

TITLE 42
IRRIGATION AND DRAINAGE -- WATER RIGHTS AND RECLAMATION

CHAPTER 29
DRAINAGE DISTRICTS

42-2901. CORPORATE POWERS OF DRAINAGE DISTRICTS. Any portion of a county requiring drainage or diking, or both, may be organized into a drainage district, and when so organized such district and the board of commissioners hereinafter provided for shall have and possess the power herein conferred by law upon such district and board of commissioners, and said district shall be known and designated as drainage district No. (here insert number) of the county of (here insert name of county), of the state of Idaho, and shall have the right to sue and be sued by and in the name of its board of commissioners hereinafter provided for, and shall have perpetual succession and shall adopt and use a seal. The commissioners hereinafter provided for and their successors in office shall, from the time of the organization of such drainage district, have the power and it shall be their duty, to manage and conduct the business and affairs of the district, and make and execute all necessary contracts, employ and appoint such agents, officers and employees as may be required, and prescribe their duties, and perform such other acts as herein provided, or that may hereafter be provided by law.

[(42-2901) 1913, ch. 16, sec. 1, p. 58; reen. C.L. 168:1; C.S., sec. 4493; I.C.A., sec. 41-2501.]

42-2902. APPROPRIATION OF WATER AVAILABLE FOR IRRIGATION PURPOSES. The boards of commissioners of drainage districts are hereby authorized and empowered to file upon and appropriate in the manner provided by law, waters created or made available for irrigation purposes, by the construction of drainage works within such district, whenever the same can be applied to a beneficial use upon lands within the district, without impairing prior existing rights, which waters shall be equitably and ratably distributed in the manner provided by law to lands within the district which may beneficially use the same in the proportion that the assessment for drainage of each tract of said land bears to the whole assessment within the district: provided, that where lands within the district have an adequate water right and the water made available for irrigation by the construction of such works, may be beneficially used upon other lands within the district, the board of commissioners may supply such lands with water, upon their assuming to pay their proportionate share of the drainage assessments, and credit other lands within the district creating such water supply with their ratable proportion, of the actual cost of the delivery thereof.

[(42-2902) 1923, ch. 134, sec. 1, p. 195; I.C.A., sec. 41-2502.]

42-2903. APPROPRIATION OF IRRIGATION WATERS -- ASSESSMENTS FOR EXPENSES. The board of commissioners of drainage districts are hereby authorized and empowered to assess upon lands within the district, benefited by such filing and appropriation as provided in section 42-2902, a sufficient amount to pay the expenses thereof, which shall be levied and collected in the same manner as funds are now levied and collected for the maintenance of the drainage works and the funds so obtained may be expended for the purposes authorized by this act.

[(42-2903) 1923, ch. 134, sec. 2, p. 195; I.C.A., sec. 41-2503.]

42-2904. MUNICIPALITY MAY ACT AS DRAINAGE DISTRICT. Any village or city already incorporated, or which may hereafter be incorporated, may exercise the functions of a drainage district under the provisions of this chapter, or the whole or any portion of any such village or city may be included with other territory in a common district under the provisions for the establishment thereof as provided for herein.

[(42-2904) 1913, ch. 16, sec. 34, p. 58; compiled and reen. C.L. 168:2; C.S., sec. 4494; I.C.A., sec. 41-2504.]

42-2905. PETITION FOR ORGANIZATION. For the purpose of the formation of such drainage district a petition shall be presented to the clerk of the district court of the county in which a greater portion of the lands of said proposed district are located, which petition shall set forth the object of the organization of said district, shall designate temporary boundaries thereof and shall set forth approximately the number of acres of land therein, and shall contain a description of the proposed system of drainage or diking or both, designating the point or points, if any there may be, which shall be the outlet or outlets for the drainage of said district, the general route over which the main ditch or ditches are to be constructed, together with the proposed spurs or branches, and the general location of the dikes or levees, if any there may be, and set forth the further fact that the establishment of said district and the proposed system of drainage will be conducive to the public health, convenience and welfare, or increase the public revenue, or that the establishment of said district and the said system of drainage and reclamation is a proper and advantageous method of accomplishing the relief sought. Said petition shall be signed by such number as own at least one-third of the acreage in the proposed district, and shall pray that the same be organized under the provisions of this chapter. Community property may be represented by either the husband or the record owner.

[(42-2905) 1913, ch. 16, part of sec. 2, p. 58; reen. C.L. 168:3; am. 1919, ch. 183, sec. 1, p. 558; C.S., sec. 4495; am. 1927, ch. 36, sec. 1, p. 48; I.C.A., sec. 41-2505.]

42-2906. PETITION -- BOND -- CONDITION FOR WITHDRAWAL OF NAMES. Said petitioners shall, at the time of the filing of the petition, file a bond with the clerk of the district court of the county in which said proposed district is located, running to the state of Idaho, in the penal sum of \$500.00, with two (2) or more sureties, to be approved by the judge of the district court, conditioned that they will pay all costs in case said district for any reason shall not be established.

In case said district be not established, then all costs and expenses shall be collectible on the bond hereinbefore provided for, and any person having a charge against said district shall have a right of action thereon: provided, that when said petition is filed with the clerk of said court no petitioner shall be allowed to withdraw his name or land therefrom without tendering into court his pro rata share of all costs and expenses incurred by petitioners to the date of said withdrawals.

[(42-2906) 1913, ch. 16, part of sec. 2, p. 58; reen. C.L. 168:4; C.S., sec. 4496; am. 1927, ch. 225, sec. 1, p. 329; I.C.A., sec. 41-2506.]

42-2907. ACTION ON PETITION -- NOTICE OF HEARING. After the filing of said petition the judge of the court shall fix a time for the hearing of said petition by order made by him, which order shall provide that said petition be published for at least three (3) successive weeks in some weekly newspaper or newspapers, printed and published in said county or counties in which the lands are situated, and in case no such paper is published in such county, then in some paper of general circulation therein; together with a notice of the time and place at which said judge will consider said petition.

[(42-2907) 1913, ch. 16, part of sec. 3, p. 58; reen. C.L. 168:5; am. 1919, ch. 183, sec. 2, p. 559; C.S., sec. 4497; I.C.A., sec. 41-2507.]

42-2908. HEARING -- OBJECTIONS -- FINDINGS. Upon the day fixed for the hearing of said petition, any persons or corporation interested therein, may appear before said court and make objections to the organization and incorporation of said district, but such objections shall be limited to determining whether or not the organization of such drainage district is a proper and advantageous method of accomplishing the reclamation and protection of the swamped, bogged or water-logged lands, or lands subject to overflow therein, and whether or not there is a reasonable probability that the objects sought by the formation of the district may be accomplished, and whether or not said proposed drainage system will be conducive either to the public health, welfare or convenience or increase the public revenue; and at the hearing the court shall hear and consider such evidence only as may be presented for or against the petition or objections thereto. Thereupon the court shall make its findings upon the facts alleged in the petition and objections and any other facts necessary and proper for the determination of the propriety of the organization of such district, and if said district be organized, the judge of said court shall cause an order to be entered and recorded in the judgment record of each of the counties in which the lands within said district are situated, setting forth the facts found by the said judge upon the hearing of said petition, and said order shall define the temporary boundaries of said district and describe the lands included therein by township, range and section only, and shall have the effect of a *lis pendens*.

Any district may be established even if it is shown that the outlet for the drainage system is without the county or counties in which said district is located, or without the boundaries of the state of Idaho, or is in any other state or territory, or in a foreign country; the work for the drainage of said district may be contracted for and performed either entirely or partially within the limits of any other state, territory or foreign country.

[(42-2908) 1913, ch. 16, part of sec. 3, p. 58; reen. C.L. 168:6; am. 1919, ch. 183, sec. 3, p. 559; C.S., sec. 4498; I.C.A., sec. 41-2508.]

42-2909. DECREE. Upon the entry of the findings of the final hearing of said petition, as set forth in the last preceding section, said judge of the district court of the county in which the proposed drainage district is located, if he finds said proposed drainage system to be conducive either to the public health, welfare or convenience, or will increase the public revenue, or be of special benefit to the majority in acreage of the lands included in said boundaries, shall declare said district duly organized, and to be known as drainage district No. (here insert number) of the county of (here insert name of county), in the state of Idaho. The clerk of said district court shall cause a copy of the order declaring said district to be organized, duly certified, to be filed in the office of the secretary of

state, and from and after the date of said filing, said organization shall be deemed complete.

[(42-2909) 1913, ch. 16, parts of sec. 4, p. 58; reen. C.L. 168:7; C.S., sec. 4499; I.C.A., sec. 41-2509.]

42-2910. APPOINTMENT OF DRAINAGE COMMISSIONERS -- QUALIFICATION -- BOND -- OATH -- ORGANIZATION OF BOARD. The judge of the district court within ten (10) days thereafter shall appoint three (3) drainage commissioners. The commissioners shall be appointed from among those living in the county where said proposed district is located.

The board of drainage commissioners appointed as aforesaid shall be entitled to enter upon the duties of their office upon qualifying as county officers are required to qualify, and upon each drainage commissioner giving a bond to the state of Idaho, for the benefit of said drainage district, for the faithful performance of his duties as such drainage commissioner, in the penal sum of \$5000, with one or more sureties to be approved by the judge of the district court. Provided that the judge of the district court, upon application and proper showing by the board of drainage commissioners, may enter an order reducing the penalty of the bond to such sum as may appear to him to be reasonable and adequate under the showing made. The drainage commissioners shall take the oath of office and file their bonds within fifteen (15) days after they are appointed; and they shall hold office until their successors are duly appointed and qualified. Each drainage commissioner thereafter who may be appointed shall enter into a like bond and of like effect upon entering upon his duties, which bond shall be approved by the judge of the district court of the county in which said drainage district is located. The bonds of the drainage commissioners shall be filed with the clerk of the district court and kept in his custody. Immediately after their appointment and their bonds have been filed and approved, the drainage commissioners shall organize themselves into a board, and they shall by lot determine the terms of their office, which shall be one (1), two (2) or three (3) years respectively. Annually thereafter the judge of the district court of the county in which said district is located shall appoint one (1) drainage commissioner whose term of office shall be for three (3) years.

[(42-2910) 1913, ch. 16, parts of secs. 4 and 5, p. 58; reen. C.L. 168:8; C.S., sec. 4500; I.C.A., sec. 41-2510; am. 1933, ch. 21, sec. 1, p. 27.]

42-2911. OFFICERS -- MEETINGS. The board of commissioners of such district shall elect one of their number chairman and one (1) secretary, and shall keep minutes of all their proceedings. The drainage commissioners shall hold their meetings for the transaction of business at any place in the county or counties in which the district is located.

[(42-2911) 1913, ch. 16, parts of secs. 6, 7, p. 58; reen. C.L. 168:9; C.S., sec. 4501; I.C.A., sec. 41-2511.]

42-2912. VACANCIES. In case a vacancy or vacancies occur in said board by death, failure to appoint, failure to qualify, or resignation of one or more of the members thereof, such vacancy or vacancies shall be filled at once by appointment by the judge of the district court of the county in which said district is located, and said appointee shall serve for the unexpired term, or until his successor is appointed and his bond approved.

[(42-2912) 1913, ch. 16, part of sec. 8, p. 58; reen. C.L. 168:10; C.S., sec. 4502; I.C.A., sec. 41-2512.]

42-2913. COMPENSATION. The drainage commissioners shall receive for their services such sum as the board of drainage district commissioners fix by resolution for each day they shall actually be engaged in the business of their office, and actual and necessary expenses. In addition, the commissioners shall each receive a mileage allowance computed at the rate established by the state board of examiners for employees of the state for each mile driven and such allowance shall be the full amount allowed for travel expense.

[(42-2913) 1913, ch. 16, part of sec. 7, p. 58; am. 1915, ch. 42, part of sec. 1, p. 124; reen. C.L. 168:11; C.S., sec. 4503; I.C.A., sec. 41-2513; am. 1957, ch. 78, sec. 1, p. 127; am. 1967, ch. 22, sec. 1, p. 39; am. 1974, ch. 160, sec. 1, p. 1394; am. 1986, ch. 62, sec. 1, p. 179; am. 1992, ch. 52, sec. 1, p. 156; am. 2018, ch. 92, sec. 1, p. 197.]

42-2914. EXAMINATION OF LANDS -- REPORT OF COMMISSIONERS -- APPORTIONMENT AND REAPPORTIONMENT OF BENEFITS AND DAMAGES. As soon as may be after their appointment, or within such time as the court may direct, the commissioners shall examine the lands described in the petition and proposed to be drained and protected, and the lands over and upon which the work is proposed to be constructed and shall determine and report:

1. Whether the starting point, route and terminus of the proposed work and the proposed location thereof, is or are in all respects proper and feasible, and if not, what is or are so.

2. The estimated cost of the proposed work, including all incidental expenses and the cost of proceedings therefor.

3. The probable cost of keeping the same in repair after the work is completed.

4. What lands will be injured thereby and the aggregate amount of such injuries; and they shall award to each tract or lot, by whomsoever held, the amount of damage so determined by them.

5. What lands will be benefited by the construction of the proposed work, whether the benefits will equal or exceed the aggregate cost of constructing such work, including all incidental expenses, costs of proceedings and damages; and they shall apportion and assess the estimated cost of the same on the lands so benefited by setting opposite the correct description of each tract, lot or easement, the portion of such cost assessed as benefits thereon. And if any particular part of the work so proposed to be done shall be assessed upon any particular tracts or lots of land or upon any municipality or corporation they shall so specify; and if any municipality or corporation should in their judgment bear a part of the expense or as such will derive a public or special benefit from the whole or any part of such proposed work, they shall so report and assess the amount of such benefits.

6. Whether the proposed district, as set out in the petition filed, will embrace all the lands that may be damaged or benefited by the proposed work, and if not, what additional lands will be benefited or damaged and the amount of the benefits or damages in the same manner as though such lands were included in such original petition.

7. If the commissioners determine the lands benefited or the amount of said benefits has either changed or is in error, the commissioners may petition the court to reapportion the benefits to part or all of the lands within

the district. Upon receipt of a petition, the court shall make and enter an order fixing a time and place when and where all persons interested may appear and object to the reapportionment of benefits, and the clerk of the court shall cause publication of the order in three (3) consecutive weekly issues in a newspaper of general circulation within each county in which any of the lands for which reapportionment of benefits is sought are located. Any landowner affected by the reapportionment of benefits may object against the whole or any part of the reapportionment pursuant to the provisions of section 42-2920, Idaho Code. Upon a hearing pursuant to the provisions of section 42-2921, Idaho Code, the court shall issue an order setting forth the reapportionment of benefits, if any.

[(42-2914) 1913, ch. 16, sec. 9, p. 58; reen. C.L. 168:12; C.S., sec. 4504; I.C.A., sec. 41-2514; am. 2012, ch. 106, sec. 1, p. 282.]

42-2915. ASSESSMENT OF BENEFITS AGAINST HIGH LANDS. In determining the amount which each tract of land will be benefited by such proposed drainage system the commissioners shall consider the damage done to low land from seepage and saturation by irrigation water from high land, and the necessity for the carrying off of waste water, and such high lands shall be considered as being benefited to the extent and in the amount that such lands are responsible for damage to low lands from seepage and saturation by irrigation water.

[(42-2915) 1913, ch. 16, sec. 9a, as added by 1915, ch. 42, sec. 2, p. 124; reen. C.L. 168:13; C.S., sec. 4506; I.C.A., sec. 41-2515.]

42-2916. DUTIES OF ENGINEERS AND SURVEYORS -- PRELIMINARY SURVEY. For the purpose of compiling the data to be presented to the court as set forth in the preceding sections, the board of commissioners of said drainage district may employ one or more competent engineers, surveyors and other helpers, and such legal assistance as may be necessary, with full power to bind said district for the compensation of such assistants or employees employed: provided, however, that all maps, profiles, surveys, plans, specifications or other data heretofore made or property acquired under laws heretofore enacted on the subject may be purchased and used under the provisions of this chapter.

[(42-2916) 1913, ch. 16, part of sec. 10, p. 58; compiled and reen. C.L. 168:14; C.S., sec. 4507; I.C.A., sec. 41-2516.]

42-2917. CHANGES IN ORIGINAL PLANS. The commissioners shall not be confined to the point of commencement, route or terminus of any drain or ditch, or the number, extent or size of the same, or the location, plan or extent of any levee, ditch or other work as proposed by the petitioners, but shall locate, lay out and plan the same in such manner as to them shall seem best designed to promote the public health or welfare and to drain or protect the lands of the parties interested with the least damage and the greatest benefit to all lands to be affected thereby; any plan proposed by the commissioners may, on the application of any person interested, on the 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.

[(42-2917) 1913, ch. 16, part of sec. 12, p. 58; reen. C.L. 168:15; C.S., sec. 4508; I.C.A., sec. 41-2517.]

42-2918. ALTERATION OF BOUNDARIES. If the commissioners find that the proposed district, as described in the petition filed, will not embrace all of the lands that will be benefited by the proposed work, or that it will include lands that will not be benefited and 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 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, the alteration of boundaries as aforesaid shall not have the effect of so far enlarging or contracting the proposed district as to render such petition void or dismissable.

[(42-2918) 1913, ch. 16, part of sec. 12, p. 58; reen. C.L. 168:16; C.S., sec. 4509; I.C.A., sec. 41-2518.]

42-2919. REPORT OF INTENTION TO DO WORK -- NOTICE OF HEARING ON CONFIRMATION. If the commissioners shall find after the investigation referred to that the cost, expenses and damages are more than equal to the increased value which will accrue to the lands within the district, they shall so report and the proceedings shall be dismissed. But if the commissioners shall report that the whole cost of the work including preliminary surveys and expenses, legal assistance and court costs will be less than the increase in value to accrue therefrom, they shall so report to the court, and the court shall then make and enter an order fixing a time and place when and where all persons interested may appear and contest the confirmation thereof, and the clerk of the court shall cause notices of the time and place of said hearing to be given to all parties interested by the publication of a notice thereof for at least three successive weeks prior to the date set for such hearing in one or more newspapers published in said county or counties which notice shall contain a description of all land affected and the amount of the assessments and damages awarded in said report and by personally serving or sending by registered mail a copy of said notice to each landowner at his post-office address in so far as the same can be ascertained, and if not known, then to their last known post-office address, at least twenty days before the date appointed for said hearing, but failure to receive such notice shall not invalidate any assessment.

[(42-2919) 1913, ch. 16, part of sec. 10, p. 58; reen. C.L. 168:17; am. 1919, ch. 183, sec. 5, p. 558; C.S., sec. 4510; I.C.A., sec. 41-2519.]

42-2920. OBJECTIONS. Any of the landowners or any person or corporation affected by the work proposed may appear on the day set for hearing said report and remonstrate against the whole or any part of the proposed work. Such remonstrance shall be verified by affidavit, and shall set forth the objections of the affiant, whether they go to the jurisdiction of the commissioners or the court or not, or whether they rest on any other fact, as that some lands are assessed too high or too low or improperly, or that lands are assessed which ought not to be, or that lands should be assessed which are not assessed, or that the plans for said proposed work should be changed, or that the boundaries of said district should be altered so as to include or exclude certain lands, or by any persons or corporations to whom damages are allowed that they are inadequate, or by any person or municipality that the public health or welfare will not be promoted by the proposed work.

[(42-2920) 1913, ch. 16, part of sec. 11, p. 58; reen. C.L. 168:18; C.S., sec. 4511; I.C.A., sec. 41-2520.]

42-2921. HEARING ON CONFIRMATION. The remonstrants shall set forth objections to the confirmation of the report of the commissioners by stating separately, first, legal objections, second, issues of fact to be tried by the court, third, issues of fact to be tried by the jury. The district court of said county shall fix a time for the hearing of the objections giving such proceedings preference over other civil actions pending, and on demand of any person or corporation assessed for the cost of construction or awarded damages, may impanel a jury and take its verdict upon the trial of such issue, whether the amount of damages awarded by the commissioners is adequate, or whether the assessment of any remonstrant demanding the review is too high, and the court or jury may assess the same. All other issues arising on remonstrance shall be tried by the court, and if the court finds that the report requires modification the same may be referred to the commissioners who may be required to modify it in any respect. The report of the commissioners shall be prima facie evidence of the allegations therein set forth and the remonstrants shall be considered as plaintiffs and have the burden of establishing their objections thereto. In any case between the commissioners and any remonstrant the court may award and apportion the costs; costs awarded against the commissioners shall be paid out of the funds realized for the assessments made.

[(42-2921) 1913, ch. 16, part of sec. 11, p. 58; reen. C.L. 168:19; am. 1919, ch. 183, sec. 6, p. 558; C.S., sec. 4512; I.C.A., sec. 41-2521.]

42-2922. FINDINGS AND DECREE. If the findings be awarded against the validity of the proceedings the same may be dismissed. If the findings be in favor of the validity of the proceedings, the court, after the report shall have been modified to conform to the findings, or if there be no remonstrances, shall confirm the same, and the order of confirmation shall be final and conclusive, the proposed work shall be established and authorized and the proposed assessments approved subject to the right of appeal to the supreme court.

[(42-2922) 1913, ch. 16, part of sec. 11, p. 58; reen. C.L. 168:20; C.S., sec. 4513; I.C.A., sec. 41-2522.]

42-2923. SUPPLEMENTAL REPORT. The court may also permit the commissioners to present and file a supplemental report as to any matter which, pursuant to the provisions of section 42-2914[, Idaho Code,] might have been included in the original report presented by them, and after reasonable notice given to parties adversely interested in such manner as the court may direct, the court may, upon the hearing in the matter, make such order as the same may require.

[(42-2923) 1913, ch. 16, part of sec. 11, p. 58; compiled and reen. C.L. 168:21; C.S., sec. 4514; I.C.A., sec. 41-2523.]

42-2924. APPEALS. Every person or corporation feeling himself or itself aggrieved by the judgment for damages or the assessment for benefits may appeal to the supreme court of this state in the manner provided by law for appeals in civil actions to the Supreme Court within thirty (30) days after the entry of the judgment confirming the report of the commissioners; and such appeal shall bring before the supreme court the propriety and justness

of the amount of damages or assessment of benefits in respect to the parties to the appeal. Upon such appeal no bond shall be required and no stay shall be allowed.

[(42-2924) 1913, ch. 16, sec. 13, p. 58; reen. C.L. 168:22; C.S., sec. 4515; I.C.A., sec. 41-2524.]

42-2925. PROCEDURE ON DISMISSAL OF PROCEEDINGS. In case the report of the commissioners hereinbefore provided for shall not be confirmed upon the hearing of the objections and remonstrances thereto, the court or judge shall dismiss such proceedings and in such case judgment shall be rendered for the costs and expenses of said proceedings against said district, and no further proceedings shall be had or done thereon; and in that event the commissioners within thirty (30) days after such dismissal shall file with the clerk of the court a statement of all costs and expenses incurred by them which statement shall be itemized and verified by the oath of one (1) of the commissioners: provided, that in case of such dismissal the said commissioners shall have the right of appeal to the Supreme Court and such appeal shall be taken in the same manner as provided for in section 42-2924[, Idaho Code].

[(42-2925) 1913, ch. 16, sec. 14, p. 58; reen. C.L. 168:23; C.S., sec. 4516; I.C.A., sec. 41-2525.]

42-2926. PROCEDURE FOR PAYMENT OF DAMAGES AWARDED -- DETERMINATION OF CONFLICTING CLAIMS. Any person or corporation claiming to be entitled to any money ordered paid by the court, as provided in this chapter, may apply to the court therefor and upon furnishing evidence satisfactory to the court that he be entitled to the same, the court shall make an order directing the payment to such claimant of the portion of such money as he or it may be found entitled to; but, if upon application, the court or judge thereof shall decide that the title to the land, real estate or premises specified in the application of such claimants is in such condition as to require that an action be commenced to determine the title of claimants thereto, it shall refuse such order until such action is commenced and the conflicting claims to such land, real estate or premises be determined according to law.

[(42-2926) 1913, ch. 16, sec. 15, p. 58; reen. C.L. 168:24; C.S., sec. 4517; I.C.A., sec. 41-2526.]

42-2927. LANDS OF STATE AND ITS SUBDIVISIONS. All state, county, school district or other lands belonging to other public corporations requiring drainage shall be subject to the provisions of this chapter, and such corporations, by and through the proper authorities, shall be made parties in all proceedings herein affecting said lands, and shall have the same rights as private persons, and their lands shall be subject to the rights of eminent domain the same as the lands of private persons or corporations.

[(42-2927) 1913, ch. 16, sec. 35, p. 58; reen. C.L. 168:25; C.S., sec. 4518; I.C.A., sec. 41-2527.]

42-2928. LANDS OF STATE AND ITS SUBDIVISIONS -- ASSESSMENT. In case lands belonging to the state, county, school district or other public corporation are benefited by any improvement instituted under the provisions of this chapter, all benefits shall be assessed against said lands, and the same shall be paid by the proper authorities of such public corporations at the

same time and in the same manner as assessments are called and paid in cases of private persons, out of any general fund of such corporations.

[(42-2928) 1913, ch. 16, sec. 36, p. 58; reen. C.L. 168:26; C.S., sec. 4519; I.C.A., sec. 41-2528.]

42-2929. SUBSEQUENT ASSESSMENT OF PUBLIC LANDS. In case there are any lands included in any drainage district which cannot be assessed because of the title being in the United States government, or because of it being land not yet proved up on [upon], or being Indian land, or for any other reason, then in that event, the drainage commissioners are, at any future date when said lands come under the jurisdiction of the drainage district, authorized to assess said lands for all benefits bestowed, the same as though said lands were originally assessable, and notice of the intention to so assess together with the amounts of assessment filed by the drainage commissioners with the recorder of the county in which said district is located, shall be notice to all subsequent purchasers and encumbrancers.

[(42-2929) 1913, ch. 16, part of sec. 41, p. 58; reen. C.L. 168:27; C.S., sec. 4520; I.C.A., sec. 41-2529.]

42-2930. ADDITIONAL LEVY -- NOTICE. In the event that the amount levied shall be insufficient to complete the contemplated improvement, then the board shall levy an additional assessment sufficient to complete the same, including the cost of collection, and all legal and other proceedings in connection therewith. Such additional levy shall be made against the same property, and in the same proportion against each, as was the original levy, and after approval thereof by the judge, before whom said proceedings are pending, shall be spread on the books of the auditor and tax collector in the same manner as is required in the case of the original levy. A brief general notice of the filing of the application for confirmation of such additional levy shall be published in a newspaper of general circulation in each of the counties in which such district is situate, at least once each week, for three (3) consecutive weeks prior to the date fixed for confirmation.

[(42-2930) 1919, ch. 183, sec. 7, p. 558; C.S., sec. 4521; I.C.A., sec. 41-2530.]

42-2931. ADDITIONAL CONSTRUCTION WORK AND ASSESSMENTS. In any case where the work set out in the plan for drainage as provided in this chapter, or the work or improvements and the system of diking and reclamation constructed or in process of construction, are deemed or found by the board of commissioners of any drainage district at any time before or after the completion thereof to be insufficient or inadequate for any reason or by reason of any occurrence or circumstance, said board may order and cause to be done and constructed (in the manner provided and permitted by this chapter and subject to the judicial proceedings required by this chapter) additional work and improvements for the purpose of rendering sufficient and adequate the work and improvements and system of reclamation and drainage already constructed or for the purpose of reconstructing and for the preservation of the same; and also in any case where in the judgment of said board, new, additional or separate works and improvements (in the nature of original construction or reconstruction work and improvements) shall be or become necessary for the sufficient, safe and adequate drainage and reclamation of said district or for the safety and preservation of the work, improvements and system already constructed, said board may order and cause to be done and

constructed such new, additional and separate works and improvements; and a new estimate of benefits may be made in each and all of said cases based on the additional or separate additional work or construction or reconstruction work proposed; and additional assessments for each or all of such additional or separate works and improvements may be made on the lands benefits in conformity with the procedure provided in this chapter as in the case of original construction; and the lands in said district, or any part of such lands, shall be assessed in proportion to the benefits estimated as accruing to such lands because of such additional or separate work and improvements or because of such separate or additional construction and reconstruction work and improvements. The provisions of chapter 29 shall apply to all proceedings had or matters or things done pursuant to the authorization of this section, the necessary substitutions and changes being made because of any variant circumstances.

[(42-2931) 1913, ch. 16, part of sec. 41, p. 58; compiled and reen. C.L. 168:28; C.S., sec. 4522; I.C.A., sec. 41-2531; am. 1935, ch. 49, sec. 1, p. 89.]

42-2932. FEES FOR SERVICE OF PROCESS. Fees for service of all process necessary to be served under the provisions of this chapter shall be the same as for like services in other civil cases, or as is or may be provided by law.

[(42-2932) 1913, ch. 16, sec. 37, p. 58; reen. C.L. 168:29; C.S., sec. 4523; I.C.A., sec. 41-2532.]

42-2933. DISTRICT COURT MAY ENFORCE CHAPTER. The district court may compel the performance of the duties imposed by this chapter, and may, in its discretion, on proper application therefor, issue its mandatory injunction for such purpose.

[(42-2933) 1913, ch. 16, sec. 38, p. 58; reen. C.L. 168:30; C.S., sec. 4524; I.C.A., sec. 41-2533.]

42-2934. ASSESSMENTS -- WHEN INCONTESTABLE. The collection of any assessments of benefits made by the commissioners and confirmed by the court shall not be restrained or obstructed by reason of any omission, imperfection or defect in the organization of any district or in any proceedings occurring prior to the order confirming the assessments of benefits, but such order shall be conclusive as to the regularity of all proceedings relating to the assessments of benefits unless appealed from within thirty (30) days after the entry of such order.

[(42-2934) 1913, ch. 16, part of sec. 40, p. 58; reen. C.L. 168:31; C.S., sec. 4525; I.C.A., sec. 41-2534.]

42-2935. ASSESSMENT ROLL. Upon the entering of the order confirming the apportionment of costs and awarding of damages as hereinbefore provided for, the clerk of said court shall immediately prepare a transcript which shall contain a list of all lands which are so assessed and awarded damages in said report and shall certify the same to the recorder of the county in which said lands are situated and said statement so certified shall specify the amount of the assessment upon each tract, parcel or governmental subdivision, and shall describe all rights of way or easements required by the district and the amount of damages awarded to the owners thereof; and the said county recorder shall thereupon enter such order of record and the same shall be notice of a lien of said assessment of all persons, and shall establish the

right of way and easement of the district in and to the lands so described and said district shall be thereafter entitled to enter upon and occupy said lands upon the payment to the owner of the amount of damage so awarded.

[(42-2935) 1913, ch. 16, part of sec. 16, p. 58; reen. C.L. 168:32; am. 1919, ch. 183, sec. 8, p. 558; C.S., sec. 4526; I.C.A., sec. 41-2535.]

42-2936. ASSESSMENTS ENTERED AS TAX LIENS -- INSTALLMENTS. A similar transcript duly certified by the clerk which shall contain a list of the names of all persons and corporations benefited by said improvement and the amount of the assessment upon each lot, parcel or governmental subdivision shall be by said clerk filed with the auditor of the county, who shall immediately enter the same upon the tax rolls of his office, as provided by law for the entry of other taxes, against the land of each of the said persons named in the list, together with the amounts thereof; and the same shall be subject to the same interest and penalties in case of delinquency as in case of general taxes and shall be collected in the same manner as other taxes and subject to the same right of redemption, and the lands sold for the collection of said taxes shall be subject to the same right of redemption, as the sale of lands for general taxes; provided, that said assessment shall not become due and payable except at such time or times and in such amounts as may be designated by the board of commissioners of said drainage district, which designation shall be made to the county auditor by said board of commissioners of said drainage district, by serving written notice upon the county auditor designating the time and the amount of the assessment, said assessment to be in proportion to the benefits to become due and payable, which amount shall fall due at the time of the falling due of general taxes, and the amount so designated shall be added by the auditor to the general taxes of said person, persons or corporation, according to said notice, upon the assessment rolls in his said office, and collected therewith: provided further, that no one call for assessment for the payment or retirement of any bonds or warrants by said commissioners shall be in amount to exceed twenty percent (20%) of the actual amount necessary to pay the cost of proceedings, and the establishment of said district and drainage system and the cost of construction of said work. In all calls for assessments made under the provisions hereof for the payment or retirement of any bonds or warrants issued subsequent to February 25, 1935, the commissioners shall itemize the various items for which a call is made, specifying the percentage called against the assessment roll for bond interest, bond redemption, warrant interest, warrant redemption, operation and maintenance and any other purpose for which a call is made. The board by resolution shall, prior to any call for the payment or retirement of any bonds or warrants issued subsequent to February 25, 1935, determine separately the interest requirement for bonds and warrants outstanding and shall not make a call or levy for interest payment in excess of the actual amount required stated separately. Calls made for the payment of such prior bonds and warrants issued prior to September 25, 1935, as to itemization thereof, as to the specification of the percentage called against the assessment roll for the foregoing purposes and as to the separate determination of interest requirements for the payment of outstanding bonds and warrants and as to the call or levy in amount for interest or principal payments or for the payment of funding or refunding bonds issued heretofore or hereafter to fund or to refund or to pay any of said prior warrants or bonds, shall be as provided by the statutes of Idaho in effect prior to February 25, 1935.

[(42-2936) 1913, ch. 16, part of sec. 16, p. 58; reen. C.L. 168:33; C.S., sec. 4527; I.C.A., sec. 41-2536; am. 1935, ch. 55, sec. 1, p. 103; am. 1939, ch. 229, sec. 1, p. 512; am. 2018, ch. 92, sec. 2, p. 197.]

42-2937. ASSESSMENT TO PAY JUDGMENT OF DISMISSAL. In event of the dismissal of said proceedings, as hereinbefore provided, said drainage commissioners shall levy a tax upon all the real estate within said district, taking as a basis the last equalized assessment of said real estate for state and county purposes sufficient to pay said judgment and the cost of levying said tax, and shall cause said tax roll to be filed in the office of the clerk of the district court in which such judgment was rendered. If said tax is not paid within one year after the filing of said tax roll, the court shall, upon the application of any party interested, direct said real estate to be sold in payment of said tax, said sale to be made in the same manner and by the same officer as is or may be provided by law for the sale of real estate for taxes for general purposes; and the same right of redemption shall exist as in the sale of real estate for the payment of taxes for general purposes.

[(42-2937) 1913, ch. 16, sec. 17, p. 58; reen. C.L. 168:34; C.S., sec. 4528; I.C.A., sec. 41-2537.]

42-2938. CONSTRUCTION AND MAINTENANCE OF DRAINAGE WORKS -- EXECUTIVE POWERS OF COMMISSIONERS. Said board of drainage commissioners hereinbefore provided for shall have the exclusive charge of the construction and maintenance of all drainage systems which heretofore have been or may be hereafter organized under the provisions of this chapter, and shall be the executive officers thereof, with full power to bind such district by their acts in the performance of their duties as provided by law.

[(42-2938) 1913, ch. 16, part of sec. 8, p. 58; reen. C.L. 168:35; C.S., sec. 4529; I.C.A., sec. 41-2538.]

42-2939. GENERAL POWERS OF DISTRICT. All drainage districts organized under the provisions of this chapter shall have the right of eminent domain, with power by and through their boards of commissioners to cause to be condemned and appropriated private property for the use of said corporation in the construction and maintenance of a system of drainage, and to make just compensations therefor, to employ engineers, and such other assistants as may be necessary; to survey, plan, locate and estimate the cost of the works necessary for the reclamation of the lands of the district; to acquire and to hold by purchase, condemnation or other legal means, the right of way and the right to take material for the construction of all works necessary for the accomplishment of that object; to build and maintain drains, canals, sluices, bulkheads, water gates, levees and embankments; to establish and maintain pumping plants and to construct and maintain and keep in repair all works requisite and necessary to the end that the lands in the district may be reclaimed.

For the purpose of the drainage of any such district, the whole or any portion of any natural water course, or river, which drains such district, may be diked, improved, enlarged, widened, deepened or straightened, or any natural obstruction may be removed therefrom.

Said board of drainage commissioners shall have power to provide by contract for the performance and payment of all or any portion of the work requisite or necessary for the drainage of the lands included within the limits of such district, or to enter into any contract whereby all or any portion of the

cost of such work shall be paid, assumed or undertaken by such district, and to do all things requisite or necessary for the drainage of said lands.

Work for the drainage of said lands may be performed either entirely or partly within the limits of such district, or of the county in which such district is located, or entirely or partly within or without the boundaries of any other county, state, territory or foreign country: provided, that the property of private corporations may be subjected to the same rights of eminent domain as that of private individuals: provided further, that the said board of commissioners shall have power to acquire by purchase all the real property necessary to make the improvements herein provided for.

[(42-2939) 1913, ch. 16, sec. 33, p. 58; reen. C.L. 168:36; C.S., sec. 4530; I.C.A., sec. 41-2539.]

42-2940. CONSTRUCTION OF WORKS -- CONTRACTS. After the organization of any drainage district, the commissioners of such drainage district shall proceed as soon as they may deem expedient in the construction of said improvements; and in carrying on said construction or any extensions thereof they shall have the power to employ such assistance as they may deem necessary and purchase all materials that may be necessary in the construction and carrying on of the work of said improvements, and shall have power to let the whole or any portion of said work to any responsible contractor; and shall in such case enter into all agreements with such contractor that may be necessary in the premises.

[(42-2940) 1913, ch. 16, part of sec. 18, p. 58; reen. C.L. 168:37; C.S., sec. 4531; I.C.A., sec. 41-2540.]

42-2941. CONTRACTORS' BONDS. In case the whole or any portion of said improvements is let to any contractor, said commissioners shall require the said contractor to give bond equal to fifty per cent (50%) of the amount of the contract price of the whole, or of the portion of said works covered by said contract, with two (2) or more sureties to be approved by the board of commissioners of said drainage district, and running to said district as obligee therein, conditioned for the faithful and accurate performance of said contract by said contractor, his executors, administrators or assigns, according to the terms and conditions of said agreement and conditioned that said contractor, his executors, administrators or assigns, performing the whole or any portion of said work under contract of said original contractor shall pay or cause to be paid all just claims for all persons performing labor or rendering services in the construction of said work under contract of said original contractor shall pay or cause to be paid all just claims of all persons performing labor or rendering services in the construction of said work, or furnishing materials, merchandise or provisions of any kind or character used by said contractor or subcontractor, or any employee thereof in the construction of said improvements: provided further, that no sureties on said bonds shall be liable thereon for labor, materials or provisions unless the persons or corporations performing said labor and furnishing said materials, goods, wares, merchandise, and provisions, shall within ninety days after the completion of said improvements, file their claim, duly verified, that the amount is just and due and remains unpaid, with the board of commissioners of said drainage district: and, provided further, that said commissioners before advertising for bids for any work or improvement may by resolution provide that said original contractor shall pay or cause to be paid monthly all just claims for all persons performing

labor or rendering services in the construction of said work, or furnishing materials, merchandise or provisions of any kind or character used by said contractor or subcontractor or any employee thereof in the construction of said improvements; and before any second or subsequent estimate is paid to the said contractor said payments as aforesaid shall be evidenced by signed vouchers or waivers, filed with the commissioners, and such other evidence by affidavit, or otherwise, as the commissioners may require, and in which event the bond required for the faithful and accurate performance of the contract shall be twenty-five per cent (25%) of the contract price, and in advertising for proposals for bids the said proposals shall set forth that the contract will be let in accordance with the terms of said resolution as to the amount of the bond and the requirement for the payment as aforesaid of all bills for labor, materials, goods, wares, merchandise and provisions, but failure to make monthly settlement of all accounts as herein provided shall not invalidate the bond so furnished by said contractor.

[(42-2941) 1913, ch. 16, part of sec. 18, p. 58; reen. C.L. 168:38; am. 1919, ch. 183, sec. 9, p. 558; C.S., sec. 4532; I.C.A., sec. 41-2541.]

42-2942. COMMENCEMENT AND PROGRESS OF WORK. The work on said improvement shall begin at a point or at points to be determined by said commissioners, and said work shall be completed with all expedition possible, and said board of commissioners of such drainage district, or any contractor thereunder, shall have no power whatever to change such route or system of improvements or the manner of doing the work therein so as to make any radical changes in said improvements, without the written consent of all of the landowners to be benefited thereby, and of the landowners who may be damaged thereby.

[(42-2942) 1913, ch. 16, part of sec. 19, p. 58; reen. C.L. 168:39; C.S., sec. 4533; I.C.A., sec. 41-2542.]

42-2943. CHANGE OF PLANS -- PROCEDURE IN DISTRICT COURT. In case any substantial changes in said system of improvement, or the manner and construction thereof, shall be deemed necessary by said board of commissioners at any time during the progress thereof, and the written consent to such changes cannot be procured from said landowners, then said commissioners for and on behalf of said district, shall file a petition in the district court of the county within which said district is located, setting forth therein the changes which they deem necessary to be made in the plans or manner of the construction of said improvement, and praying therein to be permitted to make such changes.

Upon the filing of said petition the court shall cause a summons to be served, setting forth the prayer of said petition under the seal of the said court, which summons shall be served in the same manner as the service of summons in the case of the original petition, upon all the landowners or other persons having any lien or interest therein appearing of record in said district.

Any or all of said parties so served may appear in said cause and submit their objections thereto and after the time for the appearance of all said parties has expired, the court shall proceed to hear said petition at once, and if it appears during the course of said proceedings that the property rights of any of said landowners will be affected by such proposed change in said improvements, then the court, after having passed upon all preliminary questions as in the original proceedings, may call a jury to be impaneled in

the manner provided by the Code of Civil Procedure, and upon the final hearing of said case the jury shall return a verdict finding the amount of damages, if any, sustained by all persons and corporations, the same as upon the original petition by reason of such proposed change, and the amount of compensation to be paid to any persons or corporation therefor, and for any additional right of way that may be necessary to be appropriated.

[(42-2943) 1913, ch. 16, part of sec. 19, p. 58; compiled and reen. C.L. 168:40; C.S., sec. 4534; I.C.A., sec. 41-2543.]

42-2944. PAYMENTS TO CONTRACTORS. During the construction of said improvement, said commissioners shall have the right to allow payment thereof, in installments as the work progresses, in proportion to the amount of work completed: provided, that no allowance or payment shall be made for said work to any contractor or subcontractor to exceed ninety per cent (90%) of the proportionate amount of the work completed by such contractor or subcontractor, and ten per cent (10%) of the contract price shall be reserved at all times by said board of commissioners until said work is wholly completed, and shall not be paid upon the completion of said work until ninety (90) days have expired for the presentation of all claims for labor performed and materials, goods, wares, merchandise and provisions furnished or used in the construction of said improvements. Upon the completion of said work and the payment of all claims hereinbefore provided for according to the terms and conditions of said contract, said commissioners shall accept said improvement and pay the contract price therefor.

[(42-2944) 1913, ch. 16, sec. 20, p. 58; reen. C.L. 168:41; am. 1919, ch. 183, sec. 10, p. 558; C.S., sec. 4535; I.C.A., sec. 41-2544.]

42-2945. CONNECTIONS BY PRIVATE DRAINS -- COSTS. Any person or corporation owning land within said district shall have a right to connect any private drains or ditches for the proper drainage of such land with said system, and in case any person or corporation shall desire to drain such lands into said system, and shall find it necessary, in order to do so, to procure the right of way over the land of another, or others, and if consent thereto cannot be procured from such person or persons, then such landowner may present in writing a request to the board of commissioners of said district, setting forth therein the necessity of being able to connect his private drainage with said system, and pray therein that said system be extended to such point as he may designate in said writing, and immediately thereon said board of commissioners shall cause a petition to be filed in the district court for and in the name of said drainage district, requesting, in said petition, that said system be extended as requested, setting forth therein the necessity thereof and praying that leave be granted by the board to extend the system in accordance with the prayer of said petition, and the proceedings in such case, upon the presentation of such petition and the hearing thereof shall be, in all matters, the same as in the hearing and presentation of the original petition, for the establishment of the original system of drainage in said district, as far as applicable.

The costs in such proceedings shall be paid from the assessment of benefits to be made on the lands of the person or persons benefited by such extension, and the assessment and compensation for the right of way, damages and benefits and payment of damages and compensation, and the collection of the assessments for benefits shall be the same as in the proceedings under the original petition, and the construction of the said extension shall be

made under the same provisions as the construction of the original improvement; and all things that may be done or performed in connection therewith shall be, as near as may be applicable, in accordance with the provisions already set forth herein for the establishment and construction of said original improvement: provided, that such petitioner or petitioners shall, at the time of filing such petition by said drainage commissioners, enter into a good and sufficient bond to said drainage district, in the full penal sum of \$500, with two (2) or more sureties to be approved by the court, conditioned for the payment of all costs in case the prayer of said petitioner shall not be granted, which bond shall be filed in said court.

[(42-2945) 1913, ch. 16, sec. 21, p. 58; reen. C.L. 168:42; C.S., sec. 4536; I.C.A., sec. 41-2545.]

42-2946. CONNECTION OF DISTRICT WITH LOWER DISTRICT -- COSTS. In case of the establishment of a drainage district and system of drainage under the provisions of this chapter above any other district that may theretofore have been established, and above any other system of drainage that may have theretofore been constructed in said district, and in case said district to be established above may desire to connect its drainage system with the lower or servient district, the latter district shall be made a party to the proceedings for the establishment of such system, and the petition to be filed in the district court for the establishment of the system of drainage in said upper district shall in addition to the facts hereinbefore provided and required to be set forth therein, set forth the fact that said lower system in said lower district is necessary to be used as an outlet for the system of drainage of said upper district, and that the same will be sufficient outlet and will afford sufficient capacity to carry the drainage of both said upper and lower districts; and in case said system of said lower district will be required to be enlarged by widening or deepening the same, or both, in order to give sufficient outlet to said upper district and afford sufficient drainage for said upper and lower districts, then the plans and specifications for enlarging the system of said lower district shall be filed with said petition in addition to the other data hereinbefore provided for in this chapter.

All the landowners in said lower district, or any person claiming interest therein as mortgagee or otherwise, shall be made parties defendant in said petition, and the proceedings therein as to the assessment of damages and compensation for land taken, if any be necessary to be taken in enlarging said lower system, shall be the same as in the establishment of systems of drainage in the lower or servient district as hereinbefore provided for; but the jury, in addition to the facts to be found by them as provided for in the establishment of a drainage system in the lower district, shall find and determine whether said lower system, when improved according to the plans and specifications filed with the said petition, will afford sufficient drainage for both said upper and lower districts, which finding shall be made by the jury before considering any other question at issue in said proceedings, and in case said jury should find that the system of said lower district when improved as proposed in said petition would not be sufficient, then in that case said findings shall terminate the proceedings, and no further proceedings in said case shall be had, and the costs of said proceedings shall be paid as costs in other proceedings, as hereinbefore provided for; but in such case the finding of said jury shall not terminate the objects of said upper district or operate to disorganize the same, but said upper dis-

trict may begin new proceedings for the establishment of a system of drainage with some new outlet provided therein.

All costs for the enlarging or improving of said lower system that may be required, shall be assessed to the landowners in the upper district according to the benefits to be derived from the construction of said entire system, and no additional cost shall be thrown upon the lower district, and all compensation for taking any right of way that may be necessary to be taken in enlarging said lower system and all damages occurring therefrom, if any, to the landowners of said lower district, shall be ascertained and paid in the same manner as hereinbefore provided for the adjustment of compensation and damages in the establishment of drainage systems in lower districts.

Said lower district, by and through its board of commissioners, may appear in said cause and show therein any injury it may sustain as a district by reason of the additional cost of maintenance per annum which will be sustained by said lower district by reason of said enlarging or improving of the same, and judgment shall be rendered in favor of said lower district against said upper district for such an amount as found, and the same shall be paid each year as the cost of construction is paid as provided for in this chapter, and the amount so paid shall be held by said lower district as an additional fund for the maintenance of its said system as improved and enlarged by said upper district.

[(42-2946) 1913, ch. 16, sec. 22, p. 58; reen. C.L. 168:43; C.S., sec. 4537; I.C.A., sec. 41-2546.]

42-2947. USE OF NATURAL WATERCOURSES AND PREVIOUSLY CONSTRUCTED WORKS. The whole or any portion of any natural watercourse which drains any district established under this chapter, or the whole or any portion of any ditch or drainage system already constructed or partially constructed prior to the passage of this chapter, or which may be constructed subsequent thereto, may be improved and completed as a system under the provisions of this chapter: provided, that the owner or owners of any land upon or in which any drainage system has been established or constructed in whole or in part or which may hereafter be constructed in whole or in part, may take advantage of the provisions of this chapter to organize same as a drainage district, for the purpose of completing same or for the purpose of making provision for the payment or funding of any indebtedness incurred in the construction of such system, or either; and providing for the maintenance thereof. The procedure to be followed in such case shall be the same as is herein provided for the organization of a drainage district in the first instance to the extent that same is applicable to the situation: provided, that the necessary changes and substitutions therein may be made: provided further, that in the improvement of any natural watercourse, the rights of the public therein for the purpose of navigation shall not be in any wise impaired.

[(42-2947) 1913, ch. 16, sec. 24, p. 58; am. 1915, ch. 42, sec. 3, p. 123; reen. C.L. 168:44; C.S., sec. 4538; I.C.A., sec. 41-2547.]

42-2948. CONSTRUCTION OF DIKES ALONG PUBLIC ROADS. In the construction of any diking system under the provisions of this chapter, where it is desired to construct the same along the right of way of any public road which has theretofore been legally established, said district shall have a right to construct its dikes along such road: provided, that the dikes so constructed along such road shall not destroy or impair the same for use as a public highway; and in case of the construction or improvement of any dike

along any public highway, such dike shall be constructed of sufficient width and in such manner as will be of use as a public highway.

[(42-2948) 1913, ch. 16, sec. 39, p. 58; reen. C.L. 168:45; C.S., sec. 4539; I.C.A., sec. 41-2548.]

42-2949. PAYMENTS OF CLAIMS -- OPTION FOR DEPOSIT AND DISBURSEMENT OF FUNDS -- ISSUANCE OF CHECKS OR WARRANTS -- INVESTMENT OF FUNDS . (1) The board of commissioners may issue warrants of such district, in payment of claims of indebtedness against such district; such warrants shall be in form and substance the same as county warrants, or as near the same as may be practicable and shall draw the legal rate of interest from the date of their presentation to the treasurer for payment, as hereinafter provided, and shall be signed by the chairman and attested by the secretary of said board: provided, that no warrants shall be issued by said board of commissioners in payment of any indebtedness of such district for less than face or par value.

(2) The board of commissioners may, in the alternative and as an option to subsection (1) of this section, elect by resolution to receive moneys due the district from the levy of taxes, assessments and other sources, to provide for the safekeeping and deposit of such moneys in accordance with the provisions of chapter 1, title 57, Idaho Code, and to pay all claims of indebtedness of the district allowed and approved by either warrant or check. If a drainage district elects this option, a certified copy of said resolution shall be served upon the board of county commissioners, the county auditor and the county treasurer. Upon allowance of claims by the board of commissioners, payment may be ordered by warrant or check signed by the chairman and the secretary. The secretary may be directed by resolution or order of the board to invest surplus funds in accordance with and subject to the provisions of chapter 1, title 57, Idaho Code, and section 50-1013, Idaho Code. The board of commissioners shall cause to be kept an accurate account of all moneys received, the sources from whence received, all moneys expended and the purposes to which applied.

[(42-2949) 1913, ch. 16, part of sec. 6, p. 58; reen. C.L. 168:46; C.S., sec. 4540; I.C.A., sec. 41-2549; am. 1983, ch. 60, sec. 1, p. 139.]

42-2950. WARRANTS -- PAYMENT -- INTEREST. (1) All warrants issued under the provisions of this chapter shall be presented by the holder thereof to the county treasurer, who shall indorse thereon the day of presentation for payment, with the additional indorsement thereof in case of nonpayment that they are not paid for want of funds; and no warrant shall draw interest under the provisions of this chapter until it is so presented and indorsed by the county treasurer. And it shall be the duty of such treasurer, from time to time, when he has sufficient funds in his hands for that purpose, to advertise in the newspaper doing the county printing for the presentation to him for payment of as many of the outstanding warrants as he may be able to pay: provided, that thirty (30) days after the first publication of said notice of the treasurer calling in any of said outstanding warrants, said warrants shall cease to bear interest, which shall be stated in the notice. Said notice shall be published two (2) weeks consecutively, and said warrants shall be called in and paid in the order of their indorsement.

(2) If a board of commissioners has elected and complied with the provisions of section 42-2949(1), Idaho Code, and in the absence of funds to pay warrants issued, the board may by resolution order payment of warrants presented by registering such warrants as hereinafter provided, and at the

same time shall prescribe the interest rate said warrants shall draw. All warrants issued shall be presented to the secretary of a drainage district by the persons holding the same. If there are insufficient funds to pay the warrants presented, the secretary must indorse thereon "not paid for want of funds," the date of indorsement, the rate of interest such warrant shall draw as fixed by resolution of the board of commissioners, and sign his name thereto; and thereafter the said warrant shall draw interest at the rate specified in such indorsement until called for payment. Warrants issued by a drainage district shall be paid in the order of their issuance from funds accruing for the year in which they are issued. After all outstanding indebtedness for any one (1) year has been paid, any balance for that year shall be transferred to a warrant redemption fund for payment of uncalled registered warrants. Where there is no outstanding indebtedness nor any uncalled registered warrants, any balance may be used for the payment of current expenses for the next fiscal year.

[(42-2950) 1913, ch. 16, sec. 32, p. 58; reen. C.L. 168:47; C.S., sec. 4541; I.C.A., sec. 41-2550; am. 1983, ch. 60, sec. 2, p. 140.]

42-2951. LEGALIZATION OF WARRANTS ISSUED UNDER FORMER ACT. Whenever any territory of the state of Idaho heretofore organized as a drainage district under the provisions of sections 2444 to 2483 inclusive, of the Revised Codes, shall be hereafter organized as a drainage district under the provisions of a subsequent drainage law, all debts incurred and warrants issued by the commissioners of said drainage district as heretofore organized, shall be and hereby are made legal and valid obligations against the district as organized under such subsequent drainage law: provided, however, that all debts incurred and warrants issued shall be reported to the district court by the commissioners who incurred said indebtedness or issued said warrants, or by any one of said commissioners, under oath, and be certified to as correct by the district judge of the county in which said district was located; and after such certification said district judge shall order a levy made for the payment of said obligations, and the taxes shall be collected the same as general taxes are collected: provided, however, that any creditor of any drainage district organized under sections 2444 to 2483 inclusive, of the Revised Codes, shall have the right of suit against said district, after reasonable notice of his claim to the commissioners therein, and their neglect or refusal to report said claim to the district court for certification as to its correctness: provided further, that in cases where the district as organized under a subsequent drainage law shall include other lands than were included in the district originally organized under sections 2444 to 2483 inclusive, of the Revised Codes, upon the certification of the correctness of the debts incurred and warrants issued by the commissioners of said district, by the district judge as herein provided, such debts incurred and warrants issued shall be deemed to be obligations upon the lands embraced within the limits of the district as originally organized under said sections 2444 to 2483 inclusive, of the Revised Codes, and be collected as herein provided.

[(42-2951) 1913, ch. 17, sec. 1, p. 58; reen. C.L. 168:48; C.S., sec. 4542; I.C.A., sec. 41-2551.]

42-2952. BONDS AUTHORIZED. Upon the establishment of any drainage district under the provisions of this chapter, and the establishment of a system of drainage therein as provided for in this chapter, the board of com-

missioners of such drainage district are hereby authorized to issue bonds to pay for the total cost of the work and improvements incurred or to be incurred, or of the part of the work and improvements assumed or contracted for, or to be assumed or contracted for, together with the cost of the organization of said district, and the establishment thereof, including damages assessed and compensation made or to be made to landowners for right of way, and the expense and cost of the entire proceedings, payable as provided by section 42-2954[, Idaho Code]: provided, that no bonds shall, under the provisions hereof, be sold for less than their par value; and, provided further, that the total amount of the foregoing bonds shall not exceed ninety per cent (90%) of the assessments levied against the lands of the district for the payment of the cost and expense of the foregoing items.

The board of commissioners of any such drainage district is also hereby authorized to issue additional bonds, in an amount equal to, and payable from, the additional assessments which may be levied pursuant to and under the authorization expressed in section 42-2930[, Idaho Code].

The board of commissioners of any such drainage district is also authorized to issue additional bonds sufficient in amount to pay the total cost of the additional work and improvements and of the separate and additional works and improvements authorized by the foregoing section 42-2931[, Idaho Code,] including the cost and expense of the costs of collection of the assessments therein authorized and of all legal and other proceedings incident to or had in connection with the ordering, authorization and doing of all such works and improvements by said board of commissioners or in connection with the court proceedings which shall be had under the provisions of this chapter.

The board of commissioners of any such drainage district is also authorized to issue additional bonds sufficient in amount to pay and redeem all or any part of the outstanding warrant or other indebtedness of said district, together with interest accrued thereon. The funding hereby authorized may be accomplished by the exchange of such funding bonds for the warrant indebtedness or other indebtedness thus to be funded, if consented to by the board of commissioners and by the owners of such outstanding warrants and other indebtedness; provided that such funding bonds shall not bear a higher rate of interest than the warrants and other indebtedness thereby funded and that such funding bonds shall be exchanged at not less than their par value and accrued interest; provided, however, that no warrant or other indebtedness shall be funded under the provisions of this paragraph, except such warrants and other indebtedness which have been issued and incurred prior to July 1, 1935.

In the event that the owners of such outstanding warrants and other indebtedness shall not consent to such exchange, such funding bonds shall be sold as required by section 42-2953, [Idaho Code,] and such warrants and other outstanding indebtedness and obligations shall be called and retired as provided in said section 42-2953[, Idaho Code]; provided, that all funds in the treasury of such district available for the payment or redemption of such warrants and other indebtedness shall be first applied to the payment and redemption of such warrants and other indebtedness together with the interest accrued thereon, and such funding bonds shall be issued for the retirement of the indebtedness remaining unpaid.

The foregoing bonds may be issued jointly or separately, as a unit bond issue or as separate bond issues as determined by the board of commissioners. Any or all of the bond issues authorized by this section may also be issued,

if deemed advisable by the board of commissioners, as a part of a joint bond issue with drainage district refunding bonds authorized by and issued under the provisions of chapter 30 or under any other enabling acts of this state. The foregoing bonds shall be payable solely out of and from the assessments for benefits levied upon and a lien upon the lands within such drainage district, as provided elsewhere in this chapter; and all said assessments (as to the determination, apportionment and assessment thereof, objections thereto and hearing thereon and confirmation thereof, as to their nature and existence as a lien upon the lands thus assessed, as to appeals therefrom and their incontestability, as to the certification and entry thereof of record and upon the tax rolls of the county, as to collection thereof and as to tax sale of delinquent lands and redemption thereof, as to the times when such assessments shall become due and payable and be called and in what amounts, as to annual levies thereof for the liquidation of bonds at maturity and for the payment of interest thereon; and as to the mode, manner and time of doing all the foregoing, and in all other respects), shall be governed by, and shall be provided in, sections 42-2914, 42-2915, 42-2919 to 42-2929, [Idaho Code,] inclusive and section 42-2934 to section 42-2936, [Idaho Code,] both inclusive, and sections 42-2956 and 42-2958, [Idaho Code,] and the other related provisions, of chapter 29 and as provided in this act. Provided that the foregoing funding bonds shall be paid by assessments levied upon and apportioned over the lands within the drainage district as provided by sections 42-2951 and 42-2962[, Idaho Code].

[(42-2952) 1913, ch. 16, parts of sec. 25, p. 58; reen. C.L. 168:49; am. 1919, ch. 183, sec. 11, p. 558; C.S., sec. 4543; I.C.A., sec. 41-2552; am. 1935, ch. 49, sec. 2, p. 89.]

42-2953. FUNDING BONDS. Such commissioners may, at any time thereafter, issue such bonds in the manner and form herein prescribed for the purpose of funding any outstanding warrants or obligations of such district. In case of such last-named issue all the outstanding warrants shall immediately become due and payable upon receipt of the money by the county treasurer from the sale of said bonds, and upon a call of such outstanding obligations to be issued by him. Such call shall be made by said treasurer immediately upon the receipt of the proceeds from the sale of said bonds, by publication for two (2) consecutive weeks in the county paper authorized to do the county printing, and such warrants and outstanding obligations shall cease to draw interest at the end of thirty days after the date of the first publication.

[(42-2953) 1913, ch. 16, part of sec. 25, p. 58; reen. C.L. 168:50; C.S., sec. 4544; I.C.A., sec. 41-2553.]

42-2954. FORM OF BONDS -- INTEREST -- MATURITIES. Said bonds shall be numbered from one (1) upward, consecutively, and be in denominations of not less than \$100 nor more than \$1000. They shall bear the date of issue, shall be made payable to the bearer and bear interest, payable semi-annually, with coupons attached for each interest payment. The bonds shall be signed by the chairman of the board of drainage commissioners, and shall be attested by the secretary of said board, and the seal of such district shall be affixed to each bond, but not to the coupons. The coupons may be signed by the facsimile lithographed or engraved signatures of the said officers.

The board of commissioners shall fix the maturities of said bonds not exceeding forty (40) years from the date of their issuance and an amortiza-

tion period which shall be not less than three-fourths (3/4) of the maximum maturity. During the first fourth of the period covered by the last maturity provision may be made, in the discretion of the board, for the payment of interest only. Maturities shall be so arranged that during at least the latter three-fourths (3/4) of the period covered by the last maturity the principal shall be amortized by payments thereof in annual or semi-annual instalments so arranged as to maturities that the combined principal and interest payments during the amortization period shall be approximately the same each year. Said bonds shall be payable at such place within or without the state of Idaho as may be designated by the board of commissioners. The issuing drainage district may reserve the right to redeem said bonds or any of them at any time after ten (10) years from date thereof.

[(42-2954) 1913, ch. 16, sec. 26, p. 58; reen. C.L., 168:51; C.S., sec. 4545; am. 1927, ch. 179, sec. 1, p. 242; am. 1927, ch. 254, sec. 1, p. 429; am. 1929, ch. 78, sec. 1, p. 116; I.C.A., sec. 41-2554; am. 1935, ch. 49, sec. 3, p. 89; am. 1970, ch. 133, sec. 6, p. 309.]

42-2955. EXCHANGE OF BONDS FOR WARRANTS. Said bonds may be exchanged at not less than their par value for an equal amount of the warrants of the district issuing such bonds.

[(42-2955) 1913, ch. 16, sec. 27, p. 58; reen. C.L. 168:52; C.S., sec. 4546; I.C.A., sec. 41-2555.]

42-2956. LEVY FOR SINKING FUND. At least one (1) year before the first principal maturity of said bonds (as fixed by the board of commissioners pursuant to section 42-2954[, Idaho Code,]) and thereafter annually, the drainage commissioners of such district issuing them are hereby authorized and required to levy an assessment sufficient to liquidate said bonds at their respective maturities. Such assessment shall be collected by the official whose duty it is to collect the county taxes, and kept as a separate fund for the sole purpose of liquidating said bonds in accordance with the provisions of the following section. The annual levies of assessments to pay bonds issued prior to the effective date of this amendment shall be made according to the law in existence at the time of the issuance of said prior bonds and according to the maturity needs thereof.

[(42-2956) 1913, ch. 16, sec. 28, p. 58; reen. C.L. 168:53; C.S., sec. 4547; I.C.A., sec. 41-2556; am. 1935, ch. 49, sec. 4, p. 89.]

42-2957. CALLING OF BONDS. It shall be the duty of the treasurer of any county in which there may be a district issuing bonds under the provisions of this chapter whenever he has upon hand \$5000 of the special fund for the payment of said bonds, and when said bonds shall have run for a period of three (3) years, to advertise in the newspaper doing the county printing, for the presentation to him for payment of as many of the bonds issued under the provisions of this chapter as he is able to pay with the funds in his hands, to be paid in numerical order of said bonds, beginning with the bond number one (1), until all of said bonds are paid: provided, that thirty (30) days after the first publication of said notice of the treasurer calling in any of said bonds, said bonds shall cease to bear interest.

[(42-2957) 1913, ch. 16, sec. 29, p. 58; reen. C.L. 168:54; C.S., sec. 4548; I.C.A., sec. 41-2557.]

42-2958. LEVY FOR INTEREST. It shall be the duty of such drainage commissioners annually to levy an assessment sufficient for the payment of the coupons hereinbefore mentioned as they fall due.

[(42-2958) 1913, ch. 16, sec. 30, p. 58; reen. C.L. 168:55; C.S., sec. 4549; I.C.A., sec. 41-2558; am. 1935, ch. 55, sec. 2, p. 103.]

42-2959. REGISTRATION OF BONDS. Before the bonds are delivered to the purchaser they shall be presented to the county treasurer, who shall register them in a book kept for that purpose, and known as the bond register, in which register he shall enter the number of each bond, the date of issue, the maturity, amount and rate of interest, to whom and when payable, and the proceeds derived from the sale of said bonds shall in all cases be paid by the purchaser thereof to the county treasurer.

[(42-2959) 1913, ch. 16, sec. 31, p. 58; reen. C.L. 168:56; C.S., sec. 4550; I.C.A., sec. 41-2559.]

42-2960. MAINTENANCE OF SYSTEM -- DISTRICT NOT TO BE OPERATED FOR PROFIT. Any drainage district organized under the provisions of this chapter is not to be conducted or operated for profit or with the view of paying dividends, but solely for the benefit and welfare of the residents and property owners of said district.

[(42-2960) 1913, ch. 16, sec. 42, p. 58; reen. C.L. 168:57; C.S., sec. 4551; I.C.A., sec. 41-2560.]

42-2961. APPORTIONMENT OF COST OF MAINTENANCE. The board of commissioners of any drainage district organized under the provisions of this chapter shall, on or before the third Monday of September of each year, make an estimate of the cost of maintenance of the drainage system constructed in such district, which estimate shall include the cost of making any necessary repairs that it might become necessary to make in the maintenance of such system. Such estimate shall be made for the succeeding year, and the amount so estimated shall be certified by the board of commissioners to the auditor of the county in which such district is located, on or before said date, and the amount thereof shall be apportioned to the landowners in such district benefited by said improvement in proportion to the benefit apportioned or reapportioned, and such amount shall be added to the general taxes of such landowners and collected therewith; provided however, that at the option of the commissioners the amount apportioned to every landowner on any parcel or piece of land shall be not less than one dollar (\$1.00), which amount shall be a minimum assessment to be collected as a tax for the year on every such parcel or piece of land.

[(42-2961) 1913, ch. 16, sec. 23, p. 58; reen. C.L. 168:58; am. 1919, ch. 20, sec. 1, p. 82; C.S., sec. 4552; am. 1927, ch. 53, sec. 1, p. 68; I.C.A., sec. 41-2561; am. 1953, ch. 257, sec. 1, p. 411; am. 1974, ch. 118, sec. 1, p. 1289; am. 2012, ch. 106, sec. 2, p. 283.]

42-2962. LEVY OF AND LIMITATION ON ASSESSMENTS. The commissioners may also levy assessments for any expense necessarily incurred by them for construction, maintenance, repair, or any extraordinary reasons, and also may add to said assessment sufficient to pay any deficiency occurring the preceding year or any other unpaid warrant indebtedness, if any, or to pay any outstanding warrants: provided, that any assessments to be hereafter made by any drainage commissioners to pay for the payment or retirement of

any bonds or warrants shall not exceed twenty percent (20%) of the original cost of organization and construction, and said assessment for the payment or retirement of any bonds or warrants shall be in addition to the assessments which may be levied under this section or section 42-2936, Idaho Code, and such assessments, when made, shall be apportioned under section 42-2961, Idaho Code, and collected as hereinbefore provided for.

[(42-2962) 1913, ch. 16, sec. 23, p. 58; reen. C.L. 168:58; am. 1919, ch. 20, part of sec. 1, p. 82; C.S., sec. 4553; I.C.A., sec. 41-2562; am. 2012, ch. 106, sec. 3, p. 283; am. 2018, ch. 92, sec. 3, p. 198.]

42-2963. VALIDATION OF WARRANTS HERETOFORE ISSUED. Warrants or any other evidence of drainage district indebtedness heretofore issued by the board of drainage commissioners of any drainage district for such necessary construction, maintenance, repair or any extraordinary reasons, shall be and hereby are made legal and valid obligations of such drainage district.

[(42-2963) 1913, ch. 16, sec. 23, p. 58; reen. C.L. 168:58; am. 1919, ch. 20, part of sec. 1, p. 82; C.S., sec. 4554; I.C.A., sec. 41-2563.]

42-2964. INTERPRETATION OF LAW. The provisions of this chapter shall be liberally construed to promote the public health and welfare by reclaiming wet or overflowed lands, building embankments or levees and the preservation of any system of drainage heretofore constructed or to be constructed according to law.

[(42-2964) 1913, ch. 16, part of sec. 40, p. 58; reen. C.L. 168:59; C.S., sec. 4555; I.C.A., sec. 41-2564.]

42-2965. PAYMENT OF ASSESSMENTS. The assessments levied by the commissioners of the drainage districts must be paid in lawful money of the United States; provided that warrants of the district may be accepted as cash for the payment of assessments levied for warrant redemption, and that matured bonds of the district and accrued interest coupons detached from any of the bonds of the district, when presented may be accepted as cash in payment of assessment levied for bond interest and principal, and in the event that the said bonds so used are of a greater denomination than the said assessments, the tax collector shall indorse upon said bond or bonds the amount necessary to pay said assessment or assessments and the date of said payment and take a receipt from such bondholder for the amount so credited, and either such receipt describing the bond so indorsed or such indorsement shall be prima facie evidence that the said sum so indorsed has been paid on said bond or bonds.

[(42-2965) I.C.A., sec. 41-2565, as added by 1933, ch. 213, sec. 1, p. 447.]

42-2966. INTERESTED PERSONS -- RIGHT OF EXAMINATION. Any person or corporation having an interest in, or lien upon, any land situate within the boundaries of a drainage district now organized or existing, or hereafter organized under the laws of the state of Idaho, and which land has been, or hereafter may be, assessed for benefits for the construction of drainage works in said district, as provided in this chapter, as shown by the assessment roll of said district, confirmed by the court, shall have the right personally, or through his agents, attorneys or auditors to examine the books, records and accounts of the drainage commissioners and to make copies thereof.

[42-2966, added 1937, ch. 86, sec. 1, p. 115.]

42-2967. INTERESTED PERSONS -- RIGHT TO DEMAND STATEMENT SHOWING AMOUNT OF LIEN AND TOTAL PAYMENTS -- FORM. Any person or corporation having an interest in, or lien upon, any land situate within the boundaries of a drainage district now organized and existing or hereafter organized under the laws of the state of Idaho, and which land has been, or hereafter may be, assessed for benefits for the construction of drainage works in said district, as provided in this chapter, as shown by the assessment roll of said district, confirmed by the court, and upon which any calls for assessments have been made against said assessment roll by the drainage commissioners of said district, and any or all of which calls shall have been paid upon said land, shall have the right to demand in writing from the commissioners of said drainage district and from the county treasurer of the county in which such land is situate, a statement giving the following information:

(a) Amount of original lien against said land as shown by the assessment roll of said district and confirmed by the court;

(b) Total payments made upon said land by reason of calls against said assessment roll;

(c) Total credit given on the original lien against said land created by the assessment, by reason of the payment made on calls by the drainage commissioners.

Said demand shall be personally served upon the secretary of the board of drainage commissioners of said district, and upon the county treasurer of said county.

Within ten days after the service of said notice, the commissioners of said drainage district and said county treasurer shall furnish to the person making said demand a statement in writing giving the information required by said demand. Said statement so furnished by the drainage commissioners and the county treasurer may be in one instrument or in separate instruments. The same shall be signed by the chairman of the board of drainage commissioners of said district and attested by the secretary thereof, and shall also be signed by the county treasurer.

[42-2967, added 1935, ch. 57, sec. 1, p. 109.]

42-2968. RIGHT OF ACTION BY INTERESTED PERSONS FOR ACCOUNTING. If such person or corporation making said demand shall be dissatisfied as to the total amount paid or the credit given on the original lien as shown by said statements furnished under the provisions of section 42-2967, he or it shall have the right to bring an action in the district court of the county in which such land is situate, against said district and the county treasurer of the county, for the purpose of securing a determination by the court as to the total amount of payments made and the amount which should have been credited upon the lien against said lands created by the assessment roll of said district as confirmed by the court.

[42-2968, added 1935, ch. 57, sec. 2, p. 109.]

42-2969. ACCESS TO RECORDS BY INTERESTED PERSONS FOR PREPARATION OF ACTION FOR TRIAL. Upon the filing of said complaint said plaintiff, his agents, attorneys and auditors, shall have free access to the books, records and accounts of the drainage commissioners and shall have the right to examine the same and make copies thereof, and the secretary of said drainage district shall furnish such certified copies of said records as the plaintiff may des-

ignate, said plaintiff furnishing the copies ready for certification at his own expense. He shall also have access to the records of the county treasurer insofar as they pertain to his property, including the assessment roll of the drainage district, the distribution of moneys paid by him, and such other matters as may pertain to the preparation of his case for trial.

[42-2969, added 1935, ch. 57, sec. 3, p. 109.]

42-2970. METHOD OF PROCEDURE IN ACTIONS BY INTERESTED PERSONS. The procedure provided by law for the trial and determination of other civil actions, and appeal to the Supreme Court of the state of Idaho, shall govern the procedure in any action brought under the provisions of this act; provided, however, that no costs shall be awarded to either party, either in the district court or upon appeal to the Supreme Court.

[42-2970, added 1935, ch. 57, sec. 4, p. 109.]

42-2971. PAYMENT OF ANNUAL OR DELINQUENT ASSESSMENTS OR UNPAID LIENS WITH BONDS, MATURED INTEREST COUPONS, WARRANTS OR CASH. Any person or corporation having an interest in or title to, or recorded mortgage or other lien upon any tract, lot or parcel of land, or any part thereof, situate within the boundaries of any drainage district now organized and existing, or that may hereafter be organized, under the laws of the state of Idaho, may at any time pay all or any part of the annual or delinquent drainage assessments due at the time of such payment, except as hereinafter otherwise provided, or may pay the whole or any part of the unpaid portion of the lien against said property as shown by the assessment roll of said district as confirmed by the court and filed with the county auditor, whether due or to become due, together with the accrued interest, if any, on any such annual or delinquent assessments, either in lawful money of the United States or with the bonds of the district at the face or par value thereof, of any date, number, series or denomination, whether original issue, funding or refunding and whether such bonds are due at the time of payment or will become due at a future date, and/or with warrants or matured interest coupons of said district at the face or par value of the same; and it shall be the duty of the county treasurer of the county in which said land is situate to accept said bonds, matured interest coupons and warrants in payment, or part payment, of any such annual or delinquent drainage assessments, or in payment of the unpaid portion of the lien against said real property created by the assessment roll of such drainage district; provided, however, that such bonds, interest coupons, and warrants hereinabove referred to shall have been issued by said drainage district subsequent to the date this act becomes effective.

[42-2971, added 1935, ch. 56, sec. 1, p. 105.]

42-2972. RELEASE OF LANDS FROM FURTHER LIABILITY UPON FULL PAYMENT. Upon payment in full being made to the county treasurer of the lien against any such tract, lot or parcel of land, either in lawful money of the United States and/or drainage district bonds, matured interest coupons or warrants, as provided in section 42-2971, the county treasurer shall issue and deliver to such person or corporation making said payment a receipt for the amount of such payment, stating therein the total amount paid, the amount paid in cash, in bonds, in warrants and matured interest coupons of said district; and shall thereupon issue and deliver to such person or corporation a release and discharge releasing such tract, lot or parcel of land from all other or further liability for the payment of any of the then

existing bonded indebtedness of the district, or any bonds thereafter issued to refund the same, or of any warrants theretofore, or that may thereafter be, issued for the payment of interest on any such bonds or refunding bonds, and releasing and discharging such tract, lot or parcel of land from the payment of any other or further liens created by reason of the assessment for benefits against said tract, lot or parcel of land as shown in the assessment roll of said district confirmed by the court; and such tract, lot or parcel of land shall not thereafter be assessed by such drainage district by reason of benefits theretofore assessed and confirmed by the court, except for the purpose of operation and maintenance thereof; provided, that all assessments for operation and maintenance theretofore levied or thereafter to be levied shall be payable only in lawful money of the United States or in warrants of the district issued against the operation and maintenance fund within the calendar year in which such warrants are tendered in payment, in which event such warrants shall be accepted by the county treasurer at par or face value thereof in payment of operation and maintenance charges.

[42-2972, added 1935, ch. 56, sec. 2, p. 105.]

42-2973. FORM OF RELEASE AND DISCHARGE. The release and discharge provided for in section 42-2972, Idaho Code, shall be in substantially the following form:

Release and discharge from liability from payment of the bonded and warrant indebtedness of drainage district number in County, Idaho, from the lien of the assessment roll of said district as confirmed by the court.

WHEREAS, on the day of,,
 (The owner, part owner, mortgagee or other lienholder, as the case may be) paid to the County Treasurer of County, Idaho, (in cash, bonds, warrants or matured interest coupons of said district, as the case may be) the sum of \$....., being the total unpaid amount of the lien against the real property hereinafter described, created by the assessment roll of said district; said property being situate within Drainage District Number, in County, Idaho, and particularly described as follows, to wit:

(Insert description of property.)

and being shown on the assessment roll of said district as assessment number

NOW THEREFORE, in consideration of such payment, and pursuant to law, the undersigned does by those presents release and discharge the above described tract, lot or parcel of land from the lien against said land created by the assessment roll of Drainage District Number in County, Idaho, and from the payment of all of the bonded indebtedness now existing against the same, and from the payment of any bonds now issued or that may hereafter be issued to refund the same, or any part thereof, and from the payment of any warrants of the district heretofore issued or that may hereafter be issued in payment of interest on such indebtedness or refunded indebtedness, and releases and discharges said tract, lot or parcel of land from further payment of benefits assessed against said land as shown by the assessment roll of said district and from all liens created thereby, save and except assessments made or to be made by said district for the operation and maintenance thereof.

IN WITNESS WHEREOF, I, the County Treasurer of the county of, state of Idaho, and duly authorized by law to collect all sums of money assessed by the drainage commissioners of Drainage District Number in said county,

have hereunto set my hand as such county treasurer this day of,
.....

REPLACE BL TAG HERE.....

REPLACE BL TAG HERE (Treasurer)

REPLACE BL TAG HERE... County, Idaho.

Said release and discharge shall be acknowledged before an officer au-
thorized to take acknowledgments to conveyances. The acknowledgment shall
be substantially in the following form:

STATE OF IDAHO

ss.

COUNTY OF

On this day of,, before me,, (Official Character),
in and for said state, personally appeared, known to me to be the person
whose name is subscribed to the within instrument as the County Treasurer of
the county of, state of Idaho, and acknowledged to me that he exe-
cuted the same, as such treasurer.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official
seal the day and year in this certificate first above written.

REPLACE BL TAG HERE.....

REPLACE BL TAG HERE (Official Character).

[42-2973, added 1935, ch. 56, sec. 3, p. 105; am. 2002, ch. 32, sec.
15, p. 53.]

42-2974. FILING AND RECORDING OF RELEASE AND DISCHARGE -- EFFECT. Such
release and discharge, when filed for record and recorded in the office of
the county recorder of the county in which such tract, lot or parcel of land
is situate, shall operate as a release and discharge of the land therein de-
scribed from the payment of all existing indebtedness of said district, and
release the same from the lien thereof, created by the assessment roll of
said district, confirmed by the court; save and except levies made or to be
made for the operation and maintenance of said district.

[42-2974, added 1935, ch. 56, sec. 4, p. 105.]

42-2975. CANCELLATION OF BONDS AND WARRANTS UPON DELIVERY. All bonds,
together with all unmatured coupons attached, matured interest coupons and
warrants delivered to the county treasurer under the provisions of this act
shall be cancelled in the same manner as if called for payment and paid.

[42-2975, added 1935, ch. 56, sec. 5, p. 105.]

42-2976. PAYMENT OF BONDS AFTER DEFAULT. All bonds hereafter issued by
any drainage distrct [district] in the state of Idaho, whether original is-
sue, funding or refunding, shall be governed by the provisions of this act in
regard to the payment thereof after default as hereafter provided.

[42-2976, added 1935, ch. 54, sec. 1, p. 102.]

42-2977. PRO RATA PAYMENT OF INTEREST AND BONDS. If at any time twenty
per cent (20%) or more of the entire issued, uncalled and outstanding bonds
of such district shall be past due and unpaid, after the application of all
funds available for the payment thereof, then the numerical order, or other
provisions of law, of payment of all outstanding and uncalled bonds of such
district shall immediately cease, and thereafter the county treasurer shall
distribute all funds coming into his hands applicable to the payment of bonds
pro rata on all outstanding and uncalled bonds, whether due or to become due,

to the end that after such default in the percentage herein set out, there shall be paid on each outstanding and uncalled bond its equal and ratable proportion of all funds so collected for the payment of said bonds; provided further, that if at the time of such default there shall be matured and unpaid interest on any or all of such outstanding bonds, then all moneys thereafter available for the payment of interest shall be applied toward the payment of interest longest in default until all bonds shall have assumed the same relative position in regard to interest payment. When interest shall have been paid on all outstanding bonds to the same date, thereafter all moneys available for the payment of interest shall be paid equally and ratably to the holders of all outstanding and uncalled bonds. No payment shall be made by the county treasurer after such default, upon either principal or interest, except upon presentation of the bond and the indorsement by the county treasurer of the amount paid thereon, together with the date of payment, except in the event of full payment of interest coupons, said coupons shall be surrendered to the county treasurer.

[42-2977, added 1935, ch. 54, sec. 2, p. 102.]

42-2978. REDEMPTION OF LANDS FROM LIEN FOR UNPAID ASSESSMENTS. The owner of any land within any drainage district charged with the lien of any assessment under the provisions of this chapter, may redeem the same from all liability by paying the unpaid portion of the assessment lien against such land, as shown by the assessment roll of said district, plus interest to the time of such payment; provided that the bonds of the drainage district and the accrued interest coupons thereon shall be accepted by the tax collector as cash in payment of such lien and assessment; and upon payment by any landowner of such lien and assessment against any land the same shall be relieved of all further liability and shall not be subject to any further or subsequent assessment by said district except only for the maintenance and operation of the drainage works of the district; and, provided further, upon full payment being made, as hereinabove provided, in cash and/or bonds and interest coupons, the tax collector shall issue to such owner a receipt showing the lien of the assessment against such land is fully paid and satisfied; and such tax collector shall also note upon the assessment roll of said district the full payment of the assessment against such land. All bonds and interest coupons delivered to the tax collector under the provisions of this act shall be canceled in the same manner as bonds which have been called for payment and paid.

[42-2978, added 1933, ch. 183, sec. 1, p. 338.]

42-2979. SALE OF PERSONAL PROPERTY -- PROCEDURE. Personal property of a drainage district may be sold by its board of commissioners whenever the board finds and by resolution declares that the district no longer has use therefor.

1. If, in the opinion of the board, such property does not exceed fifty thousand dollars (\$50,000) in value, it may sell the same without independent appraisal, notice or competitive bids.

2. Personal property exceeding fifty thousand dollars (\$50,000) in estimated value shall first be appraised by three (3) disinterested freeholders of the district, who shall be selected by the board. It may then be sold at public or private sale to the highest bidder for cash at not less than its appraised value, after due notice.

3. Notice of sale shall describe the property, the appraised value thereof (by separate items, if so appraised), and the time, place and condition of sale.

4. If the appraised value does not exceed fifty thousand dollars (\$50,000), notice of sale shall be posted in three (3) public places in said district to be determined in the resolution of said board of commissioners (one (1) of which shall be at the office or meeting place of said board) at least ten (10) days before the date of sale.

5. If the appraised value of the property exceeds fifty thousand dollars (\$50,000), notice shall be posted as set forth in subsection 4. of this section and in addition shall be published in a weekly newspaper, published or having a general circulation in the district, once each week during the four (4) weeks preceding the date of sale.

[42-2979, added 1951, ch. 63, sec. 1, p. 92; am. 2018, ch. 92, sec. 4, p. 198.]

42-2979A. TRADE-IN OR EXCHANGE OF DISTRICT PROPERTY. (1) Whenever the board of commissioners of a drainage district finds and by resolution declares that the district no longer has use for any personal property of the district, or finds and declares that such property is no longer economical to use, the district may, in lieu of the sale of said property as provided in section 42-2979, Idaho Code, dispose of the property by exchanging the same in part payment for new or replacement property.

(2) If the acquisition of the new or replacement property is to be let to bid under the provisions of chapter 28, title 67, Idaho Code, the district shall include in its request for bids a full description of the property to be exchanged as part payment and shall permit any interested bidder to examine the same, and any contract let as a result of said bid shall be awarded on the basis of net cost to the district after allowance for the property to be exchanged in part payment.

(3) Exchange of property will be permitted only when, in the opinion of the board of commissioners of the district, the sale of property under the provisions of section 42-2979, Idaho Code, will yield a lesser monetary return to the district than the exchange thereof as provided in this section.

[42-2979A, added 2018, ch. 92, sec. 5, p. 199.]

42-2980. DISSOLUTION OF DRAINAGE DISTRICT. A drainage district may be dissolved by the district court for the county in which the office of such drainage district was last located on complaint or petition of parties holding and owning:

(a) Fifty per cent (50%) or more of the issued, outstanding, unpaid bonds of such district; or,

(b) Fifty per cent (50%) or more of all land situated within the boundaries of such district; or,

(c) Claims, warrants, liens or other legal obligations of such district in an amount equal to not less than thirty per cent (30%) of the issued, outstanding and unpaid bonds of such district.

It must be made to appear to the satisfaction of the court, by such complaint or petition, that any one or more of the following conditions exist in or as to said district:

1. That the district has been abandoned, or for two (2) or more years last past has ceased to function, and there is little or no possibility that it ever will function in the future.

2. That no useful purpose exists for the further continuance of the organization of the district.
 3. That there are not sufficient qualified voters of such district to hold a legal election.
 4. That all essential functions of the district are or may be carried out and performed by another political subdivision of the state or other public or quasi public body to which all or any portion of the facilities of said district may be transferred by order of the court; provided, however, that the court, at its discretion, may require that interested persons be given further notice and opportunity to be heard with reference to any such proposed transfer.
- [42-2980, as added by 1961, ch. 173, sec. 1, p. 267.]

42-2981. CERTAIN PUBLIC AND PRIVATE LANDS LIABLE FOR COSTS AND EXPENSE OF DRAINAGE -- COLLECTION OF DRAINAGE CHARGES. Lands, whether public or private, which have been developed for commercial, industrial, recreational, residential, governmental or highway purposes, and from which surface water or seepage drain into the irrigation or drainage system of any person or persons, canal company, irrigation district, drainage district, or ditch owners' association, shall be liable for a proportionate share of the cost and expense of operating, maintaining, repairing and replacing the portions of such system which are used or allocated for drainage purposes. Drainage charges for any such lands which are not subject to the regular assessment powers of the person or entity owning or controlling the system shall be billed to, and shall be paid promptly by, the governmental unit owning the land. If the lands are privately owned, the drainage charges shall be billed to, and shall be paid promptly by the county in which the lands are located, and such charges shall be included in the county budget as a separate fund for drainage, the tax for which shall be levied against all privately owned lands in the county which are benefited by such drainage and which are not subject to the regular assessment powers of the owner of the irrigation or drainage system.

[42-2981, added 1978, ch. 271, sec. 1, p. 628.]

42-2982. CONSOLIDATION OF DISTRICTS. (1) If the boards of commissioners of any two (2) or more drainage districts formed under this chapter deem it in the best interest of their respective districts that they be consolidated into a single district, and if said districts are contiguous or lie at least in part within the same county, such boards may petition the district court of the county in which a greater portion of the lands of said proposed district are located for an order consolidating the same districts. For purposes of this section, districts may be considered to be contiguous even though they are separated by a body of water or other natural barrier so long as they are located in close proximity to each other. The petition shall be a joint petition signed by a majority of the commissioners of each respective board and attested to by the secretary of each board. The petition shall set forth a description of the lands and boundaries for the respective districts, a description of the proposed consolidated district and any facts showing that the consolidation is in the best interests of said districts. The petition shall also set forth and report the total outstanding obligation bonds of each consolidating district, the total value of the assets held by each consolidating district, the total levy assessed in each consolidating district in its most recent fiscal year, and the projected total levy to

be assessed for the next complete fiscal year in the proposed newly consolidated district.

(2) Evidence showing that the proposed consolidation is in the best interests of the districts may include, but is not limited to: that which shows that the proposed system of drainage will be conducive to providing the same benefits previously apportioned to the lands within the respective districts, enhance the functioning of the respective districts, the public health, convenience and welfare, or increase the public revenue, or that the consolidation of said districts and the said system of drainage and reclamation is a proper and an advantageous method of accomplishing the relief sought.

(3) Upon receiving a petition brought under this section, the district court shall fix a time and place for the hearing of the petition, and the time and manner of filing any objections to the petition. Said hearing shall be held no sooner than sixty (60) days and no later than one hundred twenty (120) days after the first publication of notice of hearing. The clerk of the court shall cause publication of such order in three (3) consecutive weekly issues in a newspaper of general circulation within each county in which any of the lands within the said proposed consolidated district are located; together with a notice of the time and place at which the district court will consider said petition for consolidation. The petitioners shall pay all costs of publication.

(4) Any person objecting to a petition for consolidation as described in this section shall provide for filing of written objection with the court. Only landowners within the proposed consolidated district, owners of land over which the drainage water from the proposed district would flow, and landowners served by any of the respective districts included in the petition shall have standing to file an objection to said petition. Written objections must be filed and served upon petitioners no later than twenty-one (21) days prior to the date of the hearing. The form of the objection shall be as provided in the Idaho rules of civil procedure. Each objection shall identify the name of the landowner entering the objection along with the objecting party's address, location of the landowner's land by township, range and section; identify the district or districts in which those lands lie; and state the nature or description of objection and basis or reasoning for the objection. Objections shall be limited to determining whether or not the proposed consolidation is in the best interests of the districts.

(5) The judge of the court shall, at the hearing herein provided, hear and consider argument from the petitioners and decide whether the proposed consolidation is in the best interests of said districts. The court shall then consider evidence in objection only from landowners who have filed a written objection as described in subsection (4) of this section, and only such evidence as may be presented for or against the petition or objections thereto. The landowners who have filed written objections shall bear the burden of proving that the consolidation is not in the best interests of the districts. After any evidence offered in opposition to the petition, the petitioners may offer evidence regarding the consolidation or in opposition to any objections entered. Based on the agreement in the petition to consolidate by the boards of the respective districts, there shall be a rebuttable presumption that the proposed consolidation of the districts is in the best interests of the petitioning districts and the landowners therein, unless the court finds by a preponderance of the evidence that the proposed consol-

idation is not in the best interests of the districts. Consolidation shall not be permitted to either exclude from the consolidated district lands that are within the petitioning districts or to include lands within the consolidated district that are not within the petitioning districts. The court shall make its determination wholly in the affirmative or negative whether said petitioning districts shall be consolidated.

(6) If the petition is granted, the court shall cause an order to be entered and recorded in the judgment record of each of the counties in which the lands within the consolidated district are situated, setting forth the facts found upon the hearing of said petition, and said order shall define the boundaries of said district and describe the lands included therein by township, range and section only. The clerk of said district court shall cause a copy of the order declaring said consolidated district, duly certified, to be filed in the office of the secretary of state. From the date of said filing and thereafter, said district consolidation shall be deemed complete.

(7) The court shall name the commissioners appointed by it for the consolidated district pursuant to the provisions of section 42-2910, Idaho Code. In appointing commissioners to the newly consolidated district, the court shall consider preference to appointment of at least one (1) commissioner from each of the districts petitioning for consolidation. The consolidated district shall be known and described by the name and number of the largest district of those consolidated.

(8) The provisions of this section shall apply exclusively to the consolidation of drainage districts which have been formed under this chapter.

[42-2982, added 2011, ch. 256, sec. 1, p. 701.]