



Alameda County Flood Control  
And Water Conservation  
District Act

# ACT 205

[Stats 1949 ch 1275 p 2240; Amended by Stats 1951 ch 1629 p 3672; Stats 1953 ch 149 p 920, effective April 9, 1953, ch 1148 p 2648; Stats 1955 ch 484 p 954, ch 486 p 958; Stats 1957 ch 20 p 324, effective February 20, 1957, ch 357 p 1000, ch 480 p 1512, ch 644 p 1847, ch 655 p 1853, ch 987 p 2227, ch 988 p 2227; Stats 1959 ch 567 p 2527, effective May 25, 1959, ch 646 p 2625, ch 1281 p 3432, ch 1373 p 3646, ch 1603 p 3972, ch 1728, p 4156; Stats 1961 ch 1009 p 2690, ch 1204 p 2939, ch 1565 p 3384; Stats 1963 ch 246 p 1000, ch 247 p 1004, ch 1612 p 3205, ch 1715 p 3369, ch 2029 p 4172; Stats 1965 ch 1074 p 2723, ch 1075 p 2724, ch 1076 p 2725, ch 1079 p 2728, ch 1107 p 2723, ch 1353 p 3244, ch 1833 p 4229, ch 1929 p 4453, ch 1997 p 4523.]

## **ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT ACT**

**A**n ACT to create a flood control district to be called Alameda County Flood Control and Water Conservation District; to provide for the control and conservation of flood and storm waters and the protection of water-courses, watersheds, harbors, public highways, life and property from damage or destruction from such waters; to prevent the waste of water or the diminution of the water supply in, or the exportation of water from said district, and to import water into said district and to obtain, retain and reclaim drainage, storm, flood and other waters and to save and conserve all or any of such waters for beneficial use in said district; to authorize the incurring of indebtedness, the issuance and sale of bonds, and the levying and collection of taxes and assessments on property within said district and in the respective zones thereof; to provide for the government, management, and operation of said district and for the acquisition and construction of property and works to carry out the purposes of the district; to define the powers of said district and its officers, including the power to engage in recreational activities incidental to and in connection with said purposes.

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# ACT 205

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**1. Citation of act**

This act shall be known and may be cited as the Alameda County Flood Control and Water Conservation District Act.

**2. Alameda County Flood Control and Water Conservation District created: Territory**

A flood control district is hereby created to be called the Alameda County Flood Control and Water Conservation District. Said district shall consist of all the territory of the County of Alameda lying within the exterior boundaries of said county. As used in this act “district” means the Alameda County Flood Control and Water Conservation District.

**3. Establishment of zones**

The board of supervisors of the district created by this act, by resolution thereof adopted from time to time, may establish zones within said district without reference to the boundaries of other zones, setting forth in such resolutions descriptions thereof by metes and bounds and entitling each of such zones by a zone number, and institute zone projects for the specific benefit of such zones.

Proceedings for the establishment of such zones may be conducted concurrently with and as a part of proceedings for the instituting of projects relating to such zones, which proceedings shall be taken and had in the manner prescribed in Section 11 of this act; provided, that before acquiring authority to proceed with the establishment of any zone the exterior boundaries of which will include any land lying within the exterior boundaries of any chartered or incorporated city within the district, the board of supervisors shall first obtain the concurrence of such city to conduct such proceedings, such concurrence to be evidenced by a resolution or ordinance adopted by a majority of the members of the city council of such city, or by a vote of a majority of the qualified electors residing in such city or portion thereof to be included in said zone voting at any regular or special election on said proposition; said election shall in all particulars be held as provided by law for holding a municipal election in said city and the cost thereof shall be a city charge.

**4. Objects and purposes of act**

The objects and purposes of this act are to provide for the control of the flood and storm waters of said district and the flood and storm waters of streams that have their source outside of said district, but which streams and the flood waters thereof flow into said district, and to conserve such waters for beneficial and useful purposes by spreading, storing, retaining and causing to percolate into the soil within said district, or without such district, such waters, or to save or conserve in any manner all or any of such waters and protect from such flood or storm waters the watercourses, watersheds, harbors, public highways, life and property in said district, and to prevent waste of water or diminution of the water supply in, or exportation of water from said district and to obtain, retain and reclaim drainage, storm, flood and other waters for beneficial use in said district, and to engage in recreation activities incidental to and in connection with said purposes.

**5. Corporate and political status: Powers**

The district is hereby declared to be a body corporate and politic and as such shall have, in addition to the other powers vested in it by this act, the following powers:

1. To have perpetual succession.
2. To sue and be sued in the name of said district.
3. To adopt a seal.

4. To acquire by grant, purchase, lease, gift, devise, contract, condemnation, construction, or otherwise, and to hold, use, enjoy, sell, let, and dispose of real and personal property of every kind, including lands, structures, buildings, rights-of-way, easements, and privileges, and to construct, maintain, alter and operate any and all works or improvements, within or without the district, necessary or proper to carry out any of the objects or purposes of this act and convenient to the full exercise of its powers, and to complete, extend, add to, alter, remove, repair or otherwise improve any works, or improvements, or property acquired by it as authorized by this act.
5. To store water in surface or underground reservoirs within or outside of the district for the common benefit of the district or of any zone or zones affected; to conserve and reclaim water for present and future use within the district; to appropriate and acquire water and water rights, and import water into the district and to conserve within or outside of the district, water for any purpose useful to the district; to commence, maintain, intervene in, defend or compromise, in the name of the district, or otherwise, and to assume the costs and expenses of, any action or proceeding involving or affecting the ownership or use of waters or water rights within or without the district, used or useful for any purpose of the district or of common benefit to any land situated therein, or involving the wasteful use of water therein; to commence, maintain, intervene in, defend and compromise and to assume the cost and expenses of any and all actions and proceedings now or hereafter begun; to prevent interference with or diminution of, or to declare rights in the natural flow of any stream or surface or subterranean supply of waters used or useful for any purpose of the district or of common benefit to the lands within the district or to its inhabitants; to prevent unlawful exportation of water from said district; to prevent contamination, pollution or otherwise rendering unfit for beneficial use the surface or subsurface water used or useful in said district, and to commence, maintain and defend actions and proceedings to prevent any such interference with the aforesaid waters as may endanger or damage the inhabitants, lands, or use of water in, or flowing into, the district; provided, however, that said district shall not have power to intervene or take part in, or to pay the costs or expenses of, actions or controversies between the owners of lands or water rights which do not affect the interest of the district.
6. To control the flood and storm waters of said district and the flood and storm waters of streams that have their sources outside of said district, but which streams and the floodwaters thereof, flow into said district, and to conserve such waters for beneficial and useful purposes of said district by spreading, storing, retaining and causing to percolate into the soil within or without said district or to save or conserve in any manner all or any of such waters and protect from damage from such flood or storm waters the watercourses, watersheds, harbors, public highways, life and property in said district, and the watercourses outside of the district of streams flowing into the district, and to prevent waste of water or diminution of the water supply in, or exportation of water from said district, and to obtain, retain and reclaim drainage, storm, flood and other waters for beneficial use in said district; provided, that nothing in this act contained shall authorize the carrying out of any plan of improvement, the purpose of which is, or the effect of which will be, to take water which flows in any watershed in said district and transport or sell same for use anywhere outside of the district when the water level of any gravel beds within the district is below the normal level and such water could reasonably be used to replenish the water level of said gravel beds; provided further, that none of the provisions of this act shall preclude the exercise by any other political subdivision that may now or hereafter exist, wholly or in part, within the district from exercising its powers, although such powers may be of the same nature as the powers

of said district. Any such other political subdivision may, by written agreement with the district, provide for the use, or joint use, of property or facilities in which any such other political subdivision has an interest, or for the use, or joint use, of property or facilities in which said district has an interest.

7. To co-operate, and to act in conjunction with or contribute funds to, the United States or the State of California or any of their engineers, officers, boards, commissions, departments or agencies, or with any public or private corporation, or with the County of Alameda, in the construction of any work for the controlling of flood or storm waters of or flowing into said district, or for the protection of life or property therein, or for the purpose of conserving said waters for beneficial use within said district, or in any other works, acts, or purposes provided for herein, and to adopt and carry out any definite plan or system of work for any such purpose.
8. To carry on technical and other investigations of all kinds, make measurements, collect data and make analyses, studies, and inspections pertaining to water supply, water rights, control of floods and use of water, both within and without said district, and for such purposes said district shall have the right of access through its authorized representatives to all properties within said district. The district, through its authorized representatives may enter upon such lands and make examinations, surveys, and maps thereof.
9. To enter upon any land, to make surveys and locate the necessary works of improvement and the lines for channels conduits, canals, pipelines, roadways and other rights-of-way; to acquire by purchase, lease, contract, condemnation, gift, devise, or other legal means all lands and water and water rights and other property necessary or convenient for the construction, use, supply, maintenance, repair and improvement of said works, including works constructed and being constructed by private owners, lands for reservoirs for storage of necessary water, and all necessary appurtenances, and also where necessary or convenient to said end, and for said purposes and uses, to acquire and to hold, the capital stock of any mutual water company or corporation, domestic or foreign, owning water or water rights, canals, waterworks, franchises, concessions, or rights, when the ownership of such stock is necessary to secure a water supply required by the district or any part thereof, upon the condition that when holding such stock, the district shall be entitled to all the rights, powers and privileges, and shall be subject to all the obligations and liabilities conferred or imposed by law upon other holders of such stock in the same company; to enter into and do any acts necessary or proper for the performance of any agreement with or necessary to comply with an act of authorization of the United States, or any state, county, district of any kind, or necessary and proper for the performance of any agreement with any public or private corporation, association, firm or individual, or any number of them, for the joint acquisition, construction, leasing, ownership, disposition, use, management, maintenance, repair or operation of any rights, works or other property of a kind which might be lawfully acquired or owned by said Alameda County Flood Control and Water Conservation District; to acquire the right to store water in any reservoirs, or to carry water through any canal, ditch or conduit not owned or controlled by the district; to grant to any owner or lessee the right to the use of any water or right to store such water in any reservoir of the district, or to carry such water through any tunnels, canal, ditch, or conduit of the district; to enter into and do any acts necessary or proper for the performance of any agreement with any district of any kind, public or private corporation, association, firm or individual, or any number of them for the transfer or delivery to any such district, corporation, association, firm or individual of any water right or water pumped, stored, appropriated or otherwise acquired or secured, for the use of the Alameda County Flood Control and Water Conservation District, or for the purpose of exchanging the same for other water, water right or water supply in exchange for water, water right or water supply to be delivered to said district by the other party to said agreement.

10. To incur indebtedness and to issue bonds in the manner herein provided.
11. To cause taxes or assessments to be levied and collected for the purpose of paying any obligation of the district, and to carry out any of the purposes of this act, in the manner hereinafter provided.
12. To make contracts, and to employ labor, and to do all acts necessary for the full exercise of all powers vested in said district or any of the officers thereof by this act.
13. To exercise the right of eminent domain, either within or without said district, and in the manner provided by law for the condemnation of private property for public use, to take any property necessary to carry out any of the objects or purposes of this act, whether such property be already devoted to any public use by any district or other public corporation, or agency, or otherwise; provided, however, that the district in exercising such power shall in addition to the damage for the taking, injury, or destruction of property, also pay the cost of removal, reconstruction, or relocation of any structure, railways, mains, pipes, conduits, wires, cable, poles, of any public utility which is required to be moved to a new location; and provided further, that notwithstanding any other provision of this act or any other law, no property shall be taken unless it is taken upon a finding by a court of competent jurisdiction that the taking is for a more necessary public use than that to which it has already been appropriated; and provided further, that no right shall exist in said district to take by proceedings in eminent domain any property, including water rights, appropriated to public use by any existing city and county or municipal utility district. The district shall also have and may exercise the right to condemn any existing works or improvements in said district or along streams flowing into said district now or hereafter used to control flood or storm waters, or to conserve such flood or storm waters or to protect any property in said district or along streams flowing into said district from damage from such flood or storm waters, and it is hereby declared that the use of the property, lands, rights-of-way, easements, or materials which may be condemned, taken or appropriated under the provision of this act is a public use subject to the regulation and control of the State in the manner prescribed by law; provided, however, that nothing in this act contained shall be deemed to authorize said district, or any person or persons to divert the waters of any river, creek, stream, irrigation system, canal or ditch, or the waters thereof or therein unless compensation therefor be first provided in the manner prescribed by law.

The power of eminent domain vested in the district shall include the power to condemn in the name of the district either the fee simple or any lesser estate, easement, or interest in any real property which the board of supervisors of the district by resolution shall determine is necessary for carrying out the purposes of this act. Such resolution shall be prima facie evidence that the taking of such fee simple or any lesser estate or easement or interest as the case may be, is necessary.

Whenever real property which is devoted to or held for some other public or quasi-public use is required by the district for any purpose authorized by this act, the district may condemn real property adjacent thereto or in the immediate vicinity thereof to be exchanged for the real property so required by the district.

Nothing in this act contained shall be construed as in any way affecting the plenary power of any existing city and county or municipal utility district to provide for a water supply for such city and county or municipal utility district, or as affecting the absolute control of any properties of such city and county or municipal utility district necessary for such water supply and nothing herein contained shall be construed as vesting any power of control over such properties in such Alameda County Flood Control and Water Conservation District or in any officer thereof, or in any person referred to in this act.

No action in eminent domain to acquire water rights outside the boundaries of the County of Alameda shall be commenced unless the board of supervisors of each affected county has consented to such acquisition by resolution.

14. To plan, improve, operate, maintain, and keep in a sanitary condition, a system of public parks, playgrounds, beaches, swimming areas and other facilities for public recreation, for the use and enjoyment of all inhabitants of the district, as an incident to the carrying out of the projects of the district and on land acquired or used for the flood control, drainage and water conservation purposes of this act; to construct, maintain, and operate any other amusement or recreational facilities on such lands, including picnic benches and tables, bathhouses, golf courses, tennis courts, or other special amusements and forms of recreation; to fix and collect reasonable fees for the use by the public of any such special facilities, services or equipment; and to adopt such rules and regulations as in the discretion of the board are necessary to the orderly operation and control of the use by the public of such lands and facilities for recreational purposes; provided, however, that the board shall not, for the purposes specified in this subdivision, interfere with control or operation of any existing public park, playground, beach, swimming area, parkway, recreational ground, or other public property, owned or controlled by any other district or municipality, except with the consent of the governing body of such district or municipality, and upon terms as may be mutually agreed upon between the board and the governing body.
15. The powers hereinabove granted shall include the design, construction, or maintenance of any levees, seawalls, groins, breakwaters, jetties, outlets, channels, harbors, basins, or other work pertaining thereto, in such manner as to render them adaptable and useful to shoreline, beach, harbor, navigation, park or marina development or use, and to do such work in co-operation with any other public or quasi-public agency or corporation concerned with such development or use.
16. To establish and maintain building setback lines along the banks of any river, creek, stream or other waterway, in any case where the board determines that such setback line is necessary for any of the following reasons:
  - (a) To prevent impediment of the natural flow of water;
  - (b) To protect life and property;
  - (c) To prevent damage from flooding, bank caving, or erosion;
  - (d) To prevent the pollution of waters. [Amended by Stats 1959 ch 1373 § 1 p 3646; Stats 1961 ch 1565 § 1 p 3384; Stats 1963 ch 2029 § 4 p 4174.]

*Note*—Stats 1963 ch 2029 also provides: § 18. This act shall become operative only if Senate Bill No. 42 is enacted by the 1963 Regular Session. Senate Bill No. 42 was enacted as Stats 1963 ch 1681 p 3266.

### **5.1. Control, salvage, etc., of waste and storm water: Facilities and contracts**

The district is hereby declared to be a body corporate and politic and as such shall have, in addition to the other powers vested in it by this act, the following powers:

To control, distribute, store, spread, sink, treat, purify, recapture and salvage any water, including but not limited to sewage waters for the beneficial use or uses of the district or its inhabitants or the owners of rights to waters therein. The district may also acquire, construct, and operate facilities for the collection, treatment, and disposal of sewage, waste and storm water of the district and its inhabitants and may contract with any public agency concerning facilities and services. [Added by Stats 1965 ch 1079 § 1 p 2728.]

**5.2. Issuance of time warrants: Interest: Payment**

The district, for any district purpose, has the authority to issue time warrants bearing interest at a rate not exceeding six percent (6%) per annum which shall be general obligations of the district, or any zone thereof, payable from revenues and assessments of the district or any zone thereof. Such warrants shall be payable not later than five years from the date thereof and the total aggregate amount of such warrants of the district or any one zone outstanding at any one time may not exceed the lesser of either two million dollars (\$2,000,000) or one percent (1%) of the assessed valuation of the taxable real property in the district or zone for which such time warrants are issued. [Added by Stats 1965 ch 1107 § 1 p 2753.]

**6. Board of Supervisors: Compensation and expenses: Ordinances, resolutions and other legislative acts**

The Board of Supervisors of Alameda County shall be and is hereby designated as, and empowered to act as, ex officio the Board of Supervisors of the Alameda County Flood Control and Water Conservation District. As used elsewhere in this act the terms “board” and “board of supervisors” mean the Board of Supervisors of the Alameda County Flood Control and Water Conservation District.

Each member of the Board of Supervisors of the Alameda County Flood Control and Water Conservation District shall receive as compensation for his services twenty-four dollars (\$24) per month and his actual and necessary expenses in the performance of official duties under this act, payable from the funds of said district in addition to his salary as county supervisor.

All ordinances, resolutions and other legislative acts for said district shall be adopted by said board of supervisors, and certified to, recorded and published, in the same manner, except as herein otherwise expressly provided, as are ordinances, resolutions or other legislative acts for the County of Alameda.

**6.1. Advisory commission: Compensation: Expenses**

The board may appoint a commission consisting of nine (9) members to assist and advise said board in the institution of projects or works of improvement, and the board may by ordinance provide for compensation for services and payment of the actual necessary expenses incurred by said members in the performance of official duties under this act, payable from the funds of the district. Members of the advisory commission shall serve at the pleasure of the board. [Amended by Stats 1957 ch 644 § 1 p 1847.]

**7. Officers, assistants, deputies, and employees: Funds from which expenses paid: Exceptions: Transfer or assignment to perform work for county**

The district attorney, county surveyor, county assessor, county tax collector, county clerk, county auditor, purchasing agent and county treasurer of the County of Alameda, and their successors in office, and all their assistants, deputies, clerks and employees, and all other officers of said Alameda County, their assistants, deputies, clerks and employees, shall be ex officio officers, assistants, deputies, clerks and employees, respectively, of said Alameda County Flood Control and Water Conservation District, and shall respectively perform, unless otherwise provided by the board, the same various duties for said district as for said Alameda County, in order to carry out the provisions of this act.

All such officers, deputies, clerks and employees shall receive their actual and necessary expenses in the performance of official duties under this act payable from the funds of the Alameda County Flood Control and Water Conservation District; provided, however, that the board may by agreement with the county reimburse it for the services rendered to the district by such officers, assistants, deputies, clerks and employees. Officers, assistants, deputies, clerks and employees of

the district may, without prejudice to their rights, be transferred to the service of the county, or may be assigned to perform work for the county, in which event a charge for such services rendered shall be payable by the county to the district. [Amended by Stats 1957 ch 988 § 1 p 2227.]

**8. Powers of board: Civil service commission and civil service department**

The board shall have power to make and enforce all needful rules and regulations for the administration and government of the district, and in addition to the officers and employees herein otherwise prescribed, the board may in its discretion appoint a chairman, a secretary and such other officers, agents and employees for the board or district as in its judgment may be deemed necessary, prescribe their duties and fix their compensation. Such officers, agents and employees shall be appointed under and pursuant to the civil service rules and regulations of the County of Alameda; provided, however, that the chairman and secretary of the board, and experts, consultants or technical or other advisors for particular purposes and laborers, employed for a temporary period, may be appointed by the board without reference to any classified civil service list.

The Civil Service Commission of the County of Alameda and the civil service department of said county shall be ex officio the civil service commission and ex officio the civil service department of the Alameda County Flood Control and Water Conservation District and said commission and the members of said department shall perform all of the duties herein prescribed without additional compensation except that the district shall pay for any necessary additional expenses incurred by reason of the performance of said additional duties for said district.

**9. Employment of civil engineers: Reports: Contents: Supplementary, amendatory and additional reports and recommendations**

The board shall have jurisdiction and power by resolution to employ competent registered civil engineers to investigate and carefully devise a plan or plans to control the flood and storm waters of the district, and the zones thereof, and the flood and storm waters of streams that have their sources outside of said district but which streams and flood waters thereof flow into said district, and to conserve such waters for beneficial and useful purposes by spreading, storing, retaining or causing to percolate into the soil within or without the district, or to save or conserve in any manner, any or all of such waters, and to protect the public highways, life and property within the district, and the watercourses, harbors, and watersheds of streams flowing into the district, from damage relating to such waters; and to obtain such other information in regard thereto as may be deemed necessary or useful for carrying out the purposes of this act; and such resolution may direct such engineer or engineers to make and file reports from time to time with the board, which shall show:

1. A general description of the work proposed to be done, together with general plans, profiles, cross-sections, and general specifications relating thereto, on each project or work of improvement.
2. A general description of the lands, rights of way, easements and property proposed to be taken, acquired or injured in carrying out said work.
3. A map or maps which shall show the location and zones, as may be required, of each of said projects or improvements, and lands, rights of way, easements and property to be taken, acquired or injured in carrying out said work, and any other information in regard to the same that may be deemed necessary or useful.
4. An estimate of the cost of each project or work of improvement, including an estimate of the cost of lands, rights of way, easements and property proposed to be taken, acquired or injured in carrying out said project or work of improvement, and also of all incidental expenses incurred or likely to be incurred in connection therewith, including legal, clerical, engineering, superintendence, inspection, printing and advertising, and stating the total amount of bonds, if any, necessary to be issued to pay for the same.

Such engineer or engineers shall from time to time and as directed by the board file with the board supplementary amendatory and additional reports and recommendations, as necessity and convenience may require.

**10. Determination of projects and improvements**

The board shall determine which projects or works of improvement shall be carried out and shall determine, as to each project or work of improvement, that it is either:

1. For the common benefit of the district as a whole; or
2. For the benefit of two or more zones hereinafter referred to as participating zones; or
3. For the benefit of a single zone.

**11. Institution of projects**

The board may institute projects for single zones and joint projects for two or more zones, for the financing, constructing, maintaining, operating, extending, repairing or otherwise improving any work or improvement of common benefit to such zone or participating zones. For the purpose of acquiring authority to proceed with any such project, the board shall adopt a resolution specifying its intention to undertake such project, together with the engineering estimates of the cost of same to be borne by the particular zone and in the case of participating zones the proportionate cost to be borne by each of the participating zones and fixing a time and place for public hearing of said resolution and which shall refer to a map or maps showing the general location and general construction of said project. Notice of such hearing shall be given by publication pursuant to Section 6066 of the Government Code in a newspaper of general circulation, circulated in such zone or each of said participating zones, if there be such newspaper, and if there be no such newspaper then by posting notice for two consecutive weeks prior to said hearing in five public places designated by the board, in such zone or in each of said participating zones. Publication shall be complete at least seven days before the date of the hearing. Said notice must designate a public place in such zone or in each of said participating zones where a copy or copies of the map or maps of said joint project may be seen by any interested person; said map must be posted in each of said public places so designated in said notice at least two weeks prior to said hearing.

At the time and place fixed for the hearing, or at any time to which said hearing may be continued, the board shall consider all written and oral objections to the proposed project. Upon the conclusion of the hearing the board may abandon the proposed project or proceed with the same, unless prior to the conclusion of said hearing a written protest against the proposed project signed by a majority in number of the holders of title to real property, or assessable rights therein, or evidence of title thereto, representing one-half or more of the assessed valuation of the real property within such zone or within any of the participating zones for which said project was initiated, be filed with the board, in which event further proceedings relating to such project must be suspended for not less than six months following the date of the conclusion of said hearing, or said proceeding may be abandoned in the discretion of the board.

In all matters in this section referred to, the last equalized assessment roll of the County of Alameda next preceding the filing of the protest shall be prima facie evidence as to the ownership of real property, the names and number of the persons who are the holders of title or evidence of title, or assessable rights therein, and as to the assessed valuation of real property within the zone or within any of the participating zones for which the project was initiated.

Executors, administrators, special administrators and guardians may sign the protest provided for in this act on behalf of the estate represented by them. If the property is assessed in the name of such representatives, that fact shall establish the right of such representatives to sign the protest; if assessed in the name of the decedent, minor or incompetent person, certified copies of the letters or such other evidence as may be satisfactory to the board must be produced.

Where real property appears to be owned in common or jointly or by a partnership, or where letters of representatives of decedents, minors or guardians are joint, only one of the owners or representatives or partners may sign the protest for all joint owners or representatives or partners; provided, the party claiming the right to protest for all produces the written consent of his co-owners or representatives or partners so to do; provided further, that where real property appears to be owned in common or jointly by husband and wife either may sign the protest without the written consent of the other.

Where real property is assessed in the name of a trustee or trustees, such trustee or trustees shall be deemed to be the person entitled to sign the protest, and if assessed in the name of more than one trustee the right to sign the protest shall be determined in like manner as above provided with respect to co-owners.

The protest of any public or quasi-public corporation, private corporation or unincorporated association, may be signed by any person authorized by the board of directors or trustees or other managing body thereof, which authorization shall be in writing; and a proxy executed by an officer or officers thereof, attested by its seal, shall constitute sufficient evidence of such authority, and shall be filed with the board.

The owner of any real property or interest therein, appearing upon the assessment roll, which has been assessed in the wrong name or to unknown owners, or which has passed from the owner appearing as such on the last equalized assessment roll, since the same was made, shall be entitled to sign the protest represented thereby, either by the production of a proxy from such former owner, or by furnishing evidence of his ownership by a conveyance duly acknowledged showing the title to be vested in the person claiming the right to sign the protest, accompanied by a certificate of a competent searcher of titles, certifying that a search of the official records of the county, since the date of the conveyance, discloses no conveyance or transfer out from the grantee or transferee named in the conveyance.

Where the real property has been contracted to be sold, the vendee shall be entitled to sign the protest, unless such real property is assessed in the name of the vendor, in which event the vendor shall be entitled to so do.

The board shall likewise be entitled to inquire and take evidence for the purpose of identifying any person claiming the right to sign the protest as being the person shown on the assessment roll or otherwise as entitled thereto. And, unless satisfactory evidence is furnished, the right to sign said protest may be denied. [Amended by Stats 1955 ch 486 § 1 p 958; Stats 1957 ch 357 § 256 p 1115.]

### **11.1. Same: Exclusiveness of preceding section**

The provisions of Section 11 of this act shall be exclusive in determining the proper procedure for the institution of projects under this act, any other provision of law notwithstanding. [Added by Stats 1951 ch 1629 § 1 p 3672.]

## **12. Levy and collection of taxes and assessments**

The board shall have power, in any year:

1. To levy ad valorem taxes or assessments upon all property in the district to pay the general administrative costs and expenses of the district, and to carry out any of the objects or purposes of this act of common benefit to the district: provided, however, that said ad valorem tax or assessment shall not exceed one and one-half cents (\$0.015) on each one hundred dollars (\$100) of assessed valuation, and
2. To levy taxes or assessments in each or any of said zones and participating zones to pay the cost and expenses of carrying out, constructing, maintaining, operating, extending, repairing or otherwise improving any or all works or improvements established or to be established within or on behalf of said respective zones, according to the benefits derived or to be derived by said respective zones, by either of the following methods:

- (a) By a levy or assessment upon all property within a zone or participating zone, including land, improvements thereon, and personal property;
- (b) By a levy or assessment upon all real property within a zone or participating zones, including both land and improvements thereon.
- (c) By a levy or assessment upon less than all of the area or property within a zone, where some property within a zone is specially benefited and where the remainder of the area or property within the zone is not specially benefited.

It is declared that for the purposes of any tax or assessment levied under this subdivision, the property so taxed or assessed within a given zone is equally benefited.

3. To levy taxes or assessments by either method authorized by subdivision 2 of this section in each or any of said zones, according to the special benefits derived or to be derived by the specific properties therein, to pay the cost and expenses of carrying out any of the objects or purposes of this act of special benefit to such zone or zones, including the constructing, maintaining, operating, extending, repairing, or otherwise improving any or all works of improvement established or to be established within or on behalf of said respective zone or zones.

In the event of project cooperation with any of the governmental bodies as authorized in subdivision 7 of Section of this act, and requiring the making of a contract with any such governmental body for the purposes set forth in said subdivision 7, by the terms of which work is to be performed by any such governmental body in any specified zone or participating zones, for the particular benefit thereof, and by said proposed contract the district is to pay to such governmental body, a sum of money in consideration or subvention for the performance of said work by such governmental body, the board may, after proceedings in the manner prescribed in Section 11 of this act, levy and collect a special tax or assessment upon the property in such zone or participating zones, whereby to raise funds to enable the district to make such payment, in addition to other taxes or assessments herein otherwise provided for.

Said taxes or assessments shall be levied and collected together with and not separately from taxes for count purposes, and the revenues derived from said district taxes or assessments shall be paid into the county treasury to the credit of said district, or the respective zones thereof, and the board shall have the power to control and order the expenditure thereof for said purposes; provided, however, that no revenues, or portions thereof, derived in any zone from the taxes or assessments levied under the provisions of subdivision 2 or 3 of this section shall be expended for constructing, maintaining, operating, extending, repairing or otherwise improving any works or improvements located in any other zone, except in the case of joint projects, or for projects authorized or established outside such zone, or zones, but for the benefit thereof. In cases of projects joint to two or more zones, such zones will become, and shall be referred to as, participating zones.

Any such assessment shall be a lien on the real property upon which it is levied and shall be of the same force and effect as liens for taxes, and the collection thereof may be enforced by the same means as provided for the enforcement of liens for county taxes. So far as applicable, all provisions of law relating to equalization, levy, payment, and collection of county taxes shall apply to such assessments.

The collection of any fee, charge or assessment to be levied under either Section 12.1 or Section 12.2 of this act may be collected by the district notwithstanding any other provisions contained herein. [Amended by Stats 1953 ch 149 § 1 p 920, effective April 9, 1953; Stats 1959 ch 567 § 1 p 2527, effective May 25, 1959; Stats 1965 ch 1997 § 1 p 4523.]

### **12.1. Collection of fees for facilities furnished: Disposition of proceeds**

The board shall also have power to prescribe, revise, and collect fees or charges for facilities furnished or to be furnished to any area, new building, improvement or structure that will benefit from any flood control, storm drainage, water conservation or supply or sewerage system constructed or to be constructed in a zone of the district. Revenues derived under this section shall be used for the acquisition, construction, engineering, reconstruction, maintenance, and operation of the flood control, storm drainage, water, or sewerage facilities of the said zone, or to reduce the principal or interest of any bonded indebtedness thereof.

The board may also provide that any fees or charges collected pursuant to Section 12.2 of this act may be credited to or deducted from any fees or charges imposed under this section. [Added by Stats 1953 ch 1148 § 1 p 2648; Amended by Stats 1965 ch 1833 § 1 p 4229.]

### **12.2. Resolution to establish special drainage areas: Lands which may be included or excluded:**

**Construction of facilities: Dedication of facilities to public: Contract with developer: Fees: Separate fund: Expenditures: Approval of plans and specifications: Collections and replacement of cost**

The board of supervisors, by resolution thereof adopted from time to time, may establish special drainage areas within the district without reference to the boundaries of other zones or special drainage areas, setting forth in such resolutions descriptions thereof by metes and bounds and entitling each of such areas by an area designation or number, and institute drainage plans for the specific benefit of such areas.

Before acquiring authority to proceed with the establishment of any special drainage area, the exterior boundaries of which will include any land lying within the exterior boundary of any chartered or incorporated city within the district, the board shall first obtain the concurrence of such city by a resolution or ordinance adopted by a majority of the members of the city council of such city.

A special drainage area may include all lands contributing to the drainage requirements of an area, excluding such lands as are already developed or those adequately served by existing local drainage facilities serving the area at the time of the adoption of a plan for additional drainage facilities.

Whenever drainage facilities, conforming to the instituted drainage plan, are required in the development of any land within a special drainage area and where, in the opinion of the board, it is necessary that other facilities be constructed which can be, or will be, used for the benefit of other property in the drainage area, and such drainage facilities are dedicated to the public, the board may contract with the developer and agree to reimburse, and may reimburse him, for all or any portion of such drainage facilities. Such contracts shall provide that the board may collect a reasonable charge from any person, corporation or agency using such facilities for the benefit of other property in the special drainage area.

Fees may be collected pursuant to this section for payment of all or any portion of any such drainage facility costs if the costs, whether actual or estimated, are based upon findings by the board, that development of property within the planned special drainage area will require construction of the facilities described in the drainage plan, and that fees are fairly apportioned within the local drainage area on the basis of benefits conferred on property within the area. The fee as to any property within the special drainage area may be charged as a condition precedent to the development of such property, and no building permit therefor shall be issued until payment thereof, and said fee shall not exceed the pro rata share of the amount of the total actual or estimated costs of all such drainage facilities within the special drainage area which would be assessable on such property if such costs were apportioned on a uniform fee schedule, excluding, however, such property within the area as, in the opinion of the board, is incapable of development.

The fees collected by the district, pursuant to this section, shall be paid into a special drainage facilities fund. A separate fund shall be established for each special drainage area. Any money placed in such fund shall be expended solely for land acquisition, construction, engineering, repair, maintenance and operation or reimbursement for the same, in whole or in part, of local drainage facilities within the planned special drainage area from which the fees comprising the fund were collected.

The term “developer,” as used herein, shall include a subdivider, industrial developer, or any person, corporation, district, public or private agency, or group that may participate in the special drainage facilities constructed pursuant to this section.

Any drainage facilities constructed in any special drainage area may be installed by the developer at his sole cost and expense in accordance with plans and specifications prepared or approved by the district, by the district with its own funds, or by the district with funds supplied by the developer, and the cost thereof may be collected and repaid, in whole or in part, in the manner provided for in this section. [Added by Stats 1963 ch 1612 § 1 p 3205; Amended by Stats 1965 ch 1076 § 1 p 2725.]

### **12.3. Resolution, notice, and hearing of protests prior to establishing special area**

Prior to the establishment of any special benefit area pursuant to Section 12.1 or special drainage area pursuant to Section 12.2 of this act, the board shall adopt a resolution specifying its intention to establish such benefit area or special drainage area. Such resolution shall refer to a map or maps showing the general location of such area and be accompanied by a proposed ordinance prescribing whatever fees and charges are to be imposed therein and fixing a time and place for public hearing of the resolution.

The notices required to be given for such hearing, the procedures to be followed at such hearing, including objections, protests and persons qualified to enter a protest shall comply substantially with the requirements of Section 11 of this act.

The provisions of this section shall be exclusive in determining the proper procedure for the establishment of any special benefit area pursuant to Section 12.1 or special drainage area, pursuant to Section 12.2, any other provision of law notwithstanding. [Added by Stats 1965 ch 1075 § 1 p 2724.]

### **12.4. Alternative proceedings under improvements acts in Streets and Highways Code: Related definitions, documents, powers, duties, etc.: Recordation of assessment and diagram**

As an alternative to the provisions of this act, the provisions of the Improvement Act of 1911, the Municipal Improvement Act of 1913, and the Improvement Bond Act of 1915 may be applicable for the construction of any facility within the powers of the district. The rights, powers, duties, responsibilities and jurisdiction conferred upon the various boards, officers, and agents of a city by the acts specified above shall be exercised by the corresponding board, officers, and agents of the district. In the application of the acts specified above, the proceedings instituted by the district, the terms used in the acts specified above have the following meaning:

- (a) “City council” or “council” means the board of supervisors of Alameda County Flood Control and Water Conservation District.
- (b) “Municipality” or “city” means the district.
- (c) “Superintendent of streets,” “street superintendent” or “city engineer” means the director of public works of the district.
- (d) “Tax collector” means the county tax collector.

- (e) "Treasurer" or "city treasurer" means the treasurer of the district.
- (f) "Mayor" means the chairman of the board.
- (g) "Clerk" and "city clerk" mean the clerk to the board of supervisors.
- (h) "Right-of-way" means any parcel of land in, on, under, or through which a right-of-way or easement has been granted to the district for the purpose of constructing or maintaining any district works or improvements.

Any certificates or documents required by the acts specified above to be filed or recorded in the office of the superintendent of streets or of the street superintendent shall be filed or recorded in the office of the director of public works of the district.

The rights, powers, duties, responsibilities, and jurisdiction conferred upon officers and agents of cities by the acts specified herein shall be exercised or assumed, as the case may be, by the respective boards, officers and agents of the district.

The improvements herein authorized to be constructed are restricted to those permitted to be constructed or acquired pursuant to the powers of the district.

No assessment or bond hereafter levied or issued pursuant to any of the improvement acts specified herein shall become a lien and no person shall be deemed to have notice thereof until a certified copy of said assessment and the diagram thereto attached shall be recorded in the office of the county recorder if the improvement district or any part thereof is unincorporated territory and the superintendent of streets of the city or cities of the improvement district or any part thereof is in incorporated territory. [Added by Stats 1965 ch 1074 § 1 p 2723.]

**13. Bonds: Resolution: Election: Posting map: Publication of election ordinance: Defects and irregularities: Favorable vote required**

- (1) Whenever the board determines that a bonded indebtedness should be incurred to pay the cost of any work or improvement in any zone or zones, the board may by resolution determine and declare the respective amounts of bonds necessary to be issued in each zone in order to raise the amount of money necessary for each work or improvement and the denomination and the maximum rate of interest of said bonds. The board shall cause a copy of the resolution, duly certified by the clerk, to be filed for record in the Office of the Recorder of Alameda County within five (5) days after its issuance. From and after said filing of said copy of said resolution the board shall be deemed vested with the authority to proceed with the bond election.
- (2) After the filing for record of the resolution specified in subdivision (1) of this section, the board may call a special bond election in said zone or participating zones at which shall be submitted to the qualified electors of said zone or participating zones the question whether or not bonds shall be issued in the amount or amounts determined in said resolution and for the purpose or purposes therein stated. Said bonds and the interest thereon shall be paid from revenue derived from annual taxes or assessments levied as provided in this act.
- (3) Said board shall call such special bond election by ordinance and not otherwise and submit to the qualified electors of said zone or participating zones the proposition of incurring a bonded debt in said zone or participating zones in the amount and for the purposes stated in said resolution and shall recite therein the objects and purposes for which the indebtedness is proposed to be incurred; provided, that it shall be sufficient to give a brief general description of such objects and purposes, and refer to the recorded copy of such resolution adopted by said board, and on file for particulars; and said ordinance shall also state the estimated cost of the proposed work and improvements, the amount of the principal of the indebtedness to be incurred therefor, and the maximum rate of interest to be paid on said indebtedness, and shall fix the date on which such special election shall be held, and the form and contents of the ballot to be used. The rate of interest to be paid on such indebtedness shall not exceed five percent (5%) per

annum. For the purposes of said election, said board shall in said ordinance establish special bond election precincts within the boundaries of each zone and participating zone and may form election precincts by consolidating the precincts established for general elections in said district to a number not exceeding six general precincts for each such special bond election precinct, and shall designate a polling place and appoint one inspector, one judge and one clerk for each of such special bond election precincts.

In all particulars not recited in said ordinance, such special bond election shall be held as nearly as practicable in conformity with the general election laws of the State.

Said board shall cause a map or maps to be prepared covering a general description of the work to be done, which said map shall show the location of the proposed works and improvements and shall cause the said map to be posted in a prominent place in the county courthouse for public inspection for at least thirty (30) days before the date fixed for such election.

Said ordinance calling for such special bond election shall, prior to the date set for such election, be published pursuant to Section 6062 of the Government Code in a newspaper of general circulation circulated in each zone and participating zone affected. The last publication of such ordinance must be at least fourteen (14) days before said election, and if there be no such newspaper, then such ordinance shall be posted in five public places designated by the board, in each zone and participating zone for at least thirty (30) days before the date fixed for such election. No other notice of such election need be given nor need polling place cards be issued.

Any defect or irregularity in the proceedings prior to the calling of such special bond election shall not affect the validity of the bonds authorized by said election. Where a project affects a single zone only, if at such election two-thirds (2/3) of the votes cast in said zone on the proposition of incurring a bonded indebtedness are in favor thereof, then bonds for such zone for the amount stated in such proceedings shall be issued and sold as in this act provided. Where the incurring of bonded indebtedness by participating zones is to be determined at such election, no bonds for any of such participating zones shall be issued or sold unless two-thirds (2/3) of the votes cast on the proposition in each such participating zone are in favor of incurring the bonded indebtedness to be undertaken by such zone. [Amended by Stats 1953 ch 149 § 2 p 922, effective April 9, 1953; Stats 1957 ch 357 § 257 p 1117.]

#### **14. Same: Form of bonds**

The board shall, subject to the provisions of this act, prescribe by resolution the form of said bonds, which must include a designation of the zone or participating zone affected, and of the interest coupons attached thereto. Said bonds shall be payable annually or semiannually at the discretion of the board each and every year on a day and date, and at a place to be fixed by said board, and designated in such bonds, together with the interest on all sums unpaid on such date until the whole of said indebtedness shall have been paid.

The board may divide the principal amount of any issue into two or more series and fix different dates for the bonds of each series. The bonds of one series may be made payable at different times from those of any other series. The maturity of each series shall comply with this section. The board may fix a date, not more than two years from the date of issuance, for the earliest maturity of each issue or series of bonds. Beginning with the date of the earliest maturity of each issue or series, not less than one-fortieth of the indebtedness of such issue or series shall be paid every year. The final maturity date shall not exceed 40 years from the time of incurring the indebtedness evidenced by each issue or series.

The bonds shall be issued in such denomination as the board may determine, except that no bonds shall be of a less denomination than one hundred dollars (\$100), nor of a greater denomination than one thousand dollars (\$1,000), and shall be payable on the days and at the place fixed in said bonds, and with interest at the rate specified in such bonds, which rate shall not be in excess of five per centum (5%) per annum, and shall be made payable annually or semiannually, and said bonds shall be numbered consecutively and shall be signed by the chairman of the board, and countersigned by the auditor of said district, and the seal of said district shall be affixed thereto by the clerk of the board.

Either or both such signatures may be printed, engraved or lithographed. The interest coupons of said bonds shall be numbered consecutively and signed by the said auditor by his printed, engraved or lithographed signature. In case any such officers whose signatures or countersignatures appear on the bonds or coupons shall cease to be such officers before the delivery of such bonds to the purchaser, such bonds and coupons, and signatures or countersignatures shall nevertheless be valid and sufficient for all purposes the same as if such officers had remained in office until the delivery of the bonds. [Amended by Stats 1953 ch 149 § 3 p 923, effective April 9, 1953.]

**15. Same: Sale of bonds**

The board may issue and sell the bonds of any such zones authorized as hereinbefore provided at not less than par value, and the proceeds of the sale of such bonds shall be placed in the treasury of the County of Alameda to the credit of said district and the respective participating zones thereof, for the uses and purposes of the zone or zones voting said bonds; and the proper record of such transactions shall be placed upon the books of said county treasurer, and said respective zone funds shall be applied exclusively to the purposes and objects mentioned in the ordinance calling for such special bond election as aforesaid, subject to the provisions in this act contained. Payments from said zone funds shall be made upon demands prepared, presented, allowed and audited in the same manner as demands upon the funds of the County of Alameda.

**16. Same: Payment: Liability of zones for indebtedness**

Any bonds issued under the provisions of this act, and the interest thereon, shall be paid by revenue derived from an annual tax or assessment levied as provided in clause (a) or (b) of subdivision 2 of Section 12 of this act. No zone nor the property therein shall be liable for the bonded indebtedness of any other zone, nor shall any moneys derived from taxation or assessments in any of the several zones be used in payment of principal or interest or otherwise of the bonded indebtedness chargeable to any other zone. [Amended by Stats 1953 ch 149 § 4 p 924, effective April 9, 1953.]

**17. Same: Levy and collection of taxes or assessment to pay principal and interest**

The board shall levy a tax or assessment each year sufficient to pay the interest and such portion of the principal of said bonds as is due or to become due before the time for making the next general tax levy. Such taxes or assessments shall be levied and collected in the respective zones of issuance together with and not separately from taxes for county purposes, and when collected shall be paid into the county treasury of said Alameda County to the credit of the zone of issuance, and be used for the payment of the principal and interest on said bonds, and for no other purpose. The principal and interest on said bonds shall be paid by the county treasurer of said Alameda County in the manner provided by law for the payment of principal and interest on bonds of said county. [Amended by Stats 1953 ch 149 § 5 p 924, effective April 9, 1953.]

**18. Application of other laws: Liability of officers upon bonds: Exemption of property from taxation and assessment**

The provisions of law of this State, prescribing the time and manner of levying, assessing, equalizing and

collecting county property taxes, including the sale of property for delinquency, and the redemption from such sale, and the duties of the several county officers with respect thereto, are, so far as they are applicable, and not in conflict with the specific provisions of this act, hereby adopted and made a part hereof. Such officers shall be liable upon their several official bonds for the faithful discharge of the duties imposed upon them by this act. All property exempt from taxation for county purposes under the provisions of the Revenue and Taxation Code of the State of California is exempt from taxation for the purposes of this act. Property used for free public libraries and free museums, growing crops, property used exclusively for public schools, and such as may belong to this State, or to any county, city and county, or municipal corporation within this State shall be exempt from assessment, except such lands and the improvements thereon located outside of the county, city and county or municipal corporation owning the same as were subject to taxation at the time of the acquisition of the same by said county, city and county, or municipal corporation; provided, that no improvements of any character whatever constructed by any county, city and county or municipal corporation shall be subject to assessment. All property of a municipal utility district located within the boundaries of the Alameda County Flood Control and Water Conservation District is exempt from both taxation and assessment under this act. [Amended by Stats 1953 ch 149 § 6 p 925, effective April 9, 1953.]

**19. District validly created: When creation of zones effective: Assessment and equalization of property for 1949-1950**

Notwithstanding Section 3720 of the Political Code, the Alameda County Flood Control and Water Conservation District is validly created for the purposes of assessment and taxation. The creation of any zone in the Alameda County Flood Control and Water Conservation District shall not be effective for purposes of assessment or taxation for the Fiscal Year 1949-1950 and shall not be effective for such purposes for any fiscal year thereafter unless the statement and map or plat required by Section 3720 of the Political Code are filed with the county assessor and the State Board of Equalization on or before the first of February of the year in which the assessments or taxes are to be levied. Until such time as the creation of any zone shall be effective for purposes of assessment or taxation, any tax or assessment levied by the board shall be levied at a uniform rate on all property in the Alameda County Flood Control and Water Conservation District. For the Fiscal Year 1949-1950, but for no other fiscal year, notwithstanding Section 18 of this act, the assessment and equalization of property for the purpose of district taxation shall be effected as provided in this section.

Assessments of the district for the Fiscal Year 1949-1950 are liens on the property the same as if they were county taxes, except that the district assessment liens attach as of noon on the day after this act becomes effective.

It is presumed that the assessments of property made by the county assessor and by the State Board of Equalization for county taxation purposes for the Fiscal Year 1949-1950 are the correct assessments for purposes of assessment by the district and the rolls prepared by the county assessor and the State Board of Equalization shall be used for purposes of levying and collecting the assessments for the district.

If the ownership or taxable situs or value of any property changes between noon on the first Monday in March, 1949, and the date on which attaches the lien for assessments of the district for the Fiscal Year 1949-1950, then, on petition of the taxpayer affected to the assessing authority, suitable entry shall be made on the assessment roll, in the manner prescribed by the State Board of Equalization, to indicate such change in the ownership or taxability or value of the property for purposes of assessment by the district.

In equalizing the assessments made by the county assessor, the Board of Supervisors of Alameda County, sitting as the county board of equalization, in addition to its regular equalization duties, shall also, in the same manner and under

the same rules, equalize the valuation of property for purposes of assessment by the district in accordance with the requirements of this section and any such changes made by the county board of equalization in the assessment role shall be entered in the manner prescribed by the State Board of Equalization.

If, for purposes of assessments by the district, a change in the assessment for county taxation purposes is not sought under this section before the end of the period during which such assessment may be equalized, or corrected on a petition for reassessment, such assessment, if valid for county taxation purposes, is conclusively presumed to be the correct assessment for assessment purposes of the district.

The board may prescribe by ordinance any necessary procedure, in accordance with the policy of this act, for the purpose of assessing, equalizing, levying, and collecting taxes or assessments for the district for the Fiscal Year 1949-1950. Except as provided in this section, Section 18 of this act is applicable to the assessment and equalization of property for the purpose of district assessments for the Fiscal Year 1949-1950.

*Note*—Pol C § 3720 was repealed by Stats 1949 ch 81 and re-enacted as Gov C § 54900-54903.

## **20. Bonds of district as legal investments**

The bonds of the district issued for any zone thereof pursuant to this act, shall be legal investments for all trust funds, and for the funds of all insurance companies, banks, both commercial and savings, and trust companies, and for the state school funds, and whenever any money or funds may by law now or hereafter enacted be invested in bonds of cities, cities and counties, counties, school districts or municipalities in the State of California, such money or funds may be invested in the said bonds of said district issued in accordance with the provisions of this act, and whenever bonds of cities, cities and counties, counties, school districts or municipalities, may by any law now or hereafter enacted be used as security for the performance of any act, such bonds of said district may be so used.

This section of this act is intended to be and shall be considered the latest enactment with respect to the matters herein contained and any and all acts or parts of acts in conflict with the provisions hereof are hereby repealed.

## **21. Bonds exempt from taxation: District declared a reclamation and irrigation district**

All bonds issued by said district under the provisions of this act shall be free and exempt from all taxation within the State of California. It is hereby declared that the district organized by this act is a reclamation district and an irrigation district within the meaning of Section 1 \_ of Article XIII and Section 13 of Article XI of the Constitution of this State.

## **22. Contracts for improvements**

All contracts for any improvement or unit of work when the cost thereof according to the estimate of the engineer, will exceed five thousand dollars (\$5,000), exclusive of the estimated cost of materials or supplies, shall be let to the lowest responsible bidder or bidders in the manner hereinafter provided. The board shall first determine whether such contract shall be let as a single unit for the whole of the work, or shall be divided into severable convenient parts, or both, according to the best interests of the district. The board shall make call for bids and advertise such call by three (3) insertions in a daily newspaper of general circulation or by two (2) insertions in a weekly newspaper of general circulation printed and published in said district inviting sealed proposals for the construction or performance of the improvement or work before any contract is made therefor. Such call for bids shall state whether such work is to be performed as a unit for the whole thereof or shall be divided into severable convenient specific parts, or both, as stated in the call. The board may let such work by single contract for the whole thereof as a unit or it may divide such work into severable convenient parts by separate contracts, as stated in such call, according to the best interests of the district. The board shall require the successful

bidder or bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material in connection therewith, such bonds to contain the terms and conditions set forth in Chapter 3 of Division 5 of Title 1 of the Government Code and to be subject to the provisions of that chapter. The board shall also have the right to reject any and all bids. In the event no proposals are received pursuant to advertisement therefor, or the work consists of channel protection, or maintenance work, or emergency work when necessary in order to protect life and property from impending flood damage, the board of supervisors may, without advertising for bids therefor, have said work done by day labor, under the direction of the board, by contract, or by a combination of the two. The district shall have the power to acquire in the open market without advertising for bids therefor, materials, equipment and supplies for use in any work or for any other purpose; provided, however, that materials and supplies for use in any new construction work or improvement, except work referred to in the preceding sentence, may not be purchased if the cost thereof exceeds three thousand five hundred dollars (\$3,500), without advertising for bids and awarding the contract therefor to the lowest responsible bidder. If any change or alteration in a contract awarded under the provisions of this section is deemed necessary and the cost thereof does not exceed ten percent (10%) of the original contract price, the board may authorize the contractor to proceed with the change or alteration without the formality of obtaining bids therefor. If a change or alteration in a contract awarded under the provisions of this section is requested by any person, firm, corporation, or public agency, other than the district, which person, firm, corporation or public agency agrees to pay all or a portion of the cost of such change or alteration, the board may authorize the contractor to proceed with such change or alteration without the formality of obtaining bids therefor, provided that the cost of such change or alteration does not exceed fifteen percent (15%) of the original contract price. The aggregate cost of all change orders shall not exceed twenty-five percent (25%) of the original contract price. [Amended by Stats 1955 ch 484 § 1 p 954; Stats 1957 ch 480 § 1 p 1512; Stats 1959 ch 1281 § 1 p 3432; Stats 1961 ch 1204 § 1 p 2939.]

**23. Improvement for which bonds voted to be made in conformity with report, etc.**

Any improvement for which bonds are voted under the provisions of this act, shall be made in conformity with the report, plans, specifications and map theretofore adopted, as above specified, unless the doing of any of such work described in said report, shall be prohibited by law, or be rendered contrary to the best interests of the district by some change of conditions in relation thereto, subsequent to the date of filing the report, plans, specifications and map theretofore adopted, in which event the board of supervisors may order necessary changes made in such proposed work or improvements and may cause any plans and specifications to be made and adopted therefor.

**24. Issuance of additional bonds**

Whenever bonds have been authorized by any zone or participating zone of said district and said bonds have been issued as in this act authorized, and the board shall by resolution determine that additional bonds should be issued for carrying out the work of flood control, or for any of the purposes of this act, the board may again proceed as in this act provided, and submit to the qualified voters of said zone or participating zone, the question of issuing additional bonds in the same manner and with like procedure as hereinbefore provided, and all the above provisions of this act for the issuing and sale of such bonds, and for the expenditure of the proceeds thereof, shall be deemed to apply to such issue of additional bonds.

**25. Failure of proposition to issue bonds to receive requisite number of votes: Subsequent election**

Should a proposition for issuing bonds for any zone or participating zones submitted at any election under this act fail to receive the requisite number of votes of the qualified electors voting at such election to incur the indebtedness for the purpose

specified, the board shall not for six months after such election call or order another election in such zone or participating zone for incurring indebtedness and issuing bonds under the terms of this act for the same objects and purposes.

**26. Repeal or amendment of act: Effect**

The repeal or amendment of this act shall not in any way affect or release any of the property in said district or any zone thereof from the obligations of any outstanding bonds or indebtedness until all such bonds and outstanding indebtedness have been fully paid and discharged.

**26.1. Withdrawal of area within chartered or incorporated city**

Notwithstanding any provisions of this act to the contrary, the withdrawal of all the area lying within the exterior boundaries of any chartered or incorporated city from the district may be effected by the vote of a majority of the qualified electors of said city voting at any regular or special election on the proposition to withdraw the area lying within such city from the district. Said election shall in all particulars be held as provided by law for holding a municipal election in said city and the cost thereof shall be a city charge. The city council shall cause the results of the election to be certified to the board of supervisors of the district and if a majority of the votes cast on the proposition to withdraw such area from the district are in favor thereof, thereupon the area lying within the exterior boundaries of such city shall no longer be a part of the district; provided, however, that the withdrawal of the area lying within the exterior boundaries of such city from the district shall not release the area so withdrawn from debts and obligations for or upon which it was liable or chargeable at the time such withdrawal was made.

**27. Rights of way**

There is hereby granted to Alameda County Flood Control and Water Conservation District the right of way for the location, construction and maintenance of flood control channels, ditches, waterways, conduits, canals, storm dikes, embankments, and protective works in, over and across public lands of the State of California, not otherwise disposed of or in use, not in any case exceeding in length or width that which is necessary for the construction of such works and adjuncts or for the protection thereof. Whenever any selection of a right of way for such works or adjuncts thereto is made by the district the board thereof must transmit to the State Lands Commission, the Controller of the State and the recorder of the county in which the selected lands are situated, a plat of the lands so selected, giving the extent thereof and the uses for which the same is claimed or desired, duly verified to be correct. If the State Lands Commission shall approve the selections so made it shall endorse its approval upon the plat and issue to the district a permit to use such right of way and lands.

**28. Relocation of streets, etc.: Failure of district and public utility to agree as to new improvements**

- (a) If by any judgment in condemnation or agreement the district shall be required to relocate any street, road, highway, railroad, canal or other property subject or devoted to public use, the board shall have power to acquire in the name of the district, by agreement or condemnation, all rights of way and other property necessary or proper for compliance with said agreement or said judgment of condemnation and thereafter to make such conveyance of such relocated street, road, highway, railroad, canal, or other property as may be proper to comply with said agreement or judgment.
- (b) In the event the district and any common carrier railroad or other public utility fail to agree as to the character or location of new improvements or works sought to be performed by the district, the character and location of such new improvements or works and any other controversy relating thereto shall be submitted to and determined by the Public Utilities Commission; and jurisdiction of such controversies is hereby vested in said commission.

- (c) Proceedings under this section relating to the jurisdiction of said commission may be instituted, maintained, and determined in the mode prescribed in paragraphs 1, 2, 3, 4, 5, 6, and 7 of subsection (c) of Section 43 of the Public Utilities Act as amended by Chapter 855 of the Statutes of 1933.

*Note*—Public Utilities Act § 43 was repealed by Stats 1951 ch 764 p 2257 and re-enacted as Pub U C § § 1201-1220, 1402.

### **28.1. Condemnation of land: Taking whole parcel when part remaining would require district to pay compensation equal to value of whole parcel**

Whenever land is to be condemned by the district for any of the uses and purposes permitted by law, and the taking of a part of a parcel of land would leave the remainder thereof in such size or shape or condition as to require the district to pay in compensation for the taking of such part an amount equal to the fair and reasonable value of the whole parcel, the resolution of the board may provide for the taking of the whole of such parcel and upon the adoption of any such resolution it shall be deemed necessary for the public use, benefit, safety, economy, and general welfare that the district acquire the whole of such parcel. [Added by Stats 1957 ch 987 § 1 p 2227.]

### **29. Claims against district**

Claims for money or damages against the district are governed by Part 3 (commencing with Section 900) and Part 4 (commencing with Section 940) of Division 3.6 of Title 1 of the Government Code, except as provided therein. Claims not governed thereby or by other statutes or by ordinances or regulations authorized by law and expressly applicable to such claims shall be prepared and presented to the governing body, and all claims shall be audited and paid, in the same manner and with the same effect as are similar claims against the county. [Added by Stats 1959 ch 1728 § 48 p 4167; Amended by Stats 1963 ch 1715 § 93 p 3409.]

*Note*—Stats 1963 ch 1715 also provides: § 152.

- (a) This act applies to all causes of action heretofore or hereafter accruing.
- (b) Nothing in this act revives or reinstates any cause of action that, on the effective date of this act, is barred either by failure to comply with any applicable statute, charter or ordinance requiring the presentation of a claim or by failure to commence an action thereon within the period prescribed by an applicable statute of limitations.
- (c) Subject to subdivision (b), where a cause of action accrued prior to the effective date of this act and a claim thereon has not been presented prior to the effective date of this act, a claim shall be presented in compliance with this act, and for the purposes of this act such cause of action shall be deemed to have accrued on the effective date of this act.
- (d) Subject to subdivision (b), where a cause of action accrued prior to the effective date of this act and a claim thereon was presented prior to the effective date of this act, the provisions of this act so far as applicable shall apply to such claim; and, if such claim has not been acted upon by the board prior to the effective date of this act, such claim shall be deemed to have been presented on the effective date of this act.

### **30. Property of district**

The legal title to all property acquired under the provisions of this act shall immediately and by operation of law vest in said district, and shall be held by said district, in trust for, and is hereby dedicated and set apart to, the uses and purposes set forth in this act. The board is hereby authorized and empowered to hold, use, acquire, manage, occupy and possess said property, as herein provided; and said board may determine, by resolution duly entered in their minutes that any property, real or personal, held by said district is no longer necessary to be retained for the uses and purposes thereof, and may thereafter sell, lease or otherwise dispose of said property in the manner prescribed by law for such action by counties; provided, however, that notwithstanding any other provision of law, the board may grant an easement or permit for use of any real property of the district to the State, or to any county, city, district, or public agency or corporation, or to any public utility corporation, upon such terms and conditions as the board sees fit, upon a finding by the board that the interest in land conveyed is in the public interest and will not substantially conflict or interfere with the use of said property by the district for the purpose for which it was acquired. [Amended by Stats 1959 ch 646 § 1 p 2625.]

**31. Determination of legality of existence of district**

The district formed under this act in order to determine the legality of its existence, may institute a proceeding therefor in the superior court of this State, in and for the County of Alameda, by filing with the clerk of said county a complaint setting forth the name of the district, its exterior boundaries, the date of its organization and a prayer that it be adjudged a legal flood control district formed under the provisions of this act. The summons in such proceeding shall be served by publishing a copy thereof once a week for four weeks in a newspaper of general circulation published in said county. Within thirty (30) days after proof of publication of said summons shall have been filed in said proceeding, the State, any property owner or resident in said district, or any person interested may appear as a defendant in said action by serving and filing an answer to said complaint, in which case said answer shall set forth the facts relied upon to show the invalidity of the district and shall be served upon the district attorney before being filed in such proceeding. Such proceeding is hereby declared to be a proceeding in rem and the final judgment rendered therein shall be conclusive against all persons whomsoever, including the district and the State of California.

**32. Bonds of officers and employees**

The board may require any officer or employee to give bond for the faithful performance of the duties of his office, in such penal sum as may be fixed by the board. When deemed expedient by the board, a master bond may be used which shall provide coverage on more than one officer, employee or agent of the district who is required by the district to give bond. Such bond shall be in the form and for the term which is approved by the board. The premium for such bond shall be paid by the district.

**33. Temporary investment of proceeds of sale of bonds of zone**

Notwithstanding any provisions of this act to the contrary, in the event the proceeds from the sale of bonds of any zone are invested temporarily in United States bonds, notes, or certificates of indebtedness, or in other legal investments, pending the expenditure of said funds for the purpose or purposes for which said indebtedness was incurred, any revenue or interest received or accruing therefrom may be used to pay the annual or semiannual installments of principal and/or interest on said bonds as same become due.

**34. Construction of act**

This act, and every part thereof, shall be liberally construed to promote the object thereof, and to carry out its intents and purposes.

**35. Separability provision**

If any provision of this act, or the application thereof to any person or circumstance, is held invalid, the remainder of the act, or the application of such provision to other persons or circumstances, shall not be affected thereby.

**36. Provisions applicable to establishment, government, operation and financing of zone in Pleasanton or Murray Townships**

Notwithstanding any other provisions of this act, the following shall apply with respect to the establishment, government, operation and financing of any zone lying wholly or in part in Pleasanton or Murray Townships:

1. The board of supervisors shall have no authority to proceed with the establishment of any zone lying wholly or in part in Pleasanton or Murray Townships without first obtaining the approval thereof by a vote of a majority of the qualified electors voting at a regular or special election on said proposition; said election shall in all particulars be held, as nearly as practicable, in conformity with the general election laws of the state, and the cost thereof shall be

reimbursed to the district if a zone is established.

2. Any zone established by the board of supervisors under the provisions of this act lying wholly or in part in Pleasanton or Murray Townships, shall be governed and controlled by a board of seven (7) directors elected by the qualified electors residing within the boundaries of said zone. The first members of said board shall be elected at the election called by the board of supervisors upon the proposition for establishment of said zone.

The term of directors shall be four years from and after their election commencing with the election of three directors in 1960 and four directors in 1962. Elections for directors shall be consolidated with the direct primary election in each even-numbered year and shall be called by proclamation of the board of supervisors of the county, issued in the manner specified in Section 1005 of the elections Code. Terms of office shall commence July 1st of the year in which elected.

The term of office of the two directors whose present terms expire in 1961 are hereby extended to 1962, at which time said two offices shall be filled by election together with the two offices whose terms expire in 1962 under the provisions of this section as it read as amended by Chapter 20 of the Statutes of 1957.

Vacancies in the membership of a board shall be filled for the unexpired term by appointment by a majority of the remaining members of the board. Every voter resident within the zone for the period requisite to enable him to vote at the direct primary is entitled to vote at zone elections. Polling places and election officers shall be the same as provided for in the direct primary elections.

The name of the candidate shall be printed on the ballot when a nominating petition and declaration of acceptance have been filed with the county clerk. Each nominating petition shall be signed by not less than 5 nor more than 20 persons each of whom meets the qualifications hereinafter set forth. Each nominating petition and declaration of acceptance shall be in substantially the following respective forms:

## Nominating Petition and Declaration of Acceptance

State of California; County of Alameda

I (or we) the undersigned certify that I join in a petition for the nomination of ..... for the office of Director of Ward.... (or at large) of Zone 7 of the Alameda County Flood Control and Water Conservation District to be voted for at the election on the .... day of ....., 20.... I am a qualified elector, residing in the zone. I am not at this time a signer of any other petition nominating any other candidate for the office, or in case there are several places to be filled in the same office I have not signed more petitions than there are places to be filled in the office.

(Signed).....

State of California; County of Alameda

..... being first duly sworn deposes and says: That he is one of the persons who signed the foregoing petition and that the signatures are the signatures of the persons whose names they purport to be.

State of California; County of Alameda

I hereby accept the nomination as a candidate for the office of Board of Directors of Ward...(or, at large) of Zone 7 of the Alameda County Flood Control and Water Conservation District to be voted for at the primary election to be held....., 20....., and if nominated I will not withdraw and will qualify for the office if elected.

(Signed).....

The nominating petition may be upon one or more sheets of paper.

Each petition shall contain the name of only one candidate.

Each signer shall be a qualified elector, residing in the zone, and shall not at the time of the signing have his name signed to any other petition for any other candidate for the same office, nor in case there are several places to be filled in the same office, signed to more petitions for that office than there are places to be filled for that office.

Each nominating petition shall be verified under oath of one of the signers that the signatures are the signatures of the persons whose names they purport to be.

A nominating petition shall be presented to the county clerk not more than 90 nor less than 60 days before the election.

If, on the 60th day prior to the day fixed for the zone election, only one person has been nominated for each office of member of the board of directors or no one has been nominated for one or more of the such offices, and if on the 50th day prior to the day fixed for the election a petition signed by 5 percent of the qualified electors in the zone, requesting that the election be held, has not been presented to the board of directors of the zone, said board of directors shall by resolution entered in their minutes order that an election shall not be held, and shall immediately request that the board of supervisors of the county appoint, and the board of supervisors shall thereupon appoint, to the office or offices the person or persons, if any, who have been nominated. If no person has been nominated for any office, the board of supervisors shall appoint any qualified person to the office prior to the date when the election would have been held. The person appointed shall qualify and take office and serve exactly as if elected at a zone election.

In such instances notices shall be posted in three public places in the zone at least 10 days before the date fixed for the election, which notices shall state that no election is to be held and that the board of supervisors will appoint, or has appointed, a member or members of the board of directors to serve for the ensuing term.

When a petition is presented for filing the county clerk shall forthwith examine it and ascertain whether or not it conforms to this section.

If found not sufficient it shall be returned to the person who presented it.

The county clerk shall cause the ballots to be printed and they shall contain the names of the candidates whose petitions have been filed as provided in this section.

The directors shall be elected at large and, except as provided herein, the election of said directors shall be conducted in substantially the same manner as provided by state law for direct primary elections.

The directors must be residents of the proposed zone and qualified electors and owners of real property therein.

The board of directors may authorize each director to receive compensation not exceeding twenty-five dollars (\$25) for each meeting of the board attended by him, not exceeding two (2) meetings in any calendar month, and his actual and necessary expenses incurred in performance of official duties under this act, payable from the funds of said zone.

3. The board of directors of any zone in which directors have been elected as provided in this act shall have the power to make and enforce all needful rules and regulations for the administration and government of the zone and the zone board may in its discretion appoint a chairman, a secretary and such other officers, agents and employees for the zone board or zone as in its judgment may be deemed necessary, prescribe their duties and fix their compensation. Such officers, agents and employees shall be appointed under and pursuant to the civil service rules and regulations of the County of Alameda; provided, however, that the chairman and secretary of the board, and experts, consultants or technical or other advisers for particular purposes and laborers, employed for a temporary period, may be appointed by the zone board without reference to any classified civil service list.

4. If any of the reports, supplementary reports, additional reports, or recommendations provided for in Section 9 of this act relate to projects or work in any zone in which a zone board of directors has been elected as provided in this act, full and complete copies thereof shall be filed with the zone board immediately upon the filing of such with the board of supervisors.
5. If, under the provisions of Section 10 of this act, the board finds that any project or work of improvement is in whole or in part for the benefit of any zone in which a board of directors has been elected, the approval or concurrence of the zone board shall be obtained before any final determination is made to proceed with such project or work of improvement.
6. No proceeding shall be commenced or taken by the board under Sections 11, 12.1, or 12.2 of this act for the institution of any project or work of improvement or the establishment of any improvement district in whole or in part in any zone in which a board of directors has been elected, until the board has first received the approval or concurrence of said zone board to the institution of said project or work of improvement or the establishment of any special benefit, drainage, or improvement area or district.
7. In any zone in which a board of directors has been elected, the tax or assessment for any purpose or purposes, other than administrative costs and expenses of the district, shall be based upon a budget or budgets prepared by, or under the direction of, the zone board of directors.

The taxes and assessments (other than the tax to pay the general administrative costs and expenses of the district and other than any taxes, assessments, or fees levied for improvement districts or pursuant to Sections 12.1, 12.2 and Section 16 hereof to pay bonds and interest thereon) levied by the board pursuant to Section 12 of this act upon any property in any zone lying wholly or in part in Pleasanton or Murray Townships shall not exceed in the aggregate the sum of fifteen cents (\$0.15) on each one hundred dollars (\$100) of assessed valuation unless a larger tax has been approved by a vote of not less than two-thirds (2/3) of the qualified electors voting upon the proposition to increase such tax.

Notwithstanding any other provisions of this section, taxes and assessments may be levied by the board after approval by the zone board, pursuant to Sections 12 or 12.1 of this act, upon any property in the zone for the purpose of making payments to the State of California for the construction, maintenance, repair, operation and all other costs of the zone's prorated share of state water facilities

8. No proceeding shall be commenced or taken by the board under Section 13 of this act for the incurring of a bonded indebtedness to pay the cost of any work or improvement in any zone in which a board of directors has been elected, until the board has first received the approval or concurrence of said zone board to the incurring of such bonded indebtedness.

The amount of bonded indebtedness outstanding at any time shall not exceed five percent (5%) of the assessed valuation of all taxable property in any zone lying wholly or in part in Pleasanton or Murray Townships. [Added by Stats 1955 ch 486 § 2 p 960; Amended by Stats 1957 ch 20 § 1 p 572, effective February 4, 1957; Stats 1959 ch 1603 § 1 p 3972; Stats 1963 ch 246 § 1 p 1000; Stats 1965 ch 1353 § 1 p 3244.]

*Note*-Stats 1955 ch 486 also provides: §3. The facts constituting the necessity for the addition of the foregoing Section 36 to this act are:

It appears that that portion of the Alameda County Flood Control and Water Conservation District lying in Pleasanton and Murray Townships will remain predominantly agricultural in land use for many years, which creates physical, economic, and political problems of a local nature, not existing in the remainder of the district. The majority of the residents and property owners in said townships have demonstrated that under present conditions they will not proceed with the institution of any projects for flood control or water conservation under this act, without such amendment. It is, therefore, essential that Section 36 be added to this act in order that the property owners and residents of Pleasanton and Murray Townships have available for their use provisions in the act whereby they can and will institute a program for solving the flood control and water conservation problems existing in said townships.

**37. Annexation of new territory to zone: Petition, hearing, etc.**

Notwithstanding any other provisions of this act, the following shall apply with respect to the annexation of new territory to any zone:

1. A petition for annexation by election signed by 25 percent of the freeholders residing in the territory proposed to be annexed as shown by the last equalized assessment roll of the county, shall be presented to the board. The petition shall designate specifically the boundaries of the territory proposed to be annexed, and its assessed valuation as shown by the last equalized assessment roll; shall state that the territory is not within the limits of any other zone; and shall ask that the territory be annexed to the zone. The petition shall be accompanied by a bond in the sum of not less than one hundred dollars (\$100), to be approved by the board and filed with the clerk of the board as security for the payment by the petitioners of the reasonable cost of the election on annexation, in the event that at the election, less than a majority of the votes cast are in favor of annexation. The petition shall be verified by the affidavit of one of the petitioners. The petition shall be published by the petitioners for at least two weeks preceding its hearing in a newspaper of general circulation published in the zone, if there is one, and if not, in a newspaper of general circulation published in the district, together with a notice stating the number of signers of the petition, the time when the petition will be presented to the board, and that all persons interested may appear and be heard. It shall not be necessary to publish the names of the signers. At the time specified for the hearing, the board shall hear the petition and may adjourn the hearing from time to time. Upon final hearing of the petition, the board, if it approves the petition as originally presented, or in a modified form, shall make an order describing the exterior boundaries of the territory proposed to be annexed and ordering that an election be held for the purpose of determining whether or not the territory shall be annexed to the zone. The order shall fix the day of the election, which shall be within 60 days from the date of the order, and shall show the boundaries of the territory proposed to be annexed to the zone. This order shall be entered in the minutes and is conclusive evidence of a due presentation of a proper petition, and of the fact that each of the petitioners was, at the time of the signing and presentation of the petition, qualified to sign. If a majority of the votes in the territory proposed to be annexed and an election called therein by the board for that purpose are in favor of the annexation the clerk of the board shall make and cause to be entered in the minutes and endorsed on the petition an order approving the petition and the petition shall be filed. The entry is conclusive evidence of the fact and regularity of all prior proceedings of every kind required by law and of the facts stated in the entry. The board at its next regular meeting after the entry shall, by an order, alter the boundaries of the zone and annex to it the territory described in the petition. The order of the board is conclusive evidence of the validity of all prior proceedings leading up to the annexation and recited in the order, and from and after the order the territory is part of the zone. If, at the election, less than a majority of the votes in a territory proposed to be annexed are in favor of the annexation of the territory to the zone, the signers of the petition shall, within 10 days after the canvassing of the votes of the election, pay to the board the reasonable cost of the election and if not paid within 10 days, the board may sue on the bond to recover the cost of the election. If the result of the election is against annexation, the board shall, by order, disapprove the petition and enter the order in its minutes. No other proceeding shall be taken in relation thereto until the expiration of six months from the presentation of the petition, except to collect the costs of the election.
2. A petition for annexation without election signed by the owners of real property in the territory proposed to be annexed, which real property represents at least 75 percent of the total assessed valuation of the territory as

shown by the last equalized county assessment roll shall be presented to the board. The petition shall designate specifically the boundaries of the territory and its assessed valuation as shown by the last equalized county assessment roll and shall show the amount of real property owned by each of the petitioners and its assessed valuation as shown by the last equalized county assessment roll. The petition shall state that the territory is not in any other zone and shall ask that the territory be annexed to the zone. The petition shall be verified by the affidavit of one of the petitioners. It shall be published by petitioners at least two weeks preceding the hearing in a newspaper of general circulation published in the zone, if there is one, and if not, in a newspaper of general circulation published in the district. With the petition there shall be published a notice stating the number of signers of the petition, the time when the petition will be presented to the board and stating that all persons interested may appear and be heard. It shall not be necessary to publish the names of the signers. At the time designated the board shall hear the petition and any person interested, and may adjourn the hearing from time to time. Upon the hearing of the petition, the board shall determine whether or not it is for the best interests of the zone and the contiguous territory that the territory be annexed to the zone and the board may modify the boundaries of the territory proposed to be annexed as set forth in the petition. If the board upon final hearing determines that it is for the best interests of the zone and of the territory proposed to be annexed, that the territory be annexed it shall make an order describing the boundaries of the territory proposed to be annexed and shall alter the boundaries of the zone and annex to it the territory described in the petition and the territory is then a part of the zone.

3. The city council of any city within the County of Alameda may apply to the board for consent to annex the territory of the city, or any portion thereof, to an existing zone. Such application shall be in the form of an ordinance adopted by a majority of the members of the city council of said city, shall describe the boundaries of the city or that portion thereof desired to be annexed, and shall contain a declaration that the area to be annexed to the zone will be benefited by such annexation. Upon receipt of a certified copy thereof from the city council the board shall fix a time and place for public hearing of said ordinance and notice of such hearing shall be given by publication for at least two weeks in a newspaper of general circulation circulated in such zone, if there be such newspaper, and if there be no such newspaper then by publication in a newspaper of general circulation published in the district. Publication shall be completed at least seven days before the date of the hearing. Said notice shall contain a copy of the ordinance of the city council and state that all persons interested may appear and be heard. At the time fixed for the hearing or at any time to which it is continued the board shall hear and pass upon the proposal and any objections that may be filed to the inclusion of any property in the proposed annexation. The board shall determine whether or not annexation is in the best interests of the zone and the territory proposed to be annexed and the board may modify the boundaries of the territory proposed to be annexed. If the board upon final hearing determines that the territory proposed to be annexed, or any part thereof, and the zone, will be benefited by annexation, it may by resolution order that the boundaries of the zone be altered to include that territory and the territory is then a part of the zone.
4. No petition or application for annexation by any of the abovementioned methods shall be accepted by the board if a zone annexation petition or application involving any of the same territory is pending before it.
5. Whenever any new territory is annexed to a zone it thereupon becomes subject to all the liabilities and entitled to all the benefits of the zone; provided, further, that as a condition of annexation the board may by resolution

determine that each parcel of the territory to be annexed should pay its proportionate share of all costs previously paid for by other properties within said zone and shall in said resolution fix the amount to be contributed by each parcel. [Added by Stats 1957 ch 655 § 1 p 1853; Amended by Stats 1963 ch 247 § 1 p 1004.]

### **38. Operation and financing of zone in Washington Township**

Notwithstanding any other provisions of this act, the following shall apply with respect to the government, operation and financing of any zone hereafter established for the purpose of water importation, treatment or conveyance and lying wholly or in part in Washington Township:

- (1) The zone shall be governed and controlled by a commission whose members shall be appointed by the city councils of the incorporated cities lying wholly or in part in the zone. Each such city council may, by resolution, appoint one commissioner who shall serve at the pleasure of the city council.
- (2) Each commissioner must be a resident of the zone and a qualified elector therein. A commissioner may also be a member of a city council or of a board of directors of a water district and such membership shall not be considered incompatible with the position of commissioner. Commissioners shall serve without compensation except that they may receive payment for their actual and necessary expenses incurred in the performance of official duties under this act, payable from the funds of said zone.
- (3) The commission shall have the power to make and enforce all needful rules and regulations for the administration and government of the zone, to appoint a chairman, a secretary and such other officers, agents and assistants for the zone commission or zone as in its judgment may be deemed necessary and to prescribe their duties and fix their compensation.
- (4) The approval or concurrence of the zone commission shall be obtained before any project or work of improvement for the zone may be instituted. Such approval or concurrence shall be evidenced by a resolution adopted by unanimous vote of all members of the commission.
- (5) The zone tax or assessment shall be based upon a budget or budgets prepared by or under the direction of the zone commission.
- (6) No proceeding shall be commenced or taken for the incurring of a bonded indebtedness to pay the cost of any work or improvement of such zone until the zone commission has given its approval or concurrence to the incurring of such bonded indebtedness.
- (7) The zone commission shall have the power to establish the rates and terms for which water acquired by or on behalf of the zone will be sold. [Added by Stats 1961 ch 1009 § 1 p 2690.]

### **39. Replenishment assessments: Purpose: Levy: Applicable procedures and regulations**

Replenishment assessments may be levied and are declared to be in furtherance of district activities or any zone thereof in the protection of the water supplies for users within the district or any zone thereof which are necessary for the public health, welfare and safety of the people of this state. The replenishment assessments are authorized to be levied upon the production of ground water from all water-producing facilities, whether public or private, within the district or any zone thereof for the benefit of all who rely directly or indirectly upon the ground water supplies of such district or any zone thereof.

The following procedures and regulations shall apply to allow the enactment of this purpose:

- (a) Not later than the second Tuesday in February of each year the board shall order an engineering survey and report to be made regarding the ground water supplies of the district or any zone thereof. The report shall include the following:
- (1) Records, data, and other information for the consideration of the board in its determination of the annual overdraft and the accumulated overdraft as of the last day of the preceding water year.
  - (2) A report, with supporting data, as to the total production of ground water from the ground water supplies within the district or any zone thereof during the preceding water year and as to the changes during the preceding water year in the pressure levels or piezometric heights of the ground water contained within pressure-level areas of the district, or any zone thereof and as to the effects thereof upon the ground water supplies within the district or any zone thereof.
  - (3) An estimate of the annual overdraft for the current and the ensuing water years, of the accumulated overdraft as of the last day of the current water year, of the total production of ground water from the ground water supplies within the district or any zone thereof for the current and ensuing water years, and of the changes during the current water year in the pressure levels or piezometric heights of the ground water contained in pressure-level areas of the district or any zone thereof and the effects upon the ground water supplies in the district or any zone thereof.
  - (4) An estimate of the quantity, source, and cost of water available for replenishment of the ground water supplies during the ensuing water year.
  - (5) A recommendation as to the quantity of water which should be purchased for replenishment of the ground water supplies within the district or any zone thereof during the ensuing water year.
  - (6) An estimate of the costs of replenishing the ground water supplies with purchased water and of the rate of the replenishment assessment required to be levied upon the production of ground water from the ground water supplies within the district or any zone thereof during the ensuing fiscal year for the purpose of accomplishing such replenishment.
- (b) On or before the second Tuesday in March of each year, and provided the survey and report required by subdivision (a) has been made, the board, by resolution, shall declare whether funds shall be raised to purchase water for replenishment during the ensuing fiscal year and whether such funds or any portion thereof shall be raised either by a water charge, a replenishment assessment, or a combination of water charges and replenishment assessments, and whether the funds so to be raised will benefit, directly or indirectly, all of the persons or real property and improvements within the district or any zone thereof.
- (c) If the board, by resolution, determines that all or a portion of the funds needed to purchase replenishment water shall be raised by the levy of a replenishment assessment, then the board shall immediately publish a notice that a public hearing will be held on the second Tuesday of April for the purpose of determining whether and to what extent the estimated cost of purchasing water for replenishment for the ensuing year shall be paid for by a replenishment assessment. Such notice shall invite inspection of the engineering survey and report upon which the board acted, a copy of the board's resolution, the time and place of said hearing, and an invitation to all interested parties to attend and be heard in support of or opposition to the proposed assessment, the engineering survey and report, and the board's determination. The notice shall be published in the county pursuant to Section 6061 of the Government Code, at least 10 days before the hearing date.

The hearing shall be held before the board and a quorum shall be present. The hearing may be adjourned from time to time by the president or presiding officer or hearing officer but shall be completed by the first Tuesday in May next following.

The board may appoint a qualified registered engineer familiar with water problems as a hearing officer to conduct said hearing.

All evidence relevant to the engineering survey and report and the board's determination that such a replenishment assessment shall be levied may be introduced.

- (d) Upon completing said hearing, but no later than the second Tuesday in May, the board shall, by resolution, find:
- (1) The annual overdraft for the preceding water year;
  - (2) The estimated annual overdraft for the current water year;
  - (3) The estimated annual overdraft for the ensuing water year;
  - (4) The accumulated overdraft as of the last day of the preceding water year;
  - (5) The estimated accumulated overdraft as of the last day of the current water year;
  - (6) The total production of ground water from the ground water supplies within the district or any zone thereof during the preceding water year;
  - (7) The estimated total production of ground water from the ground water supplies within the district or any zone thereof for the current water year;
  - (8) The estimated total production of ground water from the ground water supplies within the district or any zone thereof for the ensuing water year;
  - (9) The changes during the preceding water year in the pressure levels or piezometric heights of the ground water contained within pressure-level areas of the district or any zone thereof, and the effects thereof upon the ground water supplies within such district or any zone thereof;
  - (10) The estimated changes during the current water year in the pressure levels or piezometric heights of the ground water contained within pressure-level areas of the district or any zone thereof and the estimated effects thereof upon the ground water supplies within such district or any zone thereof;
  - (11) The quantity of water which should be purchased for the replenishment of the ground water supplies of the district or any zone thereof during the ensuing water year;
  - (12) The source and estimated cost of water available for such replenishment;
  - (13) The estimated costs of replenishing such ground water supplies with such water so purchased;
  - (14) The estimated rate of the replenishment assessment required to be levied upon the production of ground water from the ground water supplies within the district or any zone thereof during the ensuing fiscal year for the purpose of accomplishing such replenishment.
- (e) Based on the findings at the hearing the board shall, by resolution, determine what portion, if any, of the estimated cost of purchasing water for replenishment for the ensuing fiscal year shall be paid for by a replenishment assessment.

If the board determines that a replenishment assessment should be levied upon the production of ground water from ground water supplies within the district or any zone thereof during the ensuing fiscal year, then immediately following the making of such determination the board shall levy a replenishment assessment on the production of ground water from the ground water supplies within the district or any zone thereof during the fiscal year commencing on July 1st next, and such replenishment assessment shall be fixed by said board at a uniform rate per acre-foot of ground water so produced. The producers of such ground water shall pay such replenishment assessment to the district or any zone thereof at the times and in the manner hereinafter in this section provided.

- (f) The district or any zone thereof, after the levying of the replenishment assessment, shall give notice thereof to the operators of all water-producing facilities in the district or any zone thereof as disclosed by the records of such district or any zone thereof, which notice shall state the rate of replenishment assessment for each acre-foot of ground water to be produced during the ensuing fiscal year. The notice may be sent by postal card or by other first-class mail with postage prepaid by the district or any zone thereof.
- (g) Within ninety (90) days after the adoption of the resolution of the board provided in subdivision (b), the operator of each water-producing facility within such district or any zone thereof shall file with it an information ground water production statement. Such statements shall contain, in addition to such other information as the district or any zone thereof may require, an estimate of the total production of ground water from such water-producing facility for the preceding water year, an estimate of the production of ground water from such water-producing facility for the current water year, an estimate of the production of ground water from such water-producing facility for the ensuing water year, and information as to the method or basis of making such estimates.

Thereafter, the operator of each water-producing facility within the district or any zone thereof, on or before the last day of the month immediately following the respective quarterly periods ending March 31st, June 30th, September 30th, and December 31st of each year, shall file with the district or any zone thereof a sworn statement setting forth the total production in acre-feet of ground water from such water-producing facility during the respective quarterly periods immediately preceding the filing of the respective statements, a general description or number locating such water-producing facility, and the method or basis of the computation of such ground water production. Each statement also shall contain such other information as the district or any zone thereof may require. The first such statement required to be filed pursuant to the provisions of this section shall cover the first calendar quarter commencing not less than thirty (30) days after the adoption of the resolution of the board provided in subdivision (b).

- (h) Any replenishment assessment levied pursuant to this section shall be due and payable to the district or any zone thereof by each producer in quarterly installments on the last day for filing the statement of the production of ground water from the water-producing facility operated by such producer during the quarterly period required to be covered by such statement. The amount so due and payable shall be computed by multiplying the production in acre-feet of ground water so produced from such water-producing facility, as reported in such statement, by the rate of the replenishment assessment fixed and levied by the board of the district or any zone thereof for the fiscal year in which such production shall occur.
- (i) If any producer shall fail to pay a replenishment assessment when due, the board of the district or any zone thereof may charge interest at a rate not to exceed 1 percent per month on the delinquent amount of the assessment. Should any operator of a water-producing facility fail to register his water-producing facility or fail to file the ground water production statement, the district or any zone thereof, in addition to charging interest as provided above, may assess a penalty charge against such operator in an amount not to exceed 10 percent of the amount of the replenishment assessment found by the district or any zone thereof to be due with respect to the production of ground water from such water-producing facility.
- (j) The board, at the time of fixing the replenishment assessment rate, may provide by resolution that any producer operating a water-producing facility having a discharge opening not greater than two inches in diameter and providing ground water for domestic or irrigation uses on an area not exceeding one acre in extent, shall pay the

amount fixed in such resolution as the replenishment assessment to be paid by such producer. No sworn statement as to the production of ground water from such water-producing facility need be filed.

Upon good cause shown, an amended statement of ground water production may be filed or a correction of the records may be made at any time prior to the final date for filing the next quarterly ground water production statement.

- (k) The Superior Court of the County of Alameda may issue a temporary restraining order upon the filing by the district or any zone thereof with the court of a verified petition or complaint setting forth that the person named therein as defendant is the operator of a water-producing facility which has not been registered with the district or any zone thereof, or that such defendant is delinquent in the payment of a replenishment assessment. Such temporary restraining order shall be returnable to the court on or before ten (10) days after its issuance.

The court may issue and grant an injunction restraining and prohibiting the named defendant from the operation of any water-producing facility when it is established by the preponderance of the evidence at a hearing that the defendant has failed to register such water-producing facility with the district or any zone thereof or that the defendant is delinquent in the payment of a replenishment assessment. Such court may provide that the injunction so made and issued shall be stayed for a period not to exceed ten (10) days to permit the defendant to register the water-producing facility or to pay the delinquent replenishment assessment.

Service of process shall be made by posting a copy of the summons and complaint upon the water-producing facility or the parcel of land upon which such water-producing facility is located and by personal service of such summons and complaint upon the named defendant.

The right to proceed for injunctive relief as provided herein shall be in addition to any other right which may be provided elsewhere in this act or which may be otherwise allowed by law. The procedure provided in Chapter 3 (commencing with Section 525), Title 7, Part 2 of the Code of Civil Procedure regarding injunctions shall be followed except insofar as it may be otherwise provided herein. The district or any zone thereof shall not be required to furnish an undertaking or bond as a condition to the granting of injunctive relief.

- (l) If the board of the district or any zone thereof shall have probable cause to believe that the production of ground water from any water-producing facility is in excess of that disclosed by the sworn statements covering such water-producing facility, or if no statements are filed covering a water-producing facility, the board of the district or any zone thereof may cause an investigation and report to be made concerning the production of ground water from such water-producing facility. The board of the district or any zone thereof may fix the amount of ground water production from any such water-producing facility at an amount not to exceed the maximum production capacity of such water-producing facility; provided, however, where a water-measuring device is permanently attached thereto, the record of production as disclosed by such water-measuring device shall be presumed to be accurate and the burden is upon the district or any zone thereof to establish to the contrary. After such determination has been made by the board of the district, or any zone thereof, a written notice thereof shall be mailed to the operator of such water-producing facility at his address as shown by the district's records or the records of any zone thereof. Any such determination made by the district or any zone thereof shall be conclusive on the operator, and on any producer producing water from such water-producing facility, and the replenishment assessment based thereon, together with interest and penalties, shall be payable forthwith, unless such operator or producer shall file with the board of directors of the district or any zone thereof within ten

(10) days after the mailing of such notice a written protest setting forth the ground or grounds for protesting the amount of production so fixed or the replenishment assessment, interest, and penalties so levied thereon. Upon the filing of such protest, said board shall hold a hearing at which time the total amount of the ground water production and the replenishment assessment thereon shall be determined, and the interest and penalties fixed, which action shall be conclusive if based upon substantial evidence. A notice of such hearing shall be mailed to protestant at least 10 days before the date fixed for the hearing. Notice of the determination by the board shall be mailed to each protestant. The producer shall have 20 days from the date of mailing of such notice to pay the replenishment assessment, interest and penalties so fixed by the board.

- (m) The district or any zone thereof may bring a suit in the court having jurisdiction against any producer of ground water from the ground water supplies within the district or any zone thereof for the collection of any delinquent replenishment assessment. The court having jurisdiction of the suit may, in addition to allowing recovery of costs to the district or any zone thereof as allowed by law, fix and allow as part of the judgment, interest and penalties as provided in subdivision (i). Should the district or any zone thereof seek an attachment against the property of any named defendant therein, the district or any zone thereof shall not be required to furnish bond or other undertaking as provided in Chapter 4 (commencing with Section 537), Title 7, Part 2 of the Code of Civil Procedure.
- (n) It shall be unlawful to produce ground water from any water-producing facility within the district or any zone thereof from and after one year following the adoption of the resolution provided for in subdivision (b) hereof, unless such water-producing facility shall have a water-measuring device affixed thereto capable of registering the accumulated amount of ground water produced therefrom.

The board by resolution may extend such date on a year-to-year basis upon its determination that availability, price of water-measuring devices, or other circumstances justify such extension. Should the date be extended, notice thereof shall be given by publication in a newspaper of general circulation in the district or any zone thereof once a week for two successive weeks, such publication to be completed not less than two months prior to the date so extended.

This section shall not be applicable to any operator of a water-producing facility having a discharge opening two inches or less in diameter and providing ground water for domestic or irrigation uses on an area not exceeding one acre in extent, who is required to pay a replenishment assessment in an amount fixed by resolution of the board of the district or any zone thereof as hereinabove in this section provided.

Violation of this section shall be punishable by a fine not to exceed five hundred dollars (\$500), or by imprisonment in the county jail for not to exceed six (6) months, or by both such fine and imprisonment. Each day of operation of a water-producing facility in violation hereof shall constitute a separate offense.

- (o) In the event of an adjudication of all or substantially all of the rights to extract ground water and a determination of the natural safe yield of the ground water supplies within the district, or any zone thereof, and a determination of the amount or extent to which the rights to extract ground water so adjudicated may be exercised without exceeding the natural safe yield of such ground water supplies, the board of the district or any zone thereof shall recognize such judicial determination by exempting from replenishment assessments the amount of water pumped by each person whose rights have been so adjudicated which does not exceed his proportionate share of the natural safe yield of the ground water supplies of the district or any zone thereof, as so adjudicated from time to time by the court having jurisdiction over such adjudication proceeding. The

replenishment assessment shall thenceforth be levied on each producer by multiplying the production in acre-feet of ground water so produced by such producer's water-producing facility in excess of his said adjudicated share of the natural safe yield by the rate of the replenishment assessment fixed and levied by the board for the fiscal year in which such production shall occur.

To the extent that ground water supplies are replenished under this section no person shall acquire any property or other right in the waters distributed by the district or any zone thereof for replenishment purposes.

To the extent that the replenishment assessment after adjudication hereunder shifts from all producers to those who extract water in excess of their respective shares of the natural safe yield of the ground water supplies within the district or any zone thereof as so adjudicated, such replenishment assessment shall be deemed to benefit those persons who continue to pump and extract ground water in excess of their adjudicated shares of the natural safe yield. Inasmuch as such persons must buy supplemental water or be in contempt of the court's order limiting their extraction of ground water, they shall be deemed to benefit by the payment of a replenishment assessment which is used to purchase water to supplement the natural supplies of ground water available for use.

"Zone" as used herein shall mean the entire zone or any portion thereof. [Added by Stats 1965 ch 1929 § 1 p 4453.]

# WATER-UNCODIFIED ACTS

## ACT 205

### Alameda County Flood Control and Water Conservation District Act

[Amended Stats 1970 ch 230, effective June 22, 1970, ch 1038, effective September 14, 1970; Stats 1972; Stats 1972 ch 121, effective June 1, 1972; Stats 1975 ch 584, ch 585, operative July 1, 1976; Stats 1980 ch 662; Stats 1982 ch 311; Stats 1983 ch 815; Stats 1984 ch 1128; Stats 2003 ch 284.]

#### 5. Corporate and political status; Powers

The district is hereby declared to be a body corporate and politic and as such shall have, in addition to the other powers vested in it by this act, the following powers:

1. To have perpetual succession.
2. To sue and be sued in the name of said district.
3. To adopt a seal.
4. To acquire by grant, purchase, lease, gift, devise, contract, construction, or otherwise, and to hold, use, enjoy, sell, let, and dispose of real and personal property of every kind, including lands, structures, buildings, rights-of-way, easements, and privileges, and to construct, maintain, alter and operate any and all works or improvements, within or without the district, necessary or proper to carry out any of the objects or purposes of this act and convenient to the full exercise of its powers, and to complete, extend, add to, alter, remove, repair or otherwise improve any works, or improvements, or property acquired by it as authorized by this act.
5. To store water in surface or underground reservoirs within or outside of the district for the common benefit of the district or of any zone or zones affected; to conserve and reclaim water for present and future use within the district; to appropriate and acquire water and water rights, and import water into the district and to conserve within or outside of the district, water for any purpose useful to the district; to commence, maintain, intervene in, defend or compromise, in the name of the district, or otherwise, and to assume the costs and expenses of, any action or proceeding involving or affecting the ownership or use of waters or water rights within or without the district, used or useful for any purpose of the district or of common benefit to any land situated therein, or involving the wasteful use of water therein; to commence, maintain, intervene in, defend and compromise and to assume the cost and expenses of any and all actions and proceedings now or hereafter begun; to prevent interference with or diminution of, or to declare rights in the natural flow of any stream or surface or subterranean supply of waters used or useful for any purpose of the district or of common benefit to the lands within the district or to its inhabitants; to prevent unlawful exportation of water from said district; to prevent contamination, pollution or otherwise rendering unfit for beneficial use the surface or subsurface water used or useful in said district, and to commence, maintain and defend actions and proceedings to prevent any such interference with the aforesaid waters as may endanger or damage the inhabitants, lands, or use of water in, or flowing into, the district; provided, however, that said district shall not have power to intervene or take part in, or to pay the costs or expenses of, actions or controversies between the owners of lands or water rights which do not affect the interest of the district.
6. To control the flood and storm waters of said district and the flood and storm waters of streams that have their sources outside of said district, but which streams and the floodwaters thereof, flow into said district, and to conserve such waters for beneficial and useful purposes of said district by spreading, storing, retaining and causing to percolate into the soil within or without said district, or to save or conserve in any manner all or any of such waters and protect from damage from such flood or storm waters the watercourses, watersheds, harbors, public highways, life

and property in said district, and the watercourses outside of the district of streams flowing into the district, and to prevent waste of water or diminution of the water supply in, or exportation of water from said district, and to obtain, retain and reclaim drainage, storm, flood and other waters for beneficial use in said district; provided, that nothing in this act contained shall authorize the carrying out of any plan of improvement, the purpose of which is, or the effect of which will be, to take water which flows in any watershed in said district and transport or sell same for use anywhere outside of the district when the water level of any gravel beds within the district is below the normal level and such water could reasonably be used to replenish the water level of said gravel beds; provided further, that none of the provisions of this act shall preclude the exercise by any other political subdivision that may now or hereafter exist, wholly or in part, within the district from exercising its powers, although such powers may be of the same nature as the powers of said district. Any such other political subdivision may, by written agreement with the district, provide for the use, or joint use, of property or facilities in which any such other political subdivision has an interest, or for the use, or joint use, of property or facilities in which said district has an interest.

7. To cooperate, and to act in conjunction with or contribute funds to, the United States or the State of California or any of their engineers, officers, boards, commissions, departments or agencies, or with any public or private corporation, or with the County of Alameda, in the construction of any work for the controlling of flood or storm waters of or flowing into said district, or for the protection of life or property therein, or for the purpose of conserving said waters for beneficial use within said district, or in any other works, acts, or purposes provided for herein, and to adopt and carry out any definite plan or system of work for any such purpose.
8. To carry on technical and other investigations of all kinds, make measurements, collect data and make analyses, studies, and inspections pertaining to water supply, water rights, control of floods and use of water, both within and without said district, and for such purposes said district shall have the right of access through its authorized representatives to all properties within said district. The district, through its authorized representatives may enter upon such lands and make examinations, surveys, and maps thereof.
9. To enter upon any land, to make surveys and locate the necessary works of improvement and the lines for channels, conduits, canals, pipelines, roadways and other rights-of-way; to acquire by purchase, lease, contract, gift, devise, or other legal means all lands and water and water rights and other property necessary or convenient for the construction, use, supply, maintenance, repair and improvement of said works, including works constructed and being constructed by private owners, lands for reservoirs for storage of necessary water, and all necessary appurtenances, and also where necessary or convenient to said end, and for said purposes and uses, to acquire and to hold, the capital stock of any mutual water company or corporation, domestic or foreign, owning water or water rights, canals, waterworks, franchises, concessions, or rights, when the ownership of such stock is necessary to secure a water supply required by the district or any part thereof, upon the condition that when holding such stock, the district shall be entitled to all the rights, powers and privileges, and shall be subject to all the obligations and liabilities conferred or imposed by law upon other holders of such stock in the same company; to enter into and do any acts necessary or proper for the performance of any agreement with or necessary to comply with an act of authorization of the United States, or any state, county, district of any kind, or necessary and proper for the performance of any agreement with any public or private corporation, association, firm or individual, or any number of them, for the joint acquisition, construction, leasing, ownership, disposition, use, management, maintenance, repair or operation of any rights, works or other property of a kind which might be lawfully acquired or owned by said Alameda County Flood Control and Water Conservation District; to acquire the right to store water in any reservoirs, or to carry water through any canal, ditch

or conduit not owned or controlled by the district; to grant to any owner or lessee the right to the use of any water or right to store such water in any reservoir of the district, or to carry such water through any tunnels, canal, ditch, or conduit of the district; to enter into and do any acts necessary or proper for the performance of any agreement with any district of any kind, public or private corporation, association, firm or individual, or any number of them for the transfer or delivery to any such district, corporation, association, firm or individual of any water right or water pumped, stored, appropriated or otherwise acquired or secured, for the use of the Alameda County Flood Control and Water Conservation District, or for the purpose of exchanging the same for other water, water right or water supply in exchange for water, water right or water supply to be delivered to said district by the other party to said agreement.

10. To incur indebtedness and to issue bonds in the manner herein provided.
11. To cause taxes or assessments to be levied and collected for the purpose of paying any obligation of the district, and to carry out any of the purposes of this act, in the manner hereinafter provided.
12. To make contracts, and to employ labor, and to do all acts necessary for the full exercise of all powers vested in said district or any of the officers thereof by this act.
13. To exercise the right of eminent domain, either within or without said district, to take any property necessary to carry out any of the objects or purposes of this act. The district in exercising such power shall, in addition to the damage for the taking, injury, or destruction of property, also pay the cost of removal, reconstruction, or relocation of any structure, railways, mains, pipes, conduits, wires, cable, poles, of any public utility which is required to be moved to a new location.

No right shall exist in said district to take any proceedings in eminent domain any property, including water rights, appropriated to public use by any existing city and county or municipal utility district. Nothing in this act contained shall be deemed to authorize said district, or any person or persons to divert the waters of any river, creek, stream, irrigation system, canal or ditch, or the waters thereof or therein unless compensation therefor be first provided in the manner prescribed by law.

Nothing in this act contained shall be construed as in any way affecting the plenary power of any existing city and county or municipal utility district to provide for a water supply for such city and county or municipal utility district, or as affecting the absolute control of any properties of such city and county or municipal utility district necessary for such water supply and nothing herein contained shall be construed as vesting any power of control over such properties in such Alameda County Flood Control and Water Conservation District or in any officer thereof, or in any person referred to in this act.

No action in eminent domain to acquire water rights outside the boundaries of the County of Alameda shall be commenced unless the board of supervisors of each affected county has consented to such acquisition by resolution.

14. To plan, improve, operate, maintain, and keep in a sanitary condition, a system of public parks, playgrounds, beaches, swimming areas and other facilities for public recreation, for the use and enjoyment of all inhabitants of the district, as an incident to the carrying out of the projects of the district and on land acquired or used for the flood control, drainage and water conservation purposes of this act; to construct, maintain, and operate any other amusement or recreational facilities on such lands, including picnic benches and tables, bath-houses, golf courses, tennis courts, or other special amusements and forms of recreation; to fix and collect reasonable fees for the use by the public of any such special facilities, services or equipment; and to adopt such rules and regulations as in the discretion of the board are necessary to the orderly operation and control of the use by the public of such lands and facilities for recreational

purposes; provided, however, that the board shall not, for the purposes specified in this subdivision, interfere with control or operation of any existing public park, playground, beach, swimming area, parkway, recreational ground, or other public property, owned or controlled by any other district or municipality, except with the consent of the governing body of such district or municipality, and upon terms as may be mutually agreed upon between the board and the governing body.

15. The powers hereinabove granted shall include the design, construction, or maintenance of any levees, seawalls, groins, breakwaters, jetties, outlets, channels, harbors, basins, or other work pertaining thereto, in such manner as to render them adaptable and useful to shoreline, beach, harbor, navigation, park or marina development or use, and to do such work in cooperation with any other public or quasi-public agency or corporation concerned with such development or use.
16. To establish and maintain building setback lines along the banks of any river, creek, stream or other waterway, in any case where the board determines that such setback line is necessary for any of the following reasons:
  - (a) To prevent impediment of the natural flow of water;
  - (b) To protect life and property;
  - (c) To prevent damage from flooding, bank caving, or erosion;
  - (d) To prevent the pollution of waters.

Amended Stats 1975 ch 584 1, operative July 1, 1976.

### **12.1. Collection of fees for facilities furnished or for land development services provided; Disposition of proceeds**

The board also may prescribe, revise, and collect fees or charges for facilities furnished or to be furnished to any area, new building, improvement or structure that will benefit from any flood control, storm drainage, water conservation or supply or sewerage system constructed or to be constructed in a zone of the district. Revenues derived under this section shall be used for the acquisition, construction, engineering, reconstruction, maintenance, and operation of the flood control, storm drainage, water, or sewerage facilities of the said zone, or to reduce the principal or interest of any bonded indebtedness thereof.

The board may also provide that any fees or charges collected pursuant to Section 12.2 of this act may be credited to or deducted from any fees or charges imposed under this section.

The board may also prescribe, revise, and collect fees or charges for land development services provided by the district, not to exceed the reasonable cost of the services provided to the recipient thereof. "Land development services" means tract plan checking for (1) connections to flood control facilities, (2) hydraulic capacity, (3) erosion control, and (4) other matters related to flood control and watershed protection. The district shall not levy such a fee or charge for services rendered for the benefit of a federal or state agency or for the benefit of a city, a county, a city and county, a district, a public authority, or other political subdivision of the state.

Amended Stats 1980 ch 662 § 1.

### **13. Bonds; Resolution; Election; Posting map; Publication of election ordinance; Defects and irregularities; Favorable vote required**

- (1) Whenever the board determines that a bonded indebtedness should be incurred to pay the cost of any work or improvement in any zone or zones, the board may by resolution determine and declare the respective amounts of bonds necessary to be issued in each zone in order to raise the amount of money necessary for each work or

improvement and the denomination and the maximum rate of interest of said bonds. The board shall cause a copy of the resolution, duly certified by the clerk, to be filed for record in the Office of the Recorder of Alameda County within five (5) days after its issuance. From and after said filing of said copy of said resolution the board shall be deemed vested with the authority to proceed with the bond election.

- (2) After the filing for record of the resolution specified in subdivision (1) of this section, the board may call a special bond election in said zone or participating zones at which shall be submitted to the qualified electors of said zone or participating zones the question whether or not bonds shall be issued in the amount or amounts determined in said resolution and for the purpose or purposes therein stated. Said bonds and the interest thereon shall be paid from revenue derived from annual taxes or assessments levied as provided in this act.
- (3) Said board shall call such special bond election by ordinance and not otherwise and submit to the qualified electors of said zone or participating zones the proposition of incurring a bonded debt in said zone or participating zones in the amount and for the purposes stated in said resolution and shall recite therein the objects and purposes for which the indebtedness is proposed to be incurred; provided, that it shall be sufficient to give a brief, general description of such objects and purposes, and refer to the recorded copy of such resolution adopted by said board, and on file for particulars; and said ordinance shall also state the estimated cost of the proposed work and improvements, the amount of the principal of the indebtedness to be incurred therefor, and the maximum rate of interest to be paid on said indebtedness, and shall fix the date on which such special election shall be held, and the form and contents of the ballot to be used.

The rate of interest to be paid on such indebtedness shall not exceed seven percent (7%) per annum. For the purposes of said election, said board shall in said ordinance establish special bond election precincts within the boundaries of each zone and participating zone and may form election precincts by consolidating the precincts established for general elections in said district to a number not exceeding six general precincts for each such special bond election precinct, and shall designate a polling place and appoint one inspector, one judge and one clerk for each of such special bond election precincts.

In all particulars not recited in said ordinance, such special bond election shall be held as nearly as practicable in conformity with the general laws of the state.

Said board shall cause a map or maps to be prepared covering a general description of the work to be done, which said map shall show the location of the proposed works and improvements and shall cause the said map to be posted in a prominent place in the county courthouse for public inspection for at least thirty (30) days before the date fixed for such election.

Said ordinance calling for such special bond election shall, prior to the date set for such election, be published pursuant to Section 6062 of the Government Code in a newspaper of general circulation circulated in each zone and participating zone affected. The last publication of such ordinance must be at least fourteen (14) days before said election, and if there be no such newspaper, then such ordinance shall be posted in five public places designated by the board, in each zone and participating zone for at least thirty (30) days before the date fixed for such election. No other notice of such election need be given nor need polling place cards be issued.

Any defect or irregularity in the proceedings prior to the calling of such special bond election shall not affect the validity of the bonds authorized by said election. Where a project affects a single zone only, if at such election a majority of the votes cast in said zone on the proposition of incurring a bonded indebtedness are in favor thereof, then bonds for such

zone for the amount stated in such proceedings shall be issued and sold as in this act provided. Where the incurring of bonded indebtedness by participating zones is to be determined at such election, no bonds for any of such participating zones shall be issued or sold unless a majority of the votes cast on the proposition in each such participating zone are in favor of incurring the bonded indebtedness to be undertaken by such zone.

Amended Stats 1970 ch 230 § 1, effective June 22, 1970, ch 1038 § 5, effective September 14, 1970.

*Note*—Stats 1970 ch 1038, effective September 14, 1970 provides:

SEC. 7. In the event that the case of *Westbrook v Mihaly* S.F. No. 22706 is reversed by the United States Supreme Court, the provisions of this act, except for Section 8 [Repealed Stats 1972 ch 122 § 1], shall have no further force or effect. The provisions of this section shall not operate to invalidate any bonds duly authorized subsequent to the effective date of this act and prior to a reversal of the case of *Westbrook v Mihaly* by the United States Supreme Court. [*Westbrook v Mihaly*, see 29 L Ed 2d 692; 4 Pacific LJ 612]

*Editor's Notes*—The U.S. Supreme Court denied certiorari in *Westbrook v Mihaly* (1971) 403 US 922, 29 L Ed 2d 700, 91 S Ct 2225.

#### **14. Form of bonds**

The board shall, subject to the provisions of this act, prescribe by resolution the form of said bonds, which must include a designation of the zone or participating zone affected, and of the interest coupons attached thereto. Said bonds shall be payable annually or semiannually at the discretion of the board each and every year on a day and date, and at a place to be fixed by said board, and designated in such bonds, together with the interest on all sums unpaid on such date until the whole or said indebtedness shall have been paid.

The board may divide the principal amount of any issue into two or more series and fix different dates for the bonds of each series. The bonds of one series may be made payable at different times from those of any other series. The maturity of each series shall comply with this section. The board may fix a date, not more than two years from the date of issuance, for the earliest maturity of each issue or series of bonds. Beginning with the date of the earliest maturity of each issue or series, not less than one-fortieth of the indebtedness of such issue or series shall be paid every year. The final maturity date shall not exceed 40 years from the time of incurring the indebtedness evidenced by each issue or series.

The bonds shall be issued in such denomination as the board may determine, except that no bonds shall be of a less denomination than one hundred dollars (\$100), nor of a greater denomination than one thousand dollars (\$1,000), and shall be payable on the days and at the place fixed in said bonds, and with interest at the rate specified in such bonds, which rate shall not be in excess of seven per centum (7%) per annum, and shall be made payable annually or semiannually, and said bonds shall be numbered consecutively and shall be signed by the chairman of the board, and countersigned by the auditor of said district, and the seal of said district shall be affixed thereto by the clerk of the board. Either or both such signatures may be printed, engraved or lithographed. The interest coupons of said bonds shall be numbered consecutively and signed by the said auditor by his printed, engraved or lithographed signature. In case any such officers whose signatures or countersignatures appear on the bonds or coupons shall cease to be such officers before the delivery of such bonds to the purchaser, such bonds and coupons, and signatures or countersignatures shall nevertheless be valid and sufficient for all purposes the same as if such officers had remained in office until the delivery of the bonds.

Amended Stats 1970 ch 230 § 2, effective June 22, 1970.

#### **22. [Section repealed 1984.]**

Amended Stats 1982 ch 311 § 1. Repealed Stats 1984 ch 1128 § 105. See Pub Con C §§ 21151, 21152.

##### **24.1. Issuance of revenue bonds; Election in zone(s); Prior approval by zone board**

In addition to proceedings authorized under Sections 13, 14, 15, 16, 17, 18 and 24 of this act, whenever the board determines that it is in the public interest, it may borrow money to provide funds to pay the cost of any work or improvement in the

district or in any zone or zones thereof by the issuance of revenue bonds pursuant to the Revenue Bond Law of 1941 (Chapter 6 (commencing with Section 54300) of Part 1, Division 2, Title 5 of the Government Code). If the work or improvement is determined by the board to be for a zone or zones comprising less than all of the district, the election at which the proposition to issue such revenue bonds is submitted shall be held only in such zone or zones. In the case of any conflict between the provisions of this act and the provisions of the Revenue Bond Law of 1941, the provisions of the Revenue Bond Law of 1941 shall control.

No proceeding shall be commenced or taken by the board under this section for the issuance of revenue bonds to pay the cost of any work or improvement in any zone in which a board of directors has been elected, until the board has first received the approval or concurrence of such zone board to the issuance of such revenue bonds. Revenue bonds shall not be considered in determining the limitation contained in the last paragraph of subparagraph 8 of Section 36 of this act nor in the application of Section 20 of this act.

Added Stats 1972 ch 121 § 1, effective June 1, 1972.

**28. [Section repealed 1975.]**

Repealed Stats 1975 ch 585 § 1, operative July 1, 1976. The repealed section related to relocation of streets.

**28.1 [Section repealed 1975.]**

Repealed Stats 1975 ch 584 § 2, operative July 1, 1976. The repealed section related to condemnation of land.

**36. Provisions applicable to establishment, government, operation and financing of zone in Pleasanton or Murray Townships**

Notwithstanding any other provisions of this act, the following shall apply with respect to the establishment, government, operation, and financing of any zone lying, in whole or in part, in Pleasanton or Murray Townships:

- (1) The board of supervisors shall have no authority to proceed with the establishment of any zone lying, in whole or in part, in Pleasanton or Murray Townships without first obtaining the approval thereof by a vote of a majority of the qualified electors voting at a regular or special election on the proposition \*\*\*. The election shall \*\*\* be held, as nearly as practicable, in \*\*\* accordance with the general election laws of the state, and the cost thereof shall be reimbursed to the district if a zone is established.
- (2) Any zone established by the board of supervisors under the provisions of this act lying, in whole or in part, in Pleasanton or Murray Townships, shall be governed and controlled by a board of seven directors elected by the qualified electors residing within the boundaries of the zone.

The term of directors shall be four years \*\*\*. Elections for directors shall be consolidated with the direct primary election in each even-numbered year. Terms of office shall commence July 1st of the year in which elected.

Vacancies in the membership of a board shall be filled for the unexpired term by appointment by a majority of the remaining members of the board.

The directors shall be elected at large and, except as provided herein, the election of the directors shall be conducted in substantially the same manner as provided by the Uniform District Election Law (Part \*\*\* 4 (commencing with Section \*\*\* 10500) of Division \*\*\* 10 of the Elections Code), except that the time for the nomination of candidates and issuance of notices in connection therewith shall be at the times provided by general law for the nomination of candidates at the direct primary election.

The directors shall be residents of the proposed zone and qualified electors and owners of real property therein.

The board of directors may authorize each director to receive compensation not exceeding fifty dollars (\$50) for each meeting for the board attended by \*\*\* the director, not exceeding four meetings in any calendar month, and his or her actual and necessary expenses incurred in performance of official duties under this act, payable from the funds of the zone.

- (3) The board of directors of any zone in which directors have been elected as provided in this act shall have the power to make and enforce all needful rules and regulations for the administration and government of the zone \*\*\*. The zone board may \*\*\* appoint a \*\*\* chairperson, a secretary, and other officers, agents and employees for the zone board, or zone that, in its judgment, may be deemed necessary, prescribed their duties, and fix their compensation. The officers, agents, and employees shall be appointed under and pursuant to the civil service rules and regulations of the County of Alameda. However, the \*\*\* chairperson and secretary of the board, and experts, consultants, or technical or other advisers for particular purposes and laborers, employed for a temporary period, may be appointed by the zone board without reference to any classified civil service list.
- (4) *Notwithstanding any other provision of this act, the zone board elected pursuant to this section shall govern and control, in accordance with this act and without further action by the district board, all matters that relate only to the zone established pursuant to this section. All matters that relate both to a zone established pursuant to this section and to another portion of the district shall be approved by both the zone board and the district board.*

- \*\*\* (5) In any zone in which a board of directors has been elected, the tax or assessment for any purpose or purposes, other than administrative costs and expenses of the district, shall be based upon a budget or budgets prepared by, or under the direction of, the zone board of directors.

The taxes and assessments (other than the tax to pay the general administrative costs and expenses of the district and other than any taxes, assessments, or fees levied for improvement districts or pursuant to Sections 12.1, 12.2, and 16 of this act to pay bonds and interest thereon) levied by the board pursuant to Section 12 of this act upon any property in any zone lying, in whole or in part, in Pleasanton or Murray Townships shall not exceed in the aggregate the sum of fifteen cents (\$0.15) on each one hundred dollars (\$100) of assessed valuation unless a larger tax has been approved by a vote of not less than a majority of the qualified electors voting upon the proposition to increase the tax.

Notwithstanding any other provisions of this section, taxes and assessments may be levied by the board after approval by the zone board, pursuant to Sections 12 or 12.1 of this act, upon any property in the zone for the purpose of making payments to the State of California for the construction, maintenance, repair, and operation and all other costs of the zone's prorated share of state water facilities.

- \*\*\* (6) The amount of bonded indebtedness outstanding at any time shall not exceed 5 percent of the assessed valuation of all taxable property in any zone lying, in whole or in part, in Pleasanton or Murray Townships.

Amended Stats 1970 ch 1038 § 6, effective September 14, 1970; Stats 1983 ch 815 § 1; Stats 2003 ch 284 § 1 (AB 1125).

*Editor's Notes*—See Note to § 13 for applicable case law