Chapter 548

1969 REPLACEMENT PART

Provisions Applicable Both to Drainage Districts and to Irrigation Districts

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ORGANIZATION; SALE OF LANDS; TRANSFER OF FUNDS

548.005 Organization of irrigation, drainage or flood control district by owners of lands subject to assessment by district improvement company or improvement district; assumption of obligations. Where any lands are subject to assessment by a corporation under the provisions of ORS 554.010 to 554.340, or by a corporation organized before March 4, 1937, under the provisions of chapter 172, Oregon Laws 1911, and Acts amendatory thereof, the owners of the lands or any part thereof and the owners of any additional lands adjacent thereto may proceed to organize irrigation districts or drainage districts or flood control districts under the laws of Oregon. Any of such districts when organized may assume any of the valid outstanding liens or obligations of the district improvement company or improvement district and refund the same and issue district bonds therefor.

548.010 Sale or disposal of lands not needed. Whenever any drainage or irrigation district has acquired any lands, by gift, purchase, eminent domain or otherwise, for the uses and purposes of the district, and thereafter by reason of a change of its plans or for any other reason determines that all or any part thereof is no longer necessary for the uses or purposes for which it was acquired, the district may sell or dispose of the lands or any part thereof, either at private or public sale. The officers of the district otherwise authorized to execute conveyances have authority to make such conveyance.

548.015 Board of directors to transfer unnecessary funds. When the necessity for maintaining any fund of an irrigation or drainage district has ceased to exist and a balance remains in the fund, the governing board of the district shall so declare by proper resolution. The balance shall then forthwith be transferred to the credit of either the operation and maintenance fund or the general fund of the district, as designated in the resolution.

INSURANCE FOR EMPLOYES

548.050 Insurance for district employes. (1) The board of directors of an irrigation district or the board of supervisors of a drainage district may enter into contracts of insurance covering district officers and employes for medical, or any other type of remedial care recognized under state law, surgical, hospital and related services and supplies, life insurance, annuities and other retirement benefits and monthly indemnity for loss of time due to accident or sickness. Contributions for premiums therefor by officers or employes shall only be on a voluntary basis. Failure to procure such insurance shall not be construed as negligence or lack of diligence on the part of the board or the members thereof.

(2) The district may agree to pay none, part or all of the premiums on contracts of insurance entered into pursuant to this section.

(3) This section is part of the Irrigation District Act, as defined in ORS 545.002, in so far as it applies to irrigation districts, and part of the Drainage District Act, as defined in ORS 547.060, in so far as it applies to drainage districts.

(4) As used in this section the words "related services" shall include the services of a person duly licensed to practice chiropractic in the State of Oregon.

[1959 c.435 §1; 1967 c.281 §1]

DETERMINING LEGALITY OF ORGANIZATION AND PROCEEDINGS

548.105 Authority of directors to maintain proceedings for judicial determination as to organization of district and other matters; scope of inquiry; determination is prerequisite to bond issue. (1) The board of directors of an irrigation district organized under the provisions of the Irrigation District Act (as defined in ORS 545.002), or the board of supervisors of a drainage district organized under the provisions of the Drainage District Act (as defined in ORS 547.060), may by petition commence special proceedings in the circuit court of the county in which the office of the district is located for the purpose of having a judicial examination and judgment of the court as to the regularity and legality of:

(a) The proceedings in connection with the organization of the district.

(b) The proceedings of the board and of the district, providing for and authorizing the issue and sale of bonds of the district, whether bonds have or have not been sold or disposed of.

(c) Any action or proceeding of the county court declaring the organization of the district, or declaring the result of any election therein.

(d) An order of the governing board of the district including or excluding any lands in or from the district, or declaring the result of any election, general or special.

(e) An order of such board levying any assessment, general or special.

(f) An order of such board ordering the issue of any bonds for any purpose, or determining any bond issue, or providing for the same.

(g) The authorization of contract with the United States, and the validity of the contract, whether or not it has been executed, and whether or not bonds are to be deposited with the United States.

(2) All the proceedings of an irrigation district or drainage district may be judicially examined and determined by the court in one special proceeding, or any part thereof may be separately examined and determined upon by the court. No bond issue or any part thereof shall be sold or offered for sale unless it has been confirmed under the provisions of this section.

548.110 Nature of proceedings; notice; contest; trial; decree; appeal; nonprejudicial errors; costs. (1) The proceedings shall be in the nature of a proceeding in rem. The practice and procedure therein shall follow the practice and procedure of suits in equity, so far as they are consistent with the determination sought to be obtained, except as otherwise provided in ORS 548.105 to 548.115. The jurisdiction of the irrigation district or drainage district and of all the freeholders, assessment payers and legal voters therein shall be obtained by publication of notice directed to the district, and to "all freeholders, legal voters and assessment payers within the district," without naming them individually. The notice shall be served on all parties in interest by publication for at least once a week for three successive weeks in some newspaper of general circulation published in the county where the proceeding is pending. Jurisdiction shall be complete within 10 days after full publication.

(2) Any person interested may at any time before the expiration of the 10 days appear and contest the validity of the proceeding, or of any of the acts or things therein enumerated. The proceedings shall be speedily tried and judgment rendered declaring the matter so contested to be either valid or invalid. Any order or judgment in the course of the proceeding, or any final decree therein, may be made and rendered by the judge of the court in vacation. For the purpose of any such order, judgment or decree the court shall be deemed at all times to be in session, and the act of the judge in making such order, judgment or decree shall be the act of the court.

(3) Any party may appeal to the Supreme Court at any time within 30 days after rendition of the final judgment or decree. The appeal must be heard and determined within three months from the time of taking the appeal.

(4) The court, in inquiring into the regularity, legality or correctness of any of the proceedings, must disregard any error, irregularity or omission which does not affect the substantial rights of the parties to the court proceedings, and may approve the proceedings in part and disapprove and declare invalid other or subsequent proceedings in part. The costs of the court proceedings may be allowed and apportioned between the parties in the discretion of the court.

548.115 Individual's right to maintain proceedings; procedure; exclusiveness of remedy. (1) Any freeholder, legal voter or assessment payer within an irrigation district or drainage district may, within 30 days after the entry of any order or the performance of any act mentioned in ORS 548.105, for which a contest is by that section provided, may bring a like proceeding in the circuit court of the county where the lands embraced within such district, or the majority thereof, are situated, to determine the validity of such order or act. In such proceedings the board of directors shall be made parties defendant.

(2) Service of summons shall be made on the members of the board personally if within the county where the district, or any part thereof is situated. As to any directors not within the county, service may be had by publication of summons for a like time, and in like manner, as is provided by ORS 548.110. Service shall be deemed complete within 10 days from the date of personal service, or within 10 days from the date of completion of publication, as the case may be.

(3) The proceedings shall be tried and determined in the same manner as proceedings brought by the irrigation district or drainage district itself.

(4) No contest of any proceeding, matter or thing provided by ORS 548.105 to be

had or done by the board of directors or supervisors or by the district, or by the county court, or by any freeholder, legal voter or assessment payer within the district, shall be had or maintained at any time or in any manner except as provided in ORS 548.105 to 548.115.

548.120 Validation of decrees entered in proceedings by directors. In all cases where the board of directors of any irrigation district or the board of supervisors of any drainage district has instituted proceedings for the purpose of having an adjudication of the court as to the regularity and legality of the proceedings in connection with any of the matters specified in ORS 548.105, and where notice has been published directed to the parties specified by ORS 548.110, for the length of time specified by that section, and the full time provided by that section has elapsed after publication before any decree has been entered therein, all such decrees so rendered by the courts hereby are validated and declared to be effective and sufficient for all purposes, notwithstanding any other defects in the proceedings and notice upon which such decrees are based.

CERTIFICATION OF BONDS

548.205 Resolution for bond issue; filing with State Engineer. Whenever the board of directors of an irrigation district or the board of supervisors of a drainage district declares by resolution that it deems it desirable that any contemplated or outstanding bonds of the district, including any of its bonds authorized but not sold, shall be made available for the purposes provided for in ORS 548.230, the board shall file a certified copy of such resolution with the State Engineer.

548.210 Investigation by State Engineer of affairs of district; report. (1) The State Engineer, on receipt of a certified copy of the resolution, shall without delay make or cause to be made an investigation of the affairs of the district, and a report in writing upon such matters as he may deem essential.

(2) In case the application is filed by an irrigation district, the investigation and report shall be particularly upon the following points:

(a) The supply of water available for the project and the right of the district to so much of the water as may be needed.

(b) The nature of the soil as to its fertility and susceptibility to irrigation, the probable amount of water needed for its irrigation and the probable need of drainage.

(c) The feasibility of the district's irrigation system and of the specific project for which the bonds under consideration are desired or have been used, whether such system and project are constructed, projected or partially completed.

(d) The reproduction cost less depreciation of the canals, reservoirs, reservoir sites or other irrigation works owned by such district or to be acquired, or the actual cost of the works to be constructed by it with the proceeds of any such bonds.

(e) The reasonable market value of the irrigable land included within the boundaries of the district.

(f) Whether or not the aggregate amount of the bonds under consideration, and any other outstanding bonds of the district, including bonds authorized but not sold, exceeds 30 percent of the aggregate market value of the irrigable lands within the district and of the reproduction cost less depreciation of the canals, reservoirs, reservoir sites and other irrigation works owned or to be acquired or the actual cost of the works to be constructed with the proceeds of any of the bonds, by the district, as determined by paragraphs (d) and (e) of this subsection.

(g) The numbers, date or dates of issue and denomination of the bonds, if any, which the commission finds are available for the purposes provided for in ORS 548.230, and if the investigation has covered contemplated bonds, the total amount which the district can issue without exceeding the limitation expressed in paragraph (f) of this subsection.

(3) In case the application is filed by a drainage district, the investigation and report shall be particularly upon the following points:

(a) The nature of the soil as to its fertility and productivity after drainage.

(b) The feasibility of the plan of reclamation.

(c) The reproduction cost less depreciation of the works owned by such district or to be acquired or the actual cost of the works to be constructed by the proceeds of any such bonds.

(d) The reasonable market value of the land included within the boundaries of the district which will be benefited by the drainage works.

(e) Whether or not the aggregate amount of the bonds under consideration and any other outstanding bonds of the district, including bonds authorized but not sold, exceeds 30 percent of the aggregate market value of the lands within the district which will be benefited by the drainage works and the reproduction cost less depreciation of the works owned by such district or to be acquired or the actual cost of the works to be constructed by the proceeds of any such bonds as determined by paragraphs (c) and (d) of this subsection.

(f) The numbers, date or dates of issue and denomination of the bonds, if any, which the State Engineer finds are available for the purposes provided for in ORS 548.230, and, if the investigation has covered contemplated bonds, the total amount of bonds which the district can issue without exceeding the limitation expressed in paragraph (e) of this subsection.

548.215 Filing report of investigation; certification of bonds of district; supplemental report; subsequent issues of bonds; record of reports and bonds. (1) The written report of the investigation provided for in ORS 548.210 shall be filed in the office of the Secretary of State and a copy of the report shall be forwarded by the State Engineer to the secretary of the district for which the investigation was made. If the State Engineer finds, as set out in the report, that the irrigation or drainage system of the district and the specific project for which the bonds under consideration are desired or have been issued, whether such project is constructed, projected or partially completed, are feasible, and that the aggregate amount of the bonds under consideration and any other outstanding bonds of the district, including bonds authorized but not sold, does not exceed 30 percent of the aggregate market value of the irrigable lands or the lands which will be benefited by drainage within the district and of the reproduction cost less depreciation of the canals, reservoirs, reservoir sites and other irrigation or drainage works, as the case may be, owned or to be acquired or constructed with the proceeds of any such bonds by the district, then the bonds of such irrigation or drainage district, as described and enumerated in the report filed with the Secretary of State, shall be certified by him, as provided for in ORS 548.220.

(2) If the State Engineer is notified by the board of directors of any district, whose irrigation or drainage system has been found in such report to be feasible, that the district has issued bonds, and the State Engineer finds that the bonds are for any project approved in the report and that the amount of the bonds does not exceed the limitation stated in the report, the State Engineer shall prepare and file with the Secretary of State a supplementary report giving the numbers, dates of issue and denominations of the bonds, which shall then be entitled to certification by the Secretary of State.

(3) Subsequent issues of bonds may be made available for the purposes specified in ORS 548.230 upon like proceedings by the district. But after any of the bonds of an irrigation or drainage district have been enumerated and described as entitled to certification by the Secretary of State, the district shall not issue bonds not entitled to such certification, except that bonds issued by any irrigation or drainage district to refund bonds which it has theretofore issued, and which have been certified, may be issued without certification or may be certified upon the same basis as the original bonds which are to be retired by such refunding bonds.

(4) The certificate on each bond so certified shall contain the words: "This bond is not an obligation of the State of Oregon."

(5) The Secretary of State shall provide for filing and preserving the reports mentioned in this section and shall make and keep a record of the bonds certified by him, in accordance with the provisions of ORS 548.220, including the date of certification, the legal title of the district, the number of each bond, its par value, and the date of its issue and of its maturity.

548.220 Form of certificate; modification; signature; seal; fee payable to Secretary of State. (1) Whenever there is presented to the Secretary of State any bond of an irrigation or drainage district, including any bond authorized but not sold, which is eligible to certification under ORS 548.215, the Secretary of State shall cause to be attached thereto a certificate in substantially the following form:

I, —— ——, Secretary of State of Oregon, certify that the within bond No. ——

of the —— district, issue —— (insert date), is, in accordance with sections 548.205 to 548.230 of the Oregon Revised Statutes, a legal investment for all trust funds and for the funds of all insurance companies, banks, both commercial and savings, trust companies, and bonding companies, and any funds which may be invested in county, municipal or school district bonds, and it may be deposited as security for the performance of any act whenever the bonds of any county, city, school district or other municipality may be so deposited, it being entitled to such privileges by virtue of an examination by the State Engineer in pursuance of said statutes. The within bond may also be used as security for the deposit of public money in the banks of this state. This bond is not an obligation of the State of Oregon.

Secretary of State of Oregon.

(2) In case of a change in the Constitution of any of the laws of this state relating to the bonds of irrigation or drainage districts, the Secretary of State shall, if necessary, modify the above certificate so it shall conform to the facts.

(3) A facsimile of the signature of the Secretary of State, printed or otherwise impressed upon the certificate, shall be a sufficient signing thereof; provided, that the imprint of the Secretary of State's seal shall appear upon both the certificate and the bond over and through the printed signature. A fee of 25 cents shall be paid to the Secretary of State for each bond so certified by him under the provisions of this section.

548.225 Expenses of investigation and report; use by State Engineer of results of investigation; supervision by State Engineer of bonds, proceeds and work. All necessary expenses incurred in making the investigation and report provided for in ORS 548.210 and 548.215 shall be paid as the State Engineer may require by the irrigation or drainage district whose property has been investigated and reported on. However, the benefit of any services that may have been performed and any data that may have been obtained by the State Engineer or by any other public official in pursuance of the requirements of any law other than ORS 548.205 to 548.230 shall be available for the use of the State Engineer without charge to the district whose affairs are under investigation. The State Engineer may exercise such supervision and control over certified bonds, or the expenditure of funds arising therefrom, or the construction work to be paid for therewith, as he deems the interest of the district and the state demands.

548.230 Certified bonds as investments; purchase by trustees, banks and others. All bonds certified in accordance with the terms of ORS 548.205 to 548.230 shall be legal investments for all trust funds and for the funds of all banks, both commercial and savings and trust companies, and whenever any money or funds may by law be invested in bonds of cities, counties, school districts or other municipalities in the state, such money or funds may be invested in such bonds of irrigation or drainage districts. Whenever bonds of cities, counties, school districts or municipalities may by law be used as security for the performance of any act, bonds of irrigation or drainage districts under the limitations provided in ORS 548.205 to 548.230 may be so used, and may also be used as security for the deposit of public money in the banks of this state. The certification of any bonds under and in pursuance of the provisions of sections 42 to 48, chapter 357, Oregon Laws 1917 (now repealed), made prior to May 29, 1919, shall have the same force and effect as if made in pursuance of the provisions of ORS 548.205 to 548.230.

[Amended by 1967 c.359 §695]

548.235 Validation of outstanding bonds. All bonds of irrigation and drainage districts within the state, issued and outstanding on March 7, 1935, which were sold for a price not less than that authorized by law and the purchase price paid to the district, or which were exchanged for outstanding bonds or warrants of the district on a par value basis, or on a basis of par value plus accrued interest, hereby are validated and declared to be legal and binding obligations of such irrigation or drainage districts, notwithstanding that the bonds were not advertised for sale as required by law nor confirmed in the manner provided by ORS 548.105 to 548.120, or were not or are not entitled to certification in the manner provided by ORS 548.205 to 548.230.

GOVERNMENT LOANS TO IRRIGATION AND DRAINAGE DISTRICTS

548.305 Contracts for loans; purposes for which authorized; amount of loan. (1)

The board of supervisors of any drainage district or the board of directors of any irrigation district may, whenever it is determined by such board that it is for the best interests of the district, enter into a contract with any governmental agency of the United States, for a loan:

(a) For the refunding of any or all of its outstanding indebtedness;

(b) For the refunding of any state, county and municipal ad valorem taxes or special assessments levied by such district; and

(c) For the financing of any improvement or supplemental works which may be needed to reclaim lands in the district or for maintenance or operation, and for the payment or repayment thereof, upon such terms or conditions as may be agreed upon in the contract.

(2) In no case shall the total of any loan made by such governmental agency exceed in the aggregate the total amount of the outstanding indebtedness of such district so refunded, but this limitation shall not apply to any loan or any part of any loan which may be made by such governmental agency for any purpose herein provided other than refunding such outstanding indebtedness.

548.310 Validation of prior contracts and bonds. All contracts entered into before November 15, 1935, by any drainage district or irrigation district with any governmental agency of the United States, and any bonds issued before or after November 15, 1935, pursuant to such contract, for any of the purposes provided by ORS 548.305 to 548.325, which comply with the provisions of ORS 548.305 and are otherwise regular and duly made and issued according to law, are declared valid, notwithstanding that the total amount of any such loan so provided to be made by the governmental agency exceeds in the aggregate the total amount of the outstanding indebtedness of such district in any case where all or any part of such loan is for purposes other than refunding the outstanding indebtedness of such district.

548.315 Issuance of bonds; provisions thereof; funds for payment; assessments; release of land from lien; relief from payment of assessments. For the purpose of carrying into effect provisions contained in any contract so to be executed, the board of such district may, without the vote of the electors of the district, issue bonds in any denomination, bearing interest from date at a rate not to exceed six percent per annum, and to mature in not more than 40 years. The bonds shall be general obligations of the district and shall be paid by the revenue derived from the annual assessments upon the real property within the district, which assessments shall be made in accordance with the terms of the contract. All the real property within the district shall be liable to be assessed for such payments; provided, however, that the contract may contain a provision permitting the release of any land in the district from the lien to secure the payment of such bonds, or relieving any lands in the district from any obligation to pay any assessments thereafter levied for the purpose of paying the bonds or the interest accruing thereon, by payment to the district of an amount provided in the contract.

548.320 Lien on lands; lien docket; priority; sale of land for taxes not to extinguish lien. The contract may provide for a lien docket which shall be furnished by the district to the recorder of conveyances of each county in which lands of the district are situated, and in which shall be set forth a description of the lands within the district and liable under such bonds, described under the present individual ownership by metes and bounds or by calls or by reference to recorded deeds, together with the total amount of refunding bonds charged against each parcel of land, the amount of annual payments thereof, the date of such payment and the rate of interest. This charge shall remain a lien on such tract or parcel of land in favor of the district and shall have priority over all other liens and encumbrances except the lien of state, county and municipal taxes. If the contract does not provide for a lien docket nothing in this section shall be construed to prevent an irrigation or drainage district from providing a lien docket as prescribed by law. In case any lands located within an irrigation or drainage district are sold for taxes such sale shall not operate to extinguish any lien appearing on the lien docket and payable at a future time.

548.325 Assessments; emergency fund; approval of contracts by State Engineer. In addition to the annual assessments provided for in ORS 548.315, and in addition to the assessments authorized by law for the

maintenance and operation of drainage and irrigation districts, such contract may provide that the board shall levy an annual assessment not to exceed 50 cents per acre upon each acre in the district. All moneys received from such assessment shall be placed by the treasurer of the district in a fund to be designated as the "emergency fund." The emergency fund shall be used for supplementing the bond fund in case of deficiency due to accident, delinquency or other contingencies and for the purpose of foreclosure of delinquent tax certificates issued for taxes or assessments levied against lands in the district. The fund shall be disbursed by the treasurer upon the order of the board. All contracts entered into under the provisions of ORS 548.305 to 548.325 shall be approved by the State Engineer.

548.330 Bonds for refunding indebtedness; validity not affected by irregularities of refunded obligations. All bonds of any irrigation or drainage district authorized or issued by the district in the manner provided by ORS 548.305 to 548.325, for the purpose of refunding any outstanding bonds or warrants of the district in accordance with the terms and provisions of a contract therefor between the district and any governmental agency of the United States, which contract has been approved by the State Engineer shall constitute legal and binding obligations of the district, notwithstanding any irregularities or defects in the authorization of or issuance of any of the bonds or warrants to be refunded.

548.335 Consent of holders of outstanding indebtedness; initiation of proceedings to obtain constructive consent. When any irrigation or drainage district has adopted a plan for refunding and compromising any or all of its outstanding indebtedness, and pursuant to ORS 548.305 to 548.325 has entered into a contract with any governmental agency for a loan for the purpose of carrying out such plan, and the board of directors or board of supervisors for the purpose of carrying into effect the provisions contained in the contract have authorized the issuance of bonds of the district pursuant to ORS 548.315, and such plan of refinancing and compromise has been accepted in writing by the holders of more than 90 percent of such outstanding indebtedness to be refunded and compromised, such irrigation or drainage district may commence and prosecute a proceeding in rem for the purpose of obtaining constructive consent, to the plan, of the unknown holders of the evidences of the indebtedness to be refunded and compromised, and of the known holders of such evidences of indebtedness who have not so given their consent in writing. The proceeding shall be commenced in the circuit court of the county in which the office of the district is located, by filing a petition verified by the oath of the president or secretary of the district.

548.340 Averments of petition. The petition shall set forth the plan for refunding and compromising the indebtedness and shall further recite what percentage in amount of the holders of the evidences of indebtedness to be refunded or retired have filed their written consent to the proposed plan, which percentage shall not be less than 90 percent, and shall further set forth what steps have been taken to obtain the consent of all nonconsenting holders of the evidences of indebtedness. The petition shall also state the name and place of residence of all of the holders of the evidences of indebtedness who are known to the district, and shall show that diligent efforts have been made to ascertain the names and residences of all the holders.

548.345 Notice; failure of holder to object constitutes consent. (1) Upon presentation of the petition to the judge of the court, either in open court or in chambers, he shall, if it appears that diligent efforts have been made by the irrigation or drainage district to ascertain the names and places of residence of all the holders of the evidences of indebtedness so to be refunded and compromised, authorize the district to publish, and it shall publish for at least four consecutive weeks in three newspapers published within the state, to be by the court designated, one of which papers shall be published in the county in which the office of the board of directors or board of supervisors is situated, a notice specifying the particular indebtedness which it is proposed to refund and compromise, together with the plan which has been adopted by the district for the refunding and compromising; also, a general description of the refunding bonds, if any, which it is proposed to issue to the holders of the indebtedness. The notice shall require all holders of the evidences of indebtedness so to be refunded or compromised to file in the matter of the petition in the circuit court their written dissent

from or objection to the proposed plan of refunding and compromise. The notice shall also state that any holders who fail to file their dissent and protest to the plan shall be deemed to have consented thereto.

(2) The district shall also cause the notice to be served in the manner provided by law for service of summons in civil actions upon all the holders whose names and places of residence are known to the district and who reside within Oregon. The notice shall also be served upon the State Engineer. The district shall also deposit a copy of the notice in the United States mail addressed to each of the known holders who reside without the state, with postage prepaid.

(3) Dissent in writing must be filed in the court and cause within 90 days from the date of the first publication of the notice; or, in the case of holders whose names and places of residence are known to the district and who reside within the state, within 90 days from the date of service of the notice upon them; or, in the case of holders whose names and places of residence are known to the district and who reside without the state, within 90 days from the date of mailing the notice.

(4) After the expiration of said period of 90 days the holders so failing to file their objection and protest with the court shall be deemed to have consented to the refunding and compromise of the indebtedness under the terms set forth in the notice, and such failure shall be equivalent to the offer in writing signed by the known consenting holders.

548.350 Hearing; decree; State Engineer as trustee. (1) After the expiration of 90 days from the date of the first publication of the notice and the service and mailing thereof, as set forth in ORS 548.345, the district shall file in the proceeding in the circuit court its verified return of its acts under the order of the court theretofore made, attaching thereto affidavits of the publication of the notice in three newspapers, and proof of service thereof upon the State Engineer and upon the holders of the evidences of indebtedness whose names and places of residence are known to the district and who reside within the state, and of the mailing thereof to such known holders residing without the state.

(2) Thereupon the court, or the judge in chambers, shall forthwith hear the cause and shall enter a decree adjudging that all the holders of the evidences of indebtedness to be refunded and compromised by the plan or proceeding of the district, who within 90 days after the date of the first publication of the notice and the serving and mailing thereof did not file in the court their written dissent and objections to the proceedings, have consented that their evidences of indebtedness be refunded and compromised under the proposed plan.

(3) In the decree the court shall direct the officers of the district to deposit with the State Engineer, as trustee for the persons entitled thereto, the cash or refunding bonds which under the plan of refunding and compromise belong to the holders of the evidences of indebtedness whose consent was so obtained by the court proceedings. The decree shall further provide that upon the payment of said money or bonds to the State Engineer as trustee, the evidences of indebtedness so held by the holders shall be deemed paid and no longer shall be an obligation of the district; and that upon the surrender to the State Engineer of the evidences of indebtedness, together with any unpaid interest coupons belonging to the same, the State Engineer shall pay on demand to the holders the money or bonds so deposited with him as trustee, and shall mark the evidences of indebtedness canceled and deliver them to the district. All holders of the evidences of indebtedness to be refunded and compromised shall be deemed to have notice of all steps and proceedings had.

548.355 Nature of proceedings; appeal; nonprejudicial errors; costs. The procedure in the circuit court under the provisions of ORS 548.340 to 548.350 shall be in the nature of an equitable proceeding in rem. Any holders of any evidences of indebtedness affected by any such court procedure provided for in those sections, or any other interested party, may appeal to the Supreme Court at any time within 30 days after the rendition of the decree of the circuit court. The court inquiring into the regularity, legality or correctness of any of such proceedings shall disregard any error, irregularity or omission which does not affect the substantial rights of the parties, and may approve the proceedings in part and disapprove the remainder. Costs in the proceeding may be allowed and apportioned between the parties in the discretion of the court.

548.360 Moneys and securities; custody; authority of State Engineer and State Treasurer. The State Engineer may deposit with the State Treasurer for safekeeping all moneys and securities which come into his possession pursuant to the provisions of ORS 548.350. When so deposited with the State Treasurer he shall safely keep the same, subject to call of the State Engineer.

548.365 Depositary for bonds, warrants; authority of State Engineer. Whenever any governmental agency of the United States has authorized a loan to or for the benefit of any irrigation or drainage district in Oregon for the purpose of refinancing the outstanding indebtedness of the district, the State Engineer is authorized to act as depositary for the bondholders and other creditors of the district and as such may do all things that may be conferred upon such board by the bondholders and other creditors of such district or their representatives duly authorized, in connection with the delivery and transfer of title of deposited bonds, warrants and other evidences of indebtedness. All acts of the State Reclamation Commission had before March 4, 1935, in connection with any such loans authorized before that date, are ratified and confirmed.
[Amended by 1955 c.707 §67]

548.370 Assessments; cancellation or compromise by districts refunding indebtedness through federal agencies. The board of supervisors of any drainage district or the board of directors of any irrigation district may cancel or compromise any special assessment assessed and levied by such district and for which delinquent certificates have been issued to the district, and any special assessments assessed and levied by such board on lands within the district, upon the written recommendation of the State Engineer, where such district is refunding its outstanding indebtedness through any governmental agency of the United States. When such assessments are canceled or compromised the board may make appropriate notation of same upon the proper records.

SECURITIES AND MONEYS DEPOSITED WITH STATE ENGINEER

548.400 Deposit of bonds, warrants and other evidence of indebtedness of irrigation and drainage districts being reorganized. (1) The State Engineer may accept deposits of bonds, warrants or other evidences of indebtedness of irrigation and drainage districts under the process of reorganization, pursuant to the provisions of ORS 536.570, 545.278 to 545.290, and 548.810, or as may otherwise be provided by law.

(2) The State Engineer shall deposit such bonds, warrants or other evidences of indebtedness with the State Treasurer, to be held by him in safekeeping subject to the direction of the State Engineer.
[Formerly 544.040]

548.405 Loss of certificates or receipts issued by State Engineer for securities; surrender of securities by State Engineer. Whenever one claiming to be a lawful owner of a certificate of deposit or receipt issued by the State Engineer, covering securities issued by an irrigation or drainage district, satisfies the State Engineer that such certificate of deposit or receipt has been lost, stolen or destroyed and that he is the owner thereof, the State Engineer may surrender the securities evidenced by such certificate of deposit or receipt, or deliver any securities or moneys on deposit with the State Engineer received in payment for the securities evidenced by such certificate of deposit or receipt to the claimant, upon his filing a surety bond as provided in ORS 548.415.

548.410 Surrender of securities to claimant to whom certificate or receipt has not been issued or assigned. Whenever one in possession of a certificate of deposit or receipt issued by the State Engineer as evidence of the deposit of securities issued by an irrigation or drainage district, who is neither the one to whom such certificate of deposit or receipt was issued nor one to whom it has been properly assigned, but who claims to be the owner of such certificate of deposit or receipt, shall satisfy the State Engineer that he is entitled to receive securities evidenced by such certificate or receipt, or receive moneys or other securities deposited with the State Engineer in refunding the securities evidenced by such certificate or receipt, the State Engineer may surrender such securities or pay such moneys or deliver such other securities so deposited with him to the claimant upon his surrendering the certificate of deposit or receipt and filing a bond as provided in ORS 548.415.

548.415 Surety bond; amount thereof; conditions. The surety bond to be filed under

ORS 548.405 or 548.410 shall be for double the amount of the face value of the securities described in such certificate of deposit or receipt, if the securities are to be surrendered, or double the amount the claimant is to receive from moneys or securities deposited with the State Engineer, with two or more sureties, qualified and who must justify as in the case of sureties for bail; provided that surety bonds of companies licensed to transact surety business in Oregon may be accepted for the face amount of the securities if the securities are to be returned, or the face amount of any moneys or securities to be paid or delivered by the State Engineer to the claimant. Every such surety bond shall be conditioned upon indemnifying the State Engineer, and his employes making the payment, and all rightful owners of the securities, against any loss or expenses, including interest or other damage or liability, resulting from such payment or delivery.

RELEVY OF ERRONEOUS OR VOID ASSESSMENTS

548.505 Relevy and reassessment; manner and time. If any drainage or irrigation district assessment levied on any property liable thereto is prevented from being collected for any year by reason of any erroneous proceeding, or if such levy is adjudged void for want of form or manner of procedure, or otherwise, the same may be collected, relisted, reassessed and relevied in the manner and at the times provided for the collection, relisting and reassessment of taxes by the provisions of ORS 311.120.

548.510 Decree declaring assessments void; reassessment and relevy of similar assessments; time; crediting payments under void assessment. If any such levy of assessment is declared void by a court of competent jurisdiction, then all similar assessments levied in the same or other years by the drainage or irrigation district which under the decision of the court are also void, may be reassessed, relisted and relevied against the property affected, in the manner provided by law and in conformity with such court decree, within five years from the date of the rendition of the decree of the court declaring such assessment void. In the case of a relisting or relevying of such drainage or irrigation district assessment on any property affected thereby, proper credit in the collection of the same shall be given to all owners of any such property for all payments theretofore made by them on the void assessments.

548.515 Manner of relevy and reassessment; officers authorized. The relevy and reassessment of drainage and irrigation district assessments provided for by law shall be made in the same manner, and by the same officers who, at the time the new listing or levy is made, are authorized by law to list property and compute, levy and assess taxes or assessments against property in the drainage or irrigation district.

548.520 Cancellation or compromise. The provisions of ORS 548.370 relating to the authority of drainage and irrigation districts to cancel or compromise any special assessment shall apply to any relevy or reassessment by a drainage or irrigation district which is provided by law.

CERTIFICATES OF DELINQUENCY; FORECLOSURE

548.605 [Repealed by 1969 c.595 §17]

548.610 Foreclosure of certificate issued under ORS 548.605. The holder of such certificate may, at any time after the expiration of one year from the first date of delinquency of any tax included in such certificate of delinquency, foreclose the same in the manner provided by the general laws of this state for the foreclosure of such certificates. The irrigation or drainage district shall foreclose all certificates of delinquency so issued to it within 10 years from the first date of delinquency of any tax or assessment included therein. The holder of such certificate may recover the costs and disbursements and expenses in the foreclosure, including a reasonable attorney's fee.

548.615 Issuance of certificate to district for district taxes only, without payment of other taxes; form and effect of certificate. Any time after the expiration of six months from the date of delinquency, where any taxes or assessments levied upon real property by an irrigation or drainage district are delinquent, the tax collector shall, on demand of such irrigation or drainage district and without payment of any of the taxes or assessments levied against such land, make

out and issue to such irrigation or drainage district a certificate of delinquency against the property for the full amount of the taxes or assessments levied by the irrigation or drainage district, with penalties and interest accrued at the time, such certificate to be in such form and to have the same legal effect, except as otherwise specified, as is provided by the general laws covering certificates of delinquency.

548.620 Foreclosure of certificate issued under ORS 548.615. The irrigation or drainage district may, at any time after the expiration of one year from the first date of delinquency of any tax included in such certificate of delinquency, foreclose the same in the manner provided by the general laws of the state for the foreclosure of delinquency certificates by individuals. The district may include in one foreclosure suit and may foreclose by that suit as many certificates of delinquency as it may hold. The holder of such certificate may recover as a part of the judgment the costs, disbursements and expenses in such foreclosure, including a reasonable attorney's fee as determined by the court.

548.625 Outstanding taxes; title of purchaser subject thereto; lien not affected by foreclosure; compromise of amount by county court. The purchaser of any property sold on foreclosure of any certificate of delinquency issued and foreclosed pursuant to the provisions of ORS 548.615 and 548.620 shall take title subject to all outstanding taxes other than taxes or assessments levied by such irrigation or drainage district, and the lien of such taxes shall not be affected by the foreclosure proceedings. However, where any such lands are bid in at any foreclosure sale held pursuant to ORS 548.620 in the name of the irrigation or drainage district, the county court may make such equitable compromise or abatement in the amount of the outstanding taxes upon the property as it may deem just and equitable.

548.630 Rights under ORS 548.605 and 548.610 not affected. ORS 548.615 to 548.625 do not affect the rights conferred by ORS 548.605 and 548.610.

548.635 Additional rights as to foreclosure of certificates issued for nonpayment of assessments or charges before 1936. In addition to the other methods provided by law for the foreclosure of certificates of delinquency of irrigation or drainage districts, any irrigation or drainage district may foreclose any certificate of delinquency held by it and issued for nonpayment of any assessments, tolls or charges of the district levied, assessed or charged subsequent to the year 1936 upon lands within the district for district purposes, together with any tax paid by the district upon the lands, by suit in equity in the circuit court of the county in which the lands described in the certificate are situated.

548.640 Laws governing foreclosure suit. Such suit shall be governed by the provisions of the laws relating to suits in equity in so far as they are applicable, except as otherwise provided in ORS 548.635 to 548.670.

548.645 Parties defendant. In any such suit all persons having or claiming some right, title, lien or interest in or to the real property or any part thereof involved in and described in the suit, including unknown claimants of any right, title, estate, lien or interest in such property, may be made parties defendant.

548.650 Pleading. In any such suit it shall be deemed and held a sufficient allegation of jurisdictional facts authorizing the irrigation or drainage district to make and levy any assessment, toll or charge included in or foreclosed with any such certificate of delinquency if the complaint alleges in general terms that such certificate of delinquency was issued and the assessments, tolls or charges or tax included therein and foreclosed therewith were made and done in the manner and as provided by law relating to the issuance of certificates of delinquency, and the levying, making or charging of such assessments, tolls or charges by such irrigation or drainage district for district purposes. It shall not be necessary in any such complaint to set forth specifically any proceeding of the district relating thereto.

548.655 Certificates of delinquency and receipts as evidence. The certificate of delinquency and all receipts for assessments, charges or tolls paid by the irrigation or drainage district subsequent thereto shall be prima facie evidence in the suit that the real estate described in the certificate and receipts was located in the irrigation or

drainage district and was subject to be assessed or charged by the district for district purposes, and that the assessments, tolls or charges were regularly levied as provided by law, and were not paid except by such irrigation or drainage district.

548.660 Recovery of attorney's fees and cost of issuance of certificate; lien. In any such suit the irrigation or drainage district shall be entitled to recover, as a part of the moneys to be paid therein, such sum as the court may adjudge reasonable as attorney's fees, and any payment required for the issuance of the certificate. Such sums shall be a lien upon the property.

548.665 Execution sale; district may purchase; deed; no redemption; no deficiency judgment. The irrigation or drainage district may be a bidder and purchaser of the property on the sale on execution of the property involved in such suit. No publication of notice of sale on execution shall be required. Upon such sale, and without any order of confirmation thereof, the sheriff immediately shall issue a deed to the property sold, and no right of redemption thereafter shall exist. No deficiency judgment shall be entered in any such suit against the owner of the property or other person named as defendant therein.

548.670 Proceedings where assessment, etc., determined invalid; amount district entitled to; lien; inclusion in foreclosure. If in any such suit the validity of any assessment, toll or charge sought to be foreclosed is in issue, and the court determines the lien thereof to be invalid, or such amounts as may be so assessed, levied or charged are prevented from being collected by reason of any erroneous proceeding, and if upon such further proceedings as the court deems proper, it appears to the court that such lands were assessable or chargeable for such year or years for district purposes, and if otherwise the district is entitled to a decree in such proceedings, the court shall find and determine the amount for such year or years the district would have been entitled to assess or charge upon such lands for district purposes. Such amount, with interest thereon, from the date the same would have become delinquent if properly levied, assessed or charged, at the rate of eight percent per annum, shall be a lien upon such real property and included in the foreclosure of the certificate of delinquency.

548.675 Hypothecation of certificates of delinquency. Whenever any irrigation or drainage district acquires any certificates of delinquency pursuant to the general laws of this state, the district may borrow money for any purpose for which the money evidenced and represented by the certificates could, when collected, be used, and may hypothecate and pledge the certificates for the repayment of such loans.

COMPOSITION; BANKRUPTCY; REFUNDING AGREEMENTS

548.705 Irrigation or drainage district may file bankruptcy petition; confirmation of proceedings; composition of debts. At any time subsequent to default in the payment of principal or interest upon the bonded or warrant indebtedness of any irrigation or drainage district of this state, the board of directors or board of supervisors may cause a petition to be filed in the Federal District Court pursuant to the provisions of the Federal Bankruptcy Act. The consent of the state is given to any proceedings instituted or attempted before February 16, 1939, by any such district under the Federal Bankruptcy Act. The state also authorizes and confirms any proceedings by any such district to effect a plan of composition or of readjustment of its debts in accordance with the provisions and terms of that Act, and authorizes the consummation of any such proceedings.

548.710 Bonds of district; use and delivery thereof to creditors. Whenever any irrigation or drainage district files its petition in bankruptcy pursuant to the provisions of the Act of Congress approved May 24, 1934, authorizing bankruptcy proceedings by municipalities and other political subdivisions of any state, the district may, for the purpose of carrying out any plan of readjustment of its indebtedness which has been submitted and approved in the bankruptcy proceeding, use and deliver to its creditors in such bankruptcy proceeding any of its bonds authorized or issued pursuant to the provisions of ORS 548.305 to 548.325, and which bonds are not required for the purpose of carrying into effect the provisions of the contract with the governmental agency of the United States for which they primarily were authorized.

548.715 Debt refunding agreements; obtaining consent of unknown or nonconsenting creditors. Whenever any irrigation or drainage district engaged in the refunding of its indebtedness has entered into a contract for such purposes with 80 percent or more of the owners or holders of its bonds, warrants or other evidences of indebtedness, such district may proceed to obtain the constructive consent of the unknown or nonconsenting owners or holders of such evidences of indebtedness to such contract, as provided by ORS 545.320 to 545.328.

REHABILITATION PLANS

548.810 Investigation of affairs of irrigation and drainage districts by State Engineer; approval of plans for rehabilitation. (1) The State Engineer may investigate the affairs of any irrigation or drainage district. The investigation may include all physical, financial and economic conditions of the district, including available water supply, topography value and condition of reclamation works, soils and productive value of lands, and capacity to meet financial obligations, including costs of operation and maintenance and indebtedness to the state by reason of certificates of indebtedness theretofore issued. The State Engineer may cooperate with the Oregon experiment stations, the U. S. Department of Agriculture and the U. S. Bureau of Reclamation in such investigations in regard to soils, productive value of the land, and capacity to meet financial obligations on the basis of production.

(2) Based upon the results of the investigation, the State Engineer shall make findings of fact and recommendations of any plan for rehabilitation of the district, and shall endeavor to bring together all interests with a view to formulation of a definite plan and policy under which the affairs of the district may successfully be worked out.

(3) During the pendency of the investigation, which shall be pursued with due diligence, the board of directors of the district under investigation shall make available to the State Engineer all records and information pertaining to the district, shall assist the State Engineer in carrying out his recommendations, and shall enter into no contract and perform no act of omission or commission which will hinder or impede the investigation.

(4) All expenses incurred by the State Engineer under the provisions of this section shall be paid from the General Fund upon vouchers approved by the State Engineer. [Formerly 544.030]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Robert W. Lundy, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,
on December 1, 1969.

Robert W. Lundy
Legislative Counsel