

## CHAPTER 46A-13

## INTERSTATE DRAINAGE DISTRICTS

- [46A-13-1](#) Petition for formation of interstate drainage district--Filing with clerk of court--Landowner qualifications--Time and place for hearing--Notice.
- [46A-13-2](#) Petition for formation of interstate drainage district--Jurisdiction of circuit court--Hearing--Determination of boundaries of district--Designation of name.
- [46A-13-3](#) Powers of interstate drainage district--Public corporation--Suits by and against district.
- [46A-13-4](#) Governing commission of interstate drainage district--Number and selection of members.
- [46A-13-5](#) Governing commission of interstate drainage district--Qualifications of members--Term of office of commissioners--Vacancies on commission, filling.
- [46A-13-6](#) Commissioners of interstate drainage district--Oath of office, filing--Bond, filing, approval by board of county commissioners.
- [46A-13-7](#) Organization of commission--Time--Officers--Costs.
- [46A-13-8](#) Compensation of commissioners.
- [46A-13-9](#) Contract for joint action with adjoining state for drainage or flood control.
- [46A-13-10](#) Petition for improvement of interstate drainage project--Filing with commission, Contents--Jurisdiction--Joint survey--Appointment of engineers.
- [46A-13-11](#) Bond of petitioners requesting improvement of interstate drainage project--Sureties, approval by commission--Amount--Conditions.
- [46A-13-12](#) Survey and report of engineers--Time for completion and filing.
- [46A-13-13](#) Proposed improvement of interstate drainage project affecting water of United States--Use of government surveys or plans.
- [46A-13-14](#) Report of survey by engineers--Consideration by commission and officials of adjoining state--Joint plan for construction of improvement--Order to be record of commission.
- [46A-13-15](#) Commission of viewers--Appointment--Report.
- [46A-13-16](#) Estimation of total cost of construction of proposed improvement of interstate drainage project.
- [46A-13-17](#) Agreement of commission and representatives of adjoining state as to amount of costs to be borne by property within the respective states--Hearings.
- [46A-13-18](#) Determination by commission fixing proportion of cost payable by district--Finality.
- [46A-13-19](#) Joint plan for proposed improvement of interstate drainage project--Establishment--Determination of proportion of cost to be borne by respective states--Hearing on petition to construct.
- [46A-13-20](#) Hearing on proposed improvement of interstate drainage project--Notice, publication and posting, description of plan, summoning of interested persons.
- [46A-13-21](#) Hearing on proposed improvement of interstate drainage project--Appearance for or against.
- [46A-13-22](#) Adjournment of hearing on proposed improvement of interstate drainage project, purposes--Modification of joint plan, recording.
- [46A-13-23](#) Denial of petition for drainage improvement--Grounds--Liability of petitioners for costs of proceeding.
- [46A-13-24](#) Establishment of drainage improvement by commission--Grounds--Designation of name.
- [46A-13-25](#) Costs borne by state--Assessments--Warrants.
- [46A-13-26](#) Damages caused by construction of proposed improvement--Assessment, hearing, appeal.
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- [46A-13-27](#) Establishment of drainage improvement and determination of damages--Equalization of benefits.
- [46A-13-28](#) Assessments for portion of cost of construction of drainage improvement required to be paid by drainage district--Property subject to assessment.
- [46A-13-29](#) Bonds to raise money for portion of cost of construction of drainage improvement required to be paid by drainage district--Issuance and sale.
- [46A-13-30](#) Assessments for drainage purposes--Authority of commissioners of interstate drainage district.
- [46A-13-31](#) Special assessment order of commissioners of interstate drainage district--Certified copy filed with county treasurer--Lien of assessment--Collection and disbursement of assessments.

- [46A-13-32](#) Construction of drainage improvement--Provision for necessary funds--Letting of contract--Advertising for bids--Joint arrangements.
- [46A-13-33](#) Maintenance and repair of drainage improvement constructed by joint arrangement--Assessments.
- [46A-13-34](#) Absence of arrangement for joint action--Repair and maintenance treated as drainage improvement within state.
- [46A-13-35](#) Defects not affecting substantial rights disregarded in suit to avoid assessment or invalidate proceeding--Substantial defect--Rights of parties determined by court--Reassessment.
- [46A-13-36](#) Appeal from final determination of commission to circuit court--Manner and time of taking--Effect of taking.
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46A-13-1. Petition for formation of interstate drainage district--Filing with clerk of court--Landowner qualifications--Time and place for hearing--Notice. At least fifty affected South Dakota resident landowners, or the county commissioners of any affected county, may file a petition with the clerk of the circuit court for the affected county requesting the formation of a drainage district as provided in this chapter. The provisions of this section apply to any land bordering upon any body of water or stream forming the boundary line between this state and any other state, or any land included in a natural drainage basin along or extending across the boundary line of the state. For purposes of this section, an affected county is a county that lies within or partly within such territory, and an affected landowner is a South Dakota resident landowner who owns at least ten acres of such land as shown by the records of the register of deeds and clerk of courts of the county in which the land is situated. If the land is sold under a contract for deed, which is of record in the office of the register of deeds, both the landowner and the individual purchaser of the land, as named in the contract for deed, shall be treated as owners of the territory described in the petition.

Within ten days after the petition is filed, the court shall, by order, fix a time and place within the territory named in the petition for a hearing upon the petition. Notice of the hearing shall be published in at least one legal weekly newspaper published in each affected county, for two successive weeks, the last publication to be at least ten days before the day set for hearing.

**Source:** SDC 1939, § 61.1101; SL 1964, ch 222, § 1; SDCL § 46-23-1; SL 2011, ch 165, § 505.

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46A-13-2. Petition for formation of interstate drainage district--Jurisdiction of circuit court--Hearing--Determination of boundaries of district--Designation of name. Upon the filing of such petition and the giving of such notice, such circuit court shall have full jurisdiction of all matters referred to in such petition. Upon the hearing specified in such notice such court shall have full authority by order to fix and determine, and shall by order fix and determine the boundary line of such drainage district, either as designated in the petition or as subsequently modified, which shall as far as practicable include territory that forms one drainage basin and is affected by like or similar conditions, and that can properly be united in one drainage project for all the purposes of this chapter, and shall designate a name by which such district shall be known.

**Source:** SDC 1939, § 61.1101; SL 1964, ch 222, § 1; SDCL, § 46-23-2.

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46A-13-3. Powers of interstate drainage district--Public corporation--Suits by and against district. Such drainage district shall be and become a public corporation under the laws of this state and may sue and be sued and have and exercise the powers conferred by this chapter or any other provision of the laws of this state relating to drainage districts.

**Source:** SDC 1939, § 61.1101; SL 1964, ch 222, § 1; SDCL, § 46-23-3.

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46A-13-4. Governing commission of interstate drainage district--Number and selection of members. After the formation of the drainage district as prescribed in §§ 46A-13-1 to 46A-13-3, inclusive, a governing commission of three members shall be chosen as provided in this section. If the territory included within the district is within a single county, the governing board shall be chosen by the county commissioners of the county. If the territory included within the district lies within two counties, the governing board shall be chosen by the joint meeting and action of the boards of county commissioners of the counties. If the territory included

within the district lies within three or more counties, the governing board shall be chosen by the chairs of the boards of county commissioners of the counties meeting and acting jointly. The boards of county commissioners, or the chair of the boards, as the case may be, shall promptly meet and appoint the governing board of the district.

**Source:** SDC 1939, § 61.1102; SDCL § 46-23-4; SL 2011, ch 165, § 506.

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46A-13-5. Governing commission of interstate drainage district--Qualifications of members--Term of office of commissioners--Vacancies on commission, filling. Such governing board shall consist of three resident freeholders of this state, who shall be voters of the drainage district and who shall be known as the commissioners of such district. Such commissioners shall hold office for a period of two years from and after the date of their appointment and until their successors are appointed and qualified, and vacancies on such board shall be filled by appointment as in the first instance.

**Source:** SDC 1939, § 61.1102; SDCL, § 46-23-5.

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46A-13-6. Commissioners of interstate drainage district--Oath of office, filing--Bond, filing, approval by board of county commissioners. The commissioners of such drainage district shall take the oath and give the bond provided by law for members of the board of county commissioners, which oath and bond shall be filed with the county auditor of the county wherein the petition for the formation of the drainage district was filed, and such bond shall be subject to the approval of the board of county commissioners of such county.

**Source:** SDC 1939, § 61.1102; SDCL, § 46-23-6.

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46A-13-7. Organization of commission--Time--Officers--Costs. The commissioners shall, within ten days after their appointment, meet at some convenient place within the drainage district and elect one of their members as chair. They shall appoint the county auditor of one of the counties having territory included within the district clerk of the commission, whose duties are to keep and preserve the records of the commission in his or her office and to act generally as the clerical officer of the commission. Thereafter, the office of the county auditor is the office of the drainage commission. The board of county commissioners of the county shall provide additional help and facilities necessary for the auditor to act as clerk of the commission. The cost of the additional help and facilities shall be ascertained by the commission, and included as part of the cost of the drainage proceeding conducted by the commission, and shall be collected by the commission and repaid to the county. The filing of any petition, report, or document with the county auditor for all purposes of this chapter is deemed a filing with the commission.

**Source:** SDC 1939, § 61.1104; SDCL § 46-23-7; SL 2011, ch 165, § 507.

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46A-13-8. Compensation of commissioners. The commissioners of such drainage district shall be paid the sum of seven dollars per day for each day actually and necessarily spent in performing the duties of their office and in addition their actual expenses incurred in performing such duties.

**Source:** SDC 1939, § 61.1102; SDCL, § 46-23-8.

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46A-13-9. Contract for joint action with adjoining state for drainage or flood control. The commissioners of a drainage district formed pursuant to this chapter may, if necessary or expedient to carry out the purposes of this chapter, enter into a contract or agreement with the court, board, or tribunal of an adjoining state having authority relative to drainage matters in that state, including the right to raise, lower, or fix the stage of water in boundary waters, or with the United States government under its authorized authority. The contract or agreement shall be for joint action with the adjoining state for drainage or flood control measures that cause benefits or damages to, or otherwise affect, property in this state and the adjoining state. The provisions of this section apply to any lake, pond, or other body of water, or any river, stream, or watercourse that forms to any extent a

boundary line between this state and any other state, and to any land included within a natural drainage basin lying along or extending across the boundary line of the state. The contract or agreement may be for the following purposes:

- (1) To facilitate drainage into or from, or to control to any extent flood waters into, through, or from any such lake, pond, body of water, river, stream, or watercourse, or into or from any such land;
- (2) For purposes of flood control, to raise, lower, or otherwise affect the stage or depth of water;
- (3) For the joint establishment and construction of all necessary ditches, drains, canals, dikes, levees, dams, locks, spillways, or other structures necessary to provide a proper watercourse;
- (4) For deepening, widening, and straightening of the channels of any river, stream, or watercourse;
- (5) For controlling by dikes or levees the flow of water in a manner necessary to effectuate the provisions of this chapter; and
- (6) For securing and providing the necessary drainage facilities and control of flood waters into, through, and from the boundary waters and the rivers, streams, or ditches connected with the boundary waters and for properly draining any natural drainage basin.

In order to implement the contract or agreement the commissioners may determine the damages and benefits that may result to property located within the drainage district, and may provide funds to implement the contract or agreement by special assessment upon the property benefited according to the benefits received, as provided in this chapter.

**Source:** SDC 1939, § 61.1103; SDCL § 46-23-9; SL 2011, ch 165, § 508.

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46A-13-10. Petition for improvement of interstate drainage project--Filing with commission, Contents--Jurisdiction--Joint survey--Appointment of engineers. At least twenty-five South Dakota resident owners of not less than ten acres of land each within an interstate drainage district formed pursuant to this chapter, or the governing body of any county or municipality located within the district that is likely to be affected by a proposed improvement, may file a petition with the district commission setting forth the necessity for an improvement to be constructed by joint arrangement and cooperation with the authorities of another state. The petition shall include a general description of the proposed improvement. If the proposed improvement involves a ditch or watercourse, the petition shall describe the starting point, the general route, and terminus, together with a description of the territory likely to be affected. If the improvement involves the raising, lowering, or impounding of water in any body of water or stream, the petition shall include a description of the body of water or watercourse and the proposed changes to be made, and shall state the purpose for the changes and a description of the land likely to be affected by the changes. The petition shall request the construction of any of the drainage or flood control improvements referred to in this chapter.

The district commission has jurisdiction over all matters referred to in the petition in the counties named within the limits of the district. In addition, the commission may make joint contracts or agreements with the court, tribunal, or other body in the adjoining state, having authority relative to drainage and control of flood waters, for the appointment of one or more engineers to secure a joint survey of the territory affected by the proposed improvement. The joint survey shall be for purposes of considering the adoption of a joint plan for cooperation in supplying the necessary drainage of lands affected by the improvement, and impounding and controlling flood waters in and the outlet from the affected lands. In selecting the engineers, preference shall be given to state engineers or engineers in charge of state drainage in the respective states.

For purposes of this section, status as a resident owner of land within an interstate drainage district is as shown by the records in the offices of the register of deeds and the clerk of courts of the county in which the land is situated. If the land is sold under contract for deed, which is of record in the office of the register of deeds of the county, both the landowner and the individual purchaser of the land, as named in the contract for deed, shall be treated as owners.

**Source:** SDC 1939, § 61.1105; SL 1964, ch 222, § 2; SDCL § 46-23-10; SL 2011, ch 165, § 509.

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46A-13-11. Bond of petitioners requesting improvement of interstate drainage project--Sureties, approval by commission--Amount--Conditions. Before acting upon the petition for such improvements, such interstate drainage district commission shall require the petitioners to furnish a bond with proper sureties to be approved

by such commission in such sum as it may designate, to secure the payment of all expenses which may be incurred in such proceeding in the event that such improvement be not ordered constructed by such commission.

**Source:** SDC 1939, § 61.1105; SL 1964, ch 222, § 2; SDCL, § 46-23-11.

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46A-13-12. Survey and report of engineers--Time for completion and filing. The interstate drainage district commission and the authorities representing drainage in the adjoining state may make all necessary orders and regulations relative to the making of the survey and report of the engineers appointed under § 46A-13-10 and may specify all information required in such report and the time within which the report shall be completed and filed with the commission and with the authorities in the adjoining state.

**Source:** SDC 1939, § 61.1105; SL 1964, ch 222, § 2; SDCL § 46-23-12; SL 2011, ch 165, § 510.

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46A-13-13. Proposed improvement of interstate drainage project affecting water of United States--Use of government surveys or plans. In the event the proposed improvement affects a navigable stream or body of water, and as such is under the control of the United States government, any surveys or plans for improvements made and furnished by the United States government engineers which may be submitted may be used for the purpose of securing and adopting a joint plan.

**Source:** SDC 1939, § 61.1105; SL 1964, ch 222, § 2; SDCL, § 46-23-13.

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46A-13-14. Report of survey by engineers--Consideration by commission and officials of adjoining state--Joint plan for construction of improvement--Order to be record of commission. Upon the filing of the report of the engineers appointed to make the joint survey, which in all instances shall be made at the earliest possible date, the interstate drainage district commission, together with the representatives of the adjoining state or states, shall consider the report with the view of providing a joint plan for the construction of the proposed improvement. After full consideration of the report and all information obtainable about the matters included in the report and the proposed improvement, the commission may arrange for a joint plan with the authorities or representatives of the other state or states, and adopt the joint plan for the construction of the proposed improvement, if the commission determines that the plan is practicable and for the best interests of the district. The order of the commission determining the joint plan, together with a copy of the plan, shall be made a record of the commission.

**Source:** SDC 1939, § 61.1106; SDCL § 46-23-14; SL 2011, ch 165, § 511.

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46A-13-15. Commission of viewers--Appointment--Report. Upon the adoption of the joint plan, the interstate drainage district commission, together with the representatives of any adjoining state, may appoint a commission of viewers consisting of three disinterested persons, at least one of whom shall be a citizen of this state, who may examine in detail the full improvement proposed and all property affected by the proposed improvement. The commission of viewers shall report of its findings, as the commission of the drainage district and the representatives of any adjoining state require, relative to all benefits and damages that will result from the improvement. The report shall address benefits and damages from the improvement affecting highways, railway companies, and municipal corporations, and shall include a description of each piece of property and the name of each company or corporation affected by the improvement. The report shall give the amounts of benefits and damages that may result to the property or corporations from the construction of the improvement, together with the estimated cost of the improvement including all damages and expenses connected with the improvement, and the aggregate amount of benefits that will result from the improvement.

**Source:** SDC 1939, § 61.1107; SDCL § 46-23-15; SL 2011, ch 165, § 512.

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46A-13-16. Estimation of total cost of construction of proposed improvement of interstate drainage project. In estimating the probable total cost of the construction of such improvement, all damages resulting therefrom

and all expenses and fees attending the same, including counsel fees, except the expenses of the representatives of the various states, may be included.

**Source:** SDC 1939, § 61.1107; SDCL, § 46-23-16.

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46A-13-17. Agreement of commission and representatives of adjoining state as to amount of costs to be borne by property within the respective states--Hearings. Upon the filing of a copy of the viewers' report with the commission of the drainage district, the commission and the proper representatives of any adjoining state shall agree upon the proportionate amount of the cost of the improvement that shall be borne by the property located within the respective states, which shall be according to the benefits received. For the purpose of arriving at the determination of costs and benefits, the commission, with or without the representatives of any adjoining state, may hold hearings. From all the information obtained from the report of the viewers and from the hearings, the commission shall arrive at and agree with the representatives of any adjoining state upon the proportionate amount of the cost of the improvement to be borne by the property located within the drainage district, and shall enter the determination of record.

**Source:** SDC 1939, § 61.1107; SDCL § 46-23-17; SL 2011, ch 165, § 513.

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46A-13-18. Determination by commission fixing proportion of cost payable by district--Finality. The determination so made by the drainage commission fixing the proportion of the cost of the proposed improvement that shall be paid by such drainage district shall be final and conclusive on all persons and property within such district in case the improvement is constructed.

**Source:** SDC 1939, § 61.1107; SDCL, § 46-23-18.

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46A-13-19. Joint plan for proposed improvement of interstate drainage project--Establishment--Determination of proportion of cost to be borne by respective states--Hearing on petition to construct. After the establishment of the joint plan and the determination of the proportion of cost which shall be borne by the respective states, the drainage commission shall fix a time and place within the district for the hearing of the petition to construct such improvement according to the joint plan as adopted and with the cost to be divided and apportioned as determined.

**Source:** SDC 1939, § 61.1108; SDCL, § 46-23-19.

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46A-13-20. Hearing on proposed improvement of interstate drainage project--Notice, publication and posting, description of plan, summoning of interested persons. Notice of such hearing shall be given by publication for two consecutive issues in a legal weekly newspaper of each county affected by the proposed improvement, and by posting copies of such notice in at least three public places near the route of the proposed drainage within the drainage district. Such notice shall describe the location and plan of the proposed drainage improvement and the tract of country likely to be affected thereby in general terms, the separate tracts of land, if any, through which the proposed improvement will pass or be located, and give the names of the owners thereof as appears from the records of the office of the register of deeds at the date of the filing of the petition, and shall refer to the files in the proceedings for further particulars. Such notice shall summon and require all persons affected by the proposed improvement to appear at such hearing and show cause why such improvement should not be established and constructed, and shall summon all persons deeming themselves damaged by the proposed drainage or claiming compensation for the lands proposed to be taken or damaged by such improvement to present their claims therefor at such hearing.

**Source:** SDC 1939, § 61.1108; SDCL, § 46-23-20.

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46A-13-21. Hearing on proposed improvement of interstate drainage project--Appearance for or against. At such hearing any person interested may appear for or in opposition to the statements of the petition and matters

set forth in the engineers' and viewers' reports and findings and agreement of the drainage commission with the representatives of the other state or states for a joint plan and for proportioning the cost of such improvement.

**Source:** SDC 1939, § 61.1109; SDCL, § 46-23-21.

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46A-13-22. Adjournment of hearing on proposed improvement of interstate drainage project, purposes-- Modification of joint plan, recording. Such drainage commission may in its discretion adjourn such hearing for the purpose of conferring with the representatives of the other state or states relative to modifying the joint plan, or relative to modifying the findings as to the proportion of the cost to be borne by each state. If such modification is made, the same shall be entered of record as in case of the original order therefor.

**Source:** SDC 1939, § 61.1109; SDCL, § 46-23-22.

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46A-13-23. Denial of petition for drainage improvement--Grounds--Liability of petitioners for costs of proceeding. If the drainage commission has fully heard and considered the petition and the joint plan as adopted or modified, the report of the engineers and viewers, and the determination as to the proportion of cost to be borne by this state, and if the commission finds the proposed drainage improvement not conducive to the public health, convenience, or welfare, or not needed or practicable for the purpose of draining agricultural lands, or that the proportion of the cost of the proposed improvement to be borne by this state will be greater than the benefits conferred, the commission shall deny the petition for the drainage improvement. The petitioners are jointly and severally liable for the cost and expenses of the proceeding thus far made and incurred by the drainage commission, and the costs and expenses may be recovered in a civil action.

**Source:** SDC 1939, § 61.1109; SDCL § 46-23-23; SL 2011, ch 165, § 514.

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46A-13-24. Establishment of drainage improvement by commission--Grounds--Designation of name. If the drainage commission finds the drainage improvement proposed and finally agreed upon with the representatives of the other state or states conducive to the public health, convenience, or welfare, or necessary or practicable for draining agricultural lands, and that the cost thereof apportioned to be paid by this state does not exceed the benefits conferred, it shall establish such drainage improvement and give the same a name so far as the same shall be within the limits of this state.

**Source:** SDC 1939, § 61.1109; SDCL, § 46-23-24.

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46A-13-25. Costs borne by state--Assessments--Warrants. The cost of services and expenses of the drainage commission, all fees, costs and expenses relating to the procedure for assessing damages, costs of the equalization of benefits and costs of making assessments and issuance of warrants or bonds shall be added to the proportionate cost of construction of improvements borne by the state. It is intended that each state shall bear the expenses of its own representative or tribunal in making joint drainage improvement. All other costs and expenses of the procedure in making an improvement shall be borne jointly by the states according to the proportion of benefits theretofore determined. The commission may make one or more assessments for the purpose of raising money, or it may, in advance of making assessments, issue warrants payable only from assessments to be thereafter made. The warrants shall bear interest at a rate to be negotiated by the parties and may not be sold at less than their face value.

**Source:** SDC 1939, § 61.1111; SDCL, § 46-23-25; SL 1983, ch 28, § 61.

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46A-13-26. Damages caused by construction of proposed improvement--Assessment, hearing, appeal. The drainage commission shall also assess the damages sustained by each tract of land or other property within this state by the construction of the proposed improvement, and fix the compensation for any land or property taken or damaged. Any person interested may be heard in the matter of damages or compensation for property taken or damaged, and the determination of the drainage commission shall be final unless an appeal therefrom shall be

taken as provided in this chapter, and failure to prosecute such appeal or to appear and contest an award of damages by the commission shall be conclusively deemed a waiver of any such damages or compensation, or of any claimant's right to have the same assessed by a jury.

**Source:** SDC 1939, § 61.1109; SDCL, § 46-23-26.

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46A-13-27. Establishment of drainage improvement and determination of damages--Equalization of benefits. After the establishment of the drainage improvement and the determination of the damages, if any, the drainage commission shall fix the proportion of benefits of the proposed drainage among the lands or municipal corporations affected and equalize the same in like manner and after like notice as provided for the equalization of benefits in drainage matters by boards of county commissioners.

**Source:** SDC 1939, § 61.1110; SDCL, § 46-23-27.

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46A-13-28. Assessments for portion of cost of construction of drainage improvement required to be paid by drainage district--Property subject to assessment. After the establishment of the drainage improvement and the determination of the damages and the fixing of the proportion of benefits by the drainage commission, such commission shall proceed to raise the money with which to pay the portion of the cost of the construction of such improvement required to be paid by such drainage district. Such money shall be raised by an assessment to be made by such commission against each tract and property affected by the improvement within the district in proportion to the benefits fixed.

**Source:** SDC 1939, § 61.1111; SDCL, § 46-23-28.

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46A-13-29. Bonds to raise money for portion of cost of construction of drainage improvement required to be paid by drainage district--Issuance and sale. For the prompt raising of money with which to bear the proportionate cost of such proposed drainage improvement, such commission may issue bonds in the same manner and with the same effect as boards of county commissioners are authorized to issue bonds in drainage proceedings. Such commission may sell such bonds at not less than the par value thereof as it may deem best for the interests of all persons within this state affected by such drainage, any premium received on such bonds to be credited to the fund of the particular drainage.

**Source:** SDC 1939, § 61.1111; SDCL, § 46-23-29.

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46A-13-30. Assessments for drainage purposes--Authority of commissioners of interstate drainage district. All of the provisions of the laws of this state relating to the making of assessments by the board of county commissioners for drainage purposes, so far as the same shall be applicable and not inconsistent with the provisions of this chapter, shall apply to assessments by such drainage commission, and such commission shall exercise within its drainage district the same power and authority relating to making assessments for drainage purposes as are conferred upon a board of county commissioners within its county.

**Source:** SDC 1939, § 61.1111; SDCL, § 46-23-30.

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46A-13-31. Special assessment order of commissioners of interstate drainage district--Certified copy filed with county treasurer--Lien of assessment--Collection and disbursement of assessments. After the drainage commission makes a special assessment, a certified copy of the order making the assessment, or as much as relates to property within each county, shall be filed with the county treasurer of each county for collection. From the time of filing, the assessments are due and payable. They are perpetual liens upon the respective tracts so assessed against all persons or governments, except this state and the United States. If they are not paid within ten days, they shall bear interest from the date of the order at the Category D rate of interest as established in § 54-3-16 payable annually. The assessments shall be paid to the county treasurer and held in a separate fund, all

interest accrued to be credited to the fund, and shall be paid by the county treasurer upon warrants issued by the drainage commission.

**Source:** SDC 1939, § 61.1112; SDCL, § 46-23-31; SL 1983, ch 28, § 62; SL 1984, ch 319, § 30.

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46A-13-32. Construction of drainage improvement--Provision for necessary funds--Letting of contract--Advertising for bids--Joint arrangements. If the funds necessary to complete the improvement are provided by the proper authorities of each affected state, the commission in this state may join with the court or tribunal of any other affected state and, by acting jointly or by a commission appointed by the affected states for that purpose, construct the drainage improvement. The affected states or the commission may make all necessary arrangements for the letting of a contract for the construction of the drainage improvement and may advertise for bids for the construction in accordance with the plans and specifications which shall be reported and provided by the engineers appointed to make the joint survey. The bids shall be received and opened at a time and place designated in the notice, and the contracts shall be let in a manner designated in the notice. All or any portion of the improvement may be contracted for separately, and the contract shall contain such conditions and provisions as the respective authorities acting jointly may require. All provisions for the completion of the improvement, the supervision of the work, and the payment for the work may be provided for by joint arrangement between the representatives of the several states. The authorities of each state, however, are responsible only for the sums arranged to be furnished by assessment or otherwise within the limits of the state.

**Source:** SDC 1939, § 61.1113; SDCL § 46-23-32; SL 2011, ch 165, § 515.

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46A-13-33. Maintenance and repair of drainage improvement constructed by joint arrangement--Assessments. The maintenance and repair of any drainage improvement constructed by joint arrangement with the authorities of any other state, under the provisions of this chapter, may be provided for by joint arrangement with the other state in the same manner as the drainage improvement was originally established and constructed. Any provision of this chapter relating to the construction of a drainage improvement by joint action applies to the maintenance and repair of the drainage improvement if action is taken for maintenance and repair under the provisions of this chapter. The drainage commission may make assessments upon the property benefited, according to the benefit received, for the proportionate share of the maintenance and repair of any drainage improvement the maintenance and repair is arranged for under the provisions of this chapter.

**Source:** SDC 1939, § 61.1114; SDCL § 46-23-33; SL 2011, ch 165, § 516.

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46A-13-34. Absence of arrangement for joint action--Repair and maintenance treated as drainage improvement within state. In the absence of such an arrangement for joint action, the repair and improvement of any such drainage shall be treated as a drainage improvement within the state, and its repair and maintenance within the limits of this state shall be provided for in accordance with the drainage laws of this state. The repair and maintenance shall be made by the drainage commission of the drainage district, and the commission for the purpose of making the repair and maintenance shall exercise all the powers conferred upon it by this chapter in drainage matters and may make assessments for the repair and maintenance of the improvement within this state on the property benefited by the improvement as provided in this chapter to raise money for the construction of the improvement.

**Source:** SDC 1939, § 61.1114; SDCL § 46-23-34; SL 2011, ch 165, § 517.

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46A-13-35. Defects not affecting substantial rights disregarded in suit to avoid assessment or invalidate proceeding--Substantial defect--Rights of parties determined by court--Reassessment. Any defect or irregularity not affecting the substantial rights of the parties interested, occurring in any proceeding under this chapter, shall be disregarded in any action or proceeding seeking to avoid any assessment or to cancel, annul, or declare void any proceeding held under this chapter. If the defect is substantial, the court shall of its own motion determine the rights of the parties, validate the proceeding, and assess the costs as justice may require, if the court finds cause for the validation or that the action should have been taken in the first instance and all parties interested

are before the court. If for any reason an assessment is held void or set aside, the court shall immediately make an order directing the reassessment of a proper sum, with interest, against all property on which the assessment is held invalid. Upon filing the order with the drainage commission, reassessment shall be made and enforced in accordance with the order.

**Source:** SDC 1939, § 61.1115; SDCL § 46-23-35; SL 2011, ch 165, § 518.

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46A-13-36. Appeal from final determination of commission to circuit court--Manner and time of taking--Effect of taking. An appeal shall lie from any final order or determination of the drainage commission fixing damages occasioned by the making of the drainage improvement, or fixing the proportion of assessments of benefits, to the circuit court for the county in which the property affected is located, by anyone aggrieved by any such order or determination. The appeal may be taken in the manner and within the time provided by law for appeals from the action of boards of county commissioners in drainage matters. The taking of such an appeal has the same effect and is determined by the court in like manner as appeals from boards of county commissioners in drainage matters, but does not stay the drainage proceedings. No appeal may be allowed from any action of the drainage commission except as provided in this section.

**Source:** SDC 1939, § 61.1116; SDCL § 46-23-36; SL 2011, ch 165, § 519.

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