

MASON'S MINNESOTA STATUTES

1927

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BY THE SUBSEQUENT LEGISLATION OF 1925
AND 1927

AND ALSO EMBRACING LAWS OMITTED FROM THE GENERAL STATUTES
1923, AND THE LAWS OF THE 1925 AND 1927 SESSIONS OF THE
LEGISLATURE UNDER APPROPRIATE CLASSIFICATION.

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CHAPTER 44.

DRAINAGE

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6633.

Chapter 44 R. L. 1905 was repealed by 1909 c. 469 § 14. 1907 c. 191, entitled "An act to provide for the drainage of marsh, swamp, or wet lands, in any town or township in the state of Minnesota, by the owners of such lands, when the same cannot be drained without affecting the lands of others, and providing for a penalty for obstructing or injuring the ditches or drains constructed under the provisions of this act," was held unconstitutional (102-442, 114-244).

Prior drainage acts—1887 c. 97 (105-26, 116+1023); 1901 c. 258 (105-32, 117+153; 110-405, 125+901); 1901 c. 258, amended 1902 c. 38 (104-71, 116+109; 111-255, 126+1074; 116-504, 134+126); 1905 c. 230 (119-14, 137+419); 1907 c. 448 (104-389, 116+736; 105-55, 116+1017; 108-8, 121+217; 110-503, 124+227; 111-345, 126+1100; 113-214, 129+376).

STATE DRAINAGE COMMISSION [DEPARTMENT OF DRAINAGE AND WATERS].

6634. Department of drainage and waters—There is hereby established a department to be known as the Department of Drainage and Waters, the chief officer of which shall be known as the Commissioner of Drainage and Waters. He shall be appointed by the governor and shall hold his office for a period of four years and any vacancy occurring in the office from any cause shall be filled by appointment by the governor. Said commissioner before entering upon his duties shall take the oath prescribed for state officials and shall give bond with proper sureties to the State of Minnesota in the sum of ten thousand (\$10,000) dollars conditioned for the faithful performance of his duties and accounting for all moneys that may come in his hands as such commissioner, which bond shall be approved by and filed with the secretary of state.

Said commissioner shall be a practical drainage engineer experienced in drainage and hydraulic engineering, of high standing and recognized ability; he shall devote his entire time to the duties of his office and shall receive a compensation of four thousand (\$4,000) dollars per annum payable as in the case of other state officers; he shall be provided with proper office and equipment at the seat of government and shall have and may exercise the authorities and perform the duties herein provided.

The commission heretofore known as the "State Drainage Commission" is hereby abolished and all power and authority heretofore vested in such commission under chapter 44 of the General Statutes of 1913 and amendments thereto, is hereby vested in said commissioner of drainage and waters and said commissioner is hereby authorized to exercise all the power and authority specified and granted to the state drainage commission by said chapter 44 of the General Statutes of 1913, and in addition thereto, those herein-after specifically enumerated; and in all cases where the term "drainage commissioners" or "state drainage commissioners" is used in said chapter, the same shall be understood to mean and read "commissioner of drainage and waters," and in all cases where the term "commission" is used in said chapter meaning and referring to the state drainage commission, the same shall be read as "commissioner" and said act construed

accordingly. ('07 c. 470 § 1, amended '19 c. 471 § 1) [5480]

Department of Drainage and waters, with commissioner of drainage and waters, see § 52-24, herein.

Department of drainage and waters abolished. See § 53-45, herein. Office of commissioner of drainage and waters abolished. See § 53-45, herein.

125-105, 145+795.

The laws of 1917 and the several prior statutes form one complete drainage system, one consistent whole; they are in *pari materia* for they relate to the same subject matter, and should be construed together. (130-90, 157+998).

6635. Commissioner of drainage and waters—Powers and duties—The commissioner of drainage and waters established by this act, shall have power to construct as hereinafter provided, any ditch, drain or other watercourse within the State of Minnesota, and such ditch, drain or other watercourse may in whole or in part follow and consist of the bed of any creek, stream or river, whether meandered or not, and he may widen, deepen, straighten, change, lower or drain the channel or bed of any creek, river, lake or other natural watercourse, whether navigable or whether meandered or not, and may construct new and additional outlets to any marshy, shallow, or meandered lake for the purpose of draining the same, and may follow and extend the same into or through any city or village within the state far enough to secure a sufficient fall and flow of water to reasonably effectuate the purpose for which the work is extended, and may confine any such creek, river or other natural watercourse by means of dykes, levees and embankments to its natural or artificial bed, as laid out, and shall also, whenever it shall appear to its satisfaction that the drainage of any territory may be made more effective by the construction and maintenance of dams, or other works, for retaining and controlling the flood waters, tributary to such territory, have the power to construct or acquire such dams or other work, and flowage rights therefor, and to maintain and operate the same.

Provided, that when in any such proceedings, the waters of any creek, river or other watercourse are diverted from their natural bend by such artificial ditch or drain, such ditch or drain shall as nearly as practicable, follow the general direction of such creek, river or watercourse, and terminate therein.

And provided further, that no meandered lake shall be drained under the authority of this act, except in case such lake is normally shallow and grassy and of a marshy character or except in case such meandered lake is no longer of sufficient depth and volume to be capable of any beneficial public use of a substantial character for fishing, boating or public water supply.

Provided further, that no meandered lake shall be drained or lowered under the authority of this act unless petitioned for by at least sixty per cent of the legal voters residing within four miles of such lake, who are freeholders, whose lands are affected as shown by the viewers' report and filed in the office of the clerk of the district court of the county in which such proceedings are had.

Said commissioner of drainage and waters in addition to the authorities now granted under the provisions of said Chapter 44 of the General Statutes of 1913, is hereby authorized to make all necessary investigations to ascertain and determine the topographical features of the various watersheds of the state, viz.: the several tributaries of the Minnesota and Mississippi rivers and other rivers in the state, and ascertain and determine the works necessary to secure proper drainage outlet for the lands in each basin, and

the construction of the necessary works to improve such outlet and control flood waters therein, including as near as can be ascertained the probable run-off waters of each of said basins and the important streams entering therein and shall ascertain and secure the necessary facts to determine what streams have natural facilities adapted to the creation of water power and the extent of horse power that can be secured, or other information that said commissioner shall deem necessary and essential to the proper planning of the work of each basin to supply proper drainage outlet and control of flood waters, including the conservation and use of such waters.

Said commissioner is also authorized to investigate into the methods employed in the manufacture of drain tile, to make research and experimentation with a view to improving the quality of drain tile; to make investigations into the cause or causes of failures that may occur in tile drains after construction, and whenever requested by the courts, county boards, or engineers in public drainage proceedings, said commissioner shall make tests for the presence of elements in the soil and soil waters destructive to drain tile and such other tests and investigations as may be requested by the said courts, county boards, or engineers, said tests to be requested, made and reported in accordance with regulations to be furnished by said commissioner.

The commissioner shall prepare specifications governing the strength, quality and general properties of drain tile which, in his opinion, shall embody requirements for the production of a high quality drain tile, and shall cause said specifications to be published and made available to officials, contractors and manufacturers concerned with public drainage proceedings for their information and guidance. It shall be the duty of the commissioner to make inspection and tests of materials used in the manufacture of drain tile and of the manufactured product in any or all of the drain tile manufacturing plants located within the state where drain tile is made and sold to the general public, at such time or times and at such intervals as in the opinion of the commissioner may be found advisable; to keep a record of the results of such tests and to prepare and make available copies of reports thereof to officials concerned in public drainage proceedings and others within the state who may be concerned with land drainage or who may make request for copies of such tests. For the purpose of making said inspection and tests, the commissioner, or his duly authorized representatives, shall have free access to materials, manufacturing plants and appurtenances and to the manufactured drain tile at all times, and samples on which to make tests and inspection shall be furnished by the manufacturers without cost to the state.

It shall be the duty of all manufacturers of drain tile within the state who sell their products to the general public, to equip and install as a part of each manufacturing plant a first-class and up-to-date testing machine on which tests to determine the bearing strength of drain tile may be made by the commissioner, or his duly authorized representatives, the general design and capacity of which testing machines shall be approved by the commissioner and shall be erected and completed by the manufacturers ready for use within 90 days of the passage of this act; provided, however, that the original cost to any one manufacturer of drain tile by reason of the installation of the testing machine herein provided shall in no instance be made to exceed the sum of \$250.00.

Said commissioner shall also ascertain and secure the necessary information from the various parts of the state to enable him to make and furnish to the engineers of the state all necessary information as to the proper size of tile and the discharge thereof under various conditions, including information as to the proper size and discharge of open ditch construction and such information shall be included in the rules to be furnished and followed as provided in Section 1, Chapter 441 of the Laws of 1917.

Said commissioner is hereby authorized to co-operate and enter into agreement with the Minnesota State Agricultural Experiment Station and the United States government or any department thereof whenever in the opinion of said commissioner such co-operation is advisable for the purposes mentioned in this act. ('07 c. 470 § 2, amended '15 c. 278 § 1; '19 c. 471 § 2; '21 c. 327 § 1; '23 c. 328 § 1) [5481]

6635A. Powers of state drainage commission and procedure of engineers—The state drainage commission of the state of Minnesota is hereby authorized and empowered and it shall be its duty to prescribe rules and regulations for the establishment and construction of drainage projects under any and all of the drainage laws of the state in accordance with what may seem to said commission to be just and proper and consistent with the provision of law governing ditch proceedings and such commission shall furnish copies of said rules and regulations for the use of engineers, county officials and others engaged in such work, but said rules and regulations shall be construed to be advisory only.

It shall be the duty of any engineer appointed by any court or board to take charge of any drainage project to proceed therein and be governed as far as practicable in his work therein by the rules and regulations made by the said drainage commission and all such engineers engaged in any such project shall make an additional copy of their plats, maps, profiles and reports, and shall transmit such copy of all said papers to the drainage commission and such commission shall file and keep the same and shall make and keep a permanent record of such items thereof as it may deem proper in books to be prepared for that purpose and kept in the office of such commission.

In taking the levels of the surface of the ground over which the engineer shall make his survey for any such drainage project, he shall, whenever practicable, use as his base datum the sea level datum as determined by the use of the elevation of bench marks, which have heretofore or may hereafter be established by the United States geological survey, the United States coast and geodetic survey, the United States corps of engineers and other reliable engineering authorities. ('17 c. 441 § 1)

6635B. Commission to cause examinations to be made and report to court when requested—The state drainage commission is further authorized and directed upon request to examine, criticize and pass upon any plans for the construction of drainage projects which may be submitted to it by officials having the same under consideration.

Any court or county board having before it any proceedings to establish or repair any drainage project may submit to said drainage commission the petition, engineers' reports and other papers in connection therewith and propound to said commission any question relative to said proceedings or said project which it may desire to have answered and said commission and the state engineer or his deputies and assistants shall forthwith proceed to examine all the papers so

submitted and shall in good faith answer all such questions so propounded and if in the opinion of the drainage commission there is any defect in any of the plans and designs so submitted, the said commissioner shall report the same back to such court or county board with its recommendations as to what alterations, corrections or additions should be made.

And whenever in the opinion of said drainage commission or said engineer it shall be deemed advisable and for the best interest of such drainage project that an examination upon the ground should be made of the route of the proposed drainage project, then said commission is hereby authorized to cause such examination to be made before passing upon the report of the engineer in said proceedings. In case such physical examination shall be made of the proposed route, the expense thereof shall be at once reported to said court or board and such expense, as it may be allowed by said board, shall form a part of the expenses of said drainage project and shall be paid as other claims against the same.

During all the proceedings carried on relative to the drainage project the commission shall give its advice to the courts or county boards, engineers and other officials connected with or in charge of such proceedings whenever advice is required. ('17 c. 441 § 2)

6636. Records of surveys, deputies and assistants—Said commissioner shall keep complete record of all surveys and investigations made by him or under his direction and of all reports made to him by other engineers connected with drainage work throughout the state as required by law. He shall have power to appoint and employ a deputy commissioner whose compensation shall be not to exceed three thousand (\$3,000) dollars per annum and such other assistant engineers, agents and employes as may be found necessary and proper to comply with the provisions of this chapter and shall require of all deputies and assistant engineers in charge of the work to execute and file with the commissioner a bond conditioned for the faithful performance of their duties in such sum as the commissioner may specify. ('07 c. 470 § 3, amended '19 c. 471 § 3) [5482]

6637. Petition to district court—Before said state drainage commission shall construct any ditch, drain and watercourse, or deepen, drain, change, straighten, or lower the channel or bed of any creek, river, lake or other natural watercourse or other construction named in section two [6635] of this chapter, they shall (except as hereinafter provided) file with the judge of the district court for the county or counties wherein it is proposed to construct any ditch, drain or other construction referred to under this chapter, a petition setting forth the necessity thereof, and that it will be of public benefit or promote the public health, with a map showing the route of said proposed construction, estimates of the cost of the same, and description of the lands likely to be affected by such construction, such map, estimates and description of lands to be prepared by the engineer, for the drainage commission or under his direction. ('07 c. 470 § 4) [5483]

A ditch which only avoids erosion to a highway is not a "drainage project" within the drainage statute. 162-491, 203-431.

6638. Viewers — Duties — Report—Within ten days after the filing of such petition the said judge of the district court shall make an order appointing two resident freeholders of the county or counties in which said construction is proposed, not interested in the construction of the proposed work and not kin to any of the parties known to be interested therein and the

state drainage commission shall appoint one who is not a resident of the county, as viewers, to meet at a time and place to be specified by the said court, preparatory to commencing their duties. The viewers after taking their oath to faithfully perform their duties shall proceed at the time fixed in said order, with or without said drainage engineer and shall prepare a tabular statement showing as far as practicable, the names of the owners of each tract of land to be benefited or damaged; the description of each tract benefited or damaged (said names of owners to be the same as appears on the county tax duplicate of said county, and the description to be given in legal form), and the total number of acres in each of said tracts; the estimated number of acres in each said tract of land to be benefited or damaged, (as the case may be); the number of acres added to any tract by the total or partial drainage of any meandered lake, or by the change of any watercourse and the location and value of such added land; the damage, if any, to riparian rights pertaining to any tract; and the amount that each tract of land will be benefited or damaged by the construction of said work. When any ditch established under this act drains either in whole or in part any public or corporate road or benefits any such road so that the roadbed or traveled track of such road will be made better by the construction of such ditch, the viewers shall estimate the benefit arising therefrom to such roads or roadbeds, and report said benefits (names of roads and other particulars necessary to identify the corporations, private or public, to be benefited thereby, and amounts of benefits to each), as a part of their tabular statement provided for in this section; and the viewers shall also report as a part of such tabular statement, the damages awarded to each municipal or other corporation for injury to any road or roadbed, and from the necessary construction and maintenance of any bridged culverts or other works rendered necessary by the establishment of such ditch, stating the same separately; and they shall also report the total estimated benefits in respect to the entire ditch and branches, if any, and also whether or not, in their opinion the estimated expense of the construction of such ditch, including the damages awarded therefor, are greater than the utility of the proposed ditch, or that the construction of such ditch is impracticable, for any reason, stating the reason why it should not be constructed. ('07 c. 470 § 5) [5484]

6639. Disagreement—In case the viewers are unable to agree each viewer shall state separately in the report his findings on the matter disagreed upon. ('07 c. 470 § 6) [5485]

6640. Private ditch—Deduction from benefits—Whenever a public ditch is located wholly or in part in the bed of a private ditch already or partially constructed the engineer shall make an estimate of the number of cubic yards of earth already excavated on each tract of land and of the amount of the reduction in the cost of constructing the portion of the ditch on each such tract of land by reason of such private drain having been constructed, and the viewers shall deduct such amount from their estimate of benefits, if any, against such tract of land, making an appropriate notation thereof on their report. ('07 c. 470 § 7) [5486]

6641. What lands assessed—Benefits, how estimated—All lands benefited by a public ditch, drain or watercourse, and all public or corporate roads, so benefited, in whole or in part, shall be assessed in proportion to the benefits for the construction thereof, wheth-

er said ditch passes through said land or along or near the line of such road or not, and the viewers in estimating the benefits to lands or roads not traversed by said ditch shall not consider what benefits such lands or roads will receive after some other ditch or ditches shall be constructed, but only the benefits that shall be received by reason of the construction of the public ditch, as it affords an outlet for drainage, or prevents overflowing of or otherwise directly or indirectly benefits such lands or roads, and in determining the cost of draining said land or lands, there shall be included the amount paid for damages to private owners of lands, and the cost of right of way of any other ditches through such private land to the main stream, together with the cost of the construction of the ditch, office expenses, field expenses, salaries of all clerks and employes, and all fees necessary paid to officers or other persons in the proceedings. ('07 c. 470 § 8) [5487]

6642. Damages—Remedy of party aggrieved—In running said ditch, or ditches, or works through private lands not necessary to drain, it shall be the duty of the viewers to report the amount of damages to be allowed to such owner or owners for the right of way or other damages for the construction of the ditch or ditches through such land or lands. Any person or party interested aggrieved by the amount of damages so allowed or of the disallowance of the amount of damages claimed, or any part thereof, for the land so appropriated for such ditch or laterals, or any other work authorized to be done under this act, may, within ten days after the filing of the viewers' report, petition the district court before whom said proceedings are pending for the appointment of appraisers in the same manner as is now provided by law for the appropriation of private property for public uses, with all the rights and authority incidental thereto, but the construction of any such work, ditch or laterals thereof shall not be delayed by such proceedings. ('07 c. 470 § 9) [5488]

6643. Viewers' report, when filed—Said viewers shall forthwith file with the clerk of court a report of all their doings and findings in detail, including expenses and the actual time they were engaged. They shall in every case completely perform every duty by this act imposed upon them (except in case of a reference as hereinafter provided) within thirty days from the date of their first meeting; provided that, if the water be so high or the weather so inclement, or such unavoidable accident occur as in the opinion of the judge of the district court to practically and reasonably prevent them from so doing, the necessary delay caused thereby may be excused by the said judge; but the report of said viewers must in each case state the reason for such delay, and if such reason be not deemed sufficient by the court such viewers shall forfeit one-half of the compensation hereinafter provided. ('07 c. 470 § 10) [5489]

6644. Order for hearing—Notice—Within three days after the filing of such report it shall be the duty of the said clerk of court to prepare and transmit forthwith to the judge of said court, and to the auditor of each county described in the petition a written notice of the filing of such report. Upon the receipt of such notice the judge shall make an order fixing the time and place of hearing said petition and engineers' and viewers' report. He shall also cause a notice of the time and place of such meeting to be given to all persons interested, by publication for three successive weeks prior thereto, in a newspaper printed and published in said county, and by posting at least three weeks before such meeting, printed copies thereof in

three public places in each township where the proposed work is located, and one at the door of the court house in said county, of the pendency of said petition, and engineers' and viewers' reports, and of the time and place set for the hearing thereof, which notice shall be signed by the clerk of court, and shall briefly state substantially the starting points and terminal of the ditch, drain, creek or watercourse and branches, together with a description of the land through which they pass, all as appears by the engineers' report, together with the names of the owners of the land and the names of the municipal corporations that will be affected thereby, as the same appears in the report of the viewers; and within one week after beginning such publication the clerk of the court shall mail a printed copy of said notice to all non-residents of the county named in the viewers' report as affected by such proposed work, whose address is known to him, or can be ascertained by him by inquiry at the county treasurer's office; provided, that in all cases in which, for any cause, said notice shall not be given, or in any case said notice shall be legally defective, the clerk of court shall cause the same to be given again, so that the petition may be heard at another special or adjourned meeting, which will occur more than seven days after the expiration of another notice by the publication, posting and mailing, as provided in the first instance, the date of which meeting and hearing to be fixed by the court. ('07 c. 470 § 11) [5490]

6645. **Hearing—Findings and order—Re-submission to viewers—Benefits and damages—Rehearing, where order set aside.**—At the time and place fixed for the hearing, if the court shall be satisfied that notice thereof has been given according to law, he shall proceed to hear and consider the same; and all persons interested may appear and be heard by and before said court. Unless excused by the court, the engineer and at least two of the viewers shall be present at such hearing. If said court, from the report of the engineer and from the report of the viewers, and such other evidence as may be adduced before him, shall find that the engineers' and viewers' report and all other proceedings in the matter have been made and taken, in accordance with the provisions of this act, and that the estimated benefits to be derived from the construction of the work are greater than its total costs, including damages awarded, and that such damages and benefits have been duly awarded and assessed, and that said work will be of public utility and promote the public health and that such reports are complete and correct, he shall, by an order containing such findings, establish such a ditch as specified in the report of the state drainage engineer, and establish and confirm the viewers' report; provided, that in case the viewers' report is found to be defective or erroneous in any particular, the judge of the district court shall have authority to remedy such defect by reference to said viewers, if necessary, or otherwise, and to cause the expense of such re-reference, if any, to be assessed, against the land benefited. In case the viewers have not agreed or shall not agree in their findings, the court shall determine the proper findings, and change the viewers' reports accordingly, and provided, further, that if it appears from the evidence adduced before the court, that unequal and disproportionate assessments have been made, the matter shall be re-submitted to the viewers who shall proceed summarily, to make the necessary correction under the instructions of the court and forthwith report the same to the court, and thereupon, the court shall, by an order containing such findings, establish such ditch as specified

in the report of the civil engineer, and establish and confirm the viewers' report, and shall, in such findings, determine the total cost of the construction of such ditch, drain or watercourse, laterals and branches thereof, based upon the engineers' and viewers' reports which shall include all the costs and expenses, and fees that may be necessarily incurred in the construction of the same, and connected therewith, all to be allowed by the court, and shall by an order to be made and filed therein, determine the total cost to be equitably assessed against each separate tract or parcel of land owned by the different owners, so benefited by the construction of said ditch, drain or watercourse, in proportion to said benefits, and the damages, if any, are to be allowed, and to be paid on account of the construction of the same, which shall be included in the cost of the same, in order to arrive at the total cost, which order and findings shall be filed in the office of the clerk of court, of the county where such proceedings are pending, whereupon the clerk of said court shall endorse his filing thereon, and forthwith file a certified copy of the same in the office of the county auditor of such county, and in case such ditch, drain, or watercourse extends into more than one county, the said clerk shall file a certified copy in each of the said counties. Provided, that whenever any final order of the court establishing, or refusing to establish, any ditch in proceedings under this chapter shall be set aside, annulled or declared void by any court by reason of a failure to give proper notice of the pendency of said petition, and viewers' report, and of the time and place set for the hearing thereof, or any adjourned hearing, the court shall issue an order at any time within one year thereafter upon application of the state drainage commission for a rehearing thereof, notice of such meeting and rehearing shall be given in the same manner as hereinbefore provided for in the first instance, and at such meeting and hearing the said court shall proceed to reconsider such report, shall act upon the same, and make findings thereon as justice may require, and may re-establish such ditch in conformity with the provisions of this chapter. ('07 c. 470 § 12) [5491]

The question of the necessity and propriety of drainage projects is addressed to the judgment and discretion of the tribunal having jurisdiction of the matter, whose conclusions will be disturbed only when the evidence furnishes no legal basis for the decision of such tribunal. Following *State ex rel v. Nelson*, 137 Minn. 265, 161 N. W. 714, 163 N. W. 510, 156-392, 194-875.

6646. **State lands.**—In case any lands belonging to the state of Minnesota, are drained or benefited under the provisions of this act, the clerk of court shall also file a certified copy of the order and findings of the court so far as it affects state lands, but private lands shall not be included in said report, with the state auditor. ('07 c. 470 § 13) [5492]

6647. **Statement.**—As soon as practicable after the filing of the certified copy in the office of the county auditor, or county auditors, as the case may be, as provided for in section 12 [6645] of this act, the said auditor or auditors shall make in tabular form a list and statement showing the following facts:

First—The names of the owners of all lands (except state lands), which shall not be included. The names of all public or corporate roads within their respective counties benefited by the construction of such proposed work as appears from the order on file in the proceedings.

Second—The description of said lands as the same appears in such findings, and so affected, together with the total number of acres of each tract according to

the assessment rolls and tax lists of such county.

Third—The estimated number of acres in each tract of said land.

Fourth—The estimated amount of benefits and damages to each of said tracts of land, the estimated amount of benefits and damages to each public or corporate road as the same appears in said viewers' report, or as affected by the order of the court made in said proceedings.

Fifth—The amount that each of said tracts of land, and that each of said corporate roads so benefited will be liable for and must pay into the treasury of each county for the location, construction and establishment of such ditch, drain or watercourse, as shown by the order of the court on file in said petition. ('07 c. 470 § 14) [5493]

6648. Record of statement—Liens—Fees—Such statement shall then be signed by the auditor in the presence of two attesting witnesses, and shall then be duly filed with and recorded by the register of deeds of such county. The amount which each tract of land and each public or corporate road will be liable for, and the interest thereon, as hereinafter provided, shall be and remain a first and paramount lien on such land, public or corporate roads, until fully paid; and shall take precedence of all mortgages, charges, encumbrances or other liens whatever, such payments may be made as hereinafter provided. Such filings shall be deemed notice to all parties interested of the existence of such lien. The fees of such register of deeds for such recording shall be paid by the county, on the allowance and order of the court by auditor's warrant, and said statement, after the same has been recorded, shall be returned to the auditor, to be by him placed with the other papers relating to such ditch, and carefully preserved by him. ('07 c. 470 § 15) [5494]

6649. Jury trial—Any land owner aggrieved at the decision and amount finally assessed against his said land on account of the construction of the said ditch, or on account of the disallowance in the amount of damages claimed for right-of-way or other damages, may demand a jury trial. The costs and disbursements of such trial shall be taxed against the party demanding such trial in case he fails to increase the amount of the award for damages or decrease the amount of the assessment. ('07 c. 470 § 16) [5495]

6650. Appeal—Increased cost, how paid—Any party may appeal from the judgment of any appealable order of the district court, or who claims damages or against whose property benefits are assessed may appeal to the supreme court as in civil actions from any final order except an order establishing such ditch, or drain in proceedings under this chapter, within thirty days after the filing of such order, by filing the notice of appeal and bond required as in civil actions upon appeal to the supreme court. The appellant shall also serve a copy of the notice of appeal and appeal bond on the respective attorneys in the proceeding, the attorney general of the state, also upon the clerk of the district court, and file proof of such service and the original notice with the clerk, whereupon the said clerk shall certify the case to the supreme court in the same manner as in other cases appealed to said court. In case the appellant prevails in the supreme court, and the cost of the construction of said ditch, drain or water course is increased on account of said appeal, having been determined in favor of said appellant, and damages or costs are awarded to the appellant, upon a remittitur from the supreme court to the district court the clerk of the district court shall

notify the judge of the judicial district wherein said appeal was taken, advising the court of the action of the supreme court in the proceeding, whereupon the judge of the district court shall make a further finding and order assessing the amount against the tracts of land originally assessed for the construction of the said ditch and proportionately distribute the same, in proportion to, and in the same manner as the original assessment. The clerk shall thereupon certify the same to the county auditor, or county auditors as the case may be, and the said county auditor or auditors shall cause the same to be spread upon the tax duplicate record, and a statement thereof to be filed in the register's office in the same manner as under the original assessments. ('07 c. 470 § 17) [5496]

6651. Contract, how let—Payment, how made—At the time of filing of the order and findings by the court, as provided for the general assessment, the clerk of the district court shall also furnish a certified copy thereof to the drainage commission of the state of Minnesota, whereupon said drainage commission shall proceed to advertise for bids for the construction of any proposed ditch or lateral, or for the repairing, extending, deepening, strengthening, altering, or cleaning out any ditch, river or natural water course proposed to be repaired, extended, deepened, altered, or cleaned out, or for the construction of new and additional outlets, for the purpose of draining any shallow, marshy, or meandered lake, or draining any lake or body of water that has been caused to overflow, on account of additional drains or water courses, running into the same which have been constructed for the purpose of the drainage of land or for the benefit of the public health. Said bid shall be made with reference to plans and specifications to be furnished by said commission and the contract for the construction of said works shall be let to the lowest responsible bidder. The successful bidder shall be required to furnish good and sufficient bond for the faithful performance and construction of such work, and the payment of all labor, material and supplies furnished in the construction of such ditch, or in such repairing, extending, deepening, straightening or clearing out any of such ditch, or work authorized to be done under this act. Payment shall be made as said work progresses, and in accordance with the rules that may be adopted by said drainage commission, or specified in the contract. Such contracts and rules shall be approved by the attorney general of the state. Before the final payment is made the ditch or work under contract for construction shall be carefully inspected, and the work approved by the state drainage commission, and in case the contractors and the state drainage commission cannot agree upon the approval of said contract they shall have the authority to submit the same to any competent disinterested civil engineer whom they may agree upon, whose compensation therefor shall be paid one-half by the contractor, and the balance out of any appropriation available for draining state lands upon the warrant of the state auditor approved by the state drainage commission and whose decision when filed in the court where the proceedings are had shall be final. ('07 c. 470 § 18) [5497]

6652. Ditch defined—Whenever the word "ditch" is used in this act it shall be construed to mean "ditch," "drain," "creek," "pond," "water course," "outlet," "river," (whether navigable or otherwise), "lake," (whether navigable or otherwise), and the word "ditch," shall mean "ditches," whenever the sense requires it. ('07 c. 470 § 19) [5498]

6653. **Supervision**—Any and all work provided for in this chapter shall be done under the constant supervision and inspection of the engineer of said commission, or any assistant engineer duly appointed by said commission. ('07 c. 470 § 20) [5499]

6654. **Authority to enter on land**—The viewers and engineer shall have the right to enter upon any lands for the purpose of making preliminary surveys or locating such ditch or estimating damages and to do any act necessary for the proper performance of their duties and any person attempting to prevent or interfere with them in so doing shall be punished, upon conviction, by the court as for a misdemeanor. ('07 c. 470 § 21) [5500]

6655. **Co-operation with county board**—The drainage commission of the state of Minnesota, is hereby authorized to co-operate with the county board of each county wherein a county ditch or judicial ditch, or a portion thereof is located, or may be located, in enlarging, extending, repairing or otherwise bettering any such ditch now completed, or that may be now in the course of construction, or hereafter constructed, or in deepening, widening, straightening, or otherwise improving, any natural water course into which the water of any county, judicial or state ditch flows, or in the construction of additional outlets to any lake, or body of water, or meandered lake that has become overflowed by reason of additional drain, and ditches having been constructed into the same, and the waters flowing therefrom into such lake, body of water, or meandered lake, causing the said lake, body of water, or meandered lake, to overflow and damage abutting and adjacent land, whenever in their judgment it is necessary and desirable so to do. ('07 c. 470 § 22) [5501]

6656. **County bonds**—The county board in each and every county in this state wherein any such state or judicial ditch is proposed to be wholly or partly located and established, shall issue the bonds of their respective counties in an amount not greater than the assessments against lands in such county as evidenced by the statement provided for by sections 14 and 15 [6647, 6648] of this act, to defray the expenses incurred or to be incurred in locating, constructing and establishing as much of any ditch as may be located within such county, or in such relation to such county as to affect lands therein within the terms of this act.

The word "expense" shall be construed to mean and to cover every item of the cost of said ditch from its inception to its completion, and all fees and expenses incurred in pursuance thereof.

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 twenty years from their date and shall bear such rate of interest not to exceed six per centum 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 the provisions of this act, and shall be signed by the chairman of said board and countersigned by the county auditor, who shall keep a record thereof.

Said county board shall have power to negotiate said bonds as they shall deem for the best interest of said county but not for less than their par value. The proceeds from the sale of such bonds when received by the county treasurer, shall be paid to the state treasurer, and by him credited to the state drain-

age fund, which is hereby created. Said county board shall provide moneys for the payment of the principal and interest of said bonds as they severally mature, which moneys shall be placed in the general county ditch fund, into which fund it may transfer any surplus moneys remaining in the general revenue fund or other funds of the county, which can properly be used for the purpose of this act, into which fund shall also be paid all moneys received from the payment of any liens created under the provisions of this act, and such board is hereby authorized to pay said drainage bonds out of any available funds in the county treasury when the moneys on hand in the general ditch fund of the county are insufficient to meet the payment of bonds issued in ditch proceedings when the same mature, but the fund from which such moneys shall be taken or used for the payment of bonds as they mature shall be replenished with interest at the rate of six per cent per annum from collections of unpaid assessments for ditches, drains or water courses constructed under any proceedings had hereunder.

Whenever heretofore there shall have been filed with and recorded by the register of deeds of any county in this state a statement in connection with the construction of a state or judicial ditch, as provided by section 15 [6648] of this act, the county board of such county is authorized to issue, negotiate and sell the bonds of such county to the amount, for the purposes and in the manner hereinbefore specified, and any bonds so issued shall be subject to all the provisions hereof, and are in all respects legalized and made binding and valid obligations of the county issuing the same and according to their terms. ('07 c. 470 § 23, amended '13 c. 4 § 1) [5502]

6657. **Interest—Premium on bonds**—The amount that each tract of land, public or corporate road, shall be liable for on account of the location, construction and establishment of any ditch or ditches under the provisions of this act shall bear interest from the date of the filing of the auditor's statement in the register of deeds office at the rate of six per cent (6 per cent) per annum until paid; provided, that when bonds are issued by the county for the construction and establishment of such ditch the same rate of interest shall be charged as said bonds so issued bear, and said interest shall constitute an additional lien on said lands or roads until fully paid, which said interest when about to be paid shall be computed by the county auditor, providing that if said bonds are sold at a premium, such premium shall be used as far as may be to make up any deficiency in the assessments levied by the presiding judge of the court in the proceedings, and the balance remaining of such premium, if any, shall be used as far as practicable in keeping such ditch in repair and free from obstruction, so as to answer its original purpose. ('07 c. 470 § 24) [5503]

6658. **Liens, when payable—Taxes—Certificate of payment**—The payment of such liens shall be made to the treasurer of said county as follows: One-fifteenth of said principal, with interest thereon, on or before five years from said filing in the register of deeds office. One-fifteenth of the same on or before six years. One-fifteenth of the same on or before seven years. One-fifteenth of the same on or before eight years. One-fifteenth of the same on or before nine years. One-fifteenth of the same on or before ten years. One-fifteenth of the same on or before eleven years. One-fifteenth of the same on or before twelve years. One-fifteenth of the same on or before thirteen years. One-fifteenth of the same on or before fourteen

years. One-fifteenth of the same on or before fifteen years. One-fifteenth of the same on or before sixteen years. One-fifteenth of the same on or before seventeen years. One-fifteenth of the same on or before eighteen years. One-fifteenth of the same on or before nineteen years. All reckoned from the date of said filing; provided, where the annual installment to be assessed amounts to less than one mill per year, the auditor shall levy the amount of one mill per year for as many years as is necessary at that rate to pay the full lien levied against the tract or parcel of land. On or before the 15th day of November, of the fourth year next following such filing the auditor shall enter on the tax list of said county the amount of such lien then remaining unpaid against each respective tract of land subject thereto, as a tax on said tracts, with a proper notation to secure the successive entry each year thereafter of the unpaid balance of such lien. One-fifteenth of said taxes shall become due and payable, with accumulated interest thereon, at the time and in the manner and be subject to and be collected with like penalties as all other taxes for said year on said tracts in which such entry was made, and another one-fifteenth with and as the taxes of each successive year, until all is paid. The provisions of sections 23 [6656] and 25 [6658], as amended, shall be applicable in all proceedings for the construction of ditches heretofore commenced, and prosecuted under the provisions of this act where bonds have not been issued. When payment of the full amount of such lien, with accumulated interest, shall thus or at any time be made, the auditor, upon presentation of a receipt from the treasurer to that effect, shall issue, under his hand and official seal, a certificate of such payment, and the same, when recorded in the office of the register of deeds, shall release and discharge said lien of record. ('07 c. 470 § 25) [5504]

6659. Powers and duties of board—A majority of the members of said drainage commission of the state of Minnesota, shall have authority to act in all matters, and perform all duties required of the commission to be performed pertaining to the drainage of the state lands, and such private lands as they may be compelled to pass through in draining said lands, and shall from such records and surveys as are now in existence, and from such surveys and records as they may find it necessary to make, ascertain the number of acres of low or wet lands belonging to the state, that it is necessary to drain in order to protect the public health, convenience, and welfare of the community, and to make said lands fit for agricultural purposes. They shall ascertain where the same are located, and what ditch or ditches are necessary to drain said land, and said commission is hereby authorized, empowered by a majority of the members thereof, and without any petition or judicial procedure provided for in section four (4) [6637] of this act to construct as many main and lateral ditches of the size and capacity as are necessary to effectually drain such land. They may repair, extend, deepen, and alter or clean out any ditch heretofore or hereafter constructed, by the state or under its direction, when necessary to drain the land originally intended to be drained by such ditch. The said commission, in its discretion, shall drain the state lands that are most accessible to highways, villages and railroads before draining such lands more remote. In the execution of the provisions of this chapter the said commission may appoint as many agents and employes as are necessary to comply with the provisions herein. ('07 c. 470 § 26) [5505]

6660. State ditch—Survey, map, profile, etc.—

Wherever the said drainage commission shall find the state of Minnesota owns land in sufficient bodies to warrant a state ditch, it shall proceed to determine the course of said ditch, the size thereof as to depth and width at the top and bottom, and cause an accurate survey to be made upon the ground, with stakes, on which shall be written in plain figures the station number and the amount in feet, to be cut. These stakes shall be set at least every one hundred feet. Every main ditch shall run to some permanent water course, stream or lake, of sufficient size to carry the water coming into the same from such ditch without overflowing the banks thereof at high water mark. Said commission shall also cause a map of such ditch to be made on a uniform or convenient scale showing the location of said ditch, all topography for a width of at least one-quarter of a mile on each side, the depths of soundings made in marshes and lakes, and designate the character and kind of surface and subsoil, so far as the same may be readily ascertained, and the legal subdivision of all lands drained by such ditch, and if the same passes through or drains private lands, said map shall show the names of all the owners, so far as known or can be ascertained, and if unknown, to so state; said map shall also designate what private lands (if any) are drained and what private lands (if any) are not drained by said ditch. All topographical features to be located by actual survey to the center line of the ditch. Said commission shall also cause a profile of the center line of said ditch to be made, which, as to details, will at least show the elevations of the natural surface at each station of one hundred feet or any necessary fraction thereof, or as nearly as practicable, the elevations of the grade line; the ratio of the grade; the cutting at each station; the elevation and description of permanent "bench marks," of which one shall be established at each end of the ditch, and one as nearly as practicable midway between the source and the outlet. Where natural objects do not exist upon which to make such "bench marks," artificial posts shall be set in a stable, and permanent manner for such "bench marks." All elevations, as far as possible or practicable to be referred to the standard datum of sea level. Said map, profile and specifications signed by a majority of the members of said commission shall be filed in the office of the state auditor, and certified copies thereof filed with the auditor of each county in which said ditch is to be located. ('07 c. 470 § 27) [5506]

6661. Rivers and water courses—Widening, deepening, etc.—Whenever in any drainage proceeding under any laws of this state whereby the cost of construction is assessed against the benefited property (or) corporations it is proposed to widen, deepen, straighten or clean out any river or other natural water course or drain any low, shallow or grassy lake, or any body of water that has become overflowed by reason of the water from ditches previously constructed, under any drainage act, flowing into the same causing damage to abutting and adjacent lands, or by which it is proposed to promote the public health and which will be of public benefit and general utility; and said state drainage commission shall be satisfied that it is expedient and necessary, they are hereby authorized and empowered to appropriate out of any state drainage funds which may be created by law sufficient to defray not to exceed one-half of the actual cost and expense of doing such work. Provided, that no contract for said work shall be let without the approval of the state drainage commission. ('07 c. 470 § 28) [5507]

6662. **Orders of court—Jurisdiction**—The judges of the district court of the state before whom any petition may be filed under the provisions of this act shall have power to make any order necessary from time to time in any proceedings hereunder or modify the same as justice may require at any time during the pendency thereof and shall not lose jurisdiction of the proceedings by reason of failure to give proper notice of failure to hold any hearing noticed or ordered to be held for the consideration of any matter connected with the proceedings or committed to them, and may make any new and additional order in the premises as justice may require, to bring the parties interested before them, to promote the final completion of the ditch or works petitioned for or to establish and complete any state ditch, drain or water course, or drain any marshy or meandered lake under the provisions of this act. ('07 c. 470 § 29) [5508]

6663. **Obstructing commission, etc.—Penalty**—It shall be unlawful for any person to interfere with or obstruct the said state drainage commission, or any officer, servant or employe thereof, or of the court from entering upon the land for the purpose of making a survey for the purpose of establishing any ditch, drain or water course, or interfere with or obstruct the viewers appointed by the court or said commission, or other person lawfully engaged in constructing said ditch, drain or water course. Any person found guilty thereof, shall be punished as if for a misdemeanor under the statutes. ('07 c. 470 § 30) [5509]

6664. **Traveling expenses**—The members of said commission shall receive their necessary traveling expenses for attending meetings of the commission, viewing or inspecting the work or proposed work or other duties connected therewith. ('07 c. 470 § 31) [5510]

6665. **Duties of secretary—Expenses, fees, etc.**—The secretary of the commission, shall keep complete records of the proceedings of the commission, and of all surveys and work constructed under this act, which records shall become a part of the state auditor's office. He shall, when requested, or his duties require him so to do, certify to any record or proceeding on file in the office of the secretary, and shall be allowed his necessary expenses, and costs of all necessary books and record blanks, stationery and other expenses or disbursements paid out by him for the purpose of procuring such records, or in the discharge of his duties as such secretary, and in addition thereto, he shall be allowed such fees and compensation for extra services so rendered, or for necessary clerk hire, as to the members of the commission shall seem just and reasonable. All other officers or persons performing any services in any proceeding, except the judge of the district court, shall receive reasonable compensation to be allowed by the commission, except contractors, payments to whom shall be made as provided for in section eighteen [6651] of this act, and all bills or claims, including expenses of the engineers and viewers, shall be audited by the commission, and paid by warrant, drawn by the secretary and countersigned by the chairman of said commission, and paid out of the state drainage fund hereinbefore provided for. ('07 c. 470 § 32) [5511]

125-105, 145 + 795.

6666. **Act liberally construed**—This act shall be liberally construed so as to promote the public health, the construction and improvement of roads, and the drainage and reclamation of wet and overflowed lands. ('07 c. 470 § 33) [5512]

165-74, 205+625.

6667. **Additional powers of commission**—The state drainage commission, in addition to its other powers hereinbefore enumerated, shall have the power, whenever the same will be of public benefit and utility and will promote the public health and welfare,

First. To clean out, repair, extend or otherwise improve any state ditch heretofore or hereafter constructed and to determine and decide whether or not any other public ditch shall empty therein, and if allowed so to do, to determine and prescribe upon what terms and conditions it be allowed so to empty into such state ditch.

Second. To make surveys of rivers, creeks or streams within this state for the improvement thereof and to widen, deepen, straighten, change the course of, clean out, or otherwise improve any river, creek or stream in this state whenever the same shall have overflowed or shall hereafter overflow by reason of the water or sediment from any public drainage ditch or ditches, emptying therein, or otherwise by reason of said drainage ditches, and causing damage to abutting or adjacent lands. Provided, that the said state drainage commission shall, as a condition precedent to the making of any of said improvements, or to the exercise by said commission of any of the powers conferred by this section, require that any portion of the cost or expense to be incurred thereby shall be paid by the town or county or by the person or persons benefited or liable to be benefited by such improvement, and the said state drainage commission, in carrying out the provisions of this section is hereby authorized to enter into any necessary contract with any such town, county, person or persons.

Said state drainage commission shall also have the power to acquire title to any private property necessary for any of its authorized purposes, by purchase or by the exercise of the right of eminent domain, and in such last mentioned case the said commission may request the attorney general of this state to take proceedings for that purpose, and it shall thereupon be the duty of the attorney general of this state to proceed to acquire the necessary title to said private property in the manner and according to the provisions of chapter 41 of the Revised Laws of 1905 and acts amendatory thereof, anything therein contained to the contrary notwithstanding and the use of said lands for the purposes aforesaid, or either of them or otherwise, by the state drainage commission in the furtherance of its lawful projects is hereby declared to be a public purpose. Said commission shall also have the power to let contract for all such work and to change the plans thereof when necessary and to supervise, control and accept the same when complete and to cause the same and all preliminary expense in connection therewith to be paid for out of any funds appropriated to the use of the said state drainage commission. ('07 c. 470, amended '09 c. 207 § 1) [5513]

The provisions of R. L. 1905 c. 41 are included in chapter 41 hereof.

Acts granting special powers—1911 c. 138, entitled "An act to authorize the state drainage commission to construct an outlet for the waters of the Mustinka state ditch in Traverse county, Minnesota, and to appropriate money therefor," and 1911 c. 370, entitled "An act to authorize the state drainage commission to co-operate in the construction of an additional outlet for the waters of Snake river in Marshall county, Minnesota, and to appropriate money therefor."

6668. **Topographical survey of watersheds**—The state drainage commission of the state of Minnesota is hereby authorized and directed to cause to be made a topographical survey of the several watersheds of the state for the purpose of securing data from which com-

plete plans for a uniform system of drainage may be prepared. ('09 c. 471 § 1) [5517]

6669. Maps, plans, etc.—As soon as practicable after the completion of the survey of any watershed or part of a watershed, said drainage commission shall cause to be prepared such maps, plans, specifications and estimates of the cost as it may deem necessary for the system or systems of drains or ditches for the several counties included in whole or part in such watersheds; such maps, plans and estimates to be prepared in duplicate and to be divided into sections so as to include in each section or sections as far as practicable the plans and estimates relating to any county included in the survey. ('09 c. 471 § 2) [5518]

6670. Report to county—On the completion of the report of such survey, or part thereof relating to any county in this state, a copy of so much of such report relating to such county shall be filed with the county auditor of the county included therein. ('09 c. 471 § 3) [5519]

6671. Plans to be followed—Upon the filing of such report with the county auditor, as provided for in section three of this act, all subsequent drainage work carried out under any of the drainage laws of this state shall be constructed in conformity with such plans except as modified by the state drainage commission. ('09 c. 471 § 4) [5520]

6672. Commission to prescribe rules—The state drainage commission shall prescribe such rules and regulations governing the construction of ditches in any county in this state under the provisions of this act, as may seem to them just and proper. ('09 c. 471 § 5) [5521]

6673. To co-operate with United States department of agriculture—The drainage commission of the state of Minnesota is hereby authorized to co-operate with the department of agriculture of the United States in the execution of drainage or topographical surveys in any county in this state whenever said drainage commission deem it expedient and in the best interest of the state so to do. ('09 c. 471 § 6) [5522]

COUNTY DRAINS AND DITCHES [COUNTY DRAINS AND JUDICIAL DRAINS].

See 1907 c. 330, being "An act authorizing any county in this state having a population of less than 10,000 inhabitants, to issue its warrants and bonds for the purpose of draining swamps and marshy lands located in certain townships in such county, and creating a commission to have charge of the work and prescribe their compensation." The commission was to be appointed on or before July 1, 1907.

6674 to 6676. [Repealed.]

Laws 1925, c. 415 is entitled: "An act authorizing the county boards of the several counties, and the district courts of the several judicial districts in this state to establish and order the construction of public drainage systems, providing for the protection or drainage of lands and in certain cases bodies of water and meandered lakes, and for the construction, maintenance and repair of such systems including both open and tile drains, and for the construction of such other works as may be found necessary to complete such systems including the building of dykes, roads, drains, and the enlargement, cleaning out, and in certain cases changing water courses and providing for the reimbursement of owners of land damaged thereby, and the determination of benefits and damages and for the collection of costs and expense of the construction and maintenance of such systems by assessments against the property and corporations benefited, and prescribing and defining the authorities and duties of the County Auditor or Auditors and other officers in the premises, and prescribing penalties for the violation of certain provisions of this act and authorizing the issuance of county bonds for the purpose of supplying funds to carry into effect the provisions hereof and the repeal of certain laws herein specified." This act is a revision and codification of the prior laws relating to county drains and judicial

drains as contained in Gen. St. 1923, and elsewhere. Section 113 of said Laws 1925, c. 415 expressly repeals, except as to pending proceedings the following acts and parts of acts:

Gen. St. 1913, §§ 5523 (Gen. St. '23, § 6674), 5525 (Gen. St. '23, § 6676), 5526 (Gen. St. '23, § 6678), 5527 (Gen. St. '23, § 6680), 5528 (Gen. St. '23, § 6681), 5529 (Gen. St. '23, § 6682), 5530 (Gen. St. '23, § 6683), 5531 (Gen. St. '23, § 6684), 5532 (Gen. St. '23, § 6685), 5533 (Gen. St. '23, § 6686), 5534 (Gen. St. '23, § 6687), 5535 (Gen. St. '23, § 6688), 5536 (Gen. St. '23, § 6689), 5537 (Gen. St. '23, § 6690), 5538 (Gen. St. '23, § 6691), 5539 (Gen. St. '23, § 6692), 5540 (Gen. St. '23, § 6693), 5541 (Gen. St. '23, § 6694), 5542 (Gen. St. '23, § 6696), 5543 (Gen. St. '23, § 6703), 5544 (Gen. St. '23, § 6705), 5545 (Gen. St. '23, § 6711), 5546 (Gen. St. '23, § 6712), 5548 (Gen. St. '23, § 6713), 5550 (not in Gen. St. '23), 5551 (Gen. St. '23, § 6716), 5552 (Gen. St. '23, § 6717), 5553 (Gen. St. '23, § 6718), 5554 (not in Gen. St. '23), 5555 (not in Gen. St. '23), 5556 (Gen. St. '23, § 6719), 5557 (Gen. St. '23, § 6720), 5558 (Gen. St. '23, § 6721), 5559 (Gen. St. '23, § 6722), 5560 (Gen. St. '23, § 6723), 5561 (Gen. St. '23, § 6724), 5562 (Gen. St. '23, § 6725), 5568 (Gen. St. '23, § 6731), 5569 (Gen. St. '23, § 6732), 5570 (Gen. St. '23, § 6733), 5571 (Gen. St. '23, § 6734), 5572 (Gen. St. '23, § 6735), 5573 (Gen. St. '23, § 6736), 5574 (Gen. St. '23, § 6737), 5575 (Gen. St. '23, § 6738), 5576 (Gen. St. '23, § 6739), 5577 (Gen. St. '23, § 6740), 5579 (Gen. St. '23, § 6742), 5581 (Gen. St. '23, § 6744), 5582 (Gen. St. '23, § 6745), 5583 (Gen. St. '23, § 6746), 5584 (Gen. St. '23, § 6747), 5585 (Gen. St. '23, § 6748), 5586 (Gen. St. '23, § 6749), 5587 (Gen. St. '23, § 6750), 5588 (Gen. St. '23, § 6751), 5589 (Gen. St. '23, § 6752), 5590 (Gen. St. '23, § 6753), 5591 (Gen. St. '23, § 6754), 5592 (Gen. St. '23, § 6755), 5593 (Gen. St. '23, § 6756), 5594 (Gen. St. '23, § 6757), 5595 (Gen. St. '23, § 6758), 5596 (Gen. St. '23, § 6759), 5597 (Gen. St. '23, § 6761), 5605 (Gen. St. '23, § 6769), 5606 (Gen. St. '23, § 6770) and 5607 (Gen. St. '23, § 6771).

Laws 1905, c. 230, and the amendments thereto (Gen. St. '23, §§ 6674 to 6676, 6678 to 6689, 6691, 6694, 6696, 6703, 6705, 6712, 6713, 6715 to 6759, 6763).

Laws 1915, c. 178 (Gen. St. '23, § 6706 to 6710).

Laws 1915, c. 246 (Gen. St. '23, § 6695).

Laws 1915, c. 268 (Gen. St. '23, § 6760).

Laws 1915, c. 274 (not in Gen. St. '23).

Laws 1915, c. 200 (Gen. St. '23, § 6674, 6689, 6694, 6696, 6713, 6717).

Laws 1917, c. 171 (not in Gen. St. '23).

Laws 1917, c. 441, §§ 3 to 19 (Gen. St. '23, §§ 6674, 6676, 6678, 6680, 6683, 6687, 6689, 6690, 6694, 6696, 6716, 6717-A, 6717-B, 6734, 6769, 6913, 6913-A).

Laws 1919, c. 471, §§ 4, 6 to 13 and 16 (Gen. St. '23, §§ 6682, 6694, 6714, 6717-A, 6717-B, 6717-C, 6734, 6761, 6762, 6696-A).

Laws 1921, c. 508 (Gen. St. '23, § 6789, 6680, 6713, 6717, 6717-1, 6717-2, 6717-3, 6717-A).

Laws 1923, c. 248 (Gen. St. '23, § 6704).

Said Laws 1925, c. 415, § 113, further repeals all other acts or parts of acts inconsistent therewith, except as to pending proceedings. Said § 113, further provides, "that in all cases where under the provisions of any other act heretofore passed, reference is made to any of the sections or chapters hereinbefore enumerated"—as repealed—"and performance required or provided for in accordance with the provisions of such sections or chapters, then and in that event the provisions of such sections or chapters, shall continue for all purposes of such acts as though in fact constituting a part thereof."

For Laws 1925, c. 415, as amended, see §§ 6840-1 to 6840-113, herein. For section 113 thereof (the repealing section) see § 6840-113, herein.

See 1913 c. 528, approved April 25, 1913, providing for reassessment of benefits and damages, where a ditch has been established which drains a meandered lake, and the landowner is entitled to more or less land of the lake bed than was taken, awarded, or considered as the basis of assessment, and providing that applications for reassessment must be filed within 90 days after passage of the act.

1905 c. 230 is constitutional (102-391, 113+914). Departure from water course, when authorized (104-364, 116+846). Findings that lakes are not normally grassy and of marshy character, or no longer of sufficient depth to be of beneficial public use (117-369, 135+1003).

See 119-261, 138+24.

'23 c. 217, authorizes county board of counties of an assessed valuation of \$300,000,000, and an area of 5,000 square miles to purchase, use and insure dredging machines. Jurisdiction of court under laws 1909, where ditch is wholly within one county with no benefits or damages in an adjoining county. Laws 1909 held not unconstitutional (131-43, 154+617). Power given in broad (137-167, 163+136; 140-237, 167+1043). Power to

extend ditch through cities to secure outlet (142-165, 171+311). Crow Lake is not within class the statute permits to be drained (144-78, 174+522). Draining a meandered lake where its waters have been greatly reduced (146-150, 178+595).

Annotations to § 6674—A petition to construct a ditch for the purpose of lowering the water in a meandered lake, four feet below its present level, shows that the lake is not within the class of lakes which may be drained. 159-140, 198+455.

The evidence justifies the finding of the trial court that a proposed ditch will not damage a meandered lake, and the order establishing a ditch is sustained. 164-482, 205+442.

The drainage law does not give the petitioners the right to appeal from an order of the district court dismissing proceedings to establish a ditch. The order may be reviewed by certiorari. 159-140, 198+455.

Annotations to § 6676—

By 1907 c. 367 § 11, 1905 c. 311 was repealed. Where petitioners did not sign bond, and there was failure to establish ditch, they were not liable for preliminary expenses paid by county (111-345, 126+1100). Petition sufficiently set forth that ditch will be public benefit, and will promote public health (116-326, 133+971). Statutory bond with superadded conditions. (122-505, 142+899). Presumption in bond is such as required by law. (123-438, 143+970). Despite jurisdictional defects in description, bond indemnifies for preliminary expenses (124-496, 145+380). New bond (131-46, 154+619). The judge satisfied of existence and compliance of requisite conditions may order survey from source to outlet (134-436, 159+965). Petition a jurisdictional prerequisite limited to statutory provisions (136-146, 161+379; 137-167, 163+136). Bond and effect of laws (17 c. 455, 140-375, 168+184). Sufficiency of petition to confer jurisdiction resulting in drainage of meandered lake (142-38, 170+833). General drainage law authorizes construction of drains whenever prescribed conditions exist whether within or without corporate limits of city (142-166, 171+311). Ownership in land described though not traversed but yet benefited qualifies petitioners (143-970, 174+313). Slight deviation from the statute in mailing a "printed copy" two days before publication of the notice is of immaterial consequence (150-120, 184+678).

17 c. 441 § 15, not applicable in that the contemplated drainage is a county ditch proceeding under this statute (151-212, 187+410).

Drainage proceedings may be instituted to reclaim waste lands, and alleging that the proposed ditch is necessary for the reclamation of such lands is a sufficient compliance with the statutory requirement that the petition shall set forth the necessity for the ditch. 165-74, 205+625.

Where a petition sets forth the facts required by the statute to be set forth therein, it is sufficient although it may fail to set forth that it was signed by the required number of petitioners. 165-74, 205+625.

A petition signed as required by the statute and stating the facts required by the statute to be set forth therein is a jurisdictional prerequisite to the authority to establish either a county or a judicial ditch. 167-10, 208+417.

The proceeding in question as extended provides for the construction of ditches to drain an extensive territory over which the court had no jurisdiction. 167-10, 208+417.

6677. [Superseded.]

See § 6840-4, herein.

Proceedings to establish judicial ditch not stopped on account of bond (140-377, 168+185).

6678. [Repealed.]

See notes to §§ 6674 to 6676, supra.

Change by engineer in starting point, even if not authorized by 1905 c. 230 § 4, was no defense to proceedings to obtain judgment for assessment lien (112-493, 128+823). See, also, 111-255, 126+1074). Notices of first hearing properly posted, and court acquired jurisdiction; it appearing from petition and findings that proposed ditch was wholly located in town in which notices were posted (114-424, 131+476). Authority of engineer to lay out proposed ditch along practicable lines (116-326, 133+971). "Lowest responsible bidder," how determined. Reduction of bid after award (116-484, 134+221). Engineer's supervision of contract (122-504, 142+899). Recovery on bond of preliminary costs (123-438, 143+971; 129-151, 151+897). Engineer's extending ditch beyond limits named in petition (129-212, 152+407). Departure from route petitioned for is allowable where the same or different lands are benefited by the improvement (131-47, 154+619). Engineer's authority to require extra yardage of a sub-contractor in excavating (135-6, 159+1075; 136-274, 161+379). Omission of the cost of bridges

(140-377, 168+185). Survey of drainage course, tabulation of construction work and estimated cost (142-301, 172+126; 143-218, 173+408; 143-439, 174+314; 151-444, 187+414; 152-353, 188+1015). Under amended statute, at first hearing all questions of necessity, public utility and benefit are determined (194+402).

157-493, 196+666; 163-383, 204+318.

The court or county board, as the case may be, is required by the amended statute to determine on the first hearing all questions of propriety, practicability, and public utility or benefit of the proposed improvement. 156-95, 194+402.

It appearing that the work was accepted by the engineer in charge of the construction, whose directions plaintiff was to follow under his contract of hire, inquiry as to whether it conformed to the plans and specifications became immaterial. 159-218, 198+449.

A change in the plan of construction, duly authorized by the court during the progress of the work, which added 10 per cent. to the contract price, was permissible, although the contract limited such increase to 2 per cent. 164-390, 205+277.

Under the drainage statutes, a contractor is bound to do the work in accordance with the plans and specifications. A mere showing that, in good faith, he followed the directions of the engineer in charge of construction, falls short of establishing performance of the contract. 164-390, 205+277.

6679. [Superseded.]

See § 6840-6, herein.

6680 to 6696. [Repealed.]

See notes to §§ 6674, 6676, herein.

Annotations to § 6680—

129-154, 151+899; 137-269, 163+511; 138-207, 164+816; 142-302, 172+126. On appeal from an order of the county board refusing to establish a county ditch, the court tries and determines the matter de novo, and has jurisdiction to establish the ditch and to conduct all further proceedings for carrying its judgment into effect. 167-10, 208+417.

Annotations to § 6681—157-493, 196+666.

Viewers and jury must make separate award of damages (122-392, 142+802). Disqualification of viewers as a defense to action on bond (129-153, 151+898). Manner and method of viewers and jury in assessing benefits in drainage of meandered lake (130-178, 153+859). Official position as disqualification of viewer (130-178, 163+513). No manifestation of intent to legislate away police power under this statute (140-1, 167+126; 142-301, 172+126; 152-354, 188+1016).

Annotations to § 6682—157-493, 196+666.

142-302, 172+126; 152-354, 188+1016.

Benefits were assessed and confirmed upon the basis and belief and presumption that the ditch would be effective. It was not. Held, (1) the drainage law provides the exclusive method of litigating the amount of benefits, and (2) under such circumstances the landowner cannot have relief on the ground of a failure of consideration. 162-173, 202+440.

Annotations to § 6683—152-354, 188+1016.

Annotations to § 6684—In a judicial ditch proceeding, a question of adopting a modification of the plans for the proposed ditch is a discretionary matter resting with the court. 157-108, 195+781.

Service of an order to show cause is sufficient where it is made as directed by the court and in the manner provided by statute for acquiring jurisdiction of the original proceeding. 160-387, 200+471.

Parties whose assessments would be increased by the operation of a void order may move to have it set aside. 160-387, 200+471.

If a county auditor, in a county ditch proceeding, mails the statutory notice to a non-resident landowner at the address which he obtains "by inquiring at the county treasurer's office," it is sufficient, even though the county treasurer gives the wrong address. 161-193, 201+413.

If by lateral or side drains subsequently to be recommended and provided for by viewers and engineers work is extended into adjoining towns, notices of second hearing must be posted in such towns (114-424, 131+476). Rehearing of a petition and report when final order is void (124-495, 145+380). Determined as to whether meandered lake was subject to drainage under this statute (128-70, 150+209; 129-155, 151+899). Elimination of branches as an improvement of proposed drainage project (130-178, 153+859). Necessity of new notice only as to additional lands (137-266, 161+714; 163+510). Not mandatory upon county board to swear witnesses (139-315, 166+339). Apportionment and partition of bed of a meandered lake may be made at the final hearing without a petition and notice (142-350, 172+224). Notice of preliminary hearing (143-439, 174+314).

See also 138-207, 164+815; 141-440, 170+592; 142-494, 171+922; 140-175, 167+548; 140-23, 167+122; 148-349, 182+168; 150-122, 184+677.

As to branch ditch (152-352, 188+1015).

Annotations to § 6685—155-74, 205+625.

Order must locate ditch giving proper starting point, route, and terminus (107-87, 119+302). Board is limited in final order establishing ditch to description in petition subject to reasonable departures necessary to render improvement of practical utility. Extension for seven miles beyond terminus named in petition unauthorized (100-85, 110+355). Although it is not decided that the amendment to this section is utterly void, still insofar as same directs a revival of the proceedings denied on the merits and provides for a hearing and determination de novo, it is invalid and unconstitutional (148-348, 182+168; 125-325, 146+110). Benefits in excess of costs, collateral attack (129-151, 151+897; 134-436, 159+758; 136-146, 159+965). Estimated benefits to exceed total costs (140-177, 167+549; 140-233, 167+1042). Purpose to drain lands within city or village (140-177, 171+311; 152-354, 188+1016).

Annotations to § 6686.

Separate award of damages (122-394, 142+302; 131-375, 155+626; 141-488, 170+595; 152-357, 188+1017).

Annotations to § 6687—161-66, 200+833; 161-400, 201+621, note under § 6734.

Certiorari available to review order establishing a ditch; no appeal order being provided (106-197, 118+1014). Where landowners, not served with notice nor named, and whose lands were not referred to, remonstrated on ground that water would be brought in damaging quantities on their premises, they were not restricted to appeal, but might resort to injunction (101-271, 112+274). The appeal is not limited or affected by § 5543 (111-10, 126+479). Where trial of appeal from assessment of benefits is had in district court of county other than that in which proceeding was instituted, verdict of jury or order of court in such trial is final determination in that court, and no judgment thereon is necessary (116-424, 133+1010). Burden of proof, on appeal from assessment (116-424, 133+1010).

Cited (115-440, 132+749). See 119-392, 138+675).

Orders appealable are, besides drainage of a meandered lake, those determining benefits or damages, or refusing establishment of ditch (128-70, 150+209). Refusal to establish ditch, if public utility, ground for appeal and trial de novo (129-155, 151+899; 130-178, 153+859; 131-373, 155+626). Demand for jury upon statutory conditions, and dismissal when reviewable (133-113, 157+1004; affirmed by 134-290, 159+629; 142-178, 171+564). Sufficiency of notice of appeal (151-285, 186+715). Final order subject to appeal and not certiorari (194+403).

The rule applies to the claim here made that a prior proceeding commenced to effect the same improvement, which was dismissed on the merits, is res judicata and a bar to the present proceeding. 156-95, 194+402.

The time fixed by statute for demanding such trial cannot be extended by the court. 160-387, 200+471.

Where such assessments have been duly confirmed and no jury trial has been demanded, the assessments become final and conclusive at the expiration of the statutory time for demanding such trials, and cannot be modified by the court thereafter. 160-387, 200+471.

The order confirming the assessments for the construction of a judicial ditch can be reviewed only by demanding a jury trial as provided by statute. 160-387, 200+471.

Annotations to § 6689.

Action lies by contractor against county to reform contract, by causing engineer's estimate of cubic yards to conform to number actually excavated as required by plans. "Estimate" of engineer was not basis of bid, and 30 per cent, limitation did not apply (112-5, 127+396). Requirements as to filing of certified check with bid held sufficiently complied with (116-484, 134+221).

Cited (117-50, 134+226).

Validity of county ditch contractor's bonds (125-213, 146+359; 131-243, 154+1092; 133-56, 157+902).

Annotations to § 6690—167-32, 208+526, note under § 9699.

A bondsman completing the work upon default of contractor cannot avail himself of defense in action by material man that same was not completed and accepted (133-56, 157+902; 133-91, 157+999; 137-100, 162+1055).

In this action to recover upon the statutory bond given by defendant to secure payment for labor incurred by the contractors, the proof offered of negligent performance by plaintiff and damage to defendant was rightly rejected, since such damage was not alleged, and the contractors who were alleged to have been damaged admitted the amount sued for to be correct. 159-218, 198+449.

Venue. 166-499, 207+648.

Workmen's Compensation Act. 209+644.

The stipulation for liquidated damages is binding both on the contractor and the surety, but the allegations of the complaint are insufficient to show plaintiff entitled to such damages. 213+30.

Annotations to § 6691—The complaint fails to state a cause of action for damages either because of a failure to substantially perform the contract or because of negligent construction, discovered after the work was accepted and practically paid in full, for the complaint fails to show that the county has remedied the defects or incurred any obligations to that end, and hence no damages have accrued to the county. 213+30.

A judicial ditch substantially completed, not abandoned, where engineer refuses to accept ditch, and contract money is withheld by county, benefited landowners are not entitled to refund of paid, and vacating of unpaid, assessments (145-496, 175+997).

Changes in the plan of construction were provided for by the contract. After the change was made and the contractors had partially performed their contract, the surety took charge of the work and undertook to complete it. It thereby waived notice of the application for the change. 164-390, 205+277.

Annotations to § 6694—167-458, 209+638, note under § 6734.

123-59, 142+945.

Annotations to § 6693.

Proviso of 1905 c. 230 § 17, authorizing partial payments (104-463, 116+941).

Certificate of engineer under 1905 c. 230 held not final and conclusive that contract has been fully performed (112-516, 128+1008).

112-516, 128+1008, to effect that, on refusal of board to approve final certificate of engineer, contractor may bring action on contract to recover balance due, followed and applied (114-448, 131+635).

'23 c. 107 authorizes counties of over 45 and less than 58 congressional townships where warrants were issued prior to January, 1918, and which are "not paid for want of funds" as to a special drainage project, because of deficit, to assess and extend same for general taxation (122-506, 142+899; 123-61, 142+945). Judgment is res adjudicata against tax-payers, public officials and municipality (125-461, 147+448). Statute not unconstitutional (137-409, 163+746). County is agency of state (140-28, 167+114). Engineer's certificate, unapproved, as evidence of completion of ditch (145-239, 176+763). No method is prescribed by statute for review of action of board in refusing approval of engineer's final certificate, and any proper common law remedy is available (148-181, 181+324).

It appearing that the work was accepted by the engineer in charge of the construction, whose directions plaintiff was to follow under his contract of hire, inquiry as to whether it conformed to the plans and specifications became immaterial. 159-218, 198+449.

Payments made by the contractor to a sub-contractor, in reliance on certificates issued by the engineer, do not estop the county from recovering the cost of remedying defects in the sub-contractor's work. 164-390, 205+277.

Annotations to § 6695.

123-61, 142+945; 135-275, 160+766.

Annotations to § 6696.

Bonds direct and general obligations of county (117-50, 134+226).

'23 c. 5 legalizes certain bonds in proceedings under '11 c. 54, as amended '17 c. 441 § 17. Contract by county for sale of its bonds for less than par, is, as between original parties, void, under this statute (145-77, 176+196).

123-61, 142+945; 135-275, 160+766.

6696a. [Repealed.]

See notes to 6674 to 6676, herein.

'21 c. 182 § 1, amended '23 c. 376 § 1, authorizes county board of counties of not less than 95 nor more than 110 full or fractional congressional townships with at any time an assessed valuation of not less than \$6,000,000 and not more than \$12,000,000 to issue refunding bonds, etc., relating to certain drainage projects.

'21 c. 222, applies to judicial ditch projects pursuant to '05 c. 230, legalizing such contracts, prior to April 8, 1921, under G. S. '13 § 5536 and liens thereunder and providing for the issuance of bonds relating thereto, exempting pending proceedings.

'15 c. 301 legalizes the transfer of moneys, theretofore made, from ditch to revenue fund, and same has not been repaid and validates bonds therefor not to exceed \$25,000, however, providing for specific proceedings as prerequisite to the issuance of such bonds.

6697. Definition—"Drainage ditch bonds" as used herein mean any bonds issued under the provisions of Chapter 230, General Laws 1905, or of any act amendatory thereof or supplemental thereto. ('23 c. 72 § 1)

Explanatory note—For Lays 1905, c. 230, see § 6840-1, et seq., past.

6698. Application—This act shall apply and be operative in the case of any county which, at any time, shall have paid any of the principal or interest of any of its drainage ditch bonds (1) with moneys in its general ditch fund applicable to a ditch other than the ditch in connection with which such bonds were issued, or (2) out of county funds other than the general ditch fund, or (3) out of the proceeds of county warrants issued and outstanding, and a shortage in respect to the general ditch funds exists by reason thereof, and also in the case of any county where it shall, at any time, appear that the moneys in its general ditch fund will not be sufficient to pay in full the principal and interest of its drainage ditch bonds to become due according to their terms within one year following the date of the county auditor's certificate hereinafter provided for. ('23 c. 72 § 2)

6699. County boards authorized to issue ditch bonds—**Interest rate**—The county board of any such county is authorized and empowered to issue and sell, from time to time, the county's bonds for the purposes of its general ditch fund. Such bonds shall be designated Drainage Funding Bonds or by some other appropriate name. Their issuance shall be authorized by resolution of the county board, and they shall be signed by its chairman and attested by the county auditor, who shall affix his seal. They shall bear interest at a rate not exceeding six per cent per annum, payable semi-annually, and shall mature serially in annual installments, as nearly equal as conveniently may be, the first installment to be payable in not more than five years, and the last installment in not more than fifteen years from the date of said bonds. They shall be sold as provided by Section 1856, General Statutes 1913. ('23, c. 72, § 3; amended '25, c. 198, § 1)

Explanatory note—For G. S. '13, § 1856, see § 1943, herein.

6700. Auditor to make certificate—Before any bonds shall be authorized or issued under the provisions hereof, there shall be first presented to the county board and entered in its records, a certificate signed by the county auditor under his seal. This certificate shall state (1) the amount which will be required to make good any existing shortage within the meaning of Section 2 hereof, and (2) the probable amount which will be required to pay the principal or interest of the county's outstanding drainage ditch bonds to become due within one year from the date of such certificate. The certificate shall state such amounts in detail, and shall specify the part thereof which is applicable to each of the several county ditches. Such certificate of the county auditor shall be conclusive evidence that the county has authority to issue bonds under the provisions hereof to an amount not exceeding the aggregate amount specified in any such certificate. ('23, c. 72, § 4; amended '25, c. 198, § 2)

6701. Purpose—The proceeds of any such bonds paid into the treasury shall be placed in the general ditch fund, and applied to the purpose for which they are issued. The county auditor shall keep a separate account with each ditch in connection with which any of the proceeds of any of such bonds are used, and when the collection of assessments on account of such ditch at any time produces a surplus in excess of the

obligation on account of such ditch to the general ditch fund, such surplus shall be applied to the payment of the principal or interest of such bonds. ('23 c. 72 § 5)

6702. Obligation of county—Any bonds which a county may issue hereunder, shall be general obligations of the county, but shall not be included in determining such county's net indebtedness under the provisions of any applicable law. ('23 c. 72 § 6)

6703 to 6717. [Repealed.]

See notes to §§ 6674 to 6676, herein.

Duty to file statement is attribute of office of auditor, and not discretionary with person holding office. Delay of four years not fatal. Mandamus to compel filing lies (111-10, 126+479).

See 111-10, 126+479; 135-276, 160+766.

'19 c. 180 legalizes proceedings where contract for construction was let at a cost greater than the benefits to be derived, except pending proceedings.

'19 c. 182. legalizes proceedings theretofore taken, for deepening and extending drainage projects, and validating bonds for same.

Proceedings legalized under § 6705 et. seq.—Laws 1925, c. 100 reads as follows: "Section 1. That in all cases where in a proceeding instituted under Chapter 230, Laws 1905, or its amendments, a ditch in one county has heretofore been established by order of the District Court, or of a judge thereof, after an appeal from an order of a county board refusing to establish the same on petition to it, and a contract for the construction of such ditch has been let, and a lien statement under General Statutes 1923, Section 6705 also known as G. S. 1913, Sec. 5544, in respect thereto been filed and recorded, and no appeals are pending, all proceedings in reference to said ditch already or hereafter had, including the issuance of the county's bonds to defray in whole or in part the expenses incurred or to be incurred in locating, constructing and establishing the same, are hereby legalized and validated.

Sec. 2. The provisions of this act shall not apply in the case of any pending litigation."

135-276, 160+766.

Annotations to § 6712.

'21 c. 155 is unconstitutional (154-371, 191+931).

'11 c. 273 § 1, legalizes, confirms and validates levies of interest made in proceedings for ditch where no bonds were issued.

Annotations to § 6713—Where a deed presented to the auditor for certification contains such a description as might be claimed to include lands which have been sold to the state for delinquent drainage assessments, he may not be compelled to certify thereon that the taxes have been paid. 212+170.

Annotations to § 6717—157-493, 196+666; 164-452, 205+372.

1905. c. 230 § 26, so far as it attempted to confer authority to enlarge a previously constructed ditch and assess adjacent property, held unconstitutional (109-83, 122+1120).

Cited (114-281, 130+1103; 117-50, 134+226).

141-445, 170+594; 145-35, 176+183; 147-422, 180+537; 151-311, 186+715; 151-285, 186+713; 151-274, 186+709; 153-268, 190+255.

135-276, 160+766.

Whether lake was meandered and could be drained under '15 c. 300 (142-37, 170+384.)

Has no application to proceeding to consolidate under § 6769. 159-428, 199+833.

6717-1 to 6717-3. [Repealed.]

See notes to §§ 6674 to 6676, herein.

Annotations to § 6717-1—164-452, 205+372.

6717-a to 6717-c. [Repealed.]

See notes to §§ 6674 to 6676, herein.

Annotations to § 6717-B.

Purpose is to serve those with land contiguous or near public drain (151-212, 187+410).

Annotations to § 6717-C.

'21 c. 6. legalizes proceedings under '05 c. 230 where the construction of the drainage is wholly within one county or partly within two or more counties, and certain requirements have been met, and the bonds, etc., are validated; but same does not apply to right of appeal, or appeals pending wherein the validity of the proceedings or sale of such bonds are in question.

'21 c. 40, legalizes proceedings pursuant to '05 c. 230,

where all steps have been taken, and the time for appeal has elapsed, all bonds and liens thereunder are legalized and validated, but the right of appeal is not thereby affected nor any actions or appeals pending testing the validity of said proceedings.

6718 to 6727. [Repealed.]

See notes to §§ 6674 to 6676, herein.

Annotations to § 6718—167-458, 209+638, note under § 6734.

104-242, 116+484.

Court has jurisdiction although ditch is wholly within single county. (131-50, 154+620; 138-207, 164+816; 140-30, 167+115; 141-448, 170+595).

Establishing a judicial ditch is a proceeding in rem, and where the steps for establishing it have been properly taken, the court has jurisdiction of all the property affected and such jurisdiction remains unaffected by subsequent transfers. 160-387, 200+471.

Petition a jurisdictional prerequisite. 167-10, 208+417.

Annotations to § 6719—167-458, 209+638, note under § 6734.

138-207, 164+815; 140-30, 167+115; 143-439, 174+314.

Annotations to § 6720—159-428, 199+883, note under § 6769.

134-437, 159+965; 140-30, 167+115; 143-439, 174+314.

Annotations to § 6721—159-428, 199+883, note under § 6769.

136-275, 159+759; 140-30, 167+115.

'19 c. 48, provides for issuing warrants where 75% of entire contract is completed in a judicial ditch proceeding.

The court is required to pass upon the project as brought to it, and by such proceedings the court is not required to grant relief of some kind. 157-108, 195+781.

Annotations to § 6722—159-428, 199+883, note under § 6769.

Annotations to § 6725.

148-351, 182+169.

Annotations to § 6726—Statute intends that municipality or township shall construct bridge. 161-517, 200+816.

142-303, 172+127.

Annotations to § 6727.

147-293, 180+120; 147-429, 180+539.

6728. Damages arising after construction—Petition—Viewers—Notice—Hearing—That whenever any land adjacent to any ditch or drain constructed, either under the provisions of this chapter or under any prior drainage law by which the original cost of said ditch or drain was assessed against the benefited property, may be or has been damaged subsequent to the construction of such ditch or drain by reason of a part of the soil being carried away by water flowing through said ditch or drain, or by the deposit of earth or any other foreign substance (snow and ice excepted) on said land, and which damage was not considered and included in the award of the viewers appointed in the proceedings to construct such ditch or drain, the owner of the land so damaged may, at any time within six years, except as hereinafter provided, after the completion of the ditch or drain causing such damage, petition the board of county commissioners of the county where the land claimed to be damaged is situated for the appointment of viewers to ascertain and report the amount of such damages, such petition shall state the description of the land alleged to have been damaged, the amount of damage claimed, the location of the ditch or drain, the description of the land found in the proceedings to construct said ditch or drain to have been benefited by its construction, and the names of the owners of the land benefited, as shown by the last assessment roll. Upon the filing of the petition and a bond in the sum of one hundred dollars, conditioned that if it finally be determined that no damages have been sustained that are properly allowable under this section, the petitioner will pay all the expense of the proceedings had under the petition, it shall be the duty

of the board of county commissioners at their next regular or special meeting to appoint three persons who are qualified under the provisions of this chapter, viewers, selecting if practicable the same persons as acted as viewers in the proceedings to construct the drain or ditch causing the damage, and the board of county commissioners shall fix the time and place for the first meeting of the viewers, which shall be not more than twenty days from the date of their appointment, provided the board of county commissioners may, at any time within 15 years after the completion of the ditch or drain causing such damage, upon petition of the owner of any land adjacent to any ditch constructed as hereinbefore provided and if in its judgment such petition is a meritorious one, appoint three persons, who are qualified under the provisions of this chapter, as viewers to determine such damages, and provided further, that no damages reported by such viewers which have arisen more than six but not to exceed 15 years after the completion of said ditch shall be paid without being audited, allowed and approved by said board of county commissioners, but upon such audit, allowance and approval shall be paid in the same manner as such damages that arose prior to six years after the completion of said ditch as is now provided by law. In case any of the viewers so appointed shall fail for any cause to qualify, the county auditor shall designate some proper person to take his place. Each of said viewers before entering upon the duties of his office shall take and subscribe an oath that he will faithfully perform his duty as viewer and file the same in the office of the county auditor. Upon the appointment of the viewers the county auditor shall give notice to parties interested, and whose lands are liable to be assessed for the payment of the damages claimed, by one publication at least one week before the first meeting of the viewers in the newspaper in which the last delinquent real estate tax list was published, if that paper is still published in the county, and if not, in some legal newspaper printed and published in the county, and if there is none, in some newspaper published at the state capitol, stating the date and the first meeting of the viewers, and that any party interested may appear at that meeting and at such other time and place as the viewers may fix, and be heard in relation to the charges and such other matters as the viewers are authorized to hear and determine, and proof of the publication of said notice shall be filed in the office of the county auditor prior to the first meeting of the viewers. ('05, c. 230, § 39; amended '27, c. 133, § 1) [5565]

Explanatory note—This section was repealed by Laws 1925, c. 415, § 113 (§ 6840-113), herein; but it was amended by Laws 1927, c. 133, § 1, to read as set forth above.

Cited (115-440, 132+749).

140-145, 167+362.

Notwithstanding the fact that the contract under which a county drainage ditch was dug provided that openings should be left in the spoil bank wherever designated by the county board or the engineer in charge of construction under the direction of the board, the county is not liable to a landowner for damages caused by the construction of the ditch adjacent to his land without openings in the bank for the escape of surface water from the land into the ditch. 210+626.

6728-1. Same—Time limitation—After the first day of October, 1927, no claim for damages under the provisions of this act shall be entertained or allowed unless duly presented within six years after the completion of the ditch. ('27, c. 133, § 2)

6729 to 6762. [Repealed.]

See notes to §§ 6674 to 6676, herein.

Cited (115-440, 132+749).

Annotations to § 6730—The rule that an ex parte order is not appealable when made in a judicial proceeding is applicable to an order made in a drainage proceeding sought to be reviewed by certiorari. For the purpose of such review, a drainage proceeding is to be regarded as a judicial proceeding. 156-401, 194+1023.

Order of court on appeal from assessment of damages, assessing appellant's damages and directing judgment, is not an appealable order under this section, or a final order appealable under § 6740 (104-227, 116+483; 104-527, 116+484). Does not authorize appeal from judgment establishing ditch (115-440, 132+749). The question of practicability of route and plan is for trial court (131-43, 154+617). Appeal (135-198, 160+493).

Annotations to § 6732—157-493, 196+666.

Annotations to § 6734—Constitutional. 161-66, 200+833.

Time of fixing auditor's compensation (123-439, 143+971). Compensation of county auditor for other than his salary (135-275, 160+787). Compensation of county attorney for other than his salary (136-140, 161+382). The provision of this statute, prior to the amendment of '19 c. 471, under which the bill of the engineer was audited and ordered paid was unconstitutional, as not due process of law (138-186, 164+815). Order appointing relator as referee on all ditches in district is a nullity, being clearly unauthorized by this statute, prior to amendment of '19 c. 471 (138-204, 164+817). Distinguishing from (138-186, 164+815, and 138-204, 164+817), the county is deemed an agency of the state devoid of proprietary capacity and in that sense not a party interested in sufficiency of notice to constitute due process (140-30, 167+115). Constitutionality (140-465, 168+348). The decision in (138-204, 164+815) is followed and adhered to (147-24, 179+569). Duties of referee under statute and as imposed upon him by the court (147-292, 180+119).

The primary obligation to finance a ditch proceeding is constitutionally cast upon the county; and this includes the obligation to pay for the services of the engineer, though the ditch proceeding is dismissed. 161-66, 200+833.

A county attorney, appearing for his county in a judicial ditch proceeding to oppose an assessment of benefits and award of damages, has no claim on the ditch fund for compensation for his services, although his efforts resulted in a reduction of the assessment and an increase in the amount allowed as damages. 161-400, 201+621.

The primary obligation to finance a ditch proceeding is cast upon the county, including the obligation to pay for the services of the engineer. 162-258, 202+827.

The provision for the court to audit and allow claims without notice to the county is not unconstitutional when applied to a pending proceeding as distinguished from such application in a proceeding which has been dismissed as in State ex rel. County of Murray v. District Court, 138 Minn. 204, 164 N. W. 815. A dismissal of a proceeding relinquishes all jurisdiction. 167-458, 209+638.

In the absence of a valid statute authorizing the auditing and allowance of such claims, the claimant may recover in an action at law against the county. 167-458, 209+638.

Annotations to § 6735—The drainage law does not give the petitioners the right to appeal from an order of the district court dismissing proceedings to establish a ditch. The order may be reviewed by certiorari. 159-140, 198+455.

Majority being competent, disqualified viewer does not invalidate action taken. 137-273, 163+513.

Annotations to § 6736—157-493, 196+666.

Cited (116-326, 133+971).

Annotations to § 6737.

Cited (119-261, 138+24).

Final order is presumptive evidence of each step taken (137-271, 163+512). Order establishing ditch is prima facie evidence of regularity of proceeding (150-122, 184+678).

Annotations to § 6738—Does not place a void order modifying assessments beyond attack by those whose assessments would be increased if it were to be given effect. 160-387, 200+471.

Land owner, not damaged and not assessed is not entitled to certiorari (136-275, 159+758; 136-272, 161+576).

Annotations to § 6740—A landowner, in the territory dismissed from a ditch proceeding, who does not claim damages and whose property cannot be benefited (in the absence of the ditch), has no right of appeal and certiorari is his remedy to review the order of dismissal. 157-108, 195+781.

Cited (115-440, 132+749).

Order vacating final order establishing ditch and granting rehearing of issues is not an appealable order

(137-166, 163+126). Appeal is allowable from a final order confirming an assessment and upon appeal assessment is subject to question (135-460, 163+135).

Annotations to § 6742—157-493, 196+666.

Annotations to § 6744.

139-115, 165+875.

Annotations to § 6747.

142-163, 171+317.

Annotations to § 6752.

Cited (115-440, 132+749).

Appeal to District Court from order of county board for drainage of meandered lake (128-70, 150+209). Trial de novo on appeal (142-37, 170+883).

Annotations to § 6754.

Power of abatement of assessment by tax commission and reassessment (137-40, 162+687).

Annotations to § 6755—The drainage law does not give the petitioners the right to appeal from an order of the district court dismissing proceedings to establish a ditch. The order may be reviewed by certiorari. 159-140, 198+455.

Annotations to § 6756.

Right of appeal not extended to petitioners for the ditch. Certiorari lies (116-424, 133+1010). Certiorari reviewing ditch proceedings (137-265, 161+714).

Annotations to § 6761.

Not applicable to judicial ditch (116-326, 131+476).

6763. Proceedings begun under other provisions, how completed—Application—Hearing—In all cases where petition has been made for the construction of a drainage ditch under any of the provisions of the drainage laws of this state now or heretofore existing, the same may be considered and completed under the provisions of this chapter by the county board or the judge of the district court at the election of the bondsmen and sureties thereon upon written application of said bondsmen and the sureties thereon made to said county board or the judge of the district court. Upon the receipt of said application the said county board, or the judge of the district court, as the case may be, shall fix a time and place for the hearing of said application and shall cause a two weeks' published notice thereof to be given to all parties interested, and at the time and place of the hearing thereof the county board or the judge of the district court, as the case may be, shall hear and consider the same and if found to be of sufficient public benefit, shall order the said pending ditch proceedings to be heard and completed under the provisions of this chapter and thereupon the said county board or the judge of the district court, as the case may be, shall have full and complete jurisdiction thereof for the purpose of completing the proceedings thereunder the same as if the said ditch proceedings had been originally commenced under the provisions of this chapter. Provided, that whenever in proceedings in the district court of this state the construction of any ditch heretofore or hereafter ordered by the county board under any drainage law of this state by which the cost [s] for construction were or are assessed against the benefited property, was or is restrained or enjoined by said court for any reason, that within one year after the entry of final judgment in such proceedings any person whose land is liable to be assessed therefor may cause the entire proceedings relating to said ditch to be transferred to the judge of the district court in the judicial district where the same is pending, by service of a notice of motion to that effect, eight (8) days before the date of hearing on said motion, upon the county auditor, chairman of the county board, and the parties upon whose motion the construction of said ditch was enjoined or the attorneys representing them in such proceedings. The county auditor, upon service of the notice of such motion, shall forthwith transmit to the clerk of the proper district court all original papers filed in said matter.

At the time named for the hearing of such motion or on any date to which the same is continued, upon proof of the service of such notice of motion, the court shall proceed and consider the same and the viewers' report, the same in all respects as if such proceedings had been originally commenced in said court, and due notice thereof given as provided in this chapter, and the report of the viewers, appointed in such proceedings by the county board shall by the court on such motion be considered the same in all respects as if the viewers had been appointed by the court in proceedings originally commenced in said court, and the court shall thereupon make such findings as justice may require, and may order said ditch constructed in conformity with the provisions of this chapter, and all further proceedings relating to said ditch shall be had before such court, the same in all respects as if the same had originally been commenced therein. ('05 c. 230, amended '09 c. 469 § 13) [5598]

'21 c. 390 legalizes and validates bonds issued in proceedings heretofore, and makes same binding obligations, where same result from the cleaning and repairing, etc. of ditches; exempting pending actions.

6764. Repeals—That section numbered 3½ and section numbered 10 of chapter 367 of the Laws of Minnesota for the year 1907, and all of chapter numbered 448 of the General Laws of Minnesota for the year 1907, and all of chapter 44 of the Revised Laws of 1905, be and the same is hereby expressly repealed, save as to pending proceedings under said chapter 448 of the General Laws of Minnesota for the year 1907, which pending proceedings may be completed under the provisions of this chapter, if so elected as hereinbefore provided. ('09 c. 469 § 14) [5600]

6765. Change of method of construction or alteration or location of drainage ditches and proceeding for same—Whenever proceedings have been or hereafter shall be taken to lay out a drainage ditch according to law and the same has been or hereafter shall be laid out and established, and the contract for the construction thereof let, and it has been or thereafter shall be found to be impossible, by reason of unfavorable weather or other good cause, for the contractor to construct the same, and the engineer in charge of such ditch concludes, after examination, that better results can be obtained by a different method of construction, thereupon, upon a petition of not less than seventy-five per centum of the owners of the land affected by the construction of such drainage ditch, as shown by the viewers' report in such proceedings, and upon the filing with the county auditor of the county where such proceedings are pending in case of a county ditch, or with the clerk of the district court where such proceedings are pending in case of a judicial ditch, by said contractor and his bondsmen of an agreement in writing consenting thereto, the said county auditor or county clerk or county auditors, as the case may be, may alter or modify the contract theretofore entered into with such contractor as to the manner, method or time within which such drainage ditch shall be constructed, in accordance with the recommendation of the engineer in charge thereof, upon the filing of such recommendation with such auditor, or auditors, or clerks as the case may be.

Provided further, that if, after the establishment of any county or judicial ditch, and before the completion thereof, it shall become apparent that said ditch or any of the branches thereof should be enlarged, deepened or otherwise changed or that a change or alteration in the location should be made for the better service thereof, the county board in case of a

county ditch or the court in case of a judicial ditch may authorize such change or changes as the engineer shall recommend. Provided, however, that before any action shall be taken by the court or the county board, as the case may be, a petition signed by twenty-five per cent of the resident owners of lands affected by said ditch as named in the order establishing said ditch not exceeding in any case more than fifty such resident owners shall be filed with the county auditor if a county ditch, or with the clerk of court if a judicial ditch, setting forth the necessity for the changes or alterations in said ditch, and at the time of filing such petition one or more of such petitioners shall give a bond with good and sufficient freehold sureties payable to the county to be approved, including amount and sureties, by the court or the county auditor, as the case may be, conditioned to pay all expenses in case the county board or the court shall fail to make the alteration or change prayed for in said petition. The same notice shall be given as is given on the filing of an original petition for a new ditch. If upon the hearing of said petition the county board or the court, as the case may be, from the evidence considers it necessary or advisable that changes or alterations be made in said ditch, either in size, location or otherwise, the county board or the court, as the case may be, shall have authority to resubmit the same to the engineer who had charge of said ditch or appoint a new engineer to re-examine said ditch and make report as to changes or alterations he may deem necessary for the betterment of said ditch. Said engineer shall within thirty (30) days make report thereon as to the changes and alterations thereon for the improvement of said ditch. If changes and alterations are recommended by the engineer in said ditch, the viewers shall re-examine said ditch with the proposed changes and alterations and shall within twenty (20) days, after the filing of said engineer's report, file with the auditor or with the clerk of said court, as the case may be, their amended viewers' report.

Upon the filing of the amended viewers' report with the county auditor in the case of a county ditch or with the clerk of the district court in the case of a judicial ditch, the county auditor or clerk of court, as the case may be, shall give the same form of notice as was given on the filing of the original viewers' report, and thereupon procedure identical with the proceedings of sections 5531, 5532, 5557 and 5558, General Statutes of Minnesota, for the year 1913 [6684, 6685, 6720, 6721], and amendments thereto, as the case may be, shall be had and followed, and the court or the county board, as the case may be, shall have the same powers as provided by law as upon the hearing of the original viewers' report thereon. ('07 c. 138 § 1, amended '17 c. 350 § 1) [5601]

6766. Engineer's report—Notice of hearing by board or judge—Supplementary order—If said contract is so modified or altered the engineer shall report to the board of county commissioners in a county ditch, and to the judge of the district court in a judicial ditch, the difference, if any, in the cost of construction, and the difference, if any, in the benefits that will accrue to benefited lands or public roads, and the difference, if any, in the damages which will result to lands or property by reason of such modification or alteration, and the changes, if any, which should be made in the order establishing said ditch, or in the viewers' report, or in the engineer's report therein, as may be necessary to make the same conform to said modified or altered contract. Such board or judge, as the case

may be, shall thereupon cause to be given three weeks' published notice in the official paper of the county or counties, as the case may be, in which the ditch is situated, of the time and place of the hearing to consider the questions and issues involved in said report of said engineer, and to modify as may be necessary the original order establishing the ditch. Said hearing shall be conducted, as nearly as practicable, in the same manner as the hearing for establishing a ditch provided for in chapter 230 of the General Laws of 1905, and such board or the judge, as the case may be, may thereupon make a supplementary order modifying or amending the original order establishing a ditch or the viewers' or engineer's reports therein, or each or all of them as necessity may require, which order shall be supplementary to and amendatory of the original order establishing the ditch, and shall be filed and may be appealed from in the same manner and form as an original order establishing a ditch under said chapter 230 of the General Laws of 1905, and shall have the same force and effect as if a part of the original order establishing such ditch. ('07 c. 138 § 2) [5602]

Explanatory note—For Laws 1905, c. 230, see § 6840-1, et. seq., post.

6767. Acceptance by engineer—The engineer shall accept the said ditch or any part thereof constructed under such modified or altered contract in the same manner as is now provided by law for the acceptance of the construction of public ditches under chapter 230 of the General Laws of 1905. ('07 c. 138 § 3) [5603]

Explanatory note—For Laws 1905, c. 230, see § 6840-1, et. seq., post.

6768. Modification of contract by agreement—Nothing herein contained shall in any manner prevent the persons whose lands are affected by the construction of any such county or judicial ditch from uniting in a written agreement with the contractor and his bondsmen for the alteration or modification of any such contract which the engineer may in writing recommend and to which he shall consent, as to the manner or time within which such ditch or drain shall be constructed. Thereupon the contract shall be deemed to be so altered and modified, upon the filing of said agreement and recommendations and consent with such county auditor, or county auditors, or clerk of the district court, as the case may be, and said ditch construction shall thereupon be accepted by said engineer with reference to such altered or modified contract. ('07 c. 138 § 4) [5604]

6769 to 6771. [Repealed.]

See notes to 6674 to 6676, herein.

Annotations to § 6769—This statute authorizes the repair, modification, or extension of drainage systems already constructed only in so far as it becomes necessary to improve and make adequate the outlet and prevent the inundation of adjoining lands. 159-428, 199+883.

Chapter 441, Laws 1917, providing for the consolidation of several drainage systems in one drainage area, having a common outlet through a water course, becomes operative only when the outlet ceases to be adequate, overflows, and thereby causes the inundation of adjoining lands. 159-428, 199+883.

An order of the district court merging six public drainage systems and several private tile drains, held to be such a final order as may be reviewed by certiorari. 159-428, 199+883.

A natural swale which furnished a runway for the waters from the shallow lakes, but which was artificially straightened and deepened, and has so continued for over 10 years, held to be a "water course" within the meaning of the drainage statute. 159-428, 199+883.

Scope of '17 c. 441 §17 as to formation of drainage districts (142-494, 171+922). Statute and amendment construed (145-33, 176+182).

Annotations to § 6770—Has reference only to such pro-

ceedings as relate to the procuring and maintenance of a proper outlet. 159-428, 199+883.

Fair hearing and evidence admissible. 159-428, 199+883.

6772. Ditches in counties created after petition—Transfer of files—In all cases arising in this state where proceedings have been or may hereafter be instituted by petition filed with the county auditor of any county, praying for the construction of any public drainage ditch, drain or watercourse, or for the repair thereof, and after the filing of such petition and before the bonds of said old county have been issued for securing funds for payment of expenses of construction of such ditch, a new county has been or may hereafter be created and organized out of any of the territory embraced within the boundaries of said county wherein said petition is or may be hereafter filed and such public ditch, drain or watercourse, and the lands affected thereby shall lie wholly within the boundaries of such new county, the county auditor of such old county shall upon demand to him made by the county auditor of such new county, transmit to the auditor of such new county all petitions, reports and files in the proceedings, and certified copies of all book entries therein, relative to any and all such ditches, drains, watercourses or for the repair thereof, the same to be filed in his office, and all book entries and proceedings relative thereto shall be transcribed by the auditor of such new county into the records of his office, and thereafter the officers of such new county shall proceed in such matter, and such drainage ditch proceeding shall be continued and completed in the same manner and with like force and effect as though such proceedings had been originally instituted in said new county. ('11 c. 278 § 1) [5608]

6773. Obligations and contracts—Moneys expended—That at the time of the transmission of such petitions and files mentioned in section one [6772] of this act, the county auditor of such old county shall certify to the auditor of such new county an itemized statement of all obligations and contracts, and all indebtedness paid, incurred or entered into by such old county relative to any such ditch, drain, watercourse or repairs thereof, verified by such county auditor of the old county, and the same shall be assumed and paid, carried out and entered into by the proper officers of the new county, the same as if originally made and entered into by such new county, and all moneys paid out or expended relative to any such ditch, drain, watercourse or the repair thereof by such old county prior to such transmission, shall with accumulated interest thereon be paid into the treasury of said old county by auditor's warrants of the new county, payable as provided by law for payment of warrants for expenses of construction of drainage ditches under drainage laws of this state. ('11 c. 278 § 2) [5609]

6774. Ditches partly in counties created after petition—Transfer of files—Proceedings—Apportionment—In all cases where proceedings have been instituted by petition for the construction of a public drainage ditch, drain, watercourse or for the repair thereof under conditions mentioned in section one of this act, except that such ditch, drain or watercourse or the lands, roads or public corporations assessed or to be assessed for the benefits arising therefrom shall lie partly within the old county and partly within the new county, but such construction or the repair thereof shall not have been completed and bonds for securing funds for payment of expense of construction have not been issued, the auditor of such old county shall immediately certify and transmit to the clerk of the district court in and for said old county all petitions and files in his

office relative to such construction, together with all book entries and proceedings relative thereto, and thereupon such district court and such respective counties and the county officials of the respective old and new counties, shall have jurisdiction thereof, and shall proceed from the completed stage of proceedings, the same as if petition for such ditch were originally filed in the office of the said clerk of district court, and thereafter all further proceedings shall be had in said court as in the case of judicial ditches and with like force and effect as though originally commenced in said court, and the said clerk shall forthwith proceed to cause to be filed in the office of the county auditor of such new county, certified copies of all instruments which would have been required, had such proceedings been originally instituted in such court, and all payments made and liabilities incurred by said old county prior to the court assuming jurisdiction shall be apportioned between the old and new county as in the case of judicial ditches and paid upon the order of the said district court or judge thereof. ('11 c. 278 § 3) [5610]

6775. Outstanding bonds—Assumption of indebtedness—Agreement—If prior to the creation of any such new county, such old county shall have established or constructed any such ditch, drain or watercourse, the whole or any part of which, or any parts of the land assessed for benefits arising therefrom, lie within the territory of such new county, for the construction of which such old county has issued its bonds and interest coupons, the same being outstanding at the time of the creation of such new county, such new county shall assume and pay a share of such outstanding bonds and accumulated interest in proportion to the amounts of benefits assessed and levied against lands and roads, public and private corporations within the territory respectively of such old and such new county, provided, however, that from the total amount of assessments of benefits levied for such construction and paid into the treasury of such old county prior to the creation of such new county, or to the apportionment herein provided for, as payment upon the bonds and interest coupons issued against such construction, shall be deducted the total amount of money paid by such old county prior to the creation of such new county or to such apportionment, upon such bonds and interest coupons and the balance of the money remaining in the treasury of the old county to the credit of such ditch, shall after such deduction, be apportioned between the old and new county in the same proportion as the total amount of assessments of benefits in each county bears to the total assessment of benefits levied for such construction as shown by the viewers' report, approved as provided by law, and the amount due said new county shall be paid by the auditor's warrant of such old county, to such new county. The amount of such indebtedness to be assumed and paid by such new county and the amount of such money in the treasury of the old county to be paid to such new county, shall be ascertained and agreed upon by the county auditors of such old and new county, and for that purpose they shall meet at the county auditor's office in the old county upon ten days' notice given by either auditor and served upon the other. A written agreement stating all the facts so ascertained shall be signed in duplicate by both auditors and filed in their respective offices, and shall be final and conclusive as to all facts therein stated. If said county auditors are unable to agree as to the facts to be so ascertained, they shall call to their assistance a disinterested county auditor of any other county in the state, and the said auditors shall proceed to ascertain said facts, and said agree-

ment if signed by any two thereof shall have the same force and effect as if signed by the auditor of the old county and the auditor of the new county and shall be final and conclusive as to all facts so ascertained. ('11 c. 278 § 4) [5611]

6776. Duties of auditors—Payments—At least thirty days before any bond or interest coupon mentioned in section 4 [6775] of this act and which represents a debt to be partly assumed and paid by such new county, falls due, the auditor of such old county shall certify to the auditor of such new county the amount and due date thereof and the proportionate amount to be paid by such new county, and the auditor of such new county shall on or before the due date thereof draw his warrant therefor payable to the treasurer of such old county as provided by law for payment of outstanding bonds under the drainage laws of this state, for the proportionate share to be paid by such new county as herein provided, and deliver same to such treasurer of such old county to be applied to the payment of such due indebtedness. ('11 c. 278 § 5) [5612]

6777. Assessments and liens—Transcription of records—Duties of officers of new county—The auditor of such new county shall transcribe into the records of his office all records of said old county relative to the assessments levied or to be levied upon said lands, roads, or public or private corporations within the territory of such new county for ditches established by said old county prior to the organization of the new county, which ditches or the lands assessed therefor lie wholly or partly within the new county as set forth in section 4 [6775] of this act; and the register of deeds of such new county shall transcribe into his official records, all lien statements in such ditch proceedings recorded in the office of the register of deeds of such old county, and affecting lands in such new county.

Such transcribed records shall have all the force and effect of the original records, the same as if the proceedings to establish the ditch in question had been commenced in said new county; and such county auditor of such new county shall thereafter extend upon the tax books of his county and of the proper subdivisions and public corporations thereof each annual assessment levied against and a lien upon the lands within said new county, in the same manner and with the same force and effect as if such ditch proceedings had been commenced and completed in said new county, and such annual assessments shall be thereafter paid into the treasury of such new county in the same manner and at the same time as is provided by law for the payment of county ditch assessments in this state, or as provided in the order establishing such ditch. ('11 c. 278 § 6) [5613]

6778. Services and compensation of officers—In carrying out the provisions of this act, the respective county boards, in the case of a county ditch, and the district court in the case of a judicial ditch, may require the services of the county auditor, register, county attorney, clerk of court, and such other officers as shall be deemed necessary. The compensation of such county boards and such other officers for services performed in carrying out the provisions hereof shall be paid as is provided by the general laws of this state in the establishment of county and judicial ditches, and shall be in addition to any other salary or fees received by them in the performance of the regular duties of their offices. ('11 c. 278 § 7) [5614]

Compensation of county attorney (136-140, 161+382).

A county attorney appearing for his county in a judicial ditch proceeding to oppose an assessment of benefits and award of damages, has no claim on the ditch fund for compensation for his services, although his efforts resulted in a reduction of the assessment and an increase in the amount allowed as damages. 161-400, 201+621.

6779. Ditches in adjoining counties divided after petition in certain cases—Where any petition for judicial ditch has been or shall hereafter be filed with the clerk of any district court of any county of this state, praying for the construction of a public drainage ditch, partly within or affecting such county where such petition is filed, and partly within or affecting an adjoining county or counties, and where after the filing of such petition and prior to the issuance of bonds for securing funds for payment of expenses of construction of such ditch, any such adjoining county has been or may hereafter be divided and a new county created out of a part of the territory thereof, and when such drainage ditch so far as the same affects the territory comprising such adjoining county which was divided, only affects lands or municipal corporations wholly within the territory of such new county, the provisions of section 1 [6672] and section 2 [6673] hereof shall govern and be applicable. ('11 c. 278 § 8) [5615]

6780. Reassessment where assessment declared invalid—Preliminary statement—When any county board has attempted to construct, repair, enlarge or extend any county ditch which may theretofore have been begun or constructed and shall have caused, or shall hereafter cause to be constructed, repaired, enlarged or extended, any such ditch or drain, and have caused an assessment to be made therefor, which assessment shall have been heretofore or shall hereafter be set aside, or declared invalid by any court for non-compliance with any law of the state, or because such action was not justified or permitted by any law of the state, the county board aforesaid shall with all reasonable dispatch proceed to reassess the property benefited by such ditch as shown by the report of the viewers, and to that end shall prepare in tabular form a preliminary statement, giving—

First: A description of each tract of land by them deemed damaged or benefited thereby;

Second: The names of the owners of each of said tracts;

Third: The total number of acres in each of said tracts;

Fourth: The number of acres in each of said tracts by them deemed benefited or damaged thereby;

Fifth: The amount that each of said tracts in their judgment is benefited or damaged thereby;

Sixth: The entire cost of the construction, repair, enlargement or maintenance of such ditch, drain or watercourse.

In making such statement the names of the owners and the descriptions of said tracts shall be the same, as near as practicable, as the same appear in the county tax duplicates of said county. ('11 c. 113 § 1) [5616]

6781. Benefits to public or corporate roads or railroads to be assessed—In making such preliminary statement and the final statement hereinafter provided for, when any such ditch, drain or watercourse drains, either in whole or in part, any public or corporate road or railroad, or benefits any such roads so that the roadbed or traveled track of any such road was made better by the construction of such ditch, drain or watercourse, said county board shall estimate the benefits arising therefrom to such roads, roadbeds

or railroads, and said statements shall show such benefits, together with the names of the roads, roadbeds and railroads benefited, and the amount of benefits to each, and all roads benefited by such ditch, drain or watercourse, and all public or corporate roads or railroads so benefited in whole or in part shall be assessed the benefits received from the construction, repair, enlargement or extension thereof, whether said ditch passes through said lands or along or near the line of such road or railroad or not, and the said county board, in estimating the benefits to lands, roads or railroads not traversed by said ditch shall not consider what benefits such roads or railroads will receive after some other ditch, drain or watercourse shall be constructed, repaired, enlarged or extended, but the only benefits they shall have received by reason of the construction, repair, enlargement or extension of said ditch, drain or watercourse as it affords an outlet to the drainage of such lands, roads or railroads. ('11 c. 113 § 2) [5617]

6782. Lands of land and railroad companies liable—All lands owned by any land company or railroad company benefited by any such ditch, drain or watercourse shall be liable to and shall pay for such benefits the same as the owners of taxable lands. ('11 c. 113 § 3) [5618]

6783. Hearing—Notice—After having completed such preliminary statement the said county board shall fix a time and place for a hearing on the same, and shall cause the county auditor to, and he shall cause notice to be given of the completion of said preliminary statement and of the time and place so fixed for the hearing thereon by having a copy of said preliminary statement, together with a notice of the time and place so set for the hearing thereon, signed by him, published for two successive weeks, at least once in each week, in a newspaper printed and published in said county, if there is one, if not, in a newspaper printed and published at the capital of the state, and by having a copy of such printed notice, at least ten days before the time set for said hearing, posted in a public place in each township where said ditch, drain or watercourse is located, and also at the front door of the courthouse in said county, and by also mailing a printed copy of said notice, at least ten days before the time set for said hearing, to all non-residents of the county interested in such work whose address is known to him, or can be ascertained by inquiring at the county treasurer's office.

If said county board are unable to proceed at the time stated in said notice, by reason of non-compliance with any of the provisions of this section, the county board shall fix a new time and place for such hearing, and proceed de novo to give the notice herein provided for and in the manner herein set forth. ('11 c. 113 § 4) [5619]

6784. County board may raise, lower or alter damages or benefits—Amended preliminary statement—Notice, etc.—The said county board at the time set for said hearing (which hearing may be adjourned from time to time until they shall complete the assessment and make the final order confirming the same as hereinafter provided) shall proceed to hear the same, at all of which hearings all parties interested in the matter shall have the right to be present and heard in person or by attorney as to any and all matters contained in or which should be contained in such statement, and said county board at said hearings shall have the power to raise, lower or alter the amount of any and all damages and benefits as fixed in said preliminary

statement; they shall also have the power to amend said statement by altering or adding thereto to make the same conform to the requirements of this act, provided, however, that if they shall alter or add thereto except to raise or lower the amount of benefits or damages assessed, a new notice of hearing of such amended preliminary statement shall be given as and in the manner provided for in the preceding section. After the assessment shall have been completed in the manner herein set forth, the county board shall confirm the same by an order to be entered in their records, and the same as so confirmed shall constitute the assessment of damages and benefits in the matter, except as it may be altered on appeal as hereinafter provided. After the making of such final order the county auditor will cause notice thereof to be given by causing a copy of such completed statement to be once published in the same newspaper in which the preliminary statement was published, together with a statement that it is the completed statement as confirmed by the county board. ('11 c. 113 § 5) [5620]

6785. Appeal to district court—Procedure—Any person or corporation feeling himself aggrieved by said assessment as confirmed by the county board may appeal from the order confirming the same upon the following grounds, to-wit:

First: That the amount of damages allowed to any tract in which he is interested are inadequate;

Second: That the amount of benefits assessed against any tract of land in which he is interested is greater than the actual benefits received by it;

Third: That the said county board had no jurisdiction to make said final order confirming the assessment.

Said appeal may be taken by the appellant filing with the county auditor a notice of appeal, which shall briefly state the grounds upon which such appeal is taken, accompanied by an appeal bond with at least two freehold sureties, to be approved by the auditor, conditioned that said appellant will duly prosecute such appeal, and pay all the costs thereof, provided that such notice of appeal and bond shall be filed with the county auditor within fifteen days after the publication of said notice of the completion of said assessment. In the event of any appeal being taken the county auditor shall, within twenty days after the notice of appeal and appeal bond is filed, make a complete transcript of the proceedings had before the county board under this act, and certify the same, together with all the papers filed in his office in the reassessment proceedings pertaining to such ditch, drain or watercourse, including the notice of appeal and appeal bond, to the clerk of the district court, upon being paid by the appellant the sum of two dollars therefor. If the appellant shall not pay said sum therefor before the expiration of said twenty days, said appeal shall be deemed abandoned. ('11 c. 113 § 6) [5621]

6786. Consolidation of cases, etc.—If more than one party appeal the judge of the district court may, in his discretion, order the cases to be consolidated and tried together, and in such case the rights of each party shall be separately determined by the jury in its verdict, and in all cases of appeal the amount awarded by the jury shall stand for and in the place of the amount from which the appeal was taken. No assessment, however, shall be set aside unless the party appealing shows that he has been injured thereby. ('11 c. 113 § 7) [5622]

6787. Tabular statement—Duty of auditor—Lien—Within twenty days after the confirmation of such assessment by the county board, if no appeal is taken,

within twenty days from the final determination taken, or if an appeal is taken within thirty days from the final determination of all appeals taken, the county auditor shall make in tabular form a statement showing the following facts in the order named, to-wit:

First: A description of each tract of land benefited by the construction, repair, enlargement or extension of such work;

Second: The names of the respective owners, as shown by the tax lists of the county, of said premises;

Third: The amount of said benefits assessed against said premises respectively.

Which statement he shall sign and acknowledge before some officer authorized to take acknowledgments, and cause to be recorded in the office of the register of deeds of the county, and posted upon the abstract books in his office, if he has any such books, and the amount for which each tract of land, as shown by such statement, is assessed, shall be and remain a lien upon such lands, public or corporate roads or railroads from the time of filing the same in the office of the register of deeds until fully paid, said payment to be made as hereinafter provided; and the filing of such statement in the said register of deeds' office shall constitute notice to all the world of the existence of such lien. Said statement, after the same has been recorded, shall be returned by the register of deeds to the county auditor to be by him carefully preserved and filed with the other papers relating to said ditch, drain or watercourse. ('11 c. 113 § 8) [5623]

6788. Interest, etc.—The amount that each tract of land, public or corporate road or railroad shall pay for the location, construction and establishment of such ditch, drain or watercourse shall bear interest from the date of the filing of the auditor's statement in the register of deeds' office, at the rate of six per cent per annum until fully paid, and said interest shall constitute an additional lien upon said lands, public or corporate road or railroad, upon which the assessments bearing the interest shall be a lien, which said interest when paid shall be computed by the county treasurer. ('11 c. 113 § 9) [5624]

6789. [Repealed.]

See notes to §§ 6674 to 6676, herein.
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6790. Payment by public or corporate roads or railroads—All public or corporate roads or railroads shall pay the amounts taxed up against them as follows:

When any public highway is benefited by such ditch, or drain, the town, which is by law charged with the duty of keeping such highway in repair, shall be assessed for the amounts of benefits accruing to such highway in said town by reason of said ditch or drain, and the same shall be paid out of the treasury of such town upon demand of the county auditor; and whenever any railroad or the lands of any railroad company is benefited by such ditch, drain or watercourse, such railroad or railroad company shall be assessed the benefits received by such land by reason of the construction of such ditch, drain or watercourse, the same as other lands benefited are assessed, which assessments shall be collected from such railroad corporation or company in the same manner as personal taxes are collected by law, or said liens against any such company may be foreclosed by suit in the same manner as provided by law for the foreclosure of mortgage liens upon real estate by action. ('11 c. 113 § 11) [5626]

6791. Payment of damages—When any one shall be entitled to damages by reason of the construction of

such ditch, drain or watercourse, and has not already been paid the amount of such damages, a warrant shall be drawn therefor signed by the chairman of the county board and attested by the county auditor in favor of the party entitled to receive said damages, which warrant shall become due and payable with interest thereon from the time of the letting of the contract for the construction of such ditch, drain or watercourse, upon the filing of said statement in said register of deeds' office. The county shall be bound for their payment. If there is then sufficient money in the county treasury belonging to said ditch, drain or watercourse fund to pay said warrants, they shall be paid out of the same; if not, such funds shall be used as far as they will go, and the balance paid out of the general county fund. The amount so taken from the general county fund shall be replaced from the moneys collected on account of the benefits assessed as soon as collected, so far as they shall be sufficient for, and are available for this purpose. ('11 c. 113 § 12) [5627]
236 Fed. 185.

6792. Warrants to be full compensation—The conforming with the provisions of this act and the issuance of said warrants for damages shall be held and construed to be a just and full compensation to all persons interested in the lands damaged by the construction, repair, enlargement or extension of said ditch, drain or watercourse, and the condemnation of all lands and rights taken for such construction and the maintenance of such ditch, drain or watercourse. ('11 c. 113 § 13) [5628]

6793. Compensation of county board—Expenses—Benefits—The county board in addition to the compensation allowed them under the general law, shall receive as special compensation for their labors performed under this act the same per diem and mileage allowed under the general law for the actual time devoted by them in carrying out the provisions of this act, and the auditor shall receive such compensation for his services under this act as shall be allowed him by the county board. All the expenses of the proceedings under this act, and the entire cost of the construction, repair, enlargement or extension of such ditch, drain or watercourse over and above the total amount of benefits assessed shall also be paid by the county out of its general fund. The amount of benefits assessed against the property benefited shall not exceed the total amount of the contracts awarded for the construction, repair, enlargement or extension of said ditch, drain or watercourse, anything in this act to the contrary notwithstanding. ('11 c. 113 § 14) [5629]

6794. Records as evidence—The record thereof and a certified copy of the record of any order of the county board made under this act shall be prima facie evidence of the facts therein stated, and of the regularity of all the proceedings prior to the making of such order. ('11 c. 113 § 15) [5630]

6795. Amounts previously paid to be credited, etc.—Appeal—All persons who shall pay any assessments made for the same purposes for which the second assessment is made because of the invalidity of such first assessment, shall be credited with the amount paid by them on such assessment, and if such payments have exceeded the amount of the second assessment, as made under the provisions of this act, the amount overpaid shall be repaid to the person or persons who have made such payments, upon the allowance of a claim therefor by the county board and by means of a warrant of the county auditor upon the general

ditch fund of the county, if any, and if none, from the general revenue fund of the county. An appeal will lie from the allowance of a claim of this kind the same as from the allowing of ordinary claims against the county. ('11 c. 113 § 16) [5631]

6796. Pending actions—This act shall not affect any action now pending in any of the courts of this state. ('11 c. 113 § 17) [5632]

6797. Taxation—Reduction in acreage by ditch, etc., to be considered—In all cases where a drainage ditch has been or shall be constructed under county or judicial ditch proceedings, it shall be the duty of the persons and boards having to do with the making of the assessment, when determining the valuation of such land for taxation purposes, to take into consideration a reduction in the acreage of each tract or lot sufficient to cover the amount of land actually used for the ditch and its waste bank. ('13 c. 208 § 1) [5633]

6798. Declaration and definitions—Drainage and flood control are clearly within the functions of governmental action, and the exercise of the right or authority to authorize or direct drainage carries with it the right to care for and control the waters thus gathered and turned into natural or artificial channels. This act may be known and cited as the "Drainage and Conservancy Act of Minnesota" and any districts organized hereunder shall be known as "Drainage and Conservancy Districts" and such additional name as the order of the court may designate.

Whenever the term "publication" is used in this act and no manner specified therefor, it shall be taken to mean publication for once a week for three (3) consecutive weeks in one legal newspaper published and of general circulation in each county affected.

Whenever the term "public health" is used in this act, it shall be construed to include any act or thing tending to improve the general sanitary condition of the community whether by way of drainage, relieving low or wet land of stagnant and unhealthy conditions, or by preventing the flooding of any lands thereby producing or tending to produce unhealthful conditions.

Whenever the terms "public welfare," "general welfare" or "public benefit" are used, it shall be construed to extend to and include any act or thing tending to improve or benefit or contribute to the safety of the general public or benefit the inhabitants of the district and shall be construed to include any improvement contemplated by this act which shall prevent fire in areas subject to destruction by fire.

Whenever the term "person" is used in this act and not otherwise specified, it shall be taken to mean and include person, firm, copartnership, association or corporation, other than public or political subdivision, and whenever the term "corporation" is used, it shall be construed to include both "municipal corporations" and "private corporations" unless otherwise specifically designated, and whenever the term "public corporation" or "municipal corporation" is used or intended, it shall be construed to mean cities, villages, counties, townships or other political subdivisions or any public commission of the state.

Whenever the term "court" is used, it shall be taken to mean the district court or the judge thereof, and to apply to the district court wherein the petition for the organization of the district was filed and granted, unless otherwise specified. Provided nothing herein contained shall be construed to abrogate the title of the state in the public waters, but the use and control of certain waters within the limitations and for the purpose herein specified may be granted to the district.

(Ex. Sess. '19 c. 13 § 1, amended '21 c. 325 § 1; '23 c. 308 § 1)

6799. Powers granted to courts—The district court of any county in this state, or any judge thereof in vacation, is hereby vested with jurisdiction, power, and authority upon the filing of a petition as specified in Section 3 of this act, and the conditions stated therein are found to exist to establish a drainage and conservancy district and define and fix boundaries thereof, which may be entirely within or partly within and partly without any county and may include the whole or any part of one or more counties, including the county in which the petition is filed, for all or any of the following purposes:

- (a) For regulating streams, channels or water courses, and the flow of water therein, by changing, widening, deepening, straightening the same or otherwise improving the use and capacity thereof.
- (b) For reclaiming by drainage, or filling, dyking or otherwise protecting lands subject to overflow.
- (c) For providing for irrigation where it may be needed.
- (d) For the prevention of fires in areas of agricultural lands or in peat areas subject to destruction and damage by fire and for the irrigation of agricultural lands needing the same by regulating, controlling, conserving, and applying the waters in any ditch or drain which has heretofore been or shall hereafter be established and constructed under any law of this state and in streams or water courses connecting therewith.
- (e) For regulation and control of flood waters and the prevention of floods, by deepening, widening, straightening or dyking the channels of any stream or water course, and by the construction of reservoirs or other means to hold and control such waters.
- (f) For diverting in whole or in part streams or water courses and regulating the use thereof; streams so diverted shall follow the natural course of drainage and terminate in the same natural outlet; and as incident to and for the purpose of accomplishing and effectuating all the purpose of this act, may under the conditions specified herein, straighten, widen, deepen, or change the course or terminus of any natural or artificial water course and build, construct and maintain all necessary dykes, ditches, canals, levees, wall embankments, bridges, dams, sluice ways, locks and other structures that may be found necessary and advisable to create, establish and maintain the necessary reservoirs or other structures, to hold, control and regulate any and all waters within said district, and to acquire title in the name of said district to all necessary lands and other property, to construct and maintain reservoirs, dykes or other structures, including dams for power purposes and conserve and utilize such waters for any purpose consistent with the purpose of this act. Provided, however that the provisions of this act shall not be construed to authorize the diverting of the waters of one general water shed to another general water shed, and no river nor any tributary of any river or stream in this State shall be diverted from its natural

outlet by any diversion channel or flood control work, or by any other work authorized by, or mentioned in this act at any point in its course distant more than two miles from such natural outlet. (Ex. Sess. '19 c. 13 § 2, amended '21 c. 325 § 2; '23 c. 308 § 2)

6800. Petition for organization of districts—Before any district court shall establish any district as outlined in Section 2 of this act, a petition shall be filed in the office of the clerk of said court, in any county containing territory included in said petition, signed by not less than twenty-five (25%) per cent of the resident free-holders of said district, but not in any event shall more than fifty (50) signers be required, or by the proper officials of any county, city or village authorized by resolution duly passed by the governing board of said county, city or village. Said petition may be signed by one or more such counties, cities or villages, and if signed by two or more counties, or by five (5) or more cities or villages then the same need not be signed by any of the freeholders of said proposed district.

Said petition shall set forth:

1. The proposed name of said district.
2. The necessity for the proposed work, in respect to one or more of the objects or purposes mentioned in the subdivisions of Section 2 and that it will be conducive to the public health, safety and convenience and promote the welfare of the inhabitants of said district, and be of public benefit.
3. A description of the nature, purpose and plan of the contemplated improvement and shall include in general terms a description of the territory proposed to be included in said district. Said description need not be given by metes and bounds or by legal subdivision, but shall be definite and accurate description so that the territory to be included may be understood therefrom. Unless good reason be shown to the contrary the same shall include all territory within a given water shed or drainage basin or all territory from which the water from natural or artificial channels find their course through one general stream or channels, provided, that in all cases where any river basin or water shed in this state contains more than ten thousand (10,000) square miles of territory, no district shall be organized under this act which shall include in one district the main stream of such basin or water shed, and any of its tributaries, but the valley of the main stream, and the valley of each of such tributaries thereto, may be organized separately; and in organizing the main stream of any such river basin or water shed into such separate district, there may be included therein the lands along said main stream, that are likely to be affected, benefited or damaged by any proposed improvement in the valley of such main stream, together with such territory immediately adjoining thereto as will permit the boundary line of said district to be given by the lines of Government survey, but no part of any tributary of such main stream or river shall be included in said district except so much thereof as lies in the immediate valley of said main channel and such part thereof as is likely to be affected by, or form a part of any improvement constructed in, or connected with, the main stream of such basin for the proposed control of the flood waters in said main stream.
4. Said petition shall pray for the organization of the district, the appointment of a governing board therefor and that the boundaries thereof may be specifically fixed and defined by order of said court.

No petition containing a requisite number of signatures or petitioners or signed by the requisite number of counties, villages or cities shall be void or dismissed on account of any defects therein, but the court shall at any time permit the petition to be amended in form and substance to conform to the facts by correcting any errors in the description of the territory or by supplying any of the defects therein. Several similar petitions or duplicate copies of the same petition for the organization of the same district may be filed and all together be regarded as one petition and any withdrawal of any signatures or petitioners from such petition after the same has been filed, shall in no manner affect the jurisdiction of the court, and all petitions filed prior to the hearing hereinafter provided shall be considered by the court as a part of the original petition. (Ex. Sess. '19 c. 13 § 3, amended '21 c. 325 § 3; '23 c. 308 § 3)

6801. Surety bond for expenses—At the time of filing the petition provided for in Section 3 of this act, or before the notice of hearing thereon is given, a bond shall be filed by said petitioners with the clerk, to be approved by said court and in such sum as it shall designate, sufficient to pay all expenses connected with said proceeding, in case the court refuses to organize said district, and, if at any time during the proceeding the court shall be satisfied that an additional bond is needed, it may so order, provided, that if the petition is signed by the proper officials of one or more counties, accompanied by a copy of a resolution passed by the board of county commissioners thereof, that said county or counties will be responsible for such costs, then, and in that event, no bond shall be necessary. (Ex. Sess. '19 c. 13 § 4, amended '23 c. 308 § 4)

6802. Notices and hearing by Court—Upon the filing of said petition with the clerk of the district court, as provided in Section 3 of this act, he shall immediately notify the judge of said court of the filing thereof, who shall within ten days thereafter, by order, fix a time and place for hearing on said petition at some point within the limits of said proposed district, notice of which hearing shall be given by a publication in at least one legal newspaper in each county affected by said petition for three successive weeks, the last of which publication shall be at least ten days prior to the date set for hearing; provided that if the territory described in said petition shall be situate in more than one county comprising two or more judicial districts, then the judge of said court, where said petition is filed, shall arrange with the judge or judges of such other districts for a joint hearing upon such petition, which hearing may be at such time and place, within the territory described in said petition, as said judges shall jointly specify, and at said hearing each judicial district shall be represented by one judge only, but the district court, in which said petition was originally filed, shall for all other purposes, except for the purpose of said joint hearing, and except as hereinafter otherwise provided, have and retain original jurisdiction. (Ex. Sess. '19 c. 13 § 5, amended '23 c. 308 § 5)

6803. Court to file findings—Designation by name—District office—At the time and place set for hearing on said petition, all parties interested may appear and be heard for or against the granting of said petition, but continuance of such hearing shall be granted by the court when necessity therefor is shown. Upon said hearing if the facts required by this act to be set forth in the petition are proven by competent evidence and found by the court to exist, and that the purpose of this act would be subserved by the creation of a

drainage and conservancy district, comprising the whole or certain portions of the territory outlined in the petition, then said court shall make and file its findings of all matters involved in said petition, and shall, by order designate the boundaries of said district and in case the main stream of a river basin containing more than ten thousand (10,000) square miles is organized into a drainage and conservancy district such boundaries shall conform as near as practicable, using government lines, to the property and corporations affected or benefited and direct and declare said district organized, designating in said order the name by which it shall thereafter be known, and upon the filing of said order with the clerk of court where said petition was filed and a certified copy thereof in the office of the secretary of state, said district shall become and be for all purposes of this act, a body corporate endowed with all the rights, privileges and authorities herein designated, with power to sue and be sued, to incur debts and obligations for the purposes specified in this act and to do and perform and exercise all the rights and privileges in this act enumerated; provided, that the inclusion of any land, property or corporation within the limits of such district shall not be construed to render such property or corporations liable to assessment under any provisions of this act, unless the same falls within the class of property or corporations actually benefited as specified in Section 10 of this act.

Said order or decree shall designate the place where the office or proper place of business of the district shall be located, which, unless special reasons arise to the contrary, shall be where the petition is filed; shall designate the number of commissioners or officers who shall constitute the first board of directors, which shall be not less than three (3) nor more than five (5), and shall name and appoint such officers who shall be residents of said districts.

If upon said hearing the court finds that any portion of the territory named in said petition should not be included in said district the same shall be excluded from the district, but any territory benefited by the proposed improvement not included in said petition may at said hearing, or at any subsequent hearing ordered by the court upon petition from resident freeholders of said territory, or from said board upon due notice, be added to said district and the boundaries thereof fixed accordingly. If, upon full hearing, the court shall determine that the territory described in said petition or some part thereof should not be organized in said district, then said petition shall be dismissed and the costs incurred be taxed against the petitioners. (Ex. Sess. '19 c. 13 § 6, amended '21 c. 325 § 4; '23 c. 308 § 6)

6804. Authority of the board—Within ten days after the filing of the order organizing said district, in the office of the secretary of state, the parties named therein as the first board of directors shall meet at the office of the clerk of the court, where said petition was filed, each take and severally subscribe the oath provided by statute to be taken by public officials, and shall severally file with the clerk of said court a bond in the sum of one thousand (\$1,000) dollars, furnished by a proper surety company, the cost to be paid by the district, conditioned for the faithful performance of their duties, and shall thereupon organize, by electing one of their number as president, and one of their number or a third party as secretary or clerk of said board, and shall provide the necessary books and records, and if the place designated in said

order, as general offices for said district shall be a county seat, said board shall have the authority to elect the clerk of the district court of such county as clerk of said board, and thereupon and thereafter all papers filed with said clerk shall be and constitute a filing with said board, and it shall be the duty of said clerk to keep and preserve the record of said board in his office and to do and perform such duties as shall be designated and required by said board, who shall have authority to fix his compensation.

Said board shall meet at least semi-annually and at such other times as they may designate or as occasion may require, and at all such meetings a majority of the members thereof shall constitute a quorum and a legal meeting thereof may at any time be called upon eight (8) days' notice by mail, given by the clerk or any member of the board, and the compensation of the members shall be such as the board shall fix and not to exceed seven dollars (\$7.00) per day and expenses. (Ex. Sess. '19 c. 13 § 7)

6805. Treasurer and chief engineer—Said board shall have full authority to elect or appoint a treasurer, who shall be a resident of said district and may be one of their members, who, before entering upon his duties as such, shall subscribe the oath required by statute in the case of public officials, and shall be required to give bonds in such sum as the board shall direct, which shall not be less than the total sum that shall at any time be likely to be in his hands or under his control belonging to said district, which bond shall be by a surety company, to be approved by said board, and the duties of said treasurer shall be such as the board may from time to time designate, and, among other things, it shall be his duty to receive all moneys belonging to said district and deposit the same in such bank or banks as the board shall designate, and it shall be the duty of said treasurer to require such banks to give a proper bond for the care and accounting for such moneys, and said treasurer shall pay out said money only on proper orders signed by the president and secretary of said board. Said board may also employ a chief engineer and an attorney and such other engineers and attorneys or agents or assistants as may from time to time be needful and necessary and provide for their compensation, all of which expenses shall be taken and treated as a part of the costs of each particular improvement but the charges of the engineer that can be included as a part of the cost of any improvement together with his duties, shall as far as applicable, be governed by the provisions of section 5571 of the General Statutes of 1913 and amendments thereto, and neither the engineer or attorney shall receive any compensation except when employed in the construction of some specific improvement to which that expense can be charged. The chief engineer shall be superintendent of all the works and improvements and shall have general charge of all work pertaining to drainage and flood control done under proceedings had under this act, within the limits of said district and before any court or board of county commissioners shall order or authorize the construction of any drainage ditch within said district, notice shall be given to said engineer and he given an opportunity to be heard with reference to any objection thereto. (Ex. Sess. '19 c. 13 § 8)

6806. Terms of office of directors—The members of the board of directors of said district shall hold their office, where their number does not exceed three (3), one for a period of two (2) years; two for four (4) years, and where their number shall consist of five

(5) members, two of said board shall hold their office for the period of two (2) years; three for the period of four (4) years, and thereafter all shall hold their office for four years, and the district court of the county wherein said general office is located, shall have authority to fill all vacancies that occur in said board from any cause, and each member of said board shall hold his office until his successor is elected and qualified. And said board when organized shall for all purposes of this act be and constitute a commission for the purpose of carrying into effect any and all orders, judgments, decrees or directions made by the district court relative to any improvement authorized by this act, within the limits of said district. (Ex. Sess. '19 c. 13 § 9)

6807. Establishment of district—Classes—After the organization of the board of directors of any drainage and conservancy district organized under the provisions of this act and upon filing with the clerk of the board a petition signed by not less than twenty-five (25) freeholders of the district, but in no event shall more than twenty-five (25%) per cent of the owners of the property affected be required, or by the board of county commissioners of any county, or council of any city or village likely to be affected by the proposed improvement therein, asking for the construction within the limits of said conservancy district of any of the improvements authorized by the provisions of this act relative to drainage, regulation or control or conservation of the waters of any lake, pond, marsh, or body of water, river, stream, watercourse, ditch or drain within said district which may cover the whole or any part of the improvement contemplated when said district was organized therein describing the need of the proposed improvement, the extent thereof, and describing in general terms the bodies of water, streams or water courses proposed to be improved, or reservoirs or other improvements constructed, and if the construction of a ditch or drain as a part of the proposed improvement contemplated, a description of the starting point, the general course and termination thereof shall be given therein, or if the contemplated improvements require that any ditch or drain heretofore or hereafter established and constructed under any law of this state, or any portion thereof, be utilized for the protection of fires in areas subject to destruction or damage by fire or for irrigation, all as hereinbefore specified, a description of such ditch and drain, or the portions thereof so required, and a general description of such areas, protection whereof from fire is sought, or irrigation is sought, setting forth the reasons and necessity for such improvements and that the same if constructed will benefit public health and general welfare of the inhabitants in that vicinity and said petition is to be accompanied by a bond signed by said petitioners, or any number of them or other parties in their behalf in such sum as the board of directors of such district may specify and such as they shall approve, conditioned for payment of all costs or expenses in connection with such improvements in the event said petition as therein set forth or subsequently modified is not granted; it shall be the duty of said board of directors of said district to cause to be made at the earliest possible date by its engineer all necessary surveys, maps, plats, profiles and plans covering said proposed improvements so as to fully inform said board as to the merits and practicability of proposed improvements, and in making said surveys, plats, profiles and report, said engineer shall, so far as practicable, conform to the re-

quirements of Section 5526, General Statutes of 1913 and amendments thereto [6678], and said Board shall have authority to correct, change or modify the proposed improvements as outlined in said petition, and if the report of said engineer is favorable to the construction of said improvements, and is approved by the board of directors, said board shall, with the least possible delay, appoint three (3) disinterested citizens of said state to act as viewers, and the viewers so selected shall, after subscribing an oath to faithfully and impartially perform their duties, proceed and personally inspect and examine all lands, highways and other property likely to be affected by such improvements, or that may be used or taken for the construction or maintenance thereof, and shall in the performance of their duties, so far as practicable, comply with the provisions of Section 5528 of the General Statutes of 1913 and amendments thereto [6681], and make and file with the clerk of said board with such plans and specifications a detailed statement showing the actual benefits and damages that will result to individuals, property or corporations from the construction of said improvements, and a list of lands and other property including highways and corporations that will be actually benefited or damaged, and the amount thereof, and shall include lands, roads, corporations and other property receiving actual benefits by way of drainage or control of flood waters, or by regulation, conservation and application of waters for fire protection and irrigation as hereinbefore authorized and lands or water powers further down the valley and shall include all lands to which a drainage outlet is supplied by such improvement by way of increased facilities for drainage or control of flood waters or protection from fire or for irrigation and all such property and corporations shall be assessable for the cost of the proposed improvement in proportion to the actual benefits received as finally determined by the court, provided, the board of directors of the district may elect to levy no assessment under this section upon waterpowers, but collect for such improvement as otherwise provided in this act. Sections 5528 and 5529 of the General Statutes of 1913, together with amendments thereto [6681, 6682], so far as applicable, shall apply to and govern the work of the viewers under this act; and provided further that in any case where fire protection is part of the relief prayed for in said petition and the utilization of any existing ditch or drain, or any portion thereof, is alleged to be necessary thereto, said petition for such improvements, before being presented to said board of directors, shall be signed by not less than fifty per cent of the resident freeholders, but in no event shall more than twenty-five signers be required, whose lands are affected by the ditch or drain or portion thereof to be utilized, and approved by resolution of the board of county commissioners of each county wherein the same is located. (Ex. Sess. '19 c. 13 § 10, amended '21 c. 325 § 5; '23 c. 308 § 7)

6808. Report of board and action by courts—Before proceeding with the construction of any improvement, said board shall file in the office of the clerk of the district court of the county in which such improvement or some part thereof is to be located, the original petition filed with them, together with the report of the engineer and all plats connected therewith and the report of the viewers on benefits and damages and a list of lands assessable, with a petition or report on behalf of said board, therein setting forth the nature

and extent of said improvement in general terms, the necessity therefor, an estimate of the costs thereof, and that the same will be of public utility and will result in the improvement of the public health and general welfare—reference may be made to the reports of engineer and viewers for greater particularity, and asking that a time and place be fixed for a hearing upon said petition and said reports, and that at said hearing an order be made establishing the drain or improvement and authorizing the construction thereof, and confirming the reports of the engineer and viewers and fixing the rights of the parties, and upon the filing of said petition and said report, the clerk of said court shall immediately notify the judge thereof, who shall within ten days thereafter, by order, fix a time and place within such district for a hearing upon said petition and reports of which due notice shall be given by the clerk of said court, by publication in at least one legal newspaper in each county affected by said improvement, therein, in general terms, describing the lands, public roads and corporations including any ditch or drain established and constructed under any law of this state, or any portions thereof, in such county affected by said improvement and the lands, and property if any, reported by said viewers as assessable for the construction and maintenance thereof, and giving notice of the pendency of such proceedings and the nature of the proposed improvement, and that plans and specifications thereof, including the engineer's and viewers' reports are on file in his office subject to inspection and requiring all parties interested, as shown in said petition and reports, to appear before the court at the time and place designated in said notice, and present their objections, if any they have, and show cause why an order should not be made by said court granting such petition and confirming the reports of said engineer and viewers, and ordering the establishment and construction of said improvement. If any said improvement required that any ditch or drain heretofore or hereafter established and constructed under any law of this state, or any portions thereof, be utilized for any purposes authorized under this act, a printed copy of said notice shall be served by the clerk of said court upon each public corporation in this state charged by law with the maintenance and repair of such ditch or drain, at least ten (10) days before the day set for said hearing in the manner provided by law for the service of a summons in a civil action. (Ex. Sess. '19 c. 13 § 11, amended '23 c. 308 § 8)

6809. Modifications, approval or rejection—At the time and place specified in said notice the court shall hear all parties interested for and against the granting of such petition and confirming the reports, and may order and direct the modification of said plans and specifications and the assessments of benefits and damages and amend or change the list of property reported as assessable for the construction and maintenance thereof, or may recommit the same to the engineer or viewers or both for changes, and if, upon full hearing, the court shall find that said improvement will be conducive to the public health and promote the general welfare and cause the protection and reclamation of wet or overflowed lands or the control of flood waters in streams, channels and reservoirs, or aid in the prevention of fires in said areas or any purpose authorized of this act, in said drainage and conservancy district and that the benefits resulting therefrom will be greater than the costs of said con-

struction and damages, and a sum equal to fifteen (15%) per cent of the cost of said construction, exclusive of damages, for maintenance, then said court shall make its findings accordingly and order and direct the construction of said improvement and confirm the report of the engineer and the findings and report of said board of viewers with reference to benefits and damages and lands assessable and may, by said order, authorize the board of said district to construct the whole or any part of the improvement petitioned for, or to let contracts for the improvement ordered as a whole or for different parts thereof separately, provided, all persons, parties or corporations affected by said order shall have the right to appeal on questions of benefits and damages in the manner now provided for appeals in the case of judicial ditches, pursuant to provisions of Section 5534, General Statutes of 1913, and acts amendatory thereof.

If any said ditch or drain, or any portion thereof mentioned in said petition and reports, are proper to be utilized for any of the aforesaid objects or purposes of this act, the court shall include in its findings all matters in respect thereto, and in and by said order shall fix and limit the use and application of the same therefor, taking care not to destroy said ditch or any part thereof so used for the purposes for which it was established, and upon the entry of said order the board of directors of such district shall have and exercise all the authority thereover theretofore vested in any public corporation or administrative body as to such ditch or drain or portion thereof, and shall be charged with all the duties of any such public corporation or administrative body as to the upkeep, repair and maintenance of any such ditch or the part thereof taken hereunder. (Ex. Sess. '19 c. 13 § 12, amended '21 c. 325 § 6; '23 c. 308 § 9)

Explanatory note—For G. S. 1913, § 5534, see § 6687, herein.

6810. Awarding of contracts—The board of directors of any drainage and conservancy district organized under the provisions of this act, shall have full authority to let contracts for the construction of and cause to be constructed any and all works of improvement in accordance with the order of the court and the plans and specifications referred to in said order pursuant to the provisions of section 16 of this act and under the conditions named in said section, may employ and use men and equipment under supervision of the chief engineer or other agents for the construction, repair or improvement of any portion of said work not let by contract. (Ex. Sess. '19 c. 13 § 13)

6811. Right of entry—The board of directors of any district organized under this act and their agents and employees, including contractors, may enter upon lands within or without the district in order to make surveys and examinations to accomplish all necessary preliminary purposes, the district being liable only for an actual damage done, and any person or corporation preventing such entrance shall be guilty of a misdemeanor. (Ex. Sess. '19 c. 13 § 14)

6812. Orders and decrees for various improvements—In order to effect the drainage reclamation, irrigation or protection of land or other property within the limits of any drainage and conservancy district, and to effectuate all the purposes of this act, the district court of the several districts in this state and the judges thereof in vacation where any portion of such judicial district extends, within the limits of any drainage and conservancy district organized under the provisions of this act, are hereby fully empowered to

make all necessary orders and decrees and direct the entry of all necessary judgments upon the filing of a petition as provided in Section 11 of this act by the board of directors of any such district, and finding that grounds exist for the granting of such petition to order established and constructed any of the improvements specified in this act and authorize the board of directors of such district to cause to be constructed any such improvement and to clean out, straighten, widen, alter or deepen or change the course or terminus of any drain, ditch, river, creek or natural stream and to fix the height of water in any lake, pond or reservoir and cause the same to be raised or lowered and fill up or abandon or alter any ditch, drain, river or water course, pond, lake, or any natural or artificial basin or stream, and to divide the flow of water in or out of any such lake, pond, reservoir or water course and to cause to be constructed and maintain any lateral ditches, sewers, canals, dykes, dams, sluiceways, reservoirs or flood basins and construct and maintain pumping stations and other similar works and any works of improvement that may be deemed necessary for the prevention of fires in areas subject to damage or destruction thereby or to secure the drainage of lands within the limits of said district, and the control of waters therein, either in the channels of any stream or waterway, or ditch or drain, or in any lake, pond, reservoir, or other structure for holding and controlling water, including the power to exercise the right of eminent domain for the purpose of enlarging any lake, pond, or other body of water for reservoir purposes, or the flooding of land for the creation and establishment of reservoirs and the board of directors of any district organized under this act, upon being authorized by order or decree of the district court, shall have full authority to do and perform all things necessary to effectuate the purposes of this act and cause to be constructed and maintain any and all canals, levees, dykes, dams or sluiceways including reservoirs, holding basins, flood-ways and pumping stations and any other work of improvement that may be deemed necessary and proper to be constructed for the purpose of securing drainage of wet and overflow lands and protection of lands and property within the limits of said district from flood and inundation and from fire and as such board under the provisions of this act may exercise the right of eminent domain in behalf of such district in acquiring the necessary land for the creation of reservoirs or other improvements along or in the vicinity of the channels or waterways within the limits of said district, which authority may be exercised under the provisions of this act or under the provisions of Chapter 41 of the General Statutes of 1913, and acts amendatory thereof, and said board shall have full control thereof and shall have full authority to hold, operate, lease or control any water power created by any improvement authorized by this act and to enter into all contracts for the furnishing of water for irrigation, or for any other purposes, or for the leasing or furnishing of power, when authorized by order of the court, as hereinafter provided, and all sums realized from any such purpose shall be paid into the treasury of said district and be and become the property of said district, and may be used by said board to defray its general expenses and for the upkeep of any improvement made within said district and the improvement of the channel of any stream or waterway therein. (Ex. Sess. '19 c. 13 § 15, amended '23 c. 308 § 10)

Explanatory note—For G. S. 1913, c. 41, see §§ 6337 to 6578, herein.

6813. Bids authorized—After the order has been made by the district court directing the establishment of each improvement, as provided in section 12 of this act, it shall be the duty of the board of said district to call for bids for the construction of said work and give notice thereof specifying therein the time and place when bids will be open for the letting of a contract for the construction of said work; and said contract may be let in sections or as a whole as said board may direct, notice of which shall be published once each week for three (3) successive weeks in at least one newspaper published in any county where said improvement is to be made and in at least one of the papers in said state where notice of such contracts are usually published and at the time and place specified in said notice; said board may let said contract to the lowest responsible bidder, who shall give a bond with ample security, conditioned for the carrying out of said contract. Said contract shall be in writing and shall refer to the plans and specifications as approved by the court and prepared by the engineer, and shall be in such form as the attorney for said board shall direct and such as shall be approved by said engineer and said board, provided, that in all cases where a sudden emergency may arise rendering it necessary in order to protect the interests of the districts, work may be done under the direction of the board and engineer without contract to the extent that may be necessary to protect the interest of the district. (Ex. Sess. '19 c. 13 § 16)

6814. Creation of reservoirs—In all cases where a reservoir is created either in a natural basin or otherwise and said board shall conclude that the creation of said reservoir will create a waterpower or establish conditions whereby waterpower can profitably be constructed in connection with said reservoir said board may petition the court a time and place within said county for a hearing on said petition, notice of which hearing shall be given by publication of said order in a weekly newspaper for two successive weeks in each county in which said reservoir and waterpower or some part thereof is situated. If upon said hearing, said court shall find that it is practical to utilize the waters of said reservoir for waterpower purposes and that the same will be of benefit to the public and to said district, he shall have authority to authorize said board to issue the bonds of said district in such sum as such improvement may require, not to exceed 90% of the reasonable value of the proposed water power; and upon the making of said order, the board of directors are hereby authorized to issue bonds of said district not to exceed such sum as specified in the order of the court in such denominations and in such form as the board may determine, payable in not less than 10 or not more than 20 years from date with interest not to exceed 6% per annum payable annually, which bonds shall be signed by the clerk and president of said board and registered in the same manner as county bonds under the laws of this state, and the same shall be and constitute a first lien upon said water power and upon all of the property connected therewith and the income therefrom, and upon the issuance of said bonds, it shall be the duty of said board to create an interest fund and provide for the accumulation of the necessary sum to pay the interest on said bonds promptly when due. (Ex. Sess. '19 c. 13 § 17)

6815. Removal of bridges—In case it is necessary to pass any dredge boat or other equipment through a bridge or grade of any railroad company or other cor-

poration, county, township, or municipality, the board of directors shall give twenty days' notice to the owner of said bridge or grade that the same shall be removed temporarily to allow the passage of such equipment or that an agreement be immediately entered into in regard thereto. The owner of said bridge or grade shall keep an itemized account of the cost of the removal, and, if necessary, of the replacing of said bridge or grade, and said actual cost shall be paid by the district. In case the owner of said bridge or grade shall refuse to provide for the passage of said equipment, the board of directors may remove such bridge or grade at its own expense, interrupting traffic in the least degree consistent with good work and without delay or unnecessary damage. In case they shall be prevented from doing so, the owner of said bridge or grade shall be liable for damage for the resulting delay. (Ex. Sess. '19 c. 13 § 18)

6816. Gages, etc.—The board of directors shall also have the right to establish and maintain stream gages, rain gages, a flood warning service with telephone or telegraph lines or telephone or telegraph service, and may make such surveys and examinations of rainfall and flood conditions, stream flow, and other scientific and engineering subjects as are necessary and proper for the purpose of the district and they may issue reports of their findings. (Ex. Sess. '19 c. 13 § 19)

6817. Contracts with U. S. government and individuals—The board of directors shall also have the right and authority to enter into contracts or other arrangements with the United States Government, or any department thereof, with persons, railroads or other corporations, with public corporations and the state government of this or other states, with drainage, conservation, conservancy, or other improvement districts, in this or other states, for co-operation or assistance in constructing, maintaining and operating the works of the district or for the control of the waters thereof, or for making surveys and investigations or reports thereon; and may purchase, lease or acquire land or other property in adjoining states in order to secure outlets to construct and maintain dykes or dams, or for other purposes of this act, and may let contracts or spend money for securing such outlets or other works in adjoining states. And may and are hereby authorized to exercise all the authorities granted the Board of Drainage and Flood Control Districts by Sections 229, 230, 231 and 232, Chapter 442, General Laws 1917, so far as relates to co-operation with adjoining states, or drainage authorities thereof, and in the event that for any reason it may be deemed advisable to include in any drainage and conservancy district organized under the provisions of this act a Drainage and Flood Control District organized under Chapter 442, General Laws 1917, the district board organized under the provisions of this act are hereby authorized to enter into any contract or arrangement necessary to take over and control and maintain any works or improvements constructed, including surveys made and expenses incurred by any board under Chapter 442, General Laws 1917, and adopt or assume and carry out or modify any plans or works completed or partially completed by such board and make the same a part of the system to be developed under the provisions of this act. (Ex. Sess. '19 c. 13 § 20, amended '21 c. 325 § 7)

Explanatory note—The reference herein to Laws 1917, c. 442 §§ 229, 230, 231, 232, is an error, and should read: Laws 1917, c. 442, §§ 29, 30, 31, 32. These sections are set forth herein as §§ 6907 to 6910.

6818. Right of land owners to use of water—The rights enjoyed by land owners whether private or cor-

porate to the use of the waters of the district for any purpose whatsoever shall continue as it existed at the time of the organization of the district, and all such rights then existing shall be recognized and observed by the managing authorities of such district, and when the boundary line of any property abutting upon any stream or body of water, is changed in consequence of any improvement constructed by the district either raising or lowering the stage of water in such stream or body of water the rights of such abutting property owner of access to and use of such waters shall remain as it existed at and prior to the time of the construction of such improvement, but when improvements made by the district make possible a greater, better or more convenient use of or benefit from the waters of the district for any purpose, the right to such greater, better or more convenient use of or benefit from such waters shall be the property of the district, and such rights may be leased or assigned by the district in return for reasonable compensation as herein provided. (Ex. Sess. '19 c. 13 § 21, amended '21 c. 325 § 8)

6819. Applications for use of water—Persons, corporations, municipalities or other parties desiring to secure such use of the waters or water courses of the district rights therein, may make application to the board of directors for lease or permission for such use. Such application shall state the purpose and character of such use, the period and degree of continuity and the amount of water desired. In case any party makes greater, better or more convenient use of the waters of the district without formal application, the fact of such use shall serve all purposes of an application, and the board may proceed to determine a reasonable rate of compensation the same as though formal application had been made; provided, however, such use shall not be deemed an application unless the district shall have given the user three days' notice in writing that such greater, better or more convenient use of water is available; nor shall the user be obligated to pay for any use occurring prior to such notice. Where it is not possible nor reasonable to grant all applications, preference shall be given to the greatest need and to the most reasonable use, as may be determined by the board of directors, subject to the approval of the court. Preference shall be given, first to domestic and municipal water supply, and no charge shall be made for the use of water taken by private persons for home and farm use, or for watering stock. (Ex. Sess. '19 c. 13 § 22, amended '21 c. 325 § 8½)

6820. When contracts may be made—The board of directors shall not sell, lease, assign or grant any permit or otherwise part with permanent control by the district of the use of the waters thereof, and all leases, assignments or permits of any kind or other contracts for the use of water shall be entered into only after a report has been made by the board of such district to the court setting forth the terms and conditions of said lease, permit or other contract relative to the use of any property of the district, whereupon the clerk of said court, shall give due notice to all parties interested by mail, and shall cause to be published notice of said application stating therein the purpose of said application and the time and place of hearing thereof, at which time the court may hear all showing made for and against such proposed contract and make its order accordingly; but subject to revision and control by the state law and such conditions and restrictions as may be necessary at all times to protect the interests of said district and of the public. Said leases or permits may be made for periods not to exceed ten

(10) years, but subject to said conditions and subject to the rights of renewal for further reasonable period not to exceed ten (10) years on condition that a new determination may be made as to the reasonable charge therefor. (Ex. Sess. '19 c. 13 § 23)

6821. Regulations, rates, etc.—The board of directors may make regulations for the determination and measurement of the increased, or better, or more convenient use of, or benefit from the water supply of the district, for the purpose of determining rates of compensation, and for the purpose of securing to all parties interested, either within or without the districts including water power company, the greatest and best use of the water thereof. The board shall have power to determine the rates of compensation for such greater, better or more convenient use of or benefit from the water supply of the district, which rates of compensation shall be reasonable and may be based upon either a unit price per cubic foot used or unit price for theoretical horsepower developed or other practical method, and may require bond to be given to secure the payment for such use. Upon the determination of any rate, or rates, the board shall make a report of its determination to the court. The court shall thereupon cause personal notice by summons to be given to the parties interested, stating that such determination of rate has been made, that a hearing before the court will be had thereon on a certain day, and that objection may be made at such time to such determination of rates. A hearing may be had before the court, objections may be made and appeals taken in the same manner as in the case of the appraisal of benefits, but the rates as fixed by the court shall control until modified on appeal. In case no appeal is made within the time provided, or upon the final determination of the matter by the court, the determination of such rates of compensation shall be conclusive and binding for the term and under the conditions specified in the lease or other agreement. In case of failure of any user to pay for the use in the manner specified by order of the court, the board may compel payment or may enjoin further use until such payment is made. The rights under any lease or sale shall not extend to a change of use or of place, time or manner of use, except in so far as is specifically stated in the lease or other agreement. (Ex. Sess. '19 c. 13 § 24)

6822. Assessments for benefits—Whenever the board of directors of any district shall ascertain that any improvement will benefit lands or other property outside of the district, the board may file a petition for change of the boundaries of the district, or resident freeholders of the district may, in like manner, file petition for change of boundaries of the district upon which petition a like notice shall be given and like proceedings had as in the case of organization of a drainage and conservancy district, but the same shall be had in the district court of the county in which are situated the lands sought to be included in the district, if in only one county, otherwise in the district court of the county in which the original organization proceedings were had. (Ex. Sess. '19 c. 13 § 25, amended '21 c. 325 § 9)

6823. Various funds—The moneys of any drainage and conservancy district organized under the provisions of this act shall consist of three (3) separate funds:

1. A preliminary fund, which shall consist of funds to be provided as hereinafter specified, and can be used for preliminary work and general expenses.

2. A bond fund, which is the proceeds of bonds issued by said district, as herein provided, secured upon

property of the district court is producing or likely to produce a regular income and to be used for the payments of the purchase price of said property or the value thereof, fixed by the court in proceeding, as herein provided, and for the improvement and development of such property.

3. A construction and maintenance fund, which shall be supplied by sale of county bonds and by special assessments to be levied as herein provided to supply funds for the construction and upkeep of the improvements of the district including the reservoirs, ditches, dykes, canals, and other works, together with the expenses incident to, and connected therewith. (Ex. Sess. '19 c. 13 § 26)

6824. **Payment of expenses**—After the filing of a petition under this act for the formation of a district, and the furnishing and filing of the bond, as provided in section 3 and 4 of this act, the costs of publication and other official costs of such proceedings shall be paid out of the general funds of the county in which the petition is pending, by warrant of the county auditor issued upon order of the court. In case the district is organized, such costs shall be repaid to the county out of the first funds received, by the district, through the levy of taxes or assessments or selling of bonds, or the borrowing of money. If the district is not organized, the costs shall be collected from the petitioners or their bondsmen; upon the organization of the district the court may upon ten days' notice to the county auditors of the counties affected make an order dividing the preliminary expenses between the counties included in the district in proportion to the interests of the various counties as may be estimated by the court; and direct the auditor of each county to issue his warrant upon the treasurer for the proportion of the preliminary expenses assigned to that county by such order. (Ex. Sess. '19 c. 13 § 27)

6825. **Preliminary expense fund established**—As soon as the district shall have been organized under the provisions of this act, and a board of directors shall have been appointed and qualified and a petition and bond has been filed with the clerk of said board as provided in Section 10 of this act; said board may file a petition with the district court in the county where said original petition was filed, asking that an order be made creating a preliminary fund for said district, at least ten days' notice of which shall be given to the county auditor of each county affected by the proposed improvement which fund shall be of a size in proportion to the size of the district, and in the event said district shall include the whole or portions of five or more counties, said funds shall not exceed the sum of twenty thousand (\$20,000) dollars and may be of such less amount as the court may order, and the court, upon said hearing, may designate the amount of said fund, and fix the proportionate amount that each county affected by said improvement shall pay, in proportion to the area within said county affected by the proposed improvement, and thereupon the court shall order the county auditor of each of said several counties to draw their warrants upon the treasury of their county for the payment of the amount specified in the court's order, payable to the treasurer of said district, and the sum so advanced by such county shall be charged to said district, and shall be repaid with interest to each of said several counties as soon as said district has funds for that purpose, and the funds so provided, shall be used by the board of said district for preliminary work and when said board shall incur expense for surveys or other preliminary work on any proposed improvement, all expense, including time,

salaries or other expense connected with such work, shall be kept track of and figured in as the cost of construction in any such proposed improvement, and upon said improvement being ordered by the court and funds being provided for the construction thereof, as hereinafter specified, all sums advanced out of said preliminary funds shall be repaid and said funds replaced for further similar use on other improvements. The board of directors for any such district are hereby authorized to include in their petition to the court asking the creation of a preliminary fund or by separate petition at a subsequent date a request that the court shall in addition to the creation of said fund a further order authorizing the board of said district to levy upon the lands affected by the proposed improvement an assessment of such sum as may be found necessary to reimburse the county or counties for the sum advanced to create said preliminary fund, not to exceed, however, the sum of twenty (20c) cents per acre, and the court is hereby authorized to make such order; provided, that in all cases where the district includes the main stream of a basin draining more than 10,000 square miles that such application shall be accompanied by a plat, describing thereon according to government survey the lands that it is claimed will be benefited by the proposed improvement and the order of the court in such case shall designate the land in each county subject to such assessment upon the receipt of such order the board of directors of such district shall cause to be levied upon such benefited lands, such assessments as the court shall authorize and shall file with the county auditors of the several counties a list of lands within the respective counties affected by said assessment and upon the filing thereof or as soon thereafter as may be necessary, it shall be the duty of the county auditor to levy such assessment upon the lands specified and spread the same upon the assessment roll as in the case of other taxes; and it shall be the duty of the county treasurer to collect and receive such assessment and credit the same to said district and deduct from such assessment any sum, if any there is due, to such county and account to said district for all sums remaining. (Ex. Sess. '19 c. 13 § 28, amended '21 c. 325 § 10)

The amendment hereto contemplates a fund for each proposed improvement, either in petition for the improvement, or in a separate petition subsequently filed.—such funds are not to exceed in the aggregate \$20,000 (154-444, 192+184).

6826. **Apportionment of costs**—At the time set for hearing on the report and petition of the board of directors of any district and the report of the engineer asking for the establishment of any improvement under the provisions of this act or at any time subsequent thereto, upon five days' notice in writing to the auditors of the several counties containing property affected by such improvement the court shall apportion the amount of the total costs of the construction of said improvements, among the several counties affected in proportion to the benefits received and shall fix and determine the amount to be paid by each and upon similar notice to said county auditors, said judge of the district court may at any time modify said order as justice may require, or make additional orders covering additional expense. The word "expense" as used in this section shall be construed to mean every item of cost of said improvement from its inception to its completion and all fees and expenses paid or incurred, including all damages awarded, and upon the filing of said order or a certified copy thereof, with the auditors of the respective counties affected, together with a list of all property affected in said counties and a state-

ment of all benefits and damages affecting the same, and such other information as the court by order may direct, it shall be the duty of the county board of said counties and they are hereby authorized to provide the necessary funds to meet the proportionate share of the cost of said improvement as specified in said order in the same manner as now provided in the case of judicial ditch proceedings, under Section 5542 of General Statutes of 1913, and amendments thereto [6696]. That immediately or at the earliest date possible, following the letting of a contract or contracts for the construction of said improvement, by the board of directors of said district, they shall cause to be made and filed with the clerk of said board and with the county auditor of each county affected a statement showing the total cost of said improvement including expenses as near as the same can be ascertained and the proportionate amount that the property within each county affected shall be required to pay on the basis as fixed by the order of the court, together with a list of all property benefited within such county and thereupon it shall become the duty of the county auditor of the respective counties to cause to be made and recorded the tabular statement and lien against the property benefited within his county the amount to be paid by the property in said county, in accordance with the provisions of Sections 5543 and 5544, General Statutes of 1913, and acts amendatory thereof [6703, 6705], and it shall be the duty of the county commissioners of said several counties to provide the funds to meet the proportionate share of the total cost of said improvement as shown by the report of the board of said drainage and conservancy district and the order of the court and they are hereby authorized to exercise all rights and authority in so doing, now granted to the board of county commissioners under the provisions of Sections 5542 and 5543 of the General Statutes of 1913, and acts amendatory thereof [6696, 6703] and other provisions of the General Statutes relating to county and judicial ditch proceedings. It shall be the duty of the respective county auditors and county treasurers to levy and collect the amount shown in said tabular statement and lien as provided in Sections 5546 and 5548 of General Statutes of 1913, and acts amendatory thereof [6712, 6713]. All moneys received by the county treasurer of any county from the sale of bonds, assessments or otherwise for the benefit of the district shall be by the county treasurer of such county accounted for and paid over to the treasurer of such district. (Ex. Sess. '19 c. 13 § 29, amended '21 c. 325 § 11)

6827. Assessments—Upon the filing by the board of directors of a drainage and conservancy district with the county auditor of any county of the statement as provided in Section 29 of this act giving a list of the property and corporations benefited or damaged, or otherwise affected by any proposed improvement, it shall be the duty of the county auditor to assess the amount specified in such list against the lands and municipalities or other corporations as therein specified in accordance with the provisions of Section 5551 of the General Statutes of 1913 [6716] and the said county auditors, respectively, shall proceed to levy and collect the sums specified in said lists against the property and corporations in accordance with the provisions of said section, and in the event the sum so reported shall become a direct charge against said county and may be paid by such county out of its road and bridge fund or otherwise, as the county commissioners may direct, and may be paid in whole or in installments as may be specified by the board of county

commissioners of each county, provided that no assessment shall be levied against any property or corporation benefited under the provisions of this act in excess of the amounts of benefits received as fixed by the order of the court directing the construction of said improvement or subsequently determined on appeal. (Ex. Sess. '19 c. 13 § 30, amended '21 c. 325 § 12)

6828. Issuance of orders—The board of directors of any drainage and conservancy district is hereby authorized to issue the orders of said district in payment for any contracts for the construction of any improvement and also for all ordinary general expenses and all expenses incurred by contract or otherwise in making repairs and when sufficient funds are not available to pay the same, said order shall after presentation to the treasurer of the district draw interest at the rate of 6 per cent per annum until paid or until notice shall be given by the district that said funds are available provided the board of directors shall never at any time issue or have outstanding orders of said district exceeding the sum of five thousand (\$5,000.00) dollars, except orders issued in payment of construction on any improvement, the funds for which have been provided or arranged for. (Ex. Sess. '19 c. 13 § 31)

6829. Upkeep and repair of district—The board of directors of any drainage and conservancy district organized under this act are hereby authorized after the construction of any improvement to levy from time to time as occasion may require upon the property and corporations benefited by such improvement, such sum as the court may order or direct upon application by the board for the purpose of providing funds for the upkeep and repair of such improvement, which application shall be heard upon such notice as the court shall direct, and upon filing a copy of said order and levy with the county auditor of each county affected by such improvement accompanied by a list of the property and corporations within the limits of said county affected by said levy, it shall be the duty of said county auditor to extend said levy against said property within the limits of his county, as provided in other cases for the levy, assessment and collection of taxes ordered, levied and collected by the board of county commissioners in ditch proceedings and upon like application and order the board of directors of any drainage and conservancy district are hereby authorized to levy upon the property and corporations benefited within the district as shown by the engineers' and viewers' report as finally adopted by order of the court such sum as the court may authorize and direct and to cover the general expenses of the board not to exceed, however, in any one district, the sum of five thousand (\$5,000.00) dollars, and the court shall by such order apportion the amount of such levy among the several counties according to the area or valuation of the portion of each county within said district benefited by any particular improvement as shown by the engineers' and viewers' report, and upon the filing of a copy of said order showing the amount to be levied upon such property and corporations benefited within the limits of each county, the auditor of such county shall levy the same upon such property and corporations contained in such list within the limits of his county in the same manner and with like effect as in the levy of other taxes by municipal corporations in this state; and all sums collected and received by the county treasurer of such county shall be accounted for to the treasurer of said drainage and conservancy district, and the same shall be placed in the fund as provided in this act and used for the purposes for

which said assessment was made. (Ex. Sess. '19 c. 13 § 32, amended '21 c. 325 § 13)

6830. When repairs are to be made—It shall be the duty of the board of directors of any drainage and conservency district, upon being notified by the county board of any county, portions of which shall be within the limits of said district, that certain ditches, channels or watercourses within said county and district are in need of repair or improvement, to immediately or at the earliest possible date, investigate and report to said county commissioners the condition of said ditches, drains, or watercourses or other improvement needing repair and the amount and nature of the repairs required and the probable cost thereof; and upon said county providing the funds, it shall be the duty of the board to take charge of all matters pertaining to the making of said repairs, and let contracts therefor, or proceed to employ assistants and have said repairs made under the direction of the chief engineer; and in like manner it shall be the duty of the board of any drainage and conservency district, organized under this act, upon the request of the county board in case of a county ditch, or of the district court in case of a judicial ditch, to take charge of the construction of any ditch then petitioned for; and thereafter, all work done upon the construction of any such ditch shall be under the supervision and control of the board of such drainage and conservency district, who shall make reports thereon to the county board or the court as may be required, and the engineer of said drainage and conservency district shall have supervision of said work and perform all duties as assigned and specified, with reference to engineer in charge of county or judicial ditch proceedings and shall have and may exercise like authority. (Ex. Sess. '19 c. 13 § 33)

6831. Board to have control of all contracts—In all cases where contracts are let by the board of directors of any drainage and conservency district, said board shall have full control of all matters pertaining thereto, and in the event of a contractor failing to complete said improvement within the time or in the manner specified in his contract, said board shall have full authority to extend said time or refuse said extension and cancel said contract, and readvertise and relet said contracts they may deem proper, or may require the bondsmen for said contractor to complete the same or proceed and have said contract otherwise completed at the expense of the contractor, and his bondsmen, and take any other action with reference thereto that occasion may require in the interest of the district and the provisions of section 5541 of the General Statutes of 1913, as amended by chapter 441 of the General Laws of 1917 [6694], shall apply to and govern the relations between the board of the district and the contractor, including the examination and report of the engineer and the amount and time of payment so far as applicable, and in all cases the board of directors shall have full control of all agents and employes engaged or appointed by them, and may fix their compensation and remove them at pleasure. They shall keep an accurate account of all expenses incurred; and the time and expenses of all employes, including the expenses of the members of the board while engaged in any improvement, which shall be charged up to and be treated as part of the costs of said improvement and the compensation for such services members of the board of directors of any district for such services shall not exceed the sum of five (\$5.00) dollars per day and their necessary expenses for the time actually employed in performing his duties, of which accurate

account shall be kept by the secretary. (Ex. Sess. '19 c. 13 § 34)

6832. Neglect of affairs, etc.—The provisions of section 5569 of the General Statutes of 1913 [6732], relating to the obstruction or injury of work or neglect of duties by employes or officers, shall apply to any and all improvements made or authorized under the provisions of this act, and any other provision contained in the laws of this state relating to judicial or county ditches, providing for punishment for damages committed to or interfering with such work, shall apply to all improvements made under the provisions of this act. (Ex. Sess. '19 c. 13 § 35)

6833. Report of directors—At least once a year or oftener, if the court shall so order, the board of directors shall make a report to the court of its proceedings and an accounting of its receipts and disbursements to that date, which shall be filed with the clerk of said court, and it shall be the duty of said board from time to time to make such report as may be demanded by the public examiner, and it shall be the duty of the public examiner of this state to check up and report to the court not less than once a year and at such other time as the court may direct, the financial condition of said district. (Ex. Sess. '19 c. 13 § 36)

6834. Improper notices—In any and every case where a notice is provided for in this act, if the court finds for any reason that due notice was not given, the court shall not thereby lose jurisdiction, and the proceeding in question shall not thereby be void; but the court shall in that case order due notice to be given, and shall continue the hearing until such time as such notice shall be properly given, and thereupon shall proceed as though notice had been properly given in the first instance. In case any individual appraisal or appraisals, assessment or assessments, or levy or levies, shall be held void for want of legal notice, or in case the board may determine that any notice with reference to any land or lands may be faulty, then the board may file a motion in the original cause asking that the court order notice to the owner of such land or lands given and set a time for hearing, as provided in this act. And in case the original notice as a whole was sufficient, and was faulty only with reference to publication as to certain tracts, only the owners of and persons interested in those particular tracts need be notified by such subsequent notice. And if the publication of any notice in any county was defective or not made in time, re-publication of the defective notice need be had only in the county in which the defect occurred. (Ex. Sess. '19 c. 13 § 37)

6835. Question of validity—All cases in which there arises a question of the validity of the organization of conservency districts shall be advanced as a matter of immediate public interest and concern, and heard in all courts at the earliest possible moment. The court shall be open at all times for the purpose of this act. (Ex. Sess. '19 c. 13 § 38)

6836. Liberal construction to be given—This act being necessary for securing the public health, safety, convenience or welfare, and being necessary for the prevention of loss of life and for the security of public and private property from floods and other uncontrolled waters, it shall be liberally construed to effect the control and conservation and drainage of the waters of this state. (Ex. Sess. '19 c. 13 § 39)

6837. Individual sections to stand—In case any section or sections or part of any section of this act shall be found to be unconstitutional, the remainder of the act shall not hereby be invalidated, but shall remain in full force and effect. (Ex. Sess. '19 c. 13 § 40)

6838. Reference to other chapters—In all cases where reference is made to other chapters of the General Laws of 1913 or to other drainage laws of this state, and sections thereof are referred to such sections and provisions, shall so far as applicable, be treated and construed as having the same force and effect so far as the provisions of this act are concerned as though herein set forth. (Ex. Sess. '19 c. 13 § 41)

6839. Continuation—Nothing in this act contained shall be construed to interfere with the application and use of any other drainage law of this state and all proceedings now pending may be completed under such drainage law, and any proceedings hereafter instituted under such law may be conducted thereunder except where such proceedings are instituted within, or affect property within the limits of any district organized under the provisions of this act; notice of the institution of such proceedings shall be given to the board of said district and said board or its engineer given an opportunity to be heard with reference to such proceedings affecting, interfering with, or injuring the plans and work of such district. Provided, further, that all rights and privileges that may be acquired by any drainage and conservancy district organized under the provisions of this act, shall at all times be subject to regulation and control by act of the legislature and all such rights and interests that may be acquired by any district hereunder shall be subject to the right of the state to take over and acquire title thereto upon such conditions and compensation as the legislature may specify. (Ex. Sess. '19 c. 13 § 42)

6840. Districts already established—Any drainage or flood control district heretofore or hereafter organized under chapter 442 of Laws 1917 may acquire the right to operate under and exercise all the rights and authorities of this act instead of chapter 442 as though organized hereunder by the governing board of said district, filing in the office of the clerk of the district court where the original petition for organization was filed, a petition to said court asking that said district be granted such authority, whereupon said clerk, with the consent of the judge of said court, shall fix time and place of hearing upon said petition, notice of which shall be given by publication for two successive weeks in one newspaper published in each county having territory within said district, and if at said hearing the court shall find that it is for the best interests of said district to be granted such authority, he may by order grant such petition, and thereupon and thereafter such district may exercise the authorities provided for in this act as though incorporated hereunder. (Ex. Sess. '19 c. 13 § 43)

Explanatory note—For Laws 1917, c. 442, see §§ 6879 to 6912, herein.

6840-A. Proceedings started under all law to be completed under this act—That in all cases where proceedings are now pending for the organization of any drainage and conservancy district under the provisions of chapter 13 of the Laws of the Extra Session of 1919, and have not been completed and the order for the organization of such district has not been made at the time of the passage of this act, then all subsequent proceedings for the completion thereof shall conform to the provisions of said act as hereby amended. (Ex. Sess. '19, c. 13, § 43A, added; '21, c. 325, § 14)

6840-B. May appeal to supreme court—All persons or public corporations affected by any order of the district court, establishing or refusing to establish a drainage and conservancy district, or affected by any order approving or refusing to approve the plans and

directing the construction of the improvement, or affected by the determination in any district court of any assessment of benefits or damages, including the board and the petitioners, may appeal to the supreme court on any question involved in such determination, as in civil actions. The notice of appeal shall be served on the clerk of the district court and need not be served on any other person or corporation. (Ex. Sess. '19, c. 13, § 43B, added; '21 c. 325, § 15)

6840-1. Definitions—Whenever any of the following terms are used in this act and the intent not otherwise clearly defined, they shall be understood and construed as follows:

Wherever the term "publication" is used in this act and the period or manner not specifically defined, it shall be taken and construed to mean publication once a week for three successive weeks in one legally qualified newspaper published and in general circulation in each county affected.

Wherever the term "board" or "County board" is used in this act, and not otherwise specifically defined, it shall be taken and construed to mean the county board of the county where the drainage proceedings are pending, and wherever the term "court" or "the court" or "the district court" or "district judge" is used in this act, and not otherwise specifically defined it shall be taken and construed to mean and refer to the district court or a judge thereof of the county where the judicial drainage proceedings are pending.

Wherever the term "board or court" or "county board or district court" is used in this act, and not otherwise specifically defined, it shall be taken and construed to mean that the specific enactment or language used shall apply to 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.

Provided that whenever any lake having a water area of four or more square miles, situate in two judicial districts, shall be affected in proceedings in the district court, such court shall be composed of one judge from each such judicial district and one appointed by the Governor.

Wherever the term "county auditor" or "auditor" is used in this act, and not otherwise specifically defined, it shall be taken and construed to mean the county auditor of the county wherein county drainage proceedings are pending, and wherever the term "clerk" or "clerk of the district court" is used in this act and not otherwise defined, it shall be taken and construed to mean and refer to the clerk of the district court where the petition is filed in judicial proceedings.

Wherever the term "person" is used in this act, and not otherwise specifically defined, it shall be taken and construed to mean and include a person, firm, co-partnership, association or corporation other than public or political subdivision, and wherever the term "public corporation" or "municipal corporation" is used the same shall be taken and construed to mean and include cities, villages, boroughs, counties, townships, school districts, road districts or other political subdivision.

Wherever the term "public health" is used in this act, it shall be taken and construed to extend to and include any act or thing tending to improve the general sanitary condition of the community, whether by drainage, relieving low, wet land of stagnant and unhealthful conditions, or by preventing the overflow of any lands, thereby producing or tending to produce unhealthful conditions.

Wherever the term "public welfare" or "public benefit" is used, it shall be taken and construed to extend to and include any act or thing tending to improve or benefit the general public, either as a whole or any particular part or community, and shall be construed to include any improvement contemplated by this act which shall protect from overflow or reclaim and render suitable for cultivation tracts of land normally wet or needing drainage, or subject to overflow.

Wherever the term "county ditch" or "county drainage proceeding" is used in this act, and not otherwise specifically defined, it shall be taken and construed to mean drainage proceedings under the provisions of this act, instituted by petition as provided herein before the county board of any county, and wherever the term "judicial ditch" or "judicial drainage proceedings" or "judicial proceedings" is used in this act, and not otherwise specifically defined, it shall be taken and construed to mean and refer to judicial proceedings under the provisions of this act instituted before the district court of any county and may include proceedings in one or more counties.

Wherever the term "ditch" or "drainage system" or "public drainage system" or "drainage proceedings" is used in this act, and not otherwise specifically defined, it shall be construed to mean and include either an open or tiled system and all laterals or parts thereof, also the improvement of any natural run, water course or waterway included in or utilized in the construction of any drainage system, and shall unless otherwise specified be construed to include any work, excavation, structure or improvement necessary to complete the system as adopted and ordered constructed by the county board or district court.

Wherever the term "road" or "public road" or "highway" is used in this act without a more specific designation, the same shall in all cases be understood and construed to mean and include any road or highway used by the public for highway purposes, whether the same be under the control of any town, county or other municipal corporation or under the control and direction of the State Commissioner of Highways and to include, town roads, county roads, state aid roads and trunk highways, and any road or public highway under the charge and control of any municipal corporation, whether within or without the limits of said municipality, and in all cases where benefits or damages are assessed or allowed with reference to a town road, the name of the town shall be included in the viewers' report in connection with the description of said road, and in all cases of assessment for benefits or award of damages with reference to a county road or state aid road, the same shall be reported in the viewers' report in the name of the county within which the road is located, and in all cases where benefits or damages are assessed or awarded to a portion of a trunk highway, the same shall be reported in the viewers' report under the name of the state or State Highway Department, as a part of the description of said road and therein designating the county or counties within which the benefits are assessed or damages allowed, and when so reported the same shall constitute a valid assessment against such town, county or the state.

Wherever the term "resident owner" or "resident freeholder" is used in this act, it shall be construed to mean and include the owners of such land or party who holds the same under contract of purchase from the owner and who resides in the State of Minnesota. ('25, c. 415, § 1)

6840-2. Powers of county boards and district courts as to public drainage systems, water courses, dykes, dams, power plants, pumps, flood control—Drainage of meandered lakes—The county board of the several counties and the district court of the several districts of the State of Minnesota, are hereby authorized and empowered to make all necessary orders for and cause to be constructed and maintained, public drainage systems, drains and ditches to deepen, widen, straighten or change the channel or bed of any river, creek or waterway following the general direction thereof, and when practical terminating therein, to extend the same *into or through any city or village for the purpose of securing a suitable outlet to construct all needed dykes, dams and controlling works and also power appliances, pumps and pumping machinery when a pumping outlet is deemed necessary to drain in whole or in part, meandered lakes which have become normally shallow and of a marshy character or which are no longer of sufficient depth or volume to be of any substantial public use, and when deemed necessary to control flood waters therein, may raise, lower or establish the height of water in any lake, body of water or water course and cause to be constructed all necessary structures and improvements and to maintain the same for flood control or other public purposes, and where only a part of a meandered lake is to be drained, to cause to be constructed dykes 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, but no meandered lake upon which any city or village is now a riparian owner shall be drained or lowered unless by the approval of a majority vote of the legal voters of said city or village at any annual or special election held for such purpose; provided, however, that no meandered lake shall be drained except by the consent of the State of Minnesota, filed in the proceedings, and for that purpose the consent of the governor shall be sufficient.* ('25, c. 415, § 2)

6840-3. Petition for public drainage system, etc.—Signatures to—Filing—Bond of petitioners—Before any public drainage system, drain or other improvement authorized by this act, shall be established under the provisions herein, a petition signed by not less than a majority of the resident owners of the land described in the petition or by the owners of not less than 51 per cent of the area of such land, setting forth the necessity thereof that the same will be of public utility and will promote the public health, the description of the starting point, the general course and terminus of the same together with a description of the lands over which the proposed ditch or improvement passes, and 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, shall be filed if for a county drainage system with the county auditor, if for a judicial drainage system, with the clerk of the district court. That such petition may also be signed by the supervisors of any township, or the proper officers of any city or village authorized by resolution of the council thereof, which township, village or city is liable to be affected by or assessed for the proposed construction, or by the duly authorized agent of any public institution, corporation or railroad whose lands or property may be affected by or assessed for the expense of the construction or by the State Board of Control or its duly authorized agent, but that in such case the signature of such supervisors, village officers, agents, public institution, Board of Control, or other

corporation, or any or either of them, shall each count only as one signature on such petition.

Upon the filing of such petition and before any action is taken thereon, one or more of such 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 \$2,000.00 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. If it be made to appear at any time prior to the making of the order directing the construction of such improvement, that the bond of the petitioners is insufficient either in amount or as to sureties to protect the county, or counties from loss on account of any costs or expenses incurred, or to be incurred, the court or board may, and it shall require a further and additional bond, and all further proceedings shall be stayed until such bond is furnished, and if such additional bond is not furnished within such time as the board or court shall designate, the proceedings may be dismissed. ('25, c. 415, § 3)

6840-4. Expenses of survey not to exceed penalty of bond—Bond for excess—In all drainage proceedings in which a survey of the proposed drainage system has been ordered by the court or county board, the expense of such survey shall not exceed the penalty named in the bond given by the petitioners in said proceeding and no claim in excess of the amount of such bond shall be audited or paid by direction of the court or board unless in any such proceeding one or more of the petitioners therein shall, within such time as the board or court shall direct, make and file a bond with sufficient sureties in such amount as such board or court shall direct, conditioned as required by Section 3 of this act. ('25, c. 415, § 4)

Explanatory note—For section 3, see § 6840-3, herein.

6840-5. Engineer—Appointment, oath and bond—Upon the filing of the petition and bond as herein provided, the county board in a county drainage proceeding, and the judge of the district court in a judicial drainage proceeding, shall within thirty days thereafter by order appoint a competent and experienced civil engineer and direct him to proceed and examine into and report within the time fixed in said order to said board or court all matters necessary and essential to disclose the practicability, necessity and advisability of the construction of the proposed improvement, and 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 shall give a bond not less than the sum of \$5,000.00 with good and sufficient surety, payable to the county or counties affected by the proposed improvement for the benefit of such county or counties, and also for the use of all parties aggrieved or injured by any negligence or malfeasance on the part of said engineer so long as he is in any manner employed in said 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 said proceeding, said bond to be approved by the auditor or clerk, as the case may be. ('25, c. 415, § 5)

6840-6. Same—Examination, preliminary survey and report—It shall be the duty of said engineer without delay to proceed and examine all matters named and

referred to in said petition, and order, and make such preliminary survey of the territory likely to be affected by the proposed improvement as will enable him to fully determine whether the same is necessary or practical and report accordingly, and if some other or different plan than that described in the petition is found practical, said engineer shall so report, giving such detail and information as will be necessary to fully inform the court or county board on all matters pertaining to the practicability or feasibility of the proposed plan, either as outlined in said petition or according to some other or different plan that may be designated or recommended by said engineer, but it shall be his duty to outline and designate all changes whether by extension, adding laterals or otherwise, that may be necessary to make the plan of the proposed improvement practicable and feasible, showing the probable size, character and cost of such laterals, and if the construction of a ditch or drain is involved in the proposed improvement, said engineer shall especially examine and report the nature and capacity of the outlet and any extension that may be necessary to supply the same, and if he finds the improvement petitioned for is feasible, he shall include on his report a map of the proposed improvement, giving the description of the different tracts of land likely to be affected, and outline thereon any recommended changes, and give so far as known the names of the owners of the property and corporation affected, and the probable area that is likely to be drained or affected by the proposed improvement, and such other information as the board or court may order. Provided the engineer appointed pursuant to the provisions of Section 5 of this act 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 petitioner 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. ('25, c. 415, § 6)

Explanatory note—For section 5, see § 6840-5, herein.

6840-7. Preliminary hearing on report of engineer—Notice of given by county auditor or clerk of district court—Dismissal of petition—Changes in proposed plan—Order by board or court—Upon the filing of the report of the engineer as provided in Section 6, with the county auditor or clerk of the district court, as the case may be, it shall be the duty of said auditor to immediately notify the county board, or the clerk, the judge of the district court of the filing of said report, and the said auditor or said clerk, with the approval of the judge, shall fix a time for the hearing thereon, not to exceed thirty days from the date of the filing thereof, and within ten days thereafter shall by mail notify the several petitioners and the owners of the several tracts of land and corporation, public or private, affected by the proposed improvement as shown in the engineer's report, of the time and place of said hearing; and at such time and place said engineer shall attend before said county board or district court, and make such explanation and supply such information as may be necessary to fully inform said board or court of all facts named or referred to in his report, and such other facts as affect or relate to such improvement petitioned for or as recommended by him. The petitioners and all other parties interested may appear and be heard, and if upon full hearing it shall appear that the proposed improvement is not practical and no plan is reported

by the engineer whereby it can be made practical, or is not of public benefit or utility, or that the outlet is not of sufficient capacity, then said petition shall be dismissed, but if the county board or district court shall be satisfied that the proposed improvement as outlined in said petition or as modified and recommended by the engineer is practical, that there is necessity therefor, and that it will be a public benefit and promote the public health, and have an outlet of sufficient capacity, then said board or court shall so find and by said order shall designate the change that shall be made in the proposed improvement from that outlined in the petition; said changes may be described in general terms, and shall be sufficiently described by attaching to said order and said petition, a map drawn by said engineer outlining the proposed improvement thereon, and the changes made, and thereafter said petition shall be treated as modified accordingly.

Provided, the findings required in this section shall not be construed as conclusive except only to determine the nature and extent of the plan and the necessity for ordering a permanent survey; all questions relative to the practicability and necessity of the proposed improvement shall be subject to further investigation and consideration at the final hearing if the permanent survey discloses facts not discovered in making the preliminary survey. ('25, c. 415, § 7)

6840-8. Detailed survey, plans and specifications—Change in engineer—Oath and bond of new engineer—Upon the filing of the order as specified in Section 7, said board or court shall order said engineer or any other engineer, if a change of engineers shall 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 said board or court with all reasonable dispatch, and in case of a change of engineers, each new engineer shall make and file the oath and bond as provided in section 6. ('25, c. 415, § 8)

Explanatory note—For sections 6 and 7, see §§ 6840-6, 6840-7, herein.

6840-9. Vacancy in office of engineer—New engineer—Appointment, oath and bond—If the engineer appointed by the board or court fails to qualify, or at any time resigns, dies or becomes disabled during the progress of the work, the board or court, as the case may be, that originally appointed him shall forthwith appoint another civil engineer having the qualifications required by this chapter in place and stead of the engineer first appointed, who shall give the bond and take the oath required by this chapter and shall do all things remaining to be done by the original appointee under the requirements of this chapter. ('25, c. 415, § 9)

6840-10. Final survey and report by engineer—Monuments and marks to be set—Field book and plats—Open ditches—Improvements of water courses—Tile drains—Estimates of costs—Plans for structures, etc.—Variances from lines described in petition—Survey and recommendation of branches—Laterals—Location along highways—Laying out of lines—Upon the filing of the order named in Section 8, such engineer shall forthwith make a correct survey of the line of said drainage improvement petitioned for and approved by order of the board or court at the preliminary hearing, and of the branches thereof, if any, from its source or sources, to its outlet or outlets; and he shall cause stakes or monuments to be set along said line numbered progressively up or down stream, each one hundred feet; and shall fix and establish bench marks upon

permanent objects not more than one mile apart along each line surveyed so that the same will not be destroyed in constructing the system, and carefully note the location in his field book and upon the plats contained in his report. In case of an open ditch or an improvement of a creek or water course, he shall, in tabular form, give the depth of the cut, the width at the top and the width at the bottom at each one hundred foot stake or monument, the number of cubic yards of material to be excavated from said ditch, creek or water course, the estimated price per cubic yard and the estimated total cost of the work in each one hundred foot section. In the case of tile drain construction he shall, in tabular form, show the depth to which the tile shall be laid at each one hundred foot stake or monument, and shall give the kind, size and estimated cost of tile; the estimated cost of hauling, trenching, laying and backfilling and the total cost of said tile drain for each one hundred foot section. Said engineer shall make estimate of the costs of the removal of obstructions in water courses, building of flumes, culverts, bulkheads, intakes, clearing and grubbing and of all items of construction and work, temporary and permanent, found necessary for the completion of the entire drainage system. He shall, in tabular form and by suitable classification recapitulate and give the total estimated number of cubic yards of excavation and the unit and total estimated cost thereof for the entire drainage system; the kind and total number of lineal feet of each size of tile and the unit and total estimated cost thereof; the total estimated cost of hauling, trenching, laying and backfilling of all of the tile drains. He shall supply all detailed plans for all needed structures and report the unit costs and total estimated costs of flumes, culverts, bulkheads, intakes, fences, dikes, dams, controlling works including power appliances and pumping machinery when necessary, and all other items necessary for the completion of the drainage system; all preliminary and other expenses incurred, including the estimated cost of supervising construction, inspecting and certifying to the work until the same is fully completed, and an estimated grand total cost of the whole drainage system up to and including its completion. Whenever a more economical construction will result or the interest of the land owners may be better served thereby, the engineer may sub-divide the work into sections and shall designate in his specifications the time, so far as practicable and the manner in which the whole work or any section of the work shall be done.

In locating a public drainage system, whether the same be open or tiled or following the course of a drain, creek or water course or the branches of such system, the engineer may vary from the line described in the petition as finally adopted by the board or court at the preliminary hearing or from the starting point thereof and as he finds necessary for the complete 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 to give owners of lands likely to be assessed for the construction of the drainage system as finally approved by the court or board, the full benefit thereof, and he shall do the same things and report the same data, tabulations and estimates with reference to said branches as are required by this act with reference to the public drainage system described in the petition as ordered at the preliminary hearing. Provided all laterals recom-

mended by the engineer may be established as provided in Section 6 of this act and the time and manner of their construction may be fixed by the court or board. In all cases in which the route proposed is along high-ways already established the engineer shall locate the improvement, if an open ditch at sufficient distance from the center of such highway to admit of a good road along the center line thereof. That earth taken from the ditch shall be so placed, and the brush or timber taken from the right-of-way of such ditch may be so used upon the roadway as to form a turnpike which shall be provided with sufficient and suitable culverts or openings so as not to obstruct the natural flow of surface water and no nearer to the margin thereof than two feet. When there is not sufficient fall in the drainage system described in the petition, as adopted at the preliminary hearing to drain the land adjacent thereto or when for other reason it appears expedient, he may shorten or extend the ditch from the outlet named in the petition, far enough to reasonably effectuate the purpose for which the work was intended. When, it will not be detrimental to the usefulness of the whole work or of any extensive section thereof, he shall as far as practicable, locate the ditch on division lines between the lands owned by different persons, and he shall as far as practicable avoid laying the same diagonally across land, but he shall not sacrifice the general utility of the ditch to avoid diagonal lines. ('25, c. 415, § 10)

Explanatory note—For sections 6 and 8, see §§ 6840-6, 6840-8, herein.

6840-11. Outlets—Engineer may provide for— Where better results will be accomplished, and a more desirable outlet secured, the engineer 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 embrace the drainage area to be affected by the petition instituting the proceedings. Where no practical outlet can be had but through the lands of an adjoining state the engineer may procure a description of the necessary right-of-way and probable cost thereof and estimate the cost of constructing an outlet and include the same in his report. Provided, any changes or branches recommended by the engineer be established only as provided in Section 6 of this Act. ('25, c. 415, § 11)

Explanatory note—For section 6, see § 6840-6, herein.

6840-12. Field books and maps of engineer—Plans and specifications—Approval or modification by commissioner of drainage and waters—Copies of reports filed—Originals filed—The engineer shall enter all field notes made during the survey and period of construction in a field book properly ruled, and make a complete and accurate map and profile of the drainage system as surveyed by him, upon good tracing cloth; such map shall be drawn to a scale, show the number of section, township and range in which the lands affected are situated, also each station number in figures, location of bench marks, the public streets, highways and railroad right-of-ways affected, the name of the county, township and municipality in which such lands or any part thereof are situated, and all other matters necessary to the understanding of the board or court. The profile shall be drawn on a scale, show the elevation, grade, depth of cut, size of tile, and the elevation in figures of each branch and lateral at its sources, outlet, and at each one hundred foot stake. He shall make a complete set of plans and specifications covering all the work and construction ordered by the board or court,

and make a full, detailed and complete report of his work and recommendations to the board or court and shall include all maps, profiles, specifications and matters herein provided for and file the same with the county auditor or clerk of the district court, where the proceedings are pending. All plans, specifications, maps and profiles herein required shall be made in triplicate and shall be filed with the auditor or clerk where the proceedings are pending, and within 5 days from the filing of such report and before further proceedings are had thereon, one of the copies of said report shall be forwarded by said auditor or clerk to the commissioner of drainage and waters who, within the next 15 days shall examine and approve the same as presented and shall file with the auditor or clerk his approval thereof, or if he does not approve he shall file instead his recommendation for such modifications thereon as he may deem necessary, provided, that if for any reason the said commissioner of drainage and waters finds it impossible or impracticable to complete examination and report on an engineer's report within the time limited herein, said commissioner may make application to the said auditor or clerk for an extension of time, and the said auditor or clerk shall have authority to grant such extension. Upon the filing of the approval or recommendations of the commissioner of drainage and waters with the auditor or clerk, said auditor or clerk shall make an order designating the time and place for the first meeting of the viewers as provided in Section 16 of this Act after which all further proceedings shall be had as provided in this Act. One copy of said engineer's report as originally filed with the auditor or clerk or as modified by the board or court at the final hearing shall be retained by said auditor or clerk, and one copy with a copy of the contract attached shall be delivered to the contractor at his request at any time after the execution of the contract. It shall further be the duty of the engineer, when the work of construction is completed, or when for any cause the engineer ceases to longer act as such, to cause all original plats, profiles and field books to be filed in the office of the county auditor or clerk of the district court where such proceedings are pending, and the said county auditor or county auditors, are hereby forbidden to draw an order making final settlement with the engineer until proper proof has been supplied that the requirements of this section have been complied with by the engineer. ('25, c. 415, § 12)

Explanatory note—For section 16, see § 6840-16, herein.

6840-13. Contract to be provided for in engineer's report—It shall be the duty of the engineer to include in his report a form of contract as complete in its provisions as practicable, which shall contain detailed and complete specifications, by direct statement or by reference to other parts of the report, and shall provide for all necessary supervision of the laying of tile, excavation and other construction work of the contractor, or contractors, and define the relation that shall exist between the county or counties and the contractor or contractors, and shall give the engineer the right with the consent of the county board or district court, as the case may be, to modify his reports, plans and specifications as the work proceeds and as circumstances may require, provided no changes shall be made that will substantially impair the usefulness of any part of the drainage system or structures, or substantially alter its original character or increase its total cost by more than ten per cent of the total original contract price for the construction thereof,

but no change shall be made that will cause the cost of the system or work to exceed the total estimated benefits as found by the court or board, provided the increased cost resulting from such changes will be paid by the county to the contractor at not to exceed the price fixed for like work in said contract. The county attorney upon request of the engineer shall assist in the preparation of the specifications and the formal provisions of said contract. ('25, c. 415, § 13)

6840-14. Report by engineer of expenses and progress of work up to letting of contract—Limitation on amount of expenses.—It shall be the duty of the engineer 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, to make an accurate report of all expenses incurred by him, or under his direction, in connection with such drainage project, and include in such report the names of assistants and laborers, and the time each was employed by him, together with his own time and every other item of expense by him incurred in and about said work, and shall forthwith file such report with the county auditor or clerk of the district court where the proceedings are pending, and in no case shall he incur in any manner any greater expense on account of such project than the amount of the bond provided by the petitioners. It shall further be the duty of the engineer to inspect all work during the period of construction in all drainage proceedings, and in all such cases he shall make a prompt, full and detailed report of the progress of the work and include therein a description of the nature, extent and value of the work completed and material furnished. ('25, c. 415, § 14)

6840-15. Supervision and inspection by county board and district court of construction work under contract.—It shall be the duty of the county board of the several counties in this state in case of county drainage construction, and of the judges of the district court in case of judicial drainage construction, to provide for proper supervision and inspection of all construction work included in any contract, and to cause all contracts entered into under the provisions of this act to be carried into effect, and to cause all ditches, drains or other structures included in the contract to be constructed according to the terms of such contract and in compliance with the plans and specifications of the engineer, and the said county board or district court shall require strict and accurate inspection by the engineer in charge. But in all cases the parties in charge of such inspection work shall be under bond to the county or counties affected, conditioned for the faithful and efficient performance of their duties as such inspectors. ('25, c. 415, § 15)

6840-16. Viewers—Appointment—Time and place of first meeting.—As soon as conveniently can be done following the appointment of the engineer, the county board, in case of a county drainage proceeding or the district court in the case of judicial drainage proceedings, shall make an order appointing three resident freeholders of the county, or counties, not interested in the construction of the proposed work and not of kin to any of the parties known to be interested therein, as viewers, to meet at the time and place to be specified by the county auditor or clerk of the district court as hereinafter provided, preparatory to commencing their duties as hereinafter specified. It shall be the duty of the county auditor in the case of county drainage proceedings or the clerk of the district court in the case of judicial proceedings, within five (5) days after the filing of the report of the commissioner

of drainage and waters approving or recommending modifications of engineer's report, to make an order designating the time and place of the first meeting of the viewers, and it shall further be the duty of the county auditor or clerk of the district court within five (5) days after the filing of the approval or recommendation of the said commissioner of drainage and waters on the said engineer's report to issue to said viewers, if then appointed, a certified copy of the petition, the order appointing them and of the order designating the time and place of their first meeting; Provided, that if the said viewers have not been appointed at the time of the filing of the approval or recommendation of the said commissioner of drainage and waters on the said engineer's report, it shall be the duty of said auditor or clerk, within 5 days of the date of the order appointing said viewers, to make his order fixing the time and place of the first meeting of said viewers, as provided in this section. In case any of the viewers so appointed shall fail for any cause to qualify in time for the first meeting, the county auditor, in case of county drainage proceedings and the clerk of the district court in case of judicial proceedings, shall designate some other person having the qualifications above stated to take his place. ('25, c. 415, § 16)

6840-17. Same—Oath—Statements and reports—Majority may act.—The viewers after taking the oath to faithfully perform their duties, shall proceed at the time set in said order, with or without said civil engineer, and shall prepare a tabular statement showing as far as practicable the description of each tract of land benefited or damaged; with the name of the owners as the same appear on the last county tax duplicate of said county, the total number of acres in each said tracts of land benefited or damaged, as the case may be, the number of acres added to any tract by the total or partial drainage of any meandered lake, or by the change of any water course, and the location and value of such added land; the damage, if any, to riparian rights pertaining to any tract; and the amount that each tract of land will be benefited or damaged by the construction of said work; when any drainage system established under this act drains in whole or in part any public or corporate road or railroad, or benefits any such road or railroad, so that the roadbed or traveled track of any such road or railroad, will be made better by the construction of such system, the viewers shall estimate the benefits arising therefrom to such road, roadbeds or railroads, and report said benefits, giving the names of such roads or railroads, and other particulars necessary to identify the corporations, private or public, that will be benefited thereby, and the amount of benefits to each, as a part of their tabular statement provided for in this section; and the viewers shall also report as a part of such tabular statement the benefits that will result to villages or cities by way of increased drainage facilities or improvements to public health and also the damages awarded to each municipal or other corporation, and to each person, persons, or associations of persons, telephone or telegraph line or other personal property, and from the necessary construction and maintenance of any bridges, culverts or other works rendered necessary by the establishment of such drainage improvement, stating the same separately; and they shall also report the total estimated benefits in respect to the entire system and branches, if any, and also whether or not, the estimated expense of the construction of such improvement, including the

damages awarded therefor, are greater than the utility of the proposed drainage system, or that the construction of such system is impracticable for any reason, stating the reason why it should not be constructed.

In case the viewers are unable to agree, each viewer shall state separately in his report his findings on the matters disagreed upon.

A majority of the viewers shall be competent to perform the duties required of them by this act. ('25, c. 415, § 17)

6840-18. Procedure where old private ditch is used for public ditch—Whenever a public ditch is located wholly or in part in the bed of a private ditch already or partially constructed, the engineer shall make an estimate of the number of cubic yards of earth already excavated on each tract of land, the amount of the reduction in the cost of constructing the portions of the ditch on each tract of land by reason of such private drain having been constructed, and the viewers shall deduct such amount from their estimate of benefits, if any, against such tract of land, making an appropriate notation thereof on their report. ('25, c. 415, § 18)

6840-19. Railroad and corporation lands liable for benefits—All lands owned by any railroad or other corporation, benefited by any such drainage system, drain or water course, shall be liable for such benefits the same as taxable lands. ('25, c. 415, § 19)

6840-20. State and municipalities liable for benefits—Property benefitted—Public highways—Amount and assessment of benefits—Installments—Tax levy on delinquency—Assessments against railroads—Lien of assessments—Foreclosure—The State of Minnesota, all counties, cities, villages, boroughs and towns or other municipalities and all railroads, receiving any benefits from the construction of any drainage improvement under the provisions of this act shall be assessable therefor for any improvement to any public roads, street or other property including trunk highway or any street or other property owner by or of which the state or any such municipality has the charge and control, and every railroad receiving any benefits from the construction of any drainage system to its road bed, right-of-way or other property used for railroad purposes shall be assessable for such benefits, and in the case of villages or cities they shall also be assessable for any benefits derived from the construction of such drainage improvement by way of furnishing an outlet for drainage of surface waters from within or in the vicinity of such city or village and for the removal of unhealthful conditions in such vicinity by the drainage of stagnant waters from within or in the vicinity of such city or village, or for the furnishing of any other drainage or sewer outlet that may result in any benefit to or improvement of the healthful condition of said city or village, and it shall be the duty of the viewers appointed under the provisions of this act to assess such benefits to such railroads, the state and such municipalities. Whenever any public road or street shall be found to be so benefited, the state, county, city, village, town or borough which is by law chargeable with the duty of keeping such road or street in repair shall be assessed the amount of such benefits accruing to such road or street, and all benefits that shall result to any such village or city in consequence of being furnished an outlet for drainage of any kind or improvement of the healthful condition of said city or village as hereinafter specified, shall also be assessed against such village or city, by reason of the construction of such an improvement and

the same, being fixed and determined by order of the board or court at any final hearing, or in the case of appeal at any subsequent hearing before the court, the amount of the liability of any such municipality for such assessed benefits shall be determined in the manner provided in section 44 of this act, and the amount thus ascertained shall thereupon become a liability of such city, village, town or municipality and shall be due and payable in ten annual installments beginning on the first day of June next following the date or entry of the lien against private individuals as herein provided, and in the case of city, village or towns, if such installments are not paid within thirty days after maturity the amount thereof shall be extended by the county auditor against all the property in such city, village or town liable to taxation, and 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. In the event that for any reason an additional lien statement shall be filed in any drainage improvement the same method shall be pursued to ascertain the actual liability of the state and each municipality or other party, and additional lien statement made and filed with reference to municipalities the same as in the case of lands or individuals. Provided; when any public road found to be benefited is a county or state aid road, as defined by the laws of this state, the benefits accruing thereto shall be assessed against the county and the amount thereof shall be charged to and paid out of the general road and bridge fund of said county, and 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, and it shall be the duty of the commissioner of highways upon presentation of a certified copy of the assessment against the state for such improvement to any trunk highway to settle therefor by drawing an order upon the state-treasurer payable out of the trunk highway fund. Whenever the lands of any railroad company shall be determined in any such proceeding to be benefited by any such improvement said lands shall be assessed their just proportion of the benefits as other lands are assessed, and such assessments shall be collected in the same manner as in the case of other lands.

Whenever any road bed, right-of-way or other property used by a railroad company for railroad purposes shall be determined in such proceedings to be benefited by any such drainage system such railroad company shall be assessed its just proportion of such benefits as in the case of other lands assessed, which assessment shall be collected from such railroad company in the same manner as personal taxes are collected by law. 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 such assessment, with interest, shall constitute a lien against all property of such railroad company within such county. Such lien may be foreclosed by action in the same manner as provided by law for the foreclosure of mortgage liens, and the county or counties where such proceedings are pending shall have a right of action against any such railroad company or the enforcement of such assessment and the collection of the amount thereof. ('25, c. 415, § 20)

Explanatory note—For section 44, see § 6840-44, herein.

6840-21. Assessment of benefits limited to accrued benefits—The amount that any tract of land, public or corporate road or railroad shall be liable for on ac-

count of the location, construction and establishment of any drainage system or systems under the provisions of this chapter, or on account of the repair thereof, shall in no event exceed the benefits which will accrue thereto as determined in the proceedings for such location, construction and establishment or repair. ('25, c. 415, § 21)

6840-22. Bridges across drainage systems on boundaries between towns—Costs and damages apportioned between towns—In all cases where a public drainage system has been or shall hereinafter be constructed wholly or partly along a boundary line between towns or in such manner as to cross such boundary line, the cost of construction and maintenance of bridges heretofore or hereafter constructed across any such drainage system on said boundary line shall be paid for and born equally by the towns abutting upon said boundary lines; and all damages awarded shall be divided equally between said towns. ('25, c. 415, § 22)

6840-23. Bridges and culverts—Notice to construct given by county auditor or clerk of district court—Failure to construct—Construction by county board or district court—Deduction of cost from damages allowed—Collection of cost as for benefits assessed—The county auditor, or clerk of the district court wherein the proceeding is pending, shall notify each municipality, railroad company or other corporations to construct any bridge or culvert across or upon its road or right-of-way within a reasonable time named in such notice. If any such work is not done within the time limited, the county board or district court may order the same built as a part of the construction of the system, and the cost thereof shall be deducted from the damages allowed such corporation, or collected from it as in case of an assessment for benefits, and in all cases where the report of the engineer or viewers show the necessity for the construction of such bridge, the board or court may order sufficient retained from any sum due such municipality, railroad or other corporation to secure the construction of such bridge or culvert. ('25, c. 415, § 23)

6840-24. All benefitted lands, etc., to be assessed—All lands, public or corporate roads, or railroads, including town, county, state aid, and trunk highways, and all villages and cities, in any manner benefited, in whole or in part, by the construction of any public drainage system under the provisions of this act shall be assessable for the costs of the construction thereof, including the costs and expenses connected with such proceeding in proportion to the benefits received, whether such benefits result directly from the construction of said system or some part thereof, or as the same affords an outlet for drainage or prevents the overflow or otherwise directly benefits such land, roads, railroads, villages or cities, provided, that in all cases where land is assessed for an outlet and the lateral connecting the same with the main ditch or branch thereof is not constructed at the time of constructing the system, such land shall be assessed only for the estimated benefits less the estimated cost of connecting the same with said system or some part thereof. Provided, further that in any cases where drainage by pumping outlet is established, the board or court shall have authority when necessary to provide for maintenance of the pumping system by annual assessment upon the property benefited.

All lands owned by the state of Minnesota or any department thereof benefited by such drainage system or any branch thereof shall be assessable for such ben-

efit, the same as taxable land, and trunk highways, the same as town, county and state aid roads, provided that in all cases a notice of final hearing on the petition, engineer's and viewers' reports shall in case of assessment of state lands be served upon the state auditor and the commissioner of drainage and waters; and in case of assessment of trunk highways, be served on the commissioner of highways as in the case of individual land owners. ('25, c. 415, § 24)

6840-25. Viewers' report to be filed—Said viewers shall upon the completion of their work file with county auditor, in case of a county drainage proceeding or with the clerk of the district court in the case of a judicial proceeding, a report of all their doings and findings in detail, including expenses and actual time they were engaged. They shall in every case completely perform the several duties by this act imposed upon them, at the earliest date possible following their first meeting. ('25, c. 415, § 25)

6840-26. Final hearing on petition, engineer's and viewers' report—Notice of—Contents—Publication and service—Copies for certain state officers and persons affected—Correctional notices—Within three days after the filing of the report of the viewers it shall be the duty of the county auditor in county drainage proceedings to fix a date for hearing on the petition and engineer's and viewers' reports in said proceedings, said date shall not be less than thirty-five nor more than fifty days from the date of notice, and give to the several members of the county board the usual notice of calling a special meeting for that date in the manner provided by law, and in the case of judicial proceedings it shall be the duty of the clerk of the district court where such proceedings are pending, with the approval of the judge, to fix a time and place for hearing on the petition and engineer's and viewers' reports. It shall further be the duty of said auditor or said clerk where such proceedings are pending to cause notice of the time and place of such hearing to be given, to all persons interested by publication of such notice for three successive weeks prior to date of hearing in a newspaper printed and published in each county affected. Provided, that in the case of judicial proceedings extending into two or more counties, it shall not be necessary to publish in any county the description of any real estate or the names or description of any roads, railroads or municipal corporations, except such as are located in said county. Printed copies of such notices, so printed for the respective counties, shall be posted at least three weeks before such date of hearing in three public places in each township in each respective county where such work is located, and one at the front door of the court house in each respective county. Said notice shall briefly state the pendency of said petition and shall state that the engineer's and viewers' reports have been made and filed with said county auditor or the clerk of the district court where such proceedings are pending, and shall state the time and place set for such hearing. Said notice shall contain a brief description of the proposed drainage system, giving in general terms the starting point of the main ditch and branches, the general course of each and terminus, and shall designate the governmental sections of land over which such system or branches or any part thereof is surveyed, as the same is shown by the report of the engineer, and shall give the names of the owners of land and the municipal and other corporations af-

fectured thereby, as shown by the engineer's and viewers reports.

Within one week after the beginning of such publication the county auditor in the case of a county drainage proceeding or the clerk of the district court in case of judicial proceedings shall mail a printed copy of said notice to the commissioner of drainage and waters, state auditor, game and fish commissioner, state forester and to all persons and corporations who are the owners of land or are otherwise affected by said proposed drainage system as shown by the engineer's and viewers' reports, whose address is known to such county auditor in the case of a county drainage proceeding or the clerk of the district court in a judicial proceeding, or can be ascertained respectively by said auditor or clerk by inquiry at the county treasurer's office of the county wherein such lands, roads or railroads or municipal corporations are situated. Provided that in all judicial proceedings extending into two or more counties, it shall be the duty of the clerk to mail to all persons and corporations who are the owners of lands, roads or railroads, or otherwise affected by said proceedings, not less than ten days before the date of hearing, copies of the notice printed in their respective counties. Provided, further, that in all cases in which for any cause said notice shall not be given or shall be legally defective, the county auditor or clerk of the district court, as the case may be, shall cause the same to again be given so that the petition, engineer's and viewers' reports and final hearing thereon may be heard at another meeting or session of said county board or district court which will occur more than seven days after the expiration of another notice by the publication, posting and mailing as provided in the first instance.

Provided, further, if it shall appear at the date of said hearing before the county board or district court that said notice has been properly made, published, posted and served, as to a part of the lands, roads, railroads and corporations, public or private, named in the engineer's and viewers' reports, but was legally defective, either as to publication, posting or service as to other lands, roads, railroads or corporations, or that said notice was properly made, published, served and mailed but through error certain descriptions of lands, roads, railroads or corporations, public or private, were omitted from such notice or defectively described, then or in either case said county board or district court where said proceedings are pending may adjourn or continue said hearing and order notice to be given as required in the first instance, describing such lands, roads, railroads or corporations, public or private, omitted from the first notice or with reference to which the first notice was in any manner defective, either as to form and contents or as to publication, posting or service, and in that event, the jurisdiction of said board or court shall continue as to all lands, roads, railroads or corporations, public or private, with reference to which proper notice was given, published and served, and in case of judicial proceedings, if it shall appear that proper notice was given, published, posted and mailed only as to lands, roads, railroads or corporations, public or private, within one county but defective as to one or more counties, then the proceedings may be adjourned as herein provided, but it shall not be necessary to publish, post or mail said notice except in the county or counties with reference to which notice or publication, posting or mailing was defective.

Provided, further, that in all cases where service of

notice is required by this section to be given by publication, posting and mailing, or otherwise, a personal service of the printed notice in the manner provided for the service of a summons in district court, not less than ten days prior to the date of hearing, the same shall be considered as equivalent to and as in lieu of all other service, and in any case where a party has received a copy of the notice required to be served not less than ten days prior to the date of the hearing, such party shall not be permitted to object because some other manner of service has not been made as provided by this act; and provided, further, that in all cases where an adjournment of the hearing is had because of defective notice or service, the board or court may order personal service upon such parties with reference to whom a previous notice or service was defective, and if personal service is made not less than ten days prior to the date of the adjourned hearing, the same shall be treated as sufficient and as in lieu of all other manner of service required by this act. ('25, c. 415, § 26)

6840-27. Same—Jurisdiction acquired by service of notice of hearing—Upon due publication, posting and mailing of the notice provided for in section 26 of this act, the county board in the case of county drainage proceedings and the district court in the case of judicial proceedings, shall have jurisdiction of each tract of land, all public highways, railroads and all other property in said engineer's and viewers' reports described, including any land added by the drainage of any meandered lake or the change of any water course and of each tract of land described in said notice, and of each tract of land owned by any of the persons or private corporations and of each municipal corporation whose name appears in said notice, that is affected by the proposed drainage system or laterals and all persons and corporations, municipal and otherwise that are named in said notice, and all persons or corporations having or owning any interest whatever in any mortgage, lien or incumbrance against any of the tracts of land or other property heretofore in this paragraph referred to or named or referred to in the engineer's and viewers' reports. ('25, c. 415, § 27)

Explanatory note—For section 26, see § 6840-26, herein.

6840-28. Same—Procedure on hearing—Amendment or correction of engineer's and viewers' proceedings—Adjournments—At the time and place specified in the notice or at any adjournment thereof, the county board in case of a county drainage proceeding, or the judge of the district court in case of a judicial proceeding shall proceed to consider the petition for such drainage system together with all matters pertaining to the engineer's and viewers' reports therein, and consider the testimony presented in behalf of all parties interested. At such final hearing the engineer, or his deputy assistant, and at least two viewers shall be present. Such hearing may be continued or adjourned from time to time as shall be found necessary by said board or court.

If at such final hearing it shall appear to the satisfaction of such board or district court from the evidence presented, and from the engineer's and viewers' reports filed, that the general plan of said proposed system as surveyed and reported by such engineer may be improved by the addition of other branches connecting therewith or by a change in the course or dimensions of either the main ditch or any branches or by the elimination of one or more of such branches, or if it shall appear to said board or court at such hearing that the viewers have made unequal or im-

proper assessments affecting any of the property or corporations public or private assessed, or have awarded benefits in an unequal or improper proportion to any such property or corporations, then and in such case the said county board or district court where the proceeding is pending, shall have authority to forthwith amend or correct said viewer's or engineer's reports, or both as the case may be, or to make findings in relation thereto, or to either of the same as shall be deemed necessary from such evidence or such reports, and shall have authority if deemed advisable to resubmit such matters to the engineer or to such viewers for immediate consideration, and shall have authority to order such viewers or engineer, or either of the same, to proceed forthwith and summarily consider said matter and make such change in such proposed drainage system or in the location, course, number of dimensions of the branches thereof, or in relation to the amount of the benefits or damages, or both, respectively awarded, or in relation to the course or dimensions of such main ditch or branches, or either or all of the same as shall appear to such viewers or such engineer to be just, reasonable, necessary and as shall appear to be required by such evidence, and thereupon such viewers or such engineer, as the case may be, shall forthwith proceed to reconsider such matters, at such final hearing, or shall within such time thereafter as shall be fixed or determined by such board or court, as the case may be, and make and file amended findings and report accordingly. Such amended reports shall thereupon be and become a part of such original report, the same as if originally filed therewith. At such final hearing and after such amendment or amendments are made to such report, the county board or district court may further hear and consider all evidence offered and admissible concerning such report or reports as amended, and may determine accordingly.

If the county board or district court, where such proceedings are pending, from the evidence shall consider it necessary or advisable for the engineer or viewers or both to re-examine the course of said proposed system or the lands to be benefited or damaged thereby, or if other lands not included in the notice given it is found should be included and assessed, then in that case or either of them, the said county board or district court shall have authority to re-submit said reports to said engineer or viewers or both thereof as circumstances may require and order such re-examination and continue said hearing for such time as may be necessary to make such examination and report, and in such case said viewers and the said engineer shall proceed to re-examine the course of said ditch and the lands affected thereby and shall within thirty days after such re-submission file with the county auditor or clerk of the district court, where said proceedings are pending, their amended report. Provided, that in the event said amended report shall include lands, roads, railroads or corporations not included in the original report, or that it shall appear at such hearing that notice of said hearing as theretofore published and served was defective or that such notice was improperly published, posted, mailed or served, or any of the lands, roads, railroads or corporations were improperly or erroneously described therein or were omitted from the original notice, or in case of a judicial proceeding that the notice or the publication, posting or service thereof was defective as to one or more counties but properly served as to others, then or in any such case, the board or court where such pro-

ceedings are pending may, by order, adjourn or continue said hearing for such time as may be necessary and direct the county auditor, in case of county proceedings or the clerk of the district court in case of judicial proceedings to cause to be given, published, posted, mailed and served as required by this act a proper notice with reference to all such lands, roads, railroads or corporations not included in the previous notice or with reference to which the notice was in any manner defective or deficiently served, and in any such case the jurisdiction of the county board or district court where such proceedings are pending shall continue in all respects as to all lands, roads, railroads or corporations, public or private, for which proper notices were published, posted and served for the first hearing, and no new or additional notice shall be required with reference thereto, and all proceedings may be had at said adjourned hearing as in the case of the first hearing and the jurisdiction of said court or board where said proceedings are pending shall extend to and include all property, parties and corporations included in said notice. ('25, c. 415, § 28)

6840-29. Same—Order for improvement by county board or district court—Procedure where corrections are to be made—If at any such hearing or any adjournment thereof such county board or district court where said proceedings are pending shall from the reports filed and the evidence produced before them find that the engineer's report and the viewers' reports have been made and all other proceedings in the matter have been had and taken in accordance with the provisions of this act, and that the estimated benefits to be derived from the construction of said improvement are greater than the total costs including damages awarded, and such damages and benefits have been duly awarded and assessed, and that said improvement will be of public utility and benefit or will promote the public health and that such reports are complete, just and correct, then such county board or the district court shall by order containing such findings establish such drainage improvement as specified in the original report or if amended as specified in the amended report of the civil engineer, and shall by such order establish, adopt, and confirm the original report, or if amended, then the amended viewers report. In case a majority of the viewers have not agreed or shall not agree in their findings, the county or board or the district court, shall determine the proper findings and amend and adopt or confirm the viewers' report accordingly.

Provided that in all cases where a public drainage system has been regularly established by order of a county board or a district court or a judge thereof, pursuant to the provisions of any drainage law of this state, and where in any such proceedings the report of the viewers has been approved by the county board or district court, as the case may be, and it shall thereafter appear to the county auditor that the report of the viewers as so approved is erroneous, in that the descriptions of the property to be assessed for benefits as set forth in such report do not conform to the descriptions thereof as the same appear on the tax duplicates of the county in which the land is located, it shall thereupon be the duty of the county auditor in the case of county drainage proceedings, and of the county auditors in the case of judicial drainage proceedings, to petition the county board or district court setting forth in said petition the correct descriptions together with any necessary explanation and asking

for an order fixing a time and place for hearing to correct the viewers' report in the particulars in said petition set forth.

On the filing of such petition by the county auditor, the county board or district court, as the case may be, shall, by order, fix a time and place for such hearing, which shall be not less than twenty nor more than sixty days from the date of such order, and it shall thereupon, within ten days from the date of said order, be the duty of said county auditor or said clerk of the district court to cause a copy of said order, giving the time and place of hearing before said board or court, to be served by mail upon the engineer and attorney for the petitioners and all parties and corporations whose property is assessed for benefits in said proceedings.

At the time and place specified in said order or notice said county board or district court where said proceedings are pending shall attend and hear all parties interested for or against the granting of said petition, and if at said hearing it shall appear to the satisfaction of said board or court from the evidence presented that an error was made in the first report filed, and that the descriptions of the property benefited, as set forth therein, do not conform to the descriptions thereof as the same appear on the tax duplicates of said county, then and in such case the said board shall have authority to forthwith amend or correct said viewers' report in the particulars above set forth, or to make findings in relation thereto as shall be deemed necessary from such evidence or such report, and shall have authority if deemed advisable to resubmit the matters under consideration to the viewers for immediate consideration, and shall have authority to order such viewers to proceed forthwith and summarily consider said matters, and make such changes in said report as shall be necessary in the premises, and thereupon such viewers shall forthwith proceed to reconsider such matters and at such time thereafter as shall be fixed or determined by such board or court, as the case may be, at the time of said hearing, make and file their amended report. Such amended report shall thereupon be and become a part of such original report the same as if originally filed therewith. At the time fixed for the resubmission of said report to the county board or court, and after such amendment or amendments are made to such report, the county board or district court may hear and consider all evidence offered and admissible concerning such report or reports as amended and may determine accordingly. ('25, c. 415, § 29; amended '27, c. 324)

6840-30. Certified copy of viewers' report filed—Determination and apportionment of expenses and costs—Modification of order—In all proceedings pending in the district court it shall be the duty of the clerk, within twenty (20) days following the date of the order directing the construction of the drainage improvements, to make a certified copy of the viewers' report and file the same in the office of the county auditor of each county affected by said proceedings, and it shall be the duty of the court at the time of making the order directing the construction of the drainage improvement or at any time thereafter upon five days' notice in writing to the county auditor of each county affected to apportion and determine the items of expense and the proportion of the cost of the construction of the drainage system to be paid by the respective counties, which unless reason exists to the contrary shall be in proportion to the benefits received,

and upon similar notice to said county auditors, the district court or a judge thereof may at any time modify such order or orders as justice may require, or make any additional order in the premises. ('25, c. 415, § 30)

6840-31. Damages awarded to be paid out of general ditch fund on county treasury—Warrants—Issue—Board of claimants—When damages are awarded to any person or persons as the owner of any property affected, or to corporations, either public or private, and the same shall have been duly confirmed, the county board of each county in which any of the land affected for which such damages are awarded is located, shall before entering upon such lands for the construction of said improvement order the same paid less any benefits assessed against the property of any such person out of the general ditch fund if funds are there available, if not out of the treasury of such county on warrants to be drawn and attested by the auditor and signed by the chairman of the board. Such warrants may be issued after the letting of the contract of construction for such improvement. In case of appeal or in case of any postponement or delay in determining the amount of damages due to any person or corporation, the warrants in favor of such person or corporation shall not be issued until the final determination thereof. When the award is confirmed by the court, it shall be the duty of the clerk to immediately transmit to the county auditor of each county affected thereby a certified copy thereof, and likewise any final order or judgment thereafter made in case of any appeal or jury trial; and thereupon the same duty shall devolve upon each county board and auditor as hereinbefore provided. If in any case there shall be doubt as to who is entitled to the damages such board may require of the claimant a bond with good and sufficient sureties to hold the county harmless from all loss, costs, and expense in case any person should thereafter claim and show himself entitled to any part of such damages. ('25, c. 415, § 31)

6840-32. Appeals from order of county board or district court—When allowed—Order and notice of appeal—Bond—Trial of issues raised—Jury trial—Costs—Verdict or order—Any person or corporation aggrieved thereby may appeal to the district court from an order of the county board or district court made in any proceeding and entered upon its record determining either of the following matters:

First: The amount of benefits assessed against any tract of land or any road, railroad or corporation.

Second: The amount of damages allowed to any land, person, or corporation.

Third: An order refusing to establish the improvement. Any party appealing from an order of the county board refusing to establish the improvement petitioned for may appeal to the district court and all appeals taken from an order of the district court refusing to establish the improvement may be taken to the supreme court in the manner provided in civil action.

Any person so appealing on the first or second ground may include and have considered and determined benefits or damages affecting land other than his own in such drainage proceedings, but in all such cases he shall specify in his order of appeal the particular land, road or railroad and the assessment appealed from, and such notice of appeal shall be served upon the owner or occupant of such land, road or railroad, or upon the attorney who represents such owner in the proceedings before the court or board. In case

such owner has made no appearance by attorney or otherwise in such drainage proceedings then the said notice of appeal shall be served upon the clerk of the district court or county auditor where such proceedings are pending. To render such appeal effectual such appellant shall file with the county auditor in county drainage proceedings or with the clerk of the district court in judicial proceedings within thirty days of the date of such final order a notice of appeal which shall briefly state the grounds upon which such appeal is taken and in all cases of appeal from an order of the district court or the county board said appellant shall include in his notice a demand for a jury trial, which notice shall be accompanied by an appeal bond to the county board where such property or public roads or railroads are located with sufficient surety of not less than two hundred and fifty (\$250.00) dollars, to be approved in case of a county drainage proceeding by the county auditor and in case of a judicial proceeding by the clerk of the district court where such proceedings are pending, conditioned that said appellant will duly prosecute the appeal and pay all costs and disbursements that may be adjudged against him and to abide the order of the court. Within thirty 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 bond of appeal.

The issues raised by such appeal shall stand for trial and shall be fully tried and determined at the next term of the district court, held within the county in which such proceedings were commenced or in such other county in which such appeal shall be heard as hereinafter provided, beginning after the filing of such appeal and shall take precedence of all other matters of a civil nature in said court. If there be more than one appeal on the question of benefits or damages triable in one county the court may of its own motion or upon the motion of the party in interest consolidate two or more such appeals and try them together, but the right of such appellants shall be separately determined. If the appellant fails to recover more damages than awarded to him or fails to reduce the amount of benefits assessed against his land, then the cost of such trial shall be paid by the appellant. In case of demand for a jury trial as to assessment of damages or benefits to lands situated in a county other than the county where such drainage proceedings are pending, and in case such appellant for a jury trial so requests, in such appeal, such trial as to the land situated in such other county shall be held at the next term of the district court of the county wherein such lands are situated, and in such case the clerk of the district court, where such appeal is filed shall make, certify and file in the office of the clerk of the district court in the county where such trial is to be had a transcript of the papers and documents on file in his office in such proceedings so far as they pertain to the matter on account of which such appeal is taken. After such trial the clerk of the district court where such action is tried, shall make, certify and return the verdict to the district court of the county wherein such proceedings were instituted, and such verdict or order shall be entered and enforced as a part of the proceedings of such last mentioned county. ('25, c. 415, § 32)

6840-33. Contracts for construction work—Letting—Notice of—Acceptance or rejection of bids—Certified Checks of bidders—Advertisements—After the expiration of thirty days following the filing in the office of the auditor or clerk, as the case may be, of the or-

der establishing a drainage system, the auditor and chairman of the county board in the first instance, and in the second instance, the auditors of the respective counties meeting for that purpose at the office of the auditor of the county in which the proceedings are pending, or a majority of them, shall proceed as hereinafter provided, to sell the job of digging and constructing the entire work either as one job or in one or more linear sections of 100 feet each. The auditor and chairman of the county board or auditors, as the case may be, or a majority of them, may with the approval of the engineer, sell separately from the jobs of excavation, any job of building flumes or other wood or masonry work, fencing or other construction work specified in the engineer's report. The auditor and the chairman of the county board, or auditors, as the case may be, may if deemed for the best interests of all concerned, let a separate contract for the furnishing of material for the construction of such system. The auditor with such chairman or auditors, as the case may be, shall contract in the name of the county or in the name of the respective counties, as the case may be, each acting by and through its auditor, with the party to whom any of such jobs of construction work or any section or sections is or are sold, requiring him to construct the same in the time and manner and according to the specifications, provisions and form of contract upon which the drainage system is established, and shall take from him a bond in the penal sum of not less than 75 per cent of the entire contract price with sufficient surety to the county or to the respective counties, or any two or more of them, as the case may be, for the use of such counties, or county, as the case may be, and also for the use of all persons who may show themselves to be aggrieved or injured by any breach thereof, or of any contract for which such bond is given; to be by said auditor and chairman, or auditors, approved, conditioned that such party shall faithfully perform and fulfill his contract, and pay all damages which may accrue by reason of the failure to complete the work in the manner and within the time required in the contract therefor, and otherwise conditioned as in this act provided, which bond shall include a stipulation that no change, extension, alteration or addition to the terms of the contract or specifications shall in any wise affect this obligation of the principal or principals or surety on said bond. The auditor of the county in which the proceedings were taken shall give notice of the letting of such contract by publication for three successive weeks in the official paper of such county of the time when and place where such contract shall be let to the lowest responsible bidders, and such notice shall state the approximate amount of work and the estimated cost and shall invite bids for the work as one job, and also for any one or more of such sections or any one or more of such construction jobs, and if a separate contract for the furnishing of material shall be deemed advisable such notice shall contain all matters hereinbefore specified, so far as applicable, and a statement of the kind and size of tile, the number of lineal feet of each size required, the estimated cost thereof, the time within which the same are to be furnished, with such other matters as he may deem proper for the information of bidders. He shall reserve the right to reject any and all bids and no bid shall be entertained which exceeds by more than 30 per cent the estimated cost of the construction of the part of said work covered by said bid; nor unless accompanied by his certified check payable to the auditor

or to the respective auditors, as the case may be, for not less than 10 per cent of the bid; and said auditor or auditors, chairman and clerk, may adjourn such letting from time to time until the whole work shall be taken and with the approval of the engineer may let any one or more of such sections or any one or more of such construction jobs. When the estimated cost of the construction is more than three thousand (\$3,000.00) dollars, the auditor may also advertise such letting in a trade paper. The engineer shall attend to the letting of the work, and no bid shall be accepted without his approval, as to compliance with plans and specifications. Provided, if it shall appear at the expiration of thirty days from the date of the order establishing the improvement that one or more appeals have been taken involving the question of benefits or damages then no steps shall be taken for the letting of said contract unless ordered by the board or court, upon application of the auditor or auditors or of any interested person or persons and on notice by mail to all persons who have appeared in said proceeding or to their attorneys. ('25, c. 415, § 33)

6840-34. Contracts and bonds—Contents—The contract to be executed by the contractor and the bond furnished by him as required by this act shall be attached to each other and the contract shall contain the specific description of the work to be done, either expressly or by reference to plans and specifications forming a part of the engineer's report and refer to the number of section or sections included in the contract as provided for in the preceding section, and shall provide that the work shall be done and completed as provided in the plans and specifications and the report of the engineer and subject to his inspection and approval as provided in this act. The engineer and county attorney and attorney for petitioners shall take part in the framing of the contract and shall insist that the same shall contain the proper specifications as required herein. Said contractor shall execute, acknowledge and file with the county auditor in county proceedings and with the clerk of the district court where such proceedings are pending, in judicial proceedings, a bond with good and sufficient surety, to be approved by such county auditor or such clerk, as the case may be, in a sum not less than 75 per cent of the contract price of the work. Every such contract and bond shall embrace all of the provisions as required by this act and as provided by law for the giving of a bond by contractors for public works and improvements and shall carry all the liability 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 such contracts, and shall provide that time shall be of the essence of the contract, in that if there should be any failure to perform the work according to the terms of said contract, within the time limited therein, originally or by extension, the contractors shall forfeit and pay the county or counties a certain sum, to be named therein, and which shall be fixed by the county auditor or auditors, as the case may be, for each day that such failure shall continue. The bond shall expressly 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 its or his own name, and that 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 such official bonds of public officers as security to all persons and providing for action on such bonds by any injured party. ('25, c. 415, § 34)

6840-35. Extension of time on contracts—Proceedings to obtain—No extension of time shall be granted by the auditor or auditors, as the case may be, unless applied for in writing, stating to his or their satisfaction good and sufficient reasons therefor; nor shall any extension affect the right to enforce such forfeiture, if any, as shall occur after the time originally limited and before such extension, or accruing after the limit of such extension. One such extension may be made for a period of time not exceeding one year, but ten days' notice of such application shall be given to the engineer and the attorney for the petitioners, and in case of judicial proceedings, also to the county auditors of the several counties.

No extension after the first above provided for, shall be granted until a hearing upon such application shall be held after such notice as hereinafter provided. Upon the filing of such application, the auditor or auditors, as the case may be, shall cause to be prepared and served upon the engineer and attorney for the petitioners, at least ten days before the date set for the hearing and shall publish a brief notice setting forth the filing of such application, and the time and place when and where the said application will be heard, considered and determined by said auditor or auditors, as the case may be. At the time and place so designated the said auditor or auditors shall proceed to hear, consider and determine such application, and shall make written order in relation thereto.

Such notice of hearing shall be published for two successive weeks prior to such hearing in each county affected by such drainage proceeding in the newspaper therein duly designated to publish the delinquent tax list for such year, and shall be served upon the county auditor of each county affected. The expense of such hearing and publication and service of such notice shall be paid by such contractor applying for such extension. ('25, c. 415, § 35)

6840-36. Tile construction—Separate bids—Contracts—Bonds of contractors—Whenever tiling is used in the construction of any drainage improvement or any part thereof, or if at any time previous to the commencement of advertising for the sale of the job or jobs for the construction of the same, upon request of a majority of the petitioners in writing therefor, filed with the county auditor in a county proceeding and with the clerk of the district court in a case of a judicial proceeding, that separate bids be called for on such tile construction, one of which shall be based upon the construction of such tile work according to the plans and specifications; the others shall include the construction of such tile work according to the plans and specifications and shall require the contractor to guarantee all such tile work done for a period of three years after the completion of such contract against any fault or negligence on the part of any such contractor. Thereupon, said county auditor, or auditors, as the case may be, shall include such requirements in their notice and shall call for bids, and said contractors shall be required to make their bids accordingly, and said auditor, or auditors, as the case may be, shall have authority to designate which of said bids shall be accepted, and in the event that the bids requiring the guarantee of said work for the period named shall be accepted, the contract shall re-

quire the contractor of the whole tile work or of any part thereof, as the case may be, to guarantee all of such tile work done by such contractor for a period of three years after the completion of such contract against any fault or negligence on the part of such contractor, and any failure during said period of any part of said tile work constructed by any such contractor to accomplish the purpose of such drainage for which it was intended, shall be prima facie evidence that the same is due to the fault and negligence of such contractor. It shall further be the duty of the contractor and a condition of securing the contract that he shall give a good and sufficient bond for the performance of said contract and the sureties thereon shall be liable under such guarantee as herein provided. The acceptance of such tile construction by the engineer or county board shall not relieve or exempt said contractor or his bondsmen from the liability therein imposed on said contractor for such three-year period. ('25, c. 415, § 36)

6840-37. Reduction of contractor's bond on partial completion of work—Application for—Notice and hearing—The contractor at the end of each season's work after giving the contractor's bond and prior to the completion and acceptance of such job of construction, may make a verified application to the county board in case of a county proceeding, or the district court where such proceedings are instituted, in case of judicial proceedings, setting forth approximately the total yardage of excavation completed in case of open work and the total size and length of work in case of tile construction and the total amount of other work completed, the contract price thereof, and the value of the work theretofore certified as completed by the engineer and the amount of money received by the contractor and the amount held back under the terms of said contract, and further setting forth the amount then owing and unpaid by said contractor for labor or material already furnished in the matter of the completion of such contract and asking an order reducing amount of the contractor's bond.

Upon the filing of such application with the county auditor, in the case of county proceedings, and with the clerk of the district court in case of judicial proceedings, it shall be the duty of said auditor or the clerk of said court, with the consent of the judge thereof, to make an order fixing a time and place for the hearing on such application, which shall be at a time not less than twenty days, nor more than thirty days from the date of such notice, which notice shall recite the filing of such application, giving an outline of the facts obtained therein and stating the time and place for hearing thereon, and shall cause said notice to be served by mail upon the engineer and the attorney for the petitioners and in case of a judicial proceeding upon the county auditor of each county affected, all within ten days from the date of said order, and shall cause said notice to be published in a legal newspaper printed and published in each county for two weeks prior to the date of such hearing. At the time and place specified in said notice, said county board or district court, as the case may be, shall hear all parties interested for or against the granting of the petition of said contractors and if upon such hearing said board or court shall find and determine that no loss will result thereby, that the contractor is not in default, and that the possibility of the county or counties sustaining any loss will not thereby be increased, the said court or county board may by order reduce the penalty of such bond to such sum as shall be found by such

court or county board sufficient to save the county or counties from loss or damage, as the case may be, but such reduction shall in no case exceed more than 35 per cent of the amount already paid to the contractor, and such reduction shall not affect the validity or the enforcement, or in any manner otherwise affect the remaining amount of the penalty of such bond, nor any liability on such bond incurred prior to the reduction. ('25, c. 415, § 37)

6840-38. Defaults by contractor—Notice of—Completion of contract by bondsmen—Re-letting contract—If a job be not completed within the time fixed in the contract therefor, it shall be the duty of the county auditor in the case of a county drainage proceeding and the clerk of the district court in case of a judicial proceeding within ten days after the date fixed for the completion of the contract to notify in writing, by mail, the contractor, his bondsmen and the engineer of such default, and in case of a judicial proceeding the county auditors of each county affected, and in said notice said bondsmen shall be notified of such failure to complete said contract, and further that if the same is not completed within the time specified in said notice, which shall not exceed sixty (60) days from the date of the notice, the unfinished portion of said contract will be relet after notice as required in the original letting of a contract for the construction of drainage work as provided in this act; provided, that if the bondsmen of such contract shall within ten days after the mailing of such notice undertake the completion of said work, then and in that event the county board in the case of county proceedings or the district court in the case of judicial proceedings, may upon application of such bondsmen upon ten (10) days' notice to the county auditor, or auditors, as the case may be, grant such additional time as to the board or court may seem just and reasonable, and in the event said contract is completed by said bondsmen within the time specified by the court or board, the balance due on the contract shall be paid to such bondsmen, less such damages as such county or counties, as the case may be, shall have sustained by reason of such default, which damages shall be fixed by such board or court and deducted from any balance due the contractor upon such contract at the time of default.

Provided, further, that if said bondsmen do not undertake the completion of said contract as herein provided and the same is not completed within the time specified in said notice, then said auditor in the case of county drainage proceedings and the county auditors of the counties affected in case of judicial proceedings shall advertise for bids for the completion of said contract in the manner provided for the original letting of contracts under the provisions of this act. Provided, that in the event of letting a contract for the completion of the unfinished work no contract shall be let for more than thirty per cent above the original contract price for such work, and in the event of a failure to complete said contract by the bondsmen, all sums due and unpaid the original contractor upon said contract at the time of default shall be forfeited to the county or counties, as the case may be, and no such contract shall be let a second time to the same party. Upon the letting of a contract to complete said work, a new contract and bond shall be required of the contractor as provided in case of original contracts, and any excess that is paid to the contractor under a resale of such work shall be recoverable from the bondsmen of the first contractor as damages in favor of the county

or counties affected, as the case may be. ('25, c. 415, § 38)

6840-39. Same—Reinstatement of contract and extension of time for completion of work—Procedure—In proceedings before a county board or district court for the construction of any drainage improvement where a contract has been let and the date of the completion of such contract has expired, or in any case where such contract has been forfeited but for any reason has not been re-let, and the original contractor and bondsmen, or the contractor offering to furnish new bonds, or the bondsmen without the contractor, shall petition the county board in county proceedings or the district court in judicial proceedings, asking that said contract be reinstated on the original terms, if it has been forfeited, and extend the same for such reasonable time as may be deemed necessary to complete the work, and such petition shall be filed in the office of the county auditor in county proceedings or the clerk of the district court in judicial proceedings; the said auditor in case of county proceedings and the clerk of the district court, with the consent of the judge thereof, in judicial proceedings shall, within ten days, by order, fix a time and place for hearing on said petition which shall be at a date not less than twenty days, nor more than thirty days from the date of said order, and give notice thereof; said notice shall specify that said petition has been filed, and give the time and place for hearing thereon, shall briefly state the amount of said contract remaining unperformed, the amount withheld by the county or counties on the portion of said contract that has been performed by the contractor, and shall cause said notice to be served by mail upon the engineer, the attorney for the petitioners, and in case of judicial proceedings the county auditor of each county affected, and within ten days after the date of said notice shall cause a copy thereof to be published in a legal newspaper in each county affected, for two weeks before the date set for the hearing. At the time and place specified in said notice, said board or court shall hear all parties interested, for or against such petition, and if it shall appear that the contractor and his bondsmen consent thereto, and that the said bondsmen are responsible, and that said bondsmen shall, in writing, re-obligate themselves as fully as under the original contract for the performance of said contract, according to the plans and specifications, or, in case the bondsmen do not assent, but other satisfactory bond is furnished by the contractor that will be approved by the said board or court, or, in case the petition is by the bondsmen, that they are responsible and capable of completing said contract in accordance with the plans and specifications and furnish a proper bond therefor, then in that event said board or court shall have authority to reinstate said contract, if it has been canceled, and specify the time within which it shall be completed. Provided, the provisions of this section shall not be construed to release the original bondsmen from any obligation to the county or counties under the original contract or any damages sustained by such counties or other counties by reason of the default, and said board or court may as a condition of granting such extension require that all damages that the county or counties have sustained by reason of the default shall first be paid, or the amount thereof deducted from the balance retained in the hands of the county or counties on the work already performed.

Provided, further, that this act shall not be construed to affect any action or proceeding now pending in any of the courts of this state. ('25, c. 415, § 39)

6840-40. Inspections of work by engineer—Work in progress—Upon completion of contract—Reports and Certificates—Hearing on report of completion—Notice of—Orders and Warrants for payment—It shall be the duty of the engineer to properly inspect all work during the progress of construction and see that the same is performed according to the specifications and the terms and conditions of the contract and upon being notified by the contractor that his job is completed, to inspect the same, and all portions thereof included in said contract and if he finds it complete according to the contract, plans and specifications, he shall report that fact to the board or court, as the case may be, and give the contractor a certificate stating that said section or sections (by number) or other jobs of construction are completed according to the contract, plans and specifications as set forth in the report of the engineer. When the work for which such certificate is to be issued, affects more than one county, proportionate certificates shall be issued to each county. Upon the filing of such report of the engineer that any drainage improvement has been completed, the board or court shall fix a time and place for hearing on said engineer's report, which shall be not less than twenty (20) days nor more than thirty-five (35) days from the date of said order, and upon the filing of such order it shall be the duty of the county auditor in case of county proceedings, or the clerk of the district court in the case of judicial proceedings to cause to be given by mail a notice to all land owners and corporation whose lands or property are assessed for benefits for the construction whose postoffice address is known, or can be ascertained from the county treasurer, also the engineer, contractor and attorney for the petitioners. Such notice shall state the filing of the report, and the order of the board or court, granting hearing thereon, and specify the time and place for such hearing, and that all parties objecting to the acceptance of the work can then appear and be heard.

Service of such notice shall be sufficient if the same is mailed ten days before the date of such hearing; at the time and place specified in such notice, said board or court shall give all parties interested an opportunity to appear and be heard for or against the approval of said report, and if it shall appear from the evidence presented to the satisfaction of the board or court that said contract has been completed in accordance with the plans and specifications, it shall so find and by order direct the payment thereof specifying the balance found due, and upon presentation and surrender of said certificate with such approval endorsed thereon to the auditor in case of county proceedings, he shall draw a warrant upon the treasurer of his county for the balance due on said contract, and in case of judicial proceedings, the clerk of the district court shall draw an order on the county auditor of the respective counties for their proportionate share of the amount found due on said contract, and upon the presentation of such order it shall be the duty of such county auditor to draw a warrant upon the county treasurer of his county, payable to the contractor for the amount specified in the order of the clerk. In every case said warrant shall be paid out of the general ditch fund to be provided by the county board as hereinafter specified. Said warrant shall become due and payable out of said funds at once, and if there shall be no cash in said fund to pay said warrant when the same is presented, the county treasurer shall endorse said warrant "Not paid for want of funds" and date and sign such endorsement, and the amount of said warrant shall draw

interest at the rate of six per cent per annum until called in by the treasurer or auditor of said county and paid. Provided no county auditor shall issue any order as a part of the plan of settlement with the contractor until the hearing provided for in this section has been had and the report of the engineer approved. ('25, c. 415, § 40)

6840-41. Inspections by engineer—Reports—Certificates for work done—Payments to contractor—(a) It shall be the duty of the engineer during the progress of the work to inspect the laying of tile, excavation and all other work of construction from time to time as provided for in the specifications and provisions in his report and as provided in the contract for construction, and every thirty days during the progress of the work to report in writing to the county board of the district court, as the case may be, as to all work completed since the last prior report, including all material furnished in accordance with the provisions of the contract, and his services for making such inspection shall be at the rate and in the same manner as other services rendered, and each thirty days or at such times as provided in the contract, during the progress of the work of construction, the engineer may issue preliminary certificates for work done and approved, in accordance with the plans and specifications, or for material or other supplies furnished and delivered along the line of said improvement, or otherwise delivered in accordance with the contract and to be used for the construction or installment of tile or other enclosed drains or for bridges or culverts along the line of and as a part of said proposed drainage system, which preliminary certificate shall contain the station number or numbers of the work covered by such certificate, and in case of an open ditch the actual yardage of the excavation certified, and the total value thereof according to the contract of construction, or in case the same is for material furnished, then an estimate of the total value of such material according to contract. Such certificate shall further show the percentage of such total value of the work or material to be paid, by the county or counties, and if the proportion has been fixed by order of the court such certificate shall further show the proportion of such total value to be paid by the respective counties. Such certificates shall be executed in duplicate by said engineer or in such manner as may be necessary, and as many thereof marked "duplicate" shall be delivered to the contractor as there are counties affected, and such engineer shall further file one thereof with the county auditor of each county affected; provided, that except as hereinafter provided, no engineer in drainage proceedings shall by preliminary certificate certify or recommend for payment, and no county auditor shall cause to be paid a sum exceeding 85 per cent of the total value of work done and approved or exceeding 75 per cent of the total value of material furnished or delivered as such total value as shown by such preliminary certificate; but such material shall be delivered only as required for use in the course of construction, and at such reasonable times and in such quantities as the engineer shall determine and direct.

(b) Provided, that in case of the construction of an open ditch where the contract provided for the construction of highway bridges across the ditch when any such bridge has been completed and open for public use and has been finally accepted by the engineer and the county board, then the contractor shall be entitled to full payment therefor.

(c) Provided, further, that no certificate of partial completion or of furnishing material shall be furnished or delivered by the engineer unless said certificate shall be accompanied by the engineer's written certificate that no loss will result from such partial payment.

(d) Provided, further, that the said certificate of the engineer in the matter of any county or judicial drainage proceeding or any other estimate or certificate required under any of the drainage laws of this state to be made by him shall not constitute prima facie evidence of the truth of the contents thereof or the completion of any ditch or any part thereof by the contractor or otherwise, or of the fulfillment of the contract or part thereof, and in all cases where the county or counties have paid for material furnished and delivered on a preliminary estimate of the engineer, such county or counties shall have a lien on the said material to the amount of all payments made thereon by such county or counties. ('25, c. 415, § 41; amended '27, c. 51, § 1)

6840-42. Partial payments to contractor—In all county and judicial drainage proceedings where the cost of the construction of the system exceeds fifty thousand (\$50,000) dollars, and where fifty per cent of the total amount of the excavation work or tile construction work, independent of the cost of the tile, as shown by the engineer's report, is completed and the contractor is not in default, the contractor may file with the county auditor in county proceedings or with the clerk of the district court where the proceedings are pending in judicial proceedings, a petition setting forth the total cost of the drainage improvement, the total contract value of the construction work completed, the total amount of warrants issued to such contractor for such work, the total amount reserved by a county under the terms of the contract and the total balance of the contract at the contract price unperformed, and the proportion of the cost of construction to be paid by each county in a judicial proceeding, and praying therein that an order be made authorizing or directing the county auditor or auditors to pay the contractor a certain percentage of the sums reserved by the county or counties on the work already completed.

Upon the filing of such a petition duly verified, with the county auditor in case of a county proceeding, and with the clerk of the district court where the proceedings are pending in judicial proceedings, it shall be the duty of said county auditor or said clerk, with the consent of the judge, within ten days, to fix by order a time and place for hearing upon said petition before the board or court where the proceedings are pending which shall be not less than twenty (20) days nor more than thirty (30) days from the date of the order; and within five (5) days from the date of said order, said auditor or said clerk shall issue and cause to be served a notice therein reciting the filing of said petition and substantially the facts contained therein, and the date and place of hearing thereon, which notice shall be served within ten days from the date of said order by mail upon the engineer, the attorney for the petitioners, and in judicial proceedings upon the auditors of the several counties affected.

At the time and place specified in said order and notice, said county board in county proceedings, or district court in judicial proceedings shall attend and hear all parties interested, for or against the granting of said petition, and if it shall appear from the showing made to the satisfaction of said board or court, that

the contractor is not in default and to the extent that he has completed the work, has performed it in a satisfactory manner; that more than fifty per cent of the total contract price, aside from the material furnished, has been completed; that the portion that has been performed, and that a portion of the sum reserved by the county or counties on the part of the contract that has been performed can be reduced without endangering the interests of the county or counties, then said board or court shall so find and shall have authority to order paid to said contractor a portion of the sums reserved by the county on the work already performed, and not to exceed forty (40) per cent of such reserve. ('25, c. 415, § 42)

6840-43. Bond issues by county boards--Procedure--Proceeds--General ditch fund--The county board of each and every county wherein any drainage system is proposed to be wholly or partly located and established, or wherein lands are located which are assessed for benefits by reason of the construction thereof, are hereby authorized after the lien statement prepared by the county auditor has been filed in the office of the register of deeds, to issue the bonds, of their respective counties in such amounts as may be necessary to defray in whole or in part, the expenses incurred or to be incurred in locating, constructing and establishing or repairing so much of any such ditch as may be located within said county; or in such relation to such county as to affect lands therein with the term of this act. All such bonds shall be sold as provided by Section 1856 of the General Statutes of Minnesota 1913, and not otherwise. The word "expenses" shall be construed to mean and cover every item of cost of said drainage improvement from its inception to its completion, and all fees and expenses to be incurred in pursuance thereof. Such bonds shall be payable at such time or times not to exceed thirty years from their date, and shall bear such rate of interest not to exceed six per cent per annum, payable annually or semi-annually, all as the county board shall by resolution determine; provided the time or times when said bonds shall be payable as fixed by said resolution shall conform to the order of the board or court fixing the time of payment of the principal and interest on the ditch lien, as provided in Section 51 of this act. Each bond shall contain a recital that it is issued by authority of, and in strict accordance with the provisions of this act, and shall be signed by the county auditor, who shall keep a record thereof. Said county board shall have power to sell and negotiate said bonds, as hereinbefore provided, but for not less than their par value. The proceeds from the sale of all such bonds shall be placed to the credit of the drainage proceedings in which they are issued and shall be placed in the general ditch fund as provided in this act. The county auditor shall keep a separate account with each drainage system, which account shall be credited with all moneys arising from the sale of bonds, all moneys received as interest on penalties or upon liens, charges, assessments, and from all other sources on account of such drainage system, and which account shall be debited with every item of expenditure made on account of such drainage system. Such county board shall provide moneys for the payment of the principal and interest of said bonds as they severally mature, which moneys shall be placed in the general ditch fund, into which fund it may transfer any surplus moneys remaining in the general revenue fund or other funds of the county which can be properly used for the purpose of this act, into which fund shall be paid all moneys

received from the payment of any liens under the provisions of this act. And such board is hereby authorized to 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 general ditch fund of the treasury are insufficient to meet the payment of bonds issued in ditch proceedings when the same mature, but the funds from which such money have been taken or used for the payment of bonds as they mature shall be replenished with interest at the rate of six per cent per annum from collections of unpaid assessments for drainage improvement constructed under any proceedings hereunder. Provided, the county board shall have authority to provide in the contract for the sale of the bonds for the delivery of such bonds as the work proceeds and the funds are needed, and for the payment of interest only from the date of the delivery of such bonds. ('25, c. 415, § 43)

Explanatory note--For G. S. '13, § 1856, see § 1943, herein.
For section 51, see § 6840-51, herein.

6840-44. Tabular statements by county auditors--At the earliest practicable time after the letting of the contract for the construction of any drainage improvement, as herein provided, the auditor of each county affected thereby shall make in tabular form a list and statement showing the following facts, and in the order named, viz:

First. The names of the owners of all lands and the names of all public and corporate roads, railroads, and municipal corporations, within their respective counties benefited by the construction of such proposed work as appears from the viewers' report, as modified, if at all, and approved by the order of confirmation of the board or court.

Second. The description of said lands as the same appears in such report as so affected, together with the total number of acres in each tract according to the assessment roll or tax lists of such county.

Third. The estimated number of acres benefited in each tract of said land, as shown as aforesaid.

Fourth. The estimated amount of benefits and damages to each of said tracts of land and the estimated amounts of benefits and damages to each public or corporate road, railroad or municipal corporation, as the same appears in the viewers' report, as affected by the order of confirmation of the board or court or as changed by the jury or court.

Fifth. The amount that each tract of land, and that each of said public roads, including trunk highways, railroads or municipal corporations so benefited will be liable for and must pay into the treasury of each county for the establishment and construction of such drainage system, which said amount shall be determined as follows:

Said auditor shall make a full statement showing the total cost of each drainage system, under each separate petition for such system, and each petition and each drainage system located, established and constructed shall be known and designated by a number to be given it. Such statement shall be headed as follows:

Statement showing cost of drainage system No. ,
to whom paid For what
paid Amount
paid Said statement
shall be summed up, showing in figures the total cost
of each system, and shall be attached to and form
a part of the statement herein provided for. The total
cost shall then be divided by the total estimated bene-

fits as provided for in subdivision five of this section, for the rate of cost on each one dollar of benefits, the auditor not to be obliged to carry out and use a smaller fraction than one-tenth of one mill. The amount of estimated benefits to each tract of land, and to each public or corporate road, railroad or municipal corporation (as hereinbefore provided for), shall be multiplied by said rate, and the interest set down in the proper column opposite each of said tracts of land, public or corporate roads, railroads or municipal corporations, and such results so obtained, less the amount of damages, if any, shall be the amount that each of said tracts of land, public or corporate roads, railroads or municipal corporations, will be liable for on account of such improvement. ('25, c. 415, § 44)

6840-45. Same—Acknowledgment and filing with register of deeds—Such statement shall be signed by the auditor in the presence of two attesting witnesses, and be duly acknowledged by him, and shall then be duly filed with and recorded by the register of deeds of such county. The amount that each tract of land and each public or corporate road, railroad or municipal corporation will be liable for, and the interest thereon, as hereinafter provided, shall be and remain a first and paramount lien on such land, public or corporate roads, railroads or municipal corporations, until fully paid; and shall take precedence of all mortgages, charges, incumbrances or other liens whatever, such payments may be made as hereinafter provided. Such filings shall be deemed notice to all parties interested of the existence of such lien. The fees of such register of deeds for recording shall be paid by the county, on the allowance of the board of county commissioners, and said statement, after the same has been recorded, shall be returned to the auditor, to be placed by him with other files relating to such drainage system, and carefully preserved by him. ('25, c. 415, § 45)

6840-46. Same—Corrected statements—That in all cases where a public drainage system has been regularly established by order of a county board or district court or a judge thereof pursuant to the provisions of this act or any other law requiring the filing of such tabular statement, and where a county auditor or county auditors, as the case may be, has made a tabular statement and summary as required by law, and filed the same for record in the office of the register of deeds in and for the proper county, which said statement and summary is erroneous and does not conform to the order of the county board or district court, or where it has occurred that certain items of cost of construction or expenses in said proceedings have been omitted from the original tabular statement and assessment made and filed for record with the register of deeds and said items of cost have been paid by the county, then and in either of such cases, it shall thereupon be the duty of the county auditor in the case of county drainage proceedings and of the county auditors in the case of judicial drainage proceedings to make a new and correct tabular statement and summary in accordance with the facts and the order of the county board or district court and attach thereto a petition supplying the necessary explanation and asking for an order authorizing the filing of the new statement as a correct summary and tabular statement, and in the case of judicial proceedings the county auditors shall file such petition with the clerk of the district court where said proceedings are pending, and thereupon the county auditor in the case of county proceedings, and the clerk of the district court, with the approval of the judge in the case of judicial pro-

ceedings shall by order fix a time and place for a hearing upon said petition before the county board or district court, where said proceedings are pending, which shall be at a time not less than twenty nor more than sixty days from the date of said order, and it shall thereupon within ten days from the date of said order be the duty of said county auditor or said clerk of the district court to cause a copy of said order, giving the time and place of hearing before said board or court, to be served by mail upon the engineer, the attorney for the petitioners, all parties and corporations whose property is assessed for benefits in said proceedings. At the time and place specified in said order or notice, said county board or district court, where said proceedings are pending, shall attend and hear all parties interested for or against the granting of said petition, and if at said hearing it shall appear to the satisfaction of said board or court from the evidence presented that an error was made in the first tabular statement filed, and that the same does not conform to the facts and order of the board of court, or where it has occurred that certain items of cost of construction or expenses in said proceedings have been omitted from the original tabular statement and assessment made and filed of record with the register of deeds and said items of cost have been paid by the county or counties, then and in either of such cases said board or court shall so find and by order direct the auditor or auditors to make and file for record in the office of the register of deeds, a new and correct tabular statement in accordance with said order and findings and shall then authorize the said county auditor, or auditors, upon the filing of the new and correct tabular statement to cancel and discharge of record the first or erroneous tabular statement theretofore filed, and thereupon the said county auditor, or county auditors shall cause to be made and filed in the office of the county auditor or respective county auditors, a correct statement and summary together with a certified copy of the order authorizing and directing the same and a certified copy thereof in the office of the register of deeds, and shall by proper instrument discharge of record in the office of the register of deeds the erroneous summary statement previously filed.

When said corrected statement and summary has been compared and filed for record as hereinbefore provided, then and thereupon the said corrected statement and summary shall take the place of the said erroneous statement and summary and the amounts set forth therein shall be of the same force and effect as liens against the lands described therein as if the erroneous statement and summary had been correctly made and in conformity with the order of the county board or of the district court, as the case may be. ('25, c. 415, § 46)

6840-47. Same—Corrected statements—Liens released—That in any case where it becomes necessary to make a corrected tabular statement as hereinbefore provided, the auditor of any county affected is hereby authorized to release and discharge of record the liens set forth in the erroneous statement and summary in the manner following, to-wit; he shall issue under his hand and official seal a certificate stating that the original statement and summary has been found to be incorrect; that a true and correct statement and summary has been filed in his office and for record in the office of the register of deeds, and that the liens set forth in the corrected statement and summary are substitutes and in lieu of the liens set forth in the erroneous statement and summary, and shall authorize

the register of deeds in and for the proper county to release and discharge the liens set forth in said erroneous statement and summary, and shall direct said register of deeds to substitute in lieu thereof as liens against the lands described there in the amounts set forth in the corrected statement and summary; and when said certificate is recorded in the office of the register of deeds and the liens evidenced by the erroneous statement and summary shall thereupon be released and discharged and the corrected statement and summary and the liens evidenced thereby shall take the place and be in lieu thereof, and the register of deeds in and for the proper county shall thereupon be authorized to release and discharge the original tabular statement and summary and the liens evidenced thereby of record. ('25, c. 415, § 47)

6840-48. Same—Adjustments on account of erroneous collections—That in any case where a corrected statement and summary is made and filed as hereinbefore provided after one or more installments of the liens set forth in the erroneous statement and summary have been collected by the treasurer of the proper county, or have been placed on the tax rolls for any year but not collected, then if the amount of the liens set forth in the corrected statement and summary against any particular description is less than the amount set forth in the erroneous statement and summary, the county auditor of the proper county shall make each of the installments proportionately less, so that the total collected as a lien against any particular description shall be equal to the amount set forth in the corrected tabular statement and summary with interest thereon; and if the amount of the lien set forth in the corrected statement and summary is more than the amount set forth in the erroneous statement and summary, the county auditor of the proper county shall make each of the installments unpaid proportionately larger so that the total amount collected as a lien against any particular description shall be equal to the amount set forth in the corrected tabular statement and summary with interest thereon. ('25, c. 415, § 48)

6840-49. Liens—Supplementary liens—In any case where a drainage system has been established under the provisions of this act, or any other law of this state requiring the filing of tabular statements and liens, as provided in said law, a tabular statement and lien has been made, filed and recorded as provided by this act or by Sections 5543 and 5544 General Statutes 1913, and subsequent to the filing of such statement and lien, increased costs in the construction of said drainage system have been incurred by reason of the modification of the plans and specifications by the engineer, or by reason of the encountering unforeseen conditions in the construction of said drainage system, such as requiring the installation of culverts or a change in the plan of construction and the use of tile or covered construction or other change rendered necessary by unforeseen conditions, or where a part of the cost of such drainage system has been erroneously assessed against property not subject to assessments, or which is exempt by law from such assessments, or where certain items of cost regularly incurred in said proceedings have been paid, or for which the county is liable but through some mistake or oversight were omitted from the original lien statement, then and in that event the amount of such increased cost, or change in the amount of assessment or omission of costs incurred arising from any of the foregoing causes but not to exceed, however, the margin between the former lien statement and the total benefits reported and ap-

proved, may be included in an additional tabular statement and lien, in the following manner:

When any of the conditions hereinbefore enumerated shall arise in the construction of any drainage system, it shall be the duty of the engineer to make and file a detailed statement and special report to the county auditor in case of county proceedings or to the clerk of the district court, where said proceedings are pending, in case of judicial proceedings therein, setting forth the necessity for the change in the plans and specifications and increased cost of the work, if any, or a description of the property not assessable, or exempt from assessment, as the case may be, together with the total amount of the increased cost resulting from such change, and upon the filing of such report with such county auditor or clerk, it shall be the duty of said auditor or said clerk, with the consent of the judge, by order, to fix a time and place for a hearing upon such report, not less than twenty nor more than thirty days from the date of said order, and thereupon it shall be the duty of such auditor or such clerk to cause to be made and served a notice of the filing of such report which shall be treated as an application for the filing of an additional lien, which notice shall recite the filing of such report of the engineer, reciting the substance thereof and specifying the time and place for hearing thereon and shall be served by mail upon the engineer, the attorney for the petitioners and all parties and corporations whose property is assessed in said proceedings, and in judicial proceedings also upon the county auditors of each county affected at least ten days before said hearing.

At the time and place specified in the notice, the county board or district court, shall hear all parties interested for or against the matters involved in said report, and after due consideration of the showing made, if it shall appear to the satisfaction of said board or court that the change in the plans and specifications were necessary and proper; that additional costs in the construction of said drainage system were necessarily incurred; that in such proceedings property was erroneously assessed, or was exempt from such assessment, then such board or court shall make findings accordingly and may order the auditor or auditors, as the case may be, to release or discharge such property so erroneously assessed, or not assessable, and to make and file an additional tabular statement and lien against the property and corporations benefited in such proceedings in the same form and manner as the original statement and lien, and assess the same against said property and corporations benefited in the same proportion as the original lien, and cause the same to be recorded in the office of the register of deeds of the proper county; provided, no additional tabular statement of lien shall be made or filed which shall authorize the filing of a lien against any such property or corporations beyond the margin between the tabular statement and liens previously filed and the total benefits returned by the viewers' report and approved by such board or court, and provided further, that in the event the increased assessment included in such additional lien shall not exceed one-tenth of the original cost as shown by the original lien filed, the same may be extended when so ordered by the board or court as an additional installment, payable one year following the last payment on the original lien. ('25, c. 415, § 49)

Explanatory note—For G. S. '13, §§ 5543, 5544, see §§ 6703, 6705, herein.

6840-50. Same—Interest on—The amount that each tract of land, public or corporate road, railroad, or municipal corporation, shall be liable for on account of the establishment and construction of any drainage system, and shall bear interest from the date of the filing of the auditor's statement in the register of deeds office, at a rate of interest not exceeding six per cent per annum until paid, such rate of interest to be fixed and determined by the county board in case of county proceedings, or by the district court in judicial proceedings, at the time of establishing the rate of interest to be paid on the bonds issued in such proceedings. And when bonds are issued by the county for the establishment and construction of such improvement, the same rate of interest shall be charged on the lien statement as is paid on the bonds issued; provided, that in any case and at any time after the establishment of any drainage system, the county board in case of county proceedings, or the district court in case of a judicial proceedings, may upon such notice as shall be respectively ordered, and upon a showing of cause therefor, either change or modify any order previously made fixing and determining the rate of interest, or fix the rate of interest in case the same has not been previously fixed, or change the existing rate; provided, if no such order is made the rate of interest on the lien shall be understood as fixed by the rate of interest payable on the bonds.

All interest shall constitute an additional lien on said lands, roads, railroads or corporations until fully paid, which said interest when about to be paid shall be computed by the county auditor. If the bonds are sold at a premium, such premium shall be used as far as may be to make up any deficiency in the assessments levied by the county auditor or county auditors on the proceedings, and the balance remaining of such premium, if any, shall be used as far as practicable in keeping such system in proper repair and free from obstruction so as to answer its original purpose. Provided, in all cases of delay in the construction of a drainage system the owners of each tract of land and other property assessed but not yet benefited, shall be entitled to credit for unearned interest in proportion to the interest saved by delay in the delivery of the bonds as provided in Section 43 of this Act. If no bonds are sold no interest shall be collectable only as the work progresses and the property benefited. ('25, c. 415, § 50)

Explanatory note—For section 43, see § 6840-43, herein.

6840-51. Same — Payment of —Liens filed against property benefited under the provisions of this act shall be paid to the treasurer of such county as follows:

One-tenth of such 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 the first day of November of each year thereafter until the whole thereof is paid.

Provided, that if the final order establishing such drainage system or at any time thereafter, in said proceedings, the judge of the district court in judicial proceedings, or the county board in county proceedings, in his or its discretion so orders, then payment of such lien shall be made to said treasurer as follows:

One-fifteenth of said principal on or before five years from November 1st subsequent to date of said filing in the office of the register of deeds, and one-fifteenth on the first day of November of each year thereafter until the whole amount of said principal is paid or when so ordered by said court or board the same may

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

In all drainage systems heretofore established, or as provided by Section 43; in all systems hereafter established under the provisions of this act, said principal lien shall bear interest at the rate not to exceed six per cent (6%) per annum payable on November 1st, reckoned from the date of the filing of the lien statement in the office of the register of deeds, and the interest on the whole of the principal of such lien remaining from time to time unpaid shall be paid annually November 1st, except as hereinafter in this section otherwise provided. In case bonds shall be issued by the county then the lien shall bear the same rate of interest as such bonds.

On or before the fifteenth day of November next following such filing the county auditor shall for the purpose of enforcing payment of such lien enter on a ditch lien record of said county the whole amount of such lien remaining unpaid against each respective tract of land subject thereto, and shall at the same time or before tax lists for such year are turned over to the county treasurer, compute interest as in this law provided on such unpaid amount to the first day of June following, and shall enter such interest together with the installment, if any then due, on the tax lists for such year and each thereof (installment and interest) shall be collected in the same manner as real estate taxes for that year on the tract in question are collected, and the county auditor shall, in same manner, each year thereafter compute interest on the amount of such lien remaining unpaid and not previously entered on tax lists of prior year or years, together with interest to the first day of June, and enter the same on the tax lists with such portion of the principal of such lien as shall be due, said installment and interest to be collected in the same manner as the first payment until the whole amount of any such lien and accumulated interest shall have been so entered on the tax list of such county and all of the provisions of law now or hereafter existing in relation 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 and of each of the same, but no penalty shall be added to any such installment of principal or interest in case of default in the payment thereof, but such installments of principal or interest in case of default in the payment thereof, but such installments of principal and interest shall draw interest from said first day of June until paid, at six per cent per annum.

When payment of the full amount of such liens, with accumulated interest shall thus, or at any time be made, the auditor upon presentation of a receipt from the treasurer to that effect, shall issue under his hand and official seal a certificate of such payment, and the same when recorded in the office of the register of deeds, shall release and discharge said lien of record for which service the auditor shall be entitled to receive from the applicant for release the sum of 25 cents for each description of one hundred and sixty (160) acres or less in his certificate.

If any item of the cost of a drainage system established under this or any prior drainage law by the terms of which the cost of construction is assessed

against the benefited property or corporation, has been or shall be omitted from the original tabular statement for assessment made and filed by the auditor or auditors, with the register of deeds, then a corrected tabular statement, including such omitted costs or expense may be made and filed in the office of the register of deeds as provided in Section 46 of this act, and upon the filing and recording of such corrected tabular statement in the office of the register of deeds the same shall be due, payable and collectible in the same manner, time and form as if a part of the original statement. ('25, c. 415, § 51)

Explanatory note—For section 43, see § 6840-43, herein.

For section 46, see § 6840-46, herein.

6840-52. Same — Apportionment — In all cases in which a lien has been established against any tract or tracts of land by reason of benefits assessed thereon in any drainage ditch proceeding and no installment of such assessment or interest thereon shall be in default, any person or corporation having an interest in said land, or any part thereof, may petition the district court of the county wherein such land is situated to have such lien apportioned between or among specified portions of such tract or tracts. Upon the filing of such petition the court shall, by its order fix a time and place at which said petition shall be heard and requiring personal service of a notice of such hearing to be served upon the county auditor, the occupants of such premises and on all parties having an interest in said premises as shown by the records in the office of the register of deeds of such county at least ten days before such hearing; or if for any reason personal service cannot be made upon all of such persons, notice shall be given by two weeks' publication in a legal newspaper published at the county seat of such county in lieu of personal service. At the time and place appointed by the court for a hearing upon such a petition or at the time to which such hearing may have been adjourned, the court shall hear any and all evidence bearing upon the matter set out in said portion and as to what will be a proper and equitable apportionment of said lien between or among the portions of such original tract which it is desired shall be encumbered by separate liens and shall thereafter by its order apportion such lien among such tracts, but in no case shall the aggregate of said separate liens be different from the amount of the unpaid portion of the original lien. A certified copy of the order apportioning said lien shall be recorded in the office of the register of deeds of such county and filed in the office of the county auditor which shall operate as a division and apportionment of such original lien between such various tracts of land originally covered thereby and shall operate as a release of each of said tracts from said lien, except the amount so apportioned against it and thereafter the amount apportioned to each of such respective tracts shall be entered separately against such tract upon the tax list and so reported to the treasurer for collection and no reduction or abatement of the amount so apportioned shall thereafter be made. ('25, c. 415, § 52; amended '27, c. 109, § 1)

6840-53. Repairing and cleaning — Payment for — Fund for—(a) The county board of the several counties in this state within which is constructed or may hereafter be constructed, any state, county or judicial drainage system lying wholly or partly within such county, shall keep the same or such part thereof as lies within such county in proper repair and free from obstruction in the manner specified in this act so as to answer its

purpose, and in case there is sufficient funds to the credit of the drainage system to make such repair and the improvement consists of cleaning out and repair only, and does not contemplate any improvement other than of restoring the ditch, as nearly as practicable, to the same condition as it was when originally constructed, such funds may be expended by the county board for such purpose without further assessment as specified in this act; but no part of the original ditch fund shall be used for repair or cleaning out a system or any part thereof until the same has been completed according to plans and specifications and the board or court shall have so found and determined.

(b) In case there is not sufficient funds to the credit of such drainage system so to be repaired, the county board may pay for the same out of the general revenue fund of the county, and to raise the necessary money to reimburse that fund it is hereby authorized to apportion and assess the costs of such repairs upon all lands originally assessed for benefit in proceedings for the construction of such system, said apportionment and assessment to be in the same proportion as was originally assessed for benefits.

(c) For the purpose of creating a fund in the general ditch fund to the credit of each of such drainage systems to be used for such repairs, the county board is hereby authorized to levy an annual assessment against all of the lands originally assessed for benefits in the proceedings for the establishment of such drainage systems, at a rate not exceeding 30 mills on each dollar of such assessed benefits as confirmed by the court or board in the original proceedings. Such assessment shall be levied by the county board at its annual meeting held in July of each year. Before the levy of any such assessment shall be made the board shall give at least fifteen days notice by publication in two successive issues of the official paper of the county of its intention to make such a levy, and at such July meeting any person interested therein may appear before said board and be heard. The action of the county board as a result of the said hearing shall be final and binding on all lands involved. Following the levying of such assessment and before the first day of January next following the county auditor shall enter the amounts thereof upon the tax lists against the lands affected by such drainage system, located within the county, in proportion to the benefits confirmed by the court or board in the original proceedings, and the same shall be collected in the same manner as real estate taxes. Whenever the amount in the general ditch fund standing to the credit of any drainage system, available for use in making repairs, shall exceed 3 per cent of the total original assessment of benefits, no further assessment for the purpose of creating such fund for general repairs shall be made until such fund shall have fallen below said percentage.

(d) If the improvement consists of the cleaning out and repair of a state ditch that has been constructed otherwise than by assessment against property benefited, or if it consists of the deepening, widening or extending of a county, state or judicial ditch, then the county board or district court, as the case may be, is hereby authorized to cause the benefits and damages that will result from such improvement to be ascertained and determined and to assess the cost of the same against the property benefited by the construction of the original system and all property benefited by the construction of any subsequent ditch or lateral, public or private, emptying into said original system or any lake or pond to which said original system

forms an outlet or which contributes to the necessity of deepening, widening or extending said original system to obtain a better outlet, in proportion to the benefits received in the manner provided in this act.

(e) The question as to which of the procedures provided in this section shall be followed in keeping drainage systems in repair shall be discretionary with the board, and in the event that the board chooses to proceed by the levying of an annual assessment as provided herein, no lien shall be made, prepared, filed or recorded in the office of the county auditor or register of deeds as required in Sections 44 and 45 of this act; and in all cases where the total cost of any one job of repairing a drainage system does not exceed the sum of five hundred dollars, the board shall have authority to proceed with such repairs without the formality of awarding a contract. In all counties having a ditch inspector it shall be the duty of such ditch inspector, when instructed by the board, to make report of needed repairs and to act as engineer for the board in all matters affecting repair of drainage systems. In counties where no ditch inspector has been appointed the board shall have authority to appoint an engineer to act in repair proceedings as provided in Section 54 of this act. ('25, c. 415, § 53; amended '27, c. 51, § 2)

Explanatory note—For sections 44, 45 and 54, see §§ 6840-44, 6840-45, 6840-54, herein.

6840-54. Repair or improvement of drainage system — Petition for procedure — Engineer — (a) Upon the filing of a petition by any party, parties or corporation, municipal or otherwise, interested in or affected by a drainage system with the county auditor of any county in the case of a county, state or judicial drainage system lying wholly within such county, or with the clerk of the district court of any county affected, in the case of a state drainage system affecting two or more counties, or with the clerk of the district court where the original petition was filed in case of a judicial drainage system affecting two or more counties, therein setting forth that such drainage system, describing the same by number or other description sufficient to identify the same, is out of repair or that portions thereof are obstructed and describing in general terms the nature, extent and location of such obstruction, or that such system by reason of the additional laterals, either public or private, or for any other reason is of insufficient capacity, or needs deepening, widening or extending so as to furnish sufficient capacity or better outlet and the probable total cost of such repairs, cleaning out or improvement does not exceed 30 per cent of the original cost of construction of such ditch and that the petitioners will pay all costs and expenses which may be incurred in case the proceedings for the proposed repairs, for any reason, are dismissed, it shall be the duty of the county auditor in case of a drainage system lying wholly within such county to present the same to the county board at their next meeting, and of such clerk of the district court in case of a system affecting two or more counties to present the same to the judge of said court, within ten days from the filing thereof, and thereupon if the cost of making such repairs or removing such obstruction does not exceed 30 per cent of the original cost of construction of such ditch, it shall be the duty of the county board or the judge of the district court, as the case may be, to appoint a competent engineer to examine such drainage system and to make report thereon to said board or court, as the case may be.

(b) In all cases where the costs of repairing, cleaning out, or improvement of any ditch heretofore con-

structed, exceeds the sum of 30 per cent of the original cost of the construction of such ditch, then and in that event no action whatever can be taken by such County Board, or District Court judge, as the case may be, after ascertaining that such proposed expenditure exceeds 30 per cent of the original cost of construction of such ditch until a majority of the property owners owning 51 per cent of the property affected thereby join in the petition for such repair, cleaning out or improvement, except where the majority of the property owners owning 51 per cent of the property have theretofore signed such petition, and in the event the requisite number of petitioners, as herein provided, do not sign such petition, then and in that event the original petitions and their bondsmen, upon whose petition such procedure was started, shall be liable for all costs incurred.

(c) In the event of majority of the property owners owning 51 per cent of the property affected, sign such petition before filing such petition, as herein provided, then and in that event the County Board or judge of the District Court, as the case may be, are authorized, empowered and it becomes the duty of such County Board or judge, as the case may be, to proceed to repair, clean out or improve such ditch in the same manner as in the original construction of such ditch, subject to the other provisions herein, relating to repair, improving or cleaning out such ditch.

(d) Provided, that in all cases of a drainage system lying wholly within one county, subject to provisions herein as to petitions and its or their sufficiency, the county board shall have authority to act upon their own motion and appoint an engineer upon information supplied to said board by report of the ditch inspector or otherwise, to their satisfaction, that a drainage system is out of repair or obstructed, warranting such appointment.

(e) Provided further that in cases where the total cost of making such repairs or removing such obstructions shall not exceed the sum of five hundred dollars, the county board shall have authority to make such repairs without the formality of awarding a contract and pay the cost thereof as provided in Section 53 of this act.

(f) Upon the filing of a petition for the repair of a drainage system, and before any action is taken thereon, one or more of the petitioners shall furnish a bond for the same purpose and in the same manner as outlined in Section 3 of this act, except that the amount of said bond shall be fixed by the county auditor in the case of proceedings before the county board and by the clerk of court in case of proceedings before the judge of the district court. ('25, c. 415, § 54; amended '27, c. 51, § 3)

Explanatory note—For section 3, see § 6740-3, herein.

6840-55. Same—Engineer—Bond—Duties—Such engineer shall give bond in the manner now provided by law for the construction of county drainage systems and shall within thirty days from the date of such appointment commence such examination and surveys if necessary, and make report to the board or court, as the case may be, at as early a date as practicable, with his recommendations thereon, and he shall submit with such report a map of such drainage system or such portion thereof as is obstructed or otherwise needs improvement or extending, and include therein sufficient detail to show the nature and extent of such obstruction and necessary improvements and in case he shall recommend that such drainage system needs deepening,

widening or extending, a map of the original drainage system, including all laterals or extensions, public or private, open or tiled added thereto and all lands affected by such original system and such additions and descriptions of all the land affected by such deepening, widening or extending of said system shall be submitted therewith including details, plans and specifications and estimate of the cost sufficiently complete to enable the board or court to fully understand the nature of the improvement and extent and probable cost thereof, and supply the necessary details to let a contract therefor, and so far as applicable and necessary said engineer shall, in the performance of his duties comply with the requirements of sections 10 and 12 of this act, and in case of a state drainage system that has been constructed other than by assessment against the property benefited the engineer's report shall cover the same ground and in addition thereto shall give the description of all lands affected thereby and so far as practicable the names of the owners thereof. ('25, c. 415, § 55)

Explanatory note—For sections 10 and 12, see §§ 6840-10, 6840-12, herein.

6840-56. Same — Report of engineer — Procedure —

(a) Upon the filing of the report of the engineer with the county auditor, or with the clerk of the District court, as the case may be, it shall be the duty of such board or court to make the necessary inquiry to determine to their satisfaction the accuracy of the facts set forth and recommended in such report and if at said hearing it shall appear from such report and the evidence presented that the repairs recommended are necessary and the board or court shall so find and that all the improvement that is necessary is that said drainage system, or some part thereof needs cleaning out or repairing, said board or court shall make its findings and orders accordingly and direct in the case of county drainage proceedings, the county auditor and chairman of the county board of such county, or in the case of judicial proceedings the county auditors of the several counties affected, to proceed and let a contract for the repair of said system as shown in the engineer's report in the manner as provided in Section 33 of this act.

(b) Provided, that in all cases of cleaning out or repair of a judicial drainage system extending into two or more counties, it shall be the duty of the District court upon not less than five days' notice to the county auditors of the several counties affected to apportion the total cost and expense connected with such repairs among the several counties in the same proportion as the original cost of construction of said system, and thereupon it shall become the duty of the county board of such county to provide for the payment of such expense, and if there is not sufficient funds to the credit of such system in any county to make such repairs, it shall be the duty of the board of such county to order the county auditor to make and file in his office, and file for record in the office of the register of deeds a summary statement and lien as provided in Sections 44 and 45 of this act, as in the case of county drainage systems, and shall be the duty of the auditor to make and file such statement and assess the costs of said repairs against the property benefited in said original drainage proceeding in the same proportion as in the construction of said original system.

(c) Provided, further, that in all cases of cleaning out or repair of a judicial drainage system extending into two or more counties, which system is comprised of drains having outlets into two or more separate

watersheds, wherein the drains having their outlets into only one of such watersheds are cleaned out or repaired, the cost and expense of such cleaning out and/or repairing shall be assessed in the proportion aforesaid, but only against the lands tributary to and drained through said drains so cleaned out and/or repaired, the lands so to be assessed to be determined by the court and designated in the order of the court apportioning the total cost and expense connected with such cleaning out and/or repairs among the several counties.

(d) Provided, that in all cases where the total cost of such cleaning out and repair including the expenses, shall not exceed the sum of \$3,000, the same may be payable, when ordered by the board, in three or five equal annual installments, and be so specified in the lien statement, and in the event that the cost of said repairs, including expenses shall exceed \$3,000, the same may be payable when so ordered by the board in five equal annual installments and the county board shall have authority in such case, if they so determine, to sell the bonds of said county as provided in Section 43 of this act as in the case of the original construction of a drainage system and in such case the county board shall have and may exercise all the authority provided in said Section 43, and the proceeds of the sale of said bonds shall be entered in the general ditch fund and credited to the system being repaired.

(e) It shall be the duty of the auditor, in all such cases, to include in such statement and provide for the collection for the benefit of the county when funds have been advanced as herein provided, interest upon the total sum so advanced at six per cent per annum. And it shall be the duty of the county auditor and the county treasurer to levy, assess and collect the amounts included in such lien statement in the same manner as provided in Section 51 of this act. ('25, c. 415, § 56; amended '27, c. 234)

Explanatory note—For sections 33, 44, 45 and 51, see §§ 6840-33, 6840-44, 6840-45, 6840-51, herein.

6840-57. Same — Viewers — Appointment — Duties

—If it shall appear from the report of the engineer or the evidence presented in support of the same as provided in sections 55 and 56 of this act that said drainage system is a state ditch that has been constructed other than by assessment upon the property benefited, or that the improvement needed consists in deepening, widening or extending the original system and the board or court, as the case may be, shall so find, then it shall be the duty of said board or court to appoint three disinterested viewers whose duties and responsibilities in the premises shall be the same as viewers appointed under sections 16 and 17 of this act, and in the performance of their duties said viewers shall in the case of repairs only to a state drainage system constructed other than by assessments on the property benefited make complete report of all the property benefited by the original construction of said system together with any lateral or extension thereto, whether public or private, and the amount of such benefit, but if the improvement consists of deepening, widening or extending a drainage system whether state, county or judicial, said viewers shall examine and report all benefits to all property resulting from the construction of the system and all extensions or laterals thereto, and the deepening, widening or extension reported by the engineer and ordered by the board or court, and shall report the damages resulting from such deepening, widening, cleaning out or extending in the same manner as provided for in the

construction of a county or judicial drainage system. ('25, c. 415, § 57)

Explanatory note—For sections 55 and 56, see §§ 6840-55, 6840-56, herein.

For §§ 16 and 17, see §§ 6840-16, 6840-17, herein.

6840-58. Same — Viewers — Report — Filing — Powers of county board or court—Upon the filing of such viewers' report with the county auditor or the clerk of the district court, as the case may be, it shall be the duty of such auditor or such clerk with the consent of the judge to give notice of a hearing upon the report of the engineer and viewers in the same manner as provided in section 26 of this act, in the case of the construction of a county or judicial drainage system and at such hearing the board or court, as the case may be, shall have and may exercise the same authority as provided in sections 27 and 28 of this act. ('25, c. 415, § 58)

Explanatory note—For sections 26, 27 and 28, see §§ 6840-26, 6840-27, 6840-28, herein.

6840-59. Same—Contracts—Letting—It shall be the duty of the board or court where such proceedings are pending to appear at the time and place specified in the notice given as provided in section 58 of this act, and if it shall appear from the showing made to the satisfaction to the board or court that the improvement specified in the petition or some part thereof as recommended in the engineer's report would be of public benefit and utility and is necessary to the proper use of the drainage system described in the petition, and that the engineer's and viewers' reports have been *regularly and properly made*, then said board or court shall so find and by order confirm the report of the engineer and viewers, either as originally presented or as subsequently modified and order the construction of the improvement as specified in the engineer's report as approved, and such board or court at such hearing shall have, and may exercise the same power and authority to cause to be corrected, changed or modified the report of the engineer or viewers as provided in section 28 of this act.

It shall be the duty of the county auditor and chairman of the county board in the case of proceedings before the county board, or the county auditors of the counties affected in proceedings before the district court to proceed and let a contract for the construction of such improvement, as ordered by the board or court in accordance with the plans and specifications pursuant to the provisions of section 33 of this act.

In all cases of a judicial drainage system or a state system extending into two or more counties, it shall be the duty of the clerk of the district court where said proceedings are pending to cause to be made following the order of the court hereinbefore specified a copy of the engineer's and viewers' reports and file the same in the office of the county auditor of each county affected, in said proceedings, and it shall be the duty of the court in said proceedings at any time upon not less than five days' notice to the several county auditors of the counties affected, to apportion the costs of said improvements among the several counties affected in proportion to the benefits received. ('25, c. 415, § 59)

Explanatory note—For sections 58, 28 and 33, see §§ 6840-58, 6840-28, 6840-33, herein.

6840-60. Same—Liens—Statement of—Assessment and collection—In all proceedings pending before the county board within ten days after the letting of the contract as provided in the preceding section or in the proceedings pending before the district court, within

ten days after filing of the order apportioning the costs and expense of the improvement among the several counties, the county auditor, or the county auditors, as the case may be, shall make and file in their respective offices a summary statement in form and substance as provided in sections 44 and 45 of this act, and shall forthwith make a certified copy thereof and file the same for record in the office of the register of deeds of their county, as provided in section 45 of this act. Upon the filing and recording of such copy in the office of the register of deeds, the amount specified in such statement for lien shall constitute a lien against each tract of land and each public or corporate road or railroad, and such land, road or railroad will be liable for such sum and interest thereon, and the same shall be and remain a first and paramount lien on such land, public or corporate road or railroad until fully paid, and shall take precedence of all mortgages, charges, incumbrances or other liens whatsoever, except only a prior ditch lien and payment of the several installments of said lien may be made in the manner provided in section 51 of this act. Such filing shall be deemed notice to all parties interested of the existence of such lien; the fees of the register of deeds for such recording shall be paid by the county on the allowance of the board, and said lien statement after the same has been recorded shall be returned to the county auditor and be by him preserved as a part of the record of such proceedings. That the provisions of section 51 relative to the duties of the county auditor and the county treasurer governing the assessment and collection of such lien shall apply to and govern the acts of the county auditors and treasurers in the respective counties in this proceeding, provided that in all cases where the total cost of such improvement does not exceed the sum of three thousand (\$3,000.00) dollars said lien may, when ordered by the county board be collected in equal annual installments for three or five years, and where the total costs shall exceed three thousand (\$3,000.00) dollars the county board may, and they shall have authority to provide the funds by the sale of county bonds as in the case of county or judicial drainage system, as provided in section 43, and it shall be the duty of the respective county boards to provide the funds for the payment of the cost and expense of such improvement, and they are hereby authorized so to do in accordance with the provisions of this act, and may pay such cost and expense out of the general ditch fund when funds are available therein, or out of the general revenue fund of the county, but in either case it shall be the duty of the county auditor to provide for and collect as part of the expense of such improvement, interest upon all sums advanced by the county at the rate of six per cent per annum, and it shall be the duty of the county auditor and county treasurer of the respective counties to extend such assessments upon the records of their office in accordance with the provisions of section 51 of this act, and collect the same as in case of other assessments against said property. ('25, c. 415, § 60)

Explanatory note—For sections 44, 45 and 51, see §§ 6840-44, 6840-45, 6840-51. For section 43, see § 6840-43, herein.

6840-61. Use of drainage systems for outlets for public or private laterals—Authority required—After the completion of any drainage system under any law of this state, except town ditches, no public or private lateral, either open or tiled, for the drainage of land, not assessed for benefits resulting from the construction of the main system, shall be constructed so as to

use the existing system as an outlet, by any person, persons, association or corporation either private or public without having first secured expressed authority so to do from the county board in 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 upon such terms and conditions as such board or court shall determine and require. That in determining the terms and conditions upon which such public or private lateral may be constructed so as to use such existing drainage system as an outlet, the board or court, as the case may be, shall, among other things, take into consideration the benefit to lands drained by such lateral, the cost of the construction of such lateral. ('25, c. 415, § 61)

6840-62. Same—Petition—Procedure on—Bond of petitioners—Engineer—Oath, bond and duties—Report—Whenever two or more parties owning land adjoining or in the vicinity of any public drainage system or in the vicinity of any body of water forming a part of or connecting with any such system, drain or outlet, shall petition the county board where an outlet is desired in a public drainage system, lying wholly within one county, or the district court that originally ordered the system where the drainage system extends into two or more counties therein, asking to be permitted to construct a lateral to connect with the system described in said petition and therein in said petition describing in general terms the starting point, the general course and terminus of said proposed lateral and setting forth the necessity for the construction thereof, and that the same if constructed would be of public utility and promote the public health, and giving a description of the land over which the proposed lateral would pass and therein specifying 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, and shall file said petition with the county auditor in case of proceedings to use a drainage system lying wholly within one county as an outlet, or with the clerk of the district court where the petition for the construction of the original system was filed in case of judicial proceedings, and shall accompany said petition with a bond of not less than the sum of one thousand (\$1,000.00) dollars with sufficient sureties to be approved by the county auditor in case of county proceedings or by the clerk of the district court in case of judicial proceedings and payable to the county or counties, as the case may be, conditioned to pay all costs and expenses which may be incurred in case the proceedings are dismissed or for any reason no contract is let for the construction of the proposed lateral, it shall be the duty of the county board in case of county proceedings, or the district court in case of judicial proceedings, to appoint a competent civil engineer and direct him to proceed and examine into, and report within the time fixed in said order to said board or court all matters necessary and essential to disclose the necessity and advisability of the construction of the proposed lateral drain, whether the same be open or tiled. The engineer when so appointed, shall within ten days thereafter take an oath and furnish a bond in such sum as the board or court shall specify, as provided in section 5 of this act, and shall within thirty days thereafter proceed to make such examination and preliminary survey as may be necessary to enable him to report to the board or court upon the necessity and advisability of the construction of such lateral drain. And said

engineer shall include in his report a plat of said proposed lateral describing thereon all lands affected by such lateral and through which the same would pass and shall determine whether said lateral is necessary or practical and report accordingly, and if the plan petitioned for is not found practical but some other or different plan than that described in the petition is found practical, said engineer shall so report to the board or court, and upon the completion of said report shall file the same with the county auditor in case of county proceedings, or with the clerk of the district court in case of judicial proceedings. ('25, c. 415, § 62)

Explanatory note—For section 5, see § 6840-5, herein.

6840-63. Same—Hearing—Permanent survey and report by engineer—Upon the filing of the report of the engineer as provided in the last section, it shall be the duty of the county auditor in county proceedings, or the clerk of the district court, with the consent of the judge, in judicial proceedings, to fix by order a time and place for hearing upon said report, which shall be not more than thirty days from the date of said order, and shall at least ten days before the date for hearing serve notice by mail upon all the petitioners and upon the attorney for the petitioners and all parties and corporations affected as shown by the engineer's report in said proceedings, and the engineer, and at the time and place specified it shall be the duty of said board in county proceedings, and said court in judicial proceedings to appear and have considered the evidence presented by all parties interested, and the engineer and petitioners and all parties having any interest may appear and be heard, for or against the granting of said petition, and if from the showing made said board or court shall be satisfied that necessity exists for the construction of such lateral, that the same will be of public benefit and utility; that the same is practical and that the benefits derived therefrom will exceed the cost of construction, including damages, then said board or court shall so find and by order direct the engineer to proceed and make a permanent survey, and make report thereon to said board or court and thereupon within thirty days thereafter shall proceed and make a permanent survey of the proposed improvement and make a full report of his work in connection with said survey, including therewith a map of the system and all laterals and of the proposed improvement, together with plans and specifications for the construction thereof, all as provided in section 12 and 13 of this act, the provisions of which shall apply to and govern his work in the proceedings. Upon the completion of such report the engineer shall file the same with the county auditor or clerk of the district court where said proceedings are pending. ('25, c. 415, § 63)

Explanatory note—For sections 12 and 13, see §§ 6840-12, 6840-13, herein.

6840-64. Same—Viewers—Duties—Report—Upon the filing of the report of the engineer as provided in the last section, it shall be the duty of the county board in county proceedings, or the district court in judicial proceedings to make and file an order appointing three disinterested parties, citizens of the county or counties affected, as viewers to view the premises affected and appraised and report the benefits and damages resulting from the construction of said improvements and said viewers within ten days after their appointment shall subscribe the oath as such and proceed to examine the property affected, and shall make and cause to be filed a report of their doings in connection with said proceedings as required by sections 17 and 25 of this act, and all the

provisions of section 25 and 24 relative to the duties of the viewers in case of the construction of county or judicial drainage systems, shall so far as applicable apply to and govern the action and define the duties of the viewers in this proceeding; and upon the completion of their report shall file the same with the county auditor or clerk of the district court where such proceedings are pending. ('25, c. 415, § 64)

Explanatory note—For sections 17 and 25, see §§ 6840-17, 6840-25, herein.

For section 24, see § 6840-24, herein.

6840-65. Same—Hearing on viewers' report—Notice and time of—Within ten days after the filing of the viewers' report as provided in the last section it shall be the duty of the auditor in county proceedings or the clerk of the district court, with the consent of the judge in judicial proceedings, by order, to fix a time and place for hearing upon the petition and the engineer's and viewers' reports, which shall be not less than twenty (20) nor more than sixty (60) days from said hearing, to be published in at least one legal newspaper in the county or counties affected for at least two weeks prior to said hearing, therein, briefly reciting the filing of said petition and of the engineer's and viewers' reports, giving briefly the starting point, the general course and terminus of the proposed lateral and a description of the land across which the same would pass and the name of the owners thereof as shown in the last tax list of said county, and shall at least ten days prior to the date of hearing serve by mail a copy of said printed notice upon the several parties owning land or owning or controlling roads or railroads or other property affected as shown in the viewers' report. Provided, that in all cases affecting two or more counties, it shall not be necessary to publish in any county the description of the land, roads, railroads or corporations not situated within such county. ('25, c. 415, § 65)

6840-66. Same—Hearing on viewers' report—Procedure—Bids for construction—Contracts—At the time and place specified for the hearing on the petition, engineer's and viewers' reports specified in the last section, it shall be the duty of the county board in county proceedings and the district court in judicial proceedings to appear and hear and consider all evidence presented by all parties interested for or against the granting of the petition and the said board or court at such hearing shall have all authority relative to modification or changes in the report of the engineer or viewers as provided in section 28 of this act, and if upon full hearing the said county board or district court shall find that a necessity exists for the construction of said lateral; and that the same will be of public utility and that the benefits that will be derived therefrom will exceed the costs of construction, including expenses and damages; that the report of the engineer and viewers, either as originally presented or as subsequently amended is correct and true, then said board or court shall so find and by order direct the construction of such improvement according to the plans and specifications of the engineer as finally adopted by the board or court. Within ten days after the filing of said order in judicial proceedings, it shall be the duty of the clerk to make and file in the office of the county auditors in the counties affected by said proceedings a certified copy of said report of the engineer and viewers. Within fifteen days after the filing of the order directing the construction of said improvement it shall be the duty of the county auditor in the case of county proceedings, and the county auditors in

case of judicial proceedings to advertise for bids for the construction of said improvement in the manner provided in section 33 of this act, and the provisions of said section so far as applicable shall apply to and govern the duties of said county auditor or auditors, as the case may be, in advertising for bids and letting of contracts for the construction of said improvements and the provisions of section 34 of this act so far as applicable relating to the form and terms of the contract and bond of the contractors and the duties of the county auditor or county auditors relative thereto shall apply to and govern the duties of the auditor or auditors in this proceeding, and it shall be the duty of the district court in judicial proceedings at any time after the letting of the contract upon not less than five days' notice to the several county auditors of the county affected, to, by order, apportion the costs of the construction of said improvements, including expenses and damages among the several counties affected in proportion to the benefits received. ('25, c. 415, § 66)

Explanatory note—For sections 28, 33 and 34, see §§ 6840-28, 6840-33, 6840-34, herein.

6840-67. Same—Lien statements—Assessment, levy and collection of liens—Within ten days after letting of the contract in the case of county proceedings or after making the order apportioning the costs of the improvement among the several counties by the district court in judicial proceedings, it shall be the duty of the county auditor or the several county auditors, as the case may be, to make and file in their respective offices a summary statement as provided in section 44 of this act, and all the provisions of said section so far as applicable shall apply to and govern the action of the county auditor or county auditors in this proceedings; and thereupon it shall be the duty of such county auditor or auditors respectively to make a certified copy of said summary statement and lien in their office and file the same for record in the office of the register of deeds of their respective counties as provided in section of this act, and all the provisions of sections 44 and 45 shall apply to and govern the duties of the county auditor or auditors and register of deeds so far as applicable in this proceeding, and upon the filing and recording of said lien the same shall constitute a first lien against the several pieces of land, roads and railroads described therein to the extent and the amount specified in such lien statement, and the provisions of sections 44 and 45 of this act, shall apply to and govern the rights and obligations of all parties; provided, that in all cases where the cost of said improvement including expenses and damages shall not exceed the sum of three thousand (\$3,000.00) dollars, the same may be levied, assessed and collected in three or five equal annual installments, when so ordered by the board or court, and in all cases where the cost of such improvement, including damages and expenses shall exceed the sum of three thousand (\$3,000.00) dollars, then the same may be made payable and be assessed and collected in five equal annual installments and the county board of the several counties shall provide the funds for the construction of said improvements including expenses and damages, and when they deem it necessary or advisable to do so, they shall have authority to issue and sell the bonds of said county to cover the whole or such portions of the cost of said improvements as they deem necessary and all the provisions of sections 43 and 51 relative to issuance and sale of county bonds or the payments from the general ditch fund, shall apply to and govern the duties

and authorities of the county board in this proceeding. It shall be the duty of the county auditor and of the county treasurer to perform the same duties relative to the levying of assessments and the collection of the same for each installment of said liens as provided in sections 45 and 51, and it shall be the duty of said county auditor and said county treasurer to perform the several duties and exercise the authority in the collection of liens under this proceeding as provided in section 51 of this act. ('25, c. 415, § 67)

Explanatory note—For sections 44 and 45, see §§ 6840-44, 6840-45, herein.

For §§ 43 and 51, see §§ 6840-43, 6840-51, herein.

6840-68. Municipal sewer drainage into drainage systems—Conditions—The county board in the case of a drainage system lying wholly within one county and the district court that ordered the construction of the system in all cases where it extends into two or more counties, upon such terms as such board or court may deem proper may permit any municipality having a population of two thousand five hundred (2,500) or less to drain into any drainage system now or hereafter to be constructed, the overflow from any such sewerage system having and using a properly constructed and operated sewerage treatment plant subject to the following conditions:

(1) Such overflow shall empty into the drainage system at a point below the limits of the municipality or below the settled portion thereof and where the waters from the system may not flow back and flood the sewerage plant.

(2) Storm waters from the municipality shall not be permitted to enter or run through the sewerage plant. Provided, however, that in all cases where sewerage systems now exist in which certain portions the storm waters have access to the sewerage plant, such systems may nevertheless continue in operation where they have been approved by the state board of health, subject, however, to the conditions that such municipalities shall from time to time modify and correct their system in such manner as may be specified by the state board of health.

(3) No such overflow into any drainage system shall be permitted unless the same has first been rendered sanitary and inoffensive.

(4) The municipality shall pay for the use of a public drainage system as an outlet, to the county board in all cases where the system lies wholly within one county such sum as the board may direct, and to the county auditor of each county affected such sum as the court shall direct in all judicial proceedings extending into two or more counties. The sum so collected in either case to be credited to the account of the system used as outlet. ('25, c. 415, § 68)

6840-69. Petition to county board or court—Powers of board or court—Findings and orders—Any municipality containing not to exceed two thousand five hundred (2,500) inhabitants, desiring to use any public drainage system as an outlet for the sewerage system, shall petition the county board in all cases where the system desired to be used as an outlet lies wholly within one county or the district court that ordered the system in all judicial proceedings which extend into two or more counties, setting forth in said petition the necessity for the use of such system as an outlet; that the same will be of public benefit and utility and promote the public health and shall be accompanied by a plat showing the location of said drainage system and of the sewerage system of said municipality, with plans and specifications showing the plan of connection,

together with sufficient detail to be used in letting the contract and be approved by the state board of health, and in case the drainage system intended to be used has been petitioned for either to the county board or district court, but not yet established, said petition shall be filed in the office of the county auditor, in all cases pending before the county board, and with the clerk of the district court in all judicial proceedings, and be presented to the county board or the district court at the final hearing called for the consideration of the engineer's and viewers' reports, notice of which shall be included in the notice of final hearing and the said county board or district court shall have full authority to consider the matters set forth in said petition and cause the benefits and damages to be regularly assessed and included in the viewers' report as in other cases. And the said board or district court may receive all evidence of parties interested for or against the granting of such petition, and if at said hearing said board or court shall find that necessity exists for the construction of said improvement; that it will be of public benefit and utility and promote public health and that said connection can be made without serious damage to the drainage system described in the petition, and that the system proposed provides for a proper treatment plant rendering the sewage sanitary and inoffensive, before it is discharged into the drainage system, then said board or court shall make findings accordingly and, by order, make said municipality a party to said drainage proceedings and determine the amount which it shall pay for the privilege of using the drainage system as an outlet, and may include in such order such other and further conditions as may be deemed proper to protect the rights of the parties in interest and the general public. ('25, c. 415, § 69)

6840-70. Same—Petition and procedure where system already established—In all cases where the drainage system desired to be used as an outlet has already been established and constructed, the municipality desiring to use such system as an outlet file a petition accompanied by plans and specifications as described in section 69 of this act, in the office of the county auditor in all cases where the drainage system is located entirely within one county or with the clerk of the district court where the proceedings were instituted, when the drainage system extends into two or more counties, and upon the filing of such petition it shall be the duty of the county auditor, or the clerk of the district court, with the approval of the judge, by order, to fix a time and place for hearing on said petition and cause notice thereof to be given by mail at least 15 days before the date of hearing upon the county attorney and chairman of the board of county commissioners in county proceedings and upon the county attorney and county auditor of each county affected in judicial proceedings. At the time and place specified in said notice said board or court where said proceedings are pending shall attend and hear all the evidence presented by all parties in any manner interested, and if at said hearing upon the evidence presented said board or court shall be satisfied that necessity exists for the construction of the improvement and permitting the connection with the said drainage system, that said improvement will be of public utility and promote the public health; that the system conforms to the requirements of the state board of health and provides for the construction and use of a purification tank so that the sewage when passing through the same will be sanitary and inoffensive, said board or court may grant such petition upon such terms as may be prescribed

and order the construction of the necessary connection and appliances to enable the municipality to utilize such drainage system as an outlet and said board or court may include in such order such additional conditions as may be deemed necessary and proper to protect the rights of the parties and safeguard the interest of the general public. ('25, c. 415, § 70)

Explanatory note—For section 69, see § 6840-69, herein.

6840-71. Same—Condemnation of outlets—Any municipality interested in any project hereinbefore specified may acquire by purchase or condemnation the necessary right-of-way over any lands within or without such municipality for the construction of such sewage plant and overflow drain and proceedings to condemn such lands as may be made and instituted by such municipality and prosecuted to final judgment under the statutes of this state in respect to taking the property by the right of eminent domain, and all the general laws of this state in respect to the condemnation of property shall apply thereto and govern and control such proceedings. The cost of the condemnation and acquisition of such right-of-way as well as the amount required to be paid for the right to make such connection and all other expenses incurred by such municipality in the establishment and construction of such overflow drain shall be paid from the general fund of such municipality. In case of the denial by the court or board, as the case may be, of any petition in this act provided for, the municipality in whose behalf the same was made, shall pay the cost of the proceedings to be taxed in the usual way. ('25, c. 415, § 71)

6840-72. Same—Appeals—In all cases pending before the county board any interested party feeling aggrieved by any order made by such board, either granting or denying any such petition, may appeal from any such order to the district court of the county in which said proceedings are pending. The proceedings on such appeal shall be the same as those provided in section 32 of this act. ('25, c. 415, § 72)

Explanatory note—For § 32, see § 6840-32, herein.

6840-73. Plats of tile drains—That in all cases where tile drain is required to be or is being laid as a part of the plan or system of any public drainage project under any drainage law of this state, or in case of any drain being constructed by private party, it shall be the duty of the engineer in charge of such drainage project to make at the request of the owner of any land connected with such system and as a part of his duties as such engineer a complete plat of all tile drain used as a part of such system or any tract or piece of land connected therewith or affected by, said drainage tile system, showing thereon the complete location and outlet of such tile and size and kind thereof, course and distance of each line, and the description of the land upon which the same is located and so connect the same with the main ditch and outlet and the adjoining bench marks and government corners that the said system or any part thereof may readily be located at any subsequent period from such plat.

The expense of furnishing such plat shall be paid for by the party requesting the same, who may file said plat in the office of register of deeds of the county or counties in which said tile drain is located. The engineer and register of deeds shall be entitled and received the same compensation as for other like services in ditch proceedings, and the said register of deeds shall preserve said plat and make a notation thereof in his index and reception book so that the same may

be preserved for future reference. ('25, c. 415, § 73)
6840-74. Fees and expenses of engineers, viewers, county board, county officers, etc.—The following fees and expenses shall be allowed and paid for services rendered under this act.

(a) To the engineers a sum not exceeding \$12.50 per day, to be fixed by the county board or court making the appointment, for every day necessarily engaged and actual necessary expenses, including cost of bond.

(b) To each assistant engineer a sum not exceeding \$7.50 per day for every day necessarily engaged and actual and necessary expenses.

(c) To each viewer the sum of \$5.00 per day for every day necessarily engaged in viewing ditches and traveling therefor and making up the reports and actual and necessary expenses.

(d) To each rod man a sum of not exceeding \$4.00 per day and actual and necessary expenses.

(e) To each chainman, axeman and other like employes not herein mentioned and necessary to the prompt execution of the work of locating or construction of a public ditch, a sum of not exceeding \$4.00 per day and actual and necessary expenses.

(f) To each member of the county board the sum of \$5.00 per day for each day actually occupied in proceedings to establish or repair or inspect any drainage improvement after its completion or during the course of the work if appointed as a committee for that purpose and the sum of ten cents per mile each way for traveling necessary in attending any special meeting of the county board called for the purpose of transacting any business pertaining to such drainage system and for traveling in inspecting ditches or any other necessary travel in said drainage matter.

(g) To the county auditor, attorney for petitioners, clerk of the district court, the register of deeds and the sheriff performing duties thereunder, such reasonable compensation as shall be fixed by the county board or court, as the case may be, and the fees and compensation of all county officials in drainage proceedings shall be in addition to all sums and fees allowed them by law, provided that the fees of such auditor shall in no case exceed \$250.00; and provided further that in all proceedings for repair where the costs of the same are to be paid from the annual assessment for repairs provided in Section 53 hereof, the fees of the county auditor or county attorney shall in no case exceed the sum of \$100.00 for each of such proceedings.

(h) That the fees, compensation and expenses hereinbefore specified for members of the county board in drainage proceedings shall be in addition to all other fees, salaries, compensation and expenses allowed to such members of the county board by any other law of this state. In all drainage proceedings where any county is directly interested, the county attorney thereof shall represent the county. No county attorney or his assistants or any attorney associated with him in business shall otherwise appear in any drainage proceeding for any person or party whatsoever interested therein.

(i) All fees per diem, compensations and expenses provided for in this act and fees for such other legal services and expenses as may be necessary, 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 judge of the district court having charge thereof shall audit, allow and order the same paid upon ten days' written notice to the county or counties interested which notice may be given to the county auditor or the interested county or counties, that

all bills on file with the clerk of the court where such proceeding is pending at the date of such notice, will be brought on for hearing and for allowance at the time and place named therein.

(j) And in all cases where a judicial ditch proceeding has, for any reason, been dismissed by the court, all fees and expenses connected therewith shall be audited, allowed and ordered paid in like manner. ('25, c. 415, § 74; amended '27, c. 51, § 4)

6840-75. Referees — Appointment — Bond — Qualifications—Fees—Duties—Reports—The judge or county board as the case may be, may appoint a referee who shall be a consulting engineer in any drainage proceedings to perform the duties hereinafter set forth, and such referee shall qualify by taking the appropriate oath and giving bond to the county or counties affected by such drainage system in such sum as shall be fixed by such judge or board, as the case may be. Such bonds shall be conditioned for the faithful performance of his duties as referee. Said referee shall be a qualified civil engineer. The fees of such referee shall be fixed by said judge or board, as the case may be, and shall be paid out of the funds of such drainage system as shall be ordered by said judge or board. It shall be the duty of such referee if appointed, to consider all bills of account or applications for payment in such ditch proceedings and to hear evidence if offered in relation thereto and to report in writing to such judge or county board his approval, rejection or amendment thereof as such referee who shall also keep accurate record and account of all bills of account and all applications for payment acted upon by him and reported to said judge or county board, together with copies of all such reports and all proceedings had in relation thereto. It shall further be the duty of said referee by order of said judge or board to inspect and examine and make report upon all work of construction in the matter of such drainage system prior to final acceptance thereof and for the purpose of making such examinations or inspections and upon application of such referee said judge or board may appoint and designate a competent and experienced civil engineer, other than the one officially acting as such in such drainage proceedings, to examine such ditch and the plans and specifications thereof and report thereon to said referee and it shall be the duty of said referee if requested to appear and testify before the judge or county board considering the final acceptance of such drainage system. When order of said judge or county board approving a report of such referee and allowing a bill of account or application for payment in such drainage proceedings shall constitute and be construed as an accounting and allowing of such account by such judge or county board within the meaning of this section and the approval by said judge or county board or any order of said referee shall constitute the said report of said referee, the order of said judge or county board (in such proceedings, provided in all cases and said judge or county board) may reject such report and make an independent order in relation thereto covered by or contained in such report. Such referee shall be subject to removal at the pleasure of said judge or county board. ('25, c. 415, § 75)

6840-76. Appeals from orders of county board as to fees or expenses—Any land owner, employee or other person aggrieved by any order of court or county board relative to the allowance of fees, or fees and expenses, may appeal from such order to the district court of any county in which the proceeding is pending and by notice given on or before the first day of the term,

demand and obtain a jury trial. All such appeals shall be within thirty (30) days after the order allowing such claim and shall be governed as far as applicable by the provisions of section 32 of this act, save that in all appeals taken by parties whose lands are assessed for said improvements, then the expense thereof shall be paid by the county and assessed against said improvement. ('25, c. 415, § 76)

Explanatory note—For section 32, see § 6840-32, herein.

6840-77. Defective notices not to affect jurisdiction—In any and every case where a notice is required under the provisions of this act, and for any reason proper notice was not given, published or served or description of property, persons or corporations omitted, the board or court shall not thereby lose jurisdiction but in every such case such proceedings may be continued by order of the board or court for such time as may be necessary to again publish, post and serve a proper notice, and a new notice shall be ordered published, posted, and served as required by this act, as to all property, persons or corporations with reference to which the first notice was defective or not properly published or served, and in all cases where it shall appear that proper notice has been given, published or served as to land, parties and corporations, in certain counties, and is defective or not given in others, then the jurisdiction in all cases shall continue as to land, roads, railroads, parties or corporations with reference to which proper notice has been given, published and served and such proceedings may be continued by order of the board or court for such time as may be necessary to publish and serve a new notice, and in all cases where the defective notice, publication or service has occurred in only one or more counties, but is completed in others, then the new notice need be published only in such county or counties wherein the first notice was defective. Provided, that in all cases where proper notice and service has been given as to certain property, persons or corporations and is defective as to others, or certain others have been omitted and a continuance is had and new notice ordered as to the property, persons or corporations with reference to which the notice was defective or omitted, then the jurisdiction of the board or court shall continue and on the adjourned day the hearing may proceed as though conducted on the date fixed in the first notice. ('25, c. 415, § 77)

6840-78. Orders and notices—By whom served—Fees—All orders and notices, the issuance of which are provided for by this act, and are issued by the officer or tribunal herein authorized, may be served by the sheriff of the county or other disinterested person designated by the auditor or clerk, as the case may be, and such service in the absence of specific provisions to the contrary shall be made in the manner provided for the service of the summons in the district court, and in all cases where more than one manner of service is provided for, a personal service made as herein provided shall be sufficient, providing the same is made not less than ten days before the date of hearing. The officer making such service shall receive the same fees as are allowed by law for the service of such summons. ('25, c. 415, § 78)

6840-79. Purposes of law—Effect of partial invalidity—The purpose of this act being to secure improvements in the interest of the public health and general welfare and for the protection of property from floods, it shall be liberally construed in the interests of the general welfare, and in case any section or parts of

any section shall be found to be unconstitutional the remainder of the act shall not be invalidated, but shall remain in full force and effect. ('25, c. 415, § 79)

6840-80. Construction and application of other laws—In all cases where reference is made in this act to other chapters or sections of the General Statutes of 1913, or any chapters or sections of any session laws, or any other sections of this act or other drainage laws of the state, all such chapters, sections and provisions thereof shall so far as applicable for all purposes of this act be treated and construed as having the same force and effect as though herein in full set forth. ('25, c. 415, § 80)

6840-81. Appeals to supreme court—Notice of—Any aggrieved party, who claims damages, or against whose property benefits are assessed, may appeal to the supreme court, as in civil actions, from any final order except an order establishing such drainage system in proceedings under this chapter, made in the district court, *within thirty days after the filing of such order*. The notice of appeal shall be served on the clerk of the district court and need not be served on any other person or corporation. ('25, c. 415, § 81)

6840-82. Entry upon lands by engineer and assistants—In all proceedings instituted under the provisions of this act, 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, but in so doing shall commit no unnecessary damages. ('25, c. 415, § 82)

6840-83. Records prima facie evidence—The record of any proceedings conducted under the provisions of this act and any order made by the county board or district court in such proceedings, the record thereof and the certified copy of the record or of any order of the board or court made in proceedings conducted under this act shall be prima facie evidence of the facts therein stated and of the regularity of all the proceedings prior to the making of such order. ('25, c. 415, § 83)

6840-84. Obstructing work—Alteration, etc., of markings—Unauthorized connections with systems—Neglect of duties—Penalties—Duties of county attorneys—Any person wilfully or negligently obstructing or in any way injuring any work constructed under the provisions of this chapter or under any other law of this state relating to drainage or diverting the water from its proper channel and any person who is not authorized so to do by the engineer in charge of any drainage system and who wilfully changes or alters the location of or the markings on any stakes set, placed or marked by such engineer or under his direction in the matter of laying out or the construction of any drainage system, and any person digging or constructing or causing to be dug or constructed any drain which thereby empties any drain constructed under the provisions of this chapter without having first secured the permission from the county board of the county in which such principal drain is located, "shall be guilty of misdemeanor and shall be liable to any person or association of persons or corporation injured by such act in treble damages."

Any county auditor, clerk of court, member of the county board or any other officer who refuses or wilfully neglects to perform any of the duties imposed upon him by this act shall be guilty of misdemeanor and shall also be liable therefor to any person, persons,

association of persons, or corporation injured thereby in treble damages.

The county attorney of the proper county shall prosecute all criminal action arising under this chapter. ('25, c. 415, § 84)

6840-85. Outlets in adjoining states—If the engineer finds that there is no practicable or feasible outlet for a drain except through the lands in an adjoining state, he shall include said findings in his report, together with an accurate description of the needed right-of-way in such adjoining state and his estimate of the cost of obtaining the same.

If such finding is confirmed in the final order establishing said drainage system the county board or district court making said order

(a) Shall require the county auditor, in case of a county drainage system, or the auditors of the respective counties, in case of a judicial drainage system, to purchase such needed right-of-way at an expense not exceeding the estimated cost therefor specified in the engineer's report, said right-of-way to be paid for as part of the cost and expense of said drainage system; and

(b) Shall provide in said final order establishing said drainage system that the jobs of digging and constructing the drainage system shall not be advertised, let or sold until such purchase of such needed right-of-way in such adjoining states has been in all things completed. ('25, c. 415, § 85)

6840-86. Systems extending into two or more judicial districts—In case any proposed drainage system extends into two or more judicial districts proceedings may be commenced before the district court of either of said districts and the court before whom such proceedings are commenced shall thereafter have jurisdiction of all subsequent proceedings and matters in relation to said drainage system and every order made by the court laying out or establishing any drain or refusing to establish the same, and every other order made in relation thereto, under the provisions of this chapter and the record thereof, if recorded, or a certified copy of such record shall be prima facie evidence thereof, and of the facts therein stated and of the regularity of all the proceedings had therein. ('25, c. 415, § 86)

6840-87. Failure of board or court to attend hearings—Continuances—In all cases in any proceeding under this act, if the court or board for any reason shall fail to attend a hearing pursuant to a notice or order previously made and given for the holding of any special or adjourned meeting or hearing in relation to any matter connected with such proceeding, the court or board, shall not thereby lose jurisdiction of such proceedings but may make such new or additional order as may be necessary in the premises in order to arrive at speedy determination of the matters connected with such proceeding. Provided, that in all cases where an order has been made or a notice given calling a hearing in any matter connected with the proceedings under this act, and said board or court from any cause shall fail to appear at the time and place specified in said notice or order, then it shall be the duty of the county auditor in proceedings before the county board and the clerk of the district court in judicial proceedings, and they are hereby authorized to continue such hearing to such other date as may be deemed necessary and notify the board or court, as the case may be, of such continuance and the date of hearing, and such continuance made by such auditor or clerk shall con-

tinue the hearing and jurisdiction to the date fixed by said auditor or clerk. ('25, c. 415, § 87)

6840-88. Systems extending into or connecting with systems in adjoining states—Whenever it is necessary to construct, widen, deepen, straighten, or change any drainage system or water course lying on, along or near the state line between this state and any adjoining state or country, or wherever it is necessary to repair or improve any drainage work provided for in this act, which drainage system water course or other drainage work cannot be constructed, repaired, or improved in a proper manner without extending the same into an adjoining state or country, and thereby affecting lands therein the county board of the proper county or the district court before whom such drainage proceeding is pending in a county or counties adjoining or near such state line, shall have power to join with the board or tribunal of such adjoining state or country having power to lay out and construct public drainage ditches in such adjoining county or district or another state or country, in the construction, widening, deepening, straightening, repairing or improving of any such drainage system water course or other work of drainage. Such board or tribunal in this state shall have the power to enter into joint contract or arrangements with such board or tribunal in such adjoining state or country and construct, repair, or improve any such drainage work, each to pay such share of the cost and expenses of such work as shall be agreed upon by the contracting bodies. Such work of drainage and the construction thereof so far as it relates to lands in this state, shall be done on petition of owners of lands as provided for in the drainage laws of this state relating to county or judicial drainage proceedings, and the provisions of such laws so far as applicable shall govern such county board or district court, as the case may be, in relation to such joint work of drainage. Provided, such 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 drainage system of work including damages. In case the benefits to lands in such adjoining state or country are not sufficient to pay all costs of construction, repair, or improvements of such drainage system therein, including damages to lands therein, such board or court, as the case may be, is hereby given authority to authorize and direct the proper county or counties of such drainage system in such adjoining states or counties to contribute sufficient funds to complete the construction, repair or improvement of such drainage system in such adjoining state or country, if the same will be of sufficient benefit to the lands in this state affected by such drainage work, to warrant such contribution. ('25, c. 415, § 88)

6840-89. Drainage affecting meandered lakes—Appeals—Whenever any order of the board of county commissioners made and entered as herein provided drains in whole or in part any meandered lake, any person or corporation aggrieved by any such order, or any tax payer residing within four miles of any meandered lake effected by any such order, may appeal to the district court from any such order and the procedure and manner of taking such appeal shall conform to the provisions herein set forth for other appeals. Such appeal shall bring before said court all questions and proceedings involved in such order. Provided, that the party taking such appeal shall accompany the same with an appeal bond to the board of county commissioners with at least two freehold sureties in the sum of one thousand dollars, to be approved by the auditor of the

county in which such appeal is taken, conditioned that said appellant will duly prosecute the appeal and pay all costs that may be adjudged against him and abide the order of the court. ('25, c. 415, § 89)

6840-90. Consolidation of systems to prevent overflows or inundations—Procedure—In any case where one or more ditches or drainage systems whether open or tiled, whether public or private, shall have been or are being constructed or may hereafter be constructed, or for the construction of which proceedings have already been, or may hereafter be initiated, the waters from which do or it is contemplated shall empty into any existing system or any creek, draw, water course or body of water, whether meandered or not, and the construction of said ditch or drainage improvement shall cause or is likely to cause by reason of the added waters, the overflow of the waters of said drainage system, creek, draw, water course or body of water, and the inundation of the adjoining land, then and in that event, upon the filing of a petition by the county board of any county affected, or by not less than twenty-five per cent of the freeholders whose property is affected by such overflow, with the clerk of the district court of any county affected by such proposed improvement, setting forth in general terms of existence of said ditch or drainage system and the conditions of said creek, draw or water course or body of water and outlet, and the necessity for the improvement of said outlet, and if need be, the controlling of said waters therein or in said body of water, or both, and that said proposed improvement will be a public benefit and utility and improve the public health and protect said land from overflow, and asking for the consolidation of all said drainage systems or drainage proceedings, whether public or private, connected with or emptying its waters into said outlet or into said body of water into one system, and the extension of the same so as to furnish a proper outlet for all waters of said basin that naturally drain into or through said outlet, and that the cost of constructing such outlet shall be borne by all of the lands that are or will be benefited, and in order to equitably apportion the cost of the construction of said drainage improvement and the extension of said outlet to all lands to be benefited, it is necessary that such proceedings be merged and consolidated, and that said petition except when presented by a county shall be accompanied by a proper bond as provided in section 3 of this act; thereupon the clerk of said court shall notify the judge thereof and said judge shall make an order fixing the time and place for hearing upon said petition and ordering all proceedings then pending in any or all of said drainage proceedings to be stayed until the hearing and determination of said petition, which petition and order shall be served upon all persons and parties interested in such drainage proceedings by publication thereof once a week for three successive weeks prior to the date of such hearing, in a legal newspaper in each county in which such proposed drainage improvements or any part thereof are situated, and if any such proposed drainage proceedings are pending before the county board of any county, such petition and order shall be served upon the county auditor and clerk of the district court of such county. ('25, c. 415, § 90)

Explanatory note—For section 3, see § 6840-3, herein.

6840-91. Same—Order by court and subsequent procedure—Upon such hearing the judge shall proceed to hear all testimony offered in relation to said matter, and if it be made to appear that the allegations of

such petition are true, and that the same should be granted, he shall make an order granting said petition and merging and consolidating all of said drainage proceedings, or drainage systems, and giving to said drainage proceedings as consolidated, a title and number by which it shall in all subsequent proceedings be designated, and appointing a competent civil engineer to make such additional surveys, and such changes and modifications of the surveys, reports, plans and estimates theretofore made, as may be necessary, and fixing the time within which such modified and amended report of the engineer shall be filed in the office of the clerk of the district court of said county. ('25, c. 415, § 91)

6840-92. Same — Viewers — Appointment — Duties—Upon the filing of such modified and amended report of the engineer, the judge shall appoint three viewers to assess the benefits and damages in said drainage proceeding in accordance with the provisions of the drainage laws of this state, and thereafter said proceeding shall be continued and carried to final determination under the general drainage laws of this state as though originally commenced as one proceeding before said judge. ('25, c. 415, § 92)

6840-93. Errors or defects in proceedings—Effect—No person or corporation shall be permitted to take advantage of any error in any proceedings under this chapter, either by the county board or district court or by the engineer, viewers, county auditor or other officer, person or persons, not of any informality, error or defect appearing in the record of such proceedings unless the party complaining thereof is directly affected thereby. If the court shall at any time modify any assessment or assessments or enjoin the collection thereof, or release any person from liability thereof, it shall in no manner affect the rights or liability of any other person. Whenever a drainage system has been established, either under the provisions of this chapter or any prior drainage law, by which the cost of construction was assessed against a corporation or property benefited, and when the contract or contracts for the construction thereof has been or shall be let without collusion and in good faith and at a reasonable price, no defect or lack of notice in letting, making or executing of said contract, or contracts, and no variance between the advertisement and the contract as to the length of time or manner in which said drainage system shall be constructed, shall invalidate in any way the ditch liens of ditch assessments, nor shall the fact that said contract has been or may be let containing provisions different from the advertisement with reference to the time or method in which the proposed work shall be completed or constructed, in any way invalidate said contract, provided such extension of time or change of method was made in good faith and by reason of delay in obtaining bids for the construction of said drainage system or for other good causes, and provided such contract or contracts have been or shall be let with the approval of the engineer and auditor or auditors, and said drainage system or some part thereof has been constructed pursuant to the contract and in accordance with the plans and specifications approved by the board or court, the contractor may recover the contract price thereof from the county or counties and no ditch lien or ditch assessment shall in any way be delayed or invalidated by reason of such variance between the contract and notice of letting thereof. ('25, c. 415, § 93)

6840-94. County ditch inspectors in certain counties—In all counties where drainage systems now con-

structed have cost in the aggregate more than fifty thousand dollars (\$50,000.00), or which shall hereafter have drainage systems costing not less than said sum, the county board in any county, may at such time or times as the board may deem necessary appoint a competent man as county ditch inspector whose duties shall be to examine and inspect all such county drainage systems as the board shall designate and require, such appointment shall be for such time and at such compensation as the board may specify. The party so appointed shall within twenty days after making such inspection report in writing to the county board the result of his examination and specifically designate each drainage system or lateral that is in need of repair, specifically designating the location and nature of the repair needed. He shall also include in his report an itemized statement of the time spent upon each system and the expense incurred in connection therewith. It shall be the duty of the county board at as early a date as possible following the filing of such report with the county auditor to proceed and have such repairs made as provided in section 54 of this act, and the county board is hereby authorized to act upon said report in the manner of repairing or cleaning out any drainage system or part thereof without any further petition than simply the filing of such report. Provided that if the inspector shall find or have reason to believe from such examination and investigation that the cleaning out or repair of any such drainage or portion thereof is made necessary through the negligence of the owner of the land on whose premises the repairs are to be made, who himself or by tenant has wilfully filled in said ditch, he shall so state in his report, whereupon said county board or district court shall cause notice to be served upon the owner of said premises on which any such repairs are to be made, requiring said owner to repair or cause to be repaired the ditch or portion of said ditch in the manner recommended by said engineer, said ditch to be repaired within the time prescribed in said notice. If the owner fails to repair said ditch or cause same to be repaired in compliance with said notice, the said county board may proceed to repair same as above, specified and it shall be the duty of the county auditor to make a statement showing the estimated repair expense in repairing said ditch and file same in the office of the register of deeds of the county in which said premises are situated and assess against such premises for the full amount of such expense. ('25, c. 415, § 94; amended '27, c. 359)

Explanatory note—For section 54, see § 6840-54, herein.

6840-95. Assistant engineers — Appointment, oath, duties and compensation—The engineer appointed for the purpose of making a survey and report under any provisions of this act, shall have authority to appoint such assistant engineers as circumstances may require to aid in the completion of said work for whose acts he shall be responsible and whom he may remove at pleasure. Any such assistant engineer shall before entering on his duties take the oath required by this act and such oath and appointment shall be filed in case of a county proceeding with the county auditor, and in case of a judicial proceeding with the clerk of the district court. The compensation of such assistant engineer shall in no case exceed three-fourths of the regular rate fixed by this act as compensation for the engineer. Such compensation may be fixed, in case of a county proceeding by the county board and in case of a judicial proceeding by the district court. ('25, c. 415, § 95)

6840-96. Use of former reports surveys and monuments—In any proceedings heretofore or hereafter instituted for the establishment of a drainage system under any law of this State, or for the changing or improvement of any water course, where an engineer has been appointed and has made a survey and a report thereon to the proper authorities, and for any reason, the improvement has been abandoned or the proceedings dismissed, and afterwards proceedings are instituted for the establishment of another drainage system, or the changing of any water course for the benefit or reclamation of the same territory surveyed in said former proceedings, or a part thereof, or a part of the same territory and additional territory, and the engineer in the new proceedings has used the engineer's report, survey stakes and monuments made in said former proceedings or as much thereof as may be applicable and the cost of such subsequent proceedings is proportionately lessened, the amount thus saved in said subsequent proceedings by the use of said former survey, or any part thereof, shall be paid for by said subsequent proceedings to the proper parties as herein provided, namely to the engineer in said former survey, if he has not been paid, or to the petitioners or bondsmen, if they or either of them have paid the expenses of said former survey or to the county, if for any reason, after it has borne the expense of such former survey. It shall be the duty of the County Board, or the District Court, where such new proceedings are pending upon petition of the party or parties interested who paid the expense of said former survey, to determine the amount of benefit that was derived by said subsequent proceedings from the said former survey, or any part thereof, and to order the amount thus determined to be treated and considered as a part of the expenses in said subsequent proceedings, and upon the letting of the contract in said subsequent proceedings to order the amount thus determined to be paid to the party or parties entitled thereto. ('25, c. 415, § 96)

6840-97. Construction, etc., of systems at cost of individual land owners—Petition—Bond—Whenever two or more parties owning land in any county in this state, adjoining or in the vicinity of any drainage system, natural drain, creek, river or outlet, or in the vicinity of any body of water forming a part of or connected with any such drain, creek or outlet, shall petition the county board of such county for the construction of a drainage system, either open or tiled, or partly open and partly tiled, therein setting forth the necessity for the construction of such drainage system and that the same will be of public utility and benefit, will promote the public health, and give in general terms a description of the proposed drainage system, therein specifying as near as may be, the starting point, general course and terminus of the proposed drain and laterals, and giving therein a description of the land to be crossed thereby, together with the names of the owners, and a description of all public highways, roads or railroads to be crossed or otherwise affected or damaged, with the names of the municipalities or corporations affected, and therein specifying that the petitioners will pay all costs of the construction of said drainage system, including the cost of the proceedings and damages, and shall file said petition with the county auditor of such county and shall present and file therewith a bond signed by the petitioners and any other parties that may be deemed necessary to secure the approval thereof, said bond to be for a sum not less than one thousand dollars (\$1,000.00) and payable to

the county; to be conditioned for the payment by the petitioners of all costs and expenses connected with such proceedings; if said system is not ordered constructed, or for any reason a contract therefor is not let, the same to be approved by the county auditor before being filed. ('25, c. 415, § 97)

6840-98. Same—Bond and petition filed—Engineer—Report—Meeting of board to consider petition—Upon the filing of such petition and bond duly approved, it shall be the duty of the auditor to present the same to the county board of such county at the next general or special meeting of said board, and it shall then be the duty of said board forthwith to appoint a competent, experienced civil engineer and direct him to proceed and examine, and report to the board within thirty (30) days from the date of such appointment, with reference to the necessity and practicability of the construction of the proposed improvement as specified in section 5 of this act, and it shall be the duty of such engineer to qualify and make said report within the time specified in sections 5 and 6 of this act, and the provisions of said sections so far as practicable shall apply to and govern the actions of the board and said engineer in such proceedings. Upon the filing of the engineer's report it shall be the duty of the county auditor to notify by mail the several petitioners and their attorneys, if they have an attorney, and the engineer and the owners of all land and property affected as shown by the engineer's report that said report has been filed and that the same will be heard by the county board at the time and place specified in said notice, and said auditor shall have authority if deemed necessary and so requested by the petitioners, to call a special meeting of the board for such purpose. The notice so provided for shall be served by mail at least ten days before the day set for hearing. ('25, c. 415, § 98)

Explanatory note—For sections 5 and 6, see §§ 6840-5, 6840-6, herein.

6840-99. Same—Hearing by board—Subsequent procedure—At the time and place specified in said notice it shall be the duty of said board to appear and consider the evidence presented for and against the granting of such petition and it shall be the duty of the engineer to appear before said board at such time and place and make such explanation as may be necessary to fully inform said board of all the facts named and referred to in his report with reference to the necessity and practicability of said proposed improvement, and the petitioners may appear and be heard with reference to the matters involved in said petition, and if upon full hearing it shall appear to the satisfaction of the board that the proposed improvement is practical and necessary and will be of public benefit and utility, and that the outlet is of sufficient capacity, said board shall so find and by order shall direct said engineer, or another engineer if a change in engineers is made, to proceed and make a permanent survey, and in said order shall designate whether the original ditch as petitioned for or as changed by the engineer, or by order of the board, shall be surveyed, and the proposed improvement shall be sufficiently described by attaching to the order of the board, a map or plat prepared by the engineer, thereon giving a description of the land crossed and an outline of the proposed improvement, all as provided in section 7 of this act, and the provisions of this section as far as applicable shall apply to the proceedings hereunder. ('25, c. 415, § 99)

Explanatory note—For section 7, see § 6840-7, herein.

6840-100. Same—Engineer's survey and report—Viewers—Appointment—Duties—Within twenty (20)

days from the date of said order it shall be the duty of said engineer to proceed and make a permanent survey of the proposed system and report the same to the board with all reasonable dispatch, and in the work performed and the report made said engineer shall be guided by the provisions of sections 10, 11, 12 and 13 of this act, and the provisions of said sections as far as applicable shall apply to and govern his actions in making the survey and report thereon to the board. Upon the filing of the report of the engineer with the county auditor, it shall be the duty of the auditor to notify the county board, and at the next regular or special meeting following said engineer's report it shall be the duty of the board to appoint three disinterested freeholders of the county as viewers who shall be forthwith notified by mail by such county auditor of their appointment, and they shall within ten days appear at the office of the county auditor and qualify as provided in section 16 of this act. The viewers shall within ten days thereafter proceed with the performance of their duties in connection with the examination of the property affected by the proposed improvement, and the provisions of sections 16, 17, 18, 19, 20, 22, 23, 24 and 25, shall apply to and govern the action of said viewers as far as applicable, and with all reasonable dispatch they shall make and file with the county auditor their report in such proceedings. ('25, c. 415, § 100)

Explanatory note—For sections 10, 11, 12, 13, 16, 17, 18, 19, 20, 22, 23, 24 and 25, see §§ 6840-10 to 6840-13, 6840-16 to 6840-20, 6840-22 to 6840-25, herein.

6840-101. Same—Hearing on petition, reports, etc.—Upon the filing of the report of the viewers with the county auditor as provided in the last section, it shall be the duty of the county auditor within ten days thereafter, by order, to fix a time and place for hearing on the petition and engineer's and viewers' reports in said proceeding, and notice of the time and place specified in said order for a hearing shall be given by the county auditor as provided in Section 26 of this act, and the provisions of Section 26 so far as applicable shall apply to and govern the action of the county auditor in the giving and service of the notice of said hearing. ('25, c. 415, § 101)

Explanatory note—For section 26, see § 6840-26, herein.

6840-102. Same—Hearing—Procedure at—Orders—Appointment of cost—That at the time and place specified in said notice, provided for in the last section, it shall be the duty of the county board to appear and consider all evidence presented for and against the granting of the petition and the merits of the reports of the engineer and viewers, and at said hearing the board shall have and possess all the authority as specified in Section 27 and Section 28 of this act, and the provisions of said sections so far as applicable shall apply to and govern the actions of the board at said hearing. If at said hearing it shall appear to the satisfaction of the board upon evidence presented that necessity exists for the construction of said improvement, that the same will be of public benefit and utility and will promote the public health, and that the same is feasible, then said board shall so find and by order confirm the report of the engineer and viewers and direct the construction of said improvement, provided, that no order shall be made for the construction of said improvement until the petitioners shall provide the funds to cover all expenses attending said proceedings, and all costs of the construction thereof, including damages. And he shall make and file in his office a state-

ment apportioning the costs of such improvement in the manner provided in Section 44 of this Act showing the amount apportioned to each tract of land or other property covering all the costs of such improvement including damages. ('25, c. 415, § 102)

Explanatory note—For sections 27, 28 and 44, see §§ 6840-27, 6840-28, 6840-44, herein.

6840-103. Same—Contracts—Letting—That if at the hearing provided for in the last preceding section, the board shall make the findings and order the construction of said improvement, and the petitioners shall have provided the funds for the construction thereof, then it shall be the duty of the county auditor within ten days thereafter to call for bids as provided in Section 33 of this act, and the provisions of said section shall apply to and govern so far as practical his action relative to the calling for bids and the letting of the contract in said proceeding. ('25, c. 415, § 103)

Explanatory note—For section 33, see § 6840-33, herein.

6840-104. Same—Appeals—Any party or parties feeling aggrieved by the order of the board confirming the report of the viewers provided for in the last section may appeal to the district court on the question of benefits or damages in the manner provided in Section 32 of this act, and the provisions of said section so far as they relate to appeals on the question of benefits and damages shall apply to and govern appeals under the provisions of this proceedings. ('25, c. 415, § 104)

Explanatory note—For section 32, see § 6840-32, herein.

6840-105. Same—Assessments—Payment—It shall be the duty of the petitioners before a contract is let to pay the county treasurer or to such bank as the county board shall direct the amount of the assessment against their property as shown by the viewers' report, and in all cases where assessments for benefits are reported by the viewers and confirmed by the board against any party, municipal or other corporation, if the same is not paid by said party or corporations, upon demand by the county auditor or party representing the petitioners, it shall be the duty of the county auditor to assess the amount of such benefits as shown in his apportionment against said party or corporations, and the same may be assessed when ordered by the county board in installments, in two or three equal annual installments, and in that event it shall be the duty of the county auditor to file a lien therefor in his office and cause the same to be recorded in the office of the register of deeds of said county as provided in sections 44 and 45 of this act, and in that event it shall be the duty of the county auditor to levy and assess against the property benefited or against said corporations, annually a tax as provided in sections 51 and 52 of this act, except that in this proceedings the total amount of the lien shall be assessed in two or three annual installments as may be provided by order of the county board, and it shall be the duty of the treasurer to collect and pay into the general ditch fund for the benefit of the system so constructed under this proceeding and credit the same to the number that is given the drainage system so constructed.

That upon the completion of said drainage system and the payment of all costs, damages and fees in connection therewith by the County, the County Treasurer shall, upon the order of the Board of County Commissioners, return and pay over to said petitioners any unexpended balance remaining in the hands of said Treasurer deposited by said petitioners as herein pro-

vided. Said refund to be made pro rata, according to the benefits assessed. ('25, c. 415, § 105)

Explanatory note—For sections 44, 45, 51 and 52, see §§ 6840-44, 6840-45, 6840-51, 6840-52, herein.

6840-106. Assessments set aside, vacated or canceled—Reassessments—In all cases in proceedings before the county board of any county, or the district court of any district for the establishment and construction of any drainage system under the provisions of this act, or the provisions of any other law relating to the establishment and construction of county or judicial ditches, where a petition in due form has been regularly filed, engineer appointed and preliminary hearing held, permanent survey ordered and the engineer's and viewers' reports duly filed, and in all cases where a hearing was had thereon and the improvement ordered constructed, a contract let and ditch lien regularly filed, under which the cost of said proceedings and the cost of construction was assessed against the property and corporations benefited, and where said ditch lien and assessment has been or may hereafter be set aside and vacated or canceled for any reason arising out of a defect in the notice given, or publication, posting, mailing or service thereof, or defect in the description of the property or corporations affected, then or in any such case a re-assessment of the benefits and a re-award of the damages, or either of them, in said proceedings may be made in the following manner.

If such proceedings are, or were pending before the district court of any district it shall be the duty of said court within a reasonable time after the rendering of said decision annulling said assessment or damages, either on its own motion or on motion of the attorney for the petitioners or any party or corporation interested to order and direct the clerk of said court to cause to be issued, published, posted, mailed or served as required by the provisions of Section 26, this act, if such proceedings were being conducted under the provisions hereof, or in accordance with the provisions of the act under which the same were conducted, a new notice fixing a time and place for hearing upon the petition and engineer's and viewers' reports, and at said hearing upon it appearing that notice in proper form has been published, posted, mailed or served, in accordance with the order as hereinbefore specified, the court shall have jurisdiction and may have and exercise all the same authority and the same proceedings may be had as in case of the original hearing, and at said hearing said court shall have authority to confirm the report of the engineer and viewers, either as originally reported or as subsequently modified, and shall reassess and reaward benefits and damages in said proceedings as in the first instance, and the parties interested shall have the same right of appeal as provided in an original hearing.

In case said proceedings are pending before the county board of any county it shall be the duty of the county board at as early a date as possible following the rendering of the judgment annulling such assessment and award of damages, either upon its own motion or upon application of the county auditor or any parties interested in such proceeding to make an order directing the county auditor to proceed and issue and cause to be published, posted, mailed or served notices required by Section 26 of this act, if such proceedings were being conducted under the provisions hereof, or in accordance with the provisions of the act under which said proceedings were conducted, for final hearing on the petition, engineer's and viewers' reports, therein fixing a time and place for a re-hearing upon

said petition, engineer's and viewers' reports, and if at such time and place it shall appear that notice in due form has been given, published, posted, mailed or served, as provided in this act, if such proceedings were pending hereunder, or in accordance with the provisions of the act under which said proceedings were instituted and conducted, said county board shall have jurisdiction and authority to proceed to reconsider all matters relative to the petition and approval of the engineer's and viewers' reports, and said board shall have, and may exercise the same authority as in the case of an original hearing, and if at said hearing the board shall confirm the engineer's and viewers' reports, either as presented or as subsequently modified, and shall direct the county auditor to make and file and cause to be recorded in the office of the register of deeds a new lien statement and assessment covering the property, and corporations affected, as provided in Sections 44 and 45; it shall thereupon become the duty of the county auditor to cause to be made and filed a new lien re-assessing the property and corporations benefited in said proceedings in the same form and manner as provided by said Sections 44 and 45 of this act, and thereupon such re-assessment shall stand and have in all respects the same force and effect as the original assessment, and shall be carried into effect and collected in the same manner as provided in this act. ('25, c. 415, § 106)

Explanatory note—For sections 26, 44 and 45, see §§ 6840-26, 6840-44, 6840-45, herein.

6840-107. Bids not received or contracts not let—Procedure—Whenever it shall occur in case of any drainage proceedings before any county board or district court that a petition in due form has been regularly made and filed, an engineer appointed and a permanent survey made and reported, viewers appointed and report made and filed, due notice given and hearing had thereon, and the improvements ordered constructed by the board or court, but upon advertising for bids for the construction of said improvement by the county auditor or county auditors, they are unable to secure a bid or let a contract for the construction of said improvement according to the plans and specifications, except for a price more than 30% in advance of the engineer's estimate, and a petition presenting such facts shall be presented by the petitioners or any number of them or other party or corporation interested, to the board or court where such proceedings are pending; and further alleging that an error has been made by the engineer in his estimate therein specifying the nature thereof, or that the plans and specifications of the engineer could be changed or modified in a manner materially affecting the cost of the improvement without interfering with the efficiency thereof, and when so modified the improvement could be constructed at a price within the limits of the benefits as reported by the viewers and asking that an order be made reconsidering and rescinding the order theretofore made confirming the report of the engineer and viewers and ordering the construction of said improvement, and the said engineer's and viewers' reports referred back to the engineer and viewers for further consideration; on the presentation of such petition such board or court where the proceedings are pending shall order a hearing thereon, designating in such order the time and place for hearing on said petition, and cause notice thereof to be given by publication for two weeks in the same newspaper or newspapers where the notice of final hearing was theretofore published, which date shall be at a time not exceeding thirty days from the

date of such order. At the time and place specified in such notice and order it shall be the duty of the board or court where the proceedings are pending to appear and consider the evidence presented. If from the showing made it shall appear to the satisfaction of said board or court that as the result of an error in the estimates or computations or misunderstanding, the estimate of costs made and contained in the engineer's report was erroneous, and if corrected to conform to the truth one or more of the bids submitted by the contractors for the construction of the improvement would be within the 30% limitation, and shall further find that the benefits returned by the viewers are sufficient to permit the letting of a contract at the price of such bids, then in that event said board or court may by order authorize the engineer to so amend his report, and upon the filing of such amended report, shall authorize the county auditor or county auditors, as the case may be, to let said contract or authorize them to again call for bids, but should said board or court at said hearing find that the estimates in the report of the engineer as previously filed are correct but that certain changes could be made in the plans and specifications or in the plan, course, size and length of the ditch without impairing its utility, but which will enable a contract to be let for the construction thereof at a price that the benefits will warrant, then said board or court shall so find and shall have authority by order, to reopen and reconsider the former order confirming the report of the engineer and viewers and ordering the construction of said improvements, and refer back the report of the engineer and viewers for further consideration with such directions as said board or court shall deem necessary. Provided, that if the recommendations deemed necessary by the board or court shall not include a re-examination or re-survey but shall consist only of such changes as can be immediately made as such hearing, then they shall so order, and if the changes required or recommended by the engineer are not such as to affect the benefits or damages it shall not be necessary to refer back the viewers' report for further consideration but the same may stand as formerly reported. But if the changes made in the engineer's report in any manner affect the amount of benefits or damages resulting from the construction of said improvement, then said viewers' report shall be referred back to the viewers and they be required to re-examine and again report the same to said board or court; provided, that said board or court where said proceedings are pending shall have authority, when deemed necessary, to continue said hearing for the purpose of giving the engineer or viewers additional time for consideration and completing the filing of their amended reports, and in such case the jurisdiction of the board or court shall continue in all respects to said adjourned hearing.

Upon the filing of the engineer's report and viewers' report, if the same is referred back to the viewers, the board or court shall have full authority to consider the same and to modify and amend the same, as in the case of an original hearing as provided in Section 28 of this act, and after full consideration to confirm the engineer's and viewers' reports as originally made or as amended, and order the construction of said improvement, as so amended, the same as in the case of a general hearing in the first instance, as provided in Sections 29 of this act, and such order when so made, shall in all respects be of the same force and effect as an order made by said board or court in the first instance.

Upon the filing of said order referred to in the previous section, if any change has been made in the viewers' report, affecting the amount of benefits or damages, the parties so affected shall have the same right of appeal as provided for in Section 32 of this act, and it shall be the duty of the county auditor in county proceedings and the county auditors in judicial proceedings to again advertise for bids for the construction of said improvement as provided in the amended plans and specifications, and all further proceedings had thereon shall be the same as though no change had been made in said plans and specifications, and the amended plans and specifications and reports shall stand as the original, and of the same force and effect as though no changes had been made. ('25, c. 415, § 107)

Explanatory note—For sections 28, 29 and 32, see §§ 6840-28, 6840-29, 6840-32, herein.

6840-108. County warrants—Non-payment on presentation—That in all cases where a warrant shall be issued by the auditor of any county under the provisions of this act, and there shall be no cash in the fund herein mentioned to pay said warrant when the same is presented and the county treasurer shall endorse said warrant, "not paid for want of funds" and shall date and sign said endorsement, then, and in that event, the interest on said warrant may be paid on the first day of July each year thereafter until said warrant is called in and paid by the treasurer, provided, no interest shall be paid on any such warrants after funds are available in the hands of the treasurer for the payment thereof. ('25, c. 415, § 108)

6840-109. Examination of accounts and records—Accounting system—Upon application of any county in this state, indicated by the resolution of the Board of County Commissioners entered in its minutes, it shall be the duty of the public examiner, in addition to other duties imposed upon him by law, to examine into the accounts and records relating to any drainage proceedings conducted in said county, and when so requested to establish a system of accounts with each drainage system in such county, the expenses of the examination and the establishment of the accounting system provided for herein incurred, the compensation of the examining accountant and not to exceed eight dollars (\$8.00) per day and travel and hotel expenses shall be audited and allowed by the county board and paid into the State Treasurer and credited to the public examiner's contingent fund. It shall in all such cases be the duty of the county board to cause such expenses to be apportioned among the several drainage systems in said county affected and to cause the county to be reimbursed from the accounts of said several drainage systems. ('25, c. 415, § 109)

Explanatory note—Office of public examiner abolished and powers and duties transferred to comptroller. See § 53-44, herein.

6840-110. Appearance in proceedings by state and county officials—Matters to be considered in hearings—In all proceedings under the provisions of this Act, where a notice is required to be served upon the State Auditor, the Commissioner of Drainage and Waters, the Game and Fish Commissioner and the State Forester, said officials shall have the right to appear in said proceedings and represent the interests of the State and the general public, and in all judicial proceedings the county boards of the several counties affected shall have the right to appear and represent the interest of their respective counties; and all such parties at such hearings shall have the right to present and

have considered in addition to other matters evidence relative to the value of any body of water as materially affecting the water supply or water level in the surrounding territory, the effect of the proposed improvement upon the conservation of the forests of the state, or as affecting the conservation of wild life of the state. ('25, c. 415, § 110)

6840-111. Proceedings commenced under old laws—In all cases where proceedings have been instituted under existing laws before the county board or district court and are pending at the time of the passage of this Act, such proceedings may be completed under the provisions of the existing law or under the provisions of this Act, and in all cases where the parties to such proceedings desire to complete such proceedings under the provisions of this act, a petition therefor signed by the petitioners in said proceedings, or two or more of them shall be presented to the county board or court where said proceedings are pending and it shall thereupon be the duty of said board or court to fix the time and place for hearing thereon which shall be at a date not less than 12 or more than 20 days from the date of said order, and notices thereof shall be given by the county auditor or clerk of district court by mail to the petitioners and bondsmen and attorneys for petitioners in such proceedings, and also in judicial proceedings to the county auditors of the several counties affected. At the time and place set for said hearing it shall be the duty of the board or court to attend and listen to the showing made on behalf of the parties for and against granting the relief asked for in said petition, and if said board or court shall find from the evidence presented that it is in the best interest of the parties that such change be made they may so find and by order direct that all further proceedings therein be conducted under the provisions of this Act and upon the filing of such order, the provisions of this act shall apply to and govern all further proceedings therein. ('25, c. 415, § 111)

6840-112. Dismissal of proceedings—That in any proceeding under the provisions of this Act the petitioners may at any time prior to the making of the order establishing the improvement, upon payment of all lawful costs, charges, expenses and fees in said proceeding, dismiss the same. ('25, c. 415, § 112)

6840-113. Laws repealed—That chapter 230 of the General Laws of 1905 and amendments thereto and the following numbered sections of the General Statutes of 1913, namely Sections numbered, 5523, 5525, 5526, 5527, 5528, 5529, 5530, 5531, 5532, 5533, 5534, 5535, 5536, 5537, 5538, 5539, 5540, 5541, 5542, 5543, 5544, 5545, 5546, 5548, 5550, 5551, 5552, 5553, 5554, 5555, 5556, 5557, 5558, 5559, 5560, 5561, 5562, 5568, 5569, 5570, 5571, 5572, 5573, 5574, 5575, 5576, 5577, 5579, 5581, 5582, 5583, 5584, 5585, 5586, 5587, 5588, 5589, 5590, 5591, 5592, 5593, 5594, 5595, 5596, 5597, 5605, 5606, and 5607, also Chapter 300 of the General Laws of 1915, Chapters 274, 178, 246 and 268 of the General Laws of 1915, Chapter 171 of the General Laws of 1917 and Sections 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 19 of Chapter 441 of the General Laws of 1917, Sections 4, 6, 7, 8, 9, 10, 11, 12, 13 and 16 of Chapter 471 of the General Laws of 1919 and Sections 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 of Chapter 508 of the General Laws of 1921, and Chapter 248 of the General Laws of 1923, and all other acts or parts of acts inconsistent with the provisions of this act 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 act or laws under which the same were instituted and for all such purposes the provisions of such acts, sections or chapters shall continue and apply to such proceedings, and shall continue and apply for all purposes of correcting and amending and completing any proceedings instituted under such laws, provided further, that in all cases where under the provisions of any other act heretofore passed, reference is made to any of the sections or chapters hereinbefore enumerated and performance required or provided for in accordance with the provisions of such sections or chapters, then and in that event the provisions of such sections or chapters, shall continue for all purposes of such acts as though in fact constituting a part thereof. ('25, c. 415, § 113)

Explanatory note—See notes to §§ 6674 to 6676, herein.

6840-114. Extension of time for payment of ditch liens—Powers of county board—The county boards of the several counties in this state, within their respective jurisdiction, are hereby authorized, upon the filing of a petition as provided in Section 2 of this act, asking for the extension of the time of payment of the whole or certain installments of the ditch lien filed, in any county or judicial ditch proceeding lying wholly or partly within such county, and the publication of the notices and the making of the findings as herein specified to make and cause to be filed and recorded in the office of the county auditor of such county the necessary order directing the extension of the whole or certain portions of the unpaid installments of the ditch lien filed in proceedings to establish and construct any such ditch, in the manner provided in this act. ('23, c. 345, § 1)

Explanatory note—For section 2, see § 6840-115, herein.

6840-115. Same—Petition—Notice of hearing—Upon the filing with the county auditor of any county in this state of a petition by parties owning or having an interest in property that was assessed in any ditch proceedings heretofore conducted wholly within such county either by the county board or district court, or by parties owning land within that portion of a judicial ditch lying within such county, containing the signatures of not less than three parties owning land that was assessed in such proceedings and who reside in such county, and against whose property there remains unpaid portions of such original ditch lien, and giving the number and other necessary designation of said ditch to fully identify the same and setting forth that many of the owners of such land have defaulted in the payment of the installments of principal or interest or are unable to pay such installments or interest, together with any other facts showing the necessity for such extension and petitioning the county board in accordance with the provisions of this act to cause to be extended the whole or certain portions of certain unpaid installments of the ditch lien filed in such proceedings, as shown on the ditch lien record in the office of the county auditor. Thereupon it shall be the duty of such county auditor to call a hearing thereon before the county board of such county at a time not less than 30 nor more than 60 days from the time of filing such petition. Said county auditor is hereby authorized to call a special meeting of said board, if necessary, for such hearing and shall give notice to all parties interested by the publication of a notice of such hearing in the official paper of said county for at least two weeks prior to the date of such hearing, therein stat-

ing that such petition has been filed, and giving the number of the ditch or other sufficient description to fully identify such proceedings and further stating the purpose of such hearing and such notice may include one or any number of petitions. ('23, c. 345, § 2)

6840-116. Same—Hearing—Order for extension—At the time and place specified in said notice, if it shall appear that a petition in due form as required by this act has been filed and the notice of said hearing duly published, said board shall have jurisdiction of all property described in the ditch lien record referred to in said petition and all parties interested therein or holding any liens or incumbrances thereon and shall have full authority to hear all parties for or against granting such petition and may adjourn said hearing from time to time as they deem proper and if it shall further appear that default has been made in the payment of the interest or principal on the installments due on the ditch lien in said proceedings or many of the parties owning land covered by such ditch lien in said proceedings are unable to pay the installments or principal due or which shall come due, or that the conditions are such that extension of the time of payment of the amounts remaining unpaid on the principal of the ditch lien is necessary to protect the credit of, or prevent loss to, the county, and said board, after full hearing, shall so find, then said board shall have full authority and may by order direct that the payment of the whole or a specified portion of the amount of the several installments of the lien which is payable under the terms of the lien statement and supplemental lien statement, if any, in such proceedings as shown on the auditor's lien record, for any or all of the years 1927, 1928, 1929, 1930 and 1931, or one or more of such years shall be extended for a specified number of years not exceeding ten and direct the county auditor to enter on the ditch lien record of the county a proper notation of such extension showing the portions of the principal of such lien that is so extended and the date to which the said extension is made; provided, the county board may also provide in said order that in the case of the installment of liens which come due November 1, 1926, and which is included in taxes to be collected during the year 1927, any party owning land may pay to the county treasurer at any time before a date fixed in said order, a sum equal to the total amount of interest to be collected during 1927, and that upon such payment the payment of said installment payable June 1, 1927, shall be extended for a specified number of years as in the case of other installments, and the county treasurer shall notify the county auditor of all such payments and the county auditor shall enter a proper notation of the extension as hereinbefore provided. The entire unpaid principal of the lien so modified and extended pursuant to this section shall draw interest as though no extension had been made. The certificate of the county auditor that the said petition contains the requisite number of signatures of property owners, together with the resolution of the county board approving said petition, shall be conclusive evidence of the sufficiency thereof. ('23, c. 345, § 3; amended '27, c. 129, § 1)

6840-117. Same—Drainage refunding bonds—Issue and sale—In any county where the county board has made an order for the extension of the time of payment of principal of liens in accordance with this act, and where county bonds which have been issued in such drainage proceedings are outstanding, the county board shall have authority at any time after a date seven months prior to the date of maturity of any such out-

standing bonds to issue and sell the drainage refunding bonds of the county for the purpose of refunding a like amount of such maturing outstanding bonds in an amount not exceeding the aggregate amount of installments of liens, originally made payable prior to the maturity of such bonds, that have been extended in accordance with this act, less any amount of refunding bonds theretofore issued on account of any such extension. Such refunding bonds shall be in such form, shall bear such rate of interest not exceeding six per cent per annum, payable semi-annually, shall be dated and be payable either in installments or as a whole, at such date as shall be fixed in said resolution not exceeding the longest date of extension of any of said lien installments and shall be signed by the chairman of the county board and countersigned by the county auditor, all as the county board may by resolution direct. All bonds issued pursuant to the provisions of this act shall conform to the requirement of Chapter 198, General Laws 1925, and the obligation of the county shall be as therein specified and shall be sold in accordance with Section 1943, General Statutes 1923. ('23, c. 345, § 4; amended '27, c. 129, § 2)

Explanatory note—For Laws 1925, c. 198, see §§ 6699, 6700, herein.

6840-118. Same—Drainage refunding bonds—Several issues—When the county board of any county has adopted resolutions extending the time of payment of liens on more than one ditch within the county, and which is authorized by the terms hereof to issue refunding bonds on account of more than one such ditch, it may by resolution authorize the issue and sale of one or more series of refunding bonds of the county in an amount sufficient to cover the aggregate amount which may be required for refunding purposes on account of all or any number of such ditches within a period of seven months from the date of adoption of the resolution authorizing such refunding bonds; in all such cases the resolution shall name the several ditches, portions of which bonded indebtedness are included in such issue and the amount thereof and when said bonds are sold, the proceeds shall be credited to the several ditches in accordance with such resolution. The resolutions authorizing the issuance of any such bonds may recite that the county board has investigated the facts with reference to the establishment of any ditch therein referred to and the issuance of bonds for payment of expenses in connection with the construction thereof, and if the county board in a resolution finds and declares that said ditch or ditches were legally established and that the bonds for construction thereof were legally issued, then the determination by such resolution shall be conclusive evidence to the purchaser or owner of the refunding bonds therein authorized of the validity of the debts thereby authorized to be refunded, and no purchaser or owner shall be obligated to inquire into the validity of the bonds by such bonds refunded. ('23, c. 345, § 5)

6840-119. Same—Existing liens not affected—In all cases where the county board of any county, under the provisions of this act, has passed a resolution authorizing the extension of the time of payment of one or more installments of any ditch lien or any part thereof or authorize the issuance and sale of bonds to refund any existing bonds or any portion thereof against any ditch rendered necessary by reason of the extension of the time of payments of existing liens, such extension of the time of payments of any ditch liens or the refundment of existing bonds or the sale of new bonds for the purpose of such refundment shall not operate

or in any manner be treated as a payment of any existing lien indebtedness against any land described in such proceeding but such lien indebtedness shall continue as though no extension has been made and such land continue subject to all lien indebtedness existing against the same, including costs incurred in proceedings to collect such lien indebtedness, under the tax laws, and shall, for all and every purpose, continue and remain a first lien against said property notwithstanding such extension and notwithstanding the existence or renewal of mortgages or other liens against the same or the execution of new mortgages or liens or the transfer of said property, and the rights of the county to claim a first lien upon such property for the payment of such ditch lien shall continue and exist the same as though no such extension of the ditch lien had been made or bond refundment executed. Provided nothing in this act contained shall prevent the owner of any land from, at any time, paying the total amount of any installment or of any ditch lien and securing the release of his land therefrom in the manner now provided by statute. ('23, c. 345, § 6)

6840-120. Refunding ditch bonds in counties with area of not less than 95 nor more than 105 congressional townships—Authority to issue—That the county board of any county in this state now or hereafter having an area of not less than ninety-five nor more than one hundred and five full or fractional congressional townships, and having an assessed valuation exclusive of money and credits of not less than \$5,000,000, nor more than \$7,000,000, according to the last official assessed valuation of such taxable property as fixed by the Minnesota Tax Commission and having at any time a total indebtedness including Judicial and County Ditch indebtedness of not less than \$1,800,000, and not over \$2,500,000, is hereby authorized to issue refunding ditch bonds of such county and to sell the same and use the proceeds thereof solely for paying off and refunding outstanding ditch bonds of such county, or to exchange the same or any part thereof with the owners or holders of such ditch bonds issued for defraying the cost of establishing or constructing any drainage ditches in such county. ('25, c. 323, § 1)

6840-121. Same—Interest rate—Issue and sale—Use of proceeds—That any such refunding bonds shall be serial bonds; shall be made payable in annual installments of substantially equal amounts, the first installment of which shall be made due and payable in not less than ten years, and the last installment of which shall be made due and payable in not more than twenty years from the date of their issue, all as the county board of such county shall determine; that said bonds shall be payable in gold coin of the United States of the present standard of weight and fineness; shall bear interest at not more than 5½ per cent per annum, payable semi-annually; that such bonds or any of them may be sold by the county board of such county in the manner provided by law for the sale of drainage bonds of such county, or said bonds, or any of them, may be exchanged by the county treasurer of such county, with the consent and approval of the county board of such county for outstanding judicial or county ditch bonds, but none of said bonds shall be sold or exchanged at a price that will require such county to pay an interest rate, payable semi-annually, of more than six per cent per annum on any of said refunding bonds. That the proceeds of the sale of any such refunding bonds shall be used solely for the purpose of paying off and retiring outstanding ditch bonds of such county. ('25, c. 323, § 2)

6840-122. Same—Refunding ditch bond account—That at the time of issuing any such refunding bonds, said county board shall establish a "Refunding ditch bond account," into which fund shall be placed all sums collected from judicial or county ditch liens heretofore or hereafter spread or assessed in any judicial or county ditch proceeding in which any of said bonds so to be refunded, were issued; which fund shall be used solely for the purpose of paying interest or installments of the principal of said refunding bonds or interest or installments of the principal on any drainage bonds not refunded or exchanged under this act, as the same shall become due. ('25, c. 323, § 3)

6840-123. Reassessment of benefits and damages in certain cases — Petition for —Whenever any person whose lands have been assessed for the construction of a county ditch, or any contractor for the construction of the same or of any part thereof, shall file a petition with the county auditor of any county, setting forth that certain portions of a county ditch which has been duly established in said county and the contracts for construction thereof duly let, and the construction of a part thereof has been completed, are practically impossible of construction because of certain physical conditions to be specified in said petition, encountered, or which will be encountered in the course of construction thereof, and specifying by station numbers such said parts, and separately, such further parts likewise specifically designated, the utility of which will be impaired or destroyed by an abandonment of construction of any parts, and praying that the construction of such said parts practically impossible of construction shall be abandoned, and the construction of the parts the utility of which will be impaired or destroyed by such said abandonment of construction, be also abandoned or the plans and specifications and contracts for the construction thereof be modified, and that the contract for all such parts as shall be abandoned shall be cancelled and compensation thereunder be adjusted, and assessments of benefits and damages of all lands affected by said ditch and said abandonments and modifications be re-assessed; the county auditor of such county shall thereupon designate a day for hearing on said petition before the county board of such county, and give like notice of such meeting as on the final hearing for the establishment of a county ditch. ('27, c. 39, § 1)

Prior law—Laws 1925, c. 348, reads as follows: "Section 1. Whenever any person whose lands have been assessed for the construction of a county ditch, or any contractor for the construction of the same or of any part thereof, shall file a petition with the county auditor of any county, setting forth that certain portions of a county ditch which has been duly established in said county and the contracts for construction thereof duly let, and the construction of a part thereof has been completed, are practically impossible of construction because of certain physical conditions to be specified in said petition, encountered, or which will be encountered in the course of construction thereof, and specifying by station numbers such said parts, and separately, such further parts likewise specifically designated, the utility of which will be impaired or destroyed by an abandonment of construction of any parts, and praying that the construction of such said parts practically impossible of construction shall be abandoned, and the construction of the parts the utility of which will be impaired or destroyed by such said abandonment of construction, be also abandoned or the plans and specifications and contracts for the construction thereof be modified, and that the contract for all such parts as shall be abandoned shall be cancelled and compensation thereunder be adjusted, and assessments of benefits and damages of all lands affected by said ditch and said abandonments and modifications be re-assessed; the county auditor of such county shall thereupon designate a day for hearing on said petition before the county board of such county, and give like notice of such meeting as on the final hearing for the establishment of a county ditch."

"Sec. 2. Upon such hearing, if the county board shall find that such county ditch has been in part constructed, that certain parts are practically impossible of construction because of physical conditions encountered or which will be encountered in the course of further construction thereof, and that the construction of such parts should be abandoned; and if the board shall further find that such abandonment of such said parts will impair or destroy the utility of other parts not constructed, and if the contractor for the construction of the parts so found advisable to be abandoned shall file with said board a consent to such abandonment and the board and such contractor shall agree upon the further abandonment or modification of the contract as to such parts the utility of which will be impaired or destroyed as aforesaid, and shall agree upon terms of adjusted compensation with said contractor for such abandonment and modification, if any, the board shall make its formal findings as aforesaid, and its order, particularly specifying such parts so to be abandoned or the construction thereof modified and embodying the plans and specifications as modified, and if the contractor shall file his acceptance thereof, then such abandonment, adjusted compensation, and the plans and specifications for such modification, if any, shall be effective, provided that the cost of construction of such ditch shall not thereby be increased.

"Sec. 3. Upon the making of such order and its acceptance as aforesaid, or at such further time to which the board may adjourn, the board shall hear all interested parties whose lands are affected upon the re-assessment of benefits and damages to lands previously assessed or for which damages were allowed in said ditch proceeding, and upon such hearing shall re-assess the benefits and damages previously assessed or allowed and modify the same in as far as the same are affected by such abandonment, and modification, if any, in accordance with the principles of assessments in the original proceedings; and if such reassessment shall reduce the amounts realized or to be realized from such assessments below the amounts expended or to be expended in such ditch proceeding, the board shall order the deficiency to be paid out of the general revenue fund of the county.

"Sec. 4. All original assessments actually paid shall be credited as payments on the benefits as re-assessed hereunder. Where the payments upon the original assessments exceeds the amount of benefits as fixed in such re-assessments made hereunder, the county board shall authorize the county auditor to issue his warrants on the general revenue fund for the amount of such excess payments, to the persons entitled thereto.

Sec. 5. Within 30 days after the adoption of such re-assessment, the county auditor shall file with the register of deeds his revised lien statement in accordance with such re-assessment.

"Sec. 6. From such re-assessment of benefits or damages an appeal may be taken to the district court in like manner and with like effect as on the original assessments.

"Sec. 7. The provisions of this Act shall not be construed as exclusive, but as providing additional and cumulative remedies.

"Sec. 8. The provisions of this act shall not affect any pending actions or proceedings, and no proceedings under this act shall be instituted after June 1, 1925."

6840-124. Same—Duties and findings of county board—Upon such hearing, if the county board shall find that such county ditch has been in part constructed, that certain parts are practically impossible of construction because of physical conditions encountered or which will be encountered in the course of further construction thereof, and that the construction of such parts should be abandoned; and if the board shall further find that such abandonment of such said parts will impair or destroy the utility of other parts not constructed, and if the contractor for the construction of the parts so found advisable to be abandoned shall file with said board a consent to such abandonment and the board and such contractor shall agree upon the further abandonment or modification of the contract as to such parts the utility of which will be impaired or destroyed as aforesaid, and shall agree upon terms of adjusted compensation with said contractor for such abandonment and modification, if any, the board shall make its formal findings as aforesaid, and its order, particularly specifying such parts so to be abandoned or the construction thereof modified and

embodying the plans and specifications as modified, and if the contractor shall file his acceptance thereof, then such abandonment, adjusted compensation, and the plans and specifications for such modification, if any, shall be effective, provided that the cost of construction of such ditch shall not thereby be increased. ('27, c. 39, § 2)

6840-125. Same—Hearing—Upon the making of such order and its acceptance as aforesaid, or at such further time to which the board may adjourn, the board shall hear all interested parties whose lands are affected upon the re-assessment of benefits and damages to lands previously assessed or for which damages were allowed in said ditch proceeding, and upon such hearing shall re-assess the benefits and damages previously assessed or allowed and modify the same in as far as the same are affected by such abandonment, and modification, if any, in accordance with the principles of assessments in the original proceedings; and if such re-assessment shall reduce the amounts realized or to be realized from such assessments below the amounts expended or to be expended in such ditch proceeding, the board shall order the deficiency to be paid out of the general revenue fund of the county. ('27, c. 39, § 3)

6840-126. Same—Credit for original assessments paid—All original assessments actually paid shall be credited as payments on the benefits as re-assessed hereunder. Where the payments upon the original assessments exceeds the amount of benefits as fixed in such reassessments made hereunder, the county board shall authorize the county auditor to issue his warrants on the general revenue fund for the amount of such excess payments, to the persons entitled thereto. ('27, c. 39, § 4)

6840-127. Same—Revised lien statement filed—Within 30 days after the adoption of such re-assessment, the county auditor shall file with the register of deeds his revised lien statement in accordance with such re-assessment. ('27, c. 39, § 5)

6840-128. Same—Appeals—From such re-assessment of benefits or damages an appeal may be taken to the district court in like manner and with like effect as on the original assessments. ('27, c. 39, § 6)

6840-129. Same—Remedies additional and cumulative—The provisions of this act shall not be construed as exclusive, but as providing additional and cumulative remedies. ('27, c. 39, § 7)

6840-130. Same—Pending proceedings not affected—The provisions of this act shall not affect any pending actions or proceedings. ('27, c. 39, § 8)

6840-131. Same—Limitation on time of action under law—No proceedings under this act shall be instituted after July 1, 1927. ('27, c. 39, § 9)

6840-132. Assessments validated—In every case where heretofore and more than three years prior to the passage of this act there has been a petition filed for the establishment of a judicial ditch located wholly within one county and no contract for the construction of such ditch has been let by reason of the impossibility of constructing an effective drainage system or by reason of the insufficiency of the benefits to be derived from such construction to cover the cost thereof, or both, and where the costs and expenses heretofore incurred in such ditch proceedings have been paid by the county affected by the issuance of warrants therefor, and upon petition or request of more than 75 per cent in number of the property owners affected, such costs and expenses have been apportioned to and assessed upon the lands affected by such proceedings in

the proportion of benefits to such lands as found by the viewers or determined by the court in such proceedings and where such costs and expenses have in such proportion been charged and levied against said lands upon the tax lists prepared and certified by the county auditor to the county treasurer of such county, such charge and levy of costs and expenses and the lien thereof upon the respective tracts of land so assessed are hereby in all respects validated and confirmed, and such costs and expenses are hereby declared, until paid, to be a lien upon the lands against which they have been so charged and levied, to be collected and enforced in the same manner as provided by law for the collection and enforcement of liens for ditch assessments. ('27, c. 99)

6840-133. Purchase of dredges or ditching machines in certain counties—In any county of this state having an area of not more than 1,200 square miles and open drainage ditches heretofore constructed of not less than 240 miles in length, the board of county commissioners, with the written consent of the commissioner of drainage and waters first procured and filed in the office of the county auditor, may purchase, in the manner provided by law for the purchase of road machinery and equipment, a dredge or ditching machine for use by the county in cleaning out and repairing county and judicial ditches. ('27, c. 140, § 1)

6840-134. Same—Maintenance and use thereof—The county board, in any county which has purchased such dredge or ditching machine, may employ the same in cleaning out and repairing county road ditches and may use, or allow the use thereof by a contractor, in the cleaning out or repairing of any county or judicial ditch heretofore constructed, on such terms and conditions as to rental and maintenance charges for the use thereof as the board shall determine to be fair and reasonable. The charges for such rental and the expense of maintenance of the machine, when employed by the board on any county or judicial ditch cleaning or repair work, shall constitute a part of the cost of such cleaning and repair operation and shall be paid out of the proper ditch fund provided for the maintenance of the ditch so cleaned and repaired, all such charges for the use of the machine to be credited to the county. ('27, c. 140, § 2)

6840-135. Investment of surplus ditch funds—That the county board of any county having in the general ditch fund a surplus over the amount required for payment of obligations presently due and payable from such fund, hereby is authorized and empowered to invest any part of such surplus in bonds or certificates of indebtedness of the state of Minnesota, or in bonds of any other state, or in bonds of any county, school district, city, village or town of this state, of such maturities and marketable character as to be immediately available for use in paying obligations payable from such general ditch fund as they become due. ('27, c. 195)

6840-136. Repair of systems—Appeals—In any proceeding under the provisions of Chapter 415, as amended, Laws 1925, for repair of a public drainage system an appeal may be taken to the district court from an order of the county board or district court made therein, by any person aggrieved thereby in any case wherein under the provisions of said chapter an appeal might be taken by such person from a similar order made in a proceeding to establish such public drainage system, and on like grounds. ('27, c. 204, § 1)

Explanatory note—For Laws 1925, c. 415, see §§ 6840-1 to 6840-113, herein.

6840-137. Same—Appeals—Procedure—Such appeal shall be taken, perfected, heard, tried and determined in the manner and form, including trial by jury, prescribed by section 32 of chapter 415, Laws 1925. ('27, c. 204, § 2)

Explanatory note—For Laws 1925, c. 415, § 32, see § 6840-32, herein.

6840-138. Same—Appeals—Procedure—The provisions of said section 32 hereby are made applicable to appeals in proceedings for repairs of public drainage systems. ('27, c. 204, § 3)

Explanatory note—For Laws 1925, c. 415, § 32, see § 6840-32, herein.

6840-139. Completion of county ditches affecting or benefitting trunk highways and payment therefor from county general revenue fund and trunk highway fund—Petition—Procedure—In all cases in which a county ditch has been or shall be established, a contract for the construction thereof awarded, an assessment made against property benefited, but by reason of unforeseen obstacles the contractor has been unable to complete the work of construction, such construction under the contract has been abandoned, and the completion thereof will result in the draining of the right of way of a trunk highway substantially adjacent to or extending through the lands described in the petition and in the substantial benefit and betterment of such trunk highway, the owners whose lands have been assessed for the improvement, or majority of them and the state commissioner of highways may present to the county board a petition for the completion of the ditch according to the plans and specifications therefor, or in such modified form as may be suggested in such petition, which shall be accompanied by a general plan of the proposed completion improvement and an estimate of the cost thereof, which may not exceed \$10,000, and a statement of the part of such cost which the state highway department is willing to assume. Upon the presentation of such petition, the board shall appoint a competent engineer to examine and report upon the general plan of the proposed completion improvement; and if in his judgment the same is practicable and can be carried out at an expense not exceeding the amount estimated in the petition, he shall so report to the board with a more detailed plan and specifications of the proposed completion improvement. Upon the filing of such report, the board shall fix a time and place for hearing thereon and shall give notice thereof by publication in a newspaper published at the county seat, if there be one, and if not, in a newspaper published elsewhere in the county, which publication shall be made at least ten days before the time fixed for such hearing. If upon such hearing the board shall find that the completion of the ditch will be of public benefit and promote the public health, and that in justice to the owners of the lands so assessed for benefits in such drainage proceeding the ditch should be completed without further assessment against such owners, and shall further find that the completion of such ditch will result in substantial benefit and betterment of such trunk highway, and that the cost of completion should be borne by the county and such highway department in the proportion stated in the petition and without further assessment upon the lands of the owners assessed benefits in the proceedings for the establishment of such ditch, the board by appropriate order may direct the completion of such ditch, and by such order may further direct that the cost of such completion, except the portion thereof to be paid by the State Highway department, may be paid from the

General Revenue fund of the county. Upon the making of such order, the county auditor and chairman of the county board shall proceed to award a contract for the construction of such completion improvement in accordance with the provisions of Section 33, Chapter 415, General Laws 1925, which contract shall be signed in behalf of the county by the chairman of the county board and the county auditor, and also shall be signed in behalf of the State Highway department by the commissioner of highways, and shall provide for the payment of the contract price by the county and by the State Highway department in accordance with the order so made. ('27, c. 226, § 1)

Explanatory note—For Laws 1925, c. 415, § 33, see § 6840-33, herein.

6840-140. Same—Manner of payment for—Upon completion of such drainage ditch in accordance with the contract therefor and the certificate of the engineer that it has been performed and the ditch completed in accordance with the terms thereof, the county board shall so certify to the county auditor and to the state commissioner of highways, and thereupon the auditor shall issue his warrant to the contractor for the payment of the portion thereof chargeable to the county under the terms of the contract and the State Highway department shall pay the remainder thereof under the direction of the commissioner of highways in the same manner that other expenditures of the Highway Department are made under existing provisions of law. ('27, c. 226, § 2)

TOWN DITCHES

6841. Definition of various words extended so as to apply word "engineer" to any competent surveyor—The following words used in this act shall have the meaning herein given unless another intention clearly appears: The word "ditch" as used in this act shall be held to include any open, covered or tiled ditch or drain or any ditch or drain in part open and in part tiled or covered, and any drain, watercourse or creek and any side, lateral, spur or branch ditches and each and all of the constructions referred to in this act. The word "board" as herein used means the board of supervisors of the town in which the lands or roads described in the petition are located, or, if said lands or roads are located in more than one town, then the word "board" means all of the supervisors of each one of the towns in which any of said lands or roads are located, acting together as one body at a legally called meeting. The town clerk of the town in which the petition was filed shall act as the clerk of said board and keep a detailed record of its doings. Two or more of said supervisors shall constitute a quorum of said board and a majority of the supervisors present shall have power to act. The words "town clerk" and "town treasurer" as herein used shall always be held to refer to the town clerk and town treasurer of the town in which the petition was filed. The word "engineer" as used in this act shall be held to include any competent surveyor. ('09 c. 127 § 1, amended '17 c. 293 § 1) [5634]

Recovery of contract price. Town officers as agents of the law and as representatives of town (124-78, 144-458). Taking of private property for ditch must serve public purpose (125-404, 147+274).

6842. Petition to be filed—Before any ditch shall be established under this act there shall be filed with the town clerk of any town in which any part of said ditch is proposed to be located a petition therefor signed by one or more persons or corporations owning

lands which will probably be benefited by the construction of said ditch or by the chief executive officer of any city or village whose streets will probably be benefited by the construction of said ditch or by the town board of supervisors of any town whose highways will probably be benefited by the construction of said ditch, setting forth the necessity thereof, and that it will be of public benefit or promote the public health, with description of the proposed starting points, routes and termini and of the general character, size and depth of said ditch. Said petition shall also contain a legal description of all lands through which said proposed ditch shall run, or to be drained, as near as can be ascertained and shall also contain a description of all public roads and streets likely to be benefited thereby, as nearly as can be ascertained. The town board of any town shall have the same power of condemnation for the purpose of town drainage projects as are possessed by county boards in county ditch proceedings. In such petition the petitioners may, at their option, ask the appointment of an engineer to perform the duties hereinafter in this act specified, and may also at their option ask the appointment of an attorney at law to perform the duties hereinafter in this act specified. Also they may ask for the appointment of three resident freeholders of the town not interested in the construction of the proposed work, and not of kin to any of the parties known to be interested therein, as viewers to meet at a time and place fixed by the board. Such petition may include any side, lateral, spur or branch ditches necessary to secure the object of the improvement and may ask for the different parts of the ditch to flow in different directions with more than one outlet. Provided, that no meandered lake adjoining an incorporated village, or within four miles of any city of the fourth class, or upon which any incorporated village is a riparian owner shall be drained or lowered under the provisions of this act unless by the approval of a majority vote of the legal voters of such village or city at any annual or special election held for that purpose.

Provided further, however, that in case any such lake has no natural outlet and in times of highwater the run-off from adjacent lands fills up the bed of the lake so as to damage adjacent lands, then in such case it shall be legal, without the vote of such cities of the fourth class, to lower the surface of such lake by drainage until it shall reach the normal stage.

Such special election, if any, held for such purpose, shall be called in the way and manner provided by law for calling special election. ('09 c. 127 § 2, amended '19 c. 471 § 14) [5635]

124-78, 144+458. Land owner, party to proceedings, may have certiorari, but cannot enjoin construction of ditch (125-406, 147+273).

A town ditch may be established by adjoining towns, even though a county line divides them. 161-416, 201+613.

It was sufficient for the petition to designate the lower terminus of the ditch as the "deepest point" in a specified lake. 161-416, 201+613

Sufficiency of petition. 201+613.

6843. Proceedings—Upon the filing of the petition such proceedings shall be designated and numbered by the town clerk as "Town Ditch No. of Town of," and may be so referred to in all subsequent proceedings regardless of whether or not said ditch is in fact in more than one town. ('09 c. 127 § 3, amended '17 c. 380 § 1; '19 c. 471 § 14½) [5636]

124-79, 144+458; 125-404, 147+274.

6844. Notice of hearing—Said town clerk shall forthwith fix a time and place for the hearing on said petition and shall forthwith give notice of the filing of said petition and of the time and place of the hearing thereon as follows:

(a) By posting at least three weeks prior to said hearing a copy of said notice and petition in a manner likely to attract attention in each of three of the most public places in each township in which lands described in the petition are located.

(b) By filing at least three weeks prior to the date of said hearing a copy of said notice and petition in the office of the clerk of each town, village or city in which lands described in the petition are located.

(c) By mailing at least three weeks prior to said hearing a copy of said notice and petition to each owner of lands described in the petition who is a resident of the state, and whose postoffice is known to said town clerk or can be ascertained by him from the petitioners.

(d) By serving at least three weeks prior to said hearing a copy of such notice upon each occupant of the several tracts of land described in the petition.

When said notice is not legally given or is defective for any reason, the town clerk shall give a new notice of a time and place for hearing on said petition, as hereinbefore provided. ('09 c. 127 § 4) [5637]

124-80, 144+459; 125-404, 147+274.

The burden of proof to show lack of statutory notice was upon defendant. In the absence of evidence on that issue, the decision thereon properly went against him. 161-416, 201+613.

6845. Hearing—At the time and place set for the hearing of said petition (or at any time or place to which said hearing may be adjourned from time to time as necessity may require, but not otherwise) the supervisors of all the towns containing lands described in said petition shall meet and hear and consider said petition, acting as one board. ('09 c. 127 § 5) [5638]

124-80, 144+459; 125-404, 147+274.

6846. Report of engineer and action of viewers—If the petition asks for the appointment of an engineer in said matter, said board shall, at said hearing, and before taking final action on said petition, appoint a competent engineer to make plans and specifications for said ditch and to superintend the construction thereof when established. Said engineer before entering upon his duties shall give a bond in the sum fixed by the board, payable to the towns in which any part of the ditch is proposed to be constructed for the use of such towns and also for the use of all persons aggrieved or injured by the negligence or malfeasance of said engineer, to be approved by said town clerk conditioned that he will diligently and honestly and to the best of his skill and ability perform his duties as such engineer, but said engineer shall not be required to continue his bond after the conclusion or abandonment of the work. He shall take an oath to faithfully perform his duties. Said engineer shall forthwith make a survey for said ditch and prepare detailed plans and specifications for the construction thereof and make prompt report in writing of his doings to said board. Upon the appointment of such engineer said board shall adjourn said hearing a sufficient time to enable the said engineer to make and file his report in the office of said town clerk, upon the filing of the engineer's report in the office of the town clerk the board shall immediately fix a time and place in which the viewers, if any one appointed, are to meet for the purpose of viewing the proposed ditch, if no viewers have been appointed then the committee appointed by

the board shall immediately proceed with or without the engineer to proceed to assess benefits and damage by the reason of the construction of the proposed ditch in accordance with the rules as mentioned in section 6849 of this act and file their report in the town clerk's office and the town clerk shall forthwith fix a time and place for a hearing on said report and shall again give notice to all parties interested and to all land owners whose lands are liable to be benefited or damaged by the reasons of the construction of the proposed ditch. Said notice shall conform to all requirements as the notice required on the petition as set forth in section 6844 of this act. ('09 c. 127 § 6, amended '17 c. 380 § 2) [5639]

6847. Attorney-at-law—If the petition asks for the appointment of an attorney-at-law in said proceeding, said board shall forthwith, at the beginning of said hearing, by resolution, employ an attorney-at-law to superintend the drafting of all papers, contracts and orders in said proceeding and to give legal advice on all legal matters and questions arising in said proceeding. The rate of compensation of said attorney-at-law may, at the option of said board, be fixed in the resolution employing him. ('09 c. 127 § 7) [5640]

6848. Order establishing ditch after hearing—All persons interested may appear and be heard by and before said board. If such board from such evidence as may be adduced before them shall find that all of the proceedings in the matter have been in accordance with the provisions of this act and that the estimated benefits of said work are greater than the total cost, including damages awarded, and that said work will be of public utility or promote the public health, they shall establish said ditch by an order to be signed by them and shall include in said order, either expressly or by reference to maps, plats, specifications or papers on file in the office of said town clerk in said matter, an accurate description of said ditch and of the starting points, routes and termini, size and depth of said ditch and whether open, tiles or covered. They shall also fix a time for the completion of said ditch. Said board shall also include in their final order establishing said ditch a tabular statement showing the names of the owners of, the legal descriptions of and the number of acres in each tract of land to be benefited or damaged, the said names to be the same as appear on the tax duplicates of said county, the estimated number of acres in each of said tracts to be benefited or damaged, the number of acres added to any tract by the change of any watercourse and the location and value of said added land, the damage, if any, to riparian rights pertaining to any tract, the amount that such tract will be benefited or damaged by the construction of said work. When any ditch established under this act benefits either in whole or in part any public road or street within the limits of any town, village or city, charged with the repair thereof, said board shall estimate and report separately in such tabular statement the benefits to each public road or street, together with the names of the town, village or city charged with the repair thereof. They shall also report in such tabular statement the damages awarded for injury to any road or roadbed, and after the construction and maintenance of any bridges, culverts or other work necessary to the establishment of such ditch they shall make an order setting forth that fact and their reasons therefor. ('09 c. 127 § 8, amended '17 c. 380 § 3) [5641]

125-406, 147+273. After completion of ditch, party to proceedings is barred from collaterally attacking validity of ditch proceedings (120-147, 139+286).

6849. Benefits and damages, how ascertained—The board in ascertaining benefits and damages, and also the court on appeal, shall be guided as far as the same are applicable, by the rules for ascertaining benefits and damages in case of county ditches as set forth in chapter 230 of the General Laws of Minnesota for 1905. ('09 c. 127 § 9) [5642]

Explanatory note—For Laws 1905, c. 230, see § 6840-1 et. seq., herein.

6850. Costs and expenses—The ditch petitioners shall advance all costs and expenses of said ditch proceeding from its inception to its completion, including damages awarded and the costs of constructing said ditch, which costs, expenses and damages so advanced shall be repaid pro rata to said petitioners as herein-after provided. They shall promptly upon making such payments, no matter whether complete or partial, file with the town clerk a verified statement showing in detail the amount and date of payment and to whom and for what paid. ('09 c. 127 § 10) [5643]

Entire cost falls upon petitioners and not upon town (124-78, 144+458).

6851. Securities required—The board are hereby directed to require such securities as they may deem necessary, suitable and proper, from the petitioners for the proper performance of all their duties under the terms of this act. ('09 c. 127 § 11) [5644]

124-78, 144+458.

6852. Authority to enter lands—For the purpose of making examinations and surveys, the board and the engineer and any person or persons named by the court on appeal, are authorized to enter upon any land and to do any act necessary for the proper performance of their duties, and any person attempting to prevent or interfere with them shall be guilty of a misdemeanor. ('09 c. 127 § 12) [5645]

6853. Appeal to district court—Jury—Any person aggrieved thereby may appeal from any order of said board made in the proceedings and filed in the office of said town clerk, determining any of the following matters:

(1) The amount of benefits to any tract of land or to any public road or street.

(2) The amount of damages allowed to any person, town, village or city.

(3) Refusing to establish such proposed ditch.

To render such appeal effectual the appellant shall file with the town clerk within twenty days from the date of the filing of such order in his office, a notice of appeal stating briefly the grounds upon which the appeal is taken, accompanied by an appeal bond to the town treasurer in an amount of not less than \$250.00, to be approved by the town clerk, conditioned that said appellant will duly prosecute the appeal, pay all costs that may be adjudged against him and abide the order of the court. Within twenty days after such filing the town clerk, at the expense of the appellant, shall file in the office of the clerk of the district court of the county in which said town clerk resides, a complete transcript of all the papers and proceedings in the premises on file and of record in his office, including the notice of appeal. Any appellant deeming himself aggrieved by the determination in an order of the board establishing the proposed ditch, as to the amount of his benefits or damages, may demand in writing, a jury trial to determine the amount of his benefits or damages and such demand shall be filed in the office of the clerk of the district court within twenty days after the filing of the notice of appeal in the office of said town clerk. If no such demand is filed, the ap-

peal shall be tried by the court without a jury. The appeal shall be duly tried and determined at the next term of the district court held within said county, beginning after the filing of such transcript and shall take precedence of all matters of a civil nature in said court. If there be more than one appeal they may be consolidated and tried together. If the appellant is unsuccessful he shall pay to said town treasurer all of respondent's costs and disbursements, to be taxed and allowed by and before the clerk of said court. The construction of such ditch shall not be delayed or prevented by the prosecution of any appeal if the petitioners shall give bond in amount and with sureties to be fixed and approved by the town clerk, conditioned for the payment of all damages finally awarded on said appeal and to abide the orders and judgments of the court entered thereon. It shall not be necessary to serve any notice of trial or file any note of issue in the district court on such appeal. ('09 c. 127 § 13) [5646]

125-403, 147+273.

6854. Appeal from order refusing to establish—Upon an appeal from an order refusing to establish said ditch the court shall hear the entire matter de novo, without a jury and include in its final order and findings all of the matters and data required in the final order of the town board. As soon as final judgment is entered on an appeal, a certified copy thereof shall be transmitted by the clerk of the district court to said town clerk and shall be attached to the original order of the board and shall have the effect of modifying said original order so as to make it conform with said judgment. ('09 c. 127 § 14) [5647]

6855. Appeal to supreme court—Any aggrieved party to said ditch proceeding may appeal to the supreme court as in civil actions, from any final order made in the district court, within thirty days after the filing of such order. The notice of appeal shall be served on the clerk of the district court and need not be served upon any other person or corporation. ('09 c. 127 § 15) [5648]

6856. Extension of time for construction—Whenever the letting of the contract for the construction of said ditch is delayed either by lack of bidders or by appeals or by other proceedings in court, said town clerk shall by his order in writing extend the time limit in the order establishing said ditch for the construction thereof to compensate for said delay and as necessity may require. ('09 c. 127 § 16) [5649]

6857. Job, how sold—Contract—Bond—Within ten days after the filing of the order establishing said ditch the town clerk shall post notice in each of three of the most public places in each of the towns through which said ditch extends, and also in the office of the auditor of the county in which said ditch is located of the time and place at which he will sell to the lowest responsible bidder or bidders the jobs of constructing said ditch. When the estimated cost of the construction is more than \$1,000.00 the town clerk shall also advertise such sale of jobs in two newspapers, one of which shall be the paper in which the delinquent tax list is published in the county in which said ditch is located, and the other a legal paper published nearest the proposed work. Said notice shall state the approximate amount of work and the estimated cost and shall invite bids for the work as one job and also in such divisions as the petitioners may in writing request, and shall reserve the right to reject any and all bids, and no bid shall be entertained which exceeds the estimated cost of the construction of the part of said work covered by said bid more than 30 per cent.

Said town clerk may adjourn such letting from time to time until the whole work shall be taken. If an engineer has been appointed, no contract shall be let without the approval of said engineer. Said town clerk may sell separately any job of building of flumes or other wood or masonry work, fencing or other construction work specified either directly or by reference in the order establishing said ditch. The town clerk shall contract separately in the name of the petitioners, with each party to whom any of such jobs are sold, requiring him to construct the same in the time and manner specified in the provisions of the final order establishing said ditch, and shall take from him a bond in the penal sum of not less than the contract price, payable to the petitioners for the use of such petitioners and of all persons and municipalities and towns who may show themselves to be aggrieved or injured by any breach thereof, or of the contract for which said bond is given with sureties, to be by said town clerk approved, conditioned that said party shall faithfully perform and fulfill his contract, and pay all damages which may accrue by reason of failure to complete the work in the manner and within the time required in the contract therefor, which bond shall include a stipulation that no change, extension, alteration or addition to the terms of the contract or specifications shall in any wise affect the obligation of the principal or sureties on said bond. The contractor or contractors may each require the signatures of each of the petitioners to the contract and if any of the petitioners fail to sign said contract or contracts, said contractor or contractors may require that an amount of money equal to the contract price be deposited with the town treasurer to secure payment of said contract price upon the completion of said contract. ('09 c. 127 § 17) [5650]

124-78, 144+458.

6858. Bond and contract—The bond and contract shall be attached to each other and the contract shall contain a specific description of the work to be done, either expressly or by reference to plans, specifications, the order establishing said ditch or other papers on file in said town clerk's office and shall provide that the work shall be done and completed as provided for in the final order establishing said ditch and subject to the approval of the engineer, if there be one, and if not then to the approval of the board. Said contract and bond shall be drawn to the satisfaction of the engineer, if there be one, and to the satisfaction of the attorney-at-law, if there be one. Every such contract shall embrace all the provisions provided by law for the giving of bond by contractors for public works and improvements and for the better security of the parties performing labor and furnishing material in and about the performance of such contracts, and shall provide that time shall be of the essence of the contract in that if there should be any failure to perform the work according to the terms of said contract, within the time limited therein originally, or by extension, the contractor shall forfeit and pay to the petitioners a certain sum to be named therein and which shall be fixed by the town clerk for each day that such failure shall continue. No extension of time shall be granted unless applied for in writing to the town clerk, stating to his satisfaction good and sufficient reasons therefor, nor, in case there be an engineer, shall an extension of time be granted unless said engineer is satisfied that good and sufficient reasons exist therefor, nor shall any extension affect the right to enforce such forfeiture if any, as shall occur after the time origin-

ally limited and before such extension or occurring after the limit of the extension. The bond shall expressly provide that the bondsmen shall be liable for all damages resulting from such failure whether the work be resold or not, and that any person showing himself injured by such failure may maintain an action upon such bond in his own name and that such 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 such official bonds of public officers as security to all persons and providing for actions on such bonds by any injured party in the district court. ('09 c. 127 § 18) [5651]

Status of contractor's bond same as that of public officials (126-438; 148+454). Dismantling and reassembling dredge is incident of contract and subject of liability of contractor's sureties (126-438, 148+454).

6859. Modification of plans—The engineer, if there be one, and if there is no engineer, then the board, shall have the right to modify the plans and specifications contained in the final order establishing said ditch as the work proceeds and as circumstances may require; provided, no changes are made that will substantially impair the usefulness of any part of the ditch or substantially alter its original character or increase its total cost by more than two per centum of the total contract price for the construction thereof. ('09 c. 127 § 19) [5652]

Defendant cannot now complain of the construction of two laterals not in the original plan, by at least one of which his land is benefited; the cost of the two not increasing by more than 2 per centum the expense of the entire project. 161-416, 201+613.

6860. Failure of contractors—If a job be not completed within the time fixed in the contract therefor the town clerk shall forthwith notify the bondsmen in writing and order them to complete said job within a time specified by him. If the completion of said job shall not be undertaken by said bondsmen within twenty days after the date of said order, the petitioners may proceed to complete said job upon the giving of a bond containing like conditions as the original contractor's bond. The board shall determine the proportion of the contract price to be paid to the contractor and the proportion thereof to be paid to the parties completing said ditch. The petitioners and all other parties damaged or injured by the failure of the contractor to complete his job as called for by his contract shall have right of action and recover against the bondsmen. ('09 c. 127 § 20) [5653]

6861. Damages, how paid—No ditch shall be constructed until the damages assessed shall have been paid or deposited as follows: Payment of the damages awarded may be made or tendered at any time after the filing of the order establishing said ditch and acceptance of such payment shall be taken as a waiver of all objections to said order and to the proceedings leading thereto on the part of the payee and of all persons for whom he is lawfully empowered to act. In case any party to whom an award of damages is made be not a resident of the state or his place of residence be unknown or he be an infant or other person under legal disability or being legally capable, refuse to accept payment, or if for any reason it be doubtful to whom an award should be paid, the petitioners may pay the sum to the town treasurer, to be paid out under the direction of the board and unless an appeal be taken as herein provided, such deposit with the said treasurer shall be deemed a payment of said award. If an appeal be taken from the award of damages then when judgment is entered fixing the amount of dam-

ages, the petitioners shall pay said damages as fixed by the judgment of the court, with costs and interest in the same manner as if said damages as fixed by the judgment of the court with costs and interest had been the amount originally awarded in the order establishing said ditch. ('09 c. 127 § 21) [5654]

6862. Supervision—Certificate of completion—If no engineer has been appointed, then said ditch shall be constructed under the supervision of the board, which shall have authority to approve the same. If an engineer is appointed, then said ditch shall be constructed under the supervision of said engineer, who shall have authority to approve the same. Upon the town clerk being advised that said ditch is completed, he shall notify the engineer, if there is one, and if not, call a meeting of the board. Thereupon said engineer or said board, as the case may be, shall inspect said ditch and if found complete and according to the order establishing the same, shall certify to said fact in writing and file said certificate in the office of said town clerk. The contractor or contractors shall, upon said certificate being filed, be entitled forthwith to payment in full from said petitioners. ('09 c. 127 § 22) [5655]

Failure to allege certificate of inspection (124-78, 144-458).

6863. Statement and summary—Upon the filing of said certificate of the board or of the engineer, as the case may be, the town clerk shall, at the earliest practicable time, make a tabular list and statement showing the following facts and in the order named:

1. The names of the owners of all lands benefited by the construction of such proposed work as appears from the order establishing said ditch as affected by the judgment of the district court on appeal.

2. The description of such lands as the same appears in said order establishing said ditch as so affected, together with the total number of acres in each tract according to the assessment rolls or tax lists of the county.

3. The estimated number of acres benefited in each tract of said land as shown as aforesaid.

4. The estimated amount of benefits and damages to each of said tracts of land as the same appears in said order as changed, on appeal, by the district court.

5. The respective public roads and streets benefited by said ditch, the estimated amount of such benefits to each of said public roads and streets, and the names of the respective cities and towns and villages charged with the repair thereof, all as appears in said order establishing said ditch, as affected by the judgment of the court on appeal.

6. The amount that each of said tracts of land and that each of said towns, villages and cities that are charged with the repair of the several benefited public roads and streets, will be liable for and must pay for said ditch to be determined as follows:

Said town clerk shall make a full statement showing the total cost of such ditch from its inception to its completion, show to whom paid, for what paid and the amount paid. Said statement shall be summed up to show in figures the total cost of each ditch and shall be attached to and form a part of the list and statement herein provided for. The total cost shall then be divided by the total estimated benefits for the rate of cost on each dollar of benefit, not using a smaller fraction than one-tenth of one mill. The amount of estimated benefits to each tract of land shall be multiplied by said rate and the result set down in the proper column opposite each of said tracts of land, and the result so obtained shall be the amount

that each of said tracts of land will be liable for on account of such improvement. The amount of estimated benefits to each public street or road shall be multiplied by said rate and the result set down opposite the name of the respective towns, villages and cities charged with the repair of said respective roads and streets, and shall be the amounts that each of said towns, villages and cities will be liable for on account of such improvement. All assessments against tracts of land owned by any one or more petitioners shall be marked paid by the town clerk. It is the intention of this act that the balance of the assessments shall be ultimately paid over when collected to said petitioners to recompense them for the costs advanced on said ditch. ('09 c. 127 § 23) [5656]

6864. Statement, how executed—Record—Liens—Such statement signed by the town clerk in the presence of two attesting witnesses and acknowledged by him, shall then be duly filed with and recorded by the register of deeds of each county in which lands, roads or streets are located, that are described in said statement. The amount which each tract of land and each town, village or city will be liable for and the interest thereon as hereinafter provided, shall be and remain a first paramount lien on such land and on such town, village or city until fully paid and shall take precedence of all mortgages, charges, encumbrances or other liens whatever. Such payments may be made as hereinafter provided. Such filing shall be deemed notice to all parties interested of the existence of such lien. The fees of the register of deeds for such recording shall be paid by the petitioners and shall be included in said statement as a part of the total cost of said ditch. Said recorded statement shall be returned to the town clerk and preserved by him with the other papers relating to such ditch. ('09 c. 127 § 24) [5657]

6865. Collection of assessments—Interest—Discharge of lien—The amount that each tract of land, public or corporate road shall be liable for on account of the location, construction and establishment of any ditch, shall bear interest from the time of the filing of the town clerk's statement in the register of deeds' office, at the rate of 6 per cent per annum until paid. Such liens may be paid to the county treasurer at any time after the recording of such statements in said register of deeds' office. When payment of the full amount of such liens, with interest, shall at any time be made, the town clerk, upon presentation of a receipt from the county treasurer to that effect, shall issue under his hand and seal a certificate of such payment and the same when recorded in the office of the register of deeds shall release and discharge such lien of record. On or before November 15th next following such filing, the town clerk shall notify the auditor of each county in which said statement is filed, of the time of such filing and of the book and page in the office of said register of deeds of said county at which said statement is filed and of the certificates of payment in full that he has issued and said auditor shall thereupon forthwith enter on the tax lists of said county the amount of such lien then remaining unpaid against each respective tract of land subject thereto, as a tax on such tract which shall be subject to and be collected with like penalties as all other taxes for said year, until all is paid. ('09 c. 127 § 25) [5658]

6866. Roads benefited—Liability of municipalities—Assessments, how collected—Whenever any public road or street shall have been found by the order establishing said ditch to have been benefited, the town, village or city which is by law chargeable with the

duty of keeping such road or street in repair shall be assessed as hereinbefore provided, the pro rata amount of such benefits accruing to such roads or streets within said city, village or town by reason of such ditch, and the same shall thereupon become a liability of such city, village or town and shall be due on the filing of the town clerk's statement in the office of the register of deeds for record. Thereupon the town clerk shall forthwith issue a warrant to the treasurer of the town in which said petition was filed, requiring him to pay into the ditch fund of said ditch the amount of the assessment of the town of which he is treasurer, which said town treasurer shall forthwith do upon receiving said warrant. Said town clerk shall at the same time notify, by mail or otherwise, the clerk of each other town, city or village of the amount due from said respective town, city or village. If not paid to the town treasurer within thirty days, the town clerk shall notify the county auditor of the proper county in writing, thereof, who shall thereupon extend the amount thereof with interest at six per centum per annum from said day of filing in said register of deeds' office against all the property in such city, village or town liable to taxation, and the same shall become due, be paid, and collected in the same manner and with like penalties as other taxes for that year. ('09 c. 127 § 26) [5659]

6867. Assessments, how disposed of—All assessments when collected by the county treasurer or county treasurers shall forthwith be transmitted to the town treasurer of the town in which said petition was filed, to be kept by him in a separate fund to be known as "Fund of Town Ditch No. of Town of" and the petitioners for said ditch who have paid for the construction thereof and for the costs and expenses of said ditch, shall be entitled to repayment from said fund of all moneys received by the town treasurer as the proceeds of said assessments and interest. Such payment shall only be made upon warrant drawn by the town clerk, who shall have power to draw such warrant without any order of said board. ('09 c. 127 § 27) [5660]

6868. Documents, where filed—All petitions, resolutions, orders, engineer's reports, notices of appeal, bonds of engineer, affidavits, oaths and other instruments and papers having to do with said ditch proceeding shall be forthwith filed in the office of the town clerk where said petition was originally filed. ('09 c. 127 § 28) [5661]

6869. Meetings of board, how called—The town clerk of the town in which said petition is filed shall have power whenever necessary in said ditch proceeding to call a meeting of the board at such time and place as he may designate, upon three days' notice given each member of the board of supervisors of each one of the towns in which any of the lands or public roads described in the petition are located. It shall be a sufficient statement of the objects and purposes of said meeting in said notice to say that it is called pursuant to the provisions of this act. ('09 c. 127 § 29) [5662]

6870. Appointment of other engineers—If the engineer appointed by the board fails to qualify, or at any time resigns, dies or becomes disabled during the progress of the work, the board shall forthwith appoint another civil engineer having the qualifications required by this act in the stead and place of the engineer first appointed, who shall give the bond and take the oath required by this act and shall do all things remaining to be done by the original appointee. ('09 c. 127 § 30) [5663]

6871. Duty of railroads—Penalty—It shall be the duty of every railroad company in this state, owning a right of way therein, over, under or through which it shall be necessary to construct any ditch in any drainage proceeding hereunder, to permit such ditch to be constructed over its said right of way; provided, such ditch across said right of way shall be an underground ditch when practicable, otherwise to be constructed in the usual and ordinary manner, and so as not to impair the usefulness of the railroad. Any railroad company in this state refusing permission or continuing to obstruct the construction of such drain across its right of way after the same has been ordered and written permission demanded for the construction of the same by the contractor or party entitled to construct the same, shall forfeit the sum of \$25 per day for each and every day that such refusal or obstruction continues or is made after such written demand, to be recovered in a civil action by the contractor or other party aggrieved. ('09 c. 127 § 31) [5664]

6872. Repairs—Said board shall have power to enlarge, deepen, widen, lengthen and repair said ditch and the proceedings therefor shall be commenced by a like petition and the costs and expenses thereof shall be paid in like manner by the petitioners and the assessments shall be made and collected and all other proceedings shall be had, as nearly as may be, as in case of a new ditch. ('09 c. 127 § 32) [5665]

6873. Obstructing or injuring work—Failure of officers—Penalties—Any person wilfully or negligently obstructing or in any way injuring any work constructed under the provisions of this act or allowing such ditch to be injured or obstructed by his live stock, horses or cattle or diverting the water in said ditch or interfering with the construction of said ditch, shall be guilty of a misdemeanor and shall also be liable to any or all persons or corporations injured by said act, in treble damages. Any town clerk, member of a town board of supervisors, town treasurer, register of deeds or other officer who refuses or neglects to perform any of the duties imposed upon him by this act shall be guilty of a misdemeanor and shall also be liable to any person injured by this act, in treble damages. The county attorney of said county shall prosecute all criminal actions arising under this act. ('09 c. 127 § 33) [5666]

Contractor's action for damages for interference and what must be proven (125-302, 146+1110).

6874. Compensation of engineer and viewers—The engineer, if appointed, shall receive the sum of \$5.00 per day for every day he is necessarily engaged in performing the duties required of him by this act and his actual and necessary expenses incurred in and about the same. The members of the board shall each receive \$3.00 per day for every day they are necessarily employed in acting on said ditch proceeding or in viewing said ditch and making up and filing their orders and their actual and necessary expenses. The viewers shall receive the same compensation as the town board do for their work. Each rodman shall receive the sum of \$2.00 per day and may be allowed in addition thereto his board and lodging for each and every day he is employed and each chainman, axman and other employee necessary to the prompt execution of the work of locating or inspecting said ditch shall be allowed \$1.50 per day and may be allowed in addition thereto his board and lodging for the time such person is thus actively employed. The town clerk, the town treasurer, the register of deeds, constable and other officers shall be paid the same fees

as are allowed by law for similar service or if no fees are allowed then they shall receive reasonable compensation for their services. Such compensation shall be in addition to all sums allowed by law at the time of the passage of this act. The attorney at law shall receive reasonable compensation for his services. The fees per diem, compensation and expenses shall be before payment, audited and allowed by the town clerk and shall be paid by the petitioners from time to time. ('09 c. 127 § 34, amended '17 c. 380 § 4) [5667]

6875. Parties not affected cannot question proceedings—No person shall be permitted to take advantage of any error committed in any proceeding under this act either by the board, engineer, town clerk, town treasurer or by the court or by any person nor of any informality, error or defect appearing in the record of such proceedings unless the party complaining thereof is directly affected thereby. If the court shall at any time modify an assessment or enjoin the collection thereof or release any person from the liability thereof, it shall in no manner affect the liability or rights of any other person. ('09 c. 127 § 35) [5668]

6876. Act liberally construed—This act shall be liberally construed so as to promote the public health, the construction and improvement of roads and the drainage and reclamation of wet or overflowed lands. It shall not be construed as repealing any drainage law except as herein expressly provided. ('09 c. 127 § 36) [5669]

6877. Record as evidence—The record of every order of the board laying out and establishing any ditch or refusing to establish the same under the provisions of this act and the record of every judgment on appeal or a certified copy of such record shall be prima facie evidence of the facts therein stated and of the regularity of all the proceedings prior to the making of said order or judgment. ('09 c. 127 § 37) [5670]

6878. Orders and notices, how served—All orders, judgments and notices herein prescribed, not otherwise provided for, shall be served by any constable or other disinterested person designated by the town clerk or by the court, and such constable or other person so designated shall be paid the same fees by the petitioners as are allowed by law for similar service. ('09 c. 127 § 38) [5671]

OVERFLOWED LANDS—STREAMS—LAKES

6879. District court judge vested with jurisdiction to establish drainage and flood control districts—Whenever it shall become necessary or expedient in order to facilitate or control drainage into or from any lake, pond or other body of water or any river, stream or water course, which forms to any extent the boundary line between this state and any other state or when it shall become necessary in order to control, to any extent, floodwaters into, through or from any such lake, body of water, stream or water course to raise, lower or otherwise affect the stage or depth of water therein or in any stream, river or water course flowing into this state therefrom or from any drainage basin in another state which drainage or flood control shall cause benefit or damage to or otherwise affect property in this state and to some extent in such other state, the district court of any county in this state or any judge thereof in vacation is hereby vested with jurisdiction, power and authority upon the filing of a petition as specified in section 2, of this act and the conditions stated are found to exist, to establish a drainage and flood control district and define and fix the

boundaries thereof which districts shall include territory abutting upon such boundary waters or affected by waters flowing into or from such boundary waters and may include territory within or partly within and partly without any county and may include the whole or any part of one or more counties including the county in which said petition is filed but shall include territory forming the whole of a natural river or drainage basin and within which the waters directly or through tributaries find their way into and through one common outlet, and said court is hereby vested with jurisdiction, power and authority under the conditions provided in this act, to make all necessary orders providing for the construction of any and all improvements specified in this act, as may be found necessary for any of the following purposes within any such district so organized, or affecting such boundary waters or any river, stream or water course flowing into or from the same within the limits of this state including rivers or bodies of water affected by the overflow from such boundary waters.

(a) For regulating streams, channels or water courses by changing, widening, deepening, straightening the same or otherwise improving the use and capacity thereof.

(b) For reclaiming by drainage, or filling, dyking, or otherwise protecting lands subject to overflow.

(c) For providing for irrigation where it may be needed.

(d) For regulating the flow of water in streams or water courses.

(e) For regulation and control of flood waters and the prevention of floods, by deepening, widening, straightening or dyking the channels of any stream or water course, and by the construction of reservoirs or other means to hold and control such waters.

(f) For diverting in whole or in part streams or water course and regulating the use thereof, and as incident to and for the purpose of accomplishing and effectuating all the purposes of this act, may make all such orders as may be necessary to authorize and direct the straightening, widening, deepening or changing of the course or terminus of any natural or artificial water course and to build, construct or maintain all necessary dykes, ditches, canals, levys, wall-embankments, bridges, dams, sluice ways, locks and other structures that may be found necessary and advisable, and to create and establish and maintain the necessary reservoirs or other structures; to hold, control and regulate any and all flood waters within said districts, and acquire title to, in the name of said district of all necessary lands and other property to construct and maintain reservoirs, dykes or other structures to secure the proper control of the flood waters within said district. Provided, nothing in this act contained shall be construed to interfere with the operation and use of any drainage law of this state. ('17 c. 442 § 1)

Drainage and flood control act held constitutional, including right to organize district, appoint board, etc. (140-19, 167+122).

6880. Petition signed by free holders setting forth certain facts necessary before establishment of district—Before any district court shall establish any drainage and flood control district as outlined in section 1 of this act, a petition shall be filed in the office of the clerk of the district court in any county containing territory to the extent of five townships included in said proposed district which shall be signed by not less than 25 resident freeholders from each county abutting upon the main stream of the district having

more than five townships within the proposed district.

Said petition shall set forth:

1. The proposed name of said district.
2. The necessity for the proposed work; and that it will be conducive to the public health, safety and convenience and promote the welfare of the inhabitants of said district; and aid in the control of flood waters in said boundary waters and streams or rivers flowing into or from the same in this state.
3. A general description of the nature and purposes of the contemplated plan of improvement, explaining the necessity therefor, and shall include, in general terms, a description of the territory proposed to be included in said district. Said description need not be given by metes and bounds or by legal subdivision, but shall be a sufficiently definite and accurate description so that the territory affected may be generally understood, and, unless good reason be shown to the contrary, the same shall include all territory within a given watershed or drainage basin or all territory from which the water from natural or artificial channels find their course through one general stream or channel. The territory to be thus included in any district shall be limited to territory within the natural watershed of the particular basin petitioned to be organized.
4. Said petition shall pray for the organization of the district, the appointment of a governing board therefor and that the boundaries thereof may be specifically fixed and defined by order of said court and said district organized.

No petition containing a requisite number of signatures or petitioners shall be void or dismissed on account of any defects therein but the court shall at any time permit the petition to be amended in form and substance to conform to the facts by correcting any errors in the description of the territory or by supplying any of the defects therein. Several similar petitions or duplicate copies of the same petition for the organization of the same district may be filed and all together be regarded as one petition and any withdrawal of any signatures or petitioners from such petition after the same has been filed, shall in no manner affect the jurisdiction of the court, and all petitions filed prior to the hearing hereinafter provided shall be considered by the court as a part of the original petition. Provided; that no district shall be organized under the provisions of this act in any basin consisting of a stream or river wherein waters are flowing from any lake or body of water constituting the boundary waters where the territory of said district shall extend farther than forty miles in a direct line along said valley from said boundary waters, but may include all tributaries that enter said basin or connect said stream within the limits of said district. ('17 c. 442 § 2)

6881. Petitioners to file bond to pay expenses connected with proceeding—At the time of filing the petition provided for in section 2, of this act, or before the notice of hearing thereon is given, a bond shall be filed by said petitioners with the clerk, to be approved by said court and in such sum as he shall designate, sufficient to pay all expenses connected with said proceeding, in case the court refuses to organize said district, and, if at any time during the proceeding the court shall be satisfied that an additional bond is needed, he may so order, provided that if the petition is signed by the proper officials of two or more counties, accompanied by a copy of a resolution passed by the board of county commissioners of said counties, that said counties will be responsible for such costs,

then, and in that event, no bond shall be necessary. ('17 c. 442 § 3)

6882. Court to fix time and place for hearing petition—Upon the filing of said petition with the clerk of the district court, as provided in section 3 of this act, he shall immediately notify the judge of said court of the filing thereof, who shall within ten days thereafter, by order, fix a time and place for hearing on said petition at some point within the limits of said proposed district, notice of which hearing shall be given by a publication in at least one legal newspaper in each county affected by said petition, for three successive weeks, the last of which publication shall be at least ten days prior to the date set for hearing, provided that if the territory described in said petition shall include more than one county and territory within two or more judicial districts, then the judge of said court, where said petition is filed, shall arrange with the judge or judges of such other districts for a joint hearing upon such petition, which hearing may be at such time and place, within the territory described in said petition, as said judges shall jointly specify, and the finding by the majority of said judges shall be treated as the finding of said court and at said hearing such districts shall be represented by one judge only; but the district court, in which said petition was originally filed, shall for all other purposes, except for the purpose of said joint hearing, and except as hereinafter otherwise provided, have and retain original jurisdiction; but the absence from said hearing of the judge of one or more of said districts shall not affect the judgment or decree then entered providing two or more judges are present. ('17 c. 442 § 4)

6883. Court to file findings and decree on petition for flood control district with clerk of court and secretary of state—At the time and place set for hearing on said petition, all parties interested may appear and be heard for and against the granting of said petition, but no delay shall be granted at said hearing except when necessary and as the court may order, and if upon said hearing it shall appear that the purpose of this act would be subserved by the creation of a drainage and flood control district, comprising the whole or certain portions of the territory outlined in the petition, and the court shall so determine, then said court shall immediately make and file its findings of all matters involved in said petition, and shall by order, direct and declare said district organized, designating in said order the name by which it shall thereafter be known, and upon the filing of said order with the clerk of the court, where said petition was filed, and a certified copy thereof in the office of secretary of state, said district shall be and become for all purposes of this act, a body corporate endowed with all the rights, privileges and authorities herein designated with power to sue and be sued, to incur debts and obligations and to do and perform and exercise all the rights and privileges in this act enumerated.

Said order or decree shall designate the place where the office or principal place of business of the district shall be located which, unless special reasons arise to the contrary, shall be where the petition is filed; shall designate the number of directors or officers who shall constitute the first board of said district, who shall be no less than three or more than five, and name and appoint such directors.

If upon said hearing the court finds that any portion of the territory named in said petition should not be included in said district the same may be excluded, but any territory not included in said petition within

the forty mile limit hereinbefore defined may at said hearing or any subsequent hearing ordered by the court upon petition of twenty-five freeholders of said territory to be included be added to said district, and the boundaries thereof fixed accordingly, and if upon full hearing the court determine that the territory described in said petition or some part thereof should not be organized in said district, then said petition may be dismissed and the cost incurred be taxed against the petitioners. After an order is entered, establishing the district, the same shall be deemed final and binding upon all persons and property within said district, and the organization of said district shall not be collaterally questioned in any suit or action in any court in this state. ('17 c. 442 § 5, amended '21 c. 326 § 1)

6884. Authority of board of directors—Procedure of board—Within ten days after the filing of the order organizing said district, in the office of the secretary of state, the parties named therein as the first board of directors shall meet at the office of the clerk of the district court, where said petition was filed, each take and severally subscribe the oath provided by statute, to be taken by public officials, and shall severally file with the clerk of said court a bond in the sum of one thousand dollars (\$1,000.00), furnished by a proper surety company, the cost to be paid by the district conditioned for the faithful performance of their duties, and shall thereupon organize, by electing one of their number as president, and one of their number or a third party as secretary or clerk of said board, and shall provide the necessary books and records, and if the place designated in said order, as the general offices for said district, shall be a county seat said board shall have the authority to elect the clerk of the district court of such county as clerk of said board, and thereupon and thereafter all papers filed with said clerk shall be and constitute a filing with said board and the office of said clerk shall be the general office of said board and it shall be the duty of said clerk to keep and preserve the record of said board in his office and to do and perform such duties as shall be designated and required by said board, who shall have authority to fix his compensation. If said board shall consist of more than five members they shall elect an executive committee of three of their members consisting of the president and two other members, who shall have active charge of all work and improvements under the direction of the board.

Said board shall meet at least semi-annually and at such other times as they may designate or as occasion may require, and at all such meetings a majority of the members thereof shall constitute a quorum and a legal meetings thereof may at any time be called upon eight (8) days' notice by mail, given by the clerk or any member of the board. ('17 c. 442 § 6, amended '21 c. 326 § 2)

6885. Selection of treasurer and engineer—Said Board shall have full authority to elect or appoint a treasurer, who shall be a resident of said district and may be one of their members, who, before entering upon his duties as such, shall subscribe the oath required by statute, in the case of public officials, and shall be required to give bonds in such sum as the board shall direct, which shall be not less than the total sum that shall at any time be in his hands or under his control belonging to said district which bond shall be by a surety company, to be approved by said board, and the duties of said treasurer shall be such as the board may from time to time designate, and

among other things, it shall be his duty to receive all moneys belonging to said district and deposit the same in such bank or banks as the board shall designate, and it shall be the duty of said treasurer to require such banks to give a proper surety bond for the care and accounting for such moneys, and said treasurer shall pay out said money only on proper orders signed by the president and secretary of said board.

Said board may also employ a chief engineer and an attorney and such other engineers and attorneys or agents or assistants as may from time to time be needful and necessary and provide for their compensation, all of which expense shall be taken and treated as a part of the cost of each particular improvement. The chief engineer shall be superintendent of all the works and improvements and shall have general charge of all work pertaining to flood control within the limits of said district. ('17 c. 442 § 7)

140-22, 167-123.

6886. Terms of members of board—The members of the board of directors of said district shall hold their office, where their number does not exceed three (3), one for a period of 2 years, two for 4 years, and where their number shall consist of five (5) members, two of said board shall hold their office for the period of two years; three for the period of four years, and in all other cases where the total number is divisible by two then one-half shall be appointed for (and hold their office for two years and the other one-half for four years), and if there is an odd number then the extra member shall hold his office for four years, and thereafter all shall be appointed for four years, and the judge of the district wherein the county is located shall have authority to and shall fill vacancies that occur in said board from any cause in the counties in his district; and each member of said board shall hold his office until his successor is elected and qualified. And said board when organized shall for all purposes of this act be and constitute a commission for the purpose of carrying into effect any and all orders, judgments, decrees or directions made by the district court relative to any improvement authorized by this act, within the limits of said district. ('17 c. 442 § 8)

6887. Board of directors to cause surveys, maps, plats, etc., covering improvements in flood control district to be made—After the organization of the board of directors of any drainage and flood control district organized under the provisions of this act, said board of directors shall upon filing with them of a petition signed by not less than 25 freeholders of said district, or by the board of county commissioners of any county or council of any village or city likely to be affected by the proposed improvement therein asking for the construction of any of the improvements authorized by the provisions of this act relative to drainage or flood control of any waters or any lake, pond, marsh or body of water or river, stream or water course within said district, therein describing the nature of the proposed improvement, the extent thereof and describing the bodies of water, stream or water course proposed to be improved or reservoir or other improvement constructed and if the construction of a ditch or drain as a part of the proposed improvement a description of the starting place, the general course and terminus thereof and setting forth the reasons and necessity for such improvement and that the same will affect the public health and general welfare and said petition is accompanied by a bond signed by said petitioners, or any number of them or other parties in their behalf in such sum as the board of directors of said dis-

tract may specify conditioned for the payment of all costs and expenses in the event said petition is not granted, it shall be the duty of said board of directors of said district to cause to be made at the earliest date possible by its engineer all necessary surveys, maps, plats, profiles, and plans covering said proposed improvement and in the performance of his duties in making said surveys and report said engineer shall conform as near as practicable to the requirements of Sections 5526 and 5527 of the General Statutes of 1913 [6678, 6681], and amendments thereto, and said board of directors upon receipt of the report of their engineer shall appoint three disinterested parties residents of this state to act as viewers, who upon being notified of such appointment shall within ten days proceed to inspect and examine all lands, highways or other property likely to be affected by such improvement or that may be used or taken for the construction or maintenance thereof and make and file with the clerk of said board with said plans and specifications a detailed statement showing the benefits and damages that will result to all individuals, land and other property or corporation, public or private, from the construction of said improvement and a list of the land claimed to be benefited and damaged and the amount thereof and of all land subject to assessment for the construction and maintenance of such improvement and in the performance of their duties such viewers shall observe and comply with so far as practicable the requirements of section 5528 of the General Statutes of 1913 [6681], and amendments thereto, except as required by the provisions of this act, and if said improvement relates to any lake, body of water, stream or water course forming the boundary between this state and any other state and bordering on said district and is of such a nature as to call for, or render necessary the deepening, widening, straightening of the channel of any stream or water course forming the boundary line between this state and any other state or the dyking, and raising, lowering, or fixing the stage of water in any lake or body of water forming such boundary line rendering necessary co-operation with the drainage authorities of such adjoining state or the deepening, straightening or dyking of any stream or river flowing into or from and materially affecting such boundary waters or the use or control thereof then and in that event the board of directors of said district are hereby authorized to confer with and enter into all necessary contracts and arrangements with the governing board of drainage district or other tribunal in charge of drainage and flood control in such adjoining state or states, affected by said proposed improvement, for the purpose agreeing upon a joint plan for the making of said improvements and the nature and extent thereof, and shall have full authority, together with the representatives of said other state or states to employ one or more engineers to make a joint survey of such boundary waters and water courses and to report to said joint contracting parties all such information as they may require to enable them to determine and agree upon a joint plan for the construction of the proposed improvement and may make all necessary arrangements for all expense that will be incurred in connection with the making of said survey and report by said engineers and adoption of said joint plan. ('17 c. 442 § 9, amended '21 c. 326 § 3)

6888. Procedure of joint contracting parties—Upon the filing of the report of the engineers appointed as provided in section 9 of this act, with the commission-

ers or board of directors of said drainage district in this state and with the commissioners or tribunals representing drainage in such other state, said joint contracting parties shall proceed to consider such report and to adopt such joint plan for the construction of the proposed improvement and said joint contracting parties may give notice of a hearing of the time and place for the consideration of said report and adoption of said joint plan if deemed advisable but upon the adoption of said plan said joint contracting parties shall have authority to and shall appoint three (3) disinterested parties to act as viewers, at least one of each shall be resident of each state and who shall, after taking the oath for the faithful performance of their duties, proceed together with said engineer to examine all the property affected or that is likely to be affected by the construction of the proposed improvement and shall make such report as shall be required and among other things shall give a full description of all property and corporations affected by said improvement together with a statement of benefits and damages that will result thereto; and it shall be their duty to assess the benefits and damages upon the property in the various states upon the same basis so that each will be charged and credited with their proper proportion of the benefits received and damages sustained and shall include in said report a statement of the total cost of the proposed improvement including damages and all costs and expenses and shall make such report in duplicate or triplicate as the case may require and file one copy with the representative of each state and upon the filing of said reports, said board of directors of the drainage district in this state and the representative of such other state or states shall fix a time and place in the vicinity of the proposed improvement or some part thereof convenient of access to all parties interested, for a hearing upon said report of the viewers and engineers of which hearing notice shall be given by publication for two (2) successive weeks in at least one weekly newspaper published in each county containing property affected by said improvement the last of which publication shall be at least eight (8) days prior to the date set for hearing; at which hearing the representatives of the several states shall attend in joint session and all parties interested shall be given a hearing for or against any matters contained in the report of said viewers and engineers including joint plan and benefits and damages and the said representatives of the drainage and flood control district in this state and representatives from such other state or states shall have full authority to consider and modify said report and after full hearing to adopt or reject the same; and if it shall then appear that the amount assessable against the property and corporations benefited shall be greater than the benefits received, then said petition shall be dismissed but if it shall appear that the total benefits are greater than the total sums assessable against the property and corporations benefited and that such improvement will be of great public benefit same shall be adopted; and in that event, it shall be the duty of said joint contracting parties then in session to divide the total cost of said improvement including all expenses in any manner connected therewith, among the several states in proportion to the benefits received as shown by said reports as finally adopted and the joint plans as thus adopted and the division of the total costs so assigned to the several states shall be binding upon all parties to said joint arrangement in all subsequent proceedings relating

thereto and the findings and order so made by the parties to said joint arrangement shall be executed in duplicate or in triplicate as the case may require and filed with the proper representatives of the several states. ('17 c. 442 § 10)

6889. Board to petition district court for authority to construct or proceed with improvements—The board of directors of such drainage and flood control district in this state upon the filing in their office of the report required to be made by them under the provisions of section 9, where the proposed improvement relates to streams or bodies of water lying wholly within this state, or upon filing in their office where the proposed improvement relates to boundary waters or water courses, of the engineers' and viewers' report and the report and findings of said joint conference including the findings as to joint plans and division of the total cost of construction among the several states as provided in section 10, of this act, said board shall cause to be made a petition to the district court in the county where the proposed improvement or some part thereof is located, therein petitioning said court for authority to construct said improvement as shown in the original petition filed with said board or as subsequently modified by them and the finding and reports filed in their office relating to said improvement therein setting forth the necessity for such improvement and fully describing the nature and purpose thereof and setting forth the facts required to be alleged in case of petitions to the district court in judicial ditch proceedings required by the laws of this state and the engineers' and viewers' report as to benefits and damages shall be referred to or attached and made a part of said petition and asking that a time and place be fixed by said court for a hearing upon said petition and reports and requiring all parties interested to appear and show cause why the reports accompanying said petition should not be adopted and the rights of all parties interested fixed and determined and said improvement ordered constructed in accordance with said report and said petition. Upon the filing of such petitions and such reports with the clerk of said court, he shall immediately notify the judge thereof who shall within ten days fix a time and place for hearing upon said petition and report which may be in any county most convenient for the parties interested, due notice of which shall be given by publication for two (2) weeks in one newspaper published in each county affected by the proposed improvement, which notice shall contain a description of the property affected and the names of the owners thereof as appears in the office of the county treasurer on the last assessment roll of said county together with the names of all corporations affected by such proceedings, a copy of which notice shall also be mailed by the clerk to each property owner, at least two weeks before the date set for hearing at his last known address or if not known, as shown by the records in the county treasurer's office where the property is located and requiring all parties in any manner interested to appear before said court at the time and place specified in said notice to show cause why the reports accompanying said petition should not be confirmed and the prayer of said petition granted and said improvement ordered constructed in accordance with the plans and specifications and the report of the engineer and viewers accompanying said petition. Upon the filing of said petition and reports and the publication and mailing of said notice, said court shall have full jurisdiction of all parties, corporations, property and matters named and referred to

in said petition and said reports and the holders of all mortgages and liens against all lands there described. ('17 c. 442 § 11, amended '21 c. 326 § 4)

6890. Hearing on petition—At the time and place specified in the notice of hearing provided for in the last section, the judge of said court or the judge of any district court upon his request, shall appear and hear all parties for and against the matters set forth in said petition and reports accompanying the same and shall have and may exercise all the authority at said hearing provided in sections 5531 and 5532 of the General Statutes of 1913 [6684, 6685], so far as is applicable to this act, provided, he shall have no authority to modify the order adopting the joint plan or the order dividing the total cost among the several states and, if upon full hearing it shall appear and the court shall find that the engineers' and viewers' report have been made and all their proceedings had in accordance with the provisions of this act and that the total benefits resulting from said improvement together with the total sum assessable against property not directly benefited as reported by the board of said district shall exceed the total cost of said improvement including the damages and that said improvement will be of great public benefit and utility, then the said court shall make its findings accordingly and shall by order confirm the report of the engineer and viewers as finally adopted at said hearing, and shall order the construction of said improvement accordingly and such findings and order of said court shall fix and determine the rights of all parties affected in accordance therewith subject only to the right of appeal as provided in this act. ('17 c. 442 § 12, amended '21 c. 326 § 5)

6891. Appeal to supreme court—Any parties or corporations interested or affected by the order of the court directing the construction of any improvement as provided in section 12, of this act, may within twenty (20) days from the date of said order appeal therefrom upon the grounds and upon like notice as now provided for appeals in county or judicial ditch proceedings by section 5534 of General Statutes of 1913 [6687], and the provisions of said section shall apply to and govern appeals under this act, and the board of directors of said drainage district shall have a like right of appeal and shall also have the right of appeal from the order of the court denying their petition for the construction of said improvement and any appellant in their notice of appeal may demand a hearing before another judge or before a jury and in the event of a demand for hearing before another judge the judge of said court shall provide for the trial of said appeals before another judge but no appeal shall be granted from an order granting the petition of said board and ordering the construction of said improvement, provided further, that no appeal taken on the question of benefits and damages shall delay further proceedings towards the construction of said improvement. ('17 c. 442 § 13)

6892. Assessment of lands outside of district—Whenever the board of directors of any district shall ascertain that any improvement will benefit lands outside the district they shall assess such lands for such benefit as though within the district and report such facts to the court, together with their findings and recommendation; and thereupon notice of the filing of such assessment and recommendation shall be served upon the parties interested and they shall be given the same notice of hearing upon said petition and for assessment as provided for in case all parties affected by said proceedings are within the district, and said

assessments considered modified or confirmed as in other cases and at any time upon filing with the district court, where the original petition was filed, a petition by the board of directors of any district or any parties in interest outside the district asking for a change of the boundary lines of said district, either adding to or taking from said district any territory, the court shall upon the filing of said petition, cause notice thereof to be given and hearing had thereupon in the same manner, and with like effect as in the original hearing for the formation of the district, except the notice to be published, shall be only in such counties as shall be directly affected by such change. Provided no assessments shall be levied under the provisions of this section upon lands directly benefited in excess of ten miles outside of the boundary of the district as fixed by the forty mile limitation provided for in this act. ('17 c. 442 § 14)

6893. Authority to let contracts for construction— The board of directors of any district organized under the provisions of this act shall have full authority to let contracts for the construction of and cause to be constructed any and all works of improvement, in accordance with the order of the court and the plans and specifications referred to in such order, said contract to be let only on three weeks' published notice calling for bids at such time and place as the board shall designate, and may employ and use men and equipment under the supervision of the chief engineer or other agents, of all portions of said works not let by contract, and may cause to be repaired any and all works of improvement by this act authorized to be constructed and to employ men therefor; said work to be done under the direction of the chief engineer or his assistants and the cost of all such work except those of repair shall be treated and considered as part of the construction. Provided: No money shall be expended in the construction of said work except those in the preparation of the necessary surveys and plans including the work of viewing and estimating the amount of benefits and damages or connected therewith until after a petition for such construction has been filed and the same ordered constructed as provided in this act, and in the event that the said improvement relates to boundary waters or water courses then said board of such district shall have full authority to enter into and make all necessary contracts and arrangements with the board, commission or other tribunal of any adjoining state or states interested in such improvement for the letting of the contract for such improvement and the said board together with the representatives of said other states shall have full authority to advertise and call for bids for the construction of such improvements, giving such notice of the time and place of opening bids as said parties may provide and shall have full authority to make all necessary arrangements relative to the making of said contracts, the form of the contracts and the supervision of the work and payment therefor but said contract shall provide for the completion of said work in accordance with the plans and specifications within a given time and shall require sufficient bonds to secure the performance of said contract and shall further provide that the said drainage district or authorities in this state shall not be responsible except for the furnishing of the funds provided to be furnished by this state and the completion of so much of the improvement as lies within the limits of this state and may contain like provisions relative to the rights of the authorities representing such other state or states. The board of directors of such district shall also have authority to

enter into such contracts or arrangements as may be deemed advisable with the authorities of such other state or states relative to the cost of repair, improvements and upkeep of all parts of said improvement connected with such boundary waters or water courses and provide the funds therefor and also for a proper division of any income that may be realized from use of such waters. ('17 c. 442 § 15)

6894. Board given power to enter upon lands for surveys and examinations— The board of directors of any district organized under this act and their agents and employees, including contractors, may enter upon lands within or without the district in order to make surveys and examinations to accomplish all necessary preliminary purposes, the district being liable only for any actual damage done, and any person or corporation preventing such entrance shall be guilty of a misdemeanor. ('17 c. 442 § 16)

6895. Estimated value of property in connection with the reservoir to be contained in petition— Said board shall also have the authority to condemn, for the use of the district, any land or property within said district when the same shall become necessary to protect the property of the district and to carry out the purpose of this act, and when it shall appear that in any proceedings to establish any improvement including reservoirs or holding basins or other similar improvements, that sufficient land was not acquired in said proceedings to properly handle and control the waters in said reservoir or protect adjoining property from such waters or the waters of any stream, ditch or watercourse, or when the board shall determine that it is necessary and advisable to increase the size of any lake, basin or reservoir previously established and desire further lands to properly create and utilize the same, the said board may acquire title thereto for the benefit of the district, by filing a petition with the district court of any county in said district wherein said reservoir or other improvements or some parts thereof is located, accompanied by proper plats, plans and specifications, as provided in section 11 of this act, and thereupon after hearing as therein provided for, the court may by order provide for the appropriation of such land, if it shall be shown that the same is necessary and advisable, and assess the damages resulting therefrom as in other cases providing for the construction of improvements for flood control.

In all cases where a reservoir is created, either in a natural basin or otherwise, and said board shall conclude that the creation of said reservoir will create a waterpower or establish conditions whereby waterpower can profitably be constructed in connection with said reservoir, said board either in the original petition provided for the creation of said reservoir, or at any subsequent time may petition the court, presenting maps and details therewith and ask that such additional land and other rights or privileges as may be deemed necessary be condemned and title acquired in connection with said reservoir property, to enable said board to improve the same and use the waters of said reservoir and other waters in any manner connected therewith for waterpower purposes to the end that the waters of said reservoir or holding basins together with all streams connected therewith may be utilized and produce income for the benefit of said district and to aid in the general expense thereof and in the upkeep of all drainage and flood control improvements within said district.

Said board may also include in said petition a statement giving the reasonable value of said property owned by the district in connection with said reservoir

and proposed water power and a detailed estimate of the amount of water power likely to be produced by the proposed improvement and the probable income to be derived therefrom annually; and may in said petition ask the court to fix and determine the amount of bonds that the board may issue against the property of the district in connection with said reservoir together with the income therefrom and the court shall have authority to authorize said board to issue the bonds of said district in such sum as such improvement may require not to exceed 60% of the reasonable value of the proposed water power and not to exceed such sum as the income from said water power may reasonably be expected to pay the interest on; and upon the making of said order the board of directors are hereby authorized to issue the bonds of said district not to exceed such sum as specified in the order of the court in such denomination and in such form as the board may determine, payable in not less than 10 or not more than 20 years from date with interest not to exceed 6% per annum payable annually, which bonds shall be signed by the clerk and president of said board and registered in the same manner as county bonds under the laws of this state and upon the issuance of said bonds it shall be the duty of said board to create an interest fund and provide for the accumulation of the necessary sum to pay the interest on said bonds promptly when due.

If, at the time of the filing of the petition for the establishment of any reservoir or holding basin or at any time thereafter it shall appear that the waters of such reservoir or holding basin can be utilized for the purpose of irrigation or for any other purpose and the board of such district shall, after examination, so determine, it may cause to be made all necessary plats, plans and specifications and upon filing the same, together with a petition with the clerk of the district court of any county affected and by such proposed improvements or use, a hearing shall be had thereon upon like notice, as provided in section 11 of this act, at which hearing the court, after due consideration of the showing made, shall have authority to make such order as may be necessary to authorize said board to acquire title to all necessary rights of way, ditches or property to enable it to utilize waters of any such reservoir for irrigation purposes and to hold, keep and control the same and all property so acquired in any such proceeding shall be and become the property of said district. ('17 c. 442 § 17)

6896. To enter into contracts with United States government—The board of directors shall also have the right and authority to enter into contracts or other arrangements with the United States Government or any department thereof, with persons, railroads or other corporations, with public corporations, and state government of this or other states, with drainage, flood control, conservation, conservancy, or other improvement districts, in this or other states, for cooperation or assistance in constructing, maintaining, using and operating the works of the district or the waters thereof, or for making surveys and investigations or reports thereon; and may purchase, lease or acquire land in other property in adjoining states in order to secure outlets to construct and maintain dykes or dams, or for other purposes of this act, and may let contracts or spend money for securing such outlets or other works in adjoining states. Provided, that no board of directors of any drainage district organized under the provisions of this act shall have the right, power, or authority to connect by artificial means

boundary waters having different natural outlets so that the waters of one may be discharged into the other. Provided that nothing herein contained shall interfere with any action by the Congress of the United States. ('17 c. 442 § 18)

6897. Rights of various parties to waters in flood control districts—The rights of land owners, municipalities, corporations, and other users of water to the waters of the district for domestic use, water supply, industrial purposes, for water power, or for any other purposes shall extend only to such rights as were owned by them prior to the organization of the district. Wherever the organization of, or the improvements made by the district make possible a greater, better or more convenient use of, or benefit from, the waters of the district for any purpose, the right of such greater, better, or more convenient use of, or benefit from, such waters shall be the property of the district; and such rights may be leased, or assigned by the district in return for reasonable compensation; but the appraisal of benefits made by the board or any appraisers in any proceeding for the establishment of any improvement under the provisions of this act shall not be construed to in any manner include benefits for such greater, better or more convenient use of or benefit from the waters of the district, unless so specified in the petition or report of the board, but the compensation for such benefits shall be made in accordance with the provisions of this section except as hereinafter provided.

Persons, corporations, municipalities, or other parties desiring to secure such use of the waters or water courses of the district or of the district rights therein, may make application to the board of directors for lease or permission for such use. Such application shall state the purpose and character of such use, the period and degree of continuity and of the amount of water desired. In case any party makes greater, better or more convenient use of the waters of the district without formal application the fact of such use shall serve all purposes of an application, and the board may proceed to determine a reasonable rate of compensation the same as though formal application had been made. Where it is not possible nor reasonable to grant all applications, preference shall be given to the greatest need and to the most reasonable use, as may be determined by the board of directors, subject to the approval of the court. Preference shall be given, first to domestic and municipal water supply, and no charge shall be made for the use of water taken by private persons for home and farm yard use, or for watering stock.

The board of directors shall not permanently sell, lease, assign or grant any permit or otherwise part with permanent control by the district of the use of the waters thereof and the rates for light, power or other services charged by vendees, assignees, lessees or licensees of such district, but such leases, assignments or permits of any kind or other contracts for the use of water shall be entered into only after a report has been made by the board of such district to the court setting forth the terms and conditions of said lease, permit or other contract and corporations claiming under such district, the excess of the cost of improvements made pursuant to this act and damages therefrom, over the benefits to lands affected. ('17 c. 442 § 19)

FINANCIAL PROVISIONS.

6898. Financial provisions—The moneys of any drainage and flood control district organized under the

provisions of this act shall consist of three (3) separate funds:

1. A preliminary fund, which shall consist of funds to be provided as hereinafter specified, and can be used for preliminary work and general expenses.

2. A bond fund, which is the proceeds of bonds issued by said district, as herein provided, upon property of the district that is producing or likely to produce a regular income and to be used for the payments of the purchase price of said property of the value thereof, fixed by the court in proceeding, as herein provided, and for the improvement and development of such property.

3. A maintenance fund, which shall be supplied by special assessments to be levied from time to time as occasion may require to supply funds for the upkeep of the property and improvement of the districts including the reservoirs, ditches, dykes, canals and other improvements, together with the expenses incident to, and connected therewith. ('17 c. 442 § 20)

6899. Payment of expenses—After the filing of a petition under this act for the formation of a district, and the furnishing and filing of the bond, as provided in section 2 of this act, the costs of publication and other official costs of such proceedings shall be paid out of the general funds of the county in which the petition is pending. Such payment shall be made on the warrant of the auditor, on the order of the court, which order shall be made upon application of the district board upon ten (10) days' notice to the county auditor of such county. In case the district is organized, such costs shall be repaid to the county out of the first funds received by the district, through the levying of taxes or assessments or selling of bonds, or the borrowing of money. If the district is not organized, then the costs shall be collected from the petitioners or their bondsmen; upon organization of the district the court shall make an order, upon application of the board upon ten (10) days' notice to the county auditors of the several counties affected, dividing the preliminary expenses between the counties included in the district in proportion to the interests of the various counties as may be estimated by the court; and the court shall issue an order to the auditor of each county to issue his warrant upon the treasurer, for the proportion of the preliminary expenses assigned to that county by order of the court.

As soon as the district shall have been organized under the provisions of this act, and a board of directors shall have been appointed and qualified, said board may petition the district court in the county where said original petition was filed, upon ten (10) days' notice in writing to the county auditors of each county affected, asking that an order be made creating a preliminary fund for said district, which shall be of a size in proportion to the size of said district, and in the event said district shall include a number of counties, said funds shall not exceed the sum of \$10,000 and may be of such less amount as the court may order, and the court upon said hearing, may designate the amount of said funds and fix the proportionate amount that each county affected by said district shall pay in proportion to the area within said district, and thereupon the court shall order each of said several counties to advance from its general fund, the sum there named to constitute a preliminary fund for said district, and thereupon the auditors of said several counties shall draw their warrant upon the treasury of their county for the payment of the amount specified in the court's order payable to the treasurer of said district, and the sum so advanced by each county shall

be charged to said district and shall be repaid to each of said several counties as soon as said district has funds for that purpose, and the funds so provided shall be used by the board of said district for preliminary work, and when said board shall incur expense for surveys or other preliminary work on any proposed improvement, all expenses, including time, salaries or otherwise connected with such work, shall be kept track of and figured in as the cost of construction in any such proposed improvement, and upon said improvement being ordered by the court and funds being provided for the construction thereof, as hereinafter specified, all sums advanced out of said preliminary funds shall be repaid and said funds replaced for further similar use on other improvements. ('17 c. 442 § 21, amended '21 c. 326 § 6)

6900. Court to apportion amount of total costs—That immediately or at the earliest practicable date following the letting of a contract, or contracts, for the construction of any improvement by the board of directors of said district, they shall cause to be made and filed with the clerk of the district court where said proceedings are pending a statement of all expenses incurred in the construction of said improvement, including the amount for which the contract for the construction of said improvement was let; an estimate of the cost of supervision, fees and all other ascertainable expenses in connection therewith, and at the time of filing such statement, or as soon thereafter as practical, upon ten days' notice in writing given by the board to the auditors of the several counties affected by such improvement, the court shall apportion the amount of the total costs of the construction of said improvements among the several counties affected in proportion to the benefits received and shall fix and determine the amount to be paid by the property and corporations benefited in each county, and upon similar notice to said county auditors, said judge of the district court may at any time modify said order as justice may require, or make additional orders covering additional expense. The word "expense" as used in this section shall be construed to mean every item of cost of said improvement from its inception to its completion and all fees and expenses paid or incurred, including all damages awarded, and upon the filing of said order with the clerk of the court where said proceedings are pending, it shall be the duty of said clerk to make and file a certified copy of said order with the auditors of the respective counties affected, together with a certified copy of the order confirming the report of the board of viewers and the engineer and directing the construction of said improvement and a list of all property affected in each county respectively and a statement of all benefits and damages affecting the same, and such other information as the court by order may direct, and upon the filing of such order, it shall be the duty of the county board of each of said counties to provide the necessary funds to meet the proportionate share of the cost of said improvement, allotted to the county by said order in the same manner as now provided by sections 5533 and 5542 of the General Statutes of 1913 [6686 and 6696] and amendments thereto, in the case of judicial ditch proceedings, and upon the filing of the certified copies of said orders with said county auditors it shall be the duty of said auditors of the respective counties to make and file in his office a summary statement as provided in section 5543 of the General Statutes of 1913 [6703], containing the assessments against the property and corporations benefited and the property subject to assessment within his county, showing the

amount to be paid by such property and corporations in said county, as specified in said order, and shall, in accordance with the provisions of section 5544 of the General Statutes of 1913 [6705] make and file in the office of the register of deeds of said county such statement and lien against the property and corporations affected. And it shall be the duty of the county board of said several counties to provide the funds to meet the proportionate share of the total cost of said improvement, as shown by the order of the court and they are hereby authorized to exercise all rights and authority in so doing, now granted to county boards or boards of county commissioners under the provisions of section 5542, of the General Statutes of 1913 [6696], and other provisions of the General Statutes, relating to county and judicial ditch proceedings, and the said board of county commissioners and the said county auditor and county treasurer and register of deeds are hereby authorized and directed to exercise the authority and perform the several duties assigned to such officials or any of them under the provisions of sections 5544, 5546, 5548 and 5551 of the General Statutes of 1913 [6705, 6712, 6713 and 6716], and amendments thereto, relative to the establishment of liens, and the assessment and collection by installments of all sums levied against property within their respective counties for benefits resulting from the construction of said improvements and to exercise such other authority and perform such other duties relative to the establishment of liens, filing of statements or additional statements and liens as now provided by the laws of this state relating to county and judicial ditches, and the county board is authorized to make the necessary order specifying the period and times of payment of said assessment and the rate of interest. And all moneys received by the county treasurer of any county from the sale of bonds, assessment or otherwise for the benefit of the district shall be by the treasurer of each county accounted for and paid over to the treasurer of said district, and it shall be the duty of the board of said district to pay all damages before entering upon the land, except in case of appeal. ('17 c. 442, § 22, amended '21 c. 326 § 7)

6901. Assessments to be split by county auditor— Upon the filing by the board of directors of a drainage and flood control district, with the county auditor of any county, of a statement, as provided in section 22 of this act, giving a list of the property and corporations benefited or damaged or otherwise affected by any proposed improvement, it shall be the duty of the county auditor to assess the amount specified in such list against the municipalities or other corporations, as therein specified, in accordance with the provisions of section 5551 of the General Statutes of 1913 [6716] and amendments thereto; and said county auditors respectively shall proceed to levy and collect the sums specified in said list against the several corporations in accordance with the provisions of said section, and in the event that any improvement reported in said list shall be for improvements or benefits to any county or state road, then, in that event, the sum so reported shall become a direct charge against said county and may be paid by said county out of its road and bridge fund or otherwise, as its board of county commissioners may direct, and may be paid in whole or in installments, as may be specified by the board of county commissioners of each county. Provided, that no assessment shall be levied against any property or corporation benefited under the provisions of this act in excess of the amount of benefit received, as fixed by the order of court directing the construction of said

improvement, or as subsequently determined on appeal. ('17 c. 442 § 23, amended '21 c. 326 § 8)

6902. Directors authorized to issue orders for payment of contracts—The board of directors of any drainage and flood control district is hereby authorized to issue the orders of said district on payment for any contract for the construction of any improvement, and also for all ordinary general expenses, and for all expenses incurred by contract or otherwise in making reports and when sufficient funds are not available to pay the same, said order shall after presentation to the treasurer of the district, draw interest at the rate of 6% per annum until paid or until notice shall be given by the district that such funds are available. ('17 c. 442 § 24)

6903. Directors authorized to levy such sums as court may direct for upkeep and repairs—The board of directors of any drainage and flood control district, organized under this act, are hereby authorized after the construction of any improvement, to levy from time to time as occasion may require upon the land benefited by such improvement, such sum as the court may order or direct upon application by the board, for the purpose of providing funds for the upkeep and repairs of such improvement, and upon filing a copy of said order and levy with the county auditor of each county affected by said improvement accompanied by a list of the property within the limits of said county affected by said levy it shall be the duty of said county auditor to extend said levy against said property within the limits of his county as provided in other cases for the levy, assessment and collection of taxes ordered, levied and collected by the board of county commissioners in ditch proceedings, and upon like application the board of directors of any drainage and flood control district are hereby authorized to levy upon the property of the district such sum as the court may authorize and direct to cover the general expenses of the board, not to exceed, however, in any one district the sum of five thousand (\$5,000) dollars, and the court shall by such order, apportion the amount of such levy among the several counties, according to the area or valuations of the portion of each county within said district, and upon the filing of a copy of said order, showing the amount to be levied upon the property of said district, within the limits of each county, the auditor of such county shall levy the same upon that portion of the property of said county within the limits of said district in the same manner and with like effect as in the levy of other taxes by municipal corporations in this state; and all sums collected and received by the county treasurer of such county shall be accounted for to the treasurer of said drainage and flood control district; and the same shall be placed in the fund as provided in this act and used for the purposes for which said assessment was made. ('17 c. 442 § 25)

6904. Directors to have charge and control of public waters in district—The board of directors of all drainage and flood control districts shall have charge and control of the public waters of said district and especially all bodies of water used as reservoirs and streams flowing into and from the same, and may cause said reservoirs, when deemed practicable, to be stocked with fish and shall have full charge and control of all fish caught in said waters for sale or other commercial purposes, and shall have the sole right and authority to make all contracts or issue all licenses therefor, and in all cases such contracts shall provide for the payment of the reasonable value of such fish into the treasury of said district and said district shall

receive all benefits and income therefrom, but said board shall have no authority to authorize the catching of any game fish for commercial purposes or to grant any authority relative to fishing in violation of the laws of this state nor interfere with private individuals fishing with hook and line or in such other manner as the laws of this state shall provide during the seasons when such fishing is permitted. ('17 c. 442 § 26)

6905. Definition of terms—Whenever the term "person" is used in this act and not otherwise specified, it shall be taken to mean and include person, firm, co-partnership, association or corporation, other than public or political subdivision, and whenever the term "public corporation" or "municipal corporation" shall be used, the same shall be taken to mean counties, townships, school districts, road districts, or other political divisions or subdivisions.

Whenever the term "court" is used it shall be taken to mean the district court or the judge thereof, and to apply to the district court wherein the petition for the organization of the district was filed and granted unless otherwise specified.

Whenever the term "Board" or "Board of Directors" or "Commissioners" is used in this act and not otherwise specified, it shall be construed to mean the board of managers of the drainage district in this state in charge of the improvement; and whenever the term "joint contracting parties" is used, it shall be construed to mean the parties representing the board of directors of the drainage district or districts in his state in charge of the improvement and the board, commission or authorities representing such other state or states. ('17 c. 442 § 27)

6906. Classification of lands for assessment purposes—In all proceedings by the board of directors under the provisions of this act to assess benefits to any land resulting from any improvements said board shall as near as practicable divide said lands for the purpose of assessments into three (3) classes:

In Class No. 1, shall include all lands or corporations receiving direct benefits such as drainage or protection from overflow by flood control improvements.

In Class No. 2, shall include all lands or corporations to which are furnished a drainage outlet by the construction or improvement of any artificial or natural drain or watercourse.

In Class No. 3, shall include all lands that are now receiving or that need drainage and that are furnishing waters that will be handled or controlled by the proposed improvement.

Class 1 and 2, shall be treated as a direct assessment.

Class No. 3, may be treated as a secondary assessment to aid in the control of the waters furnished by said lands and all lands within or without the limits of said district falling within the classes 1 and 2 are hereby declared assessable for the construction of such improvement under the provisions of this act as lands directly benefited and all lands falling within the provisions designated as Class 3, are hereby declared assessable as lands receiving benefits from the general plan of drainage and flood control provided for by this act and assessable. (17 c. 442 § 28)

6907. Directors given authority to co-operate with board of adjoining districts—The board of directors of any drainage and flood control district organized under this act shall have authority to enter into all necessary contracts to enable them to co-operate with the managing board of any adjoining district whether or-

ganized under this act or any other act authorized by the laws of this state relative to any matters connected with drainage or flood control or other matters connected with or relating to the management of affairs connected with said district, and in the event that the formation of districts should be authorized by any other law of this state, enacted prior or subsequent to this act for the purpose of having charge of drainage and flood control matters and any such district should be formed bordering upon streams or bodies of water forming the boundary of this state, the governing board of such district shall have and may exercise all the authority granted by this act. ('17 c. 442 § 29)

(See Ex. Sess. '19 c. 13 § 20, as amended '21 c. 325 § 7)

6908. Board to make annual report to court—At least once a year or oftener, if the court shall so order, the board of directors shall make a report to the court of its proceedings and an accounting of its receipts and disbursements to that date, which shall be filed with the clerk of said court, and it shall be the duty of said board from time to time to make such report as may be demanded by the public examiner, and it shall be the duty of the public examiner of this state to check up and report to the court not less than once a year and at such time as the court may direct, the financial condition of said district. ('17 c. 442 § 30)

(See Ex. Sess. '19 c. 13 § 20, as amended '21 c. 325 § 7)

6909. Court not to lose jurisdiction by reason of failure to give notice—In any and every case where a notice is provided for in this act, if the court finds for any reason that due notice was not given, the court shall not thereby lose jurisdiction, and the proceeding in question shall not thereby be void; but the court shall in that case order due notice to be given, and shall continue the hearing until such time as such notice shall be properly given, and thereupon shall proceed as though notice had been properly given in the first instance.

In case any individual appraisal or appraisals, assessment or assessments, or levy or levies, shall be held void for want of legal notice, or in case the board may determine that any notice with reference to any land or lands may be faulty, then the board may file a motion in the original cause asking that the court order notice to the owner of such land or lands given and set a time for hearing, as provided in this act. And in case the original notice as a whole was sufficient, and was faulty only with reference to publication as to certain tracts, only the owners of and persons interested in those particular tracts need be notified by subsequent notice. And if the publication of any notice in any county was defective or not made in time, republication of the defective notice need be had only in the county in which the defect occurred. ('17 c. 442 § 31)

(See Ex. Sess. '19 c. 13 § 20, as amended '21 c. 325 § 7)

6910. Act to be liberally construed—This act being necessary for securing the public health, safety, convenience, or welfare, and being necessary for its prevention of great loss of life and for the security of public and private property from floods and other uncontrolled waters, it shall be liberally construed to effect the control and conservation and drainage of the waters of this state. ('17 c. 442 § 32)

(See Ex. Sess. '19 c. 13 § 20, as amended '21 c. 325 § 7)

6911. In case any section is declared unconstitutional, remainder to be unaffected—In case any section or sections or parts of any sections of this act shall be found to be unconstitutional, the remainder of the act

shall not thereby be invalidated, but shall remain in full force and effect. ('17 c. 442 § 33)

6912. Other laws to apply—In all cases where reference is made in this act to sections of the General Statutes of 1913 or to other drainage laws of this state and sections thereof are referred to, such sections and provisions shall, so far as applicable, be treated and construed as having the same force and effect, so far as the provisions of this act are concerned, as though herein set forth. ('17 c. 442 § 33, amended '21 c. 326 § 9)

CURATIVE AND MISCELLANEOUS PROVISIONS

6913. [Repealed.]

See notes to §§ 6674 to 6676, herein.

Historical—"An act amending chapter 145 of the General Laws of 1905," etc. 1905 c. 145 is superseded by the section above set forth. See 1905 c. 84. Broad powers conferred (143-438, 174+314).

6913-A. [Repealed.]

See notes to §§ 6674 to 6676, herein.

6913-B. Errors—Whenever in any county or judicial ditch proceedings conducted under chapter 230, Laws of 1905, and acts amendatory thereof and supplementary thereto, it shall appear that said ditch has been regularly established and the contract let and tabular statement made and filed and the bonds issued and sold as provided in said chapter, and said contract wholly completed, and that by reason of an error on the part of the engineer in computing the yardage or other work pertaining to said ditch, or by reason of unforeseen obstacles having arisen after the letting of the contract thereby increasing the total cost of said ditch; or where for any other reason it shall appear when said ditch is completed, that the total amount of the tabular statement filed and the amount of bonds issued is less than the total cost of said ditch and that the total amount of benefits as returned by the viewers and shown by the records in said proceedings exceeds the amount of the tabular statement filed and bonds issued and such facts are made to appear to the county board by report of the county auditor or otherwise, the county board is hereby authorized by resolution made and entered, to direct the county auditor to issue notice to the parties interested in said ditch proceedings and serve the same by publication at least two weeks and by mailing notice to the last known address of all parties interested as shown by the records in said proceedings, requiring all such parties to show cause before said county board why an order should not be made directing the county auditor to file another tabular statement assessing against the property affected by said proceedings in the same proportion as the original assessment, the total cost of said ditch in excess of the total amount of the tabular statement previously filed, not to exceed, however, the total amount of benefits as shown by the viewers' report and upon said hearing said county board is hereby authorized to cause to be made and entered an order directing the county auditor to make and file an additional tabular statement in form as provided in section 6543, General Statutes 1913 [], covering the deficiency between the amount of the previous tabular statement filed and the total cost of said ditch and assess the same against the lands benefited in the same proportion as the original summary statement filed, and the said county board is further hereby authorized, when the amount so levied shall exceed the sum of five thousand (\$5,000) dollars, to issue and sell bonds of said county as provided in section 5542, Gen-

eral Statutes 1913 [6696], to include the whole or such portion of the amount as they may direct, covered by said additional tabular statement so filed; and the said tabular statement so filed as herein provided, shall constitute a first lien against the property as provided in section 5543, General Statutes 1913 [6703], except only as to previous statement filed; and it shall be the duty of the said county auditor to cause said statement to be recorded as provided in section 5544, General Statutes 1913 [6705]; and the provisions of sections 5546, 5548, General Statutes 1913 [6712, 6713], shall apply to and govern the acts and duties of the several officials in the collection of the assessment so levied. Provided, however, that this section shall not apply in any case where the matter in issue has already been determined by the court. ('19 c. 471 § 15)

Explanatory note—For Laws 1905, c. 230, see § 6840-1, et. seq., herein.

For G. S. 1913, § 6543, see § 7914, herein.

6914. Reassessment for increased cost—That in any county when a ditch has been established under the provisions of chapter 230, Laws 1905, and tabular lists and statements have been made, filed and recorded, as provided by sections 19 [6703] and 20 [6705] of said act, which have not included the increased cost of such ditch, caused by a modification of the plans and specifications by the engineer as the work has proceeded, or where a part of the cost of such ditch was erroneously assessed against the right of way or other land owned by a railroad company, which was exempt by law from such assessment, the amount of such increased cost arising from such modification of plans when the same does not exceed two per centum of the total original cost of such ditch, or the part of the original cost so erroneously assessed against railroad property may be assessed against the property which was properly subjected to the assessment for such ditch, and the board of county commissioners of any county in which such ditch has been established are hereby authorized to determine what proportion of such assessment each piece, parcel or tract of land affected shall bear, and to assess the same against such lands, according to the same rules which governed the first assessment. ('07 c. 246 § 1) [5673]

6915. Duties of engineer—The engineer in charge of the construction of any such ditch and who, as the work has proceeded, has modified the plans and specifications of the same, whereby changes have been made which have increased the total cost of such ditch, shall ascertain the correct amount of such cost and shall forthwith make and file with the county auditor a detailed and verified report of the same. ('07 c. 246 § 2) [5674]

6916. Meeting of county board—Notice—Upon the filing of such engineer's report with him, or upon his own ascertainment of the fact that any part of the original cost of the ditch was assessed against exempt railroad property, the county auditor shall forthwith call a special meeting of the board of county commissioners, by giving to each member thereof not less than fifteen days' written notice, and shall also cause a notice of the same and place of such special meeting to be given to all persons interested, by publication, for one week prior thereto, in a newspaper printed and published in said county, and by posting, at least one week before such meeting, printed copies thereof in three public places in each township where such ditch is located, which notice shall state the object and purpose of such meeting, and in addition thereto said auditor shall mail a notice of said meeting to all per-

sons interested whose address is known to him or can be ascertained by inquiring at the treasurer's office. ('07 c. 246 § 3) [5675]

6917. **Hearing**—The board of county commissioners at said special meeting, being satisfied that the notice thereof has been given as provided in section 3 [6916] of this act, shall (or at any time to which they may adjourn from time to time, as necessity may require, but not otherwise) proceed to hear and consider the matter, and all persons interested may appear and be heard by and before them. ('07 c. 246 § 4) [5676]

6918. **Order for assessment**—If from the engineer's report and such other evidence as may be adduced before them, the board shall find that by a modification of the plans and specifications the total cost of the ditch has been increased by not more than two per centum of the total original contract price for the construction thereof, or that any part of the original cost was erroneously assessed against exempt railroad property, they shall, by order, determine the proportionate part thereof which shall be assessed against each piece, parcel or tract of unexempt land affected. ('07 c. 246 § 5) [5677]

6919. **Duty of auditor—Lien**—The board having made its order reassessing said lands, it shall be the duty of the county auditor forthwith to make out, file and have recorded, a tabular list and statement, as provided in sections 19 [6703] and 20 [6705], chapter 230, Laws 1905, and the amount assessed against each piece, parcel or tract of land, as stated in such list and statement, shall be a lien thereon from the time of the record of such statement in the office of the register of deeds until collected and fully paid, as provided in said chapter 230, Laws 1905. ('07 c. 246 § 6) [5678]

6920. **Fees—Statement filed**—The fees of the register of deeds for recording such supplemental list and statement shall be paid by the county, on the allowance of the board of county commissioners, and said statement, after the same has been recorded, shall be returned to the auditor to be by him placed with other papers relating to such ditch, and carefully preserved by him. ('07 c. 246 § 7) [5679]

6921. **Appeal**—Any person or corporation aggrieved thereby may appeal from the order of the board of county commissioners, made with reference to such reassessment, for the same reasons and in the manner prescribed in section 12, Laws 1905 [5534]. ('07 c. 246 § 8) [5680]

6922. **Repair and maintenance of certain districts**—That in all counties in this state which now have or may hereafter have two hundred and ninety-two thousand inhabitants, or more, according to the last state census, where a judicial ditch, as defined by section 2610, chapter 44 of the Revised Laws of Minnesota 1905, has been constructed along a creek or watercourse and where such creek or watercourse flows into a navigable lake, lying wholly or in part within such county, the board of county commissioners thereof shall pay for the repair and maintenance of said ditch or watercourse out of the lake improvement fund and shall not assess the expense thereof upon the adjoining lands. ('07 c. 75) [5681]

R. L. c. 44 was repealed by 1909 c. 469 § 14.

6923. **Drainage proceedings legalized**—Where the county board of any county of this state, or the judge of any of the district courts of this state, in pursuance of chapter 230 of the Laws of 1905 and the acts amendatory thereof or supplemental thereto, has located and established, or attempted to locate and establish, any

ditch, drain or watercourse, wholly within any county of this state, or partly within two or more counties thereof, and it has been determined by resolution adopted by said board, or order made by said judge, that said drain, ditch or watercourse will be of public utility and promotive of or conducive to the public health, and that the benefits, or estimated benefits, to be derived from the construction thereof, are greater than the total cost, including damages awarded, and such drain or watercourse has been actually constructed in accordance with the plans and specifications filed by the engineer therein, or of the contract made in accordance with such plans or specifications, or the county has, or the counties have, entered into a contract or contracts for the construction thereof, and the county auditor has, or the county auditors, as the case may be, or any of them, have executed and filed in the office of the register of deeds, the tabular statement provided for in said act, making assessments for the cost of the location, establishment and construction of the same, within such county, against the lands, corporations and roads benefited thereby, and the time for appeals has expired and no appeals have been taken therefrom, or from any such proceeding, or if such appeals have been taken, that the same have been determined before the passage of this act, then the said proceedings, and all assessments or liens so levied or attempted to be assessed or levied for the actual cost of such work, including damages awarded, and the county bonds, if any, which have been sold and issued, to defray the expense incurred in connection therewith, or that may have been contracted to be sold and have been executed but not delivered to the purchaser to defray the expense incurred in connection therewith, are hereby legalized and declared to be valid and of full force and effect until paid, as provided in said act and amendments thereto. ('23 c. 69 § 1)

6924. **Not to affect right of appeal**—This act shall not apply to or affect the right of appeals from such proceedings, as now provided by law, or any actions or appeals now pending, in which the validity of such proceedings, or the sale of such bonds shall be called in question. ('23 c. 69 § 2)

6925. **Construction and maintenance of bridges**—That in all cases where a public drainage ditch has been, or shall hereafter be constructed wholly or partly along a boundary line between towns or counties and the excavated material, or a portion thereof, has been, or shall hereafter be deposited on the said boundary line or within two rods on either side thereof, the cost of construction and maintenance of all bridges heretofore or hereafter constructed across any such ditch, along said boundary line shall be paid for and borne equally by the town and county wherein said bridges are or shall be constructed and the town and county adjoining said boundary line. ('17 c. 441 § 20)

6926. **Proceedings heretofore commenced to be completed under provisions of then existing law**—In all cases where a petition has been filed and proceedings have been instituted thereunder for the establishment of any drainage improvement under any drainage law of this state prior to the passage of this act, said proceedings may be completed under the provisions of law existing prior to the passage of this act, and the provisions of such law shall continue for all purposes of completing such unfinished proceedings notwithstanding the amendments provided for in this act. ('17 c. 441 § 21)

The following curative acts have not been included in the text:

- '05 c. 157 legalizes proceedings under General Laws 1901 c. 258.
- '05 c. 180 legalizes proceedings under Laws 1901 c. 258.
- '05 c. 247 legalizes proceedings under General Laws 1901 c. 258.
- '07 c. 9, legalizes proceedings under Laws 1905 c. 230.
- '07 c. 72, legalizes proceedings under Laws 1901 c. 258, Laws 1905, c. 230.
- '07 c. 363, saves contracts let prior to April 18, 1905.
- '09 c. 10 legalizes proceedings under Laws 1905 c. 230 and Laws 1907 c. 448.
- '09 c. 83, legalizes proceedings under Laws 1905 c. 230 as amended and Laws 1907 c. 448.
- '09 c. 257, legalizes proceedings under laws 1907 c. 191.
- '09 c. 442 validates payment of auditor's fees under Laws 1905 c. 230.
- '09 c. 469, legalizes and validates all proceedings, contracts, assessments, bonds, liens, etc. against faulty description and designation of course of the ditch.
- '11 c. 292, legalizes proceedings under Laws 1909 c. 127.
- '11 c. 384, amended '13 c. 335, legalizes proceedings under Laws 1901 c. 258 and Laws 1905, c. 230.
- '13 c. 2, legalizes proceedings under Laws 1905 c. 230.
- '13 c. 463, legalizes proceedings under Laws 1905 c. 230.
- '15 c. 6, legalizes and validates all proceedings, assessments, liens, levies and damage awards where the time for appeal has expired.
- '15 c. 42 legalizes and validates all matters relating to drainage projects constructed under Laws of 1905 c. 230, where such ditch runs into two or more counties and the total cost exceeds \$500,000.00.
- '15 c. 74, legalizes and validates drainage projects where the costs as estimated by the engineer in his report duly filed exceed \$500,000.00 and where the actual construction has deviated from that designated in the original report of the engineer.
- '15 c. 216, legalizes and validates proceedings under Laws 1905 c. 230, where the time for appeal has expired prior to the passage of the act.
- '15 c. 224, legalizes and validates all proceedings and assessments where regular in all respects except that the caption and notices were published in only one of the two counties through which the drainage project was established.
- '15 c. 274 validates bonds issued under Laws 1907 c. 448, where the contract for construction has been entered into notwithstanding repeal of such chapter.
- '17 c. 64, legalizes and validates the issue and sale of bonds made for repairs of drainage ditches.
- '17 c. 163, legalizes and validates drainage projects under Laws 1905 c. 230.
- '17 c. 269, authorizes payment to ditch contractor pursuant to Laws 1905 c. 230, for extra work on ditches constructed in counties of not less than fifty nor more than sixty congressional townships. (See 144-241, 175-118; 151-442, 187-413).
- '17 c. 369, legalizes and validates assessments where amounts have been omitted by the county auditor from the original assessment.
- '17 c. 391, legalizes drainage ditch proceedings where the establishing same is void for lack of jurisdiction and provides for resumption of proceedings to conform with the order of the law.
- '17 c. 451, validates such proceedings.
- '19 c. 448 provides for the payment of additional estimates on certain judicial ditch contracts heretofore let.

IRRIGATION

6927. Dams and dikes authorized for irrigation purposes—The owner of any land in this state which is suitable for the culture of wire grass, cranberries, rice or other crops requiring irrigation, may upon being licensed as hereinafter provided, construct upon the lands so owned, and across or upon that portion of any public ditch, drain or watercourse situated within the boundaries of said land, such dams, dykes or other regulating or controlling works, as may be necessary to secure the use of the water for irrigation. Provided, that any dam so constructed shall contain properly constructed gates of sufficient size to carry off the flood water above high water mark within twenty-four hours. ('15 c. 189 § 1)

6928. License to be secured from state drainage engineer—Any owner desiring to avail himself of the provisions of this act, shall apply for license so to do, to the state drainage engineer of the State of Minnesota, who shall issue a license to the applicant for the same, under such rules and regulations and guarantees as said engineer may require. ('15 c. 189 § 2)

6929. Bond to be required—Before any license is granted, said licensee shall execute a bond to the State of Minnesota, for the use of all persons who may be injured by said construction, conditioned for the payment of all damages to persons or property by reason of the construction of said dams, dykes or the use of said water. ('15 c. 189 § 3)

6930. To be under supervision of engineer—All dams, dykes or other works or structures constructed or erected under the provisions of this act shall be under the supervision and direction of said engineer. ('15 c. 189 § 4)

6931. Not to interfere with public ditches—Nothing in this act shall be construed as authorizing any act interfering with the benefit and utility of any public ditch, drain or watercourse, nor to in any manner authorize the use of the water to the damage or injury of the land of any other person, and if at any time it appears that the structures herein authorized cannot be maintained without impairing the utility of a public drain or watercourse, nor without depriving other land owners of the benefit thereof, then and in that case such license shall, upon demand of the owner or owners of such other land, be immediately revoked. ('15 c. 189 § 5)

6932. Violation a misdemeanor—Any person violating any of the sections of this act shall be guilty of a misdemeanor. ('15 c. 189 § 6)