



# Public Drainage Associations: *Laws and Regulations*

*Reprinted from  
Michie's Annotated  
Code of Maryland*





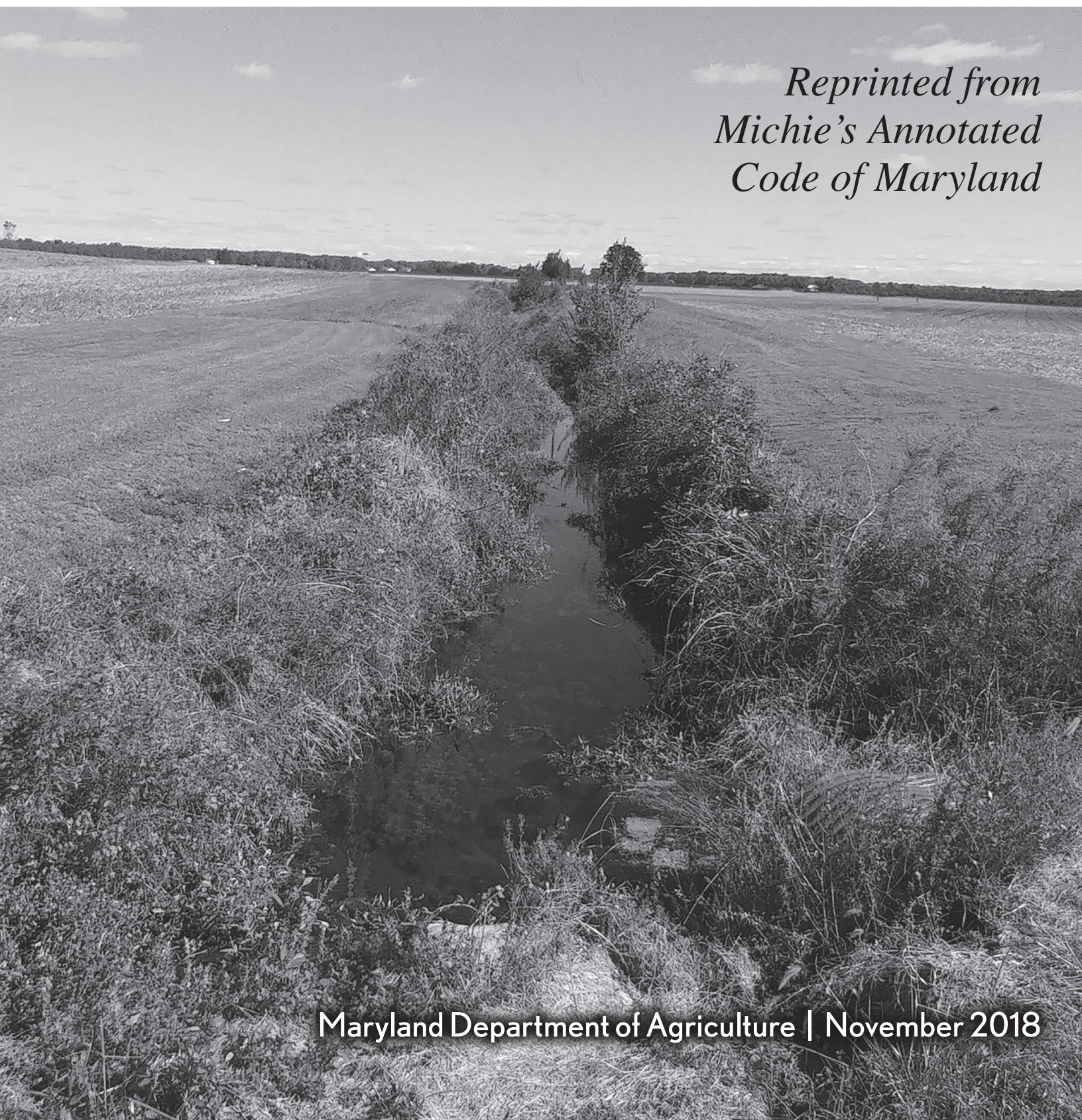






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## INTRODUCTION

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Public drainage systems were created by Maryland law more than 150 years ago in recognition of their many public benefits. Research has shown that proper drainage of frequently saturated soils helps create more productive farmland, reduces flooding, protects public health, improves the transportation infrastructure and supports local economies. The upkeep and maintenance of public drainage ditches is critical. Poorly maintained systems can accelerate the delivery of nutrients to nearby waterways, disturb wildlife habitat, and contribute to erosion and sediment losses.

The first known organized drainage project in Maryland was authorized by the state legislature in 1789 for draining the Long Marsh in Queen Anne's and Caroline counties. Specific projects were authorized by acts of the legislature until 1844 when a general law was passed delegating jurisdiction to county commissioners.

The Maryland Drainage Law governs the organization and administration of a public drainage association for a specific drainage project. As an association member, each benefited landowner is required to pay his/her proportionate expenditures. In addition, state law requires all public drainage associations to have a current Operation and Maintenance Plan that has been approved by the Maryland Secretary of Agriculture. Developed with assistance from the Maryland Department of Agriculture, these plans are designed to minimize the environmental impacts of agricultural drainage ditches while maintaining functioning drainage systems.

Maryland's public drainage law was revised in 2013 to include updated language and moved from the *County Commissioners* to the *Local Government* volume. The following sections of the Annotated Code of Maryland and the Code of Maryland Regulations (COMAR) serve as a valuable reference for managers of Maryland's Public Drainage Associations.



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**MICHIE'S ANNOTATED CODE OF MARYLAND**

**LOCAL GOVERNMENT**

**TITLE 26**

**PUBLIC DRAINAGE ASSOCIATIONS**

**AGRICULTURE**

**TITLE 8**

**SOIL CONSERVATION**

**SUBTITLE 6**

**DRAINAGE OF AGRICULTURAL LAND**







**MICHIE’S ANNOTATED CODE OF MARYLAND**

Current through chapters effective for the 2018 Regular Session of the General Assembly

**LOCAL GOVERNMENT**

**TITLE 26.**

**PUBLIC DRAINAGE ASSOCIATIONS**

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§ 26-101

PUBLIC DRAINAGE ASSOCIATIONS

Section

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**SUBTITLE 1.**

**DEFINITIONS; GENERAL PROVISIONS**

**§ 26-101. Definitions.**

(a) *In general.* – In this title the following words have the meanings indicated.

**Revisor’s Note.**

This subsection is new language added as the standard introductory language to a definition section.

(b) *Board of managers.* – “Board of managers” means the board of managers of a drainage association.

**Revisor’s Note.**

This subsection is new language added to avoid repetition of the full name of the board.



**Defined Terms.**

“Drainage association” ..... § 26-101

(c) *Board of viewers.* – “Board of viewers” means the board of drainage viewers established under this title.

**Revisor’s Note.**

This subsection is new language added to avoid repetition of the full name of the board.

(d) *Designated officer.* – “Designated officer” means:

(1) the clerk of the county commissioners for a code county or commission county if there is a clerk for the county; or

(2) an employee or official of the county who is designated by the county commissioner or county council to perform the responsibilities of the designated officer under this title.

**Revisor’s Note.**

This subsection is new language added to substitute a term for “clerk of the county commissioners” because many counties no longer have a clerk of the county commissioners or have transferred responsibilities formerly exercised by the clerk of the county commissioners to another official.

**Defined Terms.**

“Code county” ..... § 1-101

“Commission county” ..... § 1-101

“County” ..... § 1-101

(e) *Drainage association.* – “Drainage association” means a public drainage association established under this title.

**Revisor’s Note.**

This subsection is new language added to avoid repetition of the full name of the association.

(f) *Landowner.* – “Landowner” means a person who owns, or has contracted to purchase, land that is to be affected by a drainage project being considered by a drainage association or proposed drainage association.

**Revisor’s Note.**

This subsection is new language added for clarity and to conform to a similar provision in Title 25 of this article.

**Defined Terms.**

“Drainage association” ..... § 26-101

“Person” ..... § 1-101

[2013, ch. 119, § 2.]

**§ 26-102. Scope of title.**

This title does not apply to Baltimore City.

[An. Code 1957, art. 25, § 52(a), (c); 2013, ch. 119, § 2.]

**REVISOR’S NOTE**

This section is new language derived without substantive change from former Art. 25, § 52(c) and, as it related to the scope of this title, (a).

The reference to the title “not apply[ing] to Baltimore City” is substituted for the former references to the “boards of county commissioners of the several counties in the State of Maryland” and to the title “apply[ing] in those counties having a charter form of government under Article XI-A of the Maryland Constitution, with the term ‘county council’ being substituted in each instance in this subtitle for the term ‘county commissioners’” and “apply[ing] in those counties having adopted code home rule under Article XI-F of the Maryland Constitution” for brevity. Baltimore City is the only jurisdiction that is not a code county or governed by county commissioners or a county council.

Former Art. 25A, § 4(b), which provided that the “Draining Lands” Subtitle in Article 25 applied to a charter county, is deleted as unnecessary in light of the scope of this title.



The Local Government Article Review Committee notes, for consideration by the General Assembly, that although Title 25 (Watershed Associations) applies to Baltimore City, this title and Title 27 (Drainage Districts) seem to exclude Baltimore City.

§ 26-103. Construction of title.

This title does not:

- (1) restrict a charter county or code county from exercising a power granted under § 10-321 of this article;
- or
- (2) authorize:
  - (i) the removal of a milldam;
  - (ii) the interference with legal water rights of a mill; or
  - (iii) the diversion of water in a manner that deprives an owner of land over which water flows of the benefits and water rights to which the owner of the land is legally entitled.

[An. Code 1957, art. 25, §§ 52(d), 95; 2013, ch. 119, § 2.]

REVISOR’S NOTE

This section is new language derived without substantive change from former Art. 25, §§ 95 and 52(d).

In item (1) of this section, the former reference to “Article 25B, § 13 of the Code” is deleted as unnecessary in light of the organization of the revised article.

Also in item (1) of this section, the former reference to powers “which do not conflict with this subtitle” is deleted as implicit.

In item (2)(iii) of this section, the reference to the benefits and water rights “to which the owner of the land is legally entitled” is substituted for the former reference to benefits and water rights “now enjoyed by” the owner of the land for consistency with Title 25.

§ 26-104. Power to establish.

- (a) *In general.* – The county commissioners or county council of a county may establish a drainage association.
- (b) *Purpose.* – A drainage association may:
  - (1) locate and establish a ditch, drain, or canal; and
  - (2) establish and maintain a watershed drainage system by constructing, straightening, widening, or deepening any ditch, drain, or watercourse.

[An. Code 1957, art. 25, § 52(a), (c); 2013, ch. 119, § 2.]

REVISOR’S NOTE

This section is new language derived without substantive change from former Art. 25, § 52(a), as it related to the power to establish a drainage association, and (c), as it related to the authority of the county councils of charter counties.

In subsection (a) of this section, and throughout this title, the references to a “county council” are added to reflect the intent of former Art. 25, § 52(c) that “the term ‘county council’ [be] substituted in each instance for the term ‘county commissioners’”.

In subsection (a) of this section, the word “may” is substituted for the former phrase “shall have jurisdiction, power, and authority” for brevity.

Also in subsection (a) of this section, the former phrase “in their respective counties” is deleted as implicit.

Also in subsection (a) of this section, the former reference to “in the State of Maryland” is deleted as surplusage.

In subsection (b) of this section, the reference to a “drainage association” locating and establishing a ditch, drain, or canal is added for clarity.

DEFINED TERM:

“Drainage association” ..... § 26-101

§ 26-105. Statement of public benefit.

A drainage project established and maintained by a drainage association benefits the public and promotes public health, safety, and welfare.

[An. Code 1957, art. 25, § 52(a); 2013, ch. 119, § 2.]

REVISOR’S NOTE

This section is new language derived without substantive change from former Art. 25, § 52(a), as it related to the statement of the public benefit of drainage.

The reference to a drainage project “established and maintained by a drainage association” is substituted for the former reference to “such” drainage for clarity.

The reference to drainage “benefit[ing] the public and promot[ing] public health, safety, and welfare” is substituted for the former reference to drainage “be[ing] considered a public benefit and conducive to the public health, convenience and welfare” for consistency with similar terminology in the Code.

The former clause “and it is hereby declared that” is deleted as surplusage.

**§ 26-106. Notice to units of State government.**

The county commissioners or county council shall notify the Secretary of Agriculture and the State Soil Conservation Committee in the Department of Agriculture of the establishment of a drainage association so that coordination and assistance may be provided in accordance with § 8-602 of the Agriculture Article.

[An. Code 1957, art. 25, § 52(b); 2013, ch. 119, § 2.]

**REVISOR’S NOTE**

This section is new language derived without substantive change from former Art. 25, § 52(b).

The reference to the “county commissioners or county council” is added to clarify who is required to give notice.

In this section and throughout this title, the references to the State Soil Conservation Committee “in the Department of Agriculture” are added for clarity.

**DEFINED TERM:**

“Drainage association” ..... § 26-101

**§ 26-107. Notice to affected nonresident.**

If any owner of property affected by any proceedings under this title resides out of State, a written notice of the proceedings of the county commissioner or county council served on the tenant or agent of the owner at least 30 days before the proceedings shall be as good and sufficient as if the owner resided in the State.

[An. Code 1957, art. 25, § 76; 2013, ch. 119, § 2.]

**REVISOR’S NOTE**

This section is new language derived without substantive change from former Art. 25, § 76.

The former reference to “land” is deleted as included in the reference to “property”.

**DEFINED TERM:**

“State” ..... § 1-101

**SUBTITLE 2.**

**PETITION TO ESTABLISH DRAINAGE ASSOCIATION**

**§ 26-201. Filing.**

A petition to establish a drainage association shall be filed with the designated officer of the county in which all or a part of the land to be affected by the proposed drainage association is located.

[An. Code 1957, art. 25, § 53(a); 2013, ch. 119, § 2.]

**REVISOR’S NOTE**

This section is new language derived without substantive change from former Art. 25, § 53(a), as it related to the filing of a petition to establish a drainage association.

The reference to a petition “to establish a drainage association” is added for clarity.

The word “shall” is substituted for the former word “may” to clarify that it is a requirement that a petition be filed with the county.

The reference to “the land to be affected by the proposed drainage association” is substituted for the former reference to “such body of land” for clarity.

**DEFINED TERMS:**

“County” ..... § 1-101

“Designated officer” ..... § 26-101



“Drainage association” ..... § 26-101

§ 26-202. Petition.

(a) Contents. – The petition shall:

- (1) clearly describe the area’s location, boundaries, and need of drainage for optimal crop production;
- (2) describe how draining or ditching the area or changing the natural watercourse benefits the public or promotes the public health, safety, or welfare; and
- (3) request the establishment of a drainage association for the purposes listed in item (2) of this subsection.

(b) Required signatures. – A petition is valid only if signed by at least one-third of the landowners or the owners of at least one-third of the land in a watershed.

[An. Code 1957, art. 25, § 53(a); 2013, ch. 119, § 2.]

REVISOR’S NOTE

This section is new language derived without substantive change from former Art. 25, § 53(a), as it related to the content of a petition to establish a drainage association and the signatures required for the petition.

In subsection (a)(1) of this section, the reference to “clearly” describing the area is substituted for the former reference to describing the area “in such a way as to convey an intelligent idea” for brevity.

In subsection (a)(2) of this section, the reference to draining “benefit[ing] the public or promot[ing] the public health, safety, or welfare” is substituted for the former reference to “the public benefit or utility, or the public health, convenience or welfare would be promoted by draining” for consistency with similar terminology in the Code.

Also in subsection (a)(2) of this section, the reference to the “area” is substituted for the former reference to the “same” for clarity.

Also in subsection (a)(2) of this section, the former reference to “improving” the natural watercourse is deleted as included in the reference to “changing” the natural watercourse.

In subsection (b) of this section, the phrase “[a] petition is valid only if” is substituted for the former phrase “[a] petition . . . may be filed” for clarity.

DEFINED TERMS:

“Drainage association” ..... § 26-101

“Landowner” ..... § 26-101

§ 26-203. Report required.

(a) In general. –

(1) The petition shall be accompanied by a report from the local soil conservation districts serving the area of the proposed drainage association.

(2) The report shall state:

- (i) the size and location of the area of the proposed drainage association;
- (ii) the nature of the problem to be addressed;
- (iii) the type of treatment believed to be needed and the benefits anticipated;
- (iv) whether the proposed drainage association is feasible and is generally supported by the landowners in the area;
- (v) whether the proposed drainage association will benefit the public and promote the public health, safety, and welfare;
- (vi) the name of the proposed drainage association, in the form of the “\_\_\_\_\_ Public Drainage Association”; and
- (vii) the number of managers, equaling not less than three, to serve as the board of managers.

(b) Maps of area affected. – The local soil conservation districts shall file with the report maps that show:

- (1) a general delineation of the area of the proposed drainage association; and
- (2) the area’s location in each county in which it lies.

[An. Code 1957, art. 25, § 53(b); 2013, ch. 119, § 2.]

REVISOR’S NOTE

This section is new language derived without substantive change from former Art. 25, § 53(b).

In subsections (a)(1) and (2)(i) and (b)(1) of this section, the references to the area “of” the proposed drainage association are added for clarity and consistency within this title.

In subsection (a)(1) of this section, the reference to the districts “serving” the area is substituted for the former reference to the districts “lying in whole or in part within” the area for clarity.

In subsection (a)(2)(ii) of this section, the reference to the problem “to be addressed” is added for clarity.

In subsection (a)(2)(iv) of this section, the former reference to the drainage association being “practicable” is deleted as implicit in the reference to the association being “feasible”.

In subsection (a)(2)(v) of this section, the reference to the drainage association “benefit[ing] the public and promot[ing] the public health, safety, and welfare” is substituted for the former reference to the drainage association “promot[ing] the public benefit, and be[ing] conducive to the public health, safety, and welfare” for consistency with similar terminology in the Code.

In subsection (a)(2)(vii) of this section, the reference to the “board of managers” is substituted for the former reference to the “governing body” for clarity and to avoid the erroneous application of the defined term “governing body”.

In the introductory language of subsection (b) of this section, the reference to a “local” soil conservation district is added for consistency within this title.

In subsection (b)(2) of this section, the reference to “each county in which it lies” is substituted for the former reference to “the county or counties indicated” for clarity.

**DEFINED TERMS:**

“Board of managers” .....	§ 26-101
“County” .....	§ 1-101
“Drainage association” .....	§ 26-101
“Landowner” .....	§ 26-101

**§ 26-204. Examination of petition and report; hearing; notice.**

(a) *Examination of petition and report.* –

(1) The county commissioners or county council shall examine the petition and report at the first meeting after receiving the petition and report.

(2) If the county commissioners or county council find the petition and report are not in proper form or not in compliance with the law, the petition and report shall be returned to the petitioners to be corrected and resubmitted.

(3) If the petition and report are in proper form and in compliance with the law, the county commissioners or county council shall set a date for a public hearing on the petition and report.

(b) *Notice.* –

(1) At least 10 days before the hearing, the county commissioners or county council shall:

(i) publish notice of the time and place of the hearing in a newspaper of general circulation in each county in the area in which the proposed drainage association would be located; and

(ii) send notice of the hearing and any later hearing to the:

1. Department of Agriculture; and
2. State Soil Conservation Committee in the Department of Agriculture.

(2) The notice of the hearing shall state that a copy of the report is available for inspection in the office of the designated officer.

(c) *Report available for inspection.* – A copy of the report shall be available for inspection in the office of the designated officer.

[An. Code 1957, art. 25, § 54; 2013, ch. 119, § 2.]

**REVISOR’S NOTE**

This section is new language derived without substantive change from former Art. 25, § 54.

In subsection (a)(1) of this section, the reference to the requirement that the local authority “examine the petition and report” is added for consistency with § 25-204 of this article, which applies to watershed associations.

In subsection (a)(2) of this section, the reference to the petition and report being “resubmitted” is substituted for the former reference to the petition and report being returned “to the county commissioners at a subsequent meeting” for brevity.

Also in subsection (a)(2) of this section, the reference to the petition being “returned” is substituted for the former references to the petition being “reject[ed]” and “referred back” for clarity.



§ 26-205

PUBLIC DRAINAGE ASSOCIATIONS

In subsection (b)(1)(i) of this section, the reference to each “county in the area in which the proposed drainage association would be located” is substituted for the former reference to the “county or counties in which the lands in the drainage association are located” for clarity.

Also in subsection (b)(1)(i) of this section, the former reference to “newspapers” is deleted in light of the reference to “newspaper” and Art. 1, § 8, which provides that the singular generally includes the plural.

In subsection (c) of this section, the former reference to “[d]uring this time” is deleted as surplusage.

Also in subsection (c) of this section, the former reference to inspection “by any landowners or other person interested” is deleted as surplusage.

DEFINED TERMS:

- “County” ..... § 1-101
- “Designated officer” ..... § 26-101
- “Drainage association” ..... § 26-101

§ 26-205. Multiple counties – Jurisdiction and venue.

If the land described in the petition is located in two or more counties, the county commissioners or county council of an affected county may exercise the jurisdiction conferred in this title, but the venue shall lie in the county in which the petition is filed.

[An. Code 1957, art. 25, § 55; 2013, ch. 119, § 2.]

REVISOR’S NOTE

This section is new language derived without substantive change from the first sentence of former Art. 25, § 55.

DEFINED TERM:

- “County” ..... § 1-101

§ 26-206. Hearing and action on petition and report.

(a) *Participants.* – At the hearing on the petition and report, the petitioners, any affected local soil conservation district, and any other person may appear in person or by counsel and object to any part of the report.

(b) *Authority of county.* – The county commissioners or county council may:

- (1) disapprove the petition and report and return them to the petitioners for amendment in view of the objections presented; or
- (2) approve the petition and report as submitted or amended.

[An. Code 1957, art. 25, § 57; 2013, ch. 119, § 2.]

REVISOR’S NOTE

This section is new language derived without substantive change from the first and second sentences of former Art. 25, § 57.

In subsection (a) of this section, the reference to the hearing “on the petition and report” is added for clarity.

Also in subsection (a) of this section, the reference to a “local” soil conservation district is added for consistency within this title.

Also in subsection (a) of this section, the former reference to soil conservation “districts” is deleted in light of the reference to a soil conservation “district” and Art. 1, § 8, which provides that the singular generally includes the plural.

Also in subsection (a) of this section, the former reference to a soil conservation district “being represented” is deleted as surplusage.

Also in subsection (a) of this section, the reference to any “other person” is substituted for the former reference to any “person interested in the matter” for brevity.

In subsection (b)(1) of this section, the reference to “return[ing] them” is substituted for the former reference to “refer[ring] them back” for brevity.

DEFINED TERM:

- “Person” ..... § 1-101

SUBTITLE 3. ESTABLISHMENT AND ORGANIZATION

§ 26-301. Establishment of drainage association.

(a) Approval of petition and report. – On approval of the petition and report filed under Subtitle 2 of this title, the county commissioners or county council shall:

- (1) establish a drainage association that is composed of the landowners; and
(2) name the organization the “\_\_\_\_\_ Public Drainage Association”.

(b) Status. – A drainage association created under this title is a political subdivision of the State and a body politic and corporate.

(c) Powers. – A drainage association may:

- (1) acquire, hold, and convey property;
(2) sue and be sued;
(3) adopt a seal; and
(4) exercise corporate powers.

[An. Code 1957, art. 25, §§ 57, 59; 2013, ch. 119, § 2.]

REVISOR’S NOTE

This section is new language derived without substantive change from former Art. 25, § 59 and the third sentence of § 57.

In the introductory language of subsection (a) of this section, the reference to filing “under Subtitle 2 of this title” is added for clarity.

In subsection (a)(1) of this section, the former reference to “all the lands within the boundaries of the association” is deleted as surplusage.

In subsection (b) of this section, the former reference to a drainage association “under the name and title of the ‘\_\_\_\_\_ Public Drainage Association’” is deleted as unnecessary since it is established in subsection (a) of this section that the commissioners will name the drainage association.

In subsection (c)(3) of this section, the former reference to “alter[ing]” the seal “at pleasure” is deleted as implicit in the reference to “adopt[ing]” the seal.

DEFINED TERMS:

- “Drainage association” ..... § 26-101
“Landowner” ..... § 26-101
“State”..... § 1-101

§ 26-302. Board of managers – Initial election.

(a) Meeting of landowners. – Within 30 days after the approval of the petition and report, the county commissioners or county council shall call a meeting of the landowners to elect a board of managers.

(b) Notice. –

- (1) At least 10 days before the meeting, the county commissioners or county council shall post a notice of the meeting at four public places in the area or vicinity of the area of the drainage association.
(2) The notice shall state the time, place, and purpose of the meeting.

(c) Right to vote. –

- (1) Each landowner is entitled to vote in the election of the board of managers until the board of viewers report is approved by the county commissioners or county council.
(2) When the report of the board of viewers is approved, each landowner is entitled to vote according to the special assessment on the landowner shown in the report as follows:
(i) for any special assessment not exceeding \$15, one vote;
(ii) for any special assessment more than \$15 and not exceeding \$35, two votes;
(iii) for any special assessment more than \$35 and not exceeding \$60, three votes;
(iv) for any special assessment more than \$60 and not exceeding \$100, four votes;
(v) for any special assessment more than \$100, one additional vote for each \$50 in excess of \$100, plus one additional vote for any remaining part less than \$50.



(3) Any landowner may vote by written proxy signed by the landowner.

(d) *Quorum.* – A quorum consists of the number of landowners who are entitled to cast a majority of all the votes as provided in subsection (c) of this section.

(e) *Appointment in absence of quorum.* – On proof that notice has been given as required in subsection (b) of this section, if a quorum is not obtained, the county commissioners or county council shall appoint the managers.

(f) *Staggering of initial terms.* – The board of managers elected under subsection (a) of this section shall determine by a random drawing the managers who:

- (1) serve until the date of the first regular annual meeting;
- (2) serve until the date of the first regular annual meeting and for 1 year thereafter; or
- (3) serve until the date of the first regular annual meeting and for 2 years thereafter.

[An. Code 1957, art. 25, §§ 58, 61; 2013, ch. 119, § 2.]

**REVISOR’S NOTE**

This section is new language derived without substantive change from former Art. 25, §§ 58 and 61.

In subsection (a) of this section, the reference to calling “a meeting of the landowners” is substituted for the former reference to calling “together the owners of all land within the public drainage association” for clarity and consistency within this subtitle.

In subsection (b)(1) of this section, the reference to places “in the area or vicinity of the area of the drainage association” is substituted for the former reference to places “within the drainage association or in the vicinity thereof” for clarity and consistency within this title.

In subsection (c)(1) of this section, the reference to the election “of the board of managers” is substituted for the former reference to “such” election for clarity.

In subsection (c)(3) of this section, the reference to a “written proxy signed by the landowner” is substituted for the former reference to a “proxy, authorized by writing, under his hand” for clarity.

In subsection (d) of this section, the reference to the “number of landowners who are entitled” is substituted for the former reference to “[l]andowners who shall be entitled” for clarity.

Also in subsection (d) of this section, the former reference to a quorum “for the purposes aforesaid” is deleted as surplusage.

In subsection (e) of this section, the reference to a “quorum [that] is not obtained” is substituted for the former reference to “such landowners constituting a quorum [that] refuse or fail to meet” for brevity.

In subsection (f) of this section, the reference to determining “by a random drawing” is substituted for the former reference to determining “by the drawing of lots” to provide clarity through the use of more modern terminology.

Also in subsection (f) of this section, the former reference to an annual meeting “as hereinafter provided in this subtitle” is deleted as surplusage.

**DEFINED TERMS:**

“Board of managers” .....	§ 26-101
“Board of viewers” .....	§ 26-101
“Drainage association” .....	§ 26-101
“Landowner” .....	§ 26-101

**§ 26-303. Board of managers – Tenure; vacancies.**

(a) *Tenure.* –

- (1) The term of each manager is 3 years.
- (2) Each manager shall serve until a successor is elected or appointed.

(b) *Election to fill vacancies.* –

- (1) Each year, the landowners shall meet to elect a successor to:
  - (i) any manager whose term expired on or before the date of the meeting; and
  - (ii) any manager who died or resigned since the last annual meeting.

(2) A manager who is elected to fill a vacancy caused by death or resignation shall hold the office for the rest of the term.

(c) *Appointment to fill vacancies.* –

(1) The county commissioners or county council shall appoint an individual to fill a vacancy on the board of managers if:

- (i) the board of managers does not call an annual meeting of landowners; or
- (ii) the board of managers holds an annual meeting of landowners but a quorum is not present.

(2) The county commissioners or county council may appoint a manager to fill a vacancy on the board of managers until the next annual meeting of landowners.

[An. Code 1957, art. 25, §§ 64-66; 2013, ch. 119, § 2.]

**REVISOR’S NOTE**

This section is new language derived without substantive change from former Art. 25, §§ 65 and 66 and the first sentence of § 64.

In subsection (a)(1) of this section, the reference to “each manager” is substituted for the former reference to “[m]embers of the board of managers elected or appointed under § 64 or § 65 of this subtitle” for brevity.

In subsection (b)(1)(ii) of this section, the reference to any “manager” is substituted for the former reference to any “other or others” for clarity.

Also in subsection (b)(1)(ii) of this section, the reference to the last “annual” meeting is substituted for the former reference to the last “regular” meeting for clarity and consistency throughout this subtitle.

In subsection (b)(2) of this section, the reference to the “rest of the” term is substituted for the former reference to the “unexpired balance” of the term for clarity and consistency with other revised articles of the Code.

Also in subsection (b)(2) of this section, the former reference to managers holding an office “until his successor is elected or appointed” is deleted as redundant of subsection (a)(2) of this section.

In the introductory language of subsection (c)(1) of this section, the reference to an “individual” is substituted for the former reference to a “person or persons” because only a human being and not the other entities included in the definition of “person” can serve as a manager.

Also in the introductory language of subsection (c)(1) of this section, the former phrase “upon proof being given” is deleted as surplusage.

Also in the introductory language of subsection (c)(1) of this section, the former reference to “vacancies” is deleted in light of the reference to “vacancy” and Art. 1, § 8, which provides that the singular generally includes the plural.

In subsection (c)(2) of this section, the former reference to a vacancy “caused by death, resignation, or for any reason” is deleted as surplusage.

**DEFINED TERMS:**

“Board of managers” ..... § 26-101  
 “Landowner” ..... § 26-101

**§ 26-304. Officers.**

The board of managers shall elect a chair and a secretary from among its members.

[An. Code 1957, art. 25, § 60A; 2013, ch. 119, § 2.]

**REVISOR’S NOTE**

This section is new language derived without substantive change from former Art. 25, § 60A.

The former reference to the board of managers “so elected or appointed having determined the length of term of the several members,” is deleted as redundant of § 26-302(d) of this subtitle which provides for the election or appointment and term of a manager.

The former phrase “proceed at once to organize by” electing officers is deleted as surplusage.

**DEFINED TERM:**

“Board of managers” ..... § 26-101

**§ 26-305. Immunity from liability.**

An officer or director of a drainage association shall have the immunity from liability described in § 5-508 of the Courts Article.

[An. Code 1957, art. 25, § 60; 2013, ch. 43, § 5; ch. 119, § 2.]

**REVISOR’S NOTE**

This section is new language derived without substantive change from former Art. 25, § 60, as it related to the immunity from liability of an officer or director of a drainage association.

**DEFINED TERM:**

“Drainage association” ..... § 26-101

**Editor’s note.** Pursuant to § 5, ch. 43, Acts 2013, “§ 5-508” was substituted for “§ 5-508(b),” following the amendment by ch. 119, Acts 2013.



§ 26-306. Distribution and retention of petition and report.

The county commissioners or county council shall:

- (1) retain the original petition and report approved under § 26-206(b) of this title; and
- (2) deliver a copy of the approved petition and report to the board of managers and the State Soil Conservation Committee in the Department of Agriculture.

[An. Code 1957, art. 25, § 62; 2013, ch. 119, § 2.]

REVISOR'S NOTE

This section is new language derived without substantive change from former Art. 25, § 62.

The former reference to the petition and report as approved "by the board of county commissioners" is deleted as surplusage.

In item (1) of this section, the reference to the petition and report approved "under § 26-206(b) of this title" is added for clarity.

Also in item (1) of this section, the former reference to retaining the original "in their official records" is deleted as surplusage.

Also in item (1) of this section, the former reference to retaining "one copy of" the petition is deleted as surplusage. Similarly, in item (2) of this section, the former reference to a "third" copy is deleted.

DEFINED TERM:

"Board of managers" ..... § 26-101

§ 26-307. Drainage file.

(a) *Designated officer to maintain.* – The designated officer shall maintain a drainage file.

(b) *Contents.* – The drainage file shall contain the petitions, motions, orders, reports, and other exhibits necessary for a complete record of the establishment of each drainage association in the county.

[An. Code 1957, art. 25, § 75; 2013, ch. 119, § 2.]

REVISOR'S NOTE

This section is new language derived without substantive change from former Art. 25, § 75.

In subsection (b) of this section, the former reference to a "continuous" record is deleted as included in the reference to a "complete" record.

DEFINED TERMS:

"County" ..... § 1-101

"Designated officer" ..... § 26-101

"Drainage association" ..... § 26-101

§ 26-308. Annual meetings of landowners.

(a) *In general.* – In January of each year, the board of managers shall call a meeting of the landowners.

(b) *Notice.* –

(1) At least 10 days before the meeting, the board of managers shall post a notice of the meeting at four public places in the vicinity of the drainage project.

(2) The notice shall state the time, place, and purpose of the meeting.

(c) *Annual report and other business.* – At the meeting, the landowners shall:

(1) receive the annual report of the board of managers; and

(2) transact any other business that may properly come before the landowners.

[An. Code 1957, art. 25, §§ 63, 64; 2013, ch. 119, § 2.]

REVISOR'S NOTE

This section is new language derived without substantive change from the first and second sentences of former Art. 25, § 63 and the second sentence of § 64.

In subsection (a) of this section, the former reference to "on a date they select" is deleted as surplusage.

In subsection (b) of this section, the former reference to "the most" public places is deleted as surplusage.

In the introductory language of subsection (c) of this section, the phrase "[a]t the meeting" is added for clarity.

DEFINED TERMS:

"Board of managers" ..... § 26-101

“Landowner” ..... § 26-101

**§ 26-309. Special meetings.**

- (a) *In general.* – The board of managers may call a special meeting of landowners at any time.
- (b) *Notice.* –
  - (1) At least 10 days before the meeting, the board of managers shall:
    - (i) post a notice of the meeting at four public places in the vicinity of the drainage project; and
    - (ii) mail a notice to:
      - 1. each landowner;
      - 2. the county commissioners or county council; and
      - 3. the State Soil Conservation Committee in the Department of Agriculture.
  - (2) The notice shall state the time, place, and purpose of the meeting.

[An. Code 1957, art. 25, § 63; 2013, ch. 119, § 2.]

**REVISOR’S NOTE**

This section is new language derived without substantive change from the third sentence of former Art. 25, § 63.  
 In subsection (b)(1)(i) of this section, the reference to “[a]t least 10 days before the meeting ...post[ing] a notice of the meeting at four public places in the vicinity of the drainage project” is substituted for the former reference to giving notice “as aforesaid” for clarity.  
 In subsection (b)(1)(ii) of this section, the former reference to a “written or printed” notice is deleted as unnecessary in light of the reference to a “mail[ed]” notice.  
 In subsection (b)(2) of this section, the reference to the notice “stat[ing] the time, place, and purpose of the meeting” is substituted for the former reference to giving notice “as aforesaid” for clarity.

**DEFINED TERMS:**

“Board of managers” ..... § 26-101  
 “Landowner” ..... § 26-101

**SUBTITLE 4.  
PLAN**

**§ 26-401. Development.**

- (a) *Duty of board of managers.* – The board of managers shall develop a plan for agricultural drainage and soil conservation to promote optimal crop production by establishing and maintaining drainage systems that promote public health, safety, and welfare.
- (b) *Planning and engineering services.* – In developing the plan, the board of managers:
  - (1) shall engage the services of private engineers; or
  - (2) may use the services of planners and engineers of local, State, and federal units of government.
- (c) *Right of entry.* – A member or an agent of the board of managers or a member or an agent of the board of viewers:
  - (1) may enter any land to make surveys and examinations for developing a plan; and
  - (2) is liable for actual damage done to any land entered during a survey or examination.

[An. Code 1957, art. 25, § 67(a), (b); 2013, ch. 119, § 2.]

**REVISOR’S NOTE**

This section is new language derived without substantive change from former Art. 25, § 67(a) and the first sentence of (b).  
 In subsection (a) of this section, the reference to public health, “safety,” and welfare is substituted for the former reference to public health, “convenience,” and welfare for consistency with other provisions of the Code.  
 Also in subsection (a) of this section, the former reference to “the watershed or subwatershed area” is deleted as surplusage.  
 Also in subsection (a) of this section, the former reference to “watershed” drainage systems is deleted as surplusage.  
 In subsection (b)(1) of this section, the former reference to a “competent and experienced” private engineer is deleted as implicit.  
 In subsection (b)(2) of this section, the reference to “units of government” is substituted for the former reference to “agencies” for consistency with other revised articles of the Code.



In the introductory language of subsection (c) of this section, the former reference to “employees” of the board of managers is deleted as included in the reference to an “agent” of the board of managers.

In subsection (c)(1) of this section, the reference to “any land” is substituted for the former reference to “the lands within or without the area” for brevity.

Also in subsection (c)(1) of this section, the reference to “developing a plan” is substituted for the former reference to “accomplish[ing] their purpose” for clarity.

In subsection (c)(2) of this section, the reference to damage done “to any land entered during a survey or examination” is added for clarity.

**DEFINED TERMS:**

- “Board of managers” ..... § 26-101
- “Board of viewers” ..... § 26-101
- “State” ..... § 1-101

**§ 26-402. Contents.**

The plan developed under § 26-401 of this subtitle shall include:

- (1) the location of each proposed drainage project on a map, drawing, or aerial photograph;
- (2) a general delineation of the boundaries of the area affected by the drainage association with the general location in the county affected;
- (3) engineering plans in sufficient detail to describe the proposed project;
- (4) a general delineation of the boundaries of each tract of land in the area affected by the drainage association, including an estimate of the acreage of each tract; and
- (5) the total estimated construction cost of each proposed drainage project.

[An. Code 1957, art. 25, § 69(a); 2013, ch. 119, § 2.]

**REVISOR’S NOTE**

This section is new language derived without substantive change from the third sentence of former Art. 25, § 69(a).

In the introductory language of this section, the reference to the plan “developed under § 26-401 of this subtitle” is added for clarity.

In items (2) and (4) of this section, the references to the “area affected by” the drainage association are added for clarity and consistency within this title.

In item (2) of this section, the former reference to “counties” is deleted in light of the reference to a “county” and Art. 1, § 8, which provides that the singular generally includes the plural. Similarly, in item (3) of this section, the former reference to “projects” is deleted in light of the reference to a “project”.

In item (4) of this section, the reference to each “tract of land” is substituted for the former reference to each “affected individual ownership”. Similarly, the reference to the acreage of each “tract” is substituted for the former reference to “which each contains”.

In item (5) of this section and throughout this subtitle, the references to a “drainage project” are substituted for the former references to “works of improvement” for consistency with similar provisions of the Code.

**DEFINED TERMS:**

- “County” ..... § 1-101
- “Drainage association” ..... § 26-101

**§ 26-403. Adoption of plan.**

(a) *Meeting of landowners.* – On completion of the plan, or on the acceptance of a previously completed plan, the board of managers shall call a meeting of the landowners to vote on the adoption of the plan for submission to the county commissioners or county council.

(b) *Notice.* –

- (1) At least 10 days before the meeting, the board of managers shall:
  - (i) post a notice of the meeting in four public places in the area or vicinity of the area of the drainage association; and
  - (ii) mail a notice to each landowner.
- (2) The notice shall state the time, place, and purpose of the meeting.

(c) *Right to vote.* – At the meeting required under subsection (a) of this section:

- (1) each landowner is entitled to one vote; and

(2) any landowner may vote by proxy if the proxy is dated, signed by the individual entitled to vote, and witnessed by at least one individual.

(d) *Determination by board of managers.* –

(1) The board of managers shall determine whether to submit the plan to the county commissioners or county council for review and approval.

(2) In making the determination, the board of managers shall consider:

- (i) the vote of each landowner;
- (ii) the probable apportionment of benefits to each landowner based on acreage;
- (iii) the location of the drainage project; and
- (iv) the extent of the benefits to the voter’s land by the drainage project.

[An. Code 1957, art. 25, § 68; 2013, ch. 119, § 2.]

**REVISOR’S NOTE**

This section is new language derived without substantive change from former Art. 25, § 68.

In subsection (b)(1)(i) of this section, the reference to places “in the area or vicinity of the area of the drainage association” is substituted for the former reference to places “within the association or in the vicinity thereof” for clarity and consistency within this title.

In subsection (b)(1)(ii) of this section, the former reference to a “written or printed” notice is deleted as unnecessary in light of the reference to a “mail[ed]” notice.

In the introductory language of subsection (c) of this section, the phrase “[a]t the meeting required under subsection (a) of this section” is substituted for the former phrase “[a]t such meeting” for clarity.

In subsection (c)(2) of this section, the references to an “individual” being entitled to vote or being a witness are substituted for the former references to a “person” being entitled to vote or being a witness since the reference is intended to apply only to human beings and not the other entities included in the definition of “person”.

In subsection (d)(2)(i) of this section, the reference to the vote “of each landowner” is added for clarity.

In subsection (d)(2)(ii) of this section, the reference to the benefits “to each landowner” is added for clarity.

In subsection (d)(2)(iii) of this section, the reference to the location “of the drainage project” is added for clarity.

**DEFINED TERMS:**

- “Board of managers” ..... § 26-101
- “Drainage association” ..... § 26-101
- “Landowner” ..... § 26-101

**§ 26-404. Filing with county.**

(a) *Filing.* –

(1) If the board of managers decides to submit the plan to the county commissioners or county council, the board of managers shall submit three copies of the plan.

(2) The county commissioners or county council shall forward a copy of the plan to the State Soil Conservation Committee in the Department of Agriculture.

(b) *Statement.* – The board of managers shall include with the submission of the plan a statement that the board of managers has determined that the drainage project:

- (1) is feasible;
- (2) will benefit the public and promote public health, safety, and welfare; and
- (3) will produce sufficient benefits to warrant the expenditure.

[An. Code 1957, art. 25, § 69(a), (b); 2013, ch. 119, § 2.]

**REVISOR’S NOTE**

This section is new language derived without substantive change from former Art. 25, § 69(b) and the first and second sentences of (a).

In subsection (a)(2) of this section, the reference to the “county commissioners or county council” is added for clarity.

In subsection (b)(2) of this section, the reference to the project “benefit[ing] the public and promot[ing] public health, safety, and welfare” is substituted for the former reference to the project “promot[ing] the public benefit and be[ing] conducive to the public health, safety, and welfare” for consistency with similar terminology in the Code.

**DEFINED TERM:**

- “Board of managers” ..... § 26-101



SUBTITLE 5.
BOARD OF VIEWERS

§ 26-501. Appointment.

(a) In general. –

(1) On approval of a plan submitted in accordance with § 26-404 of this title, the county commissioners or county council shall appoint a board of viewers composed of at least three impartial individuals who reside in the vicinity of the area of the drainage association.

(2) A member of the board of viewers may not be a landowner.

(b) Multiple counties. – If a drainage project described in a plan is located in more than one county, at least one member of the board of viewers shall be from each county in which the drainage project is located.

(c) Notice of acceptance. – An individual who is appointed as a member of a board of viewers may not act in that capacity until the individual provides written notice of acceptance of the appointment to the county commissioners or county council.

(d) Vacancies. –

(1) If any member of the board of viewers dies, moves from a county in which the area of the drainage association is located, or otherwise is unable to act, the county commissioners or county council shall appoint a replacement as soon as feasible.

(2) The appointment of a replacement does not affect the validity of any work of the board of viewers.

(e) Compensation of viewers and engineer. – Each member of a board of viewers and the engineer is entitled to receive compensation for each day spent on duties as agreed by the county commissioners or county council and the members and engineer appointed under § 26-503 of this subtitle.

[An. Code 1957, art. 25, §§ 55, 70, 101; 2013, ch. 119, § 2.]

REVISOR’S NOTE

This section is new language derived without substantive change from former Art. 25, §§ 70 and 101 and the second sentence of § 55.

In subsection (a)(1) of this section, the reference to “individuals” is substituted for the former reference to “citizens” because the meaning of “citizens” in this context is unclear.

Also in subsection (a)(1) of this section, the former reference to the “review” of the plan is deleted as implicit in the reference to the “approval” of the plan.

Also in subsection (a)(1) of this section, the former reference to “judicious” individuals is deleted as unnecessary in light of the reference to “impartial” individuals.

In subsection (b) of this section, the reference to the “board of” viewers is added for consistency with subsections (a) and (c) of this section.

In subsection (c) of this section, the references to an “individual” are substituted for the former references to a “person” since a member of a board of viewers would be a human being and not the other entities included in the definition of “person”.

In subsection (d) of this section, the former reference to members “appointed by any order of the county commissioners” is deleted as surplusage.

Also in subsection (d) of this section, the former reference to “counties” is deleted in light of the reference to “county” and Art. 1, § 8, which provides that the singular generally includes the plural.

In subsection (e) of this section, the reference to the engineer “appointed under § 26-503 of this subtitle” is added for clarity.

Also in subsection (e) of this section, the reference to the “members and engineer” is substituted for the former reference to the “parties” for clarity.

Also in subsection (e) of this section, the former reference to the “discharge of” the members’ duties is deleted as surplusage.

DEFINED TERMS:

- “Board of viewers” ..... § 26-101
“County” ..... § 1-101
“Drainage association” ..... § 26-101
“Landowner” ..... § 26-101

§ 26-502. Notice of action by board of viewers.

At least 10 days before proceeding with its duties, the board of viewers shall:

- (1) post a notice of its intention to proceed at four public places in the area described in the petition;
- (2) publish a notice in a newspaper of general circulation published in each county in which the lands to be viewed are located; and
- (3) send a copy of the notice to the county commissioners or county council, the Secretary of Agriculture, and the State Soil Conservation Committee in the Department of Agriculture.

[An. Code 1957, art. 25, § 70A; 2013, ch. 119, § 2.]

**REVISOR’S NOTE**

This section is new language derived without substantive change from former Art. 25, § 70A.

In the introductory language of this section, the former reference to the “execution” of the duties of the board of viewers is deleted as surplusage.

In item (2) of this section, the reference to “publish[ing] a notice in a newspaper of general circulation published in each county” is substituted for the former reference to “notice inserted in a newspaper or newspapers published in the county or counties” for consistency with other terminology in this article.

**DEFINED TERMS:**

- “Board of viewers” ..... § 26-101
- “County” ..... § 1-101

**§ 26-503. Duties.**

(a) *Examination to determine benefits; make surveys.* – On receipt of a copy of the plan from the county commissioners or county council, a board of viewers shall:

- (1) (i) engage the services of a private engineer; or
- (ii) use the services of an engineer of a local, State, or federal unit of government;
- (2) enter and view, with the individuals described in item (1) of this subsection, the land described in the petition;
- (3) make careful and thorough examination of the land described in the petition and of other land if necessary to locate properly the project that is the subject of the petition;
- (4) include in the area of the proposed drainage association all land that would be benefited and exclude any land described in the petition that it determines would not be benefited by the proposed improvement;
- (5) conduct surveys to determine the boundaries and elevations of the area and to develop a plan for the project; and
- (6) lay out on the ground a plainly and substantially marked line of each ditch or drain or other improvement that it considers necessary.

(b) *Consideration of damages.* – A board of viewers shall consider as damages, without regard to any benefit that would result from the proposed drainage project:

- (1) the value of land taken for construction of the proposed drainage project;
- (2) inconvenience imposed by the construction of the proposed drainage project; and
- (3) other lawfully compensable damages.

[An. Code 1957, art. 25, §§ 71, 72; 2013, ch. 119, § 2.]

**REVISOR’S NOTE**

This section is new language derived without substantive change from former Art. 25, §§ 71 and 72.

In subsection (a)(1)(i) of this section, the former reference to a “competent and experienced” private engineer is deleted as implicit.

In subsection (a)(1)(ii) of this section, the reference to a “unit of government” is substituted for the former reference to “agency” for consistency with other similar provisions of the Code.

In subsection (a)(2) of this section, the reference to the “individuals described in item (1) of this subsection” is substituted for the former reference to “him” for clarity.

In subsection (a)(3) of this section, the reference to the “land described in the petition” is substituted for the former reference to the “area” for consistency with subsection (a)(2) of this section.

Also in subsection (a)(3) of this section, the reference to the “project” is substituted for the former reference to “improvement or improvements” for consistency with similar provisions of the Code. Similarly, in subsection (a)(5) of this section, the reference to the “project” is substituted for the former reference to the “necessary improvements”.



§ 26-504

PUBLIC DRAINAGE ASSOCIATIONS

In subsection (a)(5) of this section, the former reference to the “several parts” of the area is deleted as surplusage.

In the introductory language of subsection (b) of this section, the reference to considering damages “without regard to” any benefit is substituted for the former reference to considering damages “separate and apart from” any benefit for brevity.

In subsection (b)(1) of this section, the reference to considering as damages “the value of” land taken is added for clarity.

In subsection (b)(2) of this section, the conjunction “and” is substituted for the conjunction “or” to clarify that each item listed is to be considered.

In subsection (b)(3) of this section, the reference to “lawfully compensable damages” is substituted for the former reference to “legal damages sustained” for clarity.

DEFINED TERMS:

- “Board of viewers” ..... § 26-101
- “Drainage association” ..... § 26-101
- “State” ..... § 1-101

§ 26-504. Costs.

(a) *Assessments.* – A board of viewers:

(1) shall determine the amount sufficient to pay:

- (i) the cost of constructing or improving a proposed drainage project;
- (ii) any damages awarded;
- (iii) any compensation for an existing drainage project that the board of viewers adopts in accordance with § 26-505 of this subtitle;
- (iv) the expenses of the board of viewers; and
- (v) the costs of establishing the drainage association;

(2) shall subtract from the amount determined under item (1) of this subsection any amounts received from the county commissioners or county council or any other source; and

(3) shall assess each landowner, including the State or a political subdivision of the State, that will derive a benefit from the proposed drainage project a proportion of the amount described in item (2) of this subsection, based on the benefits that would accrue to the tract of land from the drainage project.

(b) *Contribution by county.* – Notwithstanding any other law, the county commissioners or county council may:

- (1) contribute toward the costs of a drainage project authorized under this title from general funds of the county; or
- (2) allocate toward the costs of any drainage project any other money that is available for the drainage project.

[An. Code 1957, art. 25, §§ 73, 74; 2013, ch. 119, § 2.]

REVISOR’S NOTE

This section is new language derived without substantive change from former Art. 25, § 73 and the second and fourth sentences of § 74.

In subsection (a)(1) of this section, the reference to a board of viewers “determin[ing]” an amount is added for clarity.

In subsection (a)(1)(i) of this section, the reference to a “proposed” drainage project is substituted for the former reference to “such ditches or drains or other drainage works” for consistency within this title.

In subsection (a)(1)(iii) of this section, the reference to “an existing drainage project that the board of viewers adopts in accordance with § 26-505 of this subtitle” is substituted for the former reference to “adopted improvements previously constructed” for clarity.

In subsection (a)(3) of this section, the reference to assessing each tract of land “a proportion of the amount ...based on the benefits that would accrue to the tract of land from the drainage project” is substituted for the former reference to assessing “against such persons respectively a sum proportional to the benefits accruing to their lands” for clarity.

Also in subsection (a)(3) of this section, the former reference to the requirement that the board of watershed viewers “adjudge thereof” is deleted as unnecessary in light of the requirement that the board “assess” an amount for each tract of land.

Also in subsection (a)(3) of this section, the reference to the “amount described in item (2) of this subsection” is substituted for the former reference to the “cost and expense of making the same” for clarity.

In subsection (b) of this section, the references to a “drainage project” are substituted for the former references to an “improvement” and “improvements” for consistency with similar provisions of the Code.

DEFINED TERMS:

- “Board of viewers” ..... § 26-101

“County” ..... § 1-101  
 “Drainage association” ..... § 26-101  
 “Landowner” ..... § 26-101  
 “State” ..... § 1-101

**§ 26-505. Existing drainage projects.**

(a) *Adoption.* – A board of viewers may adopt an existing drainage project as a whole drainage project or as a part of a drainage project, under this title.

(b) *Compensation for project.* – If an existing drainage project is adopted by the board of viewers, it shall pay fair compensation to each landowner for the value of work already done on the drainage project.

[An. Code 1957, art. 25, § 74; 2013, ch. 119, § 2.]

**REVISOR’S NOTE**

This section is new language derived without substantive change from the first and third sentences of former Art. 25, § 74.

In subsection (a) of this section and throughout this title, the references to an “existing” drainage project are substituted for the former references to a drainage project “already constructed” and “previously constructed” for clarity.

Also in subsection (a) of this section, the reference to “drainage project[s]” is substituted for the former reference to “drainage improvements” for consistency with similar provisions of the Code.

In subsection (b) of this section, the phrase “[i]f an existing drainage project is adopted by the board of viewers,” is added for clarity.

Also in subsection (b) of this section, the reference to “pay[ing]” fair compensation is substituted for the former reference to “allow[ing]” fair compensation for clarity.

**DEFINED TERMS:**

“Board of viewers” ..... § 26-101  
 “Landowner” ..... § 26-101

**§ 26-506. Subsequent board of viewers.**

(a) *Appointment on request of board of managers.* – At the request of the board of managers, the county commissioners or county council shall appoint a board of viewers to determine if the original determination as to which lands have benefited from the improvements has changed.

(b) *Qualifications; powers; duties.* – The board of viewers appointed under this section shall have the same qualifications, rights, powers, privileges, and duties as the original board of viewers.

(c) *Report.* –

(1) The board of viewers shall report its findings to the county commissioners or county council.

(2) The county commissioners or county council shall consider the report in the same manner as the original report, and the report shall be subject to a public hearing and the right to judicial review as provided under § 26-513 of this subtitle.

(d) *Assessments.* – Any revision in the original determination as to which lands benefit from the drainage project shall become the basis for all future assessments for paying for the drainage project, including related expenses such as damages and the maintenance of the drainage project.

(e) *Classification of land.* – Notwithstanding the requirements of this section, the board of managers, at any time after the creation of a drainage association, may determine which land in the association is classified as woodland, cropland, commercial, industrial, or residential.

[An. Code 1957, art. 25, § 82; 2013, ch. 119, § 2.]

**REVISOR’S NOTE**

This section is new language derived without substantive change from former Art. 25, § 82.

In subsection (b) of this section, the reference to the board of viewers “appointed under this section” is added for clarity.

In subsection (c)(2) of this section, the reference to judicial review “as provided under § 26-513 of this subtitle” is added for clarity.

Also in subsection (c)(2) of this section, the reference to “the county commissioners or county council” is added for clarity.

In subsection (d) of this section, the former reference to lands “both public and private” is deleted as surplusage.

DEFINED TERMS:

- “Board of managers” ..... § 26-101
- “Board of viewers” ..... § 26-101
- “Drainage association” ..... § 26-101

§ 26-507. Report to State and county.

(a) *Report required.* – At the earliest feasible date, the board of viewers shall submit three copies of a written report to the county commissioners or county council and to the State Soil Conservation Committee in the Department of Agriculture.

(b) *Contents.* – The report shall state:

(1) whether the proposed drainage project:

- (i) is feasible;
- (ii) will benefit the public or promote the public health, safety, or welfare; and
- (iii) will benefit the land to be affected by the drainage project sufficiently to warrant the probable expenditure;

(2) the name of each person entitled to damages and the amount of the damages;

(3) the name of each person entitled to compensation for a drainage project adopted under § 26-505 of this subtitle and the amount of the compensation;

(4) the amount determined under § 26-504(a)(1) of this subtitle; and

(5) the amount for which each landowner shall be assessed as a share of the total cost of the drainage project and its proportion of the whole.

(c) *Maps and profiles.* – The board of viewers shall file with the report three copies of maps and profiles that show:

(1) the location of the proposed drainage project on a map, drawing, or aerial photograph to a suitable scale;

(2) a general delineation of the boundary of the area affected, with the general location in the county indicated;

(3) a general delineation of the boundaries of each landowner’s tract, with an estimate of the acreage that each tract contains; and

(4) the dimensions and profiles of the proposed drainage project.

[An. Code 1957, art. 25, § 82A; 2013, ch. 119, § 2.]

REVISOR’S NOTE

This section is new language derived without substantive change from former Art. 25, § 82A.

In subsection (a) of this section, the reference to the requirement that the board of viewers “submit” a report is substituted for the former reference to the requirement that the board “make out and return” a report for brevity.

In subsection (b)(1)(ii) of this section, the reference to the project “benefit[ing] the public or promot[ing] the public health, safety, or welfare” is substituted for the former reference to the project “promot[ing] the public benefit or utility, or the public health, convenience or welfare” for consistency with similar provisions of the Code.

In subsections (b)(3) and (c)(4) of this section, the references to a “drainage project” are substituted for the former references to “improvements” for consistency with similar provisions of the Code.

In subsection (b)(3) of this section, the reference to a project “adopted under § 26-505 of this subtitle” is substituted for the former reference to a project “previously constructed” for clarity.

In subsection (b)(4) of this section, the reference to the “amount determined under § 26-504(a)(1) of this subtitle” is substituted for the former reference to the “total estimated cost of improvements, including damages, compensations, and organization expenses” for brevity and clarity.

DEFINED TERMS:

- “Board of viewers” ..... § 26-101
- “Landowner” ..... § 26-101
- “Person” ..... § 1-101



**§ 26-508. Examination of report; hearing; notice; report available for inspection.**

(a) *Examination.* –

(1) The county commissioners or county council shall examine a report submitted by a board of viewers under § 26-507 of this subtitle at the first meeting after receiving the report.

(2) If the county commissioners or county council find that a report under § 26-507 of this subtitle is not in proper form or not in compliance with the law, the report shall be returned to the board of viewers to be corrected and resubmitted.

(3) If the county commissioners or county council find that a report under § 26-507 of this subtitle is in proper form and in compliance with the law, the county commissioners or county council shall set a date for a public hearing on the report.

(b) *Notice.* –

(1) At least 30 days before a hearing under this section, the county commissioners or county council shall:

(i) publish notice of the time and place of the hearing in a newspaper of general circulation in each county in which the land affected is located; and

(ii) mail a notice to each person named in the report.

(2) Notice of the hearing shall state that a copy of the report is available for inspection in an office of the designated officer.

(c) *Report available for inspection.* – A copy of the report of the board of viewers shall be:

(1) available for inspection in an office of the designated officer; and

(2) sent to the Secretary of Agriculture and the State Soil Conservation Committee in the Department of Agriculture.

[An. Code 1957, art. 25, § 84; 2013, ch. 119, § 2.]

**REVISOR’S NOTE**

This section is new language derived without substantive change from former Art. 25, § 84.

In subsection (a)(2) of this section, the reference to a report “not in proper form or not in compliance with the law” is substituted for the former reference to a report “not to be in due form and in accordance with the law” for clarity. Similarly, in subsection (a)(3) of this section, the reference to a report in “proper form and in compliance with the law” is substituted for the former reference to a report “in due form and in accordance with the law”.

Also in subsection (a)(2) of this section, the reference to the report being “returned” is substituted for the former reference to the report being “referred back” for clarity.

Also in subsection (a)(2) of this section, the reference to the report being “resubmitted” is substituted for the former reference to the report being “returned to the county commissioners at a subsequent meeting” for brevity.

In subsection (b)(1)(i) of this section, the former reference to “newspapers” is deleted in light of the reference to “newspaper” and Art. 1, § 8, which provides that the singular generally includes the plural. Similarly, in subsection (b)(1)(i) of this section, the former reference to “counties” is deleted in light of the reference to “county”.

In subsection (b)(1)(ii) of this section, the former reference to a “written or printed” notice is deleted as implicit in the reference to a “mail[ed]” notice.

In subsection (b)(2) of this section, the reference to the requirement that the notice “state that a copy of the report is available for inspection in the office of the designated officer” is substituted for the former reference to the requirement that the notices “so state” for clarity.

In subsection (c) of this section, the reference to a copy of the report being “available for” inspection is substituted for the former references to a copy of the report being “on file ..., and shall be open to” the inspection for brevity.

Also in subsection (c) of this section, the former phrase “[d]uring this time” is deleted as surplusage.

Also in subsection (c) of this section, the former reference to inspection “of any landowner or other person interested” is deleted as surplusage.

**DEFINED TERMS:**

- “Board of viewers” ..... § 26-101
- “County” ..... § 1-101
- “Designated officer” ..... § 26-101
- “Person” ..... § 1-101

**§ 26-509. Hearing procedure on report.**

(a) *Participants.* – At a hearing under § 26-508 of this subtitle:

- (1) the board of viewers and engineers shall be present; and
- (2) any person may appear in person or by counsel and object to any part of the report.

(b) *Consideration by county.* – The county commissioners or county council shall consider carefully each objection presented under subsection (a) of this section.

(c) *Change in report.* – If possible at the hearing, the board of viewers may make changes to the report necessary to treat each concerned person equitably.

(d) *Action on report.* – The county commissioners or county council may:

- (1) disapprove the report;
- (2) return the report to the board of viewers for amendment or reconsideration in view of an objection presented; or
- (3) approve the report as submitted or as amended.

(e) *Powers of board of managers on approval of report.* – On approval of the report by the county commissioners or county council, the board of managers may install, operate, and maintain the drainage project described in the report.

[An. Code 1957, art. 25, § 85; 2013, ch. 119, § 2.]

**REVISOR’S NOTE**

This section is new language derived without substantive change from former Art. 25, § 85.

In subsections (a)(1) and (c) of this section, the references to the “board of viewers” are substituted for the former references to “viewers” for consistency with § 26-501 of this subtitle. Similarly, in subsection (d)(2) of this section, the reference to the “board of viewers” is substituted for the former reference to “drainage viewers”.

In subsection (a)(1) of this section, the clause “the board of viewers and engineers shall be present” is substituted for the former clause “the viewers and the engineers being present” to make explicit that which was previously implied, that the board of viewers and engineers are required to be present at the hearing.

In subsection (a)(2) of this section, the former reference to a person interested “in the matter” is deleted as surplusage.

In subsection (c) of this section, the reference to changes necessary to “treat each concerned person equitably” is substituted for the former reference to changes necessary to “render substantial and equal justice to all persons concerned” for brevity.

In subsection (d)(2) of this section, the reference to “return[ing]” the report is substituted for the former reference to the report being “refer[red] back” for clarity.

In subsection (e) of this section, the former reference to the report of “drainage viewers” is deleted as surplusage.

**DEFINED TERMS:**

- “Board of managers” ..... § 26-101
- “Board of viewers” ..... § 26-101
- “Person” ..... § 1-101

**§ 26-510. Payment of expenses if report disapproved.**

(a) *Payment by county.* – If a report is disapproved, the county commissioners or county council shall pay the expenses properly incurred in making the survey and report and in publishing notices.

(b) *Imposition of special assessment on petitioners.* – To reimburse the county for the expenses described in subsection (a) of this section, the county commissioners or county council may impose a special assessment in equal amounts on the property of the landowners who signed the petition filed under Subtitle 2 of this title.

[An. Code 1957, art. 25, § 81; 2013, ch. 119, § 2.]

**REVISOR’S NOTE**

This section is new language derived without substantive change from former Art. 25, § 81.

In subsection (b) of this section, the reference to a petition “filed under Subtitle 2 of this title” is added for clarity.

Also in subsection (b) of this section, the reference to “reimburs[ing] the county for the expenses described in subsection (a) of this section” is substituted for the former reference to “the proceeds of such tax to be used to reimburse the board of county commissioners for the said payment of the said expenses” for brevity.

Also in subsection (b) of this section, the reference to “special assessment” is substituted for the former reference to “tax” for consistency with Subtitle 8 of this title.

**DEFINED TERMS:**

“County” ..... § 1-101  
 “Landowner” ..... § 26-101

**§ 26-511. Amendment of petition or related proceedings.**

(a) *In general.* – The county commissioners or county council or circuit court for the county in which proceedings are pending may, on application of any party and at any time before a final decision is made, grant leave to the party to amend the petition or any part of the proceedings that may be defective or informal to bring the merits of the case before the county commissioners or county council for a decision or before a jury of the circuit court for trial.

(b) *Costs.* – The county commissioners or county council or circuit court for the county may award costs.

[An. Code 1957, art. 25, § 78; 2013, ch. 119, § 2.]

**REVISOR’S NOTE**

This section is new language derived without substantive change from former Art. 25, § 78.

In subsection (a) of this section, the reference to bringing the merits of the case before the county commissioners or county council “for a decision” is added for clarity to distinguish the action of the county commissioners or county council and the jury of the circuit court.

In subsection (b) of this section, the former reference to awarding costs “in their discretion, according to the right of the matter” is deleted as surplusage.

The Local Government Article Review Committee notes, for consideration by the General Assembly, that the intention of former Art. 25, § 197, in connection with authority to amend “any part of the proceedings . . . so as to bring the merits of the case before . . . [a] jury of the circuit court for trial” is unclear. To the extent the intent is to allow a de novo appeal to the circuit court with a right to a jury trial, this would contradict case law that has held that a statute that provides for a de novo trial with the right of electing to have a jury is void as being unconstitutional. *See* Department of Natural Resources v. Linchester Sand & Gravel Corp., 274 Md. 211 (1974).

**DEFINED TERM:**

“County” ..... § 1-101

**§ 26-512. Application for order of review.**

(a) *In general.* – A person who may be adversely affected by the making of any ditch or drain or who may be assessed for any part of the costs of a ditch or drain may apply for an order of review to the county commissioners or county council at any time before the approval of the report.

(b) *Appointment of viewers to review report.* – The county commissioners or county council may grant an order of review and appoint another board of viewers to redo the work done by the original board of viewers.

[An. Code 1957, art. 25, § 79; 2013, ch. 119, § 2.]

**REVISOR’S NOTE**

This section is new language derived without substantive change from former Art. 25, § 79.

In subsection (a) of this section, the reference to “adversely affected” is substituted for the former reference to “injured” to conform to modern usage.

Also in subsection (a) of this section, the reference to the costs “of a ditch or drain” is substituted for the former reference to the costs “thereof” for clarity.

Also in subsection (a) of this section, the former reference to a ditch or drain “laid out as aforesaid” is deleted as surplusage.

In subsection (b) of this section, the reference to “an order of review” is substituted for the former reference to “such order” for clarity.

Also in subsection (b) of this section, the reference to “another board of viewers . . . redo[ing] the work done” is substituted for the former reference to “other drainage viewers . . . perform[ing] the same duty” for clarity.

**DEFINED TERMS:**

“Board of viewers” ..... § 26-101  
 “Person” ..... § 1-101



§ 26-513. Judicial review.

(a) *In general.* – A person who is aggrieved by a determination of the county commissioners or county council or by any proceedings under this title relating to drains may appeal to the circuit court of the county in which the determination was made or proceedings were conducted.

(b) *Option for trial by jury.* – Either party may elect a trial by jury and the judgment in the trial shall be final between the parties.

[An. Code 1957, art. 25, § 80; 2013, ch. 119, § 2.]

REVISOR’S NOTE

This section is new language derived without substantive change from former Art. 25, § 80.

In subsection (b) of this section, the reference to the judgment “in the trial” is substituted for the former reference to the judgment “rendered thereupon” for clarity.

Also in subsection (b) of this section, the former reference to the parties “thereto” is deleted as surplusage.

DEFINED TERMS:

- “County”..... § 1-101
“Person”..... § 1-101

SUBTITLE 6.
RIGHTS-OF-WAY, EASEMENTS, AND CONDEMNATION

§ 26-601. Rights-of-way and easements generally.

(a) *Power to acquire.* – The board of managers may acquire any right-of-way and easement necessary to construct and maintain the drainage projects or dispose of excavated material according to an approved operation and maintenance plan.

(b) *Easement record.* –

(1) The board of managers of each drainage association shall submit to the clerk of the circuit court in the appropriate county a book, to be known as the “easement record”, that contains each easement for maintenance or right-of-way, according to the original design specifications or for not less than 20 feet, that the drainage association has in the county.

(2) A drainage association shall keep the easement record current.

(3) The clerk of a circuit court shall make an easement record available for inspection by the public.

[An. Code 1957, art. 25, § 88; 2013, ch. 119, § 2.]

REVISOR’S NOTE

This section is new language derived without substantive change from former Art. 25, § 88.

In subsection (a) of this section, the reference to “acquir[ing]” rights-of-way and easements is substituted for the former reference to “hav[ing] and possess[ing]” rights-of-way and easements to avoid the implication that property in trust need not be acquired before use.

Also in subsection (a) of this section, the former phrase “by virtue of this subtitle” is deleted as surplusage.

In subsection (b)(1) of this section, the former reference to a “suitable” book is deleted as surplusage.

Also in subsection (b)(1) of this section, the former reference to easements “on any land” in the county is deleted as surplusage.

In subsection (b)(2) of this section, the former reference to the requirement that a watershed association keep the easement record “up to date” is deleted as unnecessary in light of the requirement that the easement record be kept “current”.

DEFINED TERMS:

- “Board of managers”..... § 26-101
“County”..... § 1-101
“Drainage association”..... § 26-101

§ 26-602. Condemnation proceedings.

If a landowner refuses to accept the damages awarded to the landowner by the board of viewers and approved by the county commissioners or county council and refuses the necessary access to the landowner’s land, the

board of managers may begin condemnation proceedings under Title 12 of the Real Property Article to acquire a right-of-way.

[An. Code 1957, art. 25, § 86; 2013, ch. 119, § 2.]

**REVISOR’S NOTE**

This section is new language derived without substantive change from former Art. 25, § 86.

The former reference to the requirement that “the damages awarded as compensation . . . be paid by the board of managers in lieu of the damages awarded by the drainage viewers” is deleted as unnecessary in light of the reference to Title 12 of the Real Property Article.

**DEFINED TERMS:**

- “Board of managers” ..... § 26-101
- “Board of viewers” ..... § 26-101
- “Landowner” ..... § 26-101

**SUBTITLE 7.  
IMPLEMENTATION OF PLAN**

**§ 26-701. Powers and duties of managers.**

(a) *In general.* – The board of managers shall implement the drainage project.

(b) *Specific authority.* – The board of managers may:

- (1) hire employees;
- (2) buy, hire, or rent machines, and buy explosives;
- (3) award contracts;
- (4) enter into an agreement with any county, State, or federal unit of government; and
- (5) do other acts as necessary, including borrowing money, in the name of the board of managers, if the borrowing is approved by the county commissioners or county council.

(c) *Payments of drainage association.* – The county tax collector shall make payment on behalf of the drainage association as directed by the board of managers.

(d) *Accounting and reporting.* – The board of managers shall:

- (1) keep a regular account of its income and expenses; and
- (2) report its income and expenses to the annual meetings of the drainage association and meetings of the landowners.

[An. Code 1957, art. 25, § 92; 2013, ch. 119, § 2.]

**REVISOR’S NOTE**

This section is new language derived without substantive change from former Art. 25, § 92.

In subsection (a) of this section, the reference to the drainage “project” is substituted for the former reference to drainage “improvements” for consistency within this title.

Also in subsection (a) of this section, the former reference to the “plan of” drainage projects is deleted as surplusage.

In the introductory language of subsection (b) of this section, the former phrase “in exercising the authority herein conferred” is deleted as surplusage.

In subsection (b)(1) of this section, the reference to “hir[ing] employees” is substituted for the former reference to “employ[ing] supervisors, ditchers and laborers” to use more modern terminology.

In subsection (b)(2) of this section, the former references to “dredges” and “excavators” are deleted as included in the reference to “machines”.

In subsection (b)(3) of this section, the former reference to contracts for “all or part of the work” is deleted as surplusage.

In subsection (b)(4) of this section, the reference to any county, State, or federal “unit of government” is substituted for the former reference to county, State, or federal “agencies” for consistency with similar provisions of the Code.

In subsection (b)(5) of this section, the former reference to borrowing money “by promissory notes” is deleted as surplusage.

Also in subsection (b)(5) of this section, the former reference to the county commissioners “of the applicable county” is deleted as surplusage.

Also in subsection (b)(5) of this section, the former reference to borrowing money “from banks or other persons” is deleted as unnecessary because it is inclusive of all sources of borrowing money.

In subsection (c) of this section, the reference to a payment “on behalf of the drainage association” is added for clarity.

§ 26-702

PUBLIC DRAINAGE ASSOCIATIONS

In subsection (d)(1) of this section, the reference to “income and expenses” is substituted for the former reference to “expenditures” to use more modern terminology.

In subsection (d)(2) of this section, the reference to the annual meetings of the “landowners” is substituted for the former reference to the annual meetings of the “taxables” for consistency within this title and to reflect that only the landowners pay a special assessment under this title.

Also in subsection (d)(2) of this section, the reference to “income and expenses” is substituted for the former reference to “the same” for clarity.

DEFINED TERMS:

- “Board of managers” ..... § 26-101
- “County” ..... § 1-101
- “Drainage association” ..... § 26-101
- “Landowner” ..... § 26-101
- “Tax collector” ..... § 1-101

§ 26-702. Maintenance and operation of drainage projects.

(a) *In general.* – The board of managers shall control and supervise each drainage project under this title.

(b) *Duty to keep in good repair.* – The board of managers shall keep each drainage project in good repair in accordance with an approved operation and maintenance plan.

[An. Code 1957, art. 25, § 96(a); 2013, ch. 119, § 2.]

REVISOR’S NOTE

This section is new language derived without substantive change from former Art. 25, § 96(a).

Throughout this section, the references to each drainage “project” are substituted for the former references to drainage “improvements” for consistency within this title.

DEFINED TERM:

- “Board of managers” ..... § 26-101

SUBTITLE 8. FINANCING

§ 26-801. Imposition of special assessments on benefited lands.

(a) *In general.* – A special assessment imposed under this title shall be imposed on the lands benefited by a drainage project.

(b) *Division of assessment if property is divided.* – If a tract of land subject to a special assessment under this title is divided, the board of managers shall determine the ratio in which any later special assessment is to be imposed on each subdivided tract of land based on the proportion of the benefit to each tract.

[An. Code 1957, art. 25, § 94; 2013, ch. 119, § 2.]

REVISOR’S NOTE

This section is new language derived without substantive change from former Art. 25, § 94.

In this section and throughout this subtitle, the references to a “special assessment” are substituted for the former references to a “tax levied”, “taxation”, and “tax[es]” to more accurately describe the nature of the charge.

In this section and throughout this subtitle, the references to a special assessment “imposed” are substituted for the former references to a special assessment “levied” for consistency with other revised articles of the Code.

In subsection (a) of this section, the reference to lands benefited “by a drainage project” is added for clarity.

In subsection (b) of this section, the reference to a “tract of land” is substituted for the former reference to a “piece of property” for consistency within this title.

Also in subsection (b) of this section, the reference to “each subdivided tract of land” is substituted for the former reference to the “several holdings” for consistency within this title.

Also in subsection (b) of this section, the former reference to the requirement that the tax “be divided between” the tracts of land is deleted as included in the reference to the requirement that the tax be imposed “based on the proportion of the benefit”.

DEFINED TERM:

- “Board of managers” ..... § 26-101



**§ 26-802. Implementation of plan.**

(a) *Amount.* – The board of managers shall determine the amount of money to be raised to implement an approved drainage project.

(b) *Preparation of assessment list.* – The board of managers shall prepare an assessment list that shows the amount due from each landowner subject to the special assessment.

(c) *Proportional imposition of special assessments.* – The special assessments imposed on each tract of land shall be proportional to the total assessments.

(d) *Signature and transmission of assessment list.* – The assessment list required under subsection (b) of this section shall be:

- (1) signed by the board of managers; and
- (2) sent to the designated officer.

(e) *Certification.* –

- (1) The designated officer shall certify the conformance of the assessment list with this section.
- (2) After receiving the certification of the assessment list, the county commissioners or county council shall certify the assessment list to the county tax collector.

(f) *Inclusion in tax bills.* –

- (1) The county tax collector shall include the special assessments imposed under this section in the next bills for county taxes.
- (2) The special assessments are:
  - (i) due and collectible at the same time and in the same manner as county taxes; and
  - (ii) subject to the same interest and penalties for late payment and nonpayment as county taxes.

(g) *Supplemental special assessment.* – If the special assessments collected under this section are insufficient to complete the drainage project, a supplemental special assessment shall be imposed in the same manner.

[An. Code 1957, art. 25, § 87; 2013, ch. 119, § 2.]

**REVISOR’S NOTE**

This section is new language derived without substantive change from former Art. 25, § 87.

In this section and throughout this subtitle, the references to an “assessment list” are substituted for the former references to a “tax roll” to accurately reflect the references to “assessments” throughout this subtitle.

In subsections (a) and (g) of this section, the references to the “drainage project” are substituted for the former references to the “plan of drainage improvements” for consistency within this title.

In subsection (a) of this section, the reference to determining “the amount of money to be raised to implement an approved drainage project” is substituted for the former reference to determining “[f]or the purpose of raising funds necessary to carry out the plan of drainage improvements described in the report of the drainage viewers and confirmed by the county commissioners . . . the amount to be raised” for brevity.

Also in subsection (a) of this section, the former reference to “which sum may be less than the total assessment” is deleted as implicit.

In subsection (b) of this section, the former reference to the “sum” due from each landowner is deleted as included in the reference to the “amount” due.

Also in subsection (b) of this section, the former reference to being subject to assessment “in the report made out and returned by the drainage viewers and confirmed by the county commissioners” is deleted as implicit.

In subsection (c) of this section, the reference to “special assessments imposed on each tract of land” is substituted for the former reference to “[s]uch drainage taxes” for clarity and consistency.

Also in subsection (c) of this section, the reference to “total” assessments is substituted for the former reference to “respective” assessments for clarity.

In subsection (e)(1) of this section, the reference to the conformance “of the assessment list” is substituted for the former reference to “its” conformance for clarity.

Also in subsection (e)(1) of this section, the former reference to certifying “to the county commissioners” is deleted as unnecessary in light of subsection (e)(2) of this section.

In subsection (e)(2) of this section, the clause “[a]fter receiving the certification of the assessment list” is substituted for the former word “thereupon” for clarity.

In subsection (f)(1) of this section, the former reference to tax bills “sent out from his office” is deleted as surplusage.

Also in subsection (f)(1) of this section, the former reference to “State” tax bills is deleted for consistency with subsection (f)(2) of this section.

§ In subsection (f)(2)(ii) of this section, the reference to the special assessments being subject to “interest” is added for consistency with § 26-803(g)(4)(ii) of this subtitle.

In subsection (g) of this section, the reference to “special assessments collected under this section” is substituted for the former reference to “funds raised in this manner” for clarity.

Also in subsection (g) of this section, the former reference to special assessments “collected” is deleted as implicit in the authority to impose special assessments.

**DEFINED TERMS:**

“Board of managers” .....	§ 26-101
“County” .....	§ 1-101
“Designated officer” .....	§ 26-101
“Landowner” .....	§ 26-101
“Tax collector” .....	§ 1-101

**§ 26-803. Issuance of bonds or notes.**

(a) *In general.* – As an alternative to raising funds as provided in § 26-802 of this subtitle, the board of managers may issue and sell bonds or notes as provided in this section for an amount not exceeding the total cost of the drainage project.

(b) *Notice of proposal.* –

(1) The board of managers shall give notice of a proposal to issue bonds or notes by:

(i) publication at least once a week for at least 3 weeks in a newspaper of general circulation in the county in which any of the area of the drainage association is located;

(ii) posting a notice at the door of the courthouse in the county in which any of the area of the drainage association is located; and

(iii) posting a notice at five conspicuous places in the area or vicinity of the area of the drainage association.

(2) The notice shall provide:

(i) the proposal to issue bonds or notes to pay for the cost of the drainage project;

(ii) the amount of bonds or notes to be issued;

(iii) the interest rate for the bonds or notes or the method of determining the interest; and

(iv) the date when the bonds or notes are payable.

(c) *Payment by landowner in advance.* –

(1) Within 15 days after the publication or posting of the notice in subsection (b) of this section, a landowner may pay to the county tax collector the full amount for which the landowner is liable, as provided in the report of the board of viewers.

(2) If a landowner pays the full amount as provided in paragraph (1) of this subsection, the landowner is relieved from further liability for the particular drainage project.

(3) Before issuing any bonds or notes under this section, the board of managers shall deduct from the estimated amount of bonds or notes to be issued the amount paid in advance by a landowner and shall issue bonds or notes only in the decreased amount.

(4) Any amount paid in advance to the county tax collector shall be held in a separate fund to be added to the proceeds of the bonds or notes issued and to be spent to implement the plan of drainage projects.

(d) *Certification of amount; assessment list.* – The board of managers shall:

(1) certify to the county commissioners or county council the amount of bonds or notes to be issued; and

(2) submit an assessment list of all properties for which payments have not been made, showing for each landowner the full amount due, less interest, with the total amount for all landowners equaling the certified amount.

(e) *Issuance and sale of bonds or notes.* –

(1) After the assessment list has been submitted as provided in subsection (d) of this section, the board of managers shall issue bonds or notes in the certified amount.

(2) All bonds or notes issued under this section:

(i) shall be sold under the serial maturity plan;

- (ii) shall have a maturity date of 12 years or less from the date of issue;
- (iii) may not be sold for a price less than par; and
- (iv) may be sold at a public or private sale.

(3) Subject to paragraph (2) of this subsection, the board of managers may provide for the form, date, interest rate, and other details incident to the offering, sale, execution, and delivery of the bonds.

(4) Bonds issued under this section are exempt from §§ 19-205 and 19-206 of this article.

(f) *Disposition of proceeds.* –

(1) The board of managers shall pay the proceeds from the sale of bonds under this section to the county tax collector.

(2) The county tax collector shall:

- (i) retain the proceeds in a special fund;
- (ii) disburse the proceeds only as authorized by the board of managers to carry out the plan of drainage projects; and
- (iii) use any surplus to redeem bonds.

(g) *Annual assessment for payment of principal and interest.* –

(1) The board of managers shall certify to the county commissioners or county council and to the county tax collector the total amount due each year for the redemption of the bonds or notes issued under this section, including all payments of principal and interest.

(2) Each year, the county tax collector shall compute the amount due from each landowner, based on the amounts shown in the drainage assessment list, so that the total amounts individually due in any year equal the aggregate sum required in that year to pay the principal of and interest on the bonds or notes.

(3) The county tax collector shall include in the regular tax bill for each taxable year the amounts computed under paragraph (2) of this subsection.

(4) The special assessments are:

- (i) due and collectible at the same time and in the same manner as county taxes; and
- (ii) subject to the same interest and penalties for late payment or nonpayment as county taxes.

(h) *Payment for existing improvements.* – If the drainage work plan approved by the county commissioners or county council provides for adopting any existing drainage project, the board of managers may:

(1) pay the amount necessary to acquire the existing drainage project from the proceeds of any bonds or notes issued under this section; or

(2) reimburse a landowner from the proceeds of any bonds or notes issued under this section for any amount spent by the landowner in the construction of the existing drainage project.

(i) *Report and disbursement of collections.* –

(1) The county tax collector shall report to the board of managers at regular intervals on the amount collected as special assessments during each interval, including a list showing the amount received from each landowner.

(2) The board of managers shall order the amount collected as special assessments to be paid by the county tax collector for the principal of and interest on the bonds or notes issued.

(j) *Bondholder's right of action on default.* –

(1) If an installment of principal of or interest on the bonds or notes issued under this subtitle is not paid at the time and in the manner it is due and payable and the default continues for a period of 6 months, the holder of the bond or note in default shall have a right of action against the board of managers.

(2) The circuit court of the county may issue a writ of mandamus against the board of managers that directs the imposition of a special assessment against landowners in default in an amount necessary to meet unpaid installments of principal and interest and the costs of the action.

(3) The board of managers shall certify the amounts of the special assessment to the county tax collector who shall proceed immediately to collect the special assessment from the landowners in default according to the procedure provided in this subtitle.



(4) When the county tax collector collects the amounts certified under paragraph (3) of this subsection, the county tax collector, on order of the board of managers, shall pay the installments of principal and interest in default and the costs of the action.

(5) The official bonds of the county tax collector and any other officers shall be liable for the faithful performance of the duties assigned to the officers under this subtitle.

(6) The holder of any bond or note in default may bring suit against any officer on the official bond of the officer for failing to perform a duty required under this section.

(k) *Applicability of title.* – This title shall apply to drainage projects completed under this section as if completed with funds by assessments without issuing bonds or notes.

[An. Code 1957, art. 25, § 90; 2013, ch. 119, § 2.]

**REVISOR’S NOTE**

This section is new language derived without substantive change from former Art. 25, § 90.

Throughout this section, the references to “drainage project” or “drainage projects” are substituted for the former references to “improvement” or “improvements” and “drainage improvements” for consistency within this title.

In subsection (a) of this section, the former reference to a plan for raising funds “necessary to carry out the plan of drainage improvements described in the report of the drainage viewers and confirmed by the county commissioners” is deleted as implicit in the reference to imposing taxes “as provided in § 26-802 of this subtitle”.

In subsection (b)(1)(i) of this section, the reference to “any of the area of the drainage association” is substituted for the former reference to the “drainage area or some part thereof” for clarity and consistency within this title.

Also in subsection (b)(1)(i) of this section, the former phrase “if there be such a newspaper” is deleted as surplusage.

In subsection (b)(1)(ii) of this section, the reference to the county “in which any of the area of the drainage association is located” is substituted for the former reference to “such” county for clarity and consistency within this title.

In subsection (b)(1)(iii) of this section, the reference to the places “in the area or vicinity of the area of the drainage association” is substituted for the former reference to the places “in the drainage area” for clarity and consistency within this title.

In subsection (c)(1) of this section, the reference to “the landowner” being liable is substituted for the former reference to “the full amount for which his land is liable” because a landowner makes the payment and is therefore liable, rather than the “land” being liable. Similarly, in subsection (c)(2) of this section, the reference to the “landowner” is substituted for the former reference to “his lands and himself”, and in subsection (d)(2) of this section, the former reference to an amount “for which his land” is liable is deleted.

Also in subsection (c)(1) of this section, the reference to the “board” of drainage viewers is added for consistency within this title.

In subsection (c)(3) and (4) of this section, the former references to “amounts” are deleted in light of the references to “amount” and Art. 1, § 8, which provides that the singular generally includes the plural. Similarly, in subsection (e)(3) of this section, the former reference to “rates” is deleted in light of the reference to “rate”.

In subsection (c)(3) of this section, the reference to the amount paid in advance “by a landowner” is substituted for the former reference to the amount “so” paid in advance for clarity.

In subsection (d)(2) of this section, the reference to the “certified amount” is substituted for the former reference to the “amount so certified to the county commissioners” for brevity. Similarly, in subsection (e)(1) of this section, the reference to the “certified amount” is substituted for the former reference to the “amount which has been certified to the county commissioners”.

Also in subsection (d)(2) of this section, the former phrase “[a]long with such certification” is deleted as surplusage.

In subsection (e)(1) of this section, the phrase “[a]fter the assessment list has been submitted as provided in subsection (d) of this section,” is substituted for the former reference to “thereupon” for clarity.

In subsection (e)(3) of this section, the phrase “may provide for” is substituted for the former phrase “shall be within the discretion of” for brevity.

In subsection (f)(1) of this section, the reference to proceeds “from the sale of bonds under this section” is substituted for the former reference to proceeds “therefrom” for clarity.

In subsection (f)(2)(ii) of this section, the reference to disbursing the proceeds “as authorized by the board of managers” to carry out the plan is substituted for the former references to the proceeds being disbursed “only upon warrant of the board of managers” and “be[ing] devoted entirely” to carrying out the plan for brevity.

In subsection (g)(2) of this section, the reference to “pay[ing] the principal of and interest on” the bonds or notes is substituted for the former reference to the “redemption of the bonds or notes and interest” for consistency with similar provisions of this article. Similarly, in subsection (i)(2) of this section, the reference to the “principal of and interest on” is substituted for the former reference to “redemption of the bonds or notes issued and the interest thereon”.

Also in subsection (g)(2) of this section, the reference to each “landowner” is substituted for the former reference to each “individual taxable” for clarity and consistency within this title.

In subsection (g)(3) of this section, the reference to the “amounts computed under paragraph (2) of this subsection” is substituted for the former reference to the “sum as so computed” for clarity.

In subsection (g)(4)(ii) of this section, the reference to the taxes being subject to the same interest and penalties “as county taxes” is added for consistency within this subtitle.

In subsection (h) of this section, the reference to “any” of the drainage project is substituted for the former reference to “the whole or as part” of the drainage project for brevity.

Also in subsection (h) of this section, the former reference to “tak[ing] over” the drainage project is deleted as included in the reference to “adopting” a drainage project.

Also in subsection (h) of this section, the former reference to a drainage project “to be provided under this subtitle” is deleted as surplusage.

In subsection (i)(2) of this section, the reference to “the amount collected as special assessments” is substituted for the former reference to “all such moneys” for clarity.

In subsection (j)(1) and (6) of this section, the former references to “holders” and “bonds or notes” are deleted in light of the references to “holder” and “bond or note” and Art. 1, § 8, which provides that the singular generally includes the plural.

In subsection (j)(1) of this section, the reference to an installment of “principal of or interest on the bonds or notes issued under this subtitle” is substituted for the former reference to an installment of “principal and/or interest represented by the said bonds or notes” for clarity and consistency within this section.

In subsection (j)(2) of this section, the former reference to “the collection of” the special assessments is deleted as implicit in the authority to impose special assessments.

In subsection (j)(4) of this section, the former reference to “unpaid” installments is deleted as unnecessary in light of the reference to installments “in default”.

In subsection (k) of this section, the former phrase “[e]xcept as provided in this section” is deleted as surplusage.

Also in subsection (k) of this section, the former phrase “in all respects” is deleted as surplusage.

**DEFINED TERMS:**

“Board of managers” .....	§ 26-101
“Board of viewers” .....	§ 26-101
“County” .....	§ 1-101
“Drainage association” .....	§ 26-101
“Landowner” .....	§ 26-101
“Tax collector” .....	§ 1-101

**§ 26-804. Annual special assessment for maintenance and operation.**

(a) *In general.* –

(1) The board of managers may impose a special assessment on the public and private benefited land for maintenance of a drainage project constructed under this title.

(2) If the board of managers requests, the county commissioners or county council may appoint a board of viewers to evaluate changes in land use made after the original determination for a drainage project.

(3) The board of managers may use the evaluation report as a basis to impose a special assessment for maintenance of a drainage project.

(b) *Procedure for imposition and disbursement.* – The special assessments under this section shall be imposed and disbursed in the same manner as provided for other special assessments under this subtitle, except that the board of managers may, at any time, determine which land is classified as woodland, cropland, commercial, industrial, or residential.

[An. Code 1957, art. 25, § 96(b), (c); 2013, ch. 119, § 2.]

**REVISOR’S NOTE**

This section is new language derived without substantive change from former Art. 25, § 96(b) and (c).

In subsection (a)(1) of this section, the reference to the “board of managers” is added to clarify who imposes the annual special assessment.

In subsection (b) of this section, the reference to “special assessments under this section” is substituted for the former reference to “[t]axes for maintenance purposes” for clarity.

Also in subsection (b) of this section, the reference to special assessments “under this subtitle” is substituted for the former reference to “original” taxes for clarity.

Also in subsection (b) of this section, the former reference to special assessments being “collected” is deleted as implicit in the authority to impose special assessments.

**DEFINED TERMS:**

“Board of managers” .....	§ 26-101
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“Board of viewers” ..... § 26-101

§ 26-805. Duties of county tax collector.

(a) Disbursement. – The special assessments imposed under this subtitle shall remain in the county treasury until disbursed by the county tax collector on orders signed by the board of managers.

(b) Retention of proceeds. –

(1) Except as provided in paragraph (2) of this subsection, the county tax collector shall be entitled to retain 3% of the drainage special assessments collected under this subtitle as compensation.

(2) In Caroline County, the county tax collector shall deposit all fees collected into the general fund of Caroline County.

(c) Records. – For each drainage association in the county, the county tax collector shall keep a separate record that shows all income and expenses.

[An. Code 1957, art. 25, § 89; 2013, ch. 119, § 2.]

REVISOR’S NOTE

This section is new language derived without substantive change from former Art. 25, § 89.

In subsection (a) of this section, the reference to special assessments imposed “under this subtitle” is substituted for the former reference to taxes imposed “in this manner” for clarity.

Also in subsection (a) of this section, the former reference to special assessments “collected” is deleted as implicit in the authority to impose special assessments.

Also in subsection (a) of this section, the former reference to orders being “drawn” is deleted as surplusage.

In subsection (c) of this section, the reference to “income and expenses” is substituted for the former reference to “receipts and expenditures” to use more modern terminology.

DEFINED TERMS:

“Board of managers” ..... § 26-101

“County” ..... § 1-101

“Drainage association” ..... § 26-101

“Tax collector” ..... § 1-101

§ 26-806. Collection of special assessments if land in multiple counties.

(a) Separate assessment list. – If the lands of the drainage association that are subject to assessment are located in two or more counties, the board of managers shall prepare a separate assessment list for each county.

(b) Transmittal to designated officer. – The board of managers shall send the assessment list for each county to the designated officer for the county in which the drainage association was organized.

(c) Procedure. –

(1) Except as provided in paragraph (2) of this subsection, the procedure to impose a special assessment under this section shall be as provided under § 26-802 of this subtitle.

(2) (i) The county commissioners or county council of the county in which the drainage association was organized shall certify the assessment lists for the other counties to the appropriate county commissioners or county council.

(ii) The county commissioners or county council shall then certify the tax assessment lists to the respective county tax collectors for action as provided under § 26-802 of this subtitle.

(d) Proceeds. – All money collected in the several counties as provided under this section shall be paid over to the county tax collector of the county in which the drainage association was organized and credited to the drainage association.

[An. Code 1957, art. 25, § 93; 2013, ch. 119, § 2.]

REVISOR’S NOTE

This section is new language derived without substantive change from former Art. 25, § 93.

In subsection (a) of this section, the reference to lands “of” the drainage association is substituted for the former reference to lands “in” the drainage association for consistency within this title.



In subsection (b) of this section, the reference to the assessment list “for each county” is substituted for the former reference to “such” assessment lists for clarity.

In subsection (c)(1) of this section, the reference to the procedure “to impose a special assessment under this section” is added for clarity.

In subsection (c)(2)(i) of this section, the reference to “the county in which the drainage association was organized” is added for clarity.

**DEFINED TERMS:**

- “Board of managers” ..... § 26-101
- “County” ..... § 1-101
- “Designated officer” ..... § 26-101
- “Drainage association” ..... § 26-101
- “Tax collector” ..... § 1-101

**§ 26-807. Order of payments to be made by board of managers.**

(a) *First funds.* – From the money that first becomes available under this title to the board of managers, the board of managers shall pay:

- (1) the compensation and expenses of the board of viewers and the engineers;
- (2) any damages awarded;
- (3) any compensation awarded for existing drainage projects; and
- (4) the expenses incident to the organization of the drainage association.

(b) *Advancement.* –

(1) On request by the board of managers, the county commissioners or county council may advance funds to pay the costs in subsection (a) of this section.

(2) An advance under paragraph (1) of this subsection shall be repaid from the money first received to pay special assessments imposed on the landowners for the drainage project.

[An. Code 1957, art. 25, § 91; 2013, ch. 119, § 2.]

**REVISOR’S NOTE**

This section is new language derived without substantive change from former Art. 25, § 91.

In subsection (a)(3) of this section, the reference to “drainage projects” is substituted for the former reference to “improvements” for consistency within this title.

**DEFINED TERMS:**

- “Board of managers” ..... § 26-101
- “Board of viewers” ..... § 26-101
- “Drainage association” ..... § 26-101
- “Landowner” ..... § 26-101

**SUBTITLE 9.  
DISSOLUTION**

**§ 26-901. Dissolution procedure generally.**

(a) *Petition.* –

(1) A majority of the landowners or the owners of a majority of the land in the area of a drainage association may submit a petition to dissolve the drainage association to the county commissioners or county council of the county in which the drainage association was organized.

(2) A complete list of the creditors of the drainage association certified under oath by the board of managers shall accompany the petition.

(b) *Hearing; notice.* – On receipt of a petition under subsection (a) of this section, the county commissioners or county council shall:

- (1) set a date for a public hearing on the petition; and
- (2) give notice of the time, place, and purpose of the hearing at least 30 days before the hearing by:
  - (i) notice mailed to each creditor of the drainage association and each landowner; and

(ii) publication in a newspaper of general circulation in each county affected by the drainage association.

(c) *Action on petition.* –

(1) The county commissioners or county council may deny or approve a petition for dissolution after a public hearing under this section.

(2) On approval of a petition for dissolution, the county commissioners or county council shall give notice of the dissolution in the same manner as required under subsection (b) of this section.

(d) *Distribution of remaining funds.* – After payment of all debts, any balance in the county treasury to the credit of the dissolved drainage association shall be distributed to the landowners in proportion to the original assessments.

[An. Code 1957, art. 25, § 102(a); 2013, ch. 119, § 2.]

**REVISOR’S NOTE**

This section is new language derived without substantive change from former Art. 25, § 102(a).

In subsection (a)(1) of this section, the reference to land “in the area of” a drainage association is substituted for the former reference to land “in” a drainage association for consistency within this title.

In the introductory language of subsection (b) of this section, the phrase “[o]n receipt of a petition under subsection (a) of this section” is substituted for the former reference to “thereupon” for clarity.

In subsection (b)(2)(i) of this section, the reference to each creditor “of the drainage association” is added for clarity.

Also in subsection (b)(2)(i) of this section, the former reference to “written or printed” notice is deleted as unnecessary in light of the reference to “mail[ing]” the notice.

In subsection (b)(2)(ii) of this section, the reference to each county “affected by the drainage association” is substituted for the former reference to “the county or counties in which such drainage association is located” for consistency within this title.

Also in subsection (b)(2)(ii) of this section, the former reference to “newspapers” is deleted in light of the reference to “newspaper” and Art. 1, § 8, which provides that the singular generally includes the plural.

In subsection (c)(2) of this section, the reference to a notice “of the dissolution” is added for clarity.

Also in subsection (c)(2) of this section, the phrase “[o]n approval of a petition for dissolution” is substituted for the former phrase “[i]n case of approval” for clarity.

Also in subsection (c)(2) of this section, the reference to giving notice “in the same manner as required under subsection (b) of this section” is substituted for the former reference to giving “the same” notice “as for the hearing on the petition” for clarity.

In subsection (d) of this section, the reference to “debts” is substituted for the former reference to “bills” for consistency with terminology used in other articles of the Code.

**DEFINED TERMS:**

- “Board of managers” ..... § 26-101
- “County” ..... § 1-101
- “Drainage association” ..... § 26-101
- “Landowner” ..... § 26-101

**§ 26-902. Dissolution of inactive association.**

(a) *Criteria for inactivity.* – For the purpose of this section, a drainage association is considered inactive if for at least 5 years the drainage association has not complied substantially with a majority of the ordinary operating procedures required under this title, including:

- (1) the maintenance of ongoing and current information in the drainage file at the office of the designated officer;
- (2) election of a board of managers and officers of the board;
- (3) an annual meeting of landowners;
- (4) the submission of an annual report by the board of managers to the designated officer;
- (5) the development, approval, filing, execution, or maintenance of a work plan applicable to property owned by the drainage association; and
- (6) the submission and regular updating of the drainage association’s easement record in the office of the clerk of the circuit court in the applicable county.

(b) *Petition for dissolution.* – Notwithstanding § 26-901 of this subtitle, on a written petition for dissolution by any member of the most recently elected or appointed board of managers of an inactive drainage association, the

county commissioners or county council of the county in which the drainage association was organized promptly shall:

- (1) provide public notice that the county commissioners or county council has received and is considering a petition for dissolution of a drainage association;
- (2) hold a public hearing to accept public comment before taking any action on the petition;
- (3) consider all available information to determine the current operating status and foreseeable operating potential of the drainage association; and
- (4) approve or deny the petition for dissolution.

(c) *Actions after approval.* – If the county commissioners or county council approve a petition for dissolution under this section, the county commissioners or county council shall:

- (1) satisfy all outstanding debts of the drainage association if any balance remains in the county treasury to the credit of the dissolved drainage association;
- (2) retain any remaining balance; and
- (3) provide for the transfer of any interest in real property held by the inactive drainage association to any county in which the property is located.

[An. Code 1957, art. 25, § 102(b)-(d); 2013, ch. 119, § 2.]

**REVISOR’S NOTE**

This section is new language derived without substantive change from former Art. 25, § 102(b), (c), and (d).

Subsection (a) of this section is revised as a substantive provision instead of definition of “inactive association” because the defined term was used only once.

In subsection (a)(5) of this section, the former reference to “appropriate” filing is deleted as surplusage.

In subsection (c)(2) of this section, the reference to the county commissioners “retain[ing] any remaining balance” is substituted for the former reference to the county commissioners “[d]istribut[ing] any remainder to the board of county commissioners” for clarity and brevity.

In subsection (c)(3) of this section, the former reference to “counties” is deleted in light of the reference to “county” and Art. 1, § 8, which provides that the singular generally includes the plural.

**DEFINED TERMS:**

- “Board of managers” ..... § 26-101
- “County” ..... § 1-101
- “Designated officer” ..... § 26-101
- “Drainage association” ..... § 26-101
- “Landowner” ..... § 26-101

**SUBTITLE 10.  
MISCELLANEOUS**

**§ 26-1001. Right to open cross ditches or drains.**

(a) *In general.* – A person who is assessed for a ditch or drain that does not pass through or on the person’s land may open a ditch or install drain tile through the intervening land to connect to the main ditch and keep the ditch or drain tile open at the person’s expense and control.

(b) *Exception.* – A person may not open a ditch or install drain tile through the land of another person without the consent of the owner of the land, unless the damages to the land accruing to the owner of the land are assessed by three owners of land appointed by the county commissioners or county council to assess the damages.

(c) *Payment of costs and damages.* – A person seeking to open a ditch or install drain tile under this section shall:

- (1) pay the costs of laying out and opening the ditch or drain; and
- (2) pay all damages awarded to any person who is injured by the ditch or drain before making the ditch or drain.

[An. Code 1957, art. 25, § 97; 2013, ch. 119, § 2.]

REVISOR’S NOTE

This section is new language derived without substantive change from former Art. 25, § 97.

In subsection (a) of this section, the reference to opening a ditch or installing a drain tile “to connect to the main ditch” is substituted for the former reference to opening a ditch or installing a drain tile “into such main ditch” for clarity.

Also in subsection (a) of this section, the reference to a person’s “control” is substituted for the former reference to a person’s “charge” for clarity.

Also in subsection (a) of this section, the former references to “ditches” are deleted in light of the references to a “ditch” and Art. 1, § 8, which provides that the singular generally includes the plural.

In subsection (b) of this section, the reference to drain “tile” is added for consistency with subsection (a) of this section.

Also in subsection (b) of this section, the reference to three “owners of land” is substituted for the former reference to three “freeholders” to use more modern terminology.

In subsection (c) of this section, the reference to “seeking to open a ditch or install drain tile under this section” is substituted for the former reference to “applying for such ditch or drain” for clarity and consistency with subsection (a) of this section.

Also in subsection (c) of this section, the reference to “person who is injured by the ditch or drain” is substituted for the former reference to “such persons as may be injured thereby” for clarity.

Also in subsection (c) of this section, the former reference to “tender[ing]” damages is deleted as implicit in the reference to “pay[ing]” damages.

DEFINED TERM:

“Person” ..... § 1-101

§ 26-1002. Requirements when drainage project crosses public highway.

(a) *County to bear cost.* – If a drainage project established under this title crosses a public highway at the intersection of the highway with a natural watercourse or depression through which water flows during periods of high water, the county in which the bridge is located or the governmental unit required by law to maintain the highway that is intersected shall:

- (1) pay the cost of an existing bridge, repairing or enlarging an existing bridge and culvert, or constructing a new bridge or culvert; and
- (2) maintain the bridge or culvert described in item (1) of this subsection.

(b) *Drainage association to bear cost.* – If a drainage project established under this title crosses a public highway at a point where the highway does not intersect a natural watercourse or depression:

- (1) the drainage association shall pay the cost of constructing a new bridge or culvert; and
- (2) after construction, the county or other governmental unit required by law to maintain the highway that is intersected shall maintain the bridge and any culvert constructed.

[An. Code 1957, art. 25, § 99; 2013, ch. 119, § 2.]

REVISOR’S NOTE

This section is new language derived without substantive change from former Art. 25, § 99.

Throughout this section, the references to “a drainage project” are substituted for the former references to “any ditch, drain, or other improvement” for consistency within this title.

In the introductory language of subsection (a) of this section, the reference to the “governmental unit” is substituted for the former reference to the “other authority” for consistency with other revised articles of the Code. Similarly, in subsection (b)(2) of this section, the reference to the other “governmental unit” is substituted for the former reference to other “authority”.

In subsection (a)(1) of this section, the reference to the cost of an “existing” bridge is added to distinguish between that cost and the cost of constructing a new bridge.

In subsection (b)(2) of this section, the former reference to bridges and culverts being maintained “at the expense” of the county or other governmental unit is deleted as implicit in the requirement to maintain them.

DEFINED TERMS:

“County” ..... § 1-101

“Drainage association” ..... § 26-101



§ 26-1003. Requirements when drainage project crosses railroad right-of-way.

(a) Railroad to bear cost. – If a drainage project established under this title crosses a railroad right-of-way at the intersection of the right-of-way with a natural watercourse or depression through which water flows at periods of high water, the railroad company shall:

- (1) construct, build, and maintain any necessary new bridge or culvert; or
(2) enlarge, strengthen, reconstruct, or replace any existing bridge or culvert.

(b) Element of damage. – The expense to the railroad under subsection (a) of this section shall be:

- (1) considered an element of damage to the railroad company by the board of viewers; and
(2) shown as a damage in the report of the board of viewers.

[An. Code 1957, art. 25, § 100; 2013, ch. 119, § 2.]

REVISOR’S NOTE

This section is new language derived without substantive change from former Art. 25, § 100.

In subsection (b)(1) of this section, the reference to the “board of” viewers is added for consistency within this title. Similarly, in subsection (b)(2) of this section, the reference to the report “of the board of viewers” is substituted for “their” report.

DEFINED TERM:

“Board of viewers” ..... § 26-101

SUBTITLE 11. PROHIBITED ACTS

§ 26-1101. Preventing entry on drainage land.

(a) Prohibited. – A person may not prevent a member, an employee, or an agent of the board of managers or a member or an agent of the board of viewers from entering land as authorized under § 26-401(c) of this title.

(b) Penalty. – A person who violates this section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$500.

[An. Code 1957, art. 25, § 67(b); 2013, ch. 119, § 2.]

REVISOR’S NOTE

This section is new language derived without substantive change from former Art. 25, § 67(b), as it related to the prohibition against entry on drainage land and criminal penalties for violating the prohibition.

In subsection (a) of this section, the reference to a person entering land “as authorized under § 26-401(c) of this title” is substituted for the former reference to “such” entrance for clarity.

In subsection (b) of this section, the former reference to the amount of the fine being “in the discretion of the court” is deleted as surplusage.

DEFINED TERMS:

“Board of managers” ..... § 26-101
“Board of viewers” ..... § 26-101
“Person” ..... § 1-101

§ 26-1102. Obstruction of drainage project.

(a) Prohibited. –

(1) Except as provided in paragraph (2) of this subsection, a person may not obstruct a drainage project constructed under this title in a manner that impedes the free flow of water.

(2) A person may place a properly constructed swinging water gate across a ditch on a fence line to prevent livestock from trespassing through the ditch.

(b) Penalty. – A person who violates this section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$500 for each offense.

(c) Distribution of fines. – Each fine collected under this section shall be paid to the county tax collector and credited to the drainage association that suffered the damage.

[An. Code 1957, art. 25, § 98; 2013, ch. 119, § 2.]

**REVISOR'S NOTE**

This section is new language derived without substantive change from former Art. 25, § 98.

In subsection (a)(1) of this section, the reference to a “drainage project” is substituted for the former reference to a “ditch or drain or other improvement” for consistency in this title.

Also in subsection (a)(1) of this section, the former reference to “stop[ping] up” a drainage project is deleted as included in the reference to “obstruct[ing]” a drainage project.

In subsection (a)(2) of this section, the reference to “livestock” is substituted for the former reference to “stock” for clarity.

**DEFINED TERMS:**

“Drainage association” ..... § 26-101

“Person” ..... § 1-101

“Tax collector” ..... § 1-101

MICHIE’S ANNOTATED CODE OF MARYLAND

Current through chapters effective for the 2018 Regular Session of the General Assembly

AGRICULTURE

TITLE 8.  
SOIL CONSERVATION

SUBTITLE 6.  
DRAINAGE OF AGRICULTURAL LAND

Section

8-603. Regulation of agricultural drainage projects financed or managed by public drainage associations.

**§ 8-603. Regulation of agricultural drainage projects financed or managed by public drainage associations.**

(a) *Definitions.*

(1) “Agricultural drainage project” means the construction, reconstruction, or repair, or the straightening, widening, or deepening, of any ditch, drain, canal, or other watercourse, natural or man-made, financed or managed by a public drainage association for the purpose of lowering the water level in the soil of adjacent lands for agricultural purposes.

(2) “Department” means the Department of Agriculture or the Environment or Natural Resources or any combination of them.

(3) “Person” includes an individual, receiver, fiduciary or representative of any kind, or any partnership, firm, association, public or private corporation, trust, or any other entity.

(4) “Secretary” means the Secretary of Agriculture unless the context requires otherwise.

(b) *Legislative findings.* – The General Assembly determines and finds that the lands and waters comprising the watersheds of the State are great natural assets and resources. It continues to find that the drainage of surface waters from lands for agricultural purposes by public drainage associations represents a public benefit. The General Assembly further finds that agricultural drainage projects, if not properly designed, operated, and maintained, have the potential to contribute nonpoint source pollutants to the waters of the State.

(c) *Promulgation of rules and regulations.* – To protect the natural resources of the State, the Secretary and the Secretaries of Natural Resources and the Environment, shall jointly promulgate by regulation on or before January 1, 1985, criteria for the design, construction, operation, and maintenance of agricultural drainage projects which will assure, to the maximum extent practicable, the prevention of pollution of the waters of the State. These rules and regulations shall contain standards of review by the three secretaries that recognize the regulatory issues to be considered by each and minimize duplication. The rules and regulations shall also establish procedures for administrative hearings and provide for consolidation where different departments have initiated administrative proceedings arising from the same or related activities.

(d) *Approval of plans.*

(1) Effective January 1, 1985, before initiating an agricultural drainage project, a public drainage association shall obtain from the Secretary approval of construction, operation, and maintenance plans for the project.

(2) The Secretary shall not approve any construction, operation, or maintenance plan for an agricultural drainage project unless the plan has been reviewed by the Secretaries of Natural Resources and the Environment or their designees. The Secretary shall forward copies of any plan submitted simultaneously to the Secretaries of Natural Resources and the Environment, who shall have 60 calendar days to review the plan.

(e) *Compliance with approved plans; sanctions or remedies.*

(1) An agricultural drainage project shall be constructed, operated, and maintained in accordance with the approved plans.

(2) The Secretaries of Agriculture, the Environment, or Natural Resources may pursue any sanction or remedy provided in this subtitle for a violation of this subtitle. However, the Secretaries of the Environment and Natural Resources may not pursue any sanction or remedy under this subtitle until they have first consulted with the Secretary of Agriculture and given the Secretary of Agriculture a reasonable period of time to alleviate the problem.

(f) *Orders for corrective measures.*

(1) The secretary of a department may issue orders for corrective measures to any person believed to be violating any provision of this section, any rule or regulation adopted under this section, or any requirement of approved agricultural drainage project plans.

(2) The person to whom an order is issued may, on request, contest the order in a hearing governed by the Administrative Procedure Act. Whether or not an order for corrective measures has been issued or contested, the secretary of a department may, at any time, refer an alleged violation of this section, of any rule or regulation adopted under this section, or of any approved plan requirement, directly to the Attorney General for appropriate court action.

(g) *Civil actions.*

(1) In addition to any other sanction under this section, a person who constructs, operates, or maintains an agricultural drainage project without approved plans or in violation of approved plan requirements shall be liable to the State in a civil action for damages in an amount equal to double the cost of that portion of constructing, operating, or maintaining the project that was not done in accordance with approved plans.

(2) Any civil action under this section shall be prosecuted by the Attorney General on behalf of a secretary of a department. Damages recovered shall be deposited in a special fund, to be used solely for first correcting the agricultural drainage project in question, and then for support of the Secretary of Agriculture's program for review and approval of agricultural drainage projects.

(h) *Injunctions.* – The secretary of a department may seek an injunction against any person who fails to obtain or comply with approved plans.

[1984, ch. 793; 1987, ch. 306, § 3; 2007, ch. 5, § 7.]

**Editor's note.**

Pursuant to § 7, ch. 5, Acts 2007, "three secretaries" was substituted for "3 Secretaries" in (c); and "secretary" was substituted for "Secretary" in (g)(2) and (h).



**CODE OF MARYLAND REGULATIONS (COMAR)**

**TITLE 15  
DEPARTMENT OF AGRICULTURE**

**SUBTITLE 20  
SOIL AND WATER CONSERVATION**

**CHAPTER 01  
AGRICULTURAL DRAINAGE PROJECTS**







**CODE OF MARYLAND REGULATIONS (COMAR)**

**TITLE 15  
DEPARTMENT OF AGRICULTURE**

**SUBTITLE 20  
SOIL AND WATER CONSERVATION**

**CHAPTER 01  
AGRICULTURAL DRAINAGE PROJECTS**

**Authority:** Agriculture Article, §§2-103 and 8-603, Annotated Code of Maryland

Section

- .01 Purpose.
- .02 Definitions.
- .03 General Requirements.
- .04 Agricultural Drainage Project Plans.
- .05 Construction or Reconstruction Design Criteria.
- .06 Construction and Maintenance Criteria.
- .07 Operation and Maintenance Program Criteria.
- .08 Agency Approval of a Plan.
- .09 Inspection and Enforcement.

**.01 Purpose.**

These regulations establish the requirements for the design, construction, operation, and maintenance of agricultural drainage projects that are financed or managed by public drainage associations. To the maximum extent practicable, these regulations assure protection of natural resources and prevent water pollution by non-point source pollutants associated with agricultural drainage projects.

**.02 Definitions.**

- A. The following terms have the meanings indicated.
- B. Terms Defined.

(1) “Agricultural drainage project” (project) means the construction, reconstruction, repair, straightening, widening, or deepening of any ditch, drain, canal, or other watercourse, natural or man-made, financed or managed by a public drainage association to lower the water level in the soil of adjacent lands for agricultural purposes.

(2) “Association” and “public drainage association” mean an organization established to locate, construct or reconstruct, operate and maintain ditches, drains, and channels to provide agricultural drainage under Article 25, §52, Annotated Code of Maryland.

(3) “Best management practice” (BMP) means a conservation or pollution practice that:

(a) Reduces soil loss associated with farming practices; or

(b) Minimizes movement of sediment, animal wastes, nutrients, or agricultural chemicals into the waters of the State.

(4) “Cooperator’s agreement” means a landowner’s written agreement with a local soil conservation district to have a soil conservation and water quality plan prepared.

(5) “Department” means the Department of Agriculture, the Department of the Environment, or the Department of Natural Resources, or any combination of them.

- (6) "Maintenance" means the periodic:
- (a) Control of woody growth or removal of shrubs and small trees which alter the flow, affect channel stability, or limit access to a channel;
  - (b) Removal of channel obstructions, debris, and minor sediment deposits so long as the removal does not:
    - (i) Alter the approved design of the channel; or
    - (ii) Consist of channel reconstruction or realignment;
  - (c) Cleaning out or installation of sediment traps;
  - (d) Routine repair work needed to maintain the project in accordance with the approved design specifications; and
  - (e) Installation of water control structures and stabilization of soil to prevent erosion.
- (7) "Off-sided construction or reconstruction" means a method of constructing channels through riparian or other woodland, characterized by the following:
- (a) Construction or reconstruction operations are performed from one side of the channel called the construction side, the other side of the channel being called the off-side;
  - (b) Blowouts and treefalls are prevented by:
    - (i) Clearing the off-side bank of trees and other vegetation up to 12 feet from top of bank, and
    - (ii) Selectively cutting diseased, damaged, and other problematic trees on the off-side that would fall into the channel from beyond the cleared area;
  - (c) After construction, the off-side berm is allowed to reestablish natural vegetation, while all maintenance to the channel is performed from the construction side.
- (8) "Person" means any individual, receiver, trustee, guardian, personal representative, fiduciary, or representative of any kind any any partnership, association, corporation, or other entity. Person includes the federal government, this State, any county, municipal corporation, or other political subdivision of this State or any of their units.
- (9) "Pollution" means any contamination or other alteration of the physical, chemical, or biological properties of any waters of this State, including a change in temperature, taste, color, turbidity, or odor of the waters, or the discharge or deposit of any organic matter, harmful organism, or liquid, gaseous, solid, radioactive, or other substance into any waters of the State that will render the waters harmful, or detrimental to:
- (a) Public health, safety, or welfare;
  - (b) Domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses;
  - (c) Livestock, wild animals, or birds; or
  - (d) Fish or other aquatic life.
- (10) "Secretary" means the Secretary of Agriculture unless the context indicates otherwise.
- (11) "Soil conservation and water quality plan" means a farm plan approved by a local soil conservation district to minimize soil erosion, and to minimize the movement of sediment, animal waste, nutrients, or agricultural chemicals into the waters of the State.
- (12) "Stable channel" means a channel where:
- (a) The following degradation does not occur:
    - (i) Significant erosion of the channel banks and bottom,
    - (ii) Erosion around culverts, bridges, or water control structures along the channel, and
    - (iii) The formation or enlargement of gullies because of the uncontrolled entry of water flow;
  - (b) Significant aggregation to the channel occurs only within the designated limits on:
    - (i) Sediment traps,
    - (ii) In-stream wetlands designed for this purpose, and
    - (iii) Channel reaches designed for this purpose.
- (13) "Water control structure" means a structure in an Agricultural drainage project that:
- (a) Conveys water;
  - (b) Controls the direction or rate of flow of water; or



(c) Maintains a desired water surface elevation.

(14) "Waters of the State" includes both surface and underground waters within the boundaries of the State subject to its jurisdiction, including that portion of the Atlantic Ocean within the boundaries of the State, the Chesapeake Bay and its tributaries, and all ponds, lakes, rivers, streams, public ditches, tax ditches, and public drainage systems within the State, other than those designed and used to collect, convey, or dispose of sanitary sewage.

**.03 General Requirements.**

**A. Required Plans.**

(1) For any project constructed or reconstructed before the effective date of this chapter, the following apply:

- (a) All associations which operate and maintain a project shall submit to the Secretary for approval:
  - (i) Within 1 year of the effective date of this chapter, an inspection report for the project detailing the conditions of the association's drainage system, and
  - (ii) Within 5 years of the effective date of this chapter, an operation and maintenance plan for the project and an implementation schedule of needed corrective maintenance and repairs to the project;
- (b) Until such time that an operation and maintenance plan for the project is approved by the Secretary, an association shall perform needed maintenance to the project in an environmentally sound manner;
- (c) An association shall operate and maintain a project according to the operation and maintenance plan for the project approved by the Secretary;
- (d) If an association intends to perform any project maintenance not addressed in an existing operation and maintenance plan for a project approved by the Secretary, the association shall obtain the written approval of the Secretary, except that an association may make immediate corrective repairs to a project when necessary;
- (e) The Secretary shall make the final determination whether any proposed activity on a project is maintenance or reconstruction.

(2) For any project constructed or reconstructed after the effective date of this chapter, the following apply:

- (a) Before constructing or reconstructing a project, an association shall have a construction or reconstruction plan and an operation and maintenance plan for the project approved by the Secretary;
- (b) An association shall construct or reconstruct, operate and maintain a project according to the construction or reconstruction plan and the operation and maintenance plan for the project approved by the Secretary;
- (c) If an association intends to perform any project maintenance not addressed in a existing operation and maintenance plan for the project approved by the Secretary, the association shall obtain the written approval of the Secretary, except that an association may make immediate corrective repairs to a project when necessary;
- (d) The Secretary shall make the final determination whether any proposed activity on a project is maintenance or reconstruction.

**B. Land Use Requirements.**

(1) Before any project's construction or reconstruction plan is approved:

- (a) All of the association's taxable cropland acreage in a proposed project shall be under a:
  - (i) Current, not more than 10 years old, soil conservation and water quality plan; or
  - (ii) Signed cooperator's agreement.
- (b) If any landowner refuses to comply with §B(1)(a), the Secretary may:
  - (i) Waive the requirement of §B(1)(a) for those uncooperative landowners in a proposed project; and
  - (ii) Not waive this requirement for more than 20 percent of the association's taxable cropland acreage.

(2) Those BMPs necessary to minimize non-point source water pollution shall be implemented on the cropland acreage within a proposed project.

(3) Soil conservation and water quality plans for farms within a proposed project shall be implemented, if possible, according to a timetable established by the soil conservation and water quality plan.

**.04 Agricultural Drainage Project Plans.**

A. Construction or Reconstruction Plan Requirements. Before constructing or reconstructing a project, an association shall comply with the following:

- (1) Submit four copies of the construction or reconstruction plan to the Secretary for approval.
- (2) The construction or reconstruction plan shall include:
  - (a) A transmittal letter to the Secretary, including:
    - (i) The name of the association;
    - (ii) The name of the watershed and the drainage area involved; and
    - (iii) A map indicating north arrow, watershed boundaries, scale, and any other information necessary to locate the project.
  - (b) The project design specifications, including:
    - (i) A general description of the project's soil types;
    - (ii) The layout of the drainage channels;
    - (iii) The location of existing areas of trees and shrubs along the channel;
    - (iv) The design and location of water control structures;
    - (v) The design and location of sediment traps;
    - (vi) A hydrological analysis if required under Regulation .05B; and
    - (vii) A wetlands inventory map delineating the project. The association shall use the National Wetlands Inventory Maps available from the Department of Natural Resources. If the scale of the National Wetlands Inventory maps is inappropriate, the association may use maps of another scale, so long as the wetlands classification and mapping is consistent with the National Wetlands Inventory. Any lost wetlands required to be replaced under Regulation .05F and any wetlands, 1/4 acre or larger, created by the project shall be delineated on the wetlands inventory map.
  - (c) The construction methods, including:
    - (i) Open channel construction techniques;
    - (ii) Measures to limit disturbance to the soil;
    - (iii) Spoil spreading techniques and information concerning the volume of spoil materials and the location of spoil disposal sites; and
    - (iv) Temporary or permanent soil stabilization techniques for channel banks, berms, and soil disposal sites.
  - (d) Water quality protection measures including plans for:
    - (i) Establishing vegetative strips along the channels;
    - (ii) Installing BMPs along the channels;
    - (iii) Retaining or reestablishing areas of trees, shrubs, and herbaceous growth along the channel in accordance with Regulation .05E; and
    - (iv) Replacing wetlands in accordance with Regulation .05F.
  - (e) A signed statement from the local soil conservation district, stating that the project's farmland will meet the soil conservation and water quality plan requirements in accordance with Regulation .06.

(3) The project's design shall comply with Regulation .05, and the construction or reconstruction of the project shall comply with Regulation .06.

B. Operation and Maintenance Plan Requirements. Before constructing or reconstructing a project, or as required in Regulation .03A(1) for operating and maintaining a project, an association shall comply with the following:

- (1) Submit four copies of the operation and maintenance plan to the Secretary for approval.
  - (a) A transmittal letter to the Secretary, including:
    - (i) The name of the association;

- (ii) The name of the watershed and the drainage acreage involved; and
- (iii) A map indicating north arrow, watershed boundaries, scale, and any other information necessary to locate the property.
- (b) The project's maintenance program, including a general description of the project's soil types and provisions to:
  - (i) Perform routine, recurring maintenance such as mowing, seeding, and clean out;
  - (ii) Prevent project deterioration;
  - (iii) Install or replace project components when necessary; and
  - (iv) Repair damage from normal deterioration, drought, flooding, or vandalism.
- (c) Maintenance methods, including:
  - (i) Open channel maintenance techniques;
  - (ii) Measures to limit soil disturbance;
  - (iii) Spoil spreading techniques; and
  - (iv) Temporary or permanent soil stabilization techniques for the channel banks, berms, and spoil disposal areas.
- (d) Water quality protection measures, including plans for:
  - (i) Establishing and maintaining vegetative strips along a channel;
  - (ii) Installing BMPs along a channel;
  - (iii) Installing sediment traps;
  - (iv) Disposing of spoil; and
  - (v) Retaining or reestablishing areas of trees, shrubs and herbaceous growth along a channel in accordance with Regulation .05E(4).
- (e) An implementation schedule for the project's maintenance program.
- (3) The project's maintenance shall comply with Regulation .06, and the project's operation and maintenance program shall comply with Regulation .07.

**.05 Construction or Reconstruction Design Criteria.**

The design of a project shall conform to the following criteria:

**A. Channel Design.**

- (1) An outlet shall be designated for each channel to permit the discharge of water by gravity flow or pumping.
- (2) All channels shall be sloped and aligned to produce stable channels.
- (3) Water Control Structures.
  - (a) The channel design shall include necessary water control structures for the efficient functioning of the channels. These structures include:
    - (i) Water control devices and weirs;
    - (ii) Flood gates;
    - (iii) Pumping bays; and
    - (iv) Other structures affecting the functioning of the channel.
  - (b) Water control structures shall be designed, where applicable, according to the provisions in Natural Resources Article, §4-501 et seq., Annotated Code of Maryland.

**B. Flood Control.**

- (1) A project shall be designed to minimize upstream and downstream flooding.
- (2) An association shall submit an analysis of a project's hydrological impact when downstream flooding exists or may result from a project and populated areas may be affected.
- (3) Hydrological analysis shall include hydrological models and hydraulic calculations necessary to determine the changes to a 100-year frequency flood including modifications to:
  - (a) Water surface elevations;
  - (b) Water velocities; and

(c) Hydrograph timing.

(4) Formulae, models, and analysis methods for the hydrological analysis shall be subject to approval by the Secretary.

C. Erosion Control.

(1) A project shall be designed to minimize erosion and sediment deposition.

(2) Sediment traps shall be installed in key locations along channel reaches.

(3) Water control structures shall be designed for the entry of concentrated flow of water into a channel without significant deposition or degradation.

(4) A channel shall be designed to minimize overbank wash of channel spoil by:

(a) Diverting surface water around spoil banks;

(b) Protecting channel bank stability by properly placing spoil; or

(c) Sloping the finished surface of the spoil away from a channel.

D. Vegetated Strips.

(1) The following definitions describe the meaning of the terms used in §D:

(a) "Main channel" means the primary water course constructed or maintained by an association that drains water from a subwatershed or watershed area and lateral channels.

(b) "Lateral channel" means any watercourse constructed or maintained by an association that transports water from segments of a subwatershed or watershed to the main channel.

(2) Vegetated strips shall be designed, established, and maintained to stabilize the soil and to minimize the movement of sediment into a channel during operation.

(3) Measurements for a vegetated strip shall be made from the top of a channel bank.

(4) A minimum 10-foot wide vegetated strip shall be established and maintained along each cleared side of a main channel.

(5) A minimum 4-foot wide vegetated strip shall be established and maintained along each cleared side of a lateral channel only if acceptable BMPs submitted to the Secretary for approval are implemented on adjoining cropland. The following apply:

(a) Acceptable BMPs may include:

(i) Minimum tillage;

(ii) Seasonal cover crops;

(iii) Reverse berms;

(iv) Permanent sediment traps in on-farm channels; and

(v) Other methods to achieve a level of water quality protection equivalent to a 10-foot wide vegetated strip.

(b) In the absence of BMPs approved by the Secretary, a minimum 10-foot wide vegetated strip shall be established and maintained along each cleared side of a lateral channel.

(6) Vegetation shall be established and maintained to stabilize the soil on the sides of both channel banks.

E. Water Temperature Controls.

(1) One-sided or off-sided construction or reconstruction of a channel in woodland shall be used if practical.

(2) Both-sided construction of a channel in woodland shall be allowed by the Secretary only when it is the only practical construction method.

(3) Both-sided reconstruction of a channel in woodland shall be allowed by the Secretary when:

(a) It is the only practical reconstruction method; or

(b) Both-sided construction or reconstruction was previously used and both right-of-ways are clear of woody growth.

(4) Areas of trees, shrubs, and herbaceous growth that shade a channel shall be retained, replanted, or allowed to reestablish naturally, unless it can be demonstrated to the Secretary that the:

(a) Presence of trees and shrubs will prevent adequate access to a channel for maintenance; or



(b) Absence of these areas of trees and shrubs will not elevate water temperature to levels that will adversely impact fish or other aquatic life.

F. Wetlands Replacement. An association shall replace drained or filled, non-tidal wetlands as required by this section. The following are included:

- (1) Land areas that are required to be replaced by an association under this section are those areas that:
  - (a) Support a predominance of plants that grow in water or in periodically water saturated soils;
  - (b) Have remained natural and uncultivated for at least 3 successive years; and
  - (c) When drained or filled, will cause water pollution by significantly:
    - (i) Increasing erosion and siltation, or
    - (ii) Reducing the area's ability to filter water pollutants.
- (2) Land areas required to be replaced under this section shall be replaced as follows:
  - (a) One acre of land with equal soil-water conditions shall be created to replace each acre of drained or filled land when the:
    - (i) Water table is near the soil surface for extended periods during the frost-free growing season of most years; or
    - (ii) Soil is water-saturated, or surface water is present for extended periods during the frost-free growing season of most years.
  - (b) In all other cases, 1 acre of temporarily to permanently flooded land shall be created to replace every 4 acres of drained or filled land.
- (3) The Secretary shall consult with the Secretaries of the Departments of Natural Resources and the Environment to determine if an association's construction or reconstruction plan adequately meets the requirement of this section.

**.06 Construction and Maintenance Criteria.**

A. In-stream Excavation. Except with the written permission of the Secretary of the Department of Natural Resources, in-stream excavation or clearing is prohibited between the following dates:

- (1) October 1 through April 30 in natural trout waters;
- (2) March 1 through May 31 in recreational trout waters; and
- (3) March 15 through June 15 in anadromous fish spawning waters.

B. Clearing and Snagging.

- (1) Clearing and snagging of a channel may not endanger channel stability.
- (2) The areas to be cleared and snagged shall be limited to:
  - (a) The channel bottom, banks, and berms;
  - (b) Adjacent trees or other objects that may fall into a channel;
  - (c) Access roads;
  - (d) Temporary disposal areas; and
  - (e) Areas designated by a soil conservation district for planned conservation areas.

C. Revegetation.

- (1) On each project, a species of erosion controlling vegetation adapted to the area and a proven method of vegetation establishment shall be used for revegetation.
- (2) Provisions shall be taken on a project to reduce soil erosion until effective revegetation can be accomplished.
- (3) During the growing season, at a minimum:
  - (a) Channel banks shall be seeded at the end of each day's excavation; and
  - (b) Other areas where soil has been disturbed shall be seeded within 7 days of final soil disturbance.
- (4) The progress of revegetation shall be monitored by the association and corrective action taken when necessary.

**.07 Operation and Maintenance Program Criteria.**

The operation and maintenance program for a project shall conform to the following:

A. General Maintenance. General maintenance to a channel, maintenance areas, and right-of-ways includes the:

- (1) Removal of obstructions, debris, and sediment;
- (2) Control of woody growth;
- (3) Cleaning out of permanent sediment traps;
- (4) Installation of necessary sediment traps;
- (5) Installation of necessary water control structures where uncontrolled concentrated flow of water enters a channel;
- (6) Stabilization of eroding areas;
- (7) Routine repair of damaged structures and channel banks; and
- (8) Observation of all other sound operation and maintenance practices.

B. Sediment Traps and Channel Clean Out.

- (1) Sediment traps shall be installed where necessary for the efficient operation of a channel.
- (2) The design and installation of a sediment trap shall include providing a stable channel bank slope.
- (3) The clean out of a channel or sediment trap includes:
  - (a) Removal of silt bars and sediment;
  - (b) Restoration of a stable channel bank slope; and
  - (c) Maintaining the approved channel or sediment trap design.
- (4) Channel spoil shall be placed in locations where the spoil does not:
  - (a) Prevent watershed runoff from entering the natural flood plain;
  - (b) Interfere with travel ways;
  - (c) Endanger the stability of a channel;
  - (d) Fill adjacent wetlands; and
  - (e) Wash back into a channel.
- (5) Disturbed areas shall be stabilized and seeded in accordance with Regulation .06C.

C. Vegetated Strips. Vegetated strips shall be established and maintained on all channels in accordance with Regulation .05D.

D. Water Temperature Control. Areas of trees, shrubs, and herbaceous growth shall be retained or reestablished in accordance with Regulation .05E(4).

**.08 Agency Approval of a Plan.**

A. In this regulation, “plan” means a construction or reconstruction plan, or operation and maintenance plan, or both, as appropriate.

B. Plan Submission.

(1) Within 14 days of receiving a project plan, the Secretary of Agriculture shall forward a copy to the Secretaries of Natural Resources and the Environment.

(2) The Departments of Natural Resources and the Environment shall have 60 calendar days from receipt to review a plan and respond in writing to the Secretary.

(3) The Secretary shall review the comments from the Departments of the Environment and Natural Resources. If there is any significant disagreement among the three Departments concerning the plan, the Secretary shall schedule a meeting between the Departments to resolve any disagreement.

C. Plan Approval. The Secretary shall make the final determination whether to approve a plan. The Secretary shall respond to the association within 30 days from receipt of comments from the Departments of Natural Resources and the Environment and either:

- (1) Approve the plan;
- (2) Approve the plan with modification;

- (3) Approve the plan conditioned upon the formation of the association;
  - (a) Conditional approval may be issued for plans submitted by the county before an association is legally established,
  - (b) Final approval shall be given only when the Secretary is furnished a letter from the county government stating that it has approved the plan and established the association,
  - (c) Any changes in the plan by a county shall be submitted to the Secretary, who shall forward copies to the Secretaries of the Departments of Natural Resources and the Environment for review;
- (4) Disapprove the plan; or
- (5) Extend the Secretary's review period.

**.09 Inspection and Enforcement.**

**A. Channel Inspection by the Association.**

- (1) The association managers or designee shall inspect the project within 2 weeks following any storm which results in water flow exceeding channel capacity.
- (2) An association shall send a written inspection report to the Secretary not later than 90 days following the storm event. The report shall:
  - (a) Detail the damage to the channels, vegetation, and water control structures; and
  - (b) Describe needed repairs and corrective maintenance and the projected time when the work shall be accomplished.
- (3) The association managers or designee shall inspect the project at least once every 2 years. The following apply:
  - (a) An association shall send a written inspection report to the Secretary by March 1st of the appropriate year. The report shall:
    - (i) Outline the last inspection of the project performed not more than 6 months before submission;
    - (ii) Detail the condition of the channel, vegetation, and structures;
    - (iii) Describe needed maintenance and the projected time when the work shall be completed; and
    - (iv) Describe the work completed in the previous 2 years.
  - (b) An association need not file the biennial written inspection report required in §A(3) if:
    - (i) Storm damage occurred during the 6 months before March 1st of the appropriate year; and
    - (ii) An inspection report required in §A(1) was submitted.
- (4) An association shall keep records on work performed on a project. These records shall:
  - (a) Include the items of work, cost, and the date the work was completed; and
  - (b) Be made available upon request to the Secretary.

**B. State Inspection.**

- (1) The Secretary shall coordinate on-site inspections of a project by the Departments of Agriculture, the Environment, and Natural Resources.
- (2) An association shall grant each Department the right of entry to inspect a project to ensure that it complies with an approved construction or reconstruction plan or an approved operation and maintenance plan for the project.

**C. Enforcement.**

- (1) The Secretaries of Agriculture, the Environment, or Natural Resources may pursue any sanction or remedy provided in Agriculture Article, §8-603, Annotated Code of Maryland. Before pursuing any sanction or remedy, however, the Secretaries of the Environment and Natural Resources shall:
  - (a) Consult with the Secretary of Agriculture; and
  - (b) Provide the Secretary of Agriculture a reasonable period of time to solve any problem.
- (2) The Secretary of a Department may issue a written order for corrective measures to any person who violates this chapter, or who fails to follow any requirement of an approved project plan.
- (3) A person ordered to comply with this chapter may request a hearing. The following apply:
  - (a) The hearing request shall be made in writing to the Secretary who issued the order;

- (b) The hearing request shall be made not later than 10 days after the date the order is served;
  - (c) When different Departments have initiated administrative proceedings arising from the same or related activities, any person subject to more than one order may request a consolidated hearing;
  - (d) The hearing shall be scheduled within 30 working days from the receipt of the request;
  - (e) A decision shall be rendered within 30 working days from the hearing date;
  - (f) The Administrative Procedure Act, State Government Article, §10-201 et seq., Annotated Code of Maryland, governs the practice and procedure in all hearings and appeals.
- (4) Whether an order for corrective measures has been issued or contested, the Secretary of a Department may, at any time, refer an alleged violation of this chapter or of any approved plan requirement directly to the Attorney General for appropriate legal action.
- (5) In addition to any other sanction under Agriculture Article, §8-603, Annotated Code of Maryland, any person who constructs, reconstructs, operates, or maintains an agricultural drainage project without approved plans or in violation of approved plan requirements, shall be liable to the State in a civil action for damages in an amount equal to double the costs of that portion of constructing, reconstructing, operating, or maintaining the project that was not done in accordance with the requirements of this chapter.
- (6) A civil action under Agriculture Article, §8-603, Annotated Code of Maryland, shall be prosecuted by the Attorney General on behalf of the appropriate Department. Damages recovered shall be deposited in a special fund to be used solely for:
- (a) First, correcting the deficiencies in the agricultural drainage project in question; and
  - (b) Second, supporting the Secretary of Agriculture's program for review and approval of the agricultural drainage projects.
- (7) The Secretary of any Department may seek an injunction against any person who does not have or fails to follow an approved plan.

**Administrative History**

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**Maryland  
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