

CHAPTER 89.

DRAINAGE DISTRICT LAW.

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89.01 Name of drainage law. This chapter shall be known as the "Drainage District Law."

89.02 Terms defined. Whenever used in the drainage district law, the following terms and expressions shall have the following meanings unless otherwise indicated:

"Commissioner" means a commissioner of a drainage district;

"Court" means the circuit court having jurisdiction of the district;

"Corporation" shall include all corporations, both private and public, counties, towns, cities, villages, other drainage districts and all other drainage corporations;

"Cost of construction" shall include reasonable attorney fees for petitioners and commissioners, damages to lands and corporations both within and without the district, and all expenses, of whatever nature, incurred in the organization of and in the construction and completion of the work of a drainage district;

"District" shall include drainage districts organized under this or any previous drainage district law;

"Drain" shall mean an open ditch or tile, pipe line, levee, pump, or other device for the drainage of water from land or the protection of land from water;

"Land" or "lands" shall include lands, easements and servitudes;

"Mortgagee" shall include every person and corporation whose mortgage or assignment thereof, if there be an assignment, are legally recorded and contain the post-office address of such mortgagee or assignee;

"Net damages" is the difference between the damages awarded to and the assessments for "costs of construction" assessed against any land or corporation, in case the damages awarded to, exceed the assessments for "cost of construction" assessed against, such land or corporation;

"Chief engineer" shall refer to the chief engineer of the state of Wisconsin appointed under section 15.76.

89.03 Proceeding equitable; courts to supervise commissioners. (1) All proceedings under the drainage district law are equitable in their nature. The court shall at all times have supervision over the commissioners and may require them to report on any matter connected with their duties and after hearing may remove any commissioner from office for neglect of duty, malfeasance in office or other good cause. The court may in any proceeding bring in new parties upon such terms as shall be just with like force and effect as if they were original parties to said proceeding.

(2) The court or presiding judge may at any time require commissioners to give new or additional bonds to the clerk of the court and fix the amount thereof. Such bonds shall run to the clerk of the court and his successors in office as obligees, and shall be conditioned for the faithful discharge of their duties as such commissioners and the faithful accounting for and application of district moneys which shall come into their hands.

(3) All drainage district proceedings, files and records may be amended or corrected as the facts warrant.

(4) The plans of the district or any part thereof may be modified by the court at any time on petition of the commissioners or any interested person and notice to the owners of any lands affected thereby.

89.04 Modification of orders do not impair securities. (1) All orders of confirmation made in drainage district proceedings may be modified by the court at any time on such notice as the court may order, but no assessment shall be decreased to the detriment of the owner of bonds or notes which are liens on such assessment.

(2) This chapter shall neither render more difficult the collection of bonds or notes heretofore issued by any drainage district, nor impair the obligation of any contract made by such district; neither shall any assessment of supplemental benefits nor any reassessment of benefits disturb any assessment for construction previously confirmed by the court while bonds or notes secured thereon are unpaid. Confirmed assessments shall remain liens upon the same lands and claims against the same corporations in the same amounts as when first assessed and recorded until the district bonds and notes based thereon are paid or refunded.

89.05 Guardian ad litem. (1) In all proceedings under the drainage district law in which any infant or incompetent person is interested, the court shall appoint a reputable attorney guardian ad litem to represent such infant or incompetent person.

(2) In case of failure to serve notice on any interested infant or incompetent, or to assess his lands, he may be brought into court, a guardian ad litem appointed for him and the same proceedings had as in the case of a competent person.

89.06 Orders made by court or presiding judge; notice. (1) Orders fixing the time and place of hearing on all petitions and reports filed in court requiring hearings shall be made either by the court or the presiding judge thereof and may be made nunc pro tunc.

(2) Any notice of hearing on any petition or report, unless otherwise in the drainage law specified, shall be sufficient in form and substance if it recites:

- (a) That such petition or report has been filed;
- (b) The place of filing;
- (c) That it is subject to the inspection of all persons interested;
- (d) If a petition, the prayer, or the substance of the prayer;
- (e) The time, place and court of hearing.

(3) All notices required to be served under the drainage district law, unless otherwise therein specifically provided, shall be served by publishing such notice in at least one newspaper published in each county where any part of such district is situated once in each week for three successive weeks and by posting the same in three public places in each of the towns within which any part of the lands within such district are located.

(4) Whenever the required notice of hearing under the drainage district law has been served in the manner required by sections 262.08 and 262.09 on all interested parties at least twenty days before the time fixed for hearing, such service shall be sufficient to give the court complete jurisdiction of all such interested parties and of all lands in the district without publication, posting or mailing or other service of such notice.

(5) Failure to serve notice on any party or parties entitled thereto shall not defeat the jurisdiction of the court. Such party may, by a written waiver filed in court or by appearance, waive such notice or may be required to show cause why he should not be bound by the proceedings.

(6) Any notice required under the drainage district law may be signed by the commissioners, or a majority of them, by a judge or court commissioner or by the clerk of the court.

(7) In case of service of any notice or other paper the certificate of the public officer or the affidavit of any person who made the service, publication, posting or mailing, or who knows the facts, shall be sufficient proof thereof.

89.07 Hearings. (1) Except hearings on remonstrances against benefits or damages, any hearing on any matter arising under the drainage district law may be had in any county of the circuit in which such proceedings are pending.

(2) Any hearing under the drainage district law may be adjourned by the court or presiding judge thereof, or, in his absence, by the clerk of the court.

(3) All issues arising under the drainage district law, except issues of benefits and damages, shall be tried by the court without a jury. Upon demand of the remonstrant the trial of the issues of benefits and damages shall be had before a jury.

89.08 Consolidations; existing districts, by what law governed. (1) In case petitioners are before the court for the organization of two or more drainage districts and the court shall be of the opinion that the territory in the proposed districts should be included in one district, or in a less number of districts than the petitions call for, the court may by order organize such territory into such number of districts as it shall deem best to comply with the purposes of the drainage district law, or the court may annex any territory asking to be organized as a drainage district to a district already organized.

(2) All districts heretofore organized in circuit courts under the laws of Wisconsin, and all districts now in the process of organization in such courts, as soon as such districts are organized (or before if the court so orders), shall come under the operation of the drainage district law.

89.09 Assessments to bear interest; when payable. (1) All assessments for construction, supplemental assessments for construction, additional assessments and assessments for repairs shall bear interest at the rate of six per centum per annum from the date of the confirmation of the assessment, unless the court order the interest to commence at a later date, which interest shall be collected in the same manner as the principal of the assessment.

(2) Unless otherwise ordered by the court, all assessments for construction, additional assessments and assessments for repairs shall be due and payable September first next after such assessments are confirmed.

(3) All assessments for construction, assessments for repairs and additional assessments shall be apportioned on the sum of all benefits then in force.

89.10 Remonstrances. All remonstrances shall be in writing, verified by a remonstrant, and filed and served on the petitioners, or their attorney or, if commissioners have been appointed, upon the commissioners or their attorney.

89.11 Lis pendens. Notice of lis pendens containing descriptions of the lands in the proposed district shall be filed in the office of the register of deeds of the county where such lands are situated at the time of or after the filing of the petition for the organization of a drainage district. Failure to file such notice of lis pendens shall not affect the jurisdiction of the court.

89.12 Costs; judgments. (1) In all district contests the court may award and apportion the taxable costs. Costs if awarded against the commissioners shall not go against them personally, but shall be paid out of the district funds or from funds received from the petitioners unless the court otherwise orders.

(2) In case the petition be dismissed before the appointment of commissioners, judgment for costs shall be entered against the petitioners and in favor of the remonstrant and further judgment shall be entered against the petitioners in favor of any petitioner or other persons who shall have advanced moneys, rendered services, or incurred other liabilities in the prosecution of such proceedings for the amount of such moneys, services and incurred liabilities.

(3) In case the proceedings be dismissed after the appointment of commissioners, judgment shall be entered against the petitioners and in favor of the commissioners for all costs, expenses, and liabilities incurred by them or by the petitioners in the prosecution of such proceedings and for the benefit of those who have rendered services or advanced or loaned money to the petitioners or to the commissioners for the prosecution of such proceedings.

(4) Before any such judgment is entered, a petitioner or the commissioners shall file with the clerk of the court a duly verified itemized statement of all costs, attorney's fees,

and other liabilities incurred by such petitioner or the commissioners in the prosecution of such proceedings upon which an order shall be issued requiring the petitioners to show cause why judgment should not be entered against the petitioners for the amount of costs, attorney's fees and other liabilities. Notice of hearing of such order to show cause shall be given to the petitioners by publication of such order as provided in subsection (3) of section 89.06. Such order need not contain an itemized statement of such account, but shall state where such account is filed.

(5) The petitioners shall as between themselves contribute to the payment of such judgment in proportion to the number of acres of land owned by them within the boundaries of the proposed district at the time of filing the petition.

89.13 Official oath and bond. Commissioners shall take and file the official oath and execute and file an official bond in such sum as the court shall fix which bond shall be approved by the court.

89.14 A petitioner may withdraw his name; when. At any time before but not after the hearing is begun on any petition filed under the drainage district law any petitioner thereon may withdraw his or its name from the petition upon filing in court an undertaking with sufficient sureties to be approved by the court, conditioned that in case the withdrawal of names shall reduce the number of signers below the number required by section 89.19, or any other section of the statutes under which such petition is filed, and thereby the jurisdiction of the court be lost, such withdrawing petitioner will pay into court the costs of such drainage proceeding made and incurred prior to and including the making and entry of the order denying the prayer of the petition and will pay into court the expenses incurred on such petition prior to his withdrawal.

89.15 Appeals to supreme court. The time within which an appeal to the supreme court may be taken from any judgment or appealable order in drainage proceedings is limited to thirty days from the date of entry thereof, except that the time limited to any remonstrant, shall be thirty days from the service of written notice of entry of any such judgment or order. No notice of entry of judgment or order need to be given except to remonstrant.

89.16 Notice to railroad companies. Railroad companies shall file with the secretary of state a paper stating the name and post-office address of the person upon whom may be served notice of any proceedings under the drainage district law, and when such paper has been so filed notice, in addition to the notice by publication, shall be given to such person by registered mail or personally within five days after the first publication of such notice. An affidavit of such service shall be filed by the commissioners with the proof of publication of such notice.

89.17 Adverse examinations. The remonstrant, the commissioners, the petitioners, and the engineer of any drainage district may be examined adversely under sections 325.14 and 326.12.

89.18 Acquisition of land by condemnation. Any district may acquire lands or property rights either within or without the district, whenever such acquisition shall become necessary.

89.185 Petition, special conditions. (1) Before any petition shall be filed in the circuit court of any county having population of less than fifty persons per square mile according to the last official census, for the organization of a drainage district pursuant to the provisions of sections 89.01 to 89.70, both inclusive, and where the drainage area included within the boundaries of said proposed district is more than five thousand acres in area, such petition shall include a statement of (a) the assessed valuation of each parcel of lands in the district, (b) the names of the petitioners residing within or adjacent to the district, and (c) plans for bringing the drained lands promptly into agricultural use, and such petition shall be submitted to and approved by a majority of the members of the county board of supervisors of the county in which the greater part of the proposed district is located, on the question of whether or not the public welfare will be promoted by the organization of such proposed drainage district.

(2) The county board of supervisors of any such county shall, at its next session after the filing of any such petition, hear all interested parties, and decide upon the question whether or not the public welfare will be promoted by the organization of such proposed drainage district. No decision by the county board shall render the county liable in any form for any assessments, costs or other expenses in connection with the proposed drainage project.

(3) If a majority of such county board shall decide that the public welfare will be promoted by the organization of such district, then the petition shall be filed in the circuit court of such county.

(4) The decision of such county board to the effect that the public welfare will be promoted by the organization of such proposed drainage district shall be prima facie evidence of such fact, but shall not be conclusive upon the court.

89.19 Organization of districts, petition for. (1) Whenever a majority of the owners of land within a proposed drainage district who represent one-third in area of the lands of said proposed drainage district or whenever the owner or owners of more than one-half of the lands within such district desire to organize a drainage district, provided that no owner being counted for more than three hundred twenty acres, such owner or owners may file in the circuit court of any county in which the lands or any part of them are situated a petition setting forth:

- (a) The proposed name of the district.
- (b) The necessity for the proposed work describing it.
- (c) A general description of the location, character and plans of the proposed drains.
- (d) A general description of the lands intended to be included in the district.
- (e) That the public health or public welfare will be promoted and that the benefits will exceed the damages and costs of construction.
- (f) The names and addresses of the owners and mortgagees of all lands in the district, so far as known to the petitioners.
- (g) A prayer for the organization of a drainage district.
- (h) If the purpose of such petition is the enlargement, repair, or maintenance of a drain, heretofore constructed under any law of this state, said petition shall give a general description of the same with such particulars as the petitioners may deem important.

(2) No petition having as many signers as are required by subsection (1) of this section shall be declared void, but the court may at any time permit the petition to be amended in form and substance to conform to the facts, if the facts justify the organization of a district. All petitions for the organization of the same or substantially the same district filed prior to the final hearing of a petition shall be considered by the court as one petition and as filed with the first petition and all signatures to such petitions shall be counted in determining the jurisdiction of the court.

(3) If any minor or incompetent person has land in any proposed district or proposed annex to any district the general guardian or next of kin of such minor or incompetent may for him and on his behalf join in the petition for the organization of such district or the annexation of territory thereto.

(4) The territory in a district need not be all in one body provided that it be so situated that the public health or the public welfare will be promoted by such drainage of each separate body thereof and that the benefits of the proposed work in each separate body will exceed the damages from and the costs of construction of the proposed work therein and provided, further, that the court shall be satisfied that the proposed work can be more cheaply done or maintained in a single district than otherwise.

(5) The agent of any owner of land in a proposed district may sign such owner's name to the petition for the organization of a proposed district and any other petition made under the drainage district law. The authority of such agent shall be in writing and be filed in the court but need not be acknowledged, sealed or witnessed.

(6) Any owner of land within the proposed district or adjoining thereto may at any time ask to be joined as a petitioner and the court may permit such owner to be so joined with like force and effect for all purposes as if he had signed the original petition and his land shall be counted in determining whether enough lands are represented by the signers of the petition to give the court jurisdiction.

Note: Neither a drainage district organized under the drainage district law, nor one operating solely by the consent of all concerned, has any power to impair or destroy navigable waters. State v. Adelmeyer, 221 W 246, 265 NW 838.

89.20 Time and place of hearing; notice. (1) On such petition being filed, the court or presiding judge shall fix a time and place of hearing thereon and order notice.

(2) Thereupon unless personal service be obtained as provided in subsection (4) of section 89.06, the petitioners shall cause twenty days' notice of the filing of such petition to be given (a) by posting notice thereof in three public places in each of the towns, portions of which are within the boundaries of the proposed district; (b) by serving or causing to be served a copy of such notice on each owner and mortgagee, of land within such proposed district residing in any county in which any land of such proposed district is situated in the manner provided by sections 262.08 and 262.09, and (c) by publishing a copy thereof at least once a week for three successive weeks in some newspaper published in each county in which any part of the proposed district is situated.

(3) If any owner or mortgagee of land within a district is a nonresident of the county in which the proposed district lies, the petition shall be accompanied by an affidavit (a) giving the name and post-office address of such nonresident owner or mortgagee if such are known, and (b) if unknown, stating that upon diligent inquiry his name or post-office address (whichever may be the fact) cannot be ascertained. The petitioners shall mail a copy of such notice aforesaid to each nonresident owner and mortgagee whose name and post-office address is known, ten days before the day fixed for hearing on the petition.

(4) Personal service of such notice outside of the state of Wisconsin shall have the same effect as personal service in the state of Wisconsin.

(5) The posting, publication, serving and mailing of such notice of hearing, as hereinbefore provided, shall give the court jurisdiction of all persons and corporations interested and of all lands within the boundaries of such proposed district and of the subject matter of said proceedings for all the purposes of the drainage district law.

(6) It shall not be necessary to serve notice of hearing on the petitioner, upon any petitioner. All petitioners shall be deemed in court upon such hearing by virtue of their having signed the petition.

89.21 Failure to serve notice; how corrected. Failure to serve, publish, post or mail notice of hearing on the petition as hereinbefore provided shall not deprive the court of jurisdiction. Such unserved party may appear and waive notice, or the court or presiding judge, or in his absence the clerk of the court, may adjourn the hearing on the petition and direct notice of the adjourn-hearing to be served on the unserved party at least ten days before the date of the adjourn-hearing in the manner that the court or judge shall determine.

89.22 Owner or mortgagee, rights of; rules of procedure. (1) Any owner or mortgagee of land in a proposed district or any person who will be directly affected by the organization of such district may by remonstrance contest (a) the sufficiency of the petition; (b) the sufficiency of the signers of the petition; (c) the sufficiency of the notice; (d) the constitutionality of the drainage district law; (e) the jurisdiction of the court; specifying in detail his objections.

(2) The affidavit of any signer of such petition stating that he has examined and is acquainted with the locality of such proposed district and that such petition is signed by a sufficient number of owners of the land in such district to satisfy the provisions of the drainage district law shall be prima facie evidence of the facts therein stated. In case any guardian or corporation signs a petition, such guardian or agent of the corporation knowing the facts may make such affidavit.

(3) The affidavit of any petitioner or his agent or guardian giving affiant's name, age, and residence and stating that such petitioner owns land in the district and describing such land by government or other definite description shall be prima facie evidence of the facts in such affidavit stated and may be filed and used as evidence of the sufficiency of the signers of such petition. Such affidavit may state the number of acres in the tracts described and owned by the affiant.

(4) All deeds made for the purpose of establishing or defeating the prayer of such petition, and not made in good faith and for a valuable consideration shall be held to be a fraud and the holders of such deeds shall not for the purposes of these proceedings be considered to be the owners of the land described therein.

(5) If the court or presiding judge thereof shall find that the petition has not been signed as required by section 89.19, the petition shall be dismissed and judgment entered against the petitioners as provided in section 89.12.

(6) But if it shall appear that the petition is signed by the number of landowners required by section 89.19, the judge shall so find and shall order all necessary amendments to the petition and shall appoint three suitable, competent persons as commissioners and fix their preliminary bond.

89.23 Qualification of commissioners; to keep records. (1) Ownership of lands within the district shall not disqualify a person from acting as commissioner. Commissioners must reside within fifty miles of the drainage district and within the state of Wisconsin. Such commissioners shall hold their office for a term of five years and until their successors are appointed and qualified. They shall receive for their services five dollars per day of eight hours and proportionately for fractions of days for actual time spent in rendition thereof and their actual reasonable expenses.

(2) Appointments to fill expired terms of commissioners and vacancies shall be made by the court or presiding judge; and commissioners appointed to fill vacancies shall hold office the residue of the unexpired term and until their successors are appointed and qualified.

(3) The removal of any commissioner from the state or from the fifty-mile limit hereinbefore provided for, shall render his office vacant.

(4) Any commissioner may resign to the court or presiding judge thereof and the court or presiding judge may accept his resignation and appoint a successor who shall serve the balance of the unexpired term.

(5) Commissioners shall keep an accurate record of all payments made by them and shall take vouchers for such payments and shall keep accurate and true written minutes of their proceedings. They shall keep a separate account of the moneys received for the payment of the principal and interest of bonds and notes of such district and shall keep a separate general fund account in which they shall keep all other moneys of the district and in no case shall they draw on the bond and interest fund account for any other pur-

pose than the payment of the principal and interest of the bonds and notes of such district.

(6) The commissioners shall keep a record: (a) Of the number, (b) series, (c) date, (d) principal, (e) rate of interest, (f) date of maturity, (g) date when interest is due, and (h) payment of each bond and note, and (i) if a bond or note is refunded it shall be marked "Refunded by No. . . ."

(7) The commissioners shall keep in their office a complete record of the assessed lands and the assessments against the same and shall on said record mark "Paid" any and all assessments and instalments that are paid, whether to them or to the town treasurer or county treasurer.

(8) When any assessment which is a lien on land shall have been fully paid the commissioners shall in writing, under seal of their district, execute a satisfaction of such lien which satisfaction may be recorded in the office of the register of deeds.

89.24 Powers of commissioners. The commissioners when qualified shall, in addition to other powers expressly granted or necessarily implied, have the following powers:

(a) To go upon any land in or adjoining such district themselves or by their agents and employes and perform all acts necessary to the making of surveys, taking of levels and laying out all necessary work and after the organization of the district for the purpose of constructing, repairing and maintaining all work.

(b) Subject to the approval of the court, to purchase or condemn such lands and structures both within and without the district as shall be necessary for the construction, cleaning out, repair and maintenance of the work.

(c) To bring all necessary actions for the collection of funds, moneys and forfeitures belonging to such district and for the protection and preservation of all works and property thereof and may obtain injunctions to prevent unlawful interference with the performance of their duties or the exercise of any of their powers.

(d) To appoint not exceeding three fire wardens in their district whose duty it shall be to watch for and report fires in and in the vicinity of such district and to co-operate with the commissioners of the district and town fire wardens in preventing and extinguishing fires. Such fire wardens shall receive three dollars and fifty cents per day and their actual necessary expenses for each eight-hour day service necessarily performed by them and a proportional sum for each fraction of a day, which compensation and expenses shall be paid by the district and included in their assessment for repairs next thereafter reported to the court.

Note: See note to 59.07, citing 24 Atty. Gen. 549.

89.25 Actions on official bonds. Suits may be brought upon the commissioners' bond for any breach thereof in the name of the clerk of the court and the amount recovered shall be applied to the construction of the work or paid to the injured party or be put into the district's general fund as justice may require and the court order.

89.26 Organization of board, appointment and duties of chief engineer. (1) Within ten days after the commissioners have qualified they shall meet and organize by electing from their number a president, secretary and treasurer. So soon as practicable after their organization the commissioners shall employ a district engineer, to be approved by the chief engineer, and fix his compensation; they shall personally examine the lands within the district and shall request the chief engineer for a report with reference to the district. The district engineer shall, under the direction of the chief engineer, make a preliminary survey of the district and shall render such service to the chief engineer in the preparation of his report to the commissioners as the chief engineer may demand. The commissioners shall then make a preliminary report to the court wherein they shall report:

(a) Whether said proposed work is necessary or will be of utility in carrying out the purposes of the petition;

(b) Whether the proposed work will promote the public health;

(c) Whether the proposed work will promote the public welfare;

(d) Whether the total benefits from the proposed work will exceed the cost of construction thereof and in arriving at such benefits and cost of construction they shall include the benefits and damages both within and without the district from such proposed work;

(e) Whether it will probably be necessary in performing such work to enter upon and do work in any waters that may be navigable, the character thereof and whether the proposed work will materially obstruct or interfere with the general navigability thereof; and whether any other public rights in or use of said waters will be materially impaired;

(f) The boundaries of such district according to the lines of government subdivisions or fractions thereof wherever possible, but such boundaries shall not be so changed from those in the petition described as to deprive the court of jurisdiction.

(2) The commissioners shall file with and as a part of their preliminary report the report of the chief engineer on: (a) The feasibility of the proposed drainage. (b) A preliminary plan of drainage. (c) The probable cost of the necessary work. The report

of the chief engineer shall also include a joint report of the college of agriculture of the University of Wisconsin and of the department of agriculture and markets; on (d) the quality and character of the soils and subsoils; (e) a soil map of the district; (f) the present agricultural value of the lands; (g) the kinds of crops to which such lands will be adapted after drainage; (h) a recommendation either for or against the organization of the district. The chief engineer, the college of agriculture and department of agriculture and markets shall furnish such reports when requested so to do, with all reasonable dispatch. Such reports and the report of the commissioners shall be prima facie evidence of the facts therein contained. If the recommendations of one or more of the state departments contained in the report of the state chief engineer be against the organization of the district, the petition and all proceedings thereon shall be dismissed by the court. [1935 c. 550 s. 409]

89.27 Preliminary report to the court. (1) Upon the filing of the preliminary report the court or presiding judge thereof shall fix a time and place of hearing thereon at some general or special term of said court not less than thirty nor more than sixty days from the filing of said report. Notice of such hearing shall be given as provided in subsection (3) of section 89.06. Such notice shall describe all lands included in the district not described in the petition and state that such lands are sought to be included in the district and also shall describe all lands excluded from the district by such report which were by the petition included therein and shall state that such lands are sought to be excluded from the district.

(2) Where lands are sought to be included in the district which were not included in the petition, notice to the owners and mortgagees of such lands shall be served as provided in subsection (2) of section 89.20.

(3) Any interested party may remonstrate against such report or against any material

(4) If the court shall find in favor of the remonstrant on any jurisdictional question part thereof.

or if such report be that the benefits from such proposed work will not exceed the damages and cost of construction or that such proposed work will not promote the public health or the public welfare or the report of the chief engineer is that the proposed drainage is not feasible, or if the court shall find that the cost of the satisfactory drainage of the wet lands is more than seventy-five per cent of the fair market value of good tillable agricultural lands in the township or townships in which the district lies, the petition shall be dismissed.

(5) If the preliminary report be that the benefits of such work or the work proposed by the commissioners in such report will exceed the damages and cost of construction and that the public health or the public welfare will be promoted thereby and no remonstrance thereto is filed, or if on the trial of the issues made on such report the court finds that the benefits will exceed the damages and cost of construction and that the public health or the public welfare will be promoted by such proposed work, the court shall make and file its findings in writing and confirm such report or direct amendment thereof to conform to the findings and when so amended confirm the same and direct the commissioners to proceed with the work.

(6) If the court confirms the preliminary report and it appears that in doing the proposed work it will not be necessary to enter upon any waters which may be navigable or remove any dam, such district shall upon the confirmation of such preliminary report be fully organized as a body corporate with all the powers specified in section 89.24.

(7) If it shall appear from the preliminary report or upon the hearing thereon that it will be necessary to enter upon any waters that may be navigable or to acquire and remove any dam or obstruction therefrom or clean out, widen, deepen or straighten any stream that may be navigable the court shall so find and direct the commissioners to file with the public service commission of the state of Wisconsin certified copies of the petition, the preliminary report and such other papers as the court shall direct, together with an application setting forth that the public health or the public welfare will be promoted by the removal of any such dam, or other obstruction from, or by the straightening, cleaning out, deepening or widening of such waters or stream and that other public rights in and public uses of such waters or stream will not be materially impaired, which application shall be duly verified.

(8) Upon the filing of such application the public service commission shall forthwith fix a time for the hearing thereon not less than three nor more than eight weeks from the date of filing, at the courthouse of the county in which such proceeding is pending, or at such other place as the public service commission shall deem most convenient.

(9) Notice of hearing upon such application shall be given to all persons interested in the manner provided by section 31.06 of the statutes.

(10) At such hearing the public service commission shall hear all interested persons.

The public service commission may in its discretion make an independent investigation of the situation.

(12) Upon the conclusion of the hearing and investigation on such application if the public service commission shall find that the public health and the public welfare will be promoted by the removal of any dam or other obstruction from, or by the straightening, cleaning out, deepening or widening of any such waters or stream; that the work proposed is necessary to the proper operation of the proposed drainage system, and will not materially impair the navigability of any such water or stream and will not materially impair any other public right in or public uses of such water or stream, it shall so find, which findings shall in addition thereto establish the minimum level at which such waters may be maintained, which findings shall at once be transmitted to the clerk of the court in which such drainage proceeding is pending.

(13) The public service commission may also approve the plan for the work in such waters or stream, or may amend and modify such plan and approve the same and shall file a copy thereof with its findings. The public service commission may at any time, on the application of any person interested further amend such plan when the same can be done without materially impairing the navigability of any such waters, and without materially impairing any other public right.

(14) Any interested person being dissatisfied with any findings of the public service commission shall have the right to bring an action for the review of the same as prescribed in sections 196.41 to 196.47, inclusive, of the statutes.

(15) If the public service commission shall find that the public health and the public welfare will be promoted by the removal of any dam or other obstruction from, or by the straightening, cleaning out, deepening or widening of any such waters or stream; that the work proposed is necessary to the proper operation of the proposed drainage system and will not materially impair the navigability of or any other public right in any such waters or stream, permission and authority is hereby granted to the drainage commissioners to:

(a) Do all acts necessary in and about the surveying, laying out, constructing, repairing, altering the course of, enlarging, cleaning, deepening, widening, protecting and maintaining any drain, in, through or upon such waters and stream both within and beyond the limits of the district;

(b) Procure, purchase or condemn by proceedings had under chapter 32 of these statutes, riparian rights, rights of flowage, dams and waterpowers in such waters and streams both within and beyond the limits of the district.

(16) In all cases a drainage district shall be liable to the owner of riparian rights, rights of flowage, dams and waterpowers for any and all property taken and for all damages which may be occasioned to such property by reason of any work done on it, and such damages shall be determined either by agreement, award of damages or by condemnation proceedings and the same shall be paid by the district before the work is done in the same manner in which payments are made where lands are acquired by railroad companies under condemnation proceedings.

(17) In all cases where the public service commission shall find that work is necessary in any navigable waters or stream, and shall find that such work will promote the public health and welfare, and will not materially impair the navigability of or any other public rights in any such waters or stream, and when the court shall have found as required by subsection (5) of section 89.27, and upon the filing of such findings the court shall confirm such preliminary report, such district shall be fully organized; otherwise such proceeding shall be dismissed.

(18) The order of the court entered upon the hearing of the preliminary report of the commissioners, shall be final unless appealed from within thirty days. [1931 c. 79 s. 16]

89.28 Action after confirmation of preliminary report. (1) Immediately after the confirmation of the preliminary report, the commissioners shall proceed to have all necessary levels taken and surveys made, and lay out the proposed work and report in writing to the court:

(a) Whether the starting points, routes and termini of the proposed work and the proposed location thereof, as in the petition contained, are in all respects proper and feasible, and if not, shall report such as are most proper and feasible and whether pump drainage is necessary.

(b) What lands and corporations within the districts as by them reported will be damaged, and the awards or damage thereto.

(c) The cost of construction.

(d) What lands and corporation within the district as by them reported will be benefited by the proposed work, and their assessments of benefits against the same.

(e) If the cost of construction of any particular part of the work so proposed to be

done should be assessed upon any particular lands or corporations, their assessments of such cost against the same.

(f) Their assessment of the part of the cost of construction (not provided for in paragraph (e) of this section) against the other benefited lands and corporations in such district, in proportion to the benefits assessed.

(g) The estimated annual cost of maintenance and operation.

(h) Maps, plans, profiles and specifications of the proposed work.

(2) The commissioners shall not be confined to the points of commencement, routes or termini of the drains or the number, extent or size of the same, or the location, plan or extent of any drain as proposed by the petitioners, but shall locate, design, lay out and plan the same in such manner as to them shall seem best to promote the public health or welfare and to drain or to protect the lands of the parties interested with the least damage and greatest benefit to all lands affected thereby. And any plan proposed by the commissioners, may, on application of any person interested, on hearing hereinafter provided for, or on the application of the commissioners, be altered by the court, by written order, in such manner as shall appear to the court to be just. If the commissioners find that the proposed district as described in the petition filed will not embrace all the lands that will be benefited by the proposed work or that it will include lands that will not be benefited and are not necessary to be included in said district for any purpose, they may extend or contract the boundaries of the proposed district so as to include or to exclude all such lands as the case may be; and the boundaries adopted and reported by them may, upon the hearing of their report as hereinafter provided, upon their application or that of any person interested, be altered by the court in such manner as shall appear to be just; provided, that the alteration of boundaries shall not so enlarge or contract the proposed district as to deprive the court of jurisdiction.

(3) Before filing such report the commissioners shall present it to the chief engineer, who shall return it with his approval or disapproval within thirty days. If the state chief engineer disapproves the report it shall not be filed until it is so modified as to meet with his approval.

89.29 Roads on spoil banks. Whenever a road can be economically built on the spoil bank of any district ditch and is needed to open and render available for settlement the lands of such district and the materials of such spoil bank are of a kind reasonably suitable for road making, the commissioners may cause one spoil bank of its ditches to be so graded and leveled as to be a reasonably safe road, and when the same is used for public travel two years the same shall be a public highway and the town in which such road is located shall be liable for the maintenance and repair thereof.

89.30 County lands, how treated. (1) County lands in any proposed district may be assessed by benefits and assessed for construction and awarded damages the same as other lands.

(2) Notice of hearing on the report assessing benefits against county lands shall be served on the clerk of such county in the same manner as upon resident landowners.

89.31 Permission to cross state lands. In case it is necessary to run a drain across state lands, the commissioners of public lands shall on petition of the commissioners in writing grant permission to do so.

89.32 Notice of hearing. Upon the filing of the report provided for in section 89.28, notice of the time and place of hearing thereon shall be given as provided in subsection (3) of section 89.06.

89.33 Owners and mortgagees, rights of at hearing. (1) Any owner or mortgagee of lands within said district or corporation assessed may remonstrate against such report because:

(a) The court lacks jurisdiction.

(b) The commissioners lack jurisdiction.

(c) Remonstrant's lands, specifying them, are assessed too high, or other lands, specifying them, are assessed too low, or that remonstrant if a corporation should not be assessed or is assessed too high.

(d) Specified lands are assessed, which ought not to be assessed.

(e) Specified lands or corporations should be assessed which are not assessed.

(f) The damages allowed to specified lands or corporations are excessive or are too low.

(g) The plan for such proposed work should be changed, specifying the proposed change.

(2) In the trial of all remonstrances on benefits or damages, evidence may be introduced showing what benefits are assessed against and what damages are awarded to the lands in the district and such benefits and damages may be compared to determine whether they are equitable and just. Evidence may be introduced of the condition of the various tracts of land in said district and of the cost of further drainage or under-drainage necessary to give any assessed tract (the assessment against or award of damages to which is

in contest) a drainage equal to other tracts in said district, and any and all other evidence may be introduced which tends to establish what assessments against and awards to lands under contest would be equitable and just as compared with other lands in the district.

(3) If the court finds that the report requires modification or amendment, it shall so order and the commissioners shall immediately file such modified and amended report with the court.

89.34 Confirmation of assessments and awards. (1) When all remonstrances relating to the validity of the proceedings as a whole or to the feasibility or practicability of the general plan of the proposed work have been determined, the court may confirm the assessments against, and the awards of damages to all lands and corporations as to which no remonstrance remains undetermined, and confirm said report as to all other matters not in contest or already tried, and direct and empower the commissioners to proceed with the work.

(2) As soon as any remonstrance shall be determined, the court shall by order confirm such determination.

(3) The order provided for in subsection (1) of this section shall not be entered until the court shall find that the "cost of construction" of the work necessary under such order will not exceed the assessments of benefits against those lands and corporations whose assessments of benefits and awards of damages are sought to be confirmed by such order.

89.35 Assessments, when payable; annual reports. (1) At the time of confirmation of any report or at any time thereafter, before bonds or notes of the district, which are liens on the assessments, are issued, the court may order the assessments for construction against both lands and corporations or either therein contained to be paid in not more than fifteen annual instalments and assessments for repair in not more than three annual instalments, of such amounts and at such times as will be convenient for the accomplishment of the proposed work, or for the payment of the principal and interest of the notes or bonds of such district that the court shall grant authority to issue for the construction or repair of such work. The court shall also fix the date on which the first instalments of the assessments for construction shall become due, which shall be September first, not more than five years after the date of the order, and each of such instalments shall draw interest at six per centum per annum from the date of such order, such interest to be payable annually.

(2) Unless otherwise ordered, such assessments shall be payable at once. Assessments for construction, additional assessments and assessments for repairs and interest thereon shall be a first lien upon the lands assessed from the time of recording the order of confirmation of the same in the office of the register of deeds of the county in which the lands are situated until paid, and shall take precedence over all other liens and mortgages, whether accruing prior to the time of the filing of the petition under the drainage district law or not, excepting only liens for general taxes.

(3) Any owner of land or any corporation assessed for construction or repairs may, at any time before the commissioners have entered into a contract to borrow money upon notes or bonds based upon such assessment, pay into court the amount of the assessment against his land or any tract thereof, or against such corporation together with the interest thereon at the rate of six per centum from the date of entry of the order of confirmation to the date of such payment.

(4) In July of each year, the commissioners shall file with the clerk of the court an annual report containing: (a) An itemized statement of their receipts and expenditures during the preceding year ending June thirtieth, showing the balance on hand at the date of their last prior report, the sources and amounts of all receipts, the dates, purposes for which made, and amounts of all expenditures, and the balance on hand together with the vouchers for such expenditures, which statement shall be verified by the oath of one or more of the commissioners, (b) a statement of all bonds paid or issued during the preceding year, (c) a statement of all work done during the preceding year, specifying where the same was done and the cost thereof, (d) a statement of what repairs will be necessary during the coming year, where such repairs are needed and the probable cost thereof, (e) the sum that will be necessary for incidental expenses for the next succeeding year, (f) such assessments against the lands and corporations as will cover such necessary repairs, maintenance and incidental expenses, which assessment shall be known as "assessment for repairs."

(5) At any time after the filing of such report and before the hearing thereon any owner or mortgagee of lands within the district may file and serve on the commissioners objections to such report specifying the items objected to and the grounds of objection. Tuesday of August each year or as soon thereafter as may be convenient, and the court shall examine such report, hear all objections to the same and fix and determine the amounts of such assessments.

(6) Such annual report shall be heard by the court or presiding judge on the third

(7) The state chief engineer may in his discretion order an approved drainage engi-

neer to inspect any work under construction in any drainage district, plans for which have been approved by the state chief engineer. The cost of such inspection shall not exceed one-half of one per cent of the cost of construction and shall be paid by the district. If the commissioners or their engineer make any material alteration in the plans without the approval of the state chief engineer, they and their bondsmen shall be jointly and severally liable for all damages resulting from such alteration.

Note: A covenant against incumbrances runs with the land, and is breached, if at all, when the deed is given; a technical breach thereof gives rise only to a cause of action for nominal damages, and no action lies for substantial damages in advance of eviction or until the owner of the land entitled to the benefit of the covenant pays off the incum-

brance. Such a covenant was not breached at the time a deed was given by the mere inchoate right of a drainage district in force when the covenant was made, to proceed with the drainage, where no assessment was made or confirmed until eight years after the execution and delivery of the deed. *Wileman v. Ladd*, 209 W 594, 245 NW 838.

89.36 Unpaid assessments to be returned to town, village or city clerk. (1) If an assessment against any land is not paid to the commissioners when due, the commissioners shall, on, or before December first, certify the same to the clerk of the town, city or village in which the delinquent lands are situated, as due and unpaid, and such clerk shall enter the same in the tax roll of that year against the land assessed, but in a column separate from the general tax, and the same shall be collected in the same manner as general taxes are collected, except only that the personal property of natural persons and private corporations, and all lands other than those against which assessments shall have been made, shall not be liable to seizure and sale therefor.

(2) When commissioners shall fail to certify to the proper town, city or village clerk any one or more drainage assessments for construction or repair, or additional assessment, against any lands in the district, at the proper time, they may certify the same to such clerk at any time thereafter, whether in the same or any subsequent year.

(3) In case any such clerk fails to place any assessment certified to him, on the tax roll against the land or corporation assessed, such assessment shall be placed upon the tax roll of such town, city or village for any subsequent year. In case such clerk places on such roll an erroneous sum the same shall be corrected on the tax roll of any subsequent year after the error is discovered.

89.37 Assessments returned as delinquent taxes, when. (1) Such assessments against lands as are not paid to the commissioners or to the town, city or village treasurer shall be returned by such treasurer to the county treasurer, in the same manner and at the same time as delinquent taxes, but separately therefrom. The county treasurer shall advertise the same in his list of lands to be sold for unpaid taxes, and unless paid to him prior to the tax sale, he shall sell such lands for the taxes and drainage assessments against the same treating such drainage assessments the same as, but keeping them separate from, the unpaid taxes on his records. When he issues certificates of sale of land for taxes and drainage assessments, he shall issue a separate certificate for the amount of drainage assessments, penalties and accrued interest thereon. No extra advertising fee shall be added to the certificate of sale for drainage assessments when the land was at the same time sold for taxes as well as for drainage assessments. In case the tax on any land shall be paid and the drainage assessment not paid the county treasurer shall proceed to sell such land for drainage assessment or assessments in the same manner in which he would proceed if the taxes thereon were unpaid. The tax certificate and the drainage assessment certificate on the same land may be assigned separately or together but at the public sale they shall be offered and sold together.

(2) The treasurer of the county in which any part of a drainage district is situated, shall keep in the books of account of such county, a separate account with each district. In each such account he shall credit the district with (a) All sums received by the county in payment of drainage assessments of that district, penalties and interest thereon; (b) all sums received by the county as principal on the sale of drainage assessment certificates at the tax sale (except such certificates as shall be sold to the county); (c) all sums received by the county for principal, penalties and interest on sale or assignment of drainage assessment certificates, after the county has bid them in; (d) the principal and accrued interest on all drainage assessment certificates up to the date of the drainage assessment deed, in case the county has taken a deed to itself on any drainage assessment certificate and (e) any and all other sums received by the county on account of such district.

(3) In such accounts the county treasurer shall charge to each district all sums paid to its commissioners.

(4) (a) The county treasurer shall, on demand of the commissioners, pay to the commissioners the balance of moneys held by the county for their district, and shall take and file in his office receipts therefor.

(b) The county bidding in such drainage assessment certificates shall not be held or required to pay therefor, or be in any manner held liable thereon, but shall hold and sell and assign the said certificates in trust for the benefit of the drainage district in which the lands so sold are situated.

(c) Whenever any lands, located within any drainage district, shall have been offered for sale and such lands have not been sold, the county treasurer of the county in which such lands are situated shall bid in such lands for the county in trust, but the county shall not in any way be liable for such unpaid or future drainage assessments; and no credit shall be extended by the county to the treasurer of the town, city, or village, within which such lands lie, for such unpaid assessments on the lands so bid in, but the county clerk shall give to such town, city, or village treasurer a statement showing the amount of such unpaid assessment on such lands bid in by the county. Said certificates shall be held or assigned by the county only, in trust for such drainage district.

(d) In case that any of the lands so bid in by the county shall have not been redeemed or certificates assigned within the period prescribed by the statutes relating to general taxation, the circuit court may, upon the application of the county, the commissioners, or of any creditor or bondholder of the drainage district within which said lands are located, direct the treasurer of such county to offer said lands for sale at public auction, in such manner as the court shall direct, and notice of such sale shall be served upon the parties interested by publication once each week for three successive weeks in a newspaper published in the county, by posting in five public places in the drainage district and by mailing a copy of the notice to each interested party whose post-office address is known or can be ascertained by reasonable inquiry to the secretary and clerk of each corporation affected. Report shall be made and deed issued in the manner provided by sections 278.16 and 278.17, and from the moneys received from the sale of said lands the county treasurer shall first deduct any unpaid general taxes due the county and the costs of such proceedings, and shall pay the balance of such moneys in the manner and to such creditors or bondholders as the court shall direct. When lands shall have been finally sold under order of the court as provided herein, they shall be released from all lien of assessments levied prior to the time of such sale.

(5) After the expiration of 5 years from the issuing of a drainage assessment certificate, a deed shall issue thereon in the same manner and upon the same notice or affidavit of nonoccupancy now required for the issuance of tax deeds, which deeds shall be in substantially the same form as tax deeds, provided that no such drainage assessment deed shall cut off or adversely affect any drainage assessment or instalment of any assessment falling due after the assessment or instalment upon which such deed is issued, nor shall it cut off or adversely affect any additional assessment or assessment for repairs that may thereafter be made or fall due. No tax deed shall cut off any drainage assessment nor shall any drainage assessment deed cut off any tax.

(6) The rules of law applying to the collection of general taxes, interest thereon before and after sale, the sale of lands for taxes and issuance of tax deeds shall, unless in conflict with the drainage district law, apply to the collection of and sale of lands for drainage assessments and the issuance of drainage assessment deeds. [1939 c. 329; 1941 c. 158]

Note: A drainage assessment lien is a special assessment lien, and therefore a tax lien. The purchase of land at a sale for nonpayment of drainage assessments by a husband of a co-owner, under an agreement that one of the co-owners should occupy the property until her death and that the property should then be divided among the other co-owners, was a purchase by the co-owners and operated as a redemption of the property from the drainage lien by them so that the lien of a pre-existing mortgage was not thereby extinguished. *Bankers Farm M. Co. v. Christofferson*, 221 W 148, 266 NW 220.

The provision that the county acts merely as a trustee and without financial liability in the purchase of land sold for delinquent drainage assessment is valid. *Lewiston Drainage District v. Diehl*, 227 W 372, 279 NW 45.

Where lands upon which county holds drainage assessment certificates are sold at public auction by order of court, county may not be purchaser if it merely holds drainage assessment certificates, but county may be purchaser if it holds drainage deed or tax deed. Words "any unpaid general taxes due the county" as used in (4) (d) include all general taxes remaining unpaid upon lands sold thereunder. 20 Atty. Gen. 307.

County may take tax deed without paying up drainage assessment certificates but such certificates may be foreclosed and land sold, and from proceeds of sale unpaid general taxes are first to be paid. 20 Atty. Gen. 964.

County board may reassess these unpaid drainage assessments, but separately from county taxes and not as charge against the municipality in which lands assessed are situated. County is entitled to receive from drainage district six per cent interest on county funds paid out to refund invalid drainage assessment certificates. 21 Atty. Gen. 973.

County may be purchaser at sale of land which is subject to drainage assessments held pursuant to (4) (d) if such county holds general property tax certificates upon land to be sold. 26 Atty. Gen. 20.

County owning and holding unredeemed drainage assessment certificates bid in under this section may apply for sale of property under (4) (d), whether or not it has taken deed on its general tax certificates. If it has taken such deed, proceeds of sale should be first applied to payment of drainage district assessments. Application for sale should not be made in either case until expiration of five years from date of drainage assessment certificates. 30 Atty. Gen. 47.

89.376 [Repealed by 1931 c. 79 s. 17]

89.38 **Clerk to certify lands affected.** Immediately after the entry of any order confirming any assessment for construction or additional assessment, or any assessment for repairs (if the latter assessment be payable in instalments) the clerk of the court shall certify to the register of deeds in each county, where assessed lands are situated, a true

description of the lands in such county assessed and the sum assessed for construction or repair against such lands, and such register shall thereupon file and record such copy and the same after it is filed shall be notice of the lien of such assessments.

89.39 Plan for enlargements. (1) Whenever the commissioners are petitioned by the owners of one-tenth of the lands in their district to repair or enlarge existing drains or to lay out and construct new drains in such district, or whenever the commissioners shall be of the opinion that the plan and scheme of drainage of the district are or will be insufficient to effect a thorough drainage of such district or any portion thereof, and that enlarged or supplemental drains are required to effect such drainage, they shall cause to be prepared plans and specifications for the enlargement of existing drains or for the construction of sufficient supplemental drains, to complete the drainage of such district, and shall estimate the cost of construction thereof together with the cost of all additional bridges that said district must build, and shall apportion and assess such cost of construction upon the several benefited parcels of lands and corporations, as provided in section 89.28, and in subsection (3) of this section.

(2) They shall award to each parcel of land or corporation the damages caused to it by such supplemental work.

(3) All supplemental benefits shall be so apportioned and assessed that all assessed lands and corporations shall be required to pay a sum total for the construction of the total drainage proportionate to the actual benefits received by such lands and corporations from the total drainage.

(4) The commissioners shall then file a report stating:

(a) That the drains constructed or authorized are insufficient to effect a thorough drainage of such district or the part thereof therein specified and the facts relative thereto.

(b) The descriptions of all lands and corporations previously assessed for benefits or awarded damages.

(c) The assessed benefits then in force.

(d) All assessments for construction confirmed against such benefited lands and corporations.

(e) Whether the cost of construction already confirmed, together with the cost of construction by them proposed for such supplemental work, will exceed the benefits already confirmed.

(f) An assessment of supplemental benefits warranted by the work done and the proposed work upon all the benefited lands and corporations as the facts warrant, whether previously assessed benefits or not, and the assessment for construction provided for in subsection (1) of this section.

(g) A prayer for such relief as the facts may justify.

89.40 Enlargements governed by this chapter. The provisions of this chapter where applicable and not in conflict with, shall apply to the proceeding authorized by section 89.39.

89.41 Validity of assessments, how inquired into. (1) Whenever the validity of any assessment is questioned and such question is brought to the attention of the court by any interested person, the court shall fix a time and place of hearing and require all interested persons to show cause why such assessment be not validated.

(2) Such order to show cause shall be served in such manner and upon such persons as the court shall direct.

(3) Any person or corporation objecting to the validation of such assessment must, on or before the day fixed for hearing, file in the office of the clerk of the court a remonstrance stating his objections as required by section 89.33. Such remonstrances shall be heard and determined in the manner provided for remonstrances filed under said section and an order entered thereon.

(4) Such order shall direct all necessary amendments, shall cure all defects in the former proceedings, shall render valid and binding the former order of confirmation or such order of confirmation as amended by the court.

89.42 Private drains not to be connected with district drains; violations, penalty.

(1) No person or corporation shall connect any drain with a district drain or remove any spoil bank except under written plans and specifications approved by the commissioners of which the commissioners shall preserve a copy, except pursuant to section 89.64.

(2) Any person or corporation violating the provisions of this section shall be punished by a fine of not less than five nor more than twenty-five dollars, and shall be liable to the district for all damages caused by such violation.

89.43 Drains across railroads; removal of sluices, wires, etc. (1) The commissioners shall have the right to lay out and construct all necessary drains, across any railway right of way or yards in their district, and any railway company whose right of way or yards crosses the line of any proposed drain, shall open its right of way or yards and permit such drain to cross the same as soon as such drain is constructed to such right of

way or yards. The term "railway company" as used in this section shall include steam, electric, interurban and street railways.

(2) Every district shall be liable to a railway company, whose right of way or yard or tracks any of its drains cross, for the reasonable cost of opening its right of way and of the culverts and bridges made necessary by such drain crossing such right of way, yards or tracks but not of more expensive character than the average other culverts or bridges constructed on the same division of the railway across streams or ditches approximately the same width and depth and within one hundred miles of such district ditches. Such cost shall be included in the cost of construction and awarded as damages to such railway company in the report of benefits and damages.

(3) Whenever it becomes necessary to open a railway right of way in order to permit the passage of dredges and machinery in cleaning or repairing any district drain, the reasonable cost thereof shall be ascertained by the commissioners and awarded to the railway company as damages in the report of the commissioners when assessing the cost of repairs.

(4) Openings shall include the removal of all fences, tracks and bridge structures to the width specified in the report of the commissioners and replacing the same in substantially as good condition as they were prior to the removal thereof.

(5) Upon receiving fifteen days' notice in writing, any railway company across whose right of way any such drain, is laid out, shall open its right of way or yards to permit the commissioners and their contractors, agents or employes to construct, clean or repair such drain across its right of way and yards, and shall permit the passage of dredges and other machinery used in the construction, cleaning or repairing of such work through such right of way.

(6) For every day that such railway company fails, after the end of fifteen days from service of such notice, to open its right of way or yards as hereinbefore required it shall forfeit twenty-five dollars to the district to be collected in an action as other forfeitures are collected or set off against any damages that may have been awarded to such company and shall be liable to the contractor delayed for all damages caused by such delay. If such railway company fails to so open its right of way or yards the commissioners may at any time after the expiration of such fifteen days, open such right of way or yards along the lines of such drains, and construct, clean, or repair the same and may recover from such railway company the reasonable expense of opening the same. Such district shall so prosecute the work through such railway right of way and yards as not to delay traffic upon such railway for longer time than is absolutely necessary.

(7) Whenever in the construction, cleaning or repairing of any drain it shall be necessary to remove or raise any sluice or pipe carrying water or other fluid, or any wire, conduit or cable used for conducting electricity or for any other purpose for the passage of a dredge or other machinery, the owner of such sluice, pipe, wire, conduit, or cable upon being given fifteen days' written notice stating the place where such dredge or other machinery will pass and that such removal or raising is necessary, shall raise or remove the same and allow passage of such dredge or other machinery. The reasonable expense of such work shall be paid by the district or its contractor.

(8) If upon fifteen days' notice as aforesaid the owner or owners of such sluice, pipe, wire, conduit or cable shall fail to remove the same, the commissioners may do so and such owner or owners shall forfeit ten dollars per day to the district for each day that such dredge or other machinery is delayed by such failure and shall be liable to the contractor delayed for all damages caused by such delay.

89.44 Insufficient and additional assessments. (1) If in the first assessment for construction (whether for original or supplemental work) the commissioners shall have reported to the court a smaller sum than is needed to complete the work of construction or if in any year an additional sum is necessary to pay the principal or interest on lawful indebtedness of such district, additional assessments on the lands and corporations benefited, proportioned on the sum of all benefits which have been confirmed by the court and are then in force, shall be made under the order of the court or presiding judge thereof. Such additional assessments and the total prior assessments for construction shall not exceed the total amount of the benefits then in force. Such additional assessments may be made without notice, and may be made payable in instalments, and shall be treated and collected in the same manner as the original assessments for construction.

(2) The commissioners of such district shall have the same power to borrow money and issue notes or bonds based upon such additional assessments that is given to them in the case of original assessments.

89.45 Substitutes for omitted assessments. (1) Omission to assess benefits or to assess for construction or to make additional assessments or to assess for repairs or to award damages to any lands or corporations in the district shall neither affect the jurisdiction of the court to confirm the report nor render any assessment voidable, but the commissioners shall, as soon as they learn of the omission, either agree with the omitted corporations or owners of the omitted lands upon the proper assessments and awards of

damages, or they may make such assessment and awards as shall be just and shall report the facts, together with such assessments and awards to the court.

(2) If such assessment or award is not agreed upon, the court shall fix a time and place of hearing on such report and direct what notice shall be given to the owner of such lands or to such corporations. The owner of such lands or the corporations affected may file a remonstrance against the confirmation thereof because such assessment is too high or the award of damages too low and issues may be made up as provided by section 80.33 and trial had as provided by section 89.07.

(3) This section shall be retroactive.

89.46 Inequity only defense against assessment. No drainage assessment shall be void or voidable for irregularity in the proceedings unless it be shown that such assessment is inequitable.

89.47 Borrowing money. (1) The court may at any time on or after the appointment of the commissioners and before the confirmation of the report levying the assessments for construction, authorize them to borrow money upon the note or notes of the district for the purpose of carrying on the proceedings, such note or notes not to run for more than two years and to bear interest at a rate not exceeding six per centum per annum.

(2) The commissioners may upon order of the court borrow money not exceeding the amount of assessments for construction, additional assessments and assessments for repairs, unpaid at the time of borrowing, for the construction or repair of any work which they shall be authorized to construct or repair or for the payment of any indebtedness they may have lawfully incurred and may secure the same by notes, or bonds of the district bearing interest at a rate not to exceed six per centum per annum, and not running beyond one year after the last instalment of the assessments on the account of which the money was borrowed shall fall due, which notes or bonds shall not be held to make the commissioners personally liable but shall constitute a lien upon the assessments for construction and repair.

(3) Whenever the commissioners shall desire to borrow money upon the notes or bonds of a drainage district, to be paid during a series of years and after a period of not exceeding three years, they shall by public advertisement first invite proposals to furnish the money desired at the most favorable rate of interest, or if bonds or notes shall be issued at six per centum, proposals to purchase the same at the best premium. If such advertisement is made without success and if they shall have been unable to sell such notes or bonds at par or above, they may, subject to the approval of the court, sell the same at private sale at the best price they can obtain therefor.

(4) If at any time the commissioners shall find that they have not or will not have enough funds in the district treasury to pay any bonds, notes or other lawful indebtedness of the district when the same shall become due or if any extraordinary emergency requires borrowing, the court upon proof of the facts showing the necessity therefor shall authorize the district to borrow money to pay the same or meet such emergency. If such loan exceed three thousand dollars and runs beyond one year, it shall be made only upon notice published as required by subsection (3) of section 89.06. When necessary, additional assessments to pay such loans shall be made under section 89.44.

(5) The commissioners may obtain from the county treasurer of the county in which drainage assessment certificates are held in trust, the assessment certificates covering lands in such district and use such assessment certificates as collateral security for the payment of such loan. Such assessment certificates shall not be sold by the pledgee for less than their face and six per cent interest from their date. When the commissioners obtain such assessment certificates from the county treasurer they shall give a receipt therefor giving the dates and numbers of such certificates. The commissioners shall, on the minutes of their proceedings, spread a copy of such receipt and a memorandum stating by whom such assessment certificates are held as collateral. All of the loans made under this subsection may be renewed, but in no event shall they exceed the face and interest of the bonds and notes of the district and accrued interest which are paid by the money so borrowed. All loans heretofore obtained by the commissioners of any district for the payment of bonds and interest of the district wherein assessment certificates have been pledged as collateral to the loan, are hereby validated, and the withdrawals of certificates from the county treasurer for the purpose of securing such loans heretofore obtained are hereby validated.

(6) The court may on the petition of the commissioners or of the holder of any bond, interest coupon or other district obligation authorize the commissioners to refund any lawful indebtedness of the district by taking up and canceling any or all of its outstanding notes and bonds as fast as they become due (or before they are due if the holders thereof will surrender the same) and issue in lieu thereof new notes or bonds of such district payable in such longer time as the court shall deem proper, not to exceed in the aggregate the amount of all notes and bonds of the district then outstanding and the unpaid accrued interest thereon, and bearing interest not to exceed six per centum per annum.

(7) When the indebtedness of the district has been refunded or is about to be refunded, as provided above, the court may on petition of one or more landowners, or of the commissioners, extend the time in which to pay assessments for construction to September first next before a like portion of the refunding bonds, which are liens thereon, become due, in which event the face of all unpaid past due assessments so extended together with all interest, penalties and charges shall be a lien on the lands against which the assessments were originally made, and the court may make all orders and do all other things necessary to carry into effect such extension of time.

(8) Except in the case of refunding bonds approved by the court, no note, bonds or other evidences of indebtedness of the district running for more than one year shall be valid unless approved by the banking commission, the commissioner of agriculture, the state chief engineer and the attorney-general, and when so approved bear a statement showing such approval. [1937 c. 284]

89.48 Advertising for bids; commissioners not to be interested. (1) In all cases where the work to be done at any time under the direction of the commissioners shall in their opinion cost to exceed two thousand dollars unless the court has authorized the district itself to do the work the commissioners shall advertise for bids on such work in some newspaper published in the county in which the petition is filed, and may in their discretion advertise in one or more newspapers published elsewhere. Such advertisement shall particularly set forth the time and place when and where the bids will be considered, the kind of work to be let and the terms of payment. The commissioners may continue the letting from time to time and shall in the advertisement reserve the right to reject any and all bids.

(2) Such work shall be let to the lowest responsible bidder unless in the opinion of the commissioners the lowest bid is unreasonably high and a lower bid can be obtained.

(3) No commissioner shall be interested directly or indirectly in any contract with the district or for any work or material in or for such district, or for the sale of machinery or materials therefor or thereto, or in the wages of or supplies of men or teams employed on any such work in or for such district, or deal in securities of such district.

89.49 Net damages payable before taking land. The net damages awarded to the owners of lands shall be paid or tendered before the commissioners or their contractor shall be authorized to enter the lands, to which an award is made, for the construction of any drain, thereon. If the owner is unknown or the commissioners cannot for any other reason safely pay him they may deposit such net damages with the clerk of the court for the benefit of the owners or parties entitled thereto, to be paid or distributed as the court shall direct, and such payment shall have the same effect as a tender to and acceptance of damages by the persons entitled thereto.

89.50 Lands assessed but not drained, may be connected with the district drain; proceedings. (1) When any person owning lands within the district, which have been assessed for construction, shall present to the commissioners an affidavit that he owns land (describing the same) within the district, that the same has been assessed for construction, needs drainage, and is shut off from access to any drain of such district; or that, by reason of the slope of the land it is impractical for him to drain said land to any such drain, without crossing the lands of other owners, and asking that a drain be laid out from affiant's lands to such district drain, the commissioners shall fix a time and place of hearing upon such application, and within thirty days after the filing of said affidavits shall give notice thereof by posting such notice in three public places in such district or its vicinity, at least ten days before the time of hearing, and by serving such notice at least five days before such hearing on the occupants of all lands through or along which such proposed drain may pass, and upon the owners of such lands, if such owners are known and reside within the district.

(2) Such notice shall be served personally or by leaving a copy thereof at the usual place of abode of each occupant and each owner of such lands residing in the district, across, through or along which lands it is proposed to lay out such drain.

(3) At the time and place fixed by such notice the commissioners shall meet and if the facts set out in the application are true, and they decide that a drain is necessary and that the benefits will exceed the cost of construction thereof, they shall by order lay out a drain to the district drain to which applicant's lands may be drained as a public drain and shall assess the benefits and cost of construction and award the damages to all lands and corporations in the district benefited or damaged by such proposed drain. Such order shall contain a description of the location of the drain and specifications therefor. If it is found that the cost of construction will exceed the benefits the application shall be denied unless the applicant pays to the district such excess.

(4) The commissioners shall cause notice of such assessments and awards to be served upon each occupant of assessed lands and land across which such drain shall be laid, and upon each owner of the assessed lands, who resides in such district, in the same manner as the previous notice is herein by subsection (2) required to be served within ten days after

the making of such order laying out the drain, but failure to make such service within ten days shall not render such order void.

(5) Such order shall be final unless appealed from to the court having jurisdiction of the district, within thirty days after the serving of such last notice.

(6) A copy of such order together with proof of the service of the several notices shall be filed in the office of the clerk of the court within ten days after such order is made, but failure to file it within ten days shall not render such order void. A copy of such order shall be filed in the office of the register of deeds of the proper county and thereafter the assessments shall be a lien upon the lands so assessed.

(7) Within thirty days after the time for appeal from such order shall have expired or after such order is confirmed on appeal, the commissioners shall proceed to construct such drain and may borrow the necessary money to pay therefor not exceeding the benefits assessed and the excess money so deposited. When such drain is constructed it shall be a public drain and part of the drainage system of the district. Additional assessments necessary to complete such drain not exceeding such benefits may be assessed as provided in section 89.44.

89.51 Adjacent lands may be joined to a district. (1) Whenever owners of lands adjacent to any district desire such lands annexed to such district, they may file in the office of the clerk of the court a petition for annexation signed by more than one-half of the owners of lands in the proposed annex, which signers shall represent more than one-third of the lands in the proposed annex or signed by the owners of more than one-half of the lands in the proposed annex together with a description of the lands which they desire annexed to such district, and the names of owners of all such lands so far as the same are known, with a plat showing the original district and proposed annex.

(2) Thereafter the provisions of this chapter shall, so far as applicable, apply to the proceedings for the annexation of territory, and the commissioners of the original district shall be the commissioners of the enlarged district.

89.52 Benefited lands may be annexed. (1) Whenever any lands or corporation outside a drainage district are in fact receiving the benefits of any drain of such district, the commissioners, when their attention is called thereto or any owner of land in such district may report such facts to the court and petition that the benefited lands, describing them, be brought into such district and assessed for the benefits by them received from such drain.

(2) Upon the filing of such report and petition, the court shall enter an order directing that the owners of such lands be notified of the filing of such report and the contents thereof, and requiring such owners to show cause at a time and place therein fixed, not less than twenty days after such report is filed why their said lands should not be brought into the district and assessed.

(3) At the time and place fixed for hearing on such report, any such owner may remonstrate against such petition.

(4) If the court shall be satisfied that such lands or any of them are receiving benefits from any drain, the court shall so find in writing and shall order the benefited lands to be made a part of such district.

(5) The commissioners shall, after the time for appeal is past, assess benefits and cost of construction against and award of damages to each tract of annexed lands and make a report to the court thereon.

(6) The court shall fix a time and place of hearing on such report and direct what notice shall be given to the owners of such lands and corporations assessed. Any owner of such land or any corporation affected may file a remonstrance against the confirmation thereof and the issues arising thereon shall be made up as provided by section 89.33 and tried as provided by section 89.07.

89.53 District liable for damage to outside property, when. The drainage district shall be liable for any and all damages that result to lands lying outside of its boundaries because of the work done in such district. The word "damages" in this section shall be construed to mean such damages and only such damages as could be recovered against natural persons for like injury, resulting from like work. No action or proceedings shall be taken to collect such damages to outside lands until such damages have actually resulted.

89.54 Districts not to overlap; each liable to other for damages. The boundaries of no district shall in any manner conflict with the boundaries of any other district and if through the construction of any proposed drain increased cost shall be entailed upon a lower district in providing means to carry off the waters or remove the sediment flowing from the higher district, the higher district shall be liable for such increased cost. The amount of such increased cost may be agreed upon between the commissioners of such districts subject to the approval of the court, or may be recovered in an action which shall be tried by the court without a jury.

89.55 Assessments of land subsequently subdivided. In case any tract of land in a drainage district assessed for benefits as a single tract is divided in ownership, the commissioners of such district shall apportion the sum to be collected in any year thereafter for construction, additional assessment or assessments for repairs, against such tract, in such manner as shall be just and equitable between the several divisions of the divided tract.

89.56 Certification of assessments. Confirmed assessments against any city, village or town shall be certified by the commissioners, as such assessments become due, to the clerk thereof, and by such clerk, placed upon the next tax roll. Whenever such assessments exceed one-fourth of one per cent of the assessed value of the property in such city, village or town for the last previous assessed valuation, such assessment shall be paid in instalments of one-fourth of one per centum of such valuation for each year until paid unless the court shall order them paid in smaller amounts.

89.57 Bridges. (1) (a) Whenever the construction of a drainage ditch across a public highway shall make necessary the construction or reconstruction of any bridge, the district and the officers in charge of the maintenance of the bridge shall endeavor to come to an agreement as to the most practicable and desirable method of constructing or reconstructing the said bridge. In case they are unable to agree, the matter shall be referred to the court for determination.

(b) If it shall be determined to reconstruct or add to the bridge existing at the time of such crossing, the district shall pay the costs incident thereto. If it shall be deemed most practicable and desirable to construct a new bridge, the district shall pay to the unit of government responsible for the maintenance of the bridge for use in constructing the new structure such sum as shall be deemed equivalent to the value of the bridge in place at the time of constructing the drainage ditch.

(2) If it is desired to construct a new bridge across any drainage ditch, the officers in charge of such construction shall notify the drainage commissioners by registered letter addressed to the secretary thereof. If said commissioners shall within ten days file with such officers a written order to that effect, it shall be obligatory on such officers to construct such new bridge of such clear span as the said commissioners shall order and in such manner as to make possible the removal of its superstructure to permit the passage of such floating dredge. In case such order of the commissioners shall require the bridge to be built of greater span than is necessary for proper drainage of flood waters, any excess cost resulting from such order shall be paid by the district. If such bridge shall be required to be built in such manner as to permit the removal of its superstructure to afford passageway for dredges any increased cost of maintenance and the cost of such removal, when required, shall be paid by the district.

89.58 Purchase and operation of machinery. (1) Whenever the commissioners of one or more districts file in the office of the clerk of the court a petition praying that the district or districts be authorized to purchase, operate and maintain necessary machinery, apparatus, and other appliances to construct and keep in repair the drains within their districts and to employ labor and do all things necessary to satisfactorily operate such machinery and apparatus, the court shall fix a time and place of hearing on such petition.

(2) Notice of the time and place of hearing on such petition shall be given as provided in section 89.06.

(3) Any interested person or corporation may appear and contest such petition.

(4) If the court is satisfied that it will be for the best interests of the district or districts to own the necessary machinery and appliances and do the work itself or themselves it shall so find and authorize the purchase of such machinery; otherwise it shall by order dismiss such petition. When more than one district is interested the court shall determine the proportion of the cost of the machinery to be paid by each district.

(5) If there are insufficient funds with which to purchase machinery and appliances the commissioners shall levy an additional assessment to pay therefor together with the cost of the proceeding on such petition.

89.59 Certain proprietors may obtain more thorough drainage than the district affords. (1) Whenever the owners of land in a part of a drainage district desire a more thorough or different drainage than the drains of such district then constructed or planned will give, a majority of such owners may petition the commissioners to grant such more thorough or different drainage. The commissioners shall examine such lands and report the facts to the court.

(2) If the court shall be satisfied that the public health or public welfare will be promoted by such more thorough or different drainage and that the benefits therefrom will exceed the damages and costs of construction the court shall (a) Order a subdistrict of such drainage district formed; (b) give it a name or number; (c) fix its boundaries and (d) order the commissioners of said district (1) to make and report a plan and specifications for such more thorough or different drainage, (2) to estimate the cost of construction thereof, (3) to estimate the cost of all additional bridges thereby made necessary, and

(4) to assess benefits against and award damages to all lands and corporations in such district benefited or damaged by such more thorough or different drainage, as provided in section 89.28.

(3) Thereafter the proceedings under this section shall, so far as possible, conform to the proceedings under sections 89.32 to 89.70.

89.60 Consolidation of districts. (1) Whenever the owners of at least ten per cent of the lands in each of two or more districts under the jurisdiction of the courts of the same circuit petition that such districts be consolidated, any such court having jurisdiction of one or more such districts may consolidate two or more such districts, and give a name to the consolidated district and appoint commissioners therefor.

(2) Whenever such drainage districts are under the jurisdiction of courts of different circuits, such petition shall be addressed to the court having under its jurisdiction the largest area.

(3) The court may order the consolidation of two or more districts and the records of all such districts shall be certified to the clerk of such court and the circuit court of such county shall thereafter have jurisdiction of said consolidated district and said records shall be the records of said consolidated district. The court shall give a name to the consolidated district and appoint commissioners therefor.

(4) Assessments made against lands and corporations in the several districts so consolidated shall remain in full force and effect and the lien thereof shall not be affected by such consolidation.

(5) After such consolidation, the benefits of such consolidated district may be reassessed, to render them just and equitable as a basis for future assessments, but such reassessments shall in no manner affect or render more difficult of collection any bonds, notes or other valid obligations of either of the districts consolidated. Bonds, notes and other obligations of the original districts shall remain liens on the same assessments that they were liens on when they were issued.

89.61 Assessment of one district by another. Whenever one district shall have assessed another district for special benefits and such assessments shall have been confirmed by the court, or whenever a money judgment shall have been rendered against any district, the clerk of the court in which such judgment shall be rendered or assessment confirmed, shall certify such assessment or judgment to the commissioners of the district liable thereon and such commissioners shall assess upon the lands and the corporations of such district a sufficient sum to pay such assessment or judgment, but the court may order that such assessment or judgment be payable in instalments.

89.62 Inequitable assessments. At any time after the expiration of five years from the confirmation of the report of the commissioners, upon petition of at least one-tenth of the owners of lands within a district or of the owners of at least one-tenth of the lands within such district, setting forth that such original assessments of benefits is inequitable and unjust, the court shall direct the commissioners to reassess the benefits in such district. The commissioners shall report such reassessment to the court. Notice of hearing thereon shall be given as provided in subsection (3) of section 89.06. The issues shall be made up as provided in section 89.33 and tried as provided in section 89.17. The court shall on such hearing confirm the report, or direct how the same shall be modified and when so modified shall confirm the same. Such reassessment shall take the place of all prior assessments and thereafter all assessments for construction, additional assessments and assessments for repair shall be based on the sum of all assessments of benefits then in force.

89.63 Inadequate drainage; notice; hearing. (1) Whenever the commissioners of any district, or whenever the owners of more than one-tenth of the lands within any such district shall file with the court a petition in writing setting forth: (a) That the drains constructed within such districts do not afford an adequate outlet for drainage; (b) that it is necessary in order to give an adequate outlet to remove certain dams or other obstructions from waters or streams, or to deepen, straighten or widen the same either within or beyond the boundaries of such district; (c) that the public health and the public welfare will be promoted by such work and that the navigability of, and other public rights in, such waters or streams will not be materially impaired, the court shall fix a time and place of hearing thereon which shall not be less than thirty days nor more than sixty days after the date of such filing. Notice of such hearing shall be posted and published in the manner required by subsection (3) of section 89.06, and by service on the owner of any dam sought to be removed and upon all riparian owners and corporations affected thereby in the same manner as service of a summons in the circuit court.

(2) Upon such hearing any person interested may appear and contest the sufficiency of the petition and the necessity for such work.

(3) The affidavit of any landowner in the district to the effect that the petition is signed as required by the statute shall be prima facie evidence of that fact.

(4) If the court shall find that the petition has the proper number of signers, and that to afford an adequate outlet it is necessary to remove dams or other obstructions from waters and streams which may be navigable, or to straighten, clean out, deepen or widen any such waters or streams either within or beyond the limits of such district, the court shall direct the commissioners to file an application with the public service commission of the state of Wisconsin as provided in subsection (7) of section 89.27. Thereafter such proceedings shall be had as are provided for in subsections (8) to (17), inclusive, of section 89.27, so far as the same may be applicable.

(5) Within thirty days after the filing of the findings of the public service commission in the office of the clerk of the circuit court the commissioners of the district shall proceed to estimate the cost of such work, including the expenses of the proceeding, together with the damages which will result from the work and shall file with the court within a reasonable time a report in writing in which they shall award damages to all lands damaged by such work, and they shall assess the cost of such work against the lands in said district in proportion to the assessment of benefits then in force; but if the commissioners are of the opinion that such additional work will result in greater benefits to any or all of the lands within such district than the assessment of benefits then in force they shall as a part of such report reassess the lands of such district for benefits, which reassessment shall be based upon the actual benefits to such lands and the assessment for cost of construction and all future assessments shall be based upon such reassessment of benefits.

(6) Upon the filing of such report such proceedings shall be had as are prescribed by sections 89.32 and 89.33 in so far as the same may be applicable.

(7) In the event that the commissioners shall have failed to levy a sufficient assessment to cover the cost of the removal of such dam and the construction of such other work they may levy such additional or supplemental assessments against the lands in such district as may be necessary.

(8) (a) Whenever it shall be made to appear to the court having jurisdiction of such drainage district, by petition of the commissioners or of any landowner, that the work as constructed substantially fails to give results intended and contemplated, solely through lack of sufficient or adequate outlet, the court may, upon due notice and hearing, if satisfied that such result can be effectually accomplished by additional work at a reasonable cost, and that the public welfare will be promoted thereby, order such additional work done, and the cost thereof spread over all of the lands in such drainage district, on the same basis as the cost of construction of the original work; provided, however, that such cost, with costs or expenses previously incurred or paid, whether from assessments levied or voluntary contribution by landowners in the district, shall not exceed the total benefits theretofore assessed, and that in no proceedings now pending or hereafter commenced shall any such order be made or relief granted, where a court or judge having jurisdiction thereof has previously denied the same in substance or effect.

(b) The provisions of this subsection shall apply to all work heretofore or hereafter constructed under chapters 88 and 89 of the statutes.

89.64 Water for irrigation or flooding. Any owner or owners of lands adjoining or in a drainage district bordering on a drainage ditch may take water from said ditch for irrigation purposes or for the purpose of flooding lands for cranberry culture, if such water is taken from said ditch in a manner not to injure the drainage ditch or ditches and the taking thereof does not materially defeat the purposes of such drainage.

89.65 Obstructions to flow of water. (1) Whenever any embankment, grade, culvert or bridge (including the approaches to such culvert or bridge) built or maintained by any person or corporation across any natural watercourse or natural draw so obstructs such watercourse or draw that waters therein are set back or diverted upon lands in any district, such person or corporation shall so enlarge the waterway through such embankment, grade, culvert or bridge and the approaches thereof that it will not set back or divert such waters upon lands in such district.

(2) The commissioners or the owners of land upon which such water is set back or diverted may serve notice upon such person or corporation to enlarge the waterway through such embankment, grade, bridge or culvert or to make new openings therein sufficient to let the waters pass without flooding such lands.

(3) In case the owner or person or corporation maintaining such embankment, grade, bridge or culvert fails for sixty days after such notice is served to so enlarge the waterway or make the necessary new waterways through such embankment, grade, bridge or culvert to permit such waters to pass without such setting back or diversion, the commissioners or injured landowners may report the facts to the court and petition that such owner or maintainer be required to enlarge such waterway.

(4) The court or presiding judge shall fix a time and place of hearing on such report and petition and order the owner or maintainer of such embankment, grade, bridge or cul-

vert to show cause why he should not be required to so enlarge such waterway or make such new waterway.

(5) Such order to show cause shall be served on such owner or maintainer or both, if named in the petition, as provided in sections 262.08 and 262.09 at least ten days before such hearing.

(6) If the court shall be satisfied that such embankment, grade, bridge or culvert so obstructs such watercourse or draw that it causes water to be set back or diverted upon lands in such district, the court shall order the owner or maintainer of such embankment, grade, bridge or culvert to so enlarge the waterway or to construct a new waterway through the same.

(7) The period of time that such embankment, grade, bridge or culvert has been built or maintained shall be no defense to such proceeding for the enlargement of the waterway through the same or the requiring of a new waterway to be constructed.

(8) Failure of such owner or maintainer to comply with the order of the court shall be punishable as for a contempt and such owner or maintainer failing to comply with such order shall be liable to the injured party for all damages.

89.66 Levees, bulkheads, reservoirs and machinery. (1) Whenever it is necessary to the successful drainage or protection of any district or of any considerable area of such district, the commissioners may purchase, construct, maintain and operate all necessary levees, bulkheads, reservoirs, silt basins, holding basin, floodways, engines and other machinery, pumps and pumping stations.

(2) If the same will cost more than two thousand dollars and the same has not been included in the report under section 89.28, the court shall order a hearing on such notice as is required in proceedings to purchase machinery under section 89.58.

(3) After such hearing the court may authorize the purchase and construction prayed for or any part thereof or refuse the same.

89.665 Dissolution. (1) The owners of more than one-half of the lands in any drainage district which have been assessed for benefits may file in the circuit court having jurisdiction of such district a petition signed by such owners asking for the disorganization of said drainage district. Upon the filing of such petition the court shall fix a time and place of hearing on the same, and order notice of such hearing to be given by posting the same in three public places in each of the towns within which any part of the lands in such districts are located at least twenty days before such hearing, and by publishing such notice in the two newspapers having the largest circulation in each county where any part of such district is situated, once in each week for three successive weeks. If there is only one newspaper in such county, the publication in such one newspaper will be sufficient. No drainage district shall be disorganized until all of its debts are paid, or funds to pay the same and interest are deposited with the treasurer of said district or the lands in said district have been assessed to the full amount of the confirmed assessed benefits and such assessments fully paid or after assessments have been levied to the full amount of the confirmed assessed benefits and a sale of all delinquent lands has been had pursuant to paragraph (d) of subsection (4) of section 89.37.

(2) If the court is satisfied upon the hearing that the petition is properly signed by such owners and that the public welfare will be promoted by such dissolution, it shall thereupon enter an order or judgment dissolving such drainage district, and in the event that it appears that there are any funds in the hands of the treasurer of such district belonging to the district, the treasurer of such district shall forthwith make distribution thereof among the then several landowners in the district in proportion to the last confirmed assessment of benefits in such drainage district. If there is any doubt as to the ownership of such lands, the owners claiming the right to participate in such funds shall make satisfactory proof of ownership to the court. Provided, however, that the drains that may have theretofore been constructed by such dissolved district and any drainage district which may have been heretofore dissolved shall be and forever remain common waterways for the use of all such owners in such dissolved district and any landowner or owners in such district shall have the right to make repairs thereto at his or their own expense, and any person who shall in any manner obstruct or injure any such drain shall be liable for all the damages caused to any person by such obstruction, and any person or persons violating the provisions hereof, shall, upon conviction, be fined not less than one dollar nor more than twenty-five dollars and costs for the first offense and not less than ten dollars, nor more than one hundred dollars and costs for each subsequent offense.

89.667 Division of district. (1) Whenever the owners of a majority of the land in a portion of a drainage district, that is separated by a natural divide from the rest of the district, or is served by a separate outlet, petition the court having jurisdiction of such district to be set apart as a separate organization, the court shall fix a time and place of hearing on said petition, and order notice of such hearing to be given by posting the same in three public places in each of the towns within which any part of the lands in such district

are located, at least twenty days before such hearing, and by publishing such notice in at least one newspaper published in each county where any part of such district is situated, once in each week for three successive weeks.

(2) Upon such hearing the court shall determine whether or not the petition is signed by the majority of such owners, and if the court shall so find and determine, said separation shall be ordered, and thereafter said separated unit shall be independent of said drainage district, provided, all debts of said district are fully paid and the separated unit shall automatically come under the jurisdiction of the county court and the farm drainage board of the county in which the majority of the land so separated is located, and thereafter all proceedings with reference to said separated unit shall be under the farm drainage law.

(3) The treasurer of said drainage district shall, upon the entry of the order of separation, pay to the county treasurer of the county having jurisdiction of such separated unit, to the credit of the farm drainage board and said separated unit, the just share of any unused funds in the treasury of said district, such partition of funds to be based on the confirmed assessment of benefits in the separate unit as compared with those in the remainder of the drainage district.

89.668 Transfer to farm drainage laws. (1) Whenever the owners of a majority of the land in any drainage district heretofore organized under the drainage district laws of this state, shall petition the court having jurisdiction of such district to transfer the organization of such district from the drainage district laws to the farm drainage laws of this state, the court shall fix a time and place of hearing of said petition, and order notice of such hearing to be given by posting the same in three public places in each town within which any part of the lands in such district are located, at least twenty days before such hearing, and by publishing such notices in at least one newspaper published in each county in which any part of such district is situated, once in each week for three successive weeks.

(2) Upon such hearing the court shall determine whether or not the petition is signed by the owners of a majority of the land, and if the court shall so find and determine, said transfer shall be ordered and such drainage district shall thereupon automatically come under the jurisdiction of the county court and the farm drainage board of the county in which the majority of the land in such district is located, and thereafter all proceedings with reference to such drainage district shall be under the farm drainage law.

(3) In the event that at the time of the making and filing of such petition any portion of any such drainage district shall have been theretofore separated from such district as provided by section 89.667, then the petition hereinbefore required shall be sufficient if signed by the owners of a majority of the land in the remainder of any such drainage district.

(4) The treasurer of any such district shall, upon the entry of the order transferring the jurisdiction of such district, pay to the county treasurer of the county which takes jurisdiction of such farm drainage district all moneys belonging to such drainage district, and upon such transfer of jurisdiction, such drainage district shall cease to exist as a body corporate under the drainage district laws, and shall automatically become a body corporate under the farm drainage laws, and shall be subject to all of the provisions of the farm drainage laws.

(5) All notes and bonds of such drainage district shall be and remain obligations of the farm drainage district until paid, and nothing herein contained shall in any manner affect the validity of the obligations in such drainage district, the jurisdiction of which is transferred.

89.67 Liberally construed. The provisions of this chapter shall be liberally construed.

89.68 Certain corporations may acquire land to promote drainage. Whenever it shall become necessary for any corporation organized under the laws of this state for the purpose of constructing, maintaining and operating drains, ditches, canals or the like for the drainage and for reclaiming wet, submerged, overflowed and swamp lands, in order to promote the public health or welfare, to acquire any real estate for the purpose of constructing, maintaining, or operating any canals, drains, ditches or the like it may purchase the same with the approval of the court, or may acquire such real estate by condemnation.

89.69 Penalty for placing obstructions in ditches. (1) It is hereby declared to be unlawful for any person, without the written consent of the drainage commissioners, to place any dam, sluice, bulkhead, log, timber, pole, lumber, brush, stone, earth, or other obstruction of any kind to the free flow of water in any ditch constructed under any drainage law of this state, except pursuant to section 89.64.

(2) Any person or persons violating the provisions of this section shall upon conviction thereof be fined not less than one dollar nor more than twenty-five dollars and costs of prosecution for the first offense and not less than ten dollars nor more than one hundred dollars and costs of prosecution for each subsequent offense, and shall in addition be liable

in damage to the drainage district and to all persons whose ditches or lands are injured by such obstruction for all damage and injury caused by such obstruction.

89.70 Special commissioners for adjacent districts. Whenever a condition shall arise out of the relationship of two or more adjacent drainage districts, for which no provision is made by any other subsection of the drainage district laws of Wisconsin, a special commissioner shall be appointed for each of said districts by the court or courts having jurisdiction thereof to adjust all matters in controversy arising out of said condition, and if there be an even number of districts affected the special commissioners shall choose another disinterested commissioner. All special commissioners shall take an oath to support the constitution of the United States and that of the state and faithfully discharge their duties to the best of their ability. The special commissioners shall employ such help as is necessary to investigate the problem at hand, and shall report their findings and the necessary order based thereon to said court or courts. Notice of filing said order shall be given as provided in section 89.37, and unless said order is appealed from to the supreme court by the commissioners of any district affected within thirty days of said confirmation, the commissioners of all districts affected shall enforce said order. The special commissioners shall receive five dollars a day and necessary traveling expenses while actually engaged in said work. All expenses connected with said work shall be assessed to all districts affected on a pro rata acreage basis.

89.71 New districts prohibited. No proceedings shall be instituted after the taking effect of this section for the organization of any drainage district under chapter 89 of the statutes.

89.72 Application of chapter 89. The provisions of chapter 89 of the statutes shall remain in full force and effect as to all districts organized and in process of organization prior to the taking effect of this section, under any law of this state, and as to farm drainages organized, or to be organized, under chapter 88 of the statutes.

Note: The drainage board of a farm drainage, acting on an order of the county court issued on the petition of holders of defaulted construction bonds, had power to make an additional assessment against the lands in the drainage to pay the principal of the defaulted bonds; and the additional remedy thus given by the incorporative provisions of 89.72 to the holders of drainage bonds to enforce collection of their bonds was available to them although the remedy was given subsequent to the issuance of their bonds. In re Farm Drainage Dist. No. 1, Waupaca County, 232 W 455, 287 NW 806.

89.75 Dams in drainage districts. (1) Any drainage district, town or county may appropriate money for the purpose of erecting a dam over or across any drain or ditch constructed under chapter 88 or 89 of the statutes.

(2) The department of agriculture and markets shall be advised of the proposed appropriation by such district, town or county, and it shall investigate the reasonable necessity therefor for agricultural purposes.

(3) If after such investigation said department shall in writing certify to the secretary of state that in its judgment such improvement would be in aid of agriculture within the limits of such drainage district, and shall also certify the amount which has been appropriated therefor by the district, town or county, and upon such certification the district, town or county may proceed to construct such dam.

(4) Upon the completion of said dam the department of agriculture and markets shall so certify to the secretary of state, and direct said secretary to draw his warrant on the state treasury in favor of such district, town or county for an amount equal to that which was appropriated by the district, town or county for the building of such dam. [1935 c. 550 s. 410]

89.76 District meetings, place, notice, proceedings, powers. (1) An annual meeting of every drainage district organized under chapter 89 shall be held on the second Monday in July, at nine o'clock in the forenoon. A different day and hour may be fixed by any annual meeting for the next succeeding annual meeting. Every such meeting shall be held in the courthouse of the county wherein is located a majority of the confirmed benefits.

(2) The drainage commissions of each such district shall give notice of the first annual district meeting by publishing a notice of the time and place when and where it will be held in some newspaper having a general circulation in such district, once a week for two successive weeks, the last publication to be not more than five days before the date of such meeting.

(3) At each annual meeting voting shall be on the basis of confirmed benefits, one vote being allowed for each five hundred dollars of confirmed benefits or major fraction thereof, but each owner shall have at least one vote.

(4) Each annual meeting shall organize by electing a chairman and secretary, each of whom shall hold office for a term of one year and until their successors are elected and have qualified. Vacancies in such offices shall be filled in a manner to be fixed at any annual meeting.

(5) Notice of all annual meetings after the first, shall be given by the chairman or

secretary in the manner as is provided for the calling of the first meeting by the commissioner.

(6) Special meetings shall be called by the chairman of the district when its commissioners desire to submit proposals or recommendations on any matters affecting the district.

(7) The commissioners shall attend all meetings of the district.

(8) At each annual meeting the commissioners of such district shall make a detailed report of work done during the year preceding and their recommendations as to work to be done during the succeeding year. If votes representing a majority of the confirmed benefits disapprove any recommendation made by said commissioners for work in the future, such action shall be binding on the commissioners. Provided, that any person entitled to vote at such meeting may appeal from any action taken by such majority to the circuit court which appointed the commissioners. Such appeal shall be in writing and state in general language the reason for the appeal, and shall be filed in the proper court within ten days after the date when action was taken by the district meeting. A copy of such notice shall, within the same time, be served personally on the secretary of the district.

(9) In case the commissioners make any recommendations at a special meeting the same action may be taken thereon as at an annual meeting with the same result and with the same right of appeal from such action.

89.78 Refinancing. (1) Whenever used in this section the following terms and expressions shall have the following meaning:

(a) The term "district" shall include any Wisconsin drainage district or farm drainage.

(b) The term "court" shall apply to the circuit court or county court having jurisdiction of any drainage district or farm drainage.

(c) The term "owner," "owners," or "owners of land" shall include an owner of the fee, or of any interest in lands; administrators, executors, guardians, and trustees; counties, towns, and other municipal corporations; mortgagees, lien holders, holders of tax and drainage certificates, owners of drainage district, and farm drainage, bonds and notes and other creditors of a drainage district or farm drainage.

(d) The term "loan agency" shall include the United States Reconstruction Finance Corporation, any other United States loan corporation and any private individual, corporation, or loan agency.

(2) The commissioners of any district, the farm drainage board of any county, any county, town, or other municipal corporation, in which is located a portion of the land included within any district, or three or more owners of land in any district, may apply to any loan agency for a loan of moneys for the purpose of refinancing or refunding any indebtedness of any district. If any such application receives favorable consideration by the loan agency, the applicants may report the results of such application to the court having jurisdiction of such district.

(3) Upon the filing of any such report with the court, the court shall forthwith fix a day of hearing thereon and direct the manner of giving notice of such hearing. Publication of such notice once a week for three successive weeks in a newspaper published in each county in which any lands included within such district are located, shall be sufficient to give the court jurisdiction over all owners of land and other persons interested in such district. The court may, however, in its discretion direct the giving of additional notice.

(4) The court may appoint guardians ad litem to represent minors and incompetent persons interested in such district, and may appoint special administrators to represent the estates of deceased persons where there is no legal representative of such estate.

(5) If, after hearing on such report, the court shall be of the opinion that the welfare of the district and those interested therein will be promoted by the refinancing of the district, or refunding the district indebtedness, the court shall so find and may determine the procedure to be followed in such refinancing or refunding. For the accomplishment of such purposes the court shall have power:

(a) To extend the time of payment of delinquent and unmatured instalments of cost of construction, inclusive of interest, accrued thereon, for a period of not to exceed forty years.

(b) To defer payment of any portion of the principal of unpaid and unmatured assessments of cost of construction, inclusive of interest already accrued thereon, for a period of not to exceed ten years, and to provide for the payment of such delinquent and unpaid assessments of cost of construction in equal annual instalments over a period of years. Such unpaid costs of construction shall remain a lien upon the same land on which they were originally assessed.

(c) To include unpaid interest on assessments and delinquent instalments of assessments of cost of construction in determining the amount of the assessment still chargeable against any parcel of land.

(d) To fix and determine the rate, and times of payment, of interest to be chargeable on assessments, such rate not to exceed six per cent per annum.

(e) To arrange with the holders of bonds and notes and other creditors of the district for surrender of their claims against the district and accepting money or bonds in payment thereof.

(f) To make a reasonable allowance to applicants for any expense that they have incurred in making application for a loan of money for refinancing or refunding purposes, such expenses, as well as other refinancing and refunding expenses, to be paid by the district.

(g) To authorize and direct such other acts and procedure as may reasonably be required by the loan agency furnishing moneys for refinancing and refunding purposes.

(6) It is not intended to limit the court merely to the powers specifically granted herein, but it is intended that this law shall be liberally construed granting to the court extended powers and a wide discretion in accomplishing the purposes sought to be attained herein. [*Spl. S. 1933 c. 18*]

89.80 Compromise and discharge of obligations. (1) Wherever in this section the words "drainage district" or "district" are used, such terms shall include both drainage districts and farm drainages, and the terms "drainage commission" or "drainage commissioners" shall include commissions appointed under chapter 89 and drainage boards appointed under chapter 88.

(2) Whenever a drainage district is unable to pay its bonds and notes in full its commissioners may enter into a written compromise agreement with the owners of not less than seventy per cent of its obligations, and when such agreement is signed by such commissioners and the owners of seventy per cent of said obligations, all creditors of the district shall be held to be subject to said compromise agreement to the same extent and to the same effect as those signing the agreement, and their claims shall be treated in all respects as if they had executed such agreement.

(3) Whenever a drainage district is unable to pay its obligations in full, it may file in the court in which the drainage proceedings are pending a petition setting forth the fact that it is unable to pay its obligations in full, listing its assets available in said petition and listing its bonds, notes, and other obligations, and so far as known the name and address of each such owner and, if unknown, that fact and the nature of the obligation the owner of which is unknown, and if an agreement under subsection (2) has been entered into, then a copy of such agreement, and if no such agreement has been made stating such fact and praying the court for an order approving such settlement and directing its carrying out, or for equitable distribution of its net assets, after the costs of the proceeding are paid, among the creditors of such district.

(4) (a) It shall be the duty of such court to receive, examine and adjust all claims and demands against the district filing such petition.

(b) Upon the filing of such petition the court shall enter an order fixing a time not less than four months nor more than six months thereafter, as the circumstances of the case may require, within which creditors shall present their claims for examination and allowance. The court shall fix also by said order a time for hearing on claims.

(c) A copy of such order shall forthwith be published once each week for six successive weeks in at least one newspaper of general circulation in each county wherein any portion of the district lies. A copy of such notice shall also be published in the same manner and for the same length of time in the official state paper.

(d) At the time set for hearing on claims any claim accompanied by a statement of account verified by affidavit, unless objection be made to such claim, may be allowed, but no claim (whether objected to or not) shall be allowed until the court is satisfied that it is just.

(e) The court shall make a statement embracing a list of the claims presented against the district and those exhibited in offset and stating how much was allowed and how much disallowed in each case, together with the final balance, whether in favor of the creditor or the district; and the same shall be filed by the judge and stand as the judgment of the court.

(5) Every claim against a district proper to be filed which shall not, after notice given as required by this section, be filed within the time limited shall forever be barred.

(6) The court may make an order directing the distribution, after costs are paid, of the available balance of the funds of the district, among the district's creditors as equity requires and discharging the district from further liability on such district's liabilities. [*1935 c. 517*]