.2d 512 (1989).

An application seeking an extension of time within which to retire warrants filed pursuant to this section is an equitable proceeding reviewed by the Nebraska Supreme Court de novo on the record. *In re Application of S.I.D. No. 65*, 219 Neb. 647, 365 N.W.2d 456 (1985).

Where a fiscal agent for sale of bonds of a sanitary and improvement district purchases the bonds privately at par, payment of a fee for fiscal services to such purchaser constitutes a sale of bonds at less than par in violation of this statute. *Hayes v. Sanitary & Improvement Dist. No. 194*, 196 Neb. 653, 244 N.W.2d 505 (1976).

District was authorized to issue bonds for not to exceed thirty years on such terms as district court might direct. *Sanitary & Improvement Dist. v. City of Ralston*, 182 Neb. 63, 152 N.W.2d 111 (1967).

31-756. Bonds; petition; contents.

The board of trustees or the administrator of the district or such holder or holders of any bond or bonds of the district shall file in the district court for the county in which the lands of the district, or the greater portion thereof, are situated, a petition praying in effect that the proceedings aforesaid may be examined, approved, and confirmed by the court. The petition shall state the facts showing the proceedings had for the issuance and sale of the bonds, and shall state generally that the sanitary and improvement district was duly organized, and that the first board of trustees was duly elected. The petition need not state the facts showing such organization of the district or the appointment of the first board of trustees but shall state the facts relevant to the appointment of the administrator.

Source: Laws 1949, c. 78, § 30, p. 207; Laws 1982, LB 868, § 24.

31-757. Bonds; petition; notice; hearing.

The court shall fix the time for the hearing of the petition, and shall order the clerk of the court to give and publish a notice of the filing of the petition. The notice shall be given by publication the same day each week three consecutive weeks. The notice shall state the time and place fixed for the hearing of the petition

and prayer of the petition, and that any person interested in the organization of the district or in the proceedings for the issuance or sale of the bonds may, on or before the day fixed for the hearing of the petition, move to dismiss the petition or answer thereto. The petition may be referred to and described in the notice as the petition of (giving its name) praying that the proceedings for the issuance and sale of such bonds of such district may be examined, approved, and confirmed by the court.

Source: Laws 1949, c. 78, § 31, p. 207.

31-758. Bonds; petition; answer; rules of procedure.

Any person interested in the district, or in the issuance or sale of the bonds, may move to dismiss the petition, or file an answer thereto. The provisions of the code of civil procedure respecting motions and answer to a petition shall be applicable to motions and answer to the petition in such special proceedings. The persons so filing motions and answering the petition shall be the defendants to the special proceedings, and the board of trustees shall be the plaintiff. Every material statement of the petition not specially controverted by the answer must, for the purpose of such special proceedings, be taken as true. Each person failing to answer the petition shall be deemed to admit as true all the material statements of the petition. The rules of pleading and practice provided by the code of civil procedure which are not inconsistent with the provisions of sections [31-727](#) to [31-762](#) are applicable to the special proceedings herein provided for.

Source: Laws 1949, c. 78, § 32, p. 208.

Cross References

Rules of pleading promulgated by Supreme Court, see section [25-801.01](#).

31-759. Bonds; proceedings; jurisdiction of court; statement.

Upon the hearing of such special proceedings, the court shall have the power and jurisdiction to examine and determine the legality and validity of, and approve and confirm or disapprove and disaffirm, each and all of the proceedings for the organization of such district under sections [31-727](#) to [31-762](#), from and including the petition for the organization of the district, and all other proceedings which may affect the legality or validity of the bonds and the order of the sale and the sale thereof. The court in inquiring into the regularity, legality, or correctness of such proceedings shall disregard an error, irregularity, or omission which does not affect the substantial rights of the parties to such special proceedings. It may approve and

confirm such proceedings in part and disapprove and declare illegal or invalid other and subsequent parts of the proceedings. The court shall find and determine whether the notice of the filing of the petition has been duly given and published for the time and in the manner prescribed in section [31-757](#). The costs of the special proceedings may be allowed and apportioned between the parties in the discretion of the court. If the court shall determine the proceedings for the organization of the district and for the voting and issuing of the bonds legal and valid, the board of trustees or the administrator shall then prepare a written statement beginning with the filing of the petition for the organization of the district, including all subsequent proceedings for the organization of the district and voting and issuing of the bonds, and ending with the decree of the court finding the proceedings for the organization of the district and the proceedings for the voting and issuing of the bonds legal and valid. The written statement shall be certified under oath by the board of trustees or the administrator of the district.

Source: Laws 1949, c. 78, § 33, p. 208; Laws 1982, LB 868, § 25; [Laws 2001, LB 420, § 26](#).

31-760. Repealed. Laws 1959, c. 130, § 5.

31-761. District; change in boundary; petition; notice; hearing; order; effect.

(1) The sanitary and improvement district may be enlarged and additional territory annexed to the district by either of the following methods:

(a) By petitions signed by the owner or owners of all the property to be annexed to the district. If such a petition requesting annexation is presented to the trustees and approved by the trustees the change in the boundaries to include the additional area shall be certified by the clerk of the district to the county clerk in which the greater portion of the district is located and thereafter the district shall include the area thus annexed.

(b) By a petition filed with the clerk of the district, signed by persons owning not less than fifty percent of the area to be annexed, but not signed by persons owning all the area requested to be annexed. On the filing of such petition, the trustees of the district shall fix a time and place for a hearing thereon and give notice of said hearing by two weekly publications and by either registered or certified mail to the record owners of all persons owning land within the territory sought to be annexed, not less than ten days prior to the date of said hearing, if the address of said owners is known or can be ascertained by reasonable diligence by the trustees. At the said meeting, any person owning property within the area proposed to be annexed or any person owning property or residing within the district may appear and be heard. If, after said hearing, the board of trustees find and determine that annexation of the additional area will be conducive to the public

health, convenience, and welfare and will not be an undue burden on the district, the board of trustees may, by resolution, annex the additional area and fix the boundary thereof which shall not include more than the area requested in the petition. A copy of the said resolution shall be filed with the county clerk of the county in which the greater portion of the district is located and thereafter the area included by said resolution shall be a part of the district.

(2) All property, from and after it is annexed to the district as above provided, shall be subject to all taxes and other burdens thereafter levied by the district, regardless of when the obligation for which said taxes or assessments are levied was incurred.

(3) No lands included within any municipal corporation shall be included in any sanitary and improvement district, and no tract of twenty acres or more which is outside any municipal corporation and is used primarily for industrial purposes shall be included in any sanitary and improvement district organized under sections [31-727](#) to [31-762](#) without the written consent of the owner of such tract.

Source: Laws 1949, c. 78, § 35, p. 210; Laws 1957, c. 242, § 25, p. 838.

Annotations

No district may be enlarged by annexing or including land located within any municipal corporation. *Sanitary & Improvement Dist. v. City of Ralston*, 182 Neb. 63, 152 N.W.2d 111 (1967).

31-762. Sections; supplementary to existing law.

Sections [31-727](#) to [31-762](#) are supplementary to existing statutes and confer upon sanitary and improvement districts powers not heretofore granted and sections [31-727](#) to [31-762](#) shall not be construed as repealing or amending any existing statute.

Source: Laws 1949, c. 78, § 36, p. 211.

31-762.01. District located near solid waste disposal site; improvements or facilities; approval requirements.

(1) In addition to any authority granted to a city, village, or county under sections [31-727](#) to [31-762](#) to review or approve any actions or proposed actions of a sanitary and improvement district, any sanitary and improvement district which includes real property located within one mile of the boundary of a solid waste disposal site for which a permit application is pending or for which a permit has

been issued pursuant to section [13-2036](#) shall obtain the approval of the governing body of any county, municipality, or agency which has applied for or which is a holder of such permit prior to entering into any contract or agreement for or otherwise providing for building, reconstructing, purchasing, or otherwise acquiring or providing any improvements or facilities pursuant to section [31-727](#), [31-740](#), or [31-744](#), and prior to the acquisition of any property pursuant to section [31-736](#), [31-737](#), or [31-738](#).

(2) Approval under this section shall be based upon a determination by the county, municipality, or agency:

(a) That the proposed action by the sanitary and improvement district will not hinder, impede, obstruct, interfere with, or unduly burden the county, municipality, or agency in the performance of its duties and responsibilities under the Integrated Solid Waste Management Act;

(b) That the proposed action by the sanitary and improvement district is consistent with the preservation of the public health, safety, and welfare under the provisions of such act; and

(c) That the proposed action by the sanitary and improvement district will not create financial burdens upon the county, municipality, or agency responsible for a facility in the construction, operation, management, closure, or postclosure care of the facility disproportionate to the benefits from the proposed action to be derived by the owners of the land within the sanitary and improvement district making a reasonable use of their land.

(3) For purposes of this section, county, municipality, facility, and agency shall have the definitions provided in the Integrated Solid Waste Management Act.

Source: Laws 1994, LB 1207, § 13.

Cross References

Integrated Solid Waste Management Act, see section [13-2001](#).

31-763. Annexation of territory by a city or village; effect on certain contracts.

(1) Whenever any city or village annexes all the territory within the boundaries of any sanitary and improvement district organized under the provisions of sections [31-701](#) to [31-726.01](#) as such sections existed prior to July 19, 1996, or under sections [31-727](#) to [31-762](#), the district shall merge with the city or village and the city or village shall succeed to all the property and property rights of every kind, contracts, obligations, and choses in action of every kind, held by or belonging to

the district, and the city or village shall be liable for and recognize, assume, and carry out all valid contracts and obligations of the district. All taxes, assessments, claims, and demands of every kind due or owing to the district shall be paid to and collected by the city or village. Any special assessments which the district was authorized to levy, assess, relevel, or reassess, but which were not levied, assessed, relevelled, or reassessed, at the time of the merger, for improvements made by it or in the process of construction or contracted for may be levied, assessed, relevelled, or reassessed by the annexing city or village to the same extent as the district may have levied or assessed but for the merger. Nothing in this section shall authorize the annexing city or village to revoke any resolution, order, or finding made by the district in regard to special benefits or increase any assessments made by the district, but such city or village shall be bound by all such findings or orders and assessments to the same extent as the district would be bound. No district so annexed shall have power to levy any special assessments after the effective date of such annexation.

(2) Any contract entered into on or after August 30, 2015, by a sanitary and improvement district for solid waste collection services shall, upon annexation of such district by a city or village, be canceled and voided.

Source: Laws 1959, c. 130, § 1, p. 467; Laws 1969, c. 255, § 1, p. 925;
[Laws 2015, LB324, § 5](#); [Laws 2018, LB130, § 1](#).

Annotations

Upon annexation of sanitary and improvement district by Omaha, in absence of fraud, Omaha was bound by all findings, orders, and assessments made by district to same extent as district. *Pedersen v. Westroads, Inc.*, 189 Neb. 236, 202 N.W.2d 198 (1972).

This section covers the annexation by a city of all of the property within the boundaries of a sanitary and improvement district. *Sanitary & Improvement Dist. v. City of Ralston*, 182 Neb. 63, 152 N.W.2d 111 (1967).

31-764. Annexation; trustees; administrator; accounting; effect; special assessments prohibited.

The trustees or administrator of a sanitary and improvement district shall, within thirty days after the effective date of the merger, submit to the city or village a written accounting of all assets and liabilities, contingent or fixed, of the district. Unless the city or village within six months thereafter brings an action against the trustees or administrator of the district for an accounting or for damages for breach of duty, the trustees or administrator shall be discharged of all further duties and liabilities and their bonds exonerated. If the city or village brings such an action

and does not recover judgment in its favor, the taxable costs may include reasonable expenses incurred by the trustees or administrator in connection with such suit and a reasonable attorney's fee for the trustees' or administrator's attorney. The city or village shall represent the district and all parties who might be interested in such an action. The city or village and such trustees or administrator shall be the only necessary parties to such action. Nothing contained in this section shall authorize the trustees or administrator to levy any special assessments after the effective date of the merger.

Source: Laws 1959, c. 130, § 2, p. 468; Laws 1969, c. 255, § 2, p. 926; Laws 1976, LB 313, § 9; Laws 1982, LB 868, § 26; [Laws 2018, LB130, § 2.](#)

Annotations

No action for accounting or damages having been filed, city of Omaha assumed all general obligations upon merger. *Pedersen v. Westroads, Inc.*, 189 Neb. 236, 202 N.W.2d 198 (1972).

31-765. Annexation; when effective; trustees; administrator; duties; special assessments prohibited.

The merger shall be effective thirty days after the effective date of the ordinance annexing the territory within the sanitary and improvement district. If the validity of the ordinance annexing the territory is challenged by a proceeding in a court of competent jurisdiction, the effective date of the merger shall be thirty days after the final determination of the validity of the ordinance. The trustees or administrator of the sanitary and improvement district shall continue in possession and conduct the affairs of the district until the effective date of the merger, but shall not during such period levy any special assessments after the effective date of annexation.

Source: Laws 1959, c. 130, § 3, p. 468; Laws 1969, c. 255, § 3, p. 926; Laws 1982, LB 868, § 27; [Laws 2018, LB130, § 3.](#)

Annotations

This section operates to stay a proposed merger until a court can make a final determination as to its merits. *United States Cold Storage v. City of La Vista*, 285 Neb. 579, 831 N.W.2d 23 (2013).

A court decree confirming legality of municipal bonds does not adjudicate collateral matters, nor the validity of a fiscal agent's fee. *Hayes v. Sanitary & Improvement Dist. No. 194*, 196 Neb. 653, 244 N.W.2d 505 (1976).

Merger of district and city is effective thirty days after the effective date of ordinance annexing the territory within the district. Sanitary & Improvement Dist. v. City of Ralston, 182 Neb. 63, 152 N.W.2d 111 (1967).

31-766. Annexation; obligations and assessments; agreement to divide; approval; special assessments prohibited; effect on certain contracts.

(1) If only a part of the territory within any sanitary and improvement district is annexed by a city or village, the sanitary and improvement district acting through its trustees or administrator and the city or village acting through its governing body may agree between themselves as to the division of the assets, liabilities, maintenance, contracts, or other obligations of the district for a change in the boundaries of the district so as to exclude the portion annexed by the city or village or may agree upon a merger of the district with the city or village. The division of assets, liabilities, maintenance, contracts, or other obligations of the district shall be equitable, shall be proportionate to the valuation of the portion of the district annexed and to the valuation of the portion of the district remaining following annexation, and shall, to the greatest extent feasible, reflect the actual impact of the annexation on the ability of the district to perform its duties and responsibilities within its new boundaries following annexation. In the event a merger is agreed upon, the city or village shall have all the rights, privileges, duties, and obligations as provided in sections [31-763](#) to [31-765](#) when the city or village annexes the entire territory within the district, and the trustees or administrator shall be relieved of all further duties and liabilities and their bonds exonerated as provided in section [31-764](#). No agreement between the district and the city or village shall be effective until submitted to and approved by the district court of the county in which the major portion of the district is located. No agreement shall be approved which may prejudice the rights of any bondholder or creditor of the district or employee under contract to the district. The court may authorize or direct amendments to the agreement before approving the same. If the district and city or village do not agree upon the proper adjustment of all matters growing out of the annexation of a part of the territory located within the district, the district, the annexing city or village, any bondholder or creditor of the district, or any employee under contract to the district may apply to the district court of the county where the major portion of the district is located for an adjustment of all matters growing out of or in any way connected with the annexation of such territory, and after a hearing thereon the court may enter an order or decree fixing the rights, duties, and obligations of the parties. In every case such decree or order shall require a change of the district boundaries so as to exclude from the district that portion of the territory of the district which has been annexed. Such change of boundaries shall become effective on the date of entry of such decree. Only the district and the city or village shall be necessary parties to such an action. Any bondholder or creditor of the district or

any employee under contract to the district whose interests may be adversely affected by the annexation may intervene in the action pursuant to section [25-328](#). The decree when entered shall be binding on the parties the same as though the parties had voluntarily agreed thereto. Nothing contained in this section shall authorize any district to levy any special assessments within the annexed area after the effective date of annexation.

(2) Any contract entered into on or after August 30, 2015, by a sanitary and improvement district for solid waste collection services shall, upon annexation of all or part of such district by a city or village, be canceled and voided as to the annexed areas.

Source: Laws 1959, c. 130, § 4, p. 469; Laws 1969, c. 255, § 4, p. 927; Laws 1982, LB 868, § 28; Laws 1994, LB 630, § 6; [Laws 2015, LB324, § 6](#); [Laws 2018, LB130, § 4](#).

Annotations

Pursuant to this section, where there is evidence that a partially annexed fire district has assets, those assets should be considered in determining a proper adjustment of those matters growing out of the annexation. *Papillion Rural Fire Prot. Dist. v. City of Bellevue*, 274 Neb. 214, 739 N.W.2d 162 (2007).

If an adjustment of matters arising out of an annexation is sought, proceedings under this section must be instituted as soon as it becomes evident that an agreed adjustment cannot be reached. *Millard Rur. Fire Prot. Dist. No. 1 v. City of Omaha*, 226 Neb. 50, 409 N.W.2d 574 (1987).

This section does not limit power of a city to annex lands within rural fire protection district. *Webber v. City of Scottsbluff*, 187 Neb. 282, 188 N.W.2d 814 (1971).

This section must be construed in light of the intent of the two preceding sections. *Abernathy v. City of Omaha*, 183 Neb. 660, 163 N.W.2d 579 (1968).

Rights of district and of a municipality are to be promptly adjusted after annexation of part of the district by the municipality. *Sanitary & Improvement Dist. v. City of Ralston*, 182 Neb. 63, 152 N.W.2d 111 (1967).

This section sustained as constitutional. *City of Bellevue v. Eastern Sarpy County S. F. P. Dist.*, 180 Neb. 340, 143 N.W.2d 62 (1966).

31-767. Dissolution of districts; resolution; notice; outstanding indebtedness, effect; hearing; filing.

Whenever a majority of the board of trustees or the administrator of any sanitary and improvement district organized under the provisions of Chapter 31, article 7, and amendments thereto, shall desire that the district shall be wholly dissolved, the trustees or administrator shall first propose a resolution declaring the advisability of such dissolution and setting out verbatim the terms and conditions thereof, and also setting out the time and place when the board of trustees or administrator shall meet to consider the adoption of such resolution. Notice of the time and place when the resolution shall be set for consideration shall be published the same day each week for two consecutive weeks in a newspaper of general circulation published in the county where the district was organized, which publication shall contain the entire wording of the proposed resolution. If any part of the district lies within the area of the jurisdiction of any municipality, then the trustees or administrator shall mail a copy of such proposed resolution to such municipality within five days after the date of first publication of the resolution. The last publication shall be not less than five days nor more than two weeks prior to the time set for hearing on objections to the passage of the resolution, at which hearing the owners of property within the district, or any municipality if any part of such district lies within the area of its zoning jurisdiction, may appear and make objections to the proposed resolution. If the owners representing a majority of the area of real estate within the district fail to sign and present to the board or to the administrator, on or prior to the hearing date, a written petition opposing the resolution, then a majority of the board of trustees or the administrator may pass the resolution and thereby adopt the proposed dissolution; *Provided*, that no such resolution shall be adopted if the district is then obligated on any outstanding bonds, warrants, or other debts or obligations unless the holders of such bonds, warrants, or other debts or obligations shall all sign written consents to the dissolution prior to the adoption of the resolution of dissolution. If the petition opposing such resolution is signed by property owners representing a majority of the area of real estate within the district and presented to the board of trustees or the administrator on or prior to the hearing date, then the board of trustees or the administrator shall not adopt such resolution. After the board of trustees or the administrator has adopted such resolution of dissolution, the clerk of the district shall prepare and file a certified copy of the resolution of dissolution in the office of the county clerk where the original articles of association were filed and in the office of the Secretary of State.

Source: Laws 1967, c. 186, § 1, p. 507; Laws 1982, LB 868, § 29.

31-768. Dissolution and merger of districts; resolution; notice; hearing; restrictions; filing; effect.

Whenever a majority of the respective boards of trustees or the administrators of two sanitary and improvement districts organized under the provisions of Chapter 31, article 7, organized within the same county shall desire that one of the

districts shall wholly merge into the other district, the trustees or administrators shall first propose a joint resolution declaring the advisability of such merger and setting out verbatim the terms and conditions thereof and specifying which district shall be the surviving district, and also setting out the time and place when the boards of trustees or administrators of the two districts shall meet to consider the adoption of such resolution. If any part of either district lies within the area of the zoning jurisdiction of any municipality, then the trustees or the administrators shall mail a copy of such proposed joint resolution to such municipality within five days after the date of first publication of the published notice described in this section. Notice of the time and place when such resolution shall be set for consideration shall be published the same day each week for two consecutive weeks in a newspaper of general circulation published in the county where the districts were organized, which publication shall contain the entire wording of the proposed resolution. The last publication shall be not less than five days nor more than two weeks prior to the time set for hearing on objections to the passage of the resolution, at which hearing the owners of property within either of the districts or the holders of any unpaid bonds, warrants, or other obligations of either district, or any municipality if any part of such district or districts lies within the area of its zoning jurisdiction, may appear and make objections to the proposed resolution. If a petition opposing such resolution is signed by property owners representing a majority of the area of real estate within either district or is signed by any holder of any unpaid bonds, warrants, or other obligations of either district and if such petition is presented to the boards of trustees or administrators on or prior to the hearing date, then the boards of trustees or administrators shall not adopt such resolution. After the boards of trustees or administrators have both adopted such resolution of merger, the clerk of the district or the administrator shall prepare and file a certified copy of such resolution of merger in the office of the county clerk where the original articles of association of the districts were filed and in the office of the Secretary of State, and thereupon the surviving district shall succeed to and become vested with full title to all the property and property rights of every kind, contracts, obligations, and choses in action of every kind held by or belonging to the nonsurviving district, and the surviving district shall also be liable for and recognize, assume, and carry out all valid contracts and obligations of the nonsurviving district including all outstanding warrants, bonds, or other indebtedness. All taxes, assessments, and demands of every kind due or owing to the nonsurviving district shall be paid to and collected by the surviving district. Upon the filing of the certified copies of the resolution of merger as provided in this section, the corporate existence of the nonsurviving district shall thereupon terminate and the boundaries of the surviving district shall be extended to include all the territory within the boundaries of the nonsurviving district. A majority of the board of trustees or the administrator of the surviving district shall have power, from time to time, to give binding directions in writing to the county treasurer of the county in which the surviving district is located, directing that the treasurer segregate the special assessment funds of the two districts or directing the

segregation of the other assets of the two districts or directing the method and priority of payment of registered warrants of the two districts, or giving directions to the county treasurer as to other problems of fiscal management of the affairs of the two districts involved in the merger.

Source: Laws 1967, c. 186, § 2, p. 508; Laws 1982, LB 868, § 30.

31-769. District; detachment of property; resolution; notice; hearing; outstanding indebtedness, effect; isolated property; detachment; filing.

(1) Whenever a majority of the board of trustees or the administrator of any sanitary and improvement district organized under the provisions of Chapter 31, article 7, desires that any property within the district be detached from the district, the trustees or the administrator shall first propose a resolution declaring the advisability of such detachment and setting out verbatim the terms and conditions thereof and also setting out the time and place when the board of trustees or the administrator will meet to consider the adoption of such resolution. Notice of the time and place when such resolution is set for consideration shall be published the same day each week for two consecutive weeks in a newspaper of general circulation published in the county where the district was organized, which publication shall contain the entire wording of the proposed resolution. If any part of the district lies within the area of the zoning jurisdiction of any municipality, then the trustees or the administrator shall mail a copy of such proposed resolution to such municipality within five days after the date of first publication of such resolution. The last publication shall be not less than five days nor more than two weeks prior to the time set for hearing on objections to the passage of the resolution, at which hearing the owners of property within the district, or any municipality if any part of such district lies within the area of its zoning jurisdiction, may appear and make objections to the proposed resolution. If the owners representing a majority of the area of real estate within the district fail to sign and present to the board of trustees or the administrator, on or prior to the hearing date, a written petition opposing the resolution, then a majority of the board of trustees or the administrator may pass the resolution and thereby adopt the proposed detachment, except that no such resolution shall be adopted if the district is then indebted on any outstanding bonds or warrants of the district unless the holders of such bonds and warrants all sign written consents to the detachment prior to the adoption of the resolution of detachment. If the petition opposing such resolution is signed by property owners representing a majority of the area of real estate within the district and presented to the board of trustees or to the administrator on or prior to the hearing date, then the board of trustees or the administrator shall not adopt such resolution. After the board of trustees or the administrator has adopted such resolution of detachment, the clerk of the district shall prepare and file a certified copy of such resolution of detachment in the office of the county clerk where the original articles of association were filed and in the

office of the Secretary of State, and thereupon the area detached shall become excluded and detached from the boundaries of the district.

(2) The owner of a discrete tract of land which is part of a sanitary and improvement district but which is not connected to the main area of the district may petition the board of trustees or the administrator of the district to have the property detached from the district. Following receipt of the petition, the board of trustees or the administrator shall propose a resolution declaring the advisability of such detachment and setting out verbatim the terms and conditions thereof and also setting out the time and place when the board of trustees or the administrator will meet to consider the adoption of such resolution. Notice of the time and place for such consideration shall be published as provided in subsection (1) of this section. If any part of the district lies in whole or in part within the area of the zoning jurisdiction of any municipality, then the board of trustees or the administrator shall mail a copy of such proposed resolution to such municipality within five days after the date of first publication of such resolution. At the hearing for consideration of such resolution, the board of trustees or the administrator shall determine if the tract of land proposed for detachment:

(a) Has an area of twenty-five acres or more;

(b) Is wholly detached from the main area of the sanitary and improvement district and separated from such district by a distance of at least one thousand feet at the nearest points;

(c) Is undeveloped and predominantly devoted to agricultural uses; and

(d) Has no improvements placed upon it by the sanitary and improvement district and receives no current services from the district.

If the administrator or the board of trustees by majority vote determines that the tract in question meets all of the conditions provided in subdivisions (a) through (d) of this subsection, the resolution shall be adopted, except that no such resolution shall be adopted if the district is then indebted on any outstanding bonds or warrants of the district unless the holders of such bonds and warrants all sign written consents to the detachment. After the board of trustees or the administrator has adopted such resolution of detachment, the clerk of the district shall prepare and file a certified copy of such resolution of detachment in the office of the county clerk where the original articles of association were filed and in the office of the Secretary of State, and thereupon the area detached shall become excluded and detached from the boundaries of the district.

Source: Laws 1967, c. 186, § 3, p. 510; Laws 1982, LB 868, § 31; Laws 1992, LB 764, § 3.

31-770. Real estate in two districts; detachment from one district; approval.

When any land is a part of two sanitary and improvement districts and the owners of such land desire that it be a part of only one district, such owners shall file their request with the trustees or the administrator of each district. The trustees or the administrator of the districts shall meet jointly and develop an agreement for the detachment of the land from one of the districts and the adjustment of indebtedness. If the trustees or administrators are unable to reach an agreement, they shall file a petition in the district court of the county in which such land is located and the court shall have jurisdiction to detach the land and adjust the indebtedness.

Source: Laws 1972, LB 1387, § 3; Laws 1982, LB 868, § 32.

31-771. Appointment of an administrator; petition; conditions.

A petition may be filed with the district court of the county in which a majority of the real property of a sanitary and improvement district is located for referral of the district to the Auditor of Public Accounts for the appointment of an administrator of the district and suspension of the authority of the board of trustees or other relief as provided by sections [31-772](#) to [31-780](#). Such petition may be filed by: (1) A majority of the board of trustees of the district; (2) the holders of more than fifty percent in principal amount of the outstanding bonds of the district; (3) the holders of more than fifty percent in principal amount of outstanding construction fund warrants of the district; (4) a majority of the lessees permitted to vote pursuant to section [31-735](#) who are residents of the district and resident property owners of the district; (5) the owners of more than one-half of the real property within the district; or (6) a municipality whose boundary adjoins the district and which exercises zoning jurisdiction over the district. A petition filed by a municipality pursuant to subdivision (6) of this section may be filed by such municipality only on grounds that the district has issued outstanding bonds or construction fund warrants which have been in default for more than ninety days or the district lacks a functioning board of trustees.

Source: Laws 1982, LB 868, § 33.

31-772. Appointment of an administrator; petition; hearing; notice.

The court shall fix the time for the hearing of the petition pursuant to section [31-771](#) and shall order the clerk of the court to give and publish a notice of the filing of the petition. The notice shall be given by publication the same day of the week each week for three consecutive weeks. Within five days after the first

publication of such notice, the petitioner shall cause to be mailed by United States mail a copy of such notice to each holder of outstanding warrants and bonds, to each member of the board of trustees if the board has not petitioned for the appointment, and to each person whose property ownership is of record on the records of the register of deeds at least thirty days and not more than forty days prior to the mailing of a notice. Notice shall be sent to each bond and warrant holder, trustee, and property owner whose name and post office address are known after diligent investigation and inquiry. The notice shall state the time and place fixed for the hearing of the petition and the prayer of the petition, and that any person with an interest in the district may, on or before the day fixed for the hearing of the petition, move to join in, dismiss, or answer the petition. The petition may be referred to and described in the notice as the petition of (giving name of petitioner) praying for the referral of the sanitary and improvement district to the Auditor of Public Accounts for the appointment of an administrator of the sanitary and improvement district and the suspension of the authority of the board of trustees of such district to exercise the powers granted the board of trustees under sections [31-727](#) to [31-770](#) during the period of such administrator's appointment.

Source: Laws 1982, LB 868, § 34.

31-773. Appointment of an administrator; petition; contents.

The petition shall state that the sanitary and improvement district (1) has been in default for more than ninety days on its issued and outstanding bonds or construction fund warrants of the district, (2) has levied a tax upon the taxable value of the taxable property in the district which, along with the sinking fund derived from special assessments, has not been sufficient to meet payments of interest and principal on the issued and outstanding bonds of the district, (3) has failed to levy special assessments on all lots, parcels, or pieces of real property within the terms provided in section [31-751](#), or (4) lacks a functioning board of trustees. The petition shall pray for referral of the sanitary and improvement district to the Auditor of Public Accounts for the appointment of an administrator for the district and for an order suspending the authority of the board of trustees of the district to exercise the powers granted to such board pursuant to sections [31-727](#) to [31-770](#) during the period of such administrator's appointment or for such other relief as the court may determine appropriate.

Source: Laws 1982, LB 868, § 35; Laws 1992, LB 1063, § 31; Laws 1992, Second Spec. Sess., LB 1, § 31.

31-774. Appointment of an administrator; petition; interested person; rights; procedure applicable.

Any person with an interest in the district may join in the petition, move to dismiss the petition, or file an answer to such petition. The provisions of the code of civil procedure respecting motions and answers to a petition shall be applicable to motions and answers to the petition in such special proceedings. The persons filing motions to dismiss and answering the petition shall be the defendants to the special proceedings and the persons filing the petition or joining in the petition shall be the plaintiffs. Every material statement of the petition not specially controverted by the answer shall, for the purpose of the special proceedings, be taken as true. Each person or party in interest failing to answer the petition shall be deemed to admit as true all the material statements of the petition. The rules of pleading and practice provided by the code of civil procedure which are not inconsistent with the provisions of sections [31-727](#) to [31-770](#) are applicable to the special proceedings in sections [31-771](#) to [31-776](#).

Source: Laws 1982, LB 868, § 36.

Cross References

Rules of pleading promulgated by Supreme Court, see section [25-801.01](#).

31-775. Court; order; findings; relief granted; costs.

Upon the hearing of the special proceedings pursuant to sections [31-771](#) to [31-776](#), the court shall, upon a finding that any of the statements in subdivisions (1) to (4) of section [31-773](#) are true, that the petition has been properly filed and notice of the petition has been duly given and published for the time and in the manner prescribed in sections [31-771](#) to [31-780](#), and that it is in the best interest of the district, have the power and jurisdiction to issue an order which refers the sanitary and improvement district to the Auditor of Public Accounts for appointment by the auditor of an administrator from a list of not less than two names of persons possessing real estate and financial expertise compiled by the court in the proceedings, and which provides for the suspension of the authority of the board of trustees of the district to exercise the powers granted such board under sections [31-727](#) to [31-770](#) during the period of such administrator's appointment. In the alternative or as additional relief the court may order such other relief as may be appropriate to cure the defects of the district, including, but not limited to, (1) appointment of trustees to serve until the next regular election, (2) calling a special election to elect trustees which shall be conducted in the same manner as other elections for trustees, and (3) directing the board of trustees to levy taxes or special assessments as required by sections [31-727](#) to [31-770](#). The cost of the special proceedings may be allowed and apportioned between the parties in the discretion of the court.

Source: Laws 1982, LB 868, § 37.

31-776. Auditor of Public Accounts; appoint administrator; file certificate.

Upon receipt of the order of the district court referring the sanitary and improvement district to the Auditor of Public Accounts for the appointment of an administrator, the auditor shall appoint an administrator with authority, including all authority of the board of trustees, chairperson, and clerk, to direct the affairs of the district pursuant to sections [31-727](#) to [31-780](#) unless the auditor shall determine upon good cause that the appointment of an administrator would not be in the best interests of the district. Within sixty days of receipt of such order of the district court, the auditor shall file with the court a certificate evidencing compliance with this section and if the auditor determines not to appoint an administrator, such certificate shall specify the grounds for the auditor's determination that the appointment would not be in the best interest of the district.

Source: Laws 1982, LB 868, § 38.

31-777. Board of trustees; power suspended; administrator; assume powers.

Upon the issuance of a certificate of appointment by the Auditor of Public Accounts to a designated sanitary and improvement district administrator, the authority of the board of trustees of the district to exercise the powers of the district conferred by sections [31-727](#) to [31-770](#) shall be suspended. The administrator shall during the period of his or her appointment possess all of the powers of the board of trustees and shall possess exclusive authority to exercise the powers conferred in sections [31-727](#), [31-727.02](#), [31-733](#), [31-734](#), [31-737](#), [31-739](#), [31-740](#), [31-741](#) to [31-748](#), [31-749](#) to [31-756](#), [31-759](#), and [31-764](#) to [31-770](#).

Source: Laws 1982, LB 868, § 39.

31-778. Board of trustees or administrator; negotiate indebtedness; issue new bonds or warrants; procedure.

The board of trustees or the administrator shall have the power to negotiate a scaling, discounting, reduction in interest rate, or any other compromise of any or all of the bonds, warrants, or other indebtedness of the district with the owners or holders of such indebtedness. In order to carry out any compromise agreements made, the board of trustees or the administrator shall have the power to issue new bonds or warrants which may be delivered to the holders or owners of the indebtedness being compromised or may be sold on such terms as the board of trustees or administrator shall determine to provide cash to carry out the

compromise settlement. Before any new bonds or warrants are issued, the terms of the compromise settlement and the issuance of such new bonds or warrants shall be approved by the district court for the county in which the district or the greater portion of the district is situated, following the procedure set forth in sections [31-756](#) to [31-759](#). Such review by the district court shall be limited to the legality and validity of the new bonds or warrants to be issued and the decree of the district court determining the issuance of the new bonds or warrants to be legal and valid shall be conclusive against the district and all other persons having or claiming any interest in the district. Notwithstanding any other provision of law, the treasurer of the district shall disburse funds of the district in accordance with the compromise settlement approved by the district court.

Source: Laws 1982, LB 868, § 40.

31-779. Administrator; levy; administration tax; use; administrator; fee; expenses.

(1) The administrator may levy a separate tax upon the taxable value of the taxable property in the district which shall be known as the administration tax and which shall be separately accounted for by the treasurer of the district. Such tax shall be payable annually in money. Such tax may be used to pay the fees and expenses of the administrator and his or her administration, including the cost of audit services, legal services, and financial advisory services ordered by the administrator.

(2) The administrator shall receive a minimum fee of five hundred dollars per month during the term of his or her appointment. The administrator shall also be entitled to reimbursement for his or her actual and necessary expenses upon presentation of an accounting of his or her expenses to the Auditor of Public Accounts. The monthly administrator's fee provided for in this subsection shall be subject to adjustment at any time during the term of the administrator's appointment by the Auditor of Public Accounts. The factors to be considered by the auditor in his or her determination to increase the administrator's fee shall include the nature and extent of the administrator's services, the complexity of the problems confronting the district, and the value of the services of the administrator to the district. The auditor should also consider the cost of obtaining comparable services of the administrator in the private sector.

Source: Laws 1982, LB 868, § 41; Laws 1992, LB 1063, § 32; Laws 1992, Second Spec. Sess., LB 1, § 32.

31-780. Administrator; period of authority; termination.

The administrator shall serve at the pleasure of the Auditor of Public Accounts or until the district court shall terminate the authority of the auditor and the administrator. A petition for review by the court of the original order may be filed by any person with an interest in the district. The court shall have the power to terminate the authority of the Auditor of Public Accounts and the administrator upon its determination that none of the conditions set forth in section [31-773](#) exist or it is in the best interest of the district that the authority of the administrator be terminated. A termination of the authority of the Auditor of Public Accounts and the administrator shall reinstate the authority of the board of trustees pursuant to sections [31-727](#) to [31-770](#).

Source: Laws 1982, LB 868, § 42.

31-781. Petition requesting annexation; meeting; vote.

(1) Any sanitary and improvement district desiring to be annexed by a city of the metropolitan, primary, first, or second class or village may, subject to the requirements in subsection (2) of this section, by formal vote of a majority of the members of the board of trustees of the district, petition the city council of the city or board of trustees of the village for annexation. Such petition shall be filed on or before March 1 of the year in which annexation is sought by the district.

(2) Prior to taking the formal vote to petition the city or village for annexation, the board of trustees of the district shall schedule a meeting to discuss the filing of the petition with the residents and property owners of the district. At least thirty days prior to the date of such meeting, the board of trustees shall send notice of the meeting by first-class mail, postage prepaid, to each property owner and residence in the district. Such notice shall set out the date, time, and place of the meeting and shall indicate that the purpose of the meeting is to discuss the filing of a petition for annexation by a city or village and that those attending the meeting will be offered the opportunity to express their opinions. The board of trustees shall take no formal action on the petition for annexation until such meeting has taken place, and no petition shall be valid if such meeting has not occurred.

Source: Laws 1993, LB 210, § 1.

31-782. Petition; filed with clerk; response.

The petition described in section [31-781](#) shall be filed with the city or village clerk and shall be deemed received by the city council of the city or board of trustees of the village on the date upon which it is presented to the clerk. Following the filing of the petition, the district shall respond promptly and fully to all requests

by the city or village for information with regard to any matter relevant to annexation.

Source: Laws 1993, LB 210, § 2.

31-783. Petition; review; vote; when.

The city council of the city or board of trustees of the village shall review all petitions filed under section [31-781](#) and by formal vote of the council or board either grant or deny the petition. The vote shall be taken not later than the date of the first regular meeting of the council or board in July of the year in which the petition was filed.

Source: Laws 1993, LB 210, § 3.

31-784. Petition denial; report.

If the city council of the city or board of trustees of the village votes to deny a petition filed under section [31-781](#), it shall approve and adopt by vote of the council or board a report specifying the reasons for denial. Such report shall recite the specific reasons, whether financial or otherwise, which led to the decision of the council or board. Special emphasis shall be placed upon conditions in the control of the sanitary and improvement district which might be remedied by action of the district in the future. The city or village may set out in the report the conditions which, if met, would permit the city or village to annex the district in the future.

Source: Laws 1993, LB 210, § 4.

31-785. Compliance; not required.

Compliance with sections [31-781](#) to [31-784](#) shall not be required for annexation of a sanitary and improvement district. Failure to comply with such sections shall not serve as the basis for the invalidation of an otherwise lawful annexation of a district by a city or village.

Source: Laws 1993, LB 210, § 5.

31-786. Terms, defined.

For purposes of sections [31-786](#) to [31-793](#):

(1) Filing clerk means the election commissioner or county clerk of the county in which all or the largest portion of the land area comprising a sanitary and improvement district is located;

(2) Qualified property owning voter means a person entitled to vote as provided in section [31-735](#) for all trustees of a sanitary and improvement district other than those which may be elected only by qualified resident voters; and

(3) Qualified resident voter means a person entitled to vote as provided in section [31-735](#) for all trustees of a sanitary and improvement district.

Source: Laws 1997, LB 874, § 1; [Laws 2002, LB 176, § 4.](#)

31-787. Trustee; removal by recall; petition; procedure.

(1) A trustee of a sanitary and improvement district may be removed from office by recall pursuant to sections [31-786](#) to [31-793](#). A petition for an election to recall a trustee shall be sufficient if it complies with the requirements of this section.

(2) The signers of the petition shall be persons who were, on the date the initial petition papers are issued under subsection (7) of this section, eligible to vote in a district election as provided in section [31-735](#). A person's eligibility to sign a petition shall be the same as the person's eligibility to cast one or more votes at a district election under section [31-735](#). Only one person shall be allowed to sign on behalf of joint owners of property in the district or on behalf of a public, private, or municipal corporation that owns property in the district. If the trustee whose recall is sought was elected by vote of resident owners only, then only resident owners shall be allowed to sign the petition. If the trustee whose recall is sought was elected by vote of all owners of property, then all owners shall be allowed to sign the petition. Resident owner means qualified resident voter. All owners means all qualified resident voters and all qualified property owning voters.

(3) The filing clerk shall assign to each signature a count equal to the number of votes that the signer was eligible to cast on the date he or she signed. The number of votes that a signer was eligible to cast shall be based on section [31-735](#). If the signature was made by or for an owner of more than one parcel of property, the signature made by or on behalf of such owner shall be assigned a count equal to the total number of votes which the owner was eligible to cast.

(4) The filing clerk shall total the count assigned to the signatures on the petition. The petition shall be sufficient if the total is at least equal to thirty-five percent of the highest number of votes that were cast for a candidate at the previous district election for the trustee positions in the same category as the

trustee whose recall is sought by the petition. The categories of trustees shall be the same as provided in section [31-735](#).

(5) The signatures shall be affixed to petition papers and shall be considered part of the petition.

(6) The petition papers shall be procured from the filing clerk. Prior to the issuance of such petition papers, an affidavit shall be signed and filed with the filing clerk by at least one qualified resident voter of the district, if the trustee whose recall is being sought was elected solely by qualified resident voters, or at least one qualified resident voter or qualified property owning voter, if the trustee whose recall is being sought was elected by other qualified resident voters and qualified property owning voters. Such voter or voters shall be deemed to be the principal circulator or circulators of the recall petition. The affidavit shall state the name of the trustee sought to be removed and whether qualified property owning voters participated in the election of the trustee and shall request that the filing clerk issue initial petition papers to the principal circulator for circulation. The filing clerk shall notify the principal circulator or circulators that the necessary signatures must be gathered within thirty days after the date of issuing the petitions.

(7) The filing clerk, upon issuing the initial petition papers or any subsequent petition papers, shall enter in a record, to be kept in his or her office, the name of the principal circulator or circulators to whom the papers were issued, the date of issuance, the number of papers issued, and whether qualified property owning voters may participate in signing the petitions. The filing clerk shall certify on the papers the name of the principal circulator or circulators to whom the papers were issued, the date they were issued, and whether qualified property owning voters may participate in signing the petitions. No petition paper shall be accepted as part of the petition unless it bears such certificate. The principal circulator or circulators who check out petitions from the filing clerk may distribute such petitions to persons who may act as circulators of such petitions.

Source: Laws 1997, LB 874, § 2; [Laws 2002, LB 176, § 5](#); [Laws 2003, LB 444, § 2](#); [Laws 2012, LB1121, § 1](#).

31-788. Secretary of State; petition papers; requirements.

(1) The Secretary of State shall design the uniform petition papers to be distributed by all filing clerks for use in the recall of trustees of sanitary and improvement districts and shall keep a sufficient number of such blank petition papers on file for distribution to any filing clerk requesting recall petitions.

(2) Each petition paper presented to a qualified voter for his or her signature shall clearly indicate at the top (a) whether the trustee whose recall is being sought was elected solely by qualified resident voters, (b) whether the signatories must be qualified resident voters or may include qualified property owning voters, (c) that the signatories must support the holding of a recall election for the trustee, (d) the name of the individual sought to be recalled, and (e) a general statement of the reason or reasons for which recall is sought.

(3) Each petition paper shall contain a statement entitled Instructions to Petition Circulators prepared by the Secretary of State to assist circulators in understanding the provisions governing the petition process established by sections [31-786](#) to [31-793](#). The instructions shall include the following statement: No one circulating this petition paper in an attempt to gather signatures shall sign the circulator's affidavit unless each person who signed the petition paper did so in the presence of the circulator.

Source: Laws 1997, LB 874, § 3; [Laws 2002, LB 176, § 6](#); [Laws 2003, LB 444, § 3](#).

31-789. Signature verification; effect.

(1) The principal circulator or circulators shall file, as one instrument, all petition papers comprising a recall petition for signature verification with the filing clerk within thirty days after the filing clerk issues the initial petition papers to the principal circulator or circulators as provided in section [31-787](#).

(2) Within fifteen days after the filing of the petition, the filing clerk shall ascertain whether or not the petition is signed by sufficient qualified resident voters and qualified property owning voters as provided in section [31-787](#). No new signatures may be added after the initial filing of the petition papers. No signatures may be removed unless the filing clerk receives an affidavit signed by the person requesting that his or her signature be removed before the petitions are filed with the filing clerk for signature verification.

(3) If the petition is found to be sufficient, the filing clerk shall attach to the petition a certificate showing the result of such examination. If the petition is found not to be sufficient, the filing clerk shall file the petition in his or her office without prejudice to the filing of a new petition for the same purpose.

Source: Laws 1997, LB 874, § 4; [Laws 2002, LB 176, § 7](#); [Laws 2012, LB1121, § 2](#).

31-790. Notification to trustee; resignation; recall election; how conducted.

(1) If the recall petition is found to be sufficient, the filing clerk shall notify the trustee whose removal is sought and the board of trustees of the sanitary and improvement district that sufficient signatures have been gathered.

(2) If the trustee does not resign within five days after receiving the notice, the filing clerk shall order an election to be held not less than forty-five days nor more than sixty days after the expiration of the five-day period, except that if an election for the board of trustees of the district is to be held within one hundred twenty days after the expiration of the five-day period, the filing clerk shall provide for the holding of the removal election at the time of such regular election. The recall election shall be conducted in the same manner as an election for members of the board of trustees as provided in section [31-735](#). After the filing clerk sets the date for the recall election, the recall election shall be held regardless of whether the trustee whose removal is sought resigns before the recall election is held.

Source: Laws 1997, LB 874, § 5.

31-791. Official ballot; form.

The form of the official ballot at a recall election conducted pursuant to section [31-790](#) shall conform to the requirements of this section. With respect to each trustee whose removal is sought, the question shall be submitted: Shall (name of trustee) be removed from the office of trustee? Immediately following each such question there shall be printed on the ballot the two responses: Yes and No. Immediately to the left of each response shall be placed a square or oval in which the voters qualified to vote for the trustee in a regular election may vote for one of the responses by making a cross or other clear, identifiable mark. The name of the trustee which shall appear on the ballot shall be the name of the trustee that appeared on the ballot of the previous election that included his or her name.

Source: Laws 1997, LB 874, § 6; [Laws 2002, LB 176, § 8.](#)

31-792. Election results; effect; vacancy; special election.

(1) If a majority of the votes cast at a recall election are against the removal of the trustee named on the ballot or the election results in a tie, the trustee shall continue in office for the remainder of his or her term.

(2) If a majority of the votes cast at a recall election are for the removal of the trustee named on the ballot, he or she shall, regardless of any technical defects in the recall petition, be deemed removed from office unless a recount is ordered. If the trustee is deemed removed, the removal shall result in an immediate vacancy in

the office from the date of the election. The vacancy shall be filled as provided in subsection (2) of section [31-735](#).

(3) If there are vacancies in the offices of a majority or more of the members of the board of trustees at one time due to the recall of such members, a special election to fill such vacancies shall be conducted as expeditiously as possible by the filing clerk in the manner specified in section [31-735](#).

(4) No trustee who is removed at a recall election or who resigns after the initiation of the recall process shall be appointed to fill the vacancy resulting from his or her removal or the removal of any other member of the same board of trustees during the remainder of his or her term of office.

Source: Laws 1997, LB 874, § 7.

31-793. Recall petition; filing limitation.

No recall petition shall be filed against a trustee under section [31-787](#) within twelve months after a recall election has failed to remove him or her from office or within six months after the beginning of his or her term of office or within six months prior to the incumbent filing deadline for the office.

Source: Laws 1997, LB 874, § 8.

31-794. City or village annexation; receipt of written notice; limitation on district spending; exceptions; district; duties.

(1) If the chairperson of a sanitary and improvement district board of trustees or the legal counsel or administrator for the district receives written notice from a city or village proposing to annex territory within the sanitary and improvement district under the authority of section [14-117](#), [15-104](#), [16-117](#), [16-130](#), [17-405.01](#), or [17-407](#), the district shall not spend assets for a period of ninety days after receiving such notice, except for:

(a) All interest and principal payments on bonds due and payable from the construction fund or bond fund of the district;

(b) All interest and principal payments on construction fund warrants due and payable from the construction fund or bond fund of the district;

(c) All interest and principal payments on general fund warrants due and payable from the general fund of the district;

(d) Payment or issuance of warrants for services, work, labor, or materials that were ordered or contracted for by the district prior to receiving notice of the proposal of the city or village to annex the district. Such payments or warrants shall be paid from the district's general fund, construction fund, bond fund, or service fee fund, so long as such payment or warrant shall not cause the district to exceed its total budget for the fund from which payment or warrant is to be made;

(e) Payment or issuance of warrants for any expense incurred by the district prior to receiving notice of the proposal of the city or village to annex the district that is required by the district (i) to satisfy any statutory obligation of the district, (ii) to address emergency or imminent public safety repairs or replacements to district property, and expenses that would be paid by the district in the ordinary course of business of the district, and (iii) to address projects for which a notice to contractors has been published, the bidding process has begun, and contracts are awarded for such project that (A) does not cause the district to exceed the district's total general fund budget and is paid from the general fund, including, but not limited to, levied tax receipts to be received by the district on April 1 and August 1 if the annexation is to occur after such dates, (B) does not cause the district to exceed the district's total construction fund or bond fund budget and is paid from the construction fund or bond fund, and (C) does not cause the district to exceed the district's total service fee fund budget and is paid from the service fee fund; and

(f) Payment or issuance of warrants for a commitment or contract that will bind the district to pay for any other expense approved in writing by the city finance director or other designated person responsible for such approvals.

(2) If a district plans to commence a construction project or enter into any contracts required to be publicly bid pursuant to section [31-741](#) and for which a notice to contractors has not been published and the bidding process has not begun prior to the district receiving notice of the proposal of the city or village to annex the district, the district shall first submit either the plans and specifications for the improvements or the proposed contract to the city or village finance director or other designated person. Within ten business days after the district submits the plans and specifications or the proposed contract, the city or village finance director or other designated person shall either (a) approve or deny such plans and specifications or the proposed contract or (b) direct the department head within the city or village responsible for reviewing plans and specifications or contracts to approve or deny such plans and specifications or the proposed contract within ten business days.

Source: [Laws 2016, LB131, § 1.](#)

31-801. Repealed. Laws 1977, LB 510, § 10.

31-802. Repealed. Laws 1977, LB 510, § 10.

31-803. Repealed. Laws 1977, LB 510, § 10.

31-804. Repealed. Laws 1977, LB 510, § 10.

31-805. Repealed. Laws 1977, LB 510, § 10.

31-806. Repealed. Laws 1977, LB 510, § 10.

31-807. Repealed. Laws 1977, LB 510, § 10.

31-808. Repealed. Laws 1977, LB 510, § 10.

31-809. Repealed. Laws 1977, LB 510, § 10.

31-810. Repealed. Laws 1977, LB 510, § 10.

31-811. Repealed. Laws 1977, LB 510, § 10.

31-812. Repealed. Laws 1977, LB 510, § 10.

31-813. Repealed. Laws 1977, LB 510, § 10.

31-814. Repealed. Laws 1977, LB 510, § 10.

31-815. Repealed. Laws 1977, LB 510, § 10.

31-816. Repealed. Laws 1977, LB 510, § 10.

31-817. Repealed. Laws 1959, c. 131, § 18.

31-818. Repealed. Laws 1959, c. 131, § 18.

31-819. Repealed. Laws 1959, c. 131, § 18.

31-820. Repealed. Laws 1959, c. 131, § 18.

31-821. Repealed. Laws 1977, LB 510, § 10.

31-822. Repealed. Laws 1977, LB 510, § 10.

31-823. Repealed. Laws 1977, LB 510, § 10.

31-824. Repealed. Laws 1977, LB 510, § 10.

31-825. Repealed. Laws 1977, LB 510, § 10.

31-826. Repealed. Laws 1977, LB 510, § 10.

31-827. Repealed. Laws 1977, LB 510, § 10.

31-828. Repealed. Laws 1977, LB 510, § 10.

31-829. Repealed. Laws 1977, LB 510, § 10.

31-830. Repealed. Laws 1977, LB 510, § 10.

31-831. Repealed. Laws 1977, LB 510, § 10.

31-832. Repealed. Laws 1977, LB 510, § 10.

31-833. Repealed. Laws 1977, LB 510, § 10.

31-834. Repealed. Laws 1977, LB 510, § 10.

31-835. Repealed. Laws 1977, LB 510, § 10.

31-836. Repealed. Laws 1977, LB 510, § 10.

31-837. Repealed. Laws 1977, LB 510, § 10.

31-901. Declaration of policy.

(1) The maintenance of adequate drainage within the confines of certain counties of the state is hereby declared to be a matter of public health, convenience and welfare.

(2) The use of road ditches, the use of public and private ditches and natural watercourses for drainage requires some coordinated system of control and maintenance.

(3) Where portions of the drainage system of any county are not included within the boundaries of any drainage district organized under Chapter 31, article 3 or 4, or within the boundaries of any sanitary drainage district organized under Chapter 31, article 5 or 7, the county board may assist in the control and maintenance of the drainage of any area within said county, under the provisions of sections [31-901](#) to [31-933](#).

Source: Laws 1959, c. 132, § 1, p. 483.

Annotations

Proceedings involved the cleaning, widening, and changing of a drainage ditch. *Harms v. County Board of Supervisors*, 173 Neb. 687, 114 N.W.2d 713 (1962).

31-902. Terms, defined.

For purposes of the County Drainage Act, unless the context otherwise requires:

(1) County board shall mean either the board of supervisors when the county is organized under the township form or county commissioners when the county is organized under the commissioner system;

(2) Ditch shall include all road ditches and any ditch whether constructed privately or by a public agency, the water from which drains into road ditches, drainage ditches, or watercourses;

(3) Lots and lands shall include all real estate and any interest therein whether owned by individuals, partnerships, limited liability companies, or corporations, whether federal, state, county, school or municipal, all public roads, and all railroad right-of-way;

(4) Watercourse shall mean any stream, creek, draw, or natural depression through which normal drainage or storm water is accustomed to flow;

(5) Owner shall mean the person, persons, or organization shown by the records of the register of deeds or county clerk of any county to be the record titleholder to any lot or land; and

(6) Cleaning shall mean removing of trees, brush, obstructions, and sediment or the widening, deepening, straightening, or altering the channel of any ditch or watercourse.

Source: Laws 1959, c. 132, § 2, p. 484; Laws 1993, LB 121, § 196.

31-903. Drainage assistance; petition by landowners; contents; county board; investigation.

At such time as a petition by one or more owners of any lots or lands within the county is filed with the county board of any county stating: (1) That there are areas within said county which are not within the boundaries of any drainage district organized under Chapter 31, article 3 or 4, or any sanitary drainage district organized under Chapter 31, article 5 or 7, as the same now exist or may hereafter be amended; (2) that said lands are subject to overflow or lack of adequate drainage; (3) that public health, convenience and welfare would be served by the assistance in the control and maintenance of drainage in said areas by the county board; and (4) that the county board should assist and regulate the drainage in said areas under the provisions of sections [31-901](#) to [31-933](#), the county board shall investigate the facts set out therein and make determination thereon within thirty days from date of filing.

Source: Laws 1959, c. 132, § 3, p. 484.

31-904. Drainage assistance; petition; denial; approval; county board; assist in drainage.

If the county board determines that the allegations of said petition are not true, it shall deny the request. If it determines that the allegations of said petition are true, it shall, by resolution, declare that the county intends to assist in drainage under the provisions of sections [31-901](#) to [31-933](#). The determination and finding of the board shall be conclusive. If a county board has by resolution determined to assist and regulate drainage, it may at any time after one year has elapsed, by resolution, rescind such action and determine that the county assistance is not necessary. If the county board makes the determination to assist in drainage it shall have the authority provided for in sections [31-905](#) to [31-932](#).

Source: Laws 1959, c. 132, § 4, p. 485.

31-905. Drainage fund; tax; levy; purpose.

The county board may, at the time the next levy for the county is set up, levy not to exceed eight-tenths of one cent on each one hundred dollars upon the taxable value of all the taxable property of the county for the establishment of a drainage fund. No other general levy of any kind shall be made either for operation under the County Drainage Act, for maintenance, for construction, or for any other reason connected with or incidental to the drainage by the county board. Except as provided for in sections [31-920](#) and [31-922](#), the money raised from this levy shall be used for the expenses of administering the act, including supervisory and technical expenses, and shall not be used to pay costs and expenses which can be allocated to specific drainage projects.

Source: Laws 1959, c. 132, § 5, p. 485; Laws 1979, LB 187, § 146; Laws 1992, LB 719A, § 128.

31-906. Drainage fund; levy; special fund.

The money raised from the levy provided in section [31-905](#) shall be used for the expenses of the county board in operating under the provisions of sections [31-901](#) to [31-933](#) and shall be kept by the county treasurer in a special fund for that purpose.

Source: Laws 1959, c. 132, § 6, p. 486.

31-907. Drainage improvement; petition; county board; order.

After a determination has been made as provided in section [31-904](#), if at any time a petition signed by one or more owners of lots and lands affected is filed with the board requesting: (1) The cleaning of a road ditch; (2) the cleaning of a public or private ditch which is used for drainage by more than one landowner; (3) the cleaning of a watercourse; (4) the construction of any dike, revetment or bank protection; or (5) the installation of a culvert or drain, the board shall make a determination as to whether said improvement would be conducive to public health, convenience or welfare.

Source: Laws 1959, c. 132, § 7, p. 486.

31-908. Drainage improvement; proposed plan; contents.

If the board determines that said requested drainage improvement should be undertaken, it shall within ninety days develop a proposed plan for said improvement. This plan shall include:

(1) An estimate of the cost of said improvement;

(2) If the estimate indicates the cost will exceed one thousand dollars, a profile showing elevations of the drainageway before, and the proposed elevations after the completion thereof;

(3) A plat showing the lots and lands that will be benefited by said improvement and the proposed assessment of benefits and award of damages in connection therewith for each owner;

(4) A brief statement showing the nature of said improvement and the place of starting and ending thereof;

(5) A list of the owners of the lands and lots included in said plat together with the addresses as shown in the office of the county treasurer of said county; and

(6) A map showing the location and route of said improvement.

Source: Laws 1959, c. 132, § 8, p. 486.

31-909. Proposed drainage improvement plan; file with county clerk; hearing; notice; contents.

The proposal shall be filed with the county clerk of the county who shall set a hearing date not less than thirty nor more than ninety days from date of filing. Notice of the hearing shall be given by certified mail addressed to the address of each land or lot owner as shown on the plat. The notice shall give the date of hearing, the amount of benefits assessed against or damages awarded to the owner so notified, and a recital that the plan for the improvement is on file and subject to inspection in the office of the clerk. If no address of a landowner is ascertainable, the county clerk shall publish a notice of the hearing as to such owner by one publication in a legal newspaper published or of general circulation in such county.

Source: Laws 1959, c. 132, § 9, p. 487; Laws 1986, LB 960, § 24.

Annotations

Notice was properly given to landowners in district. *Harms v. County Board of Supervisors*, 173 Neb. 687, 114 N.W.2d 713 (1962).

31-910. Proposed drainage improvement plan; hearing; objections.

At the hearing the county board shall hear objections from any land or lot owner as to the following:

(1) Whether the project will be conducive to the public health, convenience or welfare;

(2) Assessment of benefits;

(3) Compensation for land appropriated; and

(4) Damage claimed to property affected by the improvement. Within thirty days from the date of the hearing, the county board shall make final determination of the amount of benefits to be assessed and damages to be awarded and shall

decide any other objections raised at said hearing. Notice of such determination shall be given by certified mail to all parties who filed objections thereto.

Source: Laws 1959, c. 132, § 10, p. 487.

31-911. Proposed drainage improvement plan; order; appeal; procedure.

Any person or corporation feeling aggrieved thereby may appeal to the district court within and for the proper county from any final order or judgment of the board made in the proceedings and entered upon its journal determining any one of the items set forth in section [31-910](#). Such appeal shall be by complaint filed with the county clerk within twenty days after receipt of the notice provided for in section [31-910](#). The complainant shall furnish a bond running to the county to be approved by the county clerk conditioned to pay all costs that may be adjudged against the complainant if the appeal be not sustained. The county clerk shall thereupon make a transcript of the objections and the determination and such complainant shall, within ten days after receipt of such transcript, file such transcript in the district court and such court shall hear and determine such appeal in a summary manner as in a case in equity and shall increase or reduce the assessments of benefits or may increase or reduce the award of damages upon any tract where the same may be required to make the apportionment equitable. All appeals that may be filed shall be heard and determined by the court in one proceeding and only one transcript of the determination shall be required.

Source: Laws 1959, c. 132, § 11, p. 488; Laws 1961, c. 138, § 10, p. 402; Laws 1961, c. 144, § 1, p. 421.

Annotations

Under former law, failure to provide any procedural method for lodging jurisdiction in district court defeated right of appeal. *Harms v. County Board of Supervisors*, 173 Neb. 687, 114 N.W.2d 713 (1962).

31-912. Proposed drainage improvement plan; county board; proceed with plan.

In the event no appeal is perfected as provided in section [31-911](#), or upon final determination of said appeal, unless the court should hold that the improvement is not conducive to public health, convenience and welfare, the board shall proceed as follows:

(1) If the estimated cost of the improvement is two thousand dollars, or less, the board may, through rental of equipment or private contract, make said

improvements without public letting;

(2) If the estimated cost of the improvement is more than two thousand dollars, plans and specifications therefor shall be drawn by an engineer employed by said board. At such time as the plans and specifications are complete, the board shall fix a time for the opening of bids on said improvement and publish notice thereof for three weeks prior to such letting;

(3) No project shall be divided into small sections in order to avoid the requirement for public letting set forth in this section; and

(4) No bid shall be accepted which is more than the estimated cost of said improvement. The board shall let the contract to the lowest responsible bidder and shall take from said bidder a sufficient bond as security for performance of the contract pursuant to and within the time fixed by said plans and specifications.

Source: Laws 1959, c. 132, § 12, p. 488.

31-913. Drainage improvements; work completed; payment.

Payment for the work done under the provisions of section [31-912](#) shall be made monthly upon progress certificate of the engineer with ten percent of each estimate to be withheld until final completion and acceptance of said improvement.

Source: Laws 1959, c. 132, § 13, p. 489.

31-914. Drainage improvements; cost; payment; warrant.

The cost of each improvement shall be paid by warrant signed by the county clerk drawn upon the county treasurer, which warrant shall designate the particular improvement project upon which it is drawn and shall be paid from money received from assessments on lots and lands in the particular improvement project.

Source: Laws 1959, c. 132, § 14, p. 489.

31-915. Drainage improvements; borrowing from county general fund permitted.

Pending the collection of assessments on any particular projects, the county treasurer may, with approval from the county board, transfer money from the general fund, which money shall be returned when collections are made of assessments of benefits as provided for by sections [31-901](#) to [31-933](#).

Source: Laws 1959, c. 132, § 15, p. 489.

31-916. Drainage improvements; assessments; interest; due date; lien; public lands; collection.

At such time as the contract for said improvement is let, or in the event no contract is let, at such time as the improvement is completed, the county board shall determine the exact amount of each assessment and direct the county clerk to certify the same to the county treasurer. This certificate shall establish the due date for payment for said assessments. Said assessments shall bear interest after the due date at the rate of seven percent per annum and shall be a lien upon the real estate assessed against to the same extent as general taxes, prior to all other liens, and may be collected by sale of the same as for delinquent general taxes. Where the lot or land assessed belongs to any public or governmental corporation, no interest shall be charged until after a claim has been filed by the county treasurer with the appropriate payment agency of such public or governmental corporation. Where title to lands assessed is in the State of Nebraska, payment shall be made under provisions of Chapter 31, article 6.

Source: Laws 1959, c. 132, § 16, p. 489.

31-917. Drainage improvements; assessments; installments; limitation.

The county board, in its sole discretion, may provide for the payment of the assessments in five equal annual installments, the unpaid balances of which shall bear interest at not to exceed the legal rate of interest or the interest which is borne by the warrants issued in payments of said project. In the event that the board elects to defer payments as provided in this section, warrants shall be given in payment of the costs of said project, which warrants shall be payable from collection of such assessments.

Source: Laws 1959, c. 132, § 17, p. 489.

31-918. Drainage improvements; damages; county board; claim; limitation; hearing.

Should a lot or land owner suffer damage resulting from said drainage improvement and such party not have been notified thereof as provided for in section [31-909](#), such lot or land owner may, within thirty days from the date that said damage occurred, file a claim with the county board setting forth the nature of such damage and requesting a hearing thereon. A hearing shall then be had as provided for in section [31-910](#), with right of appeal as set out in section [31-911](#).

Should assessment of benefits be made and a lot or land owner not have been notified as provided for in section [31-909](#), such lot or land owner shall have thirty days from the time of discovery of assessment or within one year from the date that said assessment is filed in the office of the county treasurer, whichever date occurs first, to request a hearing on the validity of his assessment and he shall have the right of appeal as set out in section [31-911](#); *Provided*, neither the failure to notify any lot or land owner nor the outcome of such appeal shall invalidate the proceedings as to other lot or land owners.

Source: Laws 1959, c. 132, § 18, p. 490.

31-919. Drainage improvements; assessment of benefits; award of damages, when final; appeal.

The assessment of benefits against, and award of damages to, every lot or land owner who has been notified as provided in section [31-909](#) and who fails to file objections or having filed objections fails to prosecute appeal from ruling thereon, shall be final. The collection of any assessment levied shall not be enjoined, nor shall it be set aside or be held void because of any irregularity or error committed in any of the proceedings had under sections [31-901](#) to [31-933](#). The award of damages to any such lot or land owner shall likewise be final and no claim shall be made against the county or the area benefited because of any claimed subsequent or consequential damages arising because of said improvement.

Source: Laws 1959, c. 132, § 19, p. 490.

31-920. Drainage improvements; damages; additional assessments of benefits; payment.

Should the board allow damage, or should the court on appeal allow damage to the claimant as provided for in section [31-919](#), additional assessments of benefits shall be made against the lot and land owners by supplemental assessments upon the proportion fixed by the original assessment upon the lots and lands benefited to pay such claim, to be certified and collected as original assessments. Should this additional amount to be so assessed be less than five hundred dollars the board in its discretion may pay the same from the drainage fund created by section [31-905](#).

Source: Laws 1959, c. 132, § 20, p. 491.

31-921. Drainage improvements; additional assessments.

Should unexpected expenses or awards of damages require a supplemental assessment of benefits to pay for such improvements, the board shall have the

authority to make such supplemental assessments in the manner provided in section [31-920](#). Should this additional amount to be so assessed be less than five hundred dollars, the board in its discretion may pay the same from the drainage fund created by section [31-905](#).

Source: Laws 1959, c. 132, § 21, p. 491.

31-922. County board; drainage assistance and regulation; general powers.

(1) The county board shall have authority to direct landowners to remove, from ditches and watercourses adjoining or within the boundaries of their premises, obstructions which the landowners have placed or permitted to be placed therein, including the removal of inadequate culverts, crossings and bridges.

(2) If an inadequate bridge, culvert or crossing has been in or over a ditch or watercourse for more than one year prior to September 28, 1959, the cost of removal or replacement shall be paid either from the county road fund, the county drainage fund or from the assessments under an improvement project conducted under sections [31-907](#) to [31-920](#).

(3) Where the removal of such obstruction is not to be payable out of special funds as provided for in subsection (2) of this section, the board, after thirty days' notice by certified mail, to the owner, may remove the obstruction and assess the costs thereof against such owner in the manner provided in section [31-916](#); *Provided*, the owner shall have the right to appeal from the order in the manner provided for in section [31-911](#).

Source: Laws 1959, c. 132, § 22, p. 491.

31-922.01. County board; rights-of-way; manner of acquisition.

The county board, in constructing a drainage improvement under the provisions of sections [31-901](#) to [31-933](#), may procure rights-of-way by purchase, gift, or by exercise of the right of eminent domain in the manner set forth in sections [76-704](#) to [76-724](#).

Source: Laws 1961, c. 144, § 2, p. 421.

31-923. Cleaning project; county road; benefits; payment; county road fund.

Where any cleaning project benefits a county road, the county board may assess the appropriate share of the costs to the county road fund.

Source: Laws 1959, c. 132, § 23, p. 492.

31-924. Cleaning project; road ditch, ditch, or watercourse; installation and maintenance of bridge or culvert; payment; county road funds.

Where the cleaning involves a road ditch or a ditch or watercourse that is crossed by a county or township bridge or culvert, the board, in its discretion, may provide for the use of county road funds for installation and maintenance of such bridge or culvert or to assist therein.

Source: Laws 1959, c. 132, § 24, p. 492.

31-925. Cleaning project; ditch or watercourse; state highway; contract with Department of Transportation.

Where the cleaning of a ditch or watercourse involves a state highway, the county board is authorized to make any contract with the Department of Transportation with reference to bridges or culverts or, if unable to agree therein, to bring any action necessary to force the state to participate in such improvement.

Source: Laws 1959, c. 132, § 25, p. 492; [Laws 2017, LB339, § 82.](#)

31-926. County board; engineers; attorneys; employees; payment from drainage fund.

The county board may employ engineers, attorneys, and others to assist in the administration of sections [31-901](#) to [31-933](#). Payment for these services shall be made from the drainage fund except where a particular improvement project is set up, in which case the share of engineering, legal and other costs shall become part of the improvement project's costs and shall be paid therefrom.

Source: Laws 1959, c. 132, § 26, p. 492.

31-927. County board; limitation on powers; contract with other districts.

The county board shall not set up any drainage improvement project within the boundaries of any drainage district organized under Chapter 31, article 3 or 4, or sanitary districts organized under Chapter 31, article 5 or 7, but may have authority to contract with any such district with reference to drainage within such district.

Source: Laws 1959, c. 132, § 27, p. 492.

31-928. Cities of first or second class or villages; included in improvement district.

Lots and lands within the confines of any village or city of the second or first class may be included within the boundaries of an improvement project as provided for in sections [31-907](#) to [31-918](#).

Source: Laws 1959, c. 132, § 28, p. 493; Laws 1961, c. 138, § 11, p. 403.

Cross References

Cities and villages, classification, see sections [16-101](#), [17-101](#), and [17-201](#).

31-929. Drainage improvements; damages; immunity.

Neither the county, the county board, nor the individual members thereof shall be liable for damages to or loss sustained by any lot or land owner by reason of their actions in the administration of sections [31-901](#) to [31-933](#) or for failure to function hereunder.

Source: Laws 1959, c. 132, § 29, p. 493.

31-930. County board; enjoin or restrain; when.

Sections [31-901](#) to [31-933](#) shall not prevent any lot or land owner from enjoining or restraining the board from cleaning or other actions under section [31-922](#) when it can be proven that such action by the board will damage such owner and no provision for reimbursement therefor has been provided, either by making said owner party to said project in the manner provided in section [31-909](#) or otherwise.

Source: Laws 1959, c. 132, § 30, p. 493.

31-931. Sections; supplemental effect.

Sections [31-901](#) to [31-933](#) shall in no way interfere with or prevent the operation of any drainage district organized under the laws of this state or the construction of roads, road ditches, culverts, drains, or bridges in connection therewith but shall be supplemental and independent legislation.

Source: Laws 1959, c. 132, § 31, p. 493.

31-932. Drainage district; dissolution; right-of-way interest becomes property of county.

Upon dissolution of any drainage district, the right-of-way interest of such drainage district shall pass to and become the property of the county where located. Nothing in this section shall apply to any irrigation ditch or ditches.

Source: Laws 1959, c. 132, § 32, p. 493.

31-933. Act, how cited.

Sections [31-901](#) to [31-933](#) shall be known and may be cited as the County Drainage Act.

Source: Laws 1959, c. 132, § 33, p. 493.

31-1001. Legislative findings; purpose of sections.

(1) The Legislature finds that recurrent flooding in various areas of the state presents serious hazards to the health, safety, welfare, and property of the people of the state, both within and outside such areas. The hazards include loss of life, loss of and damage to private and public property, disruption of lives and of livelihoods, interruption of commerce, transportation, communication, and governmental services, and unsanitary and unhealthy living and environmental conditions. The wise use of land subject to flooding is a matter of state concern. The Legislature further finds that the establishment of improved flood plain management practices and the availability of financial assistance to citizens of the state whose property is damaged during times of flooding are essential to the health, safety, and general welfare of the people of Nebraska.

(2) The purposes of sections [31-1001](#) to [31-1023](#) shall be to:

(a) Accelerate the mapping of flood-prone areas;

(b) Assist local governments in the promulgation and implementation of effective flood plain management regulations and other flood plain management practices;

(c) Assure that when state lands are used and state-owned and state-financed facilities are located and constructed, flood hazards are prevented, flood losses are minimized, and the state's eligibility for flood insurance is maintained; and

(d) Encourage local governments with flood-prone areas to qualify for participation in the national flood insurance program.

Source: Laws 1983, LB 35, § 1; Laws 1993, LB 626, § 1.

31-1002. Definitions, where found.

For purposes of sections [31-1001](#) to [31-1023](#), unless the context otherwise requires, the definitions in sections [31-1003](#) to [31-1016](#) shall apply.

Source: Laws 1983, LB 35, § 2; Laws 1993, LB 626, § 2.

31-1003. Department, defined.

Department shall mean the Department of Natural Resources.

Source: Laws 1983, LB 35, § 3; [Laws 2000, LB 900, § 75](#).

31-1004. Repealed. Laws 1993, LB 626, § 8.

31-1005. Base flood, defined.

Base flood shall mean the flood having a one percent chance of being equalled or exceeded in magnitude in any given year.

Source: Laws 1983, LB 35, § 5.

31-1006. Drainway, defined.

Drainway shall mean any depression two feet or more below the land which serves to give direction to a current of water less than nine months of the year, and which has a bed and well-defined banks.

Source: Laws 1983, LB 35, § 6.

31-1007. Flood, defined.

Flood shall mean the water of any watercourse or drainway which is above the bank or outside the channel and banks of such watercourse or drainway.

Source: Laws 1983, LB 35, § 7.

31-1008. Floodway, defined.

Floodway shall mean the channel of a watercourse or drainway and the adjacent land areas that are necessary to be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a reasonable height, as designated by the department.

Source: Laws 1983, LB 35, § 8; [Laws 2000, LB 900, § 76.](#)

31-1009. Flood fringe, defined.

Flood fringe shall mean that portion of the flood plain of the base flood which is outside of the floodway.

Source: Laws 1983, LB 35, § 9.

31-1010. Flood plain, defined.

Flood plain shall mean the area adjoining a watercourse or drainway which has been or may be covered by flood waters.

Source: Laws 1983, LB 35, § 10.

31-1011. Flood plain management, defined.

Flood plain management shall mean the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to, flood control works and flood plain management regulations.

Source: Laws 1983, LB 35, § 11.

31-1012. Flood plain management regulations, defined.

Flood plain management regulations shall mean and include zoning ordinances, subdivision regulations, building codes, and other applications of the police power which are authorized by law to secure safety from floods and provide for the reasonable and prudent use of flood plains.

Source: Laws 1983, LB 35, § 12.

31-1013. Local government, defined.

Local government shall mean a county, city, or village in the state.

Source: Laws 1983, LB 35, § 13.

31-1014. National flood insurance program, defined.

National flood insurance program shall mean the program authorized by the United States Congress under the National Flood Insurance Act of 1968, as amended, 42 U.S.C., 4001 to 4128.

Source: Laws 1983, LB 35, § 14.

31-1015. Obstruction, defined.

Obstruction shall mean any wall, wharf, embankment, levee, dike, pile, abutment, projection, excavation, channel rectification, bridge, conduit, culvert, building, wire, fence, rock, gravel, refuse, fill, or other analogous structure or matter which may impede, retard, or change the direction of the flow of water, either in itself or by catching or collecting debris carried by such water, or that is placed where the natural flow of the water would carry such structure or matter downstream to the damage or detriment of either life or property. Obstruction shall not include a dam designed to store or divert water for which permission for construction has been obtained from the Department of Natural Resources pursuant to the Safety of Dams and Reservoirs Act.

Source: Laws 1983, LB 35, § 15; Laws 1993, LB 626, § 3; [Laws 2000, LB 900, § 77](#); [Laws 2005, LB 335, § 72](#).

Cross References

Safety of Dams and Reservoirs Act, see section [46-1601](#).

31-1016. Watercourse, defined.

Watercourse shall mean any depression two feet or more below the surrounding land which serves to give direction to a current of water at least nine months of the year and which has a bed and well-defined banks.

Source: Laws 1983, LB 35, § 16.

31-1017. Department; flood plain management; powers and duties.

The department shall be the official state agency for all matters pertaining to flood plain management. In carrying out that function, the department shall have the power and authority to:

(1) Coordinate flood plain management activities of local, state, and federal agencies;

(2) Receive federal funds intended to accomplish flood plain management objectives;

(3) Prepare and distribute information and conduct educational activities which will aid the public and local units of government in complying with the purposes of sections [31-1001](#) to [31-1023](#);

(4) Provide local governments having jurisdiction over flood-prone lands with technical data and maps adequate to develop or support reasonable flood plain management regulation;

(5) Adopt and promulgate rules and regulations establishing minimum standards for local flood plain management regulation. In addition to the public notice requirement in the Administrative Procedure Act, the department shall, at least twenty days in advance, notify by mail the clerks of all cities, villages, and counties which might be affected of any hearing to consider the adoption, amendment, or repeal of such minimum standards. Such minimum standards shall be designed to protect human life, health, and property and to preserve the capacity of the flood plain to discharge the waters of the base flood and shall take into consideration (a) the danger to life and property by water which may be backed up or diverted by proposed obstructions and land uses, (b) the danger that proposed obstructions or land uses will be swept downstream to the injury of others, (c) the availability of alternate locations for proposed obstructions and land uses, (d) the opportunities for construction or alteration of proposed obstructions in such a manner as to lessen the danger, (e) the permanence of proposed obstructions or land uses, (f) the anticipated development in the foreseeable future of areas which may be affected by proposed obstructions or land uses, (g) hardship factors which may result from approval or denial of proposed obstructions or land uses, and (h) such other factors as are in harmony with the purposes of sections [31-1001](#) to [31-1023](#). Such minimum standards may, when required by law, distinguish between farm and nonfarm activities and shall provide for anticipated developments and gradations in flood hazards. If deemed necessary by the department to adequately accomplish the purposes of such sections, such standards may be more restrictive than those contained in the national flood insurance program standards, except that the department shall not adopt standards which conflict with those of the national

flood insurance program in such a way that compliance with both sets of standards is not possible;

(6) Provide local governments and other state and local agencies with technical assistance, engineering assistance, model ordinances, assistance in evaluating permit applications and possible violations of flood plain management regulations, assistance in personnel training, and assistance in monitoring administration and enforcement activities;

(7) Serve as a repository for all known flood data within the state;

(8) Assist federal, state, or local agencies in the planning and implementation of flood plain management activities, such as flood warning systems, land acquisition programs, and relocation programs;

(9) Enter upon any lands and waters in the state for the purpose of making any investigation or survey or as otherwise necessary to carry out the purposes of such sections. Such right of entry shall extend to all employees, surveyors, or other agents of the department in the official performance of their duties, and such persons shall not be liable to prosecution for trespass when performing their official duties;

(10) Enter into contracts or other arrangements with any state or federal agency or person as defined in section [49-801](#) as necessary to carry out the purposes of sections [31-1001](#) to [31-1023](#); and

(11) Adopt and enforce such rules and regulations as are necessary to carry out the duties and responsibilities of such sections.

Source: Laws 1983, LB 35, § 17; Laws 1993, LB 626, § 4; [Laws 2000, LB 900, § 78.](#)

Cross References

Administrative Procedure Act, see section [84-920](#).

Annotations

This section requires the Nebraska Natural Resources Commission to adopt, at a minimum, flood plain regulations promulgated by the Federal Emergency Management Agency. *Giger v. City of Omaha*, 232 Neb. 676, 442 N.W.2d 182 (1989).

31-1018. Preparation of flood hazard data and maps; department; duties; considerations.

In determining areas of the state for which state-prepared flood hazard data and maps are needed by local governments or by state or federal agencies and the order in which such data and maps are to be prepared, the department shall consider the following factors in such areas:

- (1) Potential for future development;
- (2) Potential for flood damage or loss of life;
- (3) Probability that adequate data and maps will be prepared within a reasonable time by other sources;
- (4) Availability and adequacy of any existing maps;
- (5) Availability of flood data and other information necessary to produce adequate maps; and
- (6) Degree of interest shown by the local governments in the area in utilizing flood data and maps in an effective flood plain management program.

Flood area data and maps produced by the department may be provided either directly to the local government which has jurisdiction over such area or indirectly through the national flood insurance program if the department and the federal agency responsible for administering the national flood insurance program agree to such an arrangement. Such maps shall delineate the flood plain of the base flood and, when information is available, the floodway and flood fringe of such flood plain. Such maps shall also contain or be accompanied by such other information as the department deems appropriate.

Source: Laws 1983, LB 35, § 18; Laws 1993, LB 626, § 5; [Laws 2000, LB 900, § 79.](#)

31-1019. Local government; flood plain management; duties.

When the department, a federal agency, or any other entity has provided a local government with sufficient data and maps with which to reasonably locate within its zoning jurisdiction any portion of the flood plain for the base flood of any watercourse or drainway, it shall be the responsibility of such local government to adopt, administer, and enforce flood plain management regulations which meet or exceed the minimum standards adopted by the department pursuant to subdivision (5) of section [31-1017](#). The authority of a local government to adopt flood plain management regulations in accordance with this section shall not be conditional

upon a prior appointment of a planning commission or the adoption of a comprehensive development plan pursuant to sections [14-403](#), [14-404](#), [14-407](#), [15-1101](#), [15-1102](#), [19-901](#), [19-929](#), [23-114.01](#) to [23-114.03](#), or [23-174.04](#) to [23-174.07](#).

Source: Laws 1983, LB 35, § 19; [Laws 2000, LB 900, § 80](#).

Annotations

This section does not create a duty giving rise to civil tort liability.
Stonacek v. City of Lincoln, 279 Neb. 869, 782 N.W.2d 900 (2010).

31-1020. Local government; failure to implement flood plain management regulations; department; powers and duties.

If a local government does not adopt and implement flood plain management regulations in accordance with section [31-1019](#) within one year after flood hazard data and maps have been provided to it pursuant to such section, the department shall, upon petition of at least ten percent of the owners of the land located within the flood plain of the base flood delineated in such maps, or upon the written request of the board of directors of the natural resources district in which such land is located, conduct a public hearing after providing notice pursuant to section [31-1022](#). If the department finds after such hearing that the data and maps available are sufficient to reasonably locate the boundaries of the base flood, the department shall determine and fix by order the boundaries of the base flood and, where deemed appropriate, the boundaries of the floodway within the zoning jurisdiction of such local government. If within three months after the date of such order the local government still has not adopted and implemented flood plain management regulations for the area subject to such order in accordance with section [31-1019](#), the department shall be vested with the power and authority to adopt flood plain management regulations for the area and shall adopt and promulgate such regulations for the identified base flood within the zoning jurisdiction of such local government. Such regulations shall be consistent with the minimum standards adopted by the department pursuant to subdivision (5) of section [31-1017](#) and shall take effect on the date prescribed by the department. All ordinances or other actions by the local government which are contrary to the rules and regulations of the department shall be null and void.

Source: Laws 1983, LB 35, § 20; Laws 1993, LB 626, § 6; [Laws 2000, LB 900, § 81](#).

31-1021. Local government; enforce department regulations.

It shall be the duty of the local government to administer and enforce any regulations adopted by the department pursuant to section [31-1020](#) in the same manner as if the local government had enacted such regulations. Such duty may be enforced in a mandamus action brought against such local government by any resident or landowner within the jurisdiction of such local government. If such mandamus action is successful, the local government may be held responsible for all reasonable and actual costs of the plaintiff, including, but not limited to, attorney's fees. Neither the regulations enacted by the department nor the boundaries of the base flood or floodway adopted by the department may be modified by the local government without the written consent of the department, except that a local government may adopt a measure more restrictive than that adopted by the department.

Source: Laws 1983, LB 35, § 21; [Laws 2000, LB 900, § 82.](#)

31-1022. Adoption of regulations; notice; hearing; appeal.

Notice of any hearing to be conducted by the department pursuant to section [31-1020](#) shall be given to the clerk of the local government and to such other local officials as the department deems appropriate, at least thirty days prior to the hearing. Notice shall also be published in a newspaper of general circulation in the area involved at least once each week for three consecutive weeks, the last publication of which shall be not less than five days prior to the date set for the hearing. The rules and regulations of the department adopted and promulgated in accordance with section [31-1020](#) shall not be subject to the provisions of the Administrative Procedure Act. Appeals from department determinations pursuant to section [31-1020](#) may be taken by any aggrieved party, and the appeals shall be in accordance with the Administrative Procedure Act.

Source: Laws 1983, LB 35, § 22; Laws 1988, LB 352, § 28; [Laws 2000, LB 900, § 83.](#)

Cross References

Administrative Procedure Act, see section [84-920](#).

31-1023. State agencies, boards, and commissions; flood plain management duties.

(1) All state agencies, boards, and commissions shall take preventive action to minimize flood hazards and losses in connection with state-owned and state-financed buildings, roads, and other facilities, and shall take such steps as are necessary to insure compliance with the minimum standards adopted by the

department in accordance with subdivision (5) of section [31-1017](#) when such facilities are being located or constructed in any area where no local government is enforcing flood plain management regulations pursuant to section [31-1019](#) or [31-1021](#). If a local government with jurisdiction over the land upon which any such facility is to be located or constructed is enforcing flood plain management regulations pursuant to section [31-1019](#) or [31-1021](#), the state agency, board, or commission locating or constructing such facility shall comply with such regulations unless such compliance is specifically waived by the department.

(2) The department shall assist state agencies, boards, and commissions in determining and evaluating flood hazards and alternative flood protective measures and shall establish by rule or regulation, standards and procedures to govern its review of proposed state-owned and state-financed facilities not subject to local flood plain management regulations. Such standards and procedures shall meet the minimum criteria necessary to maintain the state's eligibility for flood insurance under the national flood insurance program.

Source: Laws 1983, LB 35, § 23; Laws 1993, LB 626, § 7; [Laws 2000, LB 900, § 84.](#)

31-1024. Repealed. Laws 1993, LB 626, § 8.

31-1025. Repealed. Laws 1993, LB 626, § 8.

31-1026. Repealed. Laws 1993, LB 626, § 8.

31-1027. Repealed. Laws 1993, LB 626, § 8.

31-1028. Repealed. Laws 1993, LB 626, § 8.

31-1029. Repealed. Laws 1993, LB 626, § 8.

31-1030. Repealed. Laws 1993, LB 626, § 8.

31-1031. Repealed. Laws 1993, LB 626, § 8.