

COMPILATION OF STATUTES  
REGARDING THE  
**DEPARTMENT OF NATURAL RESOURCES**

**IRRIGATION DISTRICTS**

- Includes: I. Chapter 46, Article 1: Irrigation Districts  
II. Chapter 46, Article 3: Generation of Electric Light and Power in  
Connection with Water Appropriation

OCTOBER 2023

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TABLE OF CONTENTS

CHAPTER 46

ARTICLE 1

IRRIGATION DISTRICTS

<u>Section</u>		<u>Page</u>
46-101	Irrigation District Act, how cited; irrigation districts; organization; grant of authority.	1
46-102	Terms, defined.	1
46-103	Irrigation district; how formed; petition.	3
46-104	Petition; map; requirements.	4
46-105	Petition; bond; requirements.	4
46-106	Petition; notice of hearing; report by Director of Natural Resources.	4
46-107	Petition and plan of irrigation; hearing before county board; finding; appeal to district court; procedure; bond.	5
46-108	District; lands included; lands irrigated by pumping.	5
46-109	District; divisions; directors; number; election; terms.	6
46-110	District; organization and officers; election; notice; voters; eligibility.	6
46-111	District; organization and officers; election; procedure; canvass of votes; order of board; filing; election precincts.	7
46-112	District officers; election; terms.	8
46-113	Officers; oath; bond; district as federal fiscal agent; additional bond.	9
46-114	Directors; assumption of office; tenure.	9
46-115	Subsequent elections; manner; notice.	9

<u>Section</u>		<u>Page</u>
46-116	Election officers; powers and duties; hours of election.	10
46-117	Elections; return and canvass of vote.	11
46-118	Elections; statement of result entered in board record; certificate of election; vacancies, how filled.	11
46-119	Board; organization; officers; bonds; payment of premiums.	12
46-120	Board; general powers and duties.	12
46-120.01	Board; obligate lands; emergency repairs and replacement; limitation.	13
46-121	Annual meeting of water users; petition.	13
46-122	Right to water delivery; duty of directors.	14
46-123	Right of eminent domain in others; preserved.	15
46-124	Board of directors; meetings; quorum; open records.	15
46-124.01	District; budget; public inspection.	15
46-125	Surveys; acquisition of property; eminent domain; procedure; construction; powers of board.	16
46-126	Contracts with United States authorized; bonds; issuance; tax levy.	16
46-127	District as fiscal agent of the United States; authority.	17
46-128	Irrigation; declared a public use.	18
46-129	District property; title; conveyance in trust; procedure; election.	18
46-130	Board of directors; acquisition of property; corporate powers.	19
46-131	District annual assessment; how prepared.	19
46-132	Assessments; equalization; notice.	20

<u>Section</u>		<u>Page</u>
46-133	Assessments; equalization; hearings; valuation; appeal; procedure.	20
46-134	Bond and United States contract fund; assessment; schedule of increased assessments.	21
46-135	General fund; assessment; records and tax lists.	21
46-136	District taxes; collection; payment; medium; fee.	22
46-137	District taxes; disposition.	22
46-138	Failure of district board to levy taxes; county board to act.	23
46-139	Warrants; issuance by district; limit; past-due obligations; special levy; unused balances; disposition.	24
46-140	Assessments; land belonging to state; when due; lien; preference; enforcement.	24
46-141	Assessment; payment under protest; refund.	25
46-142	District bonds; payment by county treasurer; redemption; investment of funds.	26
46-143	District bonds; payment by district treasurer; additional bonds required.	26
46-144	Special assessment; warrants; election; notice; rate of assessment; disposition of proceeds.	27
46-145	Construction of works; notice; bond of contractor; bids; letting.	28
46-146	Claims against district; warrants; interest; payment; procedure.	29
46-147	Construction fund; deposit with county treasurer; when authorized; disbursement.	30
46-148	County treasurer; reports to district board; contents.	30
46-149	District treasurer; reports to district board; contents; warrants; register; order of payment.	30

<u>Section</u>		<u>Page</u>
46-150	Warrants; form.	31
46-151	Cost of construction; when payable in bonds; issuance of additional bonds; additional levy.	31
46-152	Cost of organization, operation, and improvements; how paid; tolls; assessments; borrowing.	32
46-153	Construction across streams, highways, railroads, and ditches; right-of-way over state lands; state water and water rights.	32
46-154	Directors; salaries and expenses; officers, employees, attorneys, and agents; compensation.	33
46-155	Director or officer; interest in contract prohibited; accepting gratuity or bribe; penalty; forfeiture of office.	33
46-156	Limitation on debts and liabilities; eminent domain; procedure; contracts with United States.	34
46-157	Apportionment of water; duty of water commissioners.	35
46-158	High water; duty of board; automatic measuring devices; interchange of water.	35
46-159	Prior acts not repealed; diversion of water without compensation prohibited.	36
46-160	Irrigation district; liability for failure to deliver water; conditions; limitation.	36
46-161	District boundaries; changes; inclusion of lands; petition; contents.	37
46-162	Inclusion of lands; notice; advance cost of proceeding, by whom paid.	37
46-163	Inclusion of lands; hearing; assent of parties; when implied.	38
46-164	Inclusion of lands; payment of share of original cost to new district; when required.	38

<u>Section</u>		<u>Page</u>
46-165	Inclusion of lands; action of board; order; contents.	38
46-166	Inclusion of lands; objection made; action of board.	39
46-167	Inclusion of lands; objection made; election required; notice; assent of Secretary of the Interior; when required.	39
46-168	Inclusion of lands; result of vote; duty of board.	40
46-169	Changed boundaries; copy of order filed in recorder's office; effect.	40
46-170	Changed boundaries; record; certified copy as evidence.	40
46-171	Inclusion of lands; guardians, executors, and administrators; when authorized to sign petitions.	40
46-172	Inclusion of new land in district; redivision required; election precincts.	41
46-173	District boundaries; changes; exclusion of lands; effect.	41
46-174	Exclusion of lands; petition; form; contents.	41
46-175	Exclusion of lands; notice; form; contents.	42
46-176	Exclusion of lands; hearing; assent of parties; when implied; nonirrigable lands.	42
46-177	Exclusion of lands; action of board.	43
46-178	Exclusion of lands; assent of bondholders and Secretary of the Interior required, when; order of exclusion.	43
46-179	Exclusion of lands; objection made; action of board; election required; notice; procedure.	44
46-180	Exclusion of lands; result of vote; order of board.	44
46-181	Exclusion of lands; copy of order filed with recorder; effect.	45
46-182	Order of exclusion; vacancy in office of director; when created; how filled.	45

<u>Section</u>		<u>Page</u>
46-183	Exclusion of lands; redivision required; election precincts.	45
46-184	Exclusion of lands; assessments; refund; when allowed; procedure.	46
46-185	Discontinuance of district; petition; special election; notice; procedure.	46
46-186	Discontinuance of district; result of election; resubmission; sale of property; appointment of appraisers; notice of sale.	46
46-187	Discontinuance of district; sale of property; opening of bids; sale by private negotiation.	47
46-188	Discontinuance of district; sale of property; deferred payments lien on property sold; additional security.	47
46-189	Discontinuance of district; sale of property; action to collect purchase price; in whose name brought.	48
46-190	Discontinuance of district; assets of district used to pay debts; procedure; unused funds; distribution.	48
46-191	Discontinuance of district; obligations incurred after April 8, 1903; subject to redemption upon discontinuance.	49
46-192	Discontinuance of district; final report by board; property rights; disposition; claims barred after one year.	49
46-193	Plan of operation; construction work; survey and estimate; report by Director of Natural Resources.	50
46-194	Plan of operation; construction work; bonds; issuance; special election; notice; procedure.	50
46-195	Bonds; schedule of maturity.	51
46-196	Bonds; interest; dates and place of payment.	52
46-197	Bonds; form; contents.	52
46-198	Bonds; record; interest on coupons; special election; procedures.	52

<u>Section</u>		<u>Page</u>
46-199	Construction work; annual report by board of directors; duty of Director of Natural Resources.	53
46-1,100	Bonds; sale; notice; procedure.	53
46-1,101	Bonds; how paid; assessments.	54
46-1,102	Bonds; issuance and sale; judicial approval required.	54
46-1,103	Bonds; judicial approval; petition; contents.	54
46-1,104	Bonds; judicial approval; hearing; notice; form; contents.	55
46-1,105	Bonds; judicial approval; parties; motions and answers; rules applicable.	55
46-1,106	Bonds; judicial approval; determination of legality; procedure.	56
46-1,107	Water supply from outside the state; power of district to acquire; contracts; bonds.	56
46-1,108	Bonds; refunding; reissue.	57
46-1,109	Bonds; refunding; conditions for issuance; procedure; notice; form; contents; action of board when no objections filed.	57
46-1,110	Bonds; refunding; hearing on objections; appeal.	58
46-1,111	Bonds; refunding; recitals required; delivery; payment; laws applicable.	58
46-1,112	Bonds; interest; extension of maturity; refunding; conditions; requirements.	58
46-1,113	Bonds; extension of maturity; refunding; election required, when; procedure; laws applicable.	58
46-1,114	Irrigation districts; grant of additional powers.	59
46-1,115	Bonds in discharge of judgments; power to issue; limit.	59



<u>Section</u>		<u>Page</u>
46-1,116	Bonds; issuance to procure surrender of outstanding bonds; power of district; limit.	59
46-1,117	Bonds; issuance to procure surrender of notes and warrants; power of district; limit.	60
46-1,118	Bonds; issuance for more than one purpose.	60
46-1,119	Bonds issued to discharge judgments or procure surrender of bonds, notes, and warrants; maturity; interest; redemption.	60
46-1,120	Bonds issued to discharge judgments or procure surrender of bonds, notes, and warrants; contract with holders, authorized; terms.	60
46-1,121	Bonds issued to discharge judgments or procure surrender of bonds, notes, and warrants; powers to be exercised by resolution; contents.	61
46-1,122	Bonds issued to discharge judgments or procure surrender of bonds, notes, and warrants; special election required; notice; form and contents; effect of affirmative vote.	61
46-1,123	Bonds issued to discharge judgments or procure surrender of bonds, notes, and warrants; procedure where less than all outstanding are offered.	62
46-1,124	Bonds issued to discharge judgments or procure surrender of bonds, notes, and warrants; resolution; contracts; effect.	62
46-1,125	Bonds issued to discharge judgments or procure surrender of bonds, notes, and warrants; contracts; duties of public officers.	62
46-1,126	Bonds issued to discharge judgments or procure surrender of bonds, notes, and warrants; rights of creditors not consenting.	63
46-1,127	Bonds; sinking fund; how provided.	63
46-1,128	Irrigation or drainage districts; sale of real estate; procedure.	63
46-1,129	Sale of real estate; election; notice; form; contents.	64

<u>Section</u>		<u>Page</u>
46-1,130	Sale of real estate; election; results; determination.	64
46-1,131	Sale of real estate; notice.	64
46-1,132	Sale of real estate; bids; acceptance; conveyance; form.	64
46-1,133	Irrigation districts; public lands; taxation; rights and obligations of entrymen.	65
46-1,134	Irrigation districts; excluded lands not taxable.	65
46-1,135	Rights of grantees of subdivided lands.	65
46-1,136	Subdivided lands; additional facilities; no obligation to furnish.	66
46-1,137	Tolls; collection authorized.	66
46-1,138	Delinquent tolls; lien on real estate; manner of collection.	66
46-1,139	District funds; authorized depositories.	67
46-1,140	District funds; depository designated; deposits subject to check or order.	67
46-1,141	District funds; deposits; how secured.	67
46-1,142	District funds; treasurer not liable, when.	68
46-1,143	Contract for water supply authorized.	68
46-1,144	Water supply; tax levy.	68
46-1,145	Contract for water supply; election required, when; notice; procedure; effect of affirmative vote.	69
46-1,146	Water supply contracts and bonds; rescission; when authorized.	69
46-1,147	Irrigation districts; acceptance of federal reclamation aid.	70
46-1,148	Payment of federal charges.	70

<u>Section</u>		<u>Page</u>
46-1,149	Bonds; contracts; acceptance of United States guarantee.	71
46-1,150	Acceptance of act of Congress applicable to district.	71
46-1,151	Contracts with United States; judicial approval; proceedings authorized.	71
46-1,152	Contracts with United States; procedure for confirmation; powers of court.	72
46-1,153	Contracts with United States; borrowing money to meet obligations; powers of board.	72
46-1,154	Districts organized at least one year; proceedings validated.	73
46-1,155	Merger of districts; petition; plan; contents.	73
46-1,156	Merger of districts; outstanding bonds; consent of bondholders.	74
46-1,157	Merger of districts; approval by Department of Natural Resources.	74
46-1,158	Merger of districts; special election; notice.	74
46-1,159	Merger of districts; election; notice; contents.	74
46-1,160	Merger of districts; election; ballots; canvass; board of directors.	75
46-1,161	Merger of districts; board of directors; term of office; election.	75
46-1,162	Merger of districts; election; effect.	76
46-1,163	Merger of districts; indebtedness; responsibility; succession to property.	76
46-1,164	Surface Water Irrigation Infrastructure Fund; created; use; Investment.	76
46-1,165	Surface water irrigation infrastructure; grants; matching funds.	76

CHAPTER 46

ARTICLE 3

GENERATION OF ELECTRIC LIGHT AND POWER  
IN CONNECTION WITH WATER APPROPRIATION

<u>Section</u>		<u>Page</u>
46-301	Irrigation districts; establishment of electric light and power systems; powers.	77
46-302	Electric light and power system; construction or acquisition by resolution; procedure.	77
46-303	Electric light and power system; construction or acquisition by petition; procedure.	78
46-304	Electric light and power system; construction or acquisition; examination and report by Department of Natural Resources.	78
46-305	Electric light and power system; construction or acquisition; election required; procedure; vote required; effect of affirmative vote.	79
46-306	General provisions of irrigation law applicable.	79
46-307	Operation of lines beyond district boundaries; powers of district; cost payable out of earnings.	80
46-308	Issuance of debentures pledging earnings; powers of district; judicial confirmation not required.	80
46-309	Proposals in conflict with original project; vote of electors a condition precedent to adoption.	81
46-310	Rates and charges for electric current; rules and regulations of system.	81
46-311	Sale, lease, or transfer; law applicable.	81
46-312	Extension; pledged net proceeds inadequate; bonds; how issued.	82
46-313	Eminent domain; use of highways; construction and operation; general law applicable.	82

<u>Section</u>		<u>Page</u>
46-314	Profits from sale of electricity; how used.	83
46-315	Use of water for hydroelectric plant; rights of irrigation district.	83

## CHAPTER 46

### ARTICLE 1

#### IRRIGATION DISTRICTS

#### **46-101. Irrigation District Act, how cited; irrigation districts; organization; grant of authority.**

(1) Sections 46-101 to 46-1,163 shall be known and may be cited as the Irrigation District Act.

(2) Whenever a majority of the electors owning land or holding leasehold estates, or who are entrymen of government lands, in the manner and to the extent provided in the Irrigation District Act, in any district susceptible to one mode of irrigation from a common source and by the same system of works, desire to provide for the irrigation of the same, they may propose the organization of an irrigation district under the act, and when so organized, each district shall have the power conferred by law upon such irrigation district.

**Source:** Laws 1895, c. 70, § 1, p. 269; Laws 1903, c. 121, § 1, p. 615; Laws 1905, c. 165, § 1, p. 648; Laws 1913, c. 142, § 1, p. 343; R.S.1913, § 3457; Laws 1917, c. 80, § 1, p. 187; C.S.1922, § 2857; C.S.1929, § 46-101; Laws 1937, c. 103, § 1, p. 361; C.S.Supp.,1941, § 46-101; R.S.1943, § 46-101; Laws 2015, LB 561, § 1.

Irrigation districts organized hereunder are liable for seepage damages without regard to negligence under Article I, section 21, of the Constitution of Nebraska. Halstead v. Farmers Irr. Dist., 200 Neb. 314, 263 N.W.2d 475 (1978).

Provision of public power district law did not apply to irrigation districts. Baum v. County of Scotts Bluff, 172 Neb. 225, 109 N.W.2d 295 (1961).

Where plaintiff's land was never included in district his right to abandon use of irrigation water was not controlled by irrigation district act. Faught v. Platte Valley P. P. & I. Dist., 155 Neb. 141, 51 N.W.2d 253 (1952).

An irrigation district organized under the laws of Nebraska and irrigating lands wholly within this state is subject to the irrigation laws of this state regardless of the fact that the district's headgates and diversion works may be in an adjoining

state. State ex rel. Sorensen v. Mitchell Irr. Dist., 129 Neb. 586, 262 N.W. 543 (1935).

Judgment of board as to matters submitted to it by statute cannot be collaterally attacked, but question whether land is under ditch already constructed of sufficient capacity to water same, is not left to adjudication of board. Sowerwine v. Central Irr. Dist., 85 Neb. 687, 124 N.W. 118 (1909); State v. Several Parcels of Land, 80 Neb. 424, 114 N.W. 283 (1907).

Irrigation district act sustained as constitutional. Irrigation districts are public rather than municipal corporations, and their officers are officers of the state. Board of Directors of Alfalfa Irr. Dist. v. Collins, 46 Neb. 411, 64 N.W. 1086 (1895).

Irrigation district, organized after county board was induced to believe law was complied with, was de facto corporation and liable on warrants. Draver v. Greenshields & Everest Co., 29 F.2d 552 (8th Cir. 1928).

#### **46-102. Terms, defined.**

(1) For purposes of the Irrigation District Act:

(a) Elector means:

(i) For any irrigation district or proposed irrigation district not described in subdivision

(1)(a)(ii) of this section, any resident of the State of Nebraska who:

(A) Owns not less than fifteen acres of land within any such district;

(B) Is an entryman of government land within any such district; or

(C) Holds a leasehold estate in not less than forty acres of state land within any such district for a period of not less than five years from the date at which such elector seeks to exercise the elective franchise; and

(ii) For any irrigation district or proposed irrigation district which borders another state and comprises less than two thousand acres and in which one-half or more of the landowners, leaseholders, or entrymen of government lands are not residents of the State of Nebraska, any person who:

(A) Owns not less than fifteen acres of land within any such district;

(B) Is an entryman of government land within any such district; or

(C) Holds a leasehold estate in not less than forty acres of state land within any such district for a period of not less than five years from the date at which such elector seeks to exercise the elective franchise; and

(b) Residence means (i) that place in which a person is actually domiciled, which is the residence of an individual or family, with which a person has a settled connection for the determination of his or her civil status or other legal purposes because it is actually or legally his or her permanent and principal home, and to which, whenever he or she is absent, he or she has the intention of returning, or (ii) the place where a person has his or her family domiciled even if he or she does business in another place.

(2) Status as an elector, including residency, shall be established as provided by this section and section 46-110.

(3) If an elector resides outside of the irrigation district, the elector shall be considered an elector in the division of the irrigation district in which his or her land is situated or, if the elector is the owner of land in more than one division of the irrigation district, the elector shall be considered an elector in the division of the district in which the majority of his or her land is situated.

(4) In the case of land owned or leased by joint tenants, each joint tenant is an elector and entitled to vote if the total acreage owned or leased per joint tenant is equal to or exceeds the minimum acreage requirements of subsection (1) of this section.

(5) In the case of land owned or leased by tenants in common, each tenant is an elector and entitled to vote if the total acreage owned or leased per tenant is equal to or exceeds the minimum acreage requirements of subsection (1) of this section.

(6) In the case of land owned or leased by a corporation, limited liability company, limited liability partnership, joint venture, or other legal entity which meets the minimum acreage requirements of subsection (1) of this section, the entity shall designate a shareholder, member, or partner of the entity to act as the elector on behalf of the entity. The entity shall identify its elector-designee in writing to the secretary of the board of directors of the irrigation district not less than thirty days prior to an irrigation district election.

(7) In the case of land owned or leased under a life tenancy, each remainderman is an elector and entitled to vote if the total acreage owned or leased per remainderman is equal to or exceeds the minimum acreage requirements of subsection (1) of this section.

(8) In the case of land held by a buyer in possession pursuant to a land-purchase contract when the total acreage under the land-purchase contract meets the minimum acreage requirements of subsection (1) of this section and the buyer in possession is responsible for paying the real property taxes and the irrigation fees and assessments, the buyer in possession is the elector.

(9) In the case of land owned or leased by a trust which meets the minimum acreage requirements of subsection (1) of this section, the trustee shall designate a trustor, beneficiary, or trustee of the trust to act as the elector on behalf of the trust. The trust shall identify its elector-designee in writing to the secretary of the board of directors not less than thirty days prior to an irrigation district election.

(10) In the case of a pending estate of a deceased elector involving land which meets the minimum acreage requirements of subsection (1) of this section, the duly appointed personal representative of the estate shall act as the elector on behalf of the estate.

(11) Prior to formation of an irrigation district, if two or more persons claim conflicting rights to vote on the same acreage, the election commissioner or county clerk shall determine the party entitled to vote. In such cases, the determination of the election commissioner or county clerk shall be conclusive. After formation of an irrigation district, if two or more persons claim conflicting rights to vote on the same acreage or any other conflict arises regarding the qualification of an elector, the secretary of the board of directors of the irrigation district shall determine the party entitled to vote. The secretary's determination shall be conclusive. If a claim involves the secretary of the board, the board of election for the affected irrigation district precinct shall determine the party entitled to vote. In such cases, the determination of the board of election shall be conclusive.

**Source:** Laws 1913, c. 142, § 1, p. 343; R.S.1913, § 3457; Laws 1917, c. 80, § 1, p. 188; C.S.1922, § 2857; C.S.1929, § 46-101; Laws 1937, c. 103, § 1, p. 362; C.S.Supp.,1941, § 46-101; R.S.1943, § 46-102; Laws 2015, LB 561, § 2; Laws 2021, LB507, § 5.

**Effective Date: May 6, 2021.**

#### **46-103. Irrigation district; how formed; petition.**

A petition shall be filed with the county board, signed by a majority of the electors of the proposed district who shall own or hold leasehold estates in a majority of the whole number of acres belonging to or held by the electors of the proposed district, which petition shall set forth and particularly describe the boundaries of the district and shall pray that the same be organized under the provisions of sections 46-101 to 46-128.

**Source:** Laws 1895, c. 70, § 2, p. 270; Laws 1903, c. 121, § 1, p. 616; Laws 1909, c. 155, § 1, p. 558; R.S.1913, § 3458; Laws 1917, c. 81, § 1, p. 191; C.S.1922, § 2858; C.S.1929, § 46-102; Laws 1933, c. 87, § 1, p. 355; C.S.Supp.,1941, § 46-102; R.S.1943, § 46-103.

The boundaries of the irrigation district must be sufficiently definite and certain to identify the land to be irrigated thereby. Baker v. Central Irr. Dist., 93 Neb. 460, 140 N.W. 765 (1913).



#### **46-104. Petition; map; requirements.**

The petitioners must accompany the petition with a map of the proposed district. The map shall show the location of the proposed canal or the works by means of which it is intended to irrigate the proposed district, and of all the canals situated within the boundaries of the proposed district; *Provided*, canals that only pass through such lands, and which do not in fact irrigate any of the same, need not be shown. If the water supply be from natural streams, the flow of such stream or streams shall be stated in cubic feet per second. If the water supply for the district is to be gathered by storage reservoirs, the map shall show the location of the proposed reservoirs and shall give their capacity in acre-feet. The map shall be drawn to a scale of two inches to the mile. Cross sections of the proposed canal, and all canals existing within the boundaries of the proposed district and shown on the map, and all proposed dams and embankments, shall be given in sufficient number to show the contemplated mode of construction, and the capacity shall be given in cubic feet per second of the proposed and such existing canals. Such cross sections shall be drawn to a scale of ten feet to the inch, and the map and cross sections shall be certified to by a competent irrigation engineer.

**Source:** Laws 1909, c. 155, § 1, p. 558; R.S.1913, § 3458; Laws 1917, c. 81, § 1, p. 191; C.S.1922, § 2858; C.S.1929, § 46-102; Laws 1933, c. 87, § 1, p. 355; C.S.Supp.,1941, § 46-102; R.S.1943, § 46-104.

#### **46-105. Petition; bond; requirements.**

The petitioners must accompany the petition with a good and sufficient bond, to be approved by the county board, in double the amount of the probable cost of organizing such district, conditioned that the bondsmen will pay all costs in case such organization shall not be effected.

**Source:** Laws 1895, c. 70, § 2, p. 270; Laws 1903, c. 121, § 1, p. 616; Laws 1909, c. 155, § 1, p. 559; R.S.1913, § 3458; Laws 1917, c. 81, § 1, p. 192; C.S.1922, § 2858; C.S.1929, § 46-102; Laws 1933, c. 87, § 1, p. 356; C.S.Supp.,1941, § 46-102; R.S.1943, § 46-105.

#### **46-106. Petition; notice of hearing; report by Director of Natural Resources.**

The petition for the proposed district shall be published for at least two weeks before the time at which the same is to be presented, in some newspaper printed and published in the county where the petition is presented, together with a notice stating the time of the meeting at which the petition will be presented. A copy of such petition and all maps and other papers filed with the petition shall be filed in the office of the Department of Natural Resources for at least four weeks before the date set for such hearing. The Director of Natural Resources shall examine such petition, maps, and other papers and, if he or she deems it necessary, shall further examine the proposed district, the works proposed to be purchased, or the location of the works to be constructed. The director

shall prepare a report upon the matter in such form as he or she deems advisable and submit the report to the county board at the meeting set for the hearing of the petition.

**Source:** Laws 1895, c. 70, § 2, p. 270; Laws 1903, c. 121, § 1, p. 616; Laws 1909, c. 155, § 1, p. 559; R.S.1913, § 3458; Laws 1917, c. 81, § 1, p. 192; C.S.1922, § 2858; C.S.1929, § 46-102; Laws 1933, c. 87, § 1, p. 356; C.S.Supp.,1941, § 46-102; R.S.1943, § 46-106; Laws 2000, LB 900, § 86.

**46-107. Petition and plan of irrigation; hearing before county board; finding; appeal to district court; procedure; bond.**

At the time set for the hearing, the county board may amend such plan of irrigation as it may find advisable, and when it shall have determined to proceed with the matter, the board may adjourn such hearing from time to time, not exceeding four weeks in all, and on the final hearing may make such changes in the proposed boundaries as it may find to be proper, and shall establish and define boundaries; *Provided*, the board shall, upon final hearing, make a specific finding as to the territory within the proposed district, which is susceptible of irrigation by the same system of works applicable to the other lands in such proposed district, which finding shall be deemed a final order for purposes of review to the district court on appeal. Such appeal shall be taken by filing with the county clerk of the county wherein the land or any part of the land lies, a written notice of the appeal within ten days from the date of such specific finding. The interested party or parties appealing shall give a bond to be approved by the clerk of the district court, conditioned to pay all costs of the proceedings on appeal, should the decision of the county board be sustained, and shall within thirty days file a transcript of the proceedings had upon such specific finding with the clerk of the district court, where the matter shall be tried and determined de novo.

**Source:** Laws 1895, c. 70, § 2, p. 271; Laws 1903, c. 121, § 1, p. 616; Laws 1909, c. 155, § 1, p. 560; R.S.1913, § 3458; Laws 1917, c. 81, § 1, p. 192; C.S.1922, § 2858; C.S.1929, § 46-102; Laws 1933, c. 87, § 1, p. 356; C.S.Supp.,1941, § 46-102; R.S.1943, § 46-107.

Order of county board establishing boundaries of districts is conclusive, at least in collateral attack on question whether land will be benefited by irrigation, but otherwise on question if such lands cannot from some source be irrigated. *Sowerwine v.*

*Central Irr. District*, 85 Neb. 687, 124 N.W. 118 (1909); *Andrews v. Lillian Irr. Dist.*, 66 Neb. 458, 92 N.W. 612 (1902), 97 N.W. 336 (1903).

**46-108. District; lands included; lands irrigated by pumping.**

Upon specific findings as to inclusion of any land in the proposed district, to which objection shall have been made, it shall be the duty of the county clerk to notify the objector, his agent or attorney, in writing, of the fact that such specific finding shall have been made, within three days after the finding shall have been made, nor shall any land which will not, in the judgment of the board, be benefited by irrigation by such system be included in such district; *Provided*, any persons whose lands are susceptible of irrigation from the same source, shall, upon application of the owner to the board, be entitled to have such lands included in such district. The person, firm, corporation or municipal corporation whose land, within any proposed district, is provided with water by

pumping, whether from well, lake or stream, shall not be included therein except upon written application of the owner or owners of such land; *Provided*, that one thousand gallons per minute of water shall exempt one hundred and sixty acres, and lesser or greater amounts of water shall exempt in proportion.

**Source:** Laws 1895, c. 70, § 2, p. 271; Laws 1903, c. 121, § 1, p. 616; Laws 1909, c. 155, § 1, p. 560; R.S.1913, § 3458; Laws 1917, c. 81, § 1, p. 192; C.S.1922, § 2858; C.S.1929, § 46-102; Laws 1933, c. 87, § 1, p. 357; C.S.Supp.,1941, § 46-102; R.S.1943, § 46-108.

Land may not be included in an irrigation district that is provided with water by pump for its irrigation. *Smith v. Frenchman-Cambridge Irr. Dist.*, 155 Neb. 270, 51 N.W.2d 376 (1952).

#### **46-109. District; divisions; directors; number; election; terms.**

(1) Except as otherwise provided in subsections (2) and (3) of this section, the county board shall make an order dividing the irrigation district into three divisions as nearly equal in size as may be practicable, which shall be numbered first, second, and third, and one director shall be elected for each division.

(2) After formation of an irrigation district, in districts comprising over twenty-five thousand acres, the electors thereof may determine by a majority vote to increase the number of directors in any multiple of three up to nine, whereupon the district may be divided into as many divisions as there are directors agreed upon. One-third of the number of directors so elected shall retire each year, and the order of their retirement may be agreed upon by the directors of the district, and successors shall be elected in the manner provided for the election of directors in other districts. The election for the increased number of directors shall be called upon a petition signed by twenty percent of the electors of the district presented to the then board of directors.

(3) After formation of an irrigation district, in districts comprising less than fifteen thousand acres, upon the majority vote of the board of directors, the question of whether the divisions in the irrigation district may be eliminated and the subsequent election of the directors conducted on an at-large basis may be submitted to the electors. The divisions in the district shall be eliminated and the directors elected on an at-large basis only upon the affirmative vote of two-thirds of the electors of the district.

**Source:** Laws 1895, c. 70, § 2, p. 271; Laws 1903, c. 121, § 1, p. 617; Laws 1909, c. 155, § 1, p. 560; R.S.1913, § 3458; Laws 1917, c. 81, § 1, p. 192; C.S.1922, § 2858; C.S.1929, § 46-102; Laws 1933, c. 87, § 1, p. 357; C.S.Supp.,1941, § 46-102; R.S.1943, § 46-109; Laws 1972, LB 1509, § 1; Laws 2015, LB 561, § 3.

#### **46-110. District; organization and officers; election; notice; voters; eligibility.**

(1) After dividing the proposed irrigation district into divisions, the county board shall give notice of an election to be held in such proposed district, for the purpose of determining whether or not the same shall be organized under the Irrigation District Act. Such notice shall describe the

boundaries as established and shall designate a name for such proposed district. The notice shall be published for at least three weeks prior to such election in a newspaper of general circulation in the county; and if any portion of such proposed district lies within another county or counties, then the notice shall be published in a newspaper of general circulation within each of such counties. The notice shall include the contents of the ballots to be cast and the date, time, place, and manner of the election, with instructions and deadlines to request and cast a ballot by mail. The ballot shall contain the words Irrigation district ..... Yes, or Irrigation district ..... No, or words equivalent thereto; and also the names of persons to be voted for to fill various elective offices prescribed in the Irrigation District Act.

(2) No person shall be entitled to vote at any election held under the Irrigation District Act unless he or she is qualified as an elector as provided in section 46-102. For any election under the Irrigation District Act, status as an elector shall be established by a record date designated by the election commissioner or county clerk for initial organization of the irrigation district or designated by the secretary of the board of directors for all other elections. The record date shall not be more than thirty days prior to the election. After such record date, a person may be allowed to vote when such person establishes his or her status as an elector to the satisfaction of the election commissioner or county clerk for initial organization of the district or to the satisfaction of the secretary of the board of directors for all other elections. The determination of the election commissioner, county clerk, or secretary of the board of directors, as the case may be, shall be conclusive.

**Source:** Laws 1895, c. 70, § 2, p. 271; Laws 1903, c. 121, § 1, p. 617; Laws 1909, c. 155, § 1, p. 560; R.S.1913, § 3458; Laws 1917, c. 81, § 1, p. 193; C.S.1922, § 2858; C.S.1929, § 46-102; Laws 1933, c. 87, § 1, p. 357; C.S.Supp.,1941, § 46 102; R.S.1943, § 46-110; Laws 2015, LB 561, § 4.

**46-111. District; organization and officers; election; procedure; canvass of votes; order of board; filing; election precincts.**

(1) Irrigation district elections shall be conducted in accordance with the Irrigation District Act.

(2) The county board shall meet on the second Monday next succeeding any irrigation district election or next succeeding the deadline for casting ballots in an irrigation district election by mail and canvass the votes cast at the election or by mail. If upon such canvass of the election for the formation of the district it appears that at least a majority of all votes cast are Irrigation district ..... Yes, the county board shall by an order entered on its minutes, declare such territory duly organized as an irrigation district, under the name and style therefor designated, and shall declare the persons receiving, respectively, the highest number of votes for such several offices to be duly elected to such offices. The county board shall cause a copy of such order, duly certified, to be immediately filed for record in the office of the county register of deeds of each county in which any portion of such lands are situated and shall also immediately forward a copy thereof to the clerk of the county board of each of the counties in which any portion of the district may lie; and no county board of any county, including any portion of such district, shall, after the date of the

organization of such district, allow another district to be formed including any of the lands of such district, without the consent of the board of directors thereof. From and after the date of such filing, the organization of such district shall be complete, and the officers thereof shall be entitled to immediately enter upon the duties of their respective offices, upon qualifying in accordance with law, and shall hold such offices respectively until their successors are elected and qualified. For the purpose of the election for the formation of the district, the county board shall establish one or more election precincts in the proposed district, and define the boundary or boundaries thereof, which may thereafter be changed by the board of directors of such district.

**Source:** Laws 1895, c. 70, § 3, p. 272; R.S.1913, § 3459; Laws 1919, c. 111, § 1, p. 273; C.S.1922, § 2859; C.S.1929, § 46-103; R.S.1943, § 46-111; Laws 1951, c. 148, § 1, p. 595; Laws 2015, LB 561, § 5.

### **Cross References**

**Election laws**, generally, see Chapter 32.

**Voting by mail**, absentee voters, see sections 32-938 to 32-951.

**Voting by mail**, special election procedures, see sections 32-952 to 32-959.

#### **46-112. District officers; election; terms.**

The officers elected in compliance with section 46-110, upon qualifying as provided in section 46-113, shall hold their respective offices until the next general election for the irrigation district when their successors shall be elected. At such general election the member of the board of directors having the highest number of votes shall hold his or her respective office for a term of three years, the member of the board of directors having the next highest number of votes shall be declared to be elected for a term of two years, and the member of the board of directors having the least number of votes shall be elected for a term of one year. Each year thereafter, one member of the board of directors shall be elected for a term of three years. Each member of the board of directors shall be nominated and elected by a majority vote of the electors of the division in the irrigation district and shall be an elector of the division for which he or she is to serve as such director. If, after the election, it appears that any two or more persons have an equal and the highest number of votes for the same office, the county board shall, in the presence of the candidates or their representatives, determine by lot which of the candidates shall be elected.

An automatic recount shall be held in accordance with sections 32-1119 to 32-1122. The regular election of the district shall be held on the first Tuesday in February.

**Source:** Laws 1905, c. 166, § 1, p. 649; Laws 1913, c. 142, § 2, p. 344; R.S.1913, § 3460; Laws 1915, c. 69, § 1, p. 170; C.S.1922, § 2860; Laws 1923, c. 97, § 1, p. 245; C.S.1929, § 46-104; Laws 1935, c. 106, § 1, p. 341; C.S.Supp.,1941, § 46-104; R.S.1943, § 46-112; Laws 1979, LB 421, § 14; Laws 1994, LB 76, § 555; Laws 1995, LB 99, § 12.

**46-113. Officers; oath; bond; district as federal fiscal agent; additional bond.**

Within ten days after receiving his certificate of election, hereinafter provided for, each director shall take and subscribe the official oath, and each member of the board of directors shall execute an official bond in the sum of one thousand dollars, which bond shall be approved by the county judge of the county where such organization was effected, and after such approval all bonds shall be recorded in the office of the county recorder of such county; *Provided*, that in case any district organized hereunder is appointed fiscal agent of the United States or by the United States is authorized to make collections of money for and on behalf of the United States in connection with any federal reclamation project, such treasurer and each such director shall execute a further additional official bond in such sum as the Secretary of the Interior may require, conditioned for the faithful discharge of the duties of his respective office and the faithful discharge by the district of its duties as fiscal or other agent of the United States under any such appointment or authorization; such additional bonds to be approved, recorded, and filed as herein provided for other official bonds, and any additional bonds may be sued upon by the United States or any person injured by the failure of such officer or the district to fully, promptly, and completely perform their respective duties. All official bonds herein provided for shall be in the form prescribed by law for official bonds for county officers except that the obligee named in the bond shall be the district.

**Source:** Laws 1895, c. 70, § 4, p. 273; Laws 1897, c. 86, § 1, p. 361; Laws 1903, c. 121, § 1, p. 618; Laws 1905, c. 166, § 1, p. 650; Laws 1913, c. 142, § 2, p. 344; R.S.1913, § 3460; Laws 1915, c. 69, § 1, p. 171; C.S.1922, § 2860; Laws 1923, c. 97, § 1, p. 245; C.S.1929, § 46-104; Laws 1935, c. 106, § 1, p. 341; C.S.Supp.,1941, § 46-104; R.S.1943, § 46-113.

**Cross Reference**

**Official bonds**, form, filing, recording, and approval, see sections 11-101 to 11-122.

**46-114. Directors; assumption of office; tenure.**

The director elected shall assume the duties of his office the first Tuesday in March after his election; *Provided*, all incumbents shall hold their respective offices until their successors are elected and qualified, as provided in section 46-112.

**Source:** Laws 1905, c. 166, § 1, p. 650; Laws 1913, c. 142, § 2, p. 345; R.S.1913, § 3460; Laws 1915, c. 69, § 1, p. 172; C.S.1922, § 2860; Laws 1923, c. 97, § 1, p. 246; C.S.1929, § 46-104; Laws 1935, c. 106, § 1, p. 342; C.S.Supp.,1941, § 46-104; R.S.1943, § 46-114.

**46-115. Subsequent elections; manner; notice.**

(1) Fifteen days before any election which is not held by mail under the Irrigation District Act subsequent to the organization of the irrigation district, the secretary of the board of directors shall cause notice to be published in a newspaper of general circulation in each county in which the irrigation district lies. The notice shall include the date, time, place, and manner of holding the

election. The secretary shall also post a general notice of the same in the office of the board, which shall be established and kept at some fixed place to be determined by the board, specifying the polling places, if any, of each precinct of the irrigation district.

(2) Each year the board of directors of an irrigation district shall determine whether to hold the subsequent regular election of the irrigation district by mail. The board of directors may determine to hold any other election by mail under the Irrigation District Act if the decision to hold the election by mail is made at least forty-five days prior to the date set for such election. The secretary of the board of directors shall, at least thirty days prior to the date set for the election, mail to the last-known post office address of each elector a ballot which lists the names of the candidates and gives instructions and the deadlines to return the ballot. The secretary shall publish notice of the election by mail in a newspaper of general circulation in each county in which the irrigation district lies. The notice shall include instructions and the deadlines for requesting a ballot and instructions and the deadlines for casting ballots by mail. The notice shall also include the time and place designated for processing and counting the ballots cast by mail.

(3) Prior to the time for posting the notices, the board of directors shall appoint three residents from each precinct, one clerk and two judges, who shall constitute a board of election for such precinct. If the board of directors fails to appoint a board of election or the members appointed do not attend at the opening of the polls on the morning of election or at the time and place for processing and counting the ballots cast by mail, as the case may be, the electors of the precinct present at that hour may appoint the board. The board of directors must, in its order appointing the board of election, designate the hour and place in the precinct where the election must be held or the time and place for processing and counting the ballots cast by mail, as the case may be.

**Source:** Laws 1895, c. 70, § 5, p. 274; R.S.1913, § 3461; C.S.1922, § 2861; C.S.1929, § 46-105; R.S.1943, § 46-115; Laws 1951, c. 148, § 2, p. 596; Laws 2015, LB 561, § 6.

#### **Cross References**

**Voting by mail**, absentee voters, see sections 32-938 to 32-951.

**Voting by mail**, special election procedures, see sections 32-952 to 32-959.

#### **46-116. Election officers; powers and duties; hours of election.**

(1) One of the judges shall be chairperson of the board of election and may (a) administer all oaths required in the progress of an election under the Irrigation District Act and (b) appoint judges and clerks, if during the progress of the election or processing and counting ballots cast by mail, as the case may be, any judge or clerk ceases to act. Any member of the board of election, or any clerk thereof, may administer and certify oaths required to be administered during the progress of an election or the processing and counting of ballots cast by mail, as the case may be. Before opening the polls or processing and counting ballots cast by mail, each member of the board of election must take and subscribe to an oath to faithfully perform the duties imposed upon him or her by law. Any elector of the precinct may administer and certify such oath.

(2) For elections other than those conducted by mail, the polls must be opened at 8 a.m. on the morning of the election and be kept open until 6 p.m. of the same day, except that in districts embracing twelve thousand acres or less, the polls may, by direction of the board of directors, be opened at 1 p.m. and be kept open until 5:30 p.m. of the same day.

**Source:** Laws 1895, c. 70, § 6, p. 274; Laws 1913, c. 22, § 1, p. 94; R.S.1913, § 3462; C.S.1922, § 2862; C.S.1929, § 46-106; R.S.1943, § 46-116; Laws 2015, LB 561, § 7.

#### **46-117. Elections; return and canvass of vote.**

(1) Elections under the Irrigation District Act, together with the ballots cast thereat, shall be certified by the boards of election for the precincts to the board of directors of the irrigation district within three days after the election or the deadline for casting ballots by mail.

(2) No lists, tally paper, or certificate returned from any election shall be set aside or rejected for want of form if it can be satisfactorily understood. The board of directors must meet at its usual place of meeting on the first Monday after each election and canvass the returns. If at the time of meeting the returns from each precinct in the district in which the polls were opened or ballots were mailed have been received, the board of directors must then and there proceed to canvass the returns; but if all the returns have not been received the canvass must be postponed from day to day until all the returns have been received or until six postponements have been had. The canvass must be made in public and by opening the returns and estimating the vote of the district for each person voted for and declaring the result thereof.

**Source:** Laws 1895, c. 70, § 7, p. 275; R.S.1913, § 3463; C.S.1922, § 2863; C.S.1929, § 46-107; R.S.1943, § 46-117; Laws 2015, LB 561, § 8.

#### **46-118. Elections; statement of result entered in board record; certificate of election; vacancies, how filled.**

The secretary of the board of directors must, as soon as the result is declared, enter in the records of such board a statement of such results, which statement must show (1) the whole number of votes cast in the district and in each division of the district; (2) the names of the persons voted for; (3) the office to fill which each person was voted for; (4) the number of votes given in each precinct for each of such persons; and (5) the number of votes given in the district for each of such persons. The board of directors must declare elected the person having the highest number of votes given for each office. The secretary must immediately make out and deliver to such person a certificate of election, signed by him and authenticated with the seal of the board. In case of a vacancy in the office of assessor or treasurer, the vacancy shall be filled by appointment by the board of directors. In case of a vacancy in the office of a member of the board of directors, the vacancy shall be filled by appointment by the two remaining members of the board and the district



treasurer. An officer appointed as above provided shall hold his office until the next general election of the district and until his successor is elected and qualified.

**Source:** Laws 1895, c. 70, § 8, p. 275; R.S.1913, § 3464; Laws 1915, c. 67, § 1, p. 167; C.S.1922, § 2864; C.S.1929, § 46-108; R.S.1943, § 46-118.

**46-119. Board; organization; officers; bonds; payment of premiums.**

On the first Wednesday following their election, the board of directors shall meet and organize as a board, elect a president from their number and appoint a secretary, treasurer, and assessor. All such offices may be held by one person. When the offices of secretary and treasurer are held by one person he shall give a penal bond in the sum of not less than fifty percent of the general fund levy for the current year, but when the offices of secretary and treasurer are held by separate individuals, then the treasurer shall be required to give bond in the sum of not less than twenty percent of the levy for general fund purposes for the current year. The secretary shall be required to give a penal bond in a sum of not less than thirty percent of the general fund levy for the current year, but the board of directors may increase the amount of either or both of such bonds in such an amount as it may think necessary. All of such bonds shall be approved by the directors of the district; *Provided*, that the district shall pay the cost of such bonds.

**Source:** Laws 1895, c. 70, § 9, p. 276; Laws 1909, c. 156, § 1, p. 565; Laws 1911, c. 158, § 1, p. 524; R.S.1913, § 3465; Laws 1915, c. 69, § 2, p. 172; Laws 1917, c. 82, § 1, p. 194; C.S.1922, § 2865; Laws 1923, c. 97, § 2, p. 246; Laws 1927, c. 142, § 1, p. 385; C.S.1929, § 46-109; R.S.1943, § 46-119.

**46-120. Board; general powers and duties.**

The board shall have the power and it shall be its duty to manage and conduct the business affairs of the district, make and execute all necessary contracts, employ such agents, officers, and employees as may be required and prescribe their duties, establish equitable bylaws, rules and regulations for the distribution and use of water among the owners of such lands, and generally to perform all such acts as shall be necessary to fully carry out the purposes of sections 46-101 to

46-1,111. The bylaws, rules and regulations shall be printed in convenient form for distribution in the district.

**Source:** Laws 1895, c. 70, § 9, p. 276; Laws 1909, c. 156, § 1, p. 565; Laws 1911, c. 158, § 1, p. 524; R.S.1913, § 3465; Laws 1915, c. 69, § 2, p. 172; Laws 1917, c. 82, § 1, p. 194; C.S.1922, § 2865; Laws 1923, c. 97, § 2, p. 247; Laws 1927, c. 142, § 1, p. 385; C.S.1929, § 46-109; R.S.1943, § 46-120.

Valid contract made with irrigation company may, as between parties or their successors in interest, be enforced, subject to reasonable regulations, provided rights of other water users are not thereby unlawfully curtailed. *Clague v. Tri-State Land Co.*, 84 Neb. 499, 121 N.W. 570 (1909).

Board may purchase or condemn all lands necessary for construction, use, maintenance, repair, and improvement of canals. *Andrews v. Lillian Irr. Dist.*, 66 Neb. 458, 92 N.W. 612 (1902), 97 N.W. 336 (1903).

Landowners' causes of action against an irrigation district, seeking declaratory, injunctive, and mandamus relief to establish the district's obligations with respect to pipeline maintenance and delivery of water to lands along the pipeline, accrued when the landowners became members of the district, despite an argument that the district had a continuing obligation under the statute to maintain a means of delivery of water to

the landowners' tracts; the landowners' causes of action were all based on the contention that the district had an obligation to maintain the pipeline and that the district had that obligation since inclusion of the landowners' lands into the district at the time the landowners became members of the district, and the landowners did not allege that any policies or obligations of the district had changed since that time. *DeLaet v. Blue Creek Irr. Dist.*, 23 Neb. App. 106, 868 N.W.2d 483 (2015).

Right to contract for a supply of water was not limited by 1915 act requiring vote of electors in certain cases. *Bridgeport Irr. Dist. v. United States*, 40 F.2d 827 (8th Cir. 1930).

Contract with irrigation district whereby United States managed and operated system, did not deprive district of right to determine amount of taxes to be levied. *New York Trust Co. v. Farmers' Irr. District*, 280 F. 785 (8th Cir. 1922).

#### **46-120.01. Board; obligate lands; emergency repairs and replacement; limitation.**

The board of directors of an irrigation district shall not obligate the lands of the district except for emergency and unforeseen damage, repairs, and replacement, in excess of five dollars per acre for districts irrigating more than sixty thousand acres per year without submitting the question to the electors of the district as defined in section 46-102. The election on such question shall be conducted in the same manner as other elections held under the provisions of Chapter 46, article 1.

**Source:** Laws 1967, c. 277, § 1, p. 746.

#### **46-121. Annual meeting of water users; petition.**

Upon petition signed by ten percent of the water users of any irrigation district and lodged with the president of such district or with any other officer during the absence or disability of the president for any cause, the president or other officer of such district shall call an annual meeting of the water users of the district upon notice given in the usual manner for elections therein, where reports of the manager, secretary, and board of directors shall be made and the general policies of the irrigation district shall be discussed.

**Source:** Laws 1923, c. 97, § 2, p. 247; Laws 1927, c. 142, § 1, p. 386; C.S.1929, § 46-109; R.S.1943, § 46-121.

## **46-122. Right to water delivery; duty of directors.**

(1) It is hereby expressly provided that all water distributed for irrigation purposes shall attach to and follow the tract of land to which it is applied unless a change of location has been approved by the board of directors pursuant to sections 46-2,127 to 46-2,129 or by the Department of Natural Resources pursuant to section 46-294 or sections 46-2,122 to 46-2,126.

(2) The board of directors may by the adoption of appropriate bylaws provide for the suspension of water delivery to any land in such district upon which the irrigation taxes levied and assessed thereon shall remain due and unpaid for two years. It shall be the duty of the directors to make all necessary arrangements for right-of-way for laterals from the main canal to each tract of land subject to assessment, and when necessary the board shall exercise its right of eminent domain to procure right-of-way for the laterals and shall make such rules in regard to the payment for such right-of-way as may be just and equitable.

(3) In times of reduced water supply, when the volume of water is not adequate to be beneficially used when equitably apportioned to all landowners in the district, the board may, after providing notice to landowners in a portion of the district and upon receiving no objections from the majority of such landowners, elect not to deliver water to that portion of the district. Such election shall not subject the district to liability under section 46-160 and shall not affect the rights of landowners in that portion of the district to water deliveries in the future. Any election to not deliver water to a portion of the district shall be made on a year-to-year basis, not to exceed ten years, and such election shall not subject any landowner to adjudication of his or her water right under section 46-229. The board may adjust the tolls or charges made to landowners within the district to reflect the decrease in supply to those landowners in the portion of the district not receiving water pursuant to such election by the board.

**Source:** Laws 1895, c. 70, § 9, p. 276; Laws 1909, c. 156, § 1, p. 566; Laws 1911, c. 158, § 1, p. 525; R.S.1913, § 3465; Laws 1915, c. 69, § 2, p. 172; Laws 1917, c. 82, § 1, p. 194; C.S.1922, § 2865; Laws 1923, c. 97, § 2, p. 247; Laws 1927, c. 142, § 1, p. 386; C.S.1929, § 46-109; R.S.1943, § 46-122; Laws 1983, LB 21, § 1; Laws 1995, LB 99, § 13; Laws 2000, LB 900, § 87; Laws 2003, LB 619, § 3.

By this section the Legislature intended that subirrigated lands having no use for water should not be charged with operating expense. *Morrow v. Farmers Irr. Dist.*, 117 Neb. 424, 220 N.W. 680 (1928).

Provision of amendatory act of 1923 authorizing directors to impose burden upon landowners of constructing and maintaining laterals, etc., was unconstitutional. *State ex rel. Campbell v. Gering Irr. Dist.*, 114 Neb. 329, 207 N.W. 525 (1926).

Mandamus is proper to compel district directors to provide landowners just share of water and supervise distribution. *State ex rel. Clarke v. Gering Irr. Dist.*, 109 Neb. 642, 192 N.W. 212 (1923).

Landowners' causes of action against an irrigation district, seeking declaratory, injunctive, and mandamus relief to establish the district's obligations with respect to pipeline

maintenance and delivery of water to lands along the pipeline, accrued when the landowners became members of the district, despite an argument that the district had a continuing obligation under the statute to maintain a means of delivery of water to the landowners' tracts; the landowners' causes of action were all based on the contention that the district had an obligation to maintain the pipeline and that the district had that obligation since inclusion of the landowners' lands into the district at the time the landowners became members of the district, and the landowners did not allege that any policies or obligations of the district had changed since that time. *DeLaet v. Blue Creek Irr. Dist.*, 23 Neb. App. 106, 868 N.W.2d 483 (2015).

All appropriations for irrigation purposes since 1895 are inseparably appurtenant to specific land. *United States v. Tilley*, 124 F.2d 850 (8th Cir. 1941).

**46-123. Right of eminent domain in others; preserved.**

Sections 46-119 to 46-122 shall not be construed to deprive any person, persons, company or corporation entitled thereto, to exercise the right of eminent domain.

**Source:** Laws 1909, c. 156, § 1, p. 566; Laws 1911, c. 158, § 1, p. 526; R.S.1913, § 3465; Laws 1915, c. 69, § 2, p. 173; Laws 1917, c. 82, § 1, p. 195; C.S.1922, § 2865; Laws 1923, c. 97, § 2, p. 248; Laws 1927, c. 142, § 1, p. 386; C.S.1929, § 46-109; R.S.1943, § 46-123.

**Cross Reference**

**For eminent domain proceedings,** see sections 76-701 to 76-724.

**46-124. Board of directors; meetings; quorum; open records.**

The board of directors shall hold regular meetings in its office each month and such special meetings as may be required for the proper transaction of business. All special meetings shall be ordered by the president of the board. The order must be entered of record and notice thereof must be given to each member. The order must specify the business to be transacted, and no other than that specified shall be transacted at such special meeting. All meetings of the board must be publicized. Two members shall constitute a quorum for the transaction of business, and upon all questions requiring a vote there shall be a concurrence of at least two members. All records of the board must be open to the inspection of any elector during business hours, and the board shall cause to be published at the close of each regular or special meeting a brief statement of the proceedings thereof in one newspaper in general circulation in the district, if the same can be done at an expense not exceeding one-third of the legal rate for advertising notices.

**Source:** Laws 1895, c. 70, § 10, p. 276; Laws 1903, c. 121, § 1, p. 618; Laws 1905, c. 166, § 1, p. 650; Laws 1909, c. 157, § 1, p. 567; Laws 1911, c. 159, § 1, p. 527; Laws 1913, c. 226, § 1, p. 656; R.S.1913, § 3466; Laws 1915, c. 69, § 3, p. 173; C.S.1922, § 2866; C.S.1929, § 46-110; R.S.1943, § 46-124; Laws 1975, LB 578, § 1.

**Cross Reference**

**Legal rate for advertising notices,** see section 33-141.

**46-124.01. District; budget; public inspection.**

An irrigation district organized under sections 46-101 to 46-128 shall maintain a current copy of its annual budget at its principal office for public inspection during business hours.

**Source:** Laws 1989, LB 502, § 2.

**46-125. Surveys; acquisition of property; eminent domain; procedure; construction; powers of board.**

The board, its agents, and employees shall have the right to enter upon any land within the district to make surveys, and may locate the line of any canal or canals and the necessary branches of such location. The board shall have the right to acquire, either by purchase or condemnation, all lands and waters and other property necessary for the construction, use, maintenance, repair, and improvement of any canal, canals, power plants of any kind or nature, and lands for reservoirs for the storage of water and all necessary appurtenances. The board shall have the right to acquire by purchase or condemnation any irrigation works, power plant, ditches, canals, or reservoirs already constructed for the use of the district. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724. In case of purchase, the bonds of the district hereinafter provided for may be used at their par value in payment. The board may also construct the necessary dams, reservoirs, and works for the collection of water for the district, and do any lawful act necessary to be done that sufficient water may be furnished to each landowner in the district for irrigation purposes.

**Source:** Laws 1895, c. 70, § 10, p. 277; Laws 1903, c. 121, § 1, p. 619; Laws 1905, c. 166, § 1, p. 651; Laws 1909, c. 157, § 1, p. 567; Laws 1911, c. 159, § 1, p. 528; Laws 1913, c. 226, § 1, p. 657; R.S.1913, § 3466; Laws 1915, c. 69, § 3, p. 174; C.S.1922, § 2866; C.S.1929, § 46-110; R.S.1943, § 46-125; Laws 1951, c. 101, § 89, p. 485.

**Cross Reference**

**For construction requirements and exclusions,** see Safety of Dams and Reservoirs Act, see section 46-1601 et seq.

Irrigation district may acquire fee simple title under eminent domain. *Burnett v. Central Neb. P. P. & I. Dist.*, 147 Neb. 458, 23 N.W.2d 661 (1946).

Mandamus is proper to compel district directors to provide landowners just share of water and supervise distribution. *State*

*ex rel. Clarke v. Gering Irr. Dist.*, 109 Neb. 642, 192 N.W. 212 (1923).

Board may acquire by purchase or condemnation all lands necessary for construction, use, maintenance, repair and improvement of its canals. *Andrews v. Lillian Irr. Dist.*, 66 Neb. 458, 92 N.W. 612 (1902), 97 N.W. 336 (1903).

**46-126. Contracts with United States authorized; bonds; issuance; tax levy.**

The board may enter into any obligation or contract with the United States for the construction, operation, and maintenance of the necessary works for the delivery and distribution of water therefrom under the provisions of the federal Reclamation Act, and all acts amendatory thereof or supplementary thereto, and the rules and regulations established thereunder; or the board may contract with the United States for a water supply under any Act of Congress providing for or permitting such contract, and in case contract be made with the United States as herein provided, bonds of the district may be deposited with the United States at ninety percent of their par value, to the amount to be paid by the district to the United States under any such contract, the interest on such bonds to be provided for by assessment and levy as in the case of other bonds of the district, and regularly paid to the United States to be applied as provided in such contract, and if bonds of the district are not so deposited it shall be the duty of the board of directors to include as

part of any levy, assessment, or toll provided for in sections 46-134, 46-135, 46-152, and 46-1,137, an amount sufficient to meet each year all payments accruing under the terms of any such contract. If contract is made with the United States as in this section provided and bonds are not to be deposited with the United States in connection with such contract, bonds need not be issued, or, if required to raise funds in addition to the amount of such contract, shall be issued only in the amount needed in addition thereto.

**Source:** Laws 1915, c. 69, § 3, p. 174; C.S.1922, § 2866; C.S.1929, § 46-110; R.S.1943, § 46-126; Laws 1967, c. 280, § 1, p. 757.

The power of an irrigation district to enter into a contract with the United States for the construction, operation, and maintenance of the necessary works for the delivery and distribution of water was not limited by a requirement that the contract be approved by the voters of the district. *Twin Loups Reclamation & Irr. District v. Blessing*, 202 Neb. 513, 276 N.W.2d 185 (1979).

Board of directors of district may contract with the United States for delivery and distribution of water under the Federal Reclamation Act. *Frenchman Valley Irr. Dist. v. Smith*, 167 Neb. 78, 91 N.W.2d 415 (1958).

Purpose of law is to authorize irrigation districts to contract with the United States for the construction, maintenance, and operation of works to carry to and distribute water on lands of district. *Livanis v. Northport Irr. Dist.*, 121 Neb. 777, 238 N.W. 757 (1931).

Board of directors was authorized to contract with the United States for a supply of water without authorization by the voters of the district. *Bridgeport Irr. Dist. v. United States*, 40 F.2d 827 (8th Cir. 1930).

#### **46-127. District as fiscal agent of the United States; authority.**

The board may accept on behalf of the district, appointment of the district as fiscal agent of the United States, or authorization of the district by the United States to make collections of money for and on behalf of the United States in connection with any federal reclamation project, whereupon the district shall be authorized to so act and to assume the duties and liabilities incident to such action, and the board shall have full power to do any and all things required by the federal statutes in connection therewith, and all things required by the rules and regulations established by any department of the federal government in regard thereto.

**Source:** Laws 1915, c. 69, § 3, p. 175; C.S.1922, § 2866; C.S.1929, § 46-110; R.S.1943, § 46-127.

#### **46-128. Irrigation; declared a public use.**

The use of all water required for the irrigation of lands of any district formed under the provisions of sections 46-101 to 46-128, together with canals and ditches already constructed, the rights-of-way for canals and ditches, sites for reservoirs and pumping plants, and all other property

required in fully carrying out the provisions of sections 46-101 to 46-1,111, is hereby declared to be a public use, subject to the regulation and control of the state in the manner prescribed by law.

**Source:** Laws 1895, c. 70, § 10, p. 277; Laws 1903, c. 121, § 1, p. 619; Laws 1905, c. 166, § 1, p. 651; Laws 1909, c. 157, § 1, p. 568; Laws 1911, c. 159, § 1, p. 528; Laws 1913, c. 226, § 1, p. 657; R.S.1913, § 3466; Laws 1915, c. 69, § 3, p. 175; C.S.1922, § 2866; C.S.1929, § 46-110; R.S.1943, § 46-128.

This section does no more than provide that land necessarily taken to benefit an irrigation district is taken for a public use, and whether the use for which property is taken is public or

private in nature is a judicial question, not a legislative one. Chimney Rock Irr. Dist. v. Fawcus Springs Irr. Dist., 218 Neb. 777, 359 N.W.2d 100 (1984).

#### **46-129. District property; title; conveyance in trust; procedure; election.**

The legal title to all property acquired under the provisions of sections 46-101 to 46-1,111, or acquired through purchase at tax sale foreclosure, shall immediately and by operation of law vest in such irrigation district in its corporate name, and shall be held by such district in trust for, and is hereby dedicated and set apart to the uses and purposes set forth in said sections. The board is hereby authorized and empowered to hold, use and acquire, manage, occupy and possess such property, and may convey the same, in whole or in part, to the United States, in trust, or to any trustee, for any period not exceeding thirty years, when authorized to do so by the affirmative vote of a majority of the qualified electors voting on such proposition at any general or special election held in such district. Notice of such election shall be given by posting notice thereof in three public places in each of the election precincts in the district for at least twenty days and also by publication of such notice in some newspaper published in the county where the office of the board of directors is kept, once each week for three successive weeks. Such notice shall specify the time and place of holding the election and shall contain a brief summary of the proposition involving the proposed conveyance. Such election shall be held and the result thereof determined and declared in conformity with the provisions of law governing the election of officers in such district, as nearly as may be practicable. No informalities in conducting such an election shall invalidate the same if the election shall have been otherwise fairly conducted. Where such conveyance is made pursuant to the terms and provisions of any contract entered into by the district, upon full compliance with the terms and provisions of such contract by the district the title to such property shall revert to the district; *Provided, however,* that the board of directors of any irrigation district may authorize the sale and conveyance of any property acquired through purchase at a tax foreclosure sale, to any other person, firm or corporation, by a resolution duly adopted by the board of directors of such

district; *and provided further,*, that where the property has been purchased by such district at a tax foreclosure sale, the consideration, for the sale and conveyance of such property by the district, shall not be less than the amount bid for it by such district at the tax foreclosure sale.

**Source:** Laws 1895, c. 70, § 11, p. 278; R.S.1913, § 3467; Laws 1917, c. 83, § 1, p. 196; C.S.1922, § 2867; C.S.1929, § 46-111; Laws 1937, c. 103, § 2, p. 362; C.S.Supp.,1941, § 46-111; Laws 1943, c. 110, § 1, p. 388; R.S.1943, § 46-129.

### **Cross Reference**

**Tax foreclosure sale**, see Chapter 77, article 19.

Notice of election by publication and posting was sufficient. Frenchman Valley Irr. Dist. v. Smith, 167 Neb. 78, 91 N.W.2d 415 (1958).

Landowner by adverse use of drainage ditch discharging water into irrigation canal for more than statutory period of ten years, may acquire from irrigation district an easement for that

purpose. Central Irr. Dist. v. Gering Irr. Dist., 122 Neb. 199, 240 N.W. 289 (1932).

Contract with irrigation district, whereby United States managed and operated system, did not deprive district of right to determine amount of taxes to be levied. Operation was not exercise of state sovereignty. New York Trust Co. v. Farmers' Irr. Dist., 280 F. 785 (8th Cir. 1922).

### **46-130. Board of directors; acquisition of property; corporate powers.**

The board is hereby authorized and empowered to take conveyances or other assurances for all property acquired by it under the provisions of sections 46-101 to 46-111, in the name of such irrigation district, to and for the uses and purposes herein expressed, and to institute and maintain any and all actions and proceedings, suits at law or in equity, necessary or proper in order to fully carry out the provisions of said sections, or to enforce, maintain, protect or preserve any and all rights, privileges, and immunities created by said sections, or acquired in pursuance thereof. In all courts, actions, suits or proceedings, the board may sue, appear and defend, in person or by attorneys, and in the name of such irrigation district.

**Source:** Laws 1895, c. 70, § 12, p. 278; R.S.1913, § 3468; C.S.1922, § 2868; C.S.1929, § 46-112; R.S.1943, § 46-130.

Persons dealing with officers and agents of public corporation are required to act with reference to authority, limitations, and restrictions imposed by legislation authorizing

organization and government thereof. Lincoln & Dawson County Irr. Dist. v. McNeal, 60 Neb. 613, 83 N.W. 847 (1900).

### **46-131. District annual assessment; how prepared.**

The assessor must, between March 1 and the third Monday in May in each year, assess all the real property in the district to the persons who own, claim, or have the possession or control thereof, at its full cash value, less the value of all improvements thereon. He shall also assess all leasehold estates in all lands belonging to the State of Nebraska, which are leased to any person, association, or corporation, to the person holding such lease, at the full cash value of such leasehold estate, less the value of all improvements thereon. He must prepare an assessment book with appropriate headings, in which must be listed all such property within the district, in which must be specified in separate columns under the appropriate heading (1) the name of the person to whom the property is assessed; and if the name is not known to the assessor, the property must be assessed



to unknown owners; (2) land by township, range, section, or fractional section, and when such land is not a congressional division or subdivision, by metes or bounds or other description sufficient to identify it, giving an estimate of the number of acres, locality, and improvements thereon; (3) city and town lots, naming the city or town and the number and block according to the system of numbering in such city or town and the improvements thereon; (4) the cash value of real estate other than city or town lots; (5) the cash value of improvements on such real estate; (6) the cash value of city and town lots; (7) the cash value of improvements on real estate, assessed to persons other than the owners of such real estate; (8) the full value of all leasehold estates of persons leasing state lands; (9) the cash value of the improvements on state lands held under lease; (10) the full value of all property assessed; (11) the total value of all property after the equalization of the board of directors; and (12) such other things as the board of directors may require from him; *Provided*, that city and town lots within any irrigation district, which are occupied and used exclusively for other than agricultural purposes, shall not be assessed or taxed by such irrigation district during the time such lots are so occupied and used. The assessment of any property in the name of the wrong person shall in no way invalidate the assessment thereof.

**Source:** Laws 1895, c. 70, § 16, p. 281; Laws 1897, c. 86, § 2, p. 361; Laws 1903, c. 121, § 1, p. 619; R.S.1913, § 3472; Laws 1917, c. 80, § 1, p. 188; C.S.1922, § 2382; C.S.1929, § 46-117; R.S.1943, § 46-131; Laws 1953, c. 156, § 1, p. 493; Laws 1957, c. 196, § 1, p. 693.

Amendment in 1917 of this section, exempting from taxation city lots occupied and used for other than agricultural purposes was constitutional, but such lots were not relieved from liability for bonds previously issued. *Erickson v. Nine Mile Irr. Dist.*, 109 Neb. 189, 190 N.W. 573 (1922).

In action by landowner to cancel tax, presumption is that proceedings were regular hereunder. *Wight v. McGuigan*, 94 Neb. 358, 143 N.W. 232 (1913).

#### **46-132. Assessments; equalization; notice.**

On or before May 15 in each year the assessor must complete his assessment book and deliver it to the secretary of the board, who must immediately give notice thereof, and of the time the board of directors acting as a board of equalization will meet to equalize assessments, by publication in a newspaper published in each of the counties comprising the district. The time fixed for the meeting shall not be less than ten or more than twenty days from the first publication of the notice; and in the meantime the assessment books must remain in the office of the secretary for the inspection of all persons interested.

**Source:** Laws 1895, c. 70, § 17, p. 282; Laws 1897, c. 86, § 3, p. 362; R.S.1913, § 3473; C.S.1922, § 2873; C.S.1929, § 46-118; R.S.1943, § 46-132.

#### **46-133. Assessments; equalization; hearings; valuation; appeal; procedure.**

Upon the day specified in the notice required by section 46-132 for the meeting of the board of directors which is hereby constituted a board of equalization for that purpose, it shall meet and continue in session from day to day, as long as may be necessary, not to exceed six days, exclusive of Sundays, to hear and determine such objections to the valuation and assessment as may come before it; and the board may change the valuation as may be just, but shall not raise the valuation

of any land as assessed by the assessor without giving the owner of such land due notice to appear and show cause why such valuation should not be raised. The secretary of the board shall be present during its session and note the changes made in the valuation of property, and in the names of the persons whose property is assessed; and within ten days after the close of the session he or she shall have the total values, as finally equalized by the board, extended into columns and added. Appeals may be taken from any action of the irrigation board of equalization to the district court.

**Source:** Laws 1895, c. 70, § 18, p. 282; R.S.1913, § 3474; C.S.1922, § 2874; Laws 1929, c. 134, § 1, p. 487; C.S.1929, § 46-119; Laws 1931, c. 90, § 1, p. 251; C.S.Supp.,1941, § 46-119; R.S.1943, § 46-133; Laws 1995, LB 490, § 25; Laws 1997, LB 397, § 3.

**46-134. Bond and United States contract fund; assessment; schedule of increased assessments.**

The board shall then levy an assessment sufficient to raise the annual interest on the outstanding bonds, and all payments due or to become due the ensuing year to the United States under any contract between the district and the United States, accompanying which bonds of the district have not been deposited with the United States as in section 46-126 provided, which when collected, shall be called the bond and United States contract fund of ..... Irrigation District. At the expiration of ten years after the issuing of the bonds the board must increase such assessment for the ensuing years in a percentage of the whole amount of bonds outstanding, as follows: For the eleventh year, five percent; for the twelfth year, six percent; for the thirteenth year, seven percent; for the fourteenth year, eight percent; for the fifteenth year, nine percent; for the sixteenth year, ten percent; for the seventeenth year, eleven percent; for the eighteenth year, thirteen percent; for the nineteenth year, fifteen percent; and for the twentieth year, a percentage sufficient to pay off such bonds.

**Source:** Laws 1895, c. 70, § 19, p. 283; Laws 1897, c. 86, § 4, p. 362; Laws 1899, c. 78, § 1, p. 331; Laws 1901, c. 77, § 1, p. 467; Laws 1913, c. 142, § 3, p. 345; R.S.1913, § 3475; Laws 1915, c. 68, § 1, p. 168; Laws 1915, c. 69, § 5, p. 175; Laws 1919, c. 110, § 1, p. 269; C.S.1922, § 2875; C.S.1929, § 46-120; R.S.1943, § 46-134.

Where no obligation to the United States Government exists and annual interest is not involved, there is no authority to issue bonds under this section. *Loup County v. Rumbaugh*, 151 Neb. 563, 38 N.W.2d 745 (1949).

Directors are authorized to levy taxes upon all real estate within the district for the purpose of creating a fund to pay for upkeep of ditch and incidental expense of the district. *Wyman v. Searle*, 88 Neb. 26, 128 N.W. 801 (1910).

**46-135. General fund; assessment; records and tax lists.**

If the board deems it necessary, it may at the same time levy an assessment for the care and maintenance of irrigation works already constructed and for the payment of salaries of officers and general expenses, which assessment shall be called the general fund of ..... Irrigation District. The secretary of the board must compute and enter in separate columns of the assessment books the respective sums of dollars and cents in each fund to be paid on the property therein enumerated, and shall certify to the county clerk of the county in which such land is located the amount of taxes

in each fund levied upon each tract of land by the board. The county clerk shall enter the amount of each fund in separate columns of the tax list of his county. All tax lists when delivered to the county treasurer shall contain all taxes in each fund levied on each tract of land by the board of such irrigation district.

**Source:** Laws 1895, c. 70, § 19, p. 283; Laws 1897, c. 86, § 4, p. 362; Laws 1899, c. 78, § 1, p. 322; Laws 1901, c. 77, § 1, p. 468; Laws 1913, c. 142, § 3, p. 345; R.S.1913, § 3475; Laws 1915, c. 68, § 1, p. 168; Laws 1915, c. 69, § 5, p. 176; Laws 1919, c. 110, § 1, p. 270; C.S.1922, § 2875; C.S.1929, § 46-120; R.S.1943, § 46-135.

Record failed to disclose that an assessment was made for the purposes designated in this section. Loup County v. Rumbaugh, 151 Neb. 563, 38 N.W.2d 745 (1949).

#### **46-136. District taxes; collection; payment; medium; fee.**

The general fund tax mentioned in section 46-135, shall be collected by the county treasurer at the same time, and in the same manner as all other taxes are collected in this state; *Provided, however,* such county treasurer shall receive in payment of the general fund tax, above mentioned, for the year in which such tax is levied, warrants drawn against such general fund, the same as so much lawful money of the United States, if such warrants do not exceed the amount of general fund tax which the person tendering the same owes; and he shall accept payment of the district bond fund tax and issue receipt therefor whenever the same may be tendered, and shall receive in payment of the district bond fund tax, for the year in which such taxes were levied, interest coupons past due issued by such irrigation district the same as so much lawful money of the United States, if such interest coupons do not exceed the amount of the district bond fund which the person tendering the same owes. The county treasurer shall be entitled to a collection fee of one-half of one percent on all money collected, to be deducted from the bond interest fund of the district.

**Source:** Laws 1897, c. 86, § 4, p. 362; Laws 1899, c. 78, § 1, p. 332; Laws 1901, c. 77, § 1, p. 468; Laws 1913, c. 142, § 3, p. 346; R.S.1913, § 3475; Laws 1915, c. 68, § 1, p. 169; Laws 1915, c. 69, § 5, p. 176; Laws 1919, c. 110, § 1, p. 270; C.S.1922, § 2875; C.S.1929, § 46-120; R.S.1943, § 46-136.

This section provides for the collection of taxes for the general fund of the irrigation district in the same manner as other taxes are collected. Loup County v. Rumbaugh, 151 Neb. 563, 38 N.W.2d 745 (1949).

#### **46-137. District taxes; disposition.**

All such taxes collected or received for the district bond and general funds, either in money, interest coupons or warrants on the general fund, by the treasurer of any county other than the one in which the district was originally organized shall be remitted by him to the treasurer of the county in which the district was originally organized; such remittance to be made on the fifth day of every month. All such taxes collected or received for the general fund of a district by the treasurer of the county in which the district was originally organized shall be paid to the treasurer of such irrigation district, upon an order signed by the president and secretary of such district, and all warrants

received in payment of general fund taxes may be turned over, as so much money, to the district treasurer on such orders.

**Source:** Laws 1897, c. 86, § 4, p. 363; Laws 1899, c. 78, § 1, p. 333; Laws 1901, c. 77, § 1, p. 469; Laws 1913, c. 142, § 3, p. 347; R.S.1913, § 3475; Laws 1915, c. 68, § 1, p. 169; Laws 1915, c. 69, § 5, p. 177; Laws 1919, c. 110, § 1, p. 271; C.S.1922, § 2875; C.S.1929, § 46-120; R.S.1943, § 46-137.

This section provides for the disposition of the taxes raised in an irrigation district. *Loup County v. Rumbaugh*, 151 Neb. 563, 38 N.W.2d 745 (1949).

#### **46-138. Failure of district board to levy taxes; county board to act.**

In case of the neglect or refusal of a board of directors of any irrigation district to cause an assessment and levy to be made as provided in sections 46-134 and 46-135, for the payment of principal and interest of outstanding bonds, and for all payments due or to become due the ensuing year to the United States, under any contract between the district and the United States, accompanying which the bonds of the district have not been deposited with the United States as in section 46-126 provided, and for expenses incurred in organizing such district, then the assessment of property made for county purposes, after the same shall have been adjusted by the county equalization board, shall be adopted and shall be the basis and assessment for the district, and the county board of the county in which the district was originally organized shall cause an assessment roll of such district to be prepared, and shall make the levy for the payment of the principal and interest on bonds and to meet all payments due or to become due the ensuing year to the United States under any contract between the district and the United States, accompanying which bonds of the district have been deposited with the United States as in section 46-126 provided, and expenses for organizing such district in the same manner and with like effect as if the same had been made by the board of directors; and the expense incident thereto shall be borne by such district. All such taxes collected and paid to the county treasurer shall be received by such treasurer in his official capacity, and he shall be responsible for the safekeeping, disbursement and payment thereof, the same as for other money collected by him as such treasurer. When requested in writing to do so by the secretary of any irrigation district, the county treasurer shall make weekly reports of all such irrigation district taxes collected by him for the district from which the request came, giving the amount collected for each fund, the interest collected and the legal description of the land on which such taxes were collected.

**Source:** Laws 1895, c. 70, § 19, p. 283; Laws 1897, c. 86, § 4, p. 363; Laws 1899, c. 78, § 1, p. 333; Laws 1901, c. 77, § 1, p. 469; Laws 1913, c. 142, § 3, p. 347; R.S.1913, § 3475; Laws 1915, c. 68, § 1, p. 169; Laws 1915, c. 69, § 5, p. 177; Laws 1919, c. 110, § 1, p. 271; C.S.1922, § 2875; C.S.1929, § 46-120; R.S.1943, § 46-138.

This section does not give the county board of equalization authority to levy taxes for the payment of a judgment obtained against an irrigation district. *Loup County v. Rumbaugh*, 151 Neb. 563, 38 N.W.2d 745 (1949).

**46-139. Warrants; issuance by district; limit; past-due obligations; special levy; unused balances; disposition.**

No irrigation district shall in any year issue warrants in excess of ninety percent of the levy for such year, except that in case of due and outstanding obligations against the district contracted prior to the year in which any levy is made, the district board shall have the power to make an additional levy not to exceed one and four-tenths cents on each one hundred dollars upon the taxable value of all the taxable property in such district to create a special fund for the payment of past-due obligations. If the claims or obligations against any fund for any year are fully paid, the board shall have the power to transfer any unused balance to any fund for any preceding or succeeding year.

**Source:** Laws 1905, c. 166, § 1, p. 651; R.S.1913, § 3476; C.S.1922, § 2876; C.S.1929, § 46-121; R.S.1943, § 46-139; Laws 1953, c. 287, § 63, p. 967; Laws 1979, LB 187, § 168; Laws 1992, LB 719A, § 148.

Warrants issued by officers of irrigation district prior to levy, when no funds exist, are void. *Elliott v. Calamus Irr. Dist.*, 120 Neb. 714, 235 N.W. 95 (1931).

**46-140. Assessments; land belonging to state; when due; lien; preference; enforcement.**

All assessments on real property and assessments on leasehold estates on land belonging to the state shall be due and payable on January 1 next following the date of assessment thereof, and commencing on January 1 the same shall be a lien against the property assessed and shall draw interest at the rate of nine percent per annum from May 1 of the year following such assessment; and such lien is not removed until the assessments are paid or the property sold for the payment thereof. It shall be the duty of the county and township treasurers to collect such assessment in the same manner as other taxes against real estate are collected, and the revenue laws of the state for the collection and sale of land for such taxes are hereby made applicable to the collection of assessments under sections 46-131, 46-134, and 46-135, and taxes so collected shall constitute a sinking fund to be used for the payment of the bonds and the interest thereon. The leasehold estate of any lessee of lands belonging to the state may be sold for taxes assessed as herein provided against such leasehold estate in the same manner and form as provided by the revenue laws of this state for the collection and sale of lands for taxes; *Provided*, the lien for the bonds of any series shall be a preferred lien to that of any subsequent series, and the lien for the payments due to the United States under any contract between the district and the United States, accompanying which

bonds have not been deposited with the United States, shall be a preferred lien to that of any issue of bonds or any series of any issue subsequent to the date of such contract.

**Source:** Laws 1895, c. 70, § 20, p. 284; Laws 1897, c. 86, § 5, p. 363; Laws 1903, c. 121, § 1, p. 620; R.S.1913, § 3477; Laws 1915, c. 69, § 6, p. 178; C.S.1922, § 2877; C.S.1929, § 46-122; Laws 1933, c. 136, § 28, p. 540; C.S.Supp.,1941, § 46-122; R.S.1943, § 46-140; Laws 1949, c. 157, § 1, p. 398.

Special annual assessments regularly levied for the payment of irrigation bonds become a lien against real estate in said district on and after October 1 in the year in which they are made. County of Garden v. Schaaf, 145 Neb. 676, 17 N.W.2d 874 (1945).

Irrigation district's lien by virtue of tax sale certificates, issued in its favor by county treasurer but not delivered or paid for, is not destroyed by failure to enforce within statutory

period, and is entitled to priority over earlier mortgage. Flansburg v. Shumway, 117 Neb. 125, 219 N.W. 956 (1928).

Where irrigation district assessments were given priority over mortgage in foreclosure suit, parties stipulating district's organization was legal and assessment duly made could not afterwards challenge district's right to levy assessments. Flansburg v. Shumway, 117 Neb. 125, 219 N.W. 956 (1928).

#### **46-141. Assessment; payment under protest; refund.**

When any person against whose property such assessments have been made shall pay such assessment under protest as provided by the general revenue law of this state, the board of directors of any irrigation district organized under the provisions of sections 46-101 to 46-128 may pass upon and make orders disposing of money paid under protest to the county treasurer in the county or counties in which such lands are situated in the same form and manner as provided by law, and such proceedings shall be had as in such revenue law provided insofar as the same applies; *Provided, however,* no taxes or assessments shall be ordered refunded unless the person complaining shall file in the office of the secretary of such district a copy of his tax receipt, showing the same paid under protest, together with a sworn affidavit in writing showing one of the following reasons why such tax or assessments should be refunded: (1) That the land upon which such tax or assessment was levied is not within the boundaries of the district for which the lands were taxed, or assessed; (2) that the title to the lands is in the State of Nebraska; (3) that the lands could not be benefited by irrigation either by reason of subirrigation or by reason of being city and town lots and occupied and used exclusively for other than agricultural or grazing purposes, or that the lands are nonsusceptible of irrigation from the canal of the district; *Provided,* that where unentered and unpatented lands, the title to which is in the United States, are included in any irrigation district pursuant to the provisions of the Act of Congress, entitled An Act to

promote the reclamation of arid lands, approved August 11, 1916, and acts amendatory thereto, shall not be subject to the provisions of this section, but shall be subject to taxation as provided by such Acts of Congress.

**Source:** Laws 1903, c. 121, § 1, p. 621; R.S.1913, § 3478; Laws 1917, c. 80, § 1, p. 189; C.S.1922, § 2878; C.S.1929, § 46-123; R.S.1943, § 46-141.

Compliance with this section is required in order to recover back taxes paid on nonirrigable land. *Birdwood Irr. Dist. v. Brodbeck*, 148 Neb. 824, 29 N.W.2d 621 (1947).

Subirrigated lands in district, not benefited by irrigation, are not taxable. *Morrow v. Farmers Irr. Dist.*, 117 Neb. 424, 220 N.W. 680 (1928).

Amendment in 1917 of this section, exempting city lots, etc., from taxation, was constitutional. *Erickson v. Nine Mile Irr. Dist.*, 109 Neb. 189, 190 N.W. 573 (1922).

#### **46-142. District bonds; payment by county treasurer; redemption; investment of funds.**

Upon the presentation of the coupons and bonds due at the office of the treasurer of the county in which the district was originally organized, it shall be his or her duty to pay the same from the bond funds. Whenever, after ten years from the issuance of the bonds, the sinking fund shall amount to the sum of ten thousand dollars, the board of directors may direct the county treasurer in which the district was originally organized to pay such an amount of the bonds not due as the money of the fund will redeem, at the lowest value at which they may be offered for liquidation, after advertising for at least three weeks in some daily newspaper in each of the cities hereinbefore named, and in any newspaper which the board may deem advisable, for sealed proposals for the redemption of the bonds. Such proposals shall be opened by the board in open meeting, at the time named in the notice, and the lowest bid for the bonds must be accepted. No bond shall be redeemed at a rate above par. In case the bids are equal, the lowest numbered bond shall have the preference. In case none of the holders of the bonds shall desire to have the same redeemed, as herein provided, the money shall be invested by the treasurer of the county in which the district was originally organized, under the direction of the board of directors of the district, in United States bonds, or the bonds or warrants of the state, which shall be kept in the bond fund, and may be used to redeem the district bonds whenever the holders thereof may desire.

**Source:** Laws 1895, c. 70, § 21, p. 284; Laws 1901, c. 77, § 2, p. 470; Laws 1903, c. 122, § 2, p. 624; R.S.1913, § 3479; C.S.1922, § 2879; Laws 1925, c. 131, § 1, p. 345; C.S.1929, § 46-124; R.S.1943, § 46-142; Laws 1996, LB 299, § 22.

#### **46-143. District bonds; payment by district treasurer; additional bonds required.**

The board of directors may at any time elect to have the bonds and coupons of the district paid by the district treasurer instead of the county treasurer, and in that case, they shall, after passing a resolution to that effect, furnish the county treasurer with a copy of the resolution, duly certified by the district secretary. Upon receiving the resolution, it shall be the duty of the county treasurer to pay to the district treasurer from time to time, upon order of the board of directors of the district, any money in his hands belonging to the bond fund of the district, whether collected from principal or interest of such bonds, and upon such payment, the county treasurer shall be relieved from any further liability in regard to funds so paid over. The district treasurer, in such cases, shall give

additional bond in double the amount of money which the board of directors estimate will come into his possession under sections 46-142 and 46-143 in any semiannual period. Upon the giving of such bond, it shall be the duty of the district treasurer to pay the bonds and coupons when due, and he shall have all the duties and rights given to the county treasurer by said sections in regard to payment of bonds and coupons, and investment funds.

**Source:** Laws 1925, c. 131, § 1, p. 346; C.S.1929, § 46-124; R.S.1943, § 46-143.

It is the duty of the treasurer of the district, when funds are available, to pay bonds and coupons then due upon presentment, irrespective of date of registration. State ex rel. Brown v. Taylor, 125 Neb. 228, 249 N.W. 586 (1933).

**46-144. Special assessment; warrants; election; notice; rate of assessment; disposition of proceeds.**

The board of directors may at any time, when in its judgment it may be advisable, call a special election and submit to the qualified electors of the district the question whether or not a special assessment shall be levied for the purpose of raising money to be applied for any of the purposes provided for in sections 46-101 to 46-1,111, including the purpose of creating a construction fund to be financed by the issuance of warrants, the principal of which warrants shall be payable, in not to exceed twenty years, with interest paid annually thereon not to exceed ten percent per annum. Such warrants may not be issued in the aggregate to exceed ninety percent of the fund anticipated to be raised over the years by special assessment authorized in this section. Such election shall be called upon the notice prescribed and shall be held and the result thereof determined and declared in all respects in conformity with such sections. The notice of such election shall specify the aggregate amount of money proposed to be raised, the purpose for which it is intended to be raised, the number of years in which such special assessment will be made, and whether or not warrants as authorized in this section will be to finance the construction fund so that contracts may be let and the project completed before collection of the tax. The ballots shall contain the words Assessment ..... Yes, or Assessment ..... No. If a majority of the votes are Assessment ..... Yes, the board shall at the time of the annual levy thereunder levy an assessment sufficient to raise the amount paid. The rate of assessment shall be ascertained by deducting fifteen percent for anticipated delinquencies from the aggregate taxable value of the property in the district as it appears on the assessment roll for the current year and then dividing the sum by the remainder of such aggregate taxable value. The assessment so levied and computed shall be entered on the assessment roll and upon the tax list by the county clerk and collected at the same time and in the same manner as other assessments, and all revenue laws of this state for the collection and sale of land for taxes are hereby made applicable to the assessment provided for in this section. When



collected such assessment shall be paid over by the county treasurer to the district treasurer for the purpose specified in the notice in such special election.

**Source:** Laws 1895, c. 70, § 28, p. 289; Laws 1897, c. 86, § 8, p. 365; R.S.1913, § 3486; C.S.1922, § 2886; C.S.1929, § 46-131; R.S.1943, § 46-144; Laws 1972, LB 1509, § 2; Laws 1979, LB 187, § 169; Laws 1981, LB 146, § 1; Laws 1992, LB 719A, § 149.

#### **Cross References**

**Collection of taxes**, see Chapter 77, article 17.

**Delinquent taxes**, sale of land, see Chapter 77, article 18.

#### **46-145. Construction of works; notice; bond of contractor; bids; letting.**

After adopting a plan of such canal or canals, storage reservoirs, and works, the board of directors shall give notice, by publication thereof not less than twenty days in one newspaper published in each of the counties composing the district, provided a newspaper is published therein, and in such other newspapers as it may deem advisable, calling for bids for the construction of the work or any portion thereof, and if less than the whole work is advertised, then the portion so advertised must be particularly described in such notice. The notice shall set forth that plans and specifications can be seen at the office of the board, and that the board will receive sealed proposals therefor, and that the contract will be let to the lowest responsible bidder, stating the time and place for opening the proposals, which at the time and place shall be opened in public. As soon as convenient thereafter the board shall let such work, either in part or as a whole, to the lowest responsible bidder, or it may reject any or all bids and readvertise for proposals, or may proceed to construct the work under its own superintendence with the labor of the residents of the district. Contracts for the purchase of material shall be awarded to the lowest responsible bidder. The person or persons to whom a contract may be awarded shall enter into a bond with good and sufficient sureties, to be approved by the board payable to such district for its use, to an amount equal to twenty-five percent of the contract price, for the faithful performance of the contract; *Provided, however*, in case twenty-five percent of the contract price shall exceed the sum of

fifty thousand dollars, then such bond shall be in the sum of fifty thousand dollars. The work shall be done under the direction and to the satisfaction of the engineer and be approved by the board. The provisions of this section shall not apply in the case of any contract between the district and the United States.

**Source:** Laws 1895, c. 70, § 22, p. 285; Laws 1911, c. 161, § 1, p. 533; R.S.1913, § 3480; Laws 1915, c. 69, § 7, p. 179; C.S.1922, § 2880; C.S.1929, § 46-125; R.S.1943, § 46-145.

### **Cross Reference**

**For other provisions for letting of contracts, see Chapter 73.**

Provisions must be complied with before board is authorized to proceed with construction. Reasonable value of services, not exceeding contract price, can be recovered under authorized

contract of directors, even though same is illegal, where district has received benefit. Lincoln & Dawson County Irr. Dist. v. McNeal, 60 Neb. 613, 83 N.W. 847 (1900).

### **46-146. Claims against district; warrants; interest; payment; procedure.**

No claim shall be paid by the district treasurer until the same shall have been allowed by the board of directors and only upon warrants signed by the president and countersigned by the secretary. If the district treasurer does not have sufficient money on hand to pay such warrant when presented for payment, he or she shall endorse thereon not paid for want of funds and the date when presented over his or her signature. From the time of such presentation until paid such warrants shall draw interest payable when redeemed or annually at the discretion of the board of directors. Whenever there is no cash on hand in the district treasury for the payment of general fund warrants when presented, the board of directors may issue from time to time general fund warrants in denominations not greater than ten thousand dollars to the aggregate amount required. In no case shall such warrants be in an amount greater than ninety percent of the general fund levy for the current year. Such warrants shall be drawn on the general fund levy for the current year and be payable to the irrigation district. The board of directors may sell or discount the same to the best advantage possible, but not at a discount to exceed ten percent. The board shall deposit the proceeds of such sale in some local bank, capital stock financial institution, or qualifying mutual financial institution in the name of the district, subject to the check of the chairperson of such district, countersigned by the secretary, in payment of any claim or claims ordered paid out of such

fund by the board of directors. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

**Source:** Laws 1895, c. 70, § 23, p. 286; Laws 1897, c. 86, § 6, p. 364; R.S.1913, § 3481; Laws 1917, c. 84, § 1, p. 197; C.S.1922, § 2881; Laws 1923, c. 97, § 3, p. 250; Laws 1929, c. 131, § 1, p. 481; C.S.1929, § 46-126; R.S.1943, § 46-146; Laws 1969, c. 51, § 110, p. 341; Laws 1981, LB 146, § 2; Laws 1989, LB 33, § 26; Laws 2001, LB 362, § 30.

In absence of levy, officers of irrigation district are without power to issue warrants. *Elliott v. Calamus Irr. Dist.*, 120 Neb. 714, 235 N.W. 95 (1931). and liable on warrants. *Draver v. Greenshields & Everest Co.*, 29 F.2d 552 (8th Cir. 1928).

Irrigation district, organized after county board was induced to believe that law was complied with, is corporation de facto,

**46-147. Construction fund; deposit with county treasurer; when authorized; disbursement.**

The board may draw from time to time from the construction fund, and deposit it in the county treasury of the county where the office of the board is situated, any sum in excess of the sum of twenty-five thousand dollars. The county treasurer is hereby authorized and required to receive and receipt for the same, and place the same to the credit of the district, and he shall be responsible upon his official bond for the safekeeping and disbursement of the same, as provided in sections 46-147 and 46-148. He shall pay out the same, or any part thereof, to the treasurer of the district only, and upon the order of the board, signed by the president and attested by the secretary.

**Source:** Laws 1895, c. 70, § 23, p. 286; Laws 1897, c. 86, § 6, p. 364; R.S.1913, § 3481; Laws 1917, c. 84, § 1, p. 198; C.S.1922, § 2881; Laws 1923, c. 97, § 3, p. 251; Laws 1929, c. 131, § 1, p. 482; C.S.1929, § 46-126; R.S.1943, § 46-147.

**46-148. County treasurer; reports to district board; contents.**

The county treasurer shall report in writing on the second Monday in each month the amount of money in the county treasury, the amount of receipts for the month preceding, and the amount of money paid out. The report shall be verified and filed with the secretary of the board.

**Source:** Laws 1895, c. 70, § 23, p. 286; Laws 1897, c. 86, § 6, p. 364; R.S.1913, § 3481; Laws 1917, c. 84, § 1, p. 198; C.S.1922, § 2881; Laws 1923, c. 97, § 3, p. 251; Laws 1929, c. 131, § 1, p. 482; C.S.1929, § 46-126; R.S.1943, § 46-148.

**46-149. District treasurer; reports to district board; contents; warrants; register; order of payment.**

The district treasurer shall also report to the board in writing, on the first Monday of each month the amount of money in the district treasury, the amount of receipts for the month preceding and the amount of items and expenditures, and such report shall be verified and filed with the secretary of the board. The district treasurer shall keep a register in which he shall enter each

warrant presented for payment showing the date and amount of such warrant, to whom payable, the date of the presentation for payment, the date of payment, and the amount paid in redemption thereof, and all warrants shall be paid in the order of their presentation for payment to the district treasurer.

**Source:** Laws 1895, c. 70, § 23, p. 286; Laws 1897, c. 86, § 6, p. 364; R.S.1913, § 3481; Laws 1917, c. 84, § 1, p. 198; C.S.1922, § 2881; Laws 1923, c. 97, § 3, p. 251; Laws 1929, c. 131, § 1, p. 483; C.S.1929, § 46-126; R.S.1943, § 46-149.

#### **46-150. Warrants; form.**

All warrants shall be drawn payable to the claimant or bearer, the same as county warrants, except as otherwise herein provided.

**Source:** Laws 1897, c. 86, § 6, p. 365; R.S.1913, § 3481; Laws 1917, c. 84, § 1, p. 198; C.S.1922, § 2881; Laws 1923, c. 97, § 3, p. 251; Laws 1929, c. 131, § 1, p. 483; C.S.1929, § 46-126; R.S.1943, § 46-150.

#### **Cross Reference**

**For provisions as to interest on warrants,** see section 45-106.

Warrants issued by officers of irrigation district prior to levy and when no fund exists are void. *Elliott v. Calamus Irr. Dist.*, 120 Neb. 714, 235 N.W. 95 (1931).

#### **46-151. Cost of construction; when payable in bonds; issuance of additional bonds; additional levy.**

The cost and expense of purchasing and acquiring property and constructing the works and improvements provided for in the Irrigation District Act shall be wholly paid out of the construction fund, or in the bonds of the irrigation district at their par value, after having first advertised the same for sale as provided in section 46-1,100, and having received no bids therefor of ninety-five percent or upwards of their face value. In case such bonds or the money raised by their sale is insufficient for the purposes for which the bonds were issued, additional bonds may be issued, after submission of the question at a general or special election to the electors of the district. In case of the issuance of additional bonds, the lien for taxes for the payment of the interest and principal of such issue shall be a subsequent lien to any prior bond issue. However, the provisions of this section shall not apply where the cost and expense of purchasing and acquiring property and constructing the works and improvements provided for in the Irrigation District Act are covered by contract between the district and the United States. In lieu of the issuance of

additional bonds, the board of directors may provide for the completion of the irrigation system of the district by the levy of an assessment therefor in the same manner in which levy of an assessment is made for the other purposes provided in the Irrigation District Act.

**Source:** Laws 1895, c. 70, § 24, p. 287; Laws 1899, c. 78, § 2, p. 334; Laws 1913, c. 37, § 1, p. 131; R.S.1913, § 3482; Laws 1915, c. 69, § 8, p. 179; C.S.1922, § 2882; C.S.1929, § 46-127; R.S.1943, § 46-151; Laws 2015, LB 561, § 9.

Expense of engineer for survey and plans is preliminary and payable out of construction fund. Willow Springs Irr. Dist. v. Wilson, 74 Neb. 269, 104 N.W. 165 (1905).

Construction fund must be provided before indebtedness incurred for construction. Lincoln & Dawson County Irr. Dist. v. McNeal, 60 Neb. 613, 83 N.W. 847 (1900).

Amendment of 1899 was valid. Baltes v. Farmers Irr. Dist., 60 Neb. 310, 83 N.W. 83 (1900).

#### **46-152. Cost of organization, operation, and improvements; how paid; tolls; assessments; borrowing.**

For the purpose of defraying the expenses of the organization of the district, and the care, operation, management, repair and improvement of such portions of such canal and works as are completed and in use, including salaries of officers and employees, or repayment of any contract for construction by and between the United States of America and any irrigation district as provided in section 46-126, the board may either fix rates of tolls and charges, and collect the same from all persons using such canal for irrigation or other purposes, or may provide for the payment of such expenditures by a levy of assessments therefor, or by both tolls and assessments; if by the latter method, such levy shall be made upon the completion and equalization of the assessment roll; and the board shall have the same powers and functions for the purposes of such levy as are now possessed by boards of supervisors in this state, and such assessment shall be collected as provided in section 46-136. If, after the annual assessment for the current year, the funds provided are for some unusual or unforeseen cause insufficient for the proper maintenance and operation of the district, the board of directors shall have the power to borrow additional funds needed, to an amount not to exceed fifty cents per acre for the land embraced in the district, pledging credit of the district for the payment of the same, and shall include in the estimate for the levy for the ensuing year for the general fund the amount so borrowed, and provide for the payment of the same.

**Source:** Laws 1895, c. 70, § 24, p. 287; Laws 1899, c. 78, § 2, p. 334; Laws 1913, c. 37, § 1, p. 132; R.S.1913, § 3482; Laws 1915, c. 69, § 8, p. 180; C.S.1922, § 2882; C.S.1929, § 46-127; R.S.1943, § 46-152; Laws 1967, c. 280, § 2, p. 758.

#### **46-153. Construction across streams, highways, railroads, and ditches; right-of-way over state lands; state water and water rights.**

The board of directors shall have the power to construct such works across any stream of water, watercourse, street, avenue, highway, railway, canal, ditch or flume which the route of such canal or canals may intersect or cross, in such manner as to afford security for life and property; but the board shall restore the same, when so crossed or intersected, to its former state as nearly as may be, or in a sufficient manner not to have impaired unnecessarily its usefulness. Every company whose railroad shall be intersected or crossed by such works shall unite with the board in forming

such intersections and crossings, and grant the privilege aforesaid; and if such railroad company and such board, or the owners and controllers of the property, thing or franchise so to be crossed, cannot agree upon the amount to be paid therefor, or the points or the manner of the crossings, the same shall be ascertained and determined in all respects as is provided in respect to the taking of land. The right-of-way is hereby given, dedicated, and set apart, to locate, construct and maintain such works over and through any of the lands which are or may be the property of the state; and also there is given, dedicated, and set apart for the use and purposes aforesaid, all water and water rights belonging to this state within the district.

**Source:** Laws 1895, c. 70, § 25, p. 287; R.S.1913, § 3483; C.S.1922, § 2883; C.S.1929, § 46-128; R.S.1943, § 46-153.

Irrigation canal may cross another stream. *Ainsworth Irr. Dist. v. Bejot*, 170 Neb. 257, 102 N.W.2d 416 (1960).

Grant by the Legislature of right-of-way over public school lands is an unconstitutional interference with the control of public school lands vested in the Board of Educational Lands

and Funds. *State ex rel. Johnson v. Central Nebraska Public Power & Irr. Dist.*, 143 Neb. 153, 8 N.W.2d 841 (1943).

Public power districts are governed by the statute relating to irrigation districts as to their appropriation, crossing, and use of highways. *Wright v. Loup River Public Power Dist.*, 133 Neb. 715, 277 N.W. 53 (1938).

**46-154. Directors; salaries and expenses; officers, employees, attorneys, and agents; compensation.**

The board of directors shall provide a payment for each director of not to exceed seventy dollars per day for each day that a director attends meetings of the board or is engaged in matters concerning the district, but not to exceed two thousand eight hundred dollars per annum. Each director shall also be paid necessary traveling expenses actually incurred while engaged in the performance of his or her duties, including mileage at the rate provided in section 81-1176. The board shall fix the compensation to be paid to the other officers named in sections 46-101 to 46-1,111, including the secretary, the assessor, and the treasurer to be paid out of the treasury of the district. The board may also employ a chief engineer, an attorney, and such other agents, assistants, and employees as may be necessary and provide for their compensation.

**Source:** Laws 1895, c. 70, § 26, p. 288; Laws 1897, c. 86, § 7, p. 365; R.S.1913, § 3484; C.S.1922, § 2884; C.S.1929, § 46-129; R.S.1943, § 46-154; Laws 1951, c. 149, § 1, p. 597; Laws 1961, c. 226, § 1, p. 670; Laws 1979, LB 282, § 1; Laws 1981, LB 204, § 75; Laws 2000, LB 901, § 2.

**46-155. Director or officer; interest in contract prohibited; accepting gratuity or bribe; penalty; forfeiture of office.**

No director or any officer named in sections 46-101 to 46-1,111 shall in any manner be interested, directly or indirectly, in any contract awarded or to be awarded by the board, or in the profits to be derived therefrom, nor shall receive any bonds, gratuity or bribe. For any violation of

this provision, such officer shall be guilty of a Class IV felony, and conviction thereof shall work a forfeiture of his office.

**Source:** Laws 1895, c. 70, § 27, p. 288; R.S.1913, § 3485; C.S.1922, § 2885; C.S.1929, § 46-130; R.S.1943, § 46-155; Laws 1977, LB 40, § 255.

**46-156. Limitation on debts and liabilities; eminent domain; procedure; contracts with United States.**

(1) The board of directors, or other officers of the district, shall have no power to incur any debt or liability whatever, either by issuing bonds or otherwise, in excess of the express provisions of sections 46-101 to 46-111, and any debt or liability incurred in excess of such express provisions shall be and remain absolutely void.

(2) Any irrigation district organized under the provisions of sections 46-101 to 46-128 shall have power to and it shall be its duty to provide for the proper drainage of any and all lands embraced within its limits which are or have been subirrigated by reason of the lawful use of water from its canal by the owner or lessee of the lands subirrigated or from any cause not the fault or by the consent of such owner or lessee. For such purpose such district shall have all the authority herein granted for levying special assessments or otherwise providing funds necessary to properly drain such lands, entering upon lands for the purpose of making surveys, exercising the right of eminent domain, contracting for the construction of necessary ditches, and further shall have the right to extend such drainage ditches outside of the limits of such district for the purpose of conducting the drainage water to other lands upon which the same may be lawfully used or to return the same to the stream from which its canal is taken. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724. The powers herein granted shall include the power to enter into a contract with the United States to carry out and

effectuate all proper drainage of the district or any part thereof, and any such contract shall be treated for all intents and purposes as if made under section 46-126.

**Source:** Laws 1895, c. 70, § 29, p. 290; Laws 1911, c. 162, § 1, p. 535; R.S.1913, § 3487; Laws 1915, c. 69, § 9, p. 181; C.S.1922, § 2887; C.S.1929, § 46-132; R.S.1943, § 46-156; Laws 1951, c. 101, § 90, p. 486.

The power of an irrigation district to enter into a contract with the United States for the construction, operation, and maintenance of the necessary works for the delivery and distribution of water was not limited by a requirement that the contract be approved by the voters of the district. *Twin Loups Reclamation & Irr. District v. Blessing*, 202 Neb. 513, 276 N.W.2d 185 (1979).

Provisions of this section are not applicable to public power and irrigation districts organized under Chapter 70. *Halligan v. Elander*, 147 Neb. 709, 25 N.W.2d 13 (1946).

This section, with others mentioned, shows intent to limit the location and construction of irrigation canals and ditches, as well as the land irrigated by same, to the basin containing the source of the water used, and requiring that all unused waters shall be returned to the stream from which diverted. *Osterman v. Central Nebraska Public Power & Irr. Dist.*, 131 Neb. 356, 268 N.W. 334 (1936).

Remedy provided herein for drainage of lands within an irrigation district is exclusive. *Omaha Life Ins. Co. v. Gering & Ft. Laramie Irr. Dist.*, 123 Neb. 761, 244 N.W. 296 (1932).

Power and irrigation district is not limited to irrigation alone but extends to drainage even beyond district boundaries. *Central Irr. Dist. v. Gering Irr. Dist.*, 122 Neb. 199, 240 N.W. 289 (1932).

Lessee of land involved may require district to drain all subirrigated lands in district. *Livanis v. Northport Irr. Dist.*, 121 Neb. 777, 238 N.W. 757 (1931).

Irrigation district is not absolutely required hereby to drain all nearby lands seeped by percolating subterranean water, and remedy provided by this section for drainage of such lands is exclusive. *Spurrier v. Mitchell Irr. Dist.*, 119 Neb. 401, 229 N.W. 273, 74 A.L.R. 884 (1930).

Subirrigated lands and waters referred to in this section are those which are part of the irrigation system, and liability of district is limited to damages caused by its own waters. *State ex rel. Read v. Farmers Irr. Dist.*, 116 Neb. 373, 217 N.W. 607 (1928).

This section is a legislative recognition of the general right of an appropriator to recapture and reuse seepage waters. *United States v. Tilley*, 124 F.2d 850 (8th Cir. 1941).

#### **46-157. Apportionment of water; duty of water commissioners.**

In case the volume of water in any stream or river shall not be sufficient to supply the continual wants of the entire country through which it passes, and susceptible of irrigation therefrom, then it shall be the duty of the water commissioners, constituted as hereinafter provided, to apportion in a just and equitable proportion, a certain amount of such water upon certain or alternate weekly days to different localities as they may, in their judgment, think best for the interest of all parties concerned, and with due regard to the legal and equitable rights of all. The water commissioners shall consist of the chairman of the board of directors of each of the districts affected.

**Source:** Laws 1895, c. 70, § 30, p. 290; R.S.1913, § 3488; C.S.1922, § 2888; C.S.1929, § 46-133; R.S.1943, § 46-157.

#### **46-158. High water; duty of board; automatic measuring devices; interchange of water.**

It shall be the duty of the board of directors to keep the water flowing through the ditches and canals under its control to the full capacity of such ditches and canals in times of high water when the same can be beneficially applied to the lands thereunder and does not interfere with the rights of other appropriators, except that upon the filing of a petition in the office of the board of directors of any irrigation district, signed by a majority of the landowners who are electors therein, requesting that rules and regulations be adopted by the board permitting and providing for any of the following specific orders or changes in the method of operating its canal, it shall become the



duty of such board to immediately provide for the adoption and enforcement of the same, namely, (1) that an automatic measuring device be placed in or near the headgate or any main diverting gate of the main canal, in order that a continuous record shall be kept by such district of the amount of water received into the canal for the use of the lands in such district, (2) that automatic measuring devices be placed in the headgates or all main laterals and distributing laterals within the district from and by which water is diverted to tracts or units of twenty acres or more, for the purpose of determining at all times the amount of water going to or being received upon any and all such tracts of land, and that the person having charge of the canal shall keep a separate and correct record of the amount of water delivered through each of such headgates at all times and shall file the same in the office of the board of directors for public inspection, and (3) that a system be provided for the interchange of water from one tract of land to another at the option of the owner or lessee of any lands within such district at any time, and further provide that rules made by the board or the person having charge of such canals for delivering water in alternate sections of a canal or ditch shall not interfere with this right.

**Source:** Laws 1895, c. 70, § 31, p. 290; Laws 1911, c. 163, § 1, p. 536; R.S.1913, § 3489; C.S.1922, § 2889; C.S.1929, § 46-134; R.S.1943, § 46-158; Laws 1987, LB 140, § 1.

**46-159. Prior acts not repealed; diversion of water without compensation prohibited.**

None of the provisions of sections 46-101 to 46-1,111, shall be construed as repealing or in any way modifying the provisions of any other law relating to the subject of irrigation or water commissioners. Nothing in said sections contained shall be deemed to authorize any person or persons to divert the waters of any river, creek, stream, canal or ditch from its channel to the detriment of any person or persons having any interest in such river, creek, stream, canal or ditch, or the waters therein, unless previous compensation be ascertained and paid therefor under the laws of this state authorizing the taking of private property for public use.

**Source:** Laws 1895, c. 70, § 32, p. 290; R.S.1913, § 3490; C.S.1922, § 2890; C.S.1929, § 46-135; R.S.1943, § 46-159.

**46-160. Irrigation district; liability for failure to deliver water; conditions; limitation.**

Every irrigation district within the State of Nebraska shall be liable in damages for negligence in delivering or failure to deliver water to the users from its canal to the same extent as private persons and corporations; *Provided, however*, such districts shall not be liable as herein provided, unless the party suffering such damages by reason of such negligence or failure shall, within thirty days after such negligent acts are committed, or such districts shall fail to deliver water, serve a notice in writing on the chairman of the board of directors of such district, setting forth particularly the acts committed or the omissions of duties to be performed on the part of the district, which it

is claimed to constitute such negligence or omission and that he expects to hold such district liable for whatever damages may result; *provided further*, such action shall be brought within one year from the time the cause has accrued.

**Source:** Laws 1911, c. 164, § 1, p. 538; R.S.1913, § 3526; C.S.1922, § 2926; C.S.1929, § 46-171; R.S.1943, § 46-160.

Action grounded on negligence for failure to deliver water was barred. *Cover v. Platte Valley Public Power & Irr. Dist.*, 156 Neb. 644, 57 N.W.2d 275 (1953).

Requirement of written notice to district does not apply to damages arising from the invasion of contract right to a specific quantity of the natural flow of water in a river. *Ledingham v. Farmers Irr. Dist.*, 135 Neb. 276, 281 N.W. 20 (1938).

Irrigation district, being liable hereunder for failure to deliver water to landowner entitled thereto, is not liable for

injury resulting from lawful application of water to land by owners. *Spurrier v. Mitchell Irr. Dist.*, 119 Neb. 401, 229 N.W. 273, 74 A.L.R. 884 (1930).

Notice required by this section is in time, if filed within thirty days from time district had reasonable opportunity to make repair and negligently fails to do so, or, without reasonable excuse, signifies it will not be made. *Six v. Bridgeport Irr. Dist.*, 105 Neb. 254, 179 N.W. 1014 (1920).

#### **46-161. District boundaries; changes; inclusion of lands; petition; contents.**

The holder or holders of title or evidence of title representing one-half or more of any body of contiguous lands, adjacent to the boundary of an irrigation district and which taken together constitute one tract of land, may file with the board of directors of such district a petition in writing, praying that the boundaries of such district be changed to include their lands. The petition shall describe the boundaries of the parcel or tract of land and shall also describe the boundaries of the several parcels respectively owned by the petitioners, if the petitioners are the owners of distinct parcels, but such description need not be more particular than required when such lands are entered by the county assessor in the assessment book. Such petition shall contain the consent of the petitioners to the inclusion in such district of the parcels or tracts of land described in the petition and of which the petition alleges that they are respectively the owners and shall be acknowledged in the same manner that conveyances of land are required to be acknowledged.

**Source:** Laws 1895, c. 70, § 34, p. 291; R.S.1913, § 3492; Laws 1921, c. 273, § 1, p. 901; C.S.1922, § 2892; C.S.1929, § 46-137; R.S.1943, § 46-161; Laws 1999, LB 103, § 1.

#### **Cross References**

**Acknowledgment of deeds**, see sections 76-211 and 76-216 to 76-236.

**Assessment book**, description of lands, see section 77-1613.

#### **46-162. Inclusion of lands; notice; advance cost of proceeding, by whom paid.**

The secretary of the board of directors shall cause notice of the filing of such petition to be given and published in the same manner and for the same time that notices of special elections for the issuance of bonds are required by section 46-194 to be published. The notice shall state the filing of such petition and the names of the petitioner, a description of the lands mentioned in the petition, and the prayers of the petition; and it shall notify all persons interested, or that may be affected by such change of the boundaries of the district, to appear at the office of the board at a time named in the notice, and show cause, in writing, if any they have, why the change in the

boundaries of the district as proposed in the petition should not be made. The time to be specified in the notice at which they shall be required to show cause shall be the regular meeting of the board next after the expiration of the time for the publication of the notice. The petitioner shall advance to the secretary sufficient money to pay the estimated cost of all proceedings under sections 46-161 to 46-173.

**Source:** Laws 1895, c. 70, § 35, p. 291; R.S.1913, § 3493; C.S.1922, § 2893; C.S.1929, § 46-138; R.S.1943, § 46-162.

**46-163. Inclusion of lands; hearing; assent of parties; when implied.**

The board of directors, at the time and place mentioned in the notice, or at such other time or times to which the hearing of the petition may be adjourned shall proceed to hear the petition, and all the objections thereto, presented in writing by any person, showing cause as aforesaid, why the proposed change of the boundaries of the district should not be made. The failure of any person interested in the district or in the matter of the proposed change of its boundaries, to show cause in writing as aforesaid, shall be deemed and taken as an assent on his part to the change of the boundaries of the district, as prayed for in the petition, or to such a change thereof as will include a part of the lands. The filing of such petition with the board as aforesaid shall be deemed and taken as an assent on the part of each and all of such petitioners to such a change of the boundaries that they may include the whole or any portion of the lands described in the petition.

**Source:** Laws 1895, c. 70, § 36, p. 292; R.S.1913, § 3494; C.S.1922, § 2894; C.S.1929, § 46-139; R.S.1943, § 46-163.

**46-164. Inclusion of lands; payment of share of original cost to new district; when required.**

The board of directors, to whom such petition is presented, may require as a condition precedent to the granting of the same, that the petitioners shall severally pay to such district such respective sums, as nearly as the same can be estimated, the several amounts to be determined by the board, as such petitioners or their grantors would have been required to pay to such district as assessments had such lands been included in such district at the time the same was originally formed.

**Source:** Laws 1895, c. 70, § 37, p. 293; R.S.1913, § 3495; C.S.1922, § 2895; C.S.1929, § 46-140; R.S.1943, § 46-164.

**46-165. Inclusion of lands; action of board; order; contents.**

The board of directors, if it deems it is not for the best interest of the district that a change of its boundaries be so made as to include therein the lands mentioned in the petition, shall order that the petition be rejected. If it deems it is for the best interest of the district that the boundaries of the district be changed and if no person interested in the proposed change of its boundaries shows cause in writing why the proposed change should not be made or if, having shown cause, such

person withdraws the same, the board may order that the boundaries of the district be so changed as to include therein the lands mentioned in the petition, or some part thereof. The order shall describe the boundaries of the included lands and it shall clearly show the change in the boundaries of the district.

**Source:** Laws 1895, c. 70, § 38, p. 293; R.S.1913, § 3496; C.S.1922, § 2896; C.S.1929, § 46-141; R.S.1943, § 46-165; Laws 1955, c. 182, § 1, p. 512.

#### **46-166. Inclusion of lands; objection made; action of board.**

If any person interested in the district, or the proposed change of its boundaries shall show cause as aforesaid why such boundaries should not be changed, and shall not withdraw the same, and if the board of directors deems it for the best interest of the district that the boundaries thereof be so changed as to include therein the lands mentioned in the petition, or some part thereof, the board shall adopt a resolution to that effect. The resolution shall describe the exterior boundaries of the lands which the board is of the opinion should be included within the boundaries of the district when changed.

**Source:** Laws 1895, c. 70, § 39, p. 293; R.S.1913, § 3497; C.S.1922, § 2897; C.S.1929, § 46-142; R.S.1943, § 46-166.

#### **46-167. Inclusion of lands; objection made; election required; notice; assent of Secretary of the Interior; when required.**

Upon the adoption of the resolution mentioned in section 46-166, the board shall order that an election be held within the district to determine whether the boundaries of the district shall be changed as mentioned in the resolution, and shall fix the time at which such election shall be held, and cause notice thereof to be given and posted and published, and such election shall be held and conducted, the returns thereof shall be made and canvassed, and the result of the election ascertained and declared, and all things pertaining thereto conducted in the manner prescribed by section 46-194 in case of a special election to determine whether bonds of an irrigation district shall be issued. The ballots cast at the election shall have the words For change of boundary, or Against change of boundary, or words equivalent thereto. The notice of election shall describe the boundaries in such manner and terms that it can be readily traced; *Provided*, that in case contract has been made between the district and the United States as provided in section 46-126 or 46-156, no change shall be made in the boundaries of the district and the board shall make no order changing the boundaries of the district until the Secretary of the Interior shall assent thereto in writing and such assent be filed with the board of directors.

**Source:** Laws 1895, c. 70, § 40, p. 294; R.S.1913, § 3498; Laws 1915, c. 69, § 10, p. 181; C.S.1922, § 2898; C.S.1929, § 46-143; R.S.1943, § 46-167.

**46-168. Inclusion of lands; result of vote; duty of board.**

If at such election a majority of all the votes cast at the election shall be against such change of the boundaries of the district, the board shall order that the petition be denied, and shall proceed no further in that matter. If a majority of such votes be in favor of such change of the boundaries of the district, the board shall thereupon order the boundaries of the district to be changed in accordance with the resolutions adopted by the board.

**Source:** Laws 1895, c. 70, § 41, p. 294; R.S.1913, § 3499; C.S.1922, § 2899; C.S.1929, § 46-144; R.S.1943, § 46-168; Laws 1955, c. 182, § 2, p. 513.

**46-169. Changed boundaries; copy of order filed in recorder's office; effect.**

Upon a change of the boundaries of a district being made, a copy of the order of the board of directors ordering such change, certified by the president and secretary of the board, shall be filed for record in the recorder's office of each county within which are situated any of the lands of the district, and thereupon the district shall be and remain an irrigation district as fully and to every intent and purpose as if the lands which are included in the district by the change of the boundaries, as aforesaid, had been included therein at the original organization of the district.

**Source:** Laws 1895, c. 70, § 42, p. 295; R.S.1913, § 3500; C.S.1922, § 2900; C.S.1929, § 46-145; R.S.1943, § 46-169.

**Cross Reference**

**Original boundaries,** filing of order, see section 46-111.

**46-170. Changed boundaries; record; certified copy as evidence.**

Upon the filing of the copies of the order, as mentioned in section 46-169, the secretary shall record in the minutes of the board the petition aforesaid; and the minutes, or a certified copy thereof, shall be admissible in evidence with the same effect as the petition.

**Source:** Laws 1895, c. 70, § 43, p. 295; R.S.1913, § 3501; C.S.1922, § 2901; C.S.1929, § 46-146; R.S.1943, § 46-170.

**46-171. Inclusion of lands; guardians, executors, and administrators; when authorized to sign petitions.**

A guardian, executor or an administrator of an estate, who is appointed as such under the laws of this state, and who, as such guardian, executor or administrator, is entitled to the possession of the lands belonging to the estate which he represents, may, on behalf of his ward or the estate which he represents, upon being thereunto authorized by the proper court, sign and acknowledge

the petition mentioned in section 46-161, and may show cause, as mentioned in section 46-166 why the boundaries of the district should not be changed.

**Source:** Laws 1895, c. 70, § 44, p. 295; R.S.1913, § 3502; C.S.1922, § 2902; C.S.1929, § 46-147; R.S.1943, § 46-171.

**46-172. Inclusion of new land in district; redivision required; election precincts.**

In case of the inclusion of any land within any district by proceedings under section 46-161 the board of directors must, at least thirty days prior to the next succeeding general election, make an order redividing such district into three divisions, as nearly equal in size as may be practicable, which shall be numbered first, second and third, and one director shall thereafter be elected by each division. For the purpose of elections the board of directors shall establish one or more election precincts in the districts and define the boundary or boundaries thereof, which may thereafter be changed from time to time as the board may deem necessary.

**Source:** Laws 1895, c. 70, § 45, p. 295; R.S.1913, § 3503; Laws 1919, c. 111, § 2, p. 274; C.S.1922, § 2903; C.S.1929, § 46-148; R.S.1943, § 46-172.

**46-173. District boundaries; changes; exclusion of lands; effect.**

The boundaries of any irrigation district organized under the provisions of sections 46-101 to 46-128 may be changed and tracts of land included within the boundaries of such district, at or after its organization under the provisions of said sections, may be excluded therefrom in the manner prescribed in sections 46-174 to 46-184; but neither such change of the boundaries of the district nor such exclusion of lands from the district shall impair or affect its organization, or its rights in or to property, or any of its rights or privileges, of whatever kind or nature; nor shall it affect, impair or discharge any contract, obligation, lien or charge for or upon which it was or might become liable or chargeable, had such change of its boundaries not been made or had not any land been excluded from the district.

**Source:** Laws 1895, c. 70, § 46, p. 296; R.S.1913, § 3491; C.S.1922, § 2891; C.S.1929, § 46-136; R.S.1943, § 46-173.

Equity will not interfere to separate nonirrigable lands from irrigation district in absence of showing that plaintiffs have sought to avail themselves of statutory method herein provided.

Andrews v. Lillian Irr. Dist., 66 Neb. 458, 92 N.W. 612 (1902), 97 N.W. 336 (1903).

**46-174. Exclusion of lands; petition; form; contents.**

The owner or owners in fee of one or more tracts of land which constitute a portion of an irrigation district may file with the board of directors of the district a petition praying that such tracts and any other tracts contiguous thereto may be excluded and taken from the district. The petition shall describe the boundaries of the land which the petitioners desire to have excluded from the district and also the lands of each of such petitioners which are included within such boundaries, but the description of such lands need not be more particular or certain than is required

when the lands are entered in the assessment book by the county assessor. Such petition must be acknowledged in the same manner and form as is required in case of a conveyance of land, and the acknowledgment shall have the same force and effect as evidence as the acknowledgment of such conveyance.

**Source:** Laws 1895, c. 70, § 47, p. 296; R.S.1913, § 3504; Laws 1921, c. 272, § 1, p. 900; C.S.1922, § 2904; C.S.1929, § 46-149; R.S.1943, § 46-174; Laws 1999, LB 103, § 2.

### **Cross References**

**Acknowledgment of deeds**, see sections 76-211 and 76-216 to 76-236.

**Assessment book**, description of lands, see section 77-1613.

This section does not preclude owner of land not benefited by irrigation from paying tax under protest and filing claim for refund, instead of moving to exclude such land from district, as remedy hereunder is not exclusive. *Morrow v. Farmers Irr. Dist.*, 117 Neb. 424, 220 N.W. 680 (1928).

After district is duly organized, statutory procedure herein prescribed for detaching lands, other than nonirrigable, is exclusive. *Sowerwine v. Central Irr. Dist.*, 85 Neb. 687, 124 N.W. 118 (1909); *Andrews v. Lillian Irr. Dist.*, 66 Neb. 458, 92 N.W. 612 (1902), 97 N.W. 336 (1903).

### **46-175. Exclusion of lands; notice; form; contents.**

The secretary of the board of directors shall cause a notice of the filing of such petition to be published for at least two weeks in some newspaper published in the county where the office of the board of directors is situated, and if any portion of such territory to be excluded lies within another county or counties, then the notice shall be so published in a newspaper published within each of such counties, or if no newspaper is published therein, then by posting such notice for the same time in at least three public places in the district, and in case of the posting of the notices, one of such notices must be posted on the lands proposed to be excluded. The notice shall state the filing of such petition, the names of the petitioners, description of the lands mentioned in such petition, and the prayer of the petition, and it shall notify all persons interested in, or that may be affected by such change of the boundaries of the district, to appear at the office of the board at a time named in the notice, and show cause in writing, if any they have, why the change in the boundaries of such district, as proposed in such petition, should not be made. The time to be specified in the notice at which they shall be required to show cause shall be at the regular meeting of the board next after the expiration of the time for the publication of the notice.

**Source:** Laws 1895, c. 70, § 48, p. 297; R.S.1913, § 3505; C.S.1922, § 2905; C.S.1929, § 46-150; R.S.1943, § 46-175.

### **46-176. Exclusion of lands; hearing; assent of parties; when implied; nonirrigable lands.**

The board of directors, at the time or times to which the hearing of such petition may be adjourned, shall proceed to hear the petition and all objections thereto, presented in writing by the persons, showing cause as aforesaid, why the prayer of such petition should not be granted. The failure of any person interested in the district to show cause in writing why the tract or tracts of land mentioned in the petition should not be excluded from such district shall be deemed and taken as an assent by him to the exclusion of such tract or tracts of land, or any part thereof, from the

district; and the filing of such petition with such board, as aforesaid, shall be deemed and taken as an assent by each and all of such petitioners to the exclusion from such district of the lands mentioned in the petition, or any part thereof; *Provided*, in no case shall any land be held by any district or taxed for irrigation purposes which cannot from any natural cause be irrigated thereby.

**Source:** Laws 1895, c. 70, § 49, p. 297; R.S.1913, § 3506; C.S.1922, § 2906; C.S.1929, § 46-151; R.S.1943, § 46-176.

A determination that land cannot from any natural cause be irrigated requires an examination of the intrinsic characteristics of the land and cannot be based on external factors. *Crouse v. Pioneer Irr. Dist.*, 272 Neb. 276, 719 N.W.2d 722 (2006).

Whether land cannot from any natural cause be irrigated must be determined from the facts in each case. *Smith v. Frenchman-Cambridge Irr. Dist.*, 155 Neb. 270, 51 N.W.2d 376 (1952).

The question of nonirrigability of lands from natural causes can be raised in proceedings to foreclose tax sale certificate.

*Birdwood Irr. Dist. v. Brodbeck*, 148 Neb. 824, 29 N.W.2d 621 (1947).

Government subdivision or other well-defined tract ought not to be included in irrigation district if, for natural causes, it is incapable of irrigation. *Wight v. McGuigan*, 94 Neb. 358, 143 N.W. 232 (1913).

Where party proceeds to have land detached, in order to defeat jurisdiction of board, it must be proved and found by court that land is nonirrigable, or exempted by statute. *Sowerwine v. Central Irr. Dist.*, 85 Neb. 687, 124 N.W. 118 (1909).

#### **46-177. Exclusion of lands; action of board.**

The board of directors, if it deems it not for the best interest of the district that the lands mentioned in the petition, or some portion thereof, should be excluded from the district, shall order that the petition be denied; but if it deems it for the best interest of the district that the lands mentioned in the petition, or some portion thereof, be excluded from the district, and if no person interested in the district shows cause in writing why the lands or some portion thereof should not be excluded from the district, or if having shown cause withdraws the same, and also, if there are no outstanding bonds of the district and no contract between the district and the United States, then the board may order that the lands mentioned in the petition or some defined portion thereof, be excluded from the district.

**Source:** Laws 1895, c. 70, § 50, p. 298; R.S.1913, § 3507; Laws 1915, c. 69, § 11, p. 182; C.S.1922, § 2907; C.S.1929, § 46-152; R.S.1943, § 46-177.

#### **46-178. Exclusion of lands; assent of bondholders and Secretary of the Interior required, when; order of exclusion.**

If there are outstanding bonds of the district or if the district shall have entered into a contract with the United States, as provided in section 46-126 or 46-156, then the board may adopt a resolution to the effect that the board deems it to the best interests of the district that the lands mentioned in the petition, or some portion thereof, should be excluded from the district. The resolution shall describe such lands so that the boundaries thereof can be readily traced. The holders of such outstanding bonds may give their assent in writing to the effect that they severally consent that the board may make an order by which the lands mentioned in the resolution may be excluded from the district and in case a contract has been made with the United States, as aforesaid, the Secretary of the Interior may assent to such change. The assent may be acknowledged by the several holders of such bonds in the same manner and form as are required in case of a conveyance



of land, and the acknowledgment shall have the same force and effect as evidence as an acknowledgment of such conveyance, except the assent of the Secretary of the Interior need not be acknowledged. The assent must be filed with the board and must be recorded in the minutes of the board; and such minutes, or a certified copy thereof, shall be admissible in evidence with the same effect as the assent; but if such assent of the bondholders and, in case of contract with the United States such assent of the Secretary of the Interior, is not filed, the board shall deny and dismiss the petition.

**Source:** Laws 1895, c. 70, § 51, p. 298; R.S.1913, § 3508; Laws 1915, c. 69, § 12, p. 182; C.S.1922, § 2908; C.S.1929, § 46-153; R.S.1943, § 46-178.

### **Cross Reference**

**Acknowledgment of deeds**, see sections 76-211 and 76-216 to 76-236.

Legislature has recognized principle that lands subject to irrigation bonds when issued could not afterwards be exempted from liability therefor, by exclusion from district, without

impairing obligation of contract. *Erickson v. Nine Mile Irr. Dist.*, 109 Neb. 189, 190 N.W. 573 (1922).

**46-179. Exclusion of lands; objection made; action of board; election required; notice; procedure.**

If the assent of the holders of the bonds is filed and entered of record as provided in section 46-178, and if there are objections presented by any person showing cause which have not been withdrawn, then the board of directors may order an election to be held in the irrigation district to determine whether an order shall be made excluding such lands from the district as mentioned in the resolution. The notice of such election shall describe the boundaries of all the lands which it is proposed to exclude, and such notice shall be published for at least two weeks prior to such election in a newspaper of general circulation within the county where the office of the board of directors is situated; and if any portion of such territory to be excluded lies within another county or counties, then such notice shall be so published in a newspaper of general circulation in each of such counties. Such notice shall require the electors to cast ballots which shall contain the words For exclusion, or Against exclusion, or words equivalent thereto. Such election shall otherwise be conducted in accordance with sections 46-115 to 46-118.

**Source:** Laws 1895, c. 70, § 52, p. 299; R.S.1913, § 3509; C.S.1922, § 2909; C.S.1929, § 46-154; R.S.1943, § 46-179; Laws 2015, LB 561, § 10.

### **Cross Reference**

**For election laws**, see Chapter 32.

**46-180. Exclusion of lands; result of vote; order of board.**

If at such election a majority of all votes cast shall be against the exclusion of the lands from the district, the board shall deny and dismiss the petition and proceed no further in the matter, but if a majority of such votes shall be in favor of the exclusion of the lands from the district the board shall thereupon order that the lands mentioned in the resolution be excluded from the district. The

order shall describe the boundaries of the district, should the exclusion of the lands from the district change the boundaries of the district, and for that purpose the board may cause a survey to be made of such portions of the boundaries as the board may deem necessary.

**Source:** Laws 1895, c. 70, § 53, p. 300; R.S.1913, § 3510; C.S.1922, § 2910; C.S.1929, § 46-155; R.S.1943, § 46-180.

**46-181. Exclusion of lands; copy of order filed with recorder; effect.**

Upon the entry in the minutes of the board of any of the orders hereinbefore mentioned, a copy thereof certified by the president and secretary of the board shall be filed for record in the recorder's office of each county within which are situated any of the lands of the district; and thereupon the district shall be and remain an irrigation district as fully, to every intent and purpose, as it would be had no change been made in the boundaries of the district, or had the lands excluded therefrom never constituted a portion of the district.

**Source:** Laws 1895, c. 70, § 54, p. 300; R.S.1913, § 3511; C.S.1922, § 2911; C.S.1929, § 46-156; R.S.1943, § 46-181.

**Cross Reference**

**Original boundaries,** filing of order, see section 46-111.

**46-182. Order of exclusion; vacancy in office of director; when created; how filled.**

If the land excluded from any district shall embrace the greater portion of any division or divisions of such district, then the office of director for such division shall become and be vacant at the expiration of ten days from the final order of the board excluding the lands, and such vacancies shall be filled by appointment by the county board of the county where the office of such board is situated from the district at large. A director appointed as above provided shall hold his office until the next regular election for the district, and until his successor is elected and qualified.

**Source:** Laws 1895, c. 70, § 55, p. 300; R.S.1913, § 3512; C.S.1922, § 2912; C.S.1929, § 46-157; R.S.1943, § 46-182.

**46-183. Exclusion of lands; redivision required; election precincts.**

At least thirty days before the next general election of such district, the board of directors thereof shall make an order dividing such district into three divisions as nearly equal in size as practicable, which shall be numbered first, second and third, and one director shall be elected by each division. For the purpose of election in such district the board of directors shall establish one

or more election precincts, and define the boundary or boundaries thereof, which precincts may be changed from time to time, as the board of directors may deem necessary.

**Source:** Laws 1895, c. 70, § 56, p. 301; R.S.1913, § 3513; Laws 1919, c. 111, § 3, p. 274; C.S.1922, § 2913; C.S.1929, § 46-158; R.S.1943, § 46-183.

**46-184. Exclusion of lands; assessments; refund; when allowed; procedure.**

In case of the exclusion of any lands under the provisions of sections 46-173 to 46-183, there shall be refunded to any and all persons who have paid any assessment or assessments to such district, or any land so excluded, any sum or sums so paid. Such payments shall be made in the same manner as other claims against such district, and from such fund or funds as the board of directors may designate; *Provided*, where such parties have realized benefits from the organization and operation of the district, the value of such benefits shall be deducted from the assessments paid in by such parties, and the balance, if any, refunded.

**Source:** Laws 1895, c. 70, § 58, p. 301; R.S.1913, § 3514; C.S.1922, § 2914; C.S.1929, § 46-159; R.S.1943, § 46-184.

**46-185. Discontinuance of district; petition; special election; notice; procedure.**

Whenever a majority of the assessment payers, representing a majority of the number of acres of irrigable land within any irrigation district, petition the board of directors to call a special election for the purpose of submitting to the electors of such irrigation district a proposition to vote on the discontinuance of such irrigation district and a settlement of its bonded and other indebtedness, the board of directors shall call an election, setting forth the object of the same, and cause a notice of such election to be published in some newspaper of general circulation in each of the counties in which the district is located, for a period of thirty days prior to such election, setting forth the time and place for holding such election in each of the voting precincts in the district, and shall also cause a written or printed notice of such election to be posted in some conspicuous place in each of the voting precincts. The board of directors shall provide ballots to be used at such election on which shall be written or printed the words For discontinuance ..... Yes, and For discontinuance ..... No. The election shall otherwise be conducted in accordance with sections 46-115 to 46-118.

**Source:** Laws 1897, c. 91, §§ 1, 2, p. 372; Laws 1903, c. 123, § 1, p. 625; R.S.1913, § 3521; C.S.1922, § 2921; C.S.1929, § 46-166; R.S.1943, § 46-185; Laws 2015, LB 561, § 11.

**46-186. Discontinuance of district; result of election; resubmission; sale of property; appointment of appraisers; notice of sale.**

If a majority of the votes shall be For discontinuance ..... No, there shall not be another election upon the question of a discontinuance of the district during the year in which such election was held. If a majority of the votes are For discontinuance ..... Yes, then the board shall immediately

notify all persons having claims against the district of the result of such election, and may proceed to adjust, settle and compromise any and all such claims, in whatever form the indebtedness of such district may be. For the purpose of raising money to pay any and all indebtedness of the district, such board may sell and dispose of the canal franchises and other property belonging to the district at not less than a valuation to be fixed by a board of three appraisers, one member of which shall be appointed by the board of directors of such district, and one shall be appointed by the county board of the county in which the district was originally organized, which two appraisers shall elect a third. The board of appraisers shall be sworn by the county clerk of the county, to appraise the canal franchises and other property of the district at their cash value; and as soon thereafter as practicable, the appraisers shall make an appraisal, and report in writing their appraisal of all the property owned by the district to the board of directors. The board shall advertise the property for sale at least four weeks in such a manner as in the judgment of the board shall be to the best interest of the district; and shall state in such advertisement a description of the property, and the time and place when bids in writing for the same shall be opened and considered, and bids orally received and considered.

**Source:** Laws 1897, c. 91, § 3, p. 372; Laws 1903, c. 123, § 1, p. 626; R.S.1913, § 3521; C.S.1922, § 2921; C.S.1929, § 46-166; R.S.1943, § 46-186.

**46-187. Discontinuance of district; sale of property; opening of bids; sale by private negotiation.**

At the time designated in such notice, or as soon thereafter as such board can meet, it shall open and consider all bids received for the purchase of the property and it shall have the power to reject any and all bids for such property which are not in the judgment of the board a fair and just consideration for the property. After bids are thus rejected by the board, it may by private negotiations with any person, persons or corporation, sell and convey, by deed executed by such board, all of the property, for part cash and part in deferred payments, bearing the same interest as the bonded indebtedness of such district; and in case the district has no bonded indebtedness, the interest upon such deferred payments shall be such as may be agreed upon by the board and the purchaser, not exceeding the rate allowed by law.

**Source:** Laws 1903, c. 123, § 1, p. 627; R.S.1913, § 3521; C.S.1922, § 2921; C.S.1929, § 46-166; R.S.1943, § 46-187.

**46-188. Discontinuance of district; sale of property; deferred payments lien on property sold; additional security.**

Such deferred payments shall be a lien upon all of the property thus sold by the board which shall have the same force and effect as a mortgage against such property and may, when due, be foreclosed in the same manner provided by law for the foreclosure of mortgages. In addition to such lien, the board of directors may require the purchaser of the property to furnish the district with such additional security upon all deferred payments as in its judgment shall make such payments secure. All notes, bonds, mortgages and other securities shall be made out to and in the

name of the irrigation district, and shall be, together with the money received by such sale, deposited with the county treasurer of the county in which the district was originally organized.

**Source:** Laws 1903, c. 123, § 1, p. 628; R.S.1913, § 3521; C.S.1922, § 2921; C.S.1929, § 46-166; R.S.1943, § 46-188.

#### **Cross Reference**

**For action to foreclose mortgage,** see sections 25-2137 to 25-2155.

#### **46-189. Discontinuance of district; sale of property; action to collect purchase price; in whose name brought.**

All suits at law or equity brought for the purpose of collecting such evidences of indebtedness, shall be brought in the name of such district by counsel employed by the district board; and in case the board shall be disorganized, such employment shall be by the board of such county.

**Source:** Laws 1903, c. 123, § 1, p. 628; R.S.1913, § 3521; C.S.1922, § 2921; C.S.1929, § 46-166; R.S.1943, § 46-189.

#### **46-190. Discontinuance of district; assets of district used to pay debts; procedure; unused funds; distribution.**

After a sale of the property and franchises of the district, the board of directors shall, with the amount realized from such sale, together with such other funds as such district may have, make settlement, payment, and redemption, if possible, of all outstanding bonded and other indebtedness of the district, but shall in no case pay more than the market value of such outstanding bonds with interest up to the time of payment. In cases when bonds not yet due cannot be redeemed by reason of the refusal of the owner thereof to surrender them before due, the board may invest the surplus money of the district, after paying all debts that can be paid, in state, county, or other safe bonds, bearing the same or greater rate of interest, if possible, than the district bonds thus outstanding, for the purpose of paying such outstanding bonds of the district when due. In case the amount realized from the sale of such district property, together with other money of the district, is insufficient for the payment of all the indebtedness of the district, assessments shall continue to be made against the lands included in the district in the manner provided by law for assessments to pay bonds and other indebtedness of irrigation districts until a sufficient amount is raised to fully pay all obligations of such district.

Any balance of funds remaining after the sale or disposition of all property belonging to the district and after all obligations and indebtedness of the district have been paid or discharged shall be distributed by the county treasurer to all assessment payers of the district of record as of the date of the filing in the office of the Department of Natural Resources of the report referred to in section 46-192. Such distribution shall be made pro rata in accordance with the number of acres

of irrigable land owned within the district as of the date of the last assessment against such land for the district prior to the date of the filing of such report.

**Source:** Laws 1903, c. 123, § 1, p. 628; R.S.1913, § 3521; C.S.1922, § 2921; C.S.1929, § 46-166; R.S.1943, § 46-190; Laws 1979, LB 66, § 1; Laws 2000, LB 900, § 88.

In tax sale foreclosure, property remains liable for payment of future assessments by irrigation district to discharge irrigation bonds. County of Garden v. Schaaf, 145 Neb. 676, 17 N.W.2d 874 (1945).

**46-191. Discontinuance of district; obligations incurred after April 8, 1903; subject to redemption upon discontinuance.**

In all cases where bonds and other obligations of irrigation districts were issued after April 8, 1903, such bonds and obligations shall become subject to redemption by the board of directors of any irrigation district, as soon as the property and franchise of such district shall be sold after such district has elected to discontinue as a district, as herein provided.

**Source:** Laws 1903, c. 123, § 1, p. 629; R.S.1913, § 3521; C.S.1922, § 2921; C.S.1929, § 46-166; R.S.1943, § 46-191.

**46-192. Discontinuance of district; final report by board; property rights; disposition; claims barred after one year.**

After all the property of the district is disposed of as provided in sections 46-186 to 46-188, except for any balance of funds remaining after all of the obligations of such district have been paid, the directors of such district shall file in the office of the county clerk of each county in which such district is located, and in the office of the Department of Natural Resources, a report attested by the secretary of the board, stating that the district has disposed of its property and franchises, except for any balance of funds remaining, and has discontinued operation, which report shall be recorded in the miscellaneous record of such counties. Each easement and right-of-way, whether owned by the district in fee or otherwise, shall automatically be terminated and extinguished and such interest together with any canal or other structure shall become the property of the owner of the land upon which such easement, right-of-way, canal, or other structure is located or, if owned in fee by the district, shall become the property of the owner of the land adjacent thereto, upon the filing of the report with the department. If any person has any claim against such district which is not settled or disposed of at the time of the filing of such report and such person fails or neglects to bring suit upon such claim within one year after the time of the filing of such report, such claim or claims shall be forever barred as against such district as well as against all persons and property therein.

**Source:** Laws 1903, c. 123, § 1, p. 629; R.S.1913, § 3521; C.S.1922, § 2921; C.S.1929, § 46-166; R.S.1943, § 46-192; Laws 1979, LB 66, § 2; Laws 2000, LB 900, § 89.

**46-193. Plan of operation; construction work; survey and estimate; report by Director of Natural Resources.**

As soon as practicable after the organization of any such district, the board of directors shall, by a resolution entered on its record, formulate a general plan of its proposed operation in which it shall state (1) what constructed works or other property it proposes to purchase and the cost of purchasing the same and (2) what construction work it proposes to do and how it proposes to raise the funds for carrying out such plan. For the purpose of ascertaining the cost of any such construction work, the board shall cause such surveys, examinations, and plans to be made as will demonstrate the practicability of such plan and furnish the proper basis for an estimate of the costs of carrying out the same. All such surveys, examinations, maps, plans, and estimates shall be made under the direction of a competent irrigation engineer and certified by the engineer. The board shall then submit a copy of the same to the Director of Natural Resources within ninety days thereafter, who shall file a report upon the same with the board, which report shall contain such matters as in the judgment of the director may be desirable.

**Source:** Laws 1909, c. 155, § 2, p. 561; Laws 1911, c. 160, § 1, p. 529; R.S.1913, § 3469; C.S.1922, § 2869; C.S.1929, § 46-113; R.S.1943, § 46-193; Laws 2000, LB 900, § 90.

Refusal of district court to validate issue of bonds of irrigation district was sustained, because feasible plan of irrigation was not presented. *Kinnan v. France*, 113 Neb. 99, 202 N.W. 452 (1925).

District may employ engineer to survey and make plans. Such work is preliminary and paid out of construction fund. *Willow Springs Irr. Dist. v. Wilson*, 74 Neb. 269, 104 N.W. 165 (1905).

**46-194. Plan of operation; construction work; bonds; issuance; special election; notice; procedure.**

Upon receiving the report, the board of directors shall proceed to determine the amount of money necessary to be raised, and shall immediately thereupon call a special election, at which shall be submitted to the electors of such district possessing the qualifications prescribed by section 46-102, the question of whether or not the bonds of such district shall be issued and the amount so determined; *Provided*, such bonds shall not be issued for more than the actual estimated cost of such ditches, the purchase price of ditches, the cost of construction work, all as contained in its general plan of operation, as well as the first year's interest upon such bond issue. Notice of such election must be given by posting notice in three public places in each election precinct in the district for at least twenty days, and also by publication of such notice in some newspaper published in the county where the office of the board of directors of such district is required to be kept, once a week for at least three successive weeks. Such notice must specify the time of holding the election, the amount of bonds proposed to be issued, and the election must be held, and the result thereof determined and declared in all respects as nearly as practicable in conformity with the provisions of sections 46-111 to 46-118 governing the election of officers; *Provided*, no

informalities in conducting such an election shall invalidate the same if the election shall have been otherwise fairly conducted. At such election, the ballots shall contain the words, Bonds ..... Yes, or Bonds ..... No, or words equivalent thereto.

**Source:** Laws 1895, c. 70, § 13, p. 278; Laws 1903, c. 122, § 1, p. 622; Laws 1909, c. 155, § 2, p. 562; Laws 1911, c. 160, § 1, p. 529; R.S.1913, § 3469; C.S.1922, § 2869; C.S.1929, § 46-113; R.S.1943, § 46-194.

### **Cross Reference**

#### **Bonds of indebtedness:**

Registration, see section 10-209.

Suit on, state made party, when, see section 25-21,201.

No specific requirement is made as to the form of notice to be given to the electors. Frenchman Valley Irr. Dist. v. Smith, 167 Neb. 78, 91 N.W.2d 415 (1958).

Bonds issued hereunder are classed as construction bonds as distinguished from refinance bonds. State ex rel. Brown v. Taylor, 125 Neb. 228, 249 N.W. 586 (1933).

#### **46-195. Bonds; schedule of maturity.**

If a majority of the votes cast are in favor of issuing such bonds, the board of directors shall immediately cause bonds in such amount to be issued. The bonds shall be payable in lawful money of the United States, as follows: At the expiration of eleven years not less than five percent of the bonds; at the expiration of twelve years, not less than six percent; at the expiration of thirteen years, not less than seven percent; at the expiration of fourteen years, not less than eight percent; at the expiration of fifteen years, not less than nine percent; at the expiration of sixteen years, not less than ten percent; at the expiration of seventeen years, not less than eleven percent; at the expiration of eighteen years, not less than thirteen percent; at the expiration of nineteen years, not less than fifteen percent; and for the twentieth year a percentage sufficient to pay off the bonds. Any such district may by a majority vote provide for the issuance of bonds that will mature in any number of years less than twenty, and arrange for the payment thereof in installments at the same ratio as above provided. The district may also, at its option, redeem any bonds issued at any time on or after five years from the date of issuance thereof.

**Source:** Laws 1895, c. 70, § 13, p. 279; Laws 1903, c. 122, § 1, p. 623; Laws 1909, c. 155, § 2, p. 562; Laws 1911, c. 160, § 1, p. 530; R.S.1913, § 3469; C.S.1922, § 2869; C.S.1929, § 46-113; R.S.1943, § 46-195; Laws 1947, c. 15, § 17, p. 92.

### **Cross Reference**

**Other provisions for payment of bonds,** see section 10-126.



**46-196. Bonds; interest; dates and place of payment.**

Such bonds shall bear interest payable semiannually on the first day of January and July of each year. The principal and interest shall be payable at the office of the treasurer of the county in which the district originally organized.

**Source:** Laws 1895, c. 70, § 13, p. 280; Laws 1903, c. 122, § 1, p. 623; Laws 1909, c. 155, § 2, p. 563; Laws 1911, c. 160, § 1, p. 531; R.S.1913, § 3469; C.S.1922, § 2869; C.S.1929, § 46-113; R.S.1943, § 46-196; Laws 1969, c. 51, § 111, p. 341.

**46-197. Bonds; form; contents.**

The bonds shall be each of the denomination of not less than one hundred dollars or more than five hundred dollars, negotiable in form, executed in the name of the district, and signed by the president and secretary, and the seal of the district shall be affixed thereto. They shall be numbered consecutively as issued and bear date at the time of their issue. Coupons for the interest shall be attached to each bond, signed by the president and secretary. The bonds shall express on their face that they were issued by the authority of Chapter 46, article 1. Each bond shall be made payable at the given time for its entire amount, and the bonds shall be issued in series only, each series being payable at the expiration of a certain number of years.

**Source:** Laws 1895, c. 70, § 13, p. 280; Laws 1903, c. 122, § 1, p. 623; Laws 1909, c. 155, § 2, p. 563; Laws 1911, c. 160, § 1, p. 531; R.S.1913, § 3469; C.S.1922, § 2869; C.S.1929, § 46-113; R.S.1943, § 46-197; Laws 1995, LB 589, § 9.

Bonds issued in violation of requirement that they shall be signed by president and secretary and have seal affixed are void, and payment of interest does not ratify them. Paxton Irr. Dist. v. Conway, 94 Neb. 205, 142 N.W. 797 (1913).

**46-198. Bonds; record; interest on coupons; special election; procedures.**

The secretary shall keep a record of the bonds sold, their number, date of sale, the prices received, and the name of the purchaser. Such district, by a majority vote, may provide and authorize the payment of interest on any or all due and unpaid interest coupons attached to valid and outstanding bonds of such district heretofore or hereafter issued and sold, from the date of registration of such interest coupons for payment or if previously registered, then from the date of such election to pay such interest, until paid. Such question may be submitted at any general or special election of the district by ballot, which shall generally describe the bonds to which such coupons are attached upon which such interest is to be paid, by number, series, and date of issue, and such ballots shall be in substantially the following form: For the payment of interest on coupons attached to bonds numbered ... series ... dated ... at ... percent per annum. Yes .... ( ), No ..... ( ). Such election shall be governed by the laws in force relating to bond elections in such districts, and if a majority of the ballots cast on such proposition shall be in favor thereof the board of directors shall declare the same adopted, and the funds to pay such interest shall be estimated and included in the levy for the bond fund of such irrigation district as provided by law. Thereafter, upon the presentation of any bond with coupons attached, or any detached coupons of such bonds, upon which interest is payable under the provisions of this section, the treasurer shall stamp or

write on such coupons "bears interest at ... percent per annum from the registration for payment (or if previously registered for payment, then from date of election to pay interest).

.....  
County Treasurer."

Payment of such coupon shall include the payment of the interest accruing under this section.

**Source:** Laws 1909, c. 155, § 2, p. 563; Laws 1911, c. 160, § 1, p. 531; R.S.1913, § 3469; C.S.1922, § 2869; C.S.1929, § 46-113; R.S.1943, § 46-198; Laws 1969, c. 51, § 112, p. 342.

**46-199. Construction work; annual report by board of directors; duty of Director of Natural Resources.**

At least as often as once a year after organization, the board of directors shall make a report to the Director of Natural Resources of the condition of the work of construction, as to capacity, stability, and permanency, whether or not the plan of irrigation formulated under section 46-193 is being successfully carried out, and whether or not, in the opinion of the board, the funds available will complete the proposed works. Upon the receipt of such report by the Director of Natural Resources, he or she shall make such suggestions and recommendations to such board of directors as he or she may deem advisable for the best interest of the district.

**Source:** Laws 1909, c. 155, § 2, p. 564; Laws 1911, c. 160, § 1, p. 532; R.S.1913, § 3469; C.S.1922, § 2869; C.S.1929, § 46-113; R.S.1943, § 46-199; Laws 2000, LB 900, § 91.

**46-1,100. Bonds; sale; notice; procedure.**

The board may sell such bonds from time to time in such quantities as may be necessary and most advantageous to raise the money for the construction of such canals and works, the acquisition of property and rights and otherwise to fully carry out the object and purposes of sections 46-101 to 46-1,111. Before making any sale, the board shall at a meeting, by resolution declare its intention to sell a specified amount of the bonds and the day and hour and place of such sale, and shall cause such resolution to be entered in the minutes, and notice of the sale to be given by publication thereof at least twenty days in a daily newspaper published in each of the cities of Omaha and Lincoln, and in any other newspaper, at its discretion. The notice shall state that sealed proposals will be received by the board at its office, for the purchase of the bonds, till the day and hour named in the resolution. At the time appointed the board shall open the proposals and award the purchase of the bonds to the highest responsible bidder, and may reject all bids; *Provided, however,* that if no bids have been received or submitted up to such time, the board may proceed to negotiate for the sale of the bonds, and may adjourn to some specific date, from time to time, or to convene at the call of the president, to consider such negotiations and all subsequent or new proposals, and may at such adjourned meeting, award the purchase of the bonds, or a portion thereof, to the highest responsible bidder submitting proposals thereat, or may reject all bids;

*Provided, however,* that the board shall in no event sell any of the bonds for less than ninety percent of the face value thereof.

**Source:** Laws 1895, c. 70, § 14, p. 280; R.S.1913, § 3470; C.S.1922, § 2870; Laws 1923, c. 96, § 1, p. 243; C.S.1929, § 46-114; R.S.1943, § 46-1,100.

#### **46-1,101. Bonds; how paid; assessments.**

Such bonds, and the interest thereon, shall be paid by revenue derived from an annual assessment upon the real property of the district and all the real property of the district shall be and remain liable to be assessed for such payments as herein provided, and for all payments due or to become due to the United States under any contract between the district and the United States, accompanying which bonds of the district have not been deposited with the United States as provided in section 46-126.

**Source:** Laws 1895, c. 70, § 15, p. 281; R.S.1913, § 3471; Laws 1915, c. 69, § 4, p. 175; C.S.1922, § 2871; C.S.1929, § 46-116; R.S.1943, § 46-1,101.

All real property within district remains liable for annual assessments until bonds have been paid. *County of Garden v. Schaaf*, 145 Neb. 676, 17 N.W.2d 874 (1945).

All real property within district is subject to taxation in favor of bondholders, notwithstanding subsequent legislation exempting city lots. *Erickson v. Nine Mile Irr. Dist.*, 109 Neb. 189, 190 N.W. 573 (1922).

#### **46-1,102. Bonds; issuance and sale; judicial approval required.**

The board of directors of an irrigation district organized under the provisions of sections 46-101 to 46-128 shall, before issuing and before selling any bonds of such irrigation district, commence a special proceeding, in and by which the proceedings of the board and of the district providing for and authorizing the issue and sale of the bonds of the district shall be judicially examined, approved and confirmed, or disapproved and disaffirmed.

**Source:** Laws 1895, c. 70, § 59, p. 302; Laws 1909, c. 159, § 1, p. 571; Laws 1913, c. 142, § 4, p. 347; R.S.1913, § 3515; C.S.1922, § 2915; C.S.1929, § 46-160; R.S.1943, § 46-1,102.

Confirmation of issuance of bonds was a special proceeding in rem. *Ainsworth Irr. Dist. v. Harms*, 170 Neb. 228, 102 N.W.2d 429 (1960).

Provision of Reclamation Act for confirmation of validity of reclamation district was similar to the procedure provided by this and succeeding three sections. *Nebraska Mid-State*

*Reclamation Dist. v. Hall County*, 152 Neb. 410, 41 N.W.2d 397 (1950).

Proceeding under this section is in rem and cannot be collaterally attacked, but confirmation of exchange of bonds for property is not authorized. *Wyman v. Searle*, 88 Neb. 26, 128 N.W. 801 (1910).

#### **46-1,103. Bonds; judicial approval; petition; contents.**

The board of directors of the irrigation district or such holder or holders of any bond or bonds of the district shall file in the district court of the county in which the lands of the district, or some portion thereof, are situated, a petition praying in effect, that the proceedings aforesaid may be examined, approved, and confirmed by the court. The petition shall state the facts showing the

proceedings had for the issue and sale of the bonds, and shall state generally that the irrigation district was duly organized, and that the first board of directors was duly elected; but the petition need not state the facts showing such organization of the district or the election of the first board of directors.

**Source:** Laws 1895, c. 70, § 60, p. 302; Laws 1909, c. 159, § 1, p. 571; R.S.1913, § 3516; C.S.1922, § 2916; C.S.1929, § 46-161; R.S.1943, § 46-1,103.

**46-1,104. Bonds; judicial approval; hearing; notice; form; contents.**

The court shall fix the time for the hearing of the petition, and shall order the clerk of the court to give and publish a notice of the filing of the petition. The notice shall be given and published in the same manner and for the same length of time that the notice of a special election provided for by law to determine whether the bonds of the district shall be issued is required to be given and published. The notice shall state the time and place fixed for the hearing of the petition and prayer of the petition, and that any person interested in the organization of the district, or in the proceedings for the issue or sale of the bonds, may, on or before the day fixed for the hearing of the petition, move to dismiss the petition or answer thereto. The petition may be referred to and described in the notice as the petition of ..... (giving its name), praying that the proceedings for the issue and sale of such bonds of such district may be examined, approved, and confirmed by the court.

**Source:** Laws 1895, c. 70, § 61, p. 302; Laws 1909, c. 159, § 1, p. 572; R.S.1913, § 3517; C.S.1922, § 2917; C.S.1929, § 46-162; R.S.1943, § 46-1,104.

**46-1,105. Bonds; judicial approval; parties; motions and answers; rules applicable.**

Any person interested in the district, or in the issue or sale of the bonds, may move to dismiss the petition or answer thereto. The provisions of the code of civil procedure respecting motions and answer to a complaint shall be applicable to motions and answer to the petition. The persons so filing motion and answering the petition shall be the defendants to the special proceeding, and the board of directors shall be the plaintiff. Every material statement of the petition not specially controverted by the answer must, for the purpose of such special proceeding, be taken as true; and each person failing to answer the petition shall be deemed to admit as true all the material statements of the petition. The rules of pleading and practice provided by the code of civil procedure which are not inconsistent with the provisions of sections 46-101 to 46-1,111 are applicable to the special proceeding herein provided for.

**Source:** Laws 1895, c. 70, § 62, p. 303; R.S.1913, § 3518; C.S.1922, § 2918; C.S.1929, § 46-163; R.S.1943, § 46-1,105.

**46-1,106. Bonds; judicial approval; determination of legality; procedure.**

Upon the hearing of such special proceedings, the court shall have power and jurisdiction to examine and determine the legality and validity of, and approve and confirm or disapprove and disaffirm, each and all of the proceedings for the organization of such district under sections 46-101 to 46-128, from and including the petition for the organization of the district, and all other proceedings which may affect the legality or validity of the bonds and the order of the sale and the sale thereof. The court in inquiring into the regularity, legality, or correctness of such proceedings shall disregard an error, irregularity, or omission which does not affect the substantial rights of the parties to such special proceedings, and it may approve and confirm such proceedings in part and disapprove and declare illegal or invalid other and subsequent parts of the proceedings. The court shall find and determine whether the notice of the filing of the petition has been duly given and published for the time and in the manner prescribed in section 46-1,104. The costs of the special proceedings may be allowed and apportioned between the parties in the discretion of the court. If the court shall determine the proceedings for the organization of the district legal and valid and the proceedings for the voting and issuing of the bonds legal and valid, the board of directors shall then prepare a written statement beginning with the filing of the petition for the organization of the district, and including all subsequent proceedings for the organization of the district and voting and issuing of the bonds, and ending with the decree of the court finding the proceedings for the organization of the district and the proceedings for the voting and issuing of the bonds legal and valid. The written statement shall be certified under oath by the board of directors of the district.

**Source:** Laws 1895, c. 70, § 63, p. 303; Laws 1913, c. 142, § 5, p. 348; R.S.1913, § 3519; Laws 1917, c. 8, § 1, p. 63; C.S.1922, § 2919; C.S.1929, § 46-164; Laws 1933, c. 141, § 2, p. 551; C.S.Supp.,1941, § 46-164; R.S.1943, § 46-1,106; Laws 2001, LB 420, § 30.

Approval of contract with United States and approval of bonds were proper in one proceeding. *Ainsworth Irr. Dist. v. Harms*, 170 Neb. 228, 102 N.W.2d 429 (1960).

Refusal of district court to validate bonds of irrigation district was sustained where no feasible plan of irrigation was presented. *Kinnan v. France*, 113 Neb. 99, 202 N.W. 452 (1925).

**46-1,107. Water supply from outside the state; power of district to acquire; contracts; bonds.**

When any district organized under sections 46-101 to 46-128 shall find it necessary to procure and acquire the supply of water necessary for any or all ditches outside of the boundaries of this state, and from some adjoining state, then in such event it shall be lawful for such district to contract or bargain with any person, company or corporation legally existing within such state, outside of the boundaries of this state, for the required supply of such necessary water for the district within the state. The voting, issuance and sale of bonds in such district within the state for the payment of such rights and franchises of such persons, companies or corporations of such foreign state, for the use and benefit of such district within this state, shall be deemed valid and

of full force and effect and have the same operation as though the same rights and franchises existed wholly within this state.

**Source:** Laws 1895, c. 70, § 64, p. 304; R.S.1913, § 3520; C.S.1922, § 2920; C.S.1929, § 46-165; R.S.1943, § 46-1,107.

**46-1,108. Bonds; refunding; reissue.**

The board of directors of any irrigation district in the State of Nebraska which has issued valid interest-bearing bonds that are outstanding and unpaid, may take up and pay off any such bonds whenever the same can be brought about by lawful means, by the issue and sale or the issue and exchange therefor of the bonds of such irrigation district; but bonds so to be issued shall not exceed the amount lawfully owing and unpaid upon the bond or bonds so sought to be taken up and paid. Bonds so issued shall not bear interest greater in rate or amount per annum than the bonds so sought to be taken up and paid.

**Source:** Laws 1909, c. 158, § 1, p. 569; R.S.1913, § 3522; C.S.1922, § 2922; C.S.1929, § 46-167; R.S.1943, § 46-1,108.

**46-1,109. Bonds; refunding; conditions for issuance; procedure; notice; form; contents; action of board when no objections filed.**

Whenever it is desired to issue bonds under section 46-1,108, the board of directors shall, by resolution entered in the minutes of its proceedings, direct public notice to be given, stating the amount of the indebtedness sought to be taken up and paid, the date it was voted, the rate of interest it bears, and that the same is sought to be taken up and paid off by the issuance and sale, or the issuance and exchange of bonds bearing interest at an equal or less rate and amount per annum, and stating the date on which and the place where any taxpayer of such irrigation district may file objections to such proposed action. Such notice shall be signed by the president and secretary of the irrigation district, and shall be published for two weeks in some newspaper in general circulation in the district, or by posting the notice in three of the most public places in the district for at least fifteen days prior to such date. If after such publication and on the day for filing objections, no objections to such action by the board of directors are filed, then the board of directors may issue and sell, or exchange, as the case may be, the bonds authorized by section 46-1,108, not exceeding the amount stated in such notice, nor exceeding the amount of actual bonded indebtedness of the district then outstanding and unpaid, nor bearing interest greater in rate or amount, and thereby take up and pay off the bonds described in the notice.

**Source:** Laws 1909, c. 158, § 2, p. 569; R.S.1913, § 3523; C.S.1922, § 2923; C.S.1929, § 46-168; R.S.1943, § 46-1,109.

**46-1,110. Bonds; refunding; hearing on objections; appeal.**

If on the day appointed in such notice, any written objections be filed, the objection or objections shall be heard and decided by the board of directors, and from its decision an appeal may be taken to the district court, in the manner of appeals from the county board.

**Source:** Laws 1909, c. 158, § 3, p. 570; R.S.1913, § 3524; C.S.1922, § 2924; C.S.1929, § 46-169; R.S.1943, § 46-1,110.

**46-1,111. Bonds; refunding; recitals required; delivery; payment; laws applicable.**

The bonds so issued shall have recited therein the object of issue, the title of the article under which the issue was made, stating the issue to be made in pursuance thereof, and shall also state the number, date, and amount of the bonds for which it is substituted. Such new bonds shall not be delivered until the surrender of the bond or bonds so designated, and they shall be paid, and levy made and tax collected for their payment, in accordance with laws governing the bonds heretofore issued.

**Source:** Laws 1909, c. 158, § 4, p. 570; R.S.1913, § 3525; C.S.1922, § 2925; C.S.1929, § 46-170; R.S.1943, § 46-1,111.

**46-1,112. Bonds; interest; extension of maturity; refunding; conditions; requirements.**

Any irrigation district in this state having valid and unpaid bonds outstanding may by contract with the owners or holders thereof, or by other lawful means, provide for the extension of the time of payment thereof for any period not exceeding forty years, and may provide for the payment annually or semiannually of any rate of interest and for the payment of both principal and interest as one sum in any desired percentage per annum. Such district may also provide for the payment or refunding of such bonds by the issue and sale or the issue and exchange therefor of bonds maturing in any period not exceeding forty years, in an amount equal to the principal debt and the total interest to accrue thereon during the term of the bond at any agreed rate, and may make such bonds payable in installments equal to two percent of the principal and interest each year for the first four years; four percent of the principal and interest each year for the next two years; and six percent of the principal and interest each year for the next fourteen years; or if the bond term be more than twenty years, then in substantially proportionate installments.

**Source:** Laws 1917, c. 190, § 1, p. 463; C.S.1922, § 2930; C.S.1929, § 46-175; R.S.1943, § 46-1,112; Laws 1969, c. 51, § 113, p. 343.

**46-1,113. Bonds; extension of maturity; refunding; election required, when; procedure; laws applicable.**

No bonds shall be issued or contract entered into under the provisions of section 46-1,112 unless the same shall be authorized by a majority vote of the electors of such district at any general or special election held in such district. Such election shall be held pursuant to resolution of the

board of directors calling the same, and the provisions of law governing the holding of elections to vote bonds in irrigation districts are hereby made applicable to elections held under this section.

**Source:** Laws 1917, c. 190, § 2, p. 464; C.S.1922, § 2931; C.S.1929, § 46-176; R.S.1943, § 46-1,113.

**46-1,114. Irrigation districts; grant of additional powers.**

In addition to all other powers, an irrigation district shall have the powers granted in sections 46-1,115 to 46-1,126.

**Source:** Laws 1925, c. 128, § 1, p. 336; C.S.1929, § 46-178; R.S.1943, § 46-1,114.

Refinancing bonds and coupons of irrigation district issued hereunder, when due and funds are available for that purpose on presentment, are payable by county treasurer in order of presentment by holder thereof. State ex rel. Brown v. Taylor, 125 Neb. 228, 249 N.W. 586 (1933).

**46-1,115. Bonds in discharge of judgments; power to issue; limit.**

An irrigation district shall have power to issue bonds in consideration of the discharge of judgments held against it in an amount not exceeding by more than one thousand dollars the principal and interest of judgments so discharged.

**Source:** Laws 1925, c. 128, § 2, p. 336; C.S.1929, § 46-179; R.S.1943, § 46-1,115.

**46-1,116. Bonds; issuance to procure surrender of outstanding bonds; power of district; limit.**

An irrigation district shall have power to issue bonds in consideration of the surrender and cancellation of its outstanding bonds. If the bonds surrendered provide for the separate payment of principal and interest, the principal of the bonds to be issued shall not exceed by more than one thousand dollars the principal of the bonds surrendered. If the bonds surrendered provide for the payment of principal and interest combined in installments, the principal of the bonds issued shall not exceed by more than one thousand dollars the value of such installments discounted at the same rate per year as the annual interest rate of the bonds to be issued.

**Source:** Laws 1925, c. 128, § 3, p. 336; C.S.1929, § 46-180; R.S.1943, § 46-1,116.



**46-1,117. Bonds; issuance to procure surrender of notes and warrants; power of district; limit.**

An irrigation district shall have power to issue bonds in consideration of the surrender and cancellation of its outstanding notes and warrants in an amount not exceeding by more than one thousand dollars the principal and interest of the notes and warrants surrendered.

**Source:** Laws 1925, c. 128, § 4, p. 336; C.S.1929, § 46-181; R.S.1943, § 46-1,117.

**46-1,118. Bonds; issuance for more than one purpose.**

One issue of bonds may be for any or all the purposes mentioned in sections 46-1,115 to 46-1,117.

**Source:** Laws 1925, c. 128, § 5, p. 337; C.S.1929, § 46-182; R.S.1943, § 46-1,118.

**46-1,119. Bonds issued to discharge judgments or procure surrender of bonds, notes, and warrants; maturity; interest; redemption.**

The bonds issued in pursuance of sections 46-1,115 to 46-1,118 shall mature in not exceeding fifty years, shall bear interest, payable semiannually, and may be subject to redemption before maturity at par and accrued interest at the option of the district on such terms and subject to such limitations as may be provided, and shall be in such denominations and form, with or without interest coupons, and be executed in such manner as may be provided. In case default shall be made in the payment of interest, such interest shall bear interest at the same rate as the principal.

**Source:** Laws 1925, c. 128, § 6, p. 337; C.S.1929, § 46-183; R.S.1943, § 46-1,119; Laws 1969, c. 51, § 114, p. 343.

Where holders of bonds or coupons present them when due for payment and payment is refused for want of funds, such presentment and demand does not entitle demandants to priority of payment over holders of bonds and coupons who

subsequently present same for payment when funds are available. State ex rel. Brown v. Taylor, 125 Neb. 228, 249 N.W. 586 (1933).

**46-1,120. Bonds issued to discharge judgments or procure surrender of bonds, notes, and warrants; contract with holders, authorized; terms.**

As part of the consideration for accepting new bonds in lieu of judgments, notes, warrants or bonds, and in order to induce the owners of judgments and holders of notes, warrants, and bonds to accept such new bonds, a district shall have power to make a contract with the holders of the new bonds, in the manner hereinafter provided, wherein and whereby the district may agree (1) to establish a special bond fund and to apply the money therein only to the payment of such indebtedness as may be provided, and to pay into the special bond fund such money and taxes, levied and to be levied, as may be provided, including unpaid taxes levied for general expenses of the district as well as taxes levied for the payment of bonds; (2) to levy taxes in such years and in such amounts for the special bond fund as may be provided, and to levy taxes to meet deficits due

to the failure to collect taxes levied for or payable into the special bond fund and that the amount of such deficits and the amount of taxes to be levied therefor, shall be computed in such manner as may be provided; and taxes agreed to be levied shall not be subject to any limitation of law as to the amount or rate thereof; and (3) to borrow money for the special bond fund on notes or otherwise against delinquent taxes in the fund, and to pay such loans in such manner as may be provided.

**Source:** Laws 1925, c. 128, § 7, p. 337; C.S.1929, § 46-184; R.S.1943, § 46-1,120.

**46-1,121. Bonds issued to discharge judgments or procure surrender of bonds, notes, and warrants; powers to be exercised by resolution; contents.**

In order to exercise the powers granted by sections 46-1,114 to 46-1,120 the board of directors shall adopt a resolution which shall (1) set forth the judgments to be discharged and the notes and warrants and bonds to be canceled for which bonds are to be issued; (2) authorize the issuance of bonds of the district in place of such judgments, bonds, notes and warrants, and determine the principal amount of the bonds authorized, their maturities, interest rate, interest payment dates, and in substance the terms of and limitations on the right of redemption thereof, if any, subject to the provisions of sections 46-1,114 to 46-1,126; (3) fix the date as of which settlement shall be made, and provide for such cash adjustments of principal and interest as may be necessary at the time of the actual delivery of the bonds; and (4) state the agreements, if any, to be made by the district as authorized by section 46-1,120.

**Source:** Laws 1925, c. 128, § 8, p. 338; C.S.1929, § 46-185; R.S.1943, § 46-1,121.

**46-1,122. Bonds issued to discharge judgments or procure surrender of bonds, notes, and warrants; special election required; notice; form and contents; effect of affirmative vote.**

The board of directors shall then call a special election. Notice of such election shall be given by posting notice in three public places in each election precinct in the district for at least twenty days and also by publication of such notice in some newspaper published in the county where the office of the board of directors of such district is required to be kept, once a week for at least three successive weeks. Such notice must specify the time of holding the election and that the purpose of the election is to decide for or against the approval of a resolution of the board of directors providing for the issuance of bonds, stating the principal amount, in place of existing indebtedness of the district. The election must be held and the result thereof determined and declared in all respects as nearly as practicable in conformity with the provisions of sections 46-1,109 to 46-115 governing the election of officers; *Provided*, no informalities in conducting such election shall invalidate the same if the election shall have been otherwise fairly conducted. At such election the ballot shall contain the words Bond Resolution ..... Yes, and Bond Resolution ..... No, or words equivalent thereto. If a majority of the votes cast are Bond Resolution ..... Yes, the resolution adopted by the board of directors shall become effective, and the board shall then be

authorized to pass such supplemental resolutions and do such acts and things not inconsistent with this section and the resolution as may be necessary or convenient to carry out the provisions of the resolution.

**Source:** Laws 1925, c. 128, § 9, p. 338; C.S.1929, § 46-186; R.S.1943, § 46-1,122.

**46-1,123. Bonds issued to discharge judgments or procure surrender of bonds, notes, and warrants; procedure where less than all outstanding are offered.**

In case within the time therefor set by the board of directors the amount of judgments proposed to be discharged and the amount of notes, warrants and bonds proposed to be surrendered shall not be offered for discharge or surrender, the board of directors may nevertheless accept the discharge of judgments and the surrender of the notes, warrants and bonds which may be offered, and may issue a proportionately less amount of the new bonds, selecting in their discretion which of the new bonds shall in that case be issued, so that the bonds issued will mature in such years as will best suit the needs of the district.

**Source:** Laws 1925, c. 128, § 10, p. 339; C.S.1929, § 46-187; R.S.1943, § 46-1,123.

**46-1,124. Bonds issued to discharge judgments or procure surrender of bonds, notes, and warrants; resolution; contracts; effect.**

Upon the discharge of the judgments and the surrender of the notes, warrants and bonds, and the issuance of the new bonds, the resolution approved by the electors shall constitute a contract with the holders of the bonds, and all facts therein recited shall conclusively be deemed to be true as against the district and in favor of the holders of the bonds. A recital in the bonds that they are issued in pursuance of sections 46-1,114 to 46-1,126 shall be conclusive evidence that such bonds are valid and the same shall be incontestable.

**Source:** Laws 1925, c. 128, § 11, p. 339; C.S.1929, § 46-188; R.S.1943, § 46-1,124.

**46-1,125. Bonds issued to discharge judgments or procure surrender of bonds, notes, and warrants; contracts; duties of public officers.**

After the making of a contract and the issuance of bonds as herein authorized in sections 46-1,114 to 46-1,126, it shall be the duty of all district and county officials, and such officials are hereby authorized and directed, to do and perform all such acts and things within the powers of their respective offices as may be necessary or convenient to cause the district to carry out and fully perform the obligations of such contract and bonds, including, among other things not specified, the levying and collecting of taxes, the disposition of the money of the district, the application and transfer of funds, the borrowing of money, and the payment of bonds and other obligations. In the absence of any provision of law specifying the officer by which and the manner

in which any act or thing required by any such contract shall be done or performed the board of directors shall have full power and authority to determine the matter.

**Source:** Laws 1925, c. 128, § 12, p. 340; C.S.1929, § 46-189; R.S.1943, § 46-1,125.

**46-1,126. Bonds issued to discharge judgments or procure surrender of bonds, notes, and warrants; rights of creditors not consenting.**

Any contractual obligation entered into by a district in pursuance of sections 46-1,114 to 46-1,126 shall not impair the rights of any creditor of the district who does not consent thereto by accepting the bonds issued in pursuance of said sections, and in case the district shall default in the payment of any debt owing to any such creditor the rights and remedies of such creditor shall be the same as though the contractual obligations hereby authorized had not been entered into.

**Source:** Laws 1925, c. 128, § 13, p. 340; C.S.1929, § 46-190; R.S.1943, § 46-1,126.

**46-1,127. Bonds; sinking fund; how provided.**

The board of directors of any irrigation district in the State of Nebraska, if it considers it for the best interest of such district, shall have the power to provide a sinking fund with which to pay and retire outstanding bonds of the district. For the purpose of creating, establishing, and maintaining such fund, such board may levy a tax each year of not to exceed eighty-seven and five-tenths cents on each one hundred dollars upon the taxable value of all the taxable property in such district as fixed by the district assessor. Following such levy, the board may by contract with the owners of such bonds pay and retire any bonds of the district and interest accrued thereon, whether such bonds are due and payable or not.

**Source:** Laws 1921, c. 283, § 1, p. 928; C.S.1922, § 2938; C.S.1929, § 46-196; R.S.1943, § 46-1,127; Laws 1953, c. 287, § 64, p. 968; Laws 1979, LB 187, § 170; Laws 1992, LB 719A, § 150.

**46-1,128. Irrigation or drainage districts; sale of real estate; procedure.**

An irrigation or drainage district which owns or hereafter may acquire the title to any real estate which is no longer needed by such irrigation or drainage district may sell and convey the same when authorized to do so by the affirmative vote of a majority of the qualified electors voting on such proposition at any general or special election held in such district, but nothing contained in sections 46-1,128 to 46-1,132 shall require any irrigation or drainage district which shall have more than five hundred qualified electors residing within it to comply with the requirements of sections 46-1,128 to 46-1,132. Such districts having more than five hundred qualified electors may sell and convey real estate which is no longer needed at public auction as hereafter provided in this section. Prior to any such sale, the real estate shall be appraised for sale purposes by a qualified appraiser who shall be appointed by the governing board of the district. Such real estate shall not be sold for less than the appraised value, which shall be the starting bid price at the public sale. Notice of such sale shall be given by publication three consecutive weeks in some legal newspaper

published in the county where the real estate is located; *Provided*, sale at public auction or appraisal shall not be required if the sale is to be made to a governmental subdivision or the State of Nebraska, and in such instance only notice of the sale, as provided for in this section, shall be required.

**Source:** Laws 1921, c. 257, § 1, p. 870; C.S.1922, § 2933; C.S.1929, § 46-191; R.S.1943, § 46-1,128; Laws 1969, c. 384, § 1, p. 1352.

**46-1,129. Sale of real estate; election; notice; form; contents.**

Notice of such election shall be given by posting notice in three public places in each of the election precincts in the election district for at least twenty days and also by publication of such notice in a legal newspaper published or of general circulation in the county where the office of the board of directors is kept, once each week for three consecutive weeks. Such notice shall specify the time and place of holding the election in such district and shall contain a brief summary of the proposition involving the proposed conveyance.

**Source:** Laws 1921, c. 257, § 2, p. 870; C.S.1922, § 2934; C.S.1929, § 46-192; R.S.1943, § 46-1,129; Laws 1986, LB 960, § 31.

**46-1,130. Sale of real estate; election; results; determination.**

Such election shall be held and the results thereof determined and declared in conformity with the law governing the election of officers in such district as nearly as may be practicable; *Provided*, that no irregularity in the conduct of such an election, due to an error or omission, shall invalidate the same if the election shall have been otherwise fairly conducted.

**Source:** Laws 1921, c. 257, § 3, p. 871; C.S.1922, § 2935; C.S.1929, § 46-193; R.S.1943, § 46-1,130.

**46-1,131. Sale of real estate; notice.**

At least thirty days' notice of the terms of sale, with description of property to be sold, shall be given by publication in some newspaper published in the county in which the office of the board of directors is located, or if no newspaper is published in the county then by posting in at least four public places within such district.

**Source:** Laws 1921, c. 257, § 4, p. 871; C.S.1922, § 2936; C.S.1929, § 46-194; R.S.1943, § 46-1,131.

**46-1,132. Sale of real estate; bids; acceptance; conveyance; form.**

The sale shall be by sealed bids. The directors may reject any and all bids and readvertise, if in their judgment it is for the best interest of the district. Upon approval of the sale, by a two-thirds vote of the board of directors of the district, the president of the board of directors shall in the name

of the irrigation or drainage district execute and deliver a deed or contract to the purchaser, which deed or contract shall be attested by the secretary, and the seal of the irrigation or drainage district shall be affixed thereto.

**Source:** Laws 1921, c. 257, § 5, p. 871; C.S.1922, § 2937; C.S.1929, § 46-195; R.S.1943, § 46-1,132; Laws 1971, LB 653, § 4.

#### **46-1,133. Irrigation districts; public lands; taxation; rights and obligations of entrymen.**

Whenever irrigation districts incorporated in accordance with the laws of this state, whether heretofore or hereafter organized, shall include within the corporate boundaries public lands of the United States, whether entered or unentered, the board of directors is authorized to make such representations and assurances to the Secretary of the Interior as may be required in order to comply with the Act of Congress approved August 11, 1916, and entitled An act to promote reclamation of arid land, and related acts of Congress. Upon compliance therewith, the entrymen within such district shall be entitled to all the privileges of private landowners including the right to vote and to hold office, and with respect to irrigation districts wherein irrigable public lands are located the terms electors and owners shall be so construed as to include entrymen of such public lands. The public lands of the district included as aforesaid shall be subject to irrigation district taxation in the same manner as the private lands of the district to the extent authorized by the aforesaid or other acts of Congress, and in accordance with the laws governing irrigation districts heretofore or hereafter enacted.

**Source:** Laws 1917, c. 195, § 1, p. 470; C.S.1922, § 2929; C.S.1929, § 46-174; R.S.1943, § 46-1,133.

#### **46-1,134. Irrigation districts; excluded lands not taxable.**

No irrigation district, company or corporation shall include within its district for purposes of levying taxes, bonds or assessments any land which has formerly been set out of the district, unless the owner of such lands shall consent to have his land thus reinstated in the district.

**Source:** Laws 1917, c. 197, § 1, p. 472; C.S.1922, § 2941; C.S.1929, § 46-199; R.S.1943, § 46-1,134.

#### **46-1,135. Rights of grantees of subdivided lands.**

Where land within an irrigation district, to which water has been delivered through adequate facilities provided by such irrigation district, is subdivided and transferred in part, the grantee or transferee shall have the right to use laterals and other existing facilities as against his grantor or

assignor unless agreed otherwise, which agreement must be expressly stated in the deed of conveyance or transfer.

**Source:** Laws 1933, c. 89, § 1, p. 360; C.S.Supp.,1941, § 46-1,102; R.S.1943, § 46-1,135.

"Facilities" under this section is limited to something built or constructed for the purpose of delivering irrigation water, and flooding over the land is not a facility within the meaning of the statute. Hengen v. Hengen, 211 Neb. 276, 318 N.W.2d 269 (1982).

Grantee of subdivided land previously irrigated by flooding from canal on portion of land retained by grantor or assignor

held not entitled under this section to continue the flood irrigation from the canal. Where grantee's quarter had been irrigated from farm pond fed by lateral extending from canal on other quarter before property was subdivided, grantee held entitled under this section to continue use of lateral to irrigate his quarter. Hengen v. Hengen, 211 Neb. 276, 318 N.W.2d 269 (1982).

#### **46-1,136. Subdivided lands; additional facilities; no obligation to furnish.**

An irrigation district within which subdivided land is situated, shall not be required to build additional laterals or provide other facilities for the purpose of delivering water to such subdivided land, but shall only be required to deliver water for the irrigation of such subdivided land through the laterals or other facilities in existence before such transfer or subdivision was made.

**Source:** Laws 1933, c. 89, § 2, p. 360; C.S.Supp.,1941, § 46-1,103; R.S.1943, § 46-1,136.

"Facilities" under this section is limited to something built or constructed for the purpose of delivering irrigation water, and flooding over the land is not a facility within the meaning

of the statute. Hengen v. Hengen, 211 Neb. 276, 318 N.W.2d 269 (1982).

#### **46-1,137. Tolls; collection authorized.**

When the governing authority of any irrigation district of this state elects to collect funds for the operation and maintenance of irrigation works or repayment of contracts of construction by and between the United States of America and any irrigation district as provided in section 46-126, by the levy of tolls or charges against the lands in such district, such tolls and charges and the time of payment thereof shall be levied and fixed by the rules and regulations of such district; and the delivery of water to any parcel of land may be withheld during the time that the tolls and charges levied upon such parcel of land are delinquent and unpaid. Such tolls and charges shall be cumulative, and the delivery of water to any parcel of land may be withheld until all delinquent tolls and charges levied upon such parcel of land for the operation and maintenance of the irrigation works of such district are paid for past years as well as for the current year.

**Source:** Laws 1937, c. 106, § 1, p. 366; C.S.Supp.,1941, § 46-1,109; R.S.1943, § 46-1,137; Laws 1967, c. 280, § 3, p. 758.

#### **46-1,138. Delinquent tolls; lien on real estate; manner of collection.**

All such tolls and charges, due and delinquent according to the rules and regulations of such district, and unpaid on June 1 after becoming due and delinquent, may be by the governing authority of such district certified to the county clerk of such county in which are situated the lands against which such tolls and charges have been levied; and when so certified such tolls and charges

shall be entered upon the tax list and spread upon the tax roll the same as other general and irrigation taxes are levied and assessed upon real estate, and shall become a lien upon such real estate along with other real estate taxes, and shall be collectible at the same time, in the same manner, and in the same proceeding as other real estate taxes on such land.

**Source:** Laws 1937, c. 106, § 2, p. 366; C.S.Supp.,1941, § 46-1,110; R.S.1943, § 46-1,138.

**46-1,139. District funds; authorized depositories.**

Any irrigation district treasurer may deposit the money received or held by him or her by virtue of his or her office in some state or national bank in the State of Nebraska, capital stock financial institution, or qualifying mutual financial institution. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

**Source:** Laws 1935, c. 18, § 1, p. 93; C.S.Supp.,1941, § 46-1,104; R.S.1943, § 46-1,139; Laws 1989, LB 33, § 27; Laws 2001, LB 362, § 31.

**46-1,140. District funds; depository designated; deposits subject to check or order.**

Before such funds are deposited one or more banks, capital stock financial institutions, or qualifying mutual financial institutions shall be designated by the board of directors of the irrigation district whose funds are to be so deposited. All such deposits shall be subject to payment on check or order of the treasurer of the district. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

**Source:** Laws 1935, c. 18, § 2, p. 93; C.S.Supp.,1941, § 46-1,105; R.S.1943, § 46-1,140; Laws 1989, LB 33, § 28; Laws 2001, LB 362, § 32.

**46-1,141. District funds; deposits; how secured.**

The depository receiving the deposit of funds of the district is hereby authorized to secure the deposit of such funds by giving security pursuant to the Public Funds Deposit Security Act, by depository bond, corporate in character, or by sufficient personal security when demanded by the board of directors of the district, such security to be approved by the board of directors of such



irrigation district. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

**Source:** Laws 1935, c. 18, § 3, p. 94; C.S.Supp.,1941, § 46-1,106; R.S.1943, § 46-1,141; Laws 1989, LB 33, § 29; Laws 1999, LB 396, § 35; Laws 2001, LB 362, § 33.

#### **Cross Reference**

**Public Funds Deposit Security Act**, see section 77-2386.

#### **46-1,142. District funds; treasurer not liable, when.**

No treasurer of any such district shall be liable upon his bond for loss on account of any deposit in a bank which has been designated as the depository under the provisions of sections 46-1,139 to 46-1,142, and the security given by such bank has been approved by the board of directors of such district.

**Source:** Laws 1935, c. 18, § 4, p. 94; C.S.Supp.,1941, § 46-1,107; R.S.1943, § 46-1,142.

#### **46-1,143. Contract for water supply authorized.**

The board of directors of any irrigation district organized under the laws of this state may enter into contracts for a supply of water for the irrigation of the lands within such irrigation district with any person, firm, association, corporation or the United States of America. The source of supply of such water may be either within or without the boundaries of the State of Nebraska, and the water supply may be either the entire supply of water for such district or to supplement an appropriation already made by such district.

**Source:** Laws 1915, c. 205, § 1, p. 441; C.S.1922, § 2944; C.S.1929, § 46-201; R.S.1943, § 46-1,143.

Board of directors of irrigation district may contract with the United States for a supply of water. Frenchman Valley Irr. Dist. v. Smith, 167 Neb. 78, 91 N.W.2d 415 (1958).

Irrigation districts are authorized to contract with United States for water supply for irrigation of district lands. Livanis v. Northport Irr. Dist., 121 Neb. 777, 238 N.W. 757 (1931).

Act is complete in itself, and does not limit power of officers of district to contract with United States for supply of water under other statutory provisions. Bridgeport Irr. Dist. v. United States, 40 F.2d 827 (8th Cir. 1930).

#### **46-1,144. Water supply; tax levy.**

If the contract mentioned in section 46-1,143 provides for payment of the entire purchase price of such water supply within one year after the making of such contract, the board of directors of such irrigation district shall at the time of entering into such contract pass a resolution that a levy shall be made sufficient to raise such sum as is necessary to pay such purchase price, and the board

of directors shall thereafter, and at the same time the levy of other taxes for the district is made, levy a tax against the taxable property of the district sufficient to raise and pay such sum.

**Source:** Laws 1915, c. 205, § 2, p. 441; C.S.1922, § 2945; C.S.1929, § 46-202; R.S.1943, § 46-1,144.

**46-1,145. Contract for water supply; election required, when; notice; procedure; effect of affirmative vote.**

If such contract provides for payments to be made extending for a period of more than one year from the date of making the contract, the board of directors of such irrigation district shall submit the contract to the electors of the district at any general election or at a special election called therefor for the approval or disapproval of the contract. The ballots at the election shall have printed thereon For approval of contract for water supply, and Against approval of contract for water supply. The notice of the election need not give the entire contract but shall be sufficient if it states in a general way the substance of the proposed contract. The election shall otherwise be conducted in accordance with sections 46-115 to 46-118. If a majority of the electors that vote on the proposition vote for approval of the contract, the board of directors shall enter into the contract and shall thereafter, at the time the other taxes of the district are levied, levy a tax on the taxable property of the district sufficient to pay the amount due and to become due on the contract before the next annual levy in the district.

**Source:** Laws 1915, c. 205, § 3, p. 442; C.S.1922, § 2946; C.S.1929, § 46-203; R.S.1943, § 46-1,145; Laws 2015, LB 561, § 12.

A contract for a supply of water which provides for payment to be made by an irrigation district for a period of more than one year from the date of making the contract must be approved by the legal voters of the district. *Twin Loups Reclamation & Irr. District v. Blessing*, 202 Neb. 513, 276 N.W.2d 185 (1979).

Where sale of existing irrigation works was contemplated, notice in general of substance of contract was sufficient. *Frenchman Valley Irr. Dist. v. Smith*, 167 Neb. 78, 91 N.W.2d 415 (1958).

**46-1,146. Water supply contracts and bonds; rescission; when authorized.**

If any irrigation district shall have heretofore, or hereafter, purchased a water supply and issued bonds in payment of the same, or shall have purchased an irrigation system, which system included a contract for water supply and issued bonds in payment of the same, the directors of the district may arrange for the surrender and rescission of such contract for water supply upon surrender and cancellation of bonds in an amount equal to the bonds issued in payment for such water supply, and if the water supply was included in the purchase price of an irrigation system the board of directors may arrange for the surrender and rescission of the contract for such water supply on the surrender and cancellation of bonds in an amount equal to the part of the purchase price that was

represented by the value of such contract for water supply, such amount to be determined by the directors of the irrigation district. Upon the surrender of such contract and cancellation of bonds as hereinbefore provided, the board of directors of such irrigation district may enter into a new contract for water supply as hereinbefore provided.

**Source:** Laws 1915, c. 205, § 4, p. 442; C.S.1922, § 2947; C.S.1929, § 46-204; R.S.1943, § 46-1,146.

#### **46-1,147. Irrigation districts; acceptance of federal reclamation aid.**

Any irrigation district is hereby authorized to be created and is empowered to cooperate with the United States under the Act of June 17, 1902 (32 Stat. 388), known as the Federal Reclamation Act and acts amendatory thereof and supplementary thereto, for the purposes of construction of irrigation works, including drainage works, or for the purchase, extension, operation or maintenance of irrigation works, including drainage works, or for the assumption as principal or guarantor of indebtedness to the United States on account of any district lands, and in that case the district shall levy and assess the several landowners entering lands under the reclamation laws or acquiring water rights thereunder in accordance with the reclamation law, public notices and orders issued thereunder and in accordance with existing contracts made between the individual landowners and the United States and as may be contracted for between the district and the United States, and the district is hereby clothed with full taxing power to collect such sums under the revenue laws of the state as in the case of other irrigation districts; *Provided, however,* that any property acquired by the district may be conveyed to the United States insofar as the same may be needed by the United States for the construction, operation, and maintenance of works for the benefit of the district under any contract that may be entered into with the United States pursuant to this section.

**Source:** Laws 1917, c. 191, § 1, p. 464; C.S.1922, § 2939; C.S.1929, § 46-197; R.S.1943, § 46-1,147.

An irrigation district may enter into a contract with the United States for a water supply. Frenchman Valley Irr. Dist. v. Smith, 167 Neb. 78, 91 N.W.2d 415 (1958).

Contract executed hereunder did not establish such relationship between parties as would impute negligence of the United States or its employees to the irrigation district. Livanis

v. Northport Irr. Dist., 121 Neb. 777, 238 N.W. 757 (1931), affirming on rehearing, 120 Neb. 314, 232 N.W. 583 (1930).

Reclamation service has power to take over and operate irrigation system, to protect its claims, without acquiring title. New York Trust Co. v. Farmers' Irr. Dist., 280 F. 785 (8th Cir. 1922).

#### **46-1,148. Payment of federal charges.**

The contract provisions for the payment of construction charges to the United States and the bonds securing the payment of the same, if any be issued and deposited, may be of such denominations and may call for payment of such interest not exceeding six percent per annum, and may provide for such installments and for repayment of the principal at such times as may be required by the federal laws and as may be agreed upon between the board and the Secretary of

the Interior. The contract indebtedness to the United States shall be a prior lien to any subsequent bond issue of the district.

**Source:** Laws 1917, c. 191, § 2, p. 465; C.S.1922, § 2940; C.S.1929, § 46-198; R.S.1943, § 46-1,148.

**46-1,149. Bonds; contracts; acceptance of United States guarantee.**

Any irrigation or drainage district, heretofore or hereafter organized under the laws of the State of Nebraska for irrigation or drainage purposes, is hereby authorized and empowered to enter into contract with the United States of America whereby the bonds of the district are guaranteed by the United States or financial credit is extended by the United States to the district, and for the sale, purchase or use of any canal, ditch, reservoir, rights-of-way, irrigation or drainage systems or other property owned or to be acquired for the use of such district.

**Source:** Laws 1915, c. 207, § 1, p. 461; C.S.1922, § 2949; C.S.1929, § 46-206; R.S.1943, § 46-1,149.

**46-1,150. Acceptance of act of Congress applicable to district.**

Any irrigation or drainage district organized under the laws of Nebraska is hereby authorized to accept of the provisions of any Act of Congress of the United States applicable to such district and to obligate itself to comply with such laws, rules, and regulations as may be promulgated by any department of the United States in pursuance of such acts. Irrigation or drainage districts contracting with the United States under the provisions of sections 46-1,149 and 46-1,150 shall be governed in all matters by the laws of the state relating to irrigation or drainage districts as the case may be, except in such things as may be otherwise provided for such districts.

**Source:** Laws 1915, c. 207, § 2, p. 461; C.S.1922, § 2950; C.S.1929, § 46-207; R.S.1943, § 46-1,150.

**46-1,151. Contracts with United States; judicial approval; proceedings authorized.**

The board of directors of any irrigation district heretofore or hereafter organized may, in its discretion, before or after the making of any contract with the United States or others, the levying of any assessment or the taking of any particular steps or action, commence a special proceeding in the district court of the state, in and by which the proceedings of such board and of such district leading up to or including the making of any such contract, and the validity of any of the terms

thereof, the levying of any assessment or the taking of any particular steps or action, shall be judicially examined, approved and confirmed, or disapproved and disaffirmed.

**Source:** Laws 1917, c. 192, § 1, p. 466; C.S.1922, § 2951; C.S.1929, § 46-208; R.S.1943, § 46-1,151.

Judicial approval of contract with the United States could be obtained in special proceeding in rem. Ainsworth Irr. Dist. v. Harms, 170 Neb. 228, 102 N.W.2d 429 (1960).

Contracts with United States for supply of water for irrigation require judicial approval. Frenchman Valley Irr. Dist. v. Smith, 167 Neb. 78, 91 N.W.2d 415 (1958).

Action to confirm bonds is a special proceeding in rem. Frenchman-Cambridge Irr. Dist. v. Ferguson, 154 Neb. 20, 46 N.W.2d 692 (1951).

#### **46-1,152. Contracts with United States; procedure for confirmation; powers of court.**

The practice and procedure for the confirmation of any step or action provided for in section 46-1,151 shall be as nearly as possible in conformity with the practice and procedure provided for the confirmation before the issuance and sale of bonds of irrigation districts. The court may approve and confirm such proceedings in part and disapprove and declare illegal or invalid other and subsequent parts of the proceedings, and insofar as possible the court shall remedy and cure all defects in such proceedings.

**Source:** Laws 1917, c. 192, § 2, p. 466; C.S.1922, § 2952; C.S.1929, § 46-209; R.S.1943, § 46-1,152.

Practice and procedure for approval of contract with United States is provided. Ainsworth Irr. Dist. v. Harms, 170 Neb. 228, 102 N.W.2d 429 (1960).

#### **46-1,153. Contracts with United States; borrowing money to meet obligations; powers of board.**

The board of directors of any irrigation district in this state sustaining contractual relations with the United States shall have the power to borrow funds for the purpose of making any necessary payments thereon and to pledge the credit of the district for the payment of the same. The board of directors of any irrigation district in this state shall have the power to borrow funds to meet the necessities of any unforeseen or unusual conditions arising in the operation and maintenance of the irrigation system of such district and to pledge the credit of such district for the payment thereof. The total sum borrowed by any district under the provisions of this section shall at no time exceed two-thirds the amount of the general fund levy of such district for the preceding year. If the levy for the then current year shall be insufficient to provide for the payment of the sum or sums so borrowed, then such payment shall be provided for in the levy for the year next ensuing.

**Source:** Laws 1917, c. 193, § 1, p. 467; C.S.1922, § 2953; C.S.1929, § 46-210; R.S.1943, § 46-1,153.

**46-1,154. Districts organized at least one year; proceedings validated.**

In all cases in which the county board of any county has purported to establish an irrigation district situated in whole or in part within such county, and such district has acted as an irrigation district for the period of at least one year prior to August 15, 1937, all acts and proceedings taken for the purpose of creating such district are hereby legalized, validated, and declared to be sufficient, and such irrigation district is hereby declared to be duly incorporated, and as such, said irrigation district under its corporate name shall have all the rights and privileges and be subject to all of the duties and obligations of a duly incorporated irrigation district.

**Source:** Laws 1937, c. 105, § 1, p. 365; C.S.Supp.,1941, § 46-1,108; R.S.1943, § 46-1,154.

**46-1,155. Merger of districts; petition; plan; contents.**

Any two or more irrigation districts may merge into one district if a petition for merger signed by a majority of the board of directors of each district or signed by a majority of the electors of each district is filed with the boards of directors of the districts to be merged. Such petition shall include a plan for the merger, which plan shall contain:

- (1) A description of the proposed boundaries of the merged district and a list of lands;
- (2) A summary of the reasons for the proposed merger;
- (3) A summary of the terms on which the merger is to be made between the merged districts and such terms shall include a provision for three divisions as nearly equal in size as may be practicable, which shall be numbered first, second, and third, and two directors shall be elected from each division;
- (4) The amount of outstanding indebtedness of each district and proposed disposition thereof;
- (5) The equitable adjustment of all property, debts, and liabilities among the districts involved;
- (6) The name of the proposed district; and
- (7) Such other matters as the petitioners determine proper to be included.

A certified copy of the petition for merger shall be filed with the Department of Natural Resources and the department shall either approve or disapprove such petition within twenty days. The boards of directors of the districts shall not take further action without such approval.

**Source:** Laws 1972, LB 1509, § 3; Laws 2000, LB 900, § 92.

**46-1,156. Merger of districts; outstanding bonds; consent of bondholders.**

If there are outstanding bonds of an irrigation district proposing to merge, or if such a district shall have entered into a contract with the United States, as provided in section 46-126 or 46-156, then the board shall notify the holders of such outstanding bonds that a petition for merger has been filed and the holders of such outstanding bonds may give their assent in writing to the effect that they severally consent to any merger that may be approved by the district and in case of such contract with the United States, the Secretary of the Interior shall be notified that a merger of such district is proposed and the Secretary of the Interior may assent to such merger. The assents shall be filed with the boards of directors of the districts proposed to be merged and shall be recorded in the minutes of each board and such minutes, or a certified copy thereof, shall be admissible in evidence with the same effect as an assent, but if such assent of the bondholders and, in the case of contract with the United States, such assent of the Secretary of the Interior is not filed, the board shall deny and dismiss the petition for merger.

**Source:** Laws 1972, LB 1509, § 4.

**46-1,157. Merger of districts; approval by Department of Natural Resources.**

When such plan has been approved by the Department of Natural Resources, it shall be designated as the final approved plan and shall be submitted to a vote as provided in section 46-1,158.

**Source:** Laws 1972, LB 1509, § 5; Laws 2000, LB 900, § 93.

**46-1,158. Merger of districts; special election; notice.**

Not less than thirty days nor more than sixty days after the designation of the plan as the final approved plan, the proposition of the adoption or rejection of such proposed plan of merger shall be submitted by the boards of directors at a special election to all the electors of the irrigation districts which will be affected by the merger plan. Notice of such election shall be given by posting a notice in three public places in each election precinct in each district affected by the merger for at least twenty days, and also by publication of such notice in a newspaper of general circulation in the county where the office of the board of directors of each district affected by the merger is required to be kept once a week for three successive weeks.

**Source:** Laws 1972, LB 1509, § 6.

**46-1,159. Merger of districts; election; notice; contents.**

The election notice shall:

(1) State that the election has been called for the purpose of affording the electors an opportunity to approve or reject the plan of merger;

(2) Contain a description of the boundary of the proposed district;

(3) Contain a statement giving a summary of the reason for the proposed merger including a summary of the terms on which the merger is to be made, and the amount of outstanding indebtedness of each district;

(4) State the equitable adjustments of all property, debts and liabilities among the districts involved;

(5) State the name of the proposed district;

(6) Contain such other matters as are set out in the merger plan;

(7) Specify the time of holding the election; and

(8) Name the directors of the districts to be merged who shall constitute the first board of directors of the new district.

**Source:** Laws 1972, LB 1509, § 7.

**46-1,160. Merger of districts; election; ballots; canvass; board of directors.**

The board of directors of the irrigation districts to be merged shall provide ballots to be used at such election. The return of the election, together with the ballots cast thereat, shall be certified by the boards of election of such districts to the persons who will serve as the board of directors of the merged district if the merger is approved, within three days after the election or within three days after the deadline to submit ballots by mail, as the case may be, which board shall, on or before the third day after the election, canvass such returns and declare the result of such election, which result shall be at once recorded by the secretary of the board of directors in the records of the district boards and certified to the county clerk. The election and the return thereof shall otherwise be conducted in accordance with sections 46-115 to 46-118.

**Source:** Laws 1972, LB 1509, § 8; Laws 2015, LB 561, § 13.

**46-1,161. Merger of districts; board of directors; term of office; election.**

The directors serving on the boards of directors of such merging districts shall constitute the first board of directors of the new district if the merger is approved. Such board of directors shall determine a method of setting the terms of office, so that two directors' terms on the new board shall be for one year, two for two years and three for three years. Each year thereafter two directors shall be elected for a term of three years.

**Source:** Laws 1972, LB 1509, § 9.



**46-1,162. Merger of districts; election; effect.**

If at such election a majority of all votes cast at the election in each district are not in favor of such merger, the merger plan shall be defeated and shall not be placed in effect. If at such election a majority of all votes cast at the election in each district shall be in favor of such merger, the merger shall be effective immediately and the merged district shall assume all rights, assets and liabilities of the merged districts.

**Source:** Laws 1972, LB 1509, § 10.

**46-1,163. Merger of districts; indebtedness; responsibility; succession to property.**

Whenever two or more districts are involved in a merger plan, such districts shall continue to be responsible for any indebtedness incurred before the merger takes place unless a different arrangement is included in the plan voted upon by the electors; *Provided*, that when the voters approve such merger, the merged district shall succeed to all the property, contracts and obligations of all the districts so merged into it and shall assume all of their valid contracts and obligations.

**Source:** Laws 1972, LB 1509, § 11.

**46-1,164. Surface Water Irrigation Infrastructure Fund; created; use; investment.**

There is hereby created the Surface Water Irrigation Infrastructure Fund to be administered by the Department of Natural Resources. The fund shall be used to provide grants in accordance with section 46-1,165 to irrigation districts. There shall be a one-time transfer of fifty million dollars from the Cash Reserve Fund to the Surface Water Irrigation Infrastructure Fund to carry out the purposes of section 46-1,165. Any money in the Surface Water Irrigation Infrastructure Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Investment earnings from investment of money in the fund shall be credited to the fund.

**Source:** Laws 2022, LB1012, § 9; Laws 2023, LB818, § 11.

**Effective Date: May 25, 2023.**

**Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

**Nebraska State Funds Investment Act**, see section 72-1260.

**46-1,165. Surface water irrigation infrastructure; grants; matching funds.**

The Department of Natural Resources shall establish procedures and criteria for awarding grants to irrigation districts from the Surface Water Irrigation Infrastructure Fund to be used for repair or construction of any headgate, flume, diversion structure, check valve, or any other physical structure used for irrigation projects. The department may award grants, not to exceed five million dollars per applicant, to an irrigation district that applies to the department based on

criteria and procedures established by the department. In order to receive a grant under this section, a grant applicant shall provide matching funds equal to ten percent of the grant amount awarded for such project.

**Source:** Laws 2022, LB1012, § 10.

## CHAPTER 46

### ARTICLE 3

#### GENERATION OF ELECTRIC LIGHT AND POWER IN CONNECTION WITH WATER APPROPRIATION

##### **46-301. Irrigation districts; establishment of electric light and power systems; powers.**

Irrigation districts organized under the laws of Nebraska are hereby authorized and empowered to make application for and secure and hold appropriations of water for the purpose of generation of electric light and power in connection with any such appropriation of water. Any irrigation district now or hereafter organized under the laws of this state is hereby authorized, subject to the provisions of sections 46-301 to 46-315, to acquire, by purchase, lease or otherwise, construct, extend, improve, manage and operate, electric light and power plants, lines and systems, and all machinery, equipment and other property, real or personal, connected therewith or incident thereto; to manufacture, produce, generate and transmit, distribute, purchase or sell electrical energy for lighting, heating and power purposes; to adopt, use and employ in the generation and production of electrical energy, water power, steam power, and any other practicable means or method; to extend any such plant, lines and systems within and without the boundaries of the irrigation district; and to connect, interconnect and operate such electric light and power plants, lines, systems, and service with those of any other irrigation district or districts or with those of any one or more cities, villages, or public electric light and power districts of this state, or with those of the government of the United States.

**Source:** Laws 1931, c. 91, § 1, p. 252; C.S.Supp.,1941, § 46-701; R.S.1943, § 46-301.

##### **46-302. Electric light and power system; construction or acquisition by resolution; procedure.**

Whenever the board of directors of any irrigation district shall, by resolution, determine that it is to the interest, convenience, and welfare of the district that the district, under sections 46-301 to 46-315, purchase, construct, or otherwise acquire, operate, and maintain any electric light and power plant, lines, or systems, whether as an addition, extension, enlargement, alteration, or reconstruction of any site, irrigation works, or other property owned or controlled by the district, or as a plant, lines, or system independent of works or property already owned or controlled by the district, the board of directors shall thereupon prepare comprehensive written plans, statements, and reports setting out the nature, location, and description of the proposed plant, lines, and system, including method or methods of generation or acquisition, the location of transmission lines, the use of other sites, properties, and works already owned or controlled by the district, estimated costs of acquisition and construction, the method or means of financing the proposed plan and project, the amount of bonds, if any, proposed to be issued in connection therewith, and such other data as the Department of Natural Resources shall prescribe. The expense thereof may be authorized by any special meeting or at the annual meeting of such district. Such plans, statements, and reports,

including a copy of such resolution, shall be duly certified by the board of directors and shall be thereupon submitted to the department for its examination as set forth in section 46-304.

**Source:** Laws 1931, c. 91, § 2, p. 253; C.S.Supp.,1941, § 46-702; R.S.1943, § 46-302; Laws 2000, LB 900, § 160.

**46-303. Electric light and power system; construction or acquisition by petition; procedure.**

In lieu of the resolution of the board of directors and the preparation and submission by the board of plans, reports, and statements as provided in section 46-302, a petition containing and setting forth the data and information required in such section concerning the proposed electric light and power plant, lines, and systems may be presented to the Department of Natural Resources, signed by not less than twenty percent of all the qualified electors of the district. Such petition shall declare that, in the opinion of the petitioners, it is to the interest, convenience, and welfare of the district that the district, under sections 46-301 to 46-315, adopt substantially the plan or method set out in the petition for the establishment, acquisition, and operation by the district of electric light and power plant, lines, and systems. The petition shall contain the affidavit of the person or persons who circulated the same, certifying that each name signed thereto is the true signature of the person whose name it purports to be and that the person is a qualified elector of the district.

**Source:** Laws 1931, c. 91, § 3, p. 254; C.S.Supp.,1941, § 46-703; R.S.1943, § 46-303; Laws 2000, LB 900, § 161.

**46-304. Electric light and power system; construction or acquisition; examination and report by Department of Natural Resources.**

Upon receipt by the Department of Natural Resources of the plans, reports, and statements provided for in section 46-302 or of the petition provided for in section 46-303, the department shall examine the proposed plan and project, make an estimate of the probable cost thereof, and make such further examination and investigation concerning the same as the department shall deem necessary or advisable. If the department deems the proposed plan and project feasible and practicable, either as originally submitted or as changed and amended by the department, the department shall then file with the board of directors of the irrigation district concerned its report in the matter, which report shall include a complete explanation of the proposed project, the plans and maps showing location of the project, the estimated cost of the project, and the probable receipts from the sale of electric energy, and the certificate of the department that the project has been examined and deemed feasible and practicable by the department.

**Source:** Laws 1931, c. 91, § 4, p. 254; C.S.Supp.,1941, § 46-704; R.S.1943, § 46-304; Laws 2000, LB 900, § 162.

**46-305. Electric light and power system; construction or acquisition; election required; procedure; vote required; effect of affirmative vote.**

Upon the filing of the data and certificates with the board of directors of the district, the board of directors and the other proper officers of the district shall submit the proposed plan and project to the qualified electors of the district for their approval or rejection, at a general election or at a special election called for that purpose, the submission of proposition and all matters pertaining to such election to conform, including notice of election, as nearly as may be, and except as otherwise expressly provided in sections 46-301 to 46-315, to the provisions of law governing elections upon propositions for the issuance of bonds of the district. The report of the Department of Natural Resources and all other data and information on file with the board of directors or the officers of the district shall be subject to inspection at all reasonable business hours by any elector of the district, or other interested persons, for the entire period during which notice of the election shall be published. Such question and proposition shall be thus submitted by ballots upon which shall appear, in a clear, fair, and concise manner, a statement of the nature and description of the proposed project, and, if such proposition includes the issuance of bonds of the district, there shall also appear upon the ballots a general description of such bonds, including principal amount, rate of interest and when payable, date of issuance, and date of maturity. At the bottom of the ballots substantially the following form shall appear:

FOR the adoption of the foregoing plan and project (and issuance of bonds of the district).

AGAINST the adoption of the foregoing plan and project (and the issuance of bonds of the district).

If a majority of the ballots cast on such proposition are in favor thereof, the board of directors shall declare the same adopted, and the board of directors of the district shall proceed forthwith to put such plan and project into effect, including the issuance of bonds of the district if included in the proposition submitted at the election, the levy and collection of taxes and assessments to pay such bonds and interest thereon, and the execution of all contracts proper or incident to the consummation of such plan and project.

**Source:** Laws 1931, c. 91, § 5, p. 254; C.S.Supp.,1941, § 46-705; R.S.1943, § 46-305; Laws 1971, LB 534, § 28; Laws 2000, LB 900, § 163.

**Cross Reference**

**Issuance of bonds,** election, see section 46-194.

**46-306. General provisions of irrigation law applicable.**

All general provisions of the law of this state pertaining to the acquisition, construction, management, control, and payment of the cost of property and works of irrigation districts, including the levy and collection of taxes and assessments, shall be applicable, as nearly as may be, and except as herein otherwise expressly provided, to any and all electric light and power

plants, lines and systems, constructed, purchased or otherwise acquired and operated under the provisions of sections 46-301 to 46-315.

**Source:** Laws 1931, c. 91, § 6, p. 255; C.S.Supp.,1941, § 46-706; R.S.1943, § 46-306.

**46-307. Operation of lines beyond district boundaries; powers of district; cost payable out of earnings.**

Any irrigation district in this state which, pursuant to the authority conferred upon it by sections 46-301 to 46-315, shall own or operate, or hereafter acquire or establish any electric light and power plant, distribution system, or transmission lines, may extend and operate the same beyond its boundaries, and for that purpose is hereby authorized and empowered to construct, purchase, lease or otherwise acquire, and to maintain, improve, extend and operate electric light and power plants, distribution systems, and transmission lines outside the boundaries of such district, for such distance and over such territory within this state as may be deemed expedient. In the exercise of the powers granted by this section any such district by its board of directors may enter into contracts to furnish and sell electrical energy to any person, firm, association, public or private corporation, municipality or public electric light and power district. No such construction, purchase, lease, acquisition, improvement or extension of any such additional plant, distribution system, or transmission lines, however, shall be paid for except out of the net earnings and profits of one or more or all of the electric light and power plants, distribution systems, and transmission lines of such district. The provisions of this section shall be deemed cumulative and the authority herein granted shall not be limited or made inoperative by any other provision of law for the extension and financing of such plants, lines or systems.

**Source:** Laws 1931, c. 91, § 7, p. 256; C.S.Supp.,1941, § 46-707; R.S.1943, § 46-307.

**46-308. Issuance of debentures pledging earnings; powers of district; judicial confirmation not required.**

In lieu of the issuance of bonds or the levy of taxes or assessments as otherwise by law provided, and in lieu of any other lawful methods or means of providing for the payment of indebtedness, any irrigation district within this state shall have the power and authority, by and through its board of directors, to provide for or to secure the payment of the cost or expense of purchasing, constructing or otherwise acquiring, extending and improving any real or personal property necessary or useful in its operation of any electric light and power plant, distribution system, or transmission lines, by pledging, assigning, or otherwise hypothecating the net earnings or profits of such irrigation district derived, or to be derived, from the operation of such electric light and power plant, distribution system, or transmission lines, and to that end, to enter into such contracts and to issue such warrants or debentures as may be proper to carry out the provisions of this section. All earnings, profits, and revenue thus pledged, assigned or hypothecated shall be kept in separate funds to be expended for the specific purposes aforesaid, until such indebtedness shall

have been fully paid. Warrants or debentures issued under the provisions of this section shall not be subject to the provisions of law requiring the judicial examination of the issuance and sale of bonds of the district.

**Source:** Laws 1931, c. 91, § 8, p. 256; C.S.Supp.,1941, § 46-708; R.S.1943, § 46-308.

**46-309. Proposals in conflict with original project; vote of electors a condition precedent to adoption.**

No power conferred upon the district under the provisions of sections 46-301 to 46-315 shall be exercised if in express conflict with the original plan or project submitted to the vote of the electors of the district under the provisions of sections 46-302 to 46-305, unless and until approved by the affirmative vote of a majority of the qualified electors of the district at any general election or at a special election called for the purpose. At such election the notice of the election, conduct of the election and canvass of votes shall so far as practicable conform to the foregoing provisions for elections held for the purpose of the initial establishment or acquisition, by the district, of electric light and power plant, lines or systems.

**Source:** Laws 1931, c. 91, § 9, p. 257; C.S.Supp.,1941, § 46-709; R.S.1943, § 46-309; Laws 1971, LB 534, § 29.

**46-310. Rates and charges for electric current; rules and regulations of system.**

Any irrigation district which shall acquire, establish and operate any electric light and power plant, lines or systems under the provisions of sections 46-301 to 46-315 shall have the power to fix and collect reasonable rates, fees, and charges for electric current, service, equipment, and physical connection sold or furnished to consumers, and to make and enforce reasonable rules and regulations for the operation and conduct of the entire electric light and power system of the district.

**Source:** Laws 1931, c. 91, § 10, p. 257; C.S.Supp.,1941, § 46-710; R.S.1943, § 46-310.

**46-311. Sale, lease, or transfer; law applicable.**

All provisions of law pertaining to any sale, lease or transfer of any electric light and power plant, distribution system or transmission lines by cities, villages, and public electric light and power districts to any private person, firm, association or corporation, shall be applicable, as nearly as may be, to irrigation districts which shall acquire, establish or own any such plant, lines or system.

**Source:** Laws 1931, c. 91, § 11, p. 258; C.S.Supp.,1941, § 46-711; R.S.1943, § 46-311.

**46-312. Extension; pledged net proceeds inadequate; bonds; how issued.**

If at any time after the initial acquisition or establishment by any irrigation district of an electric light and power plant, lines, or systems the Department of Natural Resources deems it to be practicable and expedient that additional plants, lines, or systems, or extensions or improvements of the existing electric light and power plant, lines, or systems, should be made by the district, and if the cost of such additions and extensions cannot be made or provided for by the application of unused funds derived from the operation of the existing electric light and power plant, lines, or systems or by the pledge or assignment of future net revenue as in sections 46-301 to 46-315, then the board of directors may, and on the petition of not less than twenty-five percent of the qualified electors of the district shall, submit to the electors of the district at any general election or at any special election called for the purpose, the question and proposition of making such improvements, additions, or extensions and the issuance of bonds of the district to pay the cost thereof. A statement of the department with reference to the expediency and feasibility of such proposed extension and addition shall be made by such department to the irrigation district whenever requested by the board of directors of such district. Such election shall be held and the result thereof determined and declared in conformity with the provisions of law governing elections upon the proposition of the issuance of bonds of the district. Complete plans and a description of the proposed additions, improvements, changes, or extensions shall be prepared and kept on file in the main office of the district or of the board of the district, subject to inspection by any elector or other interested person, at all reasonable business hours during the period of publication of notice of such election. The ballots at such election shall conform, as nearly as practicable, with the requirements of section 46-305.

**Source:** Laws 1931, c. 91, § 12, p. 258; C.S.Supp.,1941, § 46-712; R.S.1943, § 46-312; Laws 2000, LB 900, § 164.

**46-313. Eminent domain; use of highways; construction and operation; general law applicable.**

All general provisions of law applicable to electric light and power corporations and irrigation districts which pertain to the exercise of the power of eminent domain, the use and occupation of public highways, and the manner or method of construction and physical operation of plants, systems, and transmission lines shall be applicable, as nearly as may be, to irrigation districts in their exercise of the powers and functions, and in their performance of the duties conferred or imposed upon them under the provisions of sections 46-301 to 46-315.

**Source:** Laws 1931, c. 91, § 13, p. 259; C.S.Supp.,1941, § 46-713; R.S.1943, § 46-313.

**Cross Reference**

**For eminent domain procedure,** see Chapter 76, article 7.



**46-314. Profits from sale of electricity; how used.**

All net profits derived from the sale of electrical energy under the provisions of sections 46-301 to 46-315 shall belong to the irrigation district producing it, and may be used by such district to pay its operation and maintenance expense, its bonded indebtedness, if any, or other debts, or for improvements and additions.

**Source:** Laws 1931, c. 91, § 14, p. 259; C.S.Supp.,1941, § 46-714; R.S.1943, § 46-314.

**46-315. Use of water for hydroelectric plant; rights of irrigation district.**

Every irrigation district in this state shall have the exclusive right to make application to the Department of Natural Resources for the use of all water used for irrigation purposes and all return flow and seepage water from irrigated land in its district for the purpose of operating hydroelectric plants under sections 46-301 to 46-315.

**Source:** Laws 1931, c. 91, § 15, p. 259; C.S.Supp.,1941, § 46-715; R.S.1943, § 46-315; Laws 2000, LB 900, § 165.