

CHAPTER 46A-11

DRAINAGE ASSESSMENTS AND BONDS

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46A-11-1. Resolution establishing drainage project--Filing of certified copy with register of deeds--Contents--Recording and indexing--Constructive notice. If an intrastate drainage project is established under the provisions of this chapter or chapter 46A-10A, the auditor of the county wherein such drainage project or portion thereof is situated shall file in the office of the register of deeds of the county a certified copy of the resolution establishing the drainage project. The resolution shall contain a description of each lot, parcel, and tract of land situated within the drainage project and affected by proceedings establishing the project. The resolution shall be recorded and indexed against each lot, parcel, and tract of land described in the resolution. No recording fee may be charged and the recording shall constitute constructive notice of establishment of the drainage project, to all subsequent purchasers and encumbrancers of such premises.

Source: SDC 1939, § 61.1006; SDCL, § 46-21-1; SL 1985, ch 362, § 98.

46A-11-2. Apportionment of benefits of proposed drainage project by board of county commissioners--Equalization of benefits, notice, publication, and posting. After establishment of a project and fixing of damages, if any, the board shall determine the proportion of benefits of the proposed project among the lands affected and shall set a time and place for equalizing the benefits. The benefit determined for any tract of land shall be in the form of a ratio or percentage in comparison to the average tract of land found most likely to receive average benefit pursuant to § 46A-10A-61. Notice of equalization of benefits shall be by publication at least once a week for two consecutive weeks in a legal newspaper of the county, as designated by the board. The notice shall describe each tract of land affected by the proposed project and shall state the names of its owners as appear in the tax records in the county treasurer's office. The notice shall list the proportion of benefits fixed for each tract of property, taking each particular tract as a unit, and shall notify all such owners of the opportunity to show cause why the proportion of benefits should not be fixed as stated.

Source: SDC 1939, § 61.1007; SDCL, § 46-21-2; SL 1985, ch 362, § 99.

46A-11-3. Matters considered in fixing and equalizing benefits. Benefits which any county, municipality, township, railroad company, corporation, or other property owner may obtain for its property by construction of the project shall be fixed and equalized together with the proportion of benefits to tracts of land. Benefits shall accrue directly by construction of the project or indirectly by virtue of the project operating as an outlet for connection drains that may be subsequently constructed. Indirect benefits including those due to improved public welfare, may be assessed against any county or political subdivision affected as a whole, at the option of the board.

Source: SDC 1939, § 61.1007; SDCL, § 46-21-3; SL 1985, ch 362, § 100; SL 1992, ch 60, § 2.

46A-11-4. Hearing on equalization of benefits--Determination by board--Revision procedure. After a hearing on equalization of benefits, the board shall equalize and fix benefits, subject to revision, if necessary. If revision is necessary, notice and procedure shall be as required by § 46A-11-2 for equalization and fixing of

benefits. If any moneys have been paid under an abandoned or invalid proportion of benefits, that shall be considered and an equitable adjustment shall be made in the next assessment.

Source: SDC 1939, § 61.1007; SDCL, § 46-21-4; SL 1985, ch 362, § 101.

46A-11-5. Assessment by board--Cost of establishment. After equalization of benefits, the board may make an assessment against each tract and property affected, in proportion to the benefits as equalized, to pay damages and project costs incurred. Costs shall include expenses of the board, surveyors and assistants, plans and profiles, publication and filing, other fees, interest on bonds issued or to be issued, and all other expenses incurred that contribute to establishment or construction of the project.

Source: SDC 1939, § 61.1008; SDCL, § 46-21-5; SL 1985, ch 362, § 102.

46A-11-6. Assessment--Certified copy filed with county treasurer--Notice. Thirty days after an assessment is made, a copy certified by the county auditor shall be filed by him with the county treasurer. However, before it is filed, the board shall give notice of the time of filing, by publication at least once in each week for two consecutive weeks in an official newspaper in the county as designated by the board. The notice shall contain a description of the property assessed, the name of the owner as it appears in the assessment, the amount of each assessment, including the amount assessed against the county any municipality, township, or railroad company, and the date when the assessment will become delinquent, plus any penalty and the date from which interest will be charged.

Source: SDC 1939, § 61.1008; SL 1985, ch 362, § 103; SL 1992, ch 60, § 2.

46A-11-7. Assessment due and payable from time of filing of certified copy--Lien--Penalty and interest on delinquencies--Payment--Distribution. An assessment is due from the time a certified copy is filed in the treasurer's office. Perpetual liens shall attach against assessed tracts, except those owned by the state and the United States, and, if an assessment is not paid within thirty days, a penalty of five percent shall attach and the assessment shall bear interest from the date of the order of the assessment at the Category D rate of interest as established in § 54-3-16, payable annually. The assessment shall be paid to the county treasurer and remitted to the holders of assessment certificates upon order of the board.

Source: SDC 1939, § 61.1008; SDCL, § 46-21-7; SL 1983, ch 28, § 58; SL 1984, ch 319, § 29; SL 1985, ch 362, § 104.

46A-11-8. Assessment certificates--Issuance--Form and contents--Rights of holder--Enforcement. A board may issue separate assessment certificates against each tract assessed for the amount of its assessment and may sell them at not less than par value with accrued interest or may contract to pay for construction of the project with assessment certificates or with warrants. Any assessment certificate shall refer to the record, in the office of the county auditor, of the order of assessment and the copy in the county treasurer's office, shall transfer to the holder all interest, claim, or right in the assessment, and shall bear the same rate of interest, carry a property lien and be enforceable as provided by law.

Source: SDC 1939, § 61.1008; SDCL, § 46-21-8; SL 1985, ch 362, § 105.

46A-11-9. Assessments for further costs of construction. After damages arising from establishment and construction of a project are paid and lands for the drainage are taken, assessments may be made for further costs of construction.

Source: SDC 1939, § 61.1011; SDCL, § 46-21-9; SL 1985, ch 362, § 106.

46A-11-10. Assessments as work progresses--One assessment sufficient where no damages are payable or damages have been paid with warrants. If no damages are required to be paid before taking lands for a project or if damages have been paid by proceeds from the sale of warrants, only one assessment need be made. However, the board may make several assessments as work progresses.

Source: SDC 1939, § 61.1011; SDCL, § 46-21-10; SL 1985, ch 362, § 107.

46A-11-11. Agreement of contractors to take assessment certificates or warrants for services--Assessment for entire balance of cost of construction--Lien of assessment--Enforcement--Sale of assessment certificates, purpose. If project contractors agree to take assessment certificates or warrants for their services, assessments need not be made until the completion of the work. At that time an assessment shall be made for the entire balance of cost of construction, including services of the board, surveyors and assistants, plans and profiles, publication and filing, other fees, interest on bonds, and all expenses that contribute to establishment and construction of the project. Notice of the assessment shall be given by the board in the same manner as required for any other assessment under this chapter. Such assessment and any certificates issued thereon shall provide perpetual liens upon tracts assessed, shall be interest-bearing, and shall be enforceable in the same manner as any other assessment and certificates. The board may sell such assessment certificates at not less than par value to raise funds to defray the cost of project establishment and construction.

Source: SDC 1939, § 61.1011; SL 1985, ch 362, § 108.

46A-11-12. Assessments paid to county treasurer--Distribution. Assessments shall be paid to the county treasurer and assessment proceeds shall be remitted to the holders of assessment certificates upon order of the board for the particular project.

Source: SDC 1939, § 61.1011; SDCL, § 46-21-12; SL 1985, ch 362, § 109.

46A-11-13. Assessments for drainage, payment in installments--Agreement of taxpayer with county auditor--Assessment certificates, coupon form. Any owner of any tract of land against which an assessment for drainage is made who, within thirty days after the making of the assessment, files with the county auditor an agreement in writing that he will pay the assessment with interest as fixed by the board shall be allowed to pay the assessment in ten annual installments with interest payable annually. Assessment certificates may not issue until after expiration of the period for filing such agreements and, if issued as payable in installments, may be issued in coupon form.

Source: SDC 1939, § 61.1015; SDCL, § 46-21-13; SL 1985, ch 362, § 110.

46A-11-14. Assessments for drainage, payment in installments--Time installments due--Penalty on delinquencies. The first installment under an agreement filed pursuant to § 46A-11-13 shall be payable within ten days after a certified copy of the assessment has been filed in the office of the county treasurer. Subsequent installments shall be payable each year for one to nine years from the date of an assessment, with interest on the entire amount unpaid payable annually at maturity of each installment. Subsequent installments shall become delinquent after expiration of thirty days from the time they are payable and a penalty of five percent shall attach. If, however, bonds have been issued for construction of the project, as provided in this chapter, assessments shall be payable in installments sufficient to meet payments on the bonds.

Source: SDC 1939, § 61.1015; SDCL, § 46-21-14; SL 1985, ch 362, § 111.

46A-11-15. Discharge of assessments for drainage--Land not discharged until bond issue paid. Assessments may be paid in full at any time and full discharge given by the county treasurer to any landowner. However, if bonds have been issued, a payment of assessment may not operate as a discharge of the land from its liability in favor of the bonds until the entire principal and interest have been fully paid.

Source: SDC 1939, § 61.1015; SDCL, § 46-21-15; SL 1985, ch 362, § 112.

46A-11-16. Assessments of school and public lands for construction of drainage project--Certification by county auditor--Payment. Any assessment against lands described in § 46A-10A-56 for construction of a drainage project shall be certified by the county auditor of the county in which the project is located to the board or officer having charge of the lands. If sufficient funds are under control of the officer or board from which payment of the assessment can be made, it shall be made. If sufficient funds are not available, the officer or board shall approve the assessment and certify it to the state auditor, who shall pay the assessment from money available for that purpose. If no money is available, the state auditor shall request the Legislature to provide an appropriation for payment of the assessment. The payment shall be made to the treasurer of the county in which the lands are located. No penalty other than interest may attach to any such land after an assessment becomes delinquent and the land may not be sold to enforce delinquent assessments.

Source: SDC 1939, § 61.1201; SDCL § 46-21-16; SL 1985, ch 362, § 113; SL 2011, ch 165, § 503.

46A-11-17. Assessments for drainage against municipalities--Tax levy by municipal officials--Enforcement and collection. If an assessment for drainage or installment has been made against any county, municipality, or township, the officers of the unit of government whose duty it is to levy taxes shall at the next annual tax levy make a levy for drainage purposes in an amount necessary to pay the assessment and remit it to the proper officers as provided for other taxes. The levy and tax shall be enforced and collected in all respects as are other taxes.

Source: SDC 1939, § 61.1008; SDCL, § 46-21-17; SL 1985, ch 362, § 114; SL 1992, ch 60, § 2.

46A-11-18. Payment of drainage assessments against townships--Unorganized townships. Any surplus remaining in any fund at the close of a fiscal year may be used by a township to pay and apply toward any drainage assessment. In unorganized townships, the board may pay for drainage from any money of the unorganized township. Each succeeding year a like levy shall be made by local officials until the entire assessment is paid.

Source: SDC 1939, § 61.1008; SDCL, § 46-21-18; SL 1985, ch 362, § 115.

46A-11-19. Assessments for drainage--Enforcement by county treasurer, sale of property. Assessments for drainage or installments shall be enforced by the county treasurer by sale of property at an annual tax sale. However, no late assessment or installment may be included in the sale for any year unless it was delinquent on or before August first of that year. Any provisions of law relating to collection of general taxes, redemption from taxes, and issuance of tax deeds shall apply to enforcement of a lien or drainage assessment if applicable, except that a treasurer's deed issued upon a delinquent drainage assessment shall state that the title is subject to claims which the state or any political subdivision may have against the title for annual taxes.

Source: SDC 1939, § 61.1008; SDCL, § 46-21-19; SL 1985, ch 362, § 116.

46A-11-20. Assessments upon land in other counties--Payment to treasurer of county in charge of drainage--Delinquent assessments. Any assessment made by a board upon land in another county shall be paid to the county treasurer of the county having charge of the project. If the assessment becomes delinquent, the treasurer of the county having charge of the project shall certify the amount delinquent on any separate tract of land outside of the county to the treasurer of the county in which the land is situated. That treasurer shall collect the assessment as provided by this chapter and shall remit the collections to the treasurer of the county having charge of the project within thirty days.

Source: SDC 1939, § 61.1036; SDCL § 46-21-20; SL 1985, ch 362, § 117; SL 2011, ch 165, § 504.

46A-11-21. Repealed by SL 1985, ch 362, § 118

46A-11-22. Cancellation of installments of assessment--Reassessment with further assessments--Issuance of bonds--Consideration of payments by landowner on account of previous assessments or penalties accrued for nonpayment. Installments of any assessment which has been made under the provisions of this chapter, including those past due, if no delinquent assessments have been sold and no bonds issued, at the discretion of the board may be canceled and reassessed separately or together with any further assessment. However, the reassessment, in lieu of unpaid installments, shall be in the same amount as the canceled installments. The board may issue bonds to be paid from funds obtained by such new assessment in accordance with the provisions of this chapter. If any assessment is canceled for purpose of reassessment, either singly or in conjunction with other assessments, consideration shall be given to payments made on account of previous assessments and to penalties or interest accrued on account of nonpayment or delinquency in payment of any previous assessment and such amounts shall be deducted from or added to the final assessments in the amounts paid or accrued.

Source: SDC 1939, § 61.1016; SDCL, § 46-21-22; SL 1985, ch 362, § 119.

46A-11-23. Levy of costs over several years--Fixing annual levy--Bond issue--Terms of bonds. If the board determines that the estimated cost of a proposed project is greater than should be levied in a single year upon the lands benefited, it may fix the amount to be levied and collected each year and by resolution provide for issuance of bonds in an amount not to exceed the amount of unpaid assessment. The bonds shall bear interest payable annually or semiannually and shall mature in proportions and at times as assessments have been collected, not exceeding twenty years from issue.

Source: SDC 1939, § 61.1024; SDCL, § 46-21-23; SL 1983, ch 28, § 60; SL 1985, ch 362, § 120.

46A-11-24. Drainage bonds--Execution--Purpose of issue--Negotiation--Recital--Charge against lands. Bonds issued pursuant to § 46A-11-23 shall be signed by the chairman of the board and the auditor, shall be issued for the benefit of the particular drainage district, and shall be numbered, recorded, and indexed in the office of the county auditor. The board shall negotiate the bonds at not less than their par value and the proceeds and any premium received on the bonds shall be credited to the fund of the particular drainage project. The bonds shall state that they are issued pursuant to this chapter and that they are to be paid out of funds to be obtained as provided in this chapter. The bonds shall be a charge against the lands for which benefit the bonds are issued until the principal and interest thereon have been fully paid.

Source: SDC 1939, § 61.1024; SDCL, § 46-21-24; SL 1985, ch 362, § 121.

46A-11-25. Drainage bonds--County not liable for payment--Payment from assessments. No county may be liable for payment of any bonds issued under this chapter. The bonds shall be paid from funds derived from assessments under this chapter.

Source: SDC 1939, § 61.1024; SDCL, § 46-21-25; SL 1985, ch 362, § 122.

46A-11-26. Assessments payable to treasurer of county in which assessed land is situated--Issuance of bonds by joint action of boards--Laws governing. Assessments are payable to the treasurer of the county in which assessed land is situated. Bonds may be issued by jointly acting boards and payable from assessments for the project. The bonds shall be signed by the chairman of each board, countersigned by the auditor of each county and may be issued for any portion of the expenses of the project. The terms, issue, collection of assessments, and all other procedure shall be the same as for a project located entirely within one county and any assessments and certificates shall be a lien and enforceable as for a single county project.

Source: SDC 1939, § 61.1036; SDCL, § 46-21-26; SL 1985, ch 362, § 123.

46A-11-27. Additional bonds, issuance--Cost of proposed drainage exceeding estimated cost--New apportionment of assessments--Certification of assessments finally fixed to county treasurer--Money collected by county treasurer on assessments to be paid to bondholders. If the cost of a proposed project exceeds the preconstruction estimate, a new apportionment of assessments may be made and additional bonds issued and sold in like manner. If the proceeds of the assessments are insufficient to pay the principal and interest of bonds sold pursuant to this chapter, a new apportionment of assessment may be made to meet the shortage in funding. If assessments for a drainage project are finally fixed, they shall be certified to the county treasurer by the county auditor and money collected shall be received by the county treasurer to be paid to holders of bonds as the principal and interest become due.

Source: SDC 1939, § 61.1024; SDCL, § 46-21-27; SL 1985, ch 362, § 124.

46A-11-28. Separate accounts for drainage projects. Separate accounts shall be kept by the treasurer for each drainage project and no funds for one drainage project may be applied to any other project.

Source: SDC 1939, § 61.1024; SDCL, § 46-21-28; SL 1985, ch 362, § 125.

46A-11-29. Unpaid installments of assessments for drainage--Extension by board of county commissioners--Drainage refunding bonds authorized. The board of any county having outstanding drainage bonds issued under the provisions of this chapter may extend unpaid installments of assessments for such project and issue and sell drainage refunding bonds as provided in §§ 46A-11-30 to 46A-11-34, inclusive.

Source: SDC 1939, § 61.1017; SDCL, § 46-21-29; SL 1985, ch 362, § 126.

46A-11-30. Petition for extension of unpaid installments for drainage--Number of signatures required--Identification of drain--Contents--Hearing, publication of notice. If there is filed with the county auditor a petition signed by owners of not less than fifty-one percent of the real property assessed for a project, which petition identifies the project and states that owners of land assessed for the project have defaulted in payment of one or more installments of assessments, that landowners are unable to pay installments falling due during the current year, or any other facts showing a necessity for an extension, the county auditor shall set the matter for hearing before the board at any regular or special meeting. The auditor shall publish notice of the hearing in a legal newspaper of the county at least once a week for at least two successive weeks prior to the hearing. The notice shall acknowledge filing of the petition, shall identify the project, and shall state the purpose, time, and place of the hearing.

Source: SDC 1939, § 61.1018; SDCL, § 46-21-30; SL 1985, ch 362, § 127.

46A-11-31. Petition for extension of unpaid installments for drainage--Consideration by board of county commissioners--Adjournment of hearing--Order of board. At the time and place specified in a notice under § 46A-11-30, the board shall consider the petition. If the board determines that the petition is proper and required notice has been given, it has jurisdiction to hear and decide the matter. The board may adjourn the hearing from time to time. If the board determines that the facts stated in the petition are accurate, that an extension of time of payment of unpaid installments is necessary in order to prevent default in payment of a majority of assessments, and that the owners of property assessed for the project will benefit by an extension of unpaid installments, it may order that all or any portion of unpaid installments shall be extended for a period as it determines, not exceeding fifteen years from the date of the order. Interest on extended assessments is payable annually at the time provided in the original assessment.

Source: SDC 1939, § 61.1019; SDCL, § 46-21-31; SL 1985, ch 362, § 128.

46A-11-32. Appeal from order extending time for payment of unpaid installments--Determination--Waiver of matter not included in appeal. Any person aggrieved by an order issued under § 46A-11-31 may appeal the

order to the circuit court for the county within the time and in the manner provided by this chapter and chapter 46A-10A. On appeal, the right, power, and authority of the board to make the order and the necessity therefor may be heard. Any matter not included in the appeal is deemed waived.

Source: SDC 1939, § 61.1020; SDCL, § 46-21-32; SL 1985, ch 362, § 129.

46A-11-33. Refunding outstanding evidences of indebtedness--Sale and exchange--Laws governing. If a board issues an order extending the time for payment of installments of assessments, or if all assessments not extended have been collected or become delinquent, the board may refund outstanding bonds, warrants, or certificates on account of any project, which may then be due or nearly due or which may be refunded at a lower rate of interest, and may issue and sell drainage refunding bonds of the county. The bonds may be sold at par value or may be exchanged for outstanding obligations of the district. Except as otherwise stated, the provisions of this chapter apply to issuance, sale, and payment of the bonds.

Source: SDC 1939, § 61.1021; SDCL, § 46-21-33; SL 1985, ch 362, § 130.

46A-11-34. Determination of amount required to pay principal and interest on outstanding bonds by board of county commissioners--Time for making--New apportionment of assessment against lands, collection. Not later than its October meeting each year, the board shall calculate the funding required during the ensuing year to pay principal and interest on outstanding bonds on account of any projects for which assessments have been extended and the funding realized from assessments levied on real property not then in default in payment of taxes or assessments. If the board determines that the funding will not be sufficient to pay interest and principal, the board shall make a new apportionment of assessment against lands charged with the cost of the project and the assessment shall be extended, collected, and paid in the same manner as other project assessments.

Source: SDC 1939, § 61.1022; SDCL, § 46-21-34; SL 1985, ch 362, § 131.

46A-11-35. Repealed by SL 1985, ch 362, § 132

46A-11-36. Drainage projects established under prior law--Assessments unenforceable--Appraisal and apportionment of benefits under this chapter. If proceedings have been held for establishment of a ditch, drain, levee, or straightening or enlarging of a natural watercourse under prior law, if the project has been established, constructed, and assessments made therefor, and if the assessment cannot be enforced, the board shall proceed to all lands benefited by the project in like manner as if the appraisal and apportionment of benefits had never been made. The board shall proceed in the manner provided in this chapter, using as a basis the entire cost of the project. In assessment of benefits, account shall be taken of assessments, if any, that have been paid by those benefited and credit shall be given accordingly.

Source: SDC 1939, § 61.1026; SDCL, § 46-21-36; SL 1985, ch 362, § 133.

46A-11-37. Abandonment and abolition of drainage--Assessments and liens not affected. Abandonment or abolishment of any drainage project and its works may not affect the obligation or validity of any assessments made against any of the lands involved or a lien for such assessments.

Source: SL 1939, ch 290, § 6; SDC Supp 1960, § 61.1052; SDCL, § 46-21-37; SL 1985, ch 362, § 134.

46A-11-38. Refunding excess assessments. The board shall refund, upon request, any excess assessment not used in construction of any project to any person, corporation, municipality, or township within a drainage project, in proportion to the amount paid.

Source: SDC 1939, § 61.1043; SDCL, § 46-21-38; SL 1985, ch 362, § 135; SL 1992, ch 60, § 2.
