

CHAPTER 61-09 ASSESSMENTS IN IRRIGATION DISTRICTS

61-09-01. District assessor to examine tracts of land to fix annual assessments levied thereon. Between the first Monday in March and the first Monday in June of each year, the district assessor shall examine each tract of land or legal subdivision of land in the district, including entered and unentered public lands of the United States, subject thereto under any act of Congress, and all other lands publicly or privately owned. In determining benefits, the district assessor shall first ascertain the number of irrigable acres [hectares] within each tract or subdivision, as determined by the board of directors, and this shall form the primary basis for determining the benefits accruing on account of the construction, acquisition, or operation of irrigation works. In addition, the district assessor shall include such factors as methods of irrigation, power consumption, water conservation, and whether or not irrigable acres [hectares] are actually being irrigated. Thereafter, the amount of benefits so apportioned or distributed to each tract of land as finally determined and equalized shall be and remain the basis for fixing the annual assessments levied during that year against such tracts or subdivisions in carrying out the provisions of this chapter.

61-09-02. District assessor to make list or prepare map to show apportionment of assessments - Filing. The assessor shall make, or cause to be made, a list showing the apportionment or distribution of assessments, and containing a description of each unit or tract of land assessed in the district, and the name of the record owner thereof, or the assessor may prepare a map on a convenient scale showing each unit or tract of land with the amount per acre [.40 hectare] apportioned thereto. Such units of land shall, wherever practicable, consist of governmental subdivisions of forty acres [16.19 hectares] or more. If all lands on such statement or map are assessed at the same amount or rate per acre [.40 hectare], a general statement to that effect shall be sufficient. A copy of such list or map shall be filed in the office of the county auditor of each county in which the district is situated, one copy shall be filed in the office of the state engineer, and one copy shall remain in the office of the board for public inspection.

61-09-03. Assessments spread in proportion to benefits received - Property subject to assessment for deficiency. Whenever any assessment is made within an irrigation district it shall be apportioned to and spread upon each unit or tract of land in the district in proportion to the benefits received, as determined by the assessor in accordance with section 61-09-01. Bonds, district improvement warrants, and other obligations incurred by the district shall be the obligations of the district. Only lands within the district benefited by irrigation and subject to assessment for irrigation benefits shall be subject to assessment for any fund created for the payment of bonds, district improvement warrants, and other district obligations. All assessments approved and levied by an irrigation district for any fund or purpose under the authority of this title shall be in the form of special assessments and shall be levied against both privately and publicly owned lands.

61-09-04. Assessment of property not in name of owner not to invalidate assessment. The assessment of any property in the name of a person not the owner thereof in no way shall invalidate the assessment of any unit or tract of land.

61-09-05. Assessor to determine amounts payable to United States' agencies and other persons or districts. The district assessor in assessing the property of the district shall determine and list the amount payable for each tract obligated by contract, if any, to the United States, any department or agency of the United States, to the state water commission, to any person, firm, corporation, or limited liability company, or to another irrigation district for the payment of water charges.

61-09-06. When assessment roll completed - When board to equalize assessments. On or before the fifteenth day of June in each year, the assessor shall complete the assessment roll and deliver it to the secretary of the district. The board of directors thereupon at its regular meeting in July shall proceed to equalize such assessments. At least ten days before the board meets, the secretary shall give notice of such meeting by publishing notice

thereof in the manner required for a regular election of the district. Until such meeting is held, the assessment roll shall remain in the office of the secretary for the inspection of all persons interested.

61-09-07. Meeting of board for equalization - Duties - Secretary to be present to note changes. The board shall meet as a board of equalization on the day specified in section 61-09-06 for the purpose of equalizing the assessments and shall continue in session from day to day as long as may be necessary but not to exceed ten days exclusive of Sundays. The board shall hear and determine such objections to the apportionment of benefits and assessments as may come before it and may make such changes in such apportionments as shall appear to be just and equitable. The secretary of the board shall be present during the sessions of the board and shall note changes made in the apportionment of benefits and assessments returned by the assessor and in the names of persons assessed. Within ten days after the close of the session the secretary of the board shall have the apportionment of benefits and assessments, as finally equalized by the board, extended into columns and added.

61-09-08. Board to levy assessment against lands of district - Amount - How determined. The board then shall levy an assessment against the lands of the district sufficient to:

1. Pay the interest on outstanding bonds and improvement warrants;
2. Create a sinking fund to retire outstanding bonds and improvement warrants at maturity; and
3. Pay any and all obligations of the district due, or to become due during the ensuing year, including payments due, or to become due, under any contract with the United States, or with any department or agency thereof, or under any contract with the state water commission, or with any person, firm, corporation, or limited liability company, or with another irrigation district.

In determining the total of such levy the board shall take into consideration revenue derived from sources other than that obtained from the assessment and taxation of district lands. The secretary of the board shall compute and enter in separate columns of the assessment record the respective sums in dollars and cents required for each purpose, and each purpose shall be denominated a fund.

61-09-09. Board may levy assessment for general fund - Contents. If the board finds it necessary it may levy an assessment for the expenses incurred in organizing the district, for the operation, maintenance, and repair of the irrigation works, for the payment of salaries of officers and employees, and for general expenses. Such assessment shall constitute the general fund.

61-09-10. Secretary to enter sum assessed against each tract for each fund - Certifying to county auditor - Duty of auditor. The secretary shall compute and enter the sum assessed against each tract for each purpose or fund and thereupon shall certify to the county auditor of the county in which each tract of land is situated the amount of such assessment for each purpose or fund levied upon each tract of land by the board. The county auditor shall enter the amount assessed for each fund in a separate column of the tax list of the auditor's county. All tax lists when delivered to the county treasurer shall show all assessments levied for each fund on each tract of land within the district.

61-09-11. Assessments and taxes collected by county treasurer - Manner. Assessments or taxes shall be collected by the county treasurer at the same time and in the same manner as other taxes are collected in the county, except that such county treasurer shall receive in payment to the general fund mentioned in this chapter, for the year in which the assessment is levied, warrants drawn against such general fund as the equivalent of lawful money of the United States, if such warrants do not exceed the amount of the general fund assessment which the person tendering the same owes. Such county treasurer also shall

receive in payment of any assessment for any bond fund, or any improvement warrant fund, past due interest coupons on such bonds or warrants, as the equivalent of so much money of the United States if such interest coupons do not exceed the amount which the person tendering the same owes such fund. All such assessments except for the payment of principal or interest of bonds or improvement warrants collected or received by the county treasurer shall be paid to the treasurer of such irrigation district upon an order signed by the chairman and secretary of the district, and all warrants received by the county treasurer in payment of assessments, as provided in this chapter, may be turned over, as so much money, to the district treasurer on such orders.

61-09-12. Refusal or failure of board to cause assessment to be made. In case the board shall refuse, fail, or neglect to cause an assessment or levy to be made for the principal and interest of outstanding bonds, or improvement warrants, and for all payments due, or to become due, in the ensuing year to the United States, or to any department or agency thereof, or to the state water commission, or to any person, firm, corporation, or limited liability company, or to another irrigation district, under any contract entered into by the district, or for expenses incurred in organizing the district, then the assessment of property made for the preceding year shall be adopted and shall be the basis of assessment for the district. The board of county commissioners of each county comprising the district, by resolution, shall make such levy and assessment in the same manner and with like effect as if the same had been made by the board of directors of the district, and the expense incident thereto also shall be levied and assessed against the district. All such taxes or assessments shall be collected by and paid to the county treasurer in the county treasurer's official capacity and the county treasurer shall be responsible for the safekeeping, disbursement, and payment thereof, as herein provided.

61-09-13. Board may borrow additional funds if levy of annual assessment is insufficient for district - Limitations. If after the levy of the annual assessment for the current year the board finds that because of some unusual or unforeseen cause funds raised through the collection of the assessment, and from other sources, will not be sufficient for the proper maintenance and operation of the district, and the irrigation works of the district, the board may borrow additional funds needed to an amount not to exceed twenty dollars per acre [.40 hectare] for the irrigable lands within the district and may pledge the credit of the district for the payment of the loan, or the board may issue bonds in anticipation of further collections. The board shall include in the levy for the ensuing year the amount required to pay the loan or to retire the bonds.

61-09-14. Borrowing in excess of ninety percent of levy prohibited - Additional levy permissible - Transfer of balance in fund. An irrigation district, on account of expenses of operation and maintenance and to pay the current expenses of the district, in any year may not borrow in excess of ninety percent of the levy of assessments for that year. In case of due and outstanding obligations of the district on account of current expenses and expenses of operation and maintenance contracted before the year in which the levy is made, the district board may make an additional levy, not to exceed twenty dollars per acre [.40 hectare], upon all irrigable lands within the district, to create a special fund for the payment of the past-due obligations. Whenever the claims or obligations against any fund for any year are fully paid, the board may transfer any unused balance to any fund for any preceding or succeeding year.

61-09-15. Assessment made to be general tax - When due and delinquent - Tax lien to be preferred lien. All assessments made pursuant to the provisions of this chapter on real property, and assessments on leasehold estates owned by this state or any of its subdivisions, and, to the extent provided by the act of Congress of August 11, 1916, assessments on entered or unentered public lands, shall be a general tax against the real property on which assessed in like manner and to the same effect as general state and county taxes and shall be of the same order. The lien thereof shall share ratably with general tax liens in all tax proceedings and tax lien foreclosures and shall be subject to all provisions of law relating to general taxes. Such assessment shall become due and payable and delinquent at the same time as other general state and county taxes lien foreclosure and shall remain subject to all statutory provisions applying to tax lien foreclosure. In case leasehold estates only are affected by said assessments the tax lien foreclosure notice shall state that fact. The lien for the bonds of any series shall be preferred to that of any subsequent series, and the lien for the payments due to the United States

under any contract between the district and the United States, accompanying which bonds have not been deposited with the United States, shall be a lien preferred over that of any issue of bonds or any series of any issue subsequent to the date of such contract. All funds arising from assessment and levy, if any, shall be devoted to the obligations of the district payable from said funds and as to all obligations from the bond and United States contract a fund shall be so devoted in the order of priority of the creation of the obligation. No error or omission which may be made in the proceedings of the board, or of any officer of an irrigation district in referring, reporting upon, ordering or otherwise acting concerning the establishment, construction, or acquisition of irrigation works, or concerning the issuance of bonds or improvement warrants, or in making or certifying any assessment shall vitiate or in any way affect any such assessment; but if it shall appear that by reason of such error or omission substantial injury has been done to the party or parties claiming to be aggrieved, the court shall alter such assessment as may be just and the same shall then be enforced. Whenever the validity of any assessment, or the validity of any deed given pursuant to a foreclosure of tax lien for such assessment shall be drawn in question in any action in any district court in this state, and such assessment shall be held to be invalid by reason of noncompliance with the laws of this state, the court shall determine the true and just amount which the property attempted to be so assessed by said assessment should pay, to make the same uniform with other assessments for the same purpose, and the amount of such assessments as the same appears on the assessment list thereof, shall be prima facie evidence of such true and just amount, and judgment must be rendered and given therefor against the property liable for such assessment, without regard to the proceedings had for the levy thereof, and such judgment shall be a lien upon the property upon which the assessment shall have been levied, of equal force and effect as the lien of irrigation district assessments, and the lien of such judgment shall be enforced by the court in such action.

61-09-16. Payment of assessments under protest - When refunding taxes or assessments. When any person against whose property assessments as provided in this chapter have been made shall pay the same under protest as provided by the general revenue laws of this state, the board may pass upon and make orders disposing of the moneys paid under protest in the same form and manner as the boards of county commissioners are authorized to act in the case of general taxes, and such proceedings shall be had as provided in title 57, so far as such provisions apply. No taxes or assessments shall be ordered refunded unless the person complaining shall file in the office of the secretary of such district a copy of the person's tax receipt, showing the same paid under protest, together with an affidavit in writing showing one of the following reasons why such taxes or assessments should be refunded:

1. That the land upon which such taxes or assessments were levied is not within the boundaries of the district for which the lands were taxed or assessed.
2. That the said lands are exempt by law, setting forth the reason therefor.
3. Repealed by S.L. 1957, ch. 380, § 1.

61-09-17. Abatement of assessments - Exception. The board of county commissioners, with the approval of the tax commissioner, may abate any assessments made by irrigation districts if application therefor is approved by the board of the irrigation district. In case such assessments are made for the purpose of meeting payments due to the United States or any department or agency thereof or to the state water commission, the application shall not be granted unless it also bears the approval of an authorized representative or agent of the United States or of such department or agency, or of the state water commission, as the case may be. In case bonds or improvement warrants are deposited with a trustee under a trust agreement or trust indenture, the consent of such trustee shall be obtained before abating any assessment for such bonds or improvement warrants. The application for the abatement may be made by the board of the irrigation district instead of by individual taxpayers and any number of tracts of land may be included in a single application.

61-09-18. Board may call special election to determine if special assessment shall be levied. The board at any time, when in its judgment advisable, may call a special election

and submit to the qualified electors of the district the question whether or not a special assessment shall be levied for the purpose of raising money to be applied for any authorized purpose.

61-09-19. Special election - Notice - Ballots. The election provided for in section 61-09-18 shall be called upon the notice prescribed, and shall be held and the result thereof determined and declared in all respects in conformity with the provisions relating to bond elections. The notice must specify the amount of money proposed to be raised, and the purpose for which it is intended to be raised, at such election. The ballot at such election shall be in substantially the following form:

Shall a special assessment in the amount of \$_____ (stating the amount) be levied?

- Yes
No

If a majority of the votes cast are in favor of such assessment the board, at the time of the annual levy, shall levy an assessment sufficient to raise the amount voted.

61-09-20. How rate of special assessment determined. The rate of assessment determined by a special election as provided in section 61-09-18 shall be ascertained and apportioned in the manner as provided in this chapter, specifically sections 61-09-01 through 61-09-03, for all special assessments which an irrigation district has the authority to levy.