

WESTERN AUSTRALIA.

LAND DRAINAGE.

16° Geo. V., No. XLIII.

No. 43 of 1925.

(Affected by Acts No. 15 of 1945, 62 of 1947 and 113 of 1965.)

[As amended by Acts:

No. 43 of 1941 assented to 2nd January, 1942;

No. 73 of 1954¹ assented to 14th January, 1955;

and reprinted pursuant to the Amendments Incorporation Act, 1938.]

AN ACT to provide for the Drainage of Land and the Constitution of Drainage Districts and Boards, and for other relative purposes.

[Assented to 31st December, 1925.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I.—PRELIMINARY.

1. This Act may be cited as the *Land Drainage Act, 1925-1954*, and shall come into operation on a day to be fixed by proclamation.

Short title and commencement.
Amended by No. 73 of 1954, S.5.

2. This Act is divided into parts and divisions, as follows:—

Division of Act.

PART I.—PRELIMINARY, Sections 1-6.

PART II.—GENERAL ADMINISTRATION, Sections 7-10.

PART III.—DRAINAGE DISTRICTS, Sections 11-14.

¹ Came into operation 1st March, 1955; see *Gazette* 18/2/55, p. 343.

Land Drainage.

PART IV.—DRAINAGE BOARDS—

Division 1.—Constitution of Boards, Sections 15-20.

Division 2.—Disqualification of Members, Sections 21-23.

Division 3.—Election and Retirement of Members, Sections 24-29.

Division 4.—Qualification of Electors, Sections 30-34.

Division 5.—Elections, Section 35.

Division 6.—Ouster from Office, Section 36.

PART V.—PROCEEDINGS OF THE BOARD, Sections 37-59.

PART VI.—THE CONSTRUCTION AND MAINTENANCE OF WORKS, Sections 60-71.

PART VII.—REVENUE.

Division 1.—Rateable Property, Section 72.

Division 2.—Valuations, Sections 73-80.

Division 3.—Rates, Sections 81-96.

Division 4.—Appeals, Sections 97-99.

Division 5.—Liability for and Recovery of Rates, Sections 100-114.

PART VIII.—FINANCE, Sections 115-136.

PART IX.—ACCOUNTS AND AUDIT, Sections 137-147.

PART X.—BY-LAWS AND REGULATIONS, Sections 148-151.

PART XI.—OFFENCES AND MISCELLANEOUS, Sections 152-177.

Repeal.

3. The Land Drainage Act, 1900, and the Land Drainage Amendment Act, 1902, and section one hundred and sixty-eight of the Road Districts Act, 1919, are hereby repealed.

Validation of official acts and proceedings under repealed enactments.

4. (1) All drainage districts heretofore at any time declared, or purporting to be declared, and all drainage boards and members of drainage boards at any time appointed or elected, or purporting to be appointed or elected under the Land Drainage Act, 1900, shall be deemed to have been duly declared appointed or elected, and every such

board or supposed board shall be deemed to have been a validly constituted board for all purposes whatsoever.

(2) No act or proceeding at any time heretofore done or taken or purporting to be done or taken by any drainage board, or by any committee or by any person acting as a member of such board, shall be invalidated in consequence of there being a vacancy in the number of the members at the time of such act or proceeding, or by reason of the existence of any defect or informality in or in connection with such act or proceeding.

(3) All rates heretofore at any time made or levied or purporting to be made or levied by any board, or by the Minister for Water Supply, Sewerage, and Drainage, for any drainage district shall be deemed to have been lawfully made and levied, and all things necessary to be done in and towards the making or levying of any such rates shall be deemed to have been duly performed notwithstanding any failure to comply with any of the provisions of the said Act or any other law, and the said rates may be recovered accordingly as if all legal provisions relating thereto had been in all respects complied with.

(4) Every sum remaining unpaid at the commencement of this Act in respect of any such rates shall be payable and be deemed to have been payable by the person who was owner of the land rated at the time when the rate was imposed, and shall be recoverable under this Act accordingly, and the provisions of Division 5 of Part VII of this Act shall apply and be deemed to have applied thereto and in respect thereof.

(5) All contracts hitherto made, to which a board is party, and all debts contracted and debentures issued by a board, which, if this Act had been in force, would have been valid and binding, are ratified as if this Act had been in force when such contracts were made and such obligations were undertaken.

All matters and things subsisting under repealed Acts to enure for this Act.

5. Every district, board, office, regulation, rule, by-law, instrument, book, document, valuation, imposition of rate, proclamation, order-in-council, notice, declaration, determination, vote, appointment and election and every act of authority and other act, matter or thing which was subsisting or operative or is by virtue of this Act deemed to have been subsisting or operative immediately before the commencement of this Act, under or for the purposes of any statutory provision which is hereby repealed and hereby re-enacted with or without modification, shall, subject to this Act, subsist and enure for the purposes of this Act as fully and effectually as if it had originated under the corresponding provision hereof, and accordingly shall, when necessary, be deemed to have so originated, and this Act shall apply thereto accordingly.

Interpretation.
Amended by
No. 43 of
1941, S.2.

6. In this Act, subject to the context—

“Adjoining,” as applied to pieces of land, extends to pieces of land which are separated merely by a road or highway, or water course owned by the Crown;

“Board” means a drainage board;

“Chairman” means the chairman of a board, and includes any deputy or acting chairman;

“Crown lands” means waste lands of the Crown not granted or contracted to be granted in fee simple or held or occupied under conditional terms of purchase or with any right to acquire the fee simple;

“Crown Lease” means any lease from the Crown of Crown lands, excluding—

- (a) any instrument executed or issued pursuant to any contract or arrangement with the Crown by virtue whereof lands are held or occupied on conditional terms of purchase or with any right to acquire the fee

simple; and

- (b) a miner's homestead lease; and
- (c) any lease under the Workers' Homes Act, 1911¹; and
- (d) any instrument by virtue whereof lands are held or occupied subject to the payment of a peppercorn or nominal rental;

"District" means a drainage district;

"Drain" includes every channel, gutter, ditch, tunnel, pipe, cutting, or passage on, above, or underground, constructed, used, or intended to be used for draining or diverting water from land, except a navigable river, and except a main or branch water-race made for the supply of any reservoir, dam, or pit for the conservation of water;

"Financial year" in relation to the rating and financial transactions of a board means the financial year as prescribed from time to time by by-law made by such board under this Act;

"Local Authority" means a council of a municipality or a road board or a local board of health;

"Main Drain" means any drain declared by the Minister by notice in the *Gazette* to be a main drain;

"Member" means a member of the Board;

"Minister" means the Minister of Water Supply, Sewerage, and Drainage, or such other member of the Executive Council as the Governor may appoint to administer this Act;

"Occupier" means the person by whom or on whose behalf any land is actually occupied or, if there is no actual occupant, the person entitled to possession;

¹ Repealed by State Housing Act, 1946.

“Owner” as applied to the land means—

(1) Any person who is in possession as—

- (a) the holder of a legal or equitable estate of freehold in possession therein (including any estate or interest under any contract or arrangement with the Crown or any other person by virtue whereof the land is held or occupied with a right to acquire the fee simple by purchase or otherwise); or
- (b) a tenant of the Crown or of any lessor who is not liable for the payment of the rates imposed on the land under this Act; or
- (c) a mortgagee of the land; or
- (d) a trustee, attorney, or authorised agent of any such holder, lessee, or mortgagee:

Provided that if there is no such person in possession, the term means the person who is entitled to possession in any of the aforesaid capacities, except that of mortgagee, and that for the purposes of this definition, receipt of the rents and profits is equivalent to possession;

(2) Any person who, under a lease, license, or concession relating to any specific Crown land, has the right of taking any profit of the land;

“Ratepayer” means the owner of rateable land who is rated or liable to be rated in respect thereof;

“Water-course” means a river, stream, or creek in which water flows in a natural channel, whether permanent or intermittently;

“Work” or “Drainage Works” includes drains, floodgates, and walls or other defences against water made or used or intended to be used for draining or diverting water from land, and extends to tunnels, engines, buildings, pipes, or other things appurtenant thereto or used or intended to be used in connection therewith.

PART II.—GENERAL ADMINISTRATION.

7. The general administration of this Act shall be under the control of the Minister.

General control by Minister.

8. This Act shall be deemed to be mentioned in Part II. of the Schedule to the Water Supply, Sewerage, and Drainage Act, 1912, and that Act and its amendments shall have effect accordingly.

Application of Water Supply, Sewerage, and Drainage Act, 1912.

9. (1) The Minister may exercise within any district all the powers and authorities, except the power to borrow money, and shall have all the immunities conferred by this Act on a board—

Minister may exercise the powers of a board. Amended by No. 43 of 1941, S.3.

- (a) until the constitution of a board for such district; and
- (b) after the dissolution of the board for such district; or
- (c) if a board fails to carry out its duties to the satisfaction of the Minister.

(2) Whenever the Minister in pursuance of paragraph (c) of subsection (1) exercises for the time being the powers and authorities of a board, the board shall not be dissolved, but its functions shall be temporarily suspended.

(3) If any drain, not within the boundaries of a drainage district, is declared by Order in Council to be a State drain, the Minister may exercise the powers and authorities and shall have the immunities of a board under Parts VI., VII., VIII., IX., X., and XI. of this Act, within an area defined by the same or any subsequent Order in Council and declared to be land that benefits by the construction of the drain, and such area shall, for

such purposes, be deemed a district within the meaning of this Act.

(3a) If any drain or works has or have been constructed, partly constructed or improved by the Crown, whether before or after the commencement of this Act, in any portion of the State at a time when such portion of the State was not comprised in a drainage district constituted under any Act repealed by this Act or under this Act, and since the construction, partial construction or improvement of such drain or works the portion of the State in which it, or they, has, or have been constructed, partly constructed or improved as aforesaid, has been or hereafter shall be constituted a drainage district under this Act, or if any drain or works has or have prior to the commencement of this subsection been constructed, partly constructed or improved by the Crown in any portion of the State which at the time of the construction, partial construction or improvement of such drain or works, was a drainage district under any Act repealed by this Act, or under this Act, and in order to resolve any doubt as to whether such drain or works aforesaid has or have either under this Act or any other Act been vested in the board of such drainage district, or in the Minister, as the case may be, any such drain or works aforesaid shall, for all the purposes of this Act, be deemed to have been constructed under the provisions of this Act by the board of such drainage district, or, where there is no board by the Minister, and shall be deemed to be vested in the said board or in the Minister, as the case may be, and the provisions of this section and all other sections of this Act shall apply in relation to such drain or works accordingly.

(4) The provisions of this section shall apply, and be deemed to have applied in respect of any district the board whereof was dissolved before the commencement of this Act.

(5) The Minister may from time to time appoint any person or any persons, jointly or severally, to be his deputy or deputies within any district, for the purpose of exercising, during the pleasure of the Minister, such of his powers and authorities under

this section as he thinks fit to assign to such deputy or deputies, subject to any limitations expressed or directions given by the Minister; but the appointment of such deputy or deputies shall not affect the exercise by the Minister himself of any power or authority.

10. The Governor may from time to time, subject to the Public Service Act, 1904, and its amendments, appoint such officers and servants as may be necessary for the administration of this Act.

Appointment of officers and servants.

PART III.—DRAINAGE DISTRICTS.

Constitution and abolition of drainage districts.

11. The Governor may, by Order in Council—
- (a) constitute any defined portion of the State a drainage district for the purposes of this Act;
 - (b) specify the boundaries of such district;
 - (c) assign a name to such district;
 - (d) abolish any district.

12. (1) The Governor may at any time, by Order in Council, do any of the following things:—

Governor in Council may by Order, alter boundaries of districts, etc.

- (a) Unite any two or more districts so as to form one district;
- (b) Subdivide any district and constitute thereout two or more districts;
- (c) Excise any portion of a district;
- (d) Add any portion excised from a district to any other district;
- (e) Extend any district by the addition thereto of any land that has not theretofore formed part of a district;
- (f) Apportion, settle, adjust, and determine the extent of the respective interests, powers and obligations of the several bodies or authorities affected in regard to any property, income, assets, rights, liabilities, or jurisdiction in any case of the union or subdivision of districts or of excision from or addition to any district;
- (g) Repeal, vary, or amend any of the provisions of any previous order relating to any district.

Exercise of
connected
power by
one order.

(2) When the exercise of any power in this section would be rendered necessary or possible by the exercise of any other power, then both or all such powers may be exercised by the same Order in Council.

Effect as to
by-laws.

13. On the exercise of any of the powers conferred by section twelve, all by-laws in force in any district or any affected portion thereof at the date of the exercise of the power shall remain in force within the area within which they were so in force until they are lawfully repealed.

Effect on
boards,

14. (1) On the exercise of any power under paragraph (a) or (b) of section twelve the members of the board of any district affected shall vacate their offices, and a board shall be constituted for the new district or districts created by the Order in Council, in manner set out in Part IV. of this Act.

(2) On the exercise of any power under paragraph (c), (d) or (e) of the said section, the Governor may by Order in Council declare and direct whether the board of any district affected shall be reconstituted, and, if so, to what extent, and may, subject to this Act, order, settle, adjust, and finally determine any rights, liabilities, questions, and matters regarding the representation of electors on any such board and the constitution of the board:

Provided that when a district of which an irrigation or road board is the board has been so altered by the exercise of any power that it is no longer coterminous with or comprised in the irrigation or road district, then the irrigation or road board shall, unless the Governor otherwise orders, cease to be the board thereof.

PART IV.—DRAINAGE BOARDS.

Division 1.—Constitution of Boards.

Drainage
Boards.

15. (1) The Governor may, by Order in Council, direct that for any drainage district there shall be a drainage board to be constituted under and subject to the provisions of this Act.

(2) The provisions of this section extend to any district the board whereof has been abolished, or for which there are no members of a board in office.

16. The members of every board in office at the commencement of this Act shall, subject to this Act and unless sooner abolished or superseded, continue in office till the day fixed or determined under section twenty-five for the holding of an election, and shall vacate their seats at the end of that day, and the board shall be reconstituted on that day in manner set out in the next succeeding section.

Members of existing Board.

17. (1) Every board constituted after the commencement of this Act shall consist of such number of members, being three or a multiple of three, as the Governor shall by the order constituting the board determine.

Constitution of Boards.

(2) Every adult person who is a natural born or naturalised subject of the King and a registered elector in respect of rateable land within a district, and who is not disqualified by any of the provisions hereinafter set out, shall be qualified to be elected and to act as a member of the board of such district.

(3) Where an elector in respect of any rateable land is qualified to be elected as a member of a board, any attorney, agent, or business manager of such elector shall, subject to the provisions hereinafter set out, be qualified to be elected and to act as a member of the board if such ratepayer does not reside on the land.

18. Every board shall be a body corporate, with perpetual succession and a common seal, and may purchase or otherwise acquire and hold land for the purposes of this Act, and sue and be sued.

Board to be a body corporate.

19. Every court or magistrate shall take judicial notice of the existence and incorporation of every board.

Judicial notice of Board.

Irrigation or
Road
Boards may
be appointed
Drainage
Boards in
certain
cases.

20. (1) Notwithstanding anything in section seventeen, the Governor may by Order in Council direct that any irrigation board or road board shall constitute the drainage board for any district which is coterminous with or comprised in the irrigation or road district of such irrigation or road board, and may at any time revoke such order.

(2) Every appointment heretofore made under section one hundred and sixty-eight of the Road Districts Act, 1919, shall after the commencement of this Act have effect as if it were an Order in Council under this section.

(3) An existing drainage board may be superseded by an order made under this section appointing an irrigation or road board to be the board of the district, and such irrigation or road board shall be deemed to be the successor of the superseded board.

(4) The constitution and powers under any other Act of an irrigation or road board shall not be affected by its abolition as a drainage board or the cessation of its powers under this Act.

(5) Divisions two to six (inclusive) of this Part do not apply to boards and members of boards holding office by virtue of this section.

Division 2.—Disqualification of Members.

Disqualifi-
cations.

21. Any person who—

- (1) is an undischarged bankrupt; or
- (2) is of unsound mind; or
- (3) is the holder of any office of profit under the board; or
- (4) has any direct or indirect pecuniary interest in any agreement with the board otherwise than as a member, and in common with the other members, of an incorporated company consisting of at least twenty members,

shall be incapable of being elected or acting as a member of a board:

Provided that paragraph four shall not apply to any person because he—

- (a) in the ordinary course of business and not pursuant to any written contract, *bona fide* sells goods to, or does work for, the board; or
- (b) rents from the board for entertainments or business purposes any building, hall, or room; or
- (c) is the lessee from the board of any land; or
- (d) is beneficially interested in any newspaper in which the board inserts advertisements.

But no member claiming exemption under this proviso shall take part in any discussion, or vote on any question, relating to any such matter as is therein mentioned in which he is directly or indirectly interested.

22. (1) If a member of a board—

- (i) dies or ceases to be a subject of the King or to be otherwise qualified as provided in section seventeen; or
- (ii) becomes subject to any of the disabilities mentioned in the last preceding section; or
- (iii) accepts, whether by assignment, composition, or otherwise, any such relief as is afforded by law to bankrupt or insolvent debtors; or
- (iv) by notice under his hand delivered to the chairman or secretary of the Board resigns his office; or
- (v) is declared ousted of such office by a magistrate, whether or not he was entitled to have been declared by the returning officer to be elected; or

Supervening
disqualifica-
tions.

- (vi) is absent from three or more consecutive ordinary meetings of the board without leave obtained from the board in that behalf,

his place shall thereupon become vacant, and such vacancy shall be deemed to be an extraordinary vacancy.

(2) The non-attendance of a member at the time and place appointed for any ordinary meeting of the board shall not be deemed absence from an ordinary meeting of the board within the meaning of this section—

- (a) unless a meeting of the board at which a quorum is present is actually held on that day; or
- (b) while any proceeding in connection with the ouster from office of such member is pending in any Court.

Penalty for acting when disqualified. Amended by No. 113 of 1965, s. 3.¹

23. (1) Every person declared by this Act to be incapable of acting as a member of a board shall, if he so acts, be guilty of an offence against this Act, save in the case of incapacity proceeding from unsoundness of mind.

Daily penalty: Four dollars.

(2) All acts and proceedings of any person elected or returned as elected and acting as a member, notwithstanding that any such person has not been or is not duly qualified or elected, or ought not so to act, shall be as valid and effectual as if such person had been duly qualified and elected and authorised to act.

Division 3.—Election and Retirement of Members.

First elections.

24. The first election of members of a newly constituted board, and (except as hereinafter provided) any election to fill all the elective places on the board, shall be held on such day as the Minister may appoint.

¹ Decimal Currency Act, 1965.

25. Any election of members required on the reconstitution of every board under section sixteen shall be held on the second Saturday in April, one thousand nine hundred and twenty-six, or on such later date in any district as the Minister may determine for that district.

Election on reconstitution of elective board.

26. An election to supply the vacancies on any board occasioned by every periodical retirement of members hereinafter provided for shall, subject to this Act, be held on the day of such retirement.

Periodical elections.

27. (1) Except as hereinafter provided, on the second Saturday in April in every year, one-third of the elective members shall go out of office by rotation.

Annual retirement of members.

(2) The members to go out of office shall be the members who have been longest in office without re-election.

(3) Except as in this Act otherwise provided, any member elected to fill an extraordinary vacancy shall be deemed for the purposes of this section to have been elected when his immediate predecessor was elected, and shall retire accordingly.

28. If the first election for a new district or any election for the return of the whole number of the members of a board is held not more than five months before the next ensuing second Saturday in April, no member shall be required to go out of office until the second Saturday in the second month of April ensuing.

Retirement in case of new districts.

29. Every member who retires or vacates his seat by rotation, resignation, or otherwise howsoever shall, if otherwise qualified, be eligible for re-election.

Retiring member eligible for re-election.

Division 4.—Qualification of Electors.

Electors.

30. (1) Every adult person, being a natural born or naturalised subject of the King, and being on the thirteenth day of January in any year the owner or occupier of land liable to be rated within the district, shall (subject as hereinafter provided) be qualified as an elector, and to be registered as such on an electoral roll, and, when so registered, to vote at elections of members for the district:

Provided that the owner and occupier shall not both be registered as electors in respect of the same rateable land:

Provided also that the occupier (if he is not an owner) shall not be entitled to be registered as an elector unless, under the provisions hereinafter contained, he applies to the board to have his name inserted in the electoral list; but if such an application is made in respect of any land by any such occupier thereof, and such application is sustained, then no owner of such land shall be entitled to be registered in respect thereof.

Each elector to have one vote.

31. Every person shall, at every election, be entitled to such number of votes, in respect of his qualification, to each of as many candidates as are required to be elected, as he would be entitled to at an election of members of a road board under the Road Districts Act, 1919.¹

Joint owners or occupiers.

32. (1) For the purposes of this Part each of two or more owners or occupiers of one piece of land shall be deemed to be an owner or occupier of rateable land of half the rateable value of such piece of land: Provided that not more than two persons shall be registered or entered on an electoral list in respect of the same piece of land.

(2) When there are more than two owners or occupiers, then all the owners or a majority of them may out of their number, or all the occupiers or a majority of them may out of their number, choose

¹ Now see Local Government Act, 1960, Pt. IV Div. 4(B).

two who shall be entitled to the rights under this Part of owners or occupiers (as the case may be) of the piece of land.

(3) Such choice shall be made for any year by writing signed by the persons making it and delivered to the secretary on or before the thirteenth day of January. In default of a choice or until a choice is made either on the part of owners or on the part of occupiers, the two owners or occupiers (as the case may be) whose surnames come first in alphabetical order shall be deemed to be chosen.

(4) When two occupiers are entitled to apply for registration in respect of the same piece of land, either of them may make application on his own behalf to have his name inserted in the electoral list.

33. (1) When a corporation is the owner or occupier of rateable land, such corporation may by letter signed on its behalf, and delivered to the secretary on or before the thirteenth day of January in any year, appoint a person to represent it for the purposes of this part, and such person shall be entitled to the rights under this part of the owner or occupier (as the case may be) of the land accordingly.

Power of corporation to nominate representative for the purposes of this part.

(2) In default of such appointment any manager, secretary, superintendent, or attorney who appears to the board to be authorised to represent the corporation for the purposes of this part shall be entitled to the rights aforesaid.

34. At any election in a new district for which no electoral roll is in force, every owner and also every occupier of rateable land shall be entitled to vote, and (subject to section twenty-one) eligible for election, as if both owners and occupiers were registered as electors.

New districts.

Division 5.—Elections.

Incorporation of provisions of the Road Districts Act, 1919,¹ relating to electoral rolls and elections.

35. Subject to this Act, all the provisions of the Road Districts Act, 1919, mentioned in part one of the Schedule to this Act, relating to electoral rolls, the election of members, the nomination of candidates, the polling and electoral offences are, *mutatis mutandis*, incorporated herewith, and shall have effect as if such provisions were set out in this part of this Act.

Division 6.—Ouster from Office.

Ouster from Office.

36. (1) If the board or any ratepayer of any district desires to question the right of any person acting as a member or officer of the board to act in that capacity, or the validity of any return of any person as a member, such board or ratepayer shall apply to the magistrate of the Local Court held nearest to the office of the board for a rule directed to such person as respondent, and calling upon him to show cause why he should not be ousted from office:

Provided that no proceeding to question the validity of any such return (except on the ground of some personal incapacity of the respondent) shall be instituted except within three weeks of the date of the return.

(2) The magistrate, on being satisfied of the genuineness of the claim, shall grant the rule applied for, and if, upon the return thereof, the magistrate is satisfied that the respondent is not entitled to act in the capacity in which he has been acting, or that his return was invalid, he shall give judgment of ouster against him, but otherwise he shall discharge the rule.

(3) The costs of any proceedings hereunder shall be in the discretion of the magistrate.

(4) Judgment of ouster in the case of a person acting as a member shall be deemed to create an extraordinary vacancy.

PART V.—PROCEEDINGS OF THE BOARD.

37. At the first meeting of the board of a new district, and at the first meeting of every new board, and at the first meeting of every board after every annual election, the board shall elect one of the members to be chairman.

Election of chairman.
Ibid., s. 116.

38. The chairman shall hold office until the conclusion of the next annual election of members:

Duration of office of chairman.

Provided that at the meeting of the board next preceding every annual election, the board shall elect one of its continuing members to be chairman from the date of such annual election until the first meeting of the board after such annual election.

39. The chairman shall, when present, preside at all meetings of the board.

Chairman to preside.

40. (1) In the absence of the chairman from any meeting, or if after being present he retires, the members present may elect one of their number to be chairman for that meeting, or for the remainder of the meeting.

Absence of chairman.

(2) In the absence of the chairman from the district, or in case of the illness of the chairman, the members present at any meeting may elect one of their number acting chairman during such absence or illness.

41. The chairman may resign his office by writing under his hand addressed to the Board, and in such case, or if his office becomes vacant, the Board shall elect another member to be chairman in his place.

Resignation of chairman.

42. (1) The board may, from time to time, appoint and remove a secretary and such other officers and servants as may be deemed necessary, and may define their duties, and may assign

Appointment of officers.

reasonable remuneration for their services: Provided that no secretary shall be appointed or removed without the approval of the Minister: Provided also, that the secretary shall vacate his office if so directed in writing by the Minister.

Security.

(2) No secretary or other officer entrusted with moneys shall be appointed until he shall have given security to the satisfaction of the Minister for the faithful discharge of his duties by the guarantee of an insurance company or a bond with sureties approved by the Minister, nor shall any officer be continued in his office unless such security is from time to time renewed.

(3) The Board may out of its ordinary revenue pay any premium payable in respect of such security.

Remuneration on resignation or abolition of office.

43. On the resignation or death of any officer, or on the cessation or abolition of the office of any officer, the board may, with the approval of the Minister, cause to be paid to such officer or to such of his surviving relatives as the board may think fit, any gratuity not exceeding the amount of one month's salary for each year of the service of such officer.

Board meetings.

44. (1) The board shall meet for the transaction of business at such place and at such times as the board may from time to time appoint, and at least once in every three months.

(2) The chairman may call a meeting of the board as often as he shall think proper, by notice in writing under the hand of the chairman or secretary, sent to each member at least seven days before such meeting.

(3) If the chairman shall refuse or neglect to call any meeting after receiving a requisition for that purpose, signed by three members of the board, such three members may call a meeting of the board, by serving a notice in writing signed by such

three members and stating the business to be transacted, on each of the other members at least seven days (or such lesser time as may be fixed by proclamation from time to time in respect of any district) before the date of the meeting.

45. A quorum of the board shall consist of the major part of the number of members for the time being assigned to the board. Quorum.

46. (1) At all meetings of the board, save where it is otherwise provided, all the members present shall vote, and the questions there considered shall be decided by open voting, and by the majority present. How questions decided.

(2) Each member, including the chairman, shall have one vote, and in the case of an equality of votes the chairman shall have a second or casting vote.

47. No member shall vote upon or take part in the discussion of any matter before the board in which he has directly or indirectly, by himself or his partner, any interest, or in which any person of whom he is an employee has any interest, apart from any interest in common with the public, and any member who knowingly offends against this section shall be liable to a penalty not exceeding one hundred dollars for every such offence. Member cannot vote when interested. Amended by No. 113 of 1965, s. 8.¹

48. Any meeting of the board may be adjourned, and if a quorum is not present within half an hour of the time appointed for any meeting the members, or member if there is only one present, or the secretary if no member is present, may adjourn such meeting to another day, and notice of such adjourned meeting shall be given to each member. As to adjournment of meetings.

¹ Decimal Currency Act, 1965.

As to revocation or alteration of resolutions.

49. Any resolution of the board may be revoked or altered at the same or any subsequent meeting, either by the unanimous vote of all the members, or by a vote of the majority of the board, subject in such last-mentioned case to the condition that, seven days at least before such subsequent meeting, notice in writing thereof, and of the proposal to alter or revoke such resolution, shall have been given to each member.

Governor may intervene.

50. The Governor may, if he thinks fit, suspend, amend, or rescind any resolution or order of the board, or may prohibit the expenditure of any moneys from the drainage fund upon any work which he deems unnecessary or which will in his opinion impose undue burden upon the ratepayers.

Board may appoint committee.

51. (1) The board may, from time to time—

- (a) appoint committees, either for general or special purposes;
- (b) delegate to a committee power to do any specific act or hold any inquiry.

(2) The chairman shall, by virtue of his office, be a member of every committee, and if present at any meeting shall preside.

(3) Every committee shall report to the board.

Meetings of committee.

52. (1) A committee may meet at such time and place as it may think fit, and may adjourn any meeting, but no business shall be transacted unless three members at least are present.

(2) If the chairman of the board is not present, one of the members present shall be appointed chairman for the meeting.

(3) All questions shall be determined by a majority of votes of the members present, and the chairman shall have an original, and in case of an equality of votes, a second or casting vote.

(4) The chairman of every committee shall cause minutes of the proceedings of such committee to be kept in a minute book to be provided for that purpose.

53. No proceedings of the board, or of any committee, or of any person acting as member shall be invalidated in consequence of there being a vacancy in the number of members at the time of such proceedings, or by reason of the fact that there was some defect in the election or appointment of any person so acting, or that he was incapable of being a member.

Proceedings of Board not to be invalidated by vacancy.

54. Minutes of the proceedings of the board shall be kept in a book, in which shall be entered the names of the members attending each meeting, the names of the members voting on each question on which there is a division, and every resolution, order, or other proceeding of the board. The minutes of the proceedings of every meeting shall be read at the next ordinary meeting of the board, and if found correct shall be signed by the chairman of such meeting, each page of the minutes being signed by him and dated.

Minutes of Boards.

55. (1) Any book kept as aforesaid shall on production thereof before any court be received in evidence as conclusive proof of the proceedings entered therein having taken place as therein set out and of the regularity and validity of such proceedings, save in so far as the contrary may be established.

Minutes to be evidence of proceedings.

(2) A certificate under the hand of the chairman for the time being, that any book is a book kept as aforesaid, shall be *prima facie* evidence that such is the fact.

(3) Any document purporting to be or contain a copy of the minutes in such a book or an extract therefrom shall, if it be certified as a correct copy under the hand of the chairman for the time being,

be receivable in evidence, and shall, as regards the matters and proceedings set out therein, have the same probative force as the original book.

Minute book
to be open
to
inspection.

56. The minute book shall be kept at the office or usual place of meeting of the board, and shall be open to inspection, without fee, on application to the secretary during office hours, by any member of the board, or by any ratepayer or elector of the district.

Board to
provide
office.

57. (1) The board shall from time to time provide and maintain a public office within the district, or, if more convenient, without the district, for holding meetings, and for the use of its officers and for transacting public business relating to the district.

(2) Notice of the situation of the office and of the office days and hours shall be published by the board within the district.

(3) If the office is situated outside the district it shall, for the purposes of this Act, be deemed within the district.

General
meeting of
ratepayers.

58. (1) The board shall hold a general meeting of ratepayers once at least in every year, and at any time upon the requisition of any twenty or more ratepayers.

(2) Seven days' notice of the time and place of every such meeting such be given by advertisement in a newspaper usually circulating in the district, and by posting the same on the outer door of the office of the board.

(3) The chairman of the board, if present, shall preside at every such meeting.

(4) In case of the absence, or after being present, of the retirement of the chairman of the board, the person to preside shall be one of the ratepayers chosen by the ratepayers present.

(5) Such meeting may be held within the district, or, with the consent of the Minister, without the district, and shall be held in some public hall or a building not licensed for the sale of intoxicating liquors.

(6) The latest balance-sheet of the board and report of the auditors shall be produced and read at the commencement of the business of the annual general meeting.

59. This Part, with the exception of section fifty, shall not apply to road boards and irrigation boards which may be constituted drainage boards; but, subject to that exception, the proceedings of such boards and the appointment and dismissal of their servants shall be regulated by the Acts under which they are respectively governed as road or irrigation boards.

Application of this Part.

PART VI.—THE CONSTRUCTION AND MAINTENANCE OF WORKS.

60. (1) Subject as hereinafter provided and to the approval of the Governor, the board of a district may construct and maintain drainage works within such district.

Construction and maintenance of works. Amended by No. 43 of 1941, s. 4; No. 113 of 1965, s. 8.¹

(2) Before undertaking the construction of such works except such works the estimated cost of which shall not exceed one thousand dollars as the Governor may exempt from the operation of this section and section sixty-two of this Act the board shall—

- (a) cause to be prepared plans, descriptions, books of reference, and an estimate of the cost of the proposed works, together with a statement showing the earnings estimated to be derived from them, also the acreage of the rateable property to be benefited by them, and cause the same or certified copies

¹ Decimal Currency Act, 1965.

Land Drainage.

thereof to be deposited in the office of the board and of the Minister;

- (b) cause an advertisement to be published in the *Gazette* and in a newspaper generally circulating in the district, specifying—
 - (i) the description of the proposed works;
 - (ii) the times when and the places at which the plans, descriptions, books of reference, and estimates may be inspected;
- (c) obtain from the Engineer-in-Chief or officer deputed by him a certificate that he is satisfied that the proposed works will be of sufficient capacity to carry off all waters which may reasonably be expected then or at any future time to flow into such works from the catchment area which will be served thereby, and that a reasonably sufficient outlet to the sea has been provided.

(3) The plans, descriptions, books of reference, and estimates so deposited shall be open to inspection by any person interested, and every such person shall be allowed to make copies of and extracts from the same free of charge.

(4) If within a period of one month after such publication a petition against the proposed works is presented to the Minister, signed by persons who constitute a majority of the owners of rateable land within the district, the board shall not carry out the proposed works.

(5) If no such petition is presented the board shall submit the plans, descriptions, books of reference, and estimates to the Governor for approval, and if they are approved the Governor may forthwith, by Order in Council, empower the

board to undertake the construction of the said works, and such order shall be notified in the *Gazette*, and shall be conclusive evidence of due compliance with the provisions of this section in respect of such works.

61. All works constructed by a board shall be vested in the board.

Works vested in Board.

62. (1) Notwithstanding the existence of a board the Minister may, subject to this Act, construct and maintain works in any district.

Works may be constructed by Minister.

(2) Before undertaking the construction of such works the Minister must comply with the requisitions of section sixty, and the provisions of subsections (2), (3), (4), and (5) of that section shall be deemed to be repeated in this section with the substitution (except in paragraph (a) of subsection (2)) of the word "Minister" for the word "Board".

(3) For the construction and maintenance of such works the Minister may exercise all the powers conferred on the board by this Act, except the power to borrow money.

(4) All such works shall, subject to this Act, be vested in and maintained by the Minister.

63. (1) The Governor may by Order in Council place any drainage works vested in the Minister or the Crown, whether the same have been constructed by the Minister or not, under the management and control of the board of the district in which the works are, or may vest such works in such board.

Works may be placed under control of or vested in Board.

(2) It shall be the duty of a board to cleanse, repair, and otherwise maintain in a state of efficiency all drainage works so placed under its management and control, and the Order in Council

may, subject to this Act, impose and prescribe such terms and conditions as the Governor may think just and convenient.

Branch drains. Board may authorise owner to construct branch drain.

64. (1) On the application of any owner or owners of a piece or parcel of land, or of two or more adjoining pieces or parcels of land within a district, the board may authorise him or them to make a branch drain to communicate with any main for the purpose of draining his or their land, on such terms as to the board may seem proper. The application, when made by more than one owner, shall state the aliquot part of the cost which is to be borne by each owner.

Board may do work for owner.

(2) The board may, at the request of the owner or owners, make the branch drain and do all incidental work for him or them, on such terms as may be agreed upon between him or them and the board, and the cost thereof or an aliquot part thereof (determined by the agreement) shall be a debt due by the owner or each of the owners to the board.

Board may make advances with approval of Governor.

(3) The board may, with the approval of the Governor, advance to any owner or owners such sum of money as may be necessary to complete the aforesaid branch drain and work or his or their share or shares thereof, on such terms as may be agreed upon, and the amount of such advance, together with interest thereon, or on so much thereof as may remain unpaid for the time being, shall be a debt due from such owner or owners to the board.

Compulsory construction of branch drain.

(4) Whenever the board shall be of opinion that the construction of a branch drain is necessary in order to drain any piece or parcel of land, or two or more adjoining pieces or parcels of land, in the vicinity of a main drain, the board may, by notice under the hand of the chairman served on the owner or the several owners thereof, require him or them to construct such drain to the satisfaction of the board, and if the drain be not constructed within one month thereafter or such longer time

as may be specified in the notice, the board may construct or complete the branch drain and recover the cost thereof from the owner or an aliquot part (to be determined by the board with the approval of the Minister) from each of the several owners in any court of competent jurisdiction. Such notice shall specify the nature and direction of the branch drain required.

(5) For the purpose of exercising any authority conferred or complying with any requisition made under this section, the person on whom the authority is conferred or the requisition made shall (so far as necessary) have and be subject to the powers and liabilities of a board as set out in sections numbers sixty-five to seventy, both inclusive.

Person constructing drain to have powers of Board.

(6) When an owner of land becomes or is to become liable to a board for the cost or any part of the cost of making any branch drain hereunder and the doing of any work incidental thereto for the purpose of draining such land or for any money advanced in respect of such a drain or work hereunder, the board may, on his application, enter into an agreement with him for the payment of such cost or money (with interest) in not more than twenty-four quarterly instalments; the last of such instalments to become payable not more than six years after the commencement of the making of the branch drain.

Agreement for payment by instalments.

(7) All moneys due by any person to a board shall carry interest at the prescribed rate, and such moneys and interest shall, unless otherwise provided by agreement, be payable on demand, and shall be a charge on the land as if they were drainage rates imposed under this Act.

Amounts due to Board to carry interest and to be charged on land.

(8) Every owner of land or the several owners of two or more adjoining pieces or parcels of land in respect of which a branch drain has been constructed hereunder shall be liable or jointly and severally liable to keep such drain cleansed and maintained to the satisfaction of the board, and in

Obligation to cleanse and maintain drains.

the case of several owners the burden shall as between themselves be apportioned in the same way as the original liability for the cost of the drain. The burden imposed by this subsection shall run with the land and shall be binding on the owner for the time being thereof and of every portion thereof.

Default in
cleansing
and main-
tenance.

(9) If default is made by any person in maintaining or cleansing any branch drain constructed under this section which he is bound to maintain or cleanse, the board may cause the necessary maintenance or cleansing to be provided for or done and may recover the cost from any person in default in any court of competent jurisdiction.

Moneys due
recoverable
like rates.

(10) Any sum of money due by any person to a board under this section shall be recoverable by the like proceedings and with the like remedies as if it were a drainage rate imposed on such person as rateable owner of the land in respect of which the sum is due, and the provisions of Division 5 of Part VII. of this Act shall, subject as hereinafter provided, apply thereto in all respects.

For the purposes of apportionment, interest and the cost of maintenance or cleansing shall be deemed to be the amount of a rate imposed for the financial year in which the interest accrued due or the maintenance or cleansing was done, as the case may be. Other moneys shall be apportionable as if they were the amount of rates for six years calculated from the commencement of the making of the drain or the doing of the work for which they are owing.

Powers of
occupier.

(11) Any occupier of land who is not the owner may, with the approval of the Minister, make or concur in or enter into any application or agreement under this section, or construct or take part in the construction of any branch drain or work hereunder or obtain any advance or do any other act hereunder as if he were the owner, and for the purposes of this subsection he shall in so acting be deemed to be the owner, and his acts shall be binding on such

owner accordingly: Provided that any liability (including the liability to cleanse and maintain) which would, subject to any necessary apportionment being made, have to be borne and discharged by the occupier by reason of any such act, matter, or thing as aforesaid, if he were in fact the owner of the land during the term of his occupancy, shall be borne and discharged by such occupier, who shall indemnify any such owner in respect thereof; but nothing in this subsection shall prevent the liability being a charge on the land.

(12) If in the performance of any duty or the exercise of any right or authority imposed on or given to him by or under this section the owner of any land is in any way obstructed or hindered by the occupier or the occupier by the owner, the one who obstructs or hinders the other shall be guilty of an offence against this Act.

Penalty on obstruction of owner by occupier and vice versa. Amended by No. 113 of 1965, s. 8.¹

Daily penalty: Ten dollars.

65. Subject to the provisions of this Act, the board may do all or any of the following things for the purpose of exercising any of its powers under this Act, or carrying into effect any of the objects of this Act which such board is authorised to carry into effect, that is to say:—

Powers of board.

- (1) It may, without a previous agreement with the owner or occupier, enter upon any land shown on or delineated on the plans and sections, and described in the books of reference deposited as set out in section sixty, which it may be necessary to enter upon, take, or use for the purposes of the works, or any land which it may be necessary to enter for the purposes of section sixty-four, and may take levels of the same, and set out such parts thereof as the board or its officers deems necessary, and may dig and break up the soil of such land, and trench and fence-in the same, and remove or use any earth, stones, trees, and other things taken therefrom.

May enter upon lands and take levels, etc.

¹ Decimal Currency Act, 1965.

May take
lands.

- (2) It may, under and subject to the provisions of the Public Works Act, 1902, take any lands which are required for the purposes of any works or of this Act.

May con-
struct and
maintain
necessary
drains.

- (3) It may construct and maintain in and across any lands any drainage works and may at any time inspect any drainage works and make any entry on any land for the purpose of making any such inspection:

Proviso.

Provided that, in the exercise of the powers conferred by this Part, the board shall do as little damage as may be, and shall make to every person interested compensation for any damage actually sustained by him through the exercise of those powers, and such compensation, if not agreed upon between the parties, shall in the case of land taken be ascertained and made in the manner provided in the Public Works Act, 1902, and in other cases such compensation shall be recoverable in any court of competent jurisdiction.

Compensa-
tion.

Power to
break road,
etc.

66. For the purposes of constructing the works authorised by or under this Act, or extending or maintaining the same or any works now existing, a board may (subject as hereinafter provided)—

- (1) open and break up the soil and pavement of a road;
- (2) lay down and place drains in, on, or under a road, and from time to time repair, alter, or remove any of them;
- (3) remove or use any earth or materials in or under a road.

Notices to
be served on
local
authority
having
control be-
fore break-
ing up road.

67. Before a board, not being the local authority having jurisdiction in the place in question, opens or breaks up a road, it shall give to that local authority notice in writing of the intention to open or break up the same; and the notice shall be given

not less than forty-eight hours before beginning the work, except in cases of emergency, which, in the opinion of the board, justify the omission to give notice, in which cases the notice shall be given as soon as conveniently may be after beginning the work, or after the necessity for it has arisen.

68. In cases in which a notice is required to be given, a road shall not, except in case of emergency, be opened or broken up except under the superintendence of the local authority having control thereof or its officer:

Roads not to be broken up except under superintendence of local authority.

Provided that if the officer of the local authority, after such notice, fails to attend at the time fixed for the opening or breaking up of the road, or if the local authority or its officer refuses or neglects to superintend the work, the board may perform the work specified in the notice without such superintendence.

If local authority fails to superintend board may perform work.

69. When a board opens or breaks up the soil or pavement of a road, it shall—

Roads, etc., broken up to be reinstated without delay.

- (1) with all convenient speed complete the work for which it is broken up, and fill in the ground, and reinstate and make good the road or pavement so opened or broken up;
- (2) while any such road or pavement continues to be opened or broken up, cause it to be fenced or guarded, and a sufficient light to be kept there at night.

70. The powers of a board shall, within its district, extend—

Further powers of board.

- (1) to cleansing, repairing, or otherwise maintaining in a due state of efficiency any drainage works or watercourse;

- (2) subject to the approval of the Minister, to deepening, widening, straightening, or otherwise improving any watercourse or removing obstructions therefrom; and
- (3) to the doing of any other act reasonably necessary for the efficient exercise of any power vested in the board.

Interference
with drains
prohibited.

Amended by
No. 113 of
1965, s. 8.¹

71. (1) No person shall, without the consent of the board or the Minister, as the case may require, stop or obstruct any drain vested in or under the control of the board or any drain, not under such control, which is vested in the Minister or make any branch drain to connect with any such drain.

Penalty: One hundred dollars.

(2) No person shall without the consent of the Minister stop or obstruct any drain vested in or under the control of the Minister although such drain may not be within any district.

Penalty: One hundred dollars.

(3) The court before which any person is convicted under this section may in addition to or in lieu of any penalty, order the offender to pay to the board or the Minister, as the case may require, the amount of the cost or expense incurred or which in the opinion of the court will be incurred by the board or the Minister in removing the stoppage or obstruction or reforming or improving the drain so as to bring it into a satisfactory condition, and any such order may be enforced as an order for a penalty under the Justices Act, 1902.

PART VII.—REVENUE.

Division 1.—Rateable Property.

What shall
be rateable
property.

72. All land shall be rateable property within the meaning of this Act save as hereinafter excepted, that is to say—

¹ Decimal Currency Act, 1965.

(1) Land declared by the Minister exempt from rating for any year on the ground that it by its situation, configuration, or other physical causes is excluded from deriving any direct or indirect benefit from any works existing or proposed to be constructed in the district.

(2) Land the property of the Crown and used for public purposes, or unoccupied.

Provided that any person who has been rated in respect of land which he considers ought to have been exempted under subsection (1) of this section may, on an appeal to the board or a local court under the provisions hereinafter contained, raise as a ground of appeal that the land should have been exempted under subsection (1) of this section, and the board or court may make such order thereon as shall be just.

Provided also that any land exempted by subsection (2) of this section shall be deemed rateable property while leased, used, or occupied for any private purpose.

(3) Land belonging to any religious body, and used or held exclusively as or for a place of public worship, a Sunday school, a place of residence of a minister of religion, a convent, nunnery, monastery, or occupied exclusively by a religious brotherhood or sisterhood.

(4) Land used exclusively as a public hospital, benevolent asylum, orphanage, public school, private school being the property of a religious body, public library, public museum, public art gallery, or mechanics' institute, or lands held in trust under the University Endowment Act, 1904, or any amendment or re-enactment thereof.

(5) Land used and occupied exclusively for charitable purposes.

(6) Land vested in any Board under the Parks and Reserves Act, 1895, or in trustees for agricultural or horticultural show purposes, or zoological or acclimatisation gardens or purposes, or for public resort and recreation.

(7) Land held or used as a cemetery:

Provided that—

- (a) any land exempted by subsections (3), (4), or (5) of this section shall be deemed rateable property while the same is leased or occupied for any private purpose; and
- (b) any land used or occupied for any of the purposes mentioned in subsections (4) and (5) of this section shall be deemed to be rateable property if such property is held under lease or rented from any owner except the Crown:

Provided, further, that no exempted land shall become liable to be rated by reason of such land being used for the purposes of any bazaar, or as a place of meeting for any religious, charitable, temperance, or benevolent object, or for a polling place at any parliamentary or other election.

Division 2.—Valuations.

Basis of
Assessment.

73. Rates imposed under this Act shall be assessed either on—

- (a) the unimproved capital value, or
- (b) the area,

of all rateable land within the district, according to the determination of the board made in each year before imposing the rates.

Annual
valuation of
rateable
property.
Amended by
No. 43 of
1941, s.5.

74. When the unimproved value is adopted the board shall, subject to this Act, in every year as soon as reasonably may be before the commencement of the next financial year of the board, make a valuation of all rateable land within the district, on the unimproved value, in accordance with the rules hereinafter set forth; and every such valuation shall remain in force until a new valuation has been made:

Provided that the board may in its discretion, instead of causing fresh valuations to be prepared

in any year, use the valuations of the last or any previous year, with such alterations and additions as appear necessary, and that no valuation need be made which is not requisite for the purpose of assessing rates.

75. Except as hereinafter provided the unimproved value of land shall be the capital sum which the fee simple of such land might be expected to realise if offered for sale, free from encumbrances, on such reasonable terms and conditions as a *bona fide* seller would require, assuming that the improvements (if any) thereon had not been made:

Unimproved value.
Amended by No. 113 of 1965, s. 8.¹

Provided that no regard shall be had to any metals, minerals, gems, precious stones, coal, mineral oil, or phosphatic substances contained or supposed to be contained in the land:

Provided also that the following special methods of ascertaining the unimproved value shall be observed in the following cases, that is to say:—

Proviso.
Rules to be observed in certain cases in ascertaining the value of land.

- (i) In respect of land held under a Crown lease the unimproved value shall (except as hereinafter provided) be deemed to be a sum equal to twenty times the annual rent reserved by the lease; but when such annual rent is reduced under the provisions of the Land Act, 1898,² on the ground of possession by the lessee of stock, the valuation shall nevertheless be made on the annual rent originally reserved by the lease:

But if the land comprised in any such lease is sublet at a higher rent, the value shall be calculated upon the rent reserved by the sub-lease;

- (ii) The unimproved value of land held or used under any lease (not being a pastoral lease), license, or concession from the Crown for cutting and removing timber, or taking

¹ Decimal Currency Act, 1965.

² Now Land Act, 1933.

any other profit from the land, shall be a sum equal to fifty cents for every acre of the land.

Provided further that when any land is the subject of more than one lease, license, or concession from the Crown, then the estate, right, or interest conferred by each lease, license, or concession shall be valued separately as if a valuation of a separate piece of land were being made.

Valuers.

76. (1) The board may make any valuation itself, or may appoint a valuer or valuers, not being a member or members of the board, who shall make and return the valuation in a form to be prescribed by the board from time to time.

(2) The valuation so returned may be adopted by the board with or without alteration, and when adopted shall be the valuation of the board, subject to alteration as provided by this Act, and rates imposed under this Act on the unimproved capital value shall be assessed thereon.

(3) The board may cause a valuation to be made whenever necessary for the purposes of this Act, and may adopt the same with or without alteration.

Entry on premises by valuer. Amended by No. 113 of 1965, s. 8.¹

77. (1) The board and its officers and every valuer shall, for the purpose of making the valuation and return as aforesaid, have power to enter into and upon any rateable land without being liable to any legal proceedings on account thereof, and shall also have power to search in the Office of Titles and Registry of Deeds, or any office of the Department of Lands and Surveys, or of the Department of Mines, and to inspect all plans, grants, transfers, certificates of title, and memorials free of charge.

Valuer empowered to make inquiries.

(2) Any valuer may put to the owner, or agent of the owner, or any person in occupation or charge of any rateable lands which such valuer

¹ Decimal Currency Act, 1965.

is authorised to value, any question necessary to enable such valuer to state correctly the several particulars required to be stated in his valuation with regard to the land.

(3) Every person who, after being informed by the valuer of the purpose in putting such questions, and of his authority to put the same, refuses or omits to answer the same to the best of his knowledge or belief, or makes any false answer or statement in reply to any question, shall for every such offence be liable to a penalty not exceeding twenty dollars.

Penalty for false answers.

(4) A valuer who makes a wilfully incorrect valuation shall be guilty of an offence against this Act, and liable for every such offence to a penalty not exceeding forty dollars.

Penalty for wilfully incorrect valuation.

78. The Minister may make or cause to be made any valuation which a board may make or cause to be made, and may require the board to adopt any such valuation, and the board shall thereupon adopt the same without alteration as the valuation of the board.

Minister may cause valuation to be made.

79. The board may, in its discretion, adopt the valuations of the board of the road district in which the drainage district is situated, so far as they have not been made on a system inconsistent with the foregoing provisions of this division, and in such case the road board shall permit the drainage board to make a copy of so much of the valuations as may be necessary free of cost.

Board may adopt road board valuations.

80. This Division, with the exception of section seventy-three, shall not apply to road boards which may be constituted drainage boards; but, subject to that exception, the relative portions of the Road Districts Act, 1919, shall apply.

This division except s. 73 not to apply to road boards

Division 3.—Rates.

Rate Book.

81. (1) The board shall cause a book to be kept called "the rate book," according to the prescribed form, and shall enter therein—

- (a) all rateable land within the district, and in the appropriate columns the unimproved value of the same, or the area according to the basis of assessment adopted;
- (b) the name of the owner and other particulars indicated by the said form:

Provided that two or more properties of the same owner may be included in one assessment.

(2) Such book shall be made up and completed not later than thirty days after the expiration of each financial year, and the chairman shall then initial, in his handwriting the bottom of each page therein, and any alteration or erasure therein.

(3) The validity of a rate-book shall not be questioned on the ground of any error or omission therein or therefrom, or by reason of any non-compliance with any rule of procedure prescribed by this Act or any regulation made thereunder.

Owner where name not known to be rated as owner.

82. Whenever the name of any owner liable to be rated or charged with payment of a rate is not known to the board, it shall be sufficient to rate, or serve notice, or to make demand upon such owner by the designation of "the owner," without stating his name.

Rate book to be open to inspection.

83. The rate-book shall, at all reasonable times, be open to inspection by ratepayers.

One rate book and notice of assessment may be used for several rates.

84. It shall not be necessary to have a separate rate-book and notice of assessment for each rate which a board makes, whether under the authority of this or any other Act; but the board may from time to time in its discretion utilise one rate-book and one notice of assessment for all or any such rates.

85. (1) The Board may from time to time alter or amend any rate-book made or to be made by—

Alteration or amendment of rate book.

- (a) inserting therein the name of any person claiming and entitled to have his name therein as owner; or
- (b) inserting the name of any person who ought to have been rated; or
- (c) striking out the name of any person who ought not to have been rated; or
- (d) raising or reducing the sum at which any person has been rated, if it appears to the board that owing to any error in entering the rate in the rate-book such person has been underrated or overrated; or
- (e) including therein any rateable property that has been omitted therefrom; or
- (f) making any alteration or addition which, in the opinion of the board, is necessary for the purpose of the exercise by the board of the power conferred by section ninety-one or ninety-four; or
- (g) making such other additions, alterations, or amendments thereto or therein as will make the rate-book conformable to any Act for which it is required to be used; or
- (h) correcting or supplying any accidental error or omission.

(2) No such alteration, addition, or amendment shall be held to void the rate.

(3) No alteration or addition, or amendment in or to the rate-book shall be valid unless the same is initialed by the chairman, and the date of such alteration, addition, or amendment is also inserted.

(4) The power to alter or amend a rate-book, as aforesaid, shall extend to the rate-book for the current year, and to the rate-books for the last preceding five years.

(5) Every person who, by any such alteration, addition, or amendment has become rated in respect of any rateable property or otherwise affected, shall be entitled to receive notice of such alteration, addition, or amendment, and no proceeding for the recovery of any such rates from any such person shall be taken till after the expiration of one month from the service of such notice.

(6) Any person may appeal against any entry in the rate-book as altered or amended, or against any entry added to the rate-book, or against any decision of a board given on such appeal, in manner provided in Division four of this Part, and for the purposes of appeal every notice given under subsection five shall be deemed a notice of assessment.

Minister
may extend
time for
making up
rate
book.

86. If from any cause the valuation has not been made or the rate-book has not been made up within the time limited by this Act for the purpose the Minister, if reasons satisfactory to the Minister are advanced for such delay, may, by an order in writing, extend such time.

Board to
prepare
annual
estimates.
Amended by
No. 43 of
1941, s. 6.

87. (1) The board shall, in every year as soon as reasonably may be after the close of the then past financial year of the board, prepare two statements in writing, in such form as may be prescribed by the Minister, signed by the chairman, the one showing the expenditure of the board during the past financial year, and the other showing the proposed expenditure of the board during the current financial year.

(2) The board shall also, in the course of the said month, estimate as nearly as may be—

- (a) the amount which will be required to meet the several expenses and payments set out in section one hundred and sixteen;
- (b) how far the several sources of ordinary revenue, independent of rates, will be sufficient for those purposes; and

- (c) what sum will be required to make up the deficiency, if any, found to exist on comparing the sum required with the estimated revenue of the board independently of rates.

88. (1) The board, after making such estimate and statement and ascertaining the sum that will be required to make up the deficiency found to exist on comparing the sum required with the estimated revenue of the board independently of rates, shall forthwith impose rates, to be called "drainage rates," in respect of all rateable land within the district.

Board
authorised
to strike
rates.
Amended by
No. 113 of
1965, s. 8.¹

(2) No drainage rates imposed in any one year shall—

- (a) exceed ten cents in the dollar on the unimproved value of rateable land in cases in which the rates are assessed on that value;
- (b) exceed fifty cents per acre in cases in which the rates are assessed on the area.

89. Rates need not be uniform throughout the district but the board may, by resolution, with the consent of the Minister, grade the various lands in the district according to the respective benefits which it appears to the board that such lands will derive from existing works during the period for which the rate is imposed, or works to be executed during that period, and may, with the consent aforesaid, fix the rates for each grade at such figure, within the limits mentioned in section eighty-eight, as shall appear just.

Differential
rating.

90. A minimum rate of two dollars may be levied on any rateable land, or, if the board thinks fit, on each of the several lots into which any rateable land may be subdivided for sale, leasing, or partition, the annual rates in respect of which on the unimproved value or the area, as the case may be, would not amount to two dollars.

Minimum
rate.
Amended by
No. 113 of
1965, s. 8.¹

¹ Decimal Currency Act, 1965.

Rates to be made for the financial year.
Amended by No. 43 of 1941, s.7.

91. (1) Every rate shall be made and levied for the current financial year of the board as prescribed by the board by by-law made under this Act. But the board may at any time impose supplemental general or other rates for the unexpired portion of the current financial year, and may for the purposes of, and when making, such rates or any other rates which may happen to be made (under this or any other Act) after the general rates for the year, make any such alterations in, and additions to, the rate-book (but without obliterating existing entries) as may be deemed necessary to complete the rate-book for such supplemental or other rates, and to show therein all matters and facts which, if the rate-book were being then compiled, would appear therein: Provided that no board shall exceed its rating limits as by law defined.

(2) Where, by reason of any alteration in the financial year of any board the making and levying of the rate for a part of a year only shall become necessary, the board may make and levy the rate for such part of the year, but the rate for such part of the year shall bear the same ratio to the rate for a whole year as the part of the year for which the rate is made and levied bears to a whole year.

Manner of making rate.

92. Whenever any rate has been made and levied by the board, the chairman shall, on a vacant page or pages of the rate-book, to be left blank for such purpose, enter a memorandum thereof, shall sign the same, and publish a copy in a newspaper; thereupon, subject to any by-law as to the time and mode of payment, the said rate shall become due and payable:

But no proceedings to recover or enforce payment of the same shall be taken till after the expiration of one month from the serving of the notice of assessment prescribed in section ninety-three.

Notice of assessment.

93. (1) The board shall, as soon as practicable after the making of any rate, cause the amount payable in respect of the rate to be entered in the

rate-book in respect of each assessment, and a notice of the assessment in the prescribed form to be served upon every owner whose name is inserted in the rate-book or his attorney or agent.

(2) Two or more properties may be included in one notice.

94. (1) When any action has been taken under section twelve whereby any area has become incorporated in the district during the currency of the period for which any rate has been imposed therein, then the Minister may direct the board that, subject to such exceptions and conditions, if any, as he may deem proper, all rateable land within the incorporated area is to be subject to the rate as from the date when such area was added to the district.

Application of this Part to annexed areas.

(2) The board shall thereupon make such additions to the rate-book as may be necessary to complete the same for the purposes of this section, and the rate shall then be deemed to have been duly made on and in respect of such land; but the board shall be entitled in respect of such land to such part of the rate only as is proportionate to the unexpired portion of the period for which the rate was imposed.

95. (1) The board of any newly constituted district may, with the consent of the Minister, and subject to such exceptions and conditions (if any) as the Minister may see fit to impose, exercise the powers and carry out the duties and obligations granted to and imposed upon a board by this Part of this Act as soon after its election as, in the opinion of the Minister, shall be practicable.

Provision in case of new district.

(2) For the purposes of this section the board of any such newly constituted district may prepare a statement and estimate in respect of the remaining period of the then current financial year from the date of the constitution of the district, and the maximum and minimum rate of any rate to be

imposed under this section shall bear the same ratio to the maximum and minimum fixed by section eighty-eight as the portion of the current financial year unexpired at the date of the constitution of the district bears to a full year.

Exemption.

96. The Governor may exempt any district from the operation of this Division of this Act for such time as the Governor may think fit, but particulars in writing of every exemption granted and the grounds thereof shall be laid before both Houses of Parliament.

*Division 4.—Appeals.***Grounds of appeal.**

97. Any person may appeal against an entry in the rate-book on any of the grounds following, that is to say:—

- (1) That any property for which he stands rated is valued above its full and fair rateable value at the time of the completion of the rate-book.
- (2) That any property included, for which he stands rated, was not rateable at the time of the completion of the rate-book.
- (3) That such person was not at such time liable to be rated in respect of land for which he stands rated.
- (4) That (where the assessment is on the area) the area set out in the rate-book is in excess of the actual area of the land.
- (5) That the land or a part thereof should be exempt under section seventy-two, paragraph (1).
- (6) That the land or part thereof does not derive the benefit as resolved by the board under section eighty-nine.

- (7) That the land or part thereof is entitled to be graded under section eighty-nine, and the rates fixed as shall appear just.

Provided that no appeal shall lie against any entry in the rate-book on the ground that any property is valued above its full and fair rateable value in any case where the value complained of is not in excess of the amount at which the land stands valued for the time being (on the capital unimproved system of valuation) in the rate-book of the road board in whose district the land is situated, unless it shall appear that the road board valuation has been made on a system inconsistent with Division 2 of this Part.

98. (1) Appeals shall be made to the board, and from the decision of the board there may be a further appeal to the Local Court held nearest to the office of the board.

Appeals,
how made.

(2) Where any rateable property is occupied by or leased to any person who has contracted to pay the rates thereon, the occupier or lessee may appeal against any entry in the rate-book in the same manner as if he were the owner of the said property, and as if his name had been inserted in the rate-book as such owner.

Appeals by
occupiers.

99. Subject to this Act the provisions of the Road Districts Act, 1919,¹ mentioned in Part II. of the Schedule to this Act relating to rating appeals under that Act are incorporated herewith, and shall have effect as if such provisions were set out in this Part of this Act.

Incorporation of provisions of Road Districts Act relating to rating appeals.

Division 5.—Liability for and Recovery of Rates.

100. All rates imposed under this Act and entered in any rate-book shall (together with the costs of any proceedings for the recovery thereof) be a charge on the land rated, ranking *pari passu*

Who is liable for rates.

¹ See footnote 1 on p. 71.

with rates imposed under the Road Districts Act, 1919, and shall be recoverable from the board from—

- (a) the owner at the time of the completion of the rate book;
- (b) any person who whilst the rates are unpaid becomes the owner of the land rated, or any part thereof.

Payment of rates by mortgagee.

101. If a mortgagee of rateable land pays any rates accrued thereon under this Act or any Act heretofore in force, including any incidental costs, charges, and expenses charged on such land, the amount so paid by the mortgagee shall be deemed to be part of, or added to the principal moneys advanced by him under the mortgage, and shall be recoverable as such, with interest accordingly.

Persons liable to be resorted to in succession.

102. An unsatisfied judgment or order of any court for the recovery of any rates from any person shall not be a bar to the recovery thereof from any other person liable under the provisions of this Act to the payment thereof.

Apportionment of rates.

103. Rates recoverable under this Act shall for the purposes of this section be apportionable between successive owners in respect of time as if they accrued due from day to day during the period for which they were imposed, and shall also be deemed to be apportionable between owners of several portions of the land rated according to the respective values or areas (as the case may require) of such portions; and any person who is or has been an owner of rated land and whose rates or whose apportioned part of the rates in respect thereof have or has directly or indirectly been wholly or partly paid by any other person in accordance with this Act (whether during or after the period for which the rates were imposed), shall be liable to

reimburse such person the amount so paid; but nothing in this section shall affect the liability of any person to the board.

104. (1) The board may recover any rates in arrear imposed under this Act, and the costs of any proceedings for the recovery thereof, from any person liable to pay the same either by complaint of the secretary before any two justices, or by action at the suit of the board in any court of competent jurisdiction.

Complaint or action for rates.

Provided that no person against whom an order has been made by justices on any such complaint shall be liable to be imprisoned for the non-payment thereof, except under the provisions of the Debtors Act, 1871, and proceedings under that Act may be taken in respect of any such order as if it were a judgment within the meaning of that Act.

(2) For the purposes of any such complaint or action all rates shall be deemed to be payable at the office of the board.

(3) Rates due to a board by any person under any other Act may be included and shall be recoverable in any proceeding taken against such person for rates due by him to the board under this Act.

All rates may be included in one summons.

105. The board may, if authorised by its by-laws, allow to any person who pays the rates for which he is liable within thirty days of such rates becoming due, a percentage by way of discount to be fixed by the by-laws, but not exceeding five per centum of the amount of such rates.

Discount on rates for prompt payment. Amended by No. 113 of 1965, s. 8.¹

106. In any action, suit, or other proceeding by or on behalf of a board for the recovery of any amount due by any person in respect of any rate, such person shall not be permitted to raise as a defence any failure to comply in relation to such

Non-compliance with procedure prescribed in Act not to prevent recovery of rate.

¹ Decimal Currency Act, 1965.

rate with any provision of this Act, if it shall appear that the Board did in fact assent to the imposition of such rate, and had power to impose the same.

Defence in special cases.

107. If any person sued or proceeded against shall prove that any notice required to be given under section ninety-three or subsection five of section eighty-five has not been given, the claim of the board shall not on that account fail, but the defendant may raise as a defence to the whole or part of the claim any objection which might have been raised on an appeal.

Rate book to be evidence.

108. (1) In any proceeding to recover, or consequent on the recovering of the amount due in respect of any rate, the rate-book, duly signed or initialed by the chairman, and all entries made or purporting to be made therein, or certified copies thereof or extracts therefrom, certified as correct by writing under the hand of the chairman or secretary, shall be *prima facie* evidence of the contents of such book and of the due striking of such rate, and of the obligation of the person charged with the amount payable in respect of such rate to pay the same without any evidence that the notices required by this Act or other provisions of this Act have been given or complied with.

(2) In any such proceeding it shall be competent for the party sued to rely on the defence that he was not at any material time the owner or occupier of the land rated, but, subject hereto, and except as hereinbefore provided, he shall not raise by way of defence any objection which might have been raised on an appeal, and such first-mentioned defence shall not be raised by any party who has already unsuccessfully raised it as an objection on an appeal.

Jurisdiction not ousted by reason of question of title being raised.

109. No jurisdiction otherwise competent to entertain such a proceeding as is mentioned in the last preceding section or to hear any appeal shall be ousted on the ground that a question of title

to land is raised therein. But no order or judgment in any such proceeding or appeal shall be admissible in any court as evidence of title.

110. If on inquiry being made by the secretary or any collector of rates—

Refusal to give name of person liable.
Amended by No. 113 of 1965, s. 8.¹

- (a) the occupier of any land refuses or wilfully omits to disclose, or wilfully misstates the name of the owner of such land, or of the person receiving or authorised to receive the rents of the same; or
- (b) the person receiving or authorised to receive the rents of any land refuses or wilfully omits to disclose, or wilfully misstates the name of his principal,

he shall be liable to a penalty not exceeding ten dollars.

111. The board may from time to time cause to be published in a newspaper a list of all persons who are in arrear in the payment of the amount due in respect of any rate, whether made under this or any other Act, and of the amounts due by them respectively, and in respect of what rateable lands.

List of defaulters may be published.

112. The board may, with the approval of the Minister, write off arrears of rates due in respect of any rateable land.

Arrears may be written off.

113. The provisions of the Road Districts Act, 1919,² mentioned in Part 3 of the Schedule to this Act, relating to the leasing and sale of land on which arrears of rates are due, are incorporated herewith, and shall, subject to this Act, have effect as if such provisions were set out in this Part of this Act, with the figures "264"³ and "270"⁴ substituted for the figures "263" and "269" in the third schedule of the Road Districts Act, 1919.

Incorporation of provisions of Road Districts Act relating to recovery of rates.

¹ Decimal Currency Act, 1965.

² See footnote 2 on p. 71.

³ Renumbered 273 in reprint of Road Districts Act, in Reprint Volume 4.

⁴ Renumbered 285 in reprint of Road Districts Act, in Reprint Volume 4.

Drainage rates may be paid out of proceeds of sale of land *pari passu* with Road and Health rates.

114. In the distribution of the moneys arising from a sale of land for rates under the Road Districts Act, 1919, or this Act, rates imposed under this Act (including, if the sale is under this Act, all the board's expenses incidental to the proceedings in the Local Court or the sale of the land) shall be payable *pari passu* with the rates and expenses mentioned fourthly in section two hundred and seventy of the Road Districts Act, 1919.¹

PART VIII.—FINANCE.

Minister may determine value of works transferred to Board.

115. (1) The Minister may from time to time, and as often as necessary, prepare a statement of any works constructed or situated within a district and transferred to and vested in the board thereof, and the amount expended thereon out of public funds, and the amount so expended as determined by the Minister shall be charged against the board and shall be a liability of the board to the Treasurer and bear interest at such rate and payable at such times as the Treasurer may determine.

(2) The board shall also pay to the Treasurer, as contributions to a sinking fund thereon, an annual amount to be determined by the Treasurer:

Provided that the Minister may declare that any works transferred to the board are wholly or partially of a national character and that the board ought not to be charged with the moneys or with some specified portion of the moneys expended thereon, and the board shall not, in respect of such works, be liable for the amount or the specified portion of the amount so expended.

Revenue, how applied.

116. All moneys received by a board from rates, charges, or allowances shall be carried to the account of a fund to be called the "Drainage Fund,"

¹ Renumbered as section 285 in Reprint Volume 4.

and such fund shall be applied in manner following, that is to say:—

- (a) In payment of interest on and contributions to a sinking fund in respect of any expenditure charged against the board under section one hundred and fifteen;
- (b) In the payment of any interest or instalments of principal or contributions to the sinking fund due in respect of any money advanced to the board by the Treasurer, or borrowed by the board under the powers hereinafter conferred;
- (c) In defraying the expenses incurred in the construction of works under this Act, and in the maintenance and management of the works vested in or under the control of the Board, and the conduct of the business of the board;
- (d) In the payment of contributions to a fund for the replacement of depreciating property.

117. The board may pay out of the fund any sum due under an agreement lawfully made for the purposes of this Act, and any sum recovered against the board by process of law, and any sum which by order made or purporting to be made under this Act, or the Public Works Act, 1902, the board is directed to pay by way of compensation, damages, costs, or otherwise.

Payments to be made out of fund for any authorised purpose.

118. Pending the collection of the rates by any board, the Treasurer may make advances to such board for the purpose of making any payment which may lawfully be made out of the Drainage Fund, and such advances may be repaid out of such fund: Provided that the aggregate of such advances remaining unrepaid shall not at any time exceed one-third of the actual revenue of the board from rates for the last preceding financial year, or where the board and district is newly constituted such advances shall not exceed one-third of the estimated revenue.

Temporary advances by Treasurer to Boards.

Treasurer may advance moneys.

119. The Treasurer may from time to time advance to the board, out of any moneys appropriated by Parliament for that purpose, such sums of money on loan as are required for the construction and extension of works; and the Treasurer may make advances from General Account to pay any interest or contribution to sinking fund payable by a board which such board is for the time being unable to pay out of its revenue.

All sums advanced under section one hundred and eighteen or this section shall bear interest at such rate and shall be repaid in such instalments as may be agreed upon between the Treasurer and the board.

Such advances to be a charge on the works and revenue.

120. All moneys advanced by the Treasurer to a board, or for which a board is liable under section one hundred and fifteen, shall, by virtue of this Act, be charged upon all works constructed by or vested in the board and on all the revenues thereof.

Subsidy may be withheld.

121. If a board, being the road board, in any year fails to pay the full amount of all such interest and instalments, the Treasurer may withhold so much of any subsidy payable to the road board as is sufficient to provide for such interest and instalments.

Power to borrow money.

122. (1) A board may, with the approval of the Governor, borrow money—

- (a) for the construction of works;
- (b) for payment of the cost of works charged to the board under section one hundred and fifteen;
- (c) to discharge the principal money of any loan to or other indebtedness to the board;
- (d) for any other purpose approved by the Governor.

123. All moneys borrowed by the board for the purposes aforesaid may be raised by the sale of debentures.

Loans may be raised on debentures.

124. Debentures issued by the board shall be in the prescribed form, and shall be numbered consecutively, and, except in the case of debentures issued to the Treasurer on account of amounts payable or advanced under sections one hundred and fifteen and one hundred and nineteen, each debenture shall have annexed for every payment of interest, which becomes payable after the day on which such debenture is sold, a coupon bearing the same number as the debenture.

Form of debentures.

125. (1) Every debenture issued shall entitle the bearer thereof to receive payment of the principal sum named therein, on presenting such debenture on and after the day on which such debenture becomes payable, at the place at which such debenture is payable.

Debentures to be payable to bearer.

(2) Coupons annexed to debentures issued may be separated from the debentures to which they belong, and every such coupon shall entitle the person presenting the same, on or after the day on which the interest mentioned in such coupon is payable, at the place at which such interest is payable, to receive payment of such interest.

126. Every debenture and every such coupon, whether separated or not from the debenture to which it belongs, shall pass by delivery only, without any assignment or indorsement.

Debentures and coupons to pass by delivery.

127. The principal moneys secured by every debenture issued shall be made payable on some day not more than thirty years after the date of such debenture.

When debentures to be made payable.

Sinking fund.

128. When a board has raised a loan or is liable for the repayment of any loan under the provisions of this Act, a sinking fund shall be formed to liquidate the same in manner following:—

The board shall, in every year after the issue of the debentures for such loan, cause such sum (being such percentage of the principal sum secured by such debentures as is named therein) to be invested by the Treasurer as will redeem the debentures at the date of maturity, to be paid to the Treasurer for investment: Provided that the board may, with the consent of the Treasurer, in lieu of paying the sinking fund contribution to the Treasurer, purchase or redeem a debenture yearly or half-yearly as may be agreed between the board and the lender.

Power to purchase debentures.

129. All moneys directed to be invested in the formation of a sinking fund to liquidate any loan may, in lieu thereof, be invested by the Treasurer in the purchase of any debentures by the sale of which the loan was raised, and thereupon such debentures shall be cancelled.

Sinking fund may be placed at fixed deposit.

130. Until such time as the Treasurer can purchase debentures, inscribed stock, or other Government securities of the State as aforesaid, the Treasurer may place the moneys of the sinking fund at fixed deposit in any of the banks doing business in the State, in the joint names of the Treasurer and of the board.

Investment of interest on sinking fund.

131. All interest on any inscribed stock or other securities or fixed deposit for the time being standing to the credit of any sinking fund shall be invested in the purchase of inscribed stock or other securities as aforesaid, or until such investment placed upon fixed deposit as aforesaid in the names and to the account as aforesaid.

Application of sinking fund to meet debentures.

132. When debentures are about to fall due, any inscribed stock or other securities comprised in any sinking fund formed to liquidate the same may be

sold out, and the proceeds paid into such bank to such account as the Treasurer may determine, and the money so paid into such bank shall be paid out to the bearers or registered holders of such debentures on presentation and delivery up of the same.

133. On the presentation at the Treasury on behalf of the board of any debentures, and all unpaid coupons belonging thereto, together with a certificate signed by the Government Actuary, stating what amount of inscribed stock or other securities and deposits comprised in any such sinking fund as aforesaid will be sufficient to secure the holders of all debentures (other than the first-mentioned debentures) secured by such sinking fund, and upon the cancellation of such first-mentioned debentures and coupons, the Treasurer may transfer to the board any balance of such sinking fund over and above the amount mentioned in such certificate.

Power to Treasurer to transfer sinking fund after repurchase of debentures.

134. If any board has incurred more loans than one, every sinking fund formed under the provisions hereof shall be applicable in the first instance in liquidation of the debentures which such fund was formed to liquidate.

Priorities of debenture holder.

Save as aforesaid, both as to principal and interest, the holders of debentures, by the sale of which different loans were raised, shall have priority according to the respective dates of such loans, and the holders of debentures, by the sale of which the same loan was raised, shall stand as between themselves on an equal footing.

135. The board shall cause a separate account to be kept in some bank for each separate loan, and if there is any surplus the board may apply the same in the repurchase of any debentures, or in the purchase of inscribed stock or other securities, or may place the same upon fixed deposit.

Separate accounts to be kept of every loan.

Balance of loan, how applicable.

136. If after the liquidation of any loan there is any balance of stock to the credit of the sinking fund, or of the proceeds thereof, the same shall be paid to the board and be applicable as part of the revenue of the board.

Application of provisions of Road Districts Act, 1919,¹ relating to receivers.

137. The provisions of the Road Districts Act, 1919,¹ mentioned in Part 4 of the Schedule to this Act relating to the appointment and powers of receivers are incorporated herewith and shall, subject to this Act, have effect as if set out in this Part.

PART IX.—ACCOUNTS AND AUDIT.

Financial year. Amended by No. 43 of 1941, s. 8.

138. The financial year of every board shall end in every year on the last day of the financial year as prescribed by the board by by-law made under this Act.

Books of account. Amended by No. 113 of 1965, s. 8.²

139. (1) The board shall cause books to be provided and kept and true and regular accounts to be entered therein—

- (a) of all moneys received and paid on account of and for the board, and of all moneys owing to and by the board under this Act, and of the several purposes for which such moneys are received and paid, and owing; and
- (b) of all the assets and liabilities of the board under this Act.

Minister may prescribe books.

(2) The Minister may from time to time prescribe the manner and form in which the books and accounts of the board shall be kept, and the same shall be kept accordingly.

Power to inspect.

(3) All books, accounts, and vouchers of the board shall at all times be open to the inspection of any person nominated by the Minister or the Auditor General.

¹ See footnote 3 on p. 71.

² Decimal Currency Act, 1965.

(4) Any person having the custody of the said books who shall not, on any reasonable demand of any person nominated by the Minister or the Auditor General, permit him to inspect the said books, or to take copies or extracts, shall be liable to a penalty not exceeding ten dollars for every such offence.

140. (1) All moneys of the board shall be paid into such bank, and in such manner as the board shall from time to time appoint and direct for that purpose, and no sum exceeding ten dollars shall be held in the hands of any member, or any officer, servant, or clerk of the board, for any period exceeding seven days.

Banking.
Amended by
No. 113 of
1965, s. 8.¹

(2) No such money shall be drawn out of such bank excepting by cheque signed by the chairman and countersigned by another member of the board appointed by the board for the purpose and by the secretary, and the authority for payment shall be a resolution of the board duly entered in the minute book.

(3) If in any district the absence of banking facilities renders a strict compliance with subsections (1) and (2) of this section impracticable, the Minister may permit such modification thereof as he thinks fit.

(4) The Minister may remove any member or summarily dismiss any clerk or other officer of the board who fails or neglects to observe the provisions of this section.

141. Every secretary shall, at every ordinary meeting of the board, prepare and place before the board a true statement in the prescribed form of the financial position of the board, which shall be entered on the minutes; and such statement shall be examined and compared with the vouchers, and the minutes signed by the chairman and the secretary.

Financial
statements
by secretary.

¹ Decimal Currency Act, 1965.

Power to expend money for purposes not specifically authorised.

147. The board may, in any year, expend a sum not exceeding three per cent. of its ordinary income for any purpose relating to the district or the credit thereof, although such disbursement may not be otherwise authorised by this Act.

PART X.—BY-LAWS AND REGULATIONS.

Board may make by-laws. Amended by No. 43 of 1941, s. 9.

148. Every board may, with the approval of the Governor and subject to the provisions of this Act, make by-laws with respect to the following matters, that is to say:—

- (1) The general conduct of its business and proceedings;
- (1a) Prescribing the financial year of the board;
- (2) The control, supervision, guidance, and duties of its officers and servants;
- (3) The construction, maintenance, preservation from damage or destruction, repair, management, and use of the works vested in or under the control of the board;
- (4) Preventing and remedying the fouling or contaminating of water in drains vested in or under the control of the board;
- (5) The making and levying of rates and for allowing rebates or discounts for prompt payment of rates;
- (6) The protection of the water and every part of the works from trespass or injury;
- (7) Prescribing forms for the purposes of this Act;
- (8) And for any other purposes relating to the administration of this Act and the exercise of the powers vested in the board.

Regulations

149. (1) The Governor may make regulations regulating any matters with respect to which

by-laws may be made or prescribing any matters which by this Act are required or permitted to be prescribed, or which it may be necessary or convenient to prescribe, for giving effect to this Act.

(2) Such regulations may be general or may be limited to one or more district or districts.

(3) When a by-law is inconsistent with a regulation the latter shall prevail and the former shall, to the extent of the inconsistency, be invalid.

(4) A regulation may repeal any by-law.

150. Every regulation or by-law—

(1) may impose a penalty not exceeding forty dollars for the breach thereof, and in the case of a continuing breach a further penalty not exceeding ten dollars for each day the offence continues after notice thereof has been given by or on behalf of a board to the offender; and

(2) may provide that, in addition to the penalty, any expense incurred by the board in consequence of the breach of such by-law may be ordered by a court of summary jurisdiction to be paid by the person committing such breach.

Penalties for
Breach of
By-laws.
Amended by
No. 113 of
1965, s. 8¹.

151. Any regulation or by-law made or purporting to be made under or by virtue of this Act shall be judicially noticed, and, subject to this Act and except in so far as it is in conflict with any express provision of this or any other Act, be conclusively deemed to be valid and have the force of law.

Regulations
and By-laws.

PART XI.—OFFENCES AND MISCELLANEOUS.

152. Every person who wilfully obstructs the board, or any member, or any person employed by the board in the performance of any act or thing

Obstructing
Board of
officers in
performance
of duty.
Amended by
No. 113 of
1965, s. 8¹

¹ Decimal Currency Act, 1965.

which such board, member, or person is authorised or required to do in the execution of this Act or any by-law or regulation made thereunder shall be liable to a penalty not exceeding forty dollars.

Penalty for obstructing drains, etc. Amended by No. 113 of 1965, s. 8.¹

153. Every person who—

- (a) wilfully obstructs any drain or work; or
- (b) having obstructed a drain or work, neglects or refuses to remove the obstruction when required so to do by the board,

shall be liable to a penalty not exceeding forty dollars, together with the costs incurred by the board in removing such obstruction:

Provided that this section shall not exempt any such person from the provisions of any law relating to common nuisances.

Injury to property of Board. Amended by No. 113 of 1965, s. 8.¹

154. Any person who shall deface, damage, or injure in any way, or without lawful authority use or occupy any land, work, or property whatsoever owned by, vested in, or under the care, control, or management of the board shall be liable to a penalty not exceeding forty dollars, and may be ordered by the convicting justices to pay to the board, in addition to such penalty, the cost and expense of making good any damage or replacing any property destroyed: Provided that this section shall not protect or exempt any such person from the provisions of any law relating to injuries to property.

Penalty for refusing to give up possession of works. Amended by No. 113 of 1965, s. 8.¹

155. Any person having charge of any works vested in or under the control of a board who refuses, on lawful demand, to give up peaceable and quiet possession of the same to any person lawfully entitled to possession thereof, shall be guilty of an offence, and shall be liable to a penalty not exceeding two hundred dollars and to be imprisoned for any period not exceeding six months.

¹ Decimal Currency Act, 1965.

156. When by this Act, or by any by-law, regulation, or order made or given thereunder, any act is directed to be done, or forbidden to be done, and such act shall, contrary to such direction, be left undone, or contrary to such prohibition be done, then any person by whose default or act such direction or prohibition is so contravened shall be deemed guilty of an offence against this Act.

Offences.

157. Every person guilty of an offence against this Act, or of any by-law or regulation made thereunder, shall, for every such offence, if no other penalty is imposed, be liable to a penalty not exceeding forty dollars.

Penalties.
Amended by
No. 113 of
1965, s 8¹.

158. Every penalty imposed by this Act or any by-law thereunder, and any other moneys made payable therewith, may be recovered in a summary way before any two justices of the peace in petty sessions.

Recovery of
penalties.

159. Section F¹ of the Second Schedule of the Interpretation Act, 1918, is incorporated with this Act.

Incorporation of
portion of In-
terpretation
Act.

160. All penalties recovered for offences against this Act, or any by-law thereunder, shall be paid to the board.

Penalties
recovered
to be paid to
Board.

161. In any proceedings in any court of petty sessions or before any justice, the secretary or any other officer of the board appointed by the chairman in writing under his hand may represent the board in all respects as if he were the party concerned.

Board may
be repre-
sented by
secretary or
other officer.

162. In any proceedings to be instituted in relation to any land, property, or thing belonging to, vested in, or under the care, control, or management of a board, it shall be sufficient to state

Property
may be
stated in
complaint,
etc., to be
the property
of the
Board.

¹ Decimal Currency Act, 1965.

generally the land, property, or thing in respect of which such proceedings shall be instituted to be the property of such board; and for the purpose of all legal proceedings, all drains, works, reserves, and other property and things whatsoever vested in or placed under the care, control, or management of the board shall be deemed to be the property of the board.

163. [*Repealed by No. 73 of 1954, s. 5.*]

Limitation
of liability
when work
done in reli-
ance on sup-
posed legal
authority.

164. When any damage or loss has at any time been sustained by any person by reason or in the course of the construction or doing by or by the order or request or with the authority of the board of any work which the members of the board or a majority of them at such time honestly and reasonably but mistakenly believed the board was lawfully authorised to do or cause or authorise to be done, then the person sustaining such damage or loss shall not be entitled to recover from the board or any person in any action or proceeding any greater damages or compensation than he would have been entitled to if the authority of the board had been such as it was believed to be:

Provided that nothing in this section shall exempt the board or any contractor or other person from liability in respect of loss or damage occasioned by negligence on the part of any contractor, servant of the board, or other person engaged in or about such work.

Charges
need not be
registered.

165. Any charge imposed or arising by or under this Act in respect of any property shall be valid and effectual for all purposes and against all persons without registration, notwithstanding the provisions of the Transfer of Land Act, 1893, or any other Act.

Notices.

166. All notices and demands under this Act may be in writing or in print, or partly in writing and partly in print.

Service of
documents
on owners
and
occupiers.

167. (1) When any document is required to be served under or for any of the purposes of this Act or any by-law or regulation made thereunder on any owner or occupier whose name is unknown to the board, or whose address is unknown to the board, or who is absent from the State, the document may be served by placing it on or over some conspicuous part of the premises referred to therein, and by publishing a copy thereof three times with an interval of a week between each publication in the *Gazette* and a newspaper usually circulating in the district, and in the first case the document may be addressed to such owner or occupier by the description of the "owner" or "occupier" of the premises (naming them) to which the document refers without further name or description.

(2) If there are more owners or occupiers than one it shall be sufficient if the document is served on one of them, and is addressed to that one with the addition of the words "and others" or "and another," as the case may require.

(3) Non-service on the owner shall not affect the validity of service on the occupier, and non-service on the occupier shall not affect the validity of service on the owner.

(4) In all proceedings in which the document has to be proved, the defendant shall be deemed to have received notice to produce it; and, until the contrary is shown, the same and its due service may be sufficiently proved by the production of what purports to be a copy, bearing what purports to be a certificate under the hand of the officer authorised to issue the original, or of the secretary to the board, as the case may be, that the copy is a true copy of the original, and that the original was served on the date specified in the certificate.

(5) The validity of any document or of the service thereof shall not be affected by any error, misdescription, or irregularity which is not calculated to mislead, or which in fact does not mislead.

(6) For the purposes of this section "document" includes any requisition, notice, order or demand, or any summons or proceeding under the Justices Act, 1902, issued or made for any of the purposes of this Act or any by-law or regulation made thereunder, and "serve" includes "deliver," "give," and "send."

(7) Any complaint which it is necessary to make under or for the purposes of this Act or any by-law or regulation made thereunder against any owner or occupier whose name is unknown to the board may be laid against him by the description of "owner" or "ocupier" of the land to which the complaint refers without further name or description.

Notices
binding on
persons
claiming
under owner
or occupier.

168. All notices and demands duly given to or made upon any owner or occupier shall be binding upon all persons claiming by, from, or under such owner or occupier.

Notices may
be authenti-
cated by
signature of
chairman
without seal.

169. Every order, summons, notice, or other document requiring authentication by the board may be sufficiently authenticated without the common seal of the board, if signed by the chairman or secretary.

Service on
Board.

170. Any summons or notice, or any writ or other proceeding requiring to be served upon the board, may be served upon the secretary of the board.

Saving of
civil remedy.

171. The institution of any proceedings, or the conviction of any person for an offence against this Act, shall not affect any remedy which the board or any person aggrieved may be entitled to in any civil proceedings.

Books of
Land Titles
and other
offices may
be searched
without fee.

172. Any person appointed under the hand of the Minister or the chairman of the Board may, for the purposes of this Act, search the public

registers of the Office of Titles and Registry of Deeds, or any office of the Department of Lands or of Mines without payment of any fee.

173. (1) In any legal proceedings under this Act, in addition to any other method of proof available—

Proof of ownership or occupancy.

Amended by No. 113 of 1965, s 81.

(a) evidence that the person proceeded against is rated as owner or occupier in respect of any land; or

(b) evidence by the certificate of—

(i) the Registrar of Deeds and Transfers or his substitute or any assistant Registrars of Deeds and Transfers, that any person appears from search made in the register kept under the Ordinance 19 Victoriae, No. 14, to be the owner of any land; or

(ii) the Registrar of Titles, or any assistant or deputy registrar, that any person appears from search made in the Office of Titles to be owner of any land; or

(iii) the Under Secretary for Lands or the Under Secretary for Mines, that any person is registered in the Department of Lands and Surveys, or the Department of Mines, as the lessee or occupier of any land,

shall, until the contrary is proved, be evidence that such person is the owner, lessee, or occupier, as the case may be, of such land.

(2) All courts and all persons having by law, or by consent of parties, authority to hear, receive, and examine evidence shall, for the purposes of this Act, take judicial notice of the signature attached to such certificate, and on the written application of any board, signed by the secretary, a certificate giving the name and address of such owner, lessee, or occupier, the situation and description of such

land, and date of registration of title, shall be furnished on payment of twenty cents for each certificate.

(3) The averment in any claim, complaint, or other document in any proceedings instituted for the purposes of this Act that any person is or was at any time the owner or occupier of any land, shall be deemed to be proved in the absence of proof of the contrary.

Power to
destroy old
rate-books,
etc.

174. The board may destroy disused rate receipt books, bank books, cheque books, ledgers, cash books, and documents which have not been in use for upwards of seven years.

Statistics.
Ibid., s. 332.

175. The board shall, as often as required by the Registrar General, furnish such statistics and returns relating to the operations of the board in such forms and in such manner as directed.

Property of
Board not to
be taxed.

176. The board shall be exempt from any rate, tax, or imposition which any local authority might, but for this section, lawfully levy and impose.

Act not to
affect rights
of the
Crown.

177. Any act or thing which, if this Act were not in force, might be done in the exercise of any right reserved to the King or any person representing him and relating to or affecting land alienated from the Crown, may still be done in the exercise of such right, notwithstanding that authority to do the same is given by this Act to any person whomsoever.

THE SCHEDULE.

PART I.

The following provisions of the Road Districts Act, 1919, Section 35. namely:—

Part III., Division (6) Electoral Rolls; Division (7) Election of members; Division (8) Nomination of candidates; Division (9) The Polling; Division (11) Electoral Offences.

PART II.

Sections two hundred and forty-five to two hundred and forty-eight (both inclusive) of the Road Districts Act, 1919.¹ Section 99.

PART III.

Sections two hundred and sixty-one to two hundred and seventy-two (both inclusive) of the Road Districts Act of 1919,² and the Third Schedule thereto. Section 113.

PART IV.

Sections two hundred and ninety-eight to three hundred and three (both inclusive) of the Road Districts Act, 1919.³

¹ Renumbered as sections 254 to 257 in Reprint Volume 4.

² Renumbered as sections 270 to 279 in Reprint Volume 4.

³ Renumbered as sections 312 to 317 in Reprint Volume 4.

