

CHAPTER 46A-10A

COUNTY DRAINAGE

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46A-10A-1. Definitions. Terms used in this chapter and chapter 46A-11, unless the context otherwise requires, mean:

- (1) "Board," a board of county commissioners, as established in chapter 7-8;
- (2) "Closed drain" or "blind drain," a man-made drain or drainage scheme utilizing pipes, tiles, or other materials and constructed in such a way that flow of water is not visible;
- (3) "Commission" or "drainage commission," any county drainage commission created under the terms of this chapter;
- (4) "Coordinated drainage area," a defined geographic area containing one or more parcels of real property and established under the provisions of this chapter and chapter 46A-11 by a board or commission to provide a planned network or method of natural or man-made drainage, or both, to benefit all parcels of real property involved;
- (5) "Dominant estate," any parcel of real property, usually at a higher elevation, which holds a common law or statutory legal right to drain water onto other real property;
- (6) "Drainage map," any map adopted by resolution of the board that delineates the extent of county drainage, a drainage project, or a coordinated drainage area;
- (7) "Drainage plan," a document which may illustrate by maps, charts, and other descriptive matter the policies of the board to interrelate all man-made and natural systems and activities relating to drainage under its jurisdiction;
- (8) "Drainage scheme," a plan or system by which water is drained from one or more parcels of real property onto one or more parcels of real property;
- (8a) "Engineer," a professional, registered engineer;
- (9) "Established water course," a fixed and determinate route, either natural or man-made, by which water has flowed from one parcel of real property to another and by which water has been discharged upon a servient estate for a period of time, on such a regular basis and in such quantities as to make it a predictably continuous activity;
- (10) "Governing body," a board of county commissioners, a city council, or a city commission;
- (11) "Landowner" or "owner," any individual, firm, or corporation, public or private, or public agency, who has legal title to real property as shown by the records of the register of deeds of the county in which the real property is situated. If the real property is sold under a contract for deed and the contract is of record in the office of the register of deeds for the respective county, both the recorded owner of the real property and the purchaser as named in the contract for deed are deemed owners of the real property;
- (12) "Legal drain," a drain or drainage scheme that:
 - (a) Is vested under the provisions of this chapter and chapter 46A-11;
 - (b) Has been constructed by a person or by a unit of government under the provisions of past or present law; or
 - (c) Has been granted a drainage permit, if a permit is necessary under the provisions of this chapter and chapter 46A-11;
- (13) "Municipality," a city or town, however organized, as defined in § 9-1-1;
- (14) "Natural drain," a drainage system which operates as part of a natural water course, as defined in subdivision (15) of this section;
- (15) "Natural water course," a fixed and determinate route by which water naturally flows from one parcel of real property to another due to the conformation of the land and by which water is discharged upon the land receiving the water. It is not necessary that the force of the flow of water be sufficient to form a channel having a well-defined bed or banks;

- (16) "Official control," any ordinance, order, regulation, map, or procedure adopted by a board to regulate drainage;
- (17) "Ordinance," any ordinance, as defined in subdivision 7-18A-1(2), adopted by a board to regulate drainage of both rural and urban areas to provide coordination of drainage projects, individual drainage efforts and drainage areas and to foster conformity with any county drainage plan;
- (18) "Private drain," a drainage system or scheme designed, constructed, and maintained by a person primarily for his own benefit or a natural drain, whether or not actively maintained, that provides a benefit primarily to one person;
- (19) "Rural" or "rural area," any territory outside a municipality as defined in § 9-1-1;
- (20) "Servient estate," any parcel of real property, usually at a lower elevation, which is subject to a legal right allowing a dominant estate to drain water onto it;
- (21) "Unit of local government," a municipality as defined in § 9-1-1, an irrigation district as defined in chapter 46A-4, a school district as defined in § 13-5-1, a water project district as defined in chapter 46A-18, a water user district as defined in § 46A-9-2, a township as defined in chapter 8-1, a sanitary district as defined in chapter 34A-5, a conservation district as defined in chapter 38-8 or other special district;
- (22) "Vested right," a right of water drainage from one parcel of property to another which is settled or accrued to the property on the basis of state law; and
- (23) "Water management board," the state board created in § 1-40-15.

Source: SL 1985, ch 362, § 2.

46A-10A-2. County drainage commission--Appointment--Filling vacancies--Majority required to act--Ex officio members. The board of county commissioners of each county may appoint a commission of three or more members, the total membership of which shall always be an uneven number and at least one member of which shall be a member of the board, to be known as the county drainage commission. If a commission member resigns his or her position, is unable to fulfill the duties of the position, or is removed for cause under the provisions of § 46A-10A-3, the board shall appoint a new member to the commission within thirty days. A commission may not conduct official business unless all memberships on the commission are filled and unless a majority of the members are present at a meeting of the commission. Administrative officials of the county may be appointed as ex officio members of the commission, but have no vote in commission matters.

Source: SL 1985, ch 362, § 3; SL 2011, ch 165, § 492.

46A-10A-3. Term and removal of members. The term of office for members of a county drainage commission shall be established by the board of county commissioners. Any appointed member of a county drainage commission may be removed for cause, after a hearing prior to the expiration of his term, by a majority vote of the elected members of the board of county commissioners.

Source: SL 1985, ch 362, § 4; SL 1988, ch 365.

46A-10A-4. Meetings. A drainage commission shall meet at such times as may be necessary to accomplish the purposes of this chapter, but a commission may not meet less than once every six months.

Source: SL 1985, ch 362, § 5.

46A-10A-5. Compensation of members. Per diem and expenses of a county drainage commission shall be established by the board of county commissioners and paid by the county.

Source: SL 1985, ch 362, § 6.

46A-10A-6. Employment of personnel. To carry out the purposes of this chapter, a board or commission may employ an engineer or a hydrologist, or both, and such staff as it deems necessary, and a board or

commission may contract with engineering consultants or with other specialists including an attorney who may be a part-time state's attorney for services it requires.

Source: SL 1985, ch 362, § 7; SL 1986, ch 378, § 1.

46A-10A-7. Assistance by units of state government--Expense reimbursement. Any unit of state government may offer such technical assistance as it is able to any board or commission requesting such assistance. However, such technical assistance may not include granting a permit, settling a dispute, accepting a plan, establishing a coordinated drainage area, or performing any other decision function relegated to boards or commissions under the provisions of this chapter and chapter 46A-11. A unit of state government providing technical assistance may require reasonable reimbursement for its expenses. The provisions of this section do not prohibit the Water Management Board from taking action or providing assistance pursuant to the provisions of this section and §§ 46A-10A-9.1 to 46A-10A-9.5, inclusive.

Source: SL 1985, ch 362, § 8; SL 1987, ch 336, § 1.

46A-10A-7.1. Maintenance of correspondence file--Correspondence marked with date of receipt--Term of retention. Any member of a board or a county drainage commission, if established, shall maintain a file containing a copy of any written correspondence relating to drainage control, including any complaint, request for information or request for assistance, received by such board or commission member. Any correspondence shall be clearly marked with the date of receipt and shall be retained for a minimum period of two years.

Source: SL 1987, ch 337.

46A-10A-8. State Water Management Board, districts, and existing water rights unaffected--Effect on drainage districts. The provisions of this chapter and chapter 46A-11 do not abrogate or limit the rights, powers, duties, and functions of the State Water Management Board with reference to water rights, flood control, outlet elevations for public lakes, or ordinary high and low water marks on public lakes, but are supplementary thereto. This chapter and chapter 46A-11 do not limit or affect the laws of this state relating to organization and maintenance of irrigation districts, water user districts, water project districts, water development districts, conservation districts, or watershed districts, nor does it infringe upon or establish any rights superior to any existing water rights. The provisions of this chapter may affect drainage districts only as outlined under provisions of § 46A-10A-43.

Source: SL 1985, ch 362, § 8A; SL 1986, ch 379, § 4.

46A-10A-9. Joint drainage efforts by counties. The boards or commissions of two or more counties may cooperate on drainage. Expenses incurred in connection with joint efforts, including contracted services, shall be shared equitably per agreement among the counties involved. Promotion of regional drainage projects, coordinated drainage areas and drainage patterns or schemes, including passage of compatible ordinances and resolutions in adjoining counties, is the primary but not exclusive objective of joint efforts.

Source: SL 1985, ch 362, § 9.

46A-10A-9.1. Petition for assistance in development of intercounty drainage plan--Board defined. If the effectiveness of any drainage activity or official control depends upon cooperative action by the board of an adjoining county, and if voluntary joint drainage efforts, undertaken in good faith pursuant to § 46A-10A-9, have been unsuccessful, a board may file a petition with the Water Management Board requesting assistance in the development of an intercounty drainage plan or official control. For purposes of the provisions of §§ 46A-10A-9.1 to 46A-10A-9.5, inclusive, the term "board" means Board or County Drainage Commission, if established.

Source: SL 1987, ch 336, § 2.

46A-10A-9.2. Meeting to develop mutually acceptable joint county drainage activities. Within thirty days after receipt of a petition for assistance filed pursuant to § 46A-10A-9.1, the chief engineer as defined by subdivision 46-1-6(5) shall schedule a meeting with representatives of any affected board or commission for the purpose of developing mutually acceptable joint county drainage activities or official controls.

Source: SL 1987, ch 336, § 3.

46A-10A-9.3. Recommendation, notice, and hearing before Water Management Board--Cost of publication--Implementation. If efforts under § 46A-10A-9.2 to develop voluntary joint county drainage activities or official controls are unsuccessful, the chief engineer shall prepare a recommendation concerning joint county drainage activities or official controls. The recommendation, notice and hearing before the Water Management Board shall be conducted pursuant to the procedure contained in chapter 46-2A. Any cost of publication shall be borne by the affected counties. Following the hearing, the Water Management Board shall, by order, require any affected board to implement any action which the Water Management Board deems necessary for the effective drainage of land in the affected counties. The Water Management Board may require any action or official control which a board could properly institute pursuant to the provisions of this chapter.

Source: SL 1987, ch 336, § 4.

46A-10A-9.4. Limitation on effectiveness of action required by Water Management Board. Any action or official control required by the Water Management Board pursuant to § 46A-10A-9.3 shall remain in effect for a period of no longer than one year.

Source: SL 1987, ch 336, § 5.

46A-10A-9.5. Action required by board to be included in county drainage plan--Not subject to referendum procedure. Any action or official control required by the Water Management Board pursuant to § 46A-10A-9.3 shall be consistent with the principles outlined in § 46A-10A-20 and shall be included in the applicable county drainage plan, if a plan has been established. Such actions or official controls are not subject to any referendum procedure set forth in this chapter.

Source: SL 1987, ch 336, § 6.

46A-10A-10. Joint powers agreements by local units of government as to drainage. Any unit of local government may enter into joint powers agreements with the board and with each other in order to avoid overlapping drainage jurisdiction and to promote cooperation and continuity in drainage matters.

Source: SL 1985, ch 362, § 10.

46A-10A-11. Agreements for receipt of federal or state funds for drainage. Any county engaging in a drainage program may receive grants-in-aid from or enter into agreements with any department or agency of the government of the United States or the state to arrange for the receipt of federal or state funds in the interest of furthering a drainage program.

Source: SL 1985, ch 362, § 11.

46A-10A-12. Municipality contracting with county for services--Fees. Any governing body of a municipality may contract with the board for drainage expertise and services to be provided by the county. Such contract may provide that the municipality shall pay fees as are agreed upon for the services performed.

Source: SL 1985, ch 362, § 12.

46A-10A-13. Joint county-municipal drainage activities. A contract between a governing body of a municipality and a board may provide for joint county-municipal drainage activities.

Source: SL 1985, ch 362, § 13.

46A-10A-14. Board to provide funds, equipment, and accommodations for county drainage activity. The board of county commissioners shall provide the funds, equipment, and accommodations necessary for such drainage activity as the county undertakes.

Source: SL 1985, ch 362, § 14.

46A-10A-15. Adoption of emergency drainage measures--Hearing--Notice--Limited term--Renewal. If a county is conducting or in good faith intends to conduct drainage activity within a reasonable time, or has held or is holding a hearing for the purpose of considering a drainage project, coordinated drainage area, drainage plan, or other official controls, the board, in order to protect the public general welfare, may adopt as an emergency measure a temporary drainage map, temporary drainage ordinances, or other temporary official controls, the purpose of which shall be to regulate drainage and related matters as constitutes the emergency. Within fourteen days of adoption or renewal of any emergency measure, the board shall hold at least one public hearing with notice of the time and place of the hearing published at least ten days in advance in a newspaper having general circulation in the county. An emergency measure is limited to six months from the date it becomes effective and may be renewed for six months, but may not be in effect for more than one year.

Source: SL 1985, ch 362, § 15.

46A-10A-16. County drainage plan--Preparation--Adjuncts--Considerations. A board or a county drainage commission, if established, may prepare, or cause to be prepared, a drainage plan for the county, including those municipalities within the county which have requested by resolution of the governing board of such municipality to be included. Any drainage ordinances, any official drainage map, and other official controls as deemed necessary shall be included as adjuncts to a drainage plan. The board or commission shall consider any drainage right described in § 46A-10A-31, any drainage district described in § 46A-10A-43, the drainage plans or projects of a unit of local government and existing coordinated drainage areas formed pursuant to § 46A-10A-47 in preparation of a county drainage plan.

Source: SL 1985, ch 362, § 16.

46A-10A-17. Purposes of drainage plan. A drainage plan shall be for the purpose of enhancing and promoting physical, economic, and environmental management of the county; protecting the tax base; encouraging land utilization that will facilitate economical and adequate productivity of all types of land; lessening governmental expenditure; and conserving and developing natural resources. The plan may incorporate appropriate contingencies for the protection of private cropland and pasture.

Source: SL 1985, ch 362, § 17; SL 2001, ch 244, § 1.

46A-10A-18. Drainage projects and coordinated drainage areas authorized. Official controls instituted by a board or commission may include establishment of drainage projects or coordinated drainage areas within which drainage of land for agricultural, residential, industrial and commercial, soil and water conservation, and additional uses may be encouraged, regulated, or prohibited. For such purposes, the board may establish coordinated drainage areas of such number, shape, and size as may be deemed best suited to carry out county drainage goals.

Source: SL 1985, ch 362, § 18.

46A-10A-19. Maps authorized. Official controls instituted by a board or commission may include maps of drains, county highways and roads, culverts, wetlands, sloughs, and other natural and man-made features relating to drainage showing their alignments, gradients, dimensions, and other pertinent features.

Source: SL 1985, ch 362, § 19.

46A-10A-20. Legal controls for drainage management--Right to continue existing drainage. Official controls instituted by a board may include specific ordinances, resolutions, orders, regulations, or other such legal controls pertaining to other elements incorporated in a drainage plan, project, or area or establishing standards and procedures to be employed toward drainage management. Any such ordinances, resolutions, regulations, or controls shall embody the basic principle that any rural land which drains onto other rural land has a right to continue such drainage if:

- (1) The land receiving the drainage remains rural in character;
- (2) The land being drained is used in a reasonable manner;
- (3) The drainage creates no unreasonable hardship or injury to the owner of the land receiving the drainage;
- (4) The drainage is natural and occurs by means of a natural water course or established water course;
- (5) The owner of the land being drained does not substantially alter on a permanent basis the course of flow, the amount of flow, or the time of flow from that which would occur; and
- (6) No other feasible alternative drainage system is available that will produce less harm without substantially greater cost to the owner of the land being drained.

Such provisions do not necessarily apply within municipalities, but if a municipality drains water onto rural lands lying outside the boundaries of the municipality, the municipality is subject to the above provisions, if adopted by the board.

Source: SL 1985, ch 362, § 20.

46A-10A-21. Official controls not limited. Official controls are not limited to those set forth in §§ 46A-10A-18 to 46A-10A-20, inclusive.

Source: SL 1985, ch 362, § 21.

46A-10A-22. Publication of notice of hearing on proposed drainage plan. If it receives a proposed drainage plan drafted by the drainage commission or if it prepares its own plan because no commission exists, which plan includes proposed official controls, the board of county commissioners shall direct the county auditor to publish, at least once a week for at least two successive weeks in a newspaper of general circulation in the area affected, a notice of hearing, the time and place when the hearing will be held, and a statement that all interested persons may appear and be heard.

Source: SL 1985, ch 362, § 22.

46A-10A-23. Board action on plan by ordinance or resolution. Based on the results of a drainage plan hearing or hearings under § 46A-10A-22, a board's action upon a drainage plan or any part, adjunct, amendment, or addition shall be by resolution or ordinance, as appropriate, carried by the affirmative votes of not less than a majority of all the members of the board upon a finding that the plan is feasible and conducive to the public welfare and necessary or practicable for draining land in the county.

Source: SL 1985, ch 362, § 23.

46A-10A-24. Filing and publication of board action on plan--Effective date of plan--Public inspection. Any action of a board on a drainage plan shall be filed with the county auditor. A summary of the action shall be prepared by the county board or the drainage commission, if established, shall be reviewed by the state's

attorney, shall be published at least once within one week in the official newspaper or newspapers in the county and shall take effect on the twentieth day after its publication. Any summary published under the provisions of this chapter shall contain a notification that the public may inspect the entire drainage plan or any part, adjunct, amendment, or addition at the office of the county auditor during regular business hours.

Source: SL 1985, ch 362, § 24.

46A-10A-25. Petition for election on adoption of plan--Notice of election--Ballots--Suspension of effective date--Inconsistent drainage efforts prohibited. Within twenty days of publication, five percent of the voters, as determined by the total number of votes cast for Governor in the county at the last gubernatorial election, may petition to have the question of adoption or rejection of a county drainage plan, or any part, adjunct, amendment, or addition thereto, placed on the ballot at the next primary or general election to be held more than sixty days after filing of the petition with the county auditor, whichever occurs first. The county auditor shall give notice of the fact that the question will be on the ballot at the primary or general election, as provided by law, for such elections and shall prepare official ballots according to the provisions of this code relating to elections and the submission of questions to the voters. The effective date of a county drainage plan or part, adjunct, amendment, or addition thereto on which a referendum is to be held shall be suspended by the filing of a referendum petition until the referendum process is completed. However, when a drainage plan or part, adjunct, amendment, or addition thereto is referred to a referendum vote, no drainage efforts that are inconsistent with the plan or part, adjunct, amendment, or addition thereto may be established between the time of adoption of the plan by the county commission, as provided in § 46A-10A-23, and the time of the referendum vote.

Source: SL 1985, ch 362, § 25.

46A-10A-26. Rejection of plan by voters--Revision, filing, and publication. If the voters reject a proposed drainage plan or part, adjunct, amendment, or addition thereto, the board may revise or may order the drainage commission, if established, to revise the plan or part, adjunct, amendment, or addition thereto and adopt the same as revised, and file and publish the same as required by § 46A-10A-24. Such revision is subject to referendum procedures provided in § 46A-10A-25.

Source: SL 1985, ch 362, § 26.

46A-10A-27. Filing copy of adopted official control. Upon adoption of any drainage ordinance or other official drainage control, including any maps or charts, the county auditor shall file a certified copy thereof with the county register of deeds.

Source: SL 1985, ch 362, § 27.

46A-10A-28. Approval required for rehabilitation or construction of drain covered by plan--Board review of commission decision. If a board has adopted a drainage plan or any part, adjunct, amendment, or addition thereto, no rehabilitation of existing drainage or construction of new drainage, whether publicly or privately owned, if covered by the adopted plan, may be undertaken or authorized in the county until the location and extent thereof has been submitted to and approved by the board or commission, if established. In case of disapproval by a commission, it shall communicate its reasons in writing to the board. At a hearing to review the decision, by majority vote of the board members elect, a board may overrule all or any portion of a disapproval or any erroneous approval which is contrary to the adopted plan.

Source: SL 1985, ch 362, § 28.

46A-10A-29. Failure of commission to act as approval--Extension of period by board. Failure of a drainage commission to act within sixty-five days from the date of an official submission to it under the provisions of

§ 46A-10A-28 shall be deemed approval, unless a longer period is granted by the board within the sixty-five-day period.

Source: SL 1985, ch 362, § 29.

46A-10A-30. Permit system for drainage--Fee--Modification of drain or use of unrecorded right--Drainage without permit as misdemeanor--Civil penalty. Any board or commission under the provisions of this chapter and chapter 46A-11 may adopt a permit system for drainage. The permit system shall be prospective in nature. Permits shall be granted consistent with the principles outlined in § 46A-10A-20. The fee for a permit shall be established by the permitting authority, based on the administrative costs of regulating drainage activities, may not exceed one hundred dollars, and shall be paid only once. However, permitted drainage that is enlarged, rerouted, or otherwise modified requires a new permit. Any vested drainage right not recorded under the provisions of § 46A-10A-31 requires a permit for its use if a permit system has been established in the county where it exists. Any person or the person's contractor draining water without a permit, if a permit is required under the provisions of this section, is guilty of a Class 1 misdemeanor. In addition to or in lieu of any criminal penalty, a court may assess against any person violating the provisions of this section a civil penalty not to exceed one thousand dollars per each day of violation. A permit system is an official control.

Source: SL 1985, ch 362, § 30; SL 1986, ch 379, § 5; SL 2000, ch 217, § 1; SL 2011, ch 165, § 493.

46A-10A-31. Recording existing drainage rights--Information required--Disputing rights--Appeals--Recording final decision. Any natural drainage right lawfully acquired by the owner or owners of either a dominant or servient estate prior to July 1, 1985, is deemed vested. Any drainage right lawfully acquired prior to July 1, 1985, arising from drainage which is natural with man-made modifications or entirely man-made is also deemed vested, provided the right is recorded with the appropriate county register of deeds within seven years of July 1, 1985. Registration shall include the following information:

- (1) A legal description of any dominant estate or servient estate involved with the drainage right;
- (2) The general course and direction of flow of water by means of the drainage right;
- (3) The amount of time the drainage right has existed, if known, or, if not known, a statement to that effect;
- (4) The general course and direction of natural flow if different from that of the right being registered; and
- (5) The nature of the man-made modifications to the natural drainage.

The county register of deeds shall provide the board with a quarterly listing of such registrations, prior to the quarterly meetings of the board. The board shall include the list in its minutes which are published pursuant to § 7-18-3. A registration may include more than one drainage system.

Any drainage begun prior to July 1, 1988, and challenged by an affected landowner in a court of law or before a board or commission within two years of filing, may not become vested until and unless a final decision has been reached in favor of such drainage. Any commission decision may be appealed to the board within twenty days. Any board decision may be appealed to the circuit court of the county wherein the dispute arose within twenty days. Any circuit court decision may be appealed in the same manner as any other circuit court decision. If such final decision has been reached, including final decision on any appeal, the owner of the drainage right shall record the final decision within thirty days in order for the right to become vested. No county, township, or municipality is required to register its natural drainage rights.

Source: SL 1985, ch 362, § 31; SL 1986, ch 379, § 1; SL 1987, ch 338; SL 1991, ch 374.

46A-10A-31.1. Notice of recording requirements. On or before July 1, 1988, each county shall provide notice of the recording requirements set forth in § 46A-10A-31, by publishing a notice, once a week for two consecutive weeks in at least one official county newspaper.

Source: SL 1986, ch 379, § 2.

46A-10A-31.2. Local governments exempt from recording requirements. No county, municipality, or township may be required to record any highway right-of-way as a drainage right pursuant to this chapter.

Source: SL 1987, ch 339.

46A-10A-32. Copy of recorded vested right to department. After a vested drainage right is recorded with a county register of deeds under the provisions of § 46A-10A-31, the register of deeds shall transmit a copy of the registration to the Department of Environment and Natural Resources.

Source: SL 1985, ch 362, § 32; SL 2011, ch 165, § 494.

46A-10A-33. Enforcement of chapter and official controls. The board shall provide for the enforcement of the provisions of this chapter and of ordinances, resolutions, orders, and regulations made thereunder, and may impose enforcement duties on any officer, department, agency, or employee of the county.

Source: SL 1985, ch 362, § 33.

46A-10A-34. Adjudication functions of commission or board. A board may provide for appointment of its drainage commission to serve as a board of resolution and, under the regulations and controls adopted pursuant to this chapter, may provide that the board of resolution in individual cases may make, upon an affirmative vote of three-fourths of the full membership of the board of resolution, special exceptions or variances to any official controls and may reach decisions in individual drainage disputes between landowners, consistent with the provisions of § 46A-10A-20. The board may constitute itself as the board of resolution. The board may further provide that specified types or categories of drainage disputes may not be heard by the board of resolution. A drainage dispute which is not within the jurisdiction of the board of resolution shall be taken directly to the circuit court of the county wherein the conflict exists.

Source: SL 1985, ch 362, § 34; SL 1986, ch 380; SL 1997, ch 256, § 26.

46A-10A-34.1. Board of adjudication by mutual agreement--Jurisdiction. Any other provision of law notwithstanding, any board or commission, by mutual agreement, may serve as a board of adjudication, pursuant to § 46A-10A-34, for any other county. The jurisdiction of such board or commission is limited to the adjudication function specifically outlined in the agreement with the county board of the county holding jurisdiction over the drainage dispute.

Source: SL 1986, ch 379, § 11.

46A-10A-35. Appeals from commission and board--Time allowed--Commencing action in circuit court. Any decision reached by a commission in order to settle a conflict involving drainage between landowners may be appealed to the board. Any board decision may be appealed or further appealed to the circuit court of the county wherein the conflict arose. An appeal under this section shall be commenced within twenty days of the decision being appealed. The provisions of this section notwithstanding, landowners may take a drainage conflict directly to the circuit court of the county wherein the conflict exists.

Source: SL 1985, ch 362, § 35.

46A-10A-36. Regulation and elimination of nonconforming drains. The board may prescribe, by resolution as provided in § 46A-10A-33, such regulations not contrary to law or § 46A-10A-31, as it deems desirable or necessary to regulate and control, reduce the number or extent of or bring about the gradual elimination of nonconforming drains or drainage schemes.

Source: SL 1985, ch 362, § 36.

46A-10A-37. Amendment and repeal of drainage plan--Request by petition. Regulations, restrictions, or enforcement provisions established in a drainage plan or part, adjunct, amendment, or addition thereto adopted by the board of county commissioners may from time to time be amended, supplemented, changed, modified, or repealed by action of the board of county commissioners as outlined in this chapter. Any amendment, supplement, change, modification, or repeal may be requested through a petition signed by thirty percent of the landowners in a drainage district or area requesting change.

Source: SL 1985, ch 362, § 37.

46A-10A-38. Petition by landowner for change of drainage restrictions--Notice to directly affected persons. An individual landowner may petition a board or commission to change the drainage restrictions on any part of the landowner's property. The petitioning landowner shall notify all directly affected adjoining landowners and all directly affected third parties holding drainage interests by registered or certified mail of the petitioned change at least one week before any public hearing held on the petition by the board or commission. Property shall be considered as adjoining even if it is separated from the property of the petitioner by a public road or highway.

Source: SL 1985, ch 362, § 38; SL 2011, ch 165, § 495.

46A-10A-39. Hearing on petition--Commission recommendation to board. Following receipt of any petition as provided in § 46A-10A-37 or 46A-10A-38, the board or commission shall hold a public hearing, subject to the requirements of § 46A-10A-22, and take action upon the petition, within forty-five days of receipt by a board or commission of any such petition. If a commission holds a hearing to consider the petition, it shall make a recommendation to the board.

Source: SL 1985, ch 362, § 39.

46A-10A-40. Affected person's right to be heard--Resolution adopting or rejecting proposal--Review, publication, and effective date of adoption--Election. At any public hearing held pursuant to § 46A-10A-39, any affected person may appear and request or protest the requested change. The board or commission shall thereafter by resolution either adopt or reject such change, modification, or repeal and, if it is adopted by the board or commission, a summary shall be prepared by the board or commission, shall be reviewed by the state's attorney, shall be published once in the official newspaper in the county and shall take effect on the twentieth day after its publication. The provisions of § 46A-10A-25 are applicable hereto.

Source: SL 1985, ch 362, § 40.

46A-10A-41. Drainage plan or official controls for municipality--Approval or contract by municipality required for effectiveness. The governing body of any municipality may request a county board or drainage commission to submit to the governing body a drainage plan for the municipality setting forth such provisions as the board or drainage commission deems applicable to the municipality for its best interests or to prepare official controls to apply to the area within the municipality. Adoption of a drainage plan and recommendations for the municipality notwithstanding, the plan and recommendations may not become binding within the boundaries of the municipality until official controls are adopted by the municipality in accordance with the plan, unless the board or commission has entered into a contract under § 46A-10A-12.

Source: SL 1985, ch 362, § 41.

46A-10A-42. Jurisdiction of incorporated municipality. Nothing in this chapter other than the voluntary provisions of § 46A-10A-12 may be construed to prevent or modify the powers of an incorporated municipality from exercising drainage jurisdiction within the corporate limits and from exercising jointly with the county board or drainage commission the drainage authority outside of the corporate limits.

Source: SL 1985, ch 362, § 42.

46A-10A-43. Drainage district continuation and dissolution--County plan to include districts, vested rights and plans or projects of local government units and coordinated drainage areas. Any drainage district established under the laws of this state that has functioned in its capacity as a drainage district within three years prior to July 1, 1985 or that has assessed real property in its capacity as a drainage district within three years prior to July 1, 1985 shall be allowed to continue in that status. However, the landowners in such existing drainage district may choose by majority vote at a general election under the general election laws of this state to dissolve in order to join one or more drainage projects or drainage methods or to become or join a coordinated drainage area. Any county drainage plan shall include functioning drainage districts, vested rights described in § 46A-10A-31, the drainage plans or projects of a unit of local government and existing coordinated drainage areas formed pursuant to § 46A-10A-47.

Source: SL 1985, ch 362, § 43.

46A-10A-43.1. Petition for future maintenance of drain jointly and voluntarily maintained by landowners within ten years of July 1, 1985. Notwithstanding § 46A-10A-43, if within ten years prior to July 1, 1985, three or more landowners have jointly maintained a legal drain by voluntarily contributing the cost of maintenance without establishing a drainage district or without special assessments as provided in chapter 46A-11, the landowners may petition the board to provide for future maintenance, improvement, and repair of the drain.

Source: SL 1988, ch 366, § 1.

46A-10A-43.2. Signing of petition--Contents. The petition shall be signed by sixty percent of the resident landowners served by the drain. The petition shall describe the past plan of voluntary contributions, describe the drain by its initial point, terminal point, and general course, or by its exact course in whole or in part, provide a general description of the territory likely to be affected and list the owners of the land served, if known. The petition shall include a statement that the owners agree to the future maintenance and assessment of the drain by the board.

Source: SL 1988, ch 366, § 2.

46A-10A-43.3. Presentation of petition--Filing--Transmittal to Department of Environment and Natural Resources--Hearing. A petition may be presented at any regular or special meeting of the board, and, if in proper form, shall be ordered filed with the county auditor, who shall transmit a copy of the petition to the Department of Environment and Natural Resources. The board shall hold a hearing on the petition within thirty days.

Source: SL 1988, ch 366, § 3; SL 1991, ch 17 (Ex. Ord. 91-4), § 17.

46A-10A-43.4. Opportunity to appear at hearing--When granted--Resolution by board as to maintenance of drain. At a hearing held pursuant to the provisions of §§ 46A-10A-43.1 to 46A-10A-43.4, inclusive, any interested person may appear in regard to any matter in the petition. After the board has heard and considered the petition, it shall grant the petition if it complies with the provisions of §§ 46A-10A-43.1 and 46A-10A-43.2. The board shall by resolution provide for the maintenance, improvement, and repair of the drain as provided in § 46A-10A-80, shall give the drain a name and shall file a certified copy of the resolution in the office of the register of deeds.

Source: SL 1988, ch 366, § 4.

46A-10A-44. Recommendation that state's attorney seek injunction or other court action to prevent or abate violation. In the event of a violation or a threatened violation of an ordinance, resolution, regulation, restriction, or other official control adopted pursuant to this chapter, a board or commission, in addition to other remedies,

may recommend the county state's attorney seek an injunction or other appropriate action or proceeding in a court of competent jurisdiction to prevent, restrain, correct, or abate such violation or threatened violation.

Source: SL 1985, ch 362, § 44.

46A-10A-45. Mandamus proceedings authorized. Any taxpayer of a county may institute mandamus proceedings in circuit court to compel performance by the proper official or officials of any nondiscretionary duty required by this chapter and by any ordinance adopted thereunder.

Source: SL 1985, ch 362, § 45.

46A-10A-46. Control of drainage construction, rehabilitation, or methods--Approval of board. Any board or commission may adopt drainage ordinances, resolutions, or regulations to control individual drainage construction or rehabilitation or such drainage methods by groups of landowners within the county. Such ordinances, resolutions, or regulations shall be consistent with the principles outlined in § 46A-10A-20. Any drainage ordinances, resolutions, or regulations adopted by a commission shall further be approved by the board before going into effect.

Source: SL 1985, ch 362, § 46; SL 1986, ch 379, § 6.

46A-10A-47. Coordinated drainage area--Application for establishment--Inconsistency with county plan or controls barring formation--Validity of information in county in process of adopting plan or controls. Whenever an area within a county and not within a municipality becomes so situated that drainage area coordination becomes advisable, persons within the area may apply to the board or the commission, if one exists, to establish the area as a coordinated drainage area pursuant to this chapter. A board or commission may not form a coordinated drainage area if it is inconsistent with a county-wide drainage plan and ordinances or other controls which have been adopted. The formation of a coordinated drainage area is valid in a county that is in the process of adopting a county-wide drainage plan and ordinances or other controls until such are in place.

Source: SL 1985, ch 362, § 47.

46A-10A-48. Survey and map of proposed coordinated drainage area required--Availability for examination. Any person making application for establishment of a coordinated drainage area shall first obtain an accurate survey and map of the territory intended to be embraced within the limits of such area, showing the boundaries and area thereof. The accuracy thereof shall be verified by affidavit of a licensed surveyor. The survey and map, when completed and verified, shall be left at a convenient public office, to be designated by the county auditor of the county in which the application is filed, within the area for a period of not less than twenty days for examination by those having an interest in the application.

Source: SL 1985, ch 362, § 48.

46A-10A-49. Form, verification, signatures, filing, and presentation of application for establishment of area. An application for establishment of a coordinated drainage area shall be a petition verified by one or more applicants by affidavit stating that the affiant or affiants personally witnessed the signatures thereon and believe them to be genuine and shall be signed by not less than twenty-five percent of the landowners residing within the area. It shall be filed with the county auditor and presented to the board or commission for consideration at its next meeting.

Source: SL 1985, ch 362, § 49.

46A-10A-50. Order establishing area subject to voters' approval--Notice of election--Exemption from election requirement. If the board or commission is satisfied that the requirements of this chapter have been fully

met, it shall make an order declaring that such area, with the assent of the landowners thereof, shall be a coordinated drainage area as specified in the application. It shall also include in such order a notice for an election of the landowners residing in the proposed area, at polling places designated by the board, on a day within one month, to determine whether the area shall become a coordinated drainage area. However, if the landowners signing the petition represent a majority of the resident landowners in the area, no election need be held.

Source: SL 1985, ch 362, § 50.

46A-10A-51. Publication of election notice. The board or commission shall give ten days' notice of an election held under § 46A-10A-50 by publication in an official newspaper in the proposed coordinated drainage area.

Source: SL 1985, ch 362, § 51.

46A-10A-52. Hours polls open--Costs of election. At any election to establish a coordinated drainage area held under this chapter, the polls shall be kept open from 7:00 a.m. until 7:00 p.m. The county shall bear the costs of the election.

Source: SL 1985, ch 362, § 52; SL 2006, ch 28, § 8.

46A-10A-53. Establishment of area effective on voters' approval--Waiting period after rejection by voters. A vote to establish a coordinated drainage area shall be by ballot in the form provided by the board. If a majority of those voting favor the establishment, the area shall from that time be deemed a coordinated drainage area by order of the board. If a majority vote against the establishment, no further proceedings may be taken thereon for a period of two years.

Source: SL 1985, ch 362, § 53.

46A-10A-54. Appointment and duties of election officers--Order declaring area established--Conclusiveness of order. The board or commission shall appoint three judges, who shall elect one of their members as superintendent, to conduct an election to establish a coordinated drainage area. After the vote is cast and canvassed, the judges shall make a verified statement showing the number of ballots cast, together with the number voting for and the number voting against establishment, and shall return the results to the board or commission at its next meeting. After the canvass of such election, the board or commission shall make an order declaring that the coordinated drainage area has been established if the results of the election favor establishment. Subject to appropriate judicial review, such order shall be conclusive of the fact of establishment.

Source: SL 1985, ch 362, § 54; SL 1986, ch 379, § 7.

46A-10A-55. Expenditure of county funds for application for coordinated drainage area--Assessment of costs from benefiting landowners. The board is authorized to expend funds of the county, in the manner and to the extent permitted by law for other county expenditures, in the payment of necessary costs of preparation of petitions, surveys, maps, and applications submitted under the provisions of §§ 46A-10A-47 to 46A-10A-49, inclusive. The board may assess, levy, and collect such costs from any landowner benefiting from a coordinated drainage area in the same manner as provided for construction of drains elsewhere in this chapter and chapter 46A-11.

Source: SL 1985, ch 362, § 55; SL 1986, ch 379, § 8.

46A-10A-56. Public lands subject to drainage laws--Service of notices--Appearance by board or officer in charge. All state public or school lands are subject to drainage laws. In any drainage proceeding affecting such

lands, notices required by law to be given by publication and posting shall be served upon the commissioner of school and public lands at least thirty days before the time of the hearing. Such service may be made upon the commissioner in person, by service at the commissioner's office with the person in charge, or by registered or certified mail. If the land affected by the drainage proposal is not under the commissioner's control, the commissioner shall transmit a copy of the notice to the board or officer in charge of the land. The board or officer in charge of the land may appear at any such hearing or proceeding on behalf of the state.

Source: SL 1985, ch 362, § 56; SL 2011, ch 165, § 496.

46A-10A-57. Responsibilities for drainage projects. A commission, if one is established, may discuss and make recommendations on drainage projects, but the board shall be responsible for the petition process, hearing process, bidding process, construction process, and maintenance of drainage projects. Drainage project processes shall be as outlined under §§ 46A-10A-58 to 46A-10A-97, inclusive.

Source: SL 1985, ch 362, § 57.

46A-10A-58. Signatures required for board action on drainage project petition. The board may act upon a written drainage project petition only if it is signed by a majority of the resident owners of lands described in the petition who are likely to be affected by the proposed drainage. If potentially affected land is sold under a contract for deed which is of record in the office of the register of deeds, both the seller and the purchaser of the land shall be treated as owners.

Source: SL 1985, ch 362, § 58.

46A-10A-59. Contents of drainage project petition. A project petition shall explain the necessity for the project, shall give a description of the proposed project route by its initial points, terminal points, and general course, or by its exact course in whole or in part, and shall give a general statement of the territory likely to be affected. Such project petition shall include an assessment of impact, environmental or otherwise, on any public property or public property right within the affected territory.

Source: SL 1985, ch 362, § 59.

46A-10A-60. Presentation and filing of petition--Time for board action--Copy to department. A petition may be presented at any regular or special meeting of the board, and, if proper in form, shall be ordered filed with the county auditor. The board shall act within thirty days on all drainage project petitions. Upon receiving a petition, the county auditor shall transmit a copy to the Department of Environment and Natural Resources.

Source: SL 1985, ch 362, § 61; SL 2011, ch 165, § 497.

46A-10A-61. Survey and report contracted by board--Contents--Right of entry--Copy to department. If the board determines it is necessary, it shall contract for a survey of the proposed drainage to be made by an engineer selected by the board. The survey and subsequent report shall show the starting point, the route, the terminus of any proposed ditch or drain or other improvement, and the course and length of any drain through each tract of land, together with the number of acres from each tract required for construction of improvements. The survey and report shall show the elevation of all lakes, ponds, and sloughs or depressions in the project and the boundary of the proposed project, to include all land that will be benefited by the proposed improvements. The survey and report shall include the approximate location of watersheds within the district, a description of each tract of land within the district, and the names of the owners and shall identify that tract of land most likely to receive average benefit from the project. The survey and report shall estimate the probable cost and shall include other facts and recommendations the engineer deems material so the board may determine the feasibility of the project. The survey may extend to lands other than those affected by the proposed project to determine the best practical method of draining the entire area under study. For the purpose of inspection or surveys, board

members, engineers, or their employees may enter upon any land traversed by the proposed project that, in their judgment, is likely to be affected. The county auditor shall furnish the Department of Environment and Natural Resources a copy of the engineer's report and all maps and plans prepared by the engineer.

Source: SL 1985, ch 362, § 62; SL 2011, ch 165, § 498.

46A-10A-62. Survey report to be written--Inspection--Scheduling hearing--Notice requirements. The report required by § 46A-10A-61 shall be in writing to the board and shall be maintained with the petition. The report shall be available for inspection and copying by interested parties during regular business hours. Upon receipt of an engineer's report, the county auditor shall set a time and place for a hearing on the petition and shall give notice thereof by publication at least once each week for at least two consecutive weeks in a legal newspaper of the county, to be selected by the auditor. The notice shall give a description of each tract of land affected by the proposed project and the names of owners and all directly affected third parties holding drainage interests. If any portion of a municipality is included within a proposed district, the notice is sufficient if it sets forth the boundaries of the municipal territory proposed to be included within the project without listing individual lots, parts of lots, parcels of land, or the names of the owners thereof and if it refers interested persons to the files in the proceeding for further particulars. The notice shall summon all persons affected by the proposed drainage to appear at the hearing and testify regarding the proposed project. The notice also shall summon all persons deeming themselves damaged by the proposed project or claiming compensation for lands proposed to be taken for the project to present their claims at the hearing.

Source: SL 1985, ch 362, § 63.

46A-10A-63. Appearances at hearing--Establishment of project--Variation from report--Adjournment of hearing--Notices. At a hearing, any interested person may appear in regard to statements in the petition, matters set forth in the engineer's report or the overall construction plan of the project. After a hearing, the board may establish the project as set forth in the engineer's report or may amend and establish the project in accordance with an amendment of the engineer's report. If the board deems it best to vary the route, materially change the initial or terminal points of the proposed project or increase the width of land to be taken for the proposed project, the board shall adjourn the hearing and give the owners of the land affected by the project change notice as in the original hearing. If the proposed project does not have sufficient fall to drain lands as intended or will not dispose of water properly, it shall be extended as necessary, the hearing shall be adjourned and notice shall be given as in the original hearing, to all owners of land affected by the extension.

Source: SL 1985, ch 362, § 64.

46A-10A-64. Assistance by department--Reimbursement of expenses. If so requested, the Department of Environment and Natural Resources may render such assistance and advice to the board in regard to the project as the assigned duties of the department will permit. The department shall be reimbursed by the board for any expenses incident to the advice and assistance.

Source: SL 1985, ch 362, § 65; SL 2011, ch 165, § 499.

46A-10A-65. Denial of petition or establishment of project--Findings required. If the board has heard and considered the petition, it shall deny the petition if it finds the proposed project is not feasible and conducive to public welfare or is not necessary or practicable for draining land. If it finds the proposed project, or any variation thereof, is feasible and conducive to public welfare and necessary or practicable for draining land, the board by resolution shall establish the project.

Source: SL 1985, ch 362, § 66.

46A-10A-66. Assessments authorized--Expenses paid. Assessments shall be made as provided in this chapter and chapter 46A-11. All compensation claims and expenses of legal notices, inspection of the proposed route, payment of engineer's and attorney's fees, and other expenses associated with project establishment shall be paid from the general fund of the county and reimbursed from those assessments.

Source: SL 1985, ch 362, § 67.

46A-10A-67. Acquisition of easements. An easement for a drainage right may be acquired by the existence of a drainage ditch for a period of at least twenty consecutive years, by purchase or grant of easement from the owner of land through which the ditch will pass, or by condemnation under the provisions of this chapter and chapter 46A-11.

Source: SL 1985, ch 362, § 68.

46A-10A-68. Damages due to project--Determination--Hearing--Appeal. If a board establishes a project pursuant to § 46A-10A-65, it shall calculate the damage sustained by each tract of land or by other property due to construction or maintenance of the project. The board shall give notice of its determination of damages to the respective landowners and shall schedule a hearing thereon. Damages to crops growing during construction may be calculated at a later time and shall be considered part of the cost of construction. At the hearing, the board will receive evidence on the question of damages and just compensation. Any affected person or competent witness on his behalf may testify in the matter of damages or compensation for land. A determination of damages by the board after the hearing is final unless appealed as provided in this chapter. Any appeal from a board's determination of damages shall be heard in circuit court as a condemnation action. Failure to appear to contest or to appeal an award of damages shall be deemed acceptance of damages or compensation for land taken.

Source: SL 1985, ch 362, § 69.

46A-10A-69. Naming project--Record of proceedings. Any project established pursuant to § 46A-10A-65, shall be given a name by the board. Subsequent project proceedings shall be recorded and indexed in a book kept for that purpose in the auditor's office.

Source: SL 1985, ch 362, § 70.

46A-10A-70. Permissible drainage of land. Subject to any official controls pursuant to this chapter and chapter 46A-11, owners of land may drain the land in the general course of natural drainage by constructing open or covered drains and discharging the water into any natural watercourse, into any established watercourse, or into any natural depression whereby the water will be carried into a natural watercourse, into an established watercourse, or into a drain on a public highway, conditioned on consent of the board having supervision of the highway. If such drainage is wholly upon an owner's land, the owner is not liable in damages to any person. Nothing in this section affects the rights or liabilities of landowners in respect to running waters or streams.

Source: SL 1985, ch 362, § 71; SL 2011, ch 165, § 500.

46A-10A-71. Drains along or across highways. Subject to any official controls pursuant to this chapter and chapter 46A-11, drains may be laid along, within the limits of, or across any public highway. If a highway is constructed along or across a drain, the board or officers in charge of such highway shall keep the drain free and clear of obstruction.

Source: SL 1985, ch 362, § 72.

46A-10A-72. Open ditches restricted along highways. No open ditch may be constructed within the limits of any public highway unless the topography makes such construction advisable. If construction is advisable, the ditch shall be located at a sufficient distance from the center of the highway to permit construction of a highway of standard width.

Source: SL 1985, ch 362, § 73.

46A-10A-73. Drains along and across railroads--Costs. A drain may be constructed along a rail line, if necessary, if no damage is done to the rail line. If it is necessary to cross a railroad right-of-way, the railroad company, if so ordered by the board, shall make necessary openings through the right-of-way and construct and maintain culverts or bridges to permit free and unobstructed flow of water across the right-of-way. The cost of such construction and maintenance, except the cost of excavating the ditch across the right-of-way, shall be borne as outlined in § 46A-10A-74. Service of such order shall be made upon the railroad company in the manner provided for the service of summons in a civil action. An order directing construction of a drainage bridge or culvert shall be served upon the railroad company. The railroad company shall have sixty days after the service of an order to construct the bridge or culvert.

Source: SL 1985, ch 362, § 74; SL 1986, ch 379, § 9.

46A-10A-74. Construction of drainage facilities across railroads--Costs. A railroad's reasonable estimated cost of constructing a drainage facility across a railroad right-of-way shall be included in damages to be awarded the railroad company at the time the drainage is established. If the company refuses or neglects to construct bridges or culverts within a period of sixty days after service of an order, the board may construct bridges or culverts at the expense of the county and is entitled to recover such construction costs from the railroad company. Any action to recover construction costs shall be taken to circuit court and prosecuted by the state's attorney of the county.

Source: SL 1985, ch 362, § 75.

46A-10A-75. Construction contracts--Bids--Preference of landowners--Bond of contractor--Construction without contract. At any time after adopting a drainage plan or other official control, a board may construct drainage or let contracts for its construction. A contract may be for construction of an entire drainage project, for any portion thereof, or for material and labor separately, and the contract shall be let by competitive bid. A board may reject any bid. The lowest responsible and capable bidder shall be accepted. If a responsible and capable landowner affected by the project submits one of several low bids, the landowner shall be given contract preference. If a contract is let, the contractor shall post a bond in the amount of the contract, conditioned on faithful performance of the contract and full completion of the contract to the satisfaction of the board. For purposes of bids on a proposed project, all plans and specifications for the project shall be filed in the office of the county auditor. If, in the judgment of the board, the entire project or any part thereof can be constructed for less money than the amount of the lowest bid submitted, the board may hire the necessary labor and purchase the necessary material for the construction without letting contracts, the provisions of chapters 5-18A and 5-18B notwithstanding.

Source: SL 1985, ch 362, § 76; SL 2011, ch 2, § 150.

46A-10A-76. Highway bridges and culverts--Construction--Maintenance--Modification--Costs. Contracts for building public highway bridges and culverts necessary after construction of a drainage project may be let separately after the project is completed. The expense of constructing bridges or culverts initially shall be charged as part of the drainage costs, but thereafter such bridges and culverts shall be maintained as part of the highway. The expense of removing, repairing, enlarging, or replacing existing bridges or culverts across the line of a proposed drainage project shall be borne in equal shares by the drainage project and the county highway fund.

Source: SL 1985, ch 362, § 77.

46A-10A-77. Construction and contracting powers of board. Any county board has the same powers in relation to construction of and contracting for drainage projects as it has in construction of and contracting for any other facilities.

Source: SL 1985, ch 362, § 78.

46A-10A-78. Maintenance and improvement of existing drains, watercourses, and levees. Powers conferred by this chapter and chapter 46A-11 for establishing and constructing drains include maintaining, relocating, extending, deepening, widening, and regulating of existing drains and drains hereafter constructed; straightening, cleaning out, deepening, and otherwise regulating channels of creeks and streams; and constructing, maintaining, remodeling, and repairing levees, dikes, and barriers for the purpose of drainage.

Source: SL 1985, ch 362, § 79.

46A-10A-79. Apportionment of original cost to annexed area when project extended. If an existing drainage project is extended or enlarged, the board or boards shall apportion the benefits resulting to the annexed area from the existing construction in the original project as a cost to be absorbed by the lands of the annexed area on the basis of the original cost of the drain.

Source: SL 1985, ch 362, § 80.

46A-10A-80. Maintenance of drains--Assessment of costs. Any drain that has been constructed under the provisions of this chapter or chapter 46A-11 is under control of the board or commission and shall be kept open and in repair by it, unless otherwise provided. If any drain is situated in more than one county, care of the portion lying within each county is assigned to that county's board or commission to be kept open and in repair. The cost of repairs shall be assessed, levied, and collected in the same manner as provided in this chapter and chapter 46A-11 for construction of drains.

Source: SL 1985, ch 362, § 81.

46A-10A-81. Jurisdiction of improved existing drain--Maintenance--Assessments. If an existing drainage project is improved, it is under the jurisdiction and supervision of the board, or joint boards if the drainage project is in more than one county, or a commission in counties adopting that form of management. Its respective board or commission shall keep it in repair. If no assessments of benefits have been made, the board having charge of the drain shall make assessments.

Source: SL 1985, ch 362, § 82.

46A-10A-82. Maintenance without notice--Actions authorized. At any time and on its own motion, without notice, a board may maintain a drainage project. The board may remove silt, debris, weeds, and other vegetation growth, may repair damaged structures, and may take other action as necessary to maintain the project's original efficiency or capacity.

Source: SL 1985, ch 362, § 83.

46A-10A-83. Petition for repair or improvement of drain. If a board fails to make necessary drainage repairs or improvements or fails to act as provided in §§ 46A-10A-81 to 46A-10A-88, inclusive, a majority of the owners of lands affected or likely to be affected by the proposed repairs or improvements may file with the county auditor a petition signed by them requesting the board to take such action. If the drainage extends over more than one county, a petition shall be filed in each county and each involved board shall act.

Source: SL 1985, ch 362, § 84.

46A-10A-84. Repairs without contract--Cost reimbursement. If required drainage repairs will cost less than ten thousand dollars and the board projects a potential saving by not receiving bids, it may direct the repairs to be done by county equipment and labor. The county fund utilized shall be reimbursed from the drainage project fund thus benefited.

Source: SL 1985, ch 362, § 85.

46A-10A-85. Replacing drain as repair. If, in repairing a closed drain, the board finds from the engineer's report that it is more economical to construct a new closed drain than to repair an existing drain, the new drain is considered a repair.

Source: SL 1985, ch 362, § 86.

46A-10A-86. Improvements--Survey and cost estimate--Ordering without notice. If a board determines that improvements which differ from repairs are necessary or desirable, the board may appoint an engineer to conduct a survey of the proposed improvement, estimate its cost, and file the estimate with the board. An improvement may include enlarging, reopening, widening, deepening, strengthening, or lengthening of any drain; changing the location of or improving and enlarging an outlet for better service; converting all or a part of any drain from an open ditch to a closed drain; installing surface pipe for open ditches; leveling spoil banks; or constructing settling basins. If the estimated cost of the improvements does not exceed ten thousand dollars, the board may order the work done without notice.

Source: SL 1985, ch 362, § 87.

46A-10A-87. Improvements requiring notice and hearing--Reclassification of benefits--Appeal. If a board deems it desirable to make drainage improvements and the estimated cost exceeds ten thousand dollars, it shall set a date for a hearing on the matter and on the matter of reclassification of benefits for the cost of the improvements and shall provide notice as provided in § 46A-10A-62. At the hearing the board shall hear testimony on the feasibility of the improvements and on reclassification and shall take action as it considers desirable regarding the improvements. If, due to extensive modification to the project and its operation, the board determines a reclassification of benefits should be undertaken, the board shall proceed in accordance with §§ 46A-11-2 to 46A-11-4, inclusive. Any affected party has the right to appeal the board's decision to reclassify benefits and to such classification, if accomplished.

Source: SL 1985, ch 362, § 88.

46A-10A-88. Assessment of maintenance and improvement costs. Costs of cleaning, maintaining, repairing, or improving drainage may be assessed against all land in a drainage project in the same proportion as fixed for the project. Such assessments shall be made as are other assessments for construction of drainage and all finance and enforcement provisions of law relating to assessments for the original construction of the project shall govern assessments for maintenance, cleaning, improvement, and general and emergency repairs.

Source: SL 1985, ch 362, § 89.

46A-10A-89. Maintenance and assessments for drainage work in more than one county. Any provisions of this chapter and chapter 46A-11 relating to maintenance of drainage or levy of maintenance assessments are the responsibility of the board of the county having jurisdiction over the drainage. Immediately after assessments are levied by a board in charge of drainage work that lies in more than one county, the county auditor shall prepare a complete transcript of the proceedings not previously filed relating to the drainage and shall file the report with each affected county.

Source: SL 1985, ch 362, § 90.

46A-10A-90. Injury or obstruction of drainage as misdemeanor--Civil liability. Any person who intentionally removes a surveyor's stake set along the line of a drain, obstructs or injures a drain or watercourse used for drainage, or breaks down or injures a levee governed by the provisions of this chapter and chapter 46A-11:

- (1) Is guilty of a Class 2 misdemeanor; and
- (2) Is liable for damages in an amount required to repair the injury, such damages to be recovered in a civil action by the board. Damages, when collected, shall be deposited with the county treasurer and credited to the construction and maintenance fund of the project.

Source: SL 1985, ch 362, § 91.

46A-10A-91. Drain or watercourse constructed to prevent entry of water as nuisance--Exception. Any ditch, drain, or watercourse constructed to prevent surface and overflow water from adjacent land from entering it is hereby declared a nuisance and may be abated as such unless such action was taken in accordance with the provisions of this chapter and chapter 46A-11 and the principles outlined in § 46A-10A-20.

Source: SL 1985, ch 362, § 92.

46A-10A-92. Abandonment of project--Procedure. Any intrastate drainage project, local drainage project, or drainage works established prior to July 1, 1985, existing under the provisions of prior state law or existing under the provisions of this chapter and chapter 46A-11 may be abandoned and abolished after a petition has been filed, notice has been published, and a hearing has been held by the board having jurisdiction. Petition, notice, and hearing procedures shall be the same as for construction of a drainage project. An election may be held on the issue and shall follow the procedures outlined in § 46A-10A-43.

Source: SL 1985, ch 362, § 93.

46A-10A-93. Approval required to alter drainage rights established with federal or state funds. Drainage rights established by state and federal funds in state financed public improvements only may be altered or affected by the board of county commissioners or drainage commission after approval and concurrence by official action of the state agency administering such state or federal funds.

Source: SL 1985, ch 362, § 93A.

46A-10A-94. Accounts of expenditures maintained--Inspection. An itemized account of expenditures for any drainage project construction, repairs or improvement shall be maintained in the office of the county treasurer and shall be open to public inspection during regular business hours.

Source: SL 1985, ch 362, § 94.

46A-10A-95. Appeal by state as to public lands. In any decision involving lands described in § 46A-10A-56, the state has the same right of appeal from an order relating to drainage as does an individual, but no bond on appeal need be furnished.

Source: SL 1985, ch 362, § 95.

46A-10A-96. Stay of proceedings on appeal--Bond--Damages. No appeal may operate as a stay of proceedings by a board, but a court, upon taking an appeal, for good cause may issue an order staying further proceedings by a board until a hearing and determination of the merits of the appeal are completed. Before

granting a stay, a court shall require a bond or other undertaking in sufficient amount and with sufficient surety so that, if the order appealed from is sustained, the person upon whose motion the stay is granted shall pay all damages caused by the stay. For purposes of this section, no activity under the provisions of § 46A-10A-25 or 46A-10A-68 may be considered an appeal.

Source: SL 1985, ch 362, § 96.

46A-10A-97. Costs on appeal. If, on appeal, the court rules in favor of a board decision regarding a conflict between the appellant landowner and the board, the appellant landowner is liable for all costs associated with the appeal. If the contention of an appellant landowner is substantially sustained, costs associated with the appeal shall be included in the total costs of the project, but the appellant's costs before appeal shall be borne by the appellant.

Source: SL 1985, ch 362, § 97; SL 2011, ch 165, § 501.

46A-10A-98. Drainage district management by Board of Trustees. Any established drainage district as defined by § 46A-10A-43 may be placed under the control and management of a board of three trustees to be elected by the persons owning land in the district.

Source: SL 1997, ch 256, § 1.

46A-10A-99. Petition for election. Twenty percent of the landowners as defined by subdivision 46A-10A-1(11), owning land within the district assessed for benefits, may file a petition requesting that a meeting be held to conduct an election to determine if a drainage district shall be governed by three trustees as authorized by § 46A-10A-98. The petition shall be filed with the auditor of the county containing the majority of the land in the district. If the auditor determines the petition is signed by the requisite number of landowners, the petition shall be presented to the board of county commissioners.

Source: SL 1997, ch 256, § 2.

46A-10A-100. Election meeting--Appointments. The board of county commissioners shall at their next session, set a date, time, and location for a meeting of district landowners to conduct an election to determine if a drainage district shall be governed by three trustees and shall enter an order to that effect. The election meeting shall be held within forty-five days from the date of the order. The board shall appoint from the landowners of the district a superintendent and two clerks of election to serve as an election board who shall convene the meeting, take minutes, and conduct the election.

Source: SL 1997, ch 256, § 3.

46A-10A-101. Publication of notice of election--Votes by proxy. The county auditor shall publish notice of the election. The notice shall give the time, place, and purpose of the election. The notice shall be published for two consecutive weeks in the official newspapers of each county. The last publication may not be less than ten days before the date of the election. The auditor shall mail a copy of the notice of election to each landowner in the district. The county auditor shall also inform each landowner in writing that each landowner may vote by proxy pursuant to § 46A-10A-105.

Source: SL 1997, ch 256, § 4.

46A-10A-102. Election board to procure district records preceding election--Elected trustees to act as record custodians--Updates to district records. Before any election is held, the election board shall procure from the county auditor, auditors, or appropriate county official a certified copy of the record of the establishment of the district showing the lands of the district, the assessment and classification of each tract, and the name of the

person or persons against whom the tract was assessed for benefits, and the present record owner or owners. The certified record shall be kept by the trustees after they are elected for use in subsequent elections. The trustees shall, preceding each subsequent election, procure from the county auditor, auditors, or appropriate county official additional certificates showing changes of title of land assessed for benefits and the names of the new owners.

Source: SL 1997, ch 256, § 5.

46A-10A-103. Voting rights of title holder. Anyone who has acquired ownership of assessed lands since the latest certificate from the auditor may vote at any election if the person presents evidence of title to the election board for its inspection at the time the person demands the right to vote.

Source: SL 1997, ch 256, § 6.

46A-10A-104. Landowner or joint landowners entitled to one vote collectively--Voting rights of minor or protected person. A landowner or joint landowners who own a tract of land within the district assessed for benefits are entitled to one vote collectively. The vote of any person who is a minor or a protected person as defined by § 29A-5-102, may be cast by the parent, conservator, or legal representative of the minor or protected person. The person casting the vote shall deliver to the clerks of election a written sworn statement giving the name, age, and place of residence of the minor or protected person.

Source: SL 1997, ch 256, § 7.

46A-10A-105. Voting through agent or proxy--Power of attorney to specify election for which it is used--Delivery of power of attorney. Any landowner or landowners entitled to vote may vote through an agent or proxy authorized to cast votes by a power of attorney signed and acknowledged by the landowner or landowners and filed before the vote is cast in the auditor's office of the county where the election is held. Every power of attorney shall specify the particular election for which it is used, indicating the day, month, and year of the election, and is void for all subsequent elections. If a landowner chooses to vote by proxy, the power of attorney shall be postmarked and sent or delivered to the address designated by the election board at least five days before the election.

Source: SL 1997, ch 256, § 8.

46A-10A-106. Superintendent's responsibilities--Manner and purpose of elections. At the opening of the meeting, the superintendent shall state the purpose of the meeting and the manner in which the elections will be conducted. The first election conducted shall be to determine whether a board of three trustees should be elected to control and manage the district. This election shall be by secret ballot provided by the election board. If a majority of those voting approve of a board of trustees, then an election shall immediately be conducted to elect three trustees. An election conducted for trustees shall be preceded by verbal candidate nominations by those in attendance. Each voter shall be given a blank piece of paper to be used as a ballot to vote for as many trustees as are to be elected. The superintendent of the election shall instruct the voters as to how many votes may be cast on the ballot.

Source: SL 1997, ch 256, § 9.

46A-10A-107. Ballots and poll list--Ballot delivery. When the voters vote by ballot to determine whether to form a board of trustees or on the election of trustees, a poll list shall be kept by the clerk of the meeting, on which shall be entered the name of each person whose vote is received. The ballot shall be delivered by the voter to one of the clerks, so folded as to conceal its contents, and the clerk shall deposit the ballot in a box provided for that purpose.

Source: SL 1997, ch 256, § 10.

46A-10A-108. Vote count--Determination of election results--Election materials to be retained for sixty days. At the close of the election, the clerks shall proceed publicly to count the votes, which, when commenced, shall continue without adjournment or interruption until the count is completed. The count shall be conducted by taking one ballot at a time from the ballot box and counting until the number of ballots is equal to the number of names on the poll list, and if there are any left in the box, they shall be marked as extra ballots and not counted. The person having the highest number of votes for trustee shall be declared duly elected. If two or more persons have an equal number of votes for trustee, the clerks of election shall at once publicly, by lot, determine which of such persons shall be declared elected. If on opening the ballot, two or more ballots are found to be so folded that it is apparent the same person voted them, such ballots shall be marked as such and not counted. The count having been completed, a statement of the result shall be entered at length by the clerk in the minutes and publicly read by the clerk to the members attending the meeting. Such reading shall be deemed official notice of the result of the election. All ballots, pool lists, power of attorney forms, and other election materials shall be kept for sixty days by the election superintendent in a manner which guarantees their safety and integrity.

Source: SL 1997, ch 256, § 11.

46A-10A-109. Results of election to determine length of term. The results from the initial election for trustees shall determine the length of term each trustee shall hold. The candidate with the most votes shall be elected for a three-year term, the candidate with the second highest vote total shall be elected for a two-year term and the candidate with the third highest vote total shall be elected for a one-year term. The term of office for a trustee elected at a succeeding election shall be three years or until the trustee's successor has qualified.

Source: SL 1997, ch 256, § 12.

46A-10A-110. Trustees to appoint superintendent and clerks for subsequent election board--Determination of compensation of election board. After the first election of trustees, the trustees shall appoint a superintendent and two clerks to act as an election board in succeeding elections. The board of trustees may determine the amount of compensation for the election board for the services performed by them.

Source: SL 1997, ch 256, § 13.

46A-10A-111. Succeeding annual trustee elections. Succeeding annual trustee elections shall be held at 8:00 p.m. on the last Tuesday of the month in which the initial trustee election was conducted. The date and time of the election may be changed to another date and time within that month upon majority vote of those present at a prior annual election meeting. The election board appointed for succeeding annual elections shall publish a notice of election for the annual election of a trustee or trustees pursuant to the procedures set forth in § 46A-10A-101. The election board shall also mail a copy of the notice of election to each landowner and notify the landowner of the landowner's right to vote by proxy at least fourteen days prior to the date of election.

Source: SL 1997, ch 256, § 14.

46A-10A-112. Trustee qualifications. Each trustee shall be a citizen of the United States, not less than eighteen years of age, and an owner of land in the district.

Source: SL 1997, ch 256, § 15.

46A-10A-113. Appointment to fill vacancy. If any vacancy occurs in the membership of the board of trustees between the annual elections, the remaining members of the board may fill the vacancy by appointing a person with the required qualifications. The appointed person shall qualify in the same manner and hold office

until the next annual election when a successor is elected. If all places on the board become vacant, then a new board shall be elected in the same manner as was the initial board.

Source: SL 1997, ch 256, § 16.

46A-10A-114. Compensation of trustees and clerk of board--Filing requirements. The compensation of the trustees and the clerk of the board shall be fixed at twenty-five dollars per day and necessary expenses, to be paid out of the funds of the drainage district for each day necessarily expended in the transaction of business of the district, but no person may draw compensation for services as a trustee and as a clerk at the same time. Each trustee shall file with the auditor itemized, verified statements of the time devoted to the business of the district, and of the expenses incurred.

Source: SL 1997, ch 256, § 17.

46A-10A-115. Election of chair and clerk of board. The board of trustees shall elect a chair and shall select some other landowner of the district as clerk of the board. The clerk shall serve at the pleasure of the board of trustees.

Source: SL 1997, ch 256, § 18.

46A-10A-116. Powers and duties of board of trustees. The board of trustees may control, supervise, and manage the district. Subject to the legal controls for drainage management under § 46A-10A-20, the board of trustees may, in conformity with any applicable local, state, and federal laws, rules, ordinances, and regulations:

- (1) Clean out, repair, and maintain an existing drainage ditch;
- (2) Deepen, widen, or enlarge a drainage ditch;
- (3) Create a new drainage ditch, or relocate an existing drainage ditch;
- (4) Extend an existing drainage ditch;
- (5) Acquire lands for right-of-way for ditches by purchase or condemnation or any other lawful method in conformity with chapter 21-35 and any other provision of state law;
- (6) Repair levies, dikes, and barriers for the purpose of drainage;
- (7) Regulate the flow and direction of water to prevent downstream flooding;
- (8) Employ or contract with an engineer, hydrologist, surveyor, appraiser, assessor, legal counsel, or any other specialists as they deem necessary to carry out the powers and duties conferred by §§ 46A-10A-98 to 46A-10A-123, inclusive;
- (9) Let contracts for construction, maintenance, repair, or other necessary work pursuant to the provisions of chapters 5-18A and 5-18B and § 46A-10A-75. No member of the board of trustees may have any interest in any contract or employment entered into pursuant to this subdivision or subdivision (8);
- (10) Request the county commission or township board of supervisors to replace, repair, remove, and enlarge public highway culverts and bridges, pursuant to §§ 46A-10A-76, 31-12-19, 31-14-2, and 31-14-27;
- (11) Grant a request by a landowner to annex the landowner's land to the district and apportion the costs of clean out, maintenance, or construction according to the benefits received and subject to approval by a majority of the eligible landowners voting in a special election held by the board of trustees in conjunction with the district's annual election; and
- (12) Reclassify benefits and apportion costs of clean out, extension, enlargement, repairs, or improvements among landowners benefitting therefrom, if the landowners have land located within the drainage district.

Source: SL 1997, ch 256, § 19; SL 2011, ch 2, § 151.

46A-10A-117. Costs and expenses--Levy. All costs and expenses to discharge the powers and duties by §§ 46A-10A-98 to 46A-10A-123, inclusive, including costs of elections, shall be assessed, levied, and collected under the provisions of chapter 46A-11. A levy shall be upon certificate by the board of trustees to the board of county commissioners of the amount necessary for the levy.

Source: SL 1997, ch 256, § 20.

46A-10A-118. Assessment on real property. Any assessment on real property for the purposes set forth in §§ 46A-10A-98 to 46A-10A-123, inclusive or chapter 46A-11 is not subject to any real property tax freeze assessment under the provisions of chapter 10-6 or 10-6A.

Source: SL 1997, ch 256, § 21.

46A-10A-119. Tax--Tax fund. The tax shall be collected by the county treasurer as other taxes are collected in the county. The tax shall be deposited and kept in a separate fund to the credit of the district. The money may be expended only upon the order of the board of trustees signed by the chair and clerk of the board. The chair and clerk of the board shall provide a surety bond in the amount of at least five thousand dollars.

Source: SL 1997, ch 256, § 22.

46A-10A-120. Issuance of improvement certificates and drainage bonds. The board of trustees of any district may issue improvement certificates and drainage bonds under the same conditions as is provided by chapter 46A-11 for issuance by the board of county commissioners, except that in case of the issue of drainage bonds, the bonds shall be approved by a simple majority of the eligible landowners voting in a special election held by the board of trustees in conjunction with the district's annual election. The approval shall be printed upon the bonds before they are negotiated.

Source: SL 1997, ch 256, § 23.

46A-10A-121. Record of official acts and proceedings--Filing of financial report--Examination of report. The board of trustees shall keep and maintain a written record of all their official acts and proceedings. The board of trustees shall, on or before January thirty-first of each year, file a financial report of the previous calendar year with the county auditor. When the Department of Legislative Audit examines other county records, it shall examine the financial report of the board of trustees of the drainage district.

Source: SL 1997, ch 256, § 24.

46A-10A-122. Grievances--Mediation. Any interested person aggrieved by any action taken by the board of trustees in §§ 46A-10A-98 to 46A-10A-123, inclusive, may file a cause of action in circuit court in the county where the cause of action arose or may invoke mediation with the board of trustees.

Source: SL 1997, ch 256, § 25.

46A-10A-123. Special election--Notice. Any decision of the board of trustees of a drainage district may be referred to a vote of the eligible voters of the district by the filing of a petition signed by at least five percent of the eligible voters of the district. The petition shall be filed with the district within ninety days following the district's action. Upon receipt of a valid petition, the district shall call a special election, which shall be held within sixty days. The district shall publish notice of the election in the official newspaper of the counties in which the district is located at least twenty days before the election is held. The election shall be conducted by the district in the same manner as the district's annual election is conducted.

Source: SL 1997, ch 256, § 27.
