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PARROTT'S MANUAL OF

# ROAD AND DRAINAGE LAWS OF IOWA

(Code of 1979, including 68th G. A.)

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**1980**  
  
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COMPILED AND PUBLISHED BY  
**MATT PARROTT & SONS COMPANY**  
WATERLOO, IOWA 50704

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**ROAD AND DRAINAGE**

**LAWS OF IOWA**

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CODE OF 1979  
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68th GENERAL ASSESSMBLY,  
1st SESSION

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### **NOTE**

For the convenience of the officers this edition has been divided into two sections:

### **ROAD LAWS DRAINAGE LAWS**

This edition contains all laws directly applicable to the above divisions, up to and including the laws of the 68th General Assembly, 1st Session.

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## Road Laws of Iowa

### CHAPTER 306 — ESTABLISHMENT, ALTERATION AND VACATION OF HIGHWAYS

#### Sec. 306.1. Roads and Streets.

1. **Functional classification of roads and streets.** The roads and streets of this state are classified into the following systems:

- a. The freeway-expressway system.
- b. The arterial system.
- c. The arterial connector system.
- d. The trunk system.
- e. The trunk collector system.
- f. The area service system.
- g. The municipal arterial system.
- h. The municipal collector system.
- i. The municipal service system.
- j. The municipal residential alley system.
- k. The state park system, state institution and other state land road system.
- l. The county conservation parkway system.

2. **Definitions of road and street systems.** For the purpose of functionally classifying the roads and streets of this state, the following words and phrases relating to roads and streets shall have the following meanings:

a. The **freeway-expressway system** shall consist of those roads connecting and serving the major urban and regional areas of the state with high volume, long-distance traffic movements, and generally connecting with like roads of adjacent states. The national system of interstate and defense highways shall be a part of the freeway-expressway system. The freeway-expressway system, including the national interstate and defense highway mileage, shall not exceed two thousand six hundred sixty miles.

b. The **arterial system** shall consist of those roads which connect the freeway-expressway system with the arterial connector system, or which serve long-distance movements of traffic, or which serve as collectors of long-distance traffic from other systems to the freeway-expressway system. The arterial system shall not exceed three thousand five hundred miles.

c. The **arterial connector system** shall consist of those roads providing service for short-distance intrastate and interstate traffic, or providing connections between highways classified as arterial or freeway-expressway.

d. The **trunk system** shall consist of those intracounty and intercounty roads which serve principal traffic generating areas, and connect such areas to other trunk roads and roads on the arterial or freeway-expressway system. The trunk system shall not exceed fifteen thousand miles and shall include, but not be limited to, the major federal aid secondary roads of the state.

e. The **trunk collector system** shall consist of those roads providing service for short-distance intracounty and intercounty traffic, or providing connections between roads classified as trunk and area service. The trunk collector system shall not exceed twenty thousand miles. The trunk collector system and the trunk system shall constitute the farm-to-market road system of the state.

f. The **area service system** shall include those public roads outside of municipalities not otherwise classified.



g. The **municipal arterial system** shall consist of those streets within municipalities, not included in other classifications, which connect principal traffic generating areas or connect such areas with other systems. The municipal arterial system shall not exceed fifteen percent of the entire street mileage under the jurisdiction of a municipality, except that municipalities under two thousand population may exceed such limitation.

h. The **municipal collector system** shall consist of those streets within municipalities that collect traffic from the municipal service system and connect to other systems. The municipal collector system shall not exceed twenty percent of the entire street mileage under jurisdiction of the municipality, except that municipalities under two thousand population may exceed such limitation.

i. The **municipal service system** shall consist of those streets and commercial alleys within municipalities which serve primarily as access to commercial and residential property and shall also include streets within municipal parks.

j. The **municipal residential alley system** shall consist of those alleys which serve primarily as secondary access to residential property.

k. The **state park, state institution, and other state land road system** shall consist of those roads and streets wholly within the boundaries of state lands operated as parks, institutions, or other state governmental agencies.

l. The **county conservation parkway system** shall consist of those parkways located wholly within the boundaries of county lands operated as parks, forests, or other public access areas.

**Sec. 306.2. Definitions.** As used in this chapter, unless the context otherwise requires:

1. "**Department**" means the state department of transportation.
2. "**Agency**" means any governmental body which exercises jurisdiction over any road as provided in Section 306.4.

**Sec. 306.3. Definition of Terms.** As used in this chapter or in any chapter of the Code relating to highways:

1. "**Road**" or "**street**" means the entire width between property lines through private property or designated width through public property of every way or place of whatever nature when any part of such way or place is open to the use of the public, as a matter of right, for purposes of vehicular traffic.

2. "**Primary roads**" or "**primary road system**" means those roads and streets, both inside and outside the boundaries of municipalities, classified under Section 306.1 as freeway-expressway, arterial and arterial connector.

3. "**Interstate roads**" or "**interstate road system**" means those roads and streets of the primary road system that are designated by the secretary of the United States department of transportation as the National System of Interstate and Defense Highways in Iowa.

4. "**Secondary roads**" or "**secondary road system**" means those roads, outside the boundaries of municipalities, classified as trunk, trunk collector and area service under Section 306.1.

5. "**Farm-to-market roads**" or "**farm-to-market road system**" means those rural secondary roads classified as trunk and trunk collector under Section 306.1.

6. "**Local secondary roads**" or "**local secondary road system**" means those secondary roads which are classified as area service under Section 306.1.



7. **"Municipal street system"** means those streets within municipalities classified as trunk, trunk collector, municipal arterial, municipal collector, municipal service and municipal alleys under Section 306.1.

8. **"State park roads"** means those roads and streets classified as state park roads under Section 306.1.

9. **"Institutional roads"** means those roads and streets classified as institutional roads under Section 306.1.

10. **"Other state land roads"** means those roads and streets classified as other state land roads under Section 306.1.

11. **"County conservation parkways"** or **"county conservation parkway system"** means those parkways classified as county conservation parkways under Section 306.1.

**Sec. 306.4. Jurisdiction of Systems.** The jurisdiction and control over the roads and streets of the state are vested as follows:

1. Jurisdiction and control over the primary roads shall be vested in the department.

2. Jurisdiction and control over the secondary roads shall be vested in the county board of supervisors of the respective counties.

3. Jurisdiction and control over the municipal street system shall be vested in the governing bodies of each municipality; except that the department and the municipal governing body shall exercise concurrent jurisdiction over the municipal extensions of primary roads in all municipalities. The parties exercising concurrent jurisdiction shall enter into agreements with each other as to the kind and type of construction, reconstruction, repair and maintenance and the division of costs thereof.

4. Jurisdiction and control over the roads and streets in any state park, state institution or other state land shall be vested in the board, commission, or agency in control of such park, institution, or other state land; except that:

a. The department and the controlling agency shall have concurrent jurisdiction over any road which is an extension of a primary road and which both enters and exits from the state land at separate points. The department may expend the moneys available for such roads in the same manner as the department expends such funds on other roads over which the department exercises jurisdiction and control. The parties exercising concurrent jurisdiction may enter into agreements with each other as to the kind and type of construction, reconstruction, repair and maintenance and the division of costs thereof. In the absence of such agreement the jurisdiction and control of such road shall remain in the department.

b. The board of supervisors of any county and the controlling state agency shall have concurrent jurisdiction over any road which is an extension of a secondary road and which both enters and exits from the state land at separate points. The board of supervisors of any county may expend the moneys available for such roads in the same manner as the board expends such funds on other roads over which the board exercises jurisdiction and control. The parties exercising concurrent jurisdiction may enter into agreements with each other as to the kind and type of construction, reconstruction, repair and maintenance and the division of costs thereof. In the absence of such agreement, the jurisdiction and control of such road shall remain in the board of supervisors of the county.

5. Jurisdiction and control over parkways within county parks and conservation areas shall be vested in the county conservation boards within their respective counties; except that:



a. The department and the county conservation board shall have concurrent jurisdiction over an extension of a primary road which both enters and exits from a county park or other conservation area at separate points. The department may expend money available for such roads in the same manner as the department expends such funds on other roads over which the department exercises jurisdiction and control. The parties exercising concurrent jurisdiction may enter into agreements with each other as to the kind and type of construction, reconstruction, repair and maintenance and the division of costs thereof. In the absence of such agreement, the jurisdiction and control of such roads shall remain in the department.

b. The board of supervisors of any county and the county conservation board shall have concurrent jurisdiction over an extension of a secondary road which both enters and exits from a county park or other county conservation area at separate points. The board of supervisors of any county may expend moneys available for such roads in the same manner as the board expends such funds on other roads over which the board exercises jurisdiction and control. The parties exercising concurrent jurisdiction may enter into agreements with each other as to the kind and type of construction, reconstruction, repair and maintenance and the division of costs thereof. In the absence of such agreement, the jurisdiction and control of such roads shall remain in the board of supervisors of the county.

**Sec. 306.5. Continuity of Systems in Municipalities, Parks and Institutions.** The primary, trunk and trunk collector systems shall be continuous interconnected systems and provision shall be made for the continuity of such systems by the designation of extension within municipalities, state parks, state institutions, other state lands and county parks and conservation areas. The mileage of such extensions of these systems shall be included in the total mileage of a particular primary, trunk or trunk collector system and shall also be listed separately as an extension of such road system.

The department may reallocate mileage within the systems under its jurisdiction. The board of supervisors or the governing body of municipalities may alter the classification of roads under their jurisdiction with the approval of the functional classification board as provided in Section 306.6.

**Sec. 306.6. Functional Classification Board.**

1. A functional classification board shall be appointed for each county and shall operate under procedural rules promulgated by the department under the provisions of Chapter 17A. Said board shall consist of three members to be appointed as follows: The department shall appoint one member from the staff of the department, the county board of supervisors shall appoint one member who shall be either the county engineer or one of its own members, and the third member shall be a municipal official from within the county who shall be appointed by a majority of the mayors of the cities of the county. The mayors shall meet at the call of the chairman of the county board of supervisors who shall act as chairman of the meeting without vote. In the event the mayors cannot agree to and appoint this member within thirty days after the call of the meeting by the chairman, the two members previously appointed shall select the third member. The board shall serve without additional compensation and shall:

a. Classify each segment of each rural public road and each municipal street in the county in accordance with the classifications found in section 306.1.

b. Establish continuity between the systems within the county and with the systems of adjacent counties.

c. File a copy of the proposed road classification in the office of county engineer for public information and hold a public hearing before final approval of any road classification action. Notice of the date, the time, and the place of such hearing,



and the filing of such proposed road classification for public information shall be published in an official newspaper in general circulation throughout the affected area at least twenty days prior to the established date of the hearing.

d. Report the selected classifications to the department. The department shall review the reports of the county classification boards and may:

(1) Alter the classification of roads coinciding with or crossing county lines to provide continuity of the various county systems.

(2) Adjust the mileage of roads classified in the trunk and trunk collector systems to assure equitable distribution among the counties of the total mileage of such systems.

(3) Any action authorized under subparagraphs (1) and (2) of this paragraph "d" shall not be taken by the department until the proposed action has been thoroughly discussed with the affected county classification boards and their comments heard.

2. There is created a state functional classification review board which shall consist of one state senator appointed by the president of the senate, one state representative appointed by the speaker of the house of representatives, one supervisor appointed by the Iowa state association of county supervisors, one engineer appointed by the Iowa county engineers' association, two persons appointed by the league of Iowa municipalities, one of whom shall be a licensed professional engineer, and two persons appointed by the department, one of whom shall be a commissioner and the other a staff member. This board shall select a permanent chairman from among its members by majority vote of the total membership. The chairman and all members of the board shall serve without additional compensation.

It shall be the responsibility of the state functional classification review board to hear any and all appeals from classification boards or board members, relative to disputes arising out of the functional classification of any segment of highway or street. It shall also be the responsibility of the board to establish the necessary guidelines, procedures, and the time limits to be followed in transferring jurisdiction in accordance with section 306.8. The state functional classification review board shall have the authority and the responsibility to make final administrative determinations based on sound functional classification principals for all disputes relative to functional classification including those disputes relative to the transfer of jurisdictions. The review board shall also serve, when requested jointly by state and local jurisdictions, as an advisory committee for review and adjustment of construction and maintenance guidelines used in updating road and street needs studies.

It is the intent of the general assembly that effective July 1, 1979 the functional reclassification of roads shall be implemented as provided by law.

**Sec. 306.7. Functions Changed or New Roads Added.** If the function of any road or street has been altered by new construction or by reconstruction or relocation, or if a new road or street has been constructed, the functional classification board shall reclassify said roads or streets within one year. If the functional classification board does not classify any road or street as provided herein, the department shall make the classification.

**Sec. 306.8 Transfer of jurisdiction.** When a change of jurisdiction occurs as a result of the classification or reclassification of a road or street, the unit of government having jurisdiction shall, prior to such change of jurisdiction, either place the road or street and any structures on the road in good repair or provide for the transfer of money to the appropriate jurisdiction sufficient for the repairs to the road or street and any structures on the road.



Transfers of the jurisdiction and control of roads and streets may take place if agreements are entered into between the jurisdictions of government involved in the transfer of such roads and streets.

**Sec. 306.9. Diagonal roads.** It is declared to be the policy of the state of Iowa that relocation of primary highways through cultivated land shall be avoided to the maximum extent possible. Whenever the volume of traffic for which the road is designed or other conditions require such relocation, diagonal routes shall be avoided wherever feasible and prudent alternatives exist.

It is further declared that improvement of two-lane roads shall utilize the existing right of way unless alignment or other conditions make changes imperative, and when any two-lane road is expanded to a four-lane road, the normal procedure would be that the additional right of way would be contiguous to the existing right of way unless relocated for compelling reasons. This policy shall not apply to any highway project for which the corridor has been approved by the state department of transportation and which corridor has been finalized by September 1, 1977.

**Sec. 306.10. Power to Establish, Alter or Vacate.** In the construction, improvement, operation or maintenance of any highway, or highway system, the agency which has control and jurisdiction over such highway or highway system, shall have power, on its own motion, to alter or vacate and close any such highway or railroad crossing thereon, and to establish new highways or railroad crossing thereon which are or are intended to become a part of the highway system over which said agency has jurisdiction and control.

**Sec. 306.11. Hearing — Place — Date.** In proceeding to the vacation and closing of any road, part thereof, or railroad crossing, the agency in control of said road, or road system, shall fix a date for a hearing thereon in the county where said road, or part thereof, or crossing, is located, and if located in more than one county, then in a county wherein any part of such road or crossing is located. If the road to be vacated or changed is a secondary road located in more than one county, the boards of supervisors of such counties, acting jointly, shall fix a date for a hearing thereon in either or any of the counties where such road, or part thereof, is located.

**Sec. 306.12. Notice — Service.** Notice of such hearing shall be published in some newspaper of general circulation in the county or counties where such road is located, at least twenty days prior to the date of hearing. The agency which instituted said proceedings and is holding such hearing, shall notify all adjoining property owners, all utility companies whose facilities adjoin the road right of way, and the department, the agency or boards of supervisors, or agency in control of affected state lands, as the case may be, of the time and place of such hearing, by certified mail addressed to the affected property owners, all utility companies whose facilities are on the road right of way and the department, the county auditor, or the agency in control of affected state lands, as the case may be.

**Sec. 306.13. Notice — Requirements.** Said notice shall state the time and place of such hearing, the location of the particular road, or part thereof, or crossing, the vacation and closing of which is to be considered, and such other data as may be deemed pertinent.

**Sec. 306.14. Objections — Claims for Damages.** At such hearing, the department, the board of supervisors, or the agency in control of affected state lands, as the case may be, and any interested person, may appear and object and be heard. Any person owning land abutting on a road which it is proposed to vacate and close, shall have the right to file, in writing, a claim for damages at any time on or before the date fixed for hearing.



**Sec. 306.15. Purchase and Sale of Property.** If as to any one or more properties affected by the proposed vacation and closing of any secondary road, it should appear to the board of supervisors to be in the interest of economy or public welfare, the board may purchase or condemn, by proceeding as this chapter provides, the said entire property or properties, and make payment therefor out of the secondary road fund. After the road has been vacated and closed the board shall sell such property or properties at the best attainable price, and credit the proceeds of such sale to the secondary road fund.

**Sec. 306.16. Final order.** After the hearing, the agency which instituted the proceedings and conducted the hearing shall enter an order either dismissing the proceedings, or vacating and closing the road, part thereof, or crossing, in which event it shall determine and state in the order the amount of the damages allowed to each claimant. The order thus entered shall be final except as to the amount or the damages unless the order is rescinded as provided in section 306.17. A copy of the order shall be filed with the county auditor of the county or counties in which the road, part thereof, or crossing, is located and with the department and the agency in control of any affected state land.

**Sec. 306.17. Appeal.** Notwithstanding the terms of the Iowa administrative procedure Act, any claimant for damages may, by serving, within twenty days after the order has been issued, a written notice upon the agency which instituted and conducted the proceedings, appeal as to the amount of damages, to the district court of the county in which the land is located, in the manner and form prescribed in chapter 472 with reference to appeals from condemnation, and the proceedings shall thereafter conform to the applicable provisions of that chapter. If, in the opinion of the agency, the damages as finally determined on appeal are excessive, the agency may rescind its order vacating and closing the road, part thereof, or crossing, and the right of way shall remain under the jurisdiction of the agency. If the order is rescinded at any time after an appeal is taken, the agency shall pay reasonable attorney fees incurred by the claimant as taxed by the court.

**Sec. 306.18. Establishment.** In the establishment of any road, the agency in control of such road or road system need not cause a hearing to be held thereon or notice to be published thereof, but may do so.

**Sec. 306.19. Purchase or Condemnation of Right of Way — Procedure — Closing Driveway — Alternative Access.**

1. In the maintenance, relocation, establishment, or improvement of any road, including the extension of such road within cities, the agency having jurisdiction and control of such road shall have authority to purchase or to institute and maintain proceedings for the condemnation of the necessary right of way therefor. Such agency shall likewise have power to purchase or institute and maintain proceedings for the condemnation of land necessary for highway drainage, or land containing gravel or other suitable material for the improvement or maintenance of highways, together with the necessary road access or right of access thereto.

2. Whenever the agency condemns or purchases property access rights or alters by lengthening any existing driveway to a road from abutting property, except during the time required for construction and maintenance of the road or highway, the agency shall:

a. Compensate the owner for any diminution in the market value of the property by the denial or alteration by lengthening the driveway; however, in computing such diminution in value no consideration shall be given to the additional maintenance expense for maintaining the additional length of driveway, but in lieu thereof, both in condemnation proceedings or negotiated purchases, the agency shall pay to the owner the sum of five dollars for every lineal foot of additional length or driveway located on said owner's property. This payment shall represent just compensa-



tion to said property owner for the additional driveway maintenance caused by reason of the highway or road project.

b. If in the opinion of the agency it would be more economical to purchase the entire tract of the property owner than to provide and pay the maintenance expense required under the provisions of this section, proceed with the acquisition of the entire tract of land: or

c. If mutually agreeable, move buildings from an existing location to a location requiring an equal or lesser length of driveway and provide an adequate driveway to a public road.

3. None of the foregoing requirements shall prohibit the property owner and the agency from entering into a mutually acceptable agreement for the replacement, relocation, construction, or maintenance of any alternate driveway on the owner's property.

4. Compensation for any property rights taken in the establishment of any alternative temporary or permanent access shall be paid as in any other purchase or condemnation of property. Proceedings for the condemnation of land for any highway shall be under the provisions of Chapter 471 and Chapter 472. Provided that, in the condemnation of right of way for secondary roads, the board of supervisors may proceed as provided in Sections 306.28 to 306.37.

5. For the purposes of this section, the term "driveway" shall mean a way of ingress and egress located entirely on private property, consisting of a lane or passageway leading from a residence to a public roadway or highway.

**Sec. 306.20. Cemeteries.** No road shall be established through any cemetery or burying ground without the consent of all the parties affected by the same.

**Sec. 306.21. Plans, plats and field notes filed.** All road plans, plats and field notes and true and accurate diagrams of water, sewage and electric power lines for rural subdivisions shall be filed with and recorded by the county auditor and approved by the board of supervisors and the county engineer before the subdivision is laid out and platted, and if any proposed rural subdivision is within one mile of the corporate limits of any city such road plans shall also be approved by the city engineer or council of the adjoining municipality. Such plans shall be clearly designated as "completed", "partially completed" or "proposed" with a statement of the portion completed and the expected date of full completion. In the event such road plans are not approved as herein provided such roads shall not become the part of any road system as defined in this chapter.

**Sec. 306.22. Sale of Unused Right of Way.** When title to any tract of land has been or may be acquired for the construction or improvement of any highway, and when in the judgment of the agency in control of the highway, the tract will not be used in connection with or for the improvement, maintenance, or use of the highway, the agency in control of the highway may sell the tract for cash. If the tract of land is held or used in connection with any primary road, or state park or institutional road, the sale shall be subject to approval of the executive council of the state.

The department may contract for the sale of any tract of land subject to the following terms and conditions:

1. The discounted present market value of the contract offer, including the cash down payment, shall exceed one hundred ten percent of the highest cash offer submitted for the tract if a cash offer is received. The discount rate shall be the rate of interest stated in the contract.

2. The cash down payment shall be equal to or in excess of five percent of the total purchase price.



3. The term of the contract shall not exceed ten years.

4. The rate of interest stated in the contract shall not be less than the prevailing rate of interest charged on contract land sales by sellers in the county or general area in which the tract of land is located.

5. The department shall advertise for cash bids and contract offers before accepting a contract offer.

6. The appraised value of property sold under a land contract sale shall be at least five thousand dollars.

7. Any tract of land sold on contract shall be listed on the tax rolls by and taxed to the contract purchaser, as provided in Chapters 428 and 443; assessed and valued as provided in Chapter 441; taxes levied as provided in Chapter 444; collected as provided in Chapter 445; and subject to tax sale, redemption, and apportionment of taxes as provided in Chapters 446 to 448. It shall be the duty of the contract purchaser to discharge and pay all taxes.

If any tract of land is sold, the sale shall be subject to the right of a utility association, company, or corporation to continue in possession of a right of way in use at the time of the sale.

**Sec. 306.23. Notice — Preference of Sale.** Notice of intention to sell such tract, parcel, or piece of land, or part thereof, must, not less than ten days prior to the sale thereof, be sent by certified mail, by the agency in control of such land, to the last known address of the present owner of adjacent land from which said tract, parcel, piece of land or part thereof, was originally bought or condemned for highway purposes, and if located in a city, to the mayor thereof. Said notice shall give an opportunity to the present owner of adjacent property to be heard and make offers for the tract, parcel or piece of land to be sold, and if such offer is equal to or exceeds in amount any other offer received, it shall be given preference by the board in control of said land. Neglect or failure for any reason, to comply with the provisions of said notice, shall in no way prevent the giving of a clear title to the purchaser of said tract, parcel, or piece of land.

**Sec. 306.24. Conditions.** Any sale of land as herein authorized shall be upon the conditions that the tract, parcel, or piece of land so sold shall not be used in any manner so as to interfere with the use of the highway by the public, or to endanger public safety in the use of the highway, or to the material damage of the adjacent owner.

**Sec. 306.25. Execution of Conveyance.** Where a sale of land in connection with any primary road or state park or institutional road has been authorized as herein provided, written conveyances containing the conditions as prescribed by the executive council shall be made in the name of the state and signed by the governor and secretary of state, and the great seal of the state of Iowa attached thereto. Where a sale of land in connection with any secondary road has been authorized by the board of supervisors as herein provided, written conveyances containing the provisions prescribed by the board of supervisors shall be made in the name of the county and signed by the chairman of the board of supervisors and the county auditor.

**Sec. 306.26. Payment of Damages and Right of Way Cost — Proceeds of Sale.** Damages allowed on account of the vacation of any highway and costs incident thereto, right of way or land purchased or condemned for or on account of any highway and costs incident thereto, and the funds received from the sale or rental of any highway right of way or land, shall be paid from or credited to, as the case may be, the road fund or funds applicable to said highway or highway system.



### CHANGES IN ROADS, STREAMS OR DRY RUNS

**Sec. 306.27. Changes for safety, economy and utility.** The state department of transportation as to primary roads and the boards of supervisors as to secondary roads on their own motion may change the course of any part of any road or stream, watercourse or dry run and may pond water in order to avoid the construction and maintenance of bridges, or to avoid grades, or railroad crossings, or to straighten any road, or to cut off dangerous corners, turns or intersections on the highway, or to widen any road above statutory width, or for the purpose of preventing the encroachment of a stream, watercourse or dry run upon such highway. The department shall conduct its proceedings to accomplish the above in the manner and form prescribed in chapter 472, and the board of supervisors shall use the form prescribed in sections 306.28 to 306.37. All such changes shall be subject to the provisions of chapter 455A.

**Sec. 306.28. Appraisers.** If the board is unable, by agreement with the owner, to acquire the necessary right of way to effect such change, three freeholders shall be selected to appraise the damages consequent on the taking of the right of way. The board of supervisors shall select one of said appraisers. The owner or owners of the land sought to be taken shall select one of said appraisers. The two appraisers so selected shall choose the third appraiser. In case the owners do not exercise their said right or in case they are unable to agree as to an appraiser, or in case their appointee fails to appear and qualify, the said board of supervisors shall appoint two appraisers and said two appointees shall choose the third appraiser.

If the two appraisers selected shall fail within ten days to select a third, or the third appraiser so selected shall fail to serve, then the board of supervisors shall select the third appraiser.

**Sec. 306.29. Notice.** The county auditor shall cause the following notice to be served on the individual owner of each tract or parcel of land to be taken for such right of way, as shown by the transfer books in the office of such county auditor, and upon each person owning or holding a mortgage, or lease, upon such land as shown by the county records, and upon the actual occupant of such land if other than the owner thereof:

To whom it may concern: Notice is given that the board of supervisors of \_\_\_\_\_ County, Iowa, propose to condemn for road purposes the following described real estate in said county: (Here describe the right of way, and the tract or tracts from which such right of way will be taken.) The damages caused by said condemnation will be assessed by three appraisers. Notice is hereby given that the owner or owners of said real estate may, on or before the \_\_\_\_\_ day of \_\_\_\_\_, appoint one of said appraisers and that in case such right be not exercised, or if exercised and the said appointee fails to appear and qualify, the said three appraisers will be otherwise appointed as provided by law. All parties interested are further notified that said three appraisers will, when duly appointed, proceed to appraise said damages, will report said appraisal to the said board of supervisors and that said latter board will pass thereon as provided by law, and that at all such times and places you may be present if you be so minded. You are further notified that at said hearing before the said supervisors you may file objections to the use of said land for road purposes and that all such objections not so made will be deemed waived.

\_\_\_\_\_  
County Auditor.



**Sec. 306.30. Service of Notice.** Owners, occupants, and mortgagees of record who are residents of the county shall be personally served in the manner in which and for the time original notices in the district court are required to be served.

Owners and mortgagees of record who do not reside in the county and owners and mortgagees of record who do reside in the county when the officer returns that they cannot be found in the county, shall be served by publishing the notice in one of the official newspapers of the county, once each week for two weeks, and also by mailing by certified mail a copy of such notice to such owner and mortgagee of record addressed to his last known address, and the county auditor shall furnish to the board of supervisors his affidavit that such notice has been sent, which affidavit shall be conclusive evidence of the mailing of such notice.

Personal service outside the county but within the state shall take the place of service by publication.

No service need be had on one who has exercised his right to select an appraiser.

**Sec. 306.31. Qualification and Assessment.** Upon the appointment of three appraisers, the county auditor shall cause them to appear before him and to take oath that they will faithfully and impartially assess the damages claimed. Said appraisers shall forthwith proceed to the assessment of said damages and make written report thereof to the board of supervisors.

**Sec. 306.32. Hearing — adjournment.** The board shall proceed to a hearing on the objections or assessment of damages of any owner, mortgagee of record, and the actual occupant of such land if any of whom it has acquired jurisdiction, or if there be owners, mortgagee of record, and the actual occupant of such land if any over whom jurisdiction has not been acquired, the board may adjourn such hearing until a date when jurisdiction will be complete as to all owners.

**Sec. 306.33. Hearing on Objections.** The board shall, at the final hearing, first pass on the objections to the proposed change. If objections be sustained the proceedings shall be dismissed unless the board finds that the objections may be avoided by a change of plans, and to this end an adjournment may be ordered, if necessary, in order to secure service on additional parties.

**Sec. 306.34. Hearing on Claims for Damages.** When objections to the proposed change are overruled, the board shall proceed to determine the damages to be awarded to each claimant. If the damages finally awarded are, in the opinion of the board, excessive, the proceedings shall be dismissed; if not excessive, the board may, by proper order, establish such proposed change.

**Sec. 306.35. Appeals.** Claimants for damages may appeal to the district court from the award of damages in the manner and time for taking appeals from the orders establishing highways generally.

**Sec. 306.36. Damages on Appeal — Rescission of Order.** If the damages as finally determined on appeal be, in the opinion of the board, excessive, the board may rescind its order establishing such change.

**Sec. 306.37. Tender of Damages.** No appeal from an award of damages shall delay the prosecution of the work when the amount of the award is tendered in writing to the claimant and such tender is kept good. An order to the auditor to issue warrants to claimants for damages shall constitute a valid tender, if funds are available to promptly meet such warrants. Acceptance of the amount of such tender bars an appeal. Should possession of the condemned premises be taken pending appeal and the final award be not paid, the county shall be liable for all damages caused during such possession.



## GENERAL PROVISIONS

**Sec. 306.38. Rental of Acquired Property Pending Use.** In the event that land acquired for improvement of any highway is not immediately needed for such improvement, the agency in control of said highway may rent such land or buildings thereon to responsible persons for a cash rental consistent with the fair market value of similar property. The said agency may employ a local real estate firm for management and collection of rentals or may do so directly through its own personnel. The commission or service charge of such real estate company shall be paid out of such rentals.

**Sec. 306.39. Flooding Highways — Federal Water Resources Projects.** The agency which has control and jurisdiction over any highway or highway system which may be affected by a federal water resources project may grant, sell, exchange, or convey to the United States of America, the perpetual right, power, privilege and easement to overflow, flood, and submerge all of the portion of easements for highway purposes under the control and jurisdiction of such agency.

**Sec. 306.40. Easements Conveyed.** Where such easement is conveyed in connection with any primary road or state park or institutional road, written conveyances containing the conditions as prescribed by the executive council shall be made in the name of the state and signed by the governor and secretary of state, and the seal of the state of Iowa attached thereto. Where such easement is conveyed in connection with any secondary road, written conveyances containing the provisions prescribed by the board of supervisors shall be made in the name of the county and signed by the chairman of the board and the county auditor.

**Sec. 306.41. Temporary Closing for Construction.** The agency having jurisdiction and control over any highway in the state, or the chief engineer of said agency when delegated by such agency, may temporarily close sections of a highway by

**Sec. 306.41. Temporary closing for construction.** The agency having jurisdiction and control over any highway in the state, or the chief engineer of said agency when delegated by such agency, may temporarily close sections of a highway by formal resolution entered upon the minutes of such agency when reasonably necessary because of construction, reconstruction, maintenance or natural disaster and shall cause to be erected "road closed" signs and partial or total barricades in the roadway at each end of the closed highway section and on the closed highway where that highway is intersected by other highways if such intersection remains open. Any numbered road closed for over forty-eight hours shall have a designated detour route. The agency having jurisdiction over a section of highway closed in accordance with the provisions of this section, or the persons or contractors employed to carry out the construction, reconstruction, or maintenance of the closed section of highway, shall not be liable for any damages to any vehicle that enters the closed section of highway or the contents of such vehicle or for any injuries to any person that enters the closed section of highway, unless the damages are caused by gross negligence of the agency or contractor.

Nothing herein shall be construed to prohibit or deny any person from gaining lawful access to his property or residence, nor shall it change or limit liability to such persons.

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**CHAPTER 306A — CONTROLLED-ACCESS HIGHWAYS**

**Sec. 306A.1. Declaration of Policy.** The legislature hereby finds, determines, and declares that this chapter is necessary for the immediate preservation of the public peace, health, and safety, and for the promotion of the general welfare.



**Sec. 306A.2. Definition of Controlled-Access Facility.** For the purpose of this chapter, a controlled-access facility is defined as a highway or street especially designed for through traffic, and over, from or to which owners or occupants of abutting land or other persons have no right or easement or only a controlled right or easement of access, light, air, or view by reason of the fact that their property abuts upon such controlled-access facility or for any other reason. Such highways or streets may be freeways open to use by all customary forms of street and highway traffic or they may be parkways from which trucks, buses, and other commercial vehicles shall be excluded.

**Sec. 306A.3. Authority to Establish Controlled-Access Facilities.** Cities and highway authorities having jurisdiction and control over the highways of the state, as provided by chapter 306, acting alone or in cooperation with each other or with any Federal, State, or local agency or any other state having authority to participate in the construction and maintenance of highways, are hereby authorized to plan, designate, establish, regulate, vacate, alter, improve, maintain, and provide controlled-access facilities for public use wherever such authority or authorities are of the opinion that traffic conditions, present or future, will justify such special facilities; provided, that within cities such authority shall be subject to such municipal consent as may be provided by law. Said cities and highway authorities, in addition to the specific powers granted in this chapter, shall also have and may exercise, relative to controlled-access facilities, any and all additional authority now or hereafter vested in them relative to highways or streets within their respective jurisdictions. Said cities and highway authorities may regulate, restrict, or prohibit the use of such controlled-access facilities by the various classes of vehicles or traffic in a manner consistent with Section 306A.2.

**Sec. 306A.4. Design of Controlled-Access Facility.** Cities and highway authorities having jurisdiction and control over the highways of the state, as provided by Chapter 306, are authorized to so design any controlled-access facility and to so regulate, restrict, or prohibit access as to best serve the traffic for which such facility is intended. In this connection such cities and highway authorities are authorized to divide and separate any controlled-access facility into separate roadways by the construction of raised curbing, central dividing sections, or other physical separations, or by designing such separate roadways by signs, markers, stripes, and other devices. No person shall have any right of ingress or egress to, from, or across controlled-access facilities to or from abutting lands, except at such designated points at which access may be permitted, upon such terms and conditions as may be specified from time to time.

**Sec. 306A.5. Acquisition of Property and Property Rights.** For the purposes of this chapter, cities and highway authorities having jurisdiction and control over the highways of the state, as provided by Chapter 306, may acquire private or public property rights for controlled-access facilities and service roads, including rights of access, air, view, and light, by gift, devise, purchase, or condemnation in the same manner as such units are now or hereafter may be authorized by law to acquire such property or property rights in connection with highways and streets within their respective jurisdictions. All property rights acquired under the provisions of this Chapter shall be in fee simple. In connection with the acquisition of property or property rights for any controlled-access facility or portion thereof, or service road in connection therewith, the said cities and highway authorities, in its discretion, acquire an entire lot, block, or tract of land, if, by so doing, the interests of the public will be best served, even though said entire lot, block, or tract is not immediately needed for the right-of-way proper.

No access rights to any highway shall be acquired by any authority having jurisdiction and control over the highways of the state by adverse possession or prescriptive right. No action heretofore or hereafter taken by any such authority shall form the basis for any claim of adverse possession, or prescriptive right to any access rights by such authority.



**Sec. 306A.6. New and Existing Facilities — Grade Crossing Eliminations.** Cities and highway authorities having jurisdiction and control over the highways of the state, as provided by Chapter 306 may designate and establish an existing street or highway as included within a controlled-access facility. The state or any of its subdivisions shall have authority to provide for the elimination of intersections at grade of controlled-access facilities with existing state and county roads, and city or village streets, by grade separation or service road, or by closing off such roads and streets at the right of way boundary line of such controlled-access facility, the provisions of Section 306.11 to 306.17 shall apply and govern the procedure for closing of such road or street and the method of ascertaining damages sustained by any person as a consequence of such closing, provided, however, that the highway authority desiring the closing of such road or street shall conduct the hearing and carry out the procedure therefor and pay any damages, including any allowed on appeal, as a consequence thereof, any law to the contrary notwithstanding, and after the establishment of any controlled-access facility, no highway or street which is not part of said facility shall intersect the same at grade. No city or village street, county or state highway, or other public way shall be opened into or connected with any such controlled-access facility without the consent and previous approval of the highway authority in the state, county, city or village having jurisdiction over such controlled-access facility. Such consent and approval shall be given only if the public interest shall be served thereby.

**Sec. 306A.7. Authority of Local Units to Consent.** Cities and highway authorities having jurisdiction and control over the highways of the state, as provided by Chapter 306, are authorized to enter into agreements with each other, or with the Federal Government, respecting the financing, planning, establishment, improvement, maintenance, use, regulation, or vacation of controlled-access facilities or other public ways in their respective jurisdictions, to facilitate the purposes of this act.

**Sec. 306A.8. Local Service Roads.** In connection with the development of any controlled-access facility cities and highway authorities having jurisdiction and control over the highways of the state, as provided by Chapter 306, are authorized to plan, designate, establish, use, regulate, alter, improve, maintain, and vacate local service roads and streets or to designate as local service roads and streets any existing road or street, and to exercise jurisdiction over service roads in the same manner as is authorized over controlled-access facilities under the terms of this chapter, if, in their opinion, such local service roads and streets are necessary or desirable. Such local service roads or streets shall be of appropriate design, and shall be separated from the controlled-access facility proper by means of all devices designated as necessary or desirable by the proper authority.

**Sec. 306A.9.** (Repealed by Chapter 259, Acts of 61st G. A.)

## CHAPTER 307 — DEPARTMENT OF TRANSPORTATION

**Sec. 307.1. Definitions.** When used in this chapter, unless the context otherwise requires:

1. **"Director"** means the director of transportation or his designee.
2. **"Department"** means the state department of transportation.
3. **"Commission"** means the state transportation commission.
4. **"Board"** means the transportation regulation board.

**Sec. 307.2. Department of Transportation.** There is created a state department of transportation which shall be responsible for the planning, development, regulation and improvement of transportation in the state as provided by law.



**Sec. 307.3. Transportation Commission.** There is created a state transportation commission which shall consist of seven members, not more than four of whom shall be from the same political party. The governor shall appoint the members of the state transportation commission for a term of four years, subject to the confirmation of the senate.

The commission shall meet in July of each year for the purpose of electing one of its members as chairman.

**Sec. 307.4. Conflict of Interest.** A person shall not serve as a member of the state transportation commission who has an interest in a contract or job of work or material or the profits thereof or service to be performed for the department. Any member of the state transportation commission who accepts employment with or acquires any stock, bonds, or other interest in any company or corporation doing business with the department shall be disqualified from remaining a member of the state transportation commission.

**Sec. 307.5. Vacancies on Commission.** Any vacancy on the commission which may occur when the general assembly is not in session shall be filled by appointment by the governor, which appointment shall expire at the end of thirty days following the convening of the next session of the general assembly. Prior to the expiration of the thirty-day period, the governor shall transmit to the senate for its approval the name of the appointee for the unexpired portion of the regular term. Any vacancy occurring when the general assembly is in session shall be filled in the same manner as regular appointments are made, and before the end of such session, and for the unexpired portion of the regular term.

In the event the governor fails to make an appointment to fill a vacancy, or fails to submit the appointment to the senate for confirmation, the senate may make the appointment prior to adjournment of the general assembly.

**Sec. 307.6. Compensation — Commission Members.** Each member of the commission shall receive a salary as fixed by the general assembly.

**Sec. 307.7. Commission Meetings.** The commission shall meet at the call of the chairman or when any four members of the commission file a written request with the chairman for a meeting. Written notice of the time and place of each meeting shall be given to each member of the commission. A majority of the commission members shall constitute a quorum.

**Sec. 307.8. Expenses.** Members of the commission, the director, and other employees of the department shall be allowed their actual and necessary expenses incurred in the performance of their duties. All expenses and salaries shall be paid from appropriations for such purposes and the department shall be subject to the budget requirements of Chapter 8.

**Sec. 307.9. Removal From Office.** Any member of the commission may be removed for any of the causes and in the manner provided in Chapter 66 and such removal shall not be in lieu of any other punishment that may be prescribed by the laws of this state.

**Sec. 307.10. Duties of Commission.** The commission shall:

1. Develop and co-ordinate a comprehensive transportation policy for the state not later than January 1, 1975, which shall be submitted to the general assembly for its approval, and develop a comprehensive transportation plan by January 1, 1976, to be submitted to the governor and the general assembly, and to update the transportation policy and plan annually.



2. Promote the co-ordinated and efficient use of all available modes of transportation for the benefit of the state and its citizens including, but not limited to, the designation and development of multimodal public transfer facilities if carriers or other private businesses fail to develop such facilities.

3. Identify the needs for city, county and regional transportation facilities and services in the state and develop programs appropriate to meet these needs.

4. Identify methods of improving transportation safety in the state and develop programs appropriate to meet these needs.

5. Adopt rules in accordance with the provisions of Chapter 17A as it may deem necessary to transact its business and for the administration and exercise of its powers and duties. The transportation commission shall also adopt rules, which rules shall be exempt from the provisions of Chapter 17A, governing the length of vehicles and combinations of vehicles which are subject to the limitations imposed under Section 321.457. The commission may adopt such rules which permit vehicles and combinations of vehicles in excess of the length limitations imposed under Section 321.457, but not exceeding sixty-five feet in length, which may be moved on the highways of this state. Any such proposed rules shall be submitted to the general assembly within five days following the convening of a regular session of the general assembly. The general assembly may approve or disapprove the rules submitted by the commission not later than sixty days from the date such rules are submitted and, if approved or no action is taken by the general assembly on the proposed rules, such rules shall become effective May 1 and thereafter all laws in conflict therewith shall be of no further force and effect.

6. Approve the budget of the department as prepared by the director, prior to submission of the budget to the governor and the general assembly.

7. Approve the reorganization of any existing divisions within the department.

8. Consider the energy and environmental issues in transportation development.

9. Enter into such contracts and agreements as provided in this chapter.

10. Provide for the receipt or disbursement of federal funds allocated to the state and its political subdivisions for transportation purposes.

**Sec. 307.11. Director of Transportation — Qualifications — Salary.** The commission shall appoint a director of transportation who shall serve at the pleasure of the commission and who shall in no event be a member of the commission. The director shall not hold any other office under the laws of the United States or of this or any other state or hold any other position for profit. The director shall not engage in any occupation, business, or profession interfering with or inconsistent with his duties, serve on or under any committee of any political party or contribute to the campaign fund of any person or political party. The director shall be appointed on the basis of his executive and administrative abilities and he shall devote his entire time to the duties of his position.

The director shall receive a salary as fixed by the general assembly.

**Sec. 307.12. Duties of the Director.** The director shall:

1. Manage the internal operations of the department and establish guidelines and procedures to promote the orderly and efficient administration of the department.

2. Employ such personnel as are necessary to carry out the duties and responsibilities of the department, consistent with the provision of Chapter 19A and subject to the policies of the commission.

3. Assist the commission in developing state transportation policy and a state transportation plan and execute the policies adopted by the commission.



4. Establish temporary advisory boards of such size as he deems appropriate to advise the department, subject to the approval of the commission.

5. Prepare a budget for the department, subject to the approval of the commission, and prepare reports required by law or required by the commission.

6. Appoint the deputy director of transportation and the administrators of the various divisions of the department, subject to the approval of the commission.

7. Review and submit legislative proposals necessary to maintain current state transportation laws.

8. Appoint hearing officers or designate department personnel or the board to conduct hearings required by law or administrative rule.

**Sec. 307.13. Reassignment of Personnel.** The director may reassign personnel within the department among the various divisions of the department in order to properly co-ordinate the work of the divisions and perform the duties and responsibilities of the department efficiently and economically.

However, any employee so transferred or transferred from one employment system to another either administratively or legislatively, shall not be considered to be a probationary employee simply because of this action.

**Sec. 307.14. Divisions of the Department.** The following divisions are created within the department:

- \*\*1. Transportation regulation board.
- \*2. Administration division.
- \*3. Planning division.
- \*4. General counsel division.
- \*\*5. Highway division.
- \*\*6. Public transportation division.
- \*\*7. Transportation regulation and safety division.
- \*\*8. Railroad transportation division.

\* Created July 1, 1974

\*\* Created July 1, 1975

**307.15. Transportation Regulation Board.** The transportation regulation board shall consist of three members, not more than two of whom shall be from the same political party. The governor shall appoint the members of the board for a term of six years, subject to the confirmation of the senate.

**Sec. 307.16. Vacancies on Board.** Any vacancy on the transportation regulation board which may occur when the general assembly is not in session shall be filled by appointment by the governor, which appointment shall expire at the end of thirty days following the convening of the next session of the general assembly. Prior to the expiration of the thirty-day period, the governor shall transmit to the senate for its approval the name of the appointee for the unexpired portion of the regular term. Any vacancy occurring when the general assembly is in session shall be filled in the same manner as regular appointments are made, and before the end of such session, and for the unexpired portion of the regular term.

In the event the governor fails to make an appointment to fill a vacancy, or fails to submit the appointment to the senate for confirmation, the senate may make the appointment prior to the adjournment of the general assembly.

**Sec. 307.17. Compensation of Board Members.** Each member of the transportation regulation board shall receive a salary as fixed by the general assembly. Each member shall be allowed actual and necessary expenses in the same amounts paid to other state employees incurred in the performance of his duties.



**Sec. 307.18. Duties of board members.** The transportation regulation board shall have the following duties and responsibilities:

1. Fix and approve rates, fares, and charges of common carriers regulated by chapters 325, 327, 327A and 327D.

2. Issue certificates of public convenience and necessary pursuant to the provisions of chapters 325 and 327A.

3. Fix and approve rates, fares, and charges of railroads and conduct safety and service permission hearings with respect to railroads regulated by chapters 327C to 327H.

4. Appoint such counsel as it deems necessary. The counsel shall have the following duties and responsibilities:

a. Investigate the legality of all rates, charges, tariffs, rules, regulations and practices of all common carriers and persons under the jurisdiction of the board, and institute civil proceedings before the board or any proper court to correct any illegality on the part of any common carrier and prosecute the same to final determination.

b. Investigate the reasonableness of rates, tariffs, charges, rules, regulations and practices of all such common carriers in interstate transportation when directed by the board, or when in his judgment they are unlawful, prejudicial, and discriminate against any city, community, business, industry or citizen of the state and institute before the interstate commerce commission or any other tribunal having jurisdiction and prosecute to final determination any proceeding growing out of such matters.

5. Approve any ordinance or resolution adopted by a political subdivision of this state which relates to the speed of a train in an area within the jurisdiction of the political subdivision. Any such speed ordinance or resolution adopted by a political subdivision of the state prior to July 1, 1975 which has not been approved by the Iowa state commerce commission shall be referred to the board by the political subdivision and shall be in full force and effect upon approval of the ordinance or resolution by the board. Nothing in this subsection shall be construed to abrogate, modify, or alter any historical or contractual agreement between a political subdivision of the state and a railroad corporation in existence on July 1, 1975.

**Sec. 307.19. Proceedings.** The transportation regulation board shall conduct its hearings pursuant to rules promulgated under the provisions of Chapter 17A.

**Sec. 307.20. Enforcement.** The department shall be responsible for the enforcement of all orders issued by the board.

**Sec. 307.21. Administration Division.** The administrator of the administration division shall have the following duties and responsibilities:

1. Provide for the proper maintenance and protection of the grounds, buildings and equipment of the department, in co-operation with the department of general services.

2. Establish, supervise and maintain a system of centralized electronic data processing for the department, in co-operation with the department of general services.

3. Assist the director in preparing the departmental budget.

4. Provide centralized purchasing services for the department, in co-operation with the department of general services.

5. Assist the director in employing the professional, technical, clerical and secretarial staff for the department and maintain employee records in co-operation with the merit employment department and provide personnel services, including but not limited to training, safety education and employee counseling.

6. Assist the director in co-ordinating the responsibilities and duties of the various divisions within the department.



7. Carry out all other general administrative duties for the department.

8. Perform such other duties and responsibilities as may be assigned by the director.

The administrator of the administration division may purchase items from the department of general services and may co-operate with the director of general services by providing centralized purchasing services for the department of general services.

**Sec. 307.22. Planning Division.** The administrator of the planning division shall have the following duties and responsibilities:

1. Assist the director in planning all modes of transportation in order to develop an integrated transportation system providing adequate transportation services for all citizens of the state.

2. Develop and maintain transportation statistical data for the department.

3. Assist the director in establishing, analyzing and evaluating alternative transportation policies for the state.

4. Co-ordinate the planning division's duties and responsibilities with the planning functions carried on by other divisions of the department.

5. Perform such other planning functions as may be assigned by the director.

The planning functions of this division shall not include the detailed design of highways or other modal transportation facilities, but shall be restricted to the needs of this state for multimodal transportation systems.

**Sec. 307.23. General Counsel Division.** The general counsel shall be a special assistant attorney general appointed by the attorney general who shall act as the attorney for the department and he shall have the following duties and responsibilities:

Act as legal advisor to the commission, the director and the various divisions of the department and provide all legal services for the department except for those provided to the board by its counsel.

The attorney general shall appoint such additional assistant attorneys general as the commission deems necessary to carry out the duties assigned to the general counsel division. The salary of the general counsel shall be fixed by the commission, subject to the approval of the attorney general. The commission shall provide and furnish a suitable office for the general counsel upon request of the attorney general.

**Sec. 307.24. Highway Division.** The administrator of the highway division shall be responsible for the planning, design, construction and maintenance of the state primary highways and shall administer the provisions of Chapters 306 to 320 and perform such other duties as may be assigned by the director. There shall be a subdivision for urban systems, a subdivision for secondary roads, and such other subdivisions as may be necessary within the highway division.

**Sec. 307.25. Public Transportation Division.** The administrator of the public transportation division shall have the following duties and responsibilities:

1. Advise and assist the director in the development of aeronautics, including but not limited to the location of air terminals, accessibility of air terminals by other modes of public transportation, protective zoning provisions considering safety factors, noise, and air pollution, facilities for private and commercial aircraft, air freight facilities and such other physical and technical aspects as may be necessary to meet present and future needs.

2. Advise and assist the director in the development of river transportation and port facilities in the state.



3. Advise and assist the director in the study of local and regional transportation of goods and people including intracity and intercity bus systems, dial-a-bus facilities, rural and urban bus and taxi systems, the collection of data from these systems, feasibility study of increased government subsidy assistance and determination of the allocation of such subsidies to each mass transportation system, such other physical and technical aspects which may be necessary to meet present and future needs and apply for, accept and expend federal, state or private funds for the improvement of mass transit.

4. Advise and assist the director to study and develop highway transport economics to assure availability and productivity of highway transport services.

5. Administer the provisions of Chapters 322A, 325, 327, 327A, 327B, 328, 329 and 330.

6. Perform such other duties and responsibilities as may be assigned by the director and the commission.

**Sec. 307.26. Railroad Transportation Division.** The administrator of the railroad transportation division shall have the following duties and responsibilities.

1. Advise and assist the director in conducting research on the basic railroad problems and identify the present capabilities of the existing railroads in order to determine the present obligation of the railroads to provide acceptable levels of public service.

2. Advise and assist the director in the development of rail transportation systems for expansion of passenger and freight services.

3. Advise and assist the director in developing programs in anticipation of railroad abandonment, including:

a. Development and evaluation of programs which will encourage improvement of rail freight and the upgrading of rail lines in order to improve freight service.

b. Development of alternative modes of transportation to areas and communities which lose rail service.

c. Advise the director when it may appear in the best interest of the state to assume the role of advocate in railroad abandonments and railroad rate schedules.

4. Develop and maintain a federal-state relationship of programs relating to railroad safety enforcement, track standards, rail equipment, operating rules and transportation of hazardous materials.

5. Advise and assist the director in the conduct of research on railroad-highway grade crossings and encourage and develop a safety program in order to reduce injuries or fatalities including, but not limited to, the following:

a. The implementation of a program of constructing rumble strips at grade crossings on selected hard surface roads.

b. The establishment of standards for warning devices for particularly hazardous crossings or for classes of crossings on highways, which standards are designed to reduce injuries, fatalities and property damage. Such standards shall regulate the use of warning devices and signs which shall be in addition to the requirements of section 327G.2. Implementation of such standards shall be the responsibility of the government agency or department or political subdivision having jurisdiction and control of the highway and such implementation shall be deemed adequate for the purposes of railroad grade crossing protection. The department, or the political subdivision having jurisdiction, may direct the installation of temporary protection while awaiting installation of permanent protection. A railroad crossing shall not be found to be particularly hazardous for any purpose unless the department has determined it to be particularly hazardous.



6. Apply for, accept, and expend federal, state or private funds for the improvement of rail transportation.
7. Advise and assist the director on studies for co-ordination of railway service with that of other transportation modes.
8. Advise and assist the director with studies of regulatory changes deemed necessary to effectuate economical and efficient railroad service.
9. Advise and assist the director regarding agreements with railroad corporations for the restoration, conservation or improvement of railroad as defined in section 327D.2, subsection 1, on such terms, conditions, rates, rentals, or subsidy levels as may be in the best interest of the state. The commission may enter into contracts and agreements which are binding only to the extent that appropriations have been or may subsequently be made by the legislature to effectuate the purposes of this subsection.
10. Administer the provisions of chapters 327D to 327H.
11. Perform such other duties and responsibilities as may be assigned by the director and the commission.
12. Advise and assist in the establishment and development of railroad districts upon request.
13. Conduct innovative experimental programs relating to rail transportation problems within the state.
14. Enter the role of "applicant" pursuant to the Railroad Revitalization and Regulatory Reform Act of 1976, United States Public Law 94-781, and take such actions as are necessary to accomplish this role.
15. Identify those segments of railroad trackage which, if improved, may provide increased transportation services for the citizens of this state. The department shall develop and implement programs to encourage the improvement of rail freight services on such railroad trackage.

**Sec. 307.27. Transportation Regulation and Safety Division.** The administrator of the transportation regulation and safety division shall have the following duties and responsibilities.

1. Administer and supervise the registration of motor vehicles pursuant to Chapter 321.
2. Administer and supervise the licensing of motor vehicle manufacturers, distributors and dealers pursuant to Chapter 322.
3. Administer the inspection of motor vehicles pursuant to Chapter 321.
4. Administer motor vehicle registration reciprocity pursuant to Chapter 326.
5. Administer the provisions of Chapters 321A, 321B, 321E and 321F relating to motor vehicle financial responsibility, the implied consent law, the movement of vehicles of excessive size and weight and the leasing and renting of vehicles.

**Sec. 307.28. Prorating Departmental Costs.** The director shall, with the approval of the commission, prorate the costs of the department which will be expended for highways and such costs shall be paid from money appropriated from the road use tax fund. Prorated costs payable from the road use tax fund shall be based upon that portion of the commission's duties related to the construction, maintenance, and supervision of the public highways within the state or for the payment of bonds issued for the construction of public highways and the payment of interest on such bonds. The general assembly shall appropriate from the general fund of the state the remaining necessary departmental costs.



**CHAPTER 307A — TRANSPORTATION COMMISSION**

*Referred to in Section 307.24*

All rules, regulations, forms, orders, and directives promulgated by and in effect for the state highway commission on the effective date of this Act shall continue in full force and effect as rules, regulations, forms, orders, and directives of the state department of transportation until amended or supplemented by affirmative action of the state transportation commission, see 65GA, Ch. 1180, Sec. 198.

**Sec. 307A.1. Definitions.** As used in this chapter, unless the context otherwise requires:

1. **"Commission"** means the state transportation commission of the state department of transportation.
2. **"Department"** means the state department of transportation.

**Sec. 307A.2. Duties.** Said commission shall:

1. Devise and adopt standard plans of highway construction and furnish the same to the counties and provide information to the counties on the maintenance practices and policies of the department.
2. Furnish information and instruction to, answer inquiries of, and advise with, highway officers on matters of highway construction and maintenance and the reasonable cost thereof.
3. When in the interest of the state, the commission may allow a subsistence expense to any employee of the highway division of the department for continuous stay in one location while on duty away from established headquarters and place of domicile or either for a period not to exceed forty-five days; allow automobile expenses in accordance with section eighteen point one hundred seventeen (18.117) of the Code, for moving an employee and his or her family from place of present domicile to new domicile, and actual transportation expense for moving of household goods. Such household goods shall not include pets or animals.
4. Make surveys, plans, and estimates of cost, for the elimination of danger at railroad crossings on highways, and confer with local and railroad officials with reference to elimination of the danger.
5. Assist the board of supervisors and the department general counsel in the defense of suits wherein infringement of patents, relative to highway construction, is alleged.
6. Make surveys for the improvement of highways upon or adjacent to state property when requested by the board or department in control of said lands.
7. Record all important operations of said commission and, at the time provided by law, report the same to the governor.

Time of filing report and period covered, sec. 17.9

8. Incur no expense to the state by sending out road lecturers.
9. Order the removal or alteration of any lights or light-reflecting devices, whether on public or private property, other than railroad signals or crossing lights, located adjacent to a primary road and within three hundred feet of a railroad crossing at grade, which in any way interfere with the vision of or may be confusing to a person operating a motor vehicle on such highway in observing the approach of trains or in observing signs erected for the purpose of giving warning of such railroad crossing.
10. Order the removal or alteration of any lights or light-reflecting devices, whether on public or private property, located adjacent to a primary road and within three hundred feet of an intersection with another primary road, which in any way interfere with the vision of or may be confusing to a person operating a motor vehicle



on such highway in observing the approach of other vehicles or signs erected for the purpose of giving warning of such intersection.

11. Construct, reconstruct, improve and maintain state institutional roads and state park roads as defined in section 306.3 and bridges on such roads, roads located on state fair grounds as defined in chapter 173 and the roads and bridges located on area school property as defined in chapter 280A upon request of the state board, department or commission which has jurisdiction over such roads. This shall be done in such manner as may be agreed upon by the commission and the state board, department or commission which has jurisdiction. The commission may contract with any county or municipality for the construction, reconstruction, improvement or maintenance, of such roads and bridges. Any state park road which is an extension of either a primary or secondary highway which both enters and exists from a state park at separate points shall be constructed, reconstructed, improved and maintained as provided in section 306.4. Funds allocated from the road use tax fund for the purposes of this subsection shall be apportioned in the ratio that the needs of the state institution roads and bridges, park roads and bridges or area school roads and bridges bear to the total needs of these facilities based upon the most recent quadrennial park and institution need study. The commission shall conduct a study of the road and bridge facilities in state parks, state institutions, state fair grounds and on area school property. The study shall evaluate the construction and maintenance needs and projected needs based upon estimated growth for each type of facility to provide a quadrennially updated standard upon which to allocate funds appropriated for the purposes of this subsection.

Referred to in secs. 312.2(5), 313.4

12. Prepare, adopt and cause to be published a long-range program for the primary road system, in conjunction with the state transportation plan adopted by the commission. Such program shall be prepared for a period of at least five years and shall be revised, brought up to date and republished at least once every year in order to have a continuing five-year program. The program shall include, insofar as such estimates can be made, an estimate of the money expected to become available during the period covered by the program and a statement of the construction, maintenance, and other work planned to be performed during such period. The commission shall conduct periodic reinspections of the primary roads in order to revise, from time to time, its estimates of future needs to conform to the physical and service conditions of the primary roads. The commission shall annually cause to be published a sufficiency rating report showing the relative conditions of the primary roads. Before the last day of December of each year, the commission shall adopt and cause to be published from its long-range program, a plan of improvements to be accomplished during the next calendar year. This annual program shall list definite projects in order of urgency and shall include a reasonable year's work with the funds estimated to be available. The annual program shall be final and followed by the commission in the next year except that deviations may be made in case of disaster or other unforeseen emergencies or difficulties. The relative urgency of the proposed improvements shall be determined by a consideration of the physical condition, safety, and service characteristics of the various primary roads.

13. The commission shall adopt such rules and regulations in accordance with the provisions of chapter 17A as it may deem necessary to transact its business and for the administration and exercise of its powers and duties.

14. For the four-year period beginning July 1, 1979, and for each subsequent four-year period, prepare, adopt and cause to be published the results of a study of all roads and streets in the state. The study shall be so designed to investigate present deficiencies and future twenty-year maintenance and construction needs of the roads and ability of each applicable authority to meet the needs for the planning, construct-



ion, repair and maintenance of roads within their jurisdiction. The commission shall have the authority to gather information necessary to complete this study and shall be furnished such assistance from any state agency as necessary to prepare, update and publish a report to be referred to as the "quadrennial need study" for the purposes of this chapter and chapter 312. This subsection shall not preclude the commission from updating the quadrennial need study when necessary to reflect changes in road and street needs in the state.

**Sec. 307A.3. Federal Donations.** Should the government of the United States provide for free distribution among the states of machinery or other equipment, suitable for use in road improvement, the commission is empowered to receive and receipt for such machinery and equipment, and to take such action as will secure to the state the benefit of any such tenders by the federal authorities. Said commission is further authorized, in the event of such distribution to the states by the federal authorities, to make such apportionment of said machinery or other equipment among the counties of the state as in its judgment will best facilitate work in progress or contemplated by any county or counties, but the title and right of possession of such property so received from the federal government shall at all times rest in the commission for the use and benefit of the state.

**Sec. 307A.4. Federal Appropriations.** Where funds have been allotted or appropriated or may hereafter be allotted or appropriated by the government of the United States for the improvement of streets and highways in this state, and the federal statutes or the rules and regulations of the federal government provide or contemplate that such work shall be under the supervision of the commission, said commission is hereby authorized and empowered to let the necessary contracts for such construction work, to supervise and direct such construction work, to comply with the federal statutes and rules, and to co-operate with the federal government in the expenditures of said federal funds.

In order to avoid delays, payment for such street and highway projects or improvements constructed in co-operation with the federal government may be advanced from the primary road fund.

**Sec. 307A.5. State-Owned Lands — Assessment.** Municipalities and counties may assess the cost of a public improvement when such improvement benefits property owned by the state and under the jurisdiction and control of the highway division of the department. The commission shall pay from the primary road fund such portion of the cost of the improvement as would be legally assessable against the land if privately owned.

Assessments against property under the jurisdiction of the highway division of the department shall be made in the same manner as those made against private property, except that the municipality or county making the assessment shall cause a copy of the public notice of hearing to be mailed to the commission by restricted certified mail.

Assessments against property owned by the state and not under the jurisdiction and control of the highway division of the department shall be made in the same manner as those made against private property and payment thereof shall be made by the executive council from any funds of the state not otherwise appropriated.

No such assessment in excess of twenty thousand dollars shall be valid unless it is provided for by or contained within a capital appropriation by the general assembly.

**Sec. 307A.6.** Repealed by 66GA, chapter 1176, sec. 6.



**Sec. 307A.7. Materials and Equipment Revolving Fund.** There is appropriated out of the primary road fund the sum of one hundred thousand dollars which shall be known as the highway materials and equipment revolving fund. From this fund shall be paid all materials and supplies, inventoried stock supplies, maintenance and operational costs of equipment and equipment replacements incurred in the operation of centralized purchasing for the highway division of the department. Direct salaries and expenses properly chargeable thereto shall be paid from said fund. For each month the commission shall render a statement to each department within the highway division for the actual cost of materials and supplies, operational and maintenance costs of equipment, and equipment depreciation used by the highway division. Such expense shall be paid by the division in the same manner as other interdepartmental billings are paid and when such expense is paid by the division, such sum shall be credited to the highway materials and equipment revolving fund. If any surplus accrues to said revolving fund in excess of one hundred thousand dollars for which there is no anticipated need or use, the governor shall order such surplus reverted to the primary road fund. When the highway division shares equipment with other divisions of the department, the director of transportation shall prorate the costs of the equipment among the divisions using the equipment.

**Sec. 307A.8. Longevity pay prohibited.** No employee of the highway division of the state department of transportation subject to the provisions of chapter 19A who is hired on or after July 1, 1971, shall be entitled to longevity pay. The provisions of this section shall not apply to any employee of the state highway division subject to chapter 19A who has been employed prior to July 1, 1971, and whose employment continues after June 30, 1971. Any employee of the highway division subject to chapter 19A whose employment is terminated on or after July 1, 1971, shall if re-employed by the highway division, forfeit any right he may have to longevity pay.

Any employee of the highway division who becomes an employee of the state department of transportation on July 1, 1974, shall retain all rights to longevity pay so long as he continues employment with the state department of transportation.

## CHAPTER 309 — SECONDARY ROADS

### SECONDARY ROAD AND BRIDGE SYSTEMS IN GENERAL

**Sec. 309.1. Definition.** As used in this chapter, unless the context otherwise requires, "Department" means the state department of transportation.

**Sec. 309.2.** Repealed by 54GA, chapter 103, sec. 22.

**Sec. 309.3. Secondary bridge system.** The secondary bridge system of a county shall embrace all bridges and culverts on secondary roads as defined in section 306.3, subsection 4.

**Sec. 309.4 to 309.6.** Repealed by 57GA, chapter 139, sec. 1.

**Sec. 309.7. Levy for construction and maintenance.** The board of supervisors may annually, as a part of its regular budget preparation, levy for secondary road construction and maintenance purposes:

1. A tax of not to exceed three dollars and three-eighths cent per thousand dollars of assessed value of all taxable property in the county except on property within cities.

2. A tax not to exceed sixteen and seven-eighths cents per thousand dollars of assessed value of all taxable property in the county.



**Sec. 309.8. Secondary Road Fund.** There is hereby created a secondary road fund which fund shall consist of:

1. All funds derived from the secondary road tax levies.
2. All funds allotted to the county from the state road use tax fund.
3. All funds provided by individuals for the improvement of any secondary road from their own contributions.
4. All other funds which may by law be dedicated to said fund.

**Sec. 309.9. General Pledge.** The secondary road fund is hereby pledged to and shall be used for any or all of the following purposes at the option of the board of supervisors:

1. Construction and reconstruction of secondary roads and costs incident thereto.
2. Maintenance and repair of secondary roads and costs incident thereto.
3. Payment of all or part of the cost of construction and maintenance of bridges in cities having a population of eight thousand, or less and all or part of the cost of construction of road within a city, of less than four hundred population, which lead to state parks.
4. Special drainage assessments levied on account of benefits to secondary roads.
5. Payment of interest on and principal of any bonds of the county issued on account of secondary roads, bridges or culverts constructed by the county.
6. Any legal obligation or contract in connection with secondary roads and bridges which is required by law to be taken over and assumed by the county.
7. Secondary road equipment, materials, supplies and garages or sheds for the storage, repair and servicing thereof.
8. For the assignment or designation of names or numbers to roads in the county, and to erect, construct or maintain guide posts or signs at the intersections thereof.

**Sec. 309.10.** Repealed by 66GA, chapter 167, sec. 15.

**Sec. 309.11. Systems Abolished.** The classification of secondary roads into "county trunk roads" and "local county roads" is hereby abolished. Wherever in any statute the words, "county trunk roads", "county road" or "local county road" appear, they shall be construed to mean "secondary road".

**Sec. 309.12. Construction of terms.** The classification of county road funds into "secondary road construction funds" and "secondary road maintenance funds" is hereby abolished. Wherever in any statute the words, "secondary road construction fund" or "secondary road maintenance fund" appear, they shall be construed to mean, "secondary road fund".

**Sec. 309.13. Pledge of Maintenance Fund.** Repealed by Chapter 139, 57th G.A.

**Sec. 309.14. Optional Levy.** Repealed by Chapter 139, 57th G. A.

**Sec. 309.15. Transfers Generally.** Repealed by Chapter 139, 57th G. A.

**Sec. 309.16. Duty of Department.** The department shall when requested by the board of supervisors advise with said board as to the manner of constructing and maintaining the secondary roads.

#### COUNTY ENGINEER

**Sec. 309.17. Engineer — Term.** The board of supervisors shall employ one or more registered civil engineers who shall be known as county engineers. The board



shall fix their term of employment which shall not exceed three years, but the tenure of office may be terminated at any time by the board.

**Sec. 309.18. Compensation.** The board shall fix the compensation of said engineer or engineers, and pay the same, together with all engineering costs, from the general county fund, or from the secondary road construction fund or from the secondary road maintenance fund, or from any or all of said funds.

Said engineers shall, in the performance of their duties, work under the directions of said board and shall give bonds for the faithful performance of their duties in a sum not less than two thousand nor more than five thousand dollars, to be approved by the board.

**Sec. 309.19. Adjacent Counties Joining in Employment.** The boards of supervisors of two or more adjacent counties may enter into an agreement to jointly employ a county engineer, employ professional and clerical assistants for the engineer, and to provide such services as can be carried on jointly and will operate to their mutual benefit. Such agreement shall be written and entered in their respective minutes. The engineer employed under such agreement shall be the official county engineer for each of the respective boards and shall be employed for such term of years as shall be determined by the boards but in no event longer than the period of time the mutual agreement between the boards is to be in effect. The written agreement shall provide for the determination of the cost of such joint program and the manner of allocation of the cost to each board for inclusion in the respective budgets. The boards by mutual agreement shall designate one board to make payments for salaries and other costs of the joint program. The board shall be reimbursed by the other board or boards in accordance with the joint agreement. The provisions of chapter 28E shall be applicable to this section.

**Sec. 309.20. Engineers — Itemized Account.** County engineers and their assistants shall file an itemized and verified account with the board of supervisors for the reimbursement of all expenses incurred. Mileage may be claimed as provided in section 79.9.

**Sec. 309.21. Supervision of Construction and Maintenance Work.** All construction and maintenance work shall be performed under the direct and immediate supervision of the county engineer who shall be deemed responsible for the efficient, economical and good faith performance of said work.

#### CONSTRUCTION PROGRAM

**Sec. 309.22. Construction project — progress report by engineer.** On or before the first day of December of each year the board of supervisors shall, subject to the approval of the department, adopt a project accomplishment list for the next calendar year, and a project priority list for the succeeding four years based upon the construction funds, local secondary and farm-to-market, estimated to be available for such year. Subject to departmental approval, any project on the approved priority list may be advanced to and constructed in the accomplishment year and the project accomplishment list may be revised due to unforeseen conditions.

At the close of each year, the county engineer as a part of his annual report to the said department shall include a statement of the progress made toward the completion of each project contained in the approved project accomplishment list on which work was accomplished, a statement of the total amount expended on each such project during the year, and a statement of what portion of the work on each such project was done on contract and the amount so expended on each contract for each such project.

**Sec. 309.23. Scope of Program.** Repealed by Chapter 139, 57th G. A.



**Sec. 309.24. Uniform and Unified Plan Required.** Said program or project shall be planned on the basis of one general, uniform, and unified plan for the complete and permanent construction of the roads embraced therein as to bridge, culvert, tile, and grading or other improvements.

**Sec. 309.25. Material Consideration For Farm-to-Market Roads.** In planning and adopting said program or project by the board of supervisors, said board and the county engineer shall give due and careful consideration, (1) to the location of primary roads, and of roads heretofore improved as county roads, (2) to the market centers and main roads leading thereto, and (3) to rural mail and school bus routes, it being the intent of this chapter that said program or project will, when finally executed, afford the highest possible systematic, intra-county and inter-county connections of all roads of the county.

**Sec. 309.26. Provisional Selection of Roads.** The board after due consultation with the county engineer, shall first select in a provisional way the roads which they then consider advisable to embrace in said program, and direct said engineer to make a reconnaissance survey and estimate of all said roads, or of such part thereof as, in view of the public necessity and convenience, present the most urgent need and necessity for early construction.

**Sec. 309.27. Report of Engineer.** In addition to the foregoing, the engineer, when so ordered by the board, shall make written report to the board and shall designate therein in their order of importance the roads which, in his judgment, are most urgently in need of construction.

**Sec. 309.28. Recommendations.** The engineer may in his report recommend that certain definitely described roads or parts thereof be omitted from the provisional program or project, or that certain definitely described roads or parts thereof be added thereto, and in such case he shall clearly enter on his report the reasons therefor.

**Sec. 309.29. Map Required.** A map of the county showing the location of the proposed program or project shall accompany the report of the engineer.

**Sec. 309.30. Additional Estimates.** Additional reconnaissance surveys and estimates may be ordered by the board when it deems the same necessary or advisable.

**Sec. 309.31. Provisional Determination and Hearing.** Repealed by Chapter 139, 57th G. A.

**Sec. 309.32. Board's Action Final.** Repealed by Chapter 139, 57th G. A.

**Sec. 309.33. County Trunk Roads.** Repealed by Chapter 139, 57th G. A.

**Sec. 309.34. Record Required.** After the construction program or project is finally determined, the county auditor shall record the same at length in a county road book.

**Sec. 309.35. Surveys Required.** Before proceeding to the construction of any road or roads included in said program where the grading exclusive of bridges and culverts, is estimated to cost over \$3,000 per mile, the county engineer shall cause detailed surveys and plans for said road or roads to be prepared.

**Sec. 309.36. Nature of Survey.** The engineer's survey shall be on the basis of the permanent improvement of said roads, as to bridge, culvert, tile, and road work.

**Sec. 309.37. Details of Survey.** Said survey shall show:

1. A division into sections of all the roads embraced in said provisional program, a designation of each section by some appropriate number, name, or letter, the starting point and terminus of each section, and the mileage of each section.



2. An accurate plan and profile of the roads surveyed, showing (a) cuts and fills, (b) outline of grades, (c) all existing permanent bridges, culverts and grades, and (d) proper bench marks on each bridge and culvert.

3. The drainage, both surface and subdrainage, necessary to prepare said roads for complete construction.

4. The location of all lines of tile and size thereof.

5. All necessary bridges and culverts, their length, height, and width and foundation soundings.

6. An estimate of the watershed having relation to each bridge and culvert.

7. An estimate of the construction cost of said roads on the basis of permanent bridges, culverts, tile and road work.

**Sec. 309.38. Existing Surveys.** The engineer may adopt any existing survey of any road or part thereof which is embraced in said program or project, provided such existing survey substantially complies, or is made to comply, with the requirements of this chapter.

**Sec. 309.39. Contracts and Specifications.** The various contracts for the carrying out of said construction program or project in the most efficient, practicable and economical manner shall, as far as possible, be accompanied by standard specifications, and no traveled roadway shall be less than 22 feet from shoulder to shoulder.

**Sec. 309.40. Advertisement and letting.** All contracts for road or bridge construction work and materials therefor of which the engineer's estimate exceeds twenty thousand dollars, except surfacing materials obtained from local pits or quarries, shall be advertised and let at a public letting.

**Sec. 309.41. Optional advertisement and letting.** Contracts not embraced within the provisions of section 309.40 shall be either advertised and let at a public letting; or, where the cost does not exceed the engineer's estimate, let through informal bid procedure by contacting at least three qualified bidders prior to letting the contract. The informal bids received together with a statement setting forth the reasons for use of the informal procedure and bid acceptance shall be entered in the minutes of the board of supervisors meeting at which such action was taken.

Nothing contained in this section shall be deemed to prohibit the board of supervisors from purchasing material and using county equipment and regularly employed county road personnel on a project within their capability as determined by the county engineer.

**Sec. 309.42. Approval of road contracts.** Contracts for road construction work which, according to the engineer's estimate, involve a cost of five thousand dollars or more per mile, or more than twenty thousand dollars in the aggregate shall be first, approved by the department before the same shall be effective as a contract.

**Sec. 309.43. Record of Bids.** All bids received shall be publicly opened, at the time and place specified in the advertisement, and shall be recorded in detail, in the road book, by the county auditor; and the county engineer shall in all instances of day labor, private or public contracts, file a detailed cost accounting sheet with the county auditor; said book and cost sheets shall at all times be open to public inspection.

**Sec. 309.44. Trees — Ingress or Egress — Drainage.** Section 309.44, repealed by 53rd G. A. (See Section 314.7.)

**Sec. 309.45. County Trunk Roads in Cities and Towns.** Section 309.45, repealed by 53rd G. A. (See Section 314.5.)



### ANTICIPATION OF FUNDS

**Sec. 309.46. Construction Fund Anticipated.** The board before issuing anticipatory certificates shall seek the advice of the department and issue said certificates to an amount not exceeding 50% of the estimated funds which will accrue to the secondary road fund during any stated period of from 1 to 2 years.

**Sec. 309.47. Anticipatory Resolution.** Such certificates shall be authorized by a duly adopted resolution which shall specify:

1. The secondary road funds, specifying the year or years, which are to be anticipated.
2. The amount of certificates authorized.
3. The denomination of each certificate.
4. The rate of interest which each certificate shall bear which shall not exceed 5% per annum, payable annually.
5. The authorization of the chairman of the board of supervisors and of the county auditor, respectively, to sign and countersign such certificates.

**Sec. 309.48. Recitals.** Each certificate shall recite:

1. The annual accruing secondary road funds (naming the year) of which the certificate is anticipatory.
2. That said certificate shall be payable on or before December 31st of said year.
3. That said certificate is payable solely from said accruing secondary road funds.

**Sec. 309.49. Consecutive Numbering and Payment.** The series of certificates which anticipate the accruing of funds during a given year shall be numbered consecutively and paid in the order of said numbering.

**Sec. 309.50. Execution.** Upon the signing of each of said certificates by the chairman of the board, said certificates shall be delivered to the county auditor, who shall countersign the same, charge the county treasurer with the amount thereof, and deliver the same to such latter officer, who shall be responsible therefor on his bond.

**Sec. 309.51. Taxation.** Said certificates shall be exempt from taxation.

**Sec. 309.52. Duty of Treasurer.** The treasurer shall sell said certificates in accordance with the provisions of chapter 75, and shall credit the amount received to said secondary road fund; or if unable to sell said certificates for par plus accrued interest, the treasurer may apply said certificates at par plus accrued interest in payment of any warrants duly authorized and issued for secondary road work.

**Sec. 309.53. Registration of Certificate Holders.** The county treasurer shall enter on a record to be kept by him the name and postoffice address of all persons to whom any of said certificates are issued, with a particular designation of the certificates delivered to each person.

**Sec. 309.54. Registration of New Holder.** Any subsequent holder may present his certificates to the county treasurer and cause his name and postoffice address to be entered in lieu of that of such former holder.

**Sec. 309.55. Terminating Interest.** When the accruing funds in the hands of the county treasurer, for a year covered by anticipatory certificates, are sufficient to pay the first retireable certificate or certificates, the county treasurer shall, by mail, as



shown by his records, promptly notify the holder of such certificate of such fact, and thirty days from and after the mailing of such letter all interest on such certificate shall cease.

### MISCELLANEOUS PROVISIONS

**Sec. 309.56. Project plans.** The plans for each project, on which contracts will be let pursuant to the provisions of sections 309.40, 309.42 and 309.80 as soon as approved by the board of supervisors, shall be submitted to the department, and the board of supervisors may designate to the department which projects, in their estimation, should be first passed upon by said department. The department shall pass on such reports and plans, and in so doing, shall take into consideration the thoroughness, feasibility, and practicability of such plans.

**Sec. 309.57. Bonds — Conditions.** Section 309.57, repealed by 53rd G. A. (See Section 314.1.)

**Sec. 309.58. Action on Bond — Limitation.** No provision in a contract shall be valid which seeks to limit the time to less than five years in which an action may be brought upon the bond covering concrete work nor to less than one year upon the bond covering other work.

**Sec. 309.59. Itemized and Certified Bills.** Section 309.59, repealed by 53rd G. A. (See Section 314.3.)

**Sec. 309.60. Partial Payments.** Section 309.60, repealed by 53rd G. A. (See Section 314.4.)

**Sec. 309.61. Advance Payment of Pay Rolls.** The board of supervisors may authorize the county auditor to draw warrants for the amount of pay rolls for labor furnished under the day labor system, when said pay rolls are certified to by the engineer in charge of the work. Said bills shall be passed on by the board at the first meeting following said payment.

**Sec. 309.62. Witness Corners.** Section 309.62, repealed by 53rd G. A. (See Section 314.8.)

**Sec. 309.63. Gravel Beds.** The board of supervisors of any county may within the limits of such county and without the limits of any city, purchase or condemn any lands for the purpose of obtaining gravel or other suitable material with which to improve the secondary highways of such county, including a sufficient roadway to such land by the most reasonable route, or the board may purchase such material outside the limits of their county, and in either case pay for the same out of the secondary road funds.

**Sec. 309.64. Procedure.** Repealed by Chapter 103, 54th G. A. (See Section 306.13.)

**Sec. 309.65. Right to Prospect.** Section 309.65, repealed by 53rd G. A. (See Section 314.9.)

**Sec. 309.66. Use of Gravel Beds.** The board of supervisors may permit private parties or municipal corporations to take materials from such acquired lands in order to improve any street or highway in the county, but it shall be a misdemeanor for any person to use or for the board of supervisors to dispose of any such material for any purpose other than for the improvement of such streets or highways.

**Sec. 309.67. Duties of county board of supervisors and county engineer.** The county board of supervisors is charged with the duty of establishing policies and



providing adequate funds to properly maintain the secondary road system. The county engineer, pursuant to section 309.21 and board policy, shall adopt such methods and recommend such personnel and equipment necessary to maintain continuously, in the best condition practicable, the entire mileage of said system.

**Sec. 309.68. Intercounty Highways.** Boards of supervisors of adjoining counties in this state shall, subject to the approval of the department:

1. Make proper connections between roads which cross county lines and which afford continuous lines of travel.

2. Adopt plans and specifications for road, bridge, and culvert construction, reconstruction, and repairs upon highways along and across county boundary lines, and make an equitable division between said counties of the cost and work attending the execution of such plans and specifications.

3. Make joint agreements for the location, construction, and maintenance of roads under their jurisdiction wholly within one county to provide road access to lands in an adjoining county, when such location provides the most economical and practical method of providing such road access. The expense of constructing and maintaining such a road shall be equitably shared by the counties in such proportion as the boards may determine.

**Sec. 309.69. Enforcement of Duty.** In case such boards fail to perform such duty, the department may, on its own motion, or in case said boards are unable to agree and one of said boards appeals to said department, said department shall notify the auditors of the interested counties that it will, on a day not less than ten days hence, at a named time and place within any of said counties, hold a hearing to determine all matters relating to such duty. At said hearing the department shall fully investigate all questions pertaining to said matters, and shall, as soon as practicable, certify its decision to the different boards, which decision shall be final, and said boards shall forthwith comply with said order in the same manner as though such work was located wholly within the county.

**Sec. 309.70. Construction by Department.** If the said boards or either of them should, for a period of sixty (60) days, fail to comply with said decision, the said department shall proceed to locate, construct, alter, or improve said road, bridge, or culvert in accordance with said decision.

**Sec. 309.71. Payment.** If said road be a secondary road, or if the improvement be a bridge or culvert on a secondary road, bills therefor duly audited by said department in accordance with said decision shall be forwarded to the auditors of the respective counties, and said auditors shall forthwith draw warrants for the amounts so audited and the county treasurers shall pay the same as other county warrants.

**Sec. 309.72. Interstate Highways.** Section 309.72, repealed by 53rd G. A. (See Section 314.10.)

**Sec. 309.73. Bridges and Culverts on City Boundary Line.** Bridges and culverts on highways or on parts thereof, which are located along the corporate limits of cities and which are partly within and partly without such limits and which highways are in whole or in part secondary roads, shall be constructed under plans and specifications, jointly agreed on by the city council and board of supervisors, and approved by the department. The city and county shall share equally in the cost. All matters in dispute between such city and county relative to such bridges and culverts shall be referred to the department and its decision shall be final and binding on both the city and county.

A county may contract with cities therein, for the joint construction and financing of a bridge. Such contracts may provide for the acquisition of right of way for,



and construction of, highways connecting such bridge to existing city streets or secondary roads. Such bridge and highways shall be constructed under plans and specifications jointly agreed on by the respective contracting bodies. Such contract shall set forth the amount of money to be contributed by each contracting party and may provide for the amount of money to be contributed annually by each contracting party for the maintenance of the said public improvements. When such county and cities have agreed upon their respective portions of the cost of such bridge and highways they may pay the same from their respective secondary road fund, street fund, or other funds available for highway or bridge purposes, or they may issue general obligation bonds to provide funds for the payment of their respective shares of such cost. Bonds issued by a city must be issued in accordance with provisions of law relating to general corporate purpose bonds of a city.

Taxes for the payment of county bonds shall be levied in accordance with Chapter 76 and said bonds shall be payable in not more than twenty years and bear interest at a rate not exceeding five percent per annum, and shall be of such form as the respective councils or boards of supervisors shall by resolution provide, but no city or county shall become indebted in excess of five percent of the actual value of taxable property within its taxing jurisdiction as shown by the last preceding state and county tax lists. The indebtedness incurred for the purpose provided in this section shall not be considered an indebtedness incurred for general or ordinary purposes.

**Sec. 309.74. Width of Bridges and Culverts.** All culverts shall have a clear width of roadway of at least twenty feet. Bridges shall have a clear width of roadway of at least sixteen feet.

**Sec. 309.75. Definitions.** The term "culvert" shall include any structure not classified as a bridge which provides an opening under any roadway, except that such term shall not include tile crossing the road, or intakes thereto, where such tile are a part of a tile line or system designed to aid subsurface drainage.

The term "bridge" shall include any structure including supports, erected over a depression or an obstruction, as water, a highway or railroad, and having a track or passageway for carrying traffic or other moving loads and having a length measured along the center of the roadway of more than twenty feet between the undercopings of abutments or extreme ends of openings for multiple boxes.

The length of a bridge structure is the overall length measured along the line of survey stationing back to back of backwalls and abutments, if present, or otherwise from end to end of the bridge floor, but in no case less than the total clear opening of the structure.

**Sec. 309.76. Intracounty Bridge.** (Repealed by Chapter 186, Acts of 60th G.A.)

**Sec. 309.77. Intercounty and State Bridge.** (Repealed by Chapter 186, Acts of 60th G. A.)

**Sec. 309.78. Election Required.** (Repealed by Chapter 186, Acts of 60th G. A.)

**Sec. 309.79. Bridge Specifications.** Standard specifications for all bridges and culverts, railroad overhead crossings or subways shall be furnished without cost to the counties and railroad companies by the department, and work shall be done in accordance therewith.

**Sec. 309.80. Approval of contract.** Any proposed contract which shall exceed the sum of ten thousand dollars for any one bridge or culvert shall be first approved by the department before the same shall be effective as a contract.



**Sec. 309.81. Record of Plans.** Before beginning the construction of any permanent bridge or culvert by day labor or by contract, the plans, specifications, estimate of drainage area, estimates of cost and specific designation of the location of the bridge or culvert shall be filed in the county auditor's office by the engineer.

**Sec. 309.82. Record of Final Cost.** On completion of any bridge or culvert, a detailed statement of cost, and of any additions or alterations to the plans, shall be filed by the engineer and recorded by the auditor in connection with the records of bids, all of which shall be retained in the county auditor's office as permanent records, and when said work is completed and approved, a duplicate statement of the costs thereof shall be filed with the department by the county auditor.

**Sec. 309.83.** Repealed by 67GA, chapter 1108, sec. 24.

**Sec. 309.84. Bridges on County Line Roads.** Bridges on county line roads may, under joint agreement between the boards of the adjoining counties, be located, constructed, and maintained wholly within one county in order to secure a proper site or in order to avoid unnecessary expense. The resulting work and expense shall be carried on and shared in such proportion as said boards may determine.

**Sec. 309.85. Bridges over state boundary line streams.** Ten percent of the legal voters, as shown by the returns of the last general election, of any county bordering upon a stream of water which forms the boundary line of this state, may petition the board of supervisors to submit to the voters the question whether such county shall be authorized to construct and maintain a bridge extending from such county across such boundary line river. Said petition shall state the amount to be expended for said purpose.

**Sec. 309.86. Submission of Question.** The board shall direct the county commissioner of elections to submit such question at the first general election occurring not less than sixty days after the filing of said petition.

**Sec. 309.87. Notice.** Notice of the submission of such question shall be published for two consecutive weeks in at least three newspapers published and of general circulation in the county, except in counties having less than three newspapers, said notices shall be published in all of the newspapers, the last of which publications shall be at least three days and not more than ten days before the holding of such election.

**Sec. 309.88. Construction and Maintenance.** If a majority of the voters vote in favor of such authorization, the board shall have authority to construct and maintain said bridge, and may agree with the adjoining state, or with any other municipal division thereof, as to what part of said bridge said county will construct and maintain, or as to what percentage of the cost of construction and maintenance said county shall pay, and such county shall be under no greater liability than as evidenced by such agreement.

**Sec. 309.89. Levy — Bond.** In order to build and maintain such bridge, the board may, from year to year and on all the property in the county, levy an annual tax of not to exceed six and three-fourths cents per thousand dollars of assessed value. The board may, in the manner provided for funding outstanding county indebtedness, issue the bonds of the county in the amount of the authorized expenditure. The maturity of such bonds may be distributed through a period of twenty years. In case bonds are so issued, the board shall maintain sufficient levies to meet the principal and interest as in other cases of bonds issued for outstanding county indebtedness.

**Sec. 309.90. Use by Public Utilities.** Section 309.90, repealed by 53rd G. A. (See Section 314.11.)



**Sec. 309.91. Maintenance.** Where there is a contract for joint maintenance of the entire structure, the county's liability for such maintenance shall only extend to that part or portion which is within the boundary line of this state.

**Sec. 309.92. Interest in Contracts.** Section 309.92, repealed by 53rd G.A. (See Section 314.2.)

#### COUNTY SECONDARY ROAD BUDGETS

**Sec. 309.93. Itemized Statement.** On or before December 1 of each year, the board of supervisors, with the assistance of the county engineer, shall adopt and submit to the department for approval the county secondary road budget for the next calendar year. The budget shall include an itemized statement of:

1. Estimated revenues to be raised by property taxation for secondary road purposes.
2. Estimated revenues to be received from the state road use tax fund.
3. Estimates of revenues from all other sources for secondary road purposes.
4. The proposed expenditures from each road fund during the next calendar year. The estimates of such proposed expenditures shall be itemized and classified in a manner which the department shall prescribe.
5. The actual expenditures for the last two prior years and the estimated expenditures for the current year. These shall be itemized and classified in the same manner as proposed expenditures.
6. The cash balance of each road fund at the end of the last prior year, an estimate of the cash balance at the end of the current year, and an estimate of the cash balance at the end of the next calendar year.

**Sec. 309.94. Review by Department.** The department shall have the power to approve or disapprove the budget adopted by the board of supervisors. If the budget is not approved, the department shall list the disapproved expenditures and shall state the reasons for disapproval when the budget is returned to the county. The department shall act upon a budget and return the budget to the county within forty-five days after the budget is received by the department. Upon disapproval of any proposed expenditure in a budget, the county may submit a revised budget to the department for approval. The department shall act upon such a revised budget within ten days.

**Sec. 309.95. Amendments.** The budget shall be binding except that should bona fide unforeseen conditions arise, the board of supervisors may amend such budget during the year for which it was adopted. Such amendments shall be submitted to the department for approval with a statement of the reasons necessitating the amendment. The department shall approve or disapprove such amendments in the same manner as original budget estimates except that the department shall act upon and return such amendments within thirty days after their receipt by the department. The department acting upon budget amendments is directed to approve only such amendments as are actually necessitated by unforeseen conditions.

**Sec. 309.96. Operation of Budgeted Program.**

1. No county shall expend from the secondary road fund an amount in excess of the total amount of the budget or amended budget as adopted by the board of supervisors, whether such budget is approved or disapproved by the department. In



order to permit any county to adjust its secondary road income to changed needs that may occur after the budget has been approved by the department the expenditures for any individual item within the budget may exceed by not more than ten percent the amount budgeted for that item without department approval or the submission of an amended budget, provided, however, that the expenditures for one or more other individual items are less than budgeted and the total expenditures from the secondary road fund do not exceed the total secondary road budget.

2. In the event that a county secondary road budget or amended budget thereto is disapproved by the department, the county may elect either to revise such budget or amended budget so as to receive approval or the county may elect to operate with such disapproved budget or amended budget. In the event the county secondary road budget is disapproved in whole or in part, within twenty days after receipt of the department's report, the board of supervisors shall cause to be published in the official newspapers of the county, notice of a public hearing to be held within ten days of said publication, on the department's recommendations, and at said hearing the board of supervisors shall amend or adopt their original budget.

**Sec. 309.97. Construction of Law.** Nothing in Sections 309.93 to 309.96, inclusive, shall contravene or affect the provisions of Chapter 24.

## CHAPTER 310

### FARM - TO - MARKET ROADS

**Sec. 310.1. Definitions.** As used in this chapter, the following words, terms or phrases shall be construed or defined as follows:

1. "County's allotment of road use tax fund" or "allotment of road use tax fund" shall mean that part of the road use tax fund allotted to any county by the treasurer of state from the portion of the state road use tax fund which he has credited to the secondary road construction fund of the counties.

2. "Federal aid" or "federal aid secondary road fund" shall mean funds allotted to the state of Iowa by the federal government to aid in the construction of secondary roads and which funds must be matched with funds under the control of the department.

3. "Department" means the state department of transportation.

**Sec. 310.2. Supervisors' Agreement.** The county board of supervisors of any county is empowered, on behalf of the county, to enter into any arrangement or agreement with or required by the duly constituted federal or state authorities in order to secure the full cooperation of the government of the United States and of the state of Iowa, and the benefits of all present and future federal or state allotments in aid of secondary road construction, reconstruction or improvement.

**Sec. 310.3. Funds.** There is hereby created a fund which shall be known as the farm-to-market road fund which shall be made up as follows:

1. All federal aid secondary road fund received by the state.
2. All road use tax funds by law credited to the farm-to-market road fund.
3. All other funds which may, under the provisions of the chapter or any other law, be credited or appropriated for the use of the farm-to-market road fund.

**Sec. 310.4. Use of Fund.** Said farm-to-market road fund is hereby appropriated for and shall be used in the establishment, construction, reconstruction or improvement of the farm-to-market road system, including the drainage, grading, surfacing, resurfacing, construction of bridges and culverts, the elimination, protection, or im-



provement of railroad crossings, the acquiring of additional right of way and all other expenses incurred in the construction, reconstruction or improvement of said farm-to-market road system under this chapter.

**Sec. 310.5. Allotment of Fund.** Repealed by Chapter 122, 53rd G. A. (See Section 312.5.)

**Sec. 310.6. Accounts by Department.** The department shall keep accounts in relation to the farm-to-market road fund and each county's allotment thereof, crediting each fund with all amounts by law creditable thereto, and charging each with all duly and finally approved vouchers for claims properly chargeable thereto.

**Sec. 310.7. Treasurer's Monthly Statement.** The account of the farm-to-market road fund, kept by the state comptroller and the state treasurer, shall deal with said fund as a single fund with all credits thereto and disbursements therefrom.

**Sec. 310.8. Quarterly Statement to County Engineer.** The department shall, quarterly, advise each county engineer of the condition of said county's allotment of the farm-to-market road fund. Said statement shall show the balance in said county's allotment at the beginning of said period, the amount or amounts allotted to said county during said period, the amount disbursed from said county's allotment during said period, and the balance in said county's allotment at the end of said period. Said statement shall also show the estimated outstanding obligations against the said county's allotment at the date of said statement.

**Sec. 310.9. Projects Approved by Department.** Before approving any farm-to-market road project the department shall satisfy itself that the county engineer's office in that county is organized, equipped and financed to discharge satisfactorily the duties herein required.

**Sec. 310.10. Farm-To-Market Road System Defined.** The farm-to-market road system shall embrace those roads as defined in section three hundred six point three (306.3), subsection five (5), of the Code.

**Sec. 2.** This Act, being deemed of immediate importance, shall take effect from and after its publication in the Muscatine Journal, a newspaper published in Muscatine, Iowa, and in the Fort Dodge Messenger, a newspaper published in Fort Dodge, Iowa.

**Sec. 310.11. Participating County — Funds Reserved.** Any county having complied with the provisions of this chapter may by its board of supervisors submit to the department for its approval project statements for the construction, reconstruction, or improvement of farm-to-market roads.

**Sec. 310.12. Approval in Advance.** Repealed by Chapter 127, 53rd G. A.

**Sec. 310.13. Surveys, Plans and Estimates.** If the department approves a project submitted by the board of supervisors, the county engineer shall proceed to make or cause to be made, the survey, plans and estimates for said project, and submit the same to the board of supervisors and the department for approval. The construction work on said project shall be done in accordance with said approved plans, except insofar as the same may be modified to meet unforeseen or better understood conditions, and no such modification shall be deemed an invalidating matter.

**Sec. 310.14. Bids — Department or County Supervisors.** When the approved plans and specifications for any farm-to-market road project are filed with the department, it shall, if the estimated cost exceeds one thousand dollars, proceed to advertise for bids and make recommended award of contract. Said recommended award of contract shall be submitted to the board of supervisors of the county in which said



project is located for its concurrence. Upon receiving the concurrence of the county board on said recommended contract award, the department shall take final action awarding said contract. Provided, that the said department shall determine and advise the county board as to any approved farm-to-market road project which is to be financed without the use of federal funds. On such project the above procedure shall be reversed. The county board shall advertise for bids, and, subject to concurrence by the department, award contract for the construction work.

**Sec. 310.15. Consideration of Bids — Bonds.** Repealed by 53rd G. A. (See Section 314.1.)

**Sec. 310.16. Claims Charged to County Allotment.** All claims for improving farm-to-market roads hereunder shall be paid from the farm-to-market road fund and charged to the allotment of said fund for the county in which said project is located.

**Sec. 310.17. Claims Audited and Paid.** Repealed by 53rd G. A. (See Section 314.3.)

**Sec. 310.18. Partial Payments During Construction.** Partial payments may be made on the work during the progress thereof, but no such partial payment shall be deemed final acceptance of the work nor a waiver of any defect therein. The approval of any claims by the board of supervisors or by the department may be evidenced by the signature of the chairman of said board or department, or a majority of the members of the board or department, on the individual claims or on the abstract of a number of claims with the individual claims attached to said abstract.

**Sec. 310.19. Supervision and inspection of work.** The county engineer is charged with the duty of supervision, inspection and direction of the work of construction of farm-to-market road projects under this chapter. In such capacity, the county engineer shall be under the supervision of the department.

**Sec. 310.20. Supervisors' Resolution to State Treasurer.** Any county may, in any year, by resolution of its board of supervisors, make available for improvement or construction of farm-to-market roads within the county any portion of its allotment of road use tax funds. Upon certification of such a resolution, the state treasurer shall place in the county's allotment of the farm-to-market road fund the amount authorized by such resolution.

**Sec. 310.21. Extensions in Cities and Towns.** Repealed by 53rd G. A. (See Section 314.5.)

**Sec. 310.22. Right-of-Way — How Acquired.** Right-of-Way for farm-to-market road projects under this chapter shall be acquired by the county.

**Sec. 310.23. Eminent Domain Applicable.** Repealed by Chapter 103, 54th G.A. (See Section 306.13.)

**Sec. 310.24. Project Completed — Plat Filed.** Repealed by Chapter 103, 54th G. A. (See Section 306.15.)

**Sec. 310.25. Roads Bordering on Cities and Towns.** Repealed by 53rd G. A. (See Section 314.6.)

**Sec. 310.26. Deficiencies and Excesses in Funds.** Repealed by Chapter 127, 53rd G. A. (See Section 312.7.)

**Sec. 310.27. Period of Allocation — Reversion.** The farm-to-market road fund allotted to any county as provided in this chapter, shall remain available for expendi-



ture in said county for three years after the close of the fiscal year during which said sums respectively were allocated. Any sum remaining unexpended at the end of the period during which it is available for expenditure, shall be reapportioned among all the counties as provided in section 312.5 for original allocations.

For the purposes of this section, any sums of the farm-to-market road fund allotted to any county shall be presumed to have been "expended" when a contract shall have been awarded obligating said sums. If a county does not plan to utilize its allotted funds in any period up to one year, the funds may be temporarily allocated to another county, at no interest, by written agreement between the counties involved. The total of the temporarily allocated funds received by a county shall not exceed the total anticipated funds to that particular county's farm-to-market fund in the succeeding fiscal year and total reimbursement shall be completed by the end of the succeeding fiscal year.

**Sec. 310.28. Engineering and Other Expense.** Engineering, inspection and administration expense in connection with any farm-to-market road project may be paid from said county's allotment of the farm-to-market road fund. Any such expense incurred by the department may in the first instance be advanced out of the primary road fund, said amounts later being reimbursed to said funds out of the farm-to-market road fund.

Provided, that no part of the salary or expense of the county engineer, any member of the county board of supervisors, any member of the department, the chief engineer, or any department head or district engineer of the department shall be paid out of the farm-to-market road fund.

**Sec. 310.29. Maintenance By County.** Any farm-to-market road constructed under the provisions of this chapter shall be maintained by the county in a manner satisfactory to the federal authorities and to the department. Should any county fail to so maintain any such road, the department shall give the board of supervisors notice of that fact. If within sixty days after the receipt of such notice the said highway has not been placed in proper condition of maintenance the department shall proceed immediately to have such highway placed in proper condition of maintenance and charge the cost thereof against said county's allotment of the farm-to-market road fund. The amount so expended for maintenance work by the department shall be reimbursed to said county's allotment of the farm-to-market road fund, from said county's secondary road maintenance fund, before any more farm-to-market road projects in said county are approved by the department.

**Sec. 310.30. Preference on Motor Fuel Fees.** Repealed by Chapter 127, 53rd G. A.

**Sec. 310.31. Primary Road Fund Transferred.** Repealed by Chapter 122, 53rd G. A.

**Sec. 310.32.** Repealed by 66GA, chapter 167, sec. 15.

**Sec. 310.33. Apportionment of Excess Allocation.** Repealed by Chapter 162, 52nd G. A.

**Sec. 310.34. Secondary Road Research Fund.** Notwithstanding any law to the contrary, the department is hereby authorized to set aside each year not to exceed one and one-half percent of the receipts in the farm-to-market road fund in a fund to be known as the secondary road research fund.

**Sec. 310.35. Use of Fund.** The secondary road research fund shall be used by the department solely for the purpose of financing engineering studies and research projects which have as their objective the more efficient use of funds and materials that are available for the construction and maintenance of secondary roads, including bridges and culverts located thereon.



**Sec. 310.36. Report to Governor.** The research projects and engineering studies authorized herein shall be conducted in co-operation with the county engineers. Once each year the department shall file a report with the governor and county engineers showing the work accomplished and projects undertaken under section 310.35, and copies of a biennial report of the same for the use and benefit of the general assembly shall be filed with the chief clerk of the house of representatives and the secretary of the senate on or before January 31 of each odd-numbered year.

#### CHAPTER 311 — SECONDARY ROAD ASSESSMENT DISTRICTS

**Sec. 311.1. Power to Establish.** In order to provide for the graveling, oiling, or other suitable surfacing of secondary roads, the board of supervisors shall have power, on petition, to establish secondary road assessment districts.

**Sec. 311.2. Width of District.** Any such secondary road assessment district shall not be more than one-half mile wide on each side of the road or roads to be improved by said district.

**Sec. 311.3. Amount of Assessment.** Special assessments in the aggregate amount of not less than twenty-five per cent of the total estimated cost of surfacing any road included in a secondary road assessment district project shall be apportioned and levied on the lands included in said secondary road assessment district.

**Sec. 311.4. County Line Road.** Whenever it is desired to surface a secondary road on a county line, as a secondary road assessment district project, the board of supervisors of any county concerned may establish an assessment district in its county, and levy and collect special assessments for the payment of that portion of the estimated cost of such project assessable against lands in that county. Each county shall pay its share of the cost of said project as provided in this chapter, in the same manner as though the project were located wholly within that county.

**Sec. 311.5. Project in City.** Any road or street which is a continuation of a secondary road within any city and which the county board desires to improve by graveling, oiling, or other suitable surfacing may, by resolution of the county board and concurrence by the council of the city, be improved as a secondary road assessment district project or part thereof as herein provided. The lands within such city abutting on or adjacent to such street or road may be included within such secondary road assessment district and assessed on account of such improvement upon the same basis and in the same manner as though such lands were located outside of a city.

**Sec. 311.6. Petition — Information Required.** The petition for a secondary road assessment district proposing to establish such district shall intelligently describe the road or roads proposed to be improved, the nature of the proposed improvement, the percentage of the estimated cost of the surfacing of said road proposed to be assessed against the property in the said district and the lands proposed to be included in such district.

Such petition shall be signed by thirty-five per cent of the owners of the lands within such proposed district, or by thirty-five per cent of the owners of the land within such proposed district who reside within said county.

**Sec. 311.7. Improvement by private funds.** The owner or a group of owners of not less than seventy-five percent of the lands adjacent to, or abutting upon any secondary road may, on or before October 1 or any year, petition the board of supervisors of their county for the improving by graveling or other suitable surfacing, of such road, and for the assessment of not less than fifty percent (or such greater portion as may be provided in said petition) of the cost of such improving, by graveling or



other suitable surfacing, to the lands adjacent to, or abutting upon such road. When the petition has been filed, the board of supervisors shall review the project proposed by the petition and may accept or reject the proposed project. If the board of supervisors accepts the petition, the board shall include such project in the secondary road construction program of said county and establish a priority for the completion of such project.

The board of supervisors shall proceed with the construction and completion of said in accordance with its assigned priority and under the same procedure as is prescribed generally for the improvement of secondary roads by assessment, and shall, as the law may provide, establish a special secondary road assessment district and assess against the lands included therein not less than fifty percent (or such greater portion as may be provided in said petition) of the engineer's estimated cost of the surfacing of the road or roads included in said project against all the lands adjacent to or abutting upon the said road or roads.

Provided, that should the owner or owners of all the lands included in any special secondary road assessment district under this section subscribe and deposit with the county treasurer an amount not less than fifty per cent (50%) (or such greater portion as may be provided in said petition) of the engineer's estimated cost of the surfacing of the road or roads included in said project, the board of supervisors shall not establish such special assessment district as herein provided, but shall accept the said donations in lieu of an assessment, and shall otherwise proceed to the improvement of said road or roads as herein provided.

Provided further, that the total expenditure of secondary road funds of the county in any year for or on account of special secondary road assessment district projects on local secondary roads under this section shall not exceed the total secondary road funds legally expendable for construction on local secondary roads in said county in said year, and the expenditure of secondary road funds of the county, in any township in any three year period, for or on account of special secondary road assessment district projects on local secondary roads under this section, shall not exceed said township's pro rate share, on the area basis, of the total secondary road funds legally expendable for construction on local secondary roads in said county in said three year period, unless there be a township or townships from which there are no petitions filed during the first two years of said three year period.

If the engineer's estimated cost of the grading, bridges, culverts and draining of the road proposed to be included in any special assessment district project under this section, exceeds an average of seven thousand dollars per mile, the board of supervisors of said county may appeal to the state transportation commission as to whether the county shall proceed with the construction of said project. The state transportation commission shall hold a hearing on said matter, at a time and place of which the petitioners and the county board shall be duly notified, and shall have an opportunity to appear and be heard. After such hearing the state transportation commission shall determine whether the county shall proceed with said project, which determination shall be final.

Upon completion of such road or roads, and the satisfaction of all claims in relation thereto, any balance then remaining of the funds provided by the sponsors shall be returned to them according to their respective interests, providing all guarantees made by such sponsors have been fulfilled.

Any road or roads so improved by graveling or other suitable surfacing under the provisions of this section shall be maintained by the county from the secondary road fund.

**Sec. 311.8. County Engineer's Report.** Upon the filing of such petition with



the county auditor proposing the establishment of such secondary road assessment district the county engineer shall file a report thereon with the county auditor, which report shall include:

1. An estimate of the cost of the surfacing proposed on the road or roads included in such proposed district.
2. A plat of said proposed district which plat shall show the road or roads proposed to be improved, the various tracts and parcels of real estate included in said proposed district, and the ownership of such lands.
3. An approximately equitable apportionment of not less than twenty-five per cent of the estimated cost of said improvement among the tracts and parcels of real estate included in such proposed district.
4. A statement whether all of the secondary roads to be surfaced in said proposed secondary road assessment district project have been built to permanent grade and properly drained.
5. Any information the county engineer may deem pertinent.

**Sec. 311.9. Publicly Owned Real Estate.** In making said apportionment, real estate owned by the state, county or any city, shall be treated as other real estate, but no other publicly owned real estate shall be included. In apportioning benefits to real estate owned by a city, the county or the state, no consideration shall be given to the buildings thereon.

**Sec. 311.10. Estimate and Apportionment — Presumption.** Said estimated cost shall carry the presumption, in the absence of a contrary showing, that the same correctly represents the probable cost of said project as nearly as can be determined in advance of the actual doing and completion of the work. Said apportionment shall carry the presumption, in the absence of a contrary showing, that the same is fair, just, equitable and in proportion to the benefits and not in excess thereof.

**Sec. 311.11. Hearing — Notice.** The board of supervisors shall fix a time for hearing on the proposal for the establishment of said secondary road assessment district and on the apportionment of not less than twenty-five per cent of the estimated cost of the proposed improvement, and shall cause the county auditor to publish notice of said hearing.

Said notice shall state:

1. The time and place of hearing,
2. The road or roads proposed to be improved,
3. The type of surfacing proposed,
4. The estimated cost of the proposed improvement,
5. A description of the lands lying within said proposed district,
6. The ownership of said lands as shown by the transfer books in the auditor's office,
7. A statement of the amount apportioned to each tract or parcel of real estate as shown by the engineer's report,
8. That at said hearing the amount apportioned to any tract or parcel of land may be increased or decreased without further notice,
9. That all objections to the establishment of said district, to the said apportionment report, or to the proceedings relating thereto must be specifically made in writing and filed with the county auditor on or before noon of the day set for such hearing, and
10. That a failure to make and file such objections will be deemed a conclusive waiver of all such objections.



**Sec. 311.12. Publication of Notice.** Such notice shall be published once each week for two successive weeks in some newspaper published in the county as near as practicable to said district. The last publication shall be not less than five days previous to said hearing. Proof of such publication shall be made by the publisher by affidavit filed with the county auditor.

**Sec. 311.13. Errors in Notice or Apportionment Report.** Any omission or error in said apportionment report or notice with respect to any tract or parcel of real estate or the description thereof, or the name of the owner, or the amount of the assessment apportioned thereto shall work no loss of jurisdiction on the part of the board over such proceeding. Such omission or error shall only affect the particular tract of real estate or person in question. If, before or after the board has entered its final order in the establishment of the said district or in the apportionment proceedings, such omission or error is discovered, the board shall fix a time for a hearing as to such party or real estate and shall cause service of notice to be made upon them, either by publication as in this chapter provided, or by personal service in the time and manner required for service of original notices in the district court. After such hearing the board shall proceed as to such person or land as though such omission or error had not occurred.

**Sec. 311.14. Appearance.** The appearance of any interested party, either in writing or personally, or by authorized agent, before the board of supervisors at any stage of the pending proceedings for a secondary road assessment district shall be deemed a full appearance. Only interested parties shall have the right to appear in such proceedings. All persons so appearing shall state for whom they appear. The clerk of the board shall make definite entry accordingly in the minutes of the board.

**Sec. 311.15. Hearing — Adjournment — Order.** Hearings on the proposed establishment of said district may be adjourned from time to time without loss of jurisdiction by the board. On final hearing the board shall proceed to a determination of said matters. It may reject, approve, or modify and approve said proposal. The board may exclude lands from the district or may add lands thereto or otherwise modify the proposal.

Should the proposal be approved in whole or in part, the board shall establish such district. The order of the board establishing such district shall state the road or roads to be improved, the type of improvement, and the lands included in said district. Said order shall be final. No lands shall thereafter be added to or excluded from said district.

**Sec. 311.16. Final Hearing — Assessment Levied.** On final hearing the board shall hear and determine all objections filed. The board may increase, diminish, annul, or affirm the apportionment made in said report, or any part thereof, as may appear to be just and equitable.

On the final determination the board shall levy the assessments and all installments thereof upon the real estate within the district as finally established. The entire amount of the assessment shall be then due and payable, and bear interest at six percent per annum commencing twenty days from the date of the levy, and shall be collected at the succeeding September semiannual payment of ordinary taxes.

**Sec. 311.17. Assessments Over Ten Dollars — Waiver.** If an owner other than the state or a county or city, of any tracts of land on which assessment is more than ten dollars, shall, within twenty days from the date of the assessment, agree in writing filed in the office of the county auditor, that in consideration of the owner having the right to pay the assessment in installments, the owner will not make any objection of illegality or irregularity as to the assessment upon the real estate, and will pay the assessment plus six percent annual interest, the assessment shall be pay-



able in ten equal installments. The first installment shall be payable on the date of the agreement. The other installments with interest on the whole amount unpaid shall be paid annually at the same time and in the same manner as the September semi-annual payment of ordinary taxes.

**Sec. 311.18. Assessment Delinquent — Penalties.** The assessed taxes shall become delinquent on the first day of September after their maturity, shall bear the same interest, the same penalties, and be attended with same rights and remedies for collection, as ordinary taxes.

**Sec. 311.19. Assessments Ten Dollars or Less.** Assessments of ten dollars or less against any tract of land, and assessments against lands owned by the state, county, or city, shall be due and payable from the date of levy by the board of supervisors, or in the case of any appeal, from the date of final confirmation of the levy by the court.

In case of assessments on lands owned by the county, the same shall be paid from the county general fund. In case of assessments on lands owned by the state, the same shall be paid out of any funds in the state treasury not otherwise appropriated. In case of assessments on lands owned by a city, the same shall be paid from any available city fund.

**Sec. 311.20. Variation between estimated and actual cost.** Any variation between the engineer's estimated cost and the actual cost of a secondary road assessment district project shall in no way affect the validity of the assessment. It is the intent of this chapter that the assessment shall be based on the estimated cost and not on the actual cost.

**Sec. 311.21. Procedure.** The preparation and approval of plans and specifications, the advertising for bids, the award and approval of contract, the supervision and inspection of construction work, and the approval and payment of claims on any secondary road assessment district project shall be conducted in the manner provided in the laws for secondary road construction work generally.

**Sec. 311.22. Road Graded and Drained.** Any such secondary road shall be built to permanent grade and drained in a manner approved by the county engineer before being surfaced as provided in this chapter.

**Sec. 311.23. Payment of Construction Costs.** The total cost of any secondary road assessment district project shall in the first instance be paid out of the secondary road fund of said county. Any assessments which are paid in cash and in anticipation of which assessments no certificates have been issued, shall be transferred to the secondary road fund.

If no special assessment certificates are issued and sold on account of any particular secondary road assessment district, the special assessments on lands included in that district, and the interest on such assessments when collected, shall be transferred to the secondary road fund of said county. If certificates are issued and sold in anticipation of the special assessments levied on any such district as herein provided, the proceeds of such certificates shall be credited to the secondary road fund of said county. In that event, the special assessments in anticipation of which certificates have been issued, and the interest on such assessments shall, when collected, be used to retire such certificates.

**Sec. 311.24. Appeal From Assessment.** Any owner of land in a secondary road assessment district may appeal to the district court from the order of the board of supervisors in levying the assessment against his real estate, by filing with the county auditor within fifteen days of the date of such levy, a bond conditioned to pay all



costs in case the appeal is not sustained, and a written notice of appeal wherein he shall, with particularity, point out the specific objection which he desires to lodge against such levy. Said appeal shall have precedence over all other business pending before the court except criminal matters. The appeal shall be heard as in equity. The court may raise or lower the assessment in question and make an equitable assessment in the judgment of the court. The clerk of the district court shall, upon the entry of the final order of the court, certify such final order to the county auditor. The board of supervisors shall at once so adjust the assessments as to comply with the final order of the court.

**Sec. 311.25. Appeal Docketed.** When an appeal is taken, the county auditor shall at once make a transcript of the notice of appeal and appeal bond and transmit the same to the district court. The appellant shall, within twenty days after perfection of said appeal, docket said appeal and file a petition setting forth the order or decision of the board of supervisors appealed from, and his specific objections thereto. A failure to comply with either of these requirements shall be deemed a conclusive waiver of the appeal and in such case the court shall dismiss the same. Appellee need not file answer, but may do so.

**Sec. 311.26. Assessments Certified to County Treasurer.** When the board of supervisors has entered its final order as to the amounts of all special assessments on a given improvement, the county auditor shall at once certify a list of such assessments and a list of real estate upon which each assessment has been levied, with the specific designation of the district embracing such real estate, to the county treasurer, who shall enter each assessment on the tax books and continue such entry until such assessment is paid.

Each special assessment and all installments thereof shall be a lien upon the real estate upon which it is levied from the date of such certificate by the county auditor to the same extent and in the same manner as taxes levied for state and county purposes. Changes in the amount of any special assessment by reason of any ruling of the district court on appeals, shall be likewise certified and the county treasurer shall make the proper correction on his books.

**Sec. 311.27. Each District Separate Unit.** Each assessment district shall be considered a unit and all funds received by the county treasurer for or on behalf of such unit shall be carried as a distinct and separate account and under the same specific name as that used by the board in establishing such unit.

**Sec. 311.28. Certificates Anticipating Assessments.** In order to render immediately available that amount of the estimated cost of an improvement which has been specially assessed, the board may issue road certificates in the name of the county in an aggregate amount not exceeding the then unpaid amount of the special assessment levied in said district. Each issue of certificates shall be under, and in accordance with, a duly adopted resolution of the board and which shall recite (1) the name or designation of the road district on account of which the certificates are issued; (2) that a stated amount (naming the amount) has been specially assessed against the lands within said district; (3) that a stated amount of said aggregate special assessment has not yet been paid (naming the unpaid amount); (4) that it is necessary to render such unpaid amount immediately available; (5) the number of road certificates authorized and the specific amount of each certificate; (6) the specific numbering or designation of such certificates; (7) the rate of interest which each certificate shall bear from date, to-wit, not to exceed six per cent per annum; (8) the fact that said certificates are payable solely from the proceeds of the special assessments which have been levied on the lands within said districts; (9) that each certificate shall be payable on or before the first day of January of the first year following the maturity of the last installment of such special assessments, and that interest thereon shall be paid



annually; (10) the authorization to the chairman of the board, and to the county auditor, respectively, to sign and countersign each of said certificates.

**Sec. 311.29. Sale of Certificates.** Upon the signing of each of said certificates by the chairman of the board, said certificates shall be delivered to the county auditor, who shall countersign the same, charge the county treasurer with the amount thereof, and deliver the same to the latter officer, who shall be responsible therefor on his bond. The treasurer may apply said certificates in payment of any warrants duly authorized and issued for surfacing the roads within said district, or he may sell the same for the best attainable price and for not less than par, plus accrued interest, and credit the proceeds to the secondary road fund. Such certificates shall be retired in the order of the consecutive numbering thereof.

**Sec. 311.30. Certificates Registered — Payment.** The county treasurer shall, in connection with the road account for said district, enter the name and postoffice address of all persons to whom any of said certificates are issued, with a particular designation of the certificates delivered to each person. Any subsequent holder may present his certificate to the county treasurer and cause his name and postoffice address to be entered in lieu of that of such former holder. Whenever the fund for such particular district has money to pay the first retirable certificate or certificates, the county treasurer shall, by mail, as shown by his records, promptly notify the holder of such certificate of such fact and that from and after ten days after the mailing of such letter all interest on such certificates will cease.

**Sec. 311.31. Previous Assessments Not Invalidated.** The passage of this Act, the provisions hereof, and the repeal of sections hereby repealed shall not in manner affect or invalidate any secondary road district assessments levied before this chapter became effective, or any certificate in anticipation of such assessments issued before or after this chapter becomes effective.

Said assessments and taxes shall be collected and applied to the purpose for which they were levied. Certificates in anticipation of such assessments may be issued. The proceeds of such certificates shall be applied to the purpose intended, and such certificates issued before or after this chapter becomes effective shall be paid in conformance with the provisions of this chapter.

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## CHAPTER 312 — ROAD USE TAX FUND

**Sec. 312.1. Fund Created.** There is hereby created, in the state treasury, a road use tax fund. Said road use tax fund shall embrace and include:

1. All the net proceeds of the registration of motor vehicles under chapter 321.
2. All the net proceeds of the motor vehicle fuel tax or license fees under chapter 324, except those net proceeds allocated to the primary road fund under section 324.79.
3. All revenue derived from the use tax, under chapter 423 on motor vehicles, trailers, and motor vehicles accessories and equipment, as same may be collected as provided by section 423.7.
4. Any other funds which may by law be credited to the road use tax fund.

**Sec. 312.2. Allocations from fund.** The treasurer of the state shall, on the first day of each month, credit all road use tax funds which have been received by the treasurer, to the primary road fund, the secondary road fund of the counties, the farm-



to-market road fund, and the street construction fund of cities in the following manner and amounts:

1. To the primary road fund, forty-five percent.
2. To the secondary road fund of the counties, twenty-eight percent.
3. To the farm-to-market road fund, nine percent.
4. To the street construction fund of the cities, eighteen percent.

5. The treasurer of state shall before making the allotments credit annually to the highway grade crossing safety fund the sum of five hundred thousand dollars, credit annually from the road use tax fund the sum of five hundred thousand dollars to the highway railroad grade crossing surface repair fund, credit monthly to the primary road fund the dollars yielded from an allotment of sixty-five hundredths of one percent of all road use tax funds for the express purpose of carrying out subsection 11 of section 307A.2, section 313.4, subsection 2, and section 307A.5, and credit annually to the primary road fund the sum of five hundred thousand dollars to be used for paying expenses incurred by the state department of transportation other than expenses incurred for extensions of primary roads in cities. All unobligated funds provided by this subsection, except those funds credited to the highway grade crossing safety fund, shall at the end of each year revert to the road use tax fund. Funds in the highway grade crossing safety fund shall not revert to the road use tax fund except to the extent they exceed five hundred thousand dollars at the end of any biennium.

6. The treasurer of state shall before making the allotments provided for in this section credit monthly to the division of motor vehicle registration of the state department of transportation funds sufficient in amount to pay the costs of purchasing supplies and materials and for the cost of prison labor used in manufacturing motor vehicle registration plates, decalcomania emblems, and validation stickers at the prison industries.

7. The treasurer of state, before making the allotments provided in this section, shall credit annually to the primary road fund from the road use tax fund the sum of seven million one hundred thousand dollars.

8. Beginning July 1, 1981, and each subsequent year, the treasurer of state, before making any allotments to counties under the provisions of this section, shall reduce the allotment to any county for the secondary road fund by an amount by which the total funds that the county raised during the prior calendar year under the provisions of section 309.8, subsections 1, 3, and 4, are less than seventy-five percent of the maximum funds that the county could have raised in the prior calendar year under the provisions of section 309.7. Funds remaining in the secondary road fund of the counties due to a reduction of allocations to counties for failure to maintain a minimum local tax effort shall be reallocated to counties that are not reduced under the provisions of this subsection pursuant to the allocation provisions of section 312.3, subsection 1, based upon the needs and area of the county. Information necessary to make allocations under this subsection shall be provided by the state department of transportation or the state comptroller upon request by the treasurer of state.

9. The treasurer of state, before making the allotments provided for in this section, shall credit annually to the Iowa department of soil conservation five hundred thousand dollars from the road use tax funds. The department of soil conservation, in co-operation with the department of transportation and the Iowa conservation commission shall expend such funds, for the lease or other use of land intended for the planting or maintenance of wind erosion control barriers designed to reduce wind erosion interfering with the maintenance of highways in the state or the safe operation of vehicles thereon.

10. The treasurer of state shall establish a great river road fund and at the



request of the state department of transportation, shall credit monthly before making the allotments provided for in this section, sufficient funds to cover the anticipated costs, as identified by the state department of transportation, for the acquisition and construction of eligible highway-associated project components. Reimbursement to this fund shall be made as necessary from the funds appropriated in section 308.4. In no case shall the unreimbursed allotment to the great river road fund exceed one million dollars less the cumulative sum as annually appropriated in section 308.4. Reimbursed funds shall be reallocated in accordance with the provisions of this section.

11. The treasurer of the state shall establish a revolving fund for use by affected jurisdictions for great river road projects. Funds shall be advanced at the request of the state department of transportation to affected jurisdictions as noninterest loans and shall be utilized for the construction of eligible great river road highway projects. Funds may be advanced from either the primary road fund or the farm-to-market road fund. The amount advanced and not reimbursed shall not exceed five million dollars at any one time from either the primary road fund or the farm-to-market road fund, nor shall the amount advanced and not reimbursed at any one time from all funds combined exceed seven million five hundred thousand dollars.

Funds advanced as provided by this subsection shall be administered by the state department of transportation. The department shall require repayment of the advanced funds within ten years. The treasurer of state shall, upon the request of the state department of transportation, transfer a portion of the affected local jurisdiction's allocation sufficient to meet repayment requirements if the terms of the individual agreements are not complied with.

**Sec. 312.3. Apportionment to counties and cities.** The treasurer of state shall, on the first day of each month:

1. Apportion among the counties in the ratio that the needs of the secondary roads of each county bear to the total needs of the secondary roads of the state for the twenty-year improvement program developed by the automotive safety foundation and filed with the Iowa highway study committee created by chapter 426, acts of the Fifty-eighth General Assembly, through the period ending June 30, 1979, and for each year beginning July 1, 1979, based upon the total needs of secondary roads of the state as shown in the latest quadrennial need study report developed by the state department of transportation, and which is on record at the department\*, sixty percent of the allocation from road use tax funds which is credited to the secondary road fund of the counties and apportion among the counties in the ratio that the area of such county bears to the total area of the state, forty percent of the allocation from road use tax funds which is credited to the secondary road fund of the counties. However, for a hold harmless period each county shall be guaranteed a base year amount. The amount in the secondary road fund of the counties in each fiscal year during the hold harmless period in excess of the sum of the base period amounts allocated to all counties shall be distributed proportionally based on the relative needs and area factors to only those counties entitled to receive more than the base year amount.

For the purposes of this subsection:

a. "Hold harmless period" means the fiscal years beginning July 1, 1979 and ending June 30, 1983.

b. "Base year amount" means the amount of the secondary road fund of the counties received by a county for the fiscal year beginning July 1, 1977.

2. Apportion among the cities of the state, in the ratio which the population of each city, as shown by the latest available federal census, bears to the total population of all such cities in the state, the percentage of the road use tax funds which is credited to the street fund of the cities, and shall remit to the city clerk of each such



city the amount so apportioned to such city. A city may have one special federal census taken each decade, and the population figure thus obtained shall be used in apportioning amounts under this subsection beginning the calendar year following the year in which the special census is certified by the secretary of state.

3. In any case where a city has been incorporated since the latest available federal census the mayor and council shall certify to the state treasurer the actual population of such incorporated city as of the date of incorporation and its apportionment of funds under this section shall be based upon such certification until the next federal census enumeration. Any community which has dissolved its corporation shall not receive any apportionment of funds under this certificate for any period after said corporation has been dissolved.

4. In any case where a city has annexed any territory since the last available federal census or special federal census, the mayor and council shall certify to the treasurer of state the actual population of such annexed territory as determined by the last certified federal census of said territory and the apportionment of funds under this section shall be based upon the population of said city as modified by the certification of the population of the annexed territory until the next federal or special federal census enumeration.

5. In any case where two or more cities have consolidated, the apportionment of funds under this section shall be based upon the population of the city resulting from said consolidation and shall be determined by combining the population of all cities involved in the consolidation as determined by the last available federal or special federal census enumeration for said consolidating city.

**Sec. 312.4. Treasurer's Report to the Department of Transportation.** The treasurer of state shall, each month, certify to the department:

1. The amount which he has received and credited to the road use tax fund from each source of revenue creditable to the said road use tax fund.

2. The amount of the road use tax fund which he has credited to (a) the primary road fund, (b) the secondary road fund of the counties, (c) the farm-to-market road fund, and (d) the street fund of the cities.

3. The amount of the federal aid primary and urban funds which he has received from the federal government and credited to the primary road fund.

4. The amount of federal aid secondary road funds which he has received from the federal government and credited to the farm-to-market road fund.

5. The amount of the road use tax fund which has been credited to carry out the provisions of section 307A.2, subsection 11, section 313.4, subsection 2, and section 307A.5.

**Sec. 312.5. Division of Farm-To-Market Road Funds.** The road use tax funds credited to the farm-to-market road fund by the treasurer of state are hereby divided as follows, and are to be known respectively as:

1. Need allotment farm-to-market road funds, sixty percent; and

2. Area allotment farm-to-market road funds, forty percent.

All farm-to-market road funds, except funds which under section 310.20 come from any county's allotment of the road use tax funds, shall be allotted among the counties by the department. Area allotment farm-to-market road funds and federal



aid secondary road funds received by the state, shall be allotted among all the counties of the state in the ratio that the area of each county bears to the total area of the whole state.

Need allotment farm-to-market road funds shall be allotted among the counties in the ratio that the needs of the farm-to-market roads in each county bear to the total needs of the farm-to-market roads in the state for the twenty-year program developed by the automotive safety foundation and filed with the Iowa highway study committee created by chapter 426, Acts of the Fifty-eighth General Assembly, through the period ending June 30, 1979, and for each year beginning July 1, 1979, based upon the total needs of the farm-to-market roads in the state as shown in the latest quadrennial need study report developed by the state department of transportation, and which is on record at the department. However, for a hold harmless period each county shall be guaranteed a base year amount. The amount in the farm-to-market road fund in each fiscal year during the hold harmless period in excess of the sum of the base period amounts allocated to all counties shall be distributed proportionally based on the relative needs and area factors to only those counties entitled to receive more than the base year amount.

For the purposes of this section:

a. "Hold harmless period" means the fiscal years beginning July 1, 1979 and ending June 30, 1983.

b. "Base year amount" means the amount of the farm-to-market road fund received by a county for the fiscal year beginning July 1, 1977.

**Sec. 312.6. Limitation on Use of Funds.** Funds received by municipal corporations from the road use tax fund shall be used for any purpose relating to the construction, maintenance, and supervision of the public streets.

**Sec. 312.7. Balance Maintained in Fund.** The treasurer of state shall maintain in the road use tax fund in the state treasury, of the funds collected as provided in chapter 321 or as said chapter may be amended, a cash balance sufficient, when added to the cash balance of receipts in the road use tax fund from other sources, to pay the anticipated expenditures from the road use tax fund for the ensuing month.

When necessary to restore the balance in the road use tax fund in the state treasury, he shall draw upon the treasurer of each county of the state in proportion to the amounts in their possession, respectively, of the funds collected under the provisions of chapter 321 or as said chapter may be amended, and credited to the road use tax fund, a sum sufficient in the aggregate to restore the cash balance in the road use tax fund. Such drafts shall be honored by the treasurer of each county upon presentation.

**Sec. 312.8. Amana Colonies.** Where a tract of land is owned by a corporation organized under the provisions of Chapter 491 with assets of the value of one million dollars or more, and having one or more platted villages located within the territorial limits of said tract of land, all of the territory within the plats of said villages and with their addition or subdivisions shall, for the purposes of this chapter, be deemed to be one incorporated city. All funds to become due to said villages so consolidated shall be paid to the county auditor of the county in which said tract of land and said villages are situated. Said fund shall, thereupon, be administered and expended by the county board of supervisors of said county for the construction, reconstruction, repair, and maintenance of roads and streets within the plats of such villages in the same manner and with the same powers and duties as city councils in cities. In the event the population of such villages shall not have been separately



enumerated in the federal census, then said county board of supervisors shall cause a census of said villages to be taken as soon as may be after this chapter becomes effective, which census shall be used in lieu of the federal census provided for in Section 312.3, subsection 2.

All payments made under this section prior to July 4, 1961, are hereby legalized.

**Sec. 312.9 and 312.10.** Repealed by chapter 1108, sec. 24.

**Sec. 312.11. Accounts of expenditures.** Each city shall keep accounts showing the amount spent on street construction and reconstruction on extensions of rural systems, municipal arterial and municipal collector systems as classified pursuant to section 306.6 and the amount spent on street construction and reconstruction on municipal service systems. Such amounts spent on extensions of rural systems, municipal arterial, and municipal collector systems and such amounts spent on municipal service systems shall be shown on the annual street report required by section 312.14.

**Sec. 312.12. Program submitted.** Cities which receive funds from road use tax funds and which have a population of at least five thousand shall prepare, adopt and submit to the department on or before December 1 of each year a comprehensive program of street construction and reconstruction. Such program shall be prepared for a period of five fiscal years subsequent to the fiscal year in which the program is submitted, based upon the construction funds estimated to be available for each fiscal year. At the close of each fiscal year, as a part of the five-year plan, the city shall include a statement of the progress made toward the completion of each project contained in the approved program. Such cities which have a population of less than five thousand and greater than one thousand shall prepare and submit annually by December 31 of each year to the department for examination and review, a program of proposed street construction and reconstruction for its total system of streets for the ensuing year. Nothing in this section shall prohibit a city of less than five thousand from adopting by resolution a comprehensive five-year plan.

**Sec. 312.13.** Repealed by 65GA, chapter 205, sec. 2.

**Sec. 312.14. Cities to Submit Report.** Cities in the state which receive allotments of funds from road use tax funds shall prepare and submit by September 10 each year to the department an annual report showing all street receipts and expenditures for the city for the previous fiscal year.

**Sec. 312.15. When funds not allocated.** Funds shall not be allocated to any city until such city shall have complied with the provisions of sections 312.11, 312.12 and 312.14.

The department shall notify the treasurer of state if any city fails to comply with the provisions of sections 312.11, 312.12 and 312.14.

**Sec. 312.16. Definition.** As used in this chapter, unless the context otherwise requires, "department" means the state department of transportation.

## CHAPTER 313 — IMPROVEMENT OF PRIMARY ROADS

**Sec. 313.1. Federal and State Co-Operation.** The Department is empowered on behalf of the state to enter into any arrangement or contract with and required by the duly constituted federal authorities, in order to secure the full co-operation of the Government of the United States, and the benefit of all present and future federal



allotments in aid of highway construction, reconstruction, improvement or maintenance. The good faith of the state is hereby pledged to cause to be made available each year, sufficient funds to equal the total of any sums now or hereafter apportioned to the state for road purposes by the United States Government for such year, and to maintain the roads constructed with said funds.

**Sec. 313.2. "Road Systems" Defined — Roadside Parks.** The roads and streets of the state are, for the purpose of this chapter, assigned to the functional classification systems established under Chapter 306.

Whenever the board of supervisors of a county and the department mutually determine that a portion of a highway under the jurisdiction of either party should be transferred to the jurisdiction of the other party, the board and department may enter into an agreement to effect such transfer. Such agreement may provide that each party may undertake or share responsibility for improving said road with the costs of such improvement to be borne entirely by either the county or the department or equitably divided between the two jurisdictions. All such improvements shall be completed and all actual costs thereof paid or reimbursed prior to the time transfer of the road is made. In carrying out such agreement, the board of supervisors may expend secondary road funds of the county and the department may expend primary road funds.

However, prior to entering into the agreement, a notice of intent to execute such agreement shall be published in a newspaper of general circulation within the county and the cost of such notice shall be jointly borne by the department and the board of supervisors. If one hundred or more residents of the county request by petition or in writing that a hearing be held in regard to such agreement within ten days after the publication of the notice, the board of supervisors and the department shall hold such a hearing not more than seven days after receiving the petition or written instrument, and based upon evidence presented at such hearing shall re-examine the merits of executing such agreement and make a decision in regard to it.

The department may, for the purpose of affording access to cities or state parks, or for the purpose of shortening the direct line of travel on important routes, or to effect connections with interstate roads at the state line, add such road or roads to the primary system.

The department, either alone or in co-operation with any county, shall have the authority to utilize any land acquired incidental to the acquisition of land for highway right of way and to also accept by gift, lands not exceeding two acres in area for roadside parks and parking areas. The department may furnish necessary maintenance. The department shall also have authority to accept by gift, equipment or other installations incidental to the use of said parks and parking areas. Said parks and parking areas shall be a part of the primary road system and the department may at its discretion sell or otherwise dispose of said lands. No rest areas or rest area buildings shall be established or constructed on an interstate highway at intervals of less than sixty miles.

Reasonable maintenance and surveillance of rest area sites and buildings located thereon shall be provided by employees of the department within the limits of appropriations provided for such purpose.

**Sec. 313.3. Primary Road Fund.** There is hereby created a primary road fund which shall include and embrace:

1. All road use tax funds which are by law credited to the primary road fund.
2. All federal aid primary and urban road funds received by the state.
3. All other funds which may by law be credited to the primary road fund.



4. All revenue accrued or accruing to the state of Iowa on or after January 26, 1949, from the sale of public lands within the state, under Acts of Congress approved March 3, 1845, supplemental to the Act for the admission of the states of Iowa and Florida into the Union, chapters 75 and 76 (Fifth Statutes, pages 788 and 790), shall be placed in the primary road fund.

Unless otherwise provided, the primary road fund is hereby appropriated for highway construction.

**Sec. 313.4. Disbursement of Funds.** 1. Said primary road fund is hereby appropriated for and shall be used in the establishment, construction and maintenance of the primary road system, including the drainage, grading, surfacing, construction of bridges and culverts, the elimination or improvement of railroad crossings, the acquiring of additional right of way, all other expense incurred in the construction and maintenance of said primary road system and the maintenance and housing of the department.

2. Such fund is also appropriated and shall be used for the construction, reconstruction, improvement and maintenance of state institutional roads and state park roads and bridges on such roads and roads and bridges on area school property provided in subsection 11 of section 307A.2, for restoration of secondary roads used as primary road detours and for compensation of counties for such use, for restoration of municipal streets so used and for compensation of cities for such use, and for the payments required in section 307A.5.

3. It is further provided that there is appropriated from funds appropriated to the department which would otherwise revert to the primary road fund pursuant to the provisions of the Act appropriating the funds or Chapter 8, an amount sufficient to pay the increase in salaries, which increase is not otherwise provided for by the general assembly in an appropriation bill, resulting from the annual review of the merit pay plan as provided in subsection 2 of Section 19A.9. The appropriation herein provided shall be in effect from the date of approval by the executive council to the end of the fiscal biennium in which it becomes effective.

4. Such fund is appropriated and shall be used by the department to provide energy and for the operation and maintenance of those primary road freeway lighting systems within the corporate boundaries of cities.

The costs of serving freeway lighting for each utility providing the service shall be determined by the Iowa commerce commission, and the rates for such service shall be no higher than necessary to recover these costs. Funds received under the provisions of this subsection shall be used solely for the operation and maintenance of a freeway lighting system.

**Sec. 313.5. Biennial Appropriation — Budget.** The department shall submit to the comptroller, as provided by Chapter 8, a detailed estimate of the amount required by the department during each succeeding biennium for the support of the department and for engineering and administration of highway work and maintenance of the primary road system. Such estimate shall be in the same general form and detail as is required by Chapter 8 and said chapter shall apply to the budgeting, appropriation, and expenditure of funds in the primary road fund in the same manner as such chapter applies to other departments. However, the amount of contracts for bituminous resurfacing, bridge painting, concrete paving repair, and agreements with municipalities for maintenance on primary road extensions need not be included in the amount appropriated for maintenance.

The provisions of Chapter 8 shall apply except that the provisions of Section 8.39 shall not apply to funds appropriated to the department under Section 313.4, however, the first paragraph of Section 8.39 shall apply to appropriations for support of the department and for engineering and administration of highway work and maintenance of the primary road system.



Any contingent fund appropriated to the department from the primary road fund shall be subject to the following conditions:

1. A written statement from the state comptroller shall be obtained, recommending expenditures from the fund for the purposes requested by the department.

2. The comptroller and the governor shall determine that the expenditures contemplated are in the best interest of the state, and that the purposes or project for which funds are requested was not presented to the general assembly by way of a bill and which failed to become enacted into law.

**Sec. 313.6. Accounts and Records Required.** The department shall keep accounts in relation to the primary road fund, crediting said fund with all amounts by law creditable thereto and charging said fund with the amount of all duly and finally approved vouchers for claims properly chargeable thereto.

**Sec. 313.7. Monthly Certification of Funds.** The account of the primary road fund kept by the state comptroller and the state treasurer shall show the amount of the primary road fund with all credits thereto and disbursements therefrom.

**Sec. 313.8. Improvement of Primary System.** The department shall proceed to the improvement of the primary road system as rapidly as funds become available therefor until the entire mileage of the primary road system is built to established grade, bridged, and surfaced with pavement or other surface suited to the traffic on such road. Improvements shall be made and carried out in such manner as to equalize the condition of the primary roads, as nearly as possible, in all sections of the state.

**Sec. 313.9. Surveys, Plans, and Specifications.** Before proceeding with the improvement of any primary road, the department shall cause suitable surveys, plans and specifications for said proposed work to be prepared and filed in its office, and the work shall be done in accordance therewith, except insofar as the same may be modified to meet unforeseen or better understood conditions, and no such modification shall be deemed an invalidating matter.

**Sec. 313.10. Bids — When Not Necessary.** As soon as the approved plans and specifications for any primary road construction project are filed with the department, it shall, if the estimated cost exceeds one thousand dollars, proceed to advertise for bids for the construction of said improvement.

The department may contract for the emergency repair, restoration, or reconstruction of a highway or bridge without advertising for bids under the following conditions:

1. The emergency was caused by an unforeseen event causing the failure of a highway, bridge, or other highway structure so that the highway is unserviceable, or where immediate action is necessary to prevent further damage or loss;

2. The department solicits written bids from three or more contractors engaged in the type of work needed; and

3. The necessary work can be done for less than thirty thousand dollars.

**Sec. 313.11.** Repealed by 53rd G. A., section 125.2. (See section 314.1.)

**Sec. 313.12. Supervision and Inspection.** The department is expressly charged with the duty of supervision, inspection and direction of the work of construction of primary roads on behalf of the state, and of supervising the expenditure of all funds paid on account of such work by the state or the county on the primary system and it shall do and perform all other matters and things necessary to the faithful completion of the work herein authorized.

**Sec. 313.13. Engineers — Bonds.** All engineers having responsible charge of



any improvements, shall give bonds for the faithful performance of their duties and for like accounting for all property entrusted to their custody. All bonds given by such engineers in the employ of the department shall be deemed to embrace any and all improvements of which they may be in charge.

**Sec. 313.14. Claims.** All claims for improving and maintaining the primary road system shall be paid from the primary road fund.

**Sec. 313.15.** Repealed by 53rd G. A., chapter 125. (See section 314.3.)

**Sec. 313.16. Payments of Awards or Judgments.** There is hereby appropriated from the primary road fund to the department a sum sufficient for the purpose of paying any award or judgment to a claimant under Chapters 25 and 25A on a claim arising out of activities of the department when such an award cannot be charged to a current appropriation.

**Sec. 313.17. Contingent Fund.** The state treasurer is hereby directed to set aside from the primary road fund the sum of five hundred thousand dollars to be known as the primary road contingent fund.

**Sec. 313.18. Use of contingent fund.** When claims for labor, freight, or other items which must be paid promptly are presented to the said department for payment, and said department may direct that warrants in payment of said claims be drawn on said primary road contingent fund. Such warrants when so drawn and signed by the state comptroller, shall be honored by the treasurer of state for payment from said contingent fund. The primary road contingent fund shall be reimbursed for expenditures made by the state department of transportation from the fund to which the expenditure should be properly charged.

**Sec. 313.19. Audit of Contingent Claims.** The claims in payment of which warrants are drawn on the primary road contingent fund, shall be audited in the usual manner prescribed by law and shall have noted thereon that warrants in payment thereof have been drawn on the said contingent fund. After the final audit of such claims, the state comptroller shall draw warrants therefor payable to the treasurer of state and forward the same to the department for record. When such warrants have been recorded in the office of the said department, they shall be forwarded to the state treasurer who shall redeem the same, charge them to the proper fund and credit the primary road contingent fund with the amount thereof.

**Sec. 313.20. Auditor — Appointment — Bond — Duties.** The state comptroller shall appoint the auditor of the department who shall give bond in the sum of fifty thousand dollars for the faithful performance of his duties. The premium on said bond shall be paid by the department from the primary road fund. Said auditor shall check and audit all claims against the department before such claims are approved by the department, and shall keep all records and accounts relating to the expenditures of the department. He shall, in the checking and auditing of claims against the department, and keeping the records and accounts of the department, be under the direction and supervision of the comptroller, and act as an agent of said comptroller. The department shall furnish said auditor with such help and assistants as may be necessary to properly perform the duties herein specified. The said auditor may be removed by the state comptroller.

**Sec. 313.21. Improvements in Cities.** The department is hereby given authority, subject to the approval of the council, to construct, reconstruct, improve and maintain extensions of the primary road system within any city including the construction, reconstruction, and improvement of storm sewers and electrical traffic control devices



reasonably incident and necessary thereto, provided that such improvements, exclusive of storm sewers, shall not exceed in width that of the primary road system and the amount of funds expended in any one year shall not exceed thirty-five percent of the primary road construction fund.

The phrase "subject to approval of the council", as it appears in this section, shall be construed as authorizing the council to consider said proposed improvements in its relationship to municipal improvements (such as sewers, water lines, sidewalks and other public improvements, and the establishment or re-establishment of street grades). The location of said primary road extensions shall be determined by the department.

**Sec. 313.22. Paving of Whole Street by Department.** Any city and the department may enter into an agreement with respect to any project for the paving of any portion of a primary road extension, and for the construction, reconstruction, and improvement of storm sewers and electrical traffic control devices reasonably incident and necessary thereto, within such city. Said agreement shall specify that the city shall pay for that portion of the cost of said project which is not payable out of primary road funds, and may authorize the department to advertise for bids, let contracts, and supervise the construction of that portion of said project to be paid for by the city. Such agreement shall be a valid and binding obligation on the parties thereto.

**Sec. 313.23. Reimbursement by City.** Payment for the work, including the city's portion thereof, may in the first instance be made out of the primary road fund. Upon completion of the project, the city shall reimburse the department for the amount so advanced out of the primary road fund, including the city's portion of the engineering and inspection costs.

**Sec. 313.24. Separated Cities.** The department shall designate the street or streets which shall constitute the primary road extensions in any city of the state, which city is separated from the remainder of the state by a river more than five hundred feet in width from bank to bank. The laws of this state relating to the construction, reconstruction or maintenance of the extensions of primary roads in cities, and to the purchase or condemnation of right of way therefor, and to the expenditure of primary road funds thereon, shall apply to the roads or streets designated hereunder, the same as though said community were not so separated from the rest of the state.

**Sec. 313.25.** Repealed by 54GA, ch 103,§22, see §306.4, 306.13, 306.14.

**Sec. 313.26.** Repealed by 54GA, ch 103,§22, see §306.15.

**Sec. 313.27. Bridges, Viaducts, Etc., on Municipal Primary Extensions.** The department may construct or aid in the construction, and may maintain bridges, viaducts, and railroad grade crossing eliminations on primary road extensions in cities.

**Sec. 313.28. Temporary Primary Road Detours.** When the department for the purpose of establishing, constructing or maintaining any primary road, determines that any secondary road or portion thereof is necessary for a detour or haul road, the department, after consultation with the county board of supervisors having jurisdiction of the route, shall by order temporarily designate the secondary road or portion thereof as a temporary primary road detour or as a temporary primary road haul road, and the department shall maintain the same as a primary road until it shall revoke the temporary designation order. Prior to use of a secondary road as a primary haul road or detour, the department shall designate a representative to inspect the secondary road with the county engineer to determine and note the condition of the road.



Prior to revoking the designation, the department shall:

1. Restore the secondary road or portion thereof to as good condition as it was prior to its designation as a temporary primary road, or

2. Determine such amount as will adequately compensate the county exercising exclusive or concurrent jurisdiction over the secondary road or portion thereof for excessive traffic upon the secondary road or portion thereof during the period of its designation as a temporary primary road. The department shall certify the amount determined to the state comptroller. The comptroller shall credit the amount to the secondary road fund of the county.

3. If on examination of the route, it is determined that the road can be restored to its original condition only by reconstruction, the department shall cause plans to be drawn, award the necessary contracts for work and proceed to reconstruct and make payments for in the same manner as is prescribed for primary construction projects.

**Sec. 313.29. Detours located in city.** When the temporary primary road detour or temporary primary road haul road, or any portion thereof, is located within the corporate limits of a city, then as to the portion so located, the provisions of section 313.28 as to consultation, designation, restoration and payment by the department shall apply in like manner to the benefit of the city, and credits thereunder shall be made to the general fund of the city. A city may designate the county engineer or city engineer to inspect such street so used jointly with the representative of the department.

**Sec. 313.30 to 313.34, inc.,** Code 1946, transferred to sections 313.59 to 313.65, inclusive.

**Sec. 313.35.** Repealed by 53rd G. A., chapter 125. (See section 314.6.)

**Sec. 313.36. Maintenance — Limitations in Cities.** Primary roads shall be maintained by the department and the cost thereof paid out of the primary road fund. Extensions of primary roads in cities may be maintained by the department and the cost thereof paid out of the primary road fund.

The total amount of funds expended in any one year on extensions of primary roads in cities shall not exceed thirty-five percent of the primary road fund.

**Sec. 313.37. Road Equipment.** The department is authorized to purchase road material or road machinery required in the improvement or maintenance of the primary roads, after receiving competitive bids, and to pay for the same out of the primary road fund, and is directed to purchase, rent or lease any machinery or other articles necessary for the use and most economical operation of the field engineering work, the testing of materials, the preparation of plans, and for all allied purposes, in order to enable the department to carry out the provisions of this chapter.

**Secs. 313.38 to 313.40, inc.** Repealed by 54th G. A., chapter 107.

**Sec. 313.41.** Repealed by 54th G. A., chapter 165. (See section 420.41.)

**Sec. 313.42. Definition.** As used in this chapter, unless the context otherwise requires, "department" means the state department of transportation.

#### MARKINGS FOR MUNICIPALITIES

**Sec. 313.43. Lateral or Detour Routes in Cities.** Any city located on the primary road system and in which the primary road extension as officially designated does not pass through the main part or business district of such city, may designate and mark a lateral or detour route in order to facilitate such primary road traffic as



may desire to get into and out of such business district.

**Sec. 313.44. Standard Markings Required.** Such lateral or detour routes shall be marked with standard markings adopted by the department therefor, which markings shall clearly indicate that such lateral route is not the official primary road extension but is in fact a lateral or detour extending to the business district.

**Sec. 313.45. Cost.** The cost of such markings shall be without expense to the state.

**Secs. 313.46 to 313.52, inc.** Repealed by 54th G. A., chapter 103. (See sections 306.4 to 306.11, inclusive and 306.20.)

**Secs. 313.53 to 313.57, inc.** Repealed by 54th G. A., chapter 103. (See sections 306.16 to 306.20, inclusive.)

**Sec. 313.58.** Repealed by 67GA, chapter 1108, sec. 24.

#### INTERSTATE BRIDGES — GIFT OR PURCHASE

**Sec. 313.59. Gift of Bridge to State — Acceptance.** Should the owner of any bridge, for highway traffic, over the Mississippi River or the Missouri River, on the boundary of the State of Iowa, and which bridge is a connecting link between a primary road or primary road extension in a city of this state and a corresponding road or extension thereof in an adjoining state, offer to give such bridge and approaches thereto, or any part thereof, to the state, the department is hereby authorized, in its discretion, to accept such offer in the name of the State of Iowa, and to enter into written agreements evidencing such acceptance.

**Sec. 313.60. Indebtedness Paid.** When all outstanding indebtedness or other obligations against such bridge and approaches thereto have been paid and discharged the department shall accept transfer of title thereof to the state and is thereafter authorized to take possession of, operate and maintain such bridge and approaches, or any part thereof, free of tolls, as a part of the primary road system.

**Sec. 313.61. Taxes Forgiven.** Any such bridge and approaches, which has been offered to the department and with respect to which the department has entered into a written agreement accepting such offer, shall after the date of such agreement, be free from state and local property and income taxes in this state.

**Sec. 313.62. Department Authority.** The authority herein given to the department to enter into agreements for, accept, take over, operate and maintain such bridges may be exercised by the said department independently or in co-operation with other governmental agencies within this state or in adjoining states.

**Sec. 313.63. Action by Adjoining State.** The department shall not enter into an agreement of acceptance until the adjoining state enters into an agreement to accept ownership of that portion of the bridge being within such adjoining state, and agrees to pay the cost of maintaining such portion of the bridge or its proportionate share of the total cost of maintaining the bridge.

**Sec. 313.64. Financial Statement Annually.** Should the department accept the offer of any bridge over a boundary stream and enter into a written agreement in relation thereto as provided in Sections 313.59 to 313.65, the owner or operator of such bridge shall thereafter and until all indebtedness or other obligations against such bridge have been paid and discharged annually file with the department a sworn statement of its financial condition. Such statement shall show funds on hand and indebtedness at the beginning and end of the year, receipts, disbursements, indebted-



ness retired during the year and any other information required by the department to show the true and complete condition of the finances with respect to such bridge and approaches thereto.

The annual budget of authorized operating and other expenditures for or on behalf of such bridge and approaches shall be approved by the department before becoming effective. Expenditures during the year shall not exceed the approved budget unless an increase in the annual budget be likewise approved by the department.

**Sec. 313.65. Approval of Taxing Bodies.** Before any bridge owned by any individual or private corporation shall be accepted by the department under the provisions of Sections 313.59 to 313.64, inclusive, the said proposal and acceptance shall first be approved by the following tax levying and tax certifying bodies located in the said tax district: The board of supervisors, the city councils and the schools board or boards.

**Sec. 313.66. Mississippi Bridges Purchased.**

1. The department may purchase one-half of any bridge and its approaches for highway traffic over the Mississippi river on the boundary of the state and which is in receivership and is a connecting link between a primary road or primary road extension in a city of the state and a corresponding road or extension thereof in an adjoining state, providing proper approval is granted by the court having jurisdiction of such receivership.

2. The department is authorized to make payment for any such bridge and its approaches from the primary road fund provided however, that in no event shall the amount of such payment be more than one hundred thousand dollars for any one bridge and approaches thereto, and provided further that such purchase shall not be completed or payment made therefor until the adjoining state shall either have purchased or agreed to purchase ownership of the remaining one-half of said bridge and approaches, and agrees to pay the costs of repairing or maintaining such portion of the bridge and all approaches.

3. The department, after the purchase of any such bridge, is authorized to take possession thereof and maintain such portion of the bridge and its approaches thereto free of tolls as a part of the primary road system.

4. Before the purchase of any such bridge shall be completed by the department under the provisions of this section, the purchase thereof shall first be approved by the following tax levying and tax certifying bodies located in said district: The board of supervisors, the city councils, and the school board or boards.

**Sec. 313.67. Scenic and Improvement Fund.** There is hereby created a primary road scenic and improvement fund which shall include and embrace all funds hereafter credited thereto. Said fund shall be administered by the department and shall be used for the construction, reconstruction, improvement, and maintenance of roadside safety rest areas and scenic beautification areas along the primary roads of the state including the acquisition of such property and property rights needed to accomplish said purposes. Part or all of said fund may be used to match federal allotments made available to the State of Iowa for the purposes provided in this section and to this end, the department is empowered on behalf of the state to enter into any agreements or contracts with the duly constituted federal authorities in order to secure the benefit of all present and future federal allotments.

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**CHAPTER 313A — INTERSTATE BRIDGES**

**Sec. 313A.1. Definitions.** The following words or terms, as used in this chap-



ter, shall have the respective meanings as stated:

1. **"Toll Bridge"** shall mean an interstate bridge constructed, purchased or acquired under the provisions of this chapter, upon which tolls are charged, together with all appurtenances, additions, alterations, improvements, and replacements thereof, and the approaches thereto, and all lands and interests therein used therefor, and buildings and improvements thereon.
2. **"Department"** shall mean the state department of transportation.
3. **"Construct, constructing, construction or constructed"** shall include the completion, re-construction, remodeling, repair, or improvement of any existing toll bridge or any partially constructed interstate bridge, as well as the construction of any new toll bridge.
4. **"Acquisition by purchase, gift, or condemnation"** as used in this chapter shall mean acquisition by the department, whether such terms "purchase, gift, or condemnation" are used singularly or in sequence.
5. **"Federal bridge commission"** shall mean any bridge commission organized and operating pursuant to an Act of the Congress of the United States, even though such Act of Congress may declare the bridge commission not to be an agency of the federal government.

**Sec. 313A.2. Bridge to be Controlled by Department.** The department shall have full charge of the construction and acquisition of all toll bridges constructed or acquired under the provisions of this chapter, the operation and maintenance thereof and the imposition and collection of tolls and charges for the use thereof. The department shall have full charge of the design of all toll bridges constructed under the provisions of this chapter. The department shall proceed with the construction of such toll bridges and other facilities and the approaches thereto by contract immediately upon there being made available funds for such work and shall prosecute such work to completion as rapidly as practicable. The department shall advertise for bids for the construction, reconstruction, improvement, repair or remodeling of any toll bridge by publication of a notice once each week for at least two consecutive weeks in a newspaper published and having a general circulation throughout the State of Iowa, the first publication to appear at least fifteen days prior to the date set for receiving bids. The department shall have the power to accept such offer or offers, propositions or bids, and enter into such contract or contracts as it shall deem to be to the best interest of the state.

**Sec. 313A.3. Toll Bridges Constructed Over Boundary Rivers.** The department is hereby authorized to establish and construct toll bridges upon any public highway, together with approaches thereto, wherever it is considered necessary or advantageous and practical for crossing any navigable river between this state and an adjoining state. The necessity or advantage and practicality of any toll bridge shall be determined by the department. To obtain information for the consideration of the department upon the construction of any toll bridge or any other matter pertaining thereto, any officer or employee of the state, upon the request of the department, shall make reasonable examination, investigation, survey, or reconnaissance to determine material facts pertaining thereto and shall report such findings to the department. The cost thereof shall be borne by the department or office conducting it from funds provided for its functions.

**Sec. 313A.4. Investigation of Feasibility.** The department is hereby authorized to enter into agreements with any federal bridge commission or any county or city of this state, and with an adjoining state or county or city thereof, for the purpose of implementing an investigation of the feasibility of any toll bridge project for the bridging of a navigable river forming a portion of the boundary of this state and such



adjoining state. The department may use any funds available for the purposes of this section. Such agreements may provide that in the event any such project is determined to be feasible and adopted, any advancement of funds by any state, county or city may be reimbursed out of any proceeds derived from the sale of bonds or out of tolls and revenues to be derived from such project.

**Sec. 313A.5. Acquiring Existing Bridge — Bonds.** Whenever the department deems it necessary or advantageous and practical, it may acquire by gift, purchase, or condemnation any inter-state bridge which connects with or may be connected with the public highways and the approaches thereto, except that the department may not condemn an existing interstate bridge used for interstate highway traffic and combined highway and railway traffic and presently owned by a municipality, or a person, firm, or corporation engaged in interstate commerce. The department may also acquire by gift or purchase two or more existing interstate bridges and any partially constructed interstate bridge, all located within ten miles of each other, complete the partially constructed bridge and dismantle the bridge which it is designed to replace. In connection with the acquisition of any such bridge, bridges, or partially constructed bridge, the department and any federal bridge commission or any city, county, or other political subdivision of the state are authorized to do all acts and things as in this chapter are provided for the establishing and constructing of toll bridges and operating, financing, and maintaining such bridges insofar as such powers and requirements are applicable to the acquisition of any toll bridge and its operation, financing, and maintenance. In so doing, they shall act in the same manner and under the same procedures as provided for establishing, constructing, operating, financing, and maintaining toll bridges insofar as such manner and procedures are applicable. Without limiting the generality of the above provisions, the department is hereby authorize to cause surveys to be made to determine the propriety of acquiring any such bridge and the rights of way necessary therefor, and other facilities necessary to carry out the provisions hereof; to issue, sell, redeem bonds or issue and exchange bonds with present holders of outstanding bonds of bridges being acquired under the provisions of this chapter and deposit and pay out of the proceeds of the bonds for the financing thereof, to impose, collect, deposit, and expend tolls therefrom; to secure and remit financial and other assistance in connection with the purchase thereof; and to carry insurance thereon.

**Sec. 313A.6. Rules Adopted — Financial Statements.** The department, its officials, and all state officials are hereby authorized to perform such acts and make such agreements consistent with the law which are necessary and desirable in connection with the duties and powers conferred upon them regarding the construction, maintenance, and operation and insurance of toll bridges or the safeguarding of the funds and revenues required for such construction and the payment of the indebtedness incurred therefor. The department shall adopt such rules and regulations in accordance with the provisions of Chapter 17A as it may deem necessary for the administration and exercise of its powers and duties granted by this chapter, and shall prepare annual financial statements regarding the operation of such toll bridges which shall be made available for inspection by the public and by the holders of revenue bonds issued by the department under the provisions of this chapter at all reasonable times.

**Sec. 313A.7. Resolution of Public Interest and Necessity — Revenue Bonds.** Whenever the department deems it to be in the best interest of the primary highway system that any new toll bridge be constructed upon any public highway and across any navigable river between this state and an adjoining state, the department shall adopt a resolution declaring that the public interest and necessity require the construction of such toll bridge and authorizing the issuance of revenue bonds in an amount sufficient for the purpose of obtaining funds for such construction. The issuance of bonds as



provided in this chapter, for the construction, purchase, or acquisition of more than one toll bridge may, at the discretion of the department, be included in the same authority and issue or issues of bonds, and the department is hereby authorized to pledge the gross revenues derived from the operation of any such toll bridge under its control and jurisdiction to pay the principal of and interest on bonds issued to pay the cost of purchasing, acquiring, or constructing any such toll bridge financed under the provisions of this chapter. The department is hereby granted wide discretion, in connection with the financing of the cost of any toll bridge, to pledge the gross revenues of a single toll bridge for the payment of bonds and interest thereon issued to pay the cost of such bridge and to pledge the gross revenues of two or more toll bridges to pay bonds issued to pay the cost of one or more toll bridges and interest thereon as long as the several bridges included herein are not more than ten miles apart.

In addition, if the department in its discretion determines that the construction of a toll bridge cannot be financed entirely through revenue bonds and that the construction of such toll bridge is necessary, the department may advance funds from the primary highway fund to pay for that part of the construction cost, including the cost of approaches and all incidental costs, which is not paid out of the proceeds of revenue bonds. However, said funds advanced from the primary highway fund shall be used only to pay the construction cost, including the cost of approaches and all incidental costs, with respect to that part of the bridge which is or will be located within the State of Iowa. After all revenue bonds and interest thereon issued and sold pursuant to this chapter and payable from the tolls and revenues of said bridge have been fully paid and redeemed or funds sufficient to pay said bonds and interest, including premium, if any, have been set aside and pledged for that purpose, then such amount advanced from the primary road fund shall be repaid to the primary road fund from the tolls and revenues of said bridge before said bridge is made a toll free bridge under the provisions of this chapter.

**Sec. 313A.8. Right of Way Secured.** Whenever the department shall authorize the construction of any toll bridge, the department is empowered to secure rights of way therefor and for approaches thereto by gift or purchase or by condemnation in the manner provided by law for the taking of private property for public purposes.

**Sec. 313A.9. Consent to Cross State Property.** The right of way is hereby given, dedicated, and set apart upon which to locate, construct, and maintain toll bridges or approaches thereto or other highway crossings, and transportation facilities thereof or thereto, through, over or across any of the lands which are now or may be the property of this state, including highways; and through, over, or across the streets, alleys, lanes, and roads within any city, county, or other political subdivision of the state. If any property belonging to any city, county or other political subdivision of the state is required to be taken for the construction of any such bridge or approach thereto or should any such property be injured or damaged by such construction, such compensation therefor as may be proper or necessary and as shall be agreed upon may be paid by the department to the particular county, city or other political subdivision of the state owning such property, or condemnation proceedings may be brought for the determination of such compensation.

**Sec. 313A.10. Resolution Precedent to Action.** Before the department shall proceed with any action to secure right of way or with the construction of any toll bridge under the provisions of this chapter, it shall first pass a resolution finding that public interest and necessity require the acquisition of right of way for and the construction of such toll bridge. Such resolution shall be conclusive evidence of the public necessity of such construction and that such property is necessary therefor. To aid the department in determining the public interest, a public hearing shall be held in the county or counties of this state in which any portion of a bridge is proposed to be located.



Notice of such hearing shall be published at least once in a newspaper published and having a general circulation in the county or counties where such bridge is proposed to be located, not less than twenty days prior to the date of the hearing. When it becomes necessary for the department to condemn any real estate to be used in connection with any such bridge, or to condemn any existing bridge, such condemnation shall be carried out in a manner consistent with the provisions of Chapters 471 and 472. In eminent domain proceedings to acquire property for any of the purposes of this chapter, any bridge, real property, personal property, franchises, rights, easements, or other property or privileges appurtenant thereto appropriated or dedicated to a public use or purpose by any person, firm, private, public or municipal corporation, county, city, district or any political subdivision of the state, may be condemned and taken, and the acquisition and use thereof as herein provided for the same public use or purpose to which such property has been so appropriated or dedicated, or for any other public use or purpose, shall be deemed a superior and permanent right and necessity, and a more necessary use and purpose than the public use or purpose to which such property has already been appropriated or dedicated, and any condemnation award may be paid from the proceeds of revenue bonds issued under the provisions of this chapter.

**Sec. 313A.11. Payment From Available Funds.** If the department determines that any toll bridge should be constructed or acquired under its authority, all costs thereof, including land, right of way, surveying, engineering, construction, legal and administrative expenses, and fees of any fiscal adviser, shall be paid out of any funds available for payment of the cost of the bridge.

**Sec. 313A.12. Revenue Bonds.** The department is hereby authorized and empowered to issue revenue bonds for the acquisition, purchase or construction of any interstate bridge. Any and all bonds issued by the department for the acquisition, purchase, or construction of any interstate bridge under the authority of this chapter shall be issued in the name of the department and shall constitute obligations only of the department, shall be identified by some appropriate name, and shall contain a recital on the face thereof that the payment or redemption of said bonds and the payment of the interest thereon are secured by a direct charge and lien upon the tolls and other revenues of any nature whatever received from the operation of the particular bridge for the acquisition, purchase, or construction of which the bonds are issued and of such other bridge or bridges as may have been pledged therefor, and that neither the payment of the principal or any part thereof nor of the interest thereon or any part thereof constitutes a debt, liability, or obligation of the State of Iowa. When it is determined by the department to be in the best public interest, any bonds issued under the provisions of this chapter may be refunded and refinanced at a lower rate, the same rate or a higher rate or rates of interest and from time to time as often as the department shall find it to be advisable and necessary so to do. Bonds issued to refund other bonds theretofore issued by the department under the provisions of this chapter may either be sold in the manner hereinafter provided and the proceeds thereof applied to the payment of the bonds being refunded, or the refunding bonds may be exchanged for and in payment and discharge of the bonds being refunded. The refunding bonds may be sold or exchanged in installments at different times or an entire issue or series may be sold or exchanged at one time. Any issue or series of refunding bonds may be exchanged in part or sold in part in installments at different times or at one time. The refunding bonds may be sold at any time on, before, or after the maturity of any of the outstanding bonds to be refinanced thereby and may be issued for the purpose of refunding a like or greater principal amount of bonds, except that the principal amount of the refunding bonds may exceed the principal amount of the bonds to be refunded to the extent necessary to pay any premium due on the call of the bonds to be refunded or to fund interest in arrears or about to become due. The gross revenues of any toll bridge pledged to the payment of the



bonds being refunded, together with the unpledged gross revenues of any other toll bridges located within ten miles of said bridge, may be pledged by the department to pay the principal of and interest on the refunding bonds and to create and maintain reserves therefor.

The department is empowered to receive and accept funds from the State of Iowa or the federal government or any other state upon a co-operative or other basis for the acquisition, purchase, or construction of any interstate bridge authorized under the provisions of this chapter and is empowered to enter into such agreements with the State of Iowa or any other state or the federal government as may be required for the securing of such funds.

The department is authorized and empowered to spend from annual primary road fund receipts sufficient moneys to pay the cost of operation, maintenance, insurance, collection of tolls and accounting therefor and all other charges incidental to the operation and maintenance of any toll bridge administered under the provisions of this chapter. However, said annual primary road fund receipts shall be used only to pay such costs and charges with respect to that part of the bridge which is located within the State of Iowa.

The department may also issue its revenue bonds to pay all or any part of the cost of acquiring two or more existing interstate bridges and any partially constructed interstate bridge, all located within ten miles of each other, of completing the partially constructed bridge and of dismantling the bridge which it is designed to replace, and to impose and collect tolls on all of such bridges and to pledge the revenues derived therefrom to the payment of the bonds issued to finance such project. The department may also issue its revenue bonds to pay all or any part of the cost of reconstructing, completing, improving, repairing, or remodeling any interstate bridge or partially constructed bridge, impose and collect tolls, and pledge the bridge revenues to the payment of said bonds.

**Sec. 313A.13. Sale and Exchange or Retirement of Bonds.** The revenue bonds may be issued and sold or exchanged by the department from time to time and in such amounts as it deems necessary to provide sufficient funds for the acquisition, purchase, or construction of any such bridge and to pay interest on bonds issued for the construction of any toll bridge during the period of actual construction and for six months after completion thereof. The department is hereby authorized to adopt all necessary resolutions prescribing the form, conditions, and denominations of the bonds, the maturity dates therefor, and the interest rate or rates which the bonds shall bear. All bonds of the same issue need not bear the same interest rate. Principal and interest of the bonds shall be payable at such place or places within or without the State of Iowa as determined by the department, and the bonds may contain provisions for registration as to principal or interest, or both. Interest shall be payable at such times as determined by the department and the bonds shall mature at such times and in such amounts as the department prescribes. The department may provide for the retirement of the bonds at any time prior to maturity, and in such manner and upon payment of such premiums as it may determine in the resolution providing for the issuance of the bonds. All such bonds and any coupons attached thereto shall be signed by such officials of the department as the department may direct. Successive issues of such bonds within the limits of the original authorization shall have equal preference with respect to the payment of the principal thereof and the payment of interest thereon. The department may fix different maturity dates, serially or otherwise, for successive issues under any one original authorization. All bonds issued under the provisions of this chapter shall have all the qualities of negotiable instruments under the laws of the State of Iowa. All bonds issued and sold hereunder shall be sold to the highest and best bidder on the basis of sealed proposals received pur-



suant to a notice specifying the time and place of sale and the amount of bonds to be sold which shall be published at least once not less than seven days prior to the sale in a newspaper published in the State of Iowa and having a general circulation in said state. None of the provisions of Chapter 75 shall apply to bonds issued under the provisions of this chapter but such bonds shall be sold upon terms of not less than par plus accrued interest. The department may reject any or all bids received at the public sale and may thereafter sell the bonds at private sale on such terms and conditions as it deems most advantageous to its own interests, but not at a price below that of the best bid received at the advertised sale. The department may enter into contracts and borrow money through the sale of bonds of the same character as those herein authorized, from the United States or any agency thereof, upon such conditions and terms as may be agreed to and the bonds shall be subject to all the provisions of this chapter, except that any bonds issued hereunder to the United States or any agency thereof need not first be offered at public sale. The department may also provide for the private sale of bonds issued under the provisions of this chapter to the state treasurer of Iowa upon such terms and conditions as may be agreed upon, and in such event said bonds need not first be offered at public sale. Temporary or interim bonds, certificates, or receipts, of any denomination, and with or without coupons attached, signed by such official as the department may direct, may be issued and delivered until the definitive bonds are executed and available for delivery.

**Sec. 313A.14. Proceeds in Trust Fund.** The proceeds from the sale of all bonds authorized and issued under the provisions of this chapter shall be deposited by the department in a fund designated as the construction fund of the particular interstate bridge or bridges for which such bonds were issued and sold, which fund shall not be a state fund and shall at all times be kept segregated and set apart from all other funds and in trust for the purpose herein set out. Such proceeds shall be paid out or disbursed solely for the acquisition, purchase, or construction of such interstate bridge or bridges and expenses incident thereto, the acquisition of the necessary lands and easements therefor and the payment of interest on such bonds during the period of actual construction and for a period of six months thereafter, only as the need therefor shall arise and the department may agree with the purchaser of said bonds upon any conditions or limitations restricting the disbursement of such funds that may be deemed advisable, for the purpose of assuring the proper application of such funds. All moneys in such fund and not required to meet current construction costs of the interstate bridge or bridges for which such bonds were issued and sold, and all funds constituting surplus revenues which are not immediately needed for the particular object or purpose to which they must be applied or are pledged may be invested in obligations issued or guaranteed by the United States or by any person controlled by or supervised by and acting as an instrumentality of the United States pursuant to authority granted by the Congress of the United States; provided, however, that the department may provide in the proceedings authorizing the issuance of said bonds that the investment of such moneys shall be made only in particular bonds and obligations within the classifications eligible for such investment and such provisions shall thereupon be binding upon the department and all officials having anything to do with such investment. Any surplus which may exist in said construction fund shall be applied to the retirement of bonds issued for the acquisition, purchase, or construction of any such interstate bridge by purchase or call and, in the event such bonds cannot be purchased at a price satisfactory to the department, and are not by their terms callable prior to maturity, such surplus shall be paid into the fund applicable to the payment of principal and interest of said bonds and shall be used for that purpose. The proceedings authorizing the issuance of bonds may provide limitations and conditions upon the time and manner of applying such surplus to the purchase and call of outstanding bonds and the terms upon which they shall be purchased or called and such limitations and con-



ditions shall be followed and observed in the application and use of such surplus. All bonds so retired by purchase or call shall be immediately cancelled.

**Sec. 313A.15. Toll Revenue Fund.** All tolls or other revenues received from the operation of any toll bridge acquired, purchased, or constructed with the proceeds of bonds issued and sold hereunder shall be deposited by the department to the credit of a special trust fund to be designated as the toll revenue fund of the particular toll bridge or bridges producing such tolls or revenue, which fund shall be a trust fund and shall at all times be kept segregated and set apart from all other funds.

**Sec. 313A.16. Funds Transferred to Place of Payment.** From the money so deposited in each separate construction fund as hereinabove provided, at the direction of the department there shall be transferred to the place or places of payment named in said bonds such sums as may be required to pay the interest as it becomes due on all bonds issued and outstanding for the construction of such particular toll bridge or toll bridges during the period of actual construction and during the period of six months immediately thereafter. The department shall thereafter transfer from each separate toll revenue fund to the place or places of payment named in the bonds for which said revenues have been pledged such sums as may be required to pay the interest on said bonds and redeem the principal thereof as such interest and principal become due. All funds so transferred for the payment of principal of or interest on bonds issued for any particular toll bridge or toll bridges shall be segregated and applied solely for the payment of said principal or interest. The proceedings authorizing the issuance of the bonds may provide for the setting up of a reserve fund or funds out of the tolls and other revenues not needed for the payment of principal and interest, as the same currently matures and for the preservation and continuance of such fund in a manner to be provided therein, and such proceedings may also require the immediate application of all surplus moneys in such toll revenue fund to the retirement of such bonds prior to maturity, by call or purchase, in such manner and upon such terms and the payment of such premiums as may be deemed advisable in the judgment of the department. The moneys remaining in each separate toll revenue fund after providing the amount required for the payment of principal of and interest on bonds as hereinabove provided, shall be held and applied as provided in the proceedings authorizing the issuance of said bonds. In the event the proceedings authorizing the issuance of said bonds do not require surplus revenues to be held or applied in any particular manner, they shall be allocated and used for such other purposes incidental to the construction, operation, and maintenance of any toll bridge as the department may determine and as permitted under Sections 313A.7 and 313A.12.

**Sec. 313A.17. Warrants for Payment.** Warrants for payments to be made on account of such bonds shall be drawn by the department on duly approved vouchers. Moneys required to meet the costs of purchase or construction and all expenses and costs incidental to the acquisition, purchase, or construction of any particular interstate bridge or to meet the costs of operating, maintaining, and repairing the same, shall be paid by the department from the proper fund therefor upon duly approved vouchers. All interest received or earned on money deposited in each and every fund herein provided for shall be credited to and become a part of the particular fund upon which said interest accrues.

**Sec. 313A.18. Depositories or Paying Agents.** The department may provide in the proceedings authorizing the issuance of bonds or may otherwise agree with the purchasers of bonds regarding the deposit of all moneys constituting the construction fund and the toll revenue fund and provide for the deposit of such money at such times and with such depositories or paying agents and upon the furnishing of such security as may meet with the approval of the purchasers of such bonds.



**Sec. 313A.19. Expenses of Department.** Notwithstanding any provision contained in this chapter, the proceeds received from the sale of bonds and the tolls or other revenues received from the operation of any toll bridge may be used to defray any expenses incurred by the department in connection with and incidental to the issuance and sale of bonds for the acquisition, purchase, or construction of any such toll bridge including expenses for the preparation of surveys and estimates, legal, fiscal and administrative expenses, and the making of such inspections and examinations as may be required by the purchasers of such bonds; provided, that the proceedings authorizing the issuance of such bonds may contain appropriate provisions governing the use and application of said bond proceeds and toll or other revenues for the purposes herein specified.

**Sec. 313A.20. No Diminution of Duties While Bonds Outstanding.** While any bonds issued by the department remain outstanding, the powers, duties or existence of the department or of any other official or agency of the state shall not be diminished or impaired in any manner that will affect adversely the interests and rights of the holders of such bonds. The holder of any bond may by mandamus or other appropriate proceeding require and compel the performance of any of the duties imposed upon any state department, official, or employee or imposed upon the department or its officers, agents, and employees in connection with the acquisition, purchase, construction, maintenance, operation, and insurance of any bridge and in connection with the collection, deposit, investment, application, and disbursement of all tolls and other revenues derived from the operation and use of any bridge and in connection with the deposit, investment, and disbursement of the proceeds received from the issuance of bonds; provided, that the enumeration of such rights and remedies herein shall not be deemed to exclude the exercise or prosecution of any other rights or remedies by the holders of such bonds.

**Sec. 313A.21. Insurance or Indemnity Bond.** When any toll bridge authorized hereunder is being built by the department it may carry or cause to be carried such an amount of insurance or indemnity bond or bonds as protection against loss or damage as it may deem proper. The department is hereby further empowered to carry such an amount of insurance to cover any accident or destruction in part or in whole to any toll bridge. All moneys collected on any indemnity bond or insurance policy as the result of any damage or injury to any such toll bridge shall be used for the purpose of repairing or rebuilding of any such toll bridge as long as there are revenue bonds against any such structure outstanding and unredeemed. The department is also empowered to carry insurance or indemnity bonds insuring against the loss of tolls or other revenues to be derived from any such toll bridge by reason of any interruption in the use of such toll bridge from any cause whatever, and the proceeds of such insurance or indemnity bonds shall be paid into the fund into which the tolls and other revenues of the bridge thus insured are required to be paid and shall be applied to the same purposes and in the same manner as other moneys in the said fund. Such insurance or indemnity bonds may be in an amount equal to the probable tolls and other revenues to be received from the operation of such toll bridge during any period of time that may be determined upon by the department and fixed in its discretion, and be paid for out of the toll revenue fund as may be specified in said proceedings. The department may provide in the proceedings authorizing the issuance of bonds for the carrying of insurance as authorized by this chapter and the purchase and carrying of insurance as authorized by this chapter shall thereupon be obligatory upon the department and be paid for out of the toll revenue fund as may be specified in said proceedings.

**Sec. 313A.22. Toll Charges Fixed by Department.** The department is hereby empowered to fix the rates of toll and other charges for all interstate bridges acquired, purchased, or constructed under the terms of this chapter. Toll charges so fixed may



be changed from time to time as conditions may warrant. The department in establishing toll charges shall give due consideration to the amount required annually to pay the principal of and interest on bonds payable from the revenues thereof. The tolls and charges shall be at all times fixed at rates sufficient to pay the bonds and interest as they mature, together with the creation and maintenance of bond reserve funds and other funds as established in the proceedings authorizing the issuance of the bonds, for any particular toll bridge. The amounts required to pay the principal of and interest on bonds shall constitute a charge and lien on all such tolls and other revenues and interest thereon and sinking funds created therefrom received from the use and operation of said toll bridge, and the department is hereby authorized to pledge a sufficient amount of said tolls and revenues for the payment of bonds issued under the provisions of this chapter and interest thereon and to create and maintain a reserve therefor. Such tolls and revenues, together with the interest earned thereon, shall constitute a trust fund for the security and payment of such bonds and shall not be used or pledged for any other purpose as long as such bonds or any of them are outstanding and unpaid.

**Sec. 313A.23. Political Subdivision May Aid.** Whenever a proposed interstate bridge is to be acquired, purchased or constructed, any city, county, or other political subdivision located in relation to such facility so as to benefit directly or indirectly thereby, may, either jointly or separately, at the request of the department advance or contribute money, rights of way, labor, materials, and other property toward the expense of acquiring, purchasing, or constructing the bridge, and for preliminary surveys and the preparation of plans and estimates of cost therefor and other preliminary expenses. Any such city, county, or other political subdivision may, either jointly or separately, at the request of the department advance or contribute money for the purpose of guaranteeing the payment of interest or principal on the bonds issued by the department to finance the bridge. Appropriations for such purposes may be made from any funds available, including county road funds received from or credited by the state, or funds obtained by excess tax levies made pursuant to law or the issuance of general obligation bonds for this purpose. Money or property so advanced or contributed may be immediately transferred or delivered to the department to be used for the purpose for which contribution was made. The department may enter into an agreement with a city, county, or other political subdivision to repay any money or the value of a right of way, labor, materials or other property so advanced or contributed. The department may make such repayment to a city, county, or other political subdivision and reimburse the state for any expenditures made by it in connection with the bridge out of tolls and other revenues for the use of the bridge.

**Sec. 313A.24. Sale of Excess Land to Political Subdivisions.** If the department deems that any land, including improvements thereon, is no longer required for toll bridge purposes and that it is in the public interest, it may negotiate for the sale of such land to the state or to any city, county or other political subdivision or municipal corporation of the state. The department shall certify the agreement for the sale to the state executive council, with a description of the land and the terms of the sale and the state executive council may execute the deed and deliver it to the grantee.

**Sec. 313A.25. Sale to Public.** If the department is of the opinion that any land, including improvements thereon, is no longer required for toll bridge purposes, it may be offered for sale upon publication of a notice once each week for two consecutive weeks in a newspaper published and having a general circulation throughout the state of Iowa, specifying the time and place fixed for the receipt of bids.

**Sec. 313A.26. Acceptance or Rejection of Bids.** The department may reject all such bids if the highest bid does not equal the reasonable fair market value of the real property, plus the value of the improvements thereon, computed on the basis of



the reproduction value less depreciation. The department may accept the highest and best bid, and certify the agreement for the sale to the state executive council, with a description of the land and the terms of the sale and the state executive council shall execute the deed and deliver it to the grantee.

**Sec. 313A.27. Franchises for Use of Bridge.** If the department deems it consistent with the use and operation of any toll bridge, the department may grant franchises to persons, firms, associations, private or municipal corporations, the United States government or any agency thereof, to use any portion of the property of any toll bridge, including approaches thereto, for the construction and maintenance of water pipes, flumes, gas pipes, telephone, telegraph and electric light and power lines and conduits, trams or railways, and any other such facilities in the manner of granting franchises on state highways.

**Sec. 313A.28. Deposit of Proceeds.** Any moneys received pursuant to the provisions of Sections 313A.24 through 313A.27 shall be deposited by the department into the separate and proper trust fund established for the bridge.

**Sec. 313A.29. Tolls Imposed for Improving Other Bridges.** The department shall have the right to impose and reimpose tolls for pedestrian or vehicular traffic over any interstate bridges under its control and jurisdiction for the purpose of paying the cost of reconstructing and improving existing bridges and their approaches, purchasing existing bridges, and constructing new bridges and approaches, provided that any such existing bridge or new bridge is located within ten miles of the bridge on which tolls are so imposed or reimposed, to pay interest on and create a sinking fund for the retirement of revenue bonds issued for the account of such projects and to pay any and all costs and expenses incurred by the department in connection with and incidental to the issuance and sale of bonds and for the preparation of surveys and estimates and to establish the required interest reserves for and during the estimated construction period and for six months thereafter.

**Sec. 313A.30. Bridges as Part of Primary Roads.** The bridges herein provided for may be incorporated into the primary road system as toll free bridges whenever the costs of the construction of the bridges and the approaches thereto and the reconstruction and improvement of existing bridges and approaches thereto, including all incidental costs, have been paid and when all revenue bonds and interest thereon issued and sold pursuant to this chapter and payable from the tolls and revenues thereof shall have been fully paid and redeemed or funds sufficient to pay said bonds and interest, including premium, if any, have been set aside and pledged for that purpose. However, tolls may again be imposed as provided in Section 313A.29.

**Sec. 313A.31. Revenue Bonds.** The department shall have the power and is hereby authorized by resolution to issue, sell, or pledge its revenue bonds in an amount sufficient to provide funds to pay all or any part of the costs of construction of a new bridge and approaches thereto and the reconstruction, improvement, and maintaining of an existing bridge and approaches thereto, including all costs of survey, acquisition of right of way, engineering, legal, fiscal and incidental expenses, to pay the interest due thereon during the period beginning with the date of issue of the bonds and ending at the expiration of six months after the first imposition and collection of tolls from the users of said bridges, and all costs incidental to the issuance and sale of the bonds.

Except as may be otherwise specifically provided by statute, all of the other provisions of this chapter shall govern the issuance and sale of revenue bonds issued under this section, the execution thereof, the disbursement of the proceeds of issuance thereof, the interest rate or rates thereon, their form, terms, conditions, covenants, negotiability, denominations, maturity date or dates, the creation of special funds or



accounts safeguarding and providing for the payment of the principal thereof and interest thereon, and their manner of redemption and retirement.

Such bonds shall include a covenant that the payment of the principal thereof and the interest thereon are secured by a first and direct charge and lien on all of the tolls and other gross revenues received from the operation of said toll bridges and from any interest which may be earned from the deposit or investment of any such revenues.

The tolls and charges shall be at all times fixed at rates sufficient to pay the bonds and interest as they mature, together with the creation and maintenance of bond reserve funds and other funds as established in the proceedings authorizing the issuance of the bonds.

**Sec. 313A.32. Operation and Control of Bridge.** The department is hereby authorized to operate and assume the full control of said toll bridges and each portion thereof whether within or without the borders of the State of Iowa, with full power to impose and collect tolls from the users of such bridges for the purpose of providing revenues at least sufficient to pay the cost and incidental expenses of construction and acquisition of said bridges and approaches in both states in which located and for the payment of the principal of and interest on its revenue bonds as authorized by this chapter.

**Sec. 313A.33. No Obligation of State.** Under no circumstances shall any bonds issued under the terms of this chapter be or become or be construed to constitute a debt of or charge against the State of Iowa within the purview of any constitutional or statutory limitation or provision. No taxes, appropriations or other funds of the State of Iowa may be pledged for or used to pay such bonds or the interest thereon, but any such bonds shall be payable solely and only as to both principal and interest from the tolls and revenues derived from the operation of any bridge or toll bridges acquired, purchased, or constructed under this chapter, and the sole remedy for any breach or default of the terms of any such bonds or proceedings for their issuance shall be a proceeding either in law or in equity by suit, action or mandamus to enforce and compel performance of the duties required by this chapter and the terms of the resolution under which such bonds are issued.

**Sec. 313A.34. Agreements With Other States.** The director of transportation may, subject to the approval of the state transportation commission, enter into such agreement or agreements with other state highway commissions and the governmental agencies or subdivisions of the State of Iowa or other states and with federal bridge commissions as they shall find necessary or convenient to carry out the purposes of this chapter, and is authorized to do any and all acts contained in such agreement or agreements that are necessary or convenient to carry out the purposes of this chapter. Such agreements may include, but shall not be restricted to, the following provisions:

1. A provision that the department shall assume and have complete responsibility for the operation of such bridges and approaches thereto, and with full power to impose and collect all toll charges from the users of such bridges and to disburse the revenue derived therefrom for the payment of principal and interest on any revenue bonds herein provided for and to carry out the purposes of this chapter.

2. A provision that the department shall provide for the issuance, sale, exchange or pledge, and payment of revenue bonds payable solely from the revenues derived from the imposition and collection of tolls upon such toll bridges.

3. A provision that the department, after consultation with the other governmental agencies or subdivisions who are parties to such agreements, shall fix and revise the classifications and amounts of tolls to be charged and collected from the users of the toll bridges, with the further provision that such toll charges shall be removed after all costs of planning, designing, and construction of such toll bridges and



approaches thereto and all incidental costs shall have been paid, and all of said revenue bonds, and interest thereon, issued pursuant to this chapter shall have been fully paid and redeemed or funds sufficient therefor have been set aside and pledged for that purpose.

4. A provision that all acts pertaining to the design and construction of such toll bridges may be done and performed by the department and that any and all contracts for the construction of such toll bridges shall be awarded in the name of the department.

5. A provision that the State of Iowa and adjoining state and all governmental agencies or subdivisions party to such agreement shall be reimbursed out of the proceeds of the sale of such bonds or out of tolls and revenues as herein allowed for any advances they may have made or expenses they may have incurred for any of the purposes for which said revenue bonds may be issued, after duly verified itemized statements of such advances and expenses have been submitted to and been approved by all parties to such agreement.

6. A provision that when all outstanding indebtedness or other obligations payable from the revenues of such bridges have been paid the adjoining state agrees to accept ownership of that portion of the bridge within such state and agrees to pay the cost of maintaining such portions of the bridge or proportionate share of the total cost of maintaining the bridge.

**Sec. 313A.35. General Obligation Bonds.** Counties are hereby authorized to issue general obligation bonds for the purpose of contributing money to the department to help finance the construction of toll bridges across navigable rivers constituting boundaries between the county and an adjoining state. Prior to the issuance of such bonds the board of supervisors shall call and direct the county commissioner of elections to hold an election in said county at which the proposition shall be submitted to the voters of county in the following form:

"Shall the county of \_\_\_\_\_ issue its bonds in the amount of \$ \_\_\_\_\_  
for the purpose of \_\_\_\_\_?"

Notice of such election, stating the date of the election, the hours of opening and closing the polls, the precincts and polling places therefor, and the question to be submitted shall be published once each week for three consecutive weeks in at least one newspaper published and having a general circulation in the county. The election shall be held on a day not less than five nor more than twenty days after the last publication of such notice. The proposition shall not be deemed carried or adopted unless the vote in favor thereof is equal to at least sixty percent of the total vote cast for and against said proposition at said election.

**Sec. 313A.36. Purposes of Powers Granted.** The exercise of the powers granted by this chapter will be in all respects for the benefit of the people of the State of Iowa, for the increase of their commerce and prosperity and for the improvement of their health and living conditions, and as the acquisition, construction, operation, and maintenance by the department of the projects herein defined will constitute the performance of essential governmental functions, the department shall not be required to pay any taxes or assessments upon such projects or upon any property acquired or used by the department under the provisions of this chapter or upon the income from such projects, and the bonds issued under the provisions of this chapter, their transfer and the income therefrom including any profit made on the sale thereof shall at all times be free from taxation by or within the State of Iowa.

**Sec. 313A.37. Failure to pay toll — penalty.** Any person who uses any toll bridge and fails or refuses to pay the toll provided therefor shall be guilty of a simple misdemeanor.



**Sec. 313A.38. Independent of Any Other Law.** This chapter shall be construed as providing an alternative and independent method for the acquisition, purchase, or construction of interstate bridges, for the issuance and sale or exchange of bonds in connection therewith and for refunding bonds pertinent thereto, and for the imposition, collection, and application of the proceeds of tolls and charges for the use of interstate bridges, without reference to any other statute, and shall not be construed as an amendment of or subject to the provisions of any other law, and no publication of any notice, and no other or further proceeding in respect to the issuance or sale or exchange of bonds under this chapter shall be required except such as are prescribed by this chapter, any provisions of other statutes of the state to the contrary notwithstanding.

**Sec. 313A.39. Construction.** This chapter, being necessary for the public safety and welfare, shall be liberally construed to effectuate the purposes thereof.

#### CHAPTER 314 — GENERAL ADMINISTRATIVE PROVISIONS FOR HIGHWAYS

**Sec. 314.1. Bidders' Statements of Qualifications — Basis for Awarding Contracts.** The agency having charge of the receipt of bids and the award of contracts for the construction, reconstruction, improvement, repair or maintenance of any highway, may require, for any highway contract letting, that each bidder shall file with said agency a statement showing his financial standing, his equipment, and his experience in the execution of like or similar work. Said statements shall be on standard forms prepared by the department and shall be filed with said agency previous to the letting at which such bidder expects to bid. The agency may, in advance of the letting, notify the bidder as to the amount and the nature of the work for which he is deemed qualified to bid.

In the award of contracts for the construction, reconstruction, improvement, repair or maintenance of any highway, the agency having charge of awarding such contracts shall give due consideration not only to the prices bid but also to the mechanical or other equipment and the financial responsibility and experience in the performance of like or similar contracts. The agency may reject any or all bids, or may let by private contract or build by day labor, at a cost not in excess of the lowest bid received. Upon the completion of any contract or project on either the farm-to-market or secondary road system, the county engineer shall file with the county auditor a statement showing the total cost thereof with certificate that said work has been done in accordance with the plans and specifications. All contracts shall be in writing and shall be secured by a bond for the faithful performance thereof as provided by law.

**Sec. 314.2. Interest in Contract Prohibited.** No state or county official or employee, elective or appointive shall be directly or indirectly interested in any contract for the construction, reconstruction, improvement or maintenance of any highway, bridge or culvert, or the furnishing of materials therefor. The letting of a contract in violation of the foregoing provisions shall invalidate the contract and such violation shall be a complete defense to any action to recover any consideration due or earned under the contract at the time of its termination.

**Sec. 314.3. Claims — Approval and Payment.** All claims for construction, reconstruction, improvement, repair, or maintenance on any highway shall be itemized on voucher forms prepared for that purpose, certified to by the claimants and by the engineer in charge, and then forwarded to the agency in control of that highway for final audit and approval. Claims payable from the farm-to-market road fund shall be ap-



proved by both the board of supervisors and the department. Upon approval by the department of vouchers which are payable from the farm-to-market road fund, or from the primary road fund, as the case may be, such vouchers shall be forwarded to the state comptroller, who shall draw warrants therefor, and said warrants shall be paid by the treasurer of the state from the farm-to-market road fund or from the primary road fund, as the case may be.

If the engineer makes such certificate or a member of the agency approves such claim when said work has not been done in accordance with the plans and specifications, and said work be not promptly made good without additional cost, he shall be liable on his bond for the amount of such claim.

**Sec. 314.4. Partial Payments.** Partial payments may be made on highway contract work during the progress thereof, but no such partial payment shall be deemed final acceptance of the work nor a waiver of any defect therein. The approval of any claim by the agency in control of the work, or highway on which the work is located, may be evidenced by the signature of the chairman of said agency, or of a majority of the members of said agency, on the individual claims or on the abstract of a number of claims with the individual claims attached to said abstract.

**Sec. 314.5. Extensions in certain cities.** The agency in control of any secondary road or any primary road is authorized, subject to approval of the council, to eliminate danger at railroad crossings and to construct, reconstruct, improve, repair, and maintain any road or street which is an extension of such road within any city. Provided, that this authority shall not apply to the extensions of secondary roads located in cities over twenty-five hundred population, where the houses or business houses average less than two hundred feet apart.

The phrase "subject to the approval of the council" as it appears in this section, shall be construed as authorizing the council to consider said proposed improvement only in its relationship to municipal improvements such as sewers, water lines, establishing grades, change of established street grades, sidewalks and other public improvements. The locations of such road extensions shall be determined by the agency in control of such road or road system.

**Sec. 314.6. Highways Along City Limits.** Whenever any public highway located along the corporate line of any city is an extension of a farm-to-market road, or of a primary road, it may be included in the farm-to-market road system or the primary road system, as the case may be, and may be constructed, reconstructed, improved, repaired, and maintained as a part of said road system.

**Sec. 314.7. Trees — Ingress or Egress — Drainage.** Officers, employees, and contractors in charge of improvement or maintenance work on any highway shall not cut down or injure any tree growing by the wayside which does not materially obstruct the highway, or tile drains, or interfere with the improvement or maintenance of the road, and which stands in front of any city lot, farmyard, orchard or feed lot, or any ground reserved for any public use. Nor shall they destroy or injure reasonable ingress or egress to any property, or turn the natural drainage of the surface water to the injury of adjoining owners. It shall be their duty to use strict diligence in draining the surface water from the public road in its natural channel. To this end they may enter upon the adjoining lands for the purpose of removing from such natural channel obstructions that impede the flow of such water.

**Sec. 314.8. Government Markers Preserved.** Whenever it may become necessary in grading the highways to make a cut which will disturb, or fill which will cover up, a government or other established corner or land monument, it shall be the duty of the engineer to establish permanent witness corners or monuments, and make a record of the same, which shall show the distance and direction the witness corner is from



the corner disturbed or covered up. When said construction work is completed the engineer shall permanently re-establish said corner or monument. A failure to perform said duties shall subject the engineer to a fine of not less than ten dollars nor more than fifty dollars to be collected on his bond.

**Sec. 314.9. Entering Private Land.** The agency in control of any highway or highway system or the engineer, or any other authorized person employed by said agency, may after thirty days' written notice by restricted certified mail addressed to the owner and also to the occupant, enter upon private land for the purpose of making surveys, soundings, drillings, appraisals and examinations as it deems appropriate or necessary to determine the advisability or practicability of locating and constructing a highway thereon or for the purpose of determining whether gravel or other material exists on said land of suitable quality and in sufficient quantity to warrant the purchase or condemnation of said land or part thereof. Such entry, after notice, shall not be deemed a trespass, and the agency may be aided by injunction to insure peaceful entry. The agency shall pay actual damages caused by such entry, surveys, soundings, drillings, appraisals or examinations.

Any damage caused by such entry, surveys, soundings, drillings, appraisals or examinations shall be determined by agreement or in the manner provided for the award of damages in condemnation of land for highway purposes. No such soundings or drillings shall be done within twenty rods of the dwelling house or buildings on said land without written consent of owner.

**Sec. 314.10. State Line Highways.** The agency in control of any highway or bridge bordering on or crossing a state line is authorized to confer and agree with the agency or official of such border state, or subdivision of such state, having control of such highway or bridge relative to the interstate connection, the plans for the improvement, and maintenance, the division of work and the apportionment of cost of such highway or bridge.

**Sec. 314.11. Use of Bridges by Utility Companies.** Telephone, telegraph, electric transmission and pipe lines may be permitted to use any highway bridge on or across a state line on such terms and conditions as the agency or officials, jointly constructing, maintaining or operating such bridge may jointly determine. No discrimination shall be made in the use of such bridge as between such utilities. Joint use of telephone, telegraph, electric transmission or pipe lines may not be required. No grant to any public utility to use such bridge shall in any way interfere with the use of such bridge by the public for highway purposes.

**Sec. 314.12. Borrow Pits — Topsoil Preserved.** In the award of contracts for the construction, reconstruction, improvement, repair or maintenance of any highway, the agency having charge of awarding such contracts shall require that when fill dirt, soil or other materials are to be removed from borrow pits for use in the project, adequate provision shall be made by agreement with the landowner for the restoration of the borrow pit area, either by removal and replacement of a minimum of eight inches of topsoil, or by fertilizing, mulching, reseeding or other appropriate measures to provide vegetative cover or prevent erosion.

**Sec. 314.13. Definitions.** As used in this chapter, unless the context otherwise requires:

1. "Department" means the state department of transportation.
2. "Agency" means any governmental body which exercises jurisdiction over any road as provided by law.



**CHAPTER 316 — RELOCATION OF PERSON DISPLACED BY HIGHWAYS**

**Sec. 316.1. Definitions.** As used in this chapter the term:

1. **"Person"** means any individual, partnership, corporation, or association.
2. **"Displaced Person"** means any person who moves from real property, or moves his personal property from real property, as a result of the acquisition of such real property, in whole or in part, or as the result of the written order of an acquiring agency to vacate real property, for a program or project undertaken by the department with federal highway assistance; and solely for the purposes of Section 316.4 and 316.7, as a result of the acquisition of or as the result of the written order of the department to vacate other real property, on which such person conducts a business or farm operation, for such program or project.
3. **"Business"** means any lawful activity, excepting a farm operation, conducted primarily:
  - a. For the purchase, sale, lease and rental of personal and real property, and for the manufacture, processing, or marketing of products, commodities, or any other personal property;
  - b. For the sale of services to the public;
  - c. By a non-profit organization; or
  - d. Solely for the purposes of Section 316.4, subsection 1, for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display or displays, whether or not such display or displays are located on the premises of which any of the above activities are conducted.
4. **"Farm Operation"** means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.
5. **"Mortgage"** means such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of real property, under the laws of this state, together with the credit instruments, if any, secured thereby.
6. **"Federal Agency"** means any department, agency, or instrumentality in the executive branch of the federal government, and any wholly owned federal government corporation.
7. **"Department"** means the state department of transportation.
8. **"Highway Project"** means any federal-aid street or highway project requiring the purchase or condemnation of private property for public use.
9. **"Departmental Rules"** means all rules subject to the provisions of Chapter 17A.

**Sec. 316.2. Effect Upon Property Acquisition.**

1. The provisions of this chapter shall not affect the validity of any property acquisitions by purchase or condemnation.
2. Nothing in this chapter shall be construed as creating in any condemnation proceedings brought under the power of eminent domain, any element of value or of damage not in existence immediately prior to the date of this chapter.
3. In order to prevent unjust enrichment or a duplication of payments to any condemnee, the courts of this state, when determining just compensation in condemnation proceedings, shall not allow any damages which duplicate any of the benefits provided under the provisions of this chapter.



**Sec. 316.3. Declaration of Policy.** The purpose of this chapter is to establish a uniform policy for the fair and equitable treatment of persons displaced as a result of state and federally assisted highway programs in order that such persons shall not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole. The general assembly declares that replacement housing for persons displaced by highway projects is a necessary and essential part of such highway projects. This chapter shall be known and may be cited as the "Highway Relocation Assistance Law."

**Sec. 316.4. Moving and Related Expenses.**

1. Whenever the acquisition of real property for a program or project undertaken by the department will result in the displacement of any person, the department shall make a payment to any displaced person, upon proper application as approved by such department, for:

a. Actual reasonable expenses in moving himself, his family, business, farm operation, or other personal property;

b. Actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the department; and

c. Actual reasonable expenses in searching for a replacement business or farm.

2. Any displaced person eligible for payments under subsection 1 who is displaced from a dwelling and who elects to accept the payments authorized by this subsection in lieu of the payments authorized by subsection 1 may receive a moving expense allowance, determined according to a schedule established by the department not to exceed three hundred dollars; and a dislocation allowance of two hundred dollars.

3. Any displaced person eligible for payments under subsection 1 who is displaced from his place of business or from his farm operation and who elects to accept the payment authorized by this subsection in lieu of the payment authorized by subsection 1, may receive a fixed payment in an amount equal to the average annual net earnings of the business or farm operation, except that such payment shall be not less than two thousand five hundred dollars nor more than ten thousand dollars. In the case of a business, no payment shall be made under this subsection unless the department is satisfied that the business cannot be relocated without a substantial loss of the existing patronage, and is not a part of a commercial enterprise having at least one other establishment not being required for a highway project which is engaged in the same or similar business. For purposes of this subsection, the term "average annual net earnings" means one-half of any net earnings of the business or farm operation, before federal, state, and local income taxes, during the two taxable years immediately preceding the taxable year in which such business or farm operation moves from the real property acquired for such project, or during such other period as the department determines to be more equitable for establishing such earnings, and includes any compensation paid by the business or farm operation to the owner, his spouse, or his dependents during such period.

**Sec. 316.5. Replacement Housing for Homeowner.**

1. In addition to payments otherwise authorized by this chapter, the department shall make an additional payment not in excess of fifteen thousand dollars to any displaced person who is displaced from a dwelling actually owned and occupied by such displaced person for not less than one hundred eighty days prior to the initiation of negotiations for the acquisition of the property. Such additional payment shall include the following elements:

a. The amount, if any, which when added to the acquisition cost of the dwell-



ing acquired by the department, equals the reasonable cost of a comparable replacement dwelling which is a decent, safe, and sanitary dwelling adequate to accommodate such displaced person, reasonably accessible to public services and places of employment and available on the private market. All determinations required to carry out this paragraph shall be made in accordance with departmental rules established by the department in making these additional payments.

b. The amount, if any, which will compensate such displaced person for any increased interest costs which such person is required to pay for financing the acquisition of any such comparable replacement dwelling. Such amount shall be paid only if the dwelling acquired by the department was encumbered by a bona fide mortgage which was a valid lien on such dwelling for not less than one hundred and eighty days prior to the initiation of negotiations for the acquisition of such dwelling. Such amount shall be equal to the excess in the aggregate interest and other debt service costs of that amount of the principal of the mortgage on the replacement dwelling which is equal to the unpaid balance of the mortgage on the acquired dwelling, over the remainder term of the mortgage on the acquired dwelling, reduced to discounted present value. The discount rate shall be the prevailing interest rate paid on savings deposits by commercial banks in the general area in which the replacement dwelling is located.

c. Reasonable expenses incurred by such displaced person for evidence of title, recording fees, and other closing costs incident to the purchase of the replacement dwelling, but not including prepaid expenses.

2. The additional payment authorized by this section shall be made only to such a displaced person who purchases and occupies a replacement dwelling which is decent, safe, and sanitary not later than the end of the one-year period beginning on the date on which he receives from the department final payment of all costs of the acquired dwelling, or on the date on which he moves from the acquired dwelling, whichever is the later date.

**Sec. 316.6. Replacement Housing for Tenants and Certain Others.** In addition to amounts otherwise authorized by this chapter, the department shall make a payment to or for any displaced person displaced from any dwelling not eligible to receive a payment under Section 316.5 which dwelling was actually and lawfully occupied by such displaced person for not less than ninety days prior to the initiation of negotiations for acquisition of such dwelling. Such payment shall be either:

1. The amount necessary to enable such displaced person to lease or rent for a period not to exceed four years, a decent, safe, and sanitary dwelling of standards adequate to accommodate such person in areas not generally less desirable in regard to public utilities and public and commercial facilities, and reasonably accessible to his place of employment, but not to exceed four thousand dollars, or

2. The amount necessary to enable such person to make a down payment, including incidental expenses described in Section 316.5, subsection 1, paragraph "c", on the purchase of a decent, safe, and sanitary dwelling of standards adequate to accommodate such person in areas not generally less desirable in regard to public utilities and public and commercial facilities, but not to exceed four thousand dollars, except that if such amount exceeds two thousand dollars, such person must equally match any such amount in excess of two thousand dollars, in making the down payment.

**Sec. 316.7. Relocation Assistance Advisory Services.**

1. Whenever the acquisition of real property for a highway project undertaken by the department will result in the displacement of any person, the department shall provide a relocation assistance advisory program for displaced persons which shall offer the services described in subsection 3. If the department determines that any



person occupying property immediately adjacent to the real property acquired is caused substantial economic injury because of the acquisition, he may offer such person relocation advisory services under such program.

2. The department shall co-operate to the maximum extent feasible with federal, state or local agencies to assure that such displaced persons receive the maximum assistance available to them.

3. Each relocation assistance advisory program required by subsection 1 shall include such measures, facilities, or services as may be necessary or appropriate in order to:

- a. Determine the need, if any, of displaced persons, for relocation assistance;
- b. Provide current and continuing information on the availability, prices, and rentals, of comparable decent, safe, and sanitary sales and rental housing, and of comparable commercial properties and locations for displaced businesses;
- c. Assure that, within a reasonable period of time, prior to displacement there will be available in areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the families and individuals displaced, decent, safe, and sanitary dwellings, as defined by the department, equal in number to the number of and available to such displaced persons who require such dwellings and reasonably accessible to their places of employment, except that the department may prescribe by departmental rules situations when such assurances may be waived;
- d. Assist a displaced person displaced from his business or farm operation in obtaining and becoming established in a suitable replacement location;
- e. Supply information concerning federal and state housing programs, and other federal or state programs offering assistance to displaced persons; and
- f. Provide other advisory services to displaced persons in order to minimize hardships to such persons in adjusting to relocation. (Referred to in §316.8.)

4. The department shall co-ordinate relocation activities with project work, and other planned or proposed governmental actions in the community or nearby areas which may affect the carrying out of relocation assistance programs.

Referred to in sec. 316.1 (2) and 316.8.

**Sec. 316.8. Housing Replacement by Department as Last Resort.**

1. If a highway project cannot proceed to actual construction because comparable replacement sale or rental housing is not available, and the department determines that such housing cannot otherwise be made available, the department may take such action as is necessary or appropriate to provide such housing by use of funds authorized for such project. The department may let contracts for the construction of said housing to approve plans and specifications for the building thereof, and to supervise, inspect and approve the housing once constructed in order that the housing so constructed complies with the terms and conditions of this chapter.

2. No person shall be required to move from his dwelling on or after July 1, 1971, on account of any highway project, unless the department is satisfied that replacement housing, in accordance with Section 316.7, subsection 3, paragraph 'c', is available to such person.

**Sec. 316.9. Rules Adopted.** The department shall make departmental rules and regulations necessary to effect the provisions of this chapter and to assure:

1. Compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646.

2. The payments authorized by this chapter are fair and reasonable and as uniform as practicable.



3. A displaced person who makes proper application for a payment authorized by this chapter is paid promptly after a move or, in hardship cases, is paid in advance.

4. Any person aggrieved by a determination as to eligibility for a payment authorized by this chapter, or the amount of a payment, may have his application reviewed by the department.

All rules shall be subject to the provisions of Chapter 17A.

**Sec. 316.10. Applicable to Other Than Federal-Aid Highways.** The department or any political subdivision may provide all or a part of the programs and payments authorized under this chapter to persons displaced by any street or highway project which is financed in whole or in part by the state or a political subdivision, which is not a federal-aid project, and which requires the purchase or condemnation of private property for public use. To the extent that a program or payment is provided under this section, it shall be provided on a uniform basis to all persons so displaced. The department shall make departmental rules and regulations to assure reasonable standards, which need not conform to federal rules and guidelines, for programs and payments provided under this section.

**Sec. 316.11. Acquisitions By Other State Agencies and Political Subdivisions.** Whenever real property is acquired by a state agency or a political subdivision of the state incident to a federal project or program, the state agency or political subdivision is hereby authorized and shall make all payments and provide all services required by this chapter of the commission in order to secure the federal funds available for such project or program.

**Sec. 316.12. Payments Not to Be Considered as Income.** No payment received under this chapter shall be considered as income for the purposes of Chapter 422.

**Sec. 316.13. Administration.** In order to prevent unnecessary expenses and duplications of functions, and to promote uniform and effective administration of relocation assistance programs for displaced persons, the department may enter into contracts with any individual, firm, association, or corporation for services in connection with such programs, or may carry out its functions through any governmental agency, political subdivision, or instrumentality having an established organization for conducting relocation assistance programs. The department shall, in carrying out the relocation assistance activities described in Section 316.8 whenever practicable, utilize the services of state or local housing agencies, or other agencies having experience in the administration or conduct of similar housing assistance activities.

**Sec. 316.14. Funding.** Payments and expenditures under the provisions of this chapter are incident to and arise out of the construction, maintenance, and supervision of public highways and streets, and, in the case of any federal-aid highway project, may be made by the department from the primary road fund and funds made available by the federal government for the purpose of carrying out the provisions of this chapter. Payments made under authority of Section 316.10 may be made from the primary road fund in case of a primary road project only, and in other cases may be made from the secondary road fund or from appropriate funds under control of a political subdivision.

**Sec. 316.15. Federal Grants.** The department may do all things necessary to carry out the provisions of this chapter and to secure federal grants to make the payments required by this chapter, but the absence of federal aid to make such payments shall not discharge the obligation to make the payments.



## CHAPTER 319 — OBSTRUCTIONS IN HIGHWAYS

**Sec. 319.1. Removal.** The department and the board of supervisors shall cause all obstructions in highways, under their respective jurisdictions, to be removed.

**Sec. 319.2. Fences and Electric Transmission Poles.** Poles used for telephone, telegraph, or other transmission purposes, shall not be removed until notice, in writing, of not less than thirty days, has been given to the owner or company operating such lines, or in the event the owner or company has been unable to remove such poles within such thirty-day period due to storm or other act of God, then such poles shall not be removed until the owner or company shall have had a reasonable time thereafter to remove such poles, and in case of fences, notice in writing of not less than thirty days has been given to the owner, occupant, or agent of the land enclosed by said fence, unless such poles or fences constitute an immediate and dangerous hazard to persons or property lawfully using the right of way.

**Sec. 319.3. Notice.** Said notice shall, with reasonable certainty, specify the line to which such fences or poles shall be removed, and shall be served in the same manner that original notices are required to be served. (Parrott's Form No. 69-U.)

**Sec. 319.4. Refusal to Remove.** All such fences and poles shall within the time named, be removed to such line on the highway as the state highway engineer or county engineer may designate, as the case may be. If there be no county engineer, the board of supervisors, in the case of secondary roads, shall designate said line.

If not so removed the public authorities may forthwith remove them.

**Sec. 319.5. New Lines.** New lines, or parts of lines hereafter constructed, shall, in case of secondary roads, be located by the county engineer upon written application filed with the county auditor, and in case of primary roads, by the state highway engineer upon written application filed with the department, and shall thereafter be removable according to the provisions of this chapter. If there be no county engineer, the board of supervisors, in case of secondary roads, shall designate said location.

**Sec. 319.6. Cost of Removal — Liability.** Any removal made in compliance with the foregoing sections shall be at the expense of the owners of said fences or poles. All removals shall be without liability on the part of any officer ordering or effecting such removal.

**Sec. 319.7. Duty of Road Officers.** It shall be the duty of all officers responsible for the care of public highways, outside cities, to remove from the traveled portion and shoulders of the highways within their several jurisdictions, all open ditches, water breaks, and like obstructions, and to employ labor for this purpose in the same manner as for the repair of highways.

**Sec. 319.8. Nuisance.** Any person, partnership or corporation who makes, or causes to be made, any obstruction mentioned in section 319.7, in such traveled way, and any officer responsible for the care of such highway who knowingly fails to remove said obstructions, shall be deemed to have created a public nuisance and be punished accordingly.

**Sec. 319.9. Injunction to Restrain Obstructions.** The department, and the board of supervisors may, as to roads under their respective jurisdictions, maintain suits in equity aided by injunctions to restrain obstruction in such highways, and, in such actions, may cause the legal boundary lines of such highway to be adjudicated provided all interested parties are impleaded.



**Sec. 319.10. Billboards and Signs.** Billboards and advertising signs, whether on public or private property, which so obstruct the view of any portion of a public highway or of a railway track as to render dangerous the use of a public highway are public nuisances and may be abated, and the person or persons responsible for the erection and maintenance may be punished, as provided in the chapter on nuisances.

**Sec. 319.11. Enforcement.** Boards of supervisors and county attorneys as to secondary roads, and the department and the department general counsel as to primary roads, shall enforce Section 319.10 by appropriate civil or criminal proceeding or by both such proceedings.

**Sec. 319.12. Billboards, Reflectors, and Signs Prohibited.** No billboard, advertising sign or device, fence other than right of way boundary fence, or other obstruction except signs or devices authorized by law or approved by the highway authorities shall be placed or erected upon the right of way of any public highway, nor shall any vehicle be abandoned upon the right of way of any public highway.

Except for official traffic-control devices as defined by section 321.1, subsection 62, no person shall place, erect, or attach any red reflector, or any object or other device which shall cause a red reflectorized effect, within the boundary lines of the public highways so as to be visible to passing motorists.

**Sec. 319.13. Right and Duty to Remove.** If the following constitute an immediate and dangerous hazard, all billboards, advertising signs or devices, fences other than right of way boundary fences, or any temporary obstruction, including abandoned vehicles except signs or devices authorized by law or approved by the highway authorities, placed or erected upon the right of way of any public highway shall without notice or liability in damages be removable and the costs thereof assessed against:

1. The owner of any billboard, advertising sign or device so removed.
2. The vehicle owner in the case of abandoned vehicles.
3. The abutting property in the case of fences other than right of way line fences and other temporary obstructions placed by the owner of or tenant on said property.
4. The owner or person responsible for placement of all other obstructions.

Any such obstruction not constituting an immediate and dangerous hazard shall be removed without liability after forty-eight hour notice served in the same manner in which an original notice is served, or in writing by certified mail, or in any other manner reasonably calculated to apprise the person responsible for the obstruction that the obstruction will be removed at the expense of such person after the notice is given.

Such removal and assessment of cost in the case of primary roads shall be by the department and in the case of secondary roads by the board of supervisors.

Upon removal of the obstruction, the highway authority may immediately send a statement of the cost of removal to the person responsible for the obstruction. If within ten days after sending the statement the cost is not paid, the highway authority may institute proceeding in the district court to collect the cost of removal.

**Sec. 319.14. Permit Required.** A person shall not excavate, fill or make any physical change within the right of way of a public road or highway without obtaining a permit from the highway authority having jurisdiction of such public road or highway. Any work performed under the permit shall be performed in conformity with the specifications prescribed by the highway authority. If the excavation, fill or physical change within the right of way of a public road or highway does not conform to the specifications that accompany the permit the person shall be notified to make such conforming changes. If after twenty days the changes have not been made,



the public road or highway authority may make the necessary changes and immediately send a statement of the cost to the person responsible for the work done not in conformance to the specifications. If within ten days after sending the statement the cost is not paid, the highway authority may institute proceedings in the district court system to collect the cost of correction. Utility companies are exempt from the provisions of this section.

**Sec. 319.15. Definitions.** As used in this chapter, unless the context otherwise requires, "department" means the state department of transportation.

## CHAPTER 320 —

### USE OF HIGHWAYS FOR SIDEWALKS, SERVICE MAINS OR CATTLEWAYS

**Sec. 320.1. Construction of Sidewalks In Certain School Districts.** Where an independent community school district has within its limits a city of one hundred twenty-five thousand population or more, and has a schoolhouse located outside the city limits of such city and outside the limits of any city, the board of supervisors of the county in which such school district is located shall upon the filing of a petition signed by the owners of at least seventy-five per cent of the property which will be assessed, order the construction or reconstruction of a permanent sidewalk not less than four feet in width along the highway adjacent to the property described and leading to such schoolhouse.

**Sec. 320.2. Assessment of Costs.** Said work shall be undertaken and consummated and the cost thereof assessed to the abutting property in the manner and method and with the same effect as provided for the construction of sidewalks and the assessment of the costs thereof against benefited property by city councils within the limits of a city.

**Sec. 320.3. Repairs.** After the construction of such sidewalk the board of supervisors shall keep the same in repair and assess and certify the cost thereof in the same manner and to the same extent in which like repairs are assessed and certified by city councils.

**Sec. 320.4. Water and Gas Mains, Sidewalks and Cattleways.** The state department of transportation in case of primary roads, and the board of supervisors in case of secondary roads, on written application designating the particular highway and part of the highway, the use of which is desired, may grant permission:

1. To lay gas mains in highways outside cities to local municipal distributing plants or companies, but not to pipeline companies. This section shall not apply to or include pipeline companies required to obtain a license from the Iowa state commerce commission.
2. To construct and maintain cattleways over or under such highways.
3. To construct sidewalks on and along such highways.
4. To lay water mains in, under, or along highways.

**Sec. 320.5. Term of Grant.** Such grants shall be on such reasonable conditions as the board may exact, and on such as the general assembly may hereafter prescribe. Grants for gas or water mains shall not exceed twenty years.



**Sec. 320.6. Conditions — Damages.** Such mains, pipes, and cattleways shall be so erected and maintained as not to interfere with public travel or with the future improvement of the highway. The owner of such mains, pipes, and cattleways shall be responsible for all damages arising from the laying, maintenance, or erection of the same or from the same not being kept in a proper state of repair.

The location of such mains or pipes shall be changed, on reasonable notice, when such change shall be necessary in the improvement or maintenance of the highway.

**Sec. 320.7. Failure to Maintain.** Failure of the grantee to comply with the terms of the grant shall be ground for forfeiture of the grant.

**Sec. 320.8. Penalty.** Failure to comply with any of the conditions of said grant, whether made such by statute or by agreement, or the laying of any such mains, or the constructing of any such cattleways, without having secured the grant of permission as provided by law shall be deemed a simple misdemeanor. It shall be the duty of the state department of transportation and the board of supervisors, as regards the highways under their respective jurisdictions, to enforce the provisions of this section and the laws relating thereto.



## Drainage Laws of Iowa

### CHAPTER 455 — LEVEE AND DRAINAGE DISTRICTS AND IMPROVEMENTS ON PETITION OR BY MUTUAL AGREEMENT

**Sec. 455.1. Jurisdiction to Establish.** The board of supervisors of any county shall have jurisdiction, power and authority at any regular, special or adjourned session, to establish a drainage district or districts, and to locate and establish levees, and cause to be constructed as hereinafter provided any levee, ditch, drain, or watercourse, or settling basins in connection therewith, or to straighten, widen, deepen, or change any natural watercourse, in such county, whenever the same will be of public utility or conducive to the public health, convenience, or welfare.

**Sec. 455.2. Presumption.** The drainage of surface waters from agricultural lands and all other lands or the protection of such lands from overflow shall be presumed to be a public benefit and conducive to the public health, convenience, and welfare.

**Sec. 455.3. "Levee" Defined — Bank Protection.** For the purpose of this chapter and with reference to improvements along or adjacent to the Missouri river the word "levee" shall be construed to include, in addition to its ordinary and accepted meaning, embankments, revetments, retards, or any other approved system of construction which may be deemed necessary to adequately protect the banks of any river or stream, within or adjacent to any county, from wash, cutting, or erosion.

**Sec. 455.4. Definition of Terms.** Within the meaning of this chapter and chapter 457 the term "board" shall embrace the board of supervisors, the joint boards of supervisors in case of inter-county levee or drainage districts, and the board of trustees in case of a district under trustee management.

The term "commissioners" shall mean the persons appointed and qualified to classify lands, fix percentages of benefits, apportion and assess costs and expenses in any levee or drainage district, unless otherwise specifically indicated by law.

The term "appraisers" shall mean the persons appointed and qualified to ascertain the value of all land taken and the amount of damage arising from the construction of levee or drainage improvements.

The term "engineer" and the term "civil engineer", within the meaning of this chapter and chapters 457, 460, 461, 465, and 466 shall mean a person registered as a professional engineer under the provisions of chapter 114.

The term "cost of improvements" means the costs of any improvements which is subject to assessment, including but not limited to, the costs of engineering, preliminary reports, property valuations, estimates, plans, specifications, notices, acquisition of land, easements, rights of way, construction, repair, supervision, inspection, testing, notices and publication, interest during construction and for a reasonable period following the completion of construction, and may include the default fund which shall amount to not more than ten percent of the total cost of an improvement assessed against benefited property.

**Sec. 455.5. General Rule for Location.** The levees, ditches, or drains herein provided for shall, so far as practicable, be surveyed and located along the general course of the natural streams and watercourses or in the general course of natural drainage of the lands of said district; but where it will be more economical or practicable such ditch or drain need not follow the course of such natural streams, watercourses, or course of natural drainage, but may straighten, shorten, or change the course of any natural stream, watercourse, or general course of drainage.

**Sec. 455.6. Location Across Railroad.** When any such ditch or drain crosses any railroad right of way, it shall when practicable be located at the place of the na-



tural waterway across such right of way, unless said railroad company shall have provided another place in the construction of the roadbed for the flow of the water, and if located at the place provided by the railroad company, such company shall be estopped from afterwards objecting to such location on the ground that it is not at the place of the natural waterway.

**Sec. 455.7. Number of Petitioners Required.** Two or more owners of land named in the petition described in section 455.9 may file in the office of the county auditor a petition for the establishment of a levee or drainage district including a district which involves only the straightening of a creek or river. If the district described in the petition is a sub-district, one or more owners of land affected by the proposed improvement may petition for such district.

**Sec. 455.8. Request by nonpetitioners.** In the event two or more landowners included in the proposed district other than the petitioners request a classification prior to the establishment of said district, they shall file in writing their request and execute a bond as required in sections 455.10 and 455.11 to cover the expense of such classification if the district is not established. Such written request and the bond shall be filed before the board establishes a district.

**Sec. 455.9. Petition.** The petition shall set forth:

1. An intelligible description by congressional sub-division or otherwise of the lands suggested for inclusion in the district.

2. That said lands are subject to overflow or are too wet for cultivation or subject to erosion or flood danger.

3. That the public benefit, utility, health, convenience, or welfare will be promoted by the suggested improvements.

4. The suggested starting point, route, terminus, and lateral branches of the proposed improvements.

5. In the event the petitioners request a classification before the establishment of the district, the petition shall include a request that the district be classified as provided in sections 455.45 to 455.51 after the board has approved the report of the engineer as a tentative plan but before the district is finally established.

**Sec. 455.10. Bond.** There shall be filed with the petition a bond in an amount fixed and with sureties approved by the auditor, conditioned for the payment of all costs and expenses incurred in the proceedings in case the district is not finally established.

**Sec. 455.11. Additional Bond.** No preliminary expense shall be incurred before the establishment of such proposed improvement district by the board in excess of the amount of bond filed by the petitioners. In case it is necessary to incur any expense in addition to the amount of such bond the board of supervisors shall require the filing of an additional bond by the petitioners and shall not proceed with the preliminary survey or authorize any additional expense until the additional bond is filed in a sufficient amount to cover such expense.

**Sec. 455.12. Engineer — Bond.** The board shall at its first session thereafter, regular, special, or adjourned examine the petition and if it be found sufficient in form and substance, shall appoint a disinterested and competent civil engineer who shall give bond to the county for the use of the proposed levee or drainage district, if it be established, and if not established, for the use of the petitioners, in amount and with sureties to be approved by the auditor, and conditioned for the faithful and competent performance of his duties.

**Sec. 455.13. Compensation.** Any engineer employed under the provisions of this chapter shall receive such compensation per diem as shall be fixed and determined by the board of supervisors.



**Sec. 455.14. Discharge.** The board may at any time terminate the contract with, and discharge the engineer.

**Sec. 455.15. Assistants.** Assistants may be employed by the engineer only with the approval of the board, which shall fix their compensation.

**Sec. 455.16. Record of Work.** The engineer shall keep an accurate record of the kind of work done by himself and each assistant, the place where done, and the time engaged therein, and shall file an itemized statement thereof with the auditor. No expenses shall be incurred by the engineer except upon authority of the board, and vouchers shall be filed with the claims therefor.

**Sec. 455.17. Survey.** The engineer shall examine the lands described in the petition and any other lands which would be benefitted by said improvement or necessary in carrying out the same.

He shall locate and survey such ditches, drains, levees, settling basins, pumping stations, and other improvements as will be necessary, practicable, and feasible in carrying out the purposes of the petition and which will be of public benefit or utility, or conducive to public health, convenience, or welfare.

**Sec. 455.18. Report.** The engineer shall make full written report to the county auditor, setting forth:

1. The starting point, route, and terminus of each ditch, drain, and levee, and the character and location of all other improvements.

2. A plat and profile, showing all ditches, drains, levees, settling basins, and other improvements, the course, length, and depth of each ditch, the length, size, and depth of each drain, and the length, width, and height of each levee, through each tract of land, and the particular descriptions and acreage of the land required from each forty-acre tract or fraction thereof as right of way, or for settling basin or basins, together with the congressional or other description of each tract and the names of the owners thereof as shown by the transfer books in the office of the auditor.

Said plat shall describe the width of the right of way to be taken from each forty-acre tract or fraction thereof.

3. The boundary of the proposed district, including therein by color or other designation other lands that will be benefitted or otherwise affected by the proposed improvements, together with the location, size, and elevation of all lakes, ponds, and deep depressions therein.

4. Plans for the most practicable and economic place and method for passing machinery, equipment, and material required in the construction of said improvements across any highways, railroads, and other utilities within the proposed district.

5. The probable cost of the proposed improvements, together with such other facts and recommendations as he shall deem material.

Where the proposed district contemplates as its object flood control or soil conservation the engineer shall include in his report data describing any soil conservation or flood control improvements, the nature thereof, and such other additional data as shall be prescribed by the Iowa Natural Resources Council.

**Sec. 455.19. Procedure on report — classification.** Upon the filing of the report of the engineer recommending the establishment of the levee or drainage district, the board shall at its first regular, adjourned, or special meeting examine and consider the same, and, if the plan is not approved the board may employ said engineer or another disinterested engineer to report another plan or make additional examination and surveys and file an additional report covering such matters as the board may direct. Additional surveys and reports must be made in accordance with the provisions of sections 455.17 and 455.18. At any time prior to the final adoption



of the plans they may be amended, and as finally adopted by the board shall be conclusive unless the action of the board in finally adopting them shall be appealed from as hereinafter provided.

If the petition or other landowners requested a classification of the district prior to establishment, the board shall order a classification as provided by sections 455.45 to 455.51 after they have approved the report of the engineer as a tentative plan. The notice of hearing provided by section 455.20 shall also include the requirements of the notice of hearing provided in section 455.52 as to this classification, and the hearing on the petition provided in section 455.27 shall also include the matters to be heard as provided in section 455.53. If the board establishes the district as provided in section 455.28, the classification which is finally approved at said hearing by the board shall remain the basis of all future assessments for the purposes of said district as provided in section 455.56. The landowners shall have the same right of appeal from this classification as they would have if the petition had not requested a classification prior to establishment and the classification had been made after establishment.

**Sec. 455.20. Notice of Hearing.** When any plan and report of the engineer has been approved by the board, such approval shall be entered of record in its proceedings as a tentative plan only for the establishment of said improvement. Thereupon it shall enter an order fixing a date for the hearing upon the petition not less than forty days from the date of the order of approval, and directing the auditor immediately to cause notice to be given to the owner of each tract of land or lot within the proposed levee or drainage district as shown by the transfer books of the auditor's office, including railway companies having right of way in the proposed district and to all lienholders or encumbrancers of any land within the proposed district without naming them, and also to all other persons whom it may concern, and without naming individuals all actual occupants of the land in the proposed district, of the pendency and prayer of the said petition, the favorable report thereon by the engineer, and that such report may be amended before final action, the approval thereof by the board as a tentative plan, and the day and the hour set for hearing on said petition and report, and that all claims for damages except claims for land required for right-of-way, and all objections to the establishment of said district for any reason must be made in writing and filed in the office of the auditor at or before the time set forth for such hearing.

**Sec. 455.21. Service by Publication — Copy Mailed — Proof.** The notice provided in section 455.20 shall be served, except as otherwise hereinafter provided, by publication thereof once in some newspaper of general circulation published in the county, which publication shall be not less than twenty days prior to the day set for hearing. Proof of such service shall be made by affidavit of the publisher. Copy of such notice shall also be sent by ordinary mail to each person and to the clerk or recorder of each city named therein at his last known mailing address unless there is on file an affidavit of the auditor, or of a person designated by the board to make the necessary investigation, stating that no mailing address is known and that diligent inquiry has been made to ascertain it. Such copy of notice shall be mailed not less than twenty days before the day set for hearing and proof of such service shall be by affidavit of the auditor. Proofs of service required by this section shall be on file at the time the hearing begins.

**Sec. 455.22. Service on agent.** If any person, corporation, or company owning or having interest in any land or other property affected by any proposed improvement under chapters 455 to 467D\* shall file with the auditor an instrument in writing designating the name and post-office address of the agent of the person, corporation, or company upon whom service of notice of said proceeding shall be made, the auditor shall, not less than twenty days prior to the date set for hearing upon said petition,



send a copy of said notice by certified mail addressed to the agent so designated. Proof of such service shall be made by affidavit of the auditor filed in said proceeding at or before the date of the hearing upon the petition, and such service shall be in lieu of all other service of notice to such persons, corporations, or companies.

This designation when filed shall be in force for a period of five years thereafter and shall apply to all proceedings under said chapters during such period. The person, company, or corporation making such designation shall have the right to change the agent appointed therein or to amend it in any other particular.

**Sec. 455.23. Personal Service.** In lieu of publication, personal service of said notice may be made upon any owner of land in the proposed district, or upon any lienholder or other person interested in the proposed improvement, in the manner and for the time required for service of original notices in the district court. Proof of such service shall be on file with the auditor on the date of said hearing.

**Sec. 455.24. Waiver of notice.** No service of notice shall be required upon any person who shall file with the auditor a statement in writing, signed by him, waiving notice, or who enters an appearance in the proceedings. The filing of a claim for damages or objections to the establishment of said district or other pleading shall be deemed an appearance.

**Sec. 455.25. Waiver of Objections and Damages.** Any person, company, or corporation failing to file any claim for damages or objections to the establishment of the district at or before the time fixed for said hearing, except claims for land required for right of way, or for settling basins, shall be held to have waived all objections and claims for damages.

**Sec. 455.26. Adjournment for Service — Jurisdiction Retained.** If at the date set for hearing, it shall appear that any person entitled to notice has not been properly served with notice, the board may postpone said hearing and set another time for the same not less than thirty days from said date, and notice of such hearing as hereinbefore provided shall be served on such omitted parties. By fixing such new date for hearing and the adjournment of said proceeding to said date, the board shall not lose jurisdiction of the subject matter of said proceeding nor of any parties already served with notice.

**Sec. 455.27. Hearing of Petition — Dismissal.** At the time set for hearing on said petition the board shall hear and determine the sufficiency of the petition in form and substance (which petition may be amended at any time before final action thereon), and all objections filed against the establishment of such district, and the board may view the premises included in the said district. If it shall find that the construction of the proposed improvement will not materially benefit said lands or would not be for the public benefit or utility nor conducive to the public health, convenience, or welfare, or that the cost thereof is excessive it shall dismiss the proceedings.

**Sec. 455.28. Establishment — Further Investigation.** If the board shall find that such petition complies with the requirements of law in form and substance, and that such improvement would be conducive to the public health, convenience, welfare, benefit, or utility, and that the cost thereof is not excessive, and no claim shall have been filed for damages, it may locate and establish the said district in accordance with the recommendation of the engineer and the report and plans on file; or it may refuse to establish the proposed district if it deem best, or it may direct the engineer or another one employed for that purpose to make further examination, surveys, plats, profiles, and reports for the modification of said plans, or for new plans in accordance with sections 455.17 and 455.18, and continue further hearing to a fixed date. All parties over whom the board then has jurisdiction shall take notice of such further



hearing; but any new parties rendered necessary by any modification or change of plans shall be served with notice as for the original establishment of a district. The county auditor shall appoint three appraisers as provided for in section 455.30 to assess the value of the right of way required for open ditches or other improvements.

**Sec. 455.29. Settling Basins — Purchase or Lease of Lands.** If a settling basin or basins are provided as a part of a drainage improvement, the board of supervisors may buy or lease the necessary lands in lieu of condemning said lands. The board may by purchase acquire the necessary lands required for right of way for open ditches or other improvements in lieu of condemning said lands.

**Sec. 455.30. Appraisers.** If the board shall find that such improvements will materially benefit said lands, will be conducive to the public health, convenience, welfare, benefit, or utility, and that the law has been complied with as to form and substance of the petition, the service of notice and the survey and report of the engineer, and that said improvement should be made, then if any claims for damages shall have been filed, further proceedings shall be continued to an adjourned, regular, or special session, the date of which shall be fixed at the time of adjournment, and of which all interested parties shall take notice, and the auditor shall appoint three appraisers to assess damages, one of whom shall be an engineer, and two freeholders of the county who shall not be interested in nor related to any person interested in the proposed improvement, and the said appraisers shall take and subscribe an oath to examine the said premises, ascertain and impartially assess all damages according to their best judgment, skill, and ability.

**Sec. 455.31. Assessment — Report — Adjournment — Other Appraisers.** The appraisers appointed to assess damages shall view the premises and determine and fix the amount of damages to which each claimant is entitled, and shall place a separate valuation upon the acreage of each owner taken for right of way for open ditches, or for settling basins, as shown by plat of engineer, and shall, at least five days before the date fixed by the board to hear and determine the same, file with the county auditor reports in writing, showing the amount of damage sustained by each claimant. Should the report not be filed in time, or should any good cause for delay exist, the board may postpone the time of final action on the subject, and, if necessary, the auditor may appoint other appraisers.

**Sec. 455.32. Award By Board.** At the time fixed for hearing and after the filing of the report of the appraisers, the board shall examine said report, and may hear evidence thereon, both for and against each claim for damages and compensation, and shall determine the amount of damages and compensation due each claimant, and may affirm, increase, or diminish the amount awarded by the appraisers.

**Sec. 455.33. Dismissal or Establishment.** The board shall at said meeting, or at an adjourned session thereof, consider the costs of construction of said improvement as shown by the reports of the engineer and the amount of damages and compensation awarded to all claimants, and, if in its opinion, such costs of construction and amount of damages awarded create a greater burden than should justly be borne by the lands benefited by the improvement, it shall then dismiss the petition and assess the costs and expenses to the petitioners and their bondsmen, but if it finds that such cost and expense is not a greater burden than should be justly borne by the land benefited by the improvement, it shall finally and permanently locate and establish said district and improvement.

**Sec. 455.34. Dismissal on Remonstrance.** If, at or before the time set for final hearing as to the establishment of a proposed levee, drainage or improvement district, except subdrainage district, there shall have been filed with the county auditor, or auditors, in case the district extends into more than one county, a remonstrance signed



by a majority of the land owners in the district, and these remonstrances must in the aggregate own seventy per cent or more of the lands to be assessed for benefits or taxed for said improvements, remonstrating against the establishment of said levee, drainage or improvement district, setting forth the reasons therefor, the board or boards as the case may be, shall assess to the petitioners and their bondsmen or apportion the costs among them as the board or boards may deem just or as said parties may agree upon. When all such costs have been paid, the board or boards of supervisors shall dismiss said proceedings and cause to be filed with the county auditor all surveys, plats, reports, and records in relation to the proposed district.

**Sec. 455.35. Dissolution.** When for a period of two years from and after the date of the establishment of a drainage district, or when an appeal is taken or litigation brought against said district within two years from the date such appeal or litigation is finally determined, no contract shall have been let or work done or drainage certificates or bonds issued for the construction of the improvements in such district, a petition may be filed in the office of the auditor, addressed to the board of supervisors, signed by a majority of the persons owning land in such district and who, in the aggregate, own sixty per cent or more of all the land embraced in said district, setting forth the above facts and reciting that provision has been made by the petitioners for the payment of all costs and expenses incurred on account of such district. The board shall examine such petition at its next meeting after the filing thereof, and if found to comply with the above requirements, shall dissolve and vacate said district by resolution entered upon its records, to become effective upon the payment of all the costs and expenses incurred in relation to said district. In case of such vacation and dissolution and upon payment of all costs as herein provided, the auditor shall note the same on the drainage record, showing the date when such dissolution became effective.

**Sec. 455.36. Permanent Survey, Plat, and Profile.** When the improvement has been finally located and established, the board may if necessary appoint the said engineer or a new one to make a permanent survey of said improvement as so located, showing the levels and elevations of each forty-acre tract of land and file a report of the same with the county auditor together with a plat and profile thereof.

**Sec. 455.37. Paying or Securing Damages.** The amount of damages or compensation finally determined in favor of any claimant, shall be paid in the first instance by the parties benefited by the said improvement, or secured by bond in the amount of such damages and compensation with sureties approved by the auditor.

**Sec. 455.38. Division of Improvement.** After the damages as finally fixed, shall have been paid or secured, the board may divide said improvement into suitable sections, having regard to the kind of work to be done, numbering the same consecutively from outlets to the beginning, and prescribing the time within which the improvement shall be completed. A settling basin, if provided for, may be embraced in a section by itself.

**Sec. 455.39. Supervising Engineer — Bond.** Upon the payment or securing of damages, the board shall appoint a competent engineer to have charge of the work of construction thereof, who shall be required before entering upon the work to give a bond to the county for the use and benefit of the levee or drainage district, to be approved by the auditor in such sum as the board may fix, conditioned for the faithful discharge of his duties.

**Sec. 455.40. Advertisement for Bids.** The board shall cause notice to be given by publication once each week for two consecutive weeks in some newspaper published in the county wherein such improvement is located, and such additional advertisement and publication elsewhere as it may direct, of the time and place of letting the work



of construction of said improvement, specifying the approximate amount of work to be done in each numbered section of the district, the time fixed for the commencement, and the time of completion thereof, that bids will be received on the entire work and in sections or divisions thereof, and that each bidder will be required to deposit with his bid cash or certified check on and certified by a bank in Iowa, payable to the auditor or his order, at his office, in an amount equal to ten percent of his bid, in no case to exceed ten thousand dollars. When the estimated cost of the improvement exceeds fifteen thousand dollars, the board may make additional publication for two consecutive weeks in some contractor's journal of general circulation giving only the type of proposed construction or repairs, estimated amount, date of letting, amount of bidder's bond, and the name and address of the county auditor. All notices shall fix the date to which bids will be received, and upon which said work will be let. Except however, when the estimated cost of the improvement is less than twenty-five hundred dollars, the board may let the contract for such construction without taking bids therefor and without publishing any notice as above provided.

**Sec. 455.41. Bids — Letting of Work.** The board shall award contract or contracts for each section of the work to the lowest responsible bidder or bidders therefor, bids to be submitted, received and acted upon separately as to the main drain and each of the laterals, and each settling basin, if any, exercising their own discretion as to letting such work as to the main drain as a whole, or as to each lateral as a whole, or by sections as to both main drain and laterals, and reserving the right to reject any and all bids and readvertise the letting of the work.

**Sec. 455.42. Manner of making bid — deposit.** Each bid shall be in writing, specifying the portion of the work upon which the bid is made, and filed with the auditor, accompanied with a deposit of cash or a certified check on and certified by a bank in Iowa, payable to the auditor or his order at his office in a sum equal to ten percent of the amount of the bid, but in any event not to exceed ten thousand dollars. However, if the maximum limit on bid deposits would cause a denial of funds or services from the federal government which would otherwise be available, or if the maximum limit would otherwise be inconsistent with the requirements of federal law, the maximum limit may be suspended to the extent necessary to prevent denial of federal funds or services or to eliminate the inconsistency with federal requirements. The checks of unsuccessful bidders shall be returned to them, but the checks of successful bidders shall be held as a guarantee that they will enter into contract in accordance with their bids.

**Sec. 455.43. Performance Bond — Return of Check.** Each successful bidder shall be required to execute a bond with sureties approved by the auditor in favor of the county for the use and benefit of the levee or drainage district and all persons entitled to liens for labor or material in an amount not less than seventy-five per cent of the contract price of the work to be done, conditioned for the timely, efficient, and complete performance of his contract, and the payment, as they become due, of all just claims for labor performed and material used in carrying out said contract. When such contract is executed and bond approved by the board, the certified check deposited with the bid shall be returned to the bidder.

**Sec. 455.44. Contracts.** All agreements and contracts for work or materials in constructing the improvements of such district shall be in writing, signed by the chairman of the board of supervisors for and on behalf of the district and the parties who are to perform the work or furnish the materials specified in such contract. Such contract shall specify the particular work to be done or materials to be furnished, the time when it shall begin and when it shall be completed, the amount to be paid and the times of payment, with such other terms and conditions as to details necessary to a clear understanding of the terms thereof.



**Sec. 455.45. Commissioners to Classify and Assess.** When a levee or drainage district shall have been located and finally established, or, unless otherwise provided by law, when the required proceedings have been taken to enlarge, deepen, widen, change, or extend any of the ditches, laterals, settling basins, or drains of such district, or the required proceedings have been had to annex additional lands to such district, or a plan of the United States Government for original construction of the improvements in such district has been heretofore or hereafter adopted by such district under the provisions of section four hundred fifty-five point two hundred two (455.202) to four hundred fifty-five point two hundred seventeen (455.217), the board shall appoint three commissioners to assess benefits and classify the lands affected by such improvement. One of such commissioners shall be a competent civil engineer and two of them shall be resident freeholders of the county in which the district is located, but not living within, nor interested in any land included in, said district, nor related to any party whose land is affected thereby. The commissioners shall take and subscribe an oath of their qualifications and to perform the duties of classification of said lands, fix the percentages of benefits and apportion and assess the cost and expenses of constructing the said improvement according to law and their best judgment, skill, and ability. If said commissioners or any of them fail or neglect to act or perform the duties in the time and as required of them by law, the board shall appoint others with like qualifications to take their places and perform said duties.

**Sec. 455.46. Duties — Time for Performance — Scale of Benefits.** At the time of appointing said commissioners, the board shall fix the time within which said assessment, classification, and apportionment shall be made, which may be extended for good cause shown. Within twenty days after their appointment, they shall begin to inspect and classify all the lands within said district, or any change, extension, enlargement, or relocation thereof in tracts of forty acres or less according to the legal or recognized subdivisions, in a graduated scale of benefits to be numbered according to the benefits to be received by each of such tracts from such improvement, and pursue said work continuously until completed and, when completed, shall make a full, accurate, and detailed report thereof and file the same with the auditor. The lands receiving the greatest benefit shall be marked on a scale of one hundred, and those benefited in a less degree with such percentage of one hundred as the benefits received bear in proportion thereto. They shall also make an equitable apportionment of the costs, expenses, fees, and damages computed on the basis of the percentages fixed.

**Sec. 455.47. Rules of Classification.** In the report of the appraisers so appointed they shall specify each tract of land by proper description, and the ownership thereof, as the same appears on the transfer books in the auditor's office.

In estimating the benefits as to the lands not traversed by said improvement, they shall not consider what benefits such land shall receive after some other improvements shall have been constructed, but only the benefits which will be received by reason of the construction of the improvement in question as it affords an outlet to the drainage of such lands, or brings an outlet nearer to said lands or relieves the same from overflow and relieves and protects the same from damage by erosion.

**Sec. 455.48. Assessment for Lateral Ditches — Reclassification of Benefited Lands.**

1. In fixing the percentages and assessments of benefits and apportionment of costs of construction to lands benefited by lateral ditches and drains as a part of the entire improvement to be made in a drainage district, the commissioners shall ascertain and fix the percentage of benefits and apportionment of costs to the lands benefited by such lateral ditches on the same basis and in the same manner as if said lateral was, with its sublaterals, being constructed as a subdistrict as provided in this chapter, reporting separately:



a. The percentage of benefits and amount accruing to each forty-acre tract or less on account of the construction of the main ditch, drain, or watercourse including pumping plant, if any.

b. The percentage of benefits and amount accruing to each forty-acre tract or less on account of the construction of such lateral improvement.

2. When there has been a repair or improvement to a lateral ditch or drain as provided in section 455.135 and the lands benefited by the lateral have not been classified as provided in this section, then the board may order a classification of said lands and the commission shall ascertain and fix the percentage of benefits and apportionment of costs to the lands benefited by such lateral ditches or drains on the same basis and in the same manner as if said lateral was with its sublaterals being constructed as a subdistrict as provided in this chapter. Whenever this procedure is followed for the classification of any lateral ditch or drain in a given district, the board shall simultaneously follow the same procedure for the main drains and all other lateral ditches or drains in the district which have not been classified as prescribed in this section.

**Sec. 455.49. Railroad Property — Collection.** The commissioners to assess benefits and make apportionment of costs and expenses shall determine and assess the benefits to the property of any railroad company extending into or through the levee or drainage district, and make return thereof showing the benefit and the apportionment of costs and expenses of construction. Such assessment when finally fixed by the board shall constitute a debt due from the railroad company to the district, and unless paid it may be collected by ordinary proceedings for the district in the name of the county in any court having jurisdiction. All other proceedings in relation to railroads, except as otherwise provided, shall be the same as provided for individual property owners within the levee or drainage district.

**Sec. 455.50. Public highways and state-owned lands** When any public highway or other public land extends into or through a levee or drainage district, the commissioners to assess benefits shall ascertain and return in their report the amount of benefits and the apportionment of costs and expenses to such highway or other public land, and the board of supervisors shall assess the same against such highway and land.

Such assessments against primary highways and other state-owned lands under the jurisdiction of the state department of transportation shall be paid by the state department from the primary road fund on due certification of the amount by the county treasurer to said department, and against all secondary roads and other county owned lands under the jurisdiction of the board of supervisors, from the secondary road construction fund or from the secondary road maintenance fund, or from both of said funds.

When any state-owned lands under the jurisdiction of the state conservation commission are situated within a levee or drainage district, the commissioners to assess benefits shall ascertain and return in their report the amount of benefits and the apportionment of costs and expenses to such lands and the board of supervisors shall assess the same against such lands.

Such assessments against lands used by the fish and game division of the state conservation commission shall be paid by the state conservation commission from the state fish and game protection fund on due certification of the amount by the county treasurer to said commission, and against lands used by the division of lands and waters from the state conservation funds.

**Sec. 455.51. Report of Commissioners.** The commissioners, within the time fixed or as extended, shall make and file in the auditor's office a written verified report



in tabulated form as to each forty acre tract, and each tract of less than forty acres, setting forth:

1. The names of the owners thereof as shown by the transfer books of the auditor's office or the reports of the engineer on file, showing said entire classification of lands in said district.
2. The amount of benefits to highway and railroad property and the percentage of benefits to each of said other tracts and the apportionment and amount of assessment of cost and expense, or estimated costs or expense, against each:
  - a. For main ditches, and settling basins.
  - b. For laterals.
  - c. For levees and pumping station.
  - d. For erosion protection and control or flood control\*.
3. The aggregate amount of all assessments.
4. Any specific benefits other than those derived from the drainage of agricultural lands shall be separately stated.

\*See 53GA, ch. 204, Sec. 10.

**Sec. 455.52. Notice of Hearing.** The board shall fix a time for a hearing upon the report of the commissioners, and the auditor shall cause notice to be served upon each person whose name appears as owner, naming him, and also upon the person or persons in actual occupancy of any tract of land without naming him, of the day and hour of such hearing, which notice shall be for the same time and served in the same manner as is provided for the establishment of a levee or drainage district, and shall state the amount of assessment of costs and expenses of construction apportioned to each owner upon each forty-acre tract or less, and that all objections thereto must be in writing and filed with the auditor at or before the time set for such hearing.

**Sec. 455.53. Hearing and Determination.** At the time fixed or at an adjourned hearing, the board shall hear and determine all objections filed to said report and shall fully consider the said report, and may affirm, increase, or diminish the percentage of benefits or the apportionment of costs and expenses made in said report against any body or tract of land in said district as may appear to the board to be just and equitable.

**Sec. 455.54. Evidence — Conclusive Presumption.** At such hearing, the board may hear evidence both for and against the approval of said report or any portion thereof, but it shall not be competent to show that any of the lands in said district assessed for benefits or against which an apportionment of costs and expenses has been made will not be benefited by such improvement in some degree. Any interested party may be heard in argument by himself or counsel.

**Sec. 455.55. Notice of Increased Assessment.** The board shall cause notice to be served upon the owner of any tract of land or easement against which it is proposed to increase the assessment, requiring him to appear at a fixed date and show cause why such assessment should not be so increased. Such notice shall be served for the time and in the manner prescribed in section four hundred fifty-five point twenty-one (455.21) or section four hundred fifty-five point twenty-two (455.22), as the case may be, except that personal service in the same manner as an original notice may be made in lieu of the other methods.

**Sec. 455.56. Classification as Basis for Future Assessments.** A classification of land for drainage, erosion or flood control purposes, when finally adopted, shall remain the basis of all future assessments for the purpose of said district unless revised by the board in the manner provided for reclassification, except that where land included in said classification has been destroyed, in whole or in part, by the erosion of a river, or where additional right of way has been subsequently taken for drainage purposes, said land which has been so eroded and carried away by the action of a river or which has been taken for additional right of way, may be removed by said



board from said district as classified, without any reclassification, and no assessment shall thereafter be made on the land so removed. Any deficiency in assessment existing as the result of said action of the board shall be spread by it over the balance of lands remaining in said district in the same ratio as was fixed in the classification of the lands, payable at the next taxpaying period.

Except districts established by mutual agreement in accordance with section 455.152 in the event any forty-acre tract or less, or any lot, tract, or parcel, as set forth in the existing classification or reclassification of any drainage district now or hereafter established, is divided into two or more tracts, whether such division is by sale or condemnation or platted as a subdivision, the classification of the original tract shall be apportioned to the resulting parcels, regardless of use, except for land taken for additional drainage right of way. The classification of the original tract may be apportioned between the resulting parcels by agreement between the parties to such division. The parties shall file with the county auditor a written agreement setting forth the original description and the description of the tracts as subdivided and the percentage of the original classification apportioned to each. This agreement shall bear the signature of all of the parties to such subdivision. The agreement contemplated herein may be contained in the deed or other instrument effecting the division of the land, which agreement shall be binding upon the grantee or grantees by their acceptance of such instrument and their signatures shall not be necessary. The auditor shall enter this agreement in the drainage record and amend the current classification of the district in accordance with such agreement.

In the event the parties to such subdivision cannot agree as to the apportionment of the percentage classification, the board of supervisors shall, upon application of either party, appoint a commission having the qualifications of commissioners, in accordance with section 455.45. The commissioners shall inspect the lands involved and apportion the existing classification of the original tract equitably and fairly to each of the several tracts as subdivided and shall make a full, accurate and detailed report thereof and file the same with county auditor within the time set by the board. The report of the commissioners shall set forth the names of the owners thereof, the description of each of the tracts and the percentage of the original classification that each such tract shall bear (1) for main ditches and settling basins, (2) for laterals, (3) for levees and pumping station. Thereafter all the proceedings in relation thereto as to notice of hearing and fixing of percentage benefits shall be as in this chapter provided in relation to original classification and assessments, and at such hearing, the board may affirm, increase or diminish the percentage of benefits so as to make them just and equitable, and cause the record of the existing classification, percentage of benefits or assessments, or both, to be modified accordingly. In the event the parties neither agree as to the apportionment of classification nor make application for the apportionment of commissioners, then the auditor of the county in which the land is situated shall make such apportionment upon an equitable basis and enter the same of record as herein provided. No tract of land included within the boundary of any drainage district shall be exempt from drainage assessments or reassessments, except as herein provided.

**Sec. 455.57. Levy — Interest.** When the board has finally determined the matter of assessments of benefits and apportionment, it shall levy such assessments as fixed by it upon the lands within such district, but any assessment on any tract, parcel or lot within the district which is computed at less than two dollars shall be fixed at the sum of two dollars. All assessments shall be levied at that time as a tax and shall bear interest at not to exceed seven percent per annum from that date, payable annually, except as hereinafter provided as to cash payments thereof within a specified time.

**Sec. 455.58. Lien of Tax.** Such taxes shall be a lien upon all premises against



which they are assessed as fully as taxes levied for state and county purposes.

**Sec. 455.59. Levy for Deficiency.** If the first assessment made by the board for the original cost or for repairs of any improvement is insufficient, the board shall make an additional assessment and levy in the same ratio as the first for either purpose, payable at the next taxpaying period after such indebtedness is incurred subject, however, to the provisions of Section 455.64. Any assessment made under this section on any tract, parcel or lot within the district which is computed at less than two dollars shall be fixed at the sum of two dollars.

**Sec. 455.60. Record of Drainage Taxes.** All drainage or levee tax assessments shall be entered in the drainage record of the district to which they apply, and also upon the tax records of each county.

**Sec. 455.61. Funds — Disbursement — Interest.** Such taxes when collected shall be kept in a separate fund known as the county drainage or levee fund and shall be paid out only for purposes properly connected with and growing out of the county drainage and levee districts on order of the board. The auditor shall continue to keep a record of each of the drainage and levee district's funds so as to accurately reflect the financial condition of each such district account. The treasurer, on order of the board of supervisors, shall invest such funds not immediately needed for current operating expenses in United States government bonds, in time certificates of deposit, in savings accounts in such banks as the board shall approve, in the interest bearing obligations of the drainage and levee districts of the county, or as provided by chapter 453. Interest collected by the treasurer on the funds so invested shall be deposited in the county drainage or levee fund, and on July 1 of each year the auditor shall apportion and credit such interest to each drainage or levee district account in the proportion which the average credit balance of each district bears to the average balance of the county drainage or levee fund. The averages to be ascertained shall be the averages of the balances existing on the first of each month during the fiscal year immediately preceding. Interest and penalties collected on drainage or levee district taxes shall be credited to the district for which the taxes are being collected. This section shall not be construed so as to permit expenditures in behalf of any district in excess of its share of the county drainage or levee fund. The provisions of this section shall not apply to drainage and levee districts under trustee management unless the trustees consent thereto, and in the absence of such consent section 462.29 shall apply.

**Sec. 455.62. Assessments — Maturity and Collection.** All drainage or levee tax assessments shall become due and payable at the same time as other taxes, and shall be collected in the same manner with the same penalties for delinquency and the same manner of enforcing collection by tax sales.

**Sec. 455.63. Payment Before Bonds or Certificates Issued.** All assessments for benefits, as corrected and approved by the board, shall be levied at one time against the property benefited, and when levied and certified by the board, shall be payable at the office of the county treasurer. Each person or corporation shall have the right, within twenty days after the levy of assessments, to pay his or its assessment in full without interest, and before any warrants against assessments, improvement certificate or drainage bond is issued therefor, and any certificate at any time after issue, with accrued interest.

**Sec. 455.64. Installment Payments — Waiver.** If the owner of any land against which a levy exceeding one hundred dollars has been made and certified shall, within thirty days from the date of such levy, agree in writing endorsed upon any improvement certificate referred to in section 455.77, or in a separate agreement, that in consideration of having a right to pay his assessment in installments, he will not make



any objection as to the legality of his assessment for benefit, or the levy of taxes against his property, then such owner shall have the following options:

1. To pay one-third of the amount of such assessment at the time of filing such agreement; one-third within twenty days after the engineer in charge shall certify to the auditor that the improvement is one-half completed; and the remaining one-third within twenty days after the improvement has been completed and accepted by the board. All such installments shall be without interest if paid at said times, otherwise said assessments shall bear interest from the date of the levy at the rate of not to exceed seven percent per annum, payable annually, and be collected as other taxes on real estate, with like penalty for delinquency.

2. To pay such assessments in not less than ten nor more than twenty equal installments, the number to be fixed by the board and interest at the rate fixed by the board, not exceeding seven percent per annum. One such installment shall be payable at the September semi-annual taxpaying date in each year; provided, however, that the county treasurer shall, at the September semi-annual taxpaying date, require only the payment of a sufficient portion of the assessments to meet the interest and the amount maturing on bonds or certificates prior to the regular time for the payment of the second installment of taxes and the balance shall be collected with such second installment and without penalty.

The provisions of this section and of Sections 455.65 to 455.68, may within the discretion of the board, also be made applicable to repairs and improvements made under the provisions of Section 455.135.

**Sec. 455.65. Installment Payments After Appeal.** When an owner takes an appeal from the assessment against any of his land, the option to pay in installments whatever assessment is finally established against such land in said appeal shall continue, if within twenty days after the final determination of said appeal he shall file in the office of the auditor his written election to pay in installments, and within said period pay such installments as would have matured prior to that time if no appeal had been taken, together with all accrued interest on said assessment to the last preceding interest-paying date.

**Sec. 455.66. Notice of Half and Full Completion.** Within two days after the engineer has filed a certificate that the work is half completed and within two days after the board of supervisors has accepted the completed improvement as in this chapter provided, the county auditor shall notify the owner of each lot or parcel of land who has signed an agreement of waiver as provided in Section 455.64, of such fact. Such notice shall be given by certified mail sent to such owners, respectively, at the addresses filed with the auditor at the time of making such agreement of waiver.

**Sec. 455.67. Lien of Deferred Installments.** No deferred installment of the amount assessed as between vendor and vendee, mortgagor and mortgagee shall become a lien upon the property against which it is assessed and levied until June 30 of the preceding fiscal year in which it is due and payable.

**Sec. 455.68. Surplus Funds — Application Of.** When one-half or more of all assessments for a drainage or levee district have been paid and it is ascertained that there will be surplus in the district fund after all assessments have been paid, the board may refund to the owner of each tract of land, not more than 50% of his proportionate part of such surplus. When all construction work has been completed and all cost paid, and all assessments have been paid in full, the board may refund, to the owner of each tract of land, his proportionate part of any surplus funds except such portion of the surplus as the board considers should be retained for a sinking fund to pay future maintenance and repair costs.



**Sec. 455.69. Change of Conditions — Modification of Plans.** If, after the improvement has been finally located and before construction thereof has been completed, there has been a change of conditions of such nature that the plan of improvement as adopted should be modified or amended, the board may direct the engineer appointed under section 455.36 or another engineer, to make a report showing such changes or modifications of the plan of improvement as may be necessary to meet the change of conditions. Upon the filing of such report, the board shall have jurisdiction to adopt said modified or amended plan of improvement or may further modify or amend and adopt the same by following the procedure provided in section 455.202, 455.206 to 455.210, inclusive so far as the same are applicable, except that awards for damages shall not be canceled where there has been no change made in the improvement which would increase or decrease the damages awarded.

However modification and changes may be made in the plan on which hearing was held without further notice or hearing, provided that some do not increase or decrease the estimated cost to the district by more than twenty-five percent.

**Sec. 455.70. Subdrainage District.** After the establishment of a drainage district, any person, company, or corporation owning land within such district which has been assessed for benefits, but which is separated from the main ditch, drain, or watercourse for which it has been so assessed, by the land of others, who desires a ditch or drain constructed from his land across the land of such others in order to connect with the main ditch, drain, or watercourse, and shall be unable to agree with such intervening owners on the terms and conditions on which he may enter upon their lands and cause to be constructed such connecting drain or ditch, may file a petition for the establishment of a subdistrict and thereafter the proceedings shall be the same as provided for the establishment of an original district.

**Sec. 455.71. Presumption — Jurisdiction.** Such connecting ditch or drain which he shall cause to be constructed shall be presumed conducive to the public health, welfare, convenience, an utility the same as if it had been so constructed as a part of the original improvement of said district. When such subdistrict has been established and constructed it shall become and be a part of the improvement of such drainage district as a whole and be under the control and supervision of the board to the same extent and in every way as if it had been a part of the original improvement of such district.

**Sec. 455.72. Reclassification.** When, after a drainage or levee district has been established, except districts established by mutual agreement in accordance with section four hundred fifty-five point one hundred fifty-two (455.152), and the improvements thereof constructed and put in operation, there has been a material change as to lands occupied by highway or railroad right-of-way or in the character of the lands benefited by the improvement, or when a repair improvement, or the extension has become necessary, the board may consider whether the existing assessments are equitable as a basis for payment of the expense of maintaining the district and of making the repair, improvement or extension. If they find the same to be inequitable in any particular, they shall by resolution express such finding, appoint three commissioners possessing the qualifications prescribed in section four hundred fifty-five point forty-five (455.45) and order a reclassification as follows:

1. If they find the assessments to be generally inequitable they shall order a reclassification of all property subject to assessment, such as lands, highways, and railroads in said district.

2. If the inequity ascertained by the board is limited to the proportion paid by highways or railroads, a general reclassification of all lands shall not be necessary but the commissioners may evaluate and determine the fair proportion to be paid by such highways or railroads or both as provided in sections four hundred fifty-five point forty-



nine (455.49) and four hundred fifty-five point fifty (455.50).

3. Any benefits of a character for which levee or drainage districts may be established and which are attributable to or enhanced by the improvement or by the repair, improvement, or extension thereof, shall be a proper subject of consideration in a reclassification notwithstanding the district may have been originally established for a limited purpose.

4. If after a district has been reclassified, the board in its judgment concludes there were errors in the reclassification or there is an inequitable assessment of benefits, the board may on its own motion, after notice to the landowners involved as provided in sections 455.20 to 455.24, and by resolution, order the district or any portion of the district to again be reclassified as prescribed in this section and in section 455.74.

Such reclassification when finally adopted shall remain the basis for all future assessments unless revised as provided in this chapter.

**Sec. 455.73. Bids Required.** In case the board shall finally determine that any such changes, as defined in section 455.69, shall be made involving an expenditure of five thousand dollars, or more, said work shall be let by bids in the same manner as is provided for the original construction of such improvements.

**Sec. 455.74. Procedure Governing Reclassification.** The proceedings for such reclassification shall in all particulars be governed by the same rules as for original classifications. The commissioners shall fix the percentage of actual benefits and make an equitable apportionment of the costs and expenses of such repairs, improvements or extensions and file a report thereof with the auditor in the same form and manner as for original classification. Thereafter all the proceedings in relation thereto as to notice, hearing, and fixing of percentage of benefits and amount of assessments shall be as in this chapter provided in relation to original classification and assessments, and at such hearing the board may affirm, increase or diminish the percentage and assessment of benefits and apportionment of costs and expenses so as to make them just and equitable, and cause the record of the original classification, percentage of benefits, and assessments to be modified accordingly.

**Sec. 455.75. Drainage Warrants Received for Assessments.** Warrants drawn upon the construction or maintenance funds of any district for which an assessment has been or must be levied, shall be transferable by endorsement, and may be acquired by any taxpayer of such district and applied at their accrued face value upon the assessment levied to create the fund against which the warrant was drawn; when the amount of the warrant exceeds the amount of the assessment, the treasurer shall cancel the said warrant, and give the holder thereof a certificate for the amount of such excess, which certificate shall be filed with the auditor, who shall issue a warrant for the amount of such excess, and charge the treasurer therewith. Such certificate is transferable by indorsement, and will entitle the holder to the new warrant, made payable to his order, and bearing the original number, preceded by the words, "Issued as unpaid balance due on warrant number \_\_\_\_\_".

**Sec. 455.76. Bonds Received for Assessments.** Bonds issued for the cost of construction, maintenance or repair of any drainage or levee district, or for the refunding of any obligation of such district, may be acquired by any taxpayer or group of taxpayers of such district, and applied at their face value in the order of their priority, if any priority exists between bonds of the same issue, upon the payment of the delinquent and/or future assessments levied against the property of such taxpayers to pay off the bonds so acquired; the interest coupons attached to such bonds, may likewise be applied at their face value to the payment of assessments for interest accounts, delinquent or future.



**Sec. 455.77. Installment Assessments — Interest-Bearing Warrants — Improvement Certificates.** The board may provide by resolution for the payment of assessments in not more than twenty annual installments with interest at not to exceed seven percent per annum. The board may issue warrants bearing interest at the same rate, which warrants shall be numbered and state a maturity date in which event they shall bear interest from the date of issuance without being presented for payment and marked unpaid for want of funds. The warrants may be sold by the board for cash in an amount not less than the face value thereof, together with accrued interest, if any.

The board may provide by resolution for the issuance of improvement certificates payable to bearer or to the contractors, naming them, who have constructed the said improvement or completed any part thereof, in payment or part payment of such work.

**Sec. 455.78. Form, Negotiability, and Effect.** Each of such certificates shall state the amount of one or more drainage assessments or part thereof made against the property, designating it and the owner thereof liable for the payment of such assessments. Said certificates shall be negotiable and transfer to the bearer all right and interest in and to the tax in every such assessment or part thereof described in such certificates, and shall authorize such bearer to collect and receive every assessment embraced in said certificate by or through any of the methods provided by law for their collection as the same mature.

**Sec. 455.79. Interest — Place of Payment.** Such certificate shall bear interest not to exceed seven percent per annum, payable annually, and shall be paid by the taxpayer to the county treasurer, who shall receipt for the same and cause the amount to be credited on the certificates issued therefor.

**Sec. 455.80. Sale at Par — Right to Pay.** Any person shall have the right to pay the amount of his assessment represented by any outstanding improvement certificate, with the interest thereon to the date of such payment, at any time. No improvement certificate shall be issued or negotiated for the use of the drainage district for less than par value with accrued interest up to the delivery or transfer thereof. Every such certificate, when paid, shall be delivered to the treasurer and by him surrendered to the party to whose assessment it relates.

**Sec. 455.81. Drainage Bonds.** When a drainage district has been established or the making of any subsequent repair or improvement determined upon, if the board of supervisors shall find that the cost of such improvement will create assessments against the land included therein greater than should be levied in a single year upon the lands benefited by such improvement, then, instead of issuing improvement certificates, as provided in section 455.77 to 455.80, inclusive, the board may fix the amount that shall be levied and collected each year until such cost and expenses are paid, and may issue drainage bonds of the county covering all assessments exclusive of assessments of one hundred dollars and less.

Before such bonds shall be issued, the governing body of the district shall cause an action for declaratory judgment to be brought in the district court of the county in which the bonds are to be issued, asking that their legality be confirmed. The court shall fix a date for hearing thereon and notice thereof shall be given to the owner of each lot or tract of land within the district, which shall be affected by an assessment to pay the proposed bonds, as shown by the transfer books in the auditor's office, also to the holders of liens of record upon said lands; and to all persons to whom it may concern without naming them specifically. Such notice shall be given by publication and by mailing for the same time in advance of hearing and in the same manner prescribed in section four hundred fifty-five point twenty-one (455.21). After the entry of the declaratory judgment adjudicating the validity of such bonds, the approval of the district court shall be indorsed on the bonds before their issuance.



**Sec. 455.82. Form.** Each of such bonds shall be numbered and have printed upon its face that it is a "Drainage Bond", stating the county and number of the district for which it is issued, the date and maturity thereof, that it is in pursuance of a resolution of the board of supervisors, that it is to be paid only from taxes for levee drainage improvement purposes levied and collected on the lands assessed for benefits within the district for which the bond is issued.

**Sec. 455.83. Amount — Interest — Maturity.** In no case shall the aggregate amount of all bonds issued exceed the benefits assessed. Such bonds shall not be issued for a greater amount than the aggregate amount of assessments for the payment of which they are issued, nor for a longer period of maturity than twenty years, and bear a rate of interest not to exceed seven per cent per annum, payable semi-annually, on June first and December first of each year. Whenever the interest on bonds issued pursuant to the provisions of the Chapter exceeds 4% per annum, the interest on unpaid assessments shall equal the interest on such bonds but not to exceed 7% per annum, the provisions of sections 455.57 and 455.64 to the contrary notwithstanding.

**Sec. 455.84. Maturity — interest — highway benefits.** The board shall fix the amount, maturity, and interest of all bonds to be issued. It shall determine the amount of assessments to highways for benefits within the district to be covered by each bond issue. The taxes levied for benefits to highways and other public lands within any drainage or levee district shall be paid at the same times and in the same proportion as assessments against the lands of private owners.

**Sec. 455.85.** Repealed by 55th G.A., Chapter 212.

**Sec. 455.86. Sale or Application at Par — Premium.** Such bonds may be applied at par with accrued interest to the payment of work as it progresses upon the improvements of the district, or, the board may sell, through the county treasurer, said bonds at not less than par with accrued interest and devote the proceeds to such payment. Any premium derived from the sale of said bonds shall be credited to the drainage fund of the district.

**Sec. 455.87. Deficiency Levy — Additional Bonds.** If any levy of assessments is not sufficient to meet the interest and principal of outstanding bonds, or if default shall occur by reason of non-payments of assessments, additional assessments may be made on the same classification as the previous ones. Additional bond issues may be made when necessary to complete full payment for improvements, by the same proceedings as previous issues.

**Sec. 455.88. Funding or Refunding Indebtedness.** Drainage districts may settle, adjust, renew or extend the time of payments of the legal indebtedness they may have, or any part thereof, in the sum of one thousand dollars or upwards, whether evidenced by bonds, warrants, certificates or judgments, and may fund or refund the same and issue bonds therefor, in the manner provided in section 461.13.

**Sec. 455.89. Record of Bonds.** A record of the numbers, amounts, and maturities of all such bonds shall be kept by the auditor showing specifically the lands embraced in the district upon which the tax has not been previously paid in full.  
(Parrott's Form No. 56-5, loose leaf.)

**Sec. 455.90. Assessments Payable in Cash.** All assessments of twenty dollars and less shall be paid in cash.

**Sec. 455.91. Payment Before Bonds Issued.** The board at the time of making the levy, shall fix a time within which all assessments in excess of one hundred dollars may be paid in cash, and before any bonds are issued, publish notice in an official newspaper in the county where the district is located, of such time. After the expira-



tion of such time, no assessments may be paid except in the manner and at the times fixed by the board in the resolution authorizing the issue of the bonds.

**Sec. 455.92. Appeals.** Any person aggrieved may appeal from any final action of the board in relation to any matter involving his rights, to the district court of the county in which the proceeding was held.

**Sec. 455.93. Appeals in Intercounty Districts.** In districts extending into two or more counties, appeals from final orders resulting from the joint action of the several boards or board of trustees of such district may be taken to the district court of any county into which the district extends.

**Sec. 455.94. Time and Manner.** All appeals shall be taken within twenty days after the date of final action or order of the board from which such appeal is taken by filing with the auditor a notice of appeal, designating the court to which the appeal is taken and the order or action appealed from, and stating that the appeal will come on for hearing thirty days following perfection of the appeal with allowances of additional time for good cause shown. This notice shall be accompanied by an appeal bond with sureties to be approved by the auditor conditioned to pay all costs adjudged against the appellant and to abide the orders of the court.

**Sec. 455.95. Transcript.** When notice of any appeal with the bond as required by the section 455.95 shall be filed with the auditor, he shall forthwith make and certify a transcript of the notice of appeal and appeal bond, and file the same with the clerk.

**Sec. 455.96. Petition — Docket Fee — Waiver — Dismissal.** Within twenty days after perfection of the appeal the appellant shall file a petition setting forth the order or final action of the board appealed from and the grounds of his objections and his complaint with a copy of his claims for damages or objections filed by him with the auditor. He shall pay to the clerk the filing fee as provided by law in other cases. A failure to pay the filing fee or to file such petition shall be deemed a waiver of the appeal and in such case the court shall dismiss the same.

**Sec. 455.97. Pleadings on Appeal.** It shall not be necessary for the appellees to file an answer to the petition unless some affirmative defense is made thereto, but they may do so.

**Sec. 455.98. Proper Parties — Employment of Counsel.** In all actions or appeals affecting the district, the board of supervisors shall be a proper party for the purpose of representing the district and all interested parties therein, other than the adversary parties, and the employment of counsel by the board shall be for the purpose of protecting the rights of the district and interested parties therein other than the adversary parties.

**Sec. 455.99. Plaintiffs and Defendants.** In all appeals or actions adversary to the district, the appellant or complaining party shall be entitled the plaintiff, and the board of supervisors and drainage district it represents, the defendants.

**Sec. 455.100. Right of Board and District to Sue.** In all appeals or actions for or in behalf of the district, the board and the drainage district it represents may sue as the plaintiffs.

**Sec. 455.101. Trial on Appeal — Consolidation.** Appeals from orders or actions of the board fixing the amount of compensation for lands taken for right of way or the amount of damages to which any claimant is entitled shall be tried as ordinary proceedings. All other appeals shall be triable in equity. The court may, in its discretion, order the consolidation for trial of two or more such equitable cases.



**Sec. 455.102. Conclusive Presumption on Appeal.** On the trial of an appeal from the action of the board in fixing and assessing the amount of benefits to any land within the district as established, it shall not be competent to show that any lands assessed for benefits within said district as established are not benefited in some degree by the construction of the said improvement.

An exception to the conclusiveness of an assessment under this section shall be in those cases where it has been determined under section 455.201 that land has later been deprived of benefits received by a division of the district by some other improvement.

**Sec. 455.103. Order As to Damages — Duty of Clerk.** If the appeal is from the action of the board as to the amount of damages or compensation awarded, the amount found by the court shall be entered of record, but no judgment shall be rendered therefor. The amount thus ascertained shall be certified by the clerk of said court to the board of supervisors who shall thereafter proceed as if such amount had been by it allowed to the claimant.

**Sec. 455.104. Costs.** Unless the result on the appeal is more favorable to the appellant than the action of the board, all costs of the appeal shall be taxed to the appellant, but if more favorable, the cost shall be taxed to the appellees.

**Sec. 455.105. Decree As to Establishing District or Including Lands.** On appeal from the action of the board in establishing or refusing to establish said district, or in including land within the district, the court may enter such order or decree as may be equitable and just in the premises, and the clerk of said court shall certify the decree or order to the board of supervisors which shall proceed thereafter in said matter as if such order had been made by the board. The taxation of costs among the litigants shall be in the discretion of the court.

**Sec. 455.106. Appeal as Exclusive Remedy — Non Appellants.** Upon appeal the decision of the court shall in no manner affect the rights or liabilities of any person who did not appeal. The remedy by appeal provided for in this chapter shall be exclusive of all other remedies.

**Sec. 455.107. Reversal By Court — Rescission By Board.** In any case where the decree has been entered setting aside the establishment of a drainage district for errors in the proceedings, and such decree becomes final, the board shall rescind its order establishing the drainage district, assessing benefits, and levying the tax based thereon, and shall also cancel any contract made for construction work or material, and shall refund any and all assessments paid.

**Sec. 455.108. Setting Aside Establishment — Procedure.** After the court on appeal has entered a decree revising or modifying the action of the board, the board shall fix a new date for hearing, and proceed in all particulars in the manner provided for the original establishment of the district, avoiding the errors and irregularities for which the original establishment was set aside, and after a valid establishment thereof, proceed in all particulars as provided by law in relation to the original establishment of such districts.

**Sec. 455.109. Re-Assessment to Cure Illegality.** Whenever any special assessment upon any lands within any drainage district shall have been heretofore adjudged to be void for any jurisdictional defect or for any illegality or uncertainty as to the terms of any contract and the improvement shall have been wholly completed, the board or boards of supervisors shall have power to remedy such illegality or uncertainty as to the terms of any such contract with the consent of the person with whom such



contract shall have been entered into and make certain the terms of such contract and shall then cause a reassessment of such land to be made on an equitable basis with the other land in the district by taking the steps required by law in the making of an original assessment and relevying the tax in accordance with such assessment, and such tax shall have the same force and effect as though the board or boards of supervisors had jurisdiction in the first instance and no illegality or uncertainty existed in the contract.

**Sec. 455.110. Monthly Estimate — Payment.** The supervising engineer shall, on or before the tenth day of each calendar month, furnish the contractor and file with the auditor estimates for work done during the preceding calendar month under the contract on each section, and the auditor shall at once draw warrants in favor of such contractor on the drainage funds of the district or give him an order directing the county treasurer to deliver to him or them improvement certificates, or drainage bonds as the case may be, for ninety per cent of the estimate on work done. Such monthly estimates shall remain on file in the office of the auditor as a part of the permanent records of the district to which they relate. Drainage warrants, bonds or improvement certificates when so issued shall be in such amounts as the auditor determines, not however, in amounts in excess of one thousand dollars (\$1,000).

All of the provisions of this section shall, when applicable apply to repair work and improvement work in the same force in effect as to original construction.

**Sec. 455.111. Completion of Work — Report — Notice.** When the work to be done under any contract is completed to the satisfaction of the engineer in charge of construction, he shall so report and certify to the board, which shall fix a day to consider said report and shall give notice of the time and purpose of such meeting by one publication in a newspaper of general circulation published in said county and the date fixed for considering said report shall be not less than five days after the date of such publication.

**Sec. 455.112. Objections.** Any party interested in the said district or the improvement thereof may file objections to said report and submit any evidence tending to show said report should not be accepted.

Any interested party having a claim for damages arising out of the construction of the improvement or repair shall file said claim with the board at or before the time fixed for hearing on the completion of the contract, which claim shall not include any claim for land taken for right of way or for severance of land.

**Sec. 455.113. Final Settlement — claims for damages.** If it finds the work under any contract has been completed and accepted, the board shall compute the balance due, and if there are no liens on file against such balance, it shall enter of record an order directing the auditor to draw a warrant in favor of said contractor upon the levee or drainage fund of said district or give him an order directing the county treasurer to deliver to him improvement certificates or drainage bonds, as the case may be, for such balance found to be due, but such warrants, improvement certificates or bonds shall not be delivered to the contractor until the expiration of thirty days after the acceptance of the work.

If any claims for damages have been filed as provided in section 455.112, the board shall review said claims and determine said claims. If the determination by the board on any claim for damages results in a finding by the board that the damages resulting to the claimant were due to the negligence of the contractor, then the board shall provide for payment of said claim out of the remaining funds owing to the contractor. If the determination by the board results in finding that the damages resulting to the claimant were not due to the negligence of the contractor, but resulted from unavoidable necessity in the performance of the contract, then the board shall allow for payment of said claim in the amount fixed by the board out of the funds in said drainage district.



**Sec. 455.114. Abandonment of Work.** In case any contractor abandons or fails to proceed diligently and properly with the work before completion, or in case he fails to complete the same in the time and according to the terms of the contract, the board shall make written demand on him and his surety to proceed with the work within ten days. Service of said demand may be personal, or by certified mail addressed to the contractor and the surety, respectively, at their places of residence or business, as shown by the records in the auditor's office.

**Sec. 455.115. New Contract — Suit on Bond.** Unless the contractor or the surety on his bond shall appear and in good faith proceed to comply with the demand, and resume work under the contract within the time fixed, the board shall proceed to let contracts for the unfinished work in the same manner as original contracts, and apply all funds not paid to the original contractor toward the completion of the work, and if not sufficient for such purpose, may cause suit to be brought upon the bond of the defaulting contractor for the benefit of the district, and the amount of recovery thereon shall be credited to the district.

**Sec. 455.116. Construction On or Along Highway.** When a levee or drainage district shall have been established by the board and it shall become necessary or desirable that the levee, ditch, drain, or improvement shall be located and constructed within the limits of any public highway, it shall be so built as not materially to interfere with the public travel thereon.

**Sec. 455.117. Establishment of Highways.** The board shall have power to establish public highways along and upon any levee or embankment along any such ditch or drain, but when so established the same shall be worked and maintained as other highways and so as not to obstruct or impair the levee, ditch, or drain.

**Sec. 455.118. Bridges.** When such levee, ditch, drain, or change of any natural watercourse crosses a public highway, necessitating moving or building or rebuilding any secondary road bridge upon, or ditch or drain crossing such road, the board of supervisors shall move, build, or rebuild the same, paying the costs and expenses thereof, including construction, maintenance, repair and improvement costs, from the secondary road fund.

If the bridge or crossing be upon or across a primary or interstate road, the work aforesaid shall be done by the state department of transportation and paid for out of the primary road fund.

**Sec. 455.119. Construction Across Railroad.** Whenever the board of supervisors shall have established any levee, or drainage district, or change of any natural watercourse and the levee, ditch, drain, or watercourse as surveyed and located crosses the right of way of any railroad company, the county auditor shall immediately cause to be served upon such railroad company, in the manner provided for the service of original notices, a notice in writing stating the nature of the improvement to be constructed, the place where it will cross the right of way of such company, and the full requirements for its complete construction across such right of way as shown by the plans, specifications, plat, and profile of the engineer appointed by the board, and directing such company to construct such improvement according to said plans and specifications at the place designated, across its right of way, and to build and construct or rebuild and reconstruct the necessary culvert or bridge where any ditch, drain or watercourse crosses its right of way, so as not to obstruct, impede or interfere with the free flow of the water therein, within thirty days from the time of the service of such notice upon it.

**Sec. 455.120. Duty to Construct.** Upon receiving the notice provided in section 455.119, such railroad company shall construct the improvement across its right of way according to the plans and specifications prepared by the engineer for said dis-



trict, and build or rebuild the necessary culvert or bridge and complete the same within the time specified.

**Sec. 455.121. Bridges at Natural Waterway — Cost.** The cost of building, rebuilding, constructing, reconstructing, changing, or repairing, as the case may be, any culvert or bridge, when such improvement is located at the place of the natural waterway or place provided by the railroad company for the flow of the water, shall be borne by the railroad company without reimbursement therefor.

**Sec. 455.122. Construction When Company Refuses.** If the railroad company shall fail, neglect, or refuse to comply with said notice, the board shall cause the same to be done under the supervision of the engineer in charge of the improvement, and such railroad company shall be liable for the cost thereof to be collected by the county for said district in any court having jurisdiction.

**Sec. 455.123. Cost of Construction Across Railway.** The cost of constructing the improvement across the right of way of such company, not including the cost of building or rebuilding and constructing or reconstructing any necessary culvert or bridge, when such improvement is located at the place of the natural waterway or place provided by the railroad company for the flow of the water, shall be considered as an element of such company's damages by the appraiser to appraise damages.

**Sec. 455.124. Passing Drainage Equipment Across Railway.** It shall be the duty of any steam or electric railway company to furnish the contractor unrestricted passage across its right of way, telegraph, telephone and signal lines for his machines and equipment, whenever recommended by the engineer and approved by the board of supervisors and the cost thereof, shall be considered as an element of such company's damages by the appraisers thereof; provided that if such company shall fail to do so within thirty days after written notice from the auditor, the engineer shall cause the same to be done under his direction and the company shall be liable for the cost thereof to be collected by the county in any court having jurisdiction. Provided, further, that the railway company shall have the right to designate the day and hours thereof within said period of thirty days above mentioned when such crossing shall be made.

**Sec. 455.125. Passage Across Other Public Utilities.** The owner or operator of a public utility, whether operated publicly or privately other than steam and electric railways shall afford the contractor of any drainage project under this chapter unrestricted passage for his machines and equipment across the right of way lines or other equipment of such utility whenever recommended by the engineer and approved by the board of supervisors.

**Sec. 455.126. Failure to Comply.** If the owner or operator of the utility fails to afford such passage within fifteen days after written notice from the drainage engineer so to do, the contractor, under the supervision of the engineer, may proceed to do the necessary work to afford such passage and to place said utility in the same condition as before said passage; but the owner or operator shall have the right to designate the hours of the day when such crossing or passage shall be made.

**Sec. 455.127. Expenses Attending Passage.** The work necessary to afford such passage shall be deemed to be covered by and included in the contract with the district under which the contractor is operating, and if the work is done by the owner or operator of such utility the reasonable expense thereof shall be paid out of the drainage funds of the district and charged to the account of the contractor.

**Sec. 455.128. Annexation of Additional Lands.** After the establishment of a levee or drainage district, if the board becomes convinced that additional lands contiguous to the district, and without regard to county boundaries, are benefited by the



improvement or that the same are then receiving benefit or will be benefited by a repair or improvement to said district as contemplated in Section 455.135, it may adopt, with or without a petition from owners of the proposed annexed lands, a resolution of necessity for the annexation of such additional land and appoint an engineer with the qualifications provided in this chapter to examine such additional lands, to make a survey and plat thereof showing their relation, elevation, and condition of drainage with reference to such established district, and to make and file with the auditor a report as in this chapter provided for the original establishment of such district, said report to specify the character of the benefits received.

In the event the additional lands are a part of an existing drainage district, as an alternative procedure to that established by the foregoing provisions of this section, the lands may be annexed in either of the following methods:

1. A petition, proposing that the lands be included in a contiguous drainage district and signed by at least twenty percent of the landowners of those lands to be annexed, shall be filed with the governing board of each affected district.

The board of the district in which the lands are presently included may, at its next regular meeting or at a special meeting called for that purpose, adopt a resolution approving and consenting to the annexation; or

2. Whenever the owners of all the land proposed to be annexed file a petition with the governing boards of the affected districts, the consent of the board in which the lands are then located shall not be required to consent to the annexation, and the board of the annexing district may proceed as provided in this section.

3. If either method of annexation provided for in subsections 1 and 2 of this section is completed, the board of the district to which the lands are to be annexed may adopt a resolution of necessity for the annexation of the additional lands, as provided in this section.

**Sec. 455.129. Proceedings on Report.** If such report recommends the annexation of such lands or any portion thereof, the board shall consider such report, plats, and profiles and if satisfied that any of such lands are materially benefited by the district and that such annexation is feasible, expedient, and for the public good, it shall proceed in all respects as to notice, hearing, appointment of appraisers to fix damages and as to hearing thereon; and (if such annexation is finally made), as to classification and assessment of benefits to the annexed lands only, to the same extent and in the same manner as provided in the establishment of an original district. Those parties having an interest in the lands proposed to be annexed shall have the right to receive notice, to make objections, to file claims for damages, to have hearing, to take appeals and to do all other things to the same extent and in the same manner as provided in the establishment of an original district.

**Sec. 455.130. Levy for Annexed Lands.** After such annexation is made the board shall levy upon the annexed lands an assessment sufficient to equal the assessments for benefit originally paid by the lands of equal classification if the finding by the board as provided by section four hundred fifty-five point one hundred twenty-eight (455.128) was that said lands should have been included in the district when originally established, plus their proportionate share of the costs of any enlargement or extension of drains required to serve the annexed lands. If the finding of the board as provided in section four hundred fifty-five point one hundred twenty-eight (455.128) was based on the fact that additional lands are now benefited by virtue of the repair or improvement made to said district and were not benefited by the district as originally established, then the board shall levy upon said annexed lands an assessment sufficient to pay their proportionate share of the costs of said repair or improvement which was the basis for the land being annexed.



**Sec. 455.131. Use of Former and Abandoned Surveys.** In cases where proceedings have been taken for the establishment of a levee or drainage district and an engineer has been appointed who has made a survey, return and plat thereof and for any reason the improvement has been abandoned and the proceedings dismissed, and afterwards proceedings are instituted for the establishment of a levee or drainage district which will benefit any territory surveyed in said former proceedings, the engineer shall use so much of the return, levels, surveys, plat, and profile made in the former proceedings as may be applicable. He shall specify in his reports the parts thereof so used, and in case the cost of said returns, levels, surveys, plat, and profile made in said former proceedings has been paid by the former petitioners or their bondsmen, then a reasonable amount shall be allowed said petitioners or bondsmen for the use of the same.

**Sec. 455.132. Unsuccessful Procedure — Re-Establishment.** When proceedings have been instituted for the establishment of a drainage district or for any change or repair thereof, or the change of a natural watercourse, and the establishment thereof has failed for any reason either before or after the improvement is completed, the board shall have power to re-establish such district or improvement and any new improvement in connection therewith as recommended by the report of the engineer. As to all lands benefited by such re-establishment, repair, or improvement, the board shall proceed in the same manner as in the establishment of an original district, using as a basis for assessment the entire cost of the proceedings, improvement, and maintenance from the beginning; but in awarding damages and in the assessment of benefits account shall be taken of the amount of damages and taxes, if any, theretofore paid by those benefited, and credit therefor given accordingly. All other proceedings shall be the same as for the original establishment of the district, making of improvements, and assessment of benefits.

**Sec. 455.133. New District Including Old District.** If any levee or drainage district or improvement established either by legal proceedings or by private parties shall be insufficient to properly drain all of the lands tributary thereto, the board upon petition as for the establishment of an original levee or drainage district, shall have power to establish a new district covering and including such old district or improvement together with any additional lands deemed necessary. All outstanding indebtedness of the old levee or drainage district shall be assessed only against the lands included therein.

**Sec. 455.134. Credit For Old Improvement.** When such district as contemplated in section 455.133, and the new improvement therein shall include the whole or any part of the former improvement, the commissioners, for classification of lands for assessments of benefits and apportionment of costs and expenses of such new improvement, shall take into consideration the value of such old improvement in the construction of the new one and allow proper credit therefor to the parties owning the old improvement as their interests may appear. In all other respects the same proceedings shall obtain as are provided for the original establishment of levee and drainage districts.

**Sec. 455.135. Repair.**

1. When any levee or drainage district shall have been established and the improvement constructed, the same shall be at all time under the supervision of the board of supervisors except as otherwise provided for control and management by a board of trustees and it shall be the duty of the board to keep the same in repair as provided herein. The board at any time on its own motion, without notice, may order done whatever is necessary to restore or maintain a drainage or levee improvement in its original efficiency or capacity, and for that purpose may remove silt and debris, repair any damaged structures, remove weeds and other vegetable growth, and what-



ever else may be needed to restore or maintain such efficiency or capacity. In the event permanent restoration of a damaged structure is not feasible at the time, the board may order such temporary construction as it deems necessary to the continued functioning of the improvement. If in maintaining and repairing tile lines the board finds from the engineer's report it is more economical to construct a new line than to repair the existing line, such new line may be considered to be a repair. If the estimated cost of any repair exceeds seventy-five percent of the original total cost of the district and subsequent improvements therein, the board shall set a date for a hearing on the matter of making such repairs, and shall give notice as provided in sections 455.20 to 455.24, inclusive. At such hearing the board shall hear objections to the feasibility of such repairs, and following the hearing the board shall order made such repairs as it deems desirable and feasible. Any interested party shall have the right of appeal from such orders in the manner provided in this chapter. The right of remonstrance shall not apply to repairs as defined in this section.

2. In the case of minor repairs, or in the eradication of brush and weeds along the open ditches, not in excess of one thousand dollars where the board finds that the same will result in a saving to the district it may cause the same to be done by secondary road equipment, or weed fund equipment, and labor of the county and then reimburse the secondary road fund or the weed fund from the fund of the drainage district thus benefited.

3. When the board deems it necessary it may repair or reconstruct the outlet of any private tile line which empties into a drainage ditch of any district and assess the costs in each case against the land served by the private tile line.

4. When the board determines that improvements, which differ from the repairs referred to in the preceding paragraphs, are necessary or desirable, it shall appoint an engineer to make such surveys as seem appropriate to determine the nature and extent of such improvements, and to file a report showing what improvements are recommended and their estimated costs, which report may be amended before final action. If the estimated cost of the improvements does not exceed twenty-five percent of the original cost of the district and subsequent improvements therein, the board may order the work done without notice. The board shall not divide proposed improvements into separate programs in order to avoid the twenty-five percent limitation herein fixed for making improvements without notice. If the board deems it desirable to make improvements where the estimated cost exceeds twenty-five percent of the original total cost of the district and subsequent improvements therein, it shall set a date for a hearing on the matter of constructing such improvements and also on the matter of whether there shall be a reclassification of benefits for the cost of such improvements, and shall give notice as provided in section 455.20 to 455.24, inclusive. At such hearing the board shall hear objections to the feasibility of such improvements and such arguments for or against a reclassification as may be presented by or for any taxpayer of the district. Following the hearing the board shall order made such improvements as it deems desirable and feasible, and shall also determine whether there should be a reclassification of benefits for the cost of such improvement. If it is determined that such reclassification of benefits should be made the board shall proceed as provided in section 455.45.

In the event that the estimated cost of the improvements as contemplated in this section should exceed the original cost of the district plus the cost of subsequent improvements in the district, a majority of the landowners, owning in the aggregate more than seventy percent of the total land in said district, may file a written remonstrance against said improvement, at or before the time fixed for hearing on said improvement, with the county auditor, or auditors in case the district extends into more than one county. If such remonstrance is filed, the board shall discontinue and dismiss all further proceedings on said improvement and charge the costs incurred to date for said proposed improvement to the district. Any interested party shall have the right



of appeal from such orders in the manner provided in this chapter. Provided, however, that the provisions of this section shall not affect the procedures of section 455.142 covering the common outlet.

5. Where under the laws in force prior to 1904, drainage ditches and levees were established and constructed without fixing at the time of establishment a definite boundary line for the body of land to be assessed for the cost thereof, the body of land which was last assessed to pay for the repair thereof shall also be considered as the established district for the purpose of this section.

6. The governing body of the district may, by contract or conveyance, acquire, within or without the district, the necessary lands or easements for making repairs or improvements under this section, including easements for borrow and easements for meander, and in addition thereto, the same may be obtained in the manner provided in the original establishment of the district, or by exercise of the power of eminent domain as provided for in chapter 472. If additional right of way is required for any repair or improvement under this section, the same may be acquired in the same manner as provided for the acquisition of right of way in the original establishment of a district, except that where notice and hearing are not otherwise required under this section notice as provided in this chapter to owners, lienholders of record, and occupants of the land from which right of way is to be acquired shall suffice.

7. In existing districts where the stream has by erosion appropriated lands beyond its original right of way and it is more economical and feasible to acquire an easement for such erosion and meander than to undertake containment of the stream in its existing right of way, the board may, in the discharge of the duties enjoined upon it by this section, effect such acquisition as to the whole or part of the course. Right of way so taken shall be classed an improvement for the purpose of procedure under this section.

8. If the drainage records on file in the auditor's office for a particular district do not define specifically the land taken for right of way for drainage purposes, the board may at any time upon its own motion employ a land surveyor to make a survey and report of said district and to actually define the right of way taken for drainage purposes. After the land surveyor has filed his survey and report with the board, the board shall fix a date for hearing on said report and shall serve notice of said hearing upon all landowners and lienholders of record and occupants of the lands traversed by said right of way in the manner and for the time required for services of original notices in the district court.

**Sec. 455.136. Payment.** The costs of the repair or improvements provided for in Section 455.135 shall be paid for out of the funds of the levee or drainage district. If the funds on hand are not sufficient to pay such expenses, the board within two years shall levy an assessment sufficient to pay the outstanding indebtedness and leave the balance which the board determines is desirable as a sinking fund to pay maintenance and repair expenses. Any assessment made under this section on any tract, parcel or lot within the district which is computed at less than two dollars shall be fixed at the sum of two dollars.

If the board deems that the costs of the repairs or improvements will create assessments against the lands in the district greater than should be borne in one year, it may levy the same at one time and provide for the payment of said costs and assessments in the manner provided in Sections 455.64 to 455.68; provided that assessments may be collected in less than ten installments as the board may determine.

**Sec. 455.137. Impounding Areas and Erosion Control Devices.** Levee and drainage districts are empowered to construct impounding areas and other flood and erosion control devices to protect lands of the district and drainage structures and may provide ways for access to improvements for the operation or protection thereof, where



the cost is not excessive in consideration of the value to the district. Necessary lands or easements may be acquired within or without the district by purchase, lease or agreement, or by exercise of the right of eminent domain and may be procured and construction undertaken either independently or in co-operation with other districts, individuals, or any federal or state agency or political subdivision.

**Sec. 455.138. Revenues Used for Operation, Maintenance and Construction.** Levee and drainage districts may realize income from incidental uses of their improvements and rights of way which are not injurious to same or incompatible with the purposes of the district. Revenues derived therefrom may be expended for operating, maintenance or construction costs of the district as its governing body may elect.

**Sec. 455.139. City May Discharge Treated Sewage.** Any board, as defined in Section 455.4, may by contract permit any city to discharge adequately treated sewage into drainage ditches. The contract shall fix the rental, make provision for termination, and shall provide that no nuisance shall be created.

**Sec. 455.140.** Repealed by 53GA, ch 202, §§23-26.

**Sec. 455.141. Reclassification Required.** When an assessment for improvements as provided in section 455.135, exceeds 25 % of the original assessment and the original or subsequent assessment or report of the benefit commission as confirmed did not designate separately the amount each tract should pay for the main ditch and tile lateral drains then the board shall order a reclassification in accordance with the principles and rules set forth in section 455.48.

**Sec. 455.142. Improvement of Common Outlet — Notice of Hearing.** When two or more drainage districts outlet into the same ditch, drain, or natural watercourse and the board determines that it is necessary to clean out, deepen, enlarge, extend, or straighten said ditch, drain, or natural watercourse in order to expeditiously carry off the combined waters of such districts, the board may proceed as provided in section 455.135. After said board has decided that such work should be done, it shall fix a date for hearing on its decision, and it shall give two weeks' notice thereof by certified mail to the auditor of the county wherein the land to be assessed for such work is located, and said county auditor shall thereupon immediately notify by certified mail the board or boards of trustees of the districts having supervision thereof, as to said hearing on said contemplated work. In those instances where two (2) or more districts involved are under the supervision of the same board, or joint board if the district is inter-county, the notice shall be given to all landowners affected as prescribed for in sections 455.20 to 455.24. Each district shall be assessed for the cost of such work in proportion to the benefits derived.

Common outlet for the purpose of this section shall mean an outlet where two (2) adjacent districts have an outlet common to both of said districts and which districts are also contiguous, one to the other.

**Sec. 455.143. Commissioners to apportion benefits — interest prohibited.** For the purpose of ascertaining the proportionate benefits, the board shall appoint commissioners having the qualifications of benefit commissioners, one of whom shall be an engineer. Such commissioners appointed shall not be residents of any of the districts affected, nor shall any member thereof have any interest in land in any districts affected by the contemplated work. Such commission shall determine the percentage of benefits and the sum total to be assessed to each district for the improvement.

In the event that one of the districts to be assessed under this statute shall have any improvement such as a settling basin which reduces the quality and quantity of flow or sediment, such commission may give consideration to the existence of such an improvement when they determine the percentage of benefits and the sum total to be assessed to each district for the improvement.



**Sec. 455.144. Time of Report — Notice of Hearing.** When said commissioners are appointed the board shall, by proper order, fix the time when the commissioners shall report their findings, but a report filed within thirty days of the time so fixed shall be deemed a compliance with said order. On the filing of said report, the board shall fix a time for hearing thereon, and it shall give notice thereof to the auditor of the county in which the land to be assessed for such work is located by certified mail; said county auditor shall thereupon immediately notify by certified mail the board of supervisors, and board or boards of trustees of the districts having supervision thereof, as to said hearing on said commissioners' report.

In those instances where two or more districts are under the supervision of the same board, or joint board if the district is inter-county, the notice shall be given to all landowners affected as prescribed in sections 455.20 to 455.24.

**Sec. 455.145. Report and Review —Appeal.** The commissioners shall file with the board a detailed report of their findings. Said board shall review said report and may, by proper order, increase or decrease the amount which shall be charged to each district. After the final order of the board herein has been made, said board shall notify the county auditor, in the time and manner as provided in sections 455.143 and 455.144, of said order, and said county auditor shall notify by certified mail the board of supervisors, and said board or boards of trustees, of said final order. Said board of supervisors and said board or boards of trustees, if aggrieved by said final order, may appeal therefrom to the district court of the county in which any of the improvements proposed or done is located.

**Sec. 455.146. Levy Under Original Classification.** If the amount finally charged against a district does not exceed twenty-five percent of the original cost of the improvement in said district, the board shall proceed to levy said amount against all lands, highways, and railway rights of way and property within the district, in accordance with the original classification and apportionment. Any assessment made under this section on any tract, parcel or lot within the district which is computed at less than two dollars shall be fixed at the sum of two dollars.

**Sec. 455.147. Levy Under Reclassification.** If the amount finally charged against a district exceeds twenty-five percent of the original cost of the improvement, the board shall order a reclassification as provided for the original classification of a district and upon the final adoption of the new classification and apportionment shall proceed to levy said amount upon all lands, highways, and railway rights of way and property within the district, in accordance with said new classification and apportionment. Any assessment made under this section on any tract, parcel or lot within the district which is computed at less than two dollars shall be fixed at the sum of two dollars.

**Sec. 455.148. Removal of Obstructions.** The board shall cause to be removed from the ditches, drains, and laterals of any district any obstructions which interfere with the flow of the water, including trees, hedges, or shrubbery and the roots thereof, and may cause any tile drain so obstructed to be relaid in concrete or any other adequate protection, such work to be paid for from the drainage funds of the district.

**Sec. 455.149. Trees and Hedges.** When it becomes necessary to destroy any trees or hedges outside the right of way of any ditch, lateral, or drain in order to prevent obstruction by the roots thereof, if the board and the owners of such trees or hedges can not agree upon the damage for the destruction thereof, the board may proceed to acquire the right to destroy and remove such trees or hedges by the same proceedings provided for acquiring right of way for said drainage improvement in the first instance.



**Sec. 455.150. Outlet for Lateral Drains — Specifications.** The owner of any premises assessed for the payment of the costs of location and construction of any ditch, drain, or watercourse as in this chapter provided, shall have the right to use the same as an outlet for lateral drains from his premises. The board of supervisors shall make specifications covering the manner in which such lateral drains shall be connected with the main ditches or other laterals and be maintained, and the owner shall follow such specifications in making and maintaining any such connections.

**Sec. 455.151. Subdistricts in Inter-County Districts.** The board of supervisors of any county shall have jurisdiction to establish subdrainage districts of lands included within a district extending into two or more counties when the lands to compose such subdistricts lie wholly within such county, and to make improvements therein, repair and maintain the same, fix and levy assessments for the payment thereof, and the provisions of this section shall apply to all such drainage subdistricts, the lands of which lie wholly within one county. The proceedings for all such purposes shall be the same as for the establishment, construction, and maintenance of an original levee or drainage district the lands of which lie wholly within one county, so far as applicable, except that one or more persons may petition for a subdistrict as provided in section 455.70.

**Sec. 455.152. District By Mutual Agreement — Presumption.** The owners of lands may provide by mutual agreement in writing duly signed, acknowledged, and filed with the auditor for combined drainage of their lands by the location and establishment of a drainage district for such purposes and the construction of drains, ditches, settling basins and watercourses upon and through their said lands. Such drainage districts shall be presumed to be conducive to the public welfare, health, convenience, or utility.

**Sec. 455.153. What the Agreement Shall Contain.** Such agreement shall contain the following:

1. A description of the lands by congressional divisions, metes and bounds, or other intelligible manner, together with the names of the owners of all said lands.
2. The location of the drains and ditches to be constructed, describing their sources and outlets and the courses thereof.
3. The character and extent of drainage improvement to be constructed, including settling basins, if any.
4. The assessment of damages, if any.
5. The classification of the lands included in such district, the amount of drainage taxes or special assessments to be levied upon and against the several tracts, and when the same shall be levied and paid.
6. Such other provisions as the board deems necessary.

**Sec. 455.154. Board to Establish.** When such agreement is filed with the auditor he shall record it in the drainage record. The board shall at a regular, special, or adjourned session thereafter locate and establish a drainage district and locate the ditches, drains, settling basins, and watercourses thereof as provided in said agreement, and enter of record an order accordingly. The board thereafter shall carry out the object, purpose, and intent of such agreement and cause to be completed and constructed the said improvement and shall retain jurisdiction of the same as fully as in districts established in any other manner. It shall cause to be levied upon and against the lands of such district, the drainage taxes and assessments according to said agreement and when collected said taxes and assessments shall constitute the drainage funds of said district to be applied upon order of the board as in said agreement provided.



**Sec. 455.155. Procedure.** The board shall proceed to carry out the provisions of the agreement, advertising for and receiving bids, letting the work, making contracts, levying assessments, paying on estimates, issuing warrants, improvement certificates or drainage bonds as the case may be, in the same manner as in districts established on petition, except as in said mutual agreement otherwise provided.

**Sec. 455.156. Outlet In Adjoining County.** When a drainage district is established and a satisfactory outlet cannot be obtained except through lands in an adjoining county, or when an improved outlet cannot be obtained except through lands downstream from the district boundary, the board shall have the power to purchase a right-of-way, to construct and maintain such outlets, and to pay all necessary costs and expenses out of the district funds. The board shall have similar authority relative to the construction and maintenance of silt basins upstreams from the district boundary. In case the board and the owners of the land required for such outlet or silt basin cannot agree upon the price to be paid as compensation for land taken or used, the board is hereby empowered to exercise the right of eminent domain in order to procure such necessary right-of-way.

**Sec. 455.157. Outlet In Another State.** When a district is, or has been established in this state and no practicable outlet therefor can be obtained except through lands in an adjoining state, the board of supervisors of the county where said district is situated shall, as drainage commissioners, have power to purchase a right of way and to construct a ditch for such outlet in an adjoining state or to contribute to the construction of such a ditch, in an adjoining state and to pay for the same out of the funds of such district. Provided, however, that no drainage district or districts shall be charged or assessed any of the cost for land or work done unless previously agreed to by the board of supervisors or trustees of all the drainage districts which will be assessed.

**Sec. 455.158. Tax.** The board of supervisors shall have authority to levy a tax on the lands in said drainage district established in this state to provide funds from which to pay for the improvement referred to in section 455.157 should such levy be necessary.

**Sec. 455.159. Injuring or Diverting — Damages.** Any person who shall wilfully break down or through or injure any levee or bank of a settling basin, or who shall dam up, divert, obstruct, or wilfully injure any ditch, drain, or other drainage improvement authorized by law shall be liable to the person or persons owning or possessing the lands for which such improvements were constructed in double the amount of damages sustained by such owner or person in possession; and in case of a subsequent offense by the same person he shall be liable in treble the amount of such damages.

**Sec. 455.160. Obstructing or damaging.** Any person or persons willfully diverting, obstructing, impeding, or filling up, without legal authority, any ditch, drain, or watercourse or breaking down or injuring any levee or the bank of any settling basin, established, constructed, and maintained under any provision of law, or obstructing, or engaging in travel or agricultural practices upon the improvement or rights of way of a levee or drainage district which the governing body thereof has, by resolution, determined to be injurious to such improvement or to interfere with its proper preservation, operation or maintenance, and has prohibited, shall be deemed guilty of a serious misdemeanor and any such unlawful act as above described is hereby declared to be a nuisance and may be abated as such.

Said governing body shall also have the power to repair any ditch, drain or watercourse, or any levee or bank of any settling basin damaged by any person or persons in violation of the resolution of said governing body, after three (3) days' notice to such person or persons to make such repair, in the event that there is a failure



to do so, and the expense thereof shall be assessed to such person or persons and shall be certified and collected as other taxes.

**Sec. 455.161. Nuisance — Abatement.** Any ditch, drain, or watercourse which is now or hereafter may be constructed so as to prevent the surface and overflow water from the adjacent lands from entering and draining into and through the same is hereby declared a nuisance and may be abated as such.

**Sec. 455.162. Actions — Settlement — Counsel.** Levee or drainage districts through their governing bodies are authorized to maintain actions in law or equity for the purposes of preventing or recovering damages that may accrue to such districts on account of the impairment of their functions, or the increase in the cost of maintenance or operation of such districts, or on account of damages to property owned by such districts, resulting from the construction or operation of locks, dams and pools in the Mississippi or Missouri Rivers; they make settlements and adjustments of such damages and written contracts with relation thereto, and receive any appropriations that may be made by the Congress of the United States for the increased cost to drainage or levee districts, and may agree to the construction and maintenance of present equipment and of new or remedial works, improvements and equipment as a part of such damages, or as a means of lessening the damages which will be suffered by the said districts. Said districts are further authorized to employ legal and engineering counsel for such purposes and to pay for the same out of the award of damages or out of the maintenance funds of the district. If a lump sum settlement is made between the United States and the district to provide an annual payment of income therefrom, the county treasurer of the county in which the greater portion of the district is situated shall be custodian of such principal fund. The governing body of the district shall apply to the district court for authority to invest said fund as provided by section six hundred eighty-two point twenty-three (682.23), in addition to the investments therein approved the court may authorize investment of said fund in interest bearing bonds or warrants of said district. The income from said fund shall be disbursed by direction of the governing body of the district.

**Sec. 455.163. Waste Banks — Private Use.** The landowner may have any beneficial use of the land to which he has fee title and which is occupied by the waste banks of an open ditch when such use does not interfere in any way with the easement or rights of the drainage district as contemplated by this chapter. For the purpose of gaining such use the landowner may smooth said waste banks, but in doing so he must preserve the berms of such open ditch without depositing any additional dirt upon them.

**Sec. 455.164. Preliminary Expenses — How Paid.** If the proposed district is all in one county, the board of supervisors is authorized to pay all necessary preliminary expenses in connection therewith from the general fund of the county. If it extends into other counties, the boards of the respective counties are authorized to pay from the general fund thereof, such proportion of said expenses as the work done or expenses created in each county bears to the whole amount of work done or expenses created. Said amounts shall be ascertained and reported by the engineer in charge of the work and be approved by the respective boards which shall, as soon as paid, charge the amount to said district in favor of the general fund of the counties, as their interest may appear, as soon as the said district is established. If said district shall not be established, the said amounts shall be collected upon the bond or bonds of the petitioners.

**Sec. 455.165. Additional Help For Auditor.** If the work in the office of the auditor by reason of the existence of drainage districts is so increased that the regular officer is unable by diligence to do the same, the board of supervisors may employ



such additional help as may be necessary to keep the records and transact the business of the drainage districts. The expense of such help shall be paid by the districts in proportion to the amount of work done therefor.

**Sec. 455.166. Employment of Counsel.** The board is authorized to employ counsel to advise and represent it and drainage districts in any matter in which they are interested. Attorney's fees and expenses shall be paid out of the drainage fund of the district for which the services are rendered, or may be appropriated equitably among two or more districts. Such attorneys shall be allowed reasonable compensation for their services, also necessary traveling expenses while engaged in such business. Attorneys rendering such services shall file with the auditor an itemized, verified account of all claims therefor, and statement of expenses, and the same shall be audited and allowed by the board in the amount found to be due.

**Sec. 455.167. Compensation of Appraisers.** Persons appointed to appraise and award damages and make classification of lands and assess benefits, other than the engineer, shall receive such compensation as the board may fix, and in addition thereto, the necessary expense of transportation of said persons while engaged upon their work. They shall file with the auditor an itemized verified account of the amount of time employed upon said work and their expenses.

**Sec. 455.168.** Repealed by 53rd G. A., Chapter 202.

**Sec. 455.169. Payment.** All compensation for services rendered, fees, costs, and expenses when properly shown by itemized and verified statement shall be filed with the auditor and allowed by the board in such amounts as shall be just and true, and when so allowed shall be paid on order of the board from the levee or drainage funds of the district for which such services were rendered or expenses incurred, by warrants drawn on the treasurer by the auditor.

**Sec. 455.170. Purchase at Tax Sale.** When land in a levee, drainage, or improvement district is being sold at a tax sale for delinquent taxes or assessment, the board of supervisors or the district trustees, as the case may be, shall have authority to bid in such land or any part of it, paying the amount of the bid from the funds of the district, and taking the certificate of sale in their names as trustees for such district, and may thereafter pay any assessments for taxes or benefits levied against said premises from the district funds. The amount paid for redemption which shall include such additional payment, shall be credited to the district.

**Sec. 455.171. Tax deed — sale or lease.** If no redemption shall be made the board of supervisors or trustees, as the case may be, shall receive the tax deed as trustees for the district. They shall credit the district with all income from said property. They may lease or sell and convey said property as trustees for such district and shall deposit all money received therefrom to the credit of such district. The board of trustees may also lease or sell and convey such other property of the district, both real and personal, as is no longer needed for the purposes for which the district was established, and any such leases, sales and conveyances prior to July 1, 1970, are hereby legalized and declared to be valid and binding.

This amendment in 1978 shall not be construed to affect any litigation involving the lease, sale or conveyance of property by the board of supervisors or board of trustees, as the case may be, of a drainage or levee district, which litigation is pending on July 1, 1978.

**Sec. 455.172. Purchase of Tax Certificate.** When land in a drainage or levee district, or subdistrict, is subject to an unpaid assessment and levy for drainage purposes and has been sold for taxes the board of supervisors of that county, or if control



of the district has passed to trustees then such trustees, may purchase the certificate of sale issued by the county treasurer by depositing with the county auditor the amount of money to which the holder of the certificate would be entitled if redemption was made at that time, and thereupon the rights of the holder of the certificate and the ownership thereof shall vest in the board of supervisors, or the trustees of that district, as the case may be, in trust for said drainage district or subdistrict.

**Sec. 455.173. Terms of Redemption.** Redemption from said tax sale shall be made on such terms as may be agreed upon between such Board of Supervisors or such trustees and the owner of the land involved, but in any case in which the owner of said land will pay as much as fifty per cent of the value of the land at the time of redemption he shall be permitted to redeem. If the parties cannot agree upon such value, either of them may bring an action against the other in the District Court of the County where the land is situated, and the court shall determine the matter. The proceeding shall be triable in equity.

**Sec. 455.174. Payment — Assignment of Certificate.** When such money is deposited with the county auditor he shall by mail notify the purchaser at said tax sale, or the latter's assignee if of record, and shall pay to the holder of such certificate the sum of money deposited with him for that purpose on surrender of the certificate with proper assignment thereon to the board of supervisors, or to the trustees of said district, as the case may be, as trustee for said district.

**Sec. 455.175. Funds.** Payment to the county auditor for such certificate shall be from the fund of said drainage or levee district, or subdistrict, on a warrant issued against that fund which shall have precedence over all other outstanding warrants drawn against that fund in the order of their payment. Should there not be a sufficient amount in the fund of said district, or subdistrict, to pay said warrant then the board of supervisors, or the trustees of the district, as the case may be, are authorized to borrow a sum of money sufficient for that purpose on a warrant for that amount on the fund of the district, or subdistrict, which warrant shall bear interest from date at six per cent per annum and shall have preference in payment over all other unpaid warrants on said fund, and the county treasurer shall so enter the same on the list of warrants in his office and call the same for payment as soon as there is sufficient money in said fund.

**Sec. 455.176. Lease or Sale of Land.** If said certificate goes to deed to the board or to the trustees, all leases and sales of the land shall be affected and record thereof made in the same manner in which leases and sales are affected and record thereof made when the county acquires title as a purchaser under execution sale.

**Sec. 455.177. Duty of Treasurer.** When any lands in a drainage or levee district, or subdistrict, are subject to an unpaid assessment and levy for drainage purposes and are sold for a less sum of money than the amount of delinquent taxes thereon the county treasurer shall immediately report that fact to the board of supervisors, or to the trustees for the district, as the case may be.

**Sec. 455.178. Purchase by Bondholder.** In any event where upon the request of the holder of any bond or bonds by any drainage district the board of supervisors shall fail, neglect or refuse to purchase the certificate of sale issued by the county treasurer and referred to in section 455.172 in manner and form as permitted by said section, the holder of such bond or bonds may, upon filing with the county auditor a sworn statement as to the making of such written request upon the board of supervisors and a recital of the failure of such board to act in the premises by complying with the provisions of said section, in the same manner and form purchase such certificate and the ownership thereof shall thereupon vest in such holder of such bond or bonds in



trust for said drainage district or subdistrict, provided, however, that the holder shall have a lien upon said certificate and any beneficial interest arising therefrom for his actual outlays including his reasonable expenses and attorney's fees, if any, incurred in the premises. In the event any such holder of any bond or bonds shall acquire title he shall have a right to lease or convey said premises, upon giving thirty days' written notice to the board of supervisors by filing the same with the county auditor and in the event said board shall not approve said lease or sale, the same shall be referred to the district court of the county where the land is situated and there tried and determined in the manner prescribed in section 455.172. Any funds realized from the lease or sale of said land shall be first applied in extinguishing the lien of the holder of the certificate herein provided for and the balance shall be paid to the said drainage bond fund of said district.

**Sec. 455.179. Voting Power.** In case any proposition arises in said district to be determined by the vote of parties owning land therein, notice of such hearing shall be given and the board of supervisors or trustees, as the case may be, while holding title in trust to any such land, shall have the same right to vote for or against such proposition as the former owner would have had if he had not been divested of the title to said land.

**Sec. 455.180. Inspection of improvements.** The board of any county into which a levee or drainage improvement extends shall cause a competent engineer to inspect such levee or drainage improvement as often as it deems necessary for the proper maintenance and efficient service thereof. The engineer shall make report to the board of the condition of the improvement, together with such recommendations as he deems necessary. For any claim for services and expenses of inspection, the engineer shall file with the auditor an itemized and verified account of such service and expense to be allowed by the board in such amount as it shall find due and paid out of the drainage funds of the district. If the district extends into two or more counties, such action shall be had jointly by the several boards, and the expenses equitably apportioned among the lands in the different counties.

**Sec. 455.181. Watchmen.** When a levee has been established and constructed in any county, the board shall be empowered to employ one or more watchmen, and fix their compensation, whose duty it shall be to watch such levee and make repairs thereon in case of emergency. Such employee shall file with the auditor an itemized, verified account for services rendered, and cost and expenses incurred in watching or repairing such levee, and the same shall be audited and allowed by the board as other claims and paid by the county from funds belonging to such district.

**Sec. 455.182. Construction of Drainage Laws.** The provisions of this chapter and all other laws for the drainage and protection from overflow of agricultural or overflow lands shall be liberally construed to promote leveeing, ditching, draining, and reclamation of wet, swampy, and overflow lands.

**Sec. 455.183. Technical Defects.** The collection of drainage taxes and assessments shall not be defeated where the board has acquired jurisdiction of the interested parties and the subject matter, on account of technical defects and irregularities in the proceedings occurring prior to the order of the board locating and establishing the district and the improvements therein.

**Sec. 455.184. Conclusive Presumption of Legality.** The final order establishing such district when not appealed from, shall be conclusive that all prior proceedings were regular and according to law.

**Sec. 455.185. Drainage Record.** The board shall provide a drainage record book, which shall be in the custody of the auditor, who shall keep a full and complete



record therein of all proceedings relating to drainage districts, so arranged and indexed as to enable any proceedings relative to any particular district to be examined readily.

**Sec. 455.186. Records Belong to District.** All reports, maps, plats, profiles, field notes, and other documents pertaining to said matters, including all schedules, and memoranda relating to assessments of damages and benefits, shall belong to the district to which they relate, remain on file in the office of the county auditor, and be matters of permanent record of drainage proceedings.

**Sec. 455.187. Membership in National Drainage Association.**

Any drainage district may join and become a member of the National Drainage Association. A drainage district may pay a membership fee and annual dues upon the approval of the drainage board of such district, but not in excess of the following:

One hundred dollars for drainage districts having indebtedness in excess of one million dollars.

Fifty dollars for drainage districts having an indebtedness of five hundred thousand dollars and less than one million dollars.

Twenty-five dollars for drainage districts having an indebtedness of two hundred fifty thousand dollars and less than five hundred thousand dollars.

Ten dollars for drainage districts having an indebtedness of less than two hundred fifty thousand dollars.

The annual dues for any district shall not exceed one-twentieth of one percent of the outstanding indebtedness of the district.

**Sec. 455.188. Membership Fee.** The cost of membership fees and dues shall be assessed against the land in the drainage district and collected in the same manner and in the same ratio as assessments for the cost and maintenance of the drainage district.

**Sec. 455.189. Other Associations.** Levee or drainage districts are authorized to become members of drainage associations for their mutual protection and benefit, and may pay dues and membership fees therein out of the maintenance funds.

**Sec. 455.190. Receiver Authorized.** Whenever the governing board of any drainage or levee district becomes the owner of a tax sale certificate, for any tract of land within the district, and one or more year's taxes subsequent to the tax certificate have gone delinquent, the said governing board may, on behalf of such district, make application to the district court of the county within which such real estate or a part thereof is situated, for the appointment of a receiver to take charge of said delinquent real estate.

**Sec. 455.191. Hearing and Notice Thereof.** Upon the filing of the petition for such appointment, the court shall fix a time and place of hearing thereon, and shall prescribe and direct the manner for the service of notice upon the owner, lienholders and persons in possession of said real estate, of the pendency of said application.

**Sec. 455.192. Appointment — Grounds.** Said application shall be heard by the court, at the time and place so designated, and after hearing thereon the court may appoint one of the members of the governing board of said drainage or levee district as receiver for said real estate, on the grounds that the said real estate is producing returns, and that the general and special taxes against the same are not being paid, and direct him to forthwith take possession of the same and to collect the rents, issues and profits therefrom.

**Sec. 455.193. Bond.** The cost of the premium of the bond of such receiver shall be paid for out of the general funds of the drainage or levee district, and no charge shall be made by the receiver for compensation in said cause.



**Sec. 455.194. Avoidance of Receivership.** The owner of any such tract of real estate may avoid the appointment of such receiver, either before or after the action is commenced, by entering into a good and sufficient written instrument with the governing board of such district, agreeing to apply the rent share of the products of said land, or its equivalent to the payment of taxes thereon.

**Sec. 455.195. Preference in Leasing.** In the event a receiver is appointed for any tract of land, the owner if he is actually in possession thereof, shall have the preference to rent the same.

**Sec. 455.196. Rents — Application Of.** The rents, issues and profits of the real estate when collected by the receiver, shall be applied as follows:

1. To the payment of the costs and expenses of the receivership.
2. To the payment of current general taxes against said real estate.
3. To the payment of any current special taxes against said real estate.
4. The surplus shall be applied upon any delinquent taxes or tax certificates, and the remainder, if any, shall be paid to the owner of said real estate.

**Sec. 455.197. Land Classification and Assessment in District.**

1. a. When a levee district shall have been located and finally established; or
- b. When the required proceedings have been taken to enlarge, extend, strengthen, raise, re-locate, reconstruct, or improve any existing levee; or
- c. When the required proceedings have been held to annex additional lands to said levee district or to exclude or eliminate lands from said levee district; or
- d. When a plan of the United States government for the construction of any levee, or a portion of a levee, in said levee district, or for the enlarging, extending, strengthening, raising, relocating, reconstructing, or improving any existing levee, or a portion thereof, in accordance with any such plan in said levee district, has been heretofore or hereafter adopted by such levee district under the provisions of sections 455.202 to 455.217; or
- e. When the board shall, as authorized by section 455.72, determine that the assessments of benefits of said levee district against the lands in said levee district are generally inequitable the board may by resolution, or if a petition is filed by more than one-third of the owners, including corporations, of land within said levee district and who in the aggregate own more than one-third of the value of the land and land improvements in said levee district as the value thereof is then shown by the general tax records of the county or counties in which such land and land improvements are located, requesting the board to do so, the board shall order the lands in said levee district and the improvements on the land in said levee district classified or reclassified in accordance with the assessed taxable value of said land and land improvements as the same are then shown and as the same may be thereafter shown by the assessment roll of the county or counties in which said land and land improvements are located.

The assessed taxable value of any land, including land improvements exempt from general taxation but subject to assessment for levee purposes, shall be determined by the county assessor who shall make such determination in accordance with the rules of assessment applicable to adjacent lands and without any additional compensation therefore.

Referred to in subsection 2.

2. If the board orders classification or reclassification of lands as authorized in subsection 1 of this section, the board shall fix a time and place for a hearing to be held upon the action of the board in ordering such classification or reclassification, which hearing shall be held at the county seat of the county having the largest acreage



in said levee district. The board shall cause notice of the time and place of such hearing to be served by the county auditor or auditors upon each person whose name appears as owner of lands or land improvements within the levee district in the transfer books of the auditor's office in the county or counties in which said levee district is located, naming him, and also upon the person or persons in actual occupancy of any tract of land or land improvements located in said levee district, without naming him. Such notice shall be for the same time and served in the same manner as is provided for the establishment of a levee district, and such notice shall state:

a. The aggregate estimated costs and expenses which the board proposes to assess under such classification or reclassification;

b. The total aggregate assessed taxable value of all lands and land improvements in said levee district;

c. That the said classification or reclassification of benefits will be based on the assessed taxable value of all lands and improvements to lands located in said levee district;

d. That each tract of land and each land improvement in said levee district will be assessed for its pro rata share of said costs and expenses based upon the ratio that the assessed value of each tract of land and the assessed value of each land improvement bears to the total assessed taxable value of all lands and all land improvements in said district; and

e. That all objections to said method of classification or reclassification shall be in writing and filed with the auditor of the county in which said land or land improvements are located before the time set for said hearing or with the board of trustees of said district at or before the time set for such hearing.

The notice need not show the amount of such costs and expenses to be apportioned to each such owner or to any particular tract of land or land improvement within such levee district.

3. If at or before the time set for said hearing as to such classification or reclassification, there shall have been filed with the county auditor, or auditors in case the district extends into more than one county, or with said board, a remonstrance or remonstrances or objections to such method of classification or reclassification signed by the owners of land and land improvements in the levee district aggregating sixty percent of the total assessed value of the lands plus land improvements in said district as shown by the taxing records in said county or counties in which said district is located, the board shall abandon the alternative method of classification or reclassification herein authorized. The board may then proceed to classify the lands in said levee district as authorized under Sections 455.45 to 455.51, or may proceed to reclassify the same as authorized under section 455.72 unless said remonstrances and objections filed as above provided are filed by a majority of the landowners in the levee district and these remonstrants and objectors in the aggregate own seventy percent or more of the acreage of lands in the levee district and, in writing, object to any reclassification of any kind, then the board shall not reclassify the lands within the district under the provisions of this section nor shall the same be reclassified under the provisions of section 455.72.

4. At the time fixed or at any adjourned hearing if the remonstrances and objections filed at or before the hearing are not signed by sufficient number of owners, or the owners signing such remonstrances and objections do not meet the requirements hereinabove provided, then the board shall fully consider all objections and remonstrances and shall make a determination as to whether or not the costs and expenses shall be assessed:

a. By the alternative method hereinabove set forth; or

b. As provided by sections 455.45 to 455.51; or

c. That the land should be reclassified as provided in section 455.72; or



d. On the basis of a then existing classification of lands.

5. If the board shall determine that the cost and expenses shall be assessed on the basis of assessed taxable value as hereinabove provided, then such basis shall be used for all future assessments made for the purposes of said levee district except if said assessed taxable value of lands and land improvements in said levee district may be changed or revised by the county assessor in the county or counties in which the same are located for general tax purposes, then any such revision made in the assessed taxable value by any such county assessor shall automatically constitute a revision of the classification of such land or land improvements for future assessments made by the board for the purpose of said levee district.

6. In lieu of the hearing provided for in the preceding subsections, the board may, and if the petition of owners provided for in the preceding subsections so asks, the board shall call for an election for the purpose of determining the question of classification on the basis of assessed value of lands and land improvements. The question may be submitted at a regular election of the district or at a special election called for that purpose. It shall not be mandatory for the county commissioner of elections to conduct the elections, however provisions of Sections 49.43 through 49.47 and of Chapter 462, insofar as the same are applicable, shall govern all such elections, and the question to be submitted shall be set forth in the notice of election. If sixty percent of the votes cast be in favor of the proposed change in assessment, it shall become effective for all future assessments as heretofore provided in this section. If the question should fail, no new election on the subject may be called for a period of one year.

7. When a levee district has been established and constructed, as an alternative to the other methods prescribed by law, upon reclassification, the levee district may adopt a method of classification and assessment uniform as to all land in the district, including railroad land, public highways and other public land and land exempt from general taxation, based on the total amount to be assessed divided by the total acres within the district. This method of classification and assessment may be adopted either by hearing or by election and shall become effective as heretofore provided in this section.

8. When a drainage district or drainage and levee district has been established and constructed, and after the lands therein have been classified in accordance with the provisions of section 455.46, 455.47, and 455.48 or reclassified in accordance with section 455.72, the district may adopt methods of assessment for maintenance, repair, and operation of said district uniform as to all land in the district in the same manner and by the same procedures as prescribed in subsections 1 through 7 of this section. Provided, however, that only those lands drained by respective mains and laterals shall be assessed for maintenance, repair, and operation of said mains and laterals, and provided further that this alternate method of assessment shall not be applied to making improvements in the drainage system.

9. Following the adoption of any alternative method of classification or assessment as provided in this section, the same shall continue in effect until such time as the method is changed pursuant to this section or to section 455.72.

10. All proceedings taken prior to July 1, 1968, purporting to establish or re-establish a drainage or levee district or districts, or to enlarge or change the boundaries of any drainage or levee district, and any assessments not heretofore declared invalid by any court, are hereby legalized, validated, and confirmed.

The foregoing shall not be construed to affect any litigation that may be pending at the time this section becomes effective involving the establishment, re-establishment, enlargement, or change in boundaries or any assessments of drainage or levee districts.

**Sec. 455.198. Warrants Not Paid For Want of Funds.** Chapter 74 shall be



applicable to all warrants which are legally drawn on levee and drainage district funds and are not paid for want of funds, except that such warrants shall bear interest at not to exceed seven percent per annum.

**Sec. 455.199. Easements Through a Drainage District.** As used in this section, "person" shall mean any individual or group of individuals, corporation, firm company, or association, except a railroad company.

1. When any person proposes to construct a pipe line, electric transmission line, communication line, underground service line, or other similar installations on, over, across, or beneath the right of way of any drainage or levee district, such person shall, before beginning construction, obtain from the drainage or levee district an easement to cross the district's right of way. The governing body of the district shall require such person to agree to comply with subsection 3 of this section and may, as a condition of granting such easement, attach thereto such additional conditions as they deem necessary. When the necessary easement has been obtained, such person shall construct the installation at his own expense and shall pay all costs of any reconstruction, relocation, modification, or reinstallation of the drainage or levee district's facility which may be necessary as a result of construction of the installation for which the easement was granted.

2. After construction of the installation has been completed in accordance with all conditions under which the easement is granted, the drainage or levee district shall maintain its facility at its own expense, and the person who constructed the installation, or his successors in interest, shall maintain the installation at his own expense. If the drainage or levee district subsequently undertakes any maintenance, improvement, or reconstruction of its facility which requires the modification, relocation, or reconstruction of the installation, the expense of such modification, relocation, or reconstruction shall be borne by the person who constructed the installation or his successors in interest.

3. When the construction of a public highway, or any installation for which an easement has been obtained under subsection 1 of this section, on, over, across, or beneath the right of way of any drainage or levee district disturbs or requires replacement of any portion of a tile drain less than twenty inches in diameter, and a portion of such drain will remain wholly or partially exposed after the construction project has been completed, the portion which is to remain exposed and not less than three feet of such drain immediately on either side of the portion which is to remain exposed, shall be replaced either with steel pipe of not less than sixteen gauge or polyvinyl chloride pipe conforming to current industry standards regarding diameter and wall thickness.

**Sec. 455.200. Agreements With Outside Owners or Other Districts.** Levee and drainage districts are empowered to enter into agreements with the owners of lands lying outside of said districts, or with other levee and drainage districts or municipalities, to provide levee protection or drainage for such lands on such terms as the board may agree and subject to the following terms and conditions:

1. The facilities of the district furnishing the service shall not be overburdened.
2. There shall be no additional cost to the district furnishing the service.
3. The agreement shall be in writing, be made a part of the drainage records and shall include the following:
  - a. The description of the lands to be served;
  - b. The location of tile lines constructed or to be constructed;
  - c. The consideration to be paid to the district furnishing the service and the classification of the lands to be served; and
  - d. Such other provisions as the board deems necessary.



**Sec. 455.201. Public Improvements Which Divide a District — Procedure.** If it should develop that any type of public improvement, other than the forces of nature, has caused such a change in the district as to effectively sever and cut off some of the land in the district from other lands in the district and from the improvements in the district in such a way as to deprive the land of any further benefits from the improvement, or in some manner to divide the benefits that may be derived from two separated portions of the improvement, then the board of supervisors or the board of trustees in charge may upon notice to interested parties and hearing as provided by this chapter for the original establishment of a district make an order to remove lands so deprived of benefits from the district without any reclassification, or may subdivide the district into two separate entities if the public improvement splits the district into two separate units, each of which may still derive some separate benefits from the separated portions of the district.

If the public improvement is such as to leave two separate portions of the improvement that are still operable and of benefit to the land on each side of the division made by the public improvement, then the board may divide the district into two separate units so that each may perform further work on the improvements in their respective parts, but neither shall be charged for work completed on the opposite side of the new improvement that divides them and may only be charged for the work done in that portion of the district remaining on their side of the division.

The same authority provided in this section shall vest in the board of supervisors or the board of trustees in the event a drainage district in any manner relinquishes its control over any portion of its improvements or its obligation to maintain same to another district and lands may be removed from the district or the district may be divided as provided in this section.

The board may further in dividing the district award to each of the separated portions of the district the improvement remaining in each portion, determine the value of the improvement so remaining on each side and secondly determine the contributions of the lands in the separated portions to the improvements and the upkeep of the earlier district, and if the contribution is proportionate neither side shall owe the other portion of the district any money, but if contribution is disproportionate, the board shall determine an equitable adjustment and the amount of payment required for one portion to pay to the other to buy the existing improvement.

If land is eliminated from any further benefits, there need not be any reclassification and the board may remove the same from the district in the same manner as if the land has been destroyed in whole by the erosion of a river and spread any deficiency in assessment among the remaining lands as provided by section 455.56.

"Type of public improvement" for the purpose of this section includes drainage or levee improvements or new highways.

#### FEDERAL FLOOD CONTROL CO-OPERATION

**Sec. 455.202. Plan of Improvement.**

1. Whenever the government of the United States acting through its proper agencies or instrumentalities will undertake the original construction of improvements or the repair or alteration of existing improvements which will accomplish the purposes for which the district was established or aid in the accomplishment thereof and shall cause to be filed in the office of the auditor of the county in which said district is located a plan of such improvement or for the repair or alteration of existing improvements, the board shall have jurisdiction, power and authority, upon the notice, hearing and determination hereinafter provided, to adopt such plan of improvement or of repair or alteration of existing improvements and to provide necessary right of way therefor; and to pay such portion of all costs and damages incident to the adoption of such plan,



the construction thereunder and the maintenance and operation of the works as will not be discharged by the federal government under legislation existing at the time of adoption; also to enter into such agreements with the United States government as may be necessary to meet federal requirements including the taking over, repair and maintenance of the works and to perform under such agreements.

2. If the cost to the district of the repair or alteration of existing improvements contemplated by this section does not exceed twenty-five percent of the sum of the original cost to the district and the cost of subsequent improvements, including all federal contributions, the board may proceed under the provisions of section 455.135, without notice and hearing, and without appraisal as contemplated by section 455.211, but the remaining provisions of section 455.202 through section 455.217 that are not in conflict with section 455.135 shall remain applicable.

If the federal program divides a project into separate phases, each phase shall be considered a separate program as described in section 455.135, subsection 4, and shall in no event be construed as an unauthorized division into separate programs to avoid the twenty-five percent limitation prescribed for making improvements under said section 455.135, subsection 4, without notice and hearing.

**Sec. 455.203. Agreement in Advance.** The agreement with the federal government contemplated in section 455.202 may be entered into by the board in advance of the filing of the plan — such agreement to be effective if the plan is finally adopted. If the plan is approved the board shall make a record of any such co-operative agreement.

**Sec. 455.204. Engineer Appointed.** After the filing of the plan contemplated in section 455.202 the board shall, at its first session thereafter, regular, special or adjourned, appoint a disinterested and competent civil or drainage engineer who shall give bond in an amount to be fixed by the board conditioned for the faithful and competent performance of his duties.

**Sec. 455.205. Engineer's Report.** The engineer shall examine the plan filed by the federal agency and the lands affected thereby and shall make and file with the county auditor a full written report which, together with the federal plan, will show the following:

1. The character and location of all contemplated improvements, and the plats, profiles and specifications thereof.

2. The particular description and acreage of land required from each forty-acre tract or fraction thereof for right of way, borrow pits or other purposes together with congressional or other description of each tract and the names of the owners thereof as shown by the transfer books in the office of the auditor.

3. A particular description of each forty-acre tract or fraction thereof that will be excluded from benefit by adoption of the plan as filed, together with the name of owners thereof as shown by the transfer books in the office of the auditor.

4. A particular description of each forty-acre tract or fraction thereof outside the district which will benefit from adoption of the plan as filed and the name of the owner thereof as shown by the transfer books in the office of the auditor.

5. Such rights of way or portions thereof previously established or acquired as will be rendered unnecessary by adoption of the federal plan and any unpaid damages awarded therefor.

6. Such other damages previously awarded as will be affected by adoption of the federal plan.

7. The recommendation of the engineer with respect to the adoption of the plan.

**Sec. 455.206. Supplemental Reports.** Upon the filing of such report the board



shall examine and consider the same together with the plan and the commitments involved in its adoption and may require supplemental reports of the engineer or of another disinterested engineer with such data as they may deem necessary or desirable including recommendations for any change or modification, negotiate with the Federal agency involved and amend the plan in such manner as may be mutually agreed upon. The engineer shall make such supplemental reports as may be required by the board or necessitated by amendment of plan.

**Sec. 455.207. Notice and Hearing.** If upon consideration of the plan or amended plan and the report or reports of the engineer and the commitments involved in the adoption of the plan the board finds that the district will benefit therefrom or the purposes for which the district was established will be promoted thereby, the board shall adopt the same as a tentative plan, entering order to that effect and fixing a date for hearing thereon not less than thirty (30) days thereafter and directing the auditor to cause notice to be given of such hearing as hereinafter provided.

**Sec. 455.208. Form of Notice.** Such notice shall be captioned in the name of the district and shall be directed to the owners of each tract or lot within said levee or drainage district, including railroad companies having rights of way, lienholders and encumbrances and to all owners, lienholders or encumbrances of lands which an adoption of the plan would exclude from benefits and of lands outside the district which will benefit therefrom and to all other persons whom it may concern and, without naming them, to the occupants of all lands affected and shall set forth that there is on file in the office of the auditor a plan of construction of the federal agency (naming it), together with reports of an engineer thereon, which the board has tentatively approved, and that such plan may be amended before final action; also the day and hour set for hearing on the adoption of said plan, and that all claims for damages, except claims for land required for right of way or construction, and all objections to the adoption of said plan for any reason must be made in writing and filed in the office of the auditor at or before the time set for hearing. Provisions of this chapter for giving notice, waiver of notice, waiver of objections and damages and adjournment for service contained in sections four hundred fifty-five point twenty-one (455.21) to four hundred fifty-five point twenty-six (455.26), inclusive, shall apply.

**Sec. 455.209. Amendment — New Parties.** The board may continue the hearing pending decision and may amend the plan but in the event of amendment the board shall continue further hearing to a fixed date. All parties over whom the board then has jurisdiction shall take notice of such further hearing but any new parties rendered necessary by the modification or change of plans shall be served with notice as for the original hearing.

**Sec. 455.210. Entry or Order — Effect.** If the board, after consideration of the subject matter, including all objections filed to the adoption of the plan and all claims for damages, shall find that the district will be benefited by adoption of the plan or the purposes for which the district was established furthered thereby they shall enter order approving and adopting such final plan. Such order shall have the effect of:

1. Altering the boundaries of the district to conform to the changes effected by the plan adopted.
2. Cancelling all existing awards for damages for property not appropriated for right-of-way or construction and rendered unnecessary by the plan so adopted.
3. Cancelling all awards previously made for damages other than for right-of-way or construction by reinstating the claims for such damages which said claims may be amended by the claimants within ten days thereafter.
4. Cancelling all unpaid assessments for benefits on lands excluded from the district by adoption of the plan. The assessments so cancelled shall become part of



the costs of the improvement.

5. Establishing as benefited thereby the lands added to the district by adoption of the plan and rendering same subject to classification and assessment.

6. Whenever a plan has been adopted as contemplated by this section, modifications and changes can be made therein without further notice or hearing, provided the same do not increase or decrease the estimated cost of the plan to the district by more than 25%.

**Sec. 455.211. Appraisement.** The board shall thereupon appoint three appraisers of the qualification prescribed in section 455.30, who shall qualify in the manner therein provided, and shall fix a time for hearing on their report of which all interested parties shall take notice. The appraisers shall view the premises and fix and determine the damages to which each claimant is entitled, including claimants whose awards for damages were cancelled by the order of adoption, and shall place a separate valuation upon the acreage of each owner taken for right-of-way or other purposes necessitated by adoption of the plan and shall file a report thereof in writing in the office of the auditor at least five days before the date fixed by the board for hearing thereon. Should the report not be filed on time or should good cause for delay exist the board may postpone the time for final action on the subject and, if necessary, may appoint other appraisers. Thereafter the provisions of section 455.32 shall apply.

**Sec. 455.212. Assessment of Benefits.** Appointment of commissioners to assess benefits and classify lands within the district and all proceedings relative to such assessment and classification shall be as otherwise provided in this chapter except that when the lands of the district have previously been classified, the commissioners shall classify and assess only such lands as have been added to the district by adoption of the plan and recommend such changes in existing classifications as are materially affected by the plan so adopted. The board may, upon hearing, adjust the classification of lands affected by the plan.

**Sec. 455.213. Installments — Warrants.** The board shall levy the costs contemplated in section 455.202 upon all of the lands of the district on the basis of the classification for benefits as finally established and the assessments so levied shall be paid in one installment unless the board in its discretion shall provide for the payment thereof in not more than twenty equal installments with interest at not to exceed seven percent per annum. The board may issue warrants bearing interest at not to exceed seven percent per annum against assessments. The warrants may be numbered and state a maturity date in which event they shall bear interest from the date of issue without being presented for payment and marked unpaid for want of funds. The warrants may be sold by the board for cash in an amount not less than the face value thereof, together with accrued interest, if any.

**Sec. 455.214. Subsequent Levies.** The board shall make such subsequent levies as may be necessary to meet the expenses of the district including costs of maintenance, repair and operation of the works.

**Sec. 455.215. Applicable statutes.** Except as otherwise provided herein all provisions of this chapter and chapters 456 to 467 relative to assessment of damages, appointment of an engineer, employment of counsel, payment for work, levy and collection of drainage and levee assessments and taxes, the issue of improvement certificates and drainage or levee bonds, the taking of appeals and the manner of trial thereof and all other proceedings relating thereto shall apply.

**Sec. 455.216. Scope of Plan.** The provisions of this division shall be applicable to districts organized or established under the provisions of chapters 457 to 462 inclusive, chapter 466 and 467.



**Sec. 455.217. Districts Under Trustees.** When a district is in the management of Trustees as provided in chapter 462 the Board of Trustees shall have the jurisdiction to adopt the Federal plan as provided herein and to exercise all other powers herein granted except that any levy shall be made by the Board of Supervisors upon certificate of the amount necessary by the Trustees as provided in section 462.28.

#### STATE LANDS

**Sec. 455.218. Occupancy and Use Permitted — Assessments Paid.** Any levee or drainage district organized, or in the process of being organized, under the laws of this state may occupy and use for any lawful levee or drainage purpose land owned by the state of Iowa, upon first obtaining permission to do so from the state or state agency controlling the same.

In the case of lands lying within the beds of meandered streams and border streams the permission shall be obtained from the state conservation commission, or its successor. In the case of lands that are under the control of no office or agency of the state, then the permission shall be obtained from the executive council.

Such permission shall not be unreasonably withheld and shall be in the form of an easement executed by the governor or in the case of an agency, by the chairman or presiding officer thereof, and when once granted shall be perpetual, except that if no use is made of the same for a period of five years such permission shall immediately thereafter expire.

All uses and occupancies as contemplated by this section existing on July 4, 1961 are hereby legalized.

The state of Iowa, its agencies and subdivisions shall be financially responsible for drainage and special assessments against land which they own, or hold title to, within existing drainage districts.

#### BOARD OF COUNTY DRAINAGE ADMINISTRATORS

**Sec. 455.219. Administrators Appointed.** The county board of supervisors of any county of this state in which one or more drainage districts are established may by resolution establish a board of county drainage administrators. All of the powers, duties, and responsibilities now or hereafter conferred on county boards of supervisors in this chapter and chapters 456 to 467, inclusive, shall thereupon be transferred to and thereafter exercised by the board of county drainage administrators. A drainage or levee district may be established pursuant to chapter 462.

**Sec. 455.220. Administrator Areas.** When establishing a board of county drainage administrators, the board of supervisors shall divide the county, along township lines, into three drainage administrator areas of approximately equal territory. The board of county drainage administrators shall consist of one resident freeholder appointed by the county board of supervisors from each area, and at least two of the administrators shall be agricultural landowners. The members first appointed shall hold office for terms of one, two, and three years respectively, as indicated and fixed by the county board of supervisors. Thereafter, succeeding members shall be appointed for a term of three years, except that vacancies occurring otherwise than by expiration of a term shall be filled by appointment for the unexpired term. Any member of the board of county drainage administrators who shall cease to have any of the qualifications prescribed by this section shall thereupon be disqualified as a member of the board and his office shall be deemed vacant. Members of the board of county drainage administrators may be removed by the county board of supervisors for cause, but every such removal shall be by written order which shall be filed with the county auditor.

**Sec. 455.221. Compensation.** The members of the board of county drainage



administrators shall each receive seventeen dollars and fifty cents per day for each day actually devoted to the duties of their office, ten cents for every mile traveled in going to and from meetings of, or other places of performing the duties of, said board, and other actual necessary expenses incurred in the performance of their duties.

**Sec. 455.222. How Paid.** The compensation and expenses of the county board of drainage administrators, for each day or portion thereof necessarily expended in the transaction of the business of a drainage or levee district, shall be paid out of the funds of the district served. The administrators shall file with the auditor or auditors, as the case may be, itemized, verified statements of their time devoted to the business of the district and the expenses incurred. If the administrators transact business of more than one district on a given day, they shall prorate their claims for compensation proportionately among the districts served on that day, but in no case shall a member of the board of county drainage administrators claim or receive a sum in excess of seventeen dollars and fifty cents, plus actual and necessary expenses, for a single day.

**Sec. 455.223. Conservancy Districts.** The governing board of every drainage drainage or levee district organized under the laws of this state shall take notice of the district plan, and shall conform to the duly promulgated rules, of the conservancy district or districts in which the drainage or levee district is located; provided that this section shall not be construed to grant any authority not otherwise granted by law to the governing boards of drainage or levee districts.

#### CHAPTER 455A — IOWA NATURAL RESOURCES COUNCIL

**Sec. 455A.1. Definitions.** As used in this chapter, "council" means "Iowa Natural Resources Council";

"Flood plains" means the area adjoining the river or stream, which has been or may be hereafter covered by flood water;

"Floodway" means the channel of a river or stream and those portions of the flood plains adjoining the channel, which are reasonably required to carry and discharge the flood water or flood flow of any river or stream;

"Person" means any natural person, firm, partnership, association, corporation, state of Iowa, any agency of the state, municipal corporation, political subdivision of the state of Iowa, legal entity, drainage district, levee district, public body, or other district or units maintained or to be constructed by assessments, or the petitioners of a proceeding, pending in any court of the state affecting the subject matter of this chapter;

"Due notice" means a notice published once each week for two consecutive weeks in a newspaper of general circulation in each county in which the property affected is located with the date of last publication not less than ten nor more than thirty days prior to the date of hearing;

"Surface water" means the water occurring on the surface of the ground;

"Ground water" means that water occurring beneath the surface of the ground;

"Diffused waters" means waters arising by precipitation and snowmelt, and not yet a part of any watercourse or basin and shall include capillary soil water;

"Depleting use" means the storage, diversion, conveyance, or use of any supply of water which might impair rights of lower or surrounding users, or might impair the natural resources of the state or might injure the public welfare if not controlled;

"Beneficial use" means the application of water to a useful purpose that inures to the benefit of the water user and subject to his dominion and control but does not include the waste or pollution of water;



"Non regulated use" means the use of water for ordinary household purposes, use of water for poultry, livestock and domestic animals, any beneficial use of surface flow from rivers bordering the State of Iowa, existing beneficial uses of water within the territorial boundaries of municipal corporation on May 16, 1957, except that industrial users of water, having their own water supply, within the territorial boundaries of municipal corporations, shall be regulated when such water use exceeds three percent more than the highest per day beneficial use prior to May 16, 1957, and any other beneficial use of water by any person of less than five thousand gallons per day;

"Regulated use" means any depleting use except a use specifically designated as a non-regulated use;

"Permit" means the written authorization issued by the water commissioner or council to a permittee which shall be limited as to quantity, time, place, and rate of diversion, storage or withdrawal in accordance with the declared policies and principles of beneficial use set forth in this chapter;

"Permittee" means the person who obtains a permit from the council authorizing such person to take possession by diversion or otherwise and to use and apply an allotted quantity of water for a designated beneficial use, and who makes actual use of the water for such purpose;

"Waste" means (a) permitting ground water or surface water to flow, taking it or using it in any manner so that it is not put to its full beneficial use, (b) transporting ground water from its source to its place of use in such a manner that there is an excessive loss in transit, (c) permitting or causing the pollution of a water-bearing strata through any act which will cause salt water, highly mineralized water, or otherwise contaminated water to enter it;

"Watercourse" means any lake, river, creek, ditch or other body of water or channel having definite banks and bed with visible evidence of the flow or occurrence of water, except such lakes or ponds without outlet to which only one landowner is riparian;

"Basin" means a specific subsurface water-bearing reservoir having reasonably ascertainable boundaries;

"Established average minimum flow" means when reasonably required for the purpose of this chapter, the council shall determine and establish the average minimum flow for a given watercourse at a given point thereon. The "average minimum flow" for a given watercourse as used in this chapter shall be determined by the following factors: (a) Average of minimum daily flow occurring during the preceding years chosen by the council as more nearly representative of changing conditions and needs of a given drainage area at a particular time; (b) minimum daily flows shown by experience to be the limit at which further withdrawals would be harmful to the public interest in any particular drainage area; and (c) those minimum daily flows shown by established discharge records and experience to be definitely harmful to the public interest. Such determination shall be based upon available flow data, supplemented, when available data are incomplete, by whatever evidence is available;

"Impounded or stored water" means that water captured and stored on the land by anyone taking it pursuant to the provisions of this chapter, and the party impounding the water shall become the absolute owner thereof.

**Sec. 455A.2. Declaration of Policy.** It is hereby recognized that the protection of life and property from floods, the prevention of damage to lands therefrom and the orderly development, wise use, protection and conservation of the water resources of the state by the considered and proper use thereof, is of paramount importance to the welfare and prosperity of the people of the state, and, to realize these objectives it is hereby declared to be the policy of the state to correlate and vest the powers of the state in a single agency, the Iowa natural resources council, with the duty and author-



ity to establish and enforce an appropriate comprehensive state-wide program for the control, utilization, and protection of the surface and ground-water resources of the state. It is hereby declared that the general welfare of the people of the state of Iowa requires that the water resources of the state be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use, or unreasonable methods of use, of water be prevented, and that the conservation of such water be exercised with the view to the reasonable and beneficial use thereof in the interest of the people, and that the public and private funds for the promotion and expansion of the beneficial use of water resources shall be invested to the end that the best interests and welfare of the people are served.

Water occurring in any basin or in any watercourse, or other natural body of water of the state, is hereby declared to be public waters and public wealth of the people of the state of Iowa and subject to use in accordance with the provisions of this chapter, and the control and development and use of water for all beneficial purposes shall be in the state, which, in the exercise of its police powers, shall take such measures as shall effectuate full utilization and protection of the water resources of the state of Iowa.

**Sec. 455A.3. Creation.** There is hereby created and established an Iowa natural resources council. The council is established as an agency of the state government to promote the policies set forth in this chapter and shall represent the state of Iowa in all matters within the scope of this chapter.

**Sec. 455A.4. Appointment.** The council shall consist of ten members, nine of whom shall be electors of the state of Iowa and shall be selected from the state at large solely with regard to their qualifications and fitness to discharge the duties of office without regard to their political affiliation. The tenth member shall be the executive director of the department of environmental quality or his designee, who shall be a nonvoting member. The appointive members of the council shall be appointed by the governor with the approval of two-thirds of the members of the senate and shall be appointed for overlapping terms of six years. The terms of three members of the council shall expire on July 1 or each odd-numbered year. Within sixty days following the organization of each regular session of the general assembly held during an odd-numbered year, appointments shall be made of successors to members of the council whose terms of office shall expire on the first of July next thereafter and of members to fill the unexpired portion of vacant terms.

**Sec. 455A.5. Vacancies.** Vacancies occurring while the general assembly is in session shall be filled for the unexpired portion of the term as full-term appointments are filled. Vacancies occurring while the general assembly is not in session shall be filled by the governor, but such appointments shall terminate at the end of thirty days after the convening of the next general assembly.

**Sec. 455A.6. Removal.** The governor may, with the approval of the senate, during a session of the general assembly, remove any member of the council for malfeasance in office or for any cause that renders him ineligible for membership or incapable or unfit to discharge the duties of his office and his removal when so made shall be final.

**Sec. 455A.7. Compensation and Expenses.** The members of the council, except those members who are employees of the state or any political subdivision, shall be paid a forty dollar per diem and shall be reimbursed for actual and necessary expenses incurred under the provisions of this chapter; however, a member shall not receive more than three thousand two hundred dollars per diem for each fiscal year. All per diem and expense moneys paid to members shall be paid from funds appropriated to the council. A member of the council shall not have a direct financial interest



in, or profit by any of the operations of the council.

**Sec. 455A.8. Organization, meetings and rules.** The council shall organize by the election of a chairman and shall meet at the seat of government on the first Monday in the months of January, April, July and October, and at such other times and places as it may deem necessary. The chairman shall be elected annually at the meeting of the council in July. Meetings may be called by the chairman and shall be called by the chairman on the request of four members of the council. The majority of the council shall constitute a quorum and the concurrence of a majority of the council in any matter within their duties shall be required for its determination, provided that the public hearing on any matter within council duties may be conducted by less than a majority of the council or by an employee so designated by the council. The council shall adopt such rules pursuant to chapter 17A as it may deem necessary to transact its business and for the administration and exercise of its powers and duties. The council may further establish, modify or repeal rules specifying the conditions under which the water commissioner may authorize specific nonrecurring minor uses of water for periods not to exceed one year through registration.

**Sec. 455A.9. Director and water commissioners.** 1. The council shall choose a director who shall not be a member of the council and shall fix the compensation of such director, which shall be payable out of the funds appropriated to the council. The director shall be qualified by training and experience. The term of office of the director shall be during the pleasure of the council. The director shall serve as the executive officer of the council and shall have charge of the work of the council subject to its orders and directions.

2. The council shall choose a water commissioner who shall not be a member of the council and shall fix the compensation of such commissioner, which shall be payable out of the funds appropriated to the council. The water commissioner shall be qualified by training and experience. The term of office of the water commissioner shall be during the pleasure of the council. The water commissioner shall serve in a quasi-judicial capacity as the trier of fact questions in the processing of all applications for appropriation permits. He shall conduct hearings on any applications for permits as provided by law and the rules of the council, and he shall perform such other duties as the council may prescribe.

3. The council may choose one or more deputy water commissioners who shall not be members of the council. The council shall fix the compensation of such deputy commissioners, which shall be payable out of the funds appropriated to the council. The deputy commissioners shall be qualified by training and experience. The term of office of the deputy commissioners shall be during the pleasure of the council. A deputy commissioner shall have all of the duties, responsibilities, and powers of the water commissioner when acting in his stead. The deputy commissioners shall be assigned hearings on applications for permits by the water commissioner.

**Sec. 455A.10. Employees.** The director, with the approval of the council is empowered to employ, discharge, and fix the salaries of such technical, clerical, stenographic, and such other employees and assistants as may be required. All of such employees shall be paid from funds appropriated to the council.

**Sec. 455A.11. Bonds.** The council shall provide for the execution of surety bonds for all members and employees who shall be entrusted with funds and property and the premiums on all such surety bonds shall be paid from the funds appropriated to the council.

**Sec. 455A.12. Warrants.** The comptroller is directed to draw warrants on the treasurer of the state for all disbursements authorized by this chapter upon duly item-



ized and verified vouchers bearing the approval of the director of the council.

**Sec. 455A.13. Reports, Accounting and Recommendations.** The council shall make a report to the governor of its activities for the preceding biennial period, including therein an itemized statement of all receipts and disbursements and such other information pertaining to its work as may be of value.

The council in its biennial report shall make such recommendations for amendments to this chapter, or for other legislation as it deems appropriate.

The council shall report to the governor at any time required, the results accomplished since its last report, pending plans and the status of any work or plans in progress.

**Sec. 455A.14. Departmental Co-operation — investigations — search warrant.**

1. The council may request and receive from any department, division, board, bureau, commission, public body, or agency of the state, or of any political subdivision thereof, or from any organization, incorporated or unincorporated, which has for its object the control or use of any of the water resources of the state, such assistance and data as will enable the council to properly carry out its activities and effectuate its purposes hereunder. The council shall reimburse such agencies for special expense resulting from expenditures not normally a part of the operating expense of any such agency.

2. a. With the written consent of the owner or occupant, the council, its agents and other employees may enter upon any lands or waters in the state for the purpose of making any investigation, examination, or survey contemplated by this chapter.

b. If the owner or occupant of any property refuses admittance, or if prior to such refusal the director demonstrates the necessity for a warrant, the director may make application under oath to the district court of the county in which the property is located for the issuance of a search warrant.

c. In the application the director shall state that an inspection or survey of the premises designated in the application may result in evidence tending to reveal the existence of violations of the provisions of this chapter, any rule, order or permit issued by the council. The application shall describe the area or premises to be inspected or surveyed, give the date of the last inspection if known, give the date and time of the proposed inspection or survey, declare the need for such inspection or survey, recite that notice of desire to make an inspection or survey has been given to affected persons and that admission was refused if that be the fact, and state that the inspection or survey has no purpose other than to carry out the purpose of the statute or rule pursuant to which inspection or survey is to be made.

d. The court may issue a search warrant, after examination of the applicant and any witnesses, if the court is satisfied that there is probable cause to believe the existence of the allegations contained in the application.

e. In making investigations, examinations or surveys pursuant to the authority of this subsection, the director must execute the warrant in a reasonable manner within ten days after its date of issuance.

**Sec. 455A.15. Eminent domain.** The council shall have the right to exercise the power of eminent domain. All the provisions of law relating to condemnation of lands for public state purposes shall apply to the provisions hereof in and so far as applicable. The executive council shall institute and maintain such proceedings.

The council may accept gifts, contributions, donations and grants, and use the same for any purpose within the scope of this chapter.



**Sec. 455A.16. Title to Lands and Other Property.** The title to all lands, easements, or other interest therein, or other property or rights acquired by the council shall be approved by the attorney general and taken in the name of the state of Iowa.

**Sec. 455A.17. Functions and duties.** The council shall establish and enforce a comprehensive state-wide plan for the control, utilization and protection of the water resources of the state, which plan shall include all uses and developments of water resources and shall provide for the optimum control, protection, development, allocation and utilization thereof. All uses and developments of water resources regulated under provisions of this chapter must be found to be compatible with the state comprehensive plan prior to the granting of a permit by the water commissioner or an approval order by the council. In making and formulating such state comprehensive plan for the further control, development, protection, allocation, and utilization of the water resources of the state, the council shall make surveys and investigations of the water resources of the state and shall give consideration to the needs of agriculture, industry, health, fish and wildlife, recreation, pollution and allied matters as they relate to flood control and water resources. Before implementation of the statewide plan, the council shall submit the plan to the general assembly which shall approve or disapprove the plan pursuant to a concurrent resolution. Approval of the plan shall require the affirmative vote of a majority of the members of each house of the general assembly.

The council shall be the official representative of the state of Iowa on all comprehensive water resources planning groups for which state participation is provided. The council shall co-ordinate state planning with local and national planning and, in safeguarding the interests of the state and its people, shall undertake the resolution of any conflicts that may arise between the water resources policies, plans, and projects of the federal government and the water resources policies, plans, and projects of the state, its agencies, and its people. Nothing in this section assigning the overall responsibility for comprehensive planning of water resources to the council shall be construed as limiting or supplanting the functions, duties and responsibilities of the several state or local agencies or institutions with regard to planning of water associated projects within the particular area of responsibility of such state or local agency or institution.

The council shall enter into negotiations and agreements with the federal government relative to the operation of, or the release of water from, any project that has been authorized or constructed by the federal government when the council shall deem such negotiations and agreements to be necessary for the achievement of the policies of the state of Iowa relative to its water resources.

The council, on behalf of the state, shall enter into negotiations with the federal government relative to the inclusion of conservation storage features for water supply in any project that has been authorized by the federal government when the council shall deem such negotiations to be necessary for the achievement of the policies of the state of Iowa and the state comprehensive plan for water resources; provided, however, that any agreements reached pursuant to such negotiations shall not bind the state until enacted into law by the legislature.

Water users who will benefit from the development by the federal government of conservation storage for water supply shall be encouraged to assume the responsibility for repaying to the federal government any reimbursable costs incurred in such development and such users who will accept benefits from such developments financed in whole or in part by the state shall assume by contract the responsibility of repaying to the state their reasonable share of the state's obligations in accordance with such basis as will assure payment within the life of the development. No appropriations, diversions or use shall be made by any person of any of the waters of the state that have been stored or released from storage either under the authority of the state or pursuant



to an agreement between the state and the federal government until such time as he shall have assumed by contract his repayment responsibility; provided, however, that the application of this provision shall in no way infringe upon any vested property interests.

In its contracts with water users for the payment of state obligations incurred in the development of conservation storage for water supply, the council shall include (1) such terms as it shall find reasonable and necessary for the protection of the health, safety, and general welfare of the people of the state, (2) such terms as it shall find reasonable and necessary for the achievement of the purposes of this chapter and acts amendatory thereof or supplemental thereto, and, (3) such terms as shall make clear that the state of Iowa shall not be responsible to any person in the event the waters involved are insufficient for performance. The council may designate and describe any such contract, and describe the relationship to which it relates, as a sale of storage capacity, a sale of water release services, a contract for the storage or sale of water, or any similar terms suggestive of the creation of a property interest. The term of such contracts shall be commensurate with the investment and use concerned but in no event shall the council enter into any such contract for a term in excess of the maximum period provided for water use permits.

The council shall procure and obtain flood control works and water resources projects from and through or by co-operation with the United States, or any agency of the United States, by co-operation with and action of the cities and other subdivisions of the state, under the laws of the state relating to flood control and use of water resources, and by co-operation with the action of landowners in areas affected thereby when the council shall deem such projects to be necessary for the achievement of the policies of the state of Iowa and the state comprehensive plan for water resources.

**Sec. 455A.18. Jurisdiction — Diversion of Water.** The council shall have jurisdiction over the public and private waters in the state and the lands adjacent thereto necessary for the purposes of carrying out the provisions of this chapter. The council may construct flood control works or any part thereof. In the construction of such works or in making surveys and investigations or in formulating plans and programs relating to the water resources of the state, the council may co-operate with other states or any agency thereof or with the United States or any agency of the United States, or with any person as defined in this chapter.

Upon application by any person for permission to divert, pump, or otherwise take waters from any watercourse, underground basin or watercourse, drainage ditch or settling basin within the State of Iowa for any purpose other than a non-regulated use, the council shall cause to be made an investigation of the effect of such use upon the natural flow of such watercourse, the effect of any such use upon the owners of any land which might be affected by such use, and the effect of any such use upon the state comprehensive plan for water resources, and shall hold a hearing thereon. Upon application by any person for approval of the construction or maintenance of any structure, dam, obstruction, deposit or excavation to be erected, used, or maintained in or on the flood plains of any river or stream, the council shall cause an investigation to be made of the effect thereof on the efficiency and capacity of the floodway and on the state comprehensive plan for water resources. In determining the effect of any such proposal the council shall consider fully its effect on flooding or flood control both to any proposed works and to adjacent lands and property, on the wise use and protection of water resources, on the quality of water, on fish, wildlife and recreational facilities or uses, and on all other public rights and requirements.

**Sec. 455A.19. Procedure to Secure Permit.** The procedure for securing a permit to divert, store or withdraw water shall be as follows:

1. The application for a permit shall be made in writing to the council and shall set forth the designated beneficial use for which the permit is sought, the specific limits



as to quantity, time, place, and rate of diversion, storage or withdrawal of waters.

2. Upon receipt of an application for a permit, the water commissioner shall set a time and place for hearing. The hearing shall be in the county where the permit is sought, but may be held at any other place in the state unless objection is raised by the applicant. The hearing shall be to the water commissioner.

3. The water commissioner shall cause due notice of the hearing to be published. Said notice shall specify the date, time and place of hearing and shall include a concise statement of the designated beneficial purposes for which diversion is sought, the specific limits as to quantity, time, place, and rate of diversion, storage or withdrawal of waters, the name of the applicant and the description of the land upon which waters are to be diverted, stored or withdrawn. In addition to the foregoing, the water commissioner shall cause a copy of the notice to be sent to the director of the conservation commission, commissioner of public health, the secretary of the soil conservation committee, secretary of agriculture, director of the Iowa geological survey, the director of the Iowa development commission, and to any other person who has filed a written request for a notification of any hearings affecting a designated area, by ordinary mail, prior to the date of last publication.

4. Any interested person may appear and present evidence at the hearing, and may be represented by counsel, who shall have the right to question others who present evidence.

5. The applicant for a permit shall pay a fee to the council in the amount of twenty-five dollars (\$25.00) at the time of filing his application which fee shall include the cost of publishing notice and which publication shall then be paid for by the council. Such fee shall be used by the council for administering this chapter including the payment of expenses incurred in publishing legal notice.

6. The council shall prescribe the rules of procedure for the conduct of the hearings.

7. The determination of the water commissioner on any application before him shall be in writing, filed with the council and shall set forth his findings. A copy of the determination shall be mailed to the applicant and to any person appearing who in writing requests a copy of the determination.

8. Any party aggrieved by the determination of the water commissioner may, within thirty (30) days from the date such determination is filed, appeal therefrom to the council setting forth in general terms the determination appealed from and the grounds of the appeal. The director shall set a time and place for hearing before the council and shall then send a notice by ordinary mail to all persons who appeared at the hearing before the water commissioner.

9. The council shall adopt rules for the conduct of the hearing on appeal and shall file a determination in writing, setting forth findings. A copy of the determination shall be mailed to the applicant or to any person appearing who in writing requests a copy of the determination.

10. The water commissioner or the council or other employee so authorized by the council at any hearing or other proceeding authorized by this chapter, shall have the power to administer oaths; take testimony; issue subpoenas and compel the attendance of witnesses, the subpoenas shall be served in the same manner as subpoenas issued by the courts of the state; and to order the taking of depositions in the same manner as depositions are taken under the Iowa Rules of Civil Procedure.

11. The natural resources council and the Iowa geological survey may jointly determine by resolution that special irrigation permits may be issued for withdrawal of water from the alluvial aquifers of the flood plains of that portion of streams bordering the state of Iowa. The council may determine by rule special limitations and observation and monitoring requirements for each special permit.



Application and payment of the fee for special permits shall be in accordance with the provisions of subsection 1, and subsection 5, respectively. Upon receipt of the application and fee, the commissioner shall cause notice of the application to be published in a newspaper of general circulation in the county where the permit is sought. The special permit shall be issued by the commissioner two weeks from the date of publication, unless written objection to the application is filed with commissioner before that date, in which case the hearing procedures of this section, shall be followed. Special permits issued after Jan. 1, 1979\* shall terminate on July 1, 1980. The termination date of all existing special permits is hereby extended to July 1, 1980.

**Sec. 455A.20. Hearing — appeal.** If the water commissioner at the first hearing or the council at the hearing on appeal shall determine after due investigation that such diversion, storage or withdrawal will not be detrimental to the public interests, including drainage and levee districts, or to the interests of property owners with prior or superior rights who might be affected, the water commissioner following the first hearing, or the council following the hearing on appeal shall grant a permit for such diversion, storage or withdrawal. Judicial review of such action is available in accordance with the terms of the Iowa administrative procedure Act and section 455A.37. Permits may be granted for any period of time but not to exceed ten years except for the storage of water which may be granted for the life of the structure unless withdrawn for good cause. All existing storage permits are hereby extended for the life of the structure unless withdrawn for good cause. Permits may be granted which provide for less diversion, storage, or withdrawal of waters than set forth in the application. Permits may be extended by the water commissioner for a period of not more than ninety days during the pendency of an application for renewal. Any permit granted shall remain as an appurtenance of the land described therein through the date specified in such permit and any extension thereof or such earlier date as the permit or any extension thereof is revoked or cancelled under the provisions of section 455A.28.

Upon application therefor prior to the termination date specified therein permits may be renewed by the water commissioner for any period of time not to exceed ten years. Permits may be renewed without hearing or fee if no objection is filed and no change in the conditions of the permit is sought. The water commissioner shall cause notice of receipt of an application for renewal to be sent by ordinary mail to any person who appeared at the next previous proceeding on the permit and to any person who has filed a written request for notification of any hearings affecting a designated area. If written objection is filed not more than thirty days after the date of the notice by any person shown to have an interest, a hearing shall be held thereon with notice thereof to be sent not less than ten nor more than thirty days prior thereto by ordinary mail to such objector, to any person who appeared at the next previous proceeding on the permit, and to any person who has filed written request for notification of any hearing affecting a designated area.

If a change in the terms of a permit is requested which involves a change in the designated beneficial purposes for which the diversion is sought, a change in the place of such diversion, or an increase in the quantity, time, or rate of diversion, storage or withdrawal of waters, the applicant therefor shall pay a fee as required by Section 455A.19, subsection 5, and a hearing shall be held thereon with notice thereof as required by Section 455A.19, subsection 3.

Until the council adopts a statewide water plan, all new water permits issued for irrigation purposes, except special permits, shall not exceed one year and all renewals thereof shall also be limited to one year. The preceding limitation shall not apply to the renewal or extension of any valid water permit granted prior to May 6, 1977. If it is determined, through monitoring of the permitted withdrawal, that it



will endanger the present or future availability of groundwater said permits may be modified or canceled under the provisions of section 455A.28.

When permits are modified or canceled, priority for permits shall be given to applicants or permit holders who utilize such water for agriculture research. Nothing in this paragraph shall give priority to such applicants or permit holders in preference to those classes granted priority under section 455A.21.

**Sec. 455A.21. Priority of permits.** In the consideration of applications for permits, priority will be given to persons in the order applications are received. However, persons who have made diversion or withdrawal of water for a beneficial use prior to May 16, 1957, will be accorded priority according to the actual date of said diversion or withdrawal. The water commissioner or the council on appeal shall exercise their judgment on the duration and frequency of withdrawal and the quantity of water for which a permit may be granted. The use of water for ordinary household purposes, for poultry, livestock and domestic animals shall have priority over other uses. Any person with an existing irrigation system in use prior to May 16, 1957, shall be issued a permit to continue, unless by the use thereof some other riparian user is damaged. In the consideration of applications for permits by regulated users, the declared policies and principles of beneficial use, as set forth in this chapter, shall be the standard for the determination of the disposition of the applications for said permits. Nothing in this chapter shall impair the vested right of any person. Prior orders of the council shall not be invalidated by the provisions of sections 455A.19 to 455A.32.

**Sec. 455A.22. Permit for Beneficial Use.** The water commissioner and the council shall have the authority to issue a permit for beneficial use of water in a watercourse provided the established average minimum flow is preserved.

**Sec. 455A.23. Pollution Control Protected.** No use of water shall be authorized that will impair the effect of pollution control laws of this state.

**Sec. 455A.24. Navigability Preserved.** No permit shall be issued or continued that will impair the navigability of any navigable watercourse.

**Sec. 455A.25. When Permit Required.** For the purpose of administering sections 455A.19 to 455A.32 inclusive, a permit as herein provided shall be required for the following:

1. Any municipal corporation or person supplying a municipal corporation which increases its water use in excess of one hundred thousand (100,000) gallons, or three per cent (3%), whichever is the greater, per day more than its highest per day beneficial use prior to May 16, 1957. Such corporation or person shall make reasonable provision for the storage of water at such time or times when the daily use of such water by such corporation or person is less than the amount specified herein.

2. Except for a nonregulated use, any person using in excess of five thousand (5,000) gallons of water per day, diverted, stored, or withdrawn from any source of supply except a municipal water system or any other source specifically exempted under the provisions of sections 455A.19 to 455.32, inclusive.

3. Any person who diverts water or any material from the surface directly into any underground watercourse or basin. Provided, however, that any diversion of water or material from the surface directly into any underground watercourse or basin existing upon May 16, 1957 shall not require a permit if said diversion does not create waste or pollution. No permit shall be issued under this subsection until the approval of the Iowa water pollution control commission has been obtained.

4. Industrial users of water having their own supply, within the territorial boundaries of municipal corporations, shall be regulated when such water exceeds



three (3) per cent more than the highest per day beneficial use prior to May 16, 1957.

**Sec. 455A.26. Taking Water Prohibited.** No person shall take water from any natural watercourse, underground basin or watercourse, drainage ditch, or settling basin within the state of Iowa for any purpose other than a non-regulated use except upon compliance with the provisions of sections 455A.19 to 455A.32 inclusive, provided that existing uses may be continued during the period of the pendency of an application for a permit.

**Sec. 455A.27. Rights preserved.** Nothing in sections 455A.19 to 455A.32 shall operate to deprive any person of the right to use diffused waters, or to drain land by use of tile, open ditch or surface drainage, or to construct an impoundment on said person's property or across a stream that originates on said person's property so long as provision is made for safe construction and for continued established average minimum flow, if and when such flow is required to protect the rights of water users below.

**Sec. 455A.28. Modification or Cancellation of Permits.** Every permit issued hereunder shall be irrevocable for the term therefor, and for any extension of such term except as follows:

1. A permit may be modified or cancelled by the water commissioner, with consent of the permittee.

2. Subject to appeal in the manner provided by section 455A.19, subsection eight (8), a permit may be modified or cancelled by the water commissioner in case of any breach of the terms or conditions thereof or in case of any violation of the law pertaining thereto by the permittee, his agents or servants, in case of non-use as provided hereinafter, or in case the water commissioner finds such modification or cancellation necessary to protect the public health or safety or to protect the public interests in lands or waters, or to prevent substantial injury to persons or property in any manner, upon at least thirty (30) days' written notice mailed to the permittee at his last known address, stating the grounds of the proposed modification or cancellation and giving the permittee an opportunity to be heard thereon.

3. By written order to the permittee, the water commissioner may forthwith suspend operations under a permit if he finds it necessary in an emergency to protect the public health or safety or to protect the public interests in lands or waters against imminent danger of substantial injury in any manner or to any extent not expressly authorized by the permit, or to protect persons or property against such danger, may require the permittee to take any measure necessary to prevent or remedy such injury, provided, that no such order shall be in effect for more than thirty (30) days from the date thereof, without giving the permittee at least ten (10) days written notice of such order and an opportunity to be heard thereon.

**Sec. 455A.29. Termination of Permit.** The right of the permittee and his successors to the use of water shall terminate when he ceases for three (3) consecutive years to use it for the specific beneficial purpose authorized in his permit and the permittee has been notified by the water commission that unless written application as set forth as follows, that the permit will cease; provided, however, that upon his written application prior to the expiration of said three-year period for extension of said permit, the council may grant such extension without loss of priority.

**Sec. 455A.30. Disposal of Permit.** A permittee may sell, transfer, or assign his permit by conveying, leasing, or otherwise transferring the ownership of the land described in the permit, but such permit shall not constitute ownership or absolute rights of use of such waters, but such waters shall remain subject to the principle of beneficial use and the orders of the council.

**Sec. 455A.31. Power of Eminent Domain.** The state of Iowa, any subdivision



thereof, or municipal corporation, for the purpose or carrying out any permission granted, as hereinbefore provided, shall have and exercise the power of eminent domain.

**Sec. 455A.32. Unauthorized Depleting Uses.** In the event that any person shall file a complaint with the council that any other person is making a depleting use of water not expressly exempted as a nonregulated use under the provisions of this chapter and without a permit to do so, the council shall cause an investigation to be made and if the facts stated in the complaint are verified the council shall order the discontinuance of the use.

**Sec. 455A.33. Unlawful acts — powers of council.**

1. **Unlawful structures.** It shall be unlawful to suffer or permit any structure, dam, obstruction, deposit or excavation to be erected, used, or maintained in or on any floodway or flood plains, which will adversely affect the efficiency of or unduly restrict the capacity of the floodway, adversely affect the control, development, protection, allocation, or utilization of the water resources of the state, or adversely affect or interfere with the state comprehensive plan for water resources, or an approved local water resources plan, and the same are declared to be and to constitute public nuisances, provided, however, that this provision shall not apply to dams constructed and operated under the authority of chapter 469 as amended.

2. **Actions.** The council shall have the power to commence, maintain and prosecute any appropriate action to enjoin or abate a nuisance, including any of the foregoing nuisances and any other nuisance which adversely affects flood control.

3. **Application for permit.** In the event any person desires to erect or make, or to suffer or permit, a structure, dam, obstruction, deposit or excavation, other than a dam, constructed and operated under the authority of chapter 469 as amended, to be erected, made, used or maintained in or on any floodway or flood plains, such person shall file a verified written application with the director, setting forth the material facts. The director shall provide the council with copies of the application and an opportunity for the council to call up the application for its determination. The director, or the council, after an investigation or a public hearing if there is an objection to the proposed project shall determine the fact and approve or deny the application imposing such conditions and terms as the director or council may prescribe. A determination of the director may be appealed to the council by any aggrieved party.

4. **Injunction.** The council shall have the authority to maintain an action in equity to enjoin any such person from erecting or making or suffering or permitting to be made any structure, dam, obstruction, deposit, or excavation other than a dam constructed and operated under the authority of chapter 469, for which a permit has not been granted. The council is also authorized to abate as a public nuisance any structure, dam, obstruction, deposit, or excavation erected or made without a permit required by this chapter within one year of cessation of construction. The costs of the abatement shall be borne by the violator.

5. **Removal.** The council shall have the power to remove or eliminate any structure, dam, obstruction, deposit or excavation in any floodway which adversely affects the efficiency of or unduly restricts the capacity of the floodway, by an action in condemnation, and in assessing the damages in such proceeding, the appraisers and the court shall take into consideration whether the structure, dam, obstruction, deposit or excavation is lawfully in or on the floodway.

6. **Performance bond.** The council may require, as a condition of an approval order or permit granted pursuant to this chapter or chapter 469, the furnishing of a performance bond with good and sufficient surety, conditioned upon the full compliance



with the provisions of such order or permit and the rules of the council. In determining the need for and amount of bond, the council shall give consideration to the hazard posed by the construction and maintenance of the approved works and the protection of the health, safety and welfare of the people of the state. This subsection shall not apply to orders or permits granted to a governmental entity.

7. **Prohibition against tillage.** When approving a request to straighten a stream, the director or council may establish as a condition of approval a permanent prohibition against tillage of land owned by the person receiving the approval and lying within some minimum distance from the stream sufficient in the judgment of the director or council to hold soil erosion to reasonable limits. The director shall record the prohibition in the office of the county recorder of the appropriate county and the prohibition shall attach to the land. A person who violates a prohibition against tillage shall be guilty of a simple misdemeanor. Each day upon which a violation occurs constitutes a separate violation.

8. **Thresholds established by rule.** The council shall by rule establish thresholds for dimensions and effects, and any structure, dam, obstruction, deposit, or excavation having smaller dimensions and effects than those established by the council shall be lawful and not subject to regulation under this section. The thresholds shall be such that only those structures, dams, obstructions, deposits, or excavations posing a significant threat to the well-being of the public and the environment shall be subject to regulation.

**Sec. 455A.34. Additional Powers — Licensing of Dams.** After April 17, 1949 the term "council", as used in chapter 469, shall be construed to refer to the Iowa natural resources council unless specifically otherwise provided.

**Sec. 455A.35. Council — Establish Flood Plains — Encroachment Limits.** The council may establish and enforce regulations for the orderly development and wise use of the flood plains of any river or stream within the state and alter, change, or revoke and terminate the same. The council shall determine the characteristics of floods which reasonably may be expected to occur and may by order establish encroachment limits, protection methods and minimum protection levels appropriate to the flooding characteristics of the stream and to reasonable use of the flood plains. The order shall fix the length of flood plains to be regulated at any practical distance; shall fix the width of the zone between the encroachment limits so as to include portions of the flood plains adjoining the channel, which with the channel, are required to carry and discharge the flood waters or flood flow of such river or stream; and shall fix the design discharge and water surface elevations for which protection shall be provided for projects outside the encroachment limits but within the limits of inundation. Plans for the protection of projects proposed for areas subject to inundation shall be reviewed as plans for flood control works within the purview of section 455A.36. No order establishing encroachment limits and flood plain regulations shall be issued until due notice of the proposed establishment thereof shall have been given and public hearings held and opportunity given for the presentation of all protests against the establishment thereof. In establishing any such limits or regulations, the council shall avoid to the greatest possible degree the evacuation of persons residing in the area of any floodway, the removal of any residential structures occupied by such persons in the area of any floodway, and the removal of any structures erected or made prior to July 4, 1965, which are located on the flood plains of any river or stream but not within the area of any floodway.

The council may cooperate with and assist local units of government in the establishment of encroachment limits, flood plain regulations and zoning ordinances relating to flood plain areas within their jurisdiction. Encroachment limits, flood plain regulations, or flood plain zoning ordinances proposed by local units of government shall



be submitted to the council for review and approval prior to adoption by such local units of government. Changes or variations from an approved regulation or ordinance as it relates to flood plain use shall be approved by the council prior to adoption. Individual applications, plans and specifications and individual council approval orders shall not be required for works on the flood plains constructed in conformity with encroachment limits, flood plain regulations, or zoning ordinances adopted by the local units of government and approved by the council.

**Sec. 455A.36. Flood Control Works Co-Ordinated.** All works of any nature for flood control in the state, which are hereafter established and constructed, shall be co-ordinated in design, construction and operation, according to sound and accepted engineering practice so as to effect the best flood control obtainable throughout the state. No person shall construct or install any works of any nature for flood control unless and until the proposed works and the plans and specifications therefor are approved by the council. The interested persons shall file a verified written application with the council therefor, and the council after an investigation or hearing shall consider all the pertinent facts relating to the proposed works which will affect flood control and water resources in the state and shall determine whether the proposed works in the plans and specifications will be in aid of and acceptable as part of, or will adversely affect and interfere with flood control in the state, adversely affect the control, development, protection, allocation, or utilization of the water resources of the state, or adversely affect or interfere with the state comprehensive plan for water resources or an approved local water resources plan, and shall enter an order approving or disapproving the application, plans and specifications. In the event of disapproval, the order shall set forth the objectionable features so that the proposed works and the plans and specifications therefor may be corrected or adjusted to obtain the approval of the council.

The provisions of this section shall apply to all drainage districts, soil conservation districts, projects undertaken by the state conservation commission, all public agencies including counties, cities and all political subdivisions of the state and to all privately undertaken projects relating to or affecting flood control.

**Sec. 455A.37. Judicial Review.** Judicial review of action of the council may be sought in accordance with the terms of the Iowa Administrative Procedure Act. Notwithstanding the provisions of said Act, petitions for judicial review may be filed in the district court of Polk county or of any county in which the property affected is located. If the council, the district court, or the supreme court shall determine that the order of the council be stayed, the petitioner shall file an appropriate bond approved by the court.

**Sec. 455A.38. Executive Prerogatives.** The council shall have no executive prerogatives outside of its own duties and functions as set out by this chapter and shall not disturb the work, functions or authority of any of the several state or local agencies and institutions, provided the powers conferred upon the council by this chapter shall not be exercised by any other of the agencies or institutions.

**Sec. 455A.39. Penalties.** Whoever is convicted of erecting, causing or continuing a common or public nuisance, as provided in this chapter, or whoever diverts or withdraws water in violation of the provisions of this chapter, upon conviction, shall be guilty of a simple misdemeanor and each day that such violation continues after conviction shall be considered a separate offense.

**Sec. 455A.40. Co-Ordination With Conservancy Districts.** The council and the boards of the several conservancy districts established by Chapter 467D shall co-ordinate their efforts in carrying out the purposes of this chapter and Chapter 467D. In



addition to other powers and duties conferred by law upon the council it shall:

1. Offer such advice and assistance as may be appropriate to the boards of the several conservancy districts in the state in discharging their powers and duties.
2. Review and make such recommendations as it deems necessary to bring the plan of each of the conservancy districts, and any subsequent changes therein, into conformity with the state-wide water resources plan established by the council pursuant to Section 455A.17.
3. Inform the board of any conservancy district:
  - a. Of the receipt of each application for a permit to divert, store, or withdraw either surface or underground waters at any place within the district, filed with the council pursuant to Section 455A.19 to Section 455A.32.
  - b. Of the receipt of each application for approval of a proposed dam, obstruction, deposit or excavation in or on any floodway or flood plain in the district, filed with the council pursuant to Section 455A.33.
  - c. Of any proposed order which would establish encroachment limits and zoning regulations on any flood plain in the district, filed with the council pursuant to Section 455A.35.
  - d. Of the receipt of each application for approval of any proposed flood control structure or works, filed with the council pursuant to Section 455A.36.

## CHAPTER 455B — DEPARTMENT OF ENVIRONMENTAL QUALITY

### Division I — Executive Committee

**Sec. 455B.1. Definitions.** When used in this chapter, unless the context otherwise requires:

1. "Department" means the department of environmental quality.
2. "Executive director" means the executive director of the department of environmental quality or his designee.
3. "Executive committee" means the executive committee of the department of environmental quality.

**Sec. 455B.2. Department Created.** There is created a department of environmental quality. The chief administrative officer of the department shall be the executive director of environmental quality, who shall be appointed by the governor, with the approval of two-thirds of the members of the senate, and serve at his pleasure.

The executive director shall be selected on the basis of his administrative abilities. The salary of the executive director shall be initially established by the governor, but it shall not exceed twenty-five thousand dollars per annum and, thereafter, it shall be determined by the general assembly. The appointment or removal of the executive director shall not be subject to the provisions of Chapter 19A.

**Sec. 455B.4. Commissions Within Department.** There are created within the department the air quality commission, the water quality commission, the chemical technology commission, and the solid waste disposal commission. Each commission shall establish policy for the programs and services assigned to it. The membership of the commissions shall be as follows:

1. The air quality commission shall consist of the president of the Iowa medical society or his designee and the following four members appointed by the governor with the consent of two-thirds of the senate:
  - a. A member actively engaged in diversified farming.
  - b. A member actively engaged in the management of a privately owned manu-



facturing company.

c. Two members who are electors of the state.

2. The water quality commission shall consist of the chairman of the Iowa development commission or his designee and the following four members appointed by the governor with the consent of two-thirds of the senate.

a. A member actively engaged in diversified farming.

b. A member actively engaged in the management of a privately owned manufacturing company.

c. Two members who are electors of the state.

3. The solid waste disposal commission shall consist of the president of the Iowa engineering society or his designee and the following four members appointed by the governor with the consent of two-thirds of the senate.

a. A member actively engaged in diversified farming.

b. A member actively engaged in the management of a privately owned manufacturing company.

c. Two members who are electors of the state.

4. The chemical technology commission shall consist of the secretary of agriculture, the commissioner of public health, the director of the Iowa natural resources council, the chairman of the state soil conservation committee, the chief executive of the league of Iowa municipalities, the state conservation director, and the dean, college of agriculture of Iowa State University of science and technology, or their designees, a representative of a firm in Iowa actively engaged in the manufacture or formulation of agricultural chemicals, and a farmer experienced in the application of agricultural chemicals to be appointed by the governor with the consent of two-thirds of the senate. The members appointed by the governor shall serve four-year terms, except that of the membership of the initial commission, the members appointed by the governor shall be appointed members of the chemical technology review board abolished by this chapter, whose terms expired on the thirtieth of June, 1974. The terms of these two members shall expire on the thirtieth of June, 1974.

Any commission member appointed by the governor may be removed by him for cause. The members of each commission shall be electors of the state. The term of office of each appointed member shall be four years, except that of the initial membership of the air quality commission, the water quality commission, and the solid waste disposal commission, the two members appointed to represent the general public shall be appointed to two-year terms. The term of office of each member shall commence on the first day of July of the year of the appointment except that the term of office of the initial membership of the air quality commission, the water quality commission, and the solid waste disposal commission shall be computed as if such appointments were made effective July 1, 1972. Vacancies occurring during the term of office shall be filled by appointment for the balance of the unexpired term subject to the consent of two-thirds of the senate. No appointive member shall be appointed to serve more than two consecutive four-year terms.

Each commission shall meet at least four times a year. Other meetings shall be called by the chairman or upon written request of a majority of the members of the commission. The chairman shall preside at all meetings or in his absence the vice chairman shall preside. The executive director shall attend the meetings of the commissions and act as secretary for them. The members of each commission shall be paid a forty-dollar per diem while in session, ten cents a mile for travel, and their actual and necessary expenses while attending such meetings. All per diem and expense moneys paid to members shall be paid from funds appropriated to the commission of which they are members.

A majority of each commission shall constitute a quorum and the concurrence of



a majority of a commission shall be required to determine any matter relating to its duties.

### Division II — Air Quality Commission

**Sec. 455B.10. Definitions.** When used in this division II, unless the context otherwise requires:

1. "Air contaminant" means dust, fume, mist, smoke, other particulate matter, gas, vapor, (except water vapor), odorous substance, radio-active substance, or any combination thereof.

2. "Air contaminant source" means any and all sources of emission of air contaminants whether privately or publicly owned or operated.

Air contaminant source includes, but it not limited to, all types of businesses, commercial and industrial plants, works, shops, and stores, heating and power plants and stations, buildings and other structures of all types including single and multiple family residences, office buildings, hotels, restaurants, schools, hospitals, churches and other institutional buildings, automobiles, trucks, tractors, buses, aircraft, and other motor vehicles, garages, vending and service locations and stations, railroad locomotives, ships, boats, and other water-borne craft, portable fuel-burning equipment, indoor and outdoor incinerators of all types, refuse dumps and piles, and all stack and other chimney outlets from any of the foregoing.

3. "Air pollution" means presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as is or may reasonably tend to be injurious to human, plant, or animal life, or to property, or which unreasonably interferes with the enjoyment of life and property.

4. "Atmosphere" means all space outside of buildings, stacks or exterior ducts.

5. "Emission" means a release of one or more air contaminants into the outside atmosphere.

6. "Commission" means the air quality commission of the department.

7. "Person" means an individual, partnership, co-partnership, co-operative, firm, company, public or private corporation, political subdivision, agency of the state, trust, estate, joint stock company, or any other legal entity, or their legal representative, agent or assigns.

8. "Political subdivision" means any municipality, township, or county, or district, or authority, or any portion, or combination of two or more thereof.

**Sec. 455B.12. Duties.** The commission shall:

1. Direct the development of a comprehensive plan for the abatement, control, and prevention of air pollution in this state, recognizing varying requirements for different areas in the state.

2. Establish, modify, or repeal, rules pertaining to the evaluation, abatement, control, and prevention of air pollution after at least sixty days' public notice and public hearings.

3. Establish, modify, or repeal air quality standards for the atmosphere of this state on the basis of providing air quality necessary to minimize air pollution after at least sixty days' public notice and public hearings.

4. Establish, modify, or repeal emission standards relating to the maximum quantities of air contamination that may be emitted from any air contaminant source after at least sixty days, public notice and public hearings. If the maximum standards for the emission of sulphur dioxide from solid fuels have to be reduced in any area to meet ambient air standards, any contract for coal produced in Iowa, and burned by a facility in that area that met the sulphur emission standards in effect at the time the contract went into effect shall be exempted from the decreased requirement until the



expiration of the contract period or December 31, 1983, whichever first occurs, if there is any other reasonable means available to satisfy the ambient air standards. To qualify under the provisions of this subsection the contract must be recorded with the county recorder of the county where the burning facility is located within thirty days after the signing of the contract.

5. Consider complaints of conditions reported to, or considered likely to, constitute air pollution; and instruct the department to investigate such complaints upon receipt of the written petition of any state agency, the governing body of any political subdivision, a local board of health, or twenty-five affected residents of the state.

6. Hold public hearings, except when the evidence to be received is confidential pursuant to Section 455B.16, necessary to accomplish the purposes of this division II. The commission may issue subpoenas requiring the attendance of witnesses and the production of evidence pertinent to such hearings. If any person refuses to obey a subpoena issued by the commission, the district court of the county where the proceeding is pending shall have jurisdiction, upon application of the commission or its authorized representative, to issue such person an order to appear and testify or produce evidence, and any failure to obey such court order may be punished by the court as contempt.

7. Issue orders necessary to cause the abatement or control of air pollution. In making such orders, the commission shall consider the facts and circumstances bearing upon the reasonableness of the emissions involved, including but not limited to, the character and degree of injury to, or interference with, the protection of health and the physical property of the public; the practicability of reducing or limiting the emissions from such air pollution source; and the suitability or unsuitability of the air pollution source to the area where it is located. Any such order may include advisory recommendations for the control of emissions from any air contaminant source and the reduction of the emission of air contaminants.

8. Cause to be instituted by the attorney general, in the name of the state, legal proceedings to compel compliance with any of its orders.

9. Classify air contaminant sources according to levels and types of emissions, and other characteristics which relate to air pollution. The commission may require, by rule, the owner or operator of any air contaminant source to establish and maintain such records, make such reports, install, use and maintain such monitoring equipment or methods, sample such emissions in accordance with such methods at such locations and intervals, and using such procedures as the commission shall prescribe, and provide such other information as the commission may reasonably require. Such classifications may be for application to the state as a whole, or to any designated area of the state, and shall be made with special reference to effects on health, economic and social factors, and physical effects on property.

10. Require, by rules, notice of the construction or the installation of any equipment which may cause or contribute to air pollution, and the submission of plans and specifications to the department or such other information deemed necessary, for the installation of equipment from which air contaminants may be emitted to the atmosphere and related control equipment. The rules relating to a conditional permit for an electric power generating facility subject to chapter 476A shall allow the submission of engineering descriptions, flow diagrams and schematics that quantitatively and qualitatively identify emission streams and alternative control equipment that will provide compliance with emission standards. Such rules shall not specify any particular method to be used to reduce undesirable levels of emissions, nor type, design, or method of installation of any equipment to be used to reduce such levels of emissions, nor the type, design, or method of installation or type of construction of any manufacturing processes or kinds of equipment, nor specify the kind or composition of fuels permitted to be sold, stored, or used.



The commission may give technical advice pertaining to the construction or installation of such equipment or any other recommendation.

11. Review and evaluate air pollution control programs conducted by political subdivisions of the state with respect to whether such programs are consistent with the provisions of this division II and any rules adopted by the commission.

12. Represent the state in all matters pertaining to plans, procedures, negotiations, and agreements for interstate compacts relating to the control of air pollution, subject to the provisions of Section 455B.7, subsection 5.

13. Encourage voluntary co-operation by persons or affected groups in restoring and preserving a reasonable quality of air within the state.

14. Encourage political subdivisions to handle air pollution problems within their respective jurisdictions.

**Sec. 455B.13. Executive Director.** The executive director shall:

1. Publish and administer the rules and standards established by the commission. The department shall furnish a copy of such rules or standards to any person upon request.

2. Provide technical, scientific, and other services required by the commission or for the effective administration of this division II.

3. Grant, modify, or deny permits for the installation of new equipment capable of emitting air contaminants to produce air pollution and for related control equipment, and conditional permits for electric power generating facilities subject to chapter 476A, subject to the rules adopted by the commission. The department shall furnish necessary application forms for such permits.

a. No equipment which may cause or contribute to air pollution or which is intended primarily to prevent or to control the emission of air contaminants shall be installed, altered so that it significantly affects operation efficiency, or placed in use unless a permit has been issued for such equipment.

b. The condition or expected performance must be reasonably detailed in the permit unless it is agreed between the department and the permit holder that a condition of development and adjustment exists.

c. Upon denial of such permit, the applicant shall be notified of such denial and informed of the reason or reasons therefor, and such applicant shall be entitled to a hearing before the commission as provided in Section 455B.12, subsection 6.

d. All applications for conditional permits shall be subject to such notice and opportunity for public participation as may be consistent with chapter 476A or any agreement pursuant thereto under chapter 28E. The applicant or intervenor may appeal to the commission from the denial of a conditional permit or any of its conditions. For the purposes of chapter 476A, the issuance or denial of a conditional permit by the executive director or by the commission upon appeal shall be a determination that the electric power generating facility does or does not meet the permit and licensing requirements of the commission. The issuance of a conditional permit shall not relieve the applicant of the responsibility to submit final and detailed construction plans and drawings and an application for a construction permit for control equipment that will meet the emission limitations established in the conditional permit.

(1) Notwithstanding any other provision of division two (II) of this chapter, anaerobic lagoons, which are used in connection with animal feeding operations



containing six hundred twenty-five thousand pounds or less live animal weight capacity of animal species other than beef cattle or containing one million six hundred thousand pounds or less live animal weight capacity of beef cattle, shall be located at least one thousand two hundred fifty feet from a residence not owned by the owner of the feeding operation or from a public use area other than a public road. Anaerobic lagoons, which are used in connection with animal feeding operations containing six hundred twenty-five thousand pounds or more live animal weight capacity of animal species other than beef cattle or containing one million six hundred thousand pounds or more live animal weight capacity of beef cattle, shall be located at least one thousand eight hundred seventy-five feet from a residence not owned by the owner of the feeding operation or from a public use area other than a public road. For the purpose of this paragraph the determination of live animal weight capacity shall be based on the average animal weight capacity during a production cycle and the maximum animal capacity of the animal feeding operation. These separation distances shall apply to the construction of new facilities and the expansion of existing facilities.

(2) A person may build or expand an anaerobic lagoon closer to a residence not owned by the owner of the feeding operation or to a public use area than is otherwise permitted by subparagraph one (1) of this paragraph, if the affected landowners enter into a written agreement with the anaerobic lagoon owner to waive separation distances under such terms as the parties may negotiate. The written agreement shall become effective only upon recording in the office of the recorder of deeds of the county in which the residence is located.

Sec. 2. This Act, being deemed of immediate importance, shall take effect from and after its publication in the Carroll Daily Times-Herald, a newspaper published in Carroll, Iowa, and in the Allamakee Journal, a newspaper published in Lansing, Iowa.

4. Determine by field studies and sampling the quality of atmosphere and the degree of air pollution in this state or any part thereof.

5. Conduct and encourage studies, investigations, and research relating to air pollution and its causes, effects, abatement, control, and prevention.

6. Accept, receive and administer grants or other funds or gifts from public or private agencies, including the federal government, for the abatement, prevention, or control of air pollution, subject to the approval of the executive committee.

7. Provide technical assistance to political subdivisions of this state requesting such aid for the furtherance of air pollution control.

8. Collect and disseminate information, and conduct educational and training programs, relating to air pollution and its abatement, prevention, and control.

**Sec. 455B.15. Assistance on Demand.** The commission and the executive director may request and receive assistance from any other agency, department, or educational institution of the state, or political subdivision thereof, when it is deemed necessary or beneficial by the commission or the executive director. The department may reimburse such agencies for special expense resulting from expenditures not normally a part of the operating expenses of any such agency.

**Sec. 455B.23. Local Control Program.**

1. Any political subdivision may conduct an air pollution control program within the boundaries of its jurisdiction, or may jointly conduct an air pollution control program with other political subdivisions of this state or of other states, except that every joint program shall be established and administered as provided in Chapter 28E. In conducting such programs, political subdivisions may adopt and enforce rules or stand-



ards to secure and maintain adequate air quality within their respective jurisdictions.

2. If the board of supervisors in any county establishes an air pollution control program and has obtained a certificate of acceptance, the agency implementing the program may regulate air pollution within the county including any incorporated areas therein until such incorporated areas obtain a certificate of acceptance as a joint or separate agency.

**Sec. 455B.24. Acceptance of Local Program.** When an air pollution control program conducted by a political subdivision, or a combination thereof, is deemed upon review as provided in Section 455B.12, subsection 11, to be consistent with the provisions of this division II or the rules established thereunder, the commission shall accept such program in lieu of state administration and regulation of air pollution within the political subdivisions involved. Nothing contained in this section shall be construed to limit the power of the commission or the executive director to take emergency action under the provisions of Section 455B.18 and 455B.20.

1. In evaluating an air pollution control program, consideration shall be given to whether such program provides for the following:

a. Ordinances, rules and standards established requirements, consistent with, or more strict than, those imposed by this division II or rules and standards adopted by the commission.

b. Enforcement of such requirements by appropriate administrative and judicial process.

c. Administrative organization, staff, financial and other resources necessary to administer an efficient and effective program.

d. Location of emission monitoring devices in areas of the political subdivision in compliance with uniform state standards adopted by the commission. The commission shall adopt uniform state standards for the location of emission monitoring devices specifying such intervals and such procedures to provide a reasonably consistent measurement of emissions from air contaminant sources regardless of the political subdivision of the state in which the sources may be located.

2. Upon acceptance of a local air pollution control program, the commission shall issue a certificate of acceptance to the appropriate local agency.

a. Any political subdivision desiring a certificate of acceptance shall apply to the department on forms prescribed by the commission.

b. The executive director shall promptly investigate the application and recommend the disposition of such application to the commission. The commission may conduct a public hearing before action is taken on the recommendation. If the recommendation is against issuing a certificate, the political subdivision shall be entitled to a public hearing as provided in Section 455B.17. At the public hearing, the commission shall decide whether the local program is substantially consistent with the provisions of this division II, or rules adopted thereunder, and whether the local program is being enforced. The burden of proof shall be upon the political subdivision.

c. If the commission determines at any time that a local air pollution program is being conducted in a manner inconsistent with the substantive provisions of this division II or the rules adopted thereunder, the commission shall notify the political subdivision, citing the deviations from the acceptable standards and the corrective measures to be completed within a reasonable amount of time. If the corrective measures are not implemented as prescribed, the commission shall suspend the certificate of acceptance of such political subdivision and shall administer the regulatory provisions of said division within the political subdivision until the appropriate standards are met. Upon receipt of evidence that necessary corrective action has been taken, the commission shall reinstate the suspended certificate of acceptance, and the political



subdivision shall resume the administration of the local air pollution control program within its jurisdiction. In cases where the certificate of acceptance is suspended, the political subdivision is entitled to a public hearing as provided in Section 455B.17.

d. Nothing in this division II shall be construed to supersede the jurisdiction of any local air pollution control program in operation on the first of January, 1973, except that any such program shall meet all requirements of said division.

**Sec. 455B.25. Civil action for compliance.** If any order or rule of the commission is being violated, the attorney general shall, at the request of the commission or the executive director, institute a civil action in any district court for injunctive relief to prevent any further violation of such order or rule, or for the assessment of a fine as determined by the court, not to exceed five hundred dollars per day for each day such violation continues, or both such injunctive relief and fine.

**Sec. 455B.26. Failure — procedure.** Upon failure of the executive director to take action within sixty days after an application for installation permit or variance, or upon failure of the commission to enter a file order or determination within sixty days after the final argument in a public hearing, the persons seeking such action shall be entitled to treat such failure to act as a grant of the requested permit or variance, or of a finding favorable to the respondent in a public hearing, as the case may be. This section shall not apply to an application for a conditional permit for an electric power generating facility subject to chapter 476A.

**Sec. 455B.27. Fees prohibited.** No fees shall be charged by the executive director or the commission for the performance of their respective functions as provided in this division II.

**Sec. 455B.28. Other provisions not affected.** The powers, duties, and functions vested in the air quality commission under the provisions of this division II shall not be construed to affect the powers, duties and functions vested in the department under any other provisions of this chapter of the Code.

**Sec. 455B.29. Prior rules.** Any rule adopted or order or variance issued under chapter 136B\* of prior Codes by the Iowa air pollution control commission or by the state department of health, shall remain effective until modified or rescinded by action of the air quality commission unless such rule is inconsistent or contrary to this division II.

\*Repealed by section 112 of this Act (64 GA, ch. 1119).

### **Division III — Water Quality Commission**

#### **Part 1 — General**

**Sec. 455B.30. Definitions.** When used in this part 1 of division III, unless the context otherwise requires.

1. "Sewage" means the water-carried waste products from residences, public buildings, institutions, or other buildings, including the bodily discharges from human beings or animals together with such ground water infiltration and surface water as may be present.

2. "Industrial waste" means any liquid, gaseous, radioactive, or solid waste substance resulting from any process of industry, manufacturing, trade or business or from the development of any natural resource.

3. "Other waste" means heat, garbage, municipal refuse, lime, sand, ashes, offal, oil, tar, chemicals and all other wastes which are not sewage or industrial waste.



4. "Water pollution" means the contamination of any water of the state so as to create a nuisance or render such water unclean, noxious or impure so as to be actually harmful, detrimental or injurious to public health, safety or welfare, to domestic, commercial, industrial, agricultural or recreational use or to livestock, wild animals, birds, fish or other aquatic life.

5. "Sewer system" means pipelines or conduits, pumping stations, force mains, vehicles, vessels, conveyances, injection wells, and all other constructions, devices and appliances appurtenant thereto used for conducting sewage or industrial waste or other wastes to a point of ultimate disposal or disposal to any water of the state. To the extent that they are not subject to section 402 of the federal Water Pollution Control Act as amended ditches, pipes, and drains that serve only to collect, channel, direct, and convey nonpoint runoff from precipitation are not considered as sewer systems for the purposes of this Act.

6. "Treatment Works" means any plant, disposal field, lagoon, holding or flow-regulating basin, pumping station, or other works installed for the purpose of treating, stabilizing or disposing of sewage, industrial waste or other wastes.

7. "Disposal system" means a system for disposing of sewage, industrial waste and other wastes and includes sewer systems, treatment works, point sources and dispersal systems.

8. "Detergent" means a cleaning compound composed of inorganic components, including surface active agents, soaps, water softening agents, builders, dispersing agents, corrosion inhibitors, foaming agents, buffering agents, brighteners, fabric softeners, dyes, perfumes, enzymes, and fillers, which are available for household, personal, laundry, industrial, and other uses in liquid, bar, spray, tablet, flake, powder, or other form.

9. "Water of the state" means any stream, lake, pond, marsh, watercourse, waterway, well, spring, reservoir, aquifer, irrigation system, drainage system, and any other body or accumulation of water, surface or underground, natural or artificial, public or private, which are contained within, flow through or border upon the state or any portion thereof.

10. "Person" means any agency of the state or federal government or institution thereof, any municipality, governmental subdivision, interstate body, public or private corporation, individual, partnership, or other entity and includes any officer or governing or managing body of any municipality, governmental subdivision, interstate body, or public or private corporation.

11. "Commission" means the water quality commission of the department.

12. "Effluent standard" means any restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, radiological and other constituents which are discharged from point sources into any water of the state including an effluent limitation, a water quality related effluent limitation, a standard of performance for a new source, a toxic effluent standard or other limitation.

13. "Point source" means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.

14. "Pollutant" means sewage, industrial waste or other waste.

15. "New source" means any building, structure, facility or installation, from which there is or may be the discharge of a pollutant, the construction of which is commenced after the publication of proposed federal rules prescribing a standard of performance which will be applicable to such source, if such standard is promulgated.

16. "Schedule of compliance" means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with any



effluent standard, water quality standard, or any other requirement of this part of this division or any rule promulgated pursuant thereto.

17. "Sewer extension" means pipelines or conduits constituting main sewers, lateral sewers or trunk\* sewers used for conducting pollutants to a larger interceptor sewer or to a point of ultimate disposal.

18. "Water supply distribution system extension" means any extension to the pipelines or conduits which carry water directly from the treatment facility, source or storage facility to the consumer's service connection.

19. "Production capacity" means the amount of potable water which can be supplied to the distribution system in a twenty-four hour period.

20. "Public water supply system" means a system for the provision to the public of piped water for human consumption, if such system has at least fifteen service connections or regularly serves at least twenty-five individuals. Such term includes any source of water and any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system, and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system.

21. "Maximum contaminant level" means the maximum permissible level of any physical, chemical, biological or radiological substance in water which is delivered to any user of a public water supply system.

Referred to in Section 427.1. \*"Truck" in enrolled Act.

**Sec. 455B.31. Administrative agency.** The department shall be the agency of the state to prevent, abate, or control water pollution and to conduct the public water supply program.

**Sec. 455B.33. Executive director's duties.** The executive director shall:

1. Conduct investigations of alleged water pollution or of alleged violations of this part of this division or any rule adopted or any permit issued pursuant thereto upon written request of any state agency, political subdivision, local board of health, twenty-five residents of the state, as directed by the commission, or as may be necessary to accomplish the purposes of this part of this division.

2. Conduct periodic surveys and inspection of the construction, operation, self-monitoring, record keeping and reporting of all public water supply systems and all disposal systems except as provided in section 455B.45.

3. Take any action or actions allowed by law which, in the executive director's judgment, are necessary to enforce or secure compliance with the provisions of this part of this division or of any rule or standard established or permit issued pursuant thereto.

4. Approve or disapprove the plans and specification for the construction of disposal systems or water supply distribution systems except for those sewer extensions and water supply distribution system extensions which are reviewed by a city or county public works department as set forth in section 455B.45. The director shall issue, revoke, suspend, modify or deny permits for the operation, installation, construction, addition to or modification of any disposal system or water supply distribution system except for sewer extensions and water supply distribution system extensions which are reviewed by a city or county public works department as set forth in section 455B.45. The director shall also issue, revoke, suspend, modify or deny permit for the discharge of any pollutant. Such permits shall contain such conditions and schedules of compliance as are necessary to meet the requirements of this part of this division and the federal Water Pollution Control Act amendments of 1972. A permit shall not be issued to operate or discharge from any disposal system unless the conditions of the permit assure that any discharge from the disposal system meets or will meet all applicable state and federal water quality standards and affluent stan-



dards and the issuance of the permit is not otherwise prohibited by the federal Water Pollution Control Act amendments of 1972. All applications for discharge permits shall be subject to public notice and opportunity for public participation including public hearing as the commission may by rule require. The executive director shall promptly notify the applicant in writing of his action and, if the permit is denied, state the reasons for denial. The applicant may appeal to the commission from the denial of a permit, or from any condition in any permit if he or she files notice of appeal with the executive director within thirty days of the notice of denial or issuance of the permit. The executive director shall notify the applicant within thirty days of the time and place of the hearing.

Copies of all forms or other paper instruments required to be filed during on-site inspections or investigations shall be given to the owner or operator of the disposal system or public water supply system being investigated or inspected before the inspector or investigator leaves the site. Any other report, statement, or instrument shall not be filed with the department unless a copy is sent by ordinary mail to the owner or operator of the disposal system or public water supply system within ten working days of the filing. If an inspection or investigation is done in cooperation with another state department, the department involved and the areas inspected shall be stated.

The executive director shall also issue or deny conditional permits for the construction of disposal systems for electric power generating facilities subject to chapter 476A. All applications for conditional permits shall be subject to such notice and opportunity for public participation as may be required by the commission and as may be consistent with chapter 476A and any agreement pursuant thereto under chapter 28E. The applicant or an intervenor may appeal to the commission from the denial of a conditional permit or any of its conditions. For the purposes of chapter 476A, the issuance or denial of a conditional permit by the executive director or the commission upon appeal shall be a determination that the electric power generating facility does or does not meet the permit and licensing requirements of the commission. The issuance of a conditional permit shall not relieve the applicant of the responsibility to submit final and detailed construction plans and drawing and an application for a construction permit for a disposal system that will meet the effluent limitations in the conditional permit.

5. Conduct random inspections of work done by city and county public works departments to ensure such public works departments are complying with this Act (66GA, ch 1204). If a city or county public works department is not complying with section 455B.45 in reviewing plans and specifications or in granting permits or both, the department shall perform these functions in that jurisdiction until the city or county public works department is able to perform them. Performance of these functions in a jurisdiction by a local public works department shall not be suspended or revoked until after notice and opportunity for hearing as provided in chapter 17A.

The department shall give technical assistance to city and county public works departments upon request of such local public works departments.

**Sec. 455B.47. Data From Departments.** The commission and the executive director may request and receive from any department, division, board, bureau, commission, public body, or agency of the state, or of any political subdivision thereof, or from any organization, incorporated or unincorporated, which has for its object the control or use of any of the water resources of the state, such assistance and data as will enable the commission or the executive director to properly carry out their activities and effectuate the purposes of this part 1 of division III. The department shall reimburse such agencies for special expense resulting from expenditures not normally a part of the operating expenses of any such agency.



**Part 2 — Water Treatment**

**Sec. 455B.50. Definitions.** When used in this part 2 of division III, unless the context otherwise requires:

1. "Board" means the board of certification.
2. "Commission" means the water quality commission of the department.
3. "Certificate" means the certificate of competence issued by the executive director stating that the operator has met the requirements for the specified operator classification of the certification program.
4. "Water supply system" means the system of pipes, structures, and facilities through which a public water supply is obtained, treated and sold or distributed for human consumption or household use.
5. "Water treatment plant" means that portion of the water supply system which in some way alters the physical, chemical, or bacteriological quality of the water.
6. "Waste water treatment plant" means the facility or group of units used for the treatment of waste water from public sewer systems and for the reduction and handling of solids removed from such wastes.
7. "Water distribution system" means that portion of the water supply system in which water is conveyed from the water treatment plant or other supply point to the premises of the consumer.
8. "Operator" means a person who has direct responsibility for the operation of a water treatment plant, water distribution system, or waste water treatment plant.

**Sec. 455B.51. Director's Duties.** The executive director shall classify all water treatment plants, water distribution systems, and waste water treatment plants affecting the public welfare with regard to the size, type, character of water and waste water to be treated and other physical conditions affecting such treatment plants and distribution systems, and according to the skill, knowledge, and experience that an operator must have to supervise the operation of such facilities to protect the public health and prevent pollution

**Sec. 455B.63. Competent Operator Required.** It shall be unlawful for any person, firm, corporation, municipal corporation, or other governmental subdivision or agency, operating a water treatment plant, water distribution system or waste water treatment plant to operate same unless the competency of the operator to operate such plant or system is duly certified to by the executive director under the provisions of this part 2 of division III. It shall also be unlawful for any person to perform the duties of an operator, as defined herein, without being duly certified under the provisions of said part.

**Sec. 455B.64. Simple Misdemeanor.** Any person, including any firm, corporation, municipal corporation, or other governmental subdivision or agency, violating any provisions of this part 2 of division III or the rules adopted thereunder after written notice thereof by the executive director is guilty of a simple misdemeanor. Each day of operation in such violation of said part or any rules adopted thereunder shall constitute a separate offense. It shall be the duty of the appropriate county attorney to secure injunctions of continuing violations of any provisions of said part or the rules adopted thereunder.

**Sec. 455B.65 and 455B.66.** Repealed by 66GA.



### Part 3 — Sewage Works Construction

**Sec. 455B.67. Fund.** There is established a fund to be known as the "sewage works construction fund". All moneys appropriated to and deposited in the sewage works construction fund are hereby appropriated for and shall be used by the department in carrying out the purposes of this part 3 of division III.

When used in said part, and unless the context requires otherwise:

1. "Treatment works" means any plant, disposal field, lagoon, holding or flow-regulating basin, pumping station, interceptor sewer, or other works installed for the purpose of treating, stabilizing, or disposing of sewage, industrial waste, or other wastes, which qualify for federal grants pursuant to the federal water pollution Act of 1956, as amended, or any other federal Act or program.

2. "Commission" means the water quality commission of the department.

3. "Construction" means the erection, building, acquisition, alteration, reconstruction, improvement, or extension of treatment works; preliminary planning to determine the economic and engineering feasibility of treatment works; the engineering, architectural, legal, fiscal, and economic investigations and studies, surveys, designs, plans, working drawings specifications, procedures, inspection, and supervision, and other action necessary in the construction of treatment works.

4. "Eligible project" means a project for construction of sewage treatment works:

a. For which approval of the commission is required under this part 3 of division III.

b. Which is, in the judgment of the commission eligible for federal pollution abatement assistance, whether or not federal funds are then available for such purpose. Eligible projects shall be those which the construction contract therefor shall have been entered into subsequent to July 1, 1966.

c. Which conforms with applicable rules of the commission.

d. Which is, in the judgment of the commission, necessary for the accomplishment of the state's policy of water purity.

5. "Municipality" means, the city, sanitary district, or other governmental body or corporation empowered to provide sewage collection and treatment services, or any combination of two or more of such governmental bodies or corporations acting jointly, in connection with an eligible project.

6. "Federal pollution abatement assistance" means funds available to a municipality, either directly or through allocation by the state, from the federal government as grants for construction of sewage treatment works pursuant to the federal water pollution Act of 1956 as amended.

**Sec. 455B.68. Grants of Assistance.** The commission may make grants as funds are available to any municipality to assist such municipality in the construction of sewage treatment works.

**Sec. 455B.70. Contracts.** The commission may, in the name of the state, contract with any municipality concerning eligible projects, subject to the approval of the executive committee. Any such contract may include such provisions as may be agreed upon by the parties, and shall include, in substance, the following provisions:

1. An estimate of the reasonable cost of the project as determined by the commission.

2. An agreement by the commission to pay to the municipality, during the progress of construction or following completion of the construction as may be agreed upon



by the parties, an amount as determined by appropriation of the general assembly.

3. An agreement by the municipality:

a. To proceed expeditiously with, and complete, the project in accordance with plans approved pursuant to this part 3 of division III and pursuant to part 1 of this division III.

b. To commence operation of the sewage treatment works on completion of the project, and not to discontinue operation or dispose of the sewage treatment works without the approval of the commission.

c. To operate and maintain the sewage treatment works in accordance with applicable provisions of part 1 of this division III and rules of the commission.

d. To obtain approval of the commission before applying for federal assistance for pollution abatement, in order to maximize the amounts of such assistance received or to be received for all projects in Iowa.

e. To provide for the payment by the municipality of its share of the cost of the project.

4. A provision that, in the event federal assistance which was not included in the calculation of the state payment pursuant to subsection 2 becomes available to the municipality, the amount of the state payment shall be recalculated with the inclusion of such additional federal assistance and the municipality shall pay to the state the amount by which the state payment actually made exceeds the state payment determined by the recalculation.

**Sec. 455B.72. Review of Contracts by Attorney General.** All contracts entered into pursuant to this part 3 of division III shall be subject to approval of the attorney general as to form. All payments by the state pursuant to such contracts shall be made after review and by warrant of the state comptroller to the credit of the municipality and shall be used for the payment of costs of construction of an eligible project. However, if such costs have been paid by the municipality, then such payment may be used by the municipality for:

1. The payment of outstanding bonds or obligations incurred for any such eligible project.

2. Any improvement or extension of an eligible project.

3. Any other lawful municipal purpose determined to be necessary, reasonable, and in the interest of the public welfare.

#### **Division IV — Solid Waste Disposal Commission**

##### **Part 1 — Solid Waste**

**Sec. 455B.75. Definitions.** As used in this part 1 of division IV, unless the context clearly indicates a contrary intent:

1. "Public agency" means a public agency as defined in Section 28E.2.

2. "Private agency" means a private agency as defined in Section 28E.2.

3. "Sanitary disposal project" means all facilities and appurtenances including all real and personal property connected with such facilities, which are acquired, purchased, constructed, reconstructed, equipped, improved, extended, maintained, or operated to facilitate the final disposition of solid waste without creating a significant hazard to the public health or safety, and which are approved by the executive director.

4. "Solid waste" means garbage, refuse, rubbish, and other similar discarded solid or semisolid materials, including but not limited to such materials resulting from industrial, commercial, agricultural, and domestic activities. Solid waste may include



vehicles, as defined by Section 321.1, subsection 1. Nothing herein shall be construed as prohibiting the use of dirt, stone, brick, or similar inorganic material for fill, landscaping, excavation or grading at places other than a sanitary disposal.

5. "Commission" means the solid waste disposal commission of the department.

6. "Resource recovery system" means the recovery and separation of ferrous metals and nonferrous metals and glass and aluminum and the preparation and burning of solid waste as fuel for the production of electricity.

**Sec. 455B.76. Duty of Cities and Counties.** Every city and county of this state shall provide for the establishment and operation of a sanitary disposal project for final disposal of solid waste by its residents not later than July 1, 1975. Sanitary disposal projects may be established either separately or through co-operation efforts for the joint use of the participating public agencies as provided by law.

Cities and counties may execute with public and private agencies contracts, leases, or other necessary instruments, purchase land and do all things necessary not prohibited by law the collection of solid waste, establishment and operation of sanitary disposal projects, and general administration of the same. Any agreement executed with a private agency for the operation of a sanitary disposal project shall provide for the posting of a sufficient surety bond by the private agency conditioned upon the faithful performance of the agreement.

**Sec. 455B.77. Administrator's Duties.** The executive director shall administer the provisions of this part 1 of division IV subject to the rules established by the commission.

Local boards of health shall co-operate in the enforcement of the provisions of said part and the executive director may seek their aid and delegate administrative duties of the department to the local boards of health in matters relating to solid waste, refuse, disposal plants, and sanitary disposal projects.

**Sec. 455B.78. Rules Established.** The commission shall establish rules for the proper administration of the provisions of this part 1 of division IV which shall reflect and accommodate insofar as is reasonably possible those current and generally accepted methods and techniques for treatment and disposition of solid waste which will serve the purposes of said part which shall take into consideration such factors, including others which it may deem proper, as existing physical conditions, topography, soils and geology, climate, transportation, and land use, such rules including but not limited to rules relating to the establishment and location of sanitary disposal projects, sanitary practices, inspection of sanitary disposal projects, collection of solid waste, disposal of solid waste, pollution controls, the issuance of permits, approved methods of private disposition of solid waste, the general operation and maintenance of sanitary disposal projects, and the implementation of said part. Prior to issuance of rules or amendments thereto, the commission shall hold at least one public hearing on the proposed rules or amendments, and shall give notice of such hearing at least thirty days in advance by publishing notice in a newspaper of general circulation in the state. The air quality commission and the water quality commission of the department shall co-operate with the commission in the establishment of such rules. All rules promulgated shall be subject to the provisions of Chapter 17A and Section 455B.7, subsection 3.

**Sec. 455B.79. Certification of Plans by Director.** The executive director shall certify if disposal projects operated or planned to be operated by or for cities, counties and those operated by private agencies meet the standards provided for by this part 1 of division IV and the rules of the commission, by issuing a permit for existing disposal projects which fully comply, and for planned sanitary disposal projects whose



plans fully comply, with all provisions of said part and rules issued pursuant thereto. Permits shall be issued for existing disposal sites which have not met all the provisions of said part and rules issued pursuant thereto, if a comprehensive plan for compliance within the time limitations required by said part is developed by a city, county or private agency and is approved by the executive director. Every city or county of this state and every private agency involved in the final disposal of solid waste shall qualify for a permit by the first of July 1975 or be subject to such legal actions authorized by Section 455B.82.

Permits shall be issued without fee by the executive director or at his direction, by a local board of health, for each sanitary disposal project operated in this state. Such permits shall be issued in the name of the city or county or, where applicable, in the name of the public or private agency operating such project. Each sanitary disposal project shall be inspected annually by the department or a local board of health. The permits issued pursuant to this section shall be in addition to any other licenses, permits or variances authorized or required by law, including, but not limited to, the provisions of Chapter 358A. A permit may be suspended or revoked after notice and hearing before the commission or its designee if a sanitary disposal project is found not to meet the requirements of the provisions of said part or rules issued pursuant thereto.

**Sec. 455B.80. Plans Filed.** Every city, county and every private agency operating or planning to operate a sanitary disposal project shall file with the executive director a plan detailing the method by which the city, county or private agency will comply with the provisions of this part I of division IV. The executive director shall review each plan submitted and may reject, suggest modification, or approve the proposed plan. The executive director shall aid in the development of plans for compliance with the provisions of said part. The executive director shall make available to each city, county and private agency appropriate forms for the submission of plans and may hold hearings for the purpose of implementing the provisions of said part. The executive director and governmental agencies with primary responsibility for the development and conservation of energy resources shall provide research and assistance, when cities and counties operating or planning to operate sanitary disposal projects request aid in planning and implementing resource recovery systems.

**Sec. 455B.81. Tax Levy.** The board of supervisors of any county may, in lieu of the levy authorized by Section 332.32, annually levy a tax not to exceed six and three-fourths cents per thousand dollars of assessed value of taxable property in the county outside the incorporated limits of any city for the purpose of planning a sanitary disposal project or of paying the interest and principal of bonds issued pursuant to the provisions of Section 346.23 as they become due. The levy authorized by this section shall be the only levy that the board of supervisors may authorize for the purposes of this section, notwithstanding the provisions of Section 346.11 or any other provision of law.

**Sec. 455B.82. Dumping — where prohibited.**

1. It shall be unlawful for any private agency or public agency to dump or deposit or permit the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the executive director. This section shall not prohibit a private agency or public agency from dumping or depositing solid waste resulting from its own residential, farming, manufacturing, mining or commercial activities on land owned or leased by it if such action does not violate any statute of this state or rules promulgated by the commission or local boards of health, or local ordinances, or rules issued by the air quality commission or water quality commission of the department. The executive director may issue temporary permits for dumping or disposal of solid waste at disposal sites for which an application for a permit to



operate a sanitary disposal project has been made and which have not met all of the requirements of part 1 of this division and the rules adopted by the commission if a compliance schedule has been submitted by the applicant specifying how and when the applicant will meet the requirements for an operational sanitary disposal project and the executive director determines the public interest will be best served by granting such temporary permit.

2. The executive director may issue any order necessary to secure compliance with or prevent a violation of the provisions of this part 1 of division IV or the rules promulgated pursuant thereto. The attorney general shall, on request of the department, institute any legal proceedings necessary in obtaining compliance with an order of the commission or the executive director or prosecuting any person for a violation of the provisions of said part or rules issued pursuant thereto.

3. Any person who violates any provision of part 1 of this division or any rule or any order promulgated or the conditions of any permit or order issued pursuant to part 1 of this division shall be subject to a civil penalty not to exceed five hundred dollars for each day of such violation.

### Part 3 — Debris

**Sec. 455B.95. Definitions.** As used in this part 3 of division IV, unless the context otherwise requires:

1. "Litter" means any garbage, rubbish, trash, refuse, waste materials, or debris.
2. "Discard" means to place, cause to be placed, throw, despoil or drop.
3. "Commission" means the solid waste disposal commission of the department.

**Sec. 455B.96. Executive Director's Duties.** The executive director, at the direction of the commission, shall establish programs to encourage the active support of business, industry and the general public for litter control.

The executive director, at the direction of the commission, shall co-ordinate and encourage the co-operation of state and local public agencies in the administration of this part 3 of division IV.

**Sec. 455B.97. Litter.** No person shall discard any litter onto or in any water or land of this state, except that nothing in this section shall be construed to effect the authorized collection and discarding of such litter in or on areas or receptacles provided for such purpose.

**Sec. 455B.98. Penalty.** Any person violating the provisions of section 455B.97, upon conviction, shall be guilty of a simple misdemeanor. The court, in lieu of or in addition to any other sentence imposed, may direct and supervise a labor of litter gathering.

**Sec. 455B.99. Other powers not affected.** The powers, duties and functions vested in the commission under the provisions of this division IV shall not be construed to affect the powers, duties and functions vested in the department under any other provisions of this chapter or the code.

**Sec. 455B.100 to 455B.109.** Reserved.

### CHAPTER 456 — DISSOLUTION OF DRAINAGE DISTRICTS

**Sec. 456.1. Jurisdiction To Dissolve Districts and Abandon or Transfer Improvements.** Drainage or levee districts may be dissolved and abandoned or as-



simulated by the procedures prescribed by this chapter.

1. When any drainage or levee district is free from indebtedness and it shall appear that the necessity therefor no longer exists or that the expense of the continued maintenance of the ditch or levee is in excess of the benefits to be derived therefrom, the board of supervisors or board of trustees, as the case may be, shall have power and jurisdiction, upon petition of a majority of the landowners, who, in the aggregate, own sixty percent of all land in such district, to abandon the same and dissolve and discontinue such districts in the manner prescribed by sections four hundred fifty-six point two (456.2) through four hundred fifty-six point six (456.6) of the Code. Nothing in this subsection shall prevent the board from eliminating land from a drainage district as permitted under section 455.201.

2. When one drainage or levee district, either intracounty or intercounty, includes within its territory all of the territory of one or more other drainage or levee districts, and it appears that one assessment and one governing body would be to the benefit of the owners and occupants of the land within the mutual jurisdiction of the overlying and the contained districts, the board of supervisors or board of trustees may effect the dissolution of a contained district and the transfer of jurisdiction and control over that contained district's improvements to the overlying district, in the manner prescribed by sections four (4) through nine (9) of this act.

**Sec. 456.2. Notice of Hearing.** Upon the filing of such petition the board shall enter an order fixing the date for hearing thereon not less than forty days from the date of the filing thereof and shall enter an order directing the county auditor, if such district is under the control of the board of supervisors, or the clerk of the board, if under the control of a board of trustees, to immediately cause notice of hearing thereon to be served on the owners of lands in such district as may then be provided by law in proceedings for the establishment of a drainage or levee district.

**Sec. 456.3. Hearing on Petition.** At the time set for hearing on said petition the board shall hear and determine the sufficiency of the petition as to form and substance (which petition may be amended at any time before final action thereon), and all objections filed against the abandonment and dissolution of such district. If it shall find that such district is free from indebtedness and that the necessity for the continued maintenance thereof no longer exists or that the expense of the continued maintenance of such district is not commensurate with the benefits derived therefrom, it shall enter an order abandoning and dissolving such district, which order shall be filed with the county auditor of the county or counties in which such district is situated and noted on the drainage record.

**Sec. 456.4. Appeal.** Appeal may be taken from the order of the board to the district court of the county in which such district or a part thereof is situated, in the same time and manner as appeal may be taken from an order of the board of supervisors establishing a district.

**Sec. 456.5. Expense — Refund.** In case there are sufficient funds on hand in such district, or there are unpaid assessments outstanding or other property belonging to such district in an amount sufficient to pay such expense, the expense of abandonment and dissolution shall be paid out of such funds or out of funds realized by the sale of such property. Where such district is free of indebtedness but there are not sufficient funds on hand or unpaid assessments outstanding or other assets to pay such expense the board shall assess such expense against the property in the district in the same proportions as the last preceding assessments of benefits. Any excess remaining to the credit of such district after sale of its assets and after payment of such expenses shall be prorated back to the property owners in the district in the proportions according to class and benefits as last assessed. If the petition is denied, the costs of said



proceedings shall be paid by the petitioning owners.

**Sec. 456.6. Abandonment of Rights of Way.** If a dissolution is effected pursuant to section four hundred fifty-six point one (456.1), subsection one (1), and sections four hundred fifty-six point two (456.2) through four hundred fifty-six point five (456.5) of the Code, the rights of way of the district for all purposes of the district shall be deemed abandoned.

**Sec. 4. New Section. Initiating Dissolution of Contained District.** To initiate the dissolution of a contained district under the circumstances described in section four hundred fifty-six point one (456.1), subsection two (2) of the Code:

1. The board of supervisors or board of trustees of the district proposed to be dissolved shall enter an order for the proposed dissolution of that district and the surrender of its improvements and rights-of-way to the overlying district.

2. The board of supervisors or board of trustees of the overlying district shall enter an order approving the proposed acceptance of those improvements and rights-of-way.

**Sec. 5. New Section. Procedure for Notice of Hearing.**

1. The board of the overlying district shall enter an order fixing a place and a time, not less than forty days after the date of the later of the two orders required by section four (4) of this Act, for a hearing on the proposals described in the two orders.

2. The auditor, or auditors if the overlying district includes land lying in two or more counties, shall cause notice of the proposals and of the hearing to be given immediately upon the entry of an order under subsection one (1) of this section. The notice must:

a. Include the texts of the orders entered pursuant to section four (4) of this Act, the date, time and place of the hearing, and a statement that all objections to the proposals embodied in the orders must be made in writing and filed in the office of the auditor at or before the time set for the hearing.

b. Be directed to all of the following:

(1) The owner of each tract of land or lot within the overlying district, as shown by the transfer books of the auditor's office, including railway companies having right-of-way in the district.

(2) All lienholders or encumbrancers of land within the overlying district, without naming them.

(3) All actual occupants of land in the overlying district, without naming individuals.

(4) All other persons whom it may concern.

3. Except as otherwise required by section four hundred fifty-five point twenty-two (455.22) of the Code, the notice required by this section shall be served by publication once in a newspaper of general circulation in each county in which the overlying district's land is situated. The publication shall be made not less than twenty days prior to the day set for the hearing. Proof of service shall be made by affidavit of the publisher.

**Sec. 6. New Section. Procedure at Hearing.** The hearing shall be convened at the time and place fixed in accordance with section five (5), subsection one (1) of this Act, and the procedure at the hearing shall be as prescribed by this section.

1. The board of the contained district shall first hear all objections filed against the dissolution of the district and the surrender of its improvements to the overlying district. If, at the conclusion of that portion of the hearing, that board



finds that the contained district is free of debt, that the economic benefits of the continued maintenance of that district would not be commensurate with its cost, and that it would be advantageous to dissolve and discontinue the contained district and surrender its improvement and rights-of-way to the overlying district, it shall enter an order dissolving the contained district and directing the surrender of its improvements and rights-of-way, conditioned on acceptance by the overlying district.

2. Immediately thereafter, the board of the overlying district shall hear all objections filed against the acceptance of the contained district's improvements and their maintenance. If it finds that the improvements are conducive to the drainage of surface waters from agricultural lands and all other lands in the overlying district or the protection of the lands from overflow, it shall enter an order accepting the improvements and rights-of-way of the contained district.

3. Orders issued pursuant to subsections one (1) and two (2) of this section shall be filed with the county auditor of the county or counties in which the affected districts are situated and noted on the drainage record.

4. If at or before the time set for the hearing there have been filed with the county auditor or auditors, if either the contained or overlying district extends into more than one county, or within the board of either district, one or more remonstrances or objections to the dissolution of the contained district, or to the acceptance of that district's improvements and rights-of-way by the overlying district, signed by owners of land and land improvements in either district aggregating sixty percent of the total assessed value of the land in that district as shown by the taxing records in the county or counties in which that district is located, the board to which the remonstrances or objections have been made shall abandon its proposed action.

**Sec. 7. New Section. Election in Lieu of Hearings.** In lieu of the hearings provided for in section six (6) of this Act, the board of either district may call an election for the purpose of determining the dissolution of the contained district or the acceptance of that district's improvements and rights-of-way by the overlying district. The questions may be submitted at a regular election of the district or at a special election called for that purpose. It is not mandatory for the county commissioner of elections to conduct the elections, however the provisions of sections forty-nine point forty-three (49.43) through forty-nine point forty-seven (49.47), and of chapter four hundred sixty-two (462) of the Code, as they are applicable, shall govern the elections, and the question to be submitted shall be set forth in the notice of election.

2. If sixty percent or more of the votes cast in the overlying district are in favor of the proposed acceptance by that district of the contained district's improvements and rights-of-way, the board of the overlying district shall enter an order accepting the improvements and rights-of-way of the contained district.

3. Orders issued pursuant to subsections one (1) and two (2) of this section shall be filed with the county auditor of the county or counties in which the affected districts are situated and noted on the drainage record.

**Sec. 8. New Section. Effect of Dissolution, Surrender and Acceptance.** When a contained district dissolves and surrenders its improvements and rights-of-way to the jurisdiction and control of an overlying district, and the overlying district accepts those improvements and rights-of-way, in accordance with sections four (4) through seven (7) of this Act:

1. It is presumed that the classification of the lands which were included in the dissolved district, as previously determined by the commissioners in the classification of those lands as a part of the overlying district, remains equitable and no reclassification of the overlying district or any part of it is necessary.

2. The improvements surrendered and accepted are at all times under the supervision of the board of the overlying district, and it is the duty of that board to



keep the improvements in repair as provided in section four hundred fifty-five point one hundred thirty-five (455.135) of the Code as fully and completely as though the improvements were a part of the original construction or improvements in the overlying district.

3. It is presumed that:

a. The improvements surrendered and accepted are an integral part of the overlying district's improvements, and are a public benefit and conducive to the public health, convenience and welfare.

b. No value is taken into consideration for the existing improvements nor is credit given to the parties owning them, and they shall not be considered an asset of the district that is dissolved.

4. The original cost and the subsequent cost of improvements in the district that has been dissolved are added to and become a part of the original cost and the subsequent cost of improvements in the overlying district.

**Sec. 9. New Section. Costs Borne by Overlying District.** The overlying district shall pay all costs of the proceedings held pursuant to sections four (4) through seven (7) of this Act.

#### CHAPTER 457 — INTER-COUNTY LEVEE OR DRAINAGE DISTRICTS

**Sec. 457.1. Petition and Bond.** When the levee or drainage district embraces land in two or more counties, a duplicate of the petition of any owner of land to be affected or benefited by such improvement shall be filed with the county auditor of each county into which said levee or drainage district will extend, accompanied by a duplicate bond to be filed with the auditor of each of the said counties as provided when the district is wholly within one county, in an amount and with sureties approved by the auditor of the county in which the largest acreage of the district is situated, which bond shall run in favor of the several counties in which it is filed.

**Sec. 457.2. Commissioners.** Upon the filing of such petition in each county and the approval of such duplicate bond by the proper auditor, the board of each of such counties shall appoint a commissioner and the joint boards shall appoint a competent engineer who shall also act as a commissioner.

**Sec. 457.3. Examination and Report.** The commissioners thus appointed shall examine the application and make an inspection of all the lands embraced in the proposed district and shall determine what improvements in the way of levees, ditches, drains, settling basins, or change of natural watercourse are necessary for the drainage of the lands described in the petition. Such commissioners, including the engineer, shall file a detailed report of their examination and their findings and file a duplicate thereof in the office of the auditor of each of said counties.

**Sec. 457.4. Duty of Engineer.** In addition to the report of the commissioners as a whole, the engineer so appointed shall perform the same duties and in the same manner required of the engineer by chapter 455 when the proposed district is located wholly in one county, and his surveys, plats, profiles, field notes, and reports of his surveys shall be made and filed in duplicate in each county.

**Sec. 457.5. Notice.** Immediately upon the filing of the report of the commissioners and the engineer, if the same recommends the establishment of such district, notice shall be given by the auditor of each county to the owners of all the lots and tracts of land in his own county respectively embraced within such district as recommended by the commissioners as shown by the transfer books in the office of the auditor of each of said counties, and also to the persons in actual occupancy of all the lots or tracts of land in such district, and also to each lienholder or incumbrancer of any



of such lots or tracts as shown by the records of the respective counties.

**Sec. 457.6. Contents of Notice — Service.** Such notice shall state the time and place, when and where the board of the several counties will meet in joint session for the consideration of said petition and the report of the commissioners and engineer thereon, and shall in other respects be the same and served in the same time and manner as required when the district is wholly within one county, except that the auditor of each county shall give notice only to the owners, occupants, incumbrancers, and lienholders of the lots and tracts of land embraced within the proposed district in his own county as shown by the records of such county.

**Sec. 457.7. Claims for Damages — Filing — Waiver.** Any person filing objections or claiming damages or compensation on account of the construction of such improvement shall file the same in writing in the office of the auditor of the county in which his land is situated, at or before the time set for hearing. He may, however, file it at the time and place of hearing. If he shall fail to file such claim at the time specified he shall be held to have waived his right thereto, but claims for land taken for right of way for any open ditch or for settling basins need not be filed.

**Sec. 457.8. Organizations — Procedure — Adjournments.** At the time set for hearing such petition, the boards of the several counties shall meet at the place designated in said notice. They shall organize by electing a chairman and a secretary, and when deemed advisable may adjourn to meet at the call of such chairman at such time and place as he may designate, or may adjourn to a time and place fixed by said joint boards. They shall sit jointly in considering the petition, the report and recommendations of the engineer, in the same manner as if the district were wholly within one county.

**Sec. 457.9. Tentative Adoption of Plans.** The said boards by their joint action may dismiss the petition and refuse to establish such district, or they may approve and tentatively adopt the plans and recommendations of the engineer for the said district.

**Sec. 457.10. Appraisers.** If the said boards shall adopt a tentative plan for the district, the board of each county shall select an appraiser and the several boards by joint action shall employ an engineer, and the said appraisers and engineer shall constitute the appraisers to appraise the damages and value of all right of way required for open ditches and of all lands required for settling basins.

**Sec. 457.11. Duty of Appraisers — Procedure.** The appraisers shall proceed in the same manner and make return of their findings and appraisal the same as when the district is wholly within one county, except that a duplicate thereof shall be filed in the auditor's office of each of the several counties. After the filing of the report of the appraisers, all further proceedings shall be the same as where the district is wholly within one county except as otherwise provided.

**Sec. 457.12. Meetings of Joint Boards.** The board of supervisors of any county in which a petition for the establishment of a levee or drainage district to extend into or through two or more counties is on file, may meet with the board or boards of any other county or counties in which such petition is on file, for the purpose of acting jointly with such other board or boards in reference to said petition or any business relating to such district. Any such joint meetings held in either of the counties in which such petition is on file shall constitute a valid and legal meeting of said joint boards for the transaction of any business pertaining to said petition or to the business of such district.

**Sec. 457.13. Equalizing Voting Power.** When the boards are of unequal membership, for the purpose of equalizing their voting power each member of the smallest board shall cast a full vote and each member of a larger board shall cast such fractional part of a vote as results from dividing the smallest number by such larger number.



**Sec. 457.14. Commissioners to Classify and Assess.** If the boards of the several counties acting jointly shall establish the district, they shall appoint a commission consisting of one from each county, and in addition thereto a competent engineer who shall within twenty days begin to inspect the premises and classify the lands in said district fixing the percentages and assessments of benefits and the apportionment of costs and expenses and shall complete said work within the time fixed by the boards. The qualifications of said commissioners, their classification of lands, fixing of percentages and assessments of benefits and apportionment of costs and the report thereof in all details shall be governed in all respects by the provisions of chapter 455 for districts wholly within one county.

**Sec. 457.15. Notice and Service Thereof — Objections.** Upon the filing of the report of the commissioners to classify lands, fix and assess benefits and apportion costs and expenses, the auditors of the several counties, acting jointly, shall cause notice to be served upon all interested parties of the time when and place where the boards will meet and consider such report and make a final assessment of benefits and apportionment of costs, which notice shall be the same and served for the time and in the manner and all proceedings thereon shall be the same as provided in chapter 455 in districts wholly within one county, except publication of notice as provided in section 455.21 shall be in each of the counties into which the district extends, and also that said notice to be published in each of the several counties shall contain only the names of the owners of each tract of land or lot in the district located within the respective county in which said notice is to be published and the total amount of all proposed assessments on the lands located in each of the other counties into which the district extends, and except further that the objections not filed prior to the date of the hearing shall be filed with the boards at the time and place of such hearing.

**Sec. 457.16. Levies — Certificates and Bonds.** After the amount to be assessed and levied against the several tracts of land shall have been finally determined the several boards, acting separately, and within their own counties, shall levy and collect the taxes apportioned and levied in their respective counties. They may issue warrants, improvement certificates, or bonds for the payment of the cost of such improvement within their respective counties, with the same right of landowners to pay without interest or in installments all as provided where the district is wholly within one county.

**Sec. 457.17. Bonds or Proceeds Made Available.** When drainage bonds are to be issued under the provisions of section 457.16, they shall be issued at such time that they or the proceeds thereof shall be available for the use of the district at a date not later than ninety days after the actual commencement of the work on the improvement as provided in relation to districts wholly within one county.

**Sec. 457.18. Supervising Engineer.** At the time of finally establishing the district, the boards of the several counties, acting jointly, shall employ a competent engineer to have charge and supervision of the construction of the improvement and they shall fix his compensation and he shall, before entering upon said work, give a bond running to the several counties for the use and benefit of the district in the same amounts and of like tenor and effect as is provided in districts wholly within one county. A duplicate of such bond shall be filed with the auditor of each of said counties.

**Sec. 457.19. Duty of Engineer.** The duties of the supervising engineer shall be the same in all respects as is provided by chapter 455 for districts wholly within one county.

**Sec. 457.20. Notice of Letting Work — Applicable Procedure.** If the boards, acting jointly, shall establish such district, the auditors of the several counties shall immediately thereafter, acting jointly, cause notice to be given of the time and place of the meeting of the boards for letting contracts for the construction of the improve-



ment. The notices, bids, bonds, and all other proceedings in relation to letting contracts shall be the same as provided where the district is wholly within one county, but duplicates of contractors' bonds shall be filed with the auditor of each county.

**Sec. 457.21. Contracts.** All contracts made for engineering work and the work of constructing improvements of an inter-county district shall be made by written contract executed by the contractor and such person as may be authorized by the boards of the several counties and by joint resolution and shall specify the work to be done, the amount of compensation therefor and the times and manner of payment, all as provided in relation to districts wholly within one county.

**Sec. 457.22. Monthly Estimate — Payment.** The engineer in charge of the work shall furnish the contractor monthly estimates of the amount of work done on each section and the amount thereof done in each county, a duplicate of which shall be filed with the auditor of each of the several counties. Upon the filing of such statement, each auditor shall draw a warrant for the contractor or give him an order directing the treasurer to deliver to him improvement certificates or drainage bonds, as the case may be, in favor of the contractor for eighty per cent of the amount due from his county. Drainage warrants, bonds or improvement certificates when so issued shall be in such amounts as the auditor determines not however in amounts in excess of \$1,000.00.

**Sec. 457.23. Final Settlement.** When the work to be done on any contract is completed to the satisfaction of the supervising engineer he shall so report and certify to the boards of the several counties, and the auditors of the county shall fix a day to consider said report, and all the provisions shall apply in relation to objections to said report and the approval of the same and the completion of any unfinished or abandoned work as is provided in chapter 455 relating to completion of work and final settlement in districts wholly within one county, except that, when the completed work is accepted by the joint action of the boards of supervisors of the several counties into which the district extends such acceptance shall be certified to the auditor of each county who shall draw a warrant for the contractor or give him an order directing the treasurer to deliver to him improvement certificates or drainage bonds, as the case may be, for the balance due from the portion of the district in such county.

**Sec. 457.24. Failure of Board to Act.** When the establishment of a district, extending into two or more counties, is petitioned for as hereinbefore provided and one or more of such boards fails to take action thereon, the petitioners may cause notice in writing to be served upon the chairman of each board demanding that action be taken upon the petition within twenty days from and after the service of such notice.

**Sec. 457.25. Transfer to District Court.** If such boards shall fail to take action thereon within the time named, or fail to agree, the petitioners may cause such proceedings to be transferred to the district court of any of the counties into which such proposed district extends by serving notice upon the auditors of the several counties within ten days after the expiration of said twenty days' notice, or after the failure of such boards to agree.

**Sec. 457.26. Transcript, Docket, and Trial.** Within thirty days after completion of notice, the auditor shall, acting jointly, prepare and certify to the clerk of the district court a full and complete transcript of all proceedings had in such case. The clerk of the district court shall thereupon docket the case and same shall be triable in equity at any time after the expiration of twenty days thereafter.

**Sec. 457.27. Decree.** The court shall enter judgment and decree dismissing the case or establishing such district and may by proper orders and writs enforce the same.



**Sec. 457.28. Law Applicable.** Except as otherwise stipulated in this chapter the provisions and procedure set forth in chapter 455 shall govern and apply to the formation, establishment, and conduct of every levee or drainage district extending into two or more counties, the petition therefor, the giving or publication or service of notice therein, the appointment and duties of all officers or appraisers or commissioners, the making or filing of waivers, reports, plats, profiles, recommendations, notices, contracts, and papers, the classification and apportionment and assessment of lands and all other property, the taking and hearing of appeals, the issuance and delivery of warrants, bonds and assessment certificates, the payment of taxes and assessments, the making of improvements, ditches, drains, settling basins, changes, enlargements, extensions, and repairs, the inclusion of lands, and the making or performance of every other matter or thing whatsoever relevant to or in any wise connected with such joint drainage or levee district, and the rights, privileges, and duties of all persons, landowners, officers, appellants, and courts.

**Sec. 457.29. Records of Intercounty Districts.** A record of all proceedings of an intercounty levee or drainage district shall be maintained by the auditor of each county in which a portion of the district lies, as provided by Sections 455.185 and 455.186, but the records in the office of the auditor of the county having the largest acreage in the district shall be the official records of said district.

**Sec. 457.30. County With Largest Acreage to Keep Funds.** When an intercounty district has been finally established and original construction completed and final settlement made with the contractor, as provided by Section 457.23, the treasurer of the county having the largest acreage of the district shall be the depository for all funds of the district and the treasurer of the other counties in which the district is situated shall periodically, at least annually, pay over all district funds received within said period to the treasurer of the county with the largest acreage, except that funds payable on improvement certificates or bonds shall be disbursed to the holders of the certificates or bonds by the treasurer of the county in which the land encumbered is located.

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## CHAPTER 458 — CONVERTING INTRA-COUNTY DISTRICTS INTO INTER-COUNTY DISTRICT

**Sec. 458.1. Intra-County Districts Converted Into Inter-County District.** Whenever one or more drainage districts in one county outlet into a ditch, drain or natural watercourse, which ditch, drain or natural watercourse is the common carrying outlet for one or more drainage districts in another county, the boards of supervisors of such counties acting jointly may by resolution, and on petition of the trustees of any one of such districts or one or more land owners therein, in either case such petition to be accompanied by a bond as provided in section 457.1, must initiate proceedings for the establishment of an inter-county drainage district by appointing commissioners as provided in section 457.2 and by requiring a bond as provided in section 457.1 and by proceeding as provided by chapter 457, and all powers, duties, limitations and provisions of this chapter and chapter 457, shall be applicable thereto.

**Sec. 458.2. Benefited Land Only Included.** Neither any land nor any previously organized drainage district shall be included within, or assessed for, the proposed new inter-county district unless such land or unless such previously organized district shall receive special benefits from the improvements in the proposed new inter-county district.

**Sec. 458.3. Appeal By Land Owner.** Any land owner affected by the establishment of the new inter-county district may appeal to the district court of the county where his land lies from the action of the joint boards in establishing the new district or in including his land within it.



**Sec. 458.4. Procedure On Appeal.** The procedure for taking such appeal and for hearing and determining it shall be that provided for similar appeals in chapter 455.

**Sec. 458.5. Appeal By Trustees or Boards.** Trustees or boards of supervisors having charge of any previously organized district which is proposed to be included (either in whole or in part) within the new inter-county district may, in the same manner and under the same procedure appeal to the district court from the action of the joint boards in establishing the new district or in including therein the previously organized district or any part thereof.

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#### CHAPTER 459 — DRAINAGE DISTRICTS EMBRACING PART OR WHOLE OF CITY

**Sec. 459.1. Authority to Include City.** The board of any county shall have the same power to establish a drainage district that includes the whole or any part of any city, as they have to establish districts wholly outside of such cities, including assessments of damages and benefits with such cities, but no board of supervisors shall have power or authority to establish a drainage or levee district which lies wholly within the corporate limits of any city, nor in any case to establish any district for sewer purposes.

**Sec. 459.2. Inclusion of City — Notice.** Notice of the filing of the petition for such district and the time of hearing thereon, shall set forth the boundaries of the territory included within such city and directed to the city clerk and the owners and lienholders of the property within such boundaries without naming individuals, to be served in the same manner as notices where the district is wholly outside of such city.

**Sec. 459.3. Assessments — Notice.** When the streets, alleys, public ways, or parks or lots or parcels including railroad rights of way of any city, or city under special charter, so included within a levee or drainage district, will be beneficially affected by the construction of any improvement in such district, it shall be the duty of the commissioners appointed to classify and assess benefits to estimate and return in their report the percentage and assessment of benefits to such streets, alleys, public ways, and parks, or lots or parcels including railroad rights of way and notice thereof shall be served upon the clerk of such city, irrespective of the form of government, and upon owners of lots, parcels, and railroad rights of way so assessed.

**Sec. 459.4. Objections — Appeal.** The council or clerk of such city or individual owners may file objections to such percentage and assessment of benefits in the time and manner provided in case of landowners outside such city, and they shall have the same right to appeal from the finding of the board with reference to such assessment.

**Sec. 459.5. Assessments — Interest.** Such assessment as finally made shall draw interest at the same rate and from the same time as assessment against lands.

**Sec. 459.6. Bonds, Certificates, and Waivers.** The board of supervisors and the city council shall have the same power in reference to issuing improvement certificates or drainage bonds and executing waivers on account of such assessment for benefits to streets, alleys, public ways, parks, and other lands as is herein conferred upon the board of supervisors in reference to assessment for benefits to highways.

**Sec. 459.7. Funding Bonds.** Such cities may issue their funding bonds for the purpose of securing money to pay any assessment against it as provided by law.

**Sec. 459.8. Jurisdiction Relinquished.** If the board of supervisors of any county at any time finds that twenty-five percent or more of the total area of any established



drainage district is located within the corporate limits of any city, that the district's drains are wholly or partially constructed of sewer tile, and that the district's drain or drains are needed or being used by the city for storm sewer or drainage purposes, the board may by resolution transfer to the city control of the entire drainage district, including the portion outside the corporate limits of the city.

**Sec. 459.9. Request for Relinquishment.** When a county board of supervisors elects to transfer control of a drainage district to a city, as provided in Section 459.8, the resolution effecting the transfer shall state a time not less than thirty nor more than ninety days after adoption of the resolution when the transfer of control shall take effect. The resolution shall be certified to the governing body of the city and a copy thereof filed by the county auditor, who shall spread the same upon the records of the drainage district.

**Sec. 459.10. Duty to Relinquish.** It shall be the duty of the governing body of any city to accept control of and thereafter to administer a drainage district properly transferred to the city, commencing on the date specified in the resolution of the county board of supervisors certified to the governing body as provided in Section 459.9, or at such later date as may be agreed to by the county board upon request of the governing body.

**Sec. 459.11. Jurisdiction of Municipality.** After the drainage district has been taken over by the city, it shall have complete control thereof, and may use the same for any purpose that said city through its city council deems proper and necessary for the advancement of the city or its health or welfare, and the city shall be responsible for the maintenance and upkeep of said drainage district only from and after its relinquishment by the board of supervisors to the city.

**Sec. 459.12. City Council to Control District.** The council of any city acting under the provisions of this chapter shall have control, supervision and management of the district, and shall be vested with all of the powers which are now or may hereafter be conferred on the board of supervisors for the control, supervision and management of drainage districts under the laws of this state within the said district unless otherwise specifically provided.

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## CHAPTER 460 — HIGHWAY DRAINAGE DISTRICTS

**Sec. 460.1. Establishment.** Whenever, in the opinion of the board of supervisors, it is necessary to drain any part of any public highway under its jurisdiction, and any land abutting upon or adjacent thereto, it may proceed without petition or bond to establish a highway drainage district by proceeding in all other respects as provided in chapter 455.

**Sec. 460.2. Powers.** Such district, when established, shall have the powers granted to drainage and levee districts, and all parties interested shall have the same rights so far as applicable.

**Sec. 460.3. Initiation Without Petition.** When the board of supervisors determines on its own action to proceed to the establishment of a highway drainage district, it shall do so by the adoption of a resolution of necessity to be placed upon its records, in which it shall describe in a general way the portion of any highway or highways to be included in such district, together with the description of abutting or adjacent land and railroad rights of way to be included in such district and made subject to assessment for such improvement.



**Sec. 460.4. Engineer.** The board shall appoint a competent engineer for the district. If the county engineer is appointed, he shall serve without additional compensation. In no case shall the county engineer act as a member of the assessment commission in a drainage district provided for in this chapter.

**Sec. 460.5. Survey and Report.** The engineer shall make a survey of the proposed district and report the same to the board, being governed in all respects as provided by sections 455.17 and 455.18 and designate particularly any portion of the secondary road system or, the primary road system, or any portion of either or both of said systems, as well as all lands adjoining and adjacent thereto, including lands and rights of way of railroad companies which in his judgment will be benefited by drainage of highways in such district, and which should be embraced within the boundaries of such district.

**Sec. 460.6. Assessment — Report.** The commission for assessment of benefits and classification of the property assessed shall determine and report:

1. The separate amount which shall be paid by the county on account of the secondary road system.
2. The separate amount which shall be paid by the state on account of the primary road system.
3. The amounts which shall be assessed against the right of way or other real estate of each railway company within such district.
4. The amounts which shall be assessed against each forty-acre tract or less within such district.

**Sec. 460.7. Advanced Payment.** The board on construction of such improvement may advance out of the secondary road construction fund or the secondary road maintenance fund, or out of both of said funds, that portion to be collected by special assessment, the amount so advanced to be replaced in said road funds as the first special assessments are collected. The board may in lieu of making such advancements, issue warrants to be known as "Drainage Warrants", said warrants to draw not to exceed four per cent interest per annum payable annually from the date of issue and to be paid out of the special assessments levied therefor, when the same are collected.

**Sec. 460.8. Payment from road funds.** The amount fixed by the final order of the board of supervisors to be paid:

1. On account of the primary road system, shall be payable by the state department of transportation on due certification of the amount by the county treasurer to the state department of transportation out of the primary road fund.
2. On account of the secondary road system, may be payable from the secondary road construction fund, or from the secondary road maintenance fund, or from both of said funds.

**Sec. 460.9. Dismissal — Costs.** If such proceedings are dismissed or said improvement abandoned, all costs of such proceedings shall be paid out of the fund of the road system for the benefit of which said proceedings was initiated.

**Sec. 460.10. Condemnation of Right of Way.** When in the judgment of the board of supervisors, it is inadvisable to establish a drainage district but necessary to acquire right of way through private lands for the construction of ditches or drains as outlets for the drainage of highways, the board of supervisors may cause such right of way to be condemned by proceedings in the manner required for the exercise of the right of eminent domain as for works of internal improvement, except that no attorney fee shall be taxed, and pay the costs and expenses of such condemnation from either or both of said secondary road funds.



**Sec. 460.11. Laws Applicable.** All proceedings for the construction and maintenance of highway drainage districts except as provided for in this chapter shall be as provided in chapters 455 to 459 inclusive.

\*Chapters 455A, 455B, 455C, 456 enacted after this section was enacted; chapter 458 was enacted as an amendment to chapter 457, see 41GA, chapter 155.

**Sec. 460.12. Removal of Trees From Highway.** When the roots of trees located within a highway obstruct the ditches or tile drains of such highway, the board of supervisors shall remove such trees from highways, except shade or ornamental trees adjacent to a dwelling house or other farm buildings or feed lots, or any tree or trees for windbreaks upon cultivated lands consisting of sandy or other light soils.

**Sec. 460.13. Trees Outside of Highways.** When the roots of trees and hedges growing outside a highway obstruct the ditches or tile drains of any highway, the board of supervisors may acquire the right to destroy such trees in the manner provided for taking private property for public use. Ornamental trees adjacent to any dwelling, orchard trees and trees used as windbreaks for a dwelling house, outbuildings, barn or feed lots, shall be exempt from the provisions of this section.

#### CHAPTER 461 — DRAINAGE AND LEVEE DISTRICTS WITH PUMPING STATIONS

**Sec. 461.1. Authorization.** The board of supervisors of any county or counties in which a drainage or levee district has been organized as by law provided may establish and maintain a pumping station or stations when and where the same may be necessary to secure a proper outlet for the drainage of the land comprising the district or any portion thereof, and the cost of construction and maintenance of said pumping station or stations shall be levied upon and collected from the lands in the district benefited by such pumping station or stations, in the same manner as provided for in the construction and maintenance of said districts.

**Sec. 461.2. Petition — Procedure.** Such pumping station shall not be established or maintained unless a petition therefor shall be presented to the board signed by not less than one-third of the owners of lands benefited thereby. The lands benefited by such pumping station shall be determined by the board on said petition and report of the engineer and such other evidence as it may hear. No additional land shall be taken into any such drainage district after the improvements therein have been substantially completed, unless one-third of the owners of the land proposed to be annexed have petitioned therefor or consented in writing thereto.

**Sec. 461.3. Additional Pumping Station.** After the establishment of a drainage district, including a pumping plant, and before the completion of the improvement therein, the board or boards may, if deemed necessary to fully accomplish the purposes of said improvement, by resolution, authorize the establishment and maintenance of said additional pumping station or stations as the engineer may recommend, and if a petition is filed by one-third of the owners of land within such district asking the establishment of such pumping plant or plants the board or boards must direct the engineer to investigate the advisability of the establishment thereof and upon the report of said engineer the board or boards shall determine whether such additional pumping plant or plants shall be established.

**Sec. 461.4. Transfer of Pumps.** If the board or boards determine that the additional pumping plant or plants shall be established and maintained a pump or pumps may be removed from any pumping station already established and may be installed in any such additional plant, if such removal can be made without injuring the efficient operation of the plant from which removed.

**Sec. 461.5. Costs.**

1. The cost of the establishment of such additional pumping plant or plants



shall be paid in the same manner and upon the same basis as is provided for the cost of the original improvement.

2. The board of supervisors or the board of trustees, as the case may be, where the district has been established and the original improvement constructed, may proceed with the further improvement of the original project in the manner provided in section 455.135, provided, however, that the cost of such further improvement does not exceed 25 % of the sum of the original cost to the district and the cost of subsequent improvements, including all federal contributions.

For the purpose of this section the word "improvement" shall include the construction, reconstruction, enlargement and relocation of levees and acquisition of rights-of-way therefor.

**Sec. 461.6. Dividing Districts.** When a drainage district has been created and more than one pumping plant is established therein, the board or boards of supervisors may, and upon petition of one-third of the owners of land within said district shall appoint an engineer to investigate the advisability of dividing said district into two or more districts so as to include at least one pumping plant in each of such districts.

**Sec. 461.7. Notice — Publication.** If the engineer recommends such division, the board of supervisors shall fix a time for hearing upon the question of such division and shall publish notice directed to all whom it may concern of the time and place of such hearing, for the time and in the manner as is required for the publication of notice of the establishment of said district, except that said notice need not name the owners and lienholders.

**Sec. 461.8. Hearing — Jurisdiction of Divided Districts.** At the time fixed, the board shall determine the advisability of such division and shall make such order with reference thereto as shall be deemed proper, having consideration for the interests of all concerned. If such division is made, the board or boards having jurisdiction of the original district shall retain jurisdiction of the new districts created by such division for the purpose of collecting assessments theretofore made and making such additional assessments as are necessary to pay the obligations theretofore contracted. For all other purposes, each division shall be under the jurisdiction of the board or boards of supervisors which would have had jurisdiction thereof if originally established as an independent district.

**Sec. 461.9. Division In Other Cases.** After a levee or drainage district operating a pumping plant shall have been established and the improvement constructed and accepted, if it shall become apparent that the lands can be more effectually drained, managed or controlled by a division thereof, then the said board or boards, or trustees, may and if the district is divided by a stream, they shall divide the district.

**Sec. 461.10. Assessments Not Affected — Maintenance Tax.** Each district after the division shall be conducted as though established originally as a district. Nothing herein shall affect the legality or collection of any assessments levied before the division, but the maintenance tax, if any, shall be divided in proportion to the amount paid in by each district.

**Sec. 461.11. Election and Apportionment of Trustees.** If said district before the division was made under the control and management of trustees, then each trustee shall continue to serve in the district in which he is situated, and other trustees shall be elected in each new district. The election for said new trustees shall be called by the old board of trustees in each district, within ten days after said division is made and shall be conducted as provided for the election of trustees.

**Sec. 461.12. Settling Basin — Condemnation.** If, before a district operating a



pumping plant is completed and accepted, it appears that portions of the lands within said district are wet or nonproductive by reason of the floods or overflow waters from one or more streams, running into, through or along said district and that said district or some other district of which such district shall have formed a part, shall have provided a settling basin to care for the said floods and overflow waters of said stream or watercourse, but no channel to said settling basin has been provided, said board or boards are hereby empowered to lease, buy or condemn the necessary lands within or without the district for such channel. Proceedings to condemn shall be as provided for the exercise of the right of eminent domain.

**Sec. 461.13. Funding Bonds.** When the owners of ten per cent of the land in a drainage or levee district having and operating a pumping station shall petition the board of supervisors to extend the time of payment of the taxes assessed against the lands within said district for a period not exceeding twenty years, under such rules and regulations as said board may direct, the interest on such assessments to be paid annually the same as other taxes levied against the property, not less than one-twentieth of the principal of said extended tax to be paid each year until the entire tax is paid, and the lien of such tax to continue until fully paid, the board of supervisors may settle, adjust, renew or extend the legal indebtedness of such district as shown by the assessments levied against the lands therein, whether evidenced by certificates, warrants, bonds, or judgments by re-funding all such indebtedness and issuing coupon bonds therefor when such indebtedness amounts to one thousand dollars or upwards, but for no other purpose.

**Sec. 461.14. Form of Bonds.** Such bonds shall be issued in sums of not less than one hundred dollars or more than one thousand dollars each, running not more than twenty years, bearing interest not exceeding six per cent per annum, payable annually or semi-annually, and shall be substantially in the form provided by law for funding bonds issued for drainage purposes.

**Sec. 461.15. Formal Execution.** Such bonds shall be numbered consecutively, signed by the chairman of the board of supervisors, attested by the county auditor. The interest coupons attached thereto shall be executed in the same manner.

**Sec. 461.16. Resolution — Requisites — Record.** All bonds issued under the provisions of this chapter shall be issued pursuant to and in conformity with a resolution adopted by the board of supervisors, which shall specify the amount authorized to be issued, the purpose for which issued, the rate of interest they shall bear and whether payable annually or semi-annually, the place where the principal and interest shall be payable and when it becomes due, and such other provisions not inconsistent with law in reference thereto as the board of supervisors shall think proper, which resolution shall be entered of record upon the minutes of the proceedings of the said board and a complete copy thereof printed on the back of each bond, which resolution shall constitute a contract between the drainage district and the purchasers or holders of said bonds.

**Sec. 461.17. Registration.** When bonds have been executed as aforesaid they shall be delivered to the county treasurer and his receipt taken therefor. He shall register the same in a book provided for that purpose, which shall show the number of each bond, its date, date of sale, amount, date of maturity, and the name and address of the purchaser, and if exchanged what evidences of debt were received therefor, which record shall at all times be open to the inspection of the owners of property within the district. The treasurer shall thereupon certify on the back of each bond as follows:



"This bond duly and properly registered in my office this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

Treasurer of the County of \_\_\_\_\_

**Sec. 461.18. Liability of Treasurer — Reports.** The treasurer shall stand charged on his official bond with all bonds so delivered to him and the proceeds thereof. He shall report under oath to the board of supervisors, at each first regular session thereof in each month, a statement of all such bonds sold or exchanged by him since his last report and the date of such sale or exchange and when exchanged a description of the indebtedness for which exchanged.

**Sec. 461.19. Sale — Application of Proceeds.** He shall, under a resolution and the direction of said county board of supervisors, sell the bonds for cash on the best available terms or exchange them on like terms for a legal indebtedness of the said district evidenced by bonds, warrants, or judgments outstanding at the date of the passage of the resolution authorizing the issue thereof, and the proceeds shall be applied and exclusively used for the purpose for which said bonds are issued. In no case shall they be sold or exchanged for a less sum than their face value and all interest accrued at the date of sale or exchange. After registration the treasurer shall deliver said bonds to the purchaser thereof and when exchanged for indebtedness of said district shall at once cancel all warrants or bonds or secure proper credits therefor on judgments.

**Sec. 461.20. Levy.** Drainage districts issuing funding or refunding bonds under this chapter shall levy taxes for the payment of the principal and interest thereof, where there has not been a prior levy covering same, in accordance with the provisions of the law relating to taxation.

**Sec. 461.21. Scope of Act.** Refunding bonds for the purposes set out in this chapter may be issued to pay off and take up bonds issued in payment for drainage improvements under prior laws or to refund any part thereof. Bonds thus issued shall substantially conform to the provisions of the law relating to drainage bonds and the face amount thereof shall be limited to the amount of the unpaid assessments, with interest thereon, applicable to the payment of the bonds so taken up.

**Sec. 461.22. Funds Available to Pay Bonds.** When refunding bonds shall be issued to pay for drainage improvements under the provisions of this chapter, all special assessments, taxes, and sinking funds applicable to the payment of such bonds previously issued shall be applicable in the same manner and the same extent to the payment of the refunding bonds issued hereunder and all the powers and duties to levy and collect special assessments and taxes or create liens upon property shall continue until all refunding bonds shall be paid.

The drainage district shall collect the special assessments out of which the said bonds are payable and hold the same separate and apart in trust for the payment of said refunding bonds but the provisions of this chapter shall not apply to assessments or bonds adjudicated to be void.

**Sec. 461.23. Limitation of Actions.** No action shall be brought questioning the validity of any of the bonds authorized by this chapter from and after three months from the time the same are ordered issued by the proper authorities.

**Sec. 461.24. Bankruptcy Proceedings.** All drainage districts with pumping plant and levee, which have power to incur indebtedness, through action of their own governing bodies are hereby authorized to proceed under and take advantage of all laws enacted by the congress of the United States under the federal bankruptcy powers,



which laws have for their object the relief of municipal indebtedness, including 48 Stat. L. ch. 345, entitled "An act to amend an act entitled 'An act to establish a uniform system of bankruptcy throughout the United States', approved July 1, 1898, and acts amendatory thereof and supplementary thereto", approved May 24, 1934, and the officials and governing bodies of such drainage, pumping plant and levee districts, are authorized to adopt all proceedings and to do any and all acts necessary or convenient to fully avail such drainage, pumping plant, and levee districts, of the provisions of such acts of congress.

**Sec. 461.25. Chapter Applicable to Districts With Pumping Stations.** The provisions of this chapter so far as applicable shall apply to all levee districts maintaining levees for the protection of any drainage district or districts having pumping station.

**Sec. 461.26. Construction near levee prohibited.** No person, firm or corporation shall hereafter erect, alter, or maintain any building or other structure, except necessary public utility structures, or construct, alter, or maintain any ditch, or remove any earth within three hundred feet of the center line of any levee maintained by a drainage or levee district with pumping stations without first securing permission to so do from the governing board of said drainage or levee district with pumping stations. Such permission may be granted at any regular meeting thereof, and after written application is made therefor upon the form prescribed by said governing board.

**Sec. 461.27. Penalty.** Every person who shall violate any provisions of this chapter shall be guilty of a misdemeanor punishable by a fine of not more than one hundred (100) dollars, and in default of payment thereof, by imprisonment in the county jail for not more than thirty (30) days.

**Sec. 461.28. Action to Restrain or Abate.** In the event that any building or other structure, or any ditch is constructed, altered or maintained, or any earth removed in violation of any provisions of this chapter, the governing board of said drainage or levee district with pumping stations maintaining said levee, may institute an appropriate action or proceedings to prevent such unlawful construction, alteration, or maintenance, or earth removal and to restrain, correct, or abate such violation, and may by petition duly verified, setting forth the facts, apply to the district court, for an order enjoining all persons, firms or corporations from such construction, alteration, maintenance, or earth removal, until the entry of the final judgment or order.

**Sec. 461.29. Liability for Damage.** In addition to all other penalties contained herein, any person, firm or corporation who shall construct, alter or maintain any building, other structure, or any ditch, or remove earth, in violation of this chapter, shall be liable to the drainage or levee district with pumping stations maintaining said levee, for all damage sustained by the drainage or levee district resulting from the violation, and in event of flood, or other emergency so declared by resolution of the governing body, any building or other structure, or ditch so constructed without permission of the governing board, as required herein, and within three hundred (300) feet of the center line of any levee, may be removed, or the ditch filled in, without prior notice thereof to the owner.

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## CHAPTER 462 — MANAGEMENT OF DRAINAGE OR LEVEE DISTRICTS BY TRUSTEES

**Sec. 462.1. Trustees Authorized.** In the manner provided in this chapter, any drainage or levee district in which the original construction has been completed and paid for by bond issue or otherwise, may be placed under the control and management of a board of three trustees to be elected by the persons owning land in the district that has been assessed for benefits.



**Sec. 462.2. Petition.** A petition shall be filed in the office of the auditor signed by a majority of the persons including corporations owning land within the district assessed for benefits.

**Sec. 462.3. Election.** The board, at the next regular, adjourned, or special session shall canvass the petition and if signed by the requisite number of landowners, it shall order an election to be held at some convenient place in the district not less than forty nor more than sixty days from the date of such order, for the election of three trustees of such district. It shall appoint from the freeholders of the district who reside in the county or counties, three judges and two clerks of election.

It shall not be mandatory for the county commissioner of elections to conduct elections held pursuant to this chapter, but they shall be conducted in accordance with the provisions of Chapter 49 where not in conflict with this chapter.

**Sec. 462.4. Inter-County District.** If the district extends into two or more counties, a duplicate of the petition shall be filed in the office of the auditor of each county. The boards of supervisors shall, within thirty days after the filing of such petition, meet in joint session and canvass the same, and if found to be signed by a majority of the owners of land in the district assessed for benefits, they shall by joint action order such election and appoint judges and clerk of election as provided in section 462.3.

**Sec. 462.5. Election Districts.** When a petition has been filed for the election of trustees to manage a district containing three thousand acres or more, the board, or, if the district extends in to more than one county, the boards of such counties by joint action, shall, before the election, divide the district into three election districts for the purpose of securing a proper distribution of trustees in such district, and such division shall be so made that each election district will have substantially equal voting power and acreage, as nearly as may be. After such division is made there shall be elected one trustee for each of said election districts, but at such election all the qualified voters for the entire district shall be entitled to vote for each trustee. The division here provided for shall be for the purpose only of a proper distribution of trustees in the district and shall not otherwise affect said district or its management and control.

**Sec. 462.6. Record and Plat of Election Districts.** At the time of making a division into election districts as provided in section 462.5., the board or boards shall designate by congressional divisions, subdivisions, metes and bounds, or other intelligible description, the lands embraced in each election district, and the auditor, or auditors if more than one county, shall make a plat thereof in the drainage record of the district indicating thereon the boundary lines of each election district, numbering them, one, two, and three, respectively.

**Sec. 462.7. Eligibility of Trustees.** Each trustee shall be a citizen of the United States not less than eighteen years of age, a resident of the county, and the bona fide owner of agricultural land in the election district for which he is elected.

**Sec. 462.8. Notice of Election.** The board, or if in more than one county, the boards acting jointly, shall cause notice of said election to be given, setting forth the time and place of holding the same and the hours when the polls will open and close. Such notice shall be published for two consecutive weeks in a newspaper in which the official proceedings of the board are published in the county, or if the district extends into more than one county, then in such newspaper of each county. The last of such publications shall not be less than ten days before the date of said election.

**Sec. 462.9. Assessment to Determine Right to Vote.** Before any election is held, the election board shall obtain from the county auditor or auditors a certified copy



of so much of the record of the establishment of such district as will show the lands embraced therein, the assessment and classification of each tract, and the name of the person against whom the same was assessed for benefits, and the present record owner, and such certified record shall be kept by the trustees after they are elected, for use in subsequent elections. They shall, preceding each subsequent election, procure from the county auditor or auditors additional certificates showing changes of title of land assessed for benefits and the names of the new owners.

**Sec. 462.10. New Owner Entitled to Vote.** Anyone who has acquired ownership of assessed lands since the latest certificate from the auditor shall be entitled to vote at any election if he presents to the election board for its inspection at the time he demands the right to vote evidence showing that he has title.

**Sec. 462.11. Qualification of Voters.** Each landowner eighteen years of age or over without regard to sex and any railway or other corporation owning land in said district assessed for benefits shall be entitled to one vote only, except as provided in Section 462.12.

**Sec. 462.12. Votes Determined By Assessment.**

1. When a petition asking for the right to vote in proportion to assessment of benefits at all elections for any purpose thereafter to be held within said district, signed by a majority of the landowners owning land within said district assessed for benefits, is filed with the board of trustees, then, in all elections of trustees thereafter held within said district, any person whose land is assessed for benefits without regard to age, sex, or condition shall be entitled to one vote for each ten dollars or fraction thereof of the original assessment under the current classification against the land actually owned by him in said district at the time of the election, but in order to have such ballot counted for more than one vote the voter shall write his name upon the ballot. The vote of any land owner of the district may be cast by absent voters ballot as provided in chapter fifty-three (53) except that the form of applications for ballots, the voters' affidavit on the envelopes, and the endorsement of the carrier envelope for preserving the ballot shall be substantially in the form provided in subsection two (2), three (3), and four (4) below. Application blanks, envelopes and ballots shall be provided by and submitted to the office of the county auditor in which the election is held. The cost of such blanks, envelopes, ballots and postage shall be paid by the district. For the purpose of this chapter all land owners of the district shall be considered qualified voters, regardless of their place of residence.

2. For the purposes of this chapter, applications for ballots shall be made on blanks substantially in the following form:

Application for ballot to be voted at the \_\_\_\_\_

(Name of District)

District Election on \_\_\_\_\_

(Date)

State of \_\_\_\_\_

County \_\_\_\_\_

} ss.

I, \_\_\_\_\_

(Applicant)

, do solemnly swear that I am a

landowner in the \_\_\_\_\_

(Name of District)

District and that

I am a duly qualified voter entitled to vote in said election, and that on account of \_\_\_\_\_

(business, illness, residence outside of the county, etc.)



I cannot be at the polls on election day, and I hereby make application for an official ballot or ballots to be voted by me at such election, and that I will return said ballot or ballots to the officer issuing same before the day of said election.

Signed \_\_\_\_\_

Date \_\_\_\_\_

Residence (street number if any) \_\_\_\_\_

City \_\_\_\_\_

State \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, A. D., 19 \_\_\_\_\_.

3. For the purpose of this chapter, the affidavit on the reverse side of the envelope used for enclosing the marked ballots shall be substantially as follows:

State of \_\_\_\_\_ }  
County } ss.

I, \_\_\_\_\_, do solemnly swear that I am a  
(Applicant)

landowner in the \_\_\_\_\_ District and that  
(Name of District)

I am a duly qualified voter to vote in the election of trustees of said district and that I shall be prevented from attending the polls on the day of election because of \_\_\_\_\_

(business, illness, residence outside of the county, etc.)

and that I have marked the enclosed ballot in secret.

Signed \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, A. D., 19 \_\_\_\_\_, and that I hereby certify that the

affiant exhibited the enclosed ballot to me unmarked; that he then in my presence and in the presence of no other person and in such manner that I could not see his vote, marked such ballot, enclosed and sealed the same in this envelope; and that the affiant was not solicited or advertised by me for or against any candidate or measure.

(Official Title)

4. For the purpose of this chapter, upon receipt of the ballot, the auditor shall at once enclose the same, unopened, together with the application made by the voter in a large carrier envelope, securely seal the same, and endorse thereon over his official signature, the following:

- a. Name of the district in which the voter is a landowner.
- b. Date of the election for which the ballot is cast.
- c. Location of the polling place at which the ballot would be legally and properly cast if voted in person.
- d. Names of the judges of the election of that polling place, and the statement that this envelope contains an absent voter's ballot and must be opened only at the polls on election day while said polls are open.

**Sec. 462.13. Vote By Agent.** Except where the provisions of section 462.12 providing for vote in proportion to assessment are invoked, any person or corporation



owning land or right of way within the district and assessed for benefits may have his or its vote cast by his or its agent or proxy authorized to cast such vote by a power of attorney signed and acknowledged by such person or corporation, and filed before such vote is cast in the auditor's office of the county in which such election is held. Every such power of attorney shall specify the particular election for which it is to be used, indicating the day, month, and year of such election, and shall be void for all elections subsequently held. The vote of the owner of any land in a drainage or levee district in any election, where the vote is not determined by assessment, may be cast by absent voter's ballot in the same manner and form and subject to the same rights and restrictions as is provided in section 462.12 relating to vote by absentee ballot when votes are determined by assessment.

**Sec. 462.14. Vote of Minor or Mentally Ill.** The vote of any person who is a minor, mentally ill or under other legal incompetency shall be cast by the parent, guardian, or other legal representative of such minor, mentally ill, or other incompetent person. The person casting such vote shall deliver to the judges and clerks of election a written sworn statement giving the name, age, and place of residence of such minor, mentally ill, or other incompetent person, and any false statement knowingly made to secure permission to cast such vote shall render the party so making it guilty of the crime of perjury.

**Sec. 462.15. Ballots — petition for printed ballots.** Candidates for drainage district trustee shall have their names placed on printed ballots provided a petition therefor is signed by ten qualified electors of the district and filed with the clerk of the board at least fourteen days before the election. Space shall also be provided on the ballot for write-in votes.

**Sec. 462.16. Candidates Voted For.** Each qualified voter for the whole district shall be entitled to vote for one candidate for each district for which a trustee is to be elected.

**Sec. 462.17. Elections — Canvass of Votes — Returns.** On the day designated for said election the polls shall open at one o'clock P. M. and remain open until five o'clock P. M. If no convenient place is found within the district, the elections may be held at some convenient place outside the district. The judges of election shall canvass the vote and certify the result and deposit with the Auditor the ballots cast, together with the poll books showing the names of the voters; but if there is more than one county in the district the returns shall be filed with the auditor of the county having the greatest acreage of said district.

**Sec. 462.18. Canvass — Certificates of Election.** The canvass of the returns by the board or boards of supervisors shall be on the next Monday following said election and it or they shall make a return of the results of such canvass to the auditor, who shall issue certificates to the trustees elected and when the district extends into more than one county, then the auditor with whom the election returns were filed shall issue such certificates.

**Sec. 462.19. Tenure of Office.** The trustees so elected shall hold office until the fourth Saturday in January next succeeding their election and until their successors are elected and qualify. On the third Saturday in the January next succeeding their original election, an election shall be held at which three trustees shall be chosen, one for one year, one for two years, and one for three years, and each shall qualify and enter upon the duties of his office on the fourth Saturday of the same January. On the third Saturday in each succeeding January, an election shall be held to choose a successor to the trustee whose term is about to expire, and the term of his office shall be for three years and until his successor has qualified.

**Sec. 462.20. Levee and Pumping Station Districts.** The presently acting de facto members of the boards of trustees of drainage or levee districts having pumping



stations are hereby declared to be the legally constituted members of such boards; the terms of such present trustees shall expire on the fourth (4th) Saturday of January, 1958, 1959 and 1960 respectively and the length of the term of each present trustee shall be determined by lot at a meeting to be held on the third (3rd) Saturday of August, 1957. Thereafter, in levee and drainage districts having pumping station trustees shall hold office until the fourth Saturday three years after election. At an election to be held on the third (3rd) Saturday in January, 1958 and on the third (3rd) Saturday in January of each year thereafter a trustee shall be elected for a term of three (3) years to succeed the member of the board whose term will expire on the following Saturday. At such election there shall also be elected, if necessary, a trustee or trustees to fill any vacancy or vacancies which may have occurred before such election.

**Sec. 462.21. Division of Districts Under Trustees.** In all districts already under trustee management, the board of trustees shall, prior to the election of trustees in the year 1925, divide the district for which they are trustees, into election districts, and at the election for that and each succeeding year, when a trustee is to be elected, it shall be for a specified election district within such district.

**Sec. 462.22. Elections — How Conducted.** After the first election of trustees, the trustees shall act as judges of election; the clerk of the board shall act as one of the clerks; and some owner of land in the district shall be appointed by the board to act as another clerk. The trustees shall fill all vacancies in the election board. The result of each election shall be certified to the auditor or the several county auditors if the district is located in more than one county.

**Sec. 462.23. Change of Time.** The date on which said annual election shall be held may be changed by the choice of a majority of electors of such district expressed by ballot at any such annual election, and the return of such vote shall be certified in the same manner as the returns for election of trustees.

**Sec. 462.24. Vacancies.** If any vacancy occurs in the membership of the board of trustees between the annual elections, the remaining members of the board shall have power to fill such vacancies by appointment of persons having the same qualifications as themselves. The persons so appointed shall qualify in the same manner and hold office until the next annual election when their successors shall be elected. In the event that all places on the board become vacant, then a new board shall be appointed by the auditor, or if more than one county, then by the auditor of the county in which the greater acreage of the district is located. The persons so appointed shall hold office until the next annual election and until their successors are elected and qualify.

**Sec. 462.25. Bonds.** The trustees shall qualify by giving a bond in the sum of not less than one thousand dollars or more than five thousand dollars each, conditioned for the faithful discharge of their duties, said bond to be fixed and approved by the auditor of the county, and if more than one, then of the county in which the greater acreage of the district is located.

**Sec. 462.26. Organization.** As soon as the trustees have qualified, they shall organize by electing one of their own number as chairman and may select some other competent person as clerk of the board who shall serve during the pleasure of the board of trustees.

**Sec. 462.27. Power and Duties of Trustees.** Trustees shall have control, supervision, and management of the district for which they are elected and shall be clothed with all of the powers now conferred on the board or boards of supervisors for the control, management, and supervision of drainage and levee districts under the laws of the state, including the power to acquire lands by conveyance, lease, or by the ex-



ercise of the power of eminent domain as provided for in chapter 472 for right-of-way levees, ditches and settling basins within or without the district and to annex lands to the district, except as provided in section 462.28. Such authority shall extend only to the district for which they are elected.

**Sec. 462.28. Costs and Expenses.** All costs and expenses necessary to discharge the duties by this chapter conferred upon trustees shall be levied and collected as provided by law and such levy shall be upon certificate by the trustees to the board or boards of supervisors of the amount necessary for such levy.

**Sec. 462.29. Disbursement of Funds.** Drainage and levee taxes when so levied and collected shall be kept by the treasurer of the county in a separate fund to the credit of the district for which it is collected, shall be expended only upon the orders of trustees, signed by the president of the board, upon which warrants shall be drawn by the auditor upon the treasurer.

**Sec. 462.30. Certificates and Bonds.** The board of trustees of any district shall have the same power to issue improvement certificates and levee and drainage bonds under the same conditions and with like tenor and effect as is provided by chapter 455 for such issuance by the board of supervisors, except that in case of the issue of levee or drainage bonds, the same shall be approved by a judge of the district court in and for the county or counties in which such district lies, which approval shall be printed upon such bonds before the same are negotiated.

**Sec. 462.31. Reclassification and Other Changes.** Repealed by Chapter 205, 53rd General Assembly.

**Sec. 462.32. Form of Ballot.** Repealed by Chapter 205, 53rd G. A.

**Sec. 462.33. Ballots Distinguished — Record.** Repealed by Chapter 205, 53rd G. A.

**Sec. 462.34. Report to Auditor.** Such trustees shall, from time to time, and with reasonable promptness, furnish the auditor of each county in which any part of said district is situated, with a correct report of their acts and proceedings, which report shall be signed by the chairman and the clerk of the board and shall be recorded by the auditor in the drainage record, and shall be published in one official paper in the county having a general circulation in the district.

**Sec. 462.35. Compensation — Statements Required.** The compensation of the trustees and the clerk of the board is hereby fixed at seventeen dollars and fifty cents per day and necessary expenses, to be paid out of the funds of the drainage or levee district for each day necessarily expended in the transaction of the business of the district, but no one shall draw compensation for services as trustee and as clerk at the same time. They shall file with the auditor or auditors, if more than one county, itemized, verified statements of their time devoted to the business of the district and of the expenses incurred.

**Sec. 462.36. Change to Supervisor Management.** Any district which has been placed under the management of trustees may be placed back under the management of the board of supervisors in the manner provided in section 462.37.

**Sec. 462.37. Petition — Canvass.** For such purposes a petition signed by a majority of persons, including corporations, owning land within the district assessed for benefits and who in the aggregate own more than one-half the acreage of such lands, may be filed in the office of the auditor and if more than one county, then a duplicate shall be filed in the office of the auditor of each county.

The trustees shall fix a date not less than ten nor more than thirty days from the date such petition is filed for the canvass of such petition, and the trustees and auditor



or auditors shall canvass said petition and certify and record in the drainage record the result.

**Sec. 462.38. Remonstrance.** Remonstrances signed by the same persons who are qualified to sign the petition may be filed in the office of the auditor and if the same persons petition and remonstrate they shall be counted on the remonstrance only. Such remonstrances shall be filed not less than five days before the time set for hearing.

**Sec. 462.39. When Change Effective.** If the result of the canvass shows a majority in favor of such change, then it shall become effectual on the date at which the next annual election of trustees would be held, and on such date the trustees shall surrender and turn over to the board or boards of supervisors the full and complete management and control of such district, together with all books, contracts, and other documents relating thereto.

**Sec. 462.40. Final Report of Trustees.** On or before the date such change becomes effective, the said trustees shall make and file with the auditor, or if more than one county, a duplicate with each auditor, a final report setting forth:

1. The amount of cash funds on hand or to the credit of the district.
2. The amount of outstanding indebtedness of the district, and the form thereof, whether in warrants, improvement certificates, or bonds and the amount of each.
3. Any outstanding contracts for repairs or other work to be done.
4. A statement showing the condition of the improvements of the district, and specifying any portion thereof in need of repair.

**Sec. 462.41. Management By Supervisors.** After such change is made it shall be the duty of the board or boards of supervisors to manage and control the affairs of said district as fully and to the same extent as if it had never been under trustee management. They shall carry out any pending contracts lawfully made by the trustees as fully as if made by the board.

#### CHAPTER 463 — DRAINAGE REFUNDING BONDS

**Sec. 463.1. Refunding Bonds.** The board of supervisors of any county may extend the time of the payment of any of its outstanding drainage bonds issued in anticipation of the collection of drainage assessments levied upon property within a drainage district, and may extend the time of payment of any unpaid assessment, or any installment or installments thereof, and may renew or extend the time of payment of such legal bonded indebtedness, or any part thereof, for account of such drainage district, and may refund the same and issue drainage refunding bonds therefor subject to the limitation and in the manner hereinafter provided.

**Sec. 463.2. Petition for Refunding.** Before the time of payment of said assessments or any installment or installments thereof shall be extended and before the board shall institute proceedings for the issuance of drainage refunding bonds, the owners of not less than fifteen per cent of the land within a drainage district as shown by the transfer books in the auditor's office upon which drainage assessments are unpaid, shall file a petition with the board requesting the extension of the time of payment of assessments levied in said drainage district or of any installment or installments thereof, setting forth the date said assessments to be extended were levied, the aggregate amount thereof unpaid, and requesting the issuance of drainage refunding bonds, stating the amount and purpose of said bonds.

**Sec. 463.3. Sufficiency of Petition — Hearing.** Upon the receipt of any such petition the board shall, at the next regular meeting or regular adjourned meeting, determine the sufficiency thereof and fix a date of meeting of the board at which it is



proposed to extend the time of payment of said unpaid assessments and to take action for the issuance of drainage refunding bonds.

**Sec. 463.4. Notice.** The board shall give ten days notice of said meeting as required in relation to the issuance of bonds under chapter twenty-three.

**Sec. 463.5. Requirements of Notice.** Said notice shall be directed to each person whose name appears upon the transfer books in the auditor's office as owner of lands within said drainage district upon which said drainage assessments are unpaid, naming him, and also to the person or persons in actual occupancy of any of said tracts of land without naming them, and shall state the amount of unpaid assessments upon each forty acre tract of land or less, and that all of said unpaid assessments, installment or installments thereof as proposed to be extended, may be paid in cash on or before the time fixed for said hearing, and that after the expiration of such time no assessments may be paid except in the manner and at the times fixed by the board in the resolution authorizing the issuance of said drainage refunding bonds.

**Sec. 463.6. Extending Payments of Assessments.** In case no appeal is taken to the issuance of said bonds as provided by chapter twenty-three, the board may extend the time of payment of said unpaid assessment, or any installment or installments thereof as requested in the petition and may issue drainage refunding bonds, or, in case of an appeal, the board may issue such bonds in accordance with the decision of the state comptroller provided said assessments, installment or installments thereof have not been entered on the delinquent tax lists and have not been previously extended.

**Sec. 463.7. Appeal.** Any person aggrieved by the final action of the board extending the time of payment of said unpaid assessment, installment or installments thereof may appeal therefrom to the district court of the county in which such action was taken.

**Sec. 463.8. Time and Manner of Appeal.** All appeals shall be taken in the manner provided in section 455.94 except that said appeal shall be taken within ten days after the date of the final action of the board.

**Sec. 463.9. Maximum Extension.** The unpaid assessments against said lands within said drainage district shall not be extended for a period exceeding forty years from the time any assessment, installment or installments thereof to be extended become due. The board shall fix the amount that shall be levied and collected each year and may issue drainage refunding bonds covering all said unpaid assessments.

**Sec. 463.10. Form of Bonds.** Drainage refunding bonds shall be issued in denominations of not less than one hundred dollars nor more than one thousand dollars each, running not more than forty years, bearing interest not exceeding six per cent per annum, payable semi-annually, and shall be substantially in the form provided by law relating to drainage bonds, with such changes as shall be necessary to conform with this chapter.

**Sec. 463.11. Numbering, Signing, and Attestation.** Said bonds shall be numbered consecutively, signed by the chairman of the board and attested by the county auditor with the seal of the county affixed. The interest coupons attached thereto shall be executed by the county auditor.

**Sec. 463.12. Resolution Required.** All bonds issued under the provisions of this chapter shall be issued pursuant to and in conformity with a resolution adopted by the board of supervisors which shall specify the amount of unpaid assessments to be extended, the times when the installment or installments of extended assessments shall become due, the amount of drainage refunding bonds authorized to be issued, the pur-



pose for which issued, the rate of interest they shall bear, the place where the principal and interest shall be payable and the time or times when they shall become due, and such other provisions not inconsistent with law in reference thereto, as the board shall deem proper.

**Sec. 463.13. Record of Resolution.** Said resolution shall be entered of record upon the minutes of proceedings of said board and shall constitute a contract between the drainage district and the purchasers or holders of said bonds and shall be full authority for the revision of the tax rolls to accord therewith.

**Sec. 463.14. Record of Bonds.** When the bonds have been executed as aforesaid they shall be delivered to the county treasurer and his receipt taken therefor. He shall register said bonds in a book provided for that purpose which shall show the number of each bond, its date, date of sale, amount, date of maturity, and the name and address of the purchaser, and if exchanged what evidences of indebtedness were received therefor, which record shall at all times be open to the inspection of the owners of property within said drainage district. The treasurer shall thereupon certify on the back of each bond as follows:

"This bond duly and properly registered in my office this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_.

\_\_\_\_\_  
Treasurer of the County of \_\_\_\_\_

**Sec. 463.15. Liability of Treasurer — Reports.** The treasurer shall stand charged on his official bond with all bonds so delivered to him and the proceeds thereof. He shall report under oath to the board, at each first regular session thereof in each month, a statement of all such bonds sold or exchanged by him since his last report and the date of such sale or exchange and when exchanged a description of the indebtedness for which exchanged.

**Sec. 463.16. Sale, Exchange, and Cancellation.** He shall, under a resolution and the direction of the said county board of supervisors, sell the bonds for cash on the best available terms or exchange them on like terms for the legal indebtedness of the said drainage district evidenced by the outstanding drainage bonds, authorized to be refunded by the resolution authorizing the issue of said refunding bonds, and the proceeds shall be applied and exclusively used for the purpose for which said bonds are issued. In no case shall they be sold or exchanged for a less sum than their face value and all interest accrued. After registration the treasurer shall deliver said refunding bonds to the purchaser thereof and when exchanged for said bonded indebtedness of said district, shall at once cancel a like amount of said drainage bonds.

**Sec. 463.17. Redemption From Tax Sale.** In case any land within such drainage district shall have been sold at tax sale for failure of the owner thereof to pay any drainage assessments levied thereon, and before any tax deed has been issued, then on application of the owner of such land, the board of supervisors may effect a redemption thereof for such owner out of the proceeds of any refunding bond issue and add the cost of such redemption to the amount of the unpaid assessments against such land, payment thereof to be extended in manner and as a part of the remaining unpaid assessments thereon.

**Sec. 463.18. Effect of Extension.** The extension of the time of payment of any unpaid assessments or installment or installments thereof, in the manner aforesaid shall in no way impair the lien of said assessments as originally levied or the priority thereof, nor the right, duty, and power of the officers authorized by law to levy, collect, and apply the proceeds thereof to the payment of said drainage refunding bonds.



**Sec. 463.19. Additional Assessments.** If said assessments should for any reason be insufficient to meet the interest and principal of said drainage refunding bonds additional assessments shall be made to provide for such deficiency.

**Sec. 463.20. Applicability of Funds.** All special assessments, taxes, and sinking funds applicable to the payment of the indebtedness refunded by said drainage bonds shall be applicable in the same manner and to the same extent to the payment of such refunding bonds issued hereunder, and the powers, rights, and duties to levy and collect special assessments or taxes, or create liens upon property shall continue until all refunding bonds shall be paid.

**Sec. 463.21. Trust Fund.** The special assessments out of which said bonds are payable shall be collected and held separate and apart in trust for the payment of said refunding bonds.

**Sec. 463.22. Liens Unimpaired.** When drainage refunding bonds are issued hereunder, nothing in this chapter shall be construed as impairing the lien of any unpaid drainage assessments or installments in such drainage district, the time of payment of which is not extended, nor shall this chapter be construed as impairing the priority of the lien thereof nor the right, duty, and power of the officers authorized by law to levy, collect, and apply the proceeds thereof to the payment of outstanding drainage bonds issued in anticipation of the collection thereof.

**Sec. 463.23. Limitation of Action.** No action shall be brought questioning the validity of any of the bonds authorized by this chapter from and after three months from the time the same are ordered issued by the proper authorities.

**Sec. 463.24. Void Bonds or Assessments.** The provisions of this chapter shall not apply to bonds or assessments adjudicated to be void.

**Sec. 463.25. Interpretative Clause.** This chapter shall be construed as granting additional power without limiting the power already existing for the extension of the time of payment of drainage assessments and the issuance of drainage bonds.

**Sec. 463.26. Composition With Creditors — Federal Loan.** For the purpose of refinancing, adjusting, composing and refunding in such adjusted amount the indebtedness of any drainage districts or levee districts, found to be in financial distress, the governing body thereof, or board of supervisors, as the case may be, upon its own motion, is authorized to enter into agreements with the creditors of said district, for the reduction and composition of its outstanding indebtedness, and to make application for and negotiate with the Reconstruction Finance Corporation, or any other loaning agency, for the borrowing of funds for such purposes.

**Sec. 463.27. Refinancing Powers.** In order to effect such loan, the governing body of such district, or board of supervisors, is authorized to execute such agreements and contracts, and to fulfill such requirements of the loaning agency as are not inconsistent with this chapter; and to issue, and pledge or sell such bonds at their face value to the said Reconstruction Finance Corporation, or other loaning agency, furnishing the funds for such debt readjustment, in the amount required for such adjustment.

The governing body, or board of supervisors, shall also have the authority as a part of such plan of refinancing, adjusting, composing, and refunding its indebtedness, to cancel the old assessments collectible against the land within the district, pledged to the payment of its outstanding indebtedness and proportionately and equitably relevely the same, with interest, over the period covered by the new bonds, in an amount sufficient to pay said new bonds and interest thereon, provided, however, that the new assessments thereby created against any tract of land within the district shall not be in excess of the unpaid assessments against such tract before the readjustment or com-



position is made, and provided further, that such new and extended assessment against such tract shall fully replace the old assessment.

**Sec. 463.28. Report and Hearing — Appeal.** At the direction of the governing board of such district, or board of supervisors, the county auditor of the county within which the land on which the indebtedness is being adjusted is situated, shall compile a tabulated report as to the lands within the said district, setting forth:

1. The name of the owner of each assessed tract as shown by the transfer books in his office.
2. The amount of the unpaid old assessments against each of said tracts.
3. The amount of the new assessment required to pay the new bonds to be issued, together with the installments to be paid thereon annually of principal and interest, and the maximum period of time over which such assessments shall be paid.

After such report is tabulated and filed, a hearing upon the contemplated action of the governing body of such district, or board of supervisors, to make the proposed adjustment, composition, renewal and refunding in such adjusted amount of its outstanding indebtedness, together with the issuance of bonds and the levying of assessments therefor, shall be had in the manner and upon the same notice as is prescribed in sections 463.4 to 463.6, inclusive, and appeal may be made therefrom as provided in this chapter.

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## CHAPTER 464 COVERS DEFAULTED DRAINAGE BONDS

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## CHAPTER 465 — INDIVIDUAL DRAINAGE RIGHTS

**Sec. 465.1. Drainage Through Land of Others — Application.** When the owner of any land desires to construct any levee, open ditch, tile, or other underground drain, for agricultural, or mining purposes, or for the purposes of securing more complete drainage or a better outlet, across the lands of others or across the right-of-way of a railroad or highway, or when two or more land owners desire to construct a drain to serve their lands he or they may file with the auditor of the county in which any such land or right-of-way is situated, an application in writing, setting forth a description of the land or other property through which he is desirous of constructing any such levee, ditch, or drain, the starting point, route, terminus, character, size, and depth thereof. The auditor shall collect a fee of one dollar for filing each application for a ditch or drain.

**Sec. 465.2. Notice of Hearing — Service.** Upon the filing of any such application, the auditor shall forthwith fix a time and place for hearing thereon before the county board of supervisors, which hearing shall be not more than ninety days nor less than thirty days from the time of the filing of such application, and cause notice in writing to be served upon the owner of each tract of land which any such levee, ditch, or drain is proposed to be located, as shown by the transfer books in the office of the county auditor, and also upon the person in actual occupancy of any such lands, of the pendency and prayer of such application and the time and place set for hearing on the same before the board of supervisors, which notice, as to residents of the county and railroad companies, shall be served not less than ten days before the time set for such hearing, in the manner that original notices are required to be served. Notice to a railroad company may be served upon any station agent.

**Sec. 465.3. Service Upon Non-Resident.** In case any such owner is a non-resident of the county he may be personally served in the manner required for original notices or, in lieu thereof, he may be given notice as provided in section four hundred fifty-five point twenty-one (455.21).



**Sec. 465.4. Service on Omitted Parties — Adjournment.** If at the hearing it should appear that any person entitled to notice has not been served with notice, the board may postpone such hearing and fix a new time for the same, and notice of such new time of hearing may be served on such omitted persons in the manner and for the time provided by law and by fixing such new time for hearing and by adjournment to such time, the board shall not lose jurisdiction of the subject matter of such proceeding nor of any persons previously served with notice.

**Sec. 465.5. Claims for Damages — Waiver.** Any person or corporation claiming damages or compensation for or on account of the construction of any such improvement, shall file a claim in writing therefor with the auditor at or before the time fixed for hearing on the application. A failure to file such claim at the time specified shall be deemed to be a waiver of the right to claim or recover such damage.

**Sec. 465.6. Hearing — Sufficiency of Application — Damages.** At the time set for hearing on the application, if the board shall find that all necessary parties have been served with notice as required, they shall proceed to hear and determine the sufficiency of the application as to form and substance, which application may be amended both as to form and substance before final action thereon. They shall also determine the merits of the application, all objections thereto and all claims filed for damages or compensation and may view the premises. The board may adjourn the proceedings from day to day, but no adjournment shall be for a longer period than ten days.

**Sec. 465.7. Shall Locate When — Specifications.** If the supervisors find that the levee, ditch or drain petitioned for will be beneficial for sanitary, agricultural or mining purposes, they shall locate the same and fix the points of entrance and exit on such land or property, the course of the same through each tract of land, the size, character and depth thereof, when and in what manner the same shall be constructed, how kept in repair, what connections may be made therewith, what compensation, if any, shall be made to the owners of such land or property for damages by reason of the construction of any such improvements, and any other question arising in connection therewith.

**Sec. 465.8. Findings — Record.** The board shall reduce its findings, decision and determination to writing, which shall be filed with the auditor, who shall record it in the official record of the board's proceedings, together with the application and all other papers filed in connection therewith, and he shall cause the findings and decision of the board to be recorded in the office of the recorder of the county in which such land is situated, and said decision shall be final unless appealed from as provided in section 465.9.

**Sec. 465.9. Appeal — Notice.** Either party may appeal to the district court from any such decision by causing to be served, within ten days from the time it was filed with the auditor a notice in writing upon the opposite party of the taking of such appeal, which notice shall be served in the same manner as is provided for the service of original notices. If the appellant is the party petitioning for the drain, he shall also file a bond, conditioned to pay all costs of the appeal that may be assessed against him, which bond, if good and sufficient, shall be approved by the auditor.

**Sec. 465.10. Transcript.** In case of appeal, the auditor shall certify to the district court a transcript of the proceedings before the board, which shall be filed in said court with the appeal bond, the party appealing paying for said transcript and the docketing of said appeal, as in other cases.

**Sec. 465.11. Appeal — How Tried — Costs.** The cause shall be tried in the district court by ordinary proceedings, upon such pleading as the court may direct, each party having the right to offer such testimony as shall be admissible under the rules



of law. If the appellant does not recover a more favorable judgment in the district court than he received in the decision of the board, he shall pay all the costs of appeal.

**Sec. 465.12. Parties — Judgment — Orders.** The party claiming damages shall be the plaintiff, and the applicant shall be the defendant and the court shall render such judgment as shall be warranted by the verdict, the facts, and the law upon all the matters involved, and make such orders as will cause the same to be carried into effect.

**Sec. 465.13. Costs and Damages — Payment.** The applicant shall pay the costs of the board and auditor and for the serving of notices for hearing, the fees of witnesses summoned by the board on said hearing, and the recording of the finding of the board by the county recorder.

**Sec. 465.14. Construction.** Before entering on the construction of the drain, the party applying therefor shall pay to the party through whose land said drain is to be constructed the damages awarded to him, or shall pay the same to the board for his use. The applicant may proceed to construct said drain in accordance with the decision of the board, and the taking of an appeal shall not delay such work.

**Sec. 465.15. Construction Through Railroad Property.** If any such ditch or drain shall be located through or across the right of way or other land of a railroad company, the board shall determine the cost of constructing the same and the railroad company shall have the privilege of constructing such improvement through its property in accordance with the specifications made by the board and recover the cost thereof as fixed by the board. Such railroad company before it may exercise such privilege shall file its election to that effect with the auditor within five days after the decision of the board is filed.

**Sec. 465.16. Deposit.** In case such election is filed the applicant shall within ten days thereafter pay to the auditor for the use of the railroad company, the cost of constructing the drainage improvement through its property, in addition to the amount that may be allowed as damages, and when the railroad company shall have completed the improvement through its property in accordance with such specifications it shall be entitled to demand and receive from the auditor such cost.

**Sec. 465.17. Failure to Construct.** If the railroad company shall fail to so construct the improvement for a period of thirty days after filing its election so to do, the applicant may proceed to do so and may have returned to him the cost thereof deposited with the auditor.

**Sec. 465.18. Repairs.** In case any dispute shall thereafter arise as to the repair of any such drain, the same shall be determined by the county board of supervisors upon application in substantially the same manner as in the original construction thereof.

**Sec. 465.19. Obstruction.** Any person who shall dam up, obstruct, or in any way injure any ditch or drain so constructed, shall be liable to pay to the person owning or possessing the swamp, marsh or other low lands, for the draining of which such ditch or ditches have been opened, double the damages that shall be sustained by the owner, and, in case of a second or subsequent offense by the same person treble such damages.

**Sec. 465.20. Drains on Abutting Boundary Lines.** When any water course or natural drainage line crosses the boundary line between two adjoining land owners, and both parties desire to drain their land along such watercourse or natural drainage line, but are unable to agree as to the junction of the lines of drainage at such boundary line, the board of supervisors of the county in which said land is located shall have full power and authority upon the application of either party, to hear and determine



all questions arising between such parties, after giving due notice to each of the time and place of such hearing and may render such decision thereon as to said board shall seem just and equitable.

**Sec. 465.21. Boundary Between Two Counties.** If any controversy referred to in section 465.20 relates to a boundary line between adjoining owners which is also the boundary line between two counties, then such controversy shall be determined by the joint action of the board of supervisors in said two adjoining counties, and all the proceedings shall be the same as provided in section 465.20 except that it shall be by the joint action of the boards of the two counties.

**Sec. 465.22. Drainage In Course of Natural Drainage — Reconstruction — Damages.** Owners of land may drain the same in the general course of natural drainage by constructing or reconstructing open or covered drains, discharging the same in any natural watercourse, or depression whereby the water will be carried into some other natural watercourse, and when such drainage is wholly upon the owner's land he shall not be liable in damages therefor, nor shall any such owner in constructing a replacement drain, wholly on his own land, and in the exercise of due care be liable in damages to another in case a previously constructed drain on his own land is rendered inoperative or less efficient by such new drain, unless in violation of the terms of a written contract. Nothing in this section shall in any manner be construed to affect the rights or liabilities of proprietors in respect to running streams.

**Sec. 465.23. Drainage Connection With Highway.** When the course of natural drainage of any land runs to a public highway, the owner of such land shall have the right to enter upon such highway for the purpose of connecting his drain or ditch with any drain or ditch constructed along or across the said highway, but in making such connections, he shall do so in accordance with specifications furnished by the highway authorities having jurisdiction thereof which specifications shall be furnished to him on application. He shall leave the highway in as good condition in every way as it was before the said work was done.

If a tile line or drainage ditch must be projected across the right of way to a suitable outlet, the expense of both material and labor used in installing the tile line or drainage ditch across the highway and any subsequent repair thereof shall be paid from funds available for the highways affected.

**Sec. 465.24. Private Drainage System — Record.** Any person who has provided a system of drainage on land owned by him may have the same made a matter of record in the office of the county recorder of the county in which the drainage system is located, provided any drainage system constructed after July 1, 1969, shall be made a matter of record as is hereinafter provided.

**Sec. 465.25. Drainage Plat Book.** The county recorder shall be provided with a loose leaf plat book, made to scale, for each section of the land within the county in which such records shall be made. Such plat book shall consist of sheets of paper interbound by sheets of tracing cloth with proper heading, margin, and binding edge. Said plat book shall be used for keeping a record of drainage systems filed by any landowner. Plats so offered for record shall be drawn to scale on paper measuring eight and one-half by eleven inches, giving distances in feet and indicating the size of tile used, length and location of tile lines as installed with reference to government corners and subdivisions.

**Sec. 465.26. Record Book and Index.** The county recorder shall also be provided with a record book and index referring to the plats provided for in section 465.25, and which may be used to give the owner's name, description of tracts of land drained, stating the time when drainage system was established, the kind, quality, and brand of tile used, the name and place of manufacturing plant, the name of contractors who



laid the tile, the name of the engineer in charge of the survey and installation, the cost of tile, delivery, installation, and engineering expense, depths, grades, outlets, connections, contracts for agreements with adjoining landowners as to connections, and any other matters or information that may be considered of value, all of said information to be furnished by the landowner or the engineer having charge of the installation of the same and certified to under oath.

**Sec. 465.27. Original Plat Filed.** In lieu of making the record as herein provided any landowner may file with the county recorder the original plat used in the establishment of said drainage system, or a copy thereof, which shall be certified by the engineer having made the same.

**Sec. 465.28. Record Not Part of Title.** The drainage records herein provided for shall not be construed as an essential part of the title to said lands, but may upon request be set out by abstracters as a part of the record title of said lands.

**Sec. 465.29. Fees for Record and Copies.** The county recorder shall be entitled to collect fees for the filing and information heretofore provided for, and for the making of copies of such records the same as is provided for other work of a similar nature.

**Sec. 465.30. Lost Records — Hearing.** When the records of any mutual drain are incomplete or have been lost, or when the owner of any land affected by such mutual drain believes that the apportionment of costs or damages is inequitable or that repair or reconstruction is needed, such owner may petition the board of supervisors for relief. The board shall notify all affected parties of such petition, and set a date for a hearing on the petition. The board may adjourn the proceedings from day to day, but no adjournment shall be for more than ten days, and may order such engineering examinations, reclassifications of lands and appraisals of damages as they deem necessary. At the completion of the hearing the supervisors shall reestablish the original records or establish a revised record and basis for apportionment of costs and damages as they find equitable and advisable, and may order such repairs or reconstruction as they find to be needed. All cost of such reestablishment or revisions of records, and of the needed repair or reconstruction shall be apportioned in accordance with the basis established.

**Sec. 465.31. Mutual Drains — Establishment as District.** Whenever a landowner fails to pay the cost apportioned as provided in section 465.30, or whenever a repair or reconstruction ordered as provided in said section is not made within reasonable time, and in such other instances as the board of supervisors desires, the board by resolution shall establish such mutual drain as a drainage district; all proceedings thereafter shall be as provided for other legally established districts.

**Sec. 465.32. Appeal.** The decision and actions of the board of supervisors under section 465.31 may be appealed as provided in sections 465.9, 465.10 and 465.11.

**Sec. 465.33. Record Filed With Established District.** When the lands served by a mutual drain are within the boundary of an established drainage district, a complete record of the proceeding relating to such mutual drain shall be filed with, and as a part of, the records of such established district.

**Sec. 465.34. Lost or Incomplete Records.** If the records referred to in section 465.33 are incomplete or have been lost, the board may reestablish such records so as to proportion future costs and damages in proportion to the benefits and damages received because of the construction of such mutual drains and improvements thereof, and may order such surveys, engineering reports, reclassification of lands and appraisal of damages as they deem necessary. All cost of such proceedings shall be assessed against the benefited lands.



**Sec. 465.35. Petition to Combine With Established Districts.** Upon receipt of a petition, signed by the owners of the lands served by a mutual drain, requesting that such drain be combined with an established drainage district, the board shall hold a hearing with due notice to the owners of all lands affected by said mutual drain, and if the board finds it desirable it may by resolution make such mutual drains a part of the established district. Such hearing and resolution may be continued as the board deems necessary for the collection of additional information as provided in section 465.34. Such combination with an established district shall constitute dissolution of the mutual drain, and shall be so recorded, after which such mutual drain shall be a part of the district drain in all respects.

## CHAPTER 466 — DRAINAGE DISTRICTS IN CONNECTION WITH UNITED STATES LEVEES

**Sec. 466.1. United States Levees — Cooperation of Board.** In any case where the United States has built or shall build a levee along or near the bank of a navigable stream forming a part of the boundary of this state, the board of supervisors of any county through which the same may pass shall have the power to aid in procuring the right of way for and maintaining said levee, and providing a system of internal drainage made necessary or advisable by the construction thereof. Such improvement shall be presumed to be conducive to the public health, convenience, welfare, or utility.

**Sec. 466.2. Manner of Cooperation.** Any United States government levee under the conditions mentioned in section 466.1, may be taken into consideration by the board as a part of the plan of any levee or drainage district and improvements therein, and such board may, by agreement with the proper authorities of the United States government, provide for payment of such just and equitable portion of the costs of procuring the right of way and maintenance of such levee as shall be conducive to the public welfare, health, convenience, or utility.

**Sec. 466.3. Report of Engineer — Payment Authorized.** In the proceedings to establish such a district the engineer shall set forth in his report, separately from other items, the amount of the cost for the right of way of such levee, of constructing and maintaining the same; and if the plan is approved and the district finally established in connection with such levee, the board shall make a record of any such cooperative arrangement and may use such part of the funds of the district as may be necessary to pay the amount so agreed upon toward the right of way and maintenance of such levee.

**Sec. 466.4. Costs Assessed.** If said district is established, the entire costs and expenses incurred under this chapter shall be assessed against and collected from the lands lying within such district, by the levy of a rate upon the assessable value of the land and improvements within such district, sufficient to raise the required sum; provided the board may, in their discretion, classify the land within such district and graduate the tax thereon, as provided in chapter 455.

**Sec. 466.5. Annual Installments.** If the proposed improvement is the maintenance of a levee, the amount collected in any one year shall not exceed three dollars and thirty-seven and one-half cents per thousand dollars of the assessment valuation, which said assessment shall be levied at a level rate on the assessable value of the said lands, improvements, easements, and railroads within the district. If the amount necessary to pay for the improvement exceeds said sum, it shall be levied and collected in annual installments of twenty or less. For all other improvements, the board shall levy a rate sufficient to pay for the same, and may, at their discretion, make the same payable in annual installments of twenty or less.



**Sec. 466.6. Collection of Tax.** The assessment required under sections 466.4 and 466.5 shall be made by the board of supervisors at the time of levying general taxes, after the work has been authorized, and the same shall be entered on the records of the board of supervisors, then entered on the tax books by the county auditor as drainage taxes, and shall be collected by the county treasurer at the same time, in the same manner, and with the same penalties, as general taxes; and if the same is not paid he shall sell all such lands upon which such assessment remains unpaid, at the same time, and in the same manner, as is now by law provided for the sale of lands for delinquent taxes, including all steps up to the execution and delivery of the tax deed for the same. The land owners shall take notice of and pay such assessments, without other or further notice than such as is provided for in this chapter. The funds realized from such assessments shall constitute the drainage fund, as contemplated in this chapter, and shall be disbursed on warrants drawn against that fund by the county auditor, on the order of the board of supervisors.

**Sec. 466.7. Cost of Maintaining.** The board of supervisors shall have the right and power to keep and maintain any such levee, ditches, drains, or system of drainage, either in whole or in part, established under Sections 466.1 to 466.6, as may in their judgment be required, and to levy the expense thereof upon the real estate within such drainage district as herein provided for, and collect and expend the same; provided, however, that no such work which shall impose a tax exceeding three dollars and thirty-seven and one-half cents per thousand dollars on the assessable value of the lands and improvements within the district shall be authorized by them, unless the same is first petitioned for and authorized in substantially the manner required by this chapter for the inauguration of new work except that if such work is of the kinds contemplated by Section 455.135, and the cost thereof is within the limitations of said section, or is of the kinds contemplated by Section 455.201, and the cost thereof is within the limitations of said section, then the provisions of Section 455.135 or Section 455.201 shall supersede the limitations of this section.

**Sec. 466.8. Laws Applicable.** In the establishment and maintenance of levee and drainage districts in cooperation with the United States as in this chapter provided, all the proceedings for said purpose in the filing and the form and substance of the petition, assessment of damages, appointment of an engineer, his surveys, plats, profiles, and report, notice of hearings, filing of claims and objections, hearings thereon, appointment of commissioners to classify lands, assess benefits, and apportion costs and expenses, report, notice and hearing thereon, the appointment of a supervising engineer, his duties, the letting of work and making contracts, payment for work, levy and collection of drainage or levee assessments and taxes, the issue of improvement certificates and drainage or levee bonds, the taking of appeals and the manner of trial thereof, and all other proceedings relating to such district shall be as provided in chapters 455 to 465 inclusive, except as otherwise in this chapter provided.

\*Chapters 455A, 455B, 455C, 456, 463, and 464 enacted after this section was enacted; chapter 458 was enacted as an amendment to chapter 457, see 41GA, ch 155.

## CHAPTER 467 — INTER-STATE DRAINAGE DISTRICTS

**Sec. 467.1. Cooperation — Procedure.** When proceedings for the drainage of lands bordering upon the state line are had and the total cost of constructing the improvement in this state, including all damage, has been ascertained, and the engineer in charge, before the final establishment of the district, reports that the establishment and construction of such improvement ought to be jointly done with like proceedings for the drainage of lands in the same drainage area in such an adjoining state and that drainage proceedings are pending in such state for the drainage of such lands, the said authorities of this state may enter an order continuing the hearing on the



establishment of such district to a fixed date, of which all parties shall take notice.

**Sec. 467.2. Agreement As To Costs.** The board shall have power, when the total cost, including damages, of constructing the improvement in such other state has been ascertained by the authorities of such other state, to enter into an agreement as to the separate amounts which the property owners of each state should in equity pay toward the construction of the joint undertaking. When such amount is thus determined, the board or boards having jurisdiction in this state shall enter the same in the minutes of their proceedings and shall proceed therewith as though such amount to be paid by the portion of the district in this state had been originally determined by them as the cost of constructing the improvement in this state.

**Sec. 467.3. Contracts Let By Joint Agreement.** When the bids for construction are opened, unless the construction work on each side of the line can go forward independently, no contract shall be let by the authorities in this state, unless the acceptance of a bid or bids for the construction of the whole project is first jointly agreed upon by the authorities of both states.

**Sec. 467.4. Separate Contracts.** The contract or contracts for the construction of that portion of the improvement within this state shall be entirely distinct and separate from the contract or contracts let by the authorities of the neighboring state; but the aggregate amount of the contract or contracts for the construction of the work within this state shall not exceed an amount equal to the amount of the benefits assessed in this state including damages and other expenses.

**Sec. 467.5. Conditions Precedent.** No contract shall be let until the improvement shall be finally established in both states, and after the final adjustment in both states of damages and benefits. No bonds shall be issued until all litigation in both states arising out of said proceedings, has been finally terminated by actual trial or agreements, or the expiration of all right of appeal.

**Sec. 467.6. Assessments, Bonds, and Costs — Limitation.** All proceedings except as provided in this chapter in relation to the establishment, construction, and management of interstate drainage districts shall be as provided for the establishment and construction of districts wholly within this state as provided in chapter 455. All proceedings shall relate only to the lands of such district which are located wholly within this state. Boards having jurisdiction in this state may make just and equitable agreements with like authorities in such adjoining state for the joint management, repair, and maintenance of the entire improvement, after the establishment and completed construction thereof.

#### CHAPTER 467A — SOIL CONSERVATION

**Sec. 467A.1. Short Title.** This chapter may be known and cited as the "Soil Conservation Districts Law".

**Sec. 467A.2. Declaration of Policy.** It is hereby declared to be the policy of the legislature to provide for the restoration and conservation of the soil and soil resources of this state and for the control and prevention of soil erosion and for the prevention of erosion, flood water, and sediment damages and thereby to preserve natural resources, control floods, prevent impairment of dams and reservoirs, assist and maintain the navigability of rivers and harbors, preserve wild life, protect the tax base, protect public lands and promote the health, safety and public welfare of the people of this state.

**Sec. 467A.3. Definitions.** Whenever used or referred to in this chapter, unless a different meaning clearly appears from the context:

1. "District" or "soil conservation district" means a governmental subdivision



of this state, and a public body corporate and politic, organized for the purposes, with the powers, and subject to the restrictions hereinafter set forth.

2. "Commissioner" means one of the members of the governing body of a district, elected or appointed in accordance with the provisions of this chapter.
3. "Department" or "department of soil conservation" means the agency created by section 467A.4.
4. "Committee" or "state soil conservation committee" means the committee established by section 467A.4.
5. "Petition" means a petition filed under the provisions of subsection 1 of section 467A.5 for the creation of a district.
6. "Nominating petition" means a petition filed under the provisions of section 467A.5 to nominate candidates for the office of commissioner of a soil conservation district.
7. "State" means the state of Iowa.
8. "Agency of this state" includes the government of this state and any subdivision, agency, or instrumentality, corporate or otherwise, of the government of this state.
9. "United States" or "agencies of the United States" includes the United States of America, the soil conservation service of the United States department of agriculture, and any other agency or instrumentality, corporate or otherwise, of the United States.
10. "Government" or "governmental" includes the government of this state, the government of the United States, and any subdivision, agency or instrumentality, corporate or otherwise, or either of them.
11. "Landowner" includes any person, firm, or corporation or any federal agency, this state or any of its political subdivisions, who shall hold title to land lying within a proposed district or a district organized under the provisions of this chapter.
12. "Due notice" means notice published at least twice, with an interval of at least six days between the two publication dates, in a newspaper or other publication of general circulation within the appropriate area; or, if no such publication of general circulation be available, by posting at a reasonable number of conspicuous places within the appropriate area, such posting to include, where possible, posting at public places where it may be customary to post notices concerning county or municipal affairs generally. At any hearing held pursuant to such notice, at the time and place designated in such notice, adjournment may be made from time to time without the necessity of renewing such notice for such adjourned dates.
13. "Conservancy district" means one of the six conservancy districts established by Section 467D.3.
14. "Board" means the body designated by Section 467D.4 to administer each of the conservancy districts.
15. "Council" means the Iowa natural resources council.

**Sec. 467A.4. State Soil Conservation Committee.**

1. There is hereby established, to serve as an agency of the state and to perform the functions conferred upon it in this chapter, the department of soil conservation. The department shall be administered in accordance with the policies of the state soil conservation committee, which shall consist of a chairman and twelve members. The following shall serve as ex officio nonvoting members of the committee: The director of the state agricultural extension service, or his designee, the secretary of agriculture, or his designee, the director of the state conservation commission or his designee, and the director of the Iowa natural resources council or his designee. Eight voting members shall be appointed by the governor and confirmed by the senate. Six of the



appointive members shall be persons engaged in actual farming operations, one of whom shall be a resident of each of the six conservancy districts established by Section 467D.3, and no more than one of whom shall be a resident of any one county. The seventh and eighth appointive members shall be chosen by the governor from the state at large with one appointed to be a representative of cities and one appointed to be a representative of the mining industry. The committee may invite the secretary of agriculture of the United States to appoint one person to serve with the above-mentioned members, and the president of the Iowa county engineers association may designate a member of the association to serve in the same manner, but these persons shall have no vote and shall serve in an advisory capacity only. The director of the department of environmental quality shall be an ex officio non-voting member. The committee shall adopt a seal, which seal shall be judicially noticed, and may perform such acts, hold such public hearings, and promulgate such rules as provided in Chapter 17A as may be necessary for the execution of its functions under this chapter.

2. The state soil conservation committee may employ an administrative officer and such other agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties and compensation. The committee or department may call upon the attorney general of the state for such legal service as either may require. The committee shall have authority to delegate to its chairman, to one or more of its members, or to one or more agents or employees, such powers and duties as it may deem proper. Upon request of the committee, for the purpose of carrying out any of the functions assigned the committee or the department by law, the supervising officer of any state agency, or of any state institution of learning shall, insofar as may be possible under available appropriations, and having due regard to the needs of the agency to which the request is directed, assign or detail to the department members of the staff or personnel of such agency or institution of learning, and make such special reports, surveys, or studies as the committee may request.

3. The committee shall designate its chairman, and may, from time to time, change such designation. The director of the state agricultural extension service shall hold office so long as he shall retain the office by virtue of which he shall be serving on the committee. The members appointed by the governor shall serve for a period of six years. Members shall be appointed in each odd-numbered year to succeed members whose terms expire on June 30 of that year. Appointments may be made at such other times and for such other periods as are necessary to fill vacancies on the committee, and any appointment so made while the general assembly is not in session shall be subject to confirmation by the senate at the next session of the general assembly thereafter. No members shall be appointed to serve more than two complete six-year terms. Members designated to represent the secretary of agriculture, director of the state conservation commission, or the director of the Iowa natural resources council shall serve at the pleasure of the officer making such designation. A majority of the voting members of the committee shall constitute a quorum, and the concurrence of a majority of the voting members of the committee in any matter within their duties shall be required for its determination. The chairman and members of the committee, not otherwise in the employ of the state, or any political subdivision, shall receive forty dollars per diem as compensation for their services in the discharge of their duties as members of the committee. The committee shall determine the number of days for which any committee member may draw per diem compensation, but the total number of days for which per diem compensation is allowed for the entire committee shall not exceed four hundred days per year. They shall also be entitled to expenses, including traveling expenses, necessarily incurred in the discharge of their duties as members of such committee. The per diem and expenses paid to the committee members shall be paid from funds appropriated to the committee. The committee shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property, shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders



issued or adopted, and shall provide for an annual audit of the accounts of receipts and disbursements.

4. In addition to the duties and powers hereinafter conferred upon the department of soil conservation, it shall have the following duties and powers:

a. To offer such assistance as may be appropriate to the commissioners of soil conservation districts in carrying out any of their powers and programs.

b. To keep the commissioners of each of the several districts informed of the activities and experience of all other districts and to facilitate an interchange of advice and experience between such districts and co-operation between them.

c. To co-ordinate the programs of the several soil conservation districts so far as this may be done by advice and consultation.

d. To secure the co-operation and assistance of the United States and any of its agencies, and of agencies of this state, in the work of such districts.

e. To disseminate information throughout the state concerning the activities and program of the soil conservation districts.

f. To render financial aid and assistance to soil conservation districts for the purpose of carrying out the policy stated in this chapter.

g. To offer such assistance as may be appropriate to the conservancy districts established by Section 467D.3, and in carrying out of any of their powers and programs.

h. Review, amend, and give final approval to the plan of each of the conservancy districts, and to any subsequent changes therein, in the manner provided by Chapter 467D.

i. Maintain files of such proceedings, rules, and orders of each of the conservancy districts in the state as the department may request from the conservancy districts pursuant to Section 467D.6, subsection 11.

j. To keep the boards of each of the six conservancy districts established by Section 467D.3 informed of the activities and experience of the other conservancy districts and to facilitate an interchange of advice and experience between conservancy districts and co-operation between them.

k. To co-ordinate the programs of the conservancy districts so far as this may be done by advice and consultation.

l. To disseminate information throughout the state concerning the activities and programs of the conservancy districts established by Section 467D.3.

m. To render financial aid and assistance to the six conservancy districts established by Section 367D.3 for the purpose of carrying out the policy stated in Chapter 467D.

#### **Sec. 467A.5. Soil conservation districts.**

1. The one hundred soil conservation districts established in the manner which was prescribed by law prior to July 1, 1975 shall continue in existence with the boundaries and the names in effect on July 1, 1975. If the existence of any district so established is discontinued pursuant to section 467A.10, a petition for re-establishment of the district or for annexation of the former district's territory to any other abutting district may be submitted to, and shall be acted upon by, the state soil conservation committee in substantially the manner provided by section 467A.5, Code 1975.

2. The governing body of each district shall consist of five commissioners elected on a nonpartisan basis for staggered six-year terms commencing on the first day of January that is not a Sunday or holiday following their election. Any eligible elector residing in the district is eligible to the office of commissioner, except that no more



than one commissioner shall at any one time be a resident of any one township. A vacancy is created in the office of any commissioner who changes his residence into township where another commissioner then resides. A vacancy in the office of commissioner shall be filled by appointment of the state soil conservation committee until the next succeeding general election, at which time the balance of the unexpired term shall be filled as provided by section 69.12.

3. At each general election a successor shall be chosen for each commissioner whose term will expire in the succeeding January. Nomination of candidates for the office of commissioner shall be made by petition in accordance with chapter 45, except that each candidate's nominating petition shall be signed by at least twenty-five eligible electors of the district. The petition form shall be furnished by the county commissioner of elections. Every candidate shall file with the nomination papers an affidavit stating his name, his residence, that he is a candidate and is eligible for the office of commissioner, and that if elected he will qualify for the office. An eligible elector shall not in any one year sign the nominating petitions of a number of candidates greater than the number of commissioners to be elected in that year. The signed petitions shall be filed with county commissioner of elections not later than five o'clock p. m. on the fifty-fifth day prior to the general election. The votes for the office of district commissioner shall be canvassed in the same manner as the votes for county officers, and the returns shall be certified to the commissioner of the district. A plurality shall be sufficient to elect commissioners, and no primary election for the office shall be held. If the canvass shows that the two candidates receiving the highest and the second highest number of votes for the office of district commissioner are both residents of the same township, the board shall certify as elected the candidate who received the highest number of votes for the office and the candidate receiving the next highest number of votes for the office who is not a resident of the same township as the candidate receiving the highest number of votes.

4. This subsection shall apply during the period of transition from the former method of electing district commissioners to that prescribed by 66GA, ch. 229, which is the period from July 1, 1975 until December 31, 1982, and the subsection shall not appear in any edition of the Code published after July 1, 1982.

a. Each commissioner elected to office for a term of six years which commenced after January 1, 1975, or who is serving a term which, except for 66GA, ch 229, would have expired after July 1, 1975 but not later than December 31, 1976 shall hold office until noon on the first day of January, 1977 that is not a Sunday or holiday, and a successor shall be elected at the general election in 1976. However, if a commissioner elected for a term of six years which commenced after January 1, 1975 certifies in writing to the state soil conservation committee that he is willing and anticipates being able to serve until noon on the first day of January, 1983 that is not a Sunday or holiday, his term shall be extended to that date and a successor shall be elected at the general election in 1982.

b. Each commissioner serving a term which, except for 66GA, ch 229, would have expired after January 1, 1977 but not later than December 31, 1978 shall hold office until noon on the first day of January, 1979 that is not a Sunday or holiday, and a successor shall be elected at the general election in 1978.

c. Each commissioner serving a term which, except for 66GA, ch 229, would have expired after January 1, 1979 but not later than December 31, 1980 shall hold office until noon on the first day of January, 1981 that is not a Sunday or holiday, and a successor shall be elected at the general election in 1980.

**Sec. 467A.6. Appointment, qualifications and tenure of commissioners.**

The commissioners of each soil conservation district shall convene on the first day of January that is not a Sunday or holiday in each odd-numbered year. Those com-



missioners whose term of office begins on that day shall take the oath of office prescribed by section 63.10. The commissioners shall then organize by election of a chairman and a vice chairman.

The commissioners of the respective districts shall submit to the department such statements, estimates, budgets, and other information at such times and in such manner as the department may require.

A commissioner shall receive no compensation for his services but he may be paid expenses, including traveling expenses, necessarily incurred in the discharge of his duties, if funds are available for that purpose.

The commissioners may call upon the attorney general of the state for such legal services as they may require. The commissioners may delegate to their chairman, to one or more commissioners or to one or more agents, or employees, such powers and duties as they may deem proper. The commissioners shall furnish to the department of soil conservation, upon request, copies of such ordinances, rules, regulations, orders, contracts, forms, and other documents as they shall adopt or employ, and such other information concerning their activities as it may require in the performance of its duties under this chapter.

The commissioners shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted; and shall provide for a biennial audit of the accounts of receipts and disbursements.

The commissioners may invite the legislative body of any municipality or county located near the territory comprised within the district to designate a representative to advise and consult with the commissioners of the district on all questions of program and policy which may affect the property, water supply, or other interests of such municipality or county.

**Sec. 467A.7. Powers of Districts and Commissioners.** A soil conservation district organized under the provisions of this chapter shall have the following powers, in addition to others granted in other sections of this chapter.

1. To conduct surveys, investigations, and research relating to the character of soil erosion and erosion, flood-water and sediment damage and the preventive and control measures needed, to publish the results of such surveys, investigations or research, and to disseminate information concerning such preventive and control measures; provided, however, that in order to avoid duplication of research activities, no district shall initiate any research program except in co-operation with the Iowa agricultural experiment station located at Ames, Iowa, and pursuant to a co-operative agreement entered into between the Iowa agricultural experiment station and such district.

2. To conduct demonstrational projects within the district on lands owned or controlled by this state or any of its agencies, with the consent and co-operation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the owner or occupier of such lands or the necessary rights or interests in such lands, in order to demonstrate by example the means, methods, and measures by which soil and soil resources may be conserved, and soil erosion in the form of soil blowing and soil washing may be prevented and controlled; provided, however, that in order to avoid duplication of agricultural extension activities no district shall initiate any demonstrational projects, except in co-operation with the Iowa agricultural extension service whose offices are located at Ames, Iowa, and pursuant to a co-operative agreement entered into between the Iowa agricultural extension service and such district.

3. To carry out preventive and control measures within the district, including, but not limited to, crop rotations, engineering operations, methods of cultivation, the



growing of vegetation, changes in use of land, and the measures listed in Section 467A.2, on lands owned or controlled by this state or any of its agencies, with the consent and co-operation of the agency administering and having jurisdiction thereof, and on any other lands within the district, upon obtaining the consent of the owner or occupier of such lands or the necessary rights or interests in such lands. Any approval or permits from the council required under other provisions of law shall be obtained by the district prior to initiation of any construction activity.

4. To co-operate, or enter into agreements with, and within the limits of appropriations duly made available to it by law, to furnish financial or other aid to any agency, governmental or otherwise, or any owner or occupier of lands within the district, in the carrying on of erosion-control and watershed protection and flood prevention operations within the district, subject to such conditions as the commissioners may deem necessary to advance the purposes of this chapter.

5. To obtain options upon and to acquire, by purchase, exchange, lease, gift, grant, bequest, devise or otherwise, any property, real or personal, or rights or interest therein; to maintain, administer, and improve any properties acquired, to receive income from such properties and to expend such income in carrying out the purposes and provisions of this chapter; and to sell, lease or otherwise dispose of any of its property or interests therein in furtherance of the purposes and provisions of this chapter.

6. To make available on such terms as it shall prescribe, to landowners or occupiers within the district, agricultural and engineering machinery and equipment, fertilizer, lime, and such other material or equipment as will assist such landowners or occupiers to carry on operations upon their lands for the conservation of soil resources and for the prevention and control of soil erosion and the prevention of erosion, flood-water and sediment damage.

7. To construct, improve, and maintain such structures as may be necessary or convenient for the performance of any of the operations authorized in this chapter. Any approval or permits from the council required under other provisions of law shall be obtained by the district prior to initiation of any construction activity.

8. To develop comprehensive plans for the conservation of soil resources and for the control and prevention of soil erosion and for the prevention of erosion, flood-water, and sediment damages within the district, which plans shall specify in such detail as may be possible, the acts, procedures, performances, and avoidances which are necessary or desirable for the effectuation of such plans, including the specification of engineering operations, methods of cultivation, the growing of vegetation, cropping programs, tillage practices, and changes in use of land; and to publish such plans and information and bring them to the attention of owners and occupiers of lands within the district.

9. To sue and be sued in the name of the district; to have a seal, which seal shall be judicially noticed; to have perpetual succession unless terminated as hereinafter provided; to make and execute contracts and other instruments, necessary or convenient to the exercise of its powers; to make, and from time to time amend and repeal, rules not inconsistent with this chapter, to carry into effect its purposes and powers.

10. To accept donations, gifts, and contributions in money, services, materials, or otherwise, from the United States or any of its agencies, or from this state or any of its agencies, and to use or expend such moneys, services, materials, or other contributions in carrying on its operations.

11. As a condition to the extending of any benefits under this chapter to, or the performance of work upon, any lands not owned or controlled by this state or any of its agencies, the commissioners may require contributions in money, services, materials or otherwise to any operations conferring such benefits, and may require landowners or occupiers to enter into and perform such agreements or covenants as to



the permanent use of such lands as will tend to prevent or control erosion thereon.

12. No provisions with respect to the acquisition, operation, or disposition of property by other public bodies shall be applicable to a district organized hereunder unless the legislature shall specifically so state.

13. After the formation of any district under the provisions of this chapter, all participation hereunder shall be purely voluntary, except as specifically stated herein.

14. Subject to the approval of the state soil conservation committee, to change the name of such soil conservation district.

15. To take notice of the conservancy district plan, and conform to the duly promulgated rules of the conservancy district or conservancy districts in which the soil conservation district is located; provided that this subsection shall not be construed to grant any authority not otherwise granted by law to the commissioners of soil conservation districts.

16. The commissioners shall, as a condition for the receipt of any cost share funds for permanent soil conservation practices, require the landowner to covenant an agreement that if the project is removed, altered, or modified so as to lessen its effectiveness without the consent of the state soil conservation committee for a period of ten years after the date of receiving payment the landlord shall refund to the department of soil conservation the public funds used for the project. Such refunds shall be reallocated to the district from which they were refunded to be used for conservation cost sharing. It shall be the duty of the commissioners to assist the state soil conservation committee in the enforcement of this subsection.

**Sec. 467A.8. Co-Operation Between Districts.** The commissioners of any two or more districts organized under the provisions of this chapter may co-operate with one another in the exercise of any or all powers conferred in this chapter.

**Sec. 467A.9. State Agencies to Co-Operate.** Agencies of this state which shall have jurisdiction over, or be charged with the administration of, any state-owned lands, and of any county, or other governmental subdivision of the state, which shall have jurisdiction over, or be charged with the administration of, any county-owned or other publicly owned lands, lying within the boundaries of any district organized hereunder, may co-operate to the fullest extent with the commissioners of such districts in the effectuation of programs and operations undertaken by the commissioners under the provisions of this chapter.

**Sec. 467A.10. Discontinuance of Districts.** At any time after five years after the organization of a district under the provisions of this chapter, any twenty-five owners of land lying within the boundaries of such district, but in no case less than 20% of the owners of the land lying within such district, may file a petition with the state soil conservation committee praying that the operations of the district be terminated and the existence of the district discontinued. The committee may conduct such public meetings and public hearings upon such petitions as may be necessary to assist in the consideration thereof. Within sixty days after such a petition has been received by the committee, the department shall give due notice of the holding of a referendum, and shall supervise such referendum, and issue appropriate regulations governing the conduct thereof, the question to be submitted by ballots upon which the words "For terminating the existence of the \_\_\_\_\_ (name of the soil conservation district to be here inserted)" and "Against terminating the existence of the \_\_\_\_\_ (name of the soil conservation district to be here inserted)" shall be printed, with a square before each proposition and a direction to insert an X mark in the square before one or the other said propositions as the voter may favor or oppose discontinuance of such district. All owners of lands lying within the boundaries of the district shall be eligible to vote in such referendum. Only such landowners shall be eligible to vote. No informalities in the conduct of such referendum or in any matters relating thereto shall invalidate



said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and referendum shall have been fairly conducted.

When sixty-five percent of the landowners vote to terminate the existence of such district, the state soil conservation committee shall advise the commissioners to terminate the affairs of the district. The commissioners shall dispose of all property belonging to the district at public auction and shall pay over the proceeds of such sale to be covered into the state treasury. The commissioners shall thereupon file an application, duly verified, with the secretary of state for the discontinuance of such district, and shall transmit with such application the certificate of the state soil conservation committee setting for the determination of the committee that the continued operation of such district is not administratively practicable and feasible. The application shall recite that the property of the district has been disposed of and the proceeds paid over as in this section provided, and shall set forth a full accounting of such properties and proceeds of the sale. The secretary of state shall issue to the commissioners a certificate of dissolution and shall record such certificate in an appropriate book of record in his office.

Upon issuance of a certificate of dissolution under the provisions of this section, all ordinances and regulations theretofore adopted and in force within such districts shall be of no further force and effect. All contracts theretofore entered into, to which the district or commissioners are parties, shall remain in force and effect for the period provided in such contracts. The state soil conservation committee shall be substituted for the district or commissioners as party to such contracts. The committee shall be entitled to all benefits and subject to all liabilities under such contracts and shall have the same right and liability to perform, to require performance, and sue and be sued thereon, and to modify or terminate such contracts by mutual consent or otherwise, as the commissioners of the district would have had.

The state soil conservation committee shall not entertain petitions for the discontinuance of any district nor conduct referenda upon such petitions nor make determinations pursuant to such petitions in accordance with the provisions of this chapter, more often than once in five years.

**Sec. 467A.11. Report to Governor.** The committee shall submit to the governor, no later than January 1 next preceding each biennial legislative session, a report which shall state the following: The number and acreage of districts in existence or in process of organization, together with an estimate of the number and probable acreage of the districts which may be organized during the ensuing biennial fiscal period; a statement of the balances of funds, if any, available to the committee as to the sums needed for its administrative and other expenses, and for allocation among the several districts during the ensuing biennial fiscal period.

**Sec. 467A.12. Statement to Comptroller.** On or before September 1, next preceding each biennial legislative session, the state soil conservation committee shall submit to the state comptroller, on official estimate blanks furnished for such purposes, statements and estimates of the expenditure requirements for each fiscal year of the ensuing biennium, and a statement of the balance of funds, if any, available to the committee, and the estimate of the committee as to the sums needed for the administrative and other expenses of the committee and department.

**Sec. 467A.13. Purpose of Subdistrict.** Subdistricts of a soil conservation district may be formed as hereinafter provided for the purpose of carrying out watershed protection and flood prevention programs within the subdistrict but may not be formed solely for the purpose of establishing or taking over the operation of an existing drainage district.

**Sec. 467A.14. Petition to Form.** When the landowners in a proposed subdistrict desire that a subdistrict be organized, they shall file a petition with the commissioners



of the soil conservation district. The area must be contiguous and in the same watershed but in no event shall it include any area located within the boundaries of an incorporated city. The petition shall set forth an intelligible description by congressional subdivision, or otherwise, of the land suggested for inclusion in the sub-district and shall state whether the special annual tax or special benefit assessments will be used, or whether the use of both is contemplated. The petition shall contain a brief statement giving the reasons for organization, requesting that the proposed area be organized as a sub-district and must be signed by sixty-five percent (65%) of the landowners in the proposed subdistrict. Land already in one subdistrict cannot be included in another. The soil conservation district commissioners shall review such petition and if found adequate shall arrange for a hearing thereon.

**Sec. 467A.15. Notice of Hearing.** Within thirty days after such petition has been filed with the soil district commissioners, they shall fix a date, hour, and place for a hearing thereon and direct the secretary to cause to be given to the owners of each tract of land, or lot, within the proposed subdistrict as shown by the transfer books of the auditor's office, and to each lien holder, or encumbrancer, of any such lands as shown by the county records, and to all other persons whom it may concern, and without naming individuals all actual occupants of land in the proposed subdistrict, of the pendency and prayer of said petition and that all objections to establishment of said subdistrict for any reason must be made in writing and filed with the secretary of the soil conservation district at, or before, the time set for hearing. The soil conservation district commissioners shall consider and determine whether the operation of the subdistrict within the defined boundaries as proposed is desirable, practicable, feasible, and of necessity in the interest of health, safety, and public welfare. All interested parties shall have a right to attend such hearing and to be heard. The soil district commissioners may for good cause adjourn the hearing to a day certain which shall be announced at the time of adjournment and made a matter of record. If the soil district commissioners determine that the petition meets the requirements set forth herein and in section 467A.5, they shall declare that the subdistrict is duly organized and shall record such action in their official minutes together with an appropriate official name, or designation for the subdistrict.

**Sec. 467A.16. Publication of Notice.** The notice of hearing on the formation of a subdistrict shall be by publication once each week for two consecutive weeks in some newspaper of general circulation published in the county (or district) the last of which shall be not less than ten days prior to the day set for the hearing on the petition. Proof of such service shall be made by affidavit of the publisher, and be on file with the secretary of the district at the time the hearing begins.

**Sec. 467A.17. Subdistrict in More Than One District.** If the proposed subdistrict lies in more than one soil conservation district, the petition may be presented to the commissioners of any one of such districts, and the commissioners of all such districts shall act jointly as a board of commissioners with respect to all matters concerning such subdistrict, including its formation. They shall organize as a single board for such purposes and shall designate its chairman, vice-chairman, and secretary-treasurer to serve for terms of one year. Such a subdistrict shall be formed in the same manner and shall have the same powers and duties as a subdistrict formed in one soil conservation district.

**Sec. 467A.18. Authentication.** Following the entry in the official minutes of the soil district commissioners of the creation of the subdistrict, the commissioners shall certify this fact on a separate form, authentic copies of which shall be recorded with the county recorder of each county in which any portion of the subdistrict lies, and with the department of soil conservation.

**Sec. 467A.19. Governing Body.** The commissioners of a soil conservation district in which the subdistrict is formed shall be the governing body of the subdistrict. When a subdistrict lies in more than one soil conservation district, the combined board



of commissioners shall be the governing body. The governing body of the subdistrict shall appoint three trustees living within the subdistrict to assist with the administration of the subdistrict.

**Sec. 467A.20. Special Annual Tax.** After obtaining agreements to carry out recommended soil conservation measures and proper farm plans from owners of not less than fifty percent of the lands situated in the subdistrict, a subdistrict shall have the authority to impose a special annual tax, the proceeds of which shall be used for the repayment of actual and necessary expenses incurred to organize the subdistrict, to acquire land or rights or interests therein by purchase or condemnation, repair, alteration, maintenance and operation of the present and future works of improvement within its boundaries.

On or before January 10 of each year its governing body shall make an estimate of the amount it deems necessary to be raised by such special tax for the ensuing year and transmit said estimate in dollars to the board of supervisors of the county in which the subdistrict lies.

If portions of the subdistrict are in more than one county, then the governing body, as hereinbefore designated in such event, after arriving at the estimate in dollars deemed necessary for the entire subdistrict shall ratably apportion such amount between the counties and transmit and certify the prorated portion to the respective boards of supervisors of each of the counties.

The board or boards of supervisors shall upon receipt of certification from the governing body of the district make the necessary levy on the assessed valuation of all real estate within the boundaries of the subdistrict lying within their respective county to raise said amounts, but in no event to exceed one dollar and eight cents per thousand dollars of assessed value.

The special tax so levied shall be collected in the same manner as other taxes with like penalty for delinquency, with the proceeds therefrom to be kept in a separate account by the appropriate county treasurer or treasurers identified by the official name of the subdistrict and expenditures therefrom shall be made on requisition of the chairman and secretary of the governing body of the subdistrict.

**Sec. 467A.21. Condemnation By Subdistrict.** A subdistrict of a soil conservation district may condemn land or rights or interests therein to carry out the authorized purposes of the subdistrict.

**Sec. 467A.22. General powers applicable.— warrants or bonds.** A subdistrict organized under the provisions of this chapter shall have all of the powers of a soil conservation district in addition to other powers granted to the subdistrict in other sections of this chapter.

The governing body of the subdistrict, upon determination that benefits from works of improvement as set forth in the watershed work plan to be installed will exceed costs thereof, and that funds needed for purposes of the subdistrict require levy of a special benefit assessment as provided in section 467A.23, in lieu of the special annual tax as provided in section 467A.20, shall record its decision to use said taxing authority and shall have authority, upon majority vote of said governing body and with the approval of the state soil conservation committee, to issue warrants or bonds payable in not more than forty semiannual installments in connection therewith, and to pledge and assign the proceeds of the special benefit assessment and other revenues of the subdistrict as security therefor. Such warrants and bonds of indebtedness shall be general obligations of the subdistrict, exempt from all taxes, state and local, and in no event shall such warrants and bonds constitute an indebtedness of the soil conservation district or the state of Iowa.



### ALTERNATE METHOD OF TAXATION FOR WATERSHED PROTECTION AND FLOOD PREVENTION

**Sec. 467A.23. Agreement by Fifty Percent of Landowners.** After obtaining agreements to carry out recommended soil conservation measures and proper farm plans from owners of not less than fifty percent of the lands situated in the subdistrict, the governing body of the subdistrict shall have the authority to establish a special tax for the purpose of organization, construction, repair, alteration, enlargement, extension and operation of present and future works of improvement within the boundaries of said subdistrict. The governing body shall appoint three appraisers to assess benefits and classify the land affected by such improvements. One of such appraisers shall be a competent registered professional engineer and two of them shall be resident, landowners of the county or counties in which the subdistrict is located but not living within nor owning or operating any lands included in said subdistrict.

The appraisers shall take and subscribe an oath of their qualifications and to perform the duties of classification of said lands, fix the percentages, benefits and apportion and assess the costs and expenses of construction of the said improvement according to law and their best judgment, skill, and ability. If said appraisers or any of them fail or neglect to act or perform the duties in the time and as required by law, the governing body of the subdistrict shall appoint others with like qualifications to take their places and perform said duties.

**Sec. 467A.24. Assessment for Improvements.** At the time of appointing said appraisers, the governing body shall fix the time within which said assessment, classification, and apportionment shall be made, which may be extended for good cause shown. Within twenty days after their appointment, they shall begin to inspect and classify all the lands within said district, or any change, extension, enlargement, or relocation thereof in tracts of forty acres or less according to the legal or recognized subdivisions, in graduated scale of benefits to be numbered according to the benefit to be received by each of such tracts from such improvement, and pursue said work continuously until completed and, when completed, shall make a full, accurate, and detailed report thereof and file the same with the governing body. The lands receiving the greatest benefit shall be marked on a scale of one hundred, and those benefited in a less degree with such percentage of one hundred as the benefits received bear in proportion thereto.

The amount of benefit appraised to each forty acres of land within the subdistrict shall be determined by the improvements within said subdistrict based upon the work plan as agreed upon by the subdistrict and furnished by the United States soil conservation service.

**Sec. 467A.25. Report of Appraisers.** In the report of the appraisers so appointed they shall specify each tract of land by proper description, and the ownership thereof, as the same appears on the transfer books in the auditor's office.

**Sec. 467A.26. Hearing.** The governing body shall fix a time for a hearing within sixty days upon receiving the report of the appraisers, and the governing body shall cause notice to be served upon each person not less than ten days before said hearing whose name appears as owner, naming him, and also upon the person or persons in actual occupancy of any tract of land without naming him of the day and hour of such hearing, which notice shall be for the same time and served in the same manner as provided for the establishment of a subdistrict, and shall state the amount of assessment of costs and expenses of organizing and construction apportioned to each owner upon each forty-acre tract or less, and that all objections thereto must be in writing and filed with the governing body at or before the time set for such hearing.

**Sec. 467A.27. Determination By Board.** At the time fixed or at an adjourned



hearing, the governing body shall hear and determine all objections filed to said report and shall fully consider the said report, and may affirm, increase, or diminish the percentage of benefits or the apportionment of costs and expenses made in said report against any body or tract of land in said subdistrict as may appear to the board to be just and equitable.

**Sec. 467A.28. Appeal.** Any person aggrieved may appeal from any final action of the governing body in relation to any matter involving his rights, to the district court of the county in which the proceeding was held.

**Sec. 467A.29. Inter-County Subdistricts.** In subdistricts extending into two or more counties, appeals from final orders resulting from the joint action of the several governing bodies of such subdistricts may be taken to the district court of any county into which the district extends.

**Sec. 467A.30. Notice of Appeal.** All appeals shall be taken within twenty days after the date of final action or order of the governing body from which such appeal is taken by filing with the auditor a notice of appeal, designating the court to which the appeal is taken, the order or action appealed from, and stating that the appeal will come on for hearing thirty days following perfection of the appeal with allowances of additional time for good cause shown. This notice shall be accompanied by an appeal bond with sureties to be approved by the auditor conditioned to pay all costs adjudged against the appellant and to abide the orders of the court.

**Sec. 467A.31. Petition Filed.** Within twenty days after perfection of notice, the appellant shall file a petition setting forth the order or final action of the governing body appealed from and the grounds of his objections and his complaint, with a copy of his claim for damages or objections filed by him with the auditor. He shall pay to the clerk the filing fee as provided by law in other cases. A failure to pay the filing fee or to file such petition shall be deemed a waiver of the appeal and in such case the court shall dismiss the same.

**Sec. 467A.32. Assessment Certified.** When the board or boards of supervisors shall receive a certification from the governing body of the district to make the necessary assessment on the real estate within the boundaries of the subdistrict lying within their respective county, this shall be construed as final action by the governing body.

**Sec. 467A.33. Assessments Transmitted.** The governing body upon receiving the reports from three appointed appraisers and after holding the hearing shall transmit and certify the amounts of assessments to the respective boards of supervisors which upon receipt of certification from the governing body of the district, make the necessary levy of such assessments as fixed by the governing body upon the land within such subdistrict and all assessments shall be levied at that time as a tax and shall bear interest at not more than four percent per annum from the date payable annually except as hereafter provided as to cash payments therefor within a specified time. The assessment so levied shall be kept in a separate account by the appropriate county treasurer or treasurers, identified by the official name of the subdistrict and expenditures therefrom shall be made on requisition of the chairman and secretary of the governing body of the subdistrict.

At no time will an assessment be made where the benefits accrued to the subdistrict do not exceed the cost of the improvements within the said subdistrict.

**Sec. 467A.34. Payment to County Treasurer.** All assessments for benefits shall be levied at one time against the property benefited and when levied and certified by the board or boards of supervisors shall be paid at the office of the county treasurer. Each person or corporation shall have the right within twenty days after the levy of assessments to pay his or its assessment in full without interest.



If any levy of assessments is not sufficient to meet the cost and expenses of organizing and construction apportioned to each owner upon each forty-acre tract or less, additional assessments may be made on the same classification as the previous ones.

**Sec. 467A.35. Installments.** If the owner of any premises against which a levy exceeding twenty dollars has been made and certified shall, within thirty days from the date of such levy, agree in writing in a separate agreement, that in consideration of having a right to pay his assessment in installments, he will not make any objections as to the legality of his assessment for benefit, or the levy of the taxes against his property, then such owner shall have the following options:

1. To pay one-half of the amount of such assessment at the time of filing such agreement and the remaining one-half shall become due and payable one year from the date of filing such agreement. All such installments shall be without interest if paid at said times, otherwise said assessments shall bear interest from the date of the levy at the rate of four percent per annum, payable annually, and be collected as other taxes on real estate, with like penalty for delinquency.

2. To pay such assessments in not less than ten nor more than forty equal installments, the number to be fixed by the governing body of the subdistrict and interest fixed by the governing body of the subdistrict, not exceeding four percent per annum. The first installment of each assessment shall become due and payable at the October semi-annual tax paying date after the date of filing such agreement, unless the agreement is filed with the county auditor less than thirty days prior to such October semi-annual tax paying date, in that event, the first installment shall become due and payable at the next succeeding October semi-annual tax paying date. The second and each subsequent installment shall become due and payable at the October semi-annual tax paying date each year thereafter. All such installments shall be collected with interest accrued on the unpaid balance to the October semi-annual taxpaying date and as other taxes on real estate, with like penalty for delinquency.

**Sec. 467A.36. Option By Appellant.** When an owner takes an appeal from the assessment against any of his land, the option to pay in installments whatever assessment is finally established against such land in said appeal shall continue, if within twenty days after the final determination of said appeal he shall file in the office of the auditor his written election to pay in installments, and within said period pay such installments as would have matured prior to that time if no appeal had been taken, together with all accrued interest on said assessment to the last preceding interest-paying date.

**Sec. 467A.37. Status of Classification.** A classification of land for watershed purposes, when finally adopted, shall remain the basis of all future assessments for the purpose of said subdistrict, except as provided in section 467A.38.

**Sec. 467A.38. New Classification.** After a subdistrict has been established and the improvements thereof constructed and put in operation, if the governing body shall find that the original assessments are not equitable as a basis for the expenses of any enlargement or extension thereof which may have become necessary, they shall order a new classification of all lands in said subdistrict by resolution, and appoint three appraisers, which shall meet the same requirements as set forth in section 467A.23.

Upon completion of the reclassification, those affected by such reclassification shall have the right to appeal as hereinabove set forth.

**Sec. 467A.39. Benefit of Whole Subdistrict.** Assessments for repair, alteration, enlargement, extension, and operation of works of improvements within the watershed districts shall be a benefit to the entire subdistrict and levied as such.

**Sec. 467A.40. Compensation of Appraisers.** Persons appointed to appraise and make classifications of lands shall receive such compensation as the governing body may



fix and in addition thereto, the necessary expenses of transportation of said persons while engaged in their work, such compensation and expenses shall be construed as part of the cost of the subdistrict which shall be included when considering classifications of land within a subdistrict.

**Sec. 467A.41. Election of taxing methods.** Subdistricts organized under the provisions of this chapter shall designate in the petition which of the taxing methods will be used or may stipulate that both methods are contemplated for use. Should the governing body of the subdistrict find it desirable to change from a special annual tax to special benefit assessments it may elect to do so and shall institute proceedings described in sections 467A.23 through 467A.40 and may divert any moneys already collected under section 467A.20, for the purposes authorized in this chapter.

**Sec. 467A.42. Soil and Water Conservation Practices.** In addition to the definitions established by Section 467A.3, as used in Sections 467A.43 to 467A.53, unless the context otherwise requires:

1. "Soil loss limit" means the maximum amount of soil loss due to erosion by water or wind, expressed in terms of tons per acre per year, which the commissioners of the respective soil conservation districts shall determine is acceptable in order to meet the objectives expressed in Section 467D.1.

2. "Soil and water conservation practices" means any of the practices designated in or pursuant to this subsection which serve to prevent erosion of soil by wind or water, in excess of applicable soil loss limits, from land used for agricultural or horticultural purposes only.

a. "Permanent soil and water conservation practices" means planting or perennial grasses, legumes, shrubs, or trees, the establishment of grassed waterways, and the construction of terraces, or other permanent soil and water practices approved by the state soil conservation committee.

b. "Temporary soil and water conservation practices" means planting of annual or biennial crops, use of strip-cropping, contour planting, minimum or mulch tillage, and any other cultural practices approved by the state soil conservation committee.

3. "Erosion control practices" means:

a. The construction or installation, and maintenance, of such structures or devices as are necessary to carry to a suitable outlet from the site of any building housing four or more residential units, any commercial or industrial development or any publicly or privately owned recreational or service facility of any kind, not served by a central storm sewer system, any water which:

(1) Would otherwise cause erosion in excess of the applicable soil loss limit; and

(2) Does not carry nor constitute sewage, industrial waste, or other waste as defined by Section 455B.2.

b. The employment of temporary devices or structures, temporary seeding, fibre mats, plastic, straw, or other measures adequate to prevent erosion in excess of the applicable soil loss limits from the site of, or land directly affected by, the construction of any public or private street, road or highway, any residential, commercial, or industrial building or development, or any publicly or privately owned recreational or service facility of any kind, at all times prior to completion of such construction.

c. The establishment and maintenance of vegetation upon the right of way of any completed portion of any public street, road, or highway, or the construction or installation thereon of structures or devices, or other measures adequate to prevent erosion from the right of way in excess of the applicable soil loss limits.

**Sec. 467A.43. Duty of Property Owners.** To conserve the fertility, general use-



fulness, and value of the soil and soil resources of this state, and to prevent the injurious effects of soil erosion, it is hereby made the duty of the owners of real property in this state to establish and maintain soil and water conservation practices or erosion control practices, as required by the regulations of the commissioners of the respective soil conservation districts.

**Sec. 467A.44. Rules by Commissioners — Scope.** The commissioners of each soil conservation district shall, with approval of and within time limits set by administrative order of the state soil conservation committee, adopt such reasonable regulations as are deemed necessary to establish a soil loss limit or limits for the district and provide for the implementation of the limit or limits, and may subsequently amend or repeal their regulations as they deem necessary. The commissioners may:

1. Classify land in the district on the basis of topography, soil characteristics, current use, and other factors affecting propensity to soil erosion.

2. Establish different soil loss limits for different classes of land in the district if in their judgment and that of the state soil conservation committee a lower soil loss limit should be applied to some land than can reasonably be applied to other land in the district, it being the intent of the general assembly that no land in the state be assigned a soil loss limit that cannot reasonably be applied to such land.

3. Require the owners of real property in the district to employ either soil and water conservation practices or erosion control practices, and:

- a. May not specify the particular practices to be employed so long as such owners voluntarily comply with the applicable soil loss limits established for the district.

- b. May specify two or more approved soil and water conservation practices or erosion control practices, one of which shall be employed by the landowner to bring erosion from land under his control within the applicable soil loss limit of the district when an administrative order is issued to the landowner.

- c. In no case may the commissioners require:

- (1) The employment of erosion control practices as defined in Section 467A.42, subsection 3, on land used in good faith for agricultural or horticultural purposes only.

- (2) The employment of soil and water conservation practices or erosion control practices on that portion of any public street, road or highway completed or under construction within the corporate limits of any city, which is or will become the traveled or surfaced portion of such street, road, or highway.

- (3) That any owner or operator of agricultural land refrain from fall plowing of land on which he intends to raise a crop during the next succeeding growing season, however on those lands which are prone to excessive wind erosion the commissioners may require that reasonable temporary measures be taken to minimize the likelihood of wind erosion so long as such measures do not unduly increase the cost of operation of the farm on which the land is located. However, fall plowing of soil which is commonly known as gumbo shall always be permitted.

**Sec. 467A.45. Submission of Rules to Committee — Hearing.** Regulations which the commissioners propose to adopt, amend, or repeal shall be submitted to the state soil conservation committee, in such form as the committee shall prescribe, for its approval. The committee may approve the regulations as submitted, or with such amendments as it deems necessary. The commissioners shall thereafter publish notice of hearing on the proposed regulations, as approved, in a newspaper of general circulation in the district, setting a date and time not less than ten nor more than thirty days after such publication when a hearing on the proposed regulations will be held at a specified place. The notice shall include the full text of the proposed regulations or shall state that the proposed regulations are on file and available for review at the office of the affected soil conservation district.



**Sec. 467A.46. Conduct of Hearing.** At the hearing, the commissioners or their designees shall explain, in reasonable detail, the reasons why adoption, amendment, or repeal of the regulations is deemed necessary or advisable. Any landowner, or any occupant of land who would be affected by the regulations, shall be afforded an opportunity to be heard for or against the proposed regulations. At the conclusion of the hearing, the commissioners shall announce and enter of record their decision whether to adopt or modify the proposed regulations. Any modification must be approved by the state soil conservation committee, which may at its discretion order the commissioners to republish the regulations and hold another hearing in the manner prescribed by this chapter.

**Sec. 467A.47. Inspection of Land on Complaint.** The commissioners of any soil conservation district shall inspect or cause to be inspected any land within the district, upon receipt of a written and signed complaint, from an owner or occupant of land being damaged by sediment, that soil erosion is occurring thereon in excess of the limits established by the district's soil erosion control regulations. If they find that sediment damages are occurring to property owned or occupied by the person filing the complaint and that such excess soil erosion is so occurring on the land inspected, they shall issue an administrative order to the landowner or landowners of record, and to the occupant of the land if known to the commissioners, describing said land and stating as nearly as possible the extent to which soil erosion thereon exceeds the limits established by the district's regulations. The order shall be delivered either by personal service or by restricted certified mail to each of the persons to whom it is directed, and shall:

1. In the case of erosion occurring on the site of any construction project or similar undertaking involving the removal of all or a major portion of the vegetation or other natural or man-made cover, exposing bare soil directly to water or wind, state a time not more than five days after service or mailing of the notice of the order when work necessary to establish or maintain erosion control practices must be commenced, and a time not more than thirty days after service or mailing of the notice of the order when the work is to be satisfactorily completed.

2. In all other cases, state a time not more than six months after service or mailing of the notice of the order, by which work needed to establish or maintain the necessary soil and water conservation practices or erosion control measures must be commenced, and a time not more than one year after the service or mailing of the notice of the order when the work is to be satisfactorily completed, unless the requirements of the order are superseded by the provisions of Section 467A.48.

**Sec. 467A.48. Application For Public Cost-Sharing Funds.** No owner or occupant of land in this state shall be required to establish any new permanent or temporary soil and water conservation practice unless public or other cost-sharing funds have been specifically approved for such land and actually made available to the owner or occupant in an amount equal to at least seventy-five percent of the cost of any permanent soil and water conservation practice, or an amount set by the state soil conservation committee for any temporary soil and water conservation practice. The state soil conservation committee shall review these requirements at least once each year, and may authorize soil conservation district commissioners to make the mandatory establishment of any specified soil and water conservation practice in any particular case conditional on a higher proportion of public cost-sharing than is required by this section. When the commissioners have been so authorized, they shall, in determining the amount of cost-sharing for establishment of a specified soil and water conservation practice to comply with an administrative order issued pursuant to Section 467A.47, consider the extent to which the practice will contribute benefits to the public in relation to the benefits that will accrue to the individual owner or occupant of the land on which the practice is to be established. Evidence that an applica-



tion for public or other cost-sharing funds, from a source or sources having authority to pay a portion of the cost of work needed to comply with an administrative order issued pursuant to Section 467A.47, has been submitted to the proper officer or agency shall constitute commencement of such work within the meaning of Sections 467A.43 to 467A.53. Upon receiving evidence of the submission of such application, the commissioners shall forward to the officer or agency to which the application was made a written request to receive notification of the disposition of such application. When notified of the approval of such application the commissioners shall issue to the same parties who received the original administrative order, or their successors in interest, a supplementary order, to be delivered in the same manner as provided by Sections 467A.43 to 467A.53 for delivery of original administrative orders. The supplementary order shall state a time, not more than six months after approval of the application for public cost-sharing funds, by which the work needed to comply with the original administrative order shall actually be commenced, and a time thereafter when such work is to be satisfactorily completed. If feasible, that time shall be within one year after the date of the supplementary order, but the owner of land on which a soil and water conservation practice is being established under this section shall not be required to incur a cost therefor in any one calendar year which exceeds ten dollars per acre for each acre of land belonging to that owner and located in the county containing the land on which the required practice is being established or in counties contiguous thereto.

**Sec. 2.** This Act is effective on January first following its enactment.

**Sec. 467A.49. Petition For Court Order.** The commissioners shall petition the district court for a court order requiring immediate compliance with an administrative order previously issued by the commissioners as provided in Section 467A.47, if:

1. The work necessary to comply with the administrative order is not commenced on or before the date specified in such order, or in any supplementary order subsequently issued as provided in Section 467A.48, unless in the judgment of the commissioners the failure to commence or complete the work as required by the administrative order is due to factors beyond the control of the person or persons to whom such order is directed and the person or persons can be relied upon to commence and complete the necessary work at the earliest possible time.

2. Such work is not being performed with due diligence, or is not satisfactorily completed by the date specified in the administrative order, or when completed does not reduce soil erosion from such land below the limits established by the soil conservation district's regulations.

3. The person or persons to whom the administrative order is directed advise the commissioners that they do not intend to commence or complete such work.

**Sec. 467A.50. Burden — Court Order.** In any action brought under Section 467A.49, the burden of proof shall be upon the commissioners to show that soil erosion is in fact occurring in excess of the applicable soil loss limits and that the defendant has not established or maintained soil and water conservation practices or erosion control practices in compliance with the soil conservation district's regulations. With respect to construction, repair, or maintenance of any public street, road, or highway, evidence that soil erosion control standards equivalent to or in excess of those currently imposed by the United States government on the project or like projects involving use of federal funds shall create a presumption of compliance with the applicable soil loss limit. Upon receiving satisfactory proof, the court shall issue an order directing the landowner or landowners to comply with the administrative order previously issued by the commissioners. The court may modify such administrative order if deemed necessary. Notice of the court order shall be given either by personal



service or by restricted certified mail to each of the persons to whom the order is directed, who may within thirty days from the date of the court order appeal to the supreme court. Any person who fails to comply with a court order issued pursuant to this section within the time specified in such order, unless the order has been stayed pending an appeal, shall be deemed in contempt of court and may be punished accordingly.

**Sec. 467A.51. Entering on land.** The commissioners and their authorized agents or employees may enter upon any private or public property, except private dwellings, at any reasonable time to classify land by soil sampling or other appropriate methods or to determine whether soil erosion is occurring on the property in violation of the district's regulations.

1. If the owner or occupant of any property refuses admittance, or if prior to such refusal the commissioners demonstrate the need for a warrant, the commissioners may make an application under oath or affirmation to the district court of the county in which the property is located for the issuance of a search warrant.

2. In the application the commissioner shall state that entry on the premises is mandated by the laws of this state or that entry is needed to conduct soil sampling necessary to classify soil in the district as specified in section 467A.44, subsection 1, or to determine whether soil erosion is occurring on the property in violation of the of the district's regulations. The application shall describe the area or premises, give the date of the last known investigation or sampling, give the date and time of the proposed inspection, declare the need for such inspection, recite that notice of desire to make an inspection has been given to affected persons and that admission was refused if that be the fact, and state that the inspection has no purpose other than to carry out the purpose of the statute, ordinance or regulation pursuant to which the inspection is to be made.

3. The court may issue a search warrant, after examination of the applicant and any witnesses, if the court is satisfied that there is probable cause to believe the existence of the allegations in the application.

4. In soil sampling and making investigations pursuant to a warrant, the commissioners must execute the warrant in a reasonable manner within the time period specified in the warrant.

**Sec. 467A.52. Information on Situation by District Board.** When the board of any conservancy district informs the commissioners of a soil conservation district that the conservancy district is unable to proceed with construction of a planned internal improvement, because it has been found that the internal improvement would not be adequately protected against siltation due entirely or partially to failure to establish or maintain soil and water conservation practices or erosion control practices within the soil conservation district, the commissioners of the soil conservation district shall determine as far as possible the particular lands where soil erosion which prevents the conservancy district from constructing the internal improvement is occurring and proceed in the same manner as when a complaint is received under Section 467A.47. If after six months, the commissioners of the soil conservation district fail or refuse to control the soil erosion which prevents the conservancy district from constructing the internal improvement, the conservancy district directors may petition the district court of the county in which such soil conservation district is located for a court order directing the commissioners to proceed at once to control such erosion. The court shall afford the commissioners or their representative an opportunity to appear and show cause why such order should not be issued.

**Sec. 467A.53. Co-Operation With Other Agencies.** Soil conservation districts



are hereby authorized to enter into agreements with the federal government or any agency thereof, as provided by state law, or with the State of Iowa or any agency thereof, any other soil conservation district or conservancy district, or other political subdivision of this state, for co-operation in preventing, controlling, or attempting to prevent or control, soil erosion. Soil conservation districts may accept, as provided by state law, any money disbursed for soil erosion control purposes by the federal government or any agency thereof, and expend such money for the purposes for which it was received.

#### CHAPTER 467B — FLOOD AND EROSION CONTROL

**Sec. 467B.1. Authority of Board.** Whenever any county, soil conservation district, subdistrict of a soil conservation district, conservancy district, political subdivision of the state, or other local agency shall engage or participate in any project for flood or erosion control, flood prevention, or the conservation, development, utilization, and disposal of water, in co-operation with the federal government, or any department or agency thereof, the counties in which said project shall be carried on shall have the jurisdiction, power, and authority through the board of supervisors to construct, operate and maintain said project on lands under the control or jurisdiction of the county whenever dedicated to county use, or to furnish financial and other assistance in connection with said projects. Such flood, soil erosion control, and watershed improvement projects shall be presumed to be for the protection of the tax base of the county, for the protection of public roads and lands, and for the protection of the public health, sanitation, safety, and general welfare.

**Sec. 467B.2. Federal Aid.** Any county may, in accordance with provisions of this chapter, accept federal funds for aid in any project for flood or soil erosion control, flood prevention, or the conservation, development, utilization, and disposal of water, and may co-operate with the federal government or any department or agency thereof, soil conservation districts, subdistrict of a soil conservation district, conservancy district, political subdivision of the state, or other local agency, and the county may assume such proportion of the cost of the project as deemed appropriate, and may assume the maintenance cost of the same on lands under the control or jurisdiction of the county as will not be discharged by federal aid or grant.

**Sec. 467B.3. Co-Operation.** The counties and soil conservation districts, subdistricts of soil conservation districts concerned, and conservancy districts, shall advise and consult with each other, upon the request of any of them or any affected landowners, and shall be authorized to co-operate with each other or with other state subdivisions, or instrumentalities, and affected landowners, as well as with the federal government or any department or agency thereof, to construct, operate, and maintain suitable projects for flood or soil erosion control, flood prevention, or the conservation, development, utilization, and disposal of water on public roads or other public lands or other land granted county use.

**Sec. 467B.4. Structures or Levees.** When structures or levees necessary for flood or soil erosion control, flood prevention, or the conservation, development, utilization, and disposal of water, are constructed on county roads, the cost in total or in part shall be considered a part of the cost of road construction.

**Sec. 467B.5. Maintenance Cost.** Where construction of projects has been completed by the soil conservation district, subdistricts of soil conservation districts, conservancy districts, political subdivisions of the state, or other local agencies, or the federal government, or any department or agency thereof on private lands under the easement granted to the county, only the cost of maintenance may be assumed by the county.



**Sec. 467B.6. Estimate.** In the proceedings to establish such project the government engineer shall set forth in his report separately from other items, the amount of the cost of construction on county property and on private lands, and his estimate of the cost of maintenance of the same.

If the plan is approved by all co-operating agencies and the project established as a flood or erosion control project the board of supervisors shall make a written record of any such co-operative arrangement and may use such part of the funds of the county now authorized by law and by this chapter as may be necessary to pay the amount agreed upon toward the construction, maintenance and cost of such project.

**Sec. 467B.7. Projects on Private Land.** Any flood or soil erosion control, flood prevention, or the conservation, development, utilization, and disposal of water, projects built on private land with federal or other funds when dedicated to the county use, shall be maintained in the same manner as its own county owned or controlled property.

**Sec. 467B.8. Conservation Commissioners.** In counties where soil conservation districts exist the commissioners in said county shall be responsible for the inspection of all flood and erosion control structures built on private land under easement to the county; shall furnish such technical assistance as they may have available in making estimates of needed repairs without cost to the county, and shall report any needed repair and the nature thereof to the county board of supervisors.

**Sec. 467B.9. Tax.** The county board of supervisors may annually levy a tax not to exceed six and three-fourths cents per thousand dollars of assessed value of all agricultural lands in the county, the same to be used to acquire land or rights or interests therein by purchase or condemnation, and for repair, alteration, maintenance, and operation of the present and future works of improvement built on lands under the control or jurisdiction of the county, as provided for in this chapter.

**Sec. 467B.10. Assumption of Obligations.** This chapter contemplates that actual direction of the project, or projects, and the actual work done in connection therewith, will be assumed by the soil conservation district, subdistrict of a soil conservation district, conservancy district, or by the federal government and that the county or other state subdivisions or instrumentalities jointly will meet the obligation required for federal co-operation and may make proper commitment for the care and maintenance of the project after its completion for the general welfare of the public and residents of the respective counties.

**Sec. 467B.11. Highway Law Applicable.** The counties in maintaining the structures or improvements made under such project shall do so in a like manner and under like procedure as that used in the maintenance of its highways. Any co-operative agreements with other state subdivisions or instrumentalities shall conform with such an agreement as to the proportion of maintenance cost.

**Sec. 467B.12. Payments From Federal Government.** Whenever there shall be payable by the federal government to counties or school districts of the state any sums of money because of the fact that such school districts or counties are entitled to a share of the receipts from the operation of the federal government of flood control projects within any county of the state, such payments shall be payable to the county treasurer of any county in which such payments become due.

**Sec. 467B.13. Allocation to Secondary Road Funds.** Upon receipt of any such payments or payment by the county treasurer twenty-five percent of such amount shall be credited to the secondary road fund of the counties which are principally affected by the construction of such federal flood control projects, and the board of supervisors shall determine which roads of the county are deemed to be principally



affected and the amounts which shall be expended from these funds derived from the federal government on such roads.

**Sec. 467B.14. Allocation.** Sixty-five percent of any such payments or payment received from the federal government shall be distributed to the general fund of the school districts of the county after the county auditor has determined the districts which are principally affected by the federal flood control project involved in an amount deemed to be the equitable share of each such district and the amount allocated to each school district shall be paid over to the treasurer of such school district.

The county auditor shall certify to the executive council of the state the amounts allocated to each school district in the previous year, on January second of the following year. The executive council of the state shall deduct this amount from any tax free land reimbursement claim filed that year under Section 284.4; except that in no case shall the deduction result in an amount less than the total of the tax free land reimbursement plus any benefits payable to the school district other than the amounts specified in this paragraph. The remaining ten percent of any such payment received by the county treasurer from the federal government, or so much thereof as may be deemed necessary by the board of supervisors, shall be allocated to the local fire departments of the unincorporated villages, townships and cities of the county which are principally affected by the federal flood control project involved, to be paid and prorated among them as determined by the board of supervisors. If the funds prorated to local fire departments in any county are less than ten percent of the total county share of such federal payments for any year, the amount which exceeds such prorations shall revert back to and be divided equally between the secondary road fund and the local school district fund.

**Sec. 467B.15. Taxes Cancelled.** The treasurer of any county wherein is situated any land acquired by the federal government for flood control projects is hereby authorized to cancel any taxes or tax assessments against any such land so acquired where the tax has been extended but has not become a lien thereon at the time of the acquisition thereof.

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#### CHAPTER 467C — SOIL CONSERVATION AND FLOOD CONTROL DISTRICTS

**Sec. 467C.1. Presumption of Benefit.** The conservation of the soil resources of the state of Iowa, the proper control of water resources of the state and the prevention of damages to property and lands through the control of floods, the drainage of surface waters or the protection lands from overflow shall be presumed to be a public benefit and conducive to the public health, convenience and welfare and essential to the economic well-being of the state.

**Sec. 467C.2. Board of Supervisors to Establish Districts — Strip Coal Mining.** The board of supervisors of any county shall have jurisdiction, power and authority at any regular, special or adjourned session to establish, subject to the provisions of this chapter, districts having for their purpose soil conservation and the control of flood waters and cause to be constructed as hereinafter provided, such improvements and facilities as shall be deemed essential for the accomplishment of the purpose of soil conservation and flood control. Such board shall also have jurisdiction, power and authority at any regular, special or adjourned session to establish, in the same manner that the districts hereinabove referred to are established, districts having for their purpose soil conservation in mining areas within the county, and provide that anyone engaged in removing the surface soil over any bed or strata of coal in such district for the purpose of obtaining such coal shall replace the surface soil as nearly as practicable to its original position, and provided that, upon abandonment of such removal operation, all surface soil shall be so replaced. The section shall apply only to surface soil



so removed after July 4, 1949 and then only if it is essential for the accomplishment of the purpose of soil conservation and flood control within the purview of this chapter.

**Sec. 467C.3. Combination of Functions.** Such districts shall have the power to combine in their functions activities affecting soil conservation, flood control and drainage, or any of these objects, singly or in combination with another.

**Sec. 467C.4. Old Districts Combined.** If any levee or drainage district or improvement established either by legal proceedings or by private parties shall desire to include in the activities of such soil conservation or flood control projects, the board upon petition, as for the establishment of an original levee or drainage district, shall establish a new district covering and including such old district and improvement together with any additional lands deemed necessary. All outstanding indebtedness of the old levee or drainage district shall be assessed only against the lands included therein.

**Sec. 467C.5. Approval of Commissioners.** No district shall be established by any board of supervisors under this chapter unless the organization of such district is approved by the commissioners of any soil conservation district established under the provisions of chapter 467A and which is included all or in part within such district, nor shall any such district be established without the approval of the state conservation commission and the Iowa natural resources council.

**Sec. 467C.6. Chapters Made Applicable.** In the organization, operation and financing of districts established under this chapter, the provisions of chapters 455 and 456 to 467, inclusive, shall apply.

Wherever any of the provisions of said chapters refer to the word "drainage", the word shall be deemed to include in its meaning soil erosion and flood control or any combination of drainage, flood control and soil erosion control. The term "drainage district" shall be considered to include districts having as their purpose soil conservancy or flood control or any combination thereof, and the words "drainage certificates" or "drainage bonds" shall be deemed to include certificates or bonds issued in behalf of any district organized under the provisions of this chapter, and any procedure provided by these chapters in connection with the organization, financing and operation of any drainage district shall be applicable to the organization, financing and operation of districts organized under this chapter.

## CHAPTER 467D — CONSERVANCY DISTRICTS

**Sec. 467D.1. Policy.** It is hereby declared to be the policy of the state of Iowa and the objectives of this chapter to preserve and protect the public interest in the soil and water resources of this state for future generations, and for this purpose to encourage, promote, facilitate, and where such public interest requires, to mandate the conservation and proper control and use of the soil and water resources of this state, by measures including but not limited to the control of floods, the control of erosion by water or by wind, the preservation of the quantity and quality of water for its optimum use for agricultural, irrigation, recreational, industrial, and domestic purposes, all of which shall be presumed conducive to the public health, convenience and welfare, both present and prospective.

**Sec. 467D.2. Definitions.** As used in this chapter, unless the context otherwise requires:

1. "Conservancy district" means one of the six conservancy districts established by section 467D.3.



2. "Board" means the body designated by section 467D.4 to administer each of the conservancy districts.
3. "Council" means the Iowa natural resources council.
4. "Internal improvement" includes, but it is not limited to, dams or other water impoundment structures, levees, ditches, or other artificial watercourses, tile lines, or any other physical structure constructed or improved by a conservancy district in furtherance of the objectives of this chapter.
5. "Department" or "department of soil conservation" means the agency established by section 467A.4.
6. "Committee" or "state soil conservation committee" means the committee established by section 467A.4

#### **CHAPTER 468 — DRAINAGE OF MINERAL LANDS AND MINES**

Repealed by 66GA, ch. 1056, section 45.

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#### **TAX FREE**

**Sec. 427.2. Roads and Drainage Right-of-Ways.** Real estate occupied as a public road, and right-of-ways for established public levees and right-of-ways for established, open, public drainage improvements shall not be taxed.



# INDEX

	Sec. No.	Page
<b>ALTERNATE METHOD OF TAXATION FOR WATERSHED PROTECTION AND FLOOD PREVENTION</b>		
Agreement by fifty percent of landowners	467A.23	206
Assessment for improvements	467A.24	206
Report of appraisers	467A.25	206
Hearing	467A.26	206
Determination by board	467A.27	206
Appeal	467A.28	207
Inter-county sub-districts	467A.29	207
Notice of Appeal	467A.30	207
Petition filed	467A.31	207
Assessment certified	467A.32	207
Assessments transmitted	467A.33	207
Payment to county treasurer	467A.34	207
Installments	467A.35	208
Option by appellant	467A.36	208
Status of classification	467A.37	208
New classification	467A.38	208
Benefit of whole sub-district	467A.39	208
Compensation of appraisers	467A.40	208
Election by previously organized sub-districts	467A.41	209
Soil and water conservation practice	467A.42	209
Duty of property owners	467A.43	209
Rules by commissioners — scope	467A.44	210
Submission of rules to committee — hearing	467A.45	210
Conduct of hearing	467A.46	211
Inspection of land on complaint	467A.47	211
Application for public cost-sharing funds	467A.48	211
Petition for court order	467A.49	212
Burden — court order	467A.50	212
Entering on land	467A.51	213
Information on situation by district board	467A.52	213
Co-operation with other agencies	467A.53	213
<b>BOARD OF COUNTY DRAINAGE ADMINISTRATORS</b>		
Administrators appointed	455.219	130
Administrator areas	455.220	130
Compensation	455.221	130
How paid	455.222	131
Conservancy Districts	455.223	131
<b>BONDS</b>		
Drainage refunding	463.1-463.28	184
<b>CEMETERIES</b>		
Road through cemetery	306.20	10
<b>CHANGES IN ROADS, STREAMS, OR DRY RUNS</b>		
Changes for safety, economy, utility	306.27	12
Appraisers	306.28	12
Notice	306.29	12
Service of notice	306.30	13
Qualification and assessment	306.31	13
Hearing — adjournment	306.32	13
Hearing on objections	306.33	13
Hearing on claims for damages	306.34	13
Appeals	306.35	13
Damages on appeal — rescission of order	306.36	13
Tender of damages	306.37	13
Rental of acquired property pending use	306.38	14
Flooding highways — federal water resources projects	306.39	14
Easements conveyed	306.40	14
Temporary closing for construction	306.41	14

	Sec. No.	Page
<b>CONTROLLED-ACCESS HIGHWAYS Chapter 306A</b>		
Declaration of policy	306A.1	14
Definition of controlled-access facility	306A.2	15
Authority to establish controlled-access facilities	306A.3	15
Design of controlled-access facility	306A.4	15
Acquisition of property and property rights	306A.5	15
New and existing facilities — grade crossing eliminations	306A.6	16
Authority of local units to consent	306A.7	16
Local service roads	306A.8	16
<b>CONVERTING INTRA-COUNTY DISTRICTS INTO INTER-COUNTY DISTRICT Chapter 458</b>		
Intra-county districts converted into inter-county district	458.1	169
Benefited land only included	458.2	169
Appeal by land owner	458.3	169
Procedure on appeal	458.4	170
Appeal by trustee or boards	458.5	170
<b>DETOUR MARKINGS FOR MUNICIPALITIES</b>		
Lateral or detour routes	313.43	59
Standard marking required	313.44	60
Cost	313.45	60
<b>DISSOLUTION OF DRAINAGE DISTRICTS — Chapter 456</b>		
Jurisdiction to abandon and dissolve	456.1	161
Notice of hearing	456.2	162
Hearing on petition	456.3	162
Appeal	456.4	162
Expense — refund	456.5	162
Abandonment of rights-of-way	456.6	163
<b>DRAINAGE ASSOCIATIONS Chapter 455</b>		
Membership in National Drainage Association	455.187	121
Membership fee	455.188	121
Other associations	455.189	121
Receivership authorized	455.190	121
Hearing and notice thereof	455.191	121
Appointment — grounds	455.192	121
Bond	455.193	121
Avoidance of receivership	455.194	122
Preference in leasing	455.195	122
Rents — application of	455.196	122
Land classification and assessment in district	455.197	122
Warrants not paid for want of funds	455.198	124
Easements through a drainage dist.	455.199	125
Agreements with outside owners or other districts	455.200	125
Public improvements which divide a district — Procedure	455.201	126
<b>DRAINAGE OF COAL AND MINERAL LANDS AND MINES Chapter 468</b>		
Drainage through lands of another	468.1	218
Lead or zinc bearing lands	468.2	218
Setting apart compensation	468.3	218
Failure to pay compensation	468.4	218
Notice to smelters — effect	468.5	218
Right of way	468.6	218
Condemnation	468.7	218
Limitation of provisions	468.8	218
Interpretation of codification act	468.9	218



# INDEX

	Sec. No.	Page		Sec. No.	Page
<b>DRAINAGE DISTRICTS IN CONNECTION WITH UNITED STATES LEVEES</b>					
<b>Chapter 466</b>					
United States levees — co-operation of board	466.1	193	Time and manner of appeal	463.8	185
Manner of co-operation	466.2	193	Maximum extension	463.9	185
Report of engineer — payment authorized	466.3	193	Form of bonds	463.10	185
Costs assessed	466.4	193	Numbering, signing and attestation	463.11	185
Annual installments	466.5	193	Resolution required	463.12	185
Collection of tax	466.6	194	Record of resolution	463.13	186
Cost of maintaining	466.7	194	Record of bonds	463.14	186
Laws applicable	466.8	194	Liability of treasurer — reports	463.15	186
<b>DRAINAGE DISTRICTS EMBRACING PART OR WHOLE OF CITY</b>			Sales, exchange and cancellation	463.16	186
<b>Chapter 459</b>			Redemption from tax sale	463.17	186
Authority to include city	459.1	170	Effect of extension	463.18	186
Inclusion of city — notice	459.2	170	Additional assessments	463.19	187
Assessments — notice	459.3	170	Applicability of funds	463.20	187
Objections — appeal	459.4	170	Trust fund	463.21	187
Assessments — interest	459.5	170	Liens unimpaired	463.22	187
Bonds, certificates and waivers	459.6	170	Limitation of action	463.23	187
Funding bonds	459.7	170	Void bonds or assessments	463.24	187
Jurisdiction relinquished	459.8	170	Interpretative clause	463.25	187
Request for relinquishment	459.9	171	Composition with creditors — federal loan	463.26	187
Duty to relinquish	459.10	171	Refinancing powers	463.27	187
Jurisdiction of municipality	459.11	171	Report and hearing — appeal	463.28	188
City council to control district	459.12	171	<b>ENVIRONMENTAL QUALITY</b>		
<b>DRAINAGE AND LEVEE DISTRICTS WITH PUMPING STATIONS</b>			<b>Chapter 455B</b>		
<b>Chapter 461</b>			Definitions	455B.1	145
Authorization	461.1	173	Department created	455B.2	145
Petition — procedure	461.2	173	Commission within department	455B.4	145
Additional pumping station	461.3	173	<b>Division II</b>		
Transfer of pumps	461.4	173	<b>Air Quality Commission</b>		
Costs	461.5	173	Definitions	455B.10	147
Dividing districts	461.6	174	Duties	455B.12	147
Notice — publication	461.7	174	Executive director	455B.13	149
Hearing — jurisdiction of divided districts	461.8	174	Assistance on demand	455B.15	150
Division in other cases	461.9	174	Local control program	455B.23	150
Assessment not affected — maintenance tax	461.10	174	Acceptance of local program	455B.24	151
Election and apportionment of trustees	461.11	174	Civil action for compliance	455B.25	152
Settling basin — condemnation	461.12	174	Failure — procedure	455B.26	152
Funding bonds	461.13	175	Fees prohibited	455B.27	152
Form of bonds	461.14	175	Other provisions not affected	455B.28	152
Formal execution	461.15	175	Prior rules	455B.29	152
Resolution — requisites — record	461.16	175	<b>Division III</b>		
Registration	461.17	175	<b>Water Quality Commission</b>		
Liability of treasurer — reports	461.18	176	Definitions	455B.30	152
Sale — application of proceeds	461.19	176	Executive director duties	455B.33	154
Levy	461.20	176	Data from departments	455B.47	155
Scope of act	461.21	176	<b>Part 2. Water Treatment</b>		
Funds available to pay bonds	461.22	176	Definitions	455B.50	156
Limitation of actions	461.23	176	Director's duties	455B.51	156
Bankruptcy proceedings	461.24	176	Competent operator required	455B.63	156
Chapter applicable to districts with pumping stations	461.25	177	Misdemeanor	455B.64	156
Construction near levee prohibited	461.26	177	<b>Part 3. Sewage Works Construction</b>		
Penalty	461.27	177	Fund	455B.67	157
Action to restrain or abate	461.28	177	Grants of assistance	455B.68	157
Liability for damage	461.29	177	Contracts	455B.70	157
<b>DRAINAGE REFUNDING BONDS</b>			Review of contracts by attorney general	455B.72	158
<b>Chapter 463</b>			<b>Division IV</b>		
Refunding bonds	463.1	184	<b>Solid Waste Disposal Commission</b>		
Petition for refunding	463.2	184	<b>Part 1. Solid Waste</b>		
Sufficiency of petition — hearing	463.3	184	Definitions	455B.75	158
Notice	463.4	185	Duty of Cities and Counties	455B.76	159
Requirements of notice	463.5	185	Administrator's duties	455B.77	159
Extending payments of assessments	463.6	185	Rules established	455B.78	159
Appeal	463.7	185	Certification of plans by director	455B.79	159
			Plans filed	455B.80	160
			Tax levy	455B.81	160
			Dumping — where prohibited	455B.82	160
			<b>Part 3. Debris</b>		
			Definitions	455B.95	161
			Executive director's duties	455B.96	161
			Litter	455B.97	161
			Penalty	455B.98	161
			Other powers not affected	455B.99	161



# INDEX

	Sec. No.	Page
<b>ESTABLISHMENT, ALTERATION AND VACATION OF HIGHWAYS</b>		
<b>Chapter 306</b>		
Roads and streets .....	306.1	3
Definitions .....	306.2	4
Systems defined .....	306.3	4
Jurisdiction of systems .....	306.4	5
Continuity of systems in municipalities .....	306.5	6
Functional classification board .....	306.6	6
Functions changed or new roads added .....	306.7	7
Transfer of jurisdiction .....	306.8	7
Diagonal roads .....	306.9	8
Power to establish, alter or vacate .....	306.10	8
Hearing — place — date .....	306.11	8
Notice — service .....	306.12	8
Notice — requirements .....	306.13	8
Objections — claims for damages .....	306.14	8
Purchase and sale of property .....	306.15	9
Final order .....	306.16	9
Appeal .....	306.17	9
Establishment .....	306.18	9
Purchase or condemnation of right-of-way—procedure—closing driveway .....	306.19	9
Cemeteries .....	306.20	10
Plans, plats and field notes filed .....	306.21	10
Sale of unused right-of-way .....	306.22	10
Notice — preference of sale .....	306.23	11
Conditions .....	306.24	11
Execution of conveyance .....	306.25	11
Payment of damages and right-of-way cost .....	306.26	11

<b>FARM-TO-MARKET ROAD LAWS</b>		
<b>Chapter 310</b>		
Definitions .....	310.1	38
Supervisors' agreement .....	310.2	38
Funds .....	310.3	38
Use of fund .....	310.4	38
Accounts by department .....	310.6	39
Treasurer's monthly statement .....	310.7	39
Quarterly statement to county engineer .....	310.8	39
Projects approved by department .....	310.9	39
Systems designated — additions .....	310.10	39
Participating county—funds received .....	310.11	39
Surveys, plans and estimate .....	310.13	39
Bids — Department or county supervisors .....	310.14	39
Claims charged to county allotment .....	310.16	40
Partial payments during construction .....	310.18	40
Supervision and inspection of work .....	310.19	40
Supervisors' resolution to state treasurer .....	310.20	40
Right-of-way — how acquired .....	310.22	40
Period of allocation — diversion .....	310.27	40
Engineering and other expense .....	310.28	41
Maintenance by county .....	310.29	41
Widening roads — prohibition .....	310.32	41
Secondary road research fund .....	310.34	41
Use of fund .....	310.35	41
Report to governor .....	310.36	42

<b>FEDERAL FLOOD CONTROL CO-OPERATION</b>		
<b>Chapter 455</b>		
Plan of improvement .....	455.202	126
Agreement in advance .....	455.203	127
Engineer appointed .....	455.204	127
Engineer's report .....	455.205	127
Supplemental reports .....	455.206	127
Notice of hearing .....	455.207	128
Form of notice .....	455.208	128
Amendment — new parties .....	455.209	128
Entry of order — effect .....	455.210	128
Appraisal .....	455.211	129
Assessment of benefits .....	455.212	129
Installments — warrants .....	455.213	129
Subsequent levees .....	455.214	129

Applicable statutes .....	455.215	129
Scope of plan .....	455.216	129
Districts under trustees .....	455.217	130
Occupancy and use permitted — assessments paid .....	455.218	130

## FLOOD AND EROSION CONTROL Chapter 467B

Authority of board .....	467B.1	214
Federal aid .....	467B.2	214
Co-operation .....	467B.3	214
Structures or levees .....	467B.4	214
Maintenance cost .....	467B.5	214
Estimate .....	467B.6	215
Projects on private land .....	467B.7	215
Conservation commissioners .....	467B.8	215
Tax .....	467B.9	215
Assumption of obligations .....	467B.10	215
Highway law applicable .....	467B.11	215
Payments from Federal government .....	467B.12	215
Allocation to secondary road construction fund .....	467B.13	215
Allocation .....	467B.14	216
Taxes cancelled .....	467B.15	216

## GENERAL ADMINISTRATIVE PROVISIONS FOR HIGHWAYS Chapter 314

Basis for awarding contracts .....	314.1	74
Interest in contracts prohibited .....	314.2	74
Claims — approval and payment .....	314.3	74
Partial payment .....	314.4	75
Extensions in certain cities .....	314.5	75
Extensions in certain cities .....	314.5	75
Highways along city limits .....	314.6	75
Trees — ingress or egress — drainage .....	314.7	75
Government markers preserved .....	314.8	75
Entering private land .....	314.9	76
State line highways .....	314.10	76
Use of bridges by utility companies .....	314.11	76
Borrow pits — topsoil preserved .....	314.12	76
Definitions .....	314.13	76

## HEDGES ALONG HIGHWAYS Chapter 318

Chapter 318 — Repealed by 67GA. ....	81
--------------------------------------	----

## HIGHWAY DRAINAGE DISTRICTS Chapter 460

Establishment .....	460.1	171
Powers .....	460.2	171
Initiation without petition .....	460.3	171
Engineer .....	460.4	172
Survey and report .....	460.5	172
Assessment — report .....	460.6	172
Advanced payments .....	460.7	172
Payment from road fund .....	460.8	172
Dismissal — costs .....	460.9	172
Condemnation of right-of-way .....	460.10	172
Laws applicable .....	460.11	173
Removal of trees from highway .....	460.12	173
Trees outside of highways .....	460.13	173

## HIGHWAYS FOR SIDEWALKS, SERVICE MAINS OR CATTLEWAYS Chapter 320

Construction of sidewalks in certain school districts .....	320.1	84
Assessment of costs .....	320.2	84
Repairs .....	320.3	84
Water and gas mains, sidewalks and cattleways .....	320.4	84
Term of grant .....	320.5	84
Conditions — damages .....	320.6	85
Failure to maintain .....	320.7	85
Penalty .....	320.8	85



# INDEX

	Sec. No.	Page
<b>HIGHWAY FOR WATER POWER IMPROVEMENTS</b>		
Chapter 470 — Repealed by 63rd G. A., Ch. 1030		

<b>INDIVIDUAL DRAINAGE RIGHTS</b>		
<b>Chapter 465</b>		
Drainage through lands of others		
— application	465.1	188
Notice of hearing — service	465.2	188
Service upon non-resident	465.3	188
Service on omitted parties —		
adjournment	465.4	189
Claims for damages — waiver	465.5	189
Hearing — sufficiency of application		
— damages	465.6	189
Shall locate when — specifications	465.7	189
Findings — record	465.8	189
Appeal — notice	465.9	189
Transcript	465.10	189
Appeal — how tried — costs	465.11	189
Parties — judgments — orders	465.12	190
Costs and damages — payment	465.13	190
Construction	465.14	190
Construction through railroad property	465.15	190
Deposit	465.16	190
Failure to construct	465.17	190
Repairs	465.18	190
Obstruction	465.19	190
Drains on abutting boundary lines	465.20	190
Boundary between two counties	465.21	191
Drainage in course of		
natural drainage	465.22	191
Drainage connection with highway	465.23	191
Private drainage system — record	465.24	191
Drainage plat book	465.25	191
Record book and index	465.26	191
Original plat filed	465.27	192
Record not part of title	465.28	192
Fees for record and copies	465.29	192
Lost records — hearing	465.30	192
Mutual drains — establishment		
as district	465.31	192
Appeal	465.32	192
Record filed with established district	465.33	192
Lost or incomplete records	465.34	192
Petition to combine with		
established districts	465.35	193

<b>INTER-COUNTY LEVEE OR DRAINAGE DISTRICTS — Chapter 457</b>		
Petition and bond	457.1	165
Commissioners	457.2	165
Examination and report	457.3	165
Duty of engineer	457.4	165
Notice	457.5	165
Contents of notice — service	457.6	166
Claims for damages—filing—waiver	457.7	166
Organizations — procedure —		
adjournment	457.8	166
Tentative adoption of plans	457.9	166
Appraisers	457.10	166
Duty of appraisers — procedure	457.11	166
Meetings of joint boards	457.12	166
Equalizing voting power	457.13	166
Commissioners to classify and assess	457.14	167
Notice and service thereof—objection	457.15	167
Levies — certificates and bonds	457.16	167
Bonds or proceeds made available	457.17	167
Supervising engineer	457.18	167
Duty of engineer	457.19	167
Notice of letting work —		
applicable procedure	457.20	167
Contracts	457.21	168
Monthly estimate — payment	457.22	168
Final settlement	457.23	168
Failure of board to act	457.24	168
Transfer to district court	457.25	168

	Sec. No.	Page
Transcript, docket and trial	457.26	168
Decree	457.27	168
Law applicable	457.28	169
Records of inter-county districts	457.29	169
County with largest acreage		
to keep funds	457.30	169

<b>INTER-STATE BRIDGES</b>		
<b>Chapter 313A</b>		
Definitions	313A.1	61
Bridges to be controlled by		
department	313A.2	62
Toll bridges constructed		
over boundary rivers	313A.3	62
Investigation of feasibility	313A.4	62
Acquiring existing bridge — bonds	313A.5	63
Rules adopted — financial statements	313A.6	63
Resolution of public interest and		
necessity — revenue bonds	313A.7	63
Right-of-way secured	313A.8	64
Consent to cross state property	313A.9	64
Resolution precedent to action	313A.10	64
Payment from available funds	313A.11	65
Revenue bonds	313A.12	65
Sale and exchange or		
retirement of bonds	313A.13	66
Proceeds to trust fund	313A.14	67
Toll revenue fund	313A.15	68
Funds transferred to place		
of payment	313A.16	68
Warrants for payment	313A.17	68
Depositories or paying agents	313A.18	68
Expenses of department	313A.19	69
No diminution of duties		
while bonds outstanding	313A.20	69
Insurance or indemnity bond	313A.21	69
Toll charges fixed by department	313A.22	69
Political subdivision may aid	313A.23	70
Sale of excess land to political		
subdivision	313A.24	70
Sale to public	313A.25	70
Acceptance or rejection of bids	313A.26	70
Franchise for use of bridge	313A.27	71
Deposit of proceeds	313A.28	71
Tolls imposed for improving—bridges	313A.29	71
Bridges as part of primary roads	313A.30	71
Revenue bonds	313A.31	71
Operation and control of bridge	313A.32	72
No obligation of state	313A.33	72
Agreement with other states	313A.34	72
General obligation bonds	313A.35	73
Purposes of power granted	313A.36	73
Failure to pay toll — penalty	313A.37	73
Independent of any other law	313A.38	74
Construction	313A.39	74

<b>INTER-STATE DRAINAGE DISTRICTS</b>		
<b>Chapter 467</b>		
Co-operation — procedure	467.1	194
Agreement as to costs	467.2	195
Contracts let by joint agreement	467.3	195
Separate contracts	467.4	195
Conditions precedent	467.5	195
Assessments, bonds, and costs		
— limitation	467.6	195

<b>IOWA NATURAL RESOURCES COUNCIL — Chapter 455A</b>		
Definition	455A.1	131
Declaration of policy	455A.2	132
Creation	455A.3	133
Appointment	455A.4	133
Vacancies	455A.5	133
Removal	455A.6	133
Compensation and expenses	455A.7	133
Organization, meetings and rules	455A.8	134
Director of Water Commissioners	455A.9	134
Employees	455A.10	134



# INDEX

	Sec. No.	Page
Bonds	455A.11	134
Warrants	455A.12	134
Reports, accounting and recommendations	455A.13	135
Department co-operation	455A.14	135
Eminent domain	455A.15	135
Title to lands and other property	455A.16	136
Functions and duties	455A.17	136
Jurisdiction — diversion of water	455A.18	137
Procedure to secure permit	455A.19	137
Hearing — appeal	455A.20	139
Priority of permits	455A.21	140
Permit for beneficial use	455A.22	140
Pollution control protected	455A.23	140
Navigability preserved	455A.24	140
When permit required	455A.25	140
Taking water prohibited	455A.26	141
Rights reserved	455A.27	141
Modifications or cancellation of permits	455A.28	141
Termination of permit	455A.29	141
Disposal of permit	455A.30	141
Power of eminent domain	455A.31	141
Unauthorized depleting uses	455A.32	142
Unlawful acts — powers of council	455A.33	142
Additional powers—licensing of dams	455A.34	143
Council establish flood plains	455A.35	143
Flood control works co-ordinated	455A.36	144
Appeal	455A.37	144
Executive prerogatives	455A.38	144
Penalties	455A.39	144
Co-ordination with conservancy district	455A.40	144

## LEVEE AND DRAINAGE DISTRICTS AND IMPROVEMENTS

### Chapter 455

Jurisdiction to establish	455.1	86
Presumption	455.2	86
"Levee" defined — bank protection	455.3	86
Definition of terms	455.4	86
General rule for location	455.5	86
Location across railroad	455.6	86
Number or petitioners required	455.7	87
Request by nonpetitioners	455.8	87
Petition	455.9	87
Bond	455.10	87
Additional bond	455.11	87
Engineer — bond	455.12	87
Compensation	455.13	87
Discharge	455.14	88
Assistants	455.15	88
Record of work	455.16	88
Survey	455.17	88
Report	455.18	88
Procedure on report	455.19	88
Notice of hearing	455.20	89
Service by publication — proof	455.21	89
Service on agent	455.22	89
Personal service	455.23	90
Waiver of notice	455.24	90
Waiver of objections and damages	455.25	90
Adjournment for service — jurisdiction retained	455.26	90
Hearing of petition — dismissal	455.27	90
Establishment—further investigation	455.28	90
Settling basins — purchase or lease of land	455.29	91
Appraisers	455.30	91
Assessment — report — adjournment — other appraisers	455.31	91
Award by board	455.32	91
Dismissal or establishment	455.33	91
Dismissal on remonstrance	455.34	91
Dissolution	455.35	92
Permanent survey — plat and profile	455.36	92
Paying or securing damages	455.37	92
Division of improvement	455.38	92

	Sec. No.	Page
Supervising engineer — bond	455.39	92
Advertisement for bids	455.40	92
Bids — letting of work	455.41	93
Manner of making bids — deposit	455.42	93
Performance bond — return of check	455.43	93
Contracts	455.44	93
Commissioners to classify and assess	455.45	94
Duties — time for performance — scale of benefits	455.46	94
Rules of classification	455.47	94
Assessment for lateral ditches, etc.	455.48	94
Railroad property collection	455.49	95
Public highways	455.50	95
Report of Commissioners	455.51	95
Notice of hearing	455.52	96
Hearing and determination	455.53	96
Evidence — conclusive presumption	455.54	96
Notice of increased assessment	455.55	96
Classification as basis for future assessments	455.56	96
Levy — interest	455.57	97
Lien of tax	455.58	97
Levy for deficiency	455.59	98
Record of drainage taxes	455.60	98
Funds — disbursements — interest	455.61	98
Assessments—maturity and collection	455.62	98
Payment before bonds or certificates issued	455.63	98
Installment payments — waiver	455.64	98
Installment payments after appeal	455.65	99
Notice of half and full completion	455.66	99
Lien of deferred installments	455.67	99
Surplus funds	455.68	99
Change of conditions, etc.	455.69	100
Subdrainage district	455.70	100
Presumption — jurisdiction	455.71	100
Reclassification	455.72	100
Bids required	455.73	101
Procedure governing reclassification	455.74	101
Drainage warrant received for assessments	455.75	101
Bonds received for assessments	455.76	101
Installment assessments—interest-bearing warrants—improvement certificates	455.77	102
Form, negotiability and effect	455.78	102
Interest — place of payment	455.79	102
Sale at par — right to pay	455.80	102
Drainage bonds	455.81	102
Form	455.82	103
Amount — interest — maturity	455.83	103
Maturity—interest—highway benefits	455.84	103
Sale or application at par—premium	455.86	103
Deficiency levy — additional bonds	455.87	103
Funding or refunding indebtedness	455.88	103
Record of bonds	455.89	103
Assessments payable in cash	455.90	103
Payment before bond issued	455.91	103
Appeals	455.92	104
Appeals in inter-county districts	455.93	104
Time and manner	455.94	104
Transcript	455.95	104
Petition — docket fee — waiver — dismissal	455.96	104
Pleadings on appeal	455.97	104
Proper parties—employment of counsel	455.98	104
Plaintiffs and defendants	455.99	104
Right of board and district to sue	455.100	104
Trial on appeal — consolidation	455.101	104
Conclusive presumption on appeal	455.102	105
Order as to damages — duty of clerk	455.103	105
Costs	455.104	105
Decree as to establishing district or including lands	455.105	105
Appeal as exclusive remedy — non appellants	455.106	105
Reversal by court — rescission by board	455.107	105
Setting aside establishment — procedure	455.108	105



# INDEX

	Sec. No.	Page
Reassessments to cure illegality	455.109	105
Monthly estimate — payment	455.110	106
Completion of work—report—notice	455.111	106
Objections	455.112	106
Final settlement	455.113	106
Abandonment of work	455.114	107
New contract — suit on bond	455.115	107
Construction on or along highway	455.116	107
Establishment of highways	455.117	107
Bridges	455.118	107
Construction across railroad	455.119	107
Duty to construct	455.120	107
Bridges at natural waterway — cost	455.121	108
Construction when company refuses	455.122	108
Cost of construction across rail way	455.123	108
Passing drainage equipment		
across railway	455.124	108
Passage across other public utilities	455.125	108
Failure to comply	455.126	108
Expenses attending passage	455.127	108
Annexation of additional lands	455.128	108
Proceedings on report	455.129	109
Levy for annexed lands	455.130	109
Use of former and abandoned surveys	455.131	110
Unsuccessful procedure —		
re-establishment	455.132	110
New district including old district	455.133	110
Credit for old improvement	455.134	110
Repair	455.135	110
Payment	455.136	112
Impounding areas and erosion		
control devices	455.137	112
Revenues used for operation,		
maintenance and construction	455.138	113
City may discharge treated sewage	455.139	113
Reclassification required	455.141	113
Improvement of common outlet	455.142	113
Commission to apportion benefits	455.143	113
Time of report	455.144	114
Report and review	455.145	114
Levy under original classification	455.146	114
Levy under reclassification	455.147	114
Removal of obstructions	455.148	114
Trees and hedges	455.149	114
Outlet for lateral drains —		
specifications	455.150	115
Subdistricts in inter-county districts	455.151	115
District by mutual agreement —		
presumption	455.152	115
What the agreement shall contain	455.153	115
Board to establish	455.154	115
Procedure	455.155	116
Outlet in adjoining county	455.156	116
Outlet in another state	455.157	116
Tax	455.158	116
Injuring or diverting — damages	455.159	116
Obstructing or damaging	455.160	116
Nuisance — abatement	455.161	117
Actions — settlement — counsel	455.162	117
Waste banks — private use	455.163	117
Preliminary expenses — how paid	455.164	117
Additional help for auditor	455.165	117
Employment of counsel	455.166	118
Compensation of appraisers	455.167	118
Payment	455.169	118
Purchase at tax sale	455.170	118
Tax deed — sale or lease	455.171	118
Purchase of tax certificates	455.172	118
Terms of redemption	455.173	119
Payment — assignment of certificate	455.174	119
Funds	455.175	119
Lease or sale of land	455.176	119
Duty of treasurer	455.177	119
Purchase by bond holder	455.178	119
Voting power	455.179	120
Inspection of improvement	455.180	120
Watchmen	455.181	120
Construction of drainage laws	455.182	120
Technical defects	455.183	120
Conclusive presumption of legality	455.184	120
Drainage record	455.185	120
Records belong to district	455.186	121

## MANAGEMENT OF DRAINAGE OR LEVEE DISTRICTS BY TRUSTEES Chapter 462

	Sec. No.	Page
Trustees authorized	462.1	177
Petition	462.2	178
Election	462.3	178
Inter-county district	462.4	178
Election districts	462.5	178
Record and plat of election districts	462.6	178
Eligibility of trustees	462.7	178
Notice of election	462.8	178
Assessment to determine right to vote	462.9	178
New owner entitled to vote	462.10	179
Qualification of voters	462.11	179
Votes determined by assessment	462.12	179
Vote by agent	462.13	180
Vote of minor or mentally ill	462.14	181
Ballots	462.15	181
Candidates voted for	462.16	181
Election— canvass of votes— returns	462.17	181
Canvass — certificate of election	462.18	181
Tenure of office	462.19	181
Levee and pumping station districts	462.20	181
Division of districts under		
trustee management	462.21	182
Elections — how conducted	462.22	182
Change of time	462.23	182
Vacancies	462.24	182
Bonds	462.25	182
Organization	462.26	182
Power and duties of trustees	462.27	182
Cost and expenses	462.28	183
Disbursement of funds	462.29	183
Certificates and bonds	462.30	183
Report to auditor	462.34	183
Compensation — statements required	462.35	183
Change to supervisor management	462.36	183
Petition — canvass	462.37	183
Remonstrance	462.38	184
When change effective	462.39	184
Final report of trustees	462.40	184
Management of supervisors	462.41	184

## OBSTRUCTIONS IN HIGHWAYS Chapter 319

Removal	319.1	82
Fences and electric transmission poles	319.2	82
Notice	319.3	82
Refusal to remove	319.4	82
New lines	319.5	82
Cost of removal — liability	319.6	82
Duty of road officers	319.7	82
Nuisance	319.8	82
Injunction to restrain obstruction	319.9	82
Billboards and signs	319.10	83
Enforcement	319.11	83
Billboards and signs prohibited	319.12	83
Right and duty to remove	319.13	83
Permit required	319.14	83
Definitions	319.15	84

## PRIMARY ROADS - IMPROVEMENTS OF Chapter 313

Federal and state co-operation	313.1	53
"Road Systems" defined	313.2	54
Primary road fund	313.3	54
Disbursement of fund	313.4	55
Biennial appropriation — budget	313.5	55
Accounts and records required	313.6	56
Monthly certification of funds	313.7	56
Improvement of primary systems	313.8	56
Surveys, plans and specifications	313.9	56
Bids — when not necessary	313.10	56
Supervision and inspection	313.12	56
Engineers — bonds	313.13	56
Claims	313.14	57
Payments of awards or judgments	313.16	57
Contingent fund	313.17	57
Use of contingent fund	313.18	57



# INDEX

	Sec. No.	Page
Audit of contingent claims	313.19	57
Auditor—appointment—bond—duties	313.20	57
Improvement in cities	313.21	57
Paving of whole street by department	313.22	58
Reimbursement by city	313.23	58
Separated by cities	313.24	58
Bridges, viaducts, etc. on municipal primary extensions	313.27	58
Temporary primary road detours	313.28	58
Detours located in city	313.29	59
Maintenance	313.36	59
Road equipment	313.37	59
Lateral or detour routes in cities	313.43	59
Standard markings required	313.44	60
Cost	313.45	60
Special designation for highways	313.58	60
Gift of bridges to state—acceptance	313.59	60
Indebtedness paid	313.60	60
Taxes forgiven	313.61	60
Department authority	313.62	60
Action by adjoining state	313.63	60
Financial statement annually	313.64	60
Approval of taxing bodies	313.65	61
Mississippi bridges purchased	313.66	61
Scenic and improvement fund	313.67	61

## RELOCATION OF PERSON DISPLACED BY HIGHWAY

### Chapter 316

Definitions	316.1	77
Effect upon property acquisition	316.2	77
Declaration of policy	316.3	78
Moving and related expenses	316.4	78
Replacement housing for homeowner	316.5	78
Replacement housing for tenants, etc.	316.6	79
Relocation assistance advisory services	316.7	79
Housing replacement by department as last resort	316.8	80
Rules adopted	316.9	80
Applicable to other than Federal aid highways	316.10	81
Acquisitions by other state agencies, etc.	316.11	81
Payments not to be considered income	316.12	81
Administration	316.13	81
Funding	316.14	81
Federal grants	316.15	81

## ROAD USE TAX FUND

### Chapter 312

Fund created	312.1	48
Allocations from fund	312.2	48
Apportionment to counties and cities	312.3	50
Treasurer's report to the Department of transportation	312.4	51
Division of farm-to-market road funds	312.5	51
Limitation on use of funds	312.6	52
Balance maintained in fund	312.7	52
Amana Colonies	312.8	52
Applicability of chapter	312.9	52
City street system map on file	312.10	52
Accounts of expenditures	312.11	52
Program submitted	312.12	52
(Repealed by 65th G. A.)	312.13	52
Cities to submit report	312.14	52
When funds not allocated	312.15	52
Definition	312.16	52

## SECONDARY ROADS

### Chapter 309

Secondary bridge system	309.3	27
Levy for construction and maintenance	309.7	27
Secondary road fund	309.8	28
General pledge	309.9	28
Consultation with township trustees	309.10	28
Systems abolished	309.11	28
Construction of terms	309.12	28

Duty of department	309.16	28
Engineer — term	309.17	28
Compensation	309.18	29
Adjacent counties joining in employment	309.19	29
Engineers — itemized account	309.20	29
Supervisors of construction and maintenance work	309.21	29
Construction program or project	309.22	29
Uniform and unified plan required	309.24	30
Material considered for farm-to-market roads	309.25	30
Provisional selection of roads	309.26	30
Report of engineer	309.27	30
Recommendations	309.28	30
Map required	309.29	30
Additional estimates	309.30	30
Record required	309.34	30
Surveys required	309.35	30
Nature of survey	309.36	30
Details of survey	309.37	30
Existing surveys	309.38	31
Contracts and specifications	309.39	31
Advertising and letting	309.40	31
Optional advertisement and letting	309.41	31
Approval of road contracts	309.42	31
Record of bids	309.43	31
Construction fund anticipated	309.46	32
Anticipatory resolution	309.47	32
Recitals	309.48	32
Consecutive numbering and payment	309.49	32
Execution	309.50	32
Taxation	309.51	32
Duty of treasurer	309.52	32
Registration of certificate holders	309.53	32
Registration of new holder	309.54	32
Terminating of interest	309.54	32
Surveys and reports	309.56	33
Action on bond — limitation	309.58	33
Advance payment of payrolls	309.61	33
Gravel beds	309.63	33
Use of Gravel beds	309.66	33
Repair and dragging	309.67	33
Inter-county highways	309.68	34
Enforcement of duty	309.69	34
Construction by department	309.70	34
Secondary road — payment	309.71	34
Bridges and culverts on city boundary line	309.73	34
Width of bridges and culverts	309.74	35
Definitions	309.75	35
Bridge specifications	309.79	35
Approval of contract	309.80	35
Record of plans	309.81	36
Record of final cost	309.82	36
Bridges over ditches	309.83	36
Bridges on county line roads	309.84	36
Bridges over state boundary line streams	309.85	36
Submission of question	309.86	36
Notice	309.87	36
Construction and maintenance	309.88	36
Levy — bond	309.89	36
Maintenance	309.91	37
Secondary road budget	309.93-309.96	37
Construction of law	309.97	38

## SECONDARY ROAD ASSESSMENT DISTRICTS

### Chapter 311

Power to establish	311.1	42
Width of district	311.2	42
Amount of assessment	311.3	42
County line road	311.4	42
Project in city	311.5	42
Petition — information required	311.6	42
Improvement by private funds	311.7	42
County engineer's report	311.8	43
Publicly owned real estate	311.9	44



# INDEX

	Sec. No.	Page
Estimate and apportionment — presumption	311.10	44
Hearing — notice	311.11	44
Publication of notice	311.12	45
Errors in notice or apportionment report	311.13	45
Appearance	311.14	45
Hearing — adjournment — order	311.15	45
Final hearing — assessment levied	311.16	45
Assessments over ten dollars — waiver	311.17	45
Assessment delinquent — penalties	311.18	46
Assessment ten dollars or less	311.19	46
Variation between estimated and actual cost	311.20	46
Procedures	311.21	46
Road graded and drained	311.22	46
Payment of construction costs	311.23	46
Appeal from assessment	311.24	46
Appeal docketed	311.25	46
Assessment certified to county treasurer	311.26	47
Each district separate unit	311.27	47
Certificates anticipating assessments	311.28	47
Sale of certificates	311.29	48
Certificates registered — payment	311.30	48
Previous assessments not invalidated	311.31	48

## SOIL CONSERVATION Chapter 467A

Short title	467A.1	195
Declaration of policy	467A.2	195
Definitions	467A.3	195
State soil conservation committee	467A.4	196
Creation of soil conservation districts	467A.5	198
Appointment, qualifications and tenure of commissioners	467A.6	199
Powers of districts and commissioners	467A.7	200
Co-operation between districts	467A.8	202
State agencies to co-operate	467A.9	202
Discontinuance of districts	467A.10	202
Report to governor	467A.11	203
Statement to comptroller	467A.12	203
Purpose of subdistrict	467A.13	203
Petition to form	467A.14	203
Notice of hearing	467A.15	204
Subdistricts in more than one district	467A.17	204
Authentication	467A.18	204
Governing body	467A.19	204
Special annual tax	467A.20	205
Condemnation by subdistrict	467A.21	205
General powers applicable	467A.22	205

## SOIL CONSERVATION AND FLOOD CONTROL DISTRICTS Chapter 467C

Presumption of benefit	467C.1	216
Board of supervisors to establish districts — strip coal mining	467C.2	216
Combination of functions	467C.3	217
Old districts combined	467C.4	217
Approval of commissioners	467C.5	217
Chapters made applicable	467C.6	217

## CONSERVANCY DISTRICTS Chapter 467D

Policy	467D.1	217
Definitions	467D.2	217

	Sec. No.	Page
<b>STATE LANDS</b>		
Occupancy and use permitted	455.218	130

## TAX LEVIES

Secondary road fund	309.8	28
Levy — bond	309.89	36
Drainage — levy interest	455.57	97
Drainage — deficiency	455.59	98
Drainage — additional bonds	455.87	103
Drainage — classifications	455.146	114
Drainage — re-classification	455.147	114
Drainage — inter-county	457.16	165

## TOWNSHIP TRUSTEES

Secondary road improvements—consulta- tion with township trustees	309.10	28
--	--------	----

## TRANSPORTATION COMMISSION Chapter 307A

Definition	307A.1	24
Duties	307A.2	24
Federal donations	307A.3	26
Federal appropriations	307A.4	26
State owned lands — assessment	307A.5	26
Aircraft maintenance revolving fund	307A.6	26
Materials and equipment revolving fund	307A.7	27
Longevity pay prohibited	307A.8	28

## TRANSPORTATION DEPARTMENT Chapter 307

Definition	307.1	16
Department of transportation	307.2	16
Transportation commission	307.3	17
Conflict of interest	307.4	17
Vacancies on commission	307.5	17
Compensation — commission members	307.6	17
Commission meetings	307.7	17
Expenses	307.8	17
Removal from office	307.9	17
Duties of commission	307.10	17
Director of transportation — qualification — salary	307.11	18
Duties of director	307.12	18
Reassignment of personnel	307.13	19
Divisions of department	307.14	19
Transportation regulation board	307.15	19
Vacancies on board	307.16	19
Compensation of board members	307.17	19
Duties of board members	307.18	20
Proceedings	307.19	20
Enforcement	307.20	20
Administration division	307.21	20
Planning division	307.22	21
General Counsel Division	307.23	21
Highway division	307.24	21
Public transportation division	307.25	21
Railroad transportation division	307.26	22
Transportation Regulation and safety	307.27	23
Prorating departmental costs	307.28	23







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