WEST VIRGINIA CODE CHAPTER 19 ARTICLE 21

WV Legislature

§19-21-1. Jurisdiction of circuit courts to organize drainage districts; definition of terms.

Original jurisdiction, power and authority are hereby conferred upon all circuit courts of this state to establish and organize drainage, levee and reclamation districts in this state, and to the end that the public design and intention of this article may be carried into full force and effect, power and authority are hereby conferred upon such courts to provide ways and means consistent with the provisions of this article for the organization, operation and maintenance of drainage, levee and reclamation districts in this state.

The jurisdiction, power and authority conferred upon the circuit courts of this state by this article shall include the establishing, organizing and providing for the operation and maintenance of drainage, levee and reclamation districts in this state, which districts, when organized, shall have the power to construct all levees, ditches, drains or canals, pumping plants, floodgates, and other needed improvements, or to have constructed, straightened, widened, deepened, strengthened and improved any levee, ditch, drain, creek or water courses within this state, all for the purpose of reclaiming, draining or improving any low, wet, swampy or overflowed lands in this state, or to prevent the overflow of lands, or to protect towns, municipalities and cities from such overflow therein: Provided, however, That in so doing navigation upon navigable streams in this state shall not thereby be impaired: Provided further, That such improvement will result in public benefit, or will promote the public health, or will be conducive to the general welfare of the community in which the proposed district is established.

Whenever the words "court,""judge" and "clerk of the court" are used in this article, they shall be construed to mean "circuit court,""circuit judge" and "clerk of the circuit court," respectively, unless otherwise indicated.

WV Legislature

§19-21-2. Proceedings under article have precedence over other cases; exceptions; mandamus.

Proceedings under the provisions of this article shall have precedence on the dockets of all circuit courts of this state over all other civil cases, except election cases and special proceedings which heretofore by other laws may have been given precedence on the courts' dockets. If the court does not act promptly in complying with the terms of this article, it may be compelled to do so by mandamus.

WV Legislature

§19-21-3. Petition to establish district.

Proceedings to establish and organize a drainage, levee or reclamation district shall be commenced by three or more owners of real property within the proposed district, whose lands will be affected by the proposed improvement, filing a petition in the circuit court, or before the judge thereof in vacation, of the county wherein such lands and other property proposed to be organized into a drainage, levee or reclamation district are situated. Upon the filing of such petition the court, or the judge thereof in vacation, shall require a bond in sufficient penalty to be given and filed, with good and sufficient surety, and conditioned for the payment of all preliminary costs and expenses that may be incurred in case the district is not formed. If the lands to be included in the proposed district are situated in two or more counties, then the petition may be filed in the office of the clerk of the circuit court, or before the judge thereof in vacation, of either of the counties in which such lands are situated, and such court shall retain jurisdiction thereafter regardless of county lines.

The petition shall describe in a general way, and by reference to roads, streams, railroads and other landmarks, the body of land or other property proposed to be reclaimed, drained, leveed, improved and embraced within the district, and shall set forth in a general way the conditions existing and the advantages that will result from the proposed improvement. It also shall indicate opposite the name of each signer the approximate acreage of each signer which will be affected. Said petition also shall contain a prayer that the lands described therein be declared a drainage district under the provisions of this article. The petition may be amended or supplemented at any time before the drainage, levee or reclamation district is fully and completely organized.

The petition may be signed by any landowner, male or female, married or single; guardians or committees may sign for their wards, and trustees, executors and administrators may sign for the estates represented by them. If the signature of any corporation, by its authorized officer or officers, is attached thereto, attested by the corporate seal, the same shall be sufficient evidence of the assent of the corporation to such petition. Any person having signed the petition shall have no right to have such proceedings dismissed as to him without the written consent of the majority in acreage of the owners who signed the petition.

WVLegislature

§19-21-4. Appointment of engineer; duties and compensation thereof; notice of application to form drainage district.

Immediately after such petition shall have been filed it shall be the duty of the court, or the judge thereof in vacation, to enter upon its records an order appointing an engineer to be selected by the petitioners, provided the engineer whom they select is a qualified and suitable person. If the engineer designated by the petitioners is, in the opinion of the court, not a proper person, the court shall appoint such other engineer as it may deem qualified to perform the duties imposed upon him by this article. Such engineer shall forthwith proceed to ascertain in a general manner the limits of the region which will be benefited by the proposed improvements, and the names of the landowners and the approximate acreage of each landowner's holdings, as nearly as they can be determined without actual survey, and file a report of his findings with the clerk of the circuit court at the earliest date practicable. In his report the engineer shall give a general idea of the improvements required and an approximate estimate of their cost, together with such other suggestions as he may think will be of service to the court in passing on the prayer of the petitioners. For service rendered in this connection the compensation of the engineer shall be fixed by the court.

Immediately upon the filing of the engineer's report, the clerk of the circuit court shall give notice by causing publication to be made as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be each county in which are situated lands of the proposed district. The last publication shall be made at least fifteen days prior to the first day of the next regular or special term of the circuit court at which such petition is to be heard. Such notice shall be substantially in the following form which shall be deemed sufficient for all purposes of this article: NOTICE OF APPLICATION TO FORM DRAINAGE DISTRICT.

Notice is hereby given to all persons interested in the following described real estate in _____ county of West Virginia (here describe the property as set out in the petition) that a petition asking that the foregoing lands and other property be formed into a drainage district under the provisions of the statutes of West Virginia, and that the lands and other property above described will be affected by the formation of such drainage district and be rendered liable for taxation for the purposes of paying the expenses of organizing, making and maintaining the improvements that may be found necessary to drain, protect and reclaim the lands and other property in said district, and you and each of you are hereby notified to appear at a term of the circuit court of _____ county, to be held on the _____ day of _____, 19____, at the courthouse thereof, and show cause, if any there be, why such drainage district, as set forth in the petition, should not be organized.

_____ clerk of the circuit court _____ County.

The circuit court of the county in which the petition shall have been filed shall thereafter maintain and have original and exclusive jurisdiction coextensive with the boundaries and limits of such district, without regard to county lines, for all purposes of this article.

§19-21-5. Objections to formation of drainage district; action of court; appeal; filing of decree in office of clerk of county court [county commission].

Any owner of real estate or other property in such proposed district who may not have signed the petition and who objects to the organization and formation of the proposed drainage district shall, on or before the first day of the term of court at which the cause is to be heard, file his objection or objections to the organization of such proposed drainage district. Such objection or objections shall be limited to a denial of the statements in the petition and shall be heard by the court in a summary manner without unnecessary delay, and in case all such objections are overruled, if the court shall be of the opinion that the establishment of a drainage district will be to the advantage of the owners of real property therein, or will be conducive to the public health, utility, convenience and public welfare, it shall, without making further inquiry, enter an order establishing a district, which district shall have the power and authority to acquire, hold and convey property, levy taxes and collect the same, and shall have all the powers and authority necessary to carry out the provisions of this article, and may sue and be sued under the name and style of ..... drainage district. Such order shall have all the force and effect of a judgment. If the court finds that the property set out in the petition should not be organized into a drainage district, it shall dismiss such proceedings and adjudge the costs against the signers of the petition in proportion to the acreage represented by each petitioner. Any owner of real property within the district may appeal from the judgment of the court within twenty days after the same has been made, but if no appeal is taken within that time such judgment shall be deemed conclusive and binding upon all the real property within the bounds of the district and upon the owners thereof, and any owner of property in the district may within a like time appeal from an order refusing to establish such district. Such appeals must be accompanied by a bond approved by the court conditioned for the payment of costs if the appeal should be decided against the appellant. If the court orders the drainage district established, a copy of the findings and decree of the court shall be filed in the office of the clerk of the county court in each of the counties having lands and other property in such drainage district where the same shall become a permanent record.

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§19-21-6. First meeting of owners; election of board of supervisors.

Within thirty days after any drainage district shall have been organized and established under the provisions of this article the circuit clerk of the court organizing such district shall call a meeting of the owners of real estate or other property situate in such district, at a day and hour specified, in some public place in the county in which the district was organized, for the purpose of electing a board of three supervisors, to be composed of owners of real estate in such district, two of whom at least shall be residents of the county or counties in which such district is situate, or some adjoining counties. Notice of such meeting shall be given by such clerk by causing publication thereof to be made as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be each county in which lands of the district are situate. The last publication shall be at least ten days before the day of such meeting. The landowners, when assembled, shall organize by the election of a chairman and a secretary of the meeting who shall conduct the election. At such election each owner shall be entitled to one vote in person or by proxy for every acre of land or mile of right-of-way owned by him in such district, and the three persons receiving the highest number of votes shall be declared elected as supervisors. Such supervisors shall immediately by lot determine the terms of their office, which shall be respectively one, two and three years, and they shall serve until their successors shall have been elected and qualified.

WV Legislature

§19-21-7. Annual meeting of owners; election of supervisor.

In the same month of each year after the election of the first board of supervisors, the board of supervisors shall call a meeting of the owners of land and other property herein described in the district by publication, in the same manner as provided for in section six, and such owners shall meet at the time and place fixed by the board of supervisors and elect one supervisor therefor in like manner as prescribed in the preceding section, who shall hold his office for three years or until his successor is elected and qualified; and in case of a vacancy in the office of supervisor, the remaining supervisors may fill such vacancy by appointment until the next annual meeting, when a successor shall be elected for the unexpired term: Provided, That after the report of the appraisers has been confirmed by the court under the provisions of section fifteen, only owners of land and other such property having benefits assessed against it shall be entitled to vote at the annual meetings held under the provisions of this section.

WV Legislature

§19-21-8. Oath of supervisor; effect of failure to qualify.

Each supervisor before entering upon his official duties shall take and subscribe to an oath before some officer authorized by law to administer oaths, that he will honestly and impartially perform the duties devolving upon him in office as supervisor of the drainage district in which he was elected, and that he will not neglect any of the duties imposed upon him by this article. Any supervisor-elect who fails to qualify by taking such oath and filing the same in the office of the secretary of the drainage district within ten days after his election shall be deemed to have declined such election, and the vacancy shall be filled as herein provided.

WV Legislature

§19-21-9. Organization of board of supervisors; duties and compensation.

The board of supervisors immediately after their election shall choose one of their number president of the board, and elect some suitable person secretary who may or may not be a member of the board. Such board shall adopt a seal with a suitable device, and shall keep a record of all its proceedings, as hereinafter provided, which shall be open to the inspection of all owners of real estate and other property herein described of the district, as well as to all other interested parties. The board shall report to the landowners at the annual meeting held under the provisions of section seven of this article what work has been done, either by the engineers or otherwise. The members of the board shall receive, for attending to business for and in behalf of such district, actual transportation expenses, which shall be audited by the board before payment and each member shall receive $4 dollars per day as compensation for his services while actually engaged in work for the district: Provided, however, That if the secretary be a member of the board, he shall be entitled to compensation as hereinafter provided.

WV Legislature

§19-21-10. Appointment, powers and duties of chief engineer; adoption of plan for reclamation.

Within thirty days after organizing, the board of supervisors shall appoint a competent civil and drainage engineer as chief engineer, who may be an individual, copartnership, or corporation. The chief engineer may, by and with the consent of the board of supervisors, consult any eminent engineer or engineers and obtain his or their opinion and advice concerning the reclamation of the lands in the district. He shall have authority to engage such assistants as may be needed. He shall make all necessary surveys of the lands within the boundary lines of such district, as described by the petition, and of all lands adjacent thereto that may or will be improved or reclaimed in part or in whole by any system of drainage or levees that may be outlined and adopted, and such engineer shall make a report in writing to the board of supervisors with maps and profiles of such surveys, which report shall present a plan for draining, leveeing and reclaiming the lands and property described in the petition or adjacent thereto from overflow or damage by water. Such maps and profiles shall also indicate as far as necessary the physical characteristics of the lands and location of any public roads, railroads, other public utilities, and other rights- of-way, roadways, and other property and improvements located on such lands. The chief engineer shall make a report in writing to the board of supervisors, showing the progress that has been made at such times as the board may require. When the final report of the chief engineer is submitted the board of supervisors shall have authority to employ a reputable consulting engineer or engineers to pass on the adequacy of the proposed improvements as covered in the chief engineer's report and plans. When the board is satisfied of the adequacy of the plans it shall adopt the report and plans and thereafter such adopted report shall be the plan for draining, leveeing or reclaiming such lands and other property from overflow or damage by water, and it shall after such adoption be known and designated as "the plan for reclamation," which plan shall be filed with the secretary of the board of supervisors and by him copied into the records of the district.

WV Legislature

§19-21-11. Tax levy to pay preliminary expenses; delinquent tax as lien on property; disposition of funds.

For the purpose of paying expenses incurred or to be incurred in organizing such district, making surveys of the same, assessing benefits and damages, and to pay other expenses necessary to be incurred, before the board of supervisors shall be empowered by subsequent provisions of this article to provide funds to pay the total cost of works and improvements of the district, the board of supervisors of any drainage district organized under the provisions of this article shall, as soon as elected and qualified, levy a uniform tax of not more than 50¢ per acre upon each acre of land and each mile of right-of-way within such district, as shown by preliminary report of the engineer required by section four of this article. In case the boundary lines of the district shall be extended under the provisions of a subsequent section of this article so as to include lands and other property not described in the petition, the same uniform tax shall be made on such lands and other property as soon as the same shall have been made and included in the district. In case lands are included in the district and assessed in accordance with this provision which it subsequently develops should not have been included, taxes collected from such lands shall be returned to the owners of such lands. Such tax shall be due and payable as soon as assessed and if not paid within sixty days after the tax has been levied the same shall become delinquent. It shall become a lien on the land and other property against which it has been assessed and the delinquent list shall be certified by the secretary of the district to the sheriff of the county wherein the property so assessed is situated, and the same shall be collected by the sheriff in the same manner as state and county taxes, and bear the same penalty. In case the sum received from such assessment exceeds the total cost of items for which the same has been levied, the surplus shall be placed in the General Fund of the district and used to pay cost of construction: Provided, That if the district be dissolved before the improvements are completed, the amount of the surplus, if there be any, shall be prorated and refunded to the landowners paying such uniform tax.

WV Legislature

§19-21-12. Board of appraisers.

After the board of supervisors has adopted the plan for reclamation the secretary of such board shall file a certified copy of same, together with a copy of the order of such board approving "the plan for reclamation," with the clerk of the circuit court in which the district was organized. The court shall then in term time, or the judge in vacation, by an order, appoint a board of three appraisers who are in no way interested in such proceedings, for the purpose of assessing benefits and damages that may result from the making of the improvements described and set forth in "the plan for reclamation" approved by the board of supervisors. The secretary of the board of supervisors shall transmit to such board of appraisers a certified copy of the petition and of "the plan for reclamation," which has been approved by the board of supervisors. The members of the board of appraisers, at a meeting to be held within ten days after their appointment, shall each take and subscribe to an oath before the clerk of the court that they will faithfully and impartially discharge their duties and make a true report of the work done by them. If any person appointed as an appraiser fails to take the oath within the prescribed time, he shall be deemed as having declined the appointment and the court or judge shall make further appointment either in term time or vacation. They shall at the same meeting organize by electing one of their number as chairman. A majority of said board of appraisers shall constitute a quorum and shall control the action of the board on all questions. The secretary of the board of supervisors shall furnish to the board of appraisers a complete list of lands and corporate and other property described in the petition.

WV Legislature

§19-21-13. Assessment of benefits and damages; extension of district to include other lands; report of appraisers; compensation.

Within thirty days after qualifying, as provided in the previous section, the appraisers shall begin their duties; and the chief engineer or one of his assistants shall accompany such appraisers at all times and shall render his opinion in writing when called for. The appraisers shall proceed to view the premises and determine the value of all land and other property, within or without the district, to be acquired and used for rights-of-way or other works set out in "the plan for reclamation" and shall assess the amount of benefits, and the amount of damages, if any, that will accrue to each parcel of land, public highway, railroad and other right-of-way, railroad, roadway and other property, from carrying out and putting into effect "the plan for reclamation" heretofore adopted. The appraisers, in assessing the benefits to rights-of-way, railroad, roadway and other rights-of-way, railroad, roadway and other property not traversed by such works and improvements as provided for in "the plan for reclamation," shall not consider what benefits will be derived by such property after other drains, ditches, improvements or other plans for reclamation shall have been constructed, but they shall assess only such benefits as will be derived from the construction of the works and improvements set out in "the plan for reclamation," or as the same may afford protection from overflow to such property. The appraisers shall give due consideration and credit to any other ditch or other systems of reclamation, which may have already been constructed and which afford partial or complete protection to any tract or parcel of land in the new district, and if the appraisers shall find that any drain or other works have been constructed under any general or special law of this state, which can be used in making the drains and improvements herein contemplated, they shall include the same in their report, and thereafter the board of supervisors may order such drains or such works to be used, so far as they extend, for the purpose of the drainage district in which they are situated, and that the district or other owners of such drains or other improvements or persons having an interest therein by virtue of having contributed money, material or labor in the construction of the same, shall be allowed, in proportion to the interest held or owned in said drains or improvements, a compensation which shall not exceed the amount of such drainage district's indebtedness as evidenced by outstanding script, bonds or other evidences of indebtedness. The railroad and other rights-of-way, railroad and other property shall be assessed according to the increased physical efficiency and decreased maintenance cost by reason of the protection to be derived from the proposed works and improvements. The appraisers shall also assess all damages that will accrue to any landowner by reason of the proposed improvement, including all injury to lands taken or damaged; and when they return no such assessment of damages as to any tract of land, it shall be deemed a finding by them that no damage will be sustained.

If the board of appraisers finds that other lands not embraced within the boundaries of the district will be affected by the proposed improvement, they shall assess the estimated benefits and damages to such land and shall specifically report to the court the assessments which they have made on the lands beyond the boundaries of the district as already established. It shall then be the duty of the clerk of the circuit court to give the following

described notice by publication as a Class II-O legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county where such lands lie. The notice shall describe the lands which have been assessed, and the owners of real property so assessed shall be allowed twenty days after the publication of such notice to file with the clerk of the circuit court their protest against being included within the district. The circuit court shall at its next session investigate the question whether the lands beyond the boundaries of the district so assessed by the appraisers will in fact be benefited or damaged by the making of the improvement; and from its findings in that regard either the property owners affected by the assessment of the appraisers or the district may within twenty days file an appeal. If the finding is in favor of the district, the limits of the district shall be extended so as to embrace any lands that may be affected by the making of the improvements, and such lands shall be subject to the taxes provided for in section eleven of this article. The appraisers shall have no power to change "the plan for reclamation" heretofore provided for.

The board of appraisers shall prepare a report of their findings, which shall be arranged in tabular form, the columns of which shall be headed as follows: Column one, "owner of property assessed"; column two, "description of property assessed"; column three, "number of acres assessed"; column four, "amount of benefits assessed expressed in dollars and cents"; column five, "number of acres taken for right-of-way"; column six, "value of property taken"; column seven, "damages assessed." They shall also, by and with the advice of the engineer of the district, estimate the cost of works set out in "the plan for reclamation," which estimate shall include the cost of property required for rights-of-way and damages and the actual expenses of organization and administration, as estimated by the board of supervisors, and shall itemize and tabulate the same. Such reports shall be signed by at least a majority of the appraisers and filed in the office of the circuit clerk in which the petition was filed. The secretary of the board of supervisors, or his deputy, shall accompany such appraisers while engaged in their duties, and shall perform all the clerical work of such board; he shall also, under the advice, supervision and direction of the attorney for the district, prepare their report. The board of appraisers shall report to the board of supervisors the number of days each had been employed and the actual expenses incurred. Each appraiser shall be paid $5 per day for his services, and necessary expenses in addition thereto.

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§19-21-14. Publication of appraisers' report.

Upon the filing of the report of the appraisers, the clerk of such court shall give notice thereof by causing publication of such report to be made as a Class II-O legal advertisement in compliance with the provisions of article three, chapter fifty- nine of this code, and the publication area for such publication shall be each county in the district. Notice shall be in form as follows:

NOTICE OF FILING OF APPRAISERS' REPORT.

For ..... Drainage District.

Notice is hereby given to all persons interested in any land and property included within ..... Drainage District in ..... county (or counties), West Virginia, that the appraisers heretofore appointed to assess benefits and damages to the property and lands situated in such drainage district and to appraise the cash value of the land necessary to be taken for rights-of-way and other works of such district, within or without the limits of such district, filed their report in this office on the ..... day of ....., 19 ....., as follows: (Here insert report of appraisers.) And you and each of you are hereby notified that you may examine such report and file exceptions to all or any part thereof, as provided by law.

.....

Clerk of the Circuit Court of ..... County, West Virginia.

Provided, That where lands in different counties are contained in such report, it shall not be necessary to publish in each county the appraisers' report on all of such lands in such district, but only that part relating to property situate in the respective counties.

WV Legislature

§19-21-15. Exceptions to appraisers' report; action of court thereon; review of assessments.

The drainage district, or any owner of land or other property in such district, may file exception to such report, or to any assessment for either benefits or damages, within ten days after the last day of publication of the notice provided for in the preceding section. All exceptions shall be heard by the court and determined in a summary manner so as to carry out liberally the purposes and needs of the district, and if it appears to the satisfaction of the court, after having heard and determined all of such exceptions, that the estimated cost of constructing the improvement contemplated in "the plan for reclamation" is less than the benefits assessed against the land and other property in such district, then the court shall approve and confirm such appraisers' report so modified and amended. The court shall adjudge and apportion the costs incurred by the exceptions filed and shall condemn any land or other property, within or without the boundary lines of the district, that is shown by the report of the appraisers to be needed for rights-of- way, holding basins and other works, or that may be needed for material to be used in constructing such works, following, as nearly as possible, the procedure that is now provided by law for the appropriation of land and other property taken for telegraph, telephone and railroad rights-of-way. The clerk of such circuit court shall transmit a certified copy of the court's decree and a copy of the appraisers' report, as confirmed or amended by the court, to the secretary of the board of supervisors of the district, who shall make and transmit a certified copy of such decree and that part of the report affecting land in each county to the clerk of the county court of each county having lands in the district, or affected by such report, where the same shall become a permanent record. If, after determining the objections made to the appraisers' report, the court shall find that the estimated cost of works and improvements as approved by the board of appraisers, or as amended by the court, exceeds the estimated benefits, the court shall then render its decree declaring the district to be dissolved as soon as all costs incurred, which shall include court costs and all obligations and expenses incurred in behalf of the district by the board of supervisors shall have been paid; and if the uniform tax levied under the provisions of section eleven of this article be found insufficient to pay all such costs, the board of supervisors shall make such additional uniform tax levies as will be necessary to pay such deficiency.

Any owner of real property within the district who conceives himself to be aggrieved by the assessment of benefits or damages, or who deems that the assessment of any land in the district is inadequate, shall present his complaint to the circuit court at the first regular, adjourned, or special session held more than ten days after the last publication of such notice, and such court shall consider the same and enter its findings thereon either confirming such assessment or increasing or diminishing the same, and its findings shall then have the force and effect of a judgment from which an appeal may be taken within twenty days, either by the property owners or by the supervisors of the district.

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§19-21-16. Assessment of damages by jury.

Any property owner may accept the assessment of damages in his favor made by the appraisers, or acquiesce in their failure to assess damages in his favor, and shall be construed to have done so unless he gives to such board of supervisors, within thirty days after the assessment is filed, notice in writing that he demands an assessment of damages by a jury, in which event the board of supervisors shall institute in the circuit court an action to condemn the lands that must be taken or damaged in the making of such improvement, which action shall be in accordance with the proceedings for condemnation of rights-of-way by railroad, telegraph and telephone companies, with the right of paying into court a sum to be fixed by the circuit court or judge and of proceeding with the work before assessment by the jury. If there is more than one claimant to the lands and to the fund paid into court, all claimants may be made parties defendant in such suit, leaving the claimants to contest in that action their respective rights to the fund.

WV Legislature

§19-21-17. Powers of board of supervisors; letting of contracts; persons to whom contract may not be awarded; payments to contractors.

The board of supervisors of such district shall have full power and authority to build, construct, excavate and complete all or any works and improvements which may be needed to carry out, maintain and protect "the plan for reclamation." To accomplish that end such board of supervisors is hereby authorized and empowered to employ men and teams and to purchase machinery, employ men to operate the same and directly have charge of and construct the works and improvements, or by the use of other or more efficient means than provided for in the plans adopted. They may, in their discretion, let contracts for such works and improvements, either as a whole or in sections, and when such contract or contracts are to be let, they shall be advertised and let to the lowest and best bidder, who shall give a good and approved bond, in an amount equal to the contract price, with ample security, conditioned that the contractor will well and promptly carry out the contract for such work and improvements. The contract shall be in writing, and there shall be attached thereto and made a part thereof complete plans and specifications of the work to be done and the improvements to be made under such contract, which plans and specifications shall be prepared by the chief engineer, and before the work is commenced the contract shall be approved by the board of supervisors and signed by the president of the board and the contractor, and shall be executed in duplicate. No supervisor, secretary, treasurer, or engineer of any drainage district shall be awarded any such contract, or have any interest in the profits thereof, either directly or indirectly. The chief engineer shall be the superintendent of construction of all the works and improvements, and shall, whenever required, and at least once each year, make a full report to such board of all work done and improvements made, and make such suggestions and recommendations to the board as he may deem proper.

It shall be the duty of the board of supervisors to have the amount of work performed by any contractor estimated from time to time, as may be desirable, by the chief engineer, and the board shall draw its warrants in favor of the contractor for not more than eighty percent of the amount of work so required, reserving the remainder until it has been ascertained that the work has been completed according to contract, and is free from liens.

WVLegislature

§19-21-18. Levying of tax to pay costs of completion; tax lien.

After the lists of lands and other property, with the assessed benefits and the decree and judgment of court, have been filed in the office of the clerk of the county court of each county in which any of such lands are situate, as provided in section fifteen of this article, then the board of supervisors shall without any unnecessary delay, levy a tax of such portion of such benefits on all lands and other property in the district to which benefits have been assessed as may be found necessary by the board of supervisors to pay the costs of the completion as shown in "the plan for reclamation" and in carrying out the objects of such district, plus ten percent of such total amount for emergencies. The taxes so levied shall be a lien upon all the real property in the district from the time the same is levied, and shall be entitled to preference over all demands, encumbrances, executions or liens whatsoever except state and county taxes, and shall continue until such taxes, with any penalty and costs that may accrue thereon, shall have been paid. The tax shall be apportioned to and levied on each tract of land or other property in such district in proportion to the benefits assessed and not in excess thereof, and in case bonds are issued as hereinafter provided, then the amount of the interest, as estimated by the board of supervisors, which will accrue on such bonds shall be included and added to such tax, but the interest to accrue on account of the issuing of such bonds shall not be construed as a part of the costs of construction in determining whether or not the expenses and costs of making such improvements are or are not equal to or in excess of the benefits assessed. Within thirty days after the assessment of benefits is made and the amount of taxes to be levied against each piece of property has been determined, the property owners shall have the privilege of paying such taxes in full. The secretary of the board of supervisors, as soon as such total tax is levied, shall, at the expense of the district, prepare a list of all taxes levied, in the form of a well-bound book, which book shall be indorsed and named "drainage tax record of ..... drainage district ....," which indorsement shall also be printed or written at the top of each page in such book and shall be signed and certified by the president and secretary of the board of supervisors, attested by the seal of the district, and the same shall thereafter become a permanent record in the office of the secretary.

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§19-21-19. Annual installment tax; certification thereof to sheriff.

The board of supervisors shall each year thereafter determine, order and levy the amount of the annual installment of the total taxes levied under the preceding section, which shall become due and be collected during said year at the same time that state and county taxes are due and collected, which annual installment and levy shall be evidenced and certified by such board not later than July first of each year to the sheriff of each county in which any of the lands or other property subject to such drainage district tax are situated. The certificate of such installment tax shall be in substantially the following form:

State of West Virginia

ss.

County of .....

To ....., sheriff of said county:

This is to certify that by virtue and authority of the laws of West Virginia relating to drainage districts, the board of supervisors of ..... drainage district of West Virginia has levied and does hereby levy the sum of $..... as the annual installment of tax for the year 19.... of the total tax levied under the provisions of said laws; and the board of supervisors of such district, by and with the authority of said laws, has levied also the sum of $..... as a maintenance tax for such year. Said annual installment of tax and maintenance tax on the real estate and other property in such drainage district situate in your county are set out in the following table, in which are: First, the names of the owners of such lands and other property, as they appear in the decree of the court organizing such district, are as they appear on the records of the clerk of the county court on April 1 of each year subsequent to the decrees of the court; second, the descriptions of such lands and other property opposite the names of such owners; third, the amount of such installment of tax levied on each tract of real estate and other property; and fourth, the amount of maintenance tax levied against the same. Such taxes shall be collectible and payable for the present year at the same time that state and county taxes are due and collected, and you are directed and ordered to demand and collect such taxes between October 1, and last day of December of the present year, and this certificate "drainage tax book" shall be your warrant and authority for making such demand and collection.

Witness the signature of the president of such board of supervisors, attested by the seal of such district, and the signature of the secretary of said board, this ..... day of ....., 19.....

.....

President of District.

Then shall follow a table of schedules showing in properly ruled columns, first, the names of

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the owners of such lands and other property; second, the description of such lands and other property opposite the names of such owners; third, the amount of such annual installment tax levied on each tract of land or piece of property; fourth, the amount of maintenance tax; fifth, a blank column in which the sheriff of the county shall record the several amounts as collected by him sixth, a blank column in which the sheriff shall record the date of payment of the different sums; seventh, a blank column in which the sheriff shall record the names of the person or persons paying the several amounts. The columns in which the annual installment tax and the maintenance tax, if any, appear shall be correctly totaled and the total amount shall correspond to the amount set out in the above-mentioned certificate. Such certificate and table shall be prepared in the form of a well-bound book which shall be indorsed and named "drainage tax book"..... drainage district ..... county, West Virginia, for the year 19...., which indorsement shall also be printed at the top of each page in said book.

WV Legislature

§19-21-20. Collection of taxes.

It shall be the duty of the sheriff of each county in which lands or other property of any drainage district organized under this article are situate, to receive the "drainage tax book" each year, and he is hereby empowered and it shall be his duty to promptly and faithfully collect the tax therein set out and to exercise all due diligence in so doing. He is further directed and ordered to demand and collect such taxes at the same time that he demands and collects state and county taxes due on the same and other properties. Where any tract or part thereof has been divided and sold or transferred, the sheriff shall receive taxes on any part of any tract, or parcel of land, or other property charged with such taxes and give his receipt accordingly. The certificate and "drainage tax book" herein provided for shall be the warrant and authority of the sheriff for making such demand and collection. The sheriff shall make due return of all "drainage tax books" each year to the secretary of the board of supervisors of the aforesaid drainage district, and shall pay over and account for all moneys collected thereon at the end of each month to the treasurer of such district, and shall make an annual return of same at the close of each year. The sheriff shall, in such "drainage tax book," verify such return by affidavit. The secretary shall each year, within ten days after the annual return of such sheriff is delivered to him prepare and certify to such sheriff a "drainage back tax book" containing the list of lands and other property so returned by such sheriff as delinquent, deliver the same to him and take his receipt therefor, and such sheriff shall proceed to collect such delinquent drainage taxes and demand payment therefor in the same manner as hereinafter provided. Before receiving the aforesaid "drainage tax book" the sheriff of each county in which lands or other property of the drainage district are located shall execute to the board of supervisors of the district a bond with at least two good and sufficient sureties in a sum that is equal to the probable amount of any annual installment of such tax to be collected by him during any one year, conditioned that such sheriff shall pay over and account for all taxes so collected by him according to law. Such bond, after approval by the board of supervisors, shall be deposited with the secretary of the board, who shall be custodian thereof, and who shall produce the same for inspection and use as evidence whenever and wherever lawfully requested so to do. Whenever the sheriff shall give such bond with a fidelity and indemnity company as surety, the drainage district shall pay such premium thereon as may be provided by law.

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§19-21-21. When taxes payable; suit by supervisors to collect delinquent taxes; suit by bondholder.

All taxes levied under the terms of this article shall be payable between October 1, and the last day of December of each year; and if any taxes levied by the board of supervisors in pursuance to this article are not paid at maturity, the sheriff shall not embrace such taxes in the taxes for which he shall sell the lands, but he shall report such delinquencies to the board of supervisors of such district, who shall add to the amount of the tax a penalty of twenty-five percent. The board of supervisors shall enforce the collection of such delinquent taxes by chancery proceedings in the circuit court of the county in which the lands are situated; and said court shall give judgment against such lands, or other property, for the amount of such taxes and the penalty of twenty-five percent, and interest on the same, from the end of the period allowed for the collection thereof, at the rate of six percent per annum, and all costs of the proceedings. Such judgment shall provide for the sale of such delinquent lands for cash, by a commissioner of the court, after advertisement hereinafter set out. Such proceeds and judgment shall be in the nature of proceedings in rem, and it shall be immaterial that the ownership of such lands be incorrectly alleged in such proceedings, and such judgment shall be enforced wholly against such lands or other property so assessed, and not against any other property or estate of the defendant. All or any part of such delinquent lands or other property for each of such counties may be included in one suit for each county, instituted for the collection of such delinquent taxes, together with interest, penalties and costs, as aforesaid; and notice of the pendency of such suit shall be given by publication before judgment is entered for the sale of such lands or other property, which notice shall be published as a Class III-O legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county where such suits may be pending. The public notice may be in the following terms: Board of Supervisors, _____ Drainage District

v.

Delinquent lands.

All persons having or claiming an interest in any of the following described lands are hereby notified that suit is pending in the circuit court of _____ county, West Virginia, to enforce the collection of certain drainage taxes on the subjoined list of lands, the name of each supposed owner having been set opposite his or her or its lands, together with the amounts severally due from each, to wit:

(Then shall follow a list of supposed owners, with a descriptive list of such delinquent lands, and the amounts due thereon respective as aforesaid, and such public notice may conclude in the following form:)

All persons and corporations interested in such lands are hereby notified that they are required by law to appear within thirty days after the first publication hereof and make defense to such suit, or the same will be taken for confessed and final judgment will be

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entered directing the sale of such lands for the purpose of collecting such taxes, together with the payment of interest, penalty and costs allowed by law.

_____

Clerk of Said Court.

Such suit shall be set for trial at the first term of court after the completion of such publication, unless a continuance be granted for good cause shown, within the discretion of the court; and such continuance may be granted as to a part of such lands or defendants, without affecting the duty of the court to dispose finally of the others as to whom no continuance may be granted, and in all cases where notice has been properly given as aforesaid, and where no answer has been filed, or if filed, and the cause decided for the plaintiff, the court by its decree shall grant the relief as prayed for in the complaint and shall direct such commissioner to sell the lands or other property described in the complaint at the front door of the courthouse of the county wherein the decree is entered, at public outcry, to the highest and best bidder for cash in hand, after having first advertised such sale (such advertisement may include all the lands described in the decree) as a Class III-O legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county. If all the lands or other property be not sold on the day as advertised, such sale shall continue from day to day until completed. The commissioner shall sell such lands as directed, and the court, upon approval and confirmation of such sale, shall appoint a commissioner to execute proper deeds conveying to the purchaser the lands and other property so sold, and the title to such lands and other property shall thereupon become vested in such purchaser as against all others whomsoever, saving to infants and to insane persons having no guardian or committee the right they now have by law to appear and except to such proceedings within three years after their disabilities are removed.

In all suits brought under this section a reasonable attorney's fee shall be taxed in favor of the attorney for the plaintiff, which fee shall be added to the amount of the costs.

In case the supervisors shall fail to commence suit within sixty days after the taxes become delinquent, the holder of any bond issued by the district shall have right to bring suit for collection of the delinquent assessments, and the proceedings in such suit brought by the bondholder shall in all respects be governed by the provisions applicable to suits by the supervisors.

WV Legislature

§19-21-22. General conduct of suit; purchase by commissioner in name of board of supervisors; redemption.

Such suits shall be conducted in the name of the drainage district, and in accordance with the practice and proceedings of chancery courts in this state, except as herein otherwise provided, save that oral testimony may be heard; and this law shall be liberally construed to give to such assessment and tax lists the effect of a bona fide mortgage for valuable consideration, and a first lien upon such lands or other property as against all persons having an interest therein. In such suits it shall be sufficient to allege generally and briefly the organization of the district and the nonpayment of the taxes, setting forth the description of the lands proceeded against, and the amount chargeable to each tract, with prayer for foreclosure: Provided, That no informality or irregularity in holding any of the meetings provided for herein, or in the valuation or assessment of the lands, or in the name of the owners, or the number of acres therein, shall be a valid defense to such action; nor shall any defense to such suit be interposed save only the plea of payment: Provided further, That in any case where the lands, or other property, are offered for sale by such commissioner, as provided by this article, and the sum of the tax due, together with interest, costs and penalty, is not bid for the same, such commissioner shall bid the same off in the name of the board of supervisors of such drainage district, bidding therefor the whole amount due as aforesaid; and upon confirmation of such sale, the court shall appoint a commissioner who shall make a proper deed therefor, as in other cases under this article, conveying such land to such drainage district; and such deeds when duly executed in conformity to the provisions of this article, and recorded, shall be received as evidence in all cases showing an indefeasible title in said purchaser, unassailable in either law or equity. The former owner shall have the right to redeem any property sold at such sale within one year after the same is offered for sale by paying the purchaser the amount paid by him in the purchase of the property and any other tax thereon he may have paid, plus ten percent interest on the whole amount.

WV Legislature

§19-21-23. Lien of bonds; collection of annual tax to pay bonds; nonpayment of bond; receiver.

All bonds issued by supervisors under the terms of this article shall be a lien on all lands or other property so assessed in the district, and the board of supervisors shall see to it that a tax is levied annually and collected under the provisions of this article so long as it may be necessary to pay any bond issued or obligation contracted under its authority; and the making of such assessments or levy and collection may be enforced by mandamus.

If any bond or interest coupon or any bond issued by such board is not paid within thirty days after its maturity, it shall be the duty of the circuit court of the proper county, on application of any holder of such bond or interest coupon so overdue, to appoint a receiver to collect the taxes aforesaid; and the proceeds of such taxes and collections shall be applied, after payment of costs, first to overdue interest, and then to payment pro rata of all bonds issued by such board which are then due and payable; and such receiver may be directed by suit to foreclose the lien of such taxes on such lands; and the suits so brought by such receiver shall be conducted in all matters as suits by the board as hereinbefore provided, and with like effect, and the decrees and deed therein shall have the same presumptions in their favor: Provided, however, That when all such past due sums have been paid, the receiver shall be discharged, and the affairs of the district conducted by the board of supervisors of such district as hereinbefore provided.

WV Legislature

§19-21-24. Treasurer of district; salary, bond and duties; audit of books.

The secretary of the board of supervisors in any drainage district shall hold the Office of Treasurer of such district, except as otherwise provided herein. Such secretary shall receive such salary, payable monthly, as the board of supervisors may fix, and all necessary expenses. He shall obtain from the office of the clerk of the county court of the county or counties within which any land in the drainage district is situate records of transfer of property within such district made prior to April first of each year subsequent to the date of confirmation of the assessments by the court. He shall receive and receipt for all the drainage taxes collected by the sheriff, and he shall receive and receipt for the proceeds at all tax sales made under the provisions of this article. The treasurer shall give a bond in such amount as shall be fixed by the board of supervisors, conditioned that he will well and truly account for and pay out, as provided by law, all moneys received by him as taxes from the county collector or collectors, or as proceeds from the sales of delinquent taxes, or from any other source whatever on any account or claim of said district, which bond shall be signed by at least two sureties, approved and accepted by the board of supervisors, and such bond shall be in addition to the bond for proceeds of sale of bonds, which is required by a subsequent section of this article. The bond of such treasurer may, if the board so direct, be furnished by a surety or bonding company, which shall be approved by the board of supervisors. Such bond shall be placed and remain in the custody of the president of the board of supervisors, and shall be kept separate from all papers in the custody of the secretary and treasurer. The treasurer shall keep all funds received by him from any source whatever deposited at all times in some bank, banks or trust company to be designated by the board of supervisors. All interest accruing on such funds shall be extended each month to the credit of such district and statement thereof made to the board of supervisors. It shall be the duty of the supervisors to audit or have audited the books of such treasurer as of June thirtieth of each year, and they shall publish a financial statement, within thirty days thereafter, showing the amount of money received, the amount paid out during such year, and the amount in the treasury at the beginning and end of each year. The treasurer of the district shall pay out funds of the district only on warrants authorized by the board of supervisors, signed by the president of the board and attested by the signature of the secretary and treasurer, and showing the purpose for which issued.

www.Legislature

§19-21-25. Powers of board of supervisors to drain, protect and reclaim land.

In order to effect the drainage, protection and reclamation of the land and other property in the district subject to tax, the board of supervisors is authorized and empowered to straighten, widen, change the course and line of any drain in or out of such district; to fill up any creek, drain, channel, river, watercourse or natural stream; to divert or divide the flow of water in or out of such district; to construct and maintain sewers, drains, dikes, dams, sluices, revertments, drainage ditches, pumping stations, syphons, and any other works and improvements deemed necessary to preserve and maintain the works in or out of such district; to construct roadways over embankments; to construct any and all such works and improvements across, through or over any public highway, railroad, right-of-way, track, grade, fill or cut in or out of such district; to remove any fence, building or other improvements in or out of such district; and shall have the right to hold, control and acquire by donation or purchase, and, if need be, condemn, any land, easement, railroad or other right-of-way, sluice, or franchise in or out of such district for right-of-way, or for any of the purposes herein provided, or for the material to be used in constructing and maintaining such works and improvements for draining, protecting and reclaiming the lands in such district. Such board shall also have the right to condemn, for the use of the district, any land or property within or without such district not acquired or condemned by the court on the report of the appraisers assessing benefits and damages, and shall follow the procedure that is now provided by law for the appropriation of land or other property taken for telegraph, telephone and railroad rights-of-way.

WV Legislature

§19-21-26. Employment of attorney.

The board of supervisors may employ an attorney or attorneys to act for the district and to advise such board. Such employment shall be evidenced by an agreement in writing, which, as far as possible, shall specify the exact or approximate amount to be paid to such attorney for all services and expenses. Such attorney shall conduct all legal proceedings and suits in court where the district is a party or interested, and shall in all legal matters advise the board of supervisors, all officers, employees or agents of such district and board, and generally look after and attend to all matters of a legal nature for such district.

WV Legislature

§19-21-27. Record of board of supervisors.

The board of supervisors of any district organized under this article shall cause to be kept a well-bound book, entitled "Record of board of supervisors of ..... district," in which shall be recorded minutes of all meetings, proceedings, certificates, bonds given by all employees, and any and all corporate acts, which record or records shall at all times be open to the inspection of any one interested, whether taxpayers or bondholders.

WV Legislature

§19-21-28. Right to enter and appropriate land; vesting of title in district; compensation of owner.

The board of supervisors shall not have the right to enter upon or appropriate any land for right-of-way, or other works of the districts, until the price awarded to the owners of such land by the commissioners shall have been paid to such owners or into the hands of the circuit clerks of the courts organizing such districts for the use of such owners; and if the sums awarded be not so paid within five years from the date of filing the commissioners' reports, all proceedings as to the taking of such property for rights-of-way and other works not so paid for shall abate at the cost of said district. Whenever any land is acquired by any district under the provisions of this article and the price of such property has been paid the owner by the district, the title, use, possession and enjoyment of such property shall pass from the owner and be vested in the district, and subject to its use, profit, employment and final disposition. The price awarded for all land acquired by any district for rights-of-way, or other works, and the amount of damages assessed by the board of appraisers and confirmed by the court to any tract or parcel of land or other property in the district shall be paid in cash to the owner thereof or to the clerk of the court for the use of such owner, and that portion of any tract or parcel of land or other property not taken for the use of the district shall be assessed for the benefits accruing in accordance with the provisions of previous sections of this article.

WV Legislature

§19-21-29. Cost of constructing ditch or drain across highway; constructing, enlarging or changing bridge, culvert or trestle; removal of structure for passage of boat or equipment.

Where any public ditch or drain constructed under the provisions of this article crosses a public highway or the right- of-way of any railroad, tramway, or any public utility, the cost of constructing such ditch or drain across such highway, railroad, tramway or other public utility shall be paid by the drainage district. When, in crossing such highway or right-of- way, the ditch or drain follows a natural water course or the natural flow of the water, and it becomes necessary to construct, enlarge or reconstruct any bridge, culvert, aqueduct or other structure, such structures shall be constructed so as to conform to the plans and specifications of the chief engineer as provided for in "the plan for reclamation," at the expense of the county in the case of crossing public highways, and at the expense of the railroad, tramway or other public utility when public utilities are involved. In all cases where the ditch or drain does not follow a natural watercourse but the water is diverted from its natural flow by the improvements, all necessary bridges, culverts, aqueducts and other structures across public highways, rights-of-way of railroads, tramways and other public utilities shall be constructed at the expense of the district, but such structures shall thereafter be maintained by and at the expense of the county or public utilities as the case may be.

Whenever it becomes necessary for any county or any public utility to construct, enlarge or reconstruct any bridge, culvert, aqueduct or other structure under the provisions in the paragraph immediately preceding, such changes shall be made within the time directed by the circuit court either in term or vacation. In case such changes or adjustments are not made within the prescribed time, the board of supervisors may proceed to make such necessary changes at the expense of the county or public utility.

In case it is necessary to pass any dredge boat or other equipment through a bridge, aqueduct, trestle or other structure of any railroad company or other public utility, county, district, or municipality, the board of supervisors shall give twenty days' notice to the owner of said structure that the same shall be removed temporarily by a certain date to allow the passage of such equipment, or that an agreement be immediately entered into in regard thereto. The owner of such structure shall keep an itemized account of the cost of the removal, and, if necessary, of the replacing of such structure, and such actual cost shall be paid by the district. In case the owner of such structure shall refuse to provide for the passage of such equipment, the board of supervisors may remove such structure at its own expense, interrupting traffic in the least degree consistent with good work and without delay or unnecessary damage. In case they shall be prevented from doing so, the owner of such structure shall be liable for damages for the resulting delay.

WV Legislature

§19-21-30. Unpaid warrants to draw interest.

In case any warrant issued under this article is not paid when presented to the treasurer of the board of supervisors of the district, because of lack of funds in the treasury, such fact shall be indorsed on the back of such warrant, and such warrant shall draw interest thereafter at the rate of six percent per annum until such time as there is sufficient money on hand to pay the amount of such warrant and the interest then accumulated.

WV Legislature

§19-21-31. Surety bonds to be made payable to district; persons covered by bond.

All surety bonds required to be given by this article shall be made payable to the district in its corporate name, in which name all suits shall be instituted and prosecuted. All penalties on any bond herein named shall be payable to and recoverable by such district. All bonds required by this article shall cover defaults of deputies, clerks or assistants of the officers appointing them.

WV Legislature

§19-21-32. No action to abate on account of death or disability; service of summons; notice to nonresidents.

No action under this article shall abate by reason of the death or disability of any party to any proceeding, but upon suggestion of such death or disability the cause shall be immediately revived in the name of the heirs, devisees or their legal representatives, and summons must be served on such heirs, devisees and legal representatives at least five days before the day set for hearing the cause, and such summons may be served in vacation or term time. If the heirs, devisees or legal representatives of the deceased party are nonresidents, notice shall be given them in the manner and for the time provided in section four of this article, and the cause shall then proceed in all respects as in case of the original parties in court.

WV Legislature

§19-21-33. Definition of "owner"; effect of failure to summon owner.

The word "owner," as used in this article, shall mean the owner of the freehold estate, as appears by the deed of record, and it shall not include reversioners, remaindermen, trustees, or mortgagees, who need not be notified by publication, or served by process, but shall be represented by the present owners of the freehold estate in any proceeding under this article: Provided, however, That all procedure under this article being in rem, failure to notify or summon into court any owner or other person shall in nowise invalidate any act, proceeding, order or decree, under this article or under any act or law invoked in aid thereof.

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§19-21-34. Petition to amend former decree; notice; objections to amendments; hearing by court; appointment and duties of appraisers.

The board of supervisors for and in behalf of any drainage district organized under the provisions of this article, or the owners of land adjacent to such district, shall have the right to file a petition in the office of the clerk of the court organizing the district praying the court to amend its former decree incorporating the district, by correcting the names of landowners, by striking out any such names, by adding, striking out and correcting the descriptions of any lands within or alleged to be within the boundary lines of any such district, or in any other manner amend its decree. Such petition may ask permission of the court for such board to amend or change "the plan for reclamation," or to correct any errors, omissions or other mistakes that have been discovered in "the plan for reclamation"; or may ask that the boundary lines of such district be extended so as to include lands described by and included in the petition and the decree of the court incorporating the district. If such petition asks the court for permission to change "the plan for reclamation" or that the boundary lines of such district be in any manner changed, it shall also ask the court to appoint three appraisers as provided for under the provisions of section twelve to appraise the land that shall be taken for rights-of-way or other works, or assess the benefits and damages to any or all lands and other property already in the district or that may be annexed to the district by the proposed amendments and changes in "the plan for reclamation" or the proposed change in the boundary lines of said district. As soon as such petition shall have been filed the clerk of the court shall give notice for the time required by section four of this article, such notice to be substantially in the following form:

NOTICE OF DRAINAGE HEARING

To the owners and all persons interested in the lands, corporate and other property in and adjacent to _____ _____ drainage district:

You and each of you are hereby notified that (here state by whom petition was filed) has filed in the office of the circuit clerk of _____ county, _____, a petition praying such court for permission to (here insert the prayer of such petition), and unless you show cause to the contrary on or before the first day of a term of the circuit court of _____ county to be held on the _____ day of _____, 19 ____, the prayer of such petition may be granted.

_____ clerk of the circuit court of _____ county.

Any owner of land or other property located in the district, or any owner of land or property located outside of the district, who will be affected by the proposed changes, amendments and corrections enumerated in the petition, shall have the right to file objections to the granting of the prayer of such petition on or before the first day of the term of the court at which the petition is to be heard. The court shall hear such petition and all objections that may have been filed against such petition in a summary manner and enter its decree according to its findings. The clerk of such court shall, within fifteen days after granting of

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such decree, transmit a certified copy of such decree and a copy of the petition to the secretary of the board of supervisors, who shall transmit a copy of the same to the clerk of the county court of each county having land in the district. Each such county clerk shall file and preserve the same in his office. If such decree provides that "the plan for reclamation" may be amended, changed or corrected, or the boundary lines of the district extended, the court shall appoint three appraisers having the same qualifications as the appraisers appointed under the provisions of section twelve of this article, to appraise property to be taken, assess benefits and damages and estimate the cost of improvements the same as is required of appraisers acting under the provisions of section fourteen of this article. Such appraisers shall make their report in writing and file the same with the circuit clerk, after which the case shall be proceeded with in the same manner as is now provided for in the previous sections of this article for the organization of drainage districts: Provided, That if the petition be dismissed, the petitioner shall pay the cost, but if the petition be sustained in whole or in part the objectors shall pay the court costs.

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§19-21-35. Serial bonds.

The board of supervisors may, if in their judgment it seems best, issue serial bonds not to exceed ninety percent of the total amount of unpaid taxes levied under the provisions of section eighteen of this article, in denominations of not less than $100, bearing interest from date at a rate not to exceed six percent per annum, payable semiannually, to mature at annual intervals within fifteen years, commencing after a period not later than five years, to be determined by the board of supervisors, both principal and interest payable at some convenient banking house or trust company's office to be named in such bonds, which bonds shall be signed by the president of the board of supervisors, attested with the seal of such district and by the signature of the secretary of such board. All of such bonds shall be executed and delivered to the treasurer of such district, who shall sell the same with accrued interest to the best possible advantage in such quantities and at such times as the board of supervisors may direct. Such bonds shall show on their face the purpose for which they are issued, and shall be payable out of the money derived from the aforesaid taxes. A sufficient amount of the drainage tax shall be appropriated by the board of supervisors for the purpose of paying the principal and interest of such bonds and the same shall, when collected, be preserved in a separate fund for that purpose and no other. And bonds and coupons not paid at maturity shall bear interest at the rate of six percent per annum from maturity until paid, or until sufficient funds have been deposited at the place of payment. Any expenses incurred in paying such bonds and interest thereon and a reasonable compensation to the bank or trust company for paying same shall be paid out of the other funds in the hands of the treasurer and collected for the purpose of meeting the expenses of administration. It shall be the duty of such board of supervisors, in making the annual tax levy as heretofore provided, to take into account the maturing bonds and interest on all bonds, and to make ample provisions in advance for the payment thereof. In case the proceeds of the original tax levy made under the provisions of section eighteen of this article are not sufficient to pay the principal and interest on all bonds issued, then the board of supervisors shall make such additional levy or levies as are necessary for this purpose, and under no circumstances shall any tax levies be made that will in any manner or to any extent impair the security of such bonds or the fund available for the payment of the principal and interest of the same. Such treasurer, at the time of the receipt by him of such bonds, shall execute and deliver to the president of the board of supervisors of such district a bond with good and sufficient sureties, to be approved by such board of supervisors, conditioned that he shall account for and pay over as required by law and as ordered to do by such board of supervisors any and all money received by him on the sale of such bonds, or any of them, and that he will only sell and deliver such bonds to the purchaser or purchasers thereof under and according to the terms herein prescribed, and that he will return, duly canceled, any and all bonds not sold, to the board of supervisors, when ordered by such board so to do, which bond shall remain in the custody of the president of such board of supervisors, who shall produce the same for inspection or for use as evidence whenever and wherever legally requested so to do. Such treasurer shall promptly report all sales of bonds to the board of supervisors, and the board shall, at the proper time, issue warrants for the payment of the maturing bonds so sold, and the interest payments coming due on all bonds sold and a reasonable compensation

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to the bank or trust company, and such treasurer shall place sufficient funds at the place of payment to pay the same. In case proper warrants are not issued by the board of supervisors as herein provided, then the treasurer shall of his own accord place funds at the place of payment, and the canceled bonds and coupons and the receipt of the bank or trust company shall be accepted in lieu of warrants. The successor in office of any such treasurer shall not be entitled to such bonds or the proceeds thereof until he shall have complied with all the foregoing provisions applicable to his predecessor in office: Provided, That if it should be deemed more expedient by the board of supervisors, as to moneys, derived from the sale of bonds issued, such board may, by resolution, select some suitable bank or banks or other depository, as temporary treasurer or treasurers, to hold and disburse such moneys on the orders of the board as the work progresses, until such fund is exhausted or transferred to the treasurer by order of such board of supervisors. The funds derived from the sale of such bonds or any of them shall be used for the purpose of paying the cost of the drainage works and improvements and such costs, expenses, fees and salaries as may be authorized by law, and shall be for no other purpose.

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§19-21-36. Formulation of new plans; additional assessments and levy.

Where "the plan for reclamation" of the drainage district is found insufficient to reclaim in whole or in part any or all of the land of the district, the board of supervisors shall have the right to formulate new or amended plans containing new ditches, levees or other works, and additional assessments may be made in conformity with the provisions of section thirteen, the same to be made in proportion to the increased benefits accruing to the lands because of the additional works. If it should be found at any time that the amount of total tax levied under the provisions of section eighteen is insufficient to pay the costs of the works set out in "the plan for reclamation," or additional work done under the provisions of this section, the board of supervisors may make an additional levy to provide funds to complete the work, provided the total of all the levies of such tax does not exceed the total amount of benefits assessed.

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§19-21-37. Removal of officer or employee.

The board of supervisors may at any time remove any officer, attorney or other employee appointed or employed by such board.

WV Legislature

§19-21-38. Connection of ditches or drains; consent of supervisors thereto; circuit court to decide disputes.

At the time of the construction in any district incorporated under this article of "the plan for reclamation" hereinbefore referred to, all ditches or systems of drainage already constructed in such district and all watercourses shall, if necessary to the drainage of any of the lands in such district, be connected with and made a part of the works and improvements of the plan of drainage of such district. But no ditches, drains or systems of drainage constructed in such district shall be connected therewith, unless the consent of the board of supervisors shall be first had and obtained, which consent shall be in writing and shall particularly describe the method, terms and conditions of such connection, and shall be approved by the chief engineer. Such connections, if made, shall be in strict accord with the method, terms and conditions laid down in such agreement. If the landowner or owners wishing to make such connection are refused by the board of supervisors or decline to accept the consent granted, such landowner or owners may file a petition for such connection in the circuit court having jurisdiction in such district, and the matter in dispute shall in a summary manner be decided by such court, which decision shall be final and binding on the district and landowner or owners. No connection with the works or improvements of such plan of drainage of such district or with any ditch, drain or artificial drainage wholly within such district shall be made, caused or affected by any landowner or owners, company or corporation, municipal or private, by means of any ditch, drain, cut, fill, roadbed, levee, embankment or artificial drainage, wholly without the limits of said district, unless such connection is consented to by the board of supervisors, or in the manner hereinbefore provided.

WV Legislature

§19-21-39. Maintenance and preservation of ditches, etc.; maintenance tax; collection thereof by sheriff.

To maintain and preserve the ditches, drains, levees or other improvements made pursuant to this article and to strengthen, repair and restore the same, when needed, and for the purpose of defraying the current expenses of the district, the board of supervisors may, upon the completion of such improvements, and on or before July 1, in each year thereafter, levy a tax upon each tract or parcel of land and upon corporate property within the district, to be known as a "maintenance tax." Such maintenance tax shall be apportioned upon the basis of the net assessments of benefits accruing for original construction, shall not exceed ten percent thereof in any one year, and shall be certified to the sheriff of each county in which lands of such districts are situated in the same manner and at the same time as the annual installment tax is certified. The sheriff of the county shall demand and collect the maintenance tax and the return thereof at the same time and in the same manner as is provided herein for the annual installment tax.

WV Legislature

§19-21-40. Consolidation of adjacent districts.

Any two or more adjacent districts, whether incorporated in the same or different counties, may be united and consolidated in one district, and such new district and the board of supervisors thereof shall have the rights, powers and privileges of any districts organized under this article. In order to effect such consolidation, the board of supervisors of each of the original districts shall call an election in the same manner as elections of supervisors, stating the time, place and object of such election. If a majority of the acreage voting in each district vote in favor of the proposition to unite and consolidate such districts, the board of supervisors of each district shall present a petition to the circuit court of the county in which the greatest amount of the land is located, accompanied with a complete return of such election, in which petition shall be stated the name of the original district, when established, the names of the owners of the lands and boundaries of the district. When such petition has been filed, the circuit clerk shall give notice of such filing in the manner provided for giving notice in section four of this article, which notice shall state the contents of such petition and the objects sought and the term of court at which such matter is to be heard. Any person owning land in either of such districts, on or before the first day of such court, may file objections to the regularity or sufficiency of any of the proceedings had in the premises, and if such objections are overruled, or if no objections are made, the court shall enter an order that any two or more of the several districts so asking shall be united and consolidated as one district, under some appropriate designation, with all the rights, powers and privileges of such districts organized under this article, and the lands so included in the new district shall be subject to all liens, liabilities and obligations of the original districts, and a new board of supervisors shall be elected, as now provided in case of election of supervisors, and all orders made in regard to extension of time, boundaries, or united districts shall be spread on the records of the circuit court, and a certified copy thereof shall be filed with the recorder of deeds of each county in which any of such lands are located.

WV Legislature

§19-21-41. Penalty for obstructing drain or damaging drainage work.

Any person who shall obstruct a drain or damage drainage works constructed under the provisions of this article shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined $100, and he shall also be liable to the district for double the cost of removing such obstructions and repairing such damage.

WV Legislature