

## **CHAPTER 61-21 DRAINAGE ASSESSMENT PROJECTS**

### **61-21-01. Definitions.**

In this chapter, unless the subject matter otherwise requires:

1. "Affected landowners" means landowners whose land is subject to assessment or condemnation.
2. "Board" means the board of managers of a water resource district.
3. "Cleaning out and repairing of drain" means deepening and widening of drains as well as removing obstructions or sediment, and any repair necessary to return the drain to a satisfactory and useful condition.
4. "Drain" means any natural watercourse opened, or proposed to be opened, and improved for drainage and any artificial drains of any nature or description constructed for that purpose, including dikes and appurtenant works. This definition may include more than one watercourse or artificial channel constructed for the aforementioned purpose when the watercourses or channels drain land within a practical drainage area as determined by the written petition called for in section 61-21-10 and the survey and examination called for in section 61-21-12.
5. "Lateral drain" means a drain constructed after the establishment of the original drain or drainage system and which flows into such original drain or drainage system from outside the limits of the original drain; provided, that a determination by the board as to whether an existing or proposed drain is a lateral or a new drain within the meaning of this subsection shall be conclusive when entered upon the records of such board.

### **61-21-02. Watercourses, ditches, and drains may be constructed, maintained, repaired, improved, or extended.**

Watercourses, ditches, drains, and improvements thereto for the drainage of sloughs and other lowlands may be surveyed and investigated and established, constructed, maintained, repaired, improved, and cleaned out in the several counties of this state under the provisions of this chapter wherever the same shall be conducive to the public health, convenience, or welfare. The powers conferred by this chapter and this section shall extend to and include:

1. The deepening and widening or any necessary improvement of drains which have been or hereafter may be constructed.
2. The straightening, clearing, or cleaning out and deepening of channels of creeks, streams, and rivers, and the construction, maintenance, remodeling, repairing, and extension of levees, dikes, and barriers for the purpose of drainage.
3. The location or extension of any drain if such location or extension is necessary to provide a suitable outlet or reasonably drain lands within a practical drainage area of such drains.
4. The establishment, in whole or in part, of a drain and the completion of the same on the line of an abandoned or invalid drain.
5. The establishment and construction of lateral drains with outlets in drains already constructed.
6. The installation of artificial subsurface drainage systems.

#### **61-21-02.1. Assessment drain culverts.**

As part of the design and construction of a proposed assessment drain or the maintenance or reconstruction of an existing assessment drain, the board, upon approval of the appropriate road authority, may locate, relocate, size, and install culverts through roads which are not on the routes of assessment drains but which are within the assessment area and which are necessary for surface water to reach the assessment drain. The design and installation of culverts under this section must be consistent with chapters 24-03 and 24-06 and the streamcrossing and construction site protection standards prepared by the department of transportation and the department of water resources.

**61-21-03. Board of drainage commissioners - Appointment - Term - Removal - Compensation.**

Repealed by S.L. 1981, ch. 632, § 12.

**61-21-04. State and county officers not eligible as drain commissioners - Matters of personal interest to drain commissioners.**

Repealed by S.L. 1981, ch. 632, § 12.

**61-21-05. Powers of board.**

Repealed by S.L. 1981, ch. 632, § 12.

**61-21-06. Board's report to board of county commissioners - Contents - Inspection - Liability of drain commissioner on bond.**

Repealed by S.L. 1981, ch. 632, § 12.

**61-21-07. Oath and bond filed by drain commissioners - Organization of board - Quorum.**

Repealed by S.L. 1981, ch. 632, § 12.

**61-21-08. Office, records, clerk, and employment of personnel.**

Repealed by S.L. 1981, ch. 632, § 12.

**61-21-09. Levy for administrative expense - Payment of commissioners' salaries and overhead expense.**

Repealed by S.L. 1981, ch. 632, § 12.

**61-21-10. Petition for construction of drain - Purposes of drain - Signers to petition.**

A written petition for the construction of a drain may be made to the board. Such petition shall designate the starting point, terminus, and general course of the proposed drain. If among the leading purposes of the proposed drain are benefits to the health, convenience, or welfare of the people of any city, the petition shall be signed by a sufficient number of the property owners of such city to satisfy the board that there is a public demand for such drain. The petition shall be signed by at least six property owners or a majority of the landowners within the proposed district whose property will be drained by the proposed drain.

**61-21-11. Bond required from petitioners.**

The board may require the petitioners referred to in section 61-21-10 to file a bond with the petition in a sum sufficient to pay all expenses of surveys and of the board should the petition be later denied. However, in no event shall the petitioners be required to pay expenses of surveys and of the water resource board, and any other expenses that may be incurred, if the petition is later approved, but the drain is not constructed.

**61-21-12. Examination of line for drain - Designation of surveyor - Specifications - Cost estimates.**

Upon presentation of a petition as provided in section 61-21-10, the board shall examine the line of the proposed drain, and if in its opinion further proceedings are warranted, it shall adopt a resolution to that effect and designate a competent surveyor or engineer to assist the board. For the purpose of making examinations or surveys, the board or its employees may enter upon any land traversed by any proposed drain or any other lands necessary to gain access thereto. The surveyor or engineer shall prepare profiles, plans, and specifications of the proposed drain, estimates of the total cost thereof, and a map or plan of the lands to be drained showing the regular subdivisions thereof, which map or plan shall be filed in the office of the county auditor for inspection by the public. In determining the best location for the proposed drain, the board may in its discretion set the location on lines differing from the lines described in the petition. When the length of line described in the petition does not give sufficient fall to drain the land

sought to be drained, the board may extend the drain below the outlet named in the petition. The estimate of costs prepared by the surveyor or engineer shall be in sufficient detail to allow the board to determine the probable share of the total costs that will be assessed against each of the affected landowners in the proposed drainage district.

**61-21-13. Hearing on petition to establish drain and surveyor's report - Notice - Contents.**

Upon the filing of the surveyor's or engineer's report provided for in section 61-21-12, the board shall fix a date and place for public hearing on the petition. Such place of hearing shall be in the vicinity of the proposed drain and shall be convenient and accessible for the majority of the landowners subject to assessment for such drain or whose property shall be subject to condemnation for the proposed drain. At least ten days before such hearing, the board shall file with the county auditor a list showing the percentage assessment against each parcel of land benefited by the proposed drain and the approximate assessment in terms of money apportioned thereto. Notice of such filing shall be included in the notice of hearing on the petition. At least ten days' notice of such hearing shall be given by publishing a notice at least once in the official newspaper of the county in which the proposed drain is located. In addition, each owner of land subject to assessment for the proposed drain and each landowner whose property shall be subject to condemnation for the proposed drain as shown by the record in the office of the recorder shall be mailed a notice of such hearing at the owner's post-office address as shown by such records. Notices of such hearing shall contain a copy of the petition and the time and place where the board will act upon the petition. The notice of hearing shall specify the point or place of beginning of the proposed drain and where it terminates, and shall describe the general course of the drain as finally determined by the engineer and the board. The notice of hearing shall also specify when and where votes for and against such proposed drain shall be filed. The final date when votes must be filed shall not be less than ten days after the date of the hearing on the petition. A form of ballot shall be mailed with the notice of hearing for use by the affected landowners in voting for or against the proposed drain. An affidavit of mailing signed by the attorney or clerk of the board or other person mailing such notices shall be filed with the county auditor who shall file such affidavit with the records of the proceedings pertaining to that drain. All persons whose land may be subject to assessment for such drain or whose property shall be subject to condemnation for such drain may appear before the board, fully express their opinions, and offer evidence upon the matters pertaining thereto.

**61-21-14. Conduct of hearing on petition to establish drain.**

Prior to the hearing provided for in section 61-21-13, the board shall first prepare a roster or roll of affected landowners subject to assessment for such drain or whose property shall be subject to condemnation for such drain, and shall limit voting rights to such landowners. A record shall be made by the board of affected landowners present in person or by agent and such records shall be preserved in the minutes of the meeting. Affected landowners shall then be informed of the probable total cost of the project and their individual share of such cost and the amount of their property to be condemned for such project. The board shall fix a time, which shall not be less than ten days after the hearing on the petition, within which the votes for and against the establishment of the proposed drain shall be filed with the board. Objections to or approvals of the drain in writing may be filed with the board and shall be considered as votes for or against the proposed drain, as the case may be. A telegram shall be deemed writing, and any form of written approval or objection which sufficiently indicates the intention of the writer shall be sufficient. Once the deadline for filing votes for or against the proposed drain has been reached, no more votes for or against such drain shall be filed and no person shall withdraw that person's name from the list of those voting for or against the proposed drain after the deadline for filing votes has been reached. Any withdrawals of objections to or approvals of the proposed drain before that time shall be in writing only. When the votes of affected landowners have been filed and the deadline for filing votes for and against such drain has been reached, the board shall immediately proceed to determine whether or not more than fifty percent of the votes filed, as determined by section 61-21-16, are in favor of the construction of the drain. Until such determination is made, the board is without jurisdiction to take any further steps in the matter

except to determine whether more than fifty percent of the votes filed are in favor of the drain and to adopt a resolution for discontinuance, if not more than fifty percent of the votes filed favor construction of the drain.

**61-21-15. Denying or making order establishing drain - Costs when petition denied.**

If, upon the examination by the board before the survey has been made, or, if upon the hearing upon the petition or upon the trial in the district court, it shall appear that there was not sufficient cause for making such petition, or that the proposed drain would cost more than the amount of the benefits to be derived therefrom or that fifty percent or more of the votes of affected landowners as determined by section 61-21-16, which were filed with the board, are opposed to such drain, the board shall deny the petition. An objection in writing filed with the board shall, as provided in section 61-21-13, be considered the same as a vote by ballot. The board may bring an action against the petitioners or upon their bond for all costs and expenses incurred in the proceedings, in which case the petitioners shall be jointly and severally liable, or the board may pay the costs and expenses out of any moneys available. If it shall appear, after due hearing as provided in sections 61-21-13 and 61-21-14, that the proposed drain will not cost more than the amount of the benefits to be derived therefrom and is approved by more than fifty percent of the votes of the affected landowners filed with the board as determined by section 61-21-16, the board shall make an order establishing the drain, accurately describing it, and giving the same a name under which it shall be recorded and indexed.

**61-21-16. Voting right or power of landowners.**

In order that there may be a fair relation between the amount of liability for assessments and the power of objecting to the establishment of a proposed drain, the voice or vote of affected landowners on the question of establishing the drain shall be arrived at in the following manner:

The landowner or landowners of tracts of land affected by the drain shall have one vote for each dollar of assessment that the owner's land is subject to or one vote for each dollar of the assessed valuation of land condemned for the drain, as estimated by the board under the provisions of section 61-21-12. It is the intent of this section to allow one vote for each dollar of assessment, regardless of the number of owners of such tract of land. Where more than one owner of such land exists, the votes shall be prorated among them in accordance with each owner's interest.

A written power of attorney shall authorize an agent to cast the votes of any affected landowners.

**61-21-17. Notice of order establishing drain and period for appeal.**

Upon the making of an order establishing or denying establishment of a drain, the board shall give notice to all affected landowners by publishing a notice in a newspaper of general circulation in the county. The notice must include a copy of the order and must advise the affected landowners of their right to appeal under section 61-21-18.

**61-21-18. Appeal to district court - Time - Undertaking - Hearing.**

Any person whose land is assessed or may be assessed or is condemned or may be condemned for the construction of a drain under the provisions of this chapter may appeal to the district court from the order of the board establishing or denying the establishment of the drain. The appeal must be taken in accordance with the procedure provided in section 28-34-01. The appellant must give an undertaking to be approved by the clerk of district court in the sum of two hundred fifty dollars for the payment of the costs in the event that the appellant is unsuccessful in the district court. The undertaking must run in favor of the county in which the drain is located, and, if located in more than one county, it may run in the name of either of the counties in which the drain is located. The judge shall hear the appeal not less than ten days nor more than thirty days after the filing of the appeal with the clerk, the day of hearing to be fixed by the court, but such time for hearing may be extended by the court for good cause for a period not to exceed thirty days. The case must be tried in all respects as a court case without a jury. Where the

appeal is perfected, the district court upon the hearing may try and determine the question as to whether, in the first instance, there was sufficient cause for making the petition for the establishment of the drain, whether the proposed drain will cost more than the amount of the benefits to be derived therefrom, and whether such drain was objected to by a majority of the affected landowners in accordance with the weighted voting provisions of section 61-21-16.

**61-21-19. Right of way - How acquired - Assessment of damages - Issuance of warrants.**

Subject to chapter 32-15, the right of way for the construction, operation, and maintenance of a proposed drain, if not conveyed to the county by the owner, may be acquired by eminent domain. If lands assessed for drainage benefits are not contiguous to the drain, access right of way thereto over the land of others may be acquired in the same manner. The right of way, when acquired, is the property of the county. The board may issue warrants in a sum sufficient to pay the damages assessed for the right of way. The warrants must be drawn upon the proper county treasurer or, if the water resource district treasurer is custodian of the drain funds, water resource district treasurer, and are payable out of drain funds in the hands of the treasurer that have been collected for the construction of the drain for which the right of way is sought to be obtained. The board shall negotiate the warrants at not less than the par value thereof and shall pay into court for the benefit of the owners of the right of way the amount to which each is entitled according to the assessment of damages, paying the surplus, if any, to the county treasurer or water resource district treasurer, who shall place the same to the credit of the proper drain fund.

**61-21-20. Assessing cost of constructing and maintaining drain.**

After the making of the order establishing the drain, the board shall assess the percentage of the cost of acquiring right of way and constructing and maintaining such drain in accordance with benefits received, against:

1. Any county, township, or city which is benefited thereby; and
2. Any lot, piece, parcel, or interest in land which is either directly or indirectly benefited by such drain or by such drain in connection with other existing or proposed drains.

No land already included in and being assessed by an existing drainage district shall be included and assessed in any newly formed drainage district unless it can be shown that such land will be benefited by the construction of the new drain. The board in considering the benefit and assessing the percentage of costs to each affected tract, parcel, or piece of land may, among other things, take into consideration the present drainage facilities under any existing drainage district, potential use of the proposed drain by such land, whether any such lands will be benefited or harmed by any change in the existing flow and course of drainage water by reason of the construction of the drain, and such other matters as may be pertinent to the question of benefits.

**61-21-21. Assessment subject to review - Notice of time and place.**

The percentage assessments provided for in section 61-21-20 shall be subject to review, and ten days' notice of the time and place where such percentage assessments will be reviewed by the board shall be given by publication in a newspaper having general circulation in the county. In addition, each owner of land affected by the proposed drain as shown by the record in the office of the recorder or county treasurer shall be mailed a notice of such hearing at the owner's post-office address as shown by such records, and an affidavit of mailing shall be filed with the proceedings of such drain.

**61-21-22. Hearing on assessment - Appeal - Correction of assessments - Relocating drain - Fees.**

At the hearing provided for in section 61-21-21, the board shall proceed to hear all complaints relative to the percentage assessments and shall correct or confirm the same. Should landowners subject to assessment or whose property is subject to condemnation for the construction of the proposed drain having a majority of the possible votes, as determined by

section 61-21-16, believe that the assessment had not been fairly or equitably made, or that the drain is not properly located or designed, they may appeal to the department of water resources by petition within ten days after the hearing on assessments, to review the percentage assessments and to examine the location and design of the proposed drain. Upon the receipt of the petition, the department shall examine the lands assessed and the location and design of the proposed drain, and should the department determine the assessments have not been made equitably, the department may correct the assessments, and the department's correction and adjustment of assessments are final. Should the department determine the drain has been improperly located or designed, the department may order a relocation and redesign. The relocation and redesign must be followed in the construction of the proposed drain. For the department's services in reviewing the assessments and examining the location and design, the department is entitled to ten dollars per day and actual and necessary expenses during the time the department is engaged upon the work. All moneys received by the department must be paid into the state treasury and credited to the general fund. After the hearing provided in this section, the board shall make a finding that the benefits to all tracts of land will exceed the costs that will be assessed against the lands. Any landowner who claims the landowner will receive no benefit from the construction of a new drain may appeal the question of whether there is any benefit to the department upon the filing of a bond in the sum of two hundred fifty dollars with the board for the payment of the costs of the department in the matter. The department may not determine the specific amount of benefits upon an appeal by an individual landowner, but shall determine only whether there is any benefit to the landowner, and the determination of the department is final.

**61-21-23. Recording assessment.**

After the percentage assessment of benefits has been made, as provided in section 61-21-20 and confirmed upon hearing as provided in section 61-21-22, the board shall record such percentage assessments in the permanent records of the drain and such percentage assessment shall further be permanently recorded by the county auditor in a book of drainage assessments.

**61-21-24. Notice of letting of contracts.**

After the recording of percentage assessments as provided in section 61-21-23, the board shall then give at least ten days' notice of the time and place where contracts will be let for the construction of the drain. Such notice shall be published at least once in a newspaper having general circulation in the county.

**61-21-25. Letting of contracts for drains.**

The board shall let contracts for the construction of the drain, culverts, bridges, and appurtenances thereto, or portions thereof, in accordance with chapter 48-01.2.

**61-21-26. Extension of time to contractors - Reletting unfinished part of contract.**

The board may grant a reasonable extension of time for the completion of any contract. When any contract shall not be finished within the time specified, or to which it may be extended, the board in its discretion at any time thereafter may relet such unfinished portion or any part thereof to the lowest responsible bidder, and shall take security as before. The cost of completing such unfinished portions over and above the contract price, and the expense of notices and reletting shall be collected by the board from the parties first contracting. In no case shall the board forfeit and annul a contract without giving five days' notice to the contractor, if the contractor can be found or has a known place of residence in the county. Such notice may be given to such contractor personally or may be left at the contractor's place of residence.

**61-21-27. Apportionment and taxation of costs.**

After the letting of contracts or a portion thereof, the board shall compute the cost of the drain, including estimated costs of any unfinished portions. The board shall determine the sum to be levied to pay such cost, which sum shall be prorated and assessed against lands in

accordance with the percentage determined under section 61-21-20. A copy of the list of assessments shall be served on the clerk or auditor of each municipality against which taxes are to be assessed and shall also be filed in the office of the county auditor of the county or counties in which municipalities and lands benefited by the drain are situated. The provisions of section 61-21-52 shall apply to the levies and assessments provided for in this section.

**61-21-28. Collection of drain taxes.**

The county treasurer shall collect the drain taxes and shall credit all moneys so collected to the drain fund to which they belong. The county treasurer shall act as the custodian of the drain funds unless the board of the water resource district having jurisdiction over the drain requests otherwise in writing. Upon receiving a written request from the water resource district board, the county treasurer shall pay all moneys collected, and the earnings thereon, to the treasurer of the water resource district, who shall then act as the custodian of the drain funds. A direction by a board is effective for all moneys then in the custody of the county treasurer and all moneys subsequently collected thereafter unless and until the board directs in writing that the county treasurer act as the custodian of the moneys.

**61-21-29. Payment of costs and expenses of locating, constructing, maintaining, and improving drain - Warrants issued.**

Payment of all expenses and costs of locating and constructing a drain must be made upon order of the board and warrants therefor must be signed by the chairman and one other member of the board. All warrants drawn by the board in payment of items of expense of a drain are payable from the proper drain fund and must be accepted by the treasurer in payment of taxes levied in regard to the drain. All warrants, after presentation to the county treasurer or, if the water resource district treasurer is custodian of the drain funds, the water resource district treasurer for payment, if not paid for want of funds, must be registered by the county treasurer or water resource district treasurer and thereafter bear interest at a rate not to exceed eight percent per annum. The county commissioners, by proper resolution, are authorized to purchase drainage warrants from general county funds in instances when the warrants will be funded by a bond issue within six months from the date of purchase.

**61-21-30. Additional assessment to meet deficit or additional expense.**

In case the amount realized from the assessment made for the acquisition of right of way or for the construction, improvement, repair, and maintenance of any drain is not sufficient to pay all necessary expenses in regard thereto, or to pay and retire any bonds issued in connection with such operations, a further assessment shall be made to meet such deficit and such additional amount shall be levied and collected in the manner provided in sections 61-21-27, 61-21-28, and 61-21-52.

**61-21-31. Drains along and across public roads and railroads.**

Drains may be laid along, within the limits of, or across any public road or highway, but not to the injury of such road. Where it is necessary to run a drain across such highway, the department of transportation, board of county commissioners, or the board of township supervisors, as the case may be, when notified by the board to do so, shall make necessary openings through such road or highway and shall build and keep in repair all suitable culverts or bridges at its own expense, as provided under the applicable provisions of section 61-21-32. Where drains are laid along or within the limits of roads or highways, such drains shall be maintained and kept open by the board at the expense of the drainage district concerned. A drain may be laid along any railroad when necessary, but not to the injury of such road, and when it shall be necessary to run a drain across a railroad, the railroad company, when notified by the board to do so, shall make the necessary opening through said road and shall build suitable bridges and culverts and keep them in repair.

### **61-21-32. Construction of bridges and culverts - Cost.**

The board shall construct such bridges or culverts over or in connection with a drain as in its judgment may be necessary to furnish passage from one part to another of any private farm or tract of land intersected by such drain. The cost of the construction thereof shall be charged as part of the cost of constructing such drain, and such bridge or passageway shall be maintained under the authority of the board, and the necessary expense thereof shall be deemed a part of the cost of keeping such drain open and in repair. Whenever any bridge or culvert is to be constructed on a county or township highway system over and across or in connection with a drain, and the cost thereof shall exceed five hundred dollars, the cost of constructing such bridge or culvert shall be shared in the following manner: The state water commission may, if funds are available therefor, participate in the portion of the cost thereof that exceeds five hundred dollars in accordance with such rules and regulations as it may prescribe. The remaining cost thereof shall be borne on the basis of forty percent by the county and sixty percent by the water resource district or the drainage district which has created the need for such construction. If, however, moneys have not been made available to the commission for such participation, then and in that case, forty percent of the cost of a bridge or culvert costing in excess of one hundred dollars shall be paid by the county and sixty percent shall be charged as cost of the drain to the drainage district. Whenever any bridge or culvert costing one hundred dollars or less is needed on any such road, the cost of such bridge or culvert shall be charged on the basis of sixty percent to the water resource district or the drainage district and forty percent shall be borne by the township in which such bridge or culvert is located.

In the case of such bridge or culvert construction when there is federal financial participation, if there are costs exceeding the amount of such federal participation then the excess balance shall be borne by the water resource district, drainage district, county, or township, according to the foregoing provisions of this section, as the case may be.

### **61-21-32.1. Culvert and pipe arch bids and acceptance.**

A board may advertise for bids to supply culverts and pipe arches and may accept one or more low bids. A board may utilize bids for such materials received by the county within which the board has jurisdiction and may accept one or more low bids. The board may then purchase materials from the accepted low bidder or bidders for a period of one year from the date of the original acceptance of the bids.

### **61-21-33. Boards of two or more counties may construct drains through counties.**

Whenever it shall be deemed necessary by the boards of two or more counties in this state to construct or extend a drain through or into two or more counties in this state, the several boards in the counties into or through which such proposed drain may extend when completed may establish, construct, and maintain such drain through or into two or more counties in the manner provided in section 61-21-34.

### **61-21-34. Procedure to construct or extend a drain through or into two or more counties.**

In order to construct or extend a drain through or into two or more counties in this state, a petition must be presented to the several boards for the establishment of the drain in their several counties as provided in this chapter. The boards of the counties shall hold a joint meeting and shall determine the necessity or expediency of the establishment of the drain. The several boards of all counties through or into which the proposed drain may run shall agree upon the proportion of damages and benefits to accrue to the lands affected in each county, and for this purpose the boards shall consider the entire course of the drain through all the counties as one drain. Should the boards fail to agree upon the benefits to accrue to the lands in each county, the boards shall submit the points in controversy to the department of water resources, and the department's decision is final. The boards may apportion the cost of establishing and constructing the entire drain ratably and equitably upon the lands in each county in proportion to the benefits to accrue to the county's lands. When the boards have apportioned the costs, the boards shall make written reports of the apportionment to the auditors of the several counties

affected. The reports must show the portion of cost of the entire drain to be paid by taxes upon the lands in each of the counties and must be signed by the boards of all counties affected. Upon the filing of the reports, the several boards shall meet and assess against the lands in each of the counties, ratably and equitably as provided by this chapter, an amount sufficient to pay the proportion of the cost of the drain in each county. The provisions of this chapter relating to drains within a single county govern the establishment, construction, maintenance, repair, and cleanout of the drains.

**61-21-35. Settlement of unpaid warrants.**

In the event that drain warrants which have been issued pursuant to the establishment of a drain in two or more counties remain unpaid and the amounts realized from the original assessments made are not sufficient to pay said warrants and an additional assessment would be necessary to meet such deficit, the board of county commissioners of any county affected, if such board finds that such county has received benefits from such drain by reasons of public health, convenience, or welfare, as provided by law, and might therefore be liable for assessment or reassessment and that the credit of the county is or might be affected by the existence of such outstanding and unpaid warrants, may negotiate and execute a settlement with the owners of such warrants and pay the amount of such settlement from the general fund of the county.

**61-21-36. Cooperating with drainage boards or officials of other states in drainage matters.**

Any board established under the laws of this state, either severally or jointly with other boards, may cooperate with any similar drainage districts or drainage boards in any adjoining state in the establishment of any drainage area or drainage basin for the control of boundary waters between such states.

**61-21-37. Drainage boards or commissioners of different states may meet in joint conference to effectuate cooperation.**

In order to effectuate the cooperation provided for in section 61-21-36, any board may:

1. Meet in joint conference to agree upon joint plans of procedure.
2. Employ jointly with other similar boards a competent engineer.
3. Carry into effect the plans and suggestions adopted at any such joint conference in accordance with the laws of this state with reference to the construction of drains and drain improvements.
4. Assess the costs thereof upon the drainage district or area affected in accordance with the benefits received.

**61-21-38. Proceedings in drainage matters other than establishment and construction of drains - Establishment of lateral drains.**

Unless otherwise specified, all proceedings under the provisions of this chapter affecting the rights of persons and property shall be taken in accordance with the procedure governing the establishment and construction of drains in the first instance, except that a petition for the establishment and construction of a lateral drain shall be sufficient if signed by one or more freeholders whose property will be affected by the lateral drain.

**61-21-39. Petition for a lateral drain - Bond of petitioners - Penalty.**

1. All property owners whose property would be affected by a lateral drain may jointly petition the board for the construction of such drain and shall deposit with the board a good and sufficient bond to be approved by the board, conditioned upon the petitioner or petitioners paying all costs of the proposed lateral drain. Whenever improvements of an original drain are made necessary by the construction of a lateral drain, the costs of such improvements to the original drain shall be charged as part of the cost of construction of the lateral drain and assessed against the property benefited thereby and collected as other assessments are collected. In the event that the board shall

determine that such improvements to the original drain are also beneficial to property served by the original drain, the board may assess such portion of the cost of the improvements as it shall determine to property benefited by the original drain. Unless the petitioners agree to construct the lateral drain, the board within ten days shall commence proceedings for the construction of such lateral drain according to the provisions of this chapter. No person shall dig or construct any lateral ditch or drain which will conduct the flow of water from any land or lands into any drain constructed under the provisions of this chapter, except the petitioners as provided in this section. In all instances involving the construction of a lateral drain, the board shall estimate and determine the proportionate share of the cost of the main or original drain which should be paid by such petitioners. The petitioners shall pay into the county treasury the amount so determined, and they shall then be allowed to connect such lateral ditches or drains with the original drain under the direction and superintendence of the board, but at their own cost and expense. The money paid into the county treasury shall be credited to the drainage fund of the specific drain involved.

2. When one or more of the property owners to be benefited by the construction of a lateral drain or ditch petition the board for the construction of a lateral drain or ditch, the board shall then proceed in the same manner as is used for the establishment of a new drain and thereafter such lateral drain shall constitute a part of the original drain to which it is connected and the affected property shall be a part of such drainage district.
3. Repealed by S.L. 1975, ch. 569, § 4.
4. Any person violating any of the provisions of this section shall be guilty of a class B misdemeanor.

**61-21-40. Collection of tax or assessment levied not to be enjoined or declared void - Exceptions.**

The collection of any tax or assessment levied or ordered to be levied to pay for the location and construction of any drain laid out and constructed under the provisions of this chapter shall not be enjoined perpetually or absolutely declared void by reason:

1. Of any error of any officer or board in the location and establishment thereof;
2. Of any error or informality appearing in the record of the proceedings by which any drain shall have been located or established; or
3. Of a lack of any proper conveyance or condemnation of the right of way.

The court in which any proceeding may be brought to reverse or to declare void the proceedings by which any drain has been located or established, or to enjoin the tax levied to pay therefor, on application of either party, shall appoint such person or persons to examine the premises, or to survey the same, or both, as may be deemed necessary. The court, on a final hearing, shall make such order in the premises as shall be just and equitable, and may order such tax or any part thereof to remain on the tax lists for collection, or if the same shall have been paid under protest, shall order the whole or such part thereof as may be just and equitable to be refunded. The costs of such proceedings shall be apportioned among the parties as justice may require.

**61-21-41. Establishing new drains in location of invalid or abandoned drain.**

If any of the proceedings for the location, establishment, or construction of any drain under the provisions of this chapter shall have been enjoined, vacated, set aside, declared void, or voluntarily abandoned by the board, for any reason whatsoever, the board may proceed under the provisions of this chapter to locate, establish, and construct a new drain at substantially the same location as the abandoned or invalid drain. For the purposes of this chapter, a drain that is not maintained shall be considered abandoned. When a new drain is established at substantially the same location, the board shall ascertain the real value of services rendered, moneys expended, and work done under the invalid or abandoned proceedings and the extent to which the same contributes to the construction and completion of the new drain. The board shall then issue warrants in an amount not exceeding the value to the new drain of the work completed on the invalid or abandoned drain and shall deliver such new warrants, pro rata, to the owners or holders of old warrants or bonds issued under the invalid or abandoned drainage proceedings, upon the surrender of such old warrants or bonds by the holder or holders thereof.

**61-21-42. Drain kept open and in repair by board.**

All drains that have been constructed in this state except township drains shall be under the charge of the board and it shall be the duty of the board to keep such drains open and in good repair. When a drain is situated in more than one county, the drainage board of each county shall have charge of the maintenance of that portion of the drain located in its county. It shall be the mandatory duty of the board, within the limits of available funds, to clean out and repair any drain when requested to do so by petition of fifty-one percent of the affected landowners. The percentage of affected landowners of record in the treasurer's office or recorder's office favoring such cleaning out or repairing shall be determined by the weighted voting method as provided in section 61-21-16.

**61-21-43. Assessment of costs of cleaning and repairing drains.**

The cost of cleaning out and repairing a drain or a drainage structure constructed by any governmental entity for which no continuing funds for maintenance are available must be assessed pro rata against the lands benefited in the same proportion as the original assessment of the costs in establishing such drain, or in accordance with any reassessment of benefits in instances in which there has been a reassessment of benefits under the provisions of section 61-21-44. If no assessment for construction costs or reassessment of benefits has been made, the board shall make assessments for the cost of cleaning and repairing such drain or drainage structure constructed by any governmental entity for which no continuing funds for maintenance are available after a hearing thereon as prescribed in this chapter in the case of a hearing on the petition for the establishment of a new drain. The governing body of any incorporated city, by agreement with the board, is authorized to contribute to the cost of cleaning out, repairing, and maintaining a drain in excess of the amount assessed under this section, and such excess contribution may be expended for such purposes by the board.

**61-21-43.1. Removal of obstructions to drain - Notice and hearing - Appeal - Injunction.**

If the board determines that an obstruction to a drain, including if the drain is located within a road ditch, has been caused by the negligent act or omission of a landowner or landowner's tenant, the board shall notify the landowner by registered mail at the landowner's post office of record. A copy of the notice must also be sent to the tenant, if any. The notice must specify the nature and extent of the obstruction, the opinion of the board as to its cause, and must state that if the obstruction is not removed within the period the board determines, but not less than fifteen days, the board shall procure removal of the obstruction and assess the cost of the removal, or the portion the board determines, against the property of the landowner responsible. The notice must also state that the affected landowner, within fifteen days of the date the notice is mailed, may demand in writing a hearing upon the matter. Upon receipt of the demand, the board shall set a hearing date within fifteen days from the date the demand is received. In the event of an emergency the board may, immediately upon learning of the existence of the obstruction, apply to a court of proper jurisdiction for an injunction prohibiting the landowner or landowner's tenant to maintain the obstruction. Assessments levied under this section must be collected in the same manner as other assessments authorized by this chapter. If, in the opinion of the board, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in accordance with the proportionate responsibility of the landowners. A landowner aggrieved by action of the board under this section may appeal the decision of the board to the district court of the county in which the land is located in accordance with the procedure provided for in section 28-34-01. A hearing as provided for in this section is not a prerequisite to an appeal. If the obstruction is located in a road ditch, the timing and method of removal must be approved by the appropriate road authority before the notice required by this section is given and appropriate construction site protection standards must be followed.

**61-21-44. Reassessment of benefits.**

The board may hold at any time and, upon petition of any affected landowner after a drain has been in existence for at least one year, shall hold a hearing for the purpose of determining

the benefits of such drain to each tract of land affected. At least ten days' notice of such hearing must be given by publication in a newspaper having general circulation in the county and by mailing notice thereof to each owner of land whose assessment is proposed to be raised as determined by the records of the recorder or county treasurer. The provisions of this chapter governing the original determination of benefits and assessment of costs apply to any reassessment of benefits carried out under this section. The board may not be forced to make such reassessment more than once every ten years, nor may any assessment or balance thereof supporting a drainage fund be reduced or impaired by reassessment or otherwise as long as bonds payable out of such fund remain unpaid and moneys are not available in such fund to pay all such bonds in full, with interest.

**61-21-45. Contracts for work of cleaning and repairing drains.**

If the cost of any work of cleaning out or repairing any drain, or system of legal drains, if more than one cleaning or repair project is carried on under one contract, does not exceed the amount provided for construction of a public improvement under section 48-01.2-02 in any one year, the work may be done on a day work basis or a contract may be let without being advertised. When the cost of such work exceeds the amount provided for construction of a public improvement under section 48-01.2-02 in any one year, a contract must be let in accordance with chapter 48-01.2. The competitive bid requirement is waived, upon the determination of the board that an emergency situation exists requiring the prompt repair of a project, and a contract may be made for the prompt repair of the project without seeking bids.

**61-21-46. Maximum levy - Accumulation of fund.**

1. The levy in any year for cleaning out and repairing a drain may not exceed four dollars per acre [.40 hectare] on any agricultural lands in the drainage district.
  - a. Agricultural lands that carried the highest assessment when the drain was originally established, or received the most benefits under a reassessment of benefits, may be assessed the maximum amount of four dollars per acre [.40 hectare]. The assessment of other agricultural lands in the district must be based upon the proportion that the assessment of benefits at the time of construction or at the time of any reassessment of benefits bears to the assessment of the benefits of the agricultural land assessed the full four dollars per acre [.40 hectare]. Nonagricultural property must be assessed the sum in any one year as the ratio of the benefits under the original assessments or any reassessments bears to the assessment of agricultural land bearing the highest assessment.
  - b. Agricultural lands must be assessed uniformly throughout the entire assessed area. Nonagricultural property must be assessed an amount not to exceed two dollars for each five hundred dollars of taxable valuation of the nonagricultural property.
2. In case the maximum levy or assessment on agricultural and nonagricultural property for any year will not produce an amount sufficient to cover the cost of cleaning out and repairing the drain, the board may accumulate a fund in an amount not exceeding the sum produced by the maximum permissible levy for six years. If the cost of, or obligation for, the cleaning and repair of any drain exceeds the total amount that can be levied by the board in any six-year period, the board shall obtain an affirmative vote of the majority of the landowners as determined by section 61-21-16 before obligating the district for the costs.

**61-21-47. Expenditures in excess of maximum levy.**

If the cost of maintenance, cleaning out, and repairing any drain shall exceed the amount produced by the maximum levy of four dollars per acre [.40 hectare] in any year, with the amount accumulated in the drainage fund, the board may proceed with such cleaning out and make an additional levy only upon petition of at least sixty-one percent of the affected

landowners. The percentage of the affected landowners signing such petition shall be determined in accordance with the weighted voting provisions in section 61-21-16.

**61-21-48. Reconveyance of land no longer required for drainage purposes.**

Whenever land has been acquired for drainage purposes and is no longer required for such use, the board of county commissioners may reconvey such land to the present owner of the adjacent property if such party in payment thereof surrenders all warrants issued in payment of the land or repays the amount of cash paid therefor.

**61-21-49. County may pay share of drainage taxes on tax deed lands.**

If lands acquired by the county by tax deed are assessed drainage taxes, the county commissioners shall pay such taxes from general funds if it appears after a due appraisal that the value of the land exceeds the total of the delinquent taxes for which foreclosure proceedings were instituted plus the total drainage tax assessment. If the total of taxes assessed at foreclosure plus drainage taxes exceeds the value of the land, the county shall not pay the drainage assessments but upon sale of such land any excess of the sales price over and above the amount of taxes for which the foreclosure proceedings were instituted shall be paid to the drainage district to the full extent of drainage taxes due. Any income from the property shall be first credited to the general taxes and any surplus income shall be paid to the drainage district to the extent of drainage taxes due.

**61-21-50. Drain warrants - Terms and amounts.**

Drain costs must be paid upon order of the board by warrants signed by the chairman and one other member of the board. The warrants are payable from the proper drain fund and, upon maturity, are receivable by the treasurer for drain assessments supporting the fund. The warrants may be issued at any time after the order establishing the drain has become final and after incurring liability to pay for drain work to be financed by drain assessments and in anticipation of levy and collection of the assessments. Every warrant not made payable on demand must specify the date when it becomes payable. Demand warrants not paid for want of funds must be registered by the county treasurer or, if the water resource district treasurer is custodian of the drain funds, the water resource district treasurer and bear interest at a rate determined by the board, not exceeding eight percent per annum. Warrants of specified maturities bear interest according to their provisions at a rate or rates resulting in an average net interest cost not exceeding twelve percent per annum if sold at private sale, and may be issued with interest coupons attached. There is no interest rate ceiling on warrants sold at public sale or to the state of North Dakota or any of its agencies or instrumentalities. All drain warrants must state upon their faces the purpose for which they are issued and the drain fund from which they are payable. The warrants may be used to pay drain obligations, or may be sold at not less than ninety-eight percent of par value, provided that the proceeds of warrants sold are placed in the proper drain fund and used exclusively for drain expenses. Any unpaid warrants issued for the acquisition of right of way or the construction of a drain, including all incidental costs in connection therewith, must be funded by a bond issue within one hundred eighty days from and after the filing of the assessment of all costs with the county auditor as provided in section 61-21-27, but this requirement may not be construed as prohibiting the funding of warrants or the issuance of bonds after the one hundred eighty-day period.

**61-21-51. Payment of drain assessments - Interest.**

Drain assessments may be paid in full or in part at any time after the same have been filed in the office of the county auditor, provided that all such assessments shall bear interest at a rate to be set by the board, which rate shall be not less than the rate payable on warrants or bonds issued for the drain financed by such warrants or bonds. Interest shall be computed from the date of filing the assessment list in the office of the county auditor, or, if bonds are issued for right of way or for construction, extension, or renovation, from the date of first publication of the preliminary bond issue resolution, whichever date is the earlier.

### **61-21-52. Lien for and enforcement of drain assessments.**

Drain costs determined by the board shall be extended upon the proper assessment list of benefited tracts in specific amounts computed according to the proportionate benefits found for each tract affected by the drain or by work done on the drain. A true copy of every such list affecting lands in a city shall be served on the auditor thereof promptly following completion. The assessment list shall then be filed in the office of the county auditor of the proper county or counties and said auditor shall extend upon the tax lists against the land affected the specific amounts of the drain assessments according to the drain assessment list prepared by the board. From and after the filing of a drain assessment list with the county auditor, the specific amounts levied and assessed against each benefited tract shall constitute a special tax thereon and shall be a lien upon such tract until fully paid. Such lien shall have precedence over all other liens except general tax liens, and shall be of equal rank and order with the lien of general taxes and shall not be divested by any judicial sale, tax sale, or foreclosure. This chapter shall be notice to all subsequent encumbrancers of the superior rank of drain liens imposed under the provisions hereof. Special drain taxes shall be collected and enforced as other taxes are collected and enforced and in the same manner as is provided in title 57. If no satisfaction of tax lien is made, the affected property shall pass absolutely to the board on foreclosure of tax lien provided the board pays the amount for satisfaction of lien, except the amounts of drain assessments, and may thereafter be sold by the board at public sale. The governing body of each city against which a drain assessment is made shall include in the earliest possible tax levy the amount assessed against it by the board, which amount shall be extended against all of the taxable property in such city as general taxes are extended, and such levy shall be over and above mill levy limitations prescribed by law. When the cost of any drain, or of an extension or enlargement or renovation thereof, shall be in such amount that the board finds that assessment of such total cost against the affected property for collection in full in a single payment would be unduly burdensome to such property, the board may determine to divide such cost into equal annual amounts to be assessed and collected over a period of not more than fifteen years. Drain costs and drain assessments shall include all expenditures for work and materials for the drain, including anticipated expenses, interest charges, and a reasonable charge for the establishment of a reserve fund with which the board may from time to time purchase tax delinquent property affected by the drain.

### **61-21-53. Drain bonds.**

The board may issue bonds to finance acquiring drain right of way, locating and constructing drains, and funding unpaid drain warrants heretofore issued, or issued hereafter under this chapter. Drain bonds issued in whole or in part to finance expenditures for which warrants have not been issued shall not be authorized until after firm contracts for projected drain work have been made and proper undertakings therefor have been executed and filed, or until after the drain work has been completed. Proceedings for the issuance of bonds shall be initiated by the adoption of a preliminary resolution of the board which shall include information and findings as follows:

1. The maximum amount of drain bonds proposed to be issued.
2. The maximum interest rate such bonds shall bear.
3. Designation of the calendar years in which such bonds shall mature.
4. The complete name of the drain for which such bonds are to be issued.
5. The purpose or purposes for which the proceeds of the bonds will be used, including the total amount of drain warrants to be bought with such proceeds.

When such preliminary resolution has been duly adopted by the board, the board shall proceed to have the text thereof published in a legal newspaper of general circulation in the locality in which the particular drain is situated, and there shall be published with and as a part of such text a statement that from and after the expiration of thirty days next following the date of the first printing of such text, no action may be commenced or maintained, and no defense or counterclaim may be recognized in the courts of this state to question or impair the drain warrants resolved to be funded, or the drain assessments supporting such warrants. There shall also be included in such publication the further statement that a complete list identifying the drain warrants proposed to be funded has been filed in the office of the county auditor of the

county or counties in which the affected lands are located. Such publication shall be made once each week for three successive weeks and proper proof thereof shall be filed with the board. The validity and enforceability of any drain warrant or of any assessment supporting the same shall not be vulnerable to attack in the courts of this state unless an appropriate action or proceeding is commenced or a defense or counterclaim is served within thirty days next following the date of first printing of such publication. The board shall prepare and file with the auditor of the proper county or counties a complete list identifying the drain warrants proposed to be funded by such bonds, and such list, or true copies thereof, shall be filed prior to the date of the first printing of said preliminary resolution. Within a reasonable time, and more than thirty days after the first printing of such preliminary resolution, the board may proceed to authorize the preparation and sale of drain bonds in accordance with such resolution. The bonds shall bear interest at a rate or rates resulting in an average net interest cost not to exceed twelve percent per annum on those issues which are sold at private sale. There is no interest rate ceiling on those issues sold at public sale or to the state of North Dakota or any of its agencies or instrumentalities. The bonds shall contain a provision that interest thereon shall cease at maturity unless the holder shall present the same for payment and payment is refused, shall designate the fund from which they are payable, and shall be offered for sale and sold as provided in chapter 21-03, for the offering and sale of general obligation bonds of governmental subdivisions of this state. Wherever drain bonds are issued for drain warrants, the bonds in the appropriate amount may be exchanged for the warrants, but the basis of exchange shall be such that the average net rate of interest on the bonds will not exceed the rate on the warrants refunded. Drain warrants purchased with the proceeds of bonds shall not be canceled but shall be retained by the board as assets of the drain fund from which the warrants are payable. The fund shall be continued and payments therefrom shall be made on the warrants drawn thereon without reference to the bond issue, but all such payments shall be placed in the fund from which the bonds are payable and shall be applied to service such bonds and to pay the interest thereon. Bonds issued by drainage districts shall be eligible for purchase by the various trust funds of the state of North Dakota and its instrumentalities.

**61-21-54. Sinking funds and bonds.**

The board shall establish a sinking fund for each issue of bonds, which fund shall consist of all drain assessments made for the bonds, all warrants funded and all assessments for such warrants, all accrued interest received on sale of bonds, all proceeds of bonds sold not actually expended for the drain, the reserve fund authorized for purchase of tax delinquent lands affected by the drain, all general tax levies for payment of obligations of the drain, and any other moneys which may be appropriated to the sinking fund. Separate sinking funds shall be provided for each separate drain for which bonds shall have been issued. Until the purpose of the sinking fund has been fulfilled, no moneys in any such sinking fund shall be applied to any purpose other than payment of the bonds for which such fund was created.

**61-21-55. Liability for deficiencies - Maintenance of sinking fund.**

During the month of June of each year, the board shall prepare a complete statement of the condition of the finances of each drain and shall cause the same to be filed with the county auditor on or before July first next following. At its July meeting next following the filing of each statement of financial condition of any drain, the county board shall examine such statement and determine whether or not any drain has defaulted or will default on its financial obligations. If it appears to the county board that any drain does not have moneys and drain assessments receivable equal to one hundred percent of its obligations coming due within thirteen months next following, the county board shall pay from the county general fund into the sinking fund for drain warrants or bonds or shall proceed to levy a general property tax, the proceeds of which, together with drain moneys on hand and the probable prior yield of drain assessments will amount to one hundred ten percent of the obligations of the drain becoming due during the thirteen months next following. Such tax or payments shall be appropriated to the sinking fund for the drain warrants or bonds, and certificates of indebtedness may be issued against the same as levied. On redemption of all warrants or bonds against any sinking fund, or upon accumulation of moneys in such fund sufficient to redeem all outstanding warrants or bonds, all

surplus moneys in such fund shall be payable to the general fund of the county or counties levying general property taxes or making such payments, up to the amounts of such levies or payments.

**61-21-56. Dissolution of drainage district - Return of unexpended assessments.**

The owners of property subject to fifty-one percent or more of the liability for maintaining any drain as determined in section 61-21-16 may petition the board for the abandonment and dissolution of such drain. Upon receipt of such petition, the board shall call a public hearing on the petition and if the board finds the number of valid signatures to represent property liable to fifty-one percent or more of the cost of upkeep of such drain, as determined by section 61-21-16, and that such drainage district has no outstanding indebtedness, the board shall then declare such drain to be abandoned and such drainage district to be dissolved, shall record such declaration upon the minutes and publish the same in a newspaper having wide circulation in that county, and shall return all unexpended assessments collected for the maintenance of the drain to the owners of the assessed property on a pro rata basis in proportion with the amount originally assessed. In case the drainage district extends into two or more counties, the board upon receipt of the petition above referred to shall convene in joint session and call the public meeting above provided. When a drain has been abandoned and dissolved, it may then be re-established in whole or in part only in the same way as a new drain is established.

**61-21-57. Penalty for violation of rules and regulations.**

If any person shall violate any valid rule or regulation promulgated by the board, that person shall be guilty of an infraction. The board may bring a civil action to recover damages resulting from violations, plus costs of suit, and all sums recovered shall be deposited with the county treasurer to the credit of the proper drain fund.

**61-21-58. Existing obligations and regulations.**

The passage of this chapter shall not affect the validity of any valid outstanding warrants, bonds, or other obligations of drainage districts and all sinking funds created for the payment of such obligations shall continue in force until the liquidation of such obligations. All valid rules and regulations promulgated by any board of county commissioners or board of drainage commissioners shall remain in full force and effect until altered or repealed by the board in the county concerned.

**61-21-59. City application for joint drain.**

Repealed by omission from this code.

**61-21-60. Hearing on city joint drain.**

Repealed by omission from this code.

**61-21-61. Payments for city joint drain.**

Repealed by omission from this code.

**61-21-62. Board may apportion assessments for benefits of an established drain against a county or city or any tract of land benefited by an established drain.**

Whenever a board discovers or ascertains that the county, a township, or city therein, or that any tract, parcel, or piece of land is being benefited by an established drain and that the county or such township, municipality, tract, piece, or parcel of land was not included in the drainage area assessed for the cost of construction and maintenance of the drain when established, the board shall commence proceedings for reassessment of lands originally assessed for the cost of establishing and constructing such drain and shall apportion and assess the part of the balance remaining unpaid, if any, of the cost of such drain, and the expense of maintenance thereof, which such county, township, or city and each tract of land found benefited thereby should bear.

Before making such reassessment or reapportionment of benefits, the board shall hold a hearing for the purpose of determining the benefits of the drain to the county, such township, or city and to each tract, piece, or parcel of land being benefited. At least ten days' notice of such hearing shall be given by publication in a newspaper having general circulation in the county and by mailing notice thereof to each owner of land assessed for the cost of construction and maintenance when the drain was established and by mailing such notice to the governing board of the county, township, and municipality and to the owner of each tract, piece, or parcel of land found to be benefited since the establishment of the drain, as determined by the records in the office of the recorder or county treasurer. The provisions of this chapter governing the original determination of benefits and assessment of costs shall apply to the reassessment and assessment of benefits carried out under the provisions of this section.

**61-21-63. Drains having a common outlet may be consolidated.**

Whenever one or more drains which have from time to time been constructed empty into a drain that supplies the outlet for waters flowing in all such drains, such drains may by resolution or order of the board, if the cost of construction of such drains has been paid, be consolidated into one drain or drainage system and shall be renumbered and may be renamed.

**61-21-64. Outlets.**

Subject to chapter 32-15, a board may, if found necessary, by process of eminent domain acquire land needed for a sufficient outlet for any established drain.

**61-21-65. Consolidation of drainage district or districts into water resource districts.**

Upon resolution of the board of county commissioners or the water resource board, or upon the filing with the board of county commissioners of a petition containing the signatures of landowners possessing at least fifteen percent of the voting rights in one or more drainage districts, computed in accordance with section 61-21-16, the board of county commissioners shall set a date for hearing upon the establishment or expansion of a water resource district to include the property contained within the drainage district or districts. The board of county commissioners shall publish notice of the time, place, and purpose of the hearing once each week for two consecutive weeks in a newspaper of general circulation in the county, the second publication to be not less than ten nor more than twenty days before the date set for hearing. In the event special assessments remain outstanding upon any property within a drainage district to be affected by a hearing as provided in this section, the board of county commissioners shall notify by ordinary mail at least ten days before the date set for the hearing all landowners of record subject to the special assessments in accordance with the provisions of section 61-21-66. If, at the time and place set for hearing, a majority of affected landowners computed in accordance with section 61-21-16 shall file written objections, further proceedings shall be discontinued. If such majority does not object, the board of county commissioners shall file with the state water commission a petition signed by a majority of the board and all further proceedings shall thereafter be governed by chapters 61-16 and 61-16.1. Upon the establishment or expansion of a water resource district to include one or more drainage districts, the board of county commissioners shall, by resolution, dissolve the drainage districts and transfer all property of the dissolved districts to the water resource district.

**61-21-66. Dissolution prohibited when liabilities outstanding - Disposition of assets.**

Notwithstanding the provisions of section 61-21-65, no drainage district shall be dissolved if such district has any outstanding warrants, bonds, or other obligations unless the order of the board of county commissioners dissolving such district shall provide for a continuance of assessments upon properties within the dissolved district for the payment of outstanding obligations, or an assumption of such obligations by the newly created district and the spreading of such assessments over properties within the newly created district. All sinking funds created for the payment of such obligations shall be continued in force by the new district until the liquidation of such obligations. Any funds in the treasury of the drainage district shall, upon dissolution under the provisions of section 61-21-65, be transferred to the treasury of the water

resource district. Such funds may be expended separately or jointly with other funds on projects or activities of the water resource district which are of specific benefit to property in the dissolved drainage district from whence the funds were transferred or, in the discretion of the board of county commissioners, such funds may be prorated among the properties in the dissolved drainage district and credited to such property in proportion with the amount originally assessed as a credit against subsequent assessments by the water resource district.

**61-21-67. Closing of noncomplying drain - Notice and hearing - Appeal - Injunction.**

If the board determines that a drain, lateral drain, or ditch has been opened or established by a landowner or tenant contrary to this chapter or any rules adopted by the board, the board shall notify the landowner by registered mail at the landowner's post office of record. A copy of the notice must also be sent to the tenant, if any. The notice must specify the nature and extent of the noncompliance and must state that if the drain, lateral drain, or ditch is not closed or filled within the period the board determines, but not less than fifteen days, the board shall procure the closing or filling of the drain, lateral drain, or ditch and assess the cost of the closing or filling, or the portion the board determines, against the property of the landowner responsible. The notice must also state that the affected landowner, within fifteen days of the date the notice is mailed, may demand in writing a hearing upon the matter. Upon receipt of the demand, the board shall set a hearing date within fifteen days from the date the demand is received. In the event of an emergency, the board may immediately apply to the appropriate district court for an injunction prohibiting the landowner or tenant from maintaining the drain, lateral drain, or ditch. Assessments levied under this section must be collected in the same manner as other assessments authorized by this chapter. If, in the opinion of the board, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in accordance with the proportionate responsibility of the landowners. A landowner aggrieved by action of the board under this section may appeal the decision of the board to the district court of the county in which the land is located in accordance with the procedure provided for in section 28-34-01. A hearing as provided for in this section is not a prerequisite to an appeal.