

**REPORT  
OF THE  
INTERIM COMMISSION  
TO  
REVISE AND CODIFY  
DRAINAGE AND WATER  
RESOURCES LAWS**



STATE OF MINNESOTA  
DEPARTMENT OF STATE

**FILED**

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*W. H. H. H.*  
Secretary of State.

Submitted to:

**THE LEGISLATURE OF THE STATE OF MINNESOTA**

**1947**

10/45

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Members of the Interim Commission Appointed Pursuant to  
Legislative Enactment of the 1945 Session of the Minnesota  
Legislature to Revise and Codify Drainage and Water Resources  
Laws.

From the Senate:

Senator Oscar A. Swenson, Chairman  
Nicollet, Minnesota

Senator A. R. Johanson  
Wheaton, Minnesota

Senator Norman J. Larson  
Ada, Minnesota

From the House:

Representative Ed Martinson, Vice Chairman  
Ortonville, Minnesota

Representative Joseph J. Daun  
St. Peter, Minnesota

Representative O. L. Johnson  
McGregor, Minnesota

Appointed by Attorney General:

Charles E. Houston, Assistant Attorney General  
Wheaton, Minnesota

Counsel—Appointed by Commission:

G. P. Smith  
Mankato, Minnesota



## ACT CREATING COMMISSION

### Chapter 491, Laws of Minnesota 1945

Section 1. That a commission of seven members be and hereby is created to consist of three members of the House of Representatives to be appointed by the speaker, three members of the Senate to be appointed by the committee on committees of the Senate, and one attorney from the attorney general's force to be designated by the attorney general, to revise and codify the laws of this state relating to drainage and to the surface and underground water resources. Such appointments shall be made forthwith upon the passage of this act, and the commission shall designate one of its members to act as chairman.

Sec. 2. It shall be the duty of said commission to examine and compare existing laws relating to drainage and the surface and underground water resources of this state and similar laws in adjoining states or states having like conditions, and to prepare, propose and recommend such revision and codification as shall in their opinion simplify, harmonize and complete the same, and shall be best suitable toward effectuating the ends to be gained by such laws. The commission shall prepare the same in the form of a bill for presentation at the next regular legislative session and shall file their report of such revision and codification, with such explanations thereof as may be necessary, not later than the opening day of the next legislative session.

Sec. 3. The commission shall have the authority and power to hold hearings at such times and places as they may designate for the purpose of taking evidence and testimony necessary or helpful in effectuating the purposes of this act.

Sec. 4. The members of the commission shall serve without pay but shall be allowed and paid for all expenses reasonably and necessarily incurred in the performance of their duties, within the limit of the appropriation provided herein. The commission is vested with full power and authority to employ expert and clerical aid and assistance, to purchase stationery and other supplies, to rent or otherwise provide for the use of offices and equipment, and do any and all things reasonably necessary or convenient in carrying out the purposes of this act.

Sec. 5. There is hereby appropriated out of any moneys in the state treasury not otherwise appropriated, the sum of \$5,000.00, or so much thereof as may be necessary to pay all expenses

incurred pursuant to this act. For the payment of such expenses the commission shall draw its warrants upon the state treasurer, which warrants shall be signed by the chairman and at least one other member of said commission, and the state auditor shall then approve and the state treasurer shall pay such warrants as and when presented, but not exceeding in the aggregate the amount herein appropriated.

#### REPORT OF COMMISSION

To the Honorable Members of  
The 1947 Legislature of the  
State of Minnesota:

Pursuant to Chapter 491, Laws of Minnesota 1945, a Legislative Interim Commission was authorized to study and to revise and codify the laws of Minnesota relating to drainage and water resources; and to report thereon at the next regular legislative session.

#### ORGANIZATION AND STUDIES

Senators A. R. Johanson, Norman J. Larson and Oscar A. Swenson and Representatives Joseph J. Daun, O. L. Johnson and Ed Martinson and Assistant Attorney General Charles E. Houston were appointed members of the commission.

The commission met and organized at the State Capitol at St. Paul on June 11, 1945. Senator Oscar A. Swenson was named chairman and Representative Ed Martinson was named vice chairman. G. P. Smith of Mankato, Minnesota, was chosen as counsel and Mrs. R. M. Crawford of St. Paul, Minnesota, as executive clerk.

Thereupon the commission entered upon a study of the laws of Minnesota relating to drainage and water resources and compared Minnesota laws with the related laws of other states.

Open hearings were held on September 6, October 4 and 5, and November 23, 1945, and January 3 and 4, February 28, March 1, May 2 and 3, and June 5 and 6, 1946.

The commission first studied the laws relating to drainage. It was decided to recommend that the entire county and judicial drainage law be rewritten but that the basic principles of the present county and judicial ditch systems be retained. After hearings and conferences a first draft was prepared. This draft

was mimeographed and sent to all members of the Legislature and to members of the Bench and Bar, County Auditors, County Attorneys, County Commissioners, Engineers and others interested, with a request for criticism or suggestions.

The proposed draft was discussed by representatives of the commission with the County Attorneys, County Auditors and County Commissioners at their respective annual state meetings during the winter of 1945-46. Much interest was evidenced and many pertinent and helpful suggestions were received from members of each group as well as from members of the legislature, judges, engineers, attorneys, and others. These suggestions were studied and a final draft of a proposed County and Judicial Ditch Law prepared for submission to the 1947 Legislature.

#### RECOMMENDATIONS

1. The present county and judicial ditch laws are principally set forth in Chapter 106, Minnesota Statutes 1941, but other laws affecting county and judicial ditches appear in Chapters 105, 107, 108 and 113. It is recommended generally that all portions of these chapters relating to county and judicial ditches be repealed and a new code adopted completely covering this subject.

2. The proponents of Chapter 352, Laws 1945, have asked that this act be retained in the new code and the commission has acceded to this request and does not recommend repeal. It is the commission's opinion that Chapter 214, Laws 1945, should be repealed. Investigation discloses that committees have been organized under the act and apparently are functioning satisfactorily. The author has asked that the chapter be retained. The commission recommends that it be repealed with a saving clause authorizing the continuancy of committees theretofore organized. With these two exceptions it is recommended that all laws of the state relating to county and judicial drainage be repealed and a complete new code adopted as hereinafter set forth.

3. The commission recommends that Sec. 162.11, Subd. 3, Minn. Stat. 1941, be amended to permit county highway engineers to act as engineers in ditch proceedings at the discretion of the county board.

4. The laws relating to state ditches (Chapter 470, 1907) will be found under Sections 105.13 to 105.36, Minn. Stat. 1941. It is recommended that this law be repealed and not replaced.

5. Chapter 109, Minnesota Statutes 1941, authorizes town ditches and prescribes the procedure therefor under the jurisdiction of the town boards. The commission recommends that this chapter be repealed with a saving clause for the completion of proceedings already instituted and for the repair of town ditches heretofore constructed. The commission is advised that little use is made of the town ditch law and has concluded that no adequate reason exists why it should not be repealed and future public ditch proceedings brought under the county and judicial ditch law.

6. Minnesota has in its statutes two other important laws affecting drainage; the Drainage and Conservancy Act of 1919 (Sections 111.01-111.42, Minn. Stat. 1941) and the Drainage and Flood Control Act of 1917 (Chap. 112, Minn. Stat. 1941). Each of these laws contemplates the establishment of Drainage or Flood Control Districts. Proceedings have been heretofore instituted under each of these acts but so far as the commission can learn the use of the acts has been very limited and no district has ever been carried to the point of actual construction and assessment. Each act appears to be carefully drawn and to have certain merit. The commission recommends that these two acts be left undisturbed for the present. It may be that time will show a useful purpose for them.

7. The commission was also directed to study the laws relating to surface and underground water resources of the state and to make their recommendations for revision and codification thereof. The present water resources law (Chap. 468, Laws 1937) is set forth in Sections 111.43-111.63, Minn. Stat. 1941. Related thereto are Sections 105.01-105.12, Minn. Stat. 1941, covering the division of water resources of the department of conservation and the powers and duties of the commissioner and the director of the division in the administration of the water resources and drainage laws.

It is recommended that the laws noted be repealed and that a new act be adopted which shall adequately cover the subject of water resources and administration in one simplified chapter.

8. One other related subject has been studied; the laws relating to the improvement of bodies of water by counties and municipalities. See Sections 110.01-110.10, 110.12, 111.64-111.80, 162.22, 378.07, 37.08, 465.26-465.48 and 465.49, Minn. Stat. 1941. Certain of these acts are ambiguous and in conflict. The commission recommends that Sections 110.01 to 110.10 inclusive, Minn.

Stat. 1941, be repealed and a new act adopted giving county and municipal bodies general authority to improve bodies of water situated wholly or partly within the county or municipality.

Some desire has been evidenced for a new law authorizing proceedings for the improvement of lakes on petition of abutting owners with assessments based on benefits on abutting lands; a law similar in form to the drainage law. Your committee deems such law beyond the scope of its authority but does suggest the problem to the attention of the Legislature.

#### CONCLUSION

Following this report are set forth the commission's recommendations for a proposed

- (1) County and Judicial Ditch Law,
- (2) Water Resources Law,
- (3) Waters Improvement Law,
- (4) Form of Repeal—Town Ditch Law, and
- (5) Form of repeal—Chap. 214, Laws 1945.

Notes are appended referring to the source of each section and calling attention to major changes recommended. An appendix has also been prepared showing section numbers of the present law referred to in the proposed acts.

The commission is indebted to Mr. Walter S. Olson, director of the division of water resources, for his advice and assistance, and desires also to express its appreciation to the Attorney General's staff and the committees from the county auditors', county attorneys' and county commissioners' associations who have each made valuable suggestions.

The legislative members have served without compensation as directed by the act authorizing the work. The work has been completed and this report prepared in June 1946 for study by the legislators before the next legislative session.

Dated June 6th, 1946.

Respectfully submitted

A. R. JOHANSON  
NORMAN J. LARSON  
JOSEPH J. DAUN  
O. L. JOHNSON  
CHARLES E. HOUSTON  
Members of Commission

OSCAR A. SWENSON, Chairman  
ED MARTINSON, Vice Chairman

*Great Lakes Survey*  
*Norman J. Larson*  
*Ed. Martinson*  
*O. L. Johnson*  
*Charles E. Houston*

## PROPOSED COUNTY AND JUDICIAL DITCH LAW

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### **PROPOSED COUNTY AND JUDICIAL DITCH LAW**

**Section 1. Words, Terms and Phrases.** Unless the language or context clearly indicates that a different meaning is intended, the following words, terms and phrases, for the purposes of this act, shall have the meanings subjoined to them.

**Subdivision 1. Publication.** "Publication" means publication once a week for two successive weeks in one legally qualified newspaper published and in general circulation in each county affected.

**Subd. 2. Notice by Mail or Mailed Notice.** "Notice by mail" or "mailed notice" means a notice mailed and addressed to each person entitled to receive notice if the address be known to the auditor or clerk, or can be ascertained by inquiry at the office of the county treasurer of the county wherein the affected land or property is located.

**Subd. 3. Board or County Board.** "Board" or "county board" means the county board of the county where the drainage proceedings are pending.

**Subd. 4. Court, the Court, the District Court or District Judge.** "Court," "the court," "the district court," or "district judge" means the district court, or a judge thereof, of the county where the judicial drainage proceedings are pending.

**Subd. 5. Board or Court or County Board or District Court.** "Board or court" or "county board or district court" means the county board in any case where proceedings are pending before a county board, or the district court, or a judge thereof, in all proceedings pending before the district court.

**Subd. 6. County Auditor or Auditor.** "County auditor" or "auditor" means the auditor of the county wherein county drainage proceedings are pending.

**Subd. 7. Clerk or Clerk of the District Court.** "Clerk" or "clerk of the district court" means the clerk of the district court where the petition is filed in judicial proceedings.

**Subd. 8. Auditor or Clerk or County Auditor or Clerk of the District Court.** "Auditor or clerk" or "county auditor or clerk of the district court" means the county auditor in any case where proceedings are pending before the county board, and means the clerk of the district court in all proceedings pending before the district court.



Subd. 9. **Director.** "Director" means the director of the division of water resources and engineering in the department of conservation of the State of Minnesota.

Subd. 10. **Person.** "Person" means a person, firm, copartnership, association, or private corporation.

Subd. 11. **Public Corporation or Municipal Corporation.** "Public corporation" or "municipal corporation" means cities, villages, boroughs, counties, towns, school districts, and other political subdivisions.

Subd. 12. **Public Health.** "Public health" extends to and includes any act or thing tending to improve the general sanitary condition of the community; whether by drainage, relieving low, wet land or stagnant and unhealthful conditions, or by preventing the overflow of any lands which produce or tend to produce unhealthful conditions.

Subd. 13. **Public Welfare or Public Benefit.** "Public welfare" or "public benefit" extends to and includes any act or thing tending to improve or benefit the general public, either as a whole or as to any particular community or part, and is construed to include any works contemplated by this chapter which shall drain or protect from overflow public highways, and which shall protect from overflow or reclaim and render suitable for cultivation lands normally wet and needing drainage or subject to overflow.

Subd. 14. **County Ditch or County Drainage Proceeding.** "County ditch" or "county drainage proceeding" means a proceeding by authority of this chapter before the county board of any county.

Subd. 15. **Judicial Ditch or Judicial Drainage Proceeding.** "Judicial ditch" or "judicial drainage proceeding" means a proceeding by authority of this chapter before the district court of any county.

Subd. 16. **Ditch, Drainage System, Public Drainage System, Improvement, or Drainage Proceeding.** "Ditch," "drainage system," "public drainage system," "improvement," or "drainage proceeding" means either an open or tiled system and all laterals or parts thereof; also the improvement of any natural waterway included in or utilized in the construction of any drainage system; and includes any work, excavation, structure, or improvement necessary to complete the system as adopted and ordered by the board or court.

Subd. 17. **Road, Public Road, or Highway.** "Road," "public road," or "highway" means any road or street used by the public for highway purposes.

Subd. 18. **Resident Owner or Resident Freeholder.** "Resident owner" or "resident freeholder" means the owner of land or the contract purchaser, and who resides in the state.

Subd. 19. **Public Waters.** "Public waters" means streams, lakes and bodies of water which are navigable in fact.

Subd. 20. **Engineer.** "Engineer" means a professional engineer registered under the laws of Minnesota, including the county highway engineer of a county wherein affected land or property is located.

NOTE: Section 1 includes Section 106.01 and the following changes:

The last sentence of subdivision 5 requiring two judges in lake drainage in two judicial districts has been eliminated.

Subdivision 8 has been added defining the term "auditor or clerk."

A reference to highways has been included in subdivision 13.

A new subdivision 9 has been added, defining the term "director."

In subdivision 15, now 17, all except the first sentence has been eliminated. The remaining data have been set up in the requirement for the viewers' report.

Subdivision 2, now subdivision 1, has been changed to require two weeks' publication instead of three weeks' publication.

Subdivision 19 has been added to define "public waters."

Subdivision 20 defining "engineer" is new.

Subdivision 2 as appears herein, defining "notice by mail" is new.

References to former section numbers are to Minnesota Statutes 1941.

**Sec. 2. Powers of County Boards and District Courts.** Subdivision 1. **Generally.** The county boards of the several counties, and the district courts are authorized to make all necessary orders for and cause to be constructed and maintained public drainage systems; to deepen, widen, straighten, or change the channel or bed of any waterway following the general direction thereof, and when practical, terminating therein; to extend the same into or through any municipality for the purpose of securing a suitable outlet; and to construct all needed dikes, dams, and control works and power appliances, pumps, and pumping machinery.

Subd. 2. **Drainage of Lakes.** The board or court is authorized to drain in whole or in part lakes which have become normally shallow and of a marshy character and are not of sufficient depth or volume to be of any substantial public use; provided no meandered lake shall be so drained except upon the determination of the commissioner of conservation of the State of Minnesota that such lake is not public waters, or pursuant to the permit of the commissioner as provided in subdivision 3 hereof.

Subd. 3. **Flood Control.** When deemed necessary to control flood waters therein, the board or court is authorized to raise, lower, or establish the height of water in any lake, body of water, or watercourse and cause to be constructed all necessary structures and improvements to maintain the same for flood control or other public purposes. Where only a part of a lake is to be drained, it may cause to be constructed dikes or dams for the purpose of holding the water at the height designated by the board or court in that part of the lake not to be drained; provided, no dam affecting public waters shall be constructed, removed or altered, nor shall the level of any public waters be established, raised or lowered, nor shall any public waters be drained in whole or in part without the authority of the commissioner of conservation of the State of Minnesota.

Subd. 4. **Application to Commissioner.** The petitioners for any public ditch, or the board or court may make application to the commissioner of conservation for the authority required by subdivision 3 of this section or for the determination of the status of meandered lakes required by subdivision 2 of this section.

Subd. 5. **Systems Extending Into More Than One Judicial District.** In case any proposed drainage system extends into two

or more judicial districts, proceedings may be commenced before the district court of any of the districts and the court before which such proceedings are commenced shall thereafter have jurisdiction of all subsequent proceedings and matters in relation to the drainage system.

NOTE: Section 2 contains generally the provisions of 106.02.

Because of the conservation commissioner's authority over the drainage of public waters, we have eliminated subdivision 3 requiring vote if a city or village is affected.

We have included a statement that no public waters may be drained without the consent of the commissioner. We have also included a portion of Section 106.73 with reference to the jurisdiction of the court where the proceeding is in two judicial districts.

\* \* \* \* \*

Sec. 3. Petition. Subdivision 1. **Form of Petition.** Before any public drainage system or other improvement authorized by this act is established, a petition therefor shall be filed with the county auditor, if for a drainage system entirely within one county, or with the clerk of the district court, if for a drainage system within two or more counties. Such petition shall be signed by not less than a majority of the resident owners of the land described in the petition or by the owners of at least 51 percent of the area of such land. The lands described in the petition shall be those over which the proposed ditch passes or upon which the improvement is located, and the petition shall set forth the description of such lands and shall set forth the necessity for the ditch or improvement, and that the same will be of public benefit and utility and will promote the public health, with the description of the starting point, the general course, and terminus or location of the same. The petition shall state that the petitioners will pay all costs and expenses which may be incurred in case the proceedings are dismissed or for any reason no contract for the construction thereof is let. Such petition may be signed by the authorized representative of any municipal corporation or by the commissioner of highways, or the authorized agent of any public institution or any corporation which may be affected by or assessed for the proposed construction; but in such case, the signature of such representatives, commissioner, agent, or corporation

shall each count only as one signature on the petition. Each ditch proceeding shall be designated by number assigned by the auditor or clerk.

Subd. 2. **Withdrawal.** After a petition has been filed, no petitioner may withdraw therefrom except with the written consent of all other petitioners filed with the auditor or clerk.

NOTE: Section 3 has been taken from Section 106.03, with the following changes:

We have attempted to clarify the provision that the percentage of signers required refers only to lands traversed by the new ditch and not to all lands affected.

The important change is that the jurisdiction of the district court is limited to inter-county ditches only, and the county boards are given exclusive jurisdiction of intra-county ditches.

We have added a provision that no petitioner may withdraw without the consent of all petitioners. This is deemed necessary because of a subsequent proposed provision that if the petition be found insufficient, it may be referred back to the petitioners and new signers obtained.

The section numbered 4 following, contains the second paragraph of section 106.03, providing for a petitioners' bond.

\* \* \* \* \*

Sec. 4. **Petitioners' Bond.** Upon the filing of a petition and before any action is taken thereon, one or more of the petitioners shall make and file a bond payable, in case of a county drainage system, to the county, and in case of a judicial drainage system, to the counties named in the petition, in the sum of not less than \$2,000, with good and sufficient sureties, to be approved by the officer with whom the same is filed, conditioned to pay all costs and expenses which may be incurred in case the proceedings are dismissed or for any reason no contract is entered into for the construction of the improvement petitioned for.

NOTE: This section is copied from the first sentence of the second paragraph of Section 106.03. The second sentence of the paragraph relating to insufficient bond has been placed in Section 5.

**Sec. 5. Insufficient Bond; Expenses Not to Exceed Penalty of Bond.** If it shall appear at any time prior to the making of the order establishing the drainage system that the bond of petitioners is insufficient in amount to protect the county or counties from loss on account of any costs or expenses incurred or to be incurred, the court or board shall require an additional bond. In such event, all further proceedings shall be stayed until such bond is furnished, and if such additional bond be not furnished within such time as the board or court shall fix, the proceedings may be dismissed.

In all drainage proceedings, the expenses incurred prior to establishment shall not exceed the penalty named in the bond or bonds given by the parties. No claim in excess of the amount of such bond or bonds shall be audited or paid by direction of the board or court unless one or more of the parties in the proceeding shall, within such time as the board or court directs, make and file an additional bond with sufficient sureties in such amount as the board or court directs.

NOTE: Section 5 combines the last portion of Section 106.03 and all of section 106.04. The provisions of 106.04 have been changed to refer to all expenses instead of survey expenses only. We have eliminated the provision of insufficiency of sureties because of the fact that the petition itself contains a guarantee for the payment of all expenses. Because of this requirement of the petition, it is apparent that a bond is of little value except as it provides a limitation upon expenditures without knowledge and consent of the petitioners.

\* \* \* \* \*

**Sec. 6. Dismissal of Proceedings.** In any proceeding under the provisions of this chapter, all the petitioners may dismiss the same at any time prior to the making of the order establishing the improvement, upon payment of all lawful costs, charges, expenses, and fees in the proceeding.

NOTE: Section 6 is taken from Section 106.91 and apparently should be here set forth.

\* \* \* \* \*

**Sec. 7. Engineer. Subdivision 1. Appointment.** Upon the filing of the petition and bond, the board or court shall, within thirty days thereafter, by order appoint an engineer to make a

preliminary survey as provided in Section 8 of this Act within the time fixed in the order.

Such engineer shall act as engineer throughout the proceeding unless otherwise ordered.

Subd. 2. **Qualification.** The engineer so appointed shall within ten days thereafter take and subscribe an oath to faithfully perform the duties assigned to him according to the best of his ability, and give a bond in the sum fixed by the board or court, but for not less than \$5,000 with good and sufficient surety, payable to the county or counties affected by the proposed improvement, for the benefit of the county or counties, and for the use of all parties aggrieved or injured by any negligence or malfeasance on the part of the engineer so long as he is in any manner employed in the proceedings, conditioned that he will diligently, honestly, and to the best of his skill and ability, during the full period of his employment, perform his duties as such engineer in the proceedings; this bond to be approved by the auditor or clerk. In case of a change of engineers, each succeeding engineer shall make and file the oath and bond provided for herein.

Subd. 3. **Vacancy.** If, after appointment of an engineer, the office becomes vacant, the board or court shall forthwith appoint another engineer in his place.

Subd. 4. **Assistants, Compensation.** The engineer may appoint such assistant engineers as circumstances require to aid in the completion of the work, for whose acts he shall be responsible and whom he may remove at pleasure. The engineer may also employ such help as may be requisite to assist him in his duties. The compensation of the engineer and his assistants and other employees shall be fixed as provided by Section 43 of this Chapter.

Subd. 5. **Removal.** The engineer may be removed by the board or court at any time, and in such event a successor shall be forthwith appointed.

Subd. 6. **Records.** All original plats, profiles, records and field books made by the engineer during the pendency of any ditch proceeding or the construction are public records and the property of the county or counties affected. The same shall be filed with the auditor or clerk when construction is completed or when for any cause the engineer ceases to longer act.

Subd. 7. **Reports.** Every two weeks after the beginning of

his work and during the time he is engaged in the same until the letting of the contract, the engineer shall make a report of all expenses incurred by him or under his direction in connection with the drainage project, including the names of assistants and employees and the time each was employed, together with his own time and every item of expense by him incurred. He shall forthwith file this report with the auditor or clerk, and in no case shall he incur any greater expense on account of such project than the penalty of the bond provided by the petitioners.

Subd. 8. **Consulting Engineer.** Subsequent to the appointment of the engineer, and during the pendency of any ditch proceeding or during the construction of the ditch, the board or court may, if deemed advisable, employ an engineer as a consulting engineer in such proceeding. In the event of such appointment, the consulting engineer shall advise with the engineer and the board or court as to engineering matters and problems which may arise in connection with such ditch and the construction thereof. His compensation shall be fixed by the board or court.

NOTE: We have here attempted to combine in one section all matters relating to the engineer and his appointment, bond, etc.

Subdivision 1 is taken from 106.05 and relates to the appointment of the engineer.

Subdivision 2 is taken from the last portion of 106.05 and relates to the bond.

Subdivision 3 is taken from 106.09 and relates to appointment of a new engineer in case of vacancy.

Subdivision 4 includes section 106.81 authorizing the appointment of assistant engineers. The provision thereof requiring a bond from assistant engineers is eliminated because of the provision that the principal engineer shall be responsible for the acts of his assistants. This section further authorizes the employment of other necessary employees by the engineer. We have eliminated from the requirement for the engineer's bond the provisions of chapter 97, Laws 1945, which permitted the employment of government engineers without bond. We know of no reason why government engineers should act for the petitioners without bond to the county.



Subdivision 5 is new and provides that the engineer may be removed at the pleasure of the board or court.

Subdivision 6 relating to the engineer's records is taken generally from subdivision 5 of section 106.12.

Subdivision 7 authorizing the employment of a consulting engineer is new. The present law, 106.67, provides for the appointment of referees who shall be consulting engineers. It is suggested that the referee law should be repealed but that the board or court should have authority if desired to employ a consulting engineer.

\* \* \* \* \*

**Sec. 8. Preliminary Survey and Report.** Subdivision 1. **Survey and Report.** The engineer shall promptly proceed and examine all matters set forth in the petition and order, make such preliminary survey of the territory likely to be affected by the proposed improvement as will enable him to determine whether the same is necessary and feasible, and report accordingly. If some other plan than that described in the petition is found practical, the engineer shall so report, giving such detail and information as is necessary to inform the court or board on all matters pertaining to the feasibility of the proposed plan, either as outlined in the petition or according to a different plan recommended by the engineer. He shall show all changes, whether by extension, adding laterals, or otherwise, that may be necessary to make the plan of the proposed improvement practicable and feasible. If the construction of a ditch or drain is involved in the proposed improvement, the engineer shall examine and report the nature and capacity of the outlet and any necessary extension thereof.

If he finds the improvement petitioned for is feasible, he shall include in his report a preliminary plan of the proposed system showing thereon the proposed drain and laterals or other improvements, and the outlet thereof, together with the watershed of such drainage system and the lands and properties likely to be affected, including so far as known the names of the owners thereof. He shall show upon such plan the elevation of the outlet and the controlling elevations of the lands likely to be affected and also the probable size and character of the ditches and laterals necessary to make the plan practicable and feasible. All elevations so far as practical shall be referred to standard sea level datum.

He shall show in his report the character of the outlet and the sufficiency thereof and also the probable cost of the drains and improvements shown on his plan, and all other information and data necessary to disclose the practicability, necessity and feasibility of the proposed improvement, including such other information as the board or court may order.

**Subd. 2. Limitation of Survey.** The engineer shall confine his preliminary survey to the drainage area described in the petition, except to secure outlet, unless authorized by order of the board or court, with the consent of the bondsmen, at a hearing after ten days' notice by mail to the petitioners and bondsmen; and any investigation made by the engineer as to outlet, without such order, shall be confined to running the necessary levels to ascertain the distance necessary to secure the proper fall.

**NOTE:** Section 8 contains the requirements of 106.06 which has been re-written without material change, except the provision as to standard sea level datum. Sea level data have been generally established throughout the state by United States Surveys. This requirement is taken from the last paragraph of Section 105.06.

\* \* \* \* \*

**Sec. 9. Filing Engineer's Report; Authority of Director.**

**Subdivision 1. Filing.** Upon completion of his survey and report, the engineer shall file his report in duplicate with the auditor or clerk. The auditor or clerk shall transmit one copy thereof to the director of the division of water resources and engineering. If the report be filed with the clerk, a duplicate thereof shall also be filed with the auditor of each county affected.

**Subd. 2. Director's Report.** Upon request by the board or court the director shall report to the board or court giving his opinion as to the sufficiency of the engineer's report and as to the practicability and feasibility of the drainage system or improvements shown therein, together with his comments or recommendations thereon. Such report shall be filed with the auditor or clerk on or before the date fixed for the preliminary hearing or at any continuance thereof. If such report is not requested, the director may, in his discretion, report to the board or court.

**NOTE:** This section is entirely new. The present law contains no provision for filing the preliminary report, nor

does it contain provision for a copy thereof to the director, or for his report thereon.

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**Sec. 10. Preliminary Hearing.** Subdivision 1. **Notice.** Upon the filing of the report of the engineer, the auditor shall promptly notify the board, or the clerk shall promptly notify the judge, thereof, and the auditor, or the clerk with the approval of the judge, shall by order fix a time for the hearing thereon, not more than 30 days after the date of such order. Not less than 10 days before the time of hearing, the auditor or clerk shall give notice by mail of the time and place of hearing to the petitioners and the owners of the lands and properties, and corporations, public or private, likely to be affected by the proposed improvement as shown by the engineer's report.

Subd. 2. **Hearing.** The engineer shall attend the hearing and supply such information as may be necessary. The petitioners and all other parties interested may appear and be heard. The director's report, if any, shall be publicly read. Such report shall be deemed advisory only.

Subd. 3. **Sufficiency of Petition.** The board or court shall first examine the petition and if the petition be found sufficient as required by law shall so find. If the petition be found insufficient in that it is not signed by the requisite number of owners of lands described in the petition, or otherwise, the hearing shall be adjourned and the petition referred back to the petitioners for such action thereon as may be advised. The petitioners, by unanimous action, may thereupon amend the recitals in the petition. They may procure the signatures of additional owners as added petitioners. At the adjourned hearing, if the petition be found insufficient, the proceedings shall be dismissed.

Subd. 4. **Dismissal.** At said hearing or any adjournment thereof, if it shall appear that the proposed improvement is not feasible, and no plan is reported by the engineer whereby it can be made feasible, or that it is not of public benefit or utility, or that the outlet is not adequate, the petition shall be dismissed.

Subd. 5. **Findings and Order.** If the board or court shall be satisfied that the proposed improvement as outlined in the petition or as modified and recommended by the engineer is feasible, that there is necessity therefor, that it will be of public benefit and

promote the public health, and that the outlet is adequate, the board or court shall so find and by such order shall designate the changes that shall be made in the proposed improvement from that outlined in the petition. These changes may be described in general terms and shall be sufficiently described by filing with the order a map outlining the proposed improvement thereon. Thereafter the petition shall be treated as modified accordingly.

**Subd. 6. Effect of Findings.** The findings hereinbefore required shall be construed as conclusive only as to the sufficiency of the petition, the nature and extent of the proposed plan and the need of a permanent survey, and only as to the persons or parties shown by the engineer's preliminary report as likely to be affected by the improvement. All questions relative to the practicability and necessity of the proposed drain or improvement shall be subject to further investigation and consideration at the final hearing.

**NOTE:** This section largely follows Section 106.07. It contains new matter, particularly as to a finding on the sufficiency of the petition and the re-reference of the petition with the privilege of obtaining additional signers if the petition be found insufficient. It also contains a requirement for the reading of the director's report and the consideration thereof. The paragraph as to the conclusiveness and findings has been re-drafted.

\* \* \* \* \*

**Sec. 11. Order for Detailed Survey.** Upon the filing of the order as specified in subdivision 5 of Section 10 of this act, the board or court shall order the engineer or any other engineer, if a change of engineers be determined, to proceed to make a detailed survey and furnish all necessary plans and specifications for the proposed improvement and report the same to the board or court with all reasonable dispatch. All of the provisions of Section 7 of this act shall be applicable to the employment of the engineer.

**NOTE:** Section 11 is practically the same as 106.08.

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**Sec. 12. Engineer's Final Survey and Report.** Upon the filing of the order named in Section 11 of this act, the engineer shall proceed to survey the lines of the drainage improvement petitioned for and approved by order made upon preliminary

hearing, and to survey and examine all lands and properties affected thereby.

**Subdivision 1. Survey.** All ditch lines shall be surveyed in one hundred foot stations and levels shall be based on standard sea level datum if practical. Bench marks shall be established upon permanent objects along the line of the drains, not more than a mile apart. All field notes made by the engineer shall be entered in bound field books and preserved by him.

**Subd. 2. Data Required.** The engineer shall prepare and submit the following data and report:

- a. A complete map of the drainage system or improvement drawn to scale, showing thereon (1) the termini and course of each drain and whether open or tile, and the location of all other proposed improvements; (2) the location and situation of the outlet; (3) the watershed of the drainage system and the sub-watershed of main branches, if any, together with the location of existing highway bridges and culverts; (4) all lands and properties affected, together with the names of the owners thereof so far as known; (5) public streets, highways and railways affected; (6) the outlines of any meandered lake and public body of water affected; (7) such other physical characteristics of the watershed as may appear necessary for the understanding thereof.
- b. A profile of all lines of ditch proposed showing graphically, the elevation of the ground and gradient at each 100 foot station, the station number at each section line and at each property line, whether open or tiled, the size of tile and the bottom width and side slope of open ditch sections, and such other information as may appear necessary for the understanding thereof.
- c. Plans for all private bridges and culverts proposed to be constructed by and as a part of the ditch system, together with plans for all other works and items of construction necessary for the completion of the drainage system or improvement. A list showing the required minimum waterway opening at all railway and highway open ditch crossings and at other prospective open ditch crossings where bridges and culverts are not specified to be constructed as a part of the ditch.

- d. A tabular statement showing the number of cubic yards of earth to be excavated on all open ditches, the footage of each size of tile on each tile line with the average depth thereof, and all bridges, culverts, works and other construction items required by the plans for the completion of the system, together with the estimated unit cost of each of said items and a summary of the total cost thereof. Such summary shall include an estimate of the cost of fully completing the system, including supervision and other costs thereof.
- e. The acreage which will be required and taken as right of way upon each government lot and forty-acre tract or fraction thereof under separate ownership required for right of way for any open ditch.
- f. Specifications for the work proposed and all thereof. Specifications for drain tile shall require that all drain tile used shall comply with the requirements of the American Society for Testing Materials standard specifications for drain tile, except where the depths to which the drains are to be laid or the conditions of the soil, in the opinion of the engineer, require tile of a special and higher quality.
- g. When more economical construction will result, the engineer may recommend that the work be divided into sections and let separately, and that open and tile work or tile and labor thereon be let separately, and the time and manner so far as practicable in which the whole work or any section thereof shall be done.
- h. Such other detail and information as shall appear requisite to fully inform the board or court of the practicability and necessity of the proposed improvements, together with his recommendations thereon.

Subd. 3. **Soil Survey.** If deemed necessary by the engineer, or if ordered by the board or court, or requested by the director, the engineer shall make a soil survey showing the nature and character of the soil in the area proposed to be drained and shall report his findings thereon.

Subd. 4. **Variance.** In planning a public drainage system, the engineer may vary from the line and plan described in the petition as finally adopted by the board or court at the preliminary hearing or from the starting point thereof, as he finds necessary

for the proper drainage of the land likely to be assessed for the drainage system described in the petition and approved at the preliminary hearing. He shall have authority to survey and recommend the location of such branch ditch or ditches as may be found necessary. Where better results will be accomplished and more desirable outlets secured, the engineer may provide for the extension of the outlet, or he may provide for different parts of the drainage to flow in different directions with more than one outlet. It shall not be necessary for such ditches to connect if they accomplish the drainage of the area to be affected by the petition instituting the proceedings.

**Subd. 5. Outlet in Another State.** Where no practical outlet can be had but through the lands of an adjoining state, the engineer shall procure a description of the necessary right of way and the probable cost thereof and shall estimate the cost of constructing such outlet and include the same in his report.

**Subd. 6. Filing.** The engineer shall prepare the complete set of plans, specifications and estimates of cost required by this section and shall make a complete report in duplicate of his work and recommendations to the board or court, including therein all maps, profiles and matters herein provided for, and file the same with the auditor or clerk where the proceedings are pending. If the same be filed with the clerk, a complete copy thereof shall also be filed with the auditor of each county affected.

After the final acceptance of the ditch, the engineer shall make revisions of his plan, profiles and designs of structures to show the project as actually constructed on the original tracings, and shall file the same, together with a copy thereof, with the auditor or clerk. The auditor or clerk shall forward the original or copy to the Director for permanent record.

**NOTE:** This section is completely re-written and covers the requirements of Sections 106.10, 106.11, and parts of 106.12 and 106.18. The requirements for drain tile are taken from subdivision 4 of section 105.04. The requirements for a soil survey and for a list of the acreage to be taken by open ditches are new. Much of the detailed data in the old law as to tabular statements has been eliminated.

**Sec. 13. Authority of Director; Director's Report.** Upon the filing of the engineer's report, a complete copy thereof shall be transmitted to the director by the auditor or clerk.

The director shall examine the same and within 15 days make his report thereon to the board or court. If he finds the report incomplete and not in accordance with the provisions of this act he shall so report. If he approves the same as being a practical plan for the drainage of the lands affected, he shall so state. If he does not approve the plan, he shall file his recommendations for changes deemed advisable, or, if in his opinion, the proposed system or improvement is not practical, he shall so report. If a soil survey appears advisable, he shall so advise, and in such event the engineer shall make the soil survey and report thereon before the final hearing. The director's report shall be directed to the board or court and shall be filed with the auditor or clerk. Such report shall be deemed advisory only.

No notice shall issue for the final hearing until the director's report shall be filed.

NOTE: This section is in part new and in part taken from Section 106.12, subdivisions 3 and 4.

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**Sec. 14. Viewers; Appointment; Qualification.** Subdivision 1. **Appointment.** Following the order for a detailed survey as provided in Section 11 of this Act, the board or court shall make an order appointing three disinterested resident freeholders of the county or counties affected as viewers.

Subd. 2. **Qualification.** Within five days after the filing of the final report and survey of the engineer, the auditor or clerk shall make an order designating the time and place of the first meeting of the viewers and he shall issue to the viewers a certified copy of the order appointing them and the order designating the time and place of their first meeting. Upon said meeting and before entering upon their duties, the viewers shall take and subscribe an oath to faithfully perform their duties.

Subd. 3. **Failure to Qualify.** If any of the viewers so appointed shall fail for any cause to qualify at such meeting, the auditor or court shall designate some other qualified person to take his place.



NOTE: This follows very closely the provisions of 106.16.

The old law provided that the viewers not start until the director made his report. This item has been eliminated with a provision in the preceding section that the notice of final hearing shall not be issued until the director's report is filed. In subdivision 3, the court instead of the clerk is given authority to appoint.

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**Sec. 15. Duties of Viewers; Properties Assessed.** The viewers, with or without the engineer, shall view all lands and properties benefited or damaged by the proposed drainage system and shall make their report thereon.

Such report shall show in tabular form the description of each lot and forty acre tract, or fraction thereof under separate ownership, benefited or damaged, the names of the owners as the same appear on the current tax duplicate of the county, the number of acres in each tract benefited or damaged, the number of acres added to any tract by the drainage of meandered lakes and the value thereof, the damage, if any, to riparian rights, and the amount that each tract will be benefited or damaged.

Benefits and damages shall be reported on all lands owned by the state the same as upon taxable lands.

The viewers shall report all benefits and damages that will result to all railways and other utilities, including lands used for railway or other utility purposes.

They shall report the benefits and damages resulting to the State of Minnesota and all counties and other municipal corporations resulting from the proposed drainage system. When any public road or street shall be found to be benefited or damaged, the state or the county, or other corporation, which is by law charged with the duty of keeping such road or street in repair, shall be assessed or allowed the amount of benefits or damages accruing to such road or street; except that damages allowed for bridges or culverts shall be allowed to the state, county or other municipal corporation which is by law charged with the duty of constructing and maintaining such bridge or culvert as required by Section 27 of this Act.

The viewers shall find and report the benefits accruing to all lands and properties affected and benefited, whether the same

accrue immediately from the construction of the system, or as the same affords an outlet for drainage, makes an outlet more accessible, or otherwise directly benefits such lands or properties.

In case the viewers are unable to agree, each viewer shall state separately his findings on any matter disagreed upon. A majority of the viewers shall be competent to perform the duties required of them by this chapter.

NOTE: Section 15 covers Sections 106.17, 106.18, 106.19, 106.20 and 106.22. A large part of Section 106.19, defining benefits to municipal corporations, has been dropped as unnecessary. There are three important changes. One is the requirement that benefits and damages be returned by 40s. One is the provision that lands may be assessed for benefits resulting from making an outlet more accessible. The third refers to public bridges. It is contemplated that all public bridges be constructed and maintained by the road authorities.

\* \* \* \* \*

**Sec. 16. Filing of Viewers' Report.** Upon the completion of their work, the viewers shall file their report with the auditor or clerk. With such report they shall file a detailed statement showing the actual time they were engaged and expenses incurred. The viewers shall perform their duties and make their report at the earliest possible date following their first meeting. If the report be filed with the clerk a copy thereof shall also be filed with the auditor of each county affected.

NOTE: Section 16 covers Section 106.23.

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**Sec. 17. Final Hearing.** Subdivision 1. **Time.** Promptly after the filing of the viewers' report and the director's report, the auditor, or the clerk with the approval of the judge, shall fix a time and place for hearing on the petition and the engineer's and viewers' reports. The hearing shall not be less than 25 nor more than 50 days from the date of the notice thereof. The auditor shall notify the members of the county board of the time and place of meeting as provided by law.

Subd. 2. **Form of Notice.** The notice shall state the pendency of the petition, that the engineer's and viewers' reports

have been filed, and the time and place set for the hearing. The notice shall contain a brief description of the proposed drainage system, giving in general terms the starting point, terminus and general course of the main ditch and branches, together with the description of properties benefited or damaged, and the names of the owners thereof, and the municipal and other corporations affected thereby as shown by the engineer's and viewers' reports. It shall be sufficient if such names be listed in narrative form and if the lands affected be separately listed in narrative form by governmental sections or otherwise.

In judicial proceedings, separate notices may be prepared for use and published, posted and mailed in each county affected, showing only that portion of the ditch system and the names and descriptions of the properties affected in the county.

**Subd. 3. Giving of Notice.** The auditor or clerk shall cause notice of the time and place of such hearing to be given to all persons interested by publication, posting and mailing. Printed copies of the notices, so made for each county, shall be posted at least three weeks before the date of hearing in three public places in each township in each county where affected properties are situated and one at the front door of the courthouse in each county. Within one week after the beginning of publication, the auditor or clerk shall mail a printed copy of the notice to the commissioner of conservation and to all persons, corporations and public bodies affected by the proposed system as shown by the engineer's and viewers' reports.

**Subd. 4. Defective Notice.** In all cases in which the notice shall not be given or shall be legally defective, the auditor or clerk shall cause the same to again be fully given, or as provided by Section 57 of this chapter.

**NOTE:** This section follows very closely Section 106.24.

It will be noted that publication is reduced to two weeks and that an effort is made to reduce the length of the notice.

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**Sec. 18. Jurisdiction.** Upon due publication, posting and mailing of the notice provided in Section 17 hereof, the board or court shall have jurisdiction of all lands and properties described in the engineer's and viewers' reports, and of all persons and cor-

porations, municipal or otherwise, named therein, and all persons or corporations having any interest in any mortgage, lien or encumbrance against any of the lands or properties referred to in such reports.

NOTE: This section follows very closely Section 106.25.

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**Sec. 19. Proceedings at Hearing.** Subdivision 1. **Consideration of Petition.** At the time and place specified in the notice, or at any adjournment thereof, the board or court shall consider the petition for the drainage system, together with all matters pertaining to the engineer's, viewers' and director's reports. The board or court shall hear and consider the testimony presented in behalf of all parties interested. The engineer, or his assistant, and at least one viewer shall be present. The director may appear and be heard. If the director does not personally appear, his report shall be read in open hearing. The hearing may be adjourned from time to time as may be found necessary.

Subd. 2. **Changes.** If it appears to the board or court that the general plan reported by the engineer may be improved by changes therein, or that the viewers have made inequitable returns of benefits or damages to any property, the board or court shall have authority to forthwith amend the engineer's or viewers' reports, or both, or to make findings in relation thereto as shall be deemed necessary and proper. The board or court shall have authority to resubmit such matters to the engineer or to the viewers for immediate consideration. In such event, the engineer or viewers shall forthwith proceed to reconsider such matters and shall make and file amended findings and report accordingly. Such amended reports shall thereupon become a part of the original reports.

Subd. 3. **Re-Examination.** If the board or court consider it advisable for the engineer or viewers, or both, to re-examine the proposed system, or the lands benefited or damaged thereby, or if it is found that other lands not included in the notice should be included and assessed, then the board or court may resubmit the reports to the engineer or viewers, or both, as circumstances may require. In such case the hearing may be continued for such time as may be necessary to make such examination and report. If the amended report includes lands or property not included in

the original report, the board or court may by order adjourn the hearing and direct the auditor or clerk to cause to be published, posted and mailed, or served, the proper notice with reference to all such lands or properties not included in the previous notice. In such case the jurisdiction of the board or court shall continue in all respects as to all lands and properties for which proper notices were given, and no new or additional notice shall be required with reference thereto.

NOTE: Section 19 follows very closely Section 106.26, although it has been materially shortened.

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**Sec. 20. Order Establishing. Subdivision 1. Dismissal.** If it shall appear that the benefits are not more than the total cost, including damages awarded, or that the proposed system will not be of public benefit and utility, or that the same is not practicable, the board or court shall so find and the petition shall be dismissed.

**Subd. 2. Establishment.** If the board or court shall find that the engineer's and viewers' reports have been made and all other proceedings in the matter had in accordance with law, that the estimated benefits are greater than the total estimated cost, including damages, that the damages and benefits have been duly determined, that the proposed drainage system will be of public utility and benefit, and will promote the public health, that the proposed system is practicable, and that such reports as made or amended are complete, just and correct, then the board or court shall by order containing such findings, establish the drainage improvement as reported or amended, and adopt and confirm the viewers' report as made or amended.

NOTE: Subdivision 1 of Section 20 is new and provides specifically for an order of dismissal. It requires dismissal if the benefits are not greater than estimated cost. It adds the word "practicable" and requires dismissal if the ditch be not practicable.

Subdivision 2 follows very closely the first paragraph of Section 106.27, except that it requires an added finding that the ditch is "practicable."

The remaining three paragraphs of Section 106.27 have been left out. These paragraphs provide a detailed method for reopening the proceeding upon the discovery of a subse-

quent error. It would appear that this portion of the section was originally curative in nature and that it has no place in a new law. It is suggested that flagrant errors should not be anticipated.

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**Sec. 21. Judicial Ditches; Apportionment of Cost.** In all judicial proceedings the clerk shall file a certified copy of the viewers' report with the auditor of each county affected within 20 days following the date of the order establishing the system. At the time of making the order establishing the drainage improvement, or at any time thereafter upon petition by the auditor of any county affected, the court shall make an order determining the percentage of the cost of the system to be paid by the respective counties, which, unless reason exists to the contrary, shall be in proportion to the benefits received. In case of a petition by a county auditor, the matter shall be brought on for hearing on five days' written notice to the auditor of each county affected. Upon five days' written notice to the county auditors, the court may at any time thereafter modify such order as justice may require, or make any additional order in the premises.

NOTE: Section 21 is taken from Section 106.28. A change has been made permitting apportionment to be made on petition of the county auditor.

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**Sec. 22. Contract and Bond. Subdivision 1. Provisions.** The contract and bond to be executed and furnished by the contractor shall be attached. The contract shall contain the specific description of the work to be done, either expressly or by reference to the plans and specifications, and shall provide that the work shall be done and completed as provided in the plans and specifications and subject to the inspection and approval of the engineer. The county attorney, the engineer, and the attorney for the petitioner shall prepare the contract and bond. The contractor shall make and file with the auditor or clerk a bond, with good and sufficient surety, to be approved by the auditor or clerk, in a sum not less than 75 per cent of the contract price of the work. Every such contract and bond shall embrace all the provisions required by this chapter and provided by law for bonds given by contractors for public works, and shall be conditioned as provided by statute

in case of public contractors for the better security of the contracting county or counties and of parties performing labor and furnishing material in and about the performance of the contract. It shall be provided that time will be of the essence of the contract, and that if there be any failure to perform the work according to the terms of the contract within the time therein limited, originally or by extension, the contractors shall forfeit and pay the county or counties a certain sum to be named therein, as liquidated damages. Such sum shall be fixed by the auditor or auditors for each day that such failure shall continue. The bond shall provide that the bondsmen shall be liable for all damages resulting from any such failure, whether the work be resold or not, and that any person or corporation, public or private, showing himself injured by such failure, may maintain an action upon such bond in his own name, and actions may be successive in favor of all persons so injured. Such contractor shall be considered a public officer, and such bond an official bond within the meaning of the statutory provisions construing the official bonds of public officers as security to all persons, and providing for actions on such bonds by any injured party.

**Subd. 2. Changes During Construction.** The contract shall give the engineer the right, with the consent of the board or court, to modify his reports, plans and specifications as the work proceeds and as circumstances may require. It shall provide that the increased cost resulting from such changes will be paid by the county to the contractor at not to exceed the price for like work in the contract. No change shall be made that will substantially impair the usefulness of any part of the drainage system or substantially alter its original character or increase its total cost by more than 10 per cent of the total original contract price. In no event shall any change be made that will cause the cost to exceed the total estimated benefits found by the board or court.

**Subd. 3. Guaranty of Tile Work.** When tile is used in the construction of any drainage improvement, and, if prior to the commencement of advertising for the sale of the work, a majority of the persons interested shall file a written request therefor with the auditor or clerk, then such tile work shall be let separately and the contractor shall be required to guarantee the tile work covered by his contract for a period of three years after the completion thereof against any fault or negligence on his part. In such event the call for bids shall include such requirement and

may be made by the auditor or auditors or any interested person. If application be made by some person other than an auditor, then the auditor or auditors shall be given five days' notice of hearing upon such application.

The auditor of the county in which the proceedings are pending shall give notice of the letting of the contract by publication in a newspaper in such county stating the time and place where the contract shall be let. When the estimated cost of construction is more than \$3,000.00, the auditor shall also advertise such letting in a trade paper. Such notice shall state the approximate amount of work and the estimated cost thereof and shall invite bids for the work as one job, or in sections, or separately, for bridges, open work, tile, or tile construction work, as may be required or deemed advisable. The right shall be reserved to reject any and all bids. The notice shall require that each bid be accompanied by a certified check payable to the auditor or auditors for not less than 10 per cent of the bid, as security that the bidder will enter into a contract and give a bond as required by Section 22 of this Act.

The engineer shall attend the letting and no bid shall be accepted without his approval as to compliance with plans and specifications.

The job may be let in one job, or in sections, or separately for labor and material, and shall be let to the lowest, responsible bidder or bidders therefor.

Bids shall not be entertained which in the aggregate exceed by more than 30 per cent the total estimated cost of construction.

The auditor, with such chairman, or auditors, as the case may be, shall contract, in the name of the county, or in the names of the respective counties, each acting by and through its auditor, with the party to whom such work or any part thereof is let, requiring him to construct the same in the time and manner and according to the plans and specifications and the contract provisions in this chapter set forth.

NOTE: Section 23 follows closely that portion of Section 106.30 having to do with the letting of the job. One change is that making mandatory the advertisement in a trade paper. The 30 per cent limitation has been changed to apply to the whole job and not to separate parts thereof.



**Sec. 24. Procedure When Contract Not Let.** Subsequent to the establishment of any drainage system, if no bids are received except for a price more than 30 per cent in excess of the engineer's estimate, or for a price in excess of the benefits, less damages and other costs, proceedings may be had as follows:

If it shall appear to the persons interested in said ditch that the engineer made an error in his estimate or that the plans and specifications could be changed in a manner materially affecting the cost of the improvements without interfering with the efficiency thereof, then any of said persons may petition the board or court so stating and asking that an order be made reconsidering and rescinding the order theretofore made establishing the drainage system, and that the engineer's and viewers' reports be referred back to the engineer and to the viewers for further consideration.

Upon presentation of such petition, the board or court shall order a hearing, therein designating the time and place for hearing, and cause notice thereof to be given by publication in the same newspapers where the notice of final hearing was theretofore published.

At the time and place specified in the order and notice, the board or court shall consider the petition and hear all interested parties.

Upon said hearing, if it shall appear that the engineer's original estimate was erroneous and should be corrected, or that the plans and specifications could be changed in a manner materially affecting the cost of the improvement without interfering with the efficiency thereof, and further, that upon said correction or modification, a contract could be let within the 30 per cent limitation or within the available benefits, then the board or court may, by order, authorize the engineer to amend his report. If the changes recommended by the engineer in any manner affect the amount of benefits or damages to any property, the viewers' report shall be referred back to the viewers to re-examine the benefits and damages and report the same to the board or court.

The board or court may continue the hearing to give the engineer or the viewers additional time for the making of their amended reports and in such case the jurisdiction of the board or court shall continue in all respects at the adjourned hearing.

Upon said hearing the board or court shall have full authority to reopen the original order establishing said ditch, and to set said order aside, and to consider the amended engineer's report and the amended viewers' report, if any, and to make findings and an order thereon the same as is provided in Sections 19 and 20 of this chapter. All proceedings thereafter taken shall be the same as is provided upon the original findings and order of the board or court.

NOTE: Section 24 is taken from Section 106.87. The former section provided for reconsideration only if the bids exceeded the estimate by more than 30 per cent. The new section provides for reconsideration in such event and also if the bids exceed the available benefits.

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**Sec. 25. Payment of Damages.** When damages are awarded and duly confirmed, the county board of each county in which is located the property for which damages are awarded, shall, before entering upon such property for the construction of the improvement, order the same paid, less any assessment against such property. In case of appeal, the damages shall not be paid until the final determination thereof. If there is doubt as to who is entitled to the damages, the board may pay the same to the clerk of the district court of the county to be disbursed by the clerk upon order of the court to the persons thereunto entitled.

NOTE: Section 24 follows very closely the provisions of Section 106.29. Some clerical detail has been eliminated. The section has been transposed to this position because in logical sequence the payment of damages should follow the letting of the contract. It is provided that the damages may be paid into court if doubt exists as to persons entitled thereto.

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**Sec. 26. Supervision of Construction.** The board or court shall require proper supervision and inspection by the engineer of all construction under contracts. The board or court shall cause all contracts entered into under the provision of this chapter to be carried into effect and performed in accordance with the terms thereof and the plans and specifications therefor.

NOTE: Section 26 is taken from Section 106.15 and provides in general terms for supervision of construction. The requirement for an inspector's bond has been eliminated.

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**Sec. 27. Construction and Maintenance of Bridges; Authority of Director.** The auditor or clerk shall notify the state and each municipality, railroad company, or other corporation to construct any bridge or culvert required upon its road or right of way, within a reasonable time named in the notice.

On public highways, all bridges and culverts required by the construction and improvement of any public open ditch, shall be constructed and maintained by the public authority charged by law with the duty of keeping such highway in repair, except as hereinafter in this section noted.

In all cases where a public road or street, not a state trunk highway, is on the line between two public corporations, whether in the same county or not, such corporations shall bear jointly and in equal shares the cost of constructing any bridge or culvert on such road or street made necessary by the construction or improvement of any public drainage ditch; and such corporations shall bear jointly and in equal shares the cost of thereafter maintaining the same.

In all cases where a public drainage ditch is constructed along the boundary line between towns or counties, and excavated material therefrom is deposited on the boundary line or within two rods thereof, the cost of constructing and maintaining all bridges and culverts constructed across such ditch along the boundary upon town or county roads shall be paid and borne equally by the town or county wherein the bridge or culvert is located and by the other town or county adjoining the boundary.

Private bridges or culverts, constructed as a part of any ditch system hereafter established, shall be maintained by the county board as a part of the ditch.

No bridge or culvert, public or private, shall be constructed or maintained in or across any public drainage ditch with less waterway opening than specified in the engineer's report, except with the written approval of the director. If the engineer's report does not specify the waterway opening, no bridge or culvert, public

or private, in or across any public drainage ditch, may be constructed or reconstructed without the approval of the director of the dimensions of waterway opening.

NOTE: The first paragraph of Section 27 is taken from Section 106.21. The second and third paragraphs relating to bridges at or adjoining town line roads are taken from Sections 106.20, 113.17, 163.09 and 164.26. The second paragraph requiring maintenance of public ditch bridges by road authorities is new. The fifth paragraph relating to maintenance of private bridges is new. The last paragraph as to waterway openings is new.

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**Sec. 28. Inspection. Partial Payments.** It shall be the duty of the engineer during the progress of the work to inspect the same and require that it be done in accord with the plans, specifications and contract for construction. Each month during the progress of the work, he shall report in writing to the board or court showing all work completed since the last prior report and all materials furnished, in accord with the provisions of the contract, and shall therewith issue his preliminary certificate for work done and approved or materials delivered. The certificate shall contain the station numbers of the work covered by the certificate and, in case of an open ditch, the actual yardage of the excavation completed, and shall show the total value of all work done and materials furnished according to contract. In judicial ditches the certificate shall further show the percentage of the total value to be paid by each county in the proportion fixed by order of the court. A duplicate of the certificate shall be delivered to the auditor of each county affected. The county or counties shall pay the contractor upon each such certificate 85 per cent of the total value of work done and approved and 75 per cent of the total value of material furnished and delivered. Such material shall be delivered only as required in the course of construction as authorized by the engineer. Each certificate shall show that no loss will result from the partial payment therein set forth.

NOTE: Section 28 is taken from Section 106.38. It has eliminated the second paragraph providing for separate acceptance of bridges. This is a detail which should be provided by contract. It has also eliminated the last

paragraph of Section 106.38 stating that the engineer's certificates shall not constitute evidence of the truth of the contents thereof, and further eliminates the provision that the county shall have a lien on the materials. It would seem that such lien follows as a matter of law.

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**Sec. 29. Additional Partial Payments.** Where any one contract exceeds \$50,000, and the contract, exclusive of materials furnished and not installed, is one-half or more complete, and the contractor is not in default, the contractor may file a verified petition with the auditor or clerk setting forth such facts and praying that an order be made directing the payment of 40 per cent of the retained percentage.

Upon the filing of such petition, the auditor, or the clerk with the consent of the judge, shall fix a time and place for hearing upon the petition before the board or court. Not less than five days prior to the date of hearing, the auditor or clerk shall give notice by mail of the date and place of hearing to the engineer, the attorney for the petitioners, the surety on the contractor's bond, and, in judicial proceedings, to the auditors of the counties affected.

At the time and place specified in the notice, the board or court shall hear all parties interested and, if it appears that the petition is true and that the work has been performed in a satisfactory manner and that a portion of the retained percentage may be released without endangering the interests of the county or counties, the board or court shall so find and may order paid to the contractor not more than 40 per cent of such retained percentage.

NOTE: Section 29 follows very closely Section 106.39.

\* \* \* \* \*

**Sec. 30. Extension of Time on Contracts.** The auditor or auditors are authorized to extend the time for the performance of any contract as herein provided. Application for extension shall be made by the contractor in writing. Notice of such application shall be given to the engineer and the attorney for the petitioners and, in case of judicial proceedings, to the county auditors of the several counties. The auditor or auditors may grant such extension for good and sufficient reasons shown. Such extension shall

not affect any claim for liquidated damages which may accrue after the time originally limited and before extension, or accruing after the limit of such extension.

NOTE: Section 30 contains the provisions of Section 106.32. It does not limit the extensions or provide for hearing on successive applications, but leaves the matter to the discretion of the auditors.

\* \* \* \* \*

**Sec. 31. Reduction of Contractor's Bond.** The contractor, at the end of each season's work and prior to the completion of the contract, may make a verified application to the board or court setting forth the work theretofore certified as completed by the engineer, the value thereof, the amount of money received by the contractor and the amount retained, and further setting forth the amount unpaid by the contractor for labor or material furnished on the contract, and asking an order reducing the amount of the contractor's bond. Upon the filing of the application with the auditor or clerk, the auditor, or the clerk with the consent of the judge, shall make an order fixing the time and place for hearing thereon. Notice of the hearing shall be published in each county and shall be served by mail upon the engineer and the attorney for the petitioners and, in case of a judicial proceeding, upon the auditor of each county affected, 10 days prior to the date of hearing. Upon hearing, if it appears that the contractor is not in default and that no loss will result thereby, the board or court may by order reduce the penalty of the bond to a sum sufficient to save the county or counties from loss or damage; but such reduction shall not be more than 35 per cent of the amount already paid to the contractor, and such reduction shall not affect the remaining amount of the bond or any liability thereon incurred before the reduction. If the bond contains a provision for a three year guaranty of tile work, it shall not be affected by any reduction under this section. The contractor shall pay the cost of publication of notice of hearing.

NOTE: Section 31 covers the provisions of Section 106.34.

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**Sec. 32. Contractor's Defaults.** If the contractor defaults in the performance of his contract, the auditor shall notify by mail the contractor, his bondsmen and the engineer and, in a

judicial proceeding, the auditors of the other counties affected. The notice shall specify the default and state that if the default is not promptly removed and the contract completed, the unfinished portion of the contract will be re-let. If the bondsmen promptly proceed with the completion of the contract, the auditor or auditors may grant an extension of time. If the contract is completed by the bondsmen, the balance due on the contract shall be paid to them, less such damages as the county or counties have sustained by the default.

If the bondsmen do not undertake the completion of the contract, or do not complete the same within the time specified or extended, then the auditor or auditors shall advertise for bids for the completion of the contract in the manner provided in the original letting of contracts and the successful bidder shall give contract and bond as provided for original contracts. Any excess that is paid the contractor under a resale of the work, together with any damages accruing to the county or counties, shall be recoverable upon the bond of the first contractor.

NOTE: Section 32 provides for completion by the bondsmen or reletting in event of default and follows very closely Section 106.35. The original section provides for reletting only after expiration of contract time. The new section provides for notice to bondsmen and reletting after any default. The original section provides for absolute forfeiture of retained percentage. This item has been eliminated. It probably is not a lawful clause. Section 106.36 provides that after a contract has been forfeited, it may be reinstated under certain conditions. This section has not been included in the redraft. It appears to be curative in nature and not of general application. It would seem that after a contract has been forfeited, it should be relet. We have eliminated the sentence in Section 106.35 prohibiting the reletting to the original contractor. Therefore, if a contract were forfeited and relet, the original contractor or his bondsmen might bid thereon.

\* \* \* \* \*

Sec. 33. Acceptance of Contract. Upon the completion of any contract, the engineer shall report that fact to the board or court showing the work performed thereunder, the contract price

thereof, the amount paid on partial certificates and the balance unpaid. On filing the report, the auditor, or the clerk with the approval of the court, shall fix a time and place for hearing thereon and give notice of the hearing by publication or by 10 days' notice by mail to the owners of all properties affected. The notice shall state the filing of the report, the time and place for hearing, and that any party objecting to the acceptance of the contract may appear and be heard.

Upon hearing, if it appears that the contract has been completed in accordance with the plans and specifications, the board or court shall so find and, by order, direct payment of the balance found due. At the hearing and upon good cause shown, the board or court may waive any part of any liquidated damages accruing under the terms of the contract. Upon the filing of the order, the auditor, in case of county proceedings, shall draw a warrant upon the treasurer of his county for the balance due on the contract. In judicial proceedings the clerk shall draw an order on the auditors of the respective counties for their proportionate share of the balance found due on the contract, and, upon presentation of the order, the auditor shall draw a warrant upon the treasurer of his county for the amount specified in the order.

NOTE: Section 33 is taken from Section 106.37. One important change is made. Upon hearing on acceptance, it is proposed to give the board or court authority to waive overtime penalties. It is suggested this authority should be given. Frequently the penalties are set very high and out of all proportion to the damage sustained.

\* \* \* \* \*

**Sec. 34. Auditor's Lien Statement.** After the letting of the contract for the construction of any drainage system, the auditor of each county affected thereby shall make in tabular form a statement showing the following facts:

(1) The names of the owners of all lands and properties and the names of all corporate and public entities within their respective counties benefited or damaged by the construction of the proposed work as appears from the viewers' report as fixed and approved by the order of establishment.

(2) The description of all such lands and properties as the same appears in such report, together with the total number of



acres in each tract according to the tax lists of such county.

(3) The number of acres benefited or damaged in each such tract of land, as shown.

(4) The amount of benefits and damages to each tract and property as the same appears in the viewers' report as confirmed in the order establishing, or as subsequently fixed upon appeal.

(5) The amount each tract and property will be liable for and must pay into the treasury of the county for the establishment and construction of the drainage system, which amount shall be determined as follows:

The auditor shall make a full statement showing the total cost of the drainage system, including the estimated cost of all items required to complete the same. Such cost shall be pro rated to each tract and properly affected in direct proportion to the benefits thereon. The results so obtained, less the amount of damages, if any, shall be the amount that each tract or property will be liable for on account of such improvement; and the same shall be shown in the tabular statement opposite the name and description of each tract, property or corporation, public or private.

The amount any tract or property shall be liable for on account of the establishment and construction of any drainage system shall in no event exceed the benefits which will accrue thereto as determined in the proceedings.

NOTE: Section 34 is taken from Section 106.41. There has been added thereto the last paragraph of Section 106.19.

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**Sec. 35. Filing Lien Statement; Effect Thereof.** The lien statement shall be certified by the auditor and recorded by the register of deeds of the county. The fees of the register of deeds for recording shall be paid on allowance by the county board, and the lien statement, after recording, shall be returned and preserved by the auditor.

The amount that each tract and property will be liable for, as shown by the statement, and the interest thereon as herein-after provided, shall be and remain a first and paramount lien thereon until fully paid; and shall take precedence of all mortgages, charges, encumbrances and other liens. Payment thereof

shall be made as hereinafter provided. The filing of the statement shall be notice to all parties interested of the existence of the lien.

NOTE: Section 35 is taken from the first paragraph of Section 106.42. The subsequent paragraphs of Section 106.42 have to do with a proceeding for a corrected lien statement. This portion of the section is probably curative in effect and has been left out of this draft.

\* \* \* \* \*

**Sec. 36. Supplemental Lien Statement.** If any items of the cost of the drainage system have been omitted from the original lien statement, then a supplemental lien statement, including the omitted items, shall be made and recorded in the office of the register of deeds in the same manner and with the same force and effect as provided in Sections 34 and 35 of this chapter. The aggregate of the original lien and any supplemental lien or liens may not exceed the benefits.

NOTE: Section 36 is a new section and combines the provisions now contained in the next to the last paragraph of Section 106.46 with Section 108.35.

\* \* \* \* \*

**Séc. 37. Payment of Liens. Interest.** Liens filed against property benefited under the provisions of this chapter, shall be payable to the treasurer of the county, as follows:

One-tenth of the principal on or before November 1st subsequent to the filing of a lien in the office of the register of deeds, and one-tenth on or before the first day of November of each year thereafter until the whole thereof is paid.

If the board or court in its discretion so orders, then payment of such lien shall be made to the county treasurer, as follows:

One-fifteenth of the principal on or before five years from November 1st subsequent to the filing of the lien in the office of the register of deeds, and one-fifteenth on or before the first day of November of each year thereafter until the whole amount of the principal is paid.

The principal lien shall bear interest at a rate not to exceed five per cent per annum from the date of the filing of the lien statement in the office of the register of deeds. The rate of interest

shall be fixed by the board but, if bonds are issued by the county, the lien shall bear the same rate of interest as the bonds. All interest shall constitute an additional lien on all lands and properties until fully paid and shall be due and payable as follows:

Subsequent to November 1st of each year, after the filing of the lien statement until the whole amount of the lien and interest is paid, and before the tax lists for such year are turned over to the county treasurer, the auditor shall compute the interest on the unpaid balance of the lien at the rate fixed by the board, and enter such interest, together with the installment, if any then due, on the tax lists for the year. Such amount, installment and interest, shall be collected in the same manner as real estate taxes for that year on the property in question are collected; collecting one-half of the total of such installment and interest with and as a part of the real estate taxes on or before May 31st and one-half on or before October 31st of the succeeding year. The amount of interest to be entered shall be reckoned from the date of filing the lien to August 15th of the succeeding calendar year and thereafter from August 15th to August 15th of each succeeding year on the whole of the principal of the lien remaining from time to time unpaid. Interest on any lien may be paid at any time computed to the date of payment except that after the annual interest shall have been entered on the tax lists for the year, it shall be paid as entered without abatement for prepayment.

The auditor shall keep a ditch lien record in each ditch proceeding showing the amount of the lien remaining from time to time unpaid against each tract and property subject thereto.

All provisions of law now or hereafter existing relating to the collection of real estate taxes, so far as applicable hereto, are hereby adopted for the purpose of enforcing payment of such liens and installments thereof and of the interest thereon, but in case of default, no penalty shall be added to any such installment of principal and interest but each defaulted payment, principal and interest, shall draw interest from the date of default until paid at six per cent per annum.

NOTE: Section 37 covers primarily Sections 106.45 and 106.46 relative to payment and enforcement of liens and interest thereon. The last portion of Section 106.45 relating to use of bond premium and delay in levying interest has been cut out. It would seem that these

items are directory as to ordinary ministerial acts and that the statutory direction is not required.

In Section 106.46 we have eliminated the 10 to 30 year bonds, leaving the 5 to 20 years bonds as the maximum. Because it is axiomatic that bonds should be retired during the useful life of an improvement, it would seem that the maximum time given should not exceed 20 years.

The third from the last paragraph of Section 106.46, relating to satisfaction of liens, has been set up in a separate section. The second from last paragraph of Section 106.46 is covered by Section 36 hereof. The last paragraph of Section 106.46 has been dropped. The rule there contained should be followed as a matter of course without statutory enactment.

\* \* \* \* \*

**Sec. 38. Enforcement of Assessments; Public and Corporate.**

Assessments filed for benefits to any municipal corporation shall thereupon become a liability of such corporation and shall be due and payable with interest in installments on November 1 of each year as provided in Section 37 of this Act. If such installments and interest are not paid on or before November 1, the amount thereof, with interest added as provided in Section 37 hereof, shall be extended by the county auditor against all the property in such municipal corporation liable to taxation, a levy thereof made thereon, and the same shall become due, to be paid and collected in the same manner and at the same time as other taxes.

When any public road found to be benefited is a county or state aid road, the assessment filed thereon shall be against the county and paid out of the road and bridge fund of the county.

In case of assessment against the state for benefits to trunk highways, the same shall be chargeable to and payable out of the trunk highway fund. Upon presentation of a certified copy of the assessment against the state for benefits to any trunk highway, the commissioner of highways shall cause the same to be paid out of the trunk highway fund.

All state lands and properties, including rural credit lands, shall be assessable for benefits received and such assessment shall be paid by the state from any funds appropriated and available

therefor upon certification thereof to the state auditor.

All properties owned by any railroad or other utility corporation benefited by any such drainage system, shall be liable for the assessments for benefits thereto the same as taxable lands. From the date of the filing by the county auditor in the office of the register of deeds of the lien statement, the amount of the assessment with interest shall constitute a lien against all property of the corporation within the county. Upon default the assessment may be collected by civil action or, the lien may be foreclosed by action in the same manner as provided by law for the foreclosure of mortgage liens, and the county where the lien is filed shall have the right of action against any such corporation for the enforcement and collection of such assessment.

NOTE: Section 38 is new, or, more properly speaking, is a collection of scattered provisions now found in the law. It is taken in part from Sections 106.19, 106.46 and 107.03.

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**Sec. 39. Satisfaction of Liens.** When any lien with accumulated interest is fully paid, the auditor shall issue a certificate of such payment under his hand and official seal and cause the same to be recorded in the office of the register of deeds. The certificate, when so recorded, shall release and discharge the lien of record. The auditor shall be entitled to receive the sum of 25 cents for each description in his certificate, and his fee and the fee of the register of deeds shall be paid from the ditch fund.

NOTE: Section 39 is taken from the third from last paragraph of Section 106.46.

MEMO: The present law contains detailed provision for the correction of erroneous liens, for adjustments on account of erroneous collections, and for the making of supplemental liens upon hearing and order. See the second, et seq. paragraphs of Sections 106.43 and 106.44. The necessity of these provisions is doubtful.

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**Sec. 40. Apportionment of Liens.** In all cases in which a lien has been established against any tract of land in any drainage ditch proceeding and no installment of such assessment or interest thereon shall be in default, any person having an interest in the

land, or any part thereof, may petition the district court of the county wherein the land is situated to have the lien apportioned between specified portions of the tract. Upon the filing of this petition, the court shall by order fix a time and place when the petition shall be heard and requiring personal service of a notice of the hearing to be made upon the county auditor, the occupants of the premises, and on all parties having an interest in the premises, as shown by the records in the office of the register of deeds of the county, at least ten days before the hearing; or, if for any reason personal service cannot be made upon all of such persons, notice may be given by publication. The court shall hear all evidence bearing upon the matter and shall by order apportion the lien. A certified copy of the order shall be recorded in the office of the register of deeds of the county and filed in the office of the auditor. The petitioner shall pay the costs incurred for service or publication.

NOTE: Section 40 is taken from Section 106.47.

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Sec. 41. Bond Issues. The county board of each county wherein properties are located which are assessed for benefits by reason of the construction of any ditch system, is authorized, after the lien statement has been recorded in the office of the register of deeds, to issue the bonds of the county in such amount as may be necessary to defray, in whole or in part, the cost of establishing and constructing the ditch. The total amount of the bonds shall not exceed the total of the assessment for benefits filed in the county.

Such bonds shall pledge the full faith, credit and resources of the county issuing the same for the prompt payment of the principal and interest thereof, and shall be payable at such time or times, not to exceed 20 years from their date, and bear such rate of interest, not to exceed six per cent per annum, payable annually or semi-annually, as the county board shall by resolution determine.

Each bond shall contain a recital that it is issued by authority of and in strict accordance with this chapter, and shall be signed by the chairman of the board and countersigned by the auditor, who shall keep a record thereof.

Such recital shall be conclusive in favor of the holders of the

bonds as against the county, that the drainage improvement has been properly established, that property within the county has been assessed for benefits, and that a valid lien statement has been properly recorded in the office of the register of deeds of such county.

The county board shall have power to sell and negotiate such bonds, but for not less than their par value. All such bonds shall be sold as provided by Chapter 475 Minnesota Statutes, 1941, and not otherwise.

The proceeds from the sale of all such bonds shall be credited to the drainage proceedings in which they were issued.

The county board shall provide moneys for the payment of the principal and interest of the bonds as they severally mature. The board may pay drainage bonds issued under the provisions of this chapter out of any available funds in the county treasury when the moneys on hand in the ditch fund on account of which bonds were issued are insufficient therefor; but the funds from which said moneys have been taken shall be replenished from assessments on such ditch or from the sale of funding bonds as hereinafter provided.

The county board may provide in the contract for the sale of bonds, for the delivery of the bonds as the work proceeds and the funds are needed, and for the payment of interest only from the date of delivery.

The board may empower the county treasurer to accept in payment of liens under the provisions of this chapter, any outstanding bond or bonds issued on account of the ditch lien to be paid thereby which are legal obligations of the county under the provisions of this chapter. Such bonds shall be so accepted at the par value thereof plus accrued interest.

NOTE: Section 41 is taken from Section 106.40. There has been added thereto a provision from Section 107.01 relative to pledging the faith and credit of the county. This does not change the existing law because the supreme court has held ditch bonds to be county obligations. We have left out a sentence contained in Section 106.40 relative to accounting. This sentence has been transferred to a subsequent section. Reference to the general ditch fund has been eliminated.

**Sec. 42. Funding Bonds.** The county board of any county may issue ditch funding bonds under the conditions and terms in this section prescribed.

**Subdivision 1. Application.** Such bonds may be issued in any county where it at any time appears that moneys in the fund of any ditch will not be sufficient to pay in full the principal and interest of the ditch bonds issued on account of such ditch and becoming due within one year thereafter or if there be a shortage in the fund of such ditch because the county had paid any of the principal or interest on any of its drainage ditch bonds (1) with moneys applicable to a ditch other than the ditch in connection with which the bonds were issued, or (2) out of county funds other than the ditch funds, or (3) by the issuance of county warrants issued and outstanding.

**Subd. 2. Auditor's Certificate.** Before bonds shall be authorized or issued under the provisions of this section, there shall first be presented to the county board and entered in its records a certificate signed by the county auditor under his seal. This certificate shall state the amount that will be required to make good any existing shortage within the meaning of subdivision 1 hereof, and the probable amount which will be required to pay the principal and interest of the county's outstanding ditch bonds to become due within one year thereafter. The certificate shall state such amount in detail and specify the part thereof which is applicable to each of the several ditch systems. The certificate shall be conclusive evidence that the county has authority to issue bonds under the provisions of this section to an amount not exceeding the aggregate amount specified in such certificate.

**Subd. 3. Issuance of Bonds.** Pursuant to the filing of the certificate, the county board of such county is empowered to issue and sell, from time to time, the county's bonds for the purpose of the funds of the ditches listed in the certificate. These bonds shall be designated ditch funding bonds. Their issuance shall be authorized by resolution of the county board. They shall be sold and issued and shall bear interest and obligate the county as provided in Section 41 of this chapter; and shall mature serially in annual installments payable within not more than 15 years.

**Subd. 4. Obligation.** The proceeds of any such bonds paid into the treasury shall be applied to the purpose for which they are issued.



Any bonds which a county may issue under this section shall be general obligations of the county but shall not be included in determining the county's net indebtedness under the provisions of any applicable law.

NOTE: Section 42 is taken from Sections 108.01 to 108.05, inclusive.

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**Sec. 43. Fees and Expenses; Payment.** Subdivision 1. **Fees and Expenses.** The following fees and expenses shall be allowed and paid for services rendered under this chapter:

(1) The compensation of the engineer and his assistants and other employees shall be on a per diem basis and shall be fixed by order of the board or court. The order fixing compensation shall provide for payment of the actual and necessary expenses of the engineer and his assistants and other employees, including the cost of the engineer's bond.

(2) Each viewer shall be paid on a per diem basis for every day necessarily engaged and his actual and necessary expenses. The compensation shall be fixed by the board or court.

(3) Each member of the county board shall be paid the sum of \$5.00 per day for each day actually employed in drainage proceedings and for each day employed in the inspection of any drainage system, if appointed as a committee for that purpose, and in addition thereto, his actual and necessary expenses incurred therein. Such per diem shall be in addition to all sums and fees allowed by law.

(4) The county auditor, the attorney for the petitioners and the clerk of the district court, shall each be paid such reasonable compensation for services actually rendered as may be fixed by the board or court; and the fees and compensation of all county officials in drainage proceedings shall be in addition to all sums and fees allowed by law.

**Subd. 2. Payment.** All fees and expenses provided for in this chapter shall, in the case of a county ditch, be audited, allowed and paid upon the order of the county board, and, in case of a judicial ditch, the court shall audit, allow and order the same paid upon 10 days' written notice to each county interested. Such notice shall be given by the clerk to the auditor of each county stating that all bills on file with the clerk at the date of the notice

will be brought on for hearing and allowance at the time and place named therein.

NOTE: Section 43 takes the place of Section 106.66 as amended by Chapter 112, Laws of 1945. Very material changes have been made. All maximum rates of compensation for the engineer and his assistants have been eliminated. The maximum and minimum for viewers has been eliminated. The county board's per diem remains unchanged but the mileage has been eliminated with actual expenses substituted therefor. The law limits the auditor's fees to \$250 in an original proceeding and \$100 in a repair proceeding. This limitation has been eliminated. We have eliminated a special provision restricting the county attorney and have set that up in the next succeeding section. We have eliminated the last short paragraph of Section 106.66 as apparently surplusage.

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**Sec. 44. County Attorney.** The county attorney shall represent the county in all drainage proceedings without special compensation therefor. No county attorney, or his assistants, or any attorney associated with him in business, shall otherwise appear in any drainage proceeding for any person interested therein.

NOTE: Section 44 is new. The wording thereof is taken from a portion of Section 106.66.

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**Sec. 45. Payment of Costs and Expenses; Warrants; Ditch Funds.** The county board shall provide the funds for the payment of the costs and expenses incurred in any drainage system.

The county auditor shall keep a separate account and fund for each drainage system, which account shall be credited with all moneys arising from the sale of bonds, bond premiums, and all moneys received as interest and upon liens and assessments and other sources on account of such drainage system, and which account shall be debited with every item of expenditure made on account of said drainage system.

All costs and expenses incurred in any drainage proceeding shall be paid out of the funds of such ditch by warrants drawn

thereon. The funds in any ditch shall not be used to pay costs and expenses in any other ditch. If no funds are available in the ditch fund on which the warrant is drawn, the board may, by unanimous resolution, transfer funds from the general revenue fund of the county to such ditch fund. In such case the county board shall thereafter cause the general revenue fund to be reimbursed from the funds of such ditch.

In all cases where a warrant shall be issued by the auditor of any county under the provisions of this chapter, and there shall be no cash in the fund therein mentioned to pay the warrant when the same is presented, the county treasurer shall endorse the warrant "Not paid for want of funds," and date and sign the endorsement. In that event interest on the warrant shall be paid thereafter at the rate of four per cent per annum until the warrant is called in and paid by the treasurer. No interest shall be paid on any warrant after funds are available in the hands of the treasurer for the payment thereof. Such warrant shall be deemed a general obligation of the county issuing the same.

The county board of any county having in any ditch fund a surplus over the amount required for payment of obligations presently due and payable from the fund is authorized to invest any part of the surplus in bonds or certificates of indebtedness of the United States of America or of the State of Minnesota.

NOTE: Section 45 is designed as a general financial section. The present law contains no such section. It is taken in part from Sections 106.40, 106.46, 106.54, 106.88 and 107.16. The important change is the elimination of the general ditch fund. Other changes are a recital that warrants issued and unpaid are a general obligation, and the further provision that surplus may be invested in United States bonds or certificates of indebtedness or Minnesota State bonds only. The interest rate on warrants issued and unpaid is fixed at 4 per cent.

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**Sec. 46. Duties of Public Examiner.** Upon application of any county, indicated by resolution of the county board, the public examiner shall examine into the accounts and records relating to any or all drainage proceedings in the county. When so requested, the examiner shall establish a system of accounts with each drainage system in the county.

The compensation of the examining accountant, not exceeding the per diem fixed by law for general audits, and his travel and hotel expenses, shall be audited and allowed by the county board, paid into the state treasury, and credited to the public examiner's contingent fund. The auditor shall cause such expenses to be apportioned among the several drainage systems in the county.

NOTE: Section 46 is taken from subdivision 2 of 106.88.

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**Sec. 47. Repairs. Subdivision 1. Definition; Maintenance of Bridges.** (a) The term "repair" used in this section means restoring a ditch system or any part thereof as nearly as practicable to the same condition as when originally constructed or subsequently improved, including resloping of open ditches and leveling of waste banks thereon if deemed essential to prevent further deterioration, and such routine operations as may be from time to time required to remove obstructions and preserve the efficiency of the ditch.

(b) After construction, all highway bridges and culverts on any ditch system hereafter established shall be maintained by the municipality or public authority charged with the duty of maintaining the same as set forth in section 27 of this chapter. Private bridges and culverts, constructed as a part of any ditch system hereafter established, shall thereafter be maintained by the county as a part of such ditch system.

**Subd. 2. Authority of Board.** (a) After the construction of a state, county, or judicial drainage system has been completed, the county board is empowered to maintain the same or such part thereof as lies within the county and provide the repairs required to render it efficient to answer its purpose. The board shall cause such drainage system to be annually inspected, either by a committee thereof, or a ditch inspector appointed by the board, and, if the committee or inspector shall report to the board that repairs are necessary on any ditch system and such report is approved by the board, it shall cause such repairs to be made within the limits hereinafter set forth. The ditch inspector may be the county highway engineer.

(b) If the board finds that the estimated cost of such repairs will be less than \$1,000, it may have such work done by day labor without advertising for bids or entering into a contract

therefor. The county board is limited in the expenditure of money therefor as herein provided. In one calendar year the board shall not spend or contract to be spent for repairs or maintenance on one ditch system a sum greater than ten per cent of the cost of construction thereof in that county, except as provided in subdivision 4 of this section. In case there are sufficient funds to the credit of the drainage system to make such repairs, such funds may be expended by the county board for such purpose without further assessment.

**Subd. 3. Contribution by Counties.** In the case of any ditch situated in two or more counties and at the end of each year or other convenient period following its completion, the board of any county affected may petition the court having jurisdiction thereof. Such petition shall show the nature of the repairs made to the ditch in the county during the period and the necessity thereof, and the costs and expenses thereof, and shall pray the order of the court apportioning such costs and expenses among the counties affected. Upon the filing of the petition the court shall, by order, fix a time and place for hearing thereon and shall cause the clerk to give notice of the hearing to each county affected, by publication and by mailed notice to its auditor. At or prior to the time of hearing, the auditor of each county affected, except petitioner, shall file with the court a statement showing all repairs made to the ditch in his county, not previously reimbursed hereunder, together with the nature thereof, the necessity thereof, and the costs and expenses thereof. At such hearing the court shall have jurisdiction of the respective counties and shall hear all interested parties. If it appears that the repairs made by either or all the counties affected were necessary, and that the amounts expended therefor were reasonable and proper, the court shall so find and shall balance the accounts between the respective counties, charging each county with its proportionate share of the costs and expenses of all such repairs made by all the counties and crediting each county with the portion thereof theretofore paid by it, and shall order reimbursement by any county or counties affected to any other county or counties as shall be just. A certified copy of the order shall be filed by the clerk with the auditor of each county, and the county boards shall respectively make reimbursement as therein required.

**Subd. 4. Petition for Repairs; Proceedings.** (a) Upon the filing of a petition by any party or corporation, municipal or

otherwise, interested in or affected by a drainage system, with the auditor in the case of a drainage system lying wholly within the county, or with the clerk of the district court having jurisdiction over said ditch in the case of a drainage system affecting two or more counties, therein setting forth that the drainage system is out of repair, it shall be the duty of the auditor in the case of a drainage system lying wholly within the county to present the same to the county board at its next meeting, and of the clerk in the case of a drainage system affecting two or more counties, to present the petition to the judge of the court within ten days from the filing thereof. Thereupon, if it appears to the board or court that such ditch is out of repair, the board or court shall appoint an engineer to examine the ditch and make report of the necessary repairs, with the estimated cost thereof, and all details, plans and specifications required to supply the necessary details to let a contract therefor. The board or court may order a hearing on the petition before appointing the engineer on such notice as it may require, if a hearing is deemed advisable.

(b) Upon the filing of the engineer's report, notice of hearing thereon shall be given as required by section 10 of this chapter. If at this hearing it appears from the engineer's report and the evidence presented that the repairs recommended are necessary and for the best interests of the property owners affected, and the board or court shall so find, the board or court shall make findings and order accordingly. In the case of a drainage system lying wholly within the county, the order shall direct the county auditor and the chairman of the county board, and in the case of a drainage system affecting two or more counties the order shall direct the auditors of the several counties affected to proceed and let a contract for the repair of the system as shown in the engineer's report and as determined necessary by the board or court, in the manner provided in this chapter for original ditch construction.

(c) If the petition referred to in sub-paragraph (a) hereof be made by the owners of not less than 26 per cent of the area of the property affected by and assessed for the original construction of the ditch, and if upon the hearing required by sub-paragraph (b) hereof it appears that the ditch is in need of repair so that it no longer serves its original purpose, then the board or court shall order the repairs and the letting of a contract therefor as provided by sub-paragraph (b) hereof; provided, that no job of repair shall be ordered if it appears that the cost thereof will exceed the total

benefits theretofore determined in the ditch proceeding.

(d) In all proceedings before the court, the judge shall, by order, apportion the costs and expenses between the several counties in the same manner as required in the original construction of the ditch.

**Subd. 5. Assessment; Bonds.** (a) If there are not sufficient funds to the credit of the drainage system so to be repaired, the county board shall apportion and assess the cost of the repairs pro rata upon all lands, corporations and municipalities which have participated in the total benefits as theretofore determined. Such assessment may not exceed the total benefits theretofore determined. Such assessments may be made payable in annual installments to be specified in the order for assessment. If the assessments do not exceed 50 per cent of the original cost of the ditch, such installments shall not exceed five. But, if such assessments exceed 50 per cent of the original cost of the ditch, the county board may order such assessments to be paid in installments not to exceed ten. If such order shall provide for payment in installments, interest from the date of the order for assessments shall be fixed by the county board in the order, at a rate not to exceed five per cent per annum, on the unpaid assessments, and shall be collected with each installment.

(b) If the assessment be not payable in installments, no lien need be filed, and the assessment, plus interest from the date of the order to August 15 of the succeeding calendar year, shall be entered on the tax lists for the year and be due and payable with and as a part of the real estate taxes for such year. When any such assessment is levied and made payable in installments, the county auditor shall file for record in the office of the register of deeds an additional tabular statement in substance as provided in Section 34 of this Chapter, and all the provisions of Sections 35 and 37 of this Chapter relating to collection and payment shall apply thereto. Upon the filing of the tabular statement, the county board may issue and sell bonds, as provided by Section 41 of this Chapter, and in such event the rate of interest on the lien shall be the same as the interest rate on the bonds, and the installments and interest shall be due and payable and shall be entered on the tax lists and collected the same as the original lien.

**Subd. 6. Creation of Fund.** For the purpose of creating a fund to the credit of any drainage system to be used for repairs

exclusively, the county board is authorized to apportion and assess the amount of such fund against all the parcels of land, corporations and municipalities theretofore assessed for benefits in proceedings for the construction of the ditch system, including lands not originally assessed therefor but subsequently found to be benefited according to law. Such assessment shall be made pro rata according to benefits determined. The fund so created shall not exceed ten per cent of the original cost of construction of the ditch system. Whenever such fund to the credit of one ditch system shall exceed ten per cent of the total original cost of the ditch, no further assessment for the purpose of creating such fund shall be made until such fund shall have fallen below that percentage. Assessments shall be collected as provided in subdivision 5 of this section.

Such assessment, if so provided in the order, may be made payable in equal annual installments. Thereupon the county auditor shall file for record in the office of the register of deeds a tabular statement as hereinbefore provided.

Subd. 7. Inclusion of Added Lands. (a) In any proceeding for the repair of any state, county, or judicial drainage system, if it shall appear that any lands or property which were not assessed for benefits arising from its construction have been drained into such drainage system, or have otherwise benefited by reason thereof, the engineer appointed under subdivision 4 (a) hereof shall submit a map with his report showing all main ditches and drains, public or private, draining into such drainage system and all lands affected thereby or otherwise benefited by such drainage system, together with the names of the owners thereof so far as practicable. In such event, all such owners shall be notified of the hearing on the engineer's report as provided by subdivision 4 (b) hereof.

(b) Upon the hearing on the engineer's report, if it appears that lands or properties which were not assessed for benefits resulting from the construction of the ditch system have been benefited by reason thereof, the board or court shall so find, and, before ordering the letting of a contract for the making of such repairs, shall appoint viewers as provided by Section 14 of this chapter. The viewers shall proceed to ascertain and determine the benefits to all lands, roads, corporations, and municipalities benefited by the original construction of such ditch system and



not assessed for benefits arising from its construction and shall report the same to the board or court, as the case may be, as provided by Section 15 of this Chapter. Upon the filing of such report, notice of hearing thereon shall be given as required by Section 17 of this Chapter, and the board or court shall thereupon have jurisdiction of each tract of land and property in the viewers' report described, as set forth in Section 18 of this chapter.

(c) Upon hearing upon the viewers' report, the board or court shall hear all interested parties and shall find and determine the benefits to all lands, roads, corporations and municipalities benefited by the original construction of the ditch system and not assessed for benefits therefor.

(d) Any person aggrieved by the assessment as determined by the board or court may appeal from the order determining the same as provided by Section 63 of this Chapter.

(e) In the repair of the drainage system then determined and in all future proceedings relating to the repair, cleaning, improvement, or alteration of such drainage system, such lands shall be considered a part of the lands benefited by the drainage system described in such order and shall be assessed in the same manner as provided by law for the assessment of the lands and properties originally assessed for and included in the drainage system.

**Subd. 8. Cost of Repair.** All fees and costs incurred for proceedings relating to the repair of any drainage system, including inspections, engineering, viewing, publications, or any other proper proceeding shall be deemed a cost of repair and assessed against the land benefited and against corporations and municipalities as herein provided.

**NOTE:** Section 47 follows very closely the repair act passed by the 1945 legislature—Chapter 82, Laws of 1945. Four important changes have been made.

First, it is provided that all public bridges and culverts constructed as a part of the ditch system be thereafter maintained by the public body charged with the maintenance of the structure, and that no ditch funds be used for public highway bridge and culvert maintenance.

Second, it is provided in the case of repairs to a ditch in more than one county that any county expending money

therefor may obtain pro rata reimbursement from the other counties affected upon court order.

Third, it is provided in the case of ditches in more than one county that the court which originally established the ditch shall have jurisdiction of the repairs.

Fourth, it is provided that repairs may be financed by bond issue under certain conditions.

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**Sec. 48. Ditch Inspectors.** In any county where drainage systems constructed have cost in the aggregate more than \$50,000, the board may, in its discretion, appoint a competent person as county ditch inspector. The inspector may be the county highway engineer. The inspector shall examine all drainage systems within the county as the board shall designate and require. The appointment shall be for such time and for such compensation as the board may specify. The inspector shall report in writing to the county board the result of his examination of any ditch, designating the portion thereof in need of repair, together with the location and nature of the repair needed. The board shall consider such report at its next meeting and is authorized to cause all or any part of such repairs to be made as provided by section 47 of this chapter.

NOTE: Section 48 is taken from the first part of Section 106.80.

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**Sec. 49. Obstruction of Ditch.** If it at any time appears to the board that any ditch has been obstructed by the installation of bridges or culverts of insufficient waterway opening or otherwise, the board shall forthwith notify the person or public authority responsible for such obstruction to remove the same or to show cause before the board at a time and place fixed in the notice why such obstruction should not be removed. If such obstruction be on private property, the owner thereof shall be deemed prima facie responsible therefor and shall in any event be so notified. Such notice shall be by mail not less than ten days before the return date thereof. At the time and place fixed in the notice, the board shall hear all interested parties and if it appears that the ditch has been obstructed by any person or public authority, the board shall so find and order the obstruction removed by the

person or authority responsible therefor within a reasonable time fixed in the order. If the obstruction be not removed within the time fixed, the board shall cause the same to be removed and in such event the auditor shall make a statement of the cost thereof and shall file the same in the office of the Register of Deeds of the county as a lien upon the premises on which the obstruction is located or against the public or other corporation responsible therefor; and such lien shall be enforced and collected the same as liens made for ditch repairs as provided in this chapter; except that no lien may be filed against private property if it appears that the owner thereof is not responsible for the obstruction. In such event the cost of removal may be enforced against the responsible party by civil action.

NOTE: Section 49 is taken from the last part of Section 106.80. It has been changed by specific reference to possible obstruction caused by insufficient bridges or culverts. A provision has been made for hearing.

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**Sec. 50. Improvements. Subdivision 1. Petition.** Before any public drainage system theretofore established and constructed shall be improved by tiling, enlarging or extending, the following procedure shall be observed. In the case of the improvement of a ditch system lying wholly within the county, a petition signed by not less than 26 per cent of the resident owners of the property affected thereby or by the owners of not less than 26 per cent of the area of the property affected shall be filed with the auditor. In the case of a drainage system affecting two or more counties, such petition shall be filed with the clerk of the district court having jurisdiction of the system. If it appears from the petition that properties not assessed for the original construction of the ditch have been subsequently found to be benefited thereby and that such properties not assessed for such original construction will be benefited by the proposed improvement, then a petition signed by 26 per cent of the resident owners or by the owners of 26 per cent of the area, of the property affected by and assessed for the original construction of the ditch shall be sufficient. If the ditch proposed to be improved consists of a main ditch and laterals or lateral systems or of more than one main ditch with separate outlets, and if the petition be for the improvement of specified laterals or lateral systems or a separate main ditch not affecting

the entire ditch system, then a petition signed by 26 per cent of the resident owners of the property or by the owners of 26 per cent of the area of the property affected by such laterals or lateral systems or separate main ditch shall be sufficient.

The provisions of Section 3 of this Chapter, relative to signature of public and corporate officials shall apply to this section. The petition shall designate the drainage system proposed to be improved by number or other description sufficient to identify the same and set forth that the ditch is of insufficient capacity or needs enlarging or extending so as to furnish sufficient capacity or a better outlet; with a description of the starting point, general course and terminus of any extension, and that the proposed improvement will be of public utility and promote the public health. The petition shall contain an agreement by the petitioners that they will pay all costs and expenses which may be incurred in case the proceedings are dismissed.

**Subd. 2. Subsequent Proceedings.** Upon the filing of such petition and a bond as provided by Section 4 of this Chapter, it shall be the duty of the auditor, in the case of a drainage system lying wholly within the county, to present the same to the county board at its next meeting, and of the clerk, in case of a system affecting two or more counties, to present the same to the judge of the court within ten days of the filing thereof. Thereupon the board or court shall appoint an engineer to examine the drainage system and to make report thereon. Thereafter the proceedings shall be as set forth in this Chapter, Section 5, et seq., as provided in the case of original proceedings for the establishment of a ditch system. The benefits and damages determined shall be such as result from the improvements and subsequent assessments for the repair of the improvement shall be based on the benefits so determined.

**NOTE:** Section 50 follows very closely the provisions of the improvement act adopted by the 1945 legislature, i.e., Chapter 71, Laws of 1945. One important change has been made. Chapter 71 provides for petition and appointment of the engineer and states that subsequent proceedings shall be had pursuant to section 106.50 et seq. The sections referred to are 106.50 to 106.54 inclusive. These sections provide details for appointment of viewers, final hearings, filing of liens,

etc., pursuant to a petition for improvement. It is believed these sections may be abandoned and that all proceedings for improvement may follow the same proceedings as in original ditch construction. This contemplates that benefits to be derived from the improvement will be determined anew without reference to the original benefits. See last sentence of section in that respect.

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**Sec. 51. Improvement of Outlets; Petition; Proceedings.** In any case where one or more ditches or drainage systems, either public or private, have been constructed, or in any case where proceedings are pending for the construction of one or more public drainage systems, the waters from which do, or it is contemplated shall, empty into an existing drain or watercourse or body of water, and the construction of the drains has caused, or is likely to cause, the overflow of the existing drain, watercourse or body of water and the inundation of adjoining lands, any county affected or the owners of such adjoining lands may institute proceedings as follows: A petition shall be signed by the county board of any county affected, or not less than 26 per cent of the resident owners of such adjoining lands or by the owners of not less than 26 per cent of the area of such lands. The petition shall describe the lands which have been or are likely to be inundated and in general terms by number or otherwise the drain or drains which have caused, or are likely to cause, such overflow and inundation. The petition shall further describe the situation of the drain, watercourse or body of water and outlet and show the necessity of the improvement thereof by enlarging the same or controlling the waters therein by off-take ditches or additional outlets or otherwise, and that such improvement will protect such adjoining lands from overflow and be of public benefit and utility and improve the public health. The petition shall state that the petitioners will pay all costs and expenses which may be incurred in case the proceedings are dismissed or for any reason no contract for the construction thereof is let. The petitioners, except the petition be made by the county board, shall give bond as provided by Section 4 of this Chapter. If the improvement and the adjoining lands described in the petition and the lands drained by the drain or drains causing the inundation are all located in one county, the petition shall be filed with the county auditor, except in case the

petition be made by the county board. In such case it shall be made to the court and filed with the clerk of the county. If the improvement and such lands, or any part thereof, are located in two or more counties, the petition shall be filed with the clerk of the district court of any county in which the improvement or any part thereof is located. Thereafter the county board or the district court, as the case may be, shall have jurisdiction of said petition and the improvement and the lands and properties affected, and all proceedings shall thereafter be had for the establishment and construction of the improvement and the assessment of lands benefited thereby, the same as in the case of a petition for the establishment of a public drainage system as set forth in this chapter.

In his preliminary report, the engineer shall show the existing or proposed drains which cause the overflow together with the lands and properties drained or to be drained thereby and the names of the owners thereof. If, pursuant to preliminary hearing on such petition, a detailed survey be ordered and viewers appointed, the viewers shall find and report the benefits to all lands and properties from the improvement including all lands and properties drained or to be drained by such existing or proposed drains.

NOTE: Section 51 is intended to cover the subject matter of Section 106.77 and also Chapter 33, Laws 1945. The new law in short provides relief for overflowed lands at the outlet upon 26 per cent petition. Section 106.77 provides for the consolidation of ditches in the area causing the overflow. This provision has been dropped because actual consolidation of proceedings appeared to be impractical. The old laws gave exclusive jurisdiction to the court. Section 51 gives the county board jurisdiction if the lands are all in one county. All provisions for stay or consolidation of proceedings have been dropped.

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**Sec. 52. Laterals.** Persons owning property in the vicinity of an existing public drainage system may petition for a lateral or a lateral system connecting such lands with the drainage system. The petition shall be signed by 26 per cent of the resident owners of the property or by the owners of 26 per cent of the area of the property traversed by such lateral or lateral system. If

petition be made by the county board. In such case it shall be made to the court and filed with the clerk of the county. If the improvement and such lands, or any part thereof, are located in two or more counties, the petition shall be filed with the clerk of the district court of any county in which the improvement or any part thereof is located. Thereafter the county board or the district court, as the case may be, shall have jurisdiction of said petition and the improvement and the lands and properties affected, and all proceedings shall thereafter be had for the establishment and construction of the improvement and the assessment of lands benefited thereby, the same as in the case of a petition for the establishment of a public drainage system as set forth in this chapter.

In his preliminary report, the engineer shall show the existing or proposed drains which cause the overflow together with the lands and properties drained or to be drained thereby and the names of the owners thereof. If, pursuant to preliminary hearing on such petition, a detailed survey be ordered and viewers appointed, the viewers shall find and report the benefits to all lands and properties from the improvement including all lands and properties drained or to be drained by such existing or proposed drains.

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Sec. 52. Laterals. Persons owning property in the vicinity of an existing public drainage system may petition for a lateral or a lateral system connecting such lands with the drainage system. The petition shall be signed by 26 per cent of the resident owners of the property or by the owners of 26 per cent of the area of the property traversed by such lateral or lateral system. If

the lands affected by the lateral are situated in one county, the petition shall be filed with the auditor. If such lands extend into two or more counties, the petition shall be filed with the clerk. The petition shall describe in general terms the starting point, general course and terminus of the proposed lateral or lateral system, together with the lands traversed thereby, and shall set forth the necessity for the construction thereof, and that the same, if constructed, will be of public benefit and utility and promote the public health, and praying that said lateral be constructed and connected with said ditch. The petition shall provide that the petitioners will pay all costs and expenses which may be incurred in case the proceedings are dismissed or if for any reason no contract for the construction thereof is let. The petitioners shall give bond as provided by Section 4 of this Chapter and thereafter the proceedings shall be had and carried to final determination under the provisions of this Chapter the same as original proceedings for a ditch system.

NOTE: Section 52 is designed to cover laterals into existing ditches, or what might be termed as sub-ditches. The present law is contained in Sections 106.56 to 106.59, inclusive, and sets forth the details for the entire proceeding. It appears all that is needed is a provision for the original petition and that thereafter the proceedings may be the same as for any other ditch. The present law requires petition by two or more landowners. The proposed law permits petition by 26 percent of the landowners.

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Sec. 53. Use of Drainage System for Outlets. After the construction of any county or judicial ditch, no public or private lateral, either open or tiled, for the drainage of land not assessed for benefits for such ditch, shall be constructed so as to use the ditch as an outlet without having first secured express authority so to do from the county board, in the case of a system lying wholly within one county, or from the district court that originally ordered the construction, in the case of a system extending into two or more counties. Any person desiring to so utilize an existing ditch shall petition the board or court. Upon filing the petition, the auditor, or the clerk with the approval of the judge, shall fix a time and place for hearing thereon and shall give notice



of the hearing by publication. Upon the hearing the board or court shall consider the capacity of the outlet ditch and, if consent be given to construct the lateral, shall fix by order the terms and conditions for the use of the ditch as an outlet and shall fix the amount that shall be paid therefor. No lateral shall be constructed using the ditch as an outlet until the sum fixed by the order is paid by the petitioner to the county treasurer of the county wherein petitioner's property is located. The order shall also describe the property to be benefited by the lateral and shall fix the amount of benefits to such property for the outlet. The property so benefited shall be liable for assessments thereafter levied in such ditch system, on the basis of the benefits so found, the same as though such benefits had been determined in the original order establishing the ditch.

NOTE: Section 53 is taken from Section 106.55. For the purpose of protecting other parties interested, a hearing has been provided on notice by publication. It is provided that the lands affected shall be liable for future assessments the same as lands originally included.

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**Sec. 54. Outlets in Adjoining States.** At the final hearing upon the engineer's and viewers' report, in any proceeding, if it appears that there is no proper outlet for the system, except through the lands in an adjoining state, the board or court may so find and adjourn the hearing thereon. In such event the board or court shall require the auditor, in case of a county drainage system, or the auditors, in case of a judicial drainage system, to procure an option to acquire the needed right of way at an expense not exceeding the estimated cost thereof specified in the engineer's report, and the order establishing the ditch shall not be made until the option is procured. If the option be procured and the ditch established, the option shall be exercised and the cost of such right of way shall be paid for as a part of the cost and expenses of the drainage system.

NOTE: Section 54 is taken from 106.74. The first paragraph of 106.74 relating to the engineer's report has been set up in the section covering the engineer's report and eliminated from the new section. It is provided that the ditch be not established until an option on out of state right of way is procured.

of the hearing by publication. Upon the hearing the board or court shall consider the capacity of the outlet ditch and, if consent be given to construct the lateral, shall fix by order the terms and conditions for the use of the ditch as an outlet and shall fix the amount that shall be paid therefor. No lateral shall be constructed using the ditch as an outlet until the sum fixed by the order is paid by the petitioner to the county treasurer of the county wherein petitioner's property is located. The order shall also describe the property to be benefited by the lateral and shall fix the amount of benefits to such property for the outlet. The property so benefited shall be liable for assessments thereafter levied in such ditch system, on the basis of the benefits so found, the same as though such benefits had been determined in the original order establishing the ditch.

NOTE: Section 53 is taken from Section 106.55. For the purpose of protecting other parties interested, a hearing has been provided on notice by publication. It is provided that the lands affected shall be liable for future assessments the same as lands originally included.

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NOTE: Section 54 is taken from 106.74. The first paragraph of 106.74 relating to the engineer's report has been set up in the section covering the engineer's report and eliminated from the new section. It is provided that the ditch be not established until an option on out of state right of way is procured.

**Sec. 55. Connection with Drains in Adjoining States.** When it is necessary to construct or improve any drainage system at or near the state line between this state and an adjoining state or country, which work cannot be done in a proper manner without extending the same into an adjoining state or country, the board or court before which the drainage proceeding is pending may join with the board or tribunal of the adjoining state or country having power therein to lay out and construct public drainage ditches in the construction or improvement of any such drainage system. The board or court in this state may enter into contracts or arrangements with the board or tribunal in the adjoining state or country to construct or improve any such drainage system; each to pay such share of the cost and expenses of the work as shall be agreed upon by the contracting bodies. The proceeding, so far as it relates to lands in this state, shall be done on petition of the owners of lands as provided in the laws of this state relating to county or judicial ditch proceedings, and the provisions of these laws so far as applicable shall govern the board or court in relation to the joint work of drainage; provided, the adjoining county or district in another state or country shall pay its proper share of the necessary costs and expenses of the construction of any such work including damages. If the benefits to lands in the adjoining state or country are not sufficient to pay all the costs of construction or improvement therein, including damages, the board or court, as the case may be, may authorize and direct the proper county or counties to contribute sufficient funds to complete the construction or improvement of the drainage system in the adjoining state or country, provided the same will be of sufficient benefit to the lands in this state affected by the drainage work, to warrant the contribution.

NOTE: Section 55 is taken from Section 106.75.

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**Sec. 56. Municipal Sewer Connections. Subdivision 1. Petition.** Any municipality desiring to use any public drainage system as an outlet for its sewer system or the overflow therefrom, may petition the county board where the system desired to be used as an outlet lies wholly within one county, or the court having jurisdiction thereof where the system extends into two or more counties. The petition shall set forth the necessity for the use of the system as an outlet and that the same will be of public

benefit and utility and promote the public health. The petition shall be accompanied by a plat showing the location of the drainage system and of the sewerage system of the municipality with plans and specifications showing the plan of connection. The same shall have the approval of the State Water Pollution Control Commission.

Subd. 2. **Filing; Notice.** If proceedings for the drainage system intended to be used are pending, but the same is not yet established, the petition shall be filed in the office of the auditor in all cases pending before the board, and with the clerk in all judicial proceedings, and shall be presented to the board or court at the final hearing called for the consideration of the engineer's and viewers' report. Notice of the pendency of the petition shall be included in the notice of final hearing.

If the drainage system desired to be used as an outlet has already been established, the petition shall be filed with the auditor in all cases where the drainage system is located entirely within one county, or with the clerk of the court where the proceedings were instituted when the drainage system extends into two or more counties. Upon the filing of the petition, the auditor, or the clerk with the approval of the judge, shall, by order, fix a time and place for hearing on the petition. Notice of the hearing shall be given by publication, and in judicial proceedings also by mail to the auditor of each county affected.

Subd. 3. **Hearing and Order.** Upon the hearing of the petition, the board or court may receive all evidence of parties interested, for or against the granting of the petition, and if at the hearing it shall appear that a necessity exists for the use of the ditch system as an outlet for the sewerage system or the overflow therefrom, that such use will be of public utility and promote the public health, that the proposed connection conforms to the requirements of the State Water Pollution Control Commission and provides for the construction and use of proper disposal works, the board or court may grant the petition upon such terms as may be prescribed and authorize the municipality to use the drainage system as an outlet, subject to such conditions as may be deemed necessary and proper to protect the rights of the parties and safeguard the interests of the general public. The order shall make the municipality a party to the drainage proceedings and determine the benefits to be derived from such use.

If the ditch be already established, the board or court shall further determine the amount the municipality shall pay for the privilege of such use and the sum so determined shall be paid to the county or counties affected and credited to the account of the ditch system used as an outlet. The municipality shall thereafter be liable for all subsequent liens and assessments for the repair and maintenance of such drainage system in proportion to the benefits so fixed, the same as though originally determined in the order establishing such ditch.

NOTE: Section 56 is intended to cover the provisions of Section 106.61, 106.62 and 106.63. The first two sections mentioned cover separately the use of a drainage system for overflow from a sewer and the use of the drainage system as an outlet for the sewer. We have dropped this distinction because we do not believe it is required.

Section 106.61 contains detailed requirements for treatment of the sewage, point of outlet, etc. We have eliminated these provisions and believe this point is sufficiently covered by the requirement of approval by the State Water Pollution Control Commission. Section 106.64 has been dropped entirely. This gives the municipality the right to condemn right of way for the connection. It is a municipal law and has no real place in the drainage law. Section 465.01 under the heading of Cities and Villages, apparently covers the same subject.

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**Sec. 57. Defective Notice; Service.** Subdivision 1. **Defective Notice.** In all cases where notice is required under this chapter, where it appears that proper notice has been given to some parties, but is defective, or not given, as to others, the jurisdiction shall continue as to all parties to whom proper notice has been given and the proceedings may be continued by order of the board or court for such time as may be necessary to publish, post or mail a new notice. Such new notice need only be given to those not properly served in the first instance.

Subd. 2. **Personal Service.** In all cases where any form of service is provided in this chapter, personal service in lieu thereof shall be sufficient, provided the same be made not less than ten days before the date of hearing. Such notice shall be served in

the manner provided for the service of summons in a civil action in district court.

NOTE: Section 57 is taken in short form, from sections 106.68 and 106.69.

\* \* \* \* \*

**Sec. 58. Right of Entry.** In all proceedings instituted under the provisions of this chapter, the engineer and his assistants and the viewers and their assistants shall have the right to enter upon any lands for the purpose of making the survey, locating the drain, examining the property, and estimating the benefits and damages.

NOTE: Section 58 is taken from 106.70.

\* \* \* \* \*

**Sec. 59. Records, Prima Facie Evidence.** The record of any proceedings conducted under the provisions of this chapter and of any order made by the county board or the district court in such proceeding, or the certified copy thereof, shall be prima facie evidence of the facts therein stated and of the regularity of all proceedings prior to the making of the order.

NOTE: Section 59 is the same as 106.71.

\* \* \* \* \*

**Sec. 60. Failure of Board or Court to Attend Hearings.** In all cases where an order has been made and notice given calling a hearing in any matter connected with a proceeding under this chapter, and the board or court for any cause shall fail to appear at the time and place specified, the auditor or clerk shall continue the hearing to such other date as may be deemed necessary and notify the board or court of the continuance and the date of hearing. Such continuance shall continue the hearing and jurisdiction to the date fixed by the auditor or clerk.

NOTE: Section 60 is taken from 106.72.

\* \* \* \* \*

**Sec. 61. Effect of Defective Proceedings.** No party may take advantage of any error in any drainage proceedings, nor of any informality, error, or defect appearing in the record of the proceedings, unless the party complaining thereof is directly affected

thereby. The modification of the benefits or damages to any property, or the enjoining of collection of any assessment, shall in no manner affect any other property or the collection of any assessment thereon.

When any ditch has been established and a contract or contracts let without collusion and in good faith and at a reasonable price, no defect or lack of notice in letting, making or executing the contract or contracts shall in any way affect the enforcement of any assessment; and in such case, and if the contract or contracts be in good faith performed, in whole or in part, no such defect shall invalidate the contract or contracts.

NOTE: Section 61 is taken from 106.79.

\* \* \* \* \*

**Sec. 62. Use of Former Surveys.** In any proceeding for the establishment or improvement of a drainage system where a survey has been made and for any reason the proceeding has been abandoned, or dismissed, and thereafter proceedings are instituted for another drainage system in the same territory, and the engineer in the new proceedings has used a part or all of the former survey, the amount saved in the subsequent proceedings shall be paid to the proper parties. Upon petition of the parties who paid the expense of the former survey, the board or court shall determine the amount of benefit that was derived by the subsequent proceedings from the former survey and shall order the amount thus found paid to the parties entitled thereto and charged as a part of the expenses in the subsequent proceeding.

NOTE: Section 62 covers the requirements of 106.82.

\* \* \* \* \*

**Sec. 63. Appeals. Subdivision 1. Grounds for Appeal.** Any party aggrieved thereby, may appeal to the district court from an order of the board or court made in any proceeding and entered upon its record determining any of the following matters:

- (1) The amount of benefits determined;
- (2) The amount of damages allowed;
- (3) Relative to the allowance of fees or expenses in any proceeding.

Subd. 2. Procedure on Appeal. (a) Any person appealing on the first or second ground named, may include and have considered and determined benefits or damages affecting property other than his own. Notice of such appeal shall be served upon the owner or occupant of such other property or upon the attorney who represents such owner in the proceedings. Such notice of appeal shall also be served upon the auditor or clerk.

(b) To render the appeal effectual, the appellant shall file with the auditor or clerk within 30 days of the date of such final order a notice of appeal which shall state the particular benefits or damages appealed from and the ground upon which the appeal is taken. The notice of appeal shall be accompanied by an appeal bond to the county where the property is located of not less than \$250 with sufficient surety to be approved by the auditor or clerk, conditioned that the appellant will duly prosecute the appeal and pay all costs and disbursements which may be adjudged against him and abide the order of the court. Within 30 days after such filing, the auditor, in case of a county drainage proceeding, shall return and file with the clerk of the district court the original notice and appeal bond.

(c) The issues raised by the appeal shall stand for trial by jury and shall be tried and determined at the next term of the district court held within the county in which the proceedings were commenced, or in such other county in which the appeal shall be heard, beginning after the filing of the appeal; and shall take precedence of all other matters of a civil nature in court. If there be more than one appeal triable in one county, the court may, on its own motion or upon the motion of a party in interest, consolidate two or more appeals and try them together, but the rights of the appellants shall be separately determined. If the appellant fails to prevail, the cost of the trial shall be paid by the appellant. In case of appeal as to damages or benefits to property situated in the county other than the county where the drainage proceedings are pending, and if the appellant so requests, the trial shall be held at the next term of the district court of the county wherein the lands are situated. In such case, the clerk of the district court where the appeal is filed, shall make, certify and file in the office of the clerk of the district court of the county where the trial is to be had, a transcript of the papers and documents on file in his office in the proceedings so far as they pertain to the matters on account of which the appeal is taken. After the final determina-



tion of such appeal, the clerk of the district court where the action is tried, shall certify and return the verdict to the district court of the county where the proceedings were instituted.

(d) The clerk of the district court shall file a certified copy of the final determination of any such appeal with the auditor of the county affected.

(e) An appeal on the third ground may be to the district court of any county wherein lands are affected. Such appeal shall be made within 30 days after the order allowing or disallowing the claim and shall be governed as far as applicable by the provisions of this subdivision.

**Subd. 3. Effect of Determination.** In all cases of appeal, the amount awarded by the jury as finally determined shall stand for and in the place of the amount from which the appeal was taken.

**Subd. 4. Appeal from Orders.** Any party aggrieved thereby may appeal to the district court of the county where the proceedings are pending from any order made by the county board dismissing the petition for any drainage system or establishing or refusing to establish any drainage system. The appellant shall serve notice of appeal and give bond as provided in subdivision 2 hereof.

**Subd. 5. Appeal to Supreme Court.** Any party aggrieved by a final order or judgment rendered on appeal to the district court, or by the order made in any judicial ditch proceeding dismissing the petition therefor or establishing or refusing to establish any judicial ditch, may appeal therefrom to the supreme court in the manner provided in civil actions. Such appeal shall be made and perfected within 30 days after the filing of the order or entry of judgment. The notice of appeal shall be served on the clerk of the district court and need not be served on any other person.

**Subd. 6. Appeal; Repair, Improvement or Improvement of Outlet.** In any proceeding before the board or court for the repair pursuant to petition, or for the improvement of any drainage system, or for public laterals thereto, or for the improvement of an outlet under Section 51 of this Chapter, or for the abandonment of any ditch, the same right of appeal to the district or supreme court shall be had as from a similar order made in a proceeding to establish a drainage system as herein provided;

and on like grounds and with similar procedure.

NOTE: Section 63 combines the provisions of Sections 106.89, 106.90, 107.17, and 108.25. It is specifically provided that all orders of the district court shall be reviewable by appeal.

\* \* \* \* \*

**Sec. 64. Offenses; Penalties.** Any person wilfully obstructing or in any way injuring any public drainage work, and any person who wilfully changes or alters the location or markings of any stakes set by the engineer in any drainage system, and any person digging or constructing or causing to be dug or constructed any drain which thereby outlets into any drainage system constructed under the provisions of the laws of this state, without lawful authority, shall be guilty of a misdemeanor.

The County Attorney of the proper county shall prosecute all criminal actions arising under this chapter.

NOTE: Section 64 is taken from Section 106.92. This section has been re-written and has eliminated the clause making it a misdemeanor to divert water from its proper channel and limiting the application of the law to injury to public drains. We have cut out the clause providing treble damages to any party injured. We have cut out subdivision 2 relating to liability of public officers. This is taken care of by general law.

\* \* \* \* \*

**Sec. 65. Diversion of Drainage.** After the construction of any ditch system, if waters are diverted from any lands or properties assessed for benefits from such ditch system so that the drainage therefrom no longer utilizes or affects the drainage system, then the owner or owners of such lands or properties may petition the board or court for an order setting such lands or properties out of the drainage system. If the drainage system be entirely in one county, the petition shall be filed with the auditor for consideration and determination by the county board and, if the system be in two or more counties, the petition shall be filed with the clerk for consideration and determination by the court. Upon the filing of the petition, the auditor, or the clerk, with the approval of the court, shall fix a time and place for hear-

ing thereon and shall give notice of the hearing by publication to all persons interested in the drainage system. Upon hearing, if it appears that the water from lands and properties of petitioners have been diverted from the drainage system and that such lands and properties are no longer benefited thereby and no longer utilize or affect the drainage system, and further, that setting such lands and properties off from the drainage system will not prejudice the owners of lands and properties remaining in the system, the board or court shall so find and shall by order direct that the lands and properties of petitioner be set off from the drainage system. No such order shall have effect to release such lands and properties from any lien theretofore filed on account of the drainage system, nor shall it release such lands and properties from any assessment or lien thereafter filed for expenses incurred on account of such ditch prior to the date of the order. The lands and properties so set off shall be deemed no longer affected by the ditch as to any proceeding thereafter had for the repair or improvement thereof, and no lien or assessment shall be thereafter made against such lands and properties for repairs or improvements made subsequent to the date of the order.

NOTE: Section 65 is new. The present law contains no similar provision.

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**Sec. 66. Abandonment.** After the expiration of the period originally fixed, or subsequently extended, for the payment of assessment liens made on account of any public ditch, proceedings for the abandonment of the ditch may be had under the following procedure:

A petition shall be signed by not less than 51 per cent of the resident owners of lands assessed for the construction of the ditch, or by the owners of not less than 51 per cent of the area of such lands. For the purpose of the petition, the county shall be deemed the resident owner of all tax forfeited lands held by the state and assessed for benefits from said ditch, and the county board may execute the petition in behalf of the county the same as any resident owner. If all lands and property assessed for benefits in the ditch are located in one county, the petition shall be filed with the county auditor, except the petition be signed by the county board. In such case, the petition shall be made to the court and filed with the clerk. If such lands and property are located in two

or more counties, the petition shall be filed with the clerk. Thereafter, the county board or the district court, as the case may be, shall have jurisdiction of the petition.

The petition shall designate the ditch proposed to be abandoned and set forth that the ditch is no longer of public benefit and utility because of the general abandonment for agricultural uses of the lands served thereby or because the ditch has ceased to function and its restoration is not practical. Upon the filing of the petition, the auditor, or the clerk with the approval of the judge, shall fix a time and place for hearing thereon. The auditor or clerk shall cause notice of the time and place of the hearing to be given to all persons interested, by publication.

At the time and place specified in the notice, or at any adjournment thereof, the board or court shall examine the petition and determine the sufficiency thereof and shall hear all interested parties. If the owner of any land or property assessed for benefits for such ditch appears and makes written objection to the abandonment thereof, the board or court shall appoint three disinterested persons as viewers to examine such land or property and report thereon to the board or court, and shall adjourn the hearing for such reasonable time as may be required for examination and report. In such event, the viewers shall proceed to examine the lands or property of the objector and shall forthwith report to the board or court the description and situation thereof and if the ditch any longer serves to drain or otherwise effect the same. At the adjourned hearing, the board or court shall consider the viewers' report and all evidence offered and, if it appears the ditch serves any useful purpose to any lands or property or the general public, the petition for abandonment shall be denied. If it appears that the ditch no longer serves any useful purpose to any lands or property affected and that it is no longer of public benefit and utility, the board or court shall so find and shall by order abandon the ditch.

After abandonment of any ditch, no petition shall be entertained for its repair and the responsibility of the board or court for the maintenance thereof thereafter shall cease.

NOTE: Section 66 is new. There is at present no comparable statute.

Sec. 67. **Laws Repealed.** Sections numbered 105.13 to 105.36, both inclusive, Chapter 106, Chapter 107, Chapter 108, and Sections numbered 113.07 to 113.18, both inclusive, of Minnesota Statutes 1941, Chapters 241, 405 and 626 of the General Laws of 1943, and Chapters 33, 71, 82, 97 and 112 of the General Laws of 1945 are hereby repealed save only as to unfinished proceedings instituted under any of said chapters or sections and not completed at the date of this Act. Any proceedings so instituted and incomplete at the date of the passage of this Act, may be completed under the provisions of the laws under which the same were instituted; and for such purpose the provisions of such laws shall continue and apply to such proceedings.

Sec. 68. **Effective Date.** This Act shall take effect and be in force from and after its passage.

## PROPOSED WATER RESOURCES LAW

### INDEX

Section Number	Subject Matter
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6.	Permission required to build dams.
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8.	Procedure upon Application.
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19.	Enforcement of Commissioner's Orders.
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### PROPOSED WATER RESOURCES LAW

Section 1. **Words, Terms and Phrases.** Unless the language or context clearly indicates that a different meaning is intended, the following words and terms, for the purposes of this act, shall have the meanings subjoined to them:

Subdivision 1. **Commissioner.** "Commissioner" means the commissioner of conservation of the State of Minnesota.

Subd. 2. **Division.** "Division" means the division of water resources and engineering of the department of conservation of the State of Minnesota.

Subd. 3. **Director.** "Director" means the director of the division of water resources and engineering of the department of conservation of the State of Minnesota.

NOTE: Section 1 is taken from Section 105.01. The definition of "ditch" has been eliminated and definition of "commissioner" has been added.

\* \* \* \* \*

Sec. 2. **Water Conservation; Declaration of Policy.** In order to conserve and utilize the water resources of the state in the best interests of the people of the state, and for the purpose of promoting the public safety and welfare, it is hereby declared to be the policy of the state (1) that subject to existing rights, all waters in streams and lakes wholly within the state and such portions of all boundary streams and lakes as lie within the state, which are capable of substantial beneficial public use, shall be public waters, and shall be subject to the control of the state, (2) the state, so far as practicable, shall control the appropriation and use of surface and underground waters of the state, and (3) the state shall control and supervise, so far as practicable, the construction, reconstruction, repair, removal, or abandonment of dams, reservoirs, and all control structures in any of the public waters of the state.

NOTE: Section 2 is taken from Section 111.43. The definition of public waters has been changed from waters navigable in fact to waters capable of a substantial beneficial public use.

**Sec. 3. Authority and Powers of Commissioner.** Subdivision 1. **Water Conservation Program.** The commissioner shall devise and develop a general water resources conservation program for the state. The program shall contemplate the conservation, allocation and development of all the waters of the state, surface and underground, for the best interests of the people. The commissioner shall be guided by such program in the issuance of permits for the use and appropriation of the waters of the state and the construction, reconstruction, repair, removal, or abandonment of dams, reservoirs and other control structures, as provided by this act.

Subd. 2. **Surveys and Investigations.** The commissioner is authorized to cause to be made all such surveys, maps, investigations and studies of the water resources and topography of the state as he may deem necessary to provide the information to formulate a program and carry out the provisions of this act.

Subd. 3. **Administration over Waters and Water Power.** The commissioner shall have administration over the use, allocation and control of public waters and water power, the establishment, maintenance and control of lake levels and water storage basins, and the determination of the natural ordinary high water level of any public waters.

Subd. 4. **Power to Acquire Property. Eminent Domain.** The commissioner shall have the power to acquire title to any private property for any authorized purpose by purchase or by the exercise of the right of eminent domain; and the use of such property in the furtherance of lawful projects under this act is hereby declared to be a public purpose. On request by the commissioner, the attorney general shall proceed to acquire the necessary title to private property for such use under the provisions of Chapter 117, Minnesota Statutes 1941.

Subd. 5. **Contracts.** The commissioner is authorized to approve contracts for all works under this act, to change the plans thereof when necessary, and to supervise, control, and accept the same when complete. He is further authorized to cause the same, together with expenses incurred in connection therewith, to be paid for out of any funds made available to the use of the commissioner.

NOTE: Section 3 is taken from Sections 111.45, 105.03 and a part of 105.05.

**Sec. 4. Duties of Director. Qualifications.** The director of the division of water resources and engineering of the department of conservation shall be a registered professional engineer, skilled in hydraulics. Under the direction of the commissioner, he shall make the surveys and engineering investigations required by this act and perform the following duties:

A complete copy of all preliminary and final engineers' maps, plans and reports on all public ditches hereafter initiated in the state shall be filed in the office of the director by the respective county auditors or clerks of district court, and the director shall report thereon to the county boards of commissioners or judges of the district court, as required by the county and judicial ditch laws of this state.

Upon request by any county board or judge of the district court or engineer on any public ditch, the director shall advise them relative to any engineering questions or problems arising in connection with any public ditch.

When any field survey or investigation of any public ditch is deemed necessary by the director or is requested in writing by the county board or district judge, the director may make the same. If the field survey or investigation be made at the request of the board or judge, the expense thereof shall be reported to the board or court and paid by the county as are other ditch expenses.

The director is authorized to prepare and publish run-off data and information as to the capacity of tile drains and open ditches within the state together with forms of specifications for drain tile, open ditches and ditch construction and standard procedural forms for public ditch proceedings, and to furnish the same to engineers and public officials for their advice and information.

The director is authorized to investigate the methods employed in the manufacture of drain tile and the causes of any failures thereof, and to conduct research and experimentation for the purpose of improving the quality of drain tile. He may make inspections and tests of manufacturing processes and materials used and the resultant product in any manufacturing plant in the state where drain tile is made and sold to the general public. The director, or his authorized representative, shall have free access to all such manufacturing plans for the purpose of such inspections and tests, and the results thereof shall be made public for



the information of officials concerned in public ditch proceedings, tile manufacturers, and others interested in the use of drain tile.

The director, with the approval of the commissioner, may make cooperative agreements with and cooperate with any person, corporation or governmental authority for the purpose of effectuating the provisions of this section.

NOTE: Section 4 is taken from Sections 105.03, 105.04, 105.06, 105.07 and 105.10. It has been materially shortened as to detail.

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**Sec. 5. Appropriation and Use of Waters.** It shall be unlawful for the state, any person, partnership or association, private or public corporation, county, municipality, or other political subdivision of the state to appropriate or use any waters of the state, surface or underground, without the written permit of the commissioner, previously obtained upon written application therefor to the commissioner. The commissioner may give such permit subject to such conditions as he may find advisable or necessary in the public interest. Nothing in this section shall be construed to apply to the use of water for domestic purposes serving at any time less than 25 persons nor to any beneficial uses and rights in existence on July 1, 1937.

NOTE: Section 5 is taken from Section 111.46. Two changes are suggested. One authorizes the commissioner to give permits subject to conditions. The second eliminates the exemption of municipalities and would require application for permits within the limits of municipalities.

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**Sec. 6. Permission Required to Build Dams.** It shall be unlawful for the state, any person, partnership, association, private or public corporation, county, municipality or other political subdivision of the state, to construct, reconstruct, remove, or abandon or make any change in any reservoir, dam or waterway obstruction on any public water; or in any manner, other than in the usual operation of dams beneficially using water prior to July 1, 1937, to change or diminish the course, current or cross-section of any public waters, wholly or partly within the state,

without a written permit from the commissioner previously obtained. Applications for such permit shall be in writing to the commissioner on forms prescribed by him.

NOTE: Section 6 is taken from Section 111.47 as amended by Chapter 344, Laws 1943. The exemption from control of future water powers has been eliminated.

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**Sec. 7. Applications for Establishment of Lake Levels.** Application for authority to establish and maintain levels on any public water and applications to establish the natural ordinary high water level of any body of public water may be made to the commissioner by any public body or authority; or, for the purpose of conserving or utilizing the water resources of the state, the commissioner may initiate proceedings therefor.

NOTE: Section 7 is new. The provision of Section 106.03 that minimum levels may not be lower than in a state of nature has been eliminated.

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**Sec. 8. Procedure upon Application.** Subdivision 1. **Application for Permit.** Each application for a permit required by this act shall be accompanied by maps, plans, and specifications describing the proposed appropriation and use of waters, or the changes, additions, repairs or abandonment proposed to be made, or the public water affected, and such other data as the commissioner may require.

Subd. 2. **Authority of Commissioner.** The commissioner is authorized to receive applications for permits and to grant the same, with or without conditions, or refuse the same as hereinafter set forth.

Subd. 3. **Waiver of Hearing.** The commissioner in his discretion may waive hearing on any application and make his order granting or refusing such application. In such case, if any application be granted with conditions or be refused, the applicant may within ten days after mailed notice thereof file with the commissioner a demand for hearing on the application. The application shall thereupon be fully heard on notice as hereinafter provided, and determined the same as though no previous order had been made. If no demand for hearing be made, the order shall become

final at the expiration of ten days after mailed notice thereof to the applicant.

**Subd. 4. Time.** The commissioner shall act upon all applications within twenty days after the application and all required data is filed in his office; either waiving hearing and making an order thereon or directing hearing thereon.

**Subd. 5. Notice.** The notice of hearing on any application shall recite the date, place and time fixed by the commissioner for the public hearing thereon and shall show the waters affected, the levels sought to be established or any control structures proposed. The notice shall be published by the applicant, or by the commissioner if the proceeding is initiated by him, once each week for two successive weeks prior to the day of hearing in a legal newspaper published in the county in which a part or all of the affected waters are located. Notice shall also be mailed by the commissioner to the county auditor and the chief executive official of any municipality affected.

**Subd. 6. Hearing.** The hearings shall be public and shall be conducted by the commissioner or a referee appointed by him. All affected persons shall have an opportunity to be heard. All testimony shall be taken under oath and the right of cross-examination shall be accorded. The commissioner shall provide a stenographer to take testimony and a record of the testimony and all proceedings at the hearing shall be taken and preserved. The commissioner shall not be bound by judicial rules of evidence or of pleading and procedure.

**Subd. 7. Witnesses. Contempt.** The commissioner may subpoena and compel the attendance of witnesses and the production of all books and documents material to the purposes of the hearing. Disobedience of every such subpoena, or refusal to be sworn, or to answer as a witness, shall be punishable as a contempt in like manner as a contempt of the district court on complaint of the commissioner before the district court of the county where such disobedience or refusal occurred.

**NOTE:** Section 8 combines the provisions of Sections 111.49 and 111.51 relative to hearings.

**Sec. 9. Permits and Orders of Commissioner. Notice Thereof.** The commissioner shall make findings of fact upon all issues necessary for determination of the applications heard by him. All orders made by the commissioner shall be based upon findings of fact made on substantial evidence. He may cause investigations to be made, and in such event the facts disclosed thereby shall be put in evidence at the hearing or any adjournment thereof.

If the commissioner concludes that the plans of the applicant provide for the most practical use of the waters of the state and will adequately protect public safety and promote the public welfare, he shall grant the permit, and, if that be in issue, fix the control levels of public waters accordingly. If the commissioner concludes that the proposed appropriation or use of state waters or the proposed construction is inadequate, wasteful, dangerous, or impractical, or detrimental to the public interest, he shall reject the application or he may require such modification of the plan as he deems proper to protect the public interest.

In granting a permit the commissioner may include therein such terms and reservations with respect to the amount and manner of such use or appropriation or method of construction or operation of controls as appears reasonably necessary for the safety and welfare of the people of the state.

Notice of all orders made after hearing shall be given by publication of the order once each week for two successive weeks in a legal newspaper in the county where the hearing was held.

The commissioner shall make his order pursuant to hearing within 60 days after the completion of the hearing.

NOTE: Section 9 is taken from Section 111.53 and in part from subdivision 2 of Section 111.49. The provision for fishways, and the requirement that the sill of any dam may not be lower than the natural outlet, have been eliminated.

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**Sec. 10. Time Limit.** The commissioner shall fix the time within which all construction authorized in the permit must be completed, or within which the appropriation or use of water must be made, which time shall not exceed five years from the date of

the permit. Such time may be thereafter extended by the commissioner for good cause shown.

NOTE: Section 10 is taken from Section 111.55.

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**Sec. 11. Appeals.** Any party in interest may appeal from any determination of the commissioner to the district court of the county in which the project is wholly or partly located, at any time within 30 days after notice of the commissioner's order. Notice by publication shall be sufficient.

The appellant shall serve the notice of appeal on the commissioner and on the attorney for any adverse party who appears of record in the proceeding. The notice of appeal with proof of service thereof shall be filed with the clerk of the court to which such appeal is taken within five days after the service thereof; thereupon the district court shall have jurisdiction over the appeal. The notice of appeal shall set forth the order appealed from and the grounds upon which the appeal is taken.

When an appeal is taken from any order of the commissioner under the provisions of this act, the commissioner shall forthwith cause to be made a certified transcript of all proceedings had and of all pleadings, exhibits and files and all testimony taken or offered before him upon which said order is based, and shall file the same with the clerk of the district court where the appeal is pending.

Upon such appeal being perfected, it may be brought on for trial at any time by either party upon 10 days' notice to the other, and shall then be tried by the court without a jury, and determined upon the record. At such trial the findings of fact made by the commissioner shall be prima facie evidence of the matters therein stated, and his orders shall be deemed prima facie reasonable. If the court shall determine that the order appealed from is lawful and reasonable, it shall be affirmed. If the court finds that the order appealed from is unjust, unreasonable, or not supported by the evidence, it shall make such order to take the place of the order appealed from as is justified by the record before it.

Any person aggrieved may appeal to the supreme court from the judgment of the district court made therein as in a civil action, except that the appeal must be taken within 30 days from date of the entry of such judgment.

The pendency of any such appeal shall not stay the operation of the order of the commissioner, but the district court or the supreme court in their discretion may suspend the operation of the commissioner's order pending a determination of the appeal; provided the appellant shall file an appropriate bond approved by the court conditioned that he shall answer for all damages caused by the delay in the enforcement of the commissioner's order.

NOTE: Section 12 is taken from Section 111.60 with this important difference: Section 111.60 says that appeals should be taken as provided by law as for appeals from the Railroad and Warehouse Commission as provided in Section 237.25. Section 237.25 in turn refers to Sections 216.24 and 216.25. This reference has been eliminated and in lieu thereof, we have endeavored to incorporate in Section 12 all necessary provisions relating to appeals.

\* \* \* \* \*

**Sec. 12. Dam Construction and Maintenance by State.** The commissioner, in order to improve navigation, protect and improve domestic water supply, protect and preserve fish and other wild life, protect the public interest in the shore and shore lines of public waters, and promote public health, shall have power to construct, maintain, and operate all necessary dikes, dams and other structures necessary to maintain such uniform water levels as may be established under this Act.

For the purposes of this act the commissioner is authorized to acquire lands or any necessary interest therein by purchase, gift or condemnation.

All dams owned by the state or erected upon lands owned or controlled by the state shall be maintained under the direction of the commissioner and the same shall be operated under his direction and control.

The commissioner is authorized to accept from local governmental and civic agencies or persons funds for the purpose of constructing, maintaining, or operating dams and control structures or acquiring the lands required therefor.

NOTE: Section 12 is taken from the first paragraph of Section 111.64 and from paragraph 111.58. No material change has been made.

**Sec. 13. Cooperation with Other Agencies.** The commissioner may cooperate and enter into agreements with the United States government, any department of the State of Minnesota, or any state or country adjacent to the State of Minnesota for the purpose of effecting any of the provisions of this Act. He may cooperate with any department of the government of the United States in the execution of surveys within the state.

NOTE: Section 13 is taken from Subdivision 7 of Section 105.04 and from Section 105.12. No material change has been made.

\* \* \* \* \*

**Sec. 14. Commissioner to Appear for State.** The commissioner may appear, represent and act for the state in any matter relating to any application to be made to the federal government relating to waters within the state or the use thereof; and he may do and perform such acts in connection therewith as he deems proper to protect the interests of the people of the state consistent with the provisions of this Act.

NOTE: Section 14 is taken from Section 111.57.

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**Sec. 15. Owners to Cap Artesian Wells.** For the conservation of the underground water supplies of the state, the commissioner is authorized to require the owners to control artesian wells to prevent waste.

NOTE: Section 15 is taken from Section 111.52.

\* \* \* \* \*

**Sec. 16. Examination and Repair of Dams and Reservoirs.** Upon complaint or upon his own initiative, the commissioner is authorized to examine any reservoir, dam or waterway obstruction. If the commissioner determines that such reservoir, dam or waterway obstruction is unsafe or needs repair, he shall notify the owner thereof to repair or remove the same as the exigencies of the case may require. The work of repair or removal shall be commenced and completed within such reasonable time as may be prescribed by the commissioner.

NOTE: Section 16 is taken from Section 111.54.

**Sec. 17. Application of Act.** This act shall not in any way supersede or amend the provisions of Sections 92.45 and 110.13 of Minnesota Statutes 1941.

Nothing in this act shall apply to dams, reservoirs or control works in existence on and prior to July 1, 1937, except as may be necessary to protect the health and safety of the people of the state.

NOTE: Section 17 is taken from Sections 111.63 and 111.59.

\* \* \* \* \*

**Sec. 18. Violation a Gross Misdemeanor.** Any person, partnership, association or corporation violating any of the provisions of this act shall be guilty of a gross misdemeanor.

Any public officer responsible for the violation of this Act shall be subject to removal from office by the governor.

NOTE: Section 18 is taken from Section 111.61.

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**Sec. 19. May Enforce Orders of Commissioner.** Upon application of the commissioner, the district court of any county in which the project is wholly or partially located, may, by injunction, enforce the compliance with, or restrain the violation of, any order of the commissioner made pursuant to this act, or restrain the violation of this act.

NOTE: Section 19 is taken from Section 111.62.

\* \* \* \* \*

**Sec. 20. Laws Repealed.** Sections numbered 105.01 to 105.12, both inclusive, and Sections numbered 111.43 to 111.64, both inclusive, of Minnesota Statutes 1941, and Chapter 344 of the General Laws of 1943 are hereby repealed save only as to unfinished proceedings instituted under any of said chapters or sections and not completed at the date of this act.

**Sec. 21. Effective Date.** This Act shall take effect and be in force from and after its passage.



### **PROPOSED LAW FOR IMPROVEMENT OF WATERS BY COUNTIES AND MUNICIPALITIES**

**Section 1. Authority of County Board.** When the whole or any part of any body of water is situated in a single county, the county board of commissioners, in order to improve navigation thereon, or to promote the public health, safety and welfare, may improve the same and maintain the improvement and operate control works; provided that no such improvement affecting public waters be made until a permit therefor be issued by the commissioner of conservation of the state of Minnesota as provided by law.

**Sec. 2. Acquiring Property.** The county board may acquire, in the name of the county, by gift or purchase or by condemnation under chapter 117, Minnesota Statutes 1945, any existing dam or control works that may affect the level of such waters, and all other land and property needful for the purpose of improving any body of water pursuant to section 1 of this chapter.

**Sec. 3. Access to Body of Water.** No body of water shall be improved under this chapter unless the public have access to some portion of the shore line thereof.

**Sec. 4. Appropriations.** The county board is authorized to appropriate money from the general revenue fund of the county for the purpose of carrying out the provisions of this chapter, and may accept and receive gifts therefor.

**Sec. 5. Cooperative Agreements.** The county board may make cooperative agreements with the United States or state government or any other county or city, village or borough for the purpose of effecting the provisions of this act.

**Sec. 6. Authority of Municipalities.** The governing body of any city, village or borough in the state within which the whole or any part of any body of water is situated, shall have all the powers to improve such body of water as are conferred by this chapter on county boards.

**Sec. 7. Laws Repealed.** Sections numbered 110.01 to 110.12, both inclusive, and 378.07 of Minnesota Statutes 1941 are hereby repealed.

**Sec. 8. Effective Date.** This act shall take effect and be in force from and after its passage.

NOTE: This proposed chapter is taken in large part from Sections 110.01, 110.10. See also Sections 110.12, 111.65-111.80, 162.22, 378.07, 378.08, 465.26 et seq. and 465.49.

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#### **PROPOSED FORM OF REPEAL TOWN DITCH LAW**

Section 1. **Laws Repealed.** Chapter 109, Minnesota Statutes 1941, is hereby repealed save only as to unfinished proceedings instituted under said chapter and not completed at the date of this Act. Any proceedings so instituted and incomplete at the date of the passage of this Act, may be completed under the provisions of the laws under which the same were instituted; and for such purpose the provisions of such laws shall continue and apply to such proceedings.

Sec. 2. **Repairs.** The town board of any town in which is located a town ditch shall have the same powers to repair such town ditch as are conferred upon the board of county commissioners to repair county ditches.

Sec. 3. **Effective Date.** This Act shall take effect and be in force from and after its passage.

#### **PROPOSED FORM OF REPEAL**

##### **Chapter 214, General Laws of 1945**

Section 1. Chapter 214 of the General Laws of 1945 is hereby repealed save only in those instances where the court has appointed a committee pursuant to petition and hearing as provided by Subdivision 2 of said Chapter. In all cases when such committee has been appointed prior to the effective date of this Act, Subdivisions 2, 3, 4 and 5 of said Chapter 214 shall continue and be of full force and effect.

Sec. 2. This act shall take effect and be in force from and after July 1, 1947.

## APPENDIX

### EXPLANATION OF DISPOSITION OF PRESENT LAWS RELATING TO DITCHES AND WATER RESOURCES

EXPLANATORY NOTE: Numbers in the left column refer to Section numbers of Minnesota Statutes, 1941, Numbers in the parallel right column preceded by the initial "D" refer to section numbers in the proposed County and Judicial Ditch Law, as D-1 refers to Section 1 of the Ditch Law. The initial "W" refers to the proposed Water Resources Law; thus W-1 means section one of the proposed Water Resources Law.

#### Chapter 105

##### Division of Water Resources and Engineering

Present Law	Proposed Law
105.01 .....	Covered by W-1
105.02 .....	Repealed Chap. 60, Laws 1943
105.03 .....	Covered by W-3 & W-4
105.04 .....	Covered by W-4, W-14 & D-12
105.05 .....	Covered by W-3
105.06 .....	Covered by W-4 & D-8
105.07 .....	Covered by W-4
105.08 to 105.11 inc.....	To be repealed as of no specific value
105.12 .....	Covered by W-4 & W-14
105.13 to 105.36 inc.....	State Ditch Law to be repealed as of no further value

#### Chapter 106

##### Drainage Act

106.01 .....	Covered by D-1
106.02 .....	Covered by D-2
106.03 .....	Covered by D-3, D-4 & D-5
106.04 .....	Covered by D-5
106.05 as Am c. 97, l. 1945.....	Covered by D-7
106.06 .....	Covered by D-8
106.07 .....	Covered by D-10
106.08 .....	Covered by D-11

Present Law	Proposed Law
106.09 .....	Covered by D-7
106.10 .....	Covered by D-12
106.11 .....	Covered by D-12
106.12 .....	Covered by D-7, D-12 & D-13
106.13 .....	Covered by D-22
106.14 .....	Covered by D-7
106.15 .....	Covered by D-26
106.16 .....	Covered by D-14
106.17 .....	Covered by D-15
106.18 .....	Omitted as unnecessary
106.19 .....	Covered by D-15, D-34 & D-38
106.20 .....	Covered by D-15
106.21 .....	Covered by D-27
106.22 .....	Covered by D-15
106.23 .....	Covered by D-16
106.24 .....	Covered by D-17
106.25 .....	Covered by D-18
106.26 .....	Covered by D-19
106.27 .....	Covered by D-20
106.28 .....	Covered by D-21
106.29 .....	Covered by D-25
106.30 .....	Covered by D-22 & D-23
106.31 .....	Covered by D-22
106.32 .....	Covered by D-30
106.33 .....	Covered by D-22
106.34 .....	Covered by D-31
106.35 .....	Covered by D-32
106.36 .....	Omitted as unnecessary
106.37 .....	Covered by D-33
106.38 .....	Covered by D-28
106.39 .....	Covered by D-29
106.40 .....	Covered by D-41 & D-45
106.41 .....	Covered by D-34
106.42 .....	Covered by D-35
106.43 .....	Omitted as unnecessary
106.44 .....	Omitted as unnecessary
106.45 .....	Covered by D-37
106.46 .....	Covered by D-36, D-38, D-39 & D-45
106.47 .....	Covered by D-40

Present Law	Proposed Law
106.48 as amended c. 626, l. 1943 and rewritten, c. 82 L. 1945.....	Covered by D-47
106.49 as rewritten c. 71, l. 1945 .....	Covered by D-50
106.50 to 106.54 inc.....	Omitted as unnecessary
106.55 .....	Covered by D-53
106.56 .....	Covered by D-52
106.57 to 106.60 inc.....	Omitted as unnecessary
106.61 to 106.63 inc.....	Covered by D-56
106.64 .....	Omitted as unnecessary
106.65 .....	Omitted as unnecessary
106.66 as amended c. 112, l. 1945 .....	Covered by D-7, D-43 & D-44
106.67 .....	Omitted as of no value. See 7-D
106.68 & 106.69.....	Covered by D-57
106.70 .....	Covered by D-58
106.71 .....	Covered by D-59
106.72 .....	Covered by D-60
106.73 .....	Covered by D-2
106.74 .....	Covered by D-54
106.75 .....	Covered by D-55
106.76 .....	Omitted as unnecessary
106.77-106.78 .....	Covered by D-51
106.79 .....	Covered by D-61
106.80 as amended c. 214, l. 1945 .....	Covered by D-48, D-49 and condi- tional repeal c. 214
106.81 .....	Covered by D-7
106.82 .....	Covered by D-62
106.83 to 106.86 inc.....	Omitted as unnecessary
106.87 .....	Covered by D-24
106.88 .....	Covered by D-45 and D-46
106.89 and 106.90.....	Covered by D-63
106.91 .....	Covered by D-6
106.92 .....	Covered by D-64
106.93 .....	Omitted as unnecessary

## Chapter 107

### Drainage; Liens, Bonds and Refunding

Present Law	Proposed Law
107.01 .....	Covered by D-41
107.02 .....	Omitted as of no value
107.03 .....	Covered by D-37 & D-38
107.04-107.06 inc. ....	Omitted as unnecessary
107.07-107.08 .....	Covered by D-42
107.09 .....	Omitted as unnecessary
107.10 to 107.15 inc. ....	Omitted as unnecessary
107.16 .....	Covered by D-45
107.17 .....	Covered by D-63
107.18-107.19 .....	Omitted as unnecessary

## Chapter 108

### Drainage; County and Judicial

108.01 to 108.05 inc. ....	Covered by D-41 & D-42
108.06-108.07 .....	Omitted as unnecessary
108.08 to 108.10 inc. ....	Partially covered by D-24
108.11 .....	Covered by D-22
108.12 to 108.19 inc. ....	Omitted as no longer necessary
108.20 to 108.33 inc. ....	Omitted as unnecessary
108.34 .....	Omitted as unnecessary
108.35 .....	Omitted as of no value

## Chapter 109

### Drainage; Town

109.01 to 109.37 .....	Recommendation for Repeal with saving clause for repairs
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## Chapter 110

### Waters; Lake Water Levels; Dams

110.01 to 110.12 inc. ....	Covered in part by proposed Lake Improvement Law
110.13 to 110.22 inc. ....	Not covered by this report

## Chapter 111

### Drainage and Conservancy

Present Law	Proposed Law
111.01 to 111.42 inc. as am.c. 81, l. 1945.....	Drainage and Conservancy Act of 1919 No change now recommended
111.43 .....	Covered by W-2
111.44 .....	Covered by W-3
111.45 .....	Covered by W-3
111.46 .....	Covered by W-5
111.47 as am. c. 344, l. 1943.....	Covered by W-6
111.48 .....	Covered by W-8
111.49 .....	Covered by W-8 & W-9
111.50 .....	Omitted as unnecessary
111.51 .....	Covered by W-8
111.52 .....	Covered by W-15
111.53 .....	Covered by W-9
111.54 .....	Covered by W-16
111.55 .....	Covered by W-10
111.56 .....	Omitted as unnecessary
111.57 .....	Covered by W-14
111.58 .....	Covered by W-12
111.59 .....	Covered by W-17
111.60 .....	Covered by W-11
111.61 .....	Covered by W-18
111.62 .....	Covered by W-19
111.63 .....	Covered in part by W-17
111.64 .....	Covered by W-12
111.65 to 111.80 inc. ....	No recommendation made at this time

## Chapter 112

112.01 to 112.33 inc.....	Drainage and Flood Control Act of 1917. No change now recom- mended
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Chapter 113

Drainage; Irrigation; Other Provisions

Present Law	Proposed Law
113.01 to 113.06 inc. ....	Not covered by this report
113.07 to 113.16 inc. ....	Omitted as unnecessary
113.17 .....	Covered by D-15
113.18 .....	Omitted as unnecessary



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