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Levee and Drainage Districts

Dear Reader:

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We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other CTAS website material.

Sincerely,

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Levee and Drainage Districts

Acts of 1909 Chapter 185

SECTION 1. That the County Court of any county in this State is hereby vested with the 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 to straighten, widen, deepen, or change any natural watercourse in such county, or provide for the same being done whenever the same will be of public utility or conducive to the public health or welfare and as hereby provided. The Court here vested with this jurisdiction and authority is the County Court held and presided over by the County Judge or Chairman, and not the Quarterly County Court, and all references in this Act to the County Court is to the court so held by the County Judge or Chairman, unless otherwise stated.

SECTION 2. That before any County Court shall establish a drainage or levee district, or any levee, ditch, drain, or watercourse improvement, as provided for in this Act, as petition, signed by one or more persons owning land that will be affected by or liable to be assessed for the expenses of the proposed improvement, in which the improvement is expected to be made, setting forth that any body or district of land in such county, described by metes and bounds or otherwise, so as to convey an intelligible description of such lands, is subject to overflow, or too wet for profitable cultivation, and that the public health or welfare will be promoted by draining, ditching, or leveeing the same, or by changing such watercourse, or by in part changing such watercourse by cutting across bends of the same and shortening its length, or by cleaning out its natural bed or deepening or enlarging such bed, or by giving such watercourse a new outlet, or any or all of these and similar things pertaining to the proposed improvement, and setting forth in said petition as near as may be the starting point, route and terminus, and lateral branches, if with proper prayer for purpose desired; and there shall be filed with said petition a bond, with good security, in such penal sum as the County Clerk may deem adequate, to be approved by him, and conditioned for the payment of all preliminary expenses till refunded, and of all costs and expenses incurred in the proceedings in case the County Court does not grant the prayer of the petition, or the petition is dismissed for any cause. The County Court may at any time deemed proper order said bond increased in penalty or insufficiency, (sic) and make all necessary orders to this end.

SECTION 3. That after such petition has been so filed and bond taken and approved, the County Court shall, at the first session thereafter, regular, special or adjourned (and may at a later session), appoint a disinterested and competent engineer and have placed in his hands a copy of said petition, and he shall proceed to examine the lands described in said petition, and any other lands that would be benefited by said improvement, or necessary in carrying out such improvement, and survey and locate such drain or drains, ditch or ditches, levee or levees, improvement or improvements, as may be practicable to carry out the purposes of the petition and which will be of public benefit or utility or conducive to the public health or welfare. He shall make return of and file his proceedings with the County Clerk, which returns shall set forth the starting point, the route, the terminus or termini of the ditch or ditches, drains, or other improvements, and the course and length of the same, approximately, through each tract of land as far as may be practicable, and the total length and the course and the elevation, as near as may be, of all lakes, ponds, and deep depressions in said district, and the fall obtainable across said district, and the boundary of the proposed district, and the description of each tract of land therein, as shown by the tax books, and the names of the owners thereof, as shown by the tax books, together with the probably (sic) cost of the improvement, and such other facts and recommendations as he may deem material.

The court may at any time recall the appointment of any engineer made under the provisions of this Act, if deemed advisable to do so, and appoint another to act in his place.

That the ditches and drains herein provided for shall be surveyed and located along the general course of the natural streams and watercourses, or in the general course of the natural drainage of the lands of said district, unless there should be some special and good reason why the natural course should be departed from to secure a new and better outlet, or for any other good reason, and having due regard to the straightening and shortening of such natural streams, watercourses, and course of natural drainage.

Whenever such ditch or drain crosses any railroad tract or right of way, it shall be located at the place of the natural waterway across said right of way, it shall be located at the place of the natural waterway across said right of way, unless said railroad company should have provided another place in the construction of its roadbed for flow of the water, or unless another place for so crossing its right of way shall be agreed upon by said railroad company; and if located at the place provided by or agreed upon by the railroad company, such company shall be estopped from afterwards objecting to such location on the ground that it is not the

place of the natural waterway.

The engineer may employ necessary help--such as axmen, rodmen, etc.--returning an itemized expense account.

SECTION 4. That upon the filing of the return of the engineer, the County Court shall examine the return; and if the plan seems to be expedient and meets the approval of the court, it shall order the County Clerk to cause notice to be given, as hereinafter provided; but if it does not appear to be expedient, and is not approved, the court is hereby authorized to direct said engineer, or another engineer selected by it, to prepare another plan. If the court should deem the proposed improvement inexpedient or inadvisable, after an examination of the return of the engineer, or after a second or further return, it may dismiss the petition and proceedings, and, in that event, it shall adjudge all costs and expenses incurred against the petitioners and the sureties on said bonds. When the plan, if any, shall have finally met the approval of the court, it shall order the County Clerk to issue a summons, or writ, to the Sheriff of the proper county, said writs to run in the name of the State, commanding the Sheriff to summons the persons named in said writ to appear before the court on the day set by it for the hearing of said petition. Said writ or summons shall name therein to be served the owners of all the tracts or lots of land not petitioners, within the proposed levee, improvement, or drainage district, as shown by the tax books of the county, or by affidavit filed, and upon the persons in actual occupancy of the lands or lots, and also upon any lien holder, or incumbrancer is a nonresident of the State, or his name or residence cannot be ascertained after diligent inquiry, and these facts are made to appear by affidavit filed, then publication shall be made for such party for two consecutive weeks in some newspaper of the county where the proceeding is pending notifying such party or parties of the pendency and prayer of said petition, and to appear at the time set for the hearing thereof, the last publication to be at least twenty days before the time set for such hearing. Proof of such publication may be made as now provided by law in Chancery cases, and who are actual owners, or such lien holder or incumbrancer, may be made to appear to the Clerk by the affidavit of any person acquainted with the facts or by the averments of the petition if sworn to.

If at the time set for the hearing it shall appear to the court that any person entitled to notice as herein provided has not had such notice, the hearing shall be adjourned till such person can be given the required notice, and the court shall not lose jurisdiction of the subject matter or of the person already properly notified by such adjournment or postponement. The persons concerned may appear and be heard without formally answering such petition in writing.

SECTION 5. That any person claiming damages as compensation for or on account of the construction of such improvement shall file such claim in the office of the County Clerk at least five days prior to the day on which the petition has been set for hearing, and on failure to file such claim at the time specified shall be held to have waived his rights thereto; provided, if such person be an infant or a non compos mentis, and without regular guardian, or such guardian has not been notified of the proceeding as herein provided for notice, a guardian ad litem for such person, who may file such claim for damages, if deemed proper, for the person so under disability within the time above allowed or within five days after so appointed.

SECTION 6. That the County Court, upon the hearing of said petition at the time set for hearing, or at the time to which the matter has been adjourned or continued, shall proceed to determine the sufficiency of the petition in form and manner, which petition may be amended at any time, as to form and substance, before final action thereon; and if the court should find that such levee or drainage or improvement district would not be for the public benefit or utility, or conducive to the public health or welfare, it shall dismiss the proceedings; but if the court should find such improvement conducive to the public health or welfare, or to the public benefit or utility, it shall determine and adjudge the necessity therefor of such levee or drainage district; and if no claim for damages has been filed, as provided in Section 5 of this Act, the court may, if deemed advisable, locate and establish said district, or may refuse to establish the same, as the court may deem best; and at such hearing the court may order said engineer, or a new engineer appointed by it, if deemed advisable, locate and establish said district, or may refuse to establish the same, as the court may deem best; and at such hearing shall be continued till the filing of such further report. If any claims for damages have been filed, as provided in Section 5 of this Act, the court shall not establish such district till viewers have been appointed and have reported, and the court shall proceed to appoint three viewers to assess such damages, who shall be disinterested freeholders of the county, and not related to any party interested in the proposed improvement, not themselves interested in a like improvement, and the engineer appointed by the County Court as aforesaid shall accompany said viewers and furnish such information as may be called for by them concerning the survey of said improvement.

SECTION 7. That the viewers appointed to assess damages, after being duly sworn to act impartially and faithfully to the best of their ability, shall proceed to view the premises and determine and fix the amount of damages to which each claimant is entitled, and file reports in writing with the County Clerk showing the amount of damages each claimant would be entitled to because of the establishment of the proposed improvement. The report of the viewers shall be filed as soon as practicable; and if any of them fails or

refuses to act, for any reason, or they do not proceed to act with promptness, the court may appoint others as viewers in the place of any or all of them. In estimating the damages, the viewers shall give the value of the land proposed to be taken without deduction, but incidental benefits which may result to the owner by reason of the proposed improvement may be taken into consideration in estimating the incidental damages.

SECTION 8. That after the filing of the report of the viewers, the court shall consider the amount of damages awarded in deciding whether such levee or drainage district should be established; and if in its judgement the probable cost of construction is not a greater burden than should be properly borne by the land benefited by the improvement, and the improvement is conducive to the public health or welfare, or to the public benefit or utility, then the court shall locate and establish such drainage or levee district by proper order or judgement to be entered of record, and the court shall thereupon proceed to determine the amount of damages sustained by each claimant, and may hear evidence in respect thereto, and may increase or diminish the amount awarded by the viewers, as may seem just and right. Any party aggrieved may appeal from the decision of the court in establishing, or refusing to establish, the improvement district, or its decision in the allowance of damages, such appeal being to the Circuit Court, and any party so desiring to appeal shall have the right to have the benefit of such appeal at any time within ten days after such decision is made without formally praying an appeal by filing with the Clerk of the County Court a notice of such appeal, at the same time filing with him a bond, to be approved by said Clerk in such sum as he may deem adequate, and conditioned to pay all costs and expenses of the appeal, unless the finding of the Circuit Court shall be more favorable to the appellant or appellants than the finding or decision of the County Court.

The Circuit Court shall hear any such appeal de novo; and if the appeal be from the amount of damages allowed by the County Court, the amount ascertained and fixed by the Circuit Court shall be entered of record, but no judgement shall be entered therefor. The amount thus ascertained shall be certified by the Clerk of the Circuit Court to the County Court, which court shall thereafter proceed as if such amount had been by it allowed the claimant as damages. If the appeal is from the action of the County Court in establishing, or refusing to establish, the drainage or levee district, the Circuit Court shall enter such order as it may deem just and proper in the premises, and the Clerk of said court shall certify the same to the County Court, which shall proceed thereafter in the matter in accordance with the order of the Circuit Court. In the Circuit Court in such cases the cases shall be docketed with the appellant or appellants as plaintiffs and the adversary parties as defendants, and where there are several appellants on questions of damages, the Circuit Court may consolidate the causes and hear or try them together, if practicable, making proper findings or order as to each; and in such appeals from orders of the County Court made at the same session where there are several appellants, at their request only one transcript shall be made out by the County Court Clerk.

On such appeals it shall rest in the discretion of the Circuit Court how the costs shall be adjudged and distributed among the litigants; and the trial in that court shall be with or without a jury as the court may deem the right of the parties to be under the parties issues to be tried, the right to a jury being accorded wherever the parties have such right under the law of the land.

SECTION 9. That after the amount of damages due any claimant or claimants shall have been finally ascertained and fixed by the County Court, the amount of all such damages shall by said court be required to be paid, in the first instance, by the parties benefited by said levee or drainage district, or be secured, to be paid upon such terms and conditions as the County Court may deem just and proper; and after said damages have been paid, or secured, as aforesaid, the County Court shall enter a proper order of condemnation showing all such lands are appropriated and belong to such drainage or levee district for all its necessary purposes. In establishing any such levee or drainage district, all necessary lands may be appropriated as herein provided, and a right of way as much as two hundred (200) feet wide may be so appropriated, if deemed necessary, for the situs and location of any ditch or drain, or for the location of a new route or channel for any natural watercourse for the whole way or parts of the way of its course; and the natural bed of any watercourse in such district may, in so far as the same may be utilized and necessary, be so appropriated to the end that such bed or channel may be cleaned out, deepened, or widened; but the provision in this section as to width of such right of way shall not prevent the County Court from ordering appropriated such other lands as may be deemed necessary for the purposes of such improvement district under the provisions of this Act.

SECTION 10. That after such levee or drainage district is so established by the County Court, and all damages paid or secured, if the County Court is of opinion that the report of the engineer already made is not sufficiently full or definite to enable the proper letting of contracts for the construction, of the improvement, or, for other reasons, is not as full and definite as it should be, the court shall direct said engineer, or another appointed by the court for the purpose, to make a further and more complete survey and estimates of such district and cost of proposed improvements, and report to the court as to the same giving all necessary and required information; how much of said improvement will be upon each tract of

land, as nearly as practicable, giving definite estimates as to cost and character of work, and dividing the work into convenient sections for making contracts, etc., and giving such other particulars as the court may see fit to direct, and such report of such engineer shall be made and filed with the County Clerk without unreasonable delay; and if such engineer fails to act with reasonable promptness, the court may remove him and appoint another in his stead.

SECTION 11. That when the drainage or levee district, or other improvement herein provided for, shall have been located and established as provided for in this Act, the County Court shall appoint three Commissioners, one of whom shall be a competent civil engineer, and two of whom shall be freeholders of the county, not living within the levee or drainage district, and not interested therein, or in a like question, nor related to any party whose land is affected thereby; and they shall, as soon as practicable after their appointment, and after being duly sworn to perform their duty faithfully and impartially to the best of their ability, inspect and classify all the lands benefited by the location and construction of such drainage or levee district in a graduated scale of benefits, naming the tract or tracts of each owner and so classifying the same, each tract to be numbered according to the benefit received, as below provided, by the proposed improvement; and they shall make an equitable apportionment and assessment of the costs, expenses, cost of construction, fees and damages assessed for the construction of any such improvement, and make report in writing thereof to the County Court. In making said estimate and apportionment, the lands receiving the greatest benefit shall be marked on scale of one hundred, and those benefited in a less degree shall be marked with such percentage of one hundred as the benefit received bears in proportion thereto. This classification, when finally established, shall remain as a basis for all future assessments connected with the objects of said drainage or levee district, unless the County Court, for good cause, shall authorize a revision thereof. In making such classification, said Commissioners are authorized to divide the land of one owner lying in one body into more than one tract, and classify each subdivision thereof, if they are of opinion that portions of such entire tract will be more benefited than other portions, and especially when such entire tract is a large one, and that it will be more equitable and just to so classify it in subdivisions.

In the report of such Commissioners they shall specify each tract of land by reasonable description and the ownership thereof as the same appears on the tax books of the county or as the same has been previously adjudged in the proceeding, and the court shall cause notice to be served upon each person whose name appears as the owner, and upon any person in actual occupancy of the land, which notice shall state the amount of special assessments apportioned to each owner on each tract or lot, the day set for hearing the same before the court, that all objections thereto must be made in writing and filed with the County Clerk on or before noon of the day set for hearing; and said notices shall be signed by the County Clerk and served at least five days before the time set for the hearing. If any such owner be a nonresident of the State, or his name or residence is unknown and cannot be ascertained after diligent inquiry, then service of such notice upon the resident agent or attorney of such person shall be sufficient; if there be no such resident agent or attorney of such person, then the assessment may be made without notice, just as taxes are assessed without notice in such cases. When the day set for hearing has arrived, and the hearing is not continued by the court for good reason, as it may be, and when the hearing is had, the County Court shall proceed to hear and determine all objections made and filed to said report, and may increase, diminish, annul, or affirm the apportionment and assessments made in such report, or in any parts thereof, as may appear to the court to be just and equitable; but in no case shall it be competent to show that the lands assessed would not be benefited by the improvement; and when such hearing shall have been had, the County Court shall assess such apportionment so fixed by it upon the lands within such levee or drainage district. If the first assessment made by the court for the original cost of any improvement as provided in this Act is insufficient, the court may make an additional assessment in the same ratio as the first.

If for any reason the court annuls in toto, or sets aside such report of the Commissioners, it shall order them to make a new report, or shall remove them and appoint new Commissioners to act as in the first instance if desired by the parties concerned.

SECTION 12. That the assessments shall be levied upon the lands of the owners so benefited in the ratio aforesaid, and shall be collected in the same manner as taxes for county purposes, except as herein specially provided, and the funds so collected shall be kept as a separate fund, and shall be paid out only for purposes properly connected with such improvement, and on the order or warrant of the Judge or Chairman of the County Court.

SECTION 13. That an appeal may be taken to the Circuit Court of the County from the order of the County Court fixing the assessment of benefits upon the lands in the same manner and time as herein provided for appeals from the assessment of damages, including the provisions as to consolidating cases, making transcript, etc., and certifying to the County Court the action and doings of the Circuit Court.

SECTION 14. That when any appeal is taken from any order of the County Court made in any proceedings before it under this Act, the County Court may employ counsel to represent the interests of the levee or drainage district affected by such appeal, on the trial thereof in the appellate courts, and the expense of

such counsel shall be paid out of the drainage fund of such district.

SECTION 15. That in any county where a levee or drainage district is sought to be established the County Court Clerk of such county shall provide a book to be known as the "Drainage Record", and to be paid for by the county, and said Clerk shall keep therein a full and complete record of all proceedings in each case arising under this Act, including all order made by the County Court, and certified from the Circuit Court, and a copy of the original petition shall be enrolled in said Drainage Record, and all bonds required to be given.

SECTION 16. That the fees of the County Clerk in proceedings under this Act shall be the same as for similar services now allowed by law, and in such case the County Court may allow said Clerk an additional sum for extra services, or services not covered by existing fee bills, or statutes, to be fixed by the court, and paid as other costs and expenses in the case or proceeding.

SECTION 17. That where any assessments made and levied under this Act cannot for any reason be enforced, and part of the work has been done, the County Court shall proceed as to any or all lands benefited by said improvement in the same manner as if the appraisalment and apportionment of benefits had never been made, in which event any payments already made shall be duly credited to those who have paid the same.

SECTION 18. That after a drainage or levee district has been located and established as provided for by this Act, the County Court shall appoint two Directors of such district, said Directors to be owners of lands, or interested in lands, in such district, and at least one of those first appointed to be one of the petitioners for the establishment of said district, or his successor in estate or interest, said Directors to hold their offices for two years from the date of appointment, and these two thus appointed and their successors, together with the Judge or Chairman of the County Court, shall constitute the Directors, or Board of Directors, of such district, and as such Directors they shall have the general control and management of the business affairs of such district and supervision of the same, and be vested with power and authority to make contracts, as provided by this Act, for all improvement to be done in said district.

If there should be a vacancy in the office of the Director appointed as aforesaid, because of death, resignation, or other reason, the County Court shall appoint another Director of like qualifications to fill such vacancy till the end of the two years' term, and for sufficient reason the County Court may remove a Director so appointed, but not till such Director has had at least five days' notice of the time of the hearing, and of the grounds on which he should be removed, as alleged, and he shall thus be entitled to be heard and to introduce proof upon the issue as to whether he should be so removed as a Director; and if, on the hearing, the decision of the County Court is that he be removed, he may appeal therefrom, on giving proper cost bond, to the Circuit Court of the county, where the matter shall be heard anew and such judgement given as that court deems just and proper. If a Director is removed, the County Court shall appoint another to serve the remainder of the two years' term, having like qualifications as to ownership of lands, etc., as herein provided.

At the end of each two years' term the office of the two appointed Directors shall be again filled by appointment by the County Court from among those owning or interested in lands in such district. The Judge or Chairman of the County Court shall be Chairman of said Board of Directors, and said Board shall elect one of the other Directors Secretary and Treasurer of the Board, and as such Treasurer he shall give bond in the sum of twenty-five thousand dollars to faithfully account for all money coming into his hands as such Treasurer, said bond to be approved by the County Court and payable to the county or State, for the use of such district, and shall be recorded in the Drainage Record.

SECTION 19. That no contracts for improvements to be done in such drainage or levee district shall be made until after the Commissioners provided for by this Act have made their inspection, classification, and apportionment as directed in Section 11 hereof, nor until said question of classification and apportionment and assessment of benefits has been determined and settled by the court; but after the said Commissioners and the court have so acted, then such contracts may be made by the Board of Directors of the district. Before entering into any contract for improvements, the Board of Directors of the improvement district shall cause notice to be given once a week for four consecutive weeks in some newspaper published in the county wherein such improvement is located, and such additional publication elsewhere as they may direct of the time and place of letting the work of construction of said improvement, and in such notice they shall specify the approximate amount of work to be done in each section, and the time fixed for the commencement and completion thereof, and they shall award contract or contracts for each section of the work to the lowest responsible bidder, exercising their own discretion as to letting said work as a whole or in sections, and reserving the right to reject any and all bids and readvertise the letting of the work.

Each person bidding for such work shall deposit with the Treasurer of the Board of Directors in cash or certified check a sum equal to ten per centum of the amount of the bid, not in any event, however, to exceed ten thousand dollars, said deposit to be returned to him if his bid is not successful; and, if successful,

to be retained as a guarantee only of his good faith in entering on said contract.

The successful bidder shall be required to execute a bond, with sufficient sureties, payable to the county, for the use and benefit of the drainage or levee district, in an amount equal to twenty-five per centum of the estimated cost of the work so let, or he may deposit such amount in cash with the Treasurer of the Board of Directors as security for the performance of his contract, and upon the execution of such bond or the making of such deposit, the deposit originally made with his bid shall be returned to him.

SECTION 20. That the said Board of Directors shall employ a competent engineer to take charge and supervision of the construction of such improvement work, contracting with him for compensation for his services in such sum or at such rate as may be agreed upon, and to be paid as other expenses of such district. The Directors may remove such engineer and contract with another, if they see fit for any reason.

The engineer in charge of the construction shall furnish the contractor monthly estimates of the amount of work done on each section, and upon filing the same with the County Court Clerk, the Judge or Chairman of the County Court shall draw a warrant in favor of such contractor for eighty per centum of the value of the work done according to the estimate; and when said work is completed to the satisfaction of the Board of Directors and said engineer, and so certified by him and said Board of such certificate is filed with the County Clerk, then the Judge or Chairman shall draw a warrant in favor of the contractor for the balance due. All such warrants shall be drawn upon the County Trustee or Treasurer as ordinary county warrants are drawn, but shall be payable only out of the fund provided for such drainage or levee district, and shall so state upon their face. The Board of Directors shall require such engineer to give bond in such sum as they may deem proper for the faithful performance of his duties, such bond to be payable to the county or State, for the use of such improvement district, and filed with the County Clerk and recorded in the Drainage Record.

SECTION 21. That whenever any railroad or public highway will be beneficially affected by the construction of any improvement or improvements in such district established hereunder, it shall be the duty of the Commissioners appointed to classify and assess benefits to determine and return in their report the amount of the benefit to such railroad or highway, and notice shall be served as to such railroad upon its nearest station agent, as provided in case of an individual property owner; and when such special assessments have been approved and fixed by the County Court, as hereinbefore provided, as to such railroad, it shall be a debt personally from the railroad company, and, unless the same is paid by the railroad company as special assessment, it may be collected in the name of the county in any court having jurisdiction; and as to a highway, such assessment shall be paid by the county out of the general county fund or highway tax fund, such assessments to be paid into the fund of such drainage, levee, or improvement district.

SECTION 22. That whenever the making of such improvement across a public highway necessitates the building of a bridge over the same, the county shall build and construct the same and pay all cost thereof out of the county bridge fund, if such fund be provided, and, if not, out of the general county fund.

SECTION 23. That the owner of any land or lot that has been assessed for the payment of the cost of the location and construction of any ditch, drain, or water course, as hereinbefore provided, shall have the right to use the ditch, drain, or water course as an outlet for lateral drains from said land or lot.

SECTION 24. That the assessments as provided for by this Act shall be collected by the County Trustee as county taxes are collected, except as herein provided, and the funds so collected shall be kept as a separate fund, and shall be paid out only for purposes properly connected with such improvement on the order or warrant of the County Judge or Chairman; but such assessments may be collected by bill filed in Chancery, as hereinbelow provided, and no personal property of the owner of land so assessed shall be liable or distrained upon for such assessment, but the land so assessed only shall be liable for such assessment.

SECTION 25. That the improvement in the drainage districts herein provided for may consist solely, if so desired by those concerned in the changing in whole or part of the course or channel of a natural water course, or in straightening, as far as practicable, such water course and cleaning out so much of its natural channel as it is desired to utilize; or the improvement in such drainage district may, in addition to the main ditch, or drain, or channel, include such other lateral and other ditches and levees as may be deemed proper or necessary.

SECTION 26. That any person owning lands within any drainage district who desires to establish a subdistrict within the limits of the original district for the purpose of securing more complete drainage may file his petition with the County Clerk, asking the County Court to establish such subdistrict, and describing the lands to be affected thereby so as to convey an intelligible description of such lands; and the bond and all other proceedings shall be the same as herein provided for the establishment, formation, and construction of original districts and improvements thereof, including the assessments of damages

and assessment of benefits; and when established and constructed, it shall be and become a part of the drainage system of such drainage district, and be under the control and supervision of the Board of Directors of such drainage district; provided, however, such subdistrict shall only be established when conducive to the public health or welfare, or to the public benefit or utility; and, provided, further, that any special assessments made for the benefit of such subdistrict shall be secondary in the lien and in right to the assessments for the benefit of the original district.

SECTION 27. That if the County Court shall determine that the estimated cost of reclamation and improvement of such district of land or levee or drainage district is greater than should be levied in a single year upon the lands benefited, the court may fix the amount that shall be levied and collected each year, and may issue drainage bonds of the county, bearing not more than six per centum annual interest, said interest payable annually, and may devote such bonds at par, with accrued interest, to the payment of the expenses and work as it progresses, or may sell the same at not less than par, with accrued interest, and devote the proceeds to such payment; and if, in the sale of said bonds, a premium is received, such premium shall be credited to the drainage fund; and should the cost of such work exceed the estimate, a new apportionment of the assessment may be made and levied and other bonds issued and sold in like manner, but in no case shall the bonds run longer than twenty years. Any property owner may pay the full amount of the benefit assessed against his property before such bonds are issued and receive a receipt in full therefor. Such payment shall be made to the County Trustee, and it shall be the duty of the County Clerk to certify to the Trustee the amount of any such assessment when requested to do so, and the Trustee shall enter the same upon the assessment lists in his hands in a separate place provided therefor, and shall furnish the County Clerk with duplicate receipts given for all assessments so paid in full, one of which the Clerk shall deliver to the Judge or Chairman of the County Court, and the Trustee shall also give a receipt to the property owner so paying in full.

The terms and times of payment of the bonds so issued shall be fixed by the Board of Directors of the improvement district, and such bonds shall be signed by the Judge or Chairman of the County Court and countersigned by the Clerk of the County Court, each of said officers signing his name officially, and shall be verified either by the county seal or seal of the County Court Clerk. Said bonds shall be issued for the benefit of the district numbered thereon, and each district shall be numbered by the County Court and recorded by the County Clerk in the Drainage Record, said record showing specifically the lands embraced in said district and upon which the assessment has not been previously paid in full.

Each bond shall show expressly upon its face that it is to be paid only by assessments levied and collected on the lands within the district so designated and numbered, and for the benefit of which district such bond is issued; nor shall any assessment be levied or collected by the payment of said bond or bonds, or the interest thereon, on any property, real or personal outside the district so numbered, designated, and benefited. Such bonds shall be in denominations of not less than fifty dollars; and when such district lies in more than one county, the County Court of each county shall so determine whether bonds shall be issued to meet the expenses, etc., of the improvement so far as the lands of the district lie in that county; and if so issued, the bonds shall be signed by the Judge or Chairman of the County Court of such county and countersigned by the County Court Clerk, and verified by the county seal or seal of the County Clerk, and shall be payable only out of the assessments levied for such improvement on the lands in such county, as provided hereby when such district is wholly in one county.

SECTION 28. That if the Board of Directors of any improvement district provided for by this Act deems best instead of issuing bonds, they may direct that warrants shall be issued or drawn on such district or on the County Trustee, by the Judge or Chairman of the County Court, to be paid out of the funds of such district only, and at such times as the assessments may be due, or as may be due, or as may be deemed best, the time of the maturity of assessments as fixed being considered, such warrants to be issued or drawn for all lawful demands on such district and to bear interest at not more than six per centum per annum.

SECTION 29. That where a proposed or desired improvement will require a location in more than one county, applications by petition shall be made to the County Court of each of said counties as provided by this Act for applications where the improvement to be made lies wholly in one county, and signed by one or more persons owning lands lying in each county to be affected, or assessed for the proposed improvement; and when such petitions have been filed, the County Court of the county in which the larger or largest per centum of the lands to be affected by such improvement lies shall appoint a competent engineer to make survey, etc., of such proposed improvement district in the same manner as when the proposed improvement lies wholly in one county, and such engineer shall proceed in the same manner as when the improvement lies wholly in one county, and said engineer shall make out duplicate reports of his survey and work and file one with each of the County Court Clerks in the counties where the petitions for such improvement is filed; and after such reports of the engineer are so filed, the County Court of each of said counties shall proceed as herein provided for improvement districts located wholly in one county till the

point in the proceeding is reached when viewers are to be appointed to assess damages, as provided by this Act; and as to such viewers, the County Court of the county in which the larger or largest per centum of the lands to be affected or assessed on account of such improvement is located, or lies, shall appoint two viewers, and one of such viewers shall be appointed by the County Court of each of the other counties concerned, if more than one other county; and if only one other, by the County Court of such county, said viewers to have the same qualifications, etc., as hereinbefore provided for viewers. When so appointed, the viewers shall meet as soon as practicable at some convenient point to be designated by the Clerk of the County Court of the county, the court of which appoints two of the viewers and shall then proceed to assess damages, etc., as hereinbefore provided for districts lying in one county only, said engineer rendering them like assistance, as hereinbefore provided; and when their work is completed, the viewers shall make out one copy of their report for each of said counties, signing same, and shall file a copy of such report with each of the County Court Clerks of the counties where such petitions have been filed for the establishment of such improvement or district.

SECTION 30. That when the viewers have so reported, each of said County Courts shall proceed as herein provided in other cases till the point is reached to appoint Commissioners to make assessments and apportion the same as to the lands affected, when the County Court of the county in which the larger or largest per centum of the land lies to be assessed or affected, shall appoint two of said Commissioners, one of these appointees to be a competent engineer, and the other County Court, or Courts, shall appoint one of said Commissioners each, the Commissioners so appointed to have the same qualifications as hereinbefore provided; and when so appointed, they shall, as soon as practicable, meet at some convenient place to be designated by the County Court Clerk of the county, the court of which has appointed two of the Commissioners, one being an engineer, and shall then proceed to assess the lands in such district, and apportion the assessments in the same manner as herein provided where such district lies wholly in one county, and shall report in like manner, and shall file a copy of their report with the Clerks of the County Courts in each county having lands within such improvement district; and when such Commissioners have so reported, each of said County Courts shall proceed as to said reports and in levying assessments, etc., as provided by this Act, in cases of districts lying in one county only.

SECTION 31. That in cases of levee or drainage districts so lying in more than one county, the Board of Directors of such district shall consist of one member from each county, to be appointed by the County Court of such county, and the Judge or Chairman of the County Courts of each of said counties shall be members of such Board of Directors, and the qualifications, powers, and duties of such Board of Directors, shall be the same as provided by this Act for Boards of Directors and members thereof in improvement districts lying entirely in one county. The County Courts of the respective counties shall have the same right to remove the viewers, Commissioners, and Directors appointed by such court, and to appoint others in their stead, and to fill vacancies that the County Courts have, as provided by this Act, where such improvement district lies wholly in one county. The Judge or Chairman of the County Court of the county in which the larger or largest per centum of the lands of such improvement district lies shall be Chairman of such Board of Directors, with authority to call meetings of the Board; and said Board shall elect one of the appointed Directors Secretary and Treasurer of the Board of Directors, and such Treasurer shall give bond, etc., as provided by this Act, such bond or a duplicate of same to be filed with the County Clerk in each of the counties and recorded in the Drainage Record, said bond to be taken before and approved by the County Court of the county in which the larger or largest per centum of the lands of the district lies.

SECTION 32. That the assessments provided for by this Act, and to be collected for the purposes herein provided, shall be entered upon a book to be provided by the County Court Clerk, at the expense of the county, for this purpose, in a similar manner to that in which taxes are entered upon the tax books, such books showing the tracts of lands, amounts of assessments, etc., and such book, when so made out, shall be furnished to the County Trustee for collection of assessments so levied. Said book shall be called "Drainage Assessment Book," and shall be made out by the County Court Clerk of the county in which the particular assessment is levied, and said book may be made out but once, if practicable, for the entire assessment for the particular improvement project; but if not practicable, then a new drainage assessment book may be made out for a shorter period, or for each year, and furnished the County Trustee; and the assessments levied under the provisions of this Act shall become due and payable and delinquent at the same time State and County taxes become due and delinquent, and such assessments shall bear interest at the legal rate after they become delinquent.

SECTION 33. That the assessments provided for by this Act, when made and levied, shall be and become valid liens upon such lands so assessed just as State and county taxes are liens upon lands; and when such assessments have been due and delinquent for sixty days, bills may be filed in the Chancery Court of the county, or Chancery District, in which the lands lie, upon which such assessments are due and delinquent, for the collection thereof out of such lands by a sale thereof in all cases, except in cases where the assessment is made against a railroad company or a public highway, as herein provided for. Such

bills in Chancery shall be filed in the name of the county in which the lands are situated for the use of the improvement district for the benefit of which the assessments were made, and against the owners, if known, and, if unknown, against them as such; and the owners of all lands upon which such assessments are delinquent may be made defendants to the same bill as parties thereof. When it is desired by the Board of Directors, or other interested party entitled to sue, to file such bill, the County Trustee, upon request, shall make out a statement or list, showing all the lands upon which such assessments are so delinquent, and the names of the owners thereof, as appears upon the Drainage Assessment Book or showing any tract or tracts assessed to unknown owners, if such be the case, and certify as Trustee to the correctness of such statement or list as the same appears upon said book, and in such Chancery suit such certified statement or list shall be prima facie proof of the facts so certified to and that such assessments are delinquent and sufficient proof to authorize a decree of sale in the absence of rebutting proof of the facts shown by such certified statement. Such suits in Chancery shall be proceeded with as other suits are in said court, except that the court may hear the case as to any one or more of the defendants, whether ready to be heard as to other defendants, or not, and so proceed to sale and final decree as to any one or more of the defendants, though the case be not disposed of as to other defendants. When a sale is ordered in such suit, and is made and reported, the Clerk and Master of such court so making the sale shall report what public taxes are a lien upon any tract so sold in favor of the State, county, or any municipality, and the court shall see that this is done, and any such taxes, if the sale be confirmed, shall be first paid out of the proceeds of such sale before such delinquent assessments are paid. Upon confirmation of such sale by the Chancery Court, it shall divest title out of the owner and vest it in the purchaser, and award a writ of possession if asked for; but where title is so vested in a purchaser the land so purchased shall still be subject, in the hands of the purchaser, his heirs, or assigns, to any other assessments not yet due, or unpaid, that may have been made and fixed or levied upon it at the time of such confirmation of sale, for the benefit of the improvement district on account of which such sale has been made. When any such sale is made by decree of the Chancery Court, it shall be made for case, and the owners of lands so sold shall have two years from the date of the confirmation of such sale in which to redeem the same by paying to the Clerk and Master of such court making the sale the amount paid by the purchaser for said land, with legal interest thereon, to the date of redemption, and also a further sum equal to ten per centum of the amount so paid by the purchaser for said land. In such proceedings in Chancery Court the attorney or solicitor employed and attending to the suit shall be allowed as a fee ten per centum of the amount found due as an assessment or assessments on each tract of land decreed sold, the same to be charged up in the decree as part of the judgement for which the land is to be sold; and when such lands are redeemed, as herein provided, and this fact is made satisfactorily to appear to the Chancery Court, the court shall enter a decree in the cause, adjudging the land so redeemed and declaring it to be the property of the owner so redeeming, or if his heirs or assigns, if redeemed by his heirs or assigns; and if necessary may award a writ of possession to put the person so redeeming in possession of the land.

Provided, however, that infants and persons who are lunatics or of unsound mind shall have the further period of one year after the removal of such disability in which to redeem their lands sold under the provisions of this section and this Act, under like terms as to amounts to be paid, in redemption, as above provided.

SECTION 34. That the assessments provided for by this Act shall, if to paid by the owners of the land assessed, be collected only out of the land so assessed for improvement purposes, and shall not be collected, by distress warrant or otherwise, out of any other property, real or personal, of the owners of the land so assessed under the provisions of this Act.

SECTION 35. That it shall be a sufficient signing, in the sense of this Act, of the names of petitioners to the petitions herein provided for, if their names are signed by their attorney at law or by an agent authorized so to do.

SECTION 36. That engineers employed by Boards of Directors of improvement districts to supervise the work, etc., shall be paid for their services such salary or sums as may be agreed upon between them and such Boards of Directors: That engineers appointed hereunder by the County Courts shall be paid for their services at such rates as the courts appointing them may fix, and, if not so fixed, at the rate of five dollars per day while engaged in the work, and, in addition, all actual traveling expenses, an itemized account of such expenses to be kept by them and reported and sworn to; that the viewers and Commissioners provided for by this Act shall be paid at the rate of three dollars per day while engaged in the work, and, in addition, all actual expenses, including board paid for, itemized accounts for the same being reported and sworn to; and that other necessary help aiding the engineers, viewers, or Commissioners--such as chain carriers, axmen, etc.--shall be paid not more than two dollars per day.

For collecting and paying out assessments under this Act, the County Trustee shall receive the same compensation he receives for collecting public taxes; and for any certified statements furnished by him, the same fees per one hundred words as are allowed Clerks of Courts for certified copies of records; and if

there by any services required of any person under the provisions of this Act, and the rate of pay therefor is not provided for hereby, then the County Courts shall not be entitled to receive any pay for their services, but only be reimbursed or paid their actual expenses incurred on account of attending to their duties as Directors, an account of the same to be kept, made out, and sworn to by each.

SECTION 37. That if any person to whom the work, or any portion of the work, in such improvement district has been let shall fail to perform the same according to the terms specified in his contract, then the cash deposited by him shall be forfeited for, the benefit of such district and be paid into its fund; or if bond has been given by such contracting party so failing, then recovery of the damages sustained may be had by suit in the name of the payee in such bond for the use of such district, and such damage on judgement therefor collected and paid into the fund of such district.

SECTION 38. That the owners of land which require combined drainage may provide for the establishment of a drainage district, or location and construction of drains, ditches, and water courses upon their own lands by mutual agreement in writing duly signed, acknowledged, and filed with the County Clerk. Such agreement may include the location, the character or work to be done, the adjustment of the damages, the classification of the lands to be benefited thereby, the amount of special assessments to be levied, when the same shall be levied, or so many of these or other provisions as may be agreed upon, and to such extent shall be as valid and binding as though performed in the mode and manner provided for in this Act. Upon the filing of the agreement with the County Court Clerk, the County Court shall establish such drainage district and locate the ditch, drain, or water course provided for in said mutual agreement according to the terms thereof, and shall thereafter have full and complete jurisdiction of the parties and subject-matter, and order such procedure under the provisions of this Act as may be required or necessary to carry out the object, purpose, and intent of such agreement, and to complete and construct the desired improvement, and shall retain jurisdiction of the same as fully as in other cases made and provided for in this Act.

SECTION 39. That the preliminary expenses of such levee or drainage district, ditch, drain, or water-course improvement provided for by this Act (not including contracts for construction) may be paid by order of the Quarterly County Court of the county in which the lands lie of such improvement district out of the general county fund, the same, if so paid, to be refunded to the county out of assessments collected from the lands of such improvement district when so collected; and if not so repaid, for any reason, then to be adjudged against and collected out of the bond of the petitioners required by this Act, and thus repaid to the county. If the Quarterly County Court should not see fit to order such preliminary expenses so paid, and the parties to whom such expenses may be owing are not willing to agree to wait till a fund for their payment can be provided by special assessments upon such district, then the County Court by proper order shall require the petitioner or petitioners to pay to the County Court Clerk a fund sufficient to pay such preliminary expense, and the bond required of petitioners by this Act shall be liable for such preliminary expenses, and judgement thereon may be rendered at any time by the County Court to the end such fund for expenses be provided, just as courts render judgements on cost bonds, and one such judgement shall not prevent other judgements on the same bond, so the sum of the judgements does not exceed the penalty of the bond; provided, however, such fund for expenses may be paid in from time to time, under the orders of the court, as the same may be needed; and, provided, further, that all sums so paid by the petitioners or their sureties on their bonds shall be refunded and repaid to the person or persons so paying the same out of the funds of such improvement district when such funds have been realized under the provisions of this Act.

SECTION 40. That this Act is not intended to apply to Reelfoot Lake, or Wolf River in Fayette and Shelby Counties and its tributaries and the waters thereof, or to authorize the draining of same, and this Act shall not be construed to in any way authorize the draining of said lake, or Wolf River in Fayette and Shelby Counties, and the bottom lands thereof, and its tributaries. Provided, however, that the bottom lands of Wolf River in Fayette and Shelby Counties and its tributaries may be included in a drainage district under the provisions of this Act as amended whenever a majority of the owners of such lands (the majority to be reckoned by the number of acres owned) shall petition for the inclusion of said lands in such district.

As amended by: Private Acts of 1923, Chapter 385.

SECTION 41. That this Act take effect from and after its passage, the public welfare requiring it.

Passed: February 25, 1909.

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