

CHAPTER 17  
Drainage or Levee Districts Under 1911 Act

ARTICLE 1  
General Provisions

**SECTION 49-17-10.** Legislative declaration of public interest.

It is hereby declared that the drainage of swamps, the drainage of surface water from agricultural lands and the reclamation of tidal marshes shall be considered a public benefit and conducive to the public health, convenience, utility and welfare.

HISTORY: 1962 Code Section 18-201; 1952 Code Section 18-201; 1942 Code Section 6096; 1932 Code Section 6096; Civ. C. '22 Section 3150; Civ. C. '12 Section 2196; 1911 (27) 92; 1913 (28) 16; 1914 (28) 455, 460, 514; 1916 (29) 748; 1920 (31) 804.

**SECTION 49-17-20.** Chapter to be liberally construed.

The provisions of this chapter shall be liberally construed to promote the leveeing, ditching, draining and reclamation of wet and overflowed lands.

HISTORY: 1962 Code Section 18-202; 1952 Code Section 18-202; 1942 Code Section 6132; 1932 Code Section 6132; Civ. C. '22 Section 3186; Civ. C. '12 Section 2232; 1911 (27) 92.

**SECTION 49-17-30.** Proceedings may be ex parte or advisory.

Proceedings under this chapter may be ex parte or advisory.

HISTORY: 1962 Code Section 18-203; 1952 Code Section 18-203; 1942 Code Section 6136; 1932 Code Section 6136; Civ. C. '22 Section 3190; Civ. C. '12 Section 2236; 1911 (27) 92.

**SECTION 49-17-40.** Effect of chapter on local drainage laws.

This chapter shall not repeal or change any local drainage laws enacted by the General Assembly.

HISTORY: 1962 Code Section 18-204; 1952 Code Section 18-204; 1942 Code Section 6137; 1932 Code Section 6137; Civ. C. '22 Section 3191; Civ. C. '12 Section 2237; 1911 (27) 92; 1917 (30) 40.

**SECTION 49-17-50.** Drainage record.

The clerk of the court of common pleas shall provide a suitable book to be known as the "Drainage Record" in which he shall transcribe every petition, motion, order, report, judgment or finding of the board in every drainage transaction that may come before it in such a manner as to make a complete and continuous record of the case. Copies of all the maps and profiles are to be furnished by the engineer and marked by the clerk "official copies" and shall be kept on file by him in his office and one other copy shall be pasted or otherwise attached to his record book.

HISTORY: 1962 Code Section 18-205; 1952 Code Section 18-205; 1942 Code Section 6113; 1932 Code Section 6113; Civ. C. '22 Section 3167; Civ. C. '12 Section 2213; 1911 (27) 92.

ARTICLE 3  
Procedure to Establish District

**SECTION 49-17-210.** Powers of clerk of court.

The clerk of the court of common pleas of any county of this State may establish a levee or drainage district or districts in his county, locate and establish levees, drains or canals, cause to be constructed,

straightened, widened or deepened any ditch, drain or watercourse and build levees or embankments and erect tide gates and pumping plants for the purpose of draining and reclaiming wet, swamp or overflowed lands.

HISTORY: 1962 Code Section 18-211; 1952 Code Section 18-211; 1942 Code Section 6096; 1932 Code Section 6096; Civ. C. '22 Section 3150; Civ. C. '12 Section 2196; 1911 (27) 92; 1913 (28) 16; 1914 (28) 455, 460, 514; 1916 (29) 748; 1920 (31) 804.

**SECTION 49-17-220.** Initiation of proceedings.

Whenever:

(1) A petition, signed by a majority of the resident landowners in a proposed drainage district or by the owners of more than half the land in acreage which will be affected by, or assessed for the expense of the proposed improvements, shall be filed in the office of the clerk of court of common pleas of any county in which a part of such lands are located, setting forth that any specific body or district of land in the county and adjoining counties, described in such a way as to convey an intelligent idea as to the location of such land, is subject to overflow or too wet for cultivation and the public benefit or utility or the public health, convenience or welfare will be promoted by draining, ditching or leveeing such land, by changing or improving the natural watercourses or by the installing of tile systems, and setting forth therein, as far as practicable, the starting point, route and terminus and lateral branches, if necessary, of the proposed improvement and

(2) There is filed therewith a bond for the amount of one hundred dollars per mile for each mile of the proposed improvement, signed by two or more sureties or by some lawful and authorized surety company, to be approved by the clerk of such court of common pleas, conditioned for the payment of all expenses and costs incurred in the proceedings in case the clerk of court does not grant the prayer of the petition,

The clerk shall issue a summons to be served on all the landowners who have not joined in the petition and whose lands are included in the proposed drainage district, so far as the clerk has been able to ascertain them. The failure to serve those landowners whose names were unknown to the clerk shall have no effect upon the proceedings if they are made parties to the proceedings as provided in Section 49-17-630.

HISTORY: 1962 Code Section 18-213; 1952 Code Section 18-213; 1942 Code Section 6097; 1932 Code Section 6097; Civ. C. '22 Section 3151; Civ. C. '12 Section 2197; 1911 (27) 92; 1914 (28) 455; 1915 (29) 199; 1920 (31) 1089.

**SECTION 49-17-230.** Effect of lands being in more than one county.

When the lands proposed to be drained and created into a drainage district are located in two or more counties the clerk of court of common pleas of either county shall have and exercise the jurisdiction herein conferred and the venue shall be in that county in which the petition is first filed.

HISTORY: 1962 Code Section 18-214; 1952 Code Section 18-214; 1942 Code Section 6097; 1932 Code Section 6097; Civ. C. '22 Section 3151; Civ. C. '12 Section 2197; 1911 (27) 92; 1914 (28) 455; 1915 (29) 199; 1920 (31) 1089.

**SECTION 49-17-240.** Service of process.

The summons may be served by publication as to any defendants who cannot be personally served, as provided by law. The service of such summons upon the station agent of any railroad, interurban or other company in any county in which the right of way of such company will be affected by such drainage will be sufficient notice to such railroad or other company and in case there be no agent of any such company in such county such company shall be notified in the same manner as nonresident landowners.

HISTORY: 1962 Code Section 18-215; 1952 Code Section 18-215; 1942 Code Section 6097; 1932 Code Section 6097; Civ. C. '22 Section 3151; Civ. C. '12 Section 2197; 1911 (27) 92; 1914 (28) 455; 1915 (29) 199; 1920 (31) 1089.

**SECTION 49-17-250.** Appointment of board of viewers.

Upon the return day the clerk shall appoint a disinterested and competent civil and drainage engineer and two resident freeholders of the county or counties in which the lands are located as a board of viewers to examine the lands described in the petition and make a preliminary report thereon.

HISTORY: 1962 Code Section 18-216; 1952 Code Section 18-216; 1942 Code Section 6097; 1932 Code Section 6097; Civ. C. '22 Section 3151; Civ. C. '12 Section 2197; 1911 (27) 92; 1914 (28) 455; 1915 (29) 199; 1920 (31) 1089.

**SECTION 49-17-260.** Board of viewers may borrow expense money; payment of expenses.

The board of viewers may borrow a sufficient sum of money to defray the costs and expenses of examining the lands described in the petition and making a preliminary report thereon, including the compensation of the engineer and his assistants, not exceeding the amount of the bond filed and may pledge the bond as security for such loan. The sum so borrowed shall be deposited with the clerk of court to be disbursed by him from time to time in payment of the aforesaid costs and expenses, including the compensation of the engineer and his assistants. If the proposed district is finally established such loan, with interest, shall be repaid from the assessment authorized by Section 49-17-1310 and if no such loan is procured the aforesaid costs and expenses, including the compensation of the engineer and his assistants, shall be paid from such assessment. But if the petition is dismissed at the cost of the petitioners the sureties on the bond shall be liable, to the extent of the amount of the bond, for the aforesaid costs and expenses, including the compensation of the engineer and his assistants, or the repayment of the loan, together with interest, if a loan has been procured as aforesaid.

HISTORY: 1962 Code Section 18-217; 1952 Code Section 18-217; 1942 Code Section 6097; 1932 Code Section 6097; Civ. C. '22 Section 3151; Civ. C. '12 Section 2197; 1911 (27) 92; 1914 (28) 455; 1915 (29) 199; 1920 (31) 1089.

**SECTION 49-17-270.** Preliminary report of board of viewers.

The board of viewers shall proceed to examine the land described in the petition and other land, if necessary, and to locate properly such improvement or improvements as are petitioned for along the route described in the petition or any other route answering the same purpose if found more practicable or feasible and may make such surveys as may be necessary to determine the boundaries and elevations of the several parts of the district. They shall make and return to the clerk of court of common pleas within ninety days, unless the time shall be extended by the clerk, a written report, which shall set forth:

- (1) Whether the proposed drainage is practicable or not;
- (2) Whether it will benefit the public health or any public highway or be conducive to the general welfare of the community;
- (3) Whether the improvements proposed will benefit the land sought to be benefited; and
- (4) Whether or not all the lands benefited are included in the proposed drainage district.

They shall also file with this report a map of the proposed drainage district showing the location of the ditch or ditches or other improvements to be constructed in the lands that will be affected thereby and other such information as they may have collected that will tend to show the correctness of their findings.

HISTORY: 1962 Code Section 18-218; 1952 Code Section 18-218; 1942 Code Section 6098; 1932 Code Section 6098; Civ. C. '22 Section 3152; Civ. C. '12 Section 2198; 1911 (27) 92; 1920 (31) 1089.

**SECTION 49-17-280.** Dismissal of petition if report is unfavorable; new proceedings.

If the viewers report that the drainage is not practicable or that it will not benefit the public health or any public highway or be conducive to the general welfare of the community and the clerk of court shall approve such findings the petition shall be dismissed at the cost of the petitioners and the sureties upon the bond so filed by them shall be liable as aforesaid. Such petition or proceedings may again be instituted by the same or additional landowners at any time after six months upon proper allegations that conditions have changed or that material facts were omitted or overlooked.

HISTORY: 1962 Code Section 18-219; 1952 Code Section 18-219; 1942 Code Section 6099; 1932 Code Section 6099; Civ. C. '22 Section 3153; Civ. C. '12 Section 2199; 1911 (27) 92; 1914 (28) 755; 1920 (31) 1089.

**SECTION 49-17-290.** Hearing ordered if report is favorable.

If the viewers report that the drainage is practicable and that it will benefit the public health or any public highway or be conducive to the general welfare of the community and the clerk of court shall so find, then the clerk shall fix a day when the report will be further heard and considered.

HISTORY: 1962 Code Section 18-220; 1952 Code Section 18-220; 1942 Code Section 6099; 1932 Code Section 6099; Civ. C. '22 Section 3153; Civ. C. '12 Section 2199; 1911 (27) 92; 1914 (28) 755; 1920 (31) 1089.

**SECTION 49-17-300.** Notice of hearing.

If the petition is entertained by the clerk of court notice shall be given by publication for two consecutive weeks in some newspaper of general circulation within the county or counties, if one shall be published in such counties, and also by posting a written or printed notice at the door of the courthouse and at five conspicuous places within the drainage district that on the date set, naming the day, the clerk of court will consider and pass upon the report of the viewers. At least fifteen days shall intervene between the date of publication and the posting of notices and the date set for the hearing.

HISTORY: 1962 Code Section 18-221; 1952 Code Section 18-221; 1942 Code Section 6100; 1932 Code Section 6100; Civ. C. '22 Section 3154; Civ. C. '12 Section 2200; 1911 (27) 92.

**SECTION 49-17-310.** Hearing; action on preliminary report.

At the date appointed for the hearing the clerk of court shall hear and determine any objections that may be offered to the report of the viewers. If it appear that there is any land within the proposed levee or drainage district that will not be affected by the leveeing or drainage thereof such lands shall be excluded and the names of the owners withdrawn from such proceedings. And if it shall be shown that there is any land not within the proposed district that will be affected by the construction of the proposed levee or drain the boundary of the district shall be so changed as to include such lands and such additional landowners shall be made parties plaintiff or defendant, respectively, and summons shall issue accordingly, as hereinbefore provided. And any landowners whose lands were within the original levee or drainage district, who were not summoned by the clerk when the petition was filed and whose names have since been ascertained by the clerk, shall be made parties plaintiff or defendant, respectively, and summons shall issue accordingly, as hereinbefore provided. After such change in the boundaries is made, the sufficiency of the petition shall be verified to determine whether or not it conforms to the requirements of the statute as provided in Section 49-17-220. The engineer and the other two viewers may attend this meeting and give any information or evidence that may be sought to verify and to substantiate their reports. The efficiency of the drainage or levee may also be determined and if it appears that the location of any levee or drain can be changed so as to make it more effective, that other branches or spurs should be constructed or that any branch or spur projected may be eliminated or other changes made that will tend to increase the benefits of the proposed work such modification and changes shall be made by the board of viewers. If necessary the

petition, as amended, shall be referred by the clerk of court to the engineer and two viewers for further report.

HISTORY: 1962 Code Section 18-222; 1952 Code Section 18-222; 1942 Code Section 6101; 1932 Code Section 6101; Civ. C. '22 Section 3155; Civ. C. '12 Section 2202; 1911 (27) 92; 1915 (29) 199.

**SECTION 49-17-320.** Establishment of district.

The above facts having been determined to the satisfaction of the clerk of the court and the boundaries of the proposed district so determined he shall declare the establishment of the drainage or levee district, which shall be designated by a name or number, for the object and purpose as in this chapter set forth.

HISTORY: 1962 Code Section 18-223; 1952 Code Section 18-223; 1942 Code Section 6101; 1932 Code Section 6101; Civ. C. '22 Section 3155; Civ. C. '12 Section 2202; 1911 (27) 92; 1915 (29) 199.

**SECTION 49-17-330.** Right of appeal.

Any person owning lands within the drainage or levee district which he thinks will not be benefited by the improvement and should not be included in the district may appeal from the decision of the clerk to the court of common pleas of such county, in term time or at chambers, by filing an appeal, accompanied by a bond conditioned for the payment of the costs if the appeal should be decided against him for such sum as the court may require, not exceeding two hundred dollars, signed by two or more solvent sureties or by some approved surety company, to be approved by the court or by the clerk of court.

HISTORY: 1962 Code Section 18-224; 1952 Code Section 18-224; 1942 Code Section 6103; 1932 Code Section 6103; Civ. C. '22 Section 3157; Civ. C. '12 Section 2203; 1911 (27) 92; 1961 (52) 43.

## ARTICLE 5

### Proceedings Subsequent to Establishment of District

**SECTION 49-17-510.** Requirement of complete survey, plans, and specifications; report.

After the district is established the clerk of court shall refer the report of the engineer and viewers back to them to make a complete survey and complete plans and specifications for the drains or levees or other improvements and shall fix a time when the engineer and viewers shall complete and file such report.

HISTORY: 1962 Code Section 18-231; 1952 Code Section 18-231; 1942 Code Section 6104; 1932 Code Section 6104; Civ. C. '22 Section 3158; Civ. C. '12 Section 2204; 1911 (27) 92; 1916 (29) 932; 1920 (31) 1087.

**SECTION 49-17-520.** Making complete survey; accompanying documents.

The engineer and viewers may employ such assistants as may be necessary to make a complete survey of the drainage district and shall enter upon the ground and make a survey of the main drain or drains and all its laterals. The line of each ditch, drain or levee shall be plainly and substantially marked on the ground. The course and distance of each ditch shall be carefully noted and sufficient notes made so that it may be accurately platted and mapped. A line of levels shall be run for the entire work and sufficient data secured from which accurate profiles and plans may be made. Frequent bench marks shall be established along the line, on permanent objects, and their elevation recorded in the field books. If it is deemed expedient by the engineer and viewers other levels may be run to determine the fall from one part of the district to another. If an old watercourse, ditch or channel is being widened, deepened or straightened it shall be accurately cross-sectioned so as to compute the amount of cubic yards saved by the use of such old channel. A drainage map of the district shall then be completed, showing the location of the ditch or ditches and other improvements and the boundary, as closely as may be determined by the records of the lands owned by each individual landowner within the district. The location of any railroads or public highways and the

boundary of any incorporated town or village within the district shall be shown on the map. There shall also be prepared to accompany this map a profile of each levee, drain or watercourse showing the surface of the ground, the bottom or grade of the proposed improvement, the number of cubic yards of excavation or fill in each mile or fraction thereof, the total yards in the proposed improvement and the estimated cost thereof and plans and specifications for and the cost of any work required to be done.

HISTORY: 1962 Code Section 18-232; 1952 Code Section 18-232; 1942 Code Section 6105; 1932 Code Section 6105; Civ. C. '22 Section 3159; Civ. C. '12 Section 2205; 1911 (27) 92.

**SECTION 49-17-530.** Assessment of damages.

The engineer and viewers shall assess the damage claimed by anyone that is justly right and due to him for land taken or for inconvenience imposed because of the construction of the improvement or for any other legal damage sustained. Such damage shall be considered separate and apart from any benefit the land would receive because of the proposed work and shall be paid by the board of drainage commissioners when funds shall come into their hands.

HISTORY: 1962 Code Section 18-233; 1952 Code Section 18-233; 1942 Code Section 6106; 1932 Code Section 6106; Civ. C. '22 Section 3160; Civ. C. '12 Section 2206; 1911 (27) 92.

**SECTION 49-17-540.** Classification of land according to benefits.

The engineer and viewers shall personally examine the land in the district and classify it with reference to the benefit it will receive from the construction of the levee, ditch, drain or watercourse or other improvement. In the case of drainage the degree of wetness of the land, its proximity to the ditch or a natural outlet and the fertility of the soil and its effect upon health conditions in the district shall be considered in determining the amount of benefit it will receive by the construction of the ditch. The land benefited shall be separated in five classes. The land receiving the highest benefit shall be designated "Class A"; that receiving the next highest benefit, "Class B"; that receiving the next highest benefit, "Class C"; that receiving the next highest benefit, "Class D," and that receiving the smallest benefit, "Class E." The holding of any one landowner need not necessarily be all in one class but the number of acres in each class shall be ascertained, though its boundary need not be marked on the ground or shown on the map. The total number of acres owned by one person in each class and the total number of acres benefited shall be determined. The total number of acres of each class in the entire district shall be obtained and presented in tabulated form.

HISTORY: 1962 Code Section 18-234; 1952 Code Section 18-234; 1942 Code Section 6107; 1932 Code Section 6107; Civ. C. '22 Section 3161; Civ. C. '12 Section 2207; 1911 (27) 92; 1917 (30) 338.

**SECTION 49-17-550.** Scale of assessment against land in different classes.

The scale of assessment upon the several classes of land returned by the engineer and viewers shall be in the ratio of five, four, three, two and one; that is to say, as often as five mills per acre is assessed against the land in "Class A," four mills per acre shall be assessed against the land in "Class B," three mills per acre in "Class C," two mills per acre in "Class D," and one mill per acre in "Class E." This shall form the basis of the assessment of benefits to the lands for drainage purposes.

HISTORY: 1962 Code Section 18-235; 1952 Code Section 18-235; 1942 Code Section 6107; 1932 Code Section 6107; Civ. C. '22 Section 3161; Civ. C. '12 Section 2207; 1911 (27) 92; 1917 (30) 338.

**SECTION 49-17-560.** Notice when improvement crosses railroad.

Whenever the engineer and the viewers in charge shall make a survey for the purpose of locating a public levee or drainage ditch or changing a natural watercourse and the levee, ditch or watercourse would cross the right of way of any railroad company, the viewers in charge of the work shall notify the railroad

company, by serving written notice upon the agent of such company or its lessee or receiver, that they will meet the company at the place where the proposed ditch, drain or watercourse crosses the right of way of such company, such notice fixing the time of such meeting, which shall not be less than ten days after the service of the notice, for the purpose of conferring with the railroad company with relation to the place where and the manner in which such improvement shall cross such right of way.

HISTORY: 1962 Code Section 18-237; 1952 Code Section 18-237; 1942 Code Section 6121; 1932 Code Section 6121; Civ. C. '22 Section 3175; Civ. C. '12 Section 2221; 1911 (27) 92.

**SECTION 49-17-570.** Agreement with railroad; determination if unable to agree; assessment of damages and benefits.

When the time shall arrive, fixed for such conference, unless for good cause more time is agreed upon, the viewers in charge and the railroad company shall agree, if possible, upon the place where and the manner and method by which such improvement shall cross such right of way. If the viewers in charge and the railroad company cannot agree or if the railroad company shall fail, neglect or refuse to confer with the viewers they shall determine the place and manner of crossing the right of way of the railroad company and shall specify the number and the size of openings required and the damages, if any, to the railroad company and so specify in their report. The fact that the railroad company is required by the construction of the improvement to build a new bridge or culvert or to enlarge or strengthen an old one shall not be considered as damages to the railroad company. The engineer and viewers shall also assess the benefits that will accrue to the right of way, roadbed and other property of the railroad company by affording better drainage or a better outlet for drainage, but no benefits shall be assessed because of the increase of business that may come to the road because of the construction of the improvement. The benefits shall be assessed at a fixed sum, determined solely by the physical benefit that the property will receive by the construction of the improvement and it shall be reported by the viewers as a special assessment, due personally from the railroad company as a special assessment. It may be collected in the manner of an ordinary debt in any court having jurisdiction.

HISTORY: 1962 Code Section 18-238; 1952 Code Section 18-238; 1942 Code Section 6121; 1932 Code Section 6121; Civ. C. '22 Section 3175; Civ. C. '12 Section 2221; 1911 (27) 92.

**SECTION 49-17-580.** Account of cost of survey.

The engineer and viewers shall keep an accurate account and report to the clerk of the court the name of each person employed on the survey, the number of days he was employed, the kind of work he was doing, any expense that may have been incurred in going to and from the work and the cost of any supplies or material that may have been used in making the survey.

HISTORY: 1962 Code Section 18-239; 1952 Code Section 18-239; 1942 Code Section 6108; 1932 Code Section 6108; Civ. C. '22 Section 3162; Civ. C. '12 Section 2208; 1911 (27) 92.

**SECTION 49-17-590.** Delay; extension of time.

In case the work is delayed by high water, sickness or any other good cause and the report is not completed at the time fixed by the clerk of the court the engineer and viewers shall appear before the clerk of the court and state in writing the cause of such failure and ask for sufficient time in which to complete the work and the clerk shall set another date by which the report shall be completed and filed.

HISTORY: 1962 Code Section 18-240; 1952 Code Section 18-240; 1942 Code Section 6109; 1932 Code Section 6109; Civ. C. '22 Section 3163; Civ. C. '12 Section 2209; 1911 (27) 92.

**SECTION 49-17-600.** Filing and acceptance or reference back of final report.

When the final report is completed and filed it shall be examined by the clerk of the court and if it is found to be in due form and in accordance with the law it shall be accepted and if not in due form it may be referred back to the engineer and viewers, with instruction to secure further information to be reported at a subsequent date to be fixed by the clerk.

HISTORY: 1962 Code Section 18-241; 1952 Code Section 18-241; 1942 Code Section 6110; 1932 Code Section 6110; Civ. C. '22 Section 3164; Civ. C. '12 Section 2210; 1911 (27) 92; 1915 (29) 199.

**SECTION 49-17-610.** Notice of hearing on final report; copy available for inspection.

When the report is fully completed and accepted by the clerk, a date, not less than twenty days thereafter, shall be fixed by the clerk for the final hearing upon the report and notice thereof shall be given by publication in a newspaper of general circulation in the county and by posting a written or printed notice on the door of the courthouse and at five conspicuous places throughout the district, such publication to be made for at least two weeks before the final hearing. During this time a copy of the report shall be on file in the office of the clerk of the court of common pleas and shall be open to the inspection of any landowner or other person interested within the drainage district.

HISTORY: 1962 Code Section 18-242; 1952 Code Section 18-242; 1942 Code Section 6110; 1932 Code Section 6110; Civ. C. '22 Section 3164; Civ. C. '12 Section 2210; 1911 (27) 92; 1915 (29) 199.

**SECTION 49-17-620.** Notice of final hearing to and participation by railroad.

The clerk of the court of common pleas shall likewise have notice served upon any railroad company the right of way of which is crossed by the proposed public levee, drainage ditch or changed natural watercourse of the time and place of the meeting to hear and determine the final report of the engineer and viewers and the railroad company shall have the right to file objections to the report and to appeal from the findings of the board of commissioners in the same manner as any landowner. But such an appeal shall not delay or defeat the construction of the improvement.

HISTORY: 1962 Code Section 18-243; 1952 Code Section 18-243; 1942 Code Section 6122; 1932 Code Section 6122; Civ. C. '22 Section 3176; Civ. C. '12 Section 2222; 1911 (27) 92.

**SECTION 49-17-630.** Making additional landowners parties.

If it shall appear at the time the final report is completed, filed and examined by the clerk, as aforesaid, that certain landowners whose lands are included in the proposed drainage or levee district have not been made parties to the proceedings a summons as provided in Section 49-17-220 shall be served upon each of them and at the same time the written or printed notice referred to in Section 49-17-610 shall be personally served upon them and each of them.

HISTORY: 1962 Code Section 18-244; 1952 Code Section 18-244; 1942 Code Section 6110; 1932 Code Section 6110; Civ. C. '22 Section 3164; Civ. C. '12 Section 2210; 1911 (27) 92; 1915 (29) 199.

**SECTION 49-17-640.** Action on final report.

At the date set for hearing any landowner may appear in person or by counsel and file his objection in writing to the report of the viewers. The clerk of the court shall carefully review the report of the viewers and the objections filed thereto and make such changes as are necessary to render substantial and equal justice to all the landowners in the district. If, in the opinion of the clerk, the cost of construction together with the amount of damages assessed is not greater than the benefits that will accrue to the land affected the clerk shall confirm the report of the viewers. If, however, the clerk finds that the cost of construction together with the damages assessed is greater than the resulting benefits that will accrue to the lands affected, the clerk shall dismiss the proceedings at the cost of the petitioners and the sureties upon the bond so filed by them shall be liable as aforesaid.

HISTORY: 1962 Code Section 18-245; 1952 Code Section 18-245; 1942 Code Section 6111; 1932 Code Section 6111; Civ. C. '22 Section 3165; Civ. C. '12 Section 2211; 1911 (27) 92; 1920 (31) 1089.

**SECTION 49-17-650.** Appeal.

Any party aggrieved may, within ten days after the confirmation of the viewers' report, appeal to the court of common pleas in term time. Such appeal shall be taken and prosecuted as provided for appeals from a magistrate's court to the court of common pleas.

HISTORY: 1962 Code Section 18-246; 1952 Code Section 18-246; 1942 Code Section 6112; 1932 Code Section 6112; Civ. C. '22 Section 3166; Civ. C. '12 Section 2212; 1911 (27) 92.

ARTICLE 7

Board of Drainage Commissioners; Fees and Expenses

**SECTION 49-17-810.** Appointment of drainage commissioners; vacancies.

After any such drainage district shall have been declared established, as aforesaid, and the survey and plan thereof approved, the clerk of the court shall appoint three persons who shall be designated as the board of drainage commissioners. Such drainage commissioners shall first be elected by the owners of the land within the drainage or levee district or by a majority of them in such manner as the clerk shall prescribe. The clerk shall appoint those receiving a majority of the votes. If any one or more of such proposed commissioners shall not receive the vote of the majority of such landowners the clerk shall appoint all of the remainder from among those voted for in the election in the order of those receiving the greatest number of votes. Any vacancy thereafter occurring shall be filled in like manner.

HISTORY: 1962 Code Section 18-251; 1952 Code Section 18-251; 1942 Code Section 6114; 1932 Code Section 6114; Civ. C. '22 Section 3168; Civ. C. '12 Section 2214; 1911 (27) 92; 1914 (28) 455; 1920 (31) 1089.

**SECTION 49-17-820.** Commissioners as a body corporate; name and powers.

Such three drainage commissioners, when so appointed, shall be immediately created a body corporate under the name and style of "The Board of Drainage Commissioners of \_\_\_ District," with the right to hold and convey property and to sue and be sued, and shall possess such other powers as usually pertain to corporations and as are herein granted. The name of such drainage district, whether designated by number or otherwise, shall constitute a part of its corporate name, for illustration: "The Board of Drainage Commissioners of \_\_\_\_\_ (No. \_\_\_ or a name) District."

HISTORY: 1962 Code Section 18-252; 1952 Code Section 18-252; 1942 Code Section 6114; 1932 Code Section 6114; Civ. C. '22 Section 3168; Civ. C. '12 Section 2214; 1911 (27) 92; 1914 (28) 455; 1920 (31) 1089.

**SECTION 49-17-830.** Officers; seal.

The commissioners shall organize by electing from among their number a chairman and a vice-chairman. They shall also elect a secretary, either within or without their body. The treasurer of the county in which the proceedings were instituted shall be ex officio treasurer of such drainage commissioners. The board shall adopt a seal, which they may alter at pleasure.

HISTORY: 1962 Code Section 18-253; 1952 Code Section 18-253; 1942 Code Section 6114; 1932 Code Section 6114; Civ. C. '22 Section 3168; Civ. C. '12 Section 2214; 1911 (27) 92; 1914 (28) 455; 1920 (31) 1089.

**SECTION 49-17-840.** Superintendent of construction.

The board of drainage commissioners shall appoint a competent person as superintendent of construction. Such person shall furnish a bond, to be approved by the commissioners, in the penal sum of ten thousand dollars, conditioned upon the honest and faithful performance of his duties, such bond to be in favor of the board of drainage commissioners.

HISTORY: 1962 Code Section 18-254; 1952 Code Section 18-254; 1942 Code Section 6115; 1932 Code Section 6115; Civ. C. '22 Section 3169; Civ. C. '12 Section 2215; 1911 (27) 92.

**SECTION 49-17-850.** Removal of engineer and others for cause.

Any engineer, viewer, superintendent of construction or other person appointed under this chapter may be removed by the clerk of the court, upon petition, for corruption, neglect of duty or other good and satisfactory cause shown.

HISTORY: 1962 Code Section 18-255; 1952 Code Section 18-255; 1942 Code Section 6136; 1932 Code Section 6136; Civ. C. '22 Section 3190; Civ. C. '12 Section 2236; 1911 (27) 92.

**SECTION 49-17-860.** Compensation of commissioners.

The drainage commissioners shall receive as compensation for their work a per diem for the days that they work.

HISTORY: 1962 Code Section 18-256; 1952 Code Section 18-256; 1942 Code Section 6114; 1932 Code Section 6114; Civ. C. '22 Section 3168; Civ. C. '12 Section 2214; 1911 (27) 92; 1914 (28) 455; 1920 (31) 1089.

**SECTION 49-17-870.** Fees of county officers.

Inasmuch as under the provisions of this chapter much additional work is thrown on the county officials, they may collect from the board of drainage commissioners such reasonable fees as are usual in such cases, such fees to be included in the general costs of the work.

HISTORY: 1962 Code Section 18-257; 1952 Code Section 18-257; 1942 Code Section 6135; 1932 Code Section 6135; Civ. C. '22 Section 3189; Civ. C. '12 Section 2235; 1911 (27) 92.

**SECTION 49-17-880.** Compensation, fees, and expenses generally.

Any engineer employed under the provisions of this chapter shall receive such compensation per diem for his services as shall be fixed and determined by the clerk of the court and the viewers, other than the engineer. The viewers shall also receive a per diem. The rodmen, axmen, chainmen and all other laborers shall receive such compensation as shall be fixed by the board of viewers. All other fees and costs incurred under the provisions of this chapter shall be the same as provided by law for like services in other cases. If the proposed district is finally established such costs and expenses shall be paid by order of the clerk of the court, out of the drainage fund, and the board of drainage commissioners shall issue warrants therefor when funds shall be in the hands of the treasurer; provided, that if the petition is dismissed at the cost of the petitioners such costs and expenses shall be paid by the petitioners or out of the bond, as set forth in Sections 49-17-280 and 49-17-640; and provided, further, that if a loan is procured on the bond as set forth in Section 49-17-260 it shall be repaid in like manner.

HISTORY: 1962 Code Section 18-258; 1952 Code Section 18-258; 1942 Code Section 6131; 1932 Code Section 6131; Civ. C. '22 Section 3185; Civ. C. '12 Section 2231; 1911 (27) 92; 1920 (31) 1089.

ARTICLE 9  
Construction of Improvements

**SECTION 49-17-1010.** Notice of letting contract for improvement.

The board of drainage commissioners shall cause notice to be given for two consecutive weeks in some newspaper published in the county wherein such improvement is located, if such there be, and publication for the same length of time in at least one engineering or contracting journal of wide circulation of the time and place of letting the work of construction of such improvement. In such notice they shall specify the approximate amount of work to be done and the time fixed for the completion thereof.

HISTORY: 1962 Code Section 18-271; 1952 Code Section 18-271; 1942 Code Section 6116; 1932 Code Section 6116; Civ. C. '22 Section 3170; Civ. C. '12 Section 2216; 1911 (27) 92.

**SECTION 49-17-1020.** Letting contract; rejection of bids.

On the date appointed for the letting the board together with the superintendent of construction shall convene and let to the lowest responsible bidder, either as a whole or in sections as they may deem most advantageous for the district, the proposed work. No bid shall be entertained that exceeds the estimated cost unless for good and satisfactory reasons it shall be shown that the original estimate was erroneous. The board may reject all bids and advertise the work again if in their judgment the interest of the district will be served by doing so.

HISTORY: 1962 Code Section 18-272; 1952 Code Section 18-272; 1942 Code Section 6116; 1932 Code Section 6116; Civ. C. '22 Section 3170; Civ. C. '12 Section 2216; 1911 (27) 92.

**SECTION 49-17-1030.** Contract and bond of successful bidder.

The successful bidder shall be required to enter into a contract with the board of drainage commissioners and to execute a bond for the faithful performance of such contract, with sufficient sureties, in favor of the board of drainage commissioners for the use and benefit of the levee or drainage district in an amount equal to twenty-five per cent of the estimated cost of the work awarded to him and any person furnishing labor or material to such contractor or subcontractor or furnishing board or lodging to the employees of such contractor or subcontractor in the construction of such work and failing to receive compensation therefor shall have a right of action on such bond for the amount found due him.

HISTORY: 1962 Code Section 18-273; 1952 Code Section 18-273; 1942 Code Section 6116; 1932 Code Section 6116; Civ. C. '22 Section 3170; Civ. C. '12 Section 2216; 1911 (27) 92.

**SECTION 49-17-1040.** Entry on lands by contractor; removal of bridges, fences, or timber.

In the construction of the work the contractor may enter upon the lands necessary for this purpose and may remove private or public bridges or fences and cross private lands in going to or from the work. In case the right of way of the improvement is through timber the owner thereof may remove it, if he so desires, before the work of construction begins and in case it is not removed by the landowner it may be removed by the contractor.

HISTORY: 1962 Code Section 18-274; 1952 Code Section 18-274; 1942 Code Section 6119; 1932 Code Section 6119; Civ. C. '22 Section 3173; Civ. C. '12 Section 2219; 1911 (27) 92.

**SECTION 49-17-1050.** Land needed but not affected may be condemned.

If it is necessary to acquire a right-of-way or an outlet over and through lands not affected by the drainage and the right-of-way or outlet is not acquired by purchase, the action to secure the condemnation of any right-of-way which is necessary for the proper drainage of any drainage district or any part of it and to fix the compensation is governed by the Eminent Domain Procedure Act (Chapter 2 of Title 28).

HISTORY: 1962 Code Section 18-275; 1952 Code Section 18-275; 1942 Code Section 6102; 1932 Code Section 6102; Civ. C. '22 Section 3156; Civ. C. '12 Section 2202; 1911 (27) 92; 1987 Act No. 173, Section 28.

**SECTION 49-17-1060.** Costs and assessments when highways are affected.

If no exceptions are filed or if it is shown upon the hearing of all of the exceptions that the estimated cost of construction of improvements contemplated in the Plan of Reclamation is less than the benefits assessed against the lands in the district, the court shall approve and confirm the commissioners' report. If the court, upon hearing the objections filed, finds that any or all the objections must be sustained it shall order the report changed to conform with the findings and when so changed the court shall approve and confirm the report and enter its decree accordingly. The court shall adjudge and apportion the costs incurred by the exceptions filed and there must be condemned any land or other property, within or without the boundary lines of the district, that is shown by the report of the commissioners to be needed for rights-of-way, holding basins, or other works or that may be needed for material to be used in constructing the works, following the provisions of the Eminent Domain Procedure Act (Chapter 2 of Title 28).

HISTORY: 1962 Code Section 18-276; 1952 Code Section 18-276; 1942 Code Section 6120; 1932 Code Section 6120; Civ. C. '22 Section 3174; Civ. C. '12 Section 2220; 1911 (27) 92; 1920 (31) 1089; 1987 Act No. 173, Section 29.

**SECTION 49-17-1070.** Plans for time and manner of crossing railroad right of way.

After the contract is let and the actual construction is commenced, if the work is being done with a floating dredge the superintendent in charge of construction shall notify any railroad company the right of way of which is to be crossed by the work of the probable time at which the contractor will be ready to enter upon the right of way of the road and construct the work thereon. The railroad shall send a representative to view the ground with the superintendent of construction and arrange the exact time at which such work can be most conveniently done.

HISTORY: 1962 Code Section 18-277; 1952 Code Section 18-277; 1942 Code Section 6123; 1932 Code Section 6123; Civ. C. '22 Section 3177; Civ. C. '12 Section 2223; 1911 (27) 92.

**SECTION 49-17-1080.** Work of crossing railroad right of way.

At the time agreed upon, the railroad company shall remove its rails, ties, stringers and other such obstructions, if such removal should be necessary, to permit the expeditious execution of the work across its right of way. The work shall be so planned and conducted as to interfere in the least possible manner with the business of the railroad. In case the railroad company refuses and fails to make the aforementioned provision for the execution of the work on its right of way it shall be held as delaying the construction of the improvement and shall be liable to a penalty of twenty-five dollars per day for each day of delay, to be collected by the board of drainage commissioners for the benefit of the drainage district, as in the case of other penalties. Such a penalty may be collected in any court having jurisdiction and shall inure to the benefit of the drainage district.

HISTORY: 1962 Code Section 18-278; 1952 Code Section 18-278; 1942 Code Section 6123; 1932 Code Section 6123; Civ. C. '22 Section 3177; Civ. C. '12 Section 2223; 1911 (27) 92.

**SECTION 49-17-1090.** Bill of expenses of railroad company.

Within thirty days after the work is completed an itemized bill for the actual expenses incurred by the railroad company for opening its tracks shall be made and presented to the superintendent of construction of the drainage improvement. Such bill, however, shall not include the cost of putting in a new bridge or strengthening or enlarging an old one. The superintendent of construction shall audit this bill and, if found correct, approve it and file it with the secretary of the board of drainage commissioners. The commissioners

shall deduct from this bill the cost of the excavation or other work done by the drainage commission on the right of way of the railroad company at the contract price and pay the difference, if any, to the railroad company.

HISTORY: 1962 Code Section 18-279; 1952 Code Section 18-279; 1942 Code Section 6123; 1932 Code Section 6123; Civ. C. '22 Section 3177; Civ. C. '12 Section 2223; 1911 (27) 92.

**SECTION 49-17-1100.** Outlet for lateral drains.

The owner of any land that has been assessed for the cost of the construction of any ditch, drain or watercourse, as herein provided, shall have the right to use the ditch, drain or watercourse as an outlet for lateral drains from such land and if such land is separated from the ditch, drain or watercourse by the land of another or others and the owner thereof shall be unable to agree with such other or others as to the terms and conditions on which he may enter their lands and construct such drain or ditch he may file his auxiliary petition in such pending proceeding to the court and the procedure shall be as now provided by law. When the ditch is constructed it shall become a part of the drainage system and shall be under the control of the board of drainage commissioners and be kept in repair by them as herein provided.

HISTORY: 1962 Code Section 18-280; 1952 Code Section 18-280; 1942 Code Section 6125; 1932 Code Section 6125; Civ. C. '22 Section 3179; Civ. C. '12 Section 2225; 1911 (27) 92.

**SECTION 49-17-1110.** Joining with border state in work.

Whenever it may be desirable to construct, widen, deepen, straighten or change any ditch, drain, watercourse or levee lying on, along, across or near the State line between this State and any adjoining state or whenever it may be desirable to construct, repair or improve any work of drainage as provided for in this chapter which cannot be constructed, repaired or improved in the best manner without affecting land in any such adjoining state the board of drainage commissioners in the county in which such work is located may join with the proper officers of such adjacent counties of any other state in the construction, widening, deepening, straightening, repairing or improving of any such drain, ditch, watercourse or other work of drainage.

HISTORY: 1962 Code Section 18-281; 1952 Code Section 18-281; 1942 Code Section 6133; 1932 Code Section 6133; Civ. C. '22 Section 3187; Civ. C. '12 Section 2233; 1911 (27) 92.

**SECTION 49-17-1120.** Contract, costs and procedure where work is joined in by border state.

Such drainage commissioners in any county of this State may jointly enter into contracts with the proper officers of such counties in any adjoining state to construct, repair or improve any such work of drainage, each to pay such proportion of the costs and expenses of the work as the contracting officials shall deem just. Such work of drainage shall be made on petition of landowners as provided for in this chapter in relation to other works of drainage and all other provisions of this chapter, so far as applicable, shall govern the drainage commissioners and other officers of this State in relation to such joint work of drainage; provided, such adjoining county or counties in other states shall pay their proper share of the necessary costs and expenses.

HISTORY: 1962 Code Section 18-282; 1952 Code Section 18-282; 1942 Code Section 6133; 1932 Code Section 6133; Civ. C. '22 Section 3187; Civ. C. '12 Section 2233; 1911 (27) 92.

**SECTION 49-17-1130.** Failure of contractor; reletting contract.

If any contractor to whom a portion of the work shall have been let shall fail to perform it according to the terms specified in his contract, action may be had in behalf of the board of drainage commissioners against such contractor and his bond in the court of common pleas for damages sustained by the drainage

district and recovery made against such contractor and his sureties. In such an event the work shall be advertised and relet in the same manner as the original letting.

HISTORY: 1962 Code Section 18-283; 1952 Code Section 18-283; 1942 Code Section 6118; 1932 Code Section 6118; Civ. C. '22 Section 3172; Civ. C. '12 Section 2218; 1911 (27) 92.

**SECTION 49-17-1140.** Payment for work done.

The superintendent in charge of construction shall make monthly estimates of the amount of work done and furnish one copy to the contractor and file the other with the secretary of the board of drainage commissioners and the board shall meet and direct the secretary to draw a warrant in favor of such contractor for ninety per cent of the work done, according to the specifications and contract. Upon the presentation of such warrant properly signed by the chairman and secretary to the treasurer of the drainage fund he shall pay the amount due thereon. When the work is fully completed and accepted by the superintendent he shall make an estimate for the whole amount due, including the amounts withheld on the previous monthly estimates, which shall be paid from the drainage fund as before provided.

HISTORY: 1962 Code Section 18-284; 1952 Code Section 18-284; 1942 Code Section 6117; 1932 Code Section 6117; Civ. C. '22 Section 3171; Civ. C. '12 Section 2217; 1911 (27) 92.

ARTICLE 11

Assessments and Issuance of Bonds; Federal Aid

**SECTION 49-17-1310.** Assessment and tax roll.

After the classification of the land and the ratio of assessment of the different classes to be made thereon has been confirmed by the clerk of court the drainage commission shall prepare an assessment roll or drainage tax duplicate, giving a description of all the land in the drainage district, the name of the owner, so far as can be ascertained from the public records, and the amount of assessment against each of the several tracts of land and other property in the district which is benefited by the proposed works. In preparing this assessment roll the board shall ascertain the total cost of the improvement, including the damages awarded and to be paid to the owners of lands, and all incidental expenses and deduct therefrom any special assessment made against any railroad or highway and the remainder shall be the amount to be borne and paid by the lands benefited. This amount shall be assessed against the several tracts of land according to the benefit received as shown by the classification and ratio of assessment made by the viewers and confirmed by the clerk of the court. This drainage tax roll shall be made in duplicate, signed by the chairman and secretary and one copy filed with the drainage record and the other delivered to the sheriff or other tax collector, except when the land of the district lies in more than one county when, in addition to the copy of the tax roll which shall be filed with the drainage records, a copy thereof shall be delivered to the treasurer of each of such counties. There shall be appended an order to collect such assessments and the same shall have the force and effect of a judgment as in the case of State and county taxes.

HISTORY: 1962 Code Section 18-291; 1952 Code Section 18-291; 1942 Code Section 6126; 1932 Code Section 6126; Civ. C. '22 Section 3180; Civ. C. '12 Section 2226; 1911 (27) 92; 1917 (30) 335.

**SECTION 49-17-1320.** Payments to be made in one installment.

If the total cost of the work is less than an average of twenty-five cents per acre on all the land in the district the assessment made against the several tracts shall be collected in one installment by the same officer and in the same manner as State and county taxes are collected and shall be payable at the same time.

HISTORY: 1962 Code Section 18-292; 1952 Code Section 18-292; 1942 Code Section 6127; 1932 Code Section 6127; Civ. C. '22 Section 3181; Civ. C. '12 Section 2227; 1911 (27) 92.

**SECTION 49-17-1330.** Notice of proposed bond issue.

In case the total assessment exceeds the average of twenty-five cents per acre on all the lands in the district the board of drainage commissioners may give notice of three weeks by publication in some newspaper of general circulation in the district, if there be one, and also by posting a written or printed notice at the door of the courthouse and at five conspicuous places in the drainage district that they propose to issue bonds for the construction of such improvement, giving the amount of bonds to be issued, the rate of interest they are to bear and the time when payable.

HISTORY: 1962 Code Section 18-293; 1952 Code Section 18-293; 1942 Code Section 6127; 1932 Code Section 6127; Civ. C. '22 Section 3181; Civ. C. '12 Section 2227; 1911 (27) 92.

**SECTION 49-17-1340.** Effect of proposed bond issue on assessed landowners.

Any landowner having lands assessed in the district and not wanting to pay interest on the bonds may, within thirty days after the publication of such notice, pay the county treasurer the full amount of his assessment and have his land released therefrom. Each and every person owning land in the district which is assessed for the construction of an improvement who shall neglect or fail to pay the full amount of his assessment to the county treasurer within the time specified shall be deemed as consenting to the issuing of such drainage bonds and in consideration of the right to pay his assessment in installments he thereby waives his right to any defense against the collection of such assessment because of any irregularity, illegality or defect in the proceedings prior to such time, except in the case of an appeal, as heretofore provided, which shall not be affected by such waiver.

HISTORY: 1962 Code Section 18-294; 1952 Code Section 18-294; 1942 Code Sections 6127, 6128; 1932 Code Sections 6127, 6128; Civ. C. '22 Sections 3181, 3182; Civ. C. '12 Sections 2227, 2228; 1911 (27) 92.

**SECTION 49-17-1350.** Issuance of bonds.

After the expiration of the thirty days after the publication the board of drainage commissioners may issue bonds for the full amount of the assessment not paid into the county treasury, together with the interest thereon, cost of collection and other incidental expenses.

HISTORY: 1962 Code Section 18-295; 1952 Code Section 18-295; 1942 Code Section 6129; 1932 Code Section 6129; Civ. C. '22 Section 3183; Civ. C. '12 Section 2229; 1911 (27) 92; 1917 (30) 335; 1918 (30) 767.

**SECTION 49-17-1360.** Terms of bonds.

The bonds shall bear interest at a rate not exceeding six per cent per annum, payable semiannually. The bonds shall be payable at a time not less than ten nor more than twenty-five years after their issue and shall be paid up in full at maturity.

HISTORY: 1962 Code Section 18-296; 1952 Code Section 18-206; 1942 Code Section 6129; 1932 Code Section 6129; Civ. C. '22 Section 3183; Civ. C. '12 Section 2229; 1911 (27) 92; 1917 (30) 335; 1918 (30) 767.

**SECTION 49-17-1370.** Sinking fund.

In order to provide for the payment of bonds at maturity a "sinking fund" shall be provided as follows: Five years from the date of the bond issue and at the same time each succeeding year until the maturity of the bonds the board of drainage commissioners shall collect from the several tracts assessed in the bond issue a sum of money which, when placed in a bank and interest paid thereon at four per cent, compounded quarterly, shall equal the total assessment against all the tracts in the bond issue at the end of twenty years.

This amount shall be placed in some State or national bank of reputable standing and shall bear four per cent interest, compounded quarterly. This sum shall be collected along with the interest on the bonds and at the same time and in the same manner as State and county taxes are collected. At the date of maturity of the bonds such sum shall be paid over to the bondholders in liquidation of the bonds, such funds to be drawn out of the bank of deposit by the clerk of the court. In no case shall bonds be issued until the tax levy has been made to meet them as they come due.

HISTORY: 1962 Code Section 18-297; 1952 Code Section 18-297; 1942 Code Section 6129; 1932 Code Section 6129; Civ. C. '22 Section 3183; Civ. C. '12 Section 2229; 1911 (27) 92; 1917 (30) 335; 1918 (30) 767.

**SECTION 49-17-1380.** Use, numbering, and record of bonds.

The bonds issued shall be for the exclusive use of the drainage district specified on their face and shall be numbered by the board of drainage commissioners and recorded in the drainage record, which record shall set out specifically the lands embraced in the district on which the tax has not been paid in full and which is assessed for the payment of the bonds issued and the interest thereon.

HISTORY: 1962 Code Section 18-298; 1952 Code Section 18-298; 1942 Code Section 6129; 1932 Code Section 6129; Civ. C. '22 Section 3183; Civ. C. '12 Section 2229; 1911 (27) 92; 1917 (30) 335; 1918 (30) 767.

**SECTION 49-17-1390.** Payment of interest on bonds.

The interest upon the bonds shall be paid to the holders thereof by the county treasurer, on warrant of the governing body of the county which shall audit and approve the claims of the bondholders.

HISTORY: 1962 Code Section 18-299; 1952 Code Section 18-299; 1942 Code Section 6129; 1932 Code Section 6129; Civ. C. '22 Section 3183; Civ. C. '12 Section 2229; 1911 (27) 92; 1917 (30) 335; 1918 (30) 767.

**SECTION 49-17-1400.** Lien of assessment; remedies on default.

This assessment shall constitute the first and paramount lien, second only to State and county taxes, upon the lands assessed for the payment of the bonds and the interest thereon as they become due and shall be collected in the same manner by the same officers as the State and county taxes are collected. If any installment of the principal or interest represented by the bonds shall not be paid at the time and in the manner when it shall become due and payable and such default shall continue for a period of six months the holder or holders of such bond or bonds upon which default has been made may have a right of action against the drainage district or the board of drainage commissioners of the district and any judge of the court of common pleas may issue a writ of mandamus against the drainage district, its officers, including the governing board of the county, auditor or treasurer, directing the levying of a tax or special assessment as herein provided and the collection thereof, in such sum as may be necessary to meet any unpaid installments of principal and interest and cost of action. And such other remedies are hereby vested in the holder or holders of such bond or bonds in default as may be authorized by law and the right of action is hereby vested in the holder or holders of such bond or bonds upon which default has been made authorizing them to institute suit against any officer on his official bond for failure to perform any duty imposed by the provisions of this chapter. The obligors and sureties on the official bonds of the members of the governing body of the county and the county treasurer shall be liable for the faithful performance of the duties herein assigned such officials.

HISTORY: 1962 Code Section 18-300; 1952 Code Section 18-300; 1942 Code Section 6129; 1932 Code Section 6129; Civ. C. '22 Section 3183; Civ. C. '12 Section 2229; 1911 (27) 92; 1917 (30) 335; 1918 (30) 767.

**SECTION 49-17-1410.** Defects that do not defeat assessment.

The collection of the assessment shall not be defeated, when the proper notices have been given, by reason of any defect in the proceedings occurring prior to the order of the clerk of the court confirming the final report of the viewers but such order or orders shall be conclusive and final that all prior proceedings were regular and according to law, unless they were appealed from. If on appeal the court shall deem it just and proper to release any person or to modify his assessment or liability it shall in no manner affect the rights and legal position of any person other than the appellant and the failure to appeal from the order of the clerk of the court within the time specified shall be a waiver of any illegality in the proceedings and the remedies provided for in this chapter shall exclude all other remedies.

HISTORY: 1962 Code Section 18-301; 1952 Code Section 18-301; 1942 Code Section 6132; 1932 Code Section 6132; Civ. C. '22 Section 3186; Civ. C. '12 Section 2232; 1911 (27) 92.

**SECTION 49-17-1420.** Change of assessment; relevy.

When the clerk of the court has confirmed an assessment for the construction of any public levee, ditch or drain and such assessment has been modified by a court of superior jurisdiction but for some unforeseen cause cannot be collected the board of drainage commissioners may change or modify the assessment as originally confirmed to conform to the judgment of the court of common pleas and to cover any deficit that may have been caused by the order of such court or unforeseen occurrence. Such relevy shall be made for the additional sum required in the same ratio on the lands benefited as the original assessment was made.

HISTORY: 1962 Code Section 18-302; 1952 Code Section 18-302; 1942 Code Section 6130; 1932 Code Section 6130; Civ. C. '22 Section 3184; Civ. C. '12 Section 2330; 1911 (27) 92.

**SECTION 49-17-1430.** Federal aid.

In the event that the United States Government makes provision for loans to prosecute drainage and reclamation work or provides for such work to be done under the supervision of its officials the drainage districts created under this chapter may avail themselves of such provisions at any time, turning over to the United States Government for completion any work begun prior to such provision being made. And any such drainage district may levy and collect in the manner herein provided the taxes against the land and pledge and pay to the United States Government the receipts from such levy in liquidation of the loan made as aforesaid by the United States Government. The officials of this State shall solicit the cooperation of the various bureaus of the United States Government in the prosecution of all work undertaken under this chapter.

HISTORY: 1962 Code Section 18-303; 1952 Code Section 18-303; 1942 Code Section 6134; 1932 Code Section 6134; Civ. C. '22 Section 3188; Civ. C. '12 Section 2234; 1911 (27) 92.

ARTICLE 13

Collection, Deposit and Disbursement of Funds

**SECTION 49-17-1610.** Funds to be deposited with county treasurer.

All sums of money arising from the sale of bonds, collection of assessments or otherwise for drainage districts or purposes shall be paid over to the county treasurer of the county wherein the drainage district is situate, to be distributed by him as provided in Section 49-17-1620.

HISTORY: 1962 Code Section 18-311; 1952 Code Section 18-311; 1942 Code Section 6211; 1932 Code Section 6211; Civ. C. '22 Section 3265; 1920 (31) 1023; 1925 (34) 179.

**SECTION 49-17-1620.** Disbursement of funds on warrant of board of drainage commissioners.

All bills, claims or other demands against a drainage district shall be paid by the county treasurer upon the warrant of the board of drainage commissioners, signed by not less than two of the members thereof and countersigned by the clerk of the board.

HISTORY: 1962 Code Section 18-313; 1952 Code Section 18-313; 1942 Code Section 6212; 1932 Code Section 6212; Civ. C. '22 Section 3266; 1920 (31) 1023.

**SECTION 49-17-1630.** Issuance of warrants.

The board of drainage commissioners shall issue their warrants, directed to the county treasurer, for all bills, claims or demands against the drainage district for all work, services, contracts, damages or otherwise, including the expenses incurred in the formation of the drainage district.

HISTORY: 1962 Code Section 18-314; 1952 Code Section 18-314; 1942 Code Section 6213; 1932 Code Section 6213; Civ. C. '22 Section 3267; 1920 (31) 1023.

**SECTION 49-17-1640.** Assessment rolls.

The board of drainage commissioners shall furnish the county auditor with an assessment roll showing the names of the property owners and the amounts assessed, respectively, for drainage purposes and the county auditor shall make up an original book and a duplicate thereof as for other taxes or assessments and shall furnish the county treasurer with a duplicate.

HISTORY: 1962 Code Section 18-315; 1952 Code Section 18-315; 1942 Code Section 6214; 1932 Code Section 6214; Civ. C. '22 Section 3268.

**SECTION 49-17-1650.** Collection of assessments.

The county treasurer shall collect the assessments shown by such duplicate in the same manner as taxes.

HISTORY: 1962 Code Section 18-316; 1952 Code Section 18-316; 1942 Code Section 6215; 1932 Code Section 6215; Civ. C. '22 Section 3269; 1920 (31) 1023.

**SECTION 49-17-1660.** Proceedings upon default in payment of assessments.

In case of default in the payment of any assessment the county treasurer shall issue his warrant to the sheriff who shall collect the assessment as in the case of a defaulting taxpayer and the same costs shall be allowed for the collection of a drainage assessment as for collecting defaulted taxes.

HISTORY: 1962 Code Section 18-317; 1952 Code Section 18-317; 1942 Code Section 6216; 1932 Code Section 6216; Civ. C. '22 Section 3270; 1920 (31) 1023.

**SECTION 49-17-1670.** Adjustment of assessments upon lands transferred or conveyed.

The board of drainage commissioners during February in each year shall furnish the county auditor with a report showing all transfers or conveyances of land within a drainage district appearing of record, together with an equitable reassessment and classification of the land conveyed if deemed necessary, so that the burden of the assessment shall be equitably distributed in case of subdivision.

HISTORY: 1962 Code Section 18-318; 1952 Code Section 18-318; 1942 Code Section 6218; 1932 Code Section 6218; Civ. C. '22 Section 3272; 1920 (31) 1023.

**SECTION 49-17-1680.** Correction of assessment books.

The county auditor shall make the original and duplicate assessment book conform each year with such report and changes.

HISTORY: 1962 Code Section 18-319; 1952 Code Section 18-319; 1942 Code Section 6219; 1932 Code Section 6219; Civ. C. '22 Section 3273; 1920 (31) 1023.

**SECTION 49-17-1690.** Fees of auditor and treasurer.

The county auditor shall receive twenty-five cents for each entry in the original assessment book each year and the county treasurer shall receive twenty-five cents for each assessment collected each year and in addition thereto shall receive one per cent upon all disbursements made by him. The board of drainage commissioners shall pay the same annually by warrant.

HISTORY: 1962 Code Section 18-320; 1952 Code Section 18-320; 1942 Code Section 6217; 1932 Code Section 6217; Civ. C. '22 Section 3271; 1920 (31) 1023; 1921 (32) 228.

**SECTION 49-17-1700.** Assessments of less than twenty-five dollars payable in cash.

When the original assessment for drainage purposes is less than twenty-five dollars upon a property the owner must pay it in cash so that there will be no necessity to issue bonds thereon for drainage purposes.

HISTORY: 1962 Code Section 18-322; 1952 Code Section 18-322; 1942 Code Section 6220; 1932 Code Section 6220; Civ. C. '22 Section 3274; 1920 (31) 1023.

**SECTION 49-17-1710.** Extension of time for payment of assessment.

The board of drainage commissioners may extend the time for the payment of the original assessment or any annual assessment for drainage purposes.

HISTORY: 1962 Code Section 18-323; 1952 Code Section 18-323; 1942 Code Section 6221; 1932 Code Section 6221; Civ. C. '22 Section 3275; 1920 (31) 1023.

## ARTICLE 15

### Subsequent Operation; Repairs; Injury to Drainage Works

**SECTION 49-17-1810.** Control and supervision after completion; rights of cities and towns.

Whenever any improvement constructed under this chapter is completed it shall be under the control and supervision of the board of drainage commissioners. But any city or town may convert into a sewer any part of any drain within such corporate limits and to that end may change the location of any such part of such drain on condition only that such change of location or conversion of such drain into a sewer shall not injuriously affect the general purposes of such drainage and that no lands outside of such corporate limits shall be charged thereby with any additional burden.

HISTORY: 1962 Code Section 18-331; 1952 Code Section 18-331; 1942 Code Section 6124; 1932 Code Section 6124; Civ. C. '22 Section 3178; Civ. C. '12 Section 2224; 1911 (27) 92.

**SECTION 49-17-1820.** Repairs.

The board of drainage commissioners shall keep the levee, ditch, drain or watercourse in good repair, and for this purpose they may levy an assessment on the lands benefited by the construction of such improvement in the same manner and in the same proportion as the original assessments were made and the fund that is collected shall be used for repairing and maintaining the ditch, drain or watercourse in perfect order; provided, however, that:

(1) Such parts of public drains as are within the corporate limits of any city or town shall be kept in repair by such city or town; and

(2) any repairs are made necessary by the act or negligence of the owner of any land through which such improvement is constructed or by the act or negligence of his agent or employee or if they are caused 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 of such owner alone, to be collected by proper suit instituted by the drainage commissioners.

HISTORY: 1962 Code Section 18-332; 1952 Code Section 18-332; 1942 Code Section 6124; 1932 Code Section 6124; Civ. C. '22 Section 3178; Civ. C. '12 Section 2224; 1911 (27) 92.

**SECTION 49-17-1830.** Penalties for injury to drainage works.

It shall be unlawful for any person to injure, damage or obstruct any levee, ditch, drain or watercourse constructed or improved under the provisions of this chapter or to build any bridge, fence or floodgate in such way as to injure or damage any such levee, ditch, drain or watercourse. Any person violating any of the provisions of this section shall be guilty of a misdemeanor and, upon conviction thereof, may be fined in any sum not exceeding twice the damage or injury done or caused.

HISTORY: 1962 Code Section 18-333; 1952 Code Section 18-333; 1942 Code Sections 1228, 6124; 1932 Code Sections 1228, 6124; Civ. C. '22 Section 3178; Cr. C. '22 Section 117; Civ. C. '12 Section 2224; 1911 (27) 92.