

CHAPTER 106

DRAINAGE

Sec.		Sec.	
106.01	Definitions	106.486	Repair fund
106.02	Public drainage systems; powers of county boards and district court	106.487	Engineer's maps, report; hearing; appeal
106.03	Petitions; signatures, filing; bond	106.488	Costs and assessments
106.04	Expenses of survey not to exceed penalty of bond; bond for excess	106.495	Repair or improvement
106.05	Engineer; appointment, oath, bond	106.50	Repair or improvement of drainage system; engineer
106.06	Examination, preliminary survey and report	106.51	Report of engineer; procedure
106.07	Preliminary hearing	106.52	Viewers; appointment; duties, reports; duties of county board or court
106.08	Detailed survey, plans, and specifications	106.53	Letting of contracts
106.09	Engineer, vacancy in office; new engineer	106.54	Liens; statement, assessment, collection
106.10	Engineer's final survey and report	106.55	Use of drainage systems for outlets
106.11	Outlets	106.56	Petition for lateral; bond of petitioners; appointment of engineer; survey and report; hearing
106.12	Field books and maps; plans and specifications	106.57	Viewers; appointment, report
106.13	Form of contract set out in report of engineer	106.58	Hearing on viewers' report
106.14	Report by engineer of expenses and progress of work up to letting of contract; limitation	106.59	Hearing on viewers' report; construction, bids, contracts
106.15	Supervision and inspection of construction work	106.60	Lien statements; assessment, levy, and collection of liens
106.16	Viewers	106.61	Overflow from municipal sewerage systems
106.17	Duties of viewers	106.62	Petition; findings and orders of county board or court
106.18	Old private ditch used	106.63	Petition and procedure where system already established
106.19	Property assessable for benefits; limitation	106.64	Condemnation of outlets
106.20	Bridges on town boundaries over drainage systems; apportionment of cost	106.65	Plats of tile-drains
106.21	Construction of bridges and culverts	106.66	Fees and expenses
106.22	All benefited lands assessed	106.67	Referrees
106.23	Viewers' report filed	106.68	Jurisdiction not affected by defective notices
106.24	Final hearing	106.69	Orders, notices; service of; fees
106.25	Jurisdiction, how acquired	106.70	Entry upon lands
106.26	Proceedings at hearings	106.71	Records prima facie evidence
106.27	Order for improvement by county board or district court; corrections	106.72	Failure of board or court to attend hearings; continuances
106.28	Certified copy of viewers' report filed; expenses and costs; modification of order	106.73	Systems extending into more than one judicial district
106.29	Damages, how paid	106.74	Outlets in adjoining states
106.30	Contracts for construction	106.75	Systems extending into or connecting with systems in adjoining states
106.31	Contracts, bonds; contents	106.76	Drainage affecting meandered lakes; appeals
106.32	Extension of time on contracts	106.77	Consolidation of systems to prevent overflows or inundations
106.33	Tile construction; bids; contracts; bonds	106.78	Hearing; court orders; viewers, appointment, duties
106.34	Bond of contractor, when reduced	106.79	Effect of defective proceedings
106.35	Defaults by contractor	106.80	County ditch inspectors
106.36	Reinstatement of contract and extension of time for completion of work	106.81	Assistant engineers
106.37	Inspections, reports, notices	106.82	Use of former reports, surveys, and monuments
106.38	Engineer to inspect tile and other construction work	106.83	Construction at cost of land owners
106.39	Partial payments to contractor	106.84	Hearing
106.40	Bond issues; proceeds; general ditch fund; payment of liens with bonds	106.85	Assessments; levy, payment
106.41	Tabular statements	106.86	Reassessments
106.42	Acknowledgment and filing of tabular statements with register of deeds	106.87	Procedure when bids not received or contracts not let
106.43	Adjustments on account of erroneous collections	106.88	County warrants; accounts and records examined; appearances by state and county officials
106.44	Liens; supplementary liens	106.89	Appeals
106.45	Interest	106.90	Appeals to supreme court
106.46	Payment of liens	106.91	Dismissal of proceedings
106.47	Apportionment of liens	106.92	Offenses; penalties
106.481	Assessments for cleaning state, county, and judicial ditches	106.93	Construction and application of other laws
106.483	Repair of ditches		
106.484	Maintenance; inspection		
106.485	Payment		

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

Subdivision 2. **Publication.** The term "publication" means publication once a week for three successive weeks in one legally qualified newspaper published and in general circulation in each county affected.

Subdivision 3. **Board or county board.** The term "board" or "county board" means the county board of the county where the drainage proceedings are pending.

Subdivision 4. **Court, the court, the district court or district judge.** The term "court," "the court," "the district court," or "district judge" means and refers to the district court, or a judge thereof, of the county where the judicial drainage proceedings are pending.

Subdivision 5. **Board or court or county board or district court.** The term "board or court" or "county board or district court" means 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. When 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 judicial district and one appointed by the governor.

Subdivision 6. **County auditor or auditor.** The term "county auditor" or "auditor" means the auditor of the county wherein county drainage proceedings are pending.

Subdivision 7. **Clerk or clerk of the district court.** The term "clerk" or "clerk of the district court" means and refers to the clerk of the district court where the petition is filed in judicial proceedings.

Subdivision 8. **Person.** The term "person" means and includes a person, firm, copartnership, association, or corporation other than a public or political subdivision.

Subdivision 9. **Public corporation or municipal corporation.** The term "public corporation" or "municipal corporation" means and includes cities, villages, boroughs, counties, towns, school districts, road districts, or other political subdivisions.

Subdivision 10. **Public health.** The term "public health" extends to and includes any act or thing tending to improve the general sanitary condition of the community, whether by drainage, relieving low, wet land or stagnant and unhealthful conditions, or by preventing the overflow of any lands, thereby producing or tending to produce unhealthful conditions.

Subdivision 11. **Public welfare or public benefit.** The term "public welfare" or "public benefit" extends to and includes any act or thing tending to improve or benefit the general public, either as a whole or any particular part or community, and construed to include any improvement contemplated by this chapter which shall protect from overflow or reclaim and render suitable for cultivation tracts of land normally wet or needing drainage, or subject to overflow.

Subdivision 12. **County ditch or county drainage proceeding.** The term "county ditch" or "county drainage proceeding" means drainage proceedings under the provisions of this chapter instituted by petition, as provided herein, before the county board of any county.

Subdivision 13. **Judicial ditch or judicial drainage proceeding.** The term "judicial ditch" or "judicial drainage proceeding" means and refers to judicial proceedings under the provisions of this chapter instituted before the district court of any county and may include proceedings in one or more counties.

Subdivision 14. **Ditch, drainage system, public drainage system, or drainage proceeding.** The term "ditch," "drainage system," "public drainage system," or "drainage proceeding" means and includes either an open or tiled system and all laterals or parts thereof, also the improvement of any natural run, watercourse, 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 the district court.

Subdivision 15. **Road, public road, or highway.** The term "road," "public road," or "highway" means and includes 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 commissioner of highways, and includes 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 the municipal corporation. 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 the road. 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 under the name of state department of highways, as a part of the description of the road, and therein designating the county or counties within which the benefits are assessed or damages allowed; when so reported the same shall constitute a valid assessment against such town, county, or the state.

Subdivision 16. **Resident owner or resident freeholder.** The term "resident owner" or "resident freeholder" means and includes the owners of such land or the party who holds the land under contract of purchase from the owner and who resides in the state.

[1925 c. 415 s. 1] (6840-1)

106.02 PUBLIC DRAINAGE SYSTEMS; POWERS OF COUNTY BOARDS AND DISTRICT COURT. Subdivision 1. **Generally.** The county boards of the several counties and the district court of the several judicial districts 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 dikes, 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.

Subdivision 2. **Flood control.** When deemed necessary to control flood waters therein, the county board and court are hereby authorized and empowered to raise, lower, or establish the height of water in any lake, body of water, or watercourse and cause to be constructed all necessary structures and improvements to maintain the same for flood control or other public purposes and, where only a part of a meandered lake is to be drained, to cause to be constructed dikes or dams for the purpose of holding the water at the height designated by the board or court in that part of the lake not to be drained.

Subdivision 3. **Meandered lakes, when not drained.** 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 the city or village at any annual election or a special election held for such purpose.

Subdivision 4. **Meandered lakes, when consent of commissioner required.** No meandered lake shall be drained except by the consent of the commissioner, subject to such policies as he may formulate from time to time to be filed in the proceedings on or before the date of the appointment of the engineer by the board or court, as provided in section 106.05.

[1925 c. 415 s. 2; 1933 c. 312 s. 1] (6840-2)

106.03 PETITIONS; SIGNATURES, FILING; BOND. Before any public drainage system, drain, or other improvement authorized by this chapter shall be established, 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. Such petition may also be signed by the supervisors of any town or the proper officers of any city or village authorized by resolution of the council thereof, which town, 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 director of public institutions or his duly authorized agent, but in such case the signature of such supervisors, village officers, authorized agents of any public institutions, or other corporations, or any or either of them, shall each count only as one signature on a petition.

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

[1925 c. 415 s. 3] (6840-3)

106.04 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 the survey shall not exceed the penalty named in the bond given by the petitioners in this proceeding. No claim in excess of the amount of such bond shall be audited or paid by direction of the court or board unless in the 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 106.03.

[1925 c. 415 s. 4] (6840-4)

106.05 Engineer; appointment, oath, bond. Upon the filing of the petition and bond, the county board, in a county drainage proceeding, or the judge of the district court, in a judicial drainage proceeding, shall, within 30 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 the order, to the board or court all matters necessary and essential to disclose the practicability, necessity, and advisability of the construction of the proposed improvement. The engineer so appointed shall within ten days thereafter take and subscribe an oath to faithfully perform the duties assigned to him according to the best of his ability, and give a bond in the sum of not less than \$5,000 with good and sufficient surety, payable to the county or counties affected by the proposed improvement, for the benefit of the county or counties, and for the use of all parties aggrieved or injured by any negligence or malfeasance on the part of the engineer so long as he is in any manner employed in the proceedings, conditioned that he will diligently, honestly, and to the best of his skill and ability, during the full period of his employment, perform his duties as such engineer in the proceeding, this bond to be approved by the auditor or clerk, as the case may be. In case of a change of engineers, each new engineer shall make and file the oath and bond provided for herein. Provided, however, that where the engineer so appointed is an employee of the United States Department of Agriculture as a soil conservation engineer, the bond herein provided for may be waived by the appointing authority.

[1925 c. 415 ss. 5, 8; 1945 c. 97 s. 1] (6840-5, 6840-8)

106.06 EXAMINATION, PRELIMINARY SURVEY, AND REPORT. It shall be the duty of the engineer without delay to proceed and examine all matters named and referred to in the petition and order, make such preliminary survey of the territory likely to be affected by the proposed improvement as will enable him to fully determine whether the same is necessary or practical, and report accordingly. If some other or different plan than that described in the petition is found practical, the 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 the petition or according to another or different plan designated or recommended by the engineer. 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. If the construction of a ditch or drain is

involved in the proposed improvement, the engineer shall especially examine and report the nature and capacity of the outlet and any extension that may be necessary to supply the same. If he finds the improvement petitioned for is feasible, he shall include in 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 the corporations 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. The engineer appointed pursuant to the provisions of section 106.05 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.

[1925 c. 415 s. 6] (6840-6)

106.07 PRELIMINARY HEARING. Subdivision 1. **Time; notice.** Upon the filing of the report of the engineer as provided in section 106.06 with the county auditor or the clerk of the district court, as the case may be, it shall be the duty of the auditor to immediately notify the county board, or the clerk, the judge of the district court, of the filing of the report, and the auditor or the clerk, with the approval of the judge, shall fix a time for the hearing thereon, not to exceed 30 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 corporations, public or private, affected by the proposed improvement, as shown in the engineer's report, of the time and place of the hearing; and at such time and place the engineer shall attend before the county board or district court and make such explanation and supply such information as may be necessary to fully inform the 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.

Subdivision 2. **Findings.** 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, the petition shall be dismissed; but, if the county board or district court shall be satisfied that the proposed improvement, as outlined in the 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, the board or court shall so find and by such order shall designate the change that shall be made in the proposed improvement from that outlined in the petition; these changes may be described in general terms and shall be sufficiently described by attaching to the order and the petition a map drawn by the engineer outlining the proposed improvement thereon and the changes made and thereafter the petition shall be treated as modified accordingly.

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.

[1925 c. 415 s. 7] (6840-7)

106.08 DETAILED SURVEY, PLANS, AND SPECIFICATIONS. Upon the filing of the order as specified in section 106.07, the board or court shall order the engineer or any other engineer, if a change of engineers be determined, to proceed to make a detailed survey and furnish all necessary plans and specifications for the proposed improvement and report the same to the board or court with all reasonable dispatch.

[1925 c. 415 s. 8] (6840-8)

106.09 ENGINEER, VACANCY IN OFFICE; NEW ENGINEER. 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 the place and stead of the engineer first appointed, who shall give the bond and take the oath required by section 106.05 and do all things remaining to be done by the original appointee under the requirements of this chapter.

[1925 c. 415 s. 9] (6840-9)

106.10 ENGINEER'S FINAL SURVEY AND REPORT. Upon the filing of the order named in section 106.08, the engineer shall forthwith make a correct survey of the line of the drainage improvement petitioned for and approved by the 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; cause stakes or monuments to be set along the line numbered progressively up or down stream, each 100 feet; and 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 watercourse, he shall in tabular form give the depth of the cut, the width at the top and the width at the bottom of each 100-foot stake or monument, the number of cubic yards of material to be excavated from the ditch, creek, or watercourse, the estimated price per cubic yard, and the estimated total cost of the work in each 100-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 100-foot stake or monument and give the kind, size, and estimated cost of tile, the estimated cost of hauling, trenching, laying, and backfilling, and the total cost of the tile-drain for each 100-foot section. The engineer shall make estimate of the costs of the removal of obstructions in watercourses, 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. When a more economical construction will result or the interest of the land owners may be better served thereby the engineer may subdivide 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 watercourse 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 these branches as are required by this chapter with reference to the public drainage system described in the petition, as ordered at the preliminary hearing. All laterals recommended by the engineer may be established as provided in section 106.06 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 highways 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. 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.

[1925 c. 415 s. 10] (6840-10)

106.11 OUTLETS. 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. Any changes or branches recommended by the engineer shall be established only as provided in section 106.06.

[1925 c. 415 s. 11] (6840-11)

106.12 FIELD BOOKS AND MAPS; PLANS AND SPECIFICATIONS. Subdivision 1. **Contents of field book and maps.** 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 the 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 rights of way 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 source, outlet, and at each 100-foot stake.

Subdivision 2. **Filing.** The engineer shall make a complete set of plans, specifications, and estimates of costs 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 include all maps, profiles, specifications, and matters herein provided for, and file the same with the county auditor or the clerk where the proceedings are pending.

Subdivision 3. **Report to director.** All plans, specifications, maps, profiles, and estimates of costs herein required shall be made in triplicate and filed with the auditor or clerk where the proceedings are pending and, within five days from the filing of such report and before further proceedings are had thereon, one of the copies of the report shall be forwarded by the auditor or clerk to the director, who within the next 15 days shall examine and approve the same as presented and file with the auditor or clerk his approval thereof, or, if he does not approve, he shall file instead his recommendations for modifications thereon as he may deem necessary.

If for any reason the director finds it impossible or impracticable to complete the examination and report on an engineer's report within the time limited herein, he may make application to the auditor or clerk for an extension of time and the auditor or clerk shall have authority to grant such extension.

Subdivision 4. **Approval by director.** Upon the filing of the approval or recommendations of the director with the auditor or clerk, the auditor or clerk

shall make an order designating the time and place for the first meeting of the viewers, as provided in section 106.16, after which all further proceedings shall be had as provided in this chapter. One copy of the 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 the 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.

Subdivision 5. **Final completion.** It shall 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 where such proceedings are pending and the 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.

[1925 c. 415 s. 12; 1933 c. 312 s. 2] (6840-12)

106.13 FORM OF CONTRACT SET OUT IN REPORT OF ENGINEER. 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 the contract. The county attorney upon request of the engineer shall assist in the preparation of the specifications and the formal provisions of the contract.

[1925 c. 415 s. 13] (6840-13)

106.14 REPORT BY ENGINEER OF EXPENSES AND PROGRESS OF WORK UP TO LETTING OF CONTRACT; LIMITATION 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 the 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 the work. He shall forthwith file this report with the county auditor or clerk 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.

[1925 c. 415 s. 14] (6840-14)

106.15 SUPERVISION AND INSPECTION OF CONSTRUCTION WORK. It shall be the duty of the county boards 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 chapter 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 county board or district court shall require

strict and accurate inspection by the engineer in charge. In all cases the parties in charge of inspection work shall be under bond to the county or counties affected, conditioned for the faithful and efficient performance of their duties as inspectors.

[1925 c. 415 s. 15] (6840-15)

106.16 VIEWERS. Subdivision 1. **Appointment, number.** 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 a judicial drainage proceeding, 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.

Subdivision 2. **Meeting of viewers.** 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 days after the filing of the report of the director approving or recommending modifications of the 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 days after the filing of the approval or recommendation of the director on the engineer's report to issue to the viewers, if then appointed, a certified copy of the petition, the order appointing them, and the order designating the time and place of their first meeting.

If the viewers have not been appointed at the time of the filing of the approval or recommendation of the director on the engineer's report, it shall be the duty of the auditor or clerk within five days of the date of the order appointing the viewers to make his order fixing the time and place of the first meeting of the viewers, as provided in this section.

Subdivision 3. **Filling of vacancy.** 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.

[1925 c. 415 s. 16; 1933 c. 312 s. 3] (6840-16)

106.17 DUTIES OF VIEWERS. Subdivision 1. **Oath, tabular statement.** The viewers, after taking the oath to faithfully perform their duties, shall proceed at the time set in the order, with or without the civil engineer, and prepare in duplicate a tabular statement showing as far as practicable the description of each tract of land benefited or damaged; with the names of the owners as the same appear on the last county tax duplicate of the county, the total number of acres in each tract 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 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 the work; when any drainage system established under this chapter 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, roadbed, or railroad and report such 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.

Subdivision 2. **Report of benefits and damages.** The viewers shall 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, or association 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 report the total estimated benefits in

respect to the entire system and branches, if any, and whether or not the estimated expense of the construction of such improvement, including the damages awarded therefor, is greater than the utility of the proposed drainage system or that the construction of such a 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 matter disagreed upon.

A majority of the viewers shall be competent to perform the duties required of them by this chapter.

[1925 c. 415 s. 17; 1933 c. 312 s. 4] (6840-17)

106.18 OLD PRIVATE DITCH USED. When 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.

[1925 c. 415 s. 18] (6840-18)

106.19 PROPERTY ASSESSABLE FOR BENEFITS; LIMITATION. 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 chapter shall be assessable therefor for any improvement to any public roads, streets, or other property, including trunk highway or any street or other property owned 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 roadbed, right of way, or other property used for railroad purposes shall be assessable for such benefits; and villages or cities shall 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 the city or village, and it shall be the duty of the viewers appointed under the provisions of this chapter to assess such benefits to such railroads, to the state, and to such municipalities. When 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 such city or village, as hereinafter specified, shall be assessed against such city or village 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 106.41 and the amount thus ascertained shall thereupon become a liability of such city, village, town, or municipality and due and payable in ten annual instalments beginning on the first day of June next following the date of entry of the lien against private individuals, as herein provided, and in the case of a city, village, or town, if such instalments are not paid within 30 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, 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 an additional lien statement made and filed with reference to municipalities the same as in the case of lands or individuals. 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 the 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, 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. When the lands of any railroad company shall be determined in any such proceeding to be benefited by any such improvement these 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.

When any roadbed, 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 the 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 the 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 the railroad company within such county. The 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 for the enforcement of such assessment and the collection of the amount thereof.

All lands owned by any railroad or other corporation benefited by any such drainage system, drain, or watercourse shall be liable for such benefits the same as taxable lands.

The amount any tract of land, public or corporate road, or railroad shall be liable for on account 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.

[1925 c. 415 ss. 19, 20, 21] (6840-19, 6840-20, 6840-21)

106.20 BRIDGES ON TOWN BOUNDARIES OVER DRAINAGE SYSTEMS; APPORTIONMENT OF COST. In all cases where a public drainage system has been or shall 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 such boundary line shall be paid for and borne equally by the towns abutting upon the boundary lines; and all damages awarded shall be divided equally between the towns.

[1925 c. 415 s. 22] (6840-22)

106.21 CONSTRUCTION OF BRIDGES AND CULVERTS. The county auditor, or clerk of the district court wherein the proceeding is pending, shall notify each municipality, railroad company, or other corporation to construct any bridge or culvert across or upon its road or right of way within a reasonable time named in the notice. If the 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 the 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 shows 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 the bridge or culvert.

[1925 c. 415 s. 23] (6840-23)

106.22 ALL BENEFITED LANDS ASSESSED. Subdivision 1. **What benefits included.** 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 chapter 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 the system or some part thereof or as the same affords an outlet for drainage or prevents the overflow or otherwise directly benefits such lands, roads, railroads, villages, or cities. 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 the system or some part thereof.

In any case 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.

Subdivision 2. Lands of state. All lands owned by the state or any department thereof benefited by such drainage system or any branch thereof shall be assessable for such benefit the same as taxable land, and trunk highways the same as town, county, and state aid roads. 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 director, and, in case of assessment of trunk highways, be served on the commissioner of highways, as in the case of individual land owners.

[1925 c. 415 s. 24; 1933 c. 312 s. 5] (6840-24)

106.23 VIEWERS' REPORT FILED. The viewers shall upon the completion of their work file with the county auditor, in the case of a county drainage proceeding, or with the clerk of the district court, in the case of a judicial proceeding, two copies of the report of all their doings and findings in detail including expenses and actual time they were engaged and within five days from the filing of such report one of the copies of the report shall be furnished by the auditor or clerk to the director, who shall file and keep the same as a part of his record in the proceedings. The viewers shall in every case completely perform the several duties by this chapter imposed upon them at the earliest date possible following their first meeting.

[1925 c. 415 s. 25; 1933 c. 312 s. 6] (6840-25)

106.24 FINAL HEARING. **Subdivision 1. Time.** 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 the engineer's and viewers' reports in the proceedings, which date shall not be less than 35, nor more than 50, days from the date of notice and give to the members of the county board the usual notice of the calling of 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.

Subdivision 2. Notice. It shall be the duty of the auditor or the 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 the notice for three successive weeks prior to date of hearing in a newspaper printed and published in each county affected.

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 the county.

Subdivision 3. Posting of notice. Printed copies of these notices, so printed for the respective counties, shall be posted at least three weeks before the date of hearing in three public places in each township in each county where the work is located, and one at the front door of the court-house in each county. This notice shall briefly state the pendency of the petition, that the engineer's and viewers' reports have been made and filed with the county auditor or the clerk of the district court where such proceedings are pending, and the time and place set for the hearing. The notice shall contain a brief description of the proposed drainage system giving in general terms the starting point of the main ditch and branches, the general course of each and its terminus, 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 give the names of the owners of land and the municipal and other corporations affected thereby as shown by the engineer's and viewers' reports.

Subdivision 4. Mailing printed copies of notice. Within one week after the beginning of such publication the county auditor, in the case of county drainage proceedings, or the clerk of the district court, in the case of judicial proceedings, shall mail a printed copy of the notice to the state auditor, the commissioner, and to all persons and corporations who are the owners of land or who are otherwise affected by the proposed drainage system as shown by the engineer's and viewers' reports whose addresses are known to the county auditor, in the case of county drainage proceedings, or the clerk of the district court, in a judicial proceeding, or can be ascertained, respectively, by the auditor or clerk by inquiry at the county treasurer's office of the county wherein such lands, roads, railroads, or municipal corporations are situated.

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 the proceedings not less than ten days before the date of hearing copies of the notice printed in their respective counties.

Subdivision 5. Notice, defective or not given. In all cases in which for any cause the 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 the 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. -

Subdivision 6. Notice, partly proper, partly defective. If it shall appear at the date of the hearing before the county board or the district court that the 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 the 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 the notice or defectively described, then, or in either case, the county board or district court where such proceedings are pending may adjourn or continue the 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 the 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 the notice except in the county or counties with reference to which notice of publication, posting, or mailing was defective.

Subdivision 7. Personal service, when proper. 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 summons in district court, not less than ten days prior to the date of hearing, 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 chapter.

Subdivision 8. Sufficiency of notice upon adjournment of hearing. 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 party 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 as required by this chapter.

[1925 c. 415 s. 26; 1933 c. 312 s. 7] (6840-26)

106.25 JURISDICTION, HOW ACQUIRED. Upon due publication, posting, and mailing of the notice provided for in section 106.24, 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 the 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 the 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 the notice that is affected by the proposed drainage system or laterals, and all persons and corporations, municipal and otherwise, that are named in the notice, and all persons or corporations having or owning any interest in any mortgage, lien, or encumbrance against any of the tracts of land or other property heretofore in this section referred to or named or referred to in the engineer's and viewers' reports.

[1925 c. 415 s. 27] (6840-27)

106.26 PROCEEDINGS AT HEARINGS. Subdivision 1. **Consideration of petition.** 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 the board or court.

Subdivision 2. **Changes of plans and reports.** If, at such final hearing, it appears 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 the proposed system, as surveyed and reported by the engineer, may be improved by the addition of other branches connected therewith or by a change in the course or the dimensions of either the main ditch or any branches or by the elimination of one or more of the branches, or, if it shall appear to the board or court at such hearing that the viewers have made unequal or improper 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 county board or district court where the proceeding is pending shall have authority to forthwith amend or correct the engineer's or viewers' 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 the viewers for immediate consideration and shall have authority to order such engineer or viewers, or either of them, to proceed forthwith and summarily consider the matter and make such change in the proposed drainage system or in the location, course number or dimensions of the branches thereof, or in relation to the amount of the benefits or damages, or both, 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 engineer or such viewers to be just, reasonable, necessary and as shall appear to be required by such evidence and thereupon the engineer or viewers, 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 the board or court, as the case may be, make and file amended findings and report accordingly. These amended reports shall thereupon be and become a part of the original report the same as if originally filed therewith. At the final hearing and after the amendment or amendments are made to the report, the county board or district court may further hear and consider all evidence offered and admissible concerning the report or reports as amended and may determine accordingly.

Subdivision 3. Reexamination of system. 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 reexamine the course of the 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, and in that case, or either of them, the county board or district court shall have authority to resubmit the reports to the engineer or viewers, or both, as circumstances may require, and order such reexamination and continue the hearing for such time as may be necessary to make such examination and report, and in such case the engineer and viewers shall proceed to reexamine the course of the ditch and the lands affected thereby and shall, within 30 days after such resubmission, file with the county auditor or clerk of the district court where the proceedings are pending their amended report. In the event the amended report includes lands, roads, railroads, or corporations not included in the original report, or that it shall appear at such hearing that notice of the hearing as theretofore published and served was defective, or that the 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 of 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 proceedings are pending may by order adjourn or continue the 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 chapter 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 the adjourned hearing as in the case of the first hearing and the jurisdiction of the court or board where the proceedings are pending shall extend to and include all property, parties, and corporations included in the notice.

[1925 c. 415 s. 28] (6840-28)

106.27 ORDER FOR IMPROVEMENT BY COUNTY BOARD OR DISTRICT COURT; CORRECTIONS. If, at any such hearing or any adjournment thereof, such county board or district court where the proceedings are pending shall, from the reports filed and the evidence produced, 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 chapter, and that the estimated benefits to be derived from the construction of the improvement are greater than the total costs, including damages awarded, and such damages and benefits have been duly awarded and assessed, and that the 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 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, the amended viewers' report. In case a majority of the viewers have not agreed or shall not agree in their findings, the county board or the district court shall determine the proper findings and amend and adopt or confirm the viewers' report accordingly.

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 the 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 the 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 the petition set forth.

On the filing of this 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 20, nor more than 60, days from the date of the order; and it shall thereupon, within ten days from the date of the order, be the duty of the county auditor or the clerk of the district court to cause a copy of the order, giving the time and place of hearing before the board or court, to be served by mail upon the engineer and the attorney for the petitioners and all parties and corporations whose property is assessed for benefits in the proceedings.

At the time and place specified in the order or notice the county board or district court where the proceedings are pending shall attend and hear all parties interested for or against the granting of the petition and, if, at the hearing, it shall appear to the satisfaction of the 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 the county, the board shall have authority to forthwith amend or correct the 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 these matters and make such changes in their report as shall be necessary in the premises. 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 the 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 the report to the county board or district 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.

[1925 c. 415 s. 29; 1927 c. 324] (6840-29)

106.28 CERTIFIED COPY OF VIEWERS' REPORT FILED; EXPENSES AND COSTS; MODIFICATION OF ORDER. In all proceedings pending in the district court it shall be the duty of the clerk, within 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 auditor of each county affected by the 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 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 the 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.

[1925 c. 415 s. 30] (6840-30)

106.29 DAMAGES, HOW PAID. When damages are awarded to any person as the owner of any property affected, or to corporations, 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 the 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. These warrants may be issued after the letting of the contract of construction for such improvement. In case of appeal or in case of any postpone-

ment 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 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.

[1925 c. 415 s. 31] (6840-31)

106.30 CONTRACTS FOR CONSTRUCTION. After the expiration of 30 days following the filing in the office of the auditor or clerk, as the case may be, of the order 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 the 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 county or counties, 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 the auditor and the 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 chapter provided, which bond shall include a stipulation that no change, extension, alteration, or addition to the terms of the contract or specifications shall in anywise affect this obligation of the principal or principals or surety on the 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 newspaper 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 the work covered by the 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 ten per cent of the bid; and the 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 \$3,000, 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. If it shall appear, at the expiration of 30 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, no steps shall be taken for the letting of the 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 the proceeding or to their attorneys.

[1925 c. 415 s. 33] (6840-33)

106.31 CONTRACTS AND BONDS; CONTENTS. The contract to be executed by the contractor, and the bond furnished by him as required by this chapter 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 section 106.30, 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 chapter. The engineer and county attorney and attorney for the petitioners shall take part in the framing of the contract and shall insist that the same shall contain the proper specifications as required herein. The 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 chapter 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 the 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 his or its own name, and actions may be successive in favor of all persons so injured. Such contractor shall be considered a public officer, and such bond an official bond within the meaning of the statutory provisions construing such official bonds of public officers as security to all persons and providing for action on such bonds by any injured party.

[1925 c. 415 s. 34] (6840-34)

106.32 EXTENSION OF TIME ON CONTRACTS. 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 the 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 the application, the auditor or auditors, as the case may be, shall cause to be prepared and served upon the engineer and the 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 the application, and the time and place when and

where the application will be heard, considered, and determined by the auditor or auditors, as the case may be. At the time and place so designated the 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 the 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 the contractor applying for the extension.

[1925 c. 415 s. 35] (6840-35)

106.33 TILE CONSTRUCTION; BIDS; CONTRACTS; BONDS. When 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 judicial proceeding, 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 the contract against any fault or negligence on the part of any such contractor. Thereupon the county auditor, or auditors, as the case may be, shall include such requirements in their notice and shall call for bids, and contractors shall be required to make their bids accordingly, and the auditor, or auditors, as the case may be, shall have authority to designate which of the bids shall be accepted and, in the event that the bids requiring the guarantee of the work for the period named shall be accepted, the contract shall require 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 the contract against any fault or negligence on the part of such contractor, and any failure during this period of any part of the 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 the 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 the contract and the sureties thereon shall be liable under such guarantee as is herein provided. The acceptance of such tile construction by the engineer or county board shall not relieve or exempt the contractor or his bondsmen from the liability therein imposed on the contractor for such three-year period.

[1925 c. 415 s. 36] (6840-36)

106.34 BOND OF CONTRACTOR, WHEN REDUCED. 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 a judicial proceeding, 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, 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 the contract, and further setting forth the amount then owing and unpaid by the contractor for labor or material already furnished in the matter of the completion of the contract, and asking an order reducing the amount of the contractor's bond.

Upon the filing of the application with the county auditor, in the case of county proceedings, and with the clerk of the district court, in the case of judicial proceedings, it shall be the duty of the auditor or the clerk of such court, with the consent of the judge thereof, to make an order fixing a time and place for the hearing on the application, which shall be at a time not less than 20, nor more than 30, days from the date of the notice, which notice shall recite the filing of the application, giving an outline of the facts obtained therein and stating the time and place for

hearing thereon, and shall cause the notice to be served by mail upon the engineer and the attorney for the petitioners; and, in case of a judicial proceeding, upon the auditor of each county affected, all within ten days from the date of the order, and shall cause the notice to be published, in a legal newspaper printed and published in each county, for two weeks prior to the date of the hearing. At the time and place specified in the notice, the county board or district court, as the case may be, shall hear all parties interested for or against the granting of the petition of the contractors and if, upon such hearing, the 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 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.

[1925 c. 415 s. 37] (6840-37)

106.35 DEFAULTS BY CONTRACTOR. 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 the 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 the counties affected; and in the notice the bondsmen shall be notified of such failure to complete the contract; and that, if the same is not completed within the time specified in the notice, which shall not exceed 60 days from the date of the notice, the unfinished portion of the 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 chapter; provided, that if the bondsmen of such contract shall within ten days after the mailing of such notice undertake the completion of the work, 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 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 the contract is completed by the 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 the board or court and deducted from any balance due the contractor upon the contract at the time of default.

If the bondsmen do not undertake the completion of the contract, as herein provided, and the same is not completed within the time specified in the notice, then the auditor, in the case of county drainage proceedings, and the county auditors of the counties affected, in the case of judicial proceedings, shall advertise for bids for the completion of the contract in the manner provided for the original letting of contracts under the provisions of this chapter. In the event of letting a contract for the completion of the unfinished work, no contract shall be let for more than 30 per cent above the original contract price for such work and, in the event of a failure to complete the contract by the bondsmen, all sums due and unpaid the original contractor upon the 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 the 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 re-sale 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.

[1925 c. 415 s. 38] (6840-38)

106.36 REINSTATEMENT OF CONTRACT AND EXTENSION OF TIME FOR COMPLETION OF WORK. 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 the contract has expired, or in any case where such contract has been forfeited but for any reason has not been relet, 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 the 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 auditor, in the 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 the petition, which shall be at a date not less than 20, nor more than 30, days from the date of the order, and give notice thereof; the notice shall specify that the petition has been filed, and give the time and place for hearing thereon, shall briefly state the amount of the contract remaining unperformed, the amount withheld by the county or counties on the portion of the contract that has been performed by the contractor, and shall cause the notice to be served by mail upon the engineer, the attorney for the petitioners, and, in case of judicial proceedings, the auditor of each county affected, and, within ten days after the date of the 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 the notice the board or court shall hear all parties interested, for or against the petition and, if it shall appear that the contractor and his bondsmen consent thereto, that the bondsmen are responsible, and that the bondsmen shall, in writing, re-obligate themselves as fully as under the original contract for the performance of the 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 board or court, or, in case the petition is by the bondsmen, that they are responsible and capable of completing the contract in accordance with the plans and specifications and to furnish a proper bond therefor, then, and in that event, the board or court shall have authority to reinstate the contract, if it has been canceled, and specify the time within which it shall be completed. 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 county or other counties by reason of the default, and the 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.

[1925 c. 415 s. 39] (6840-39)

106.37 INSPECTIONS, REPORTS, NOTICES. It shall be the duty of the engineer to properly inspect all work during the progress of construction and to 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 the contract. 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 the 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 the engineer's report, which shall be not less than 20, nor more than 35, days from the date of the order and, upon the filing of such order, it shall be the duty of the county auditor, in the 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 corporations whose lands or property are assessed for benefits for the construction whose post-office addresses are known or can be ascertained from the county treasurer, also the engineer, contractor, and attorney for the petitioners. This notice shall state the filing of the report, the order of the board or court

granting hearing thereon, 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 the hearing. At the time and place specified in the notice, the board or court shall give all parties interested an opportunity to appear and be heard for or against the approval of the report; and, if it shall appear from the evidence presented, to the satisfaction of the board or court that the 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 the 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 the contract; and, in case of judicial proceedings, the clerk of the district court shall draw an order on the auditors of the respective counties for their proportionate share of the amount found due on the contract; and, upon the presentation of such order, it shall be the duty of such auditor to draw a warrant upon the treasurer of his county, payable to the contractor, for the amount specified in the order of the clerk. In every case the warrant shall be paid out of the general ditch fund to be provided by the county board, as hereinafter specified. The warrant shall become due and payable out of these funds at once, and, if there shall be no cash in the fund to pay the warrant when the same is presented, the county treasurer shall endorse the warrant, "Not paid for want of funds" and date and sign such endorsement, and the amount of the warrant shall draw interest at the rate of six per cent per annum until called in by the treasurer or the auditor of the county and paid. 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.

[1925 c. 415 s. 40] (6840-40)

106.38 ENGINEER TO INSPECT TILE AND OTHER CONSTRUCTION WORK. 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 30 days during the progress of the work to report in writing to the county board or 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 30 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 and other supplies furnished and delivered along the line of the improvement, or otherwise delivered in accordance with the contract and to be used for the construction or instalment of tile or other enclosed drains or for bridges or culverts along the line of, and as a part of, the 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. The 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 certificate shall be executed in duplicate by the 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 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.

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 opened for public use and has been finally accepted by the engineer and the county board, the contractor shall be entitled to full payment therefor.

No certificate of partial completion or of furnishing material shall be furnished or delivered by the engineer unless the certificate shall be accompanied by the engineer's written certificate that no loss will result from such partial payment.

The 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 material to the amount of all payments made thereon by such county or counties.

[1925 c. 415 s. 41; 1927 c. 51 s. 1] (6840-41)

106.39 PARTIAL PAYMENTS TO CONTRACTOR. In all county and judicial drainage proceedings where the cost of the construction of the system exceeds \$50,000, and where 50 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 the county auditor or the clerk, with the consent of the judge within ten days to fix by order a time and place for hearing upon the petition before the board or court where the proceedings are pending, which shall be not less than 20, nor more than 30, days from the date of the order; and, within five days from the date of the order, the auditor or the clerk shall issue and cause to be served a notice therein reciting the filing of the 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 the 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 the order and notice, the county board, in county proceedings, or the district court, in judicial proceedings, shall attend and hear all parties interested, for or against the granting of the petition and, if it shall appear, from the showing made, to the satisfaction of the 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 50 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 the board or the court shall so find and shall have authority to order paid to the contractor a portion of the sums reserved by the county on the work already performed, and not to exceed 40 per cent of such reserve.

[1925 c. 415 s. 42] (6840-42)

106.40 BOND ISSUES; PROCEEDS; GENERAL DITCH FUND; PAYMENT OF LIENS WITH BONDS. The county board of each 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, is 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 the county in such amounts as may be necessary to defray, in whole or in part, the expenses incurred or to be incurred in locating, constructing, establishing, or repairing so much of any ditch as may be located within the county; or in such relation to such county as to affect lands therein with the terms of this chapter. All such bonds shall be sold as provided by section 475.15, and not otherwise. The word "expenses" shall be construed to mean and cover every item of cost of the 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 30 years from their date, and shall bear such rate of interest not to exceed six per cent per annum, payable annually or semiannually, all as the county board shall by resolution determine; provided, the time or times when the bonds shall be payable as fixed by the 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 by section 106.46. Each bond shall contain a recital that it is issued by the authority of and in strict accordance with the provisions of this chapter, and shall be signed by the county auditor, who shall keep a record thereof. The county board shall have power to sell and negotiate these 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 chapter. 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 these 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 purposes of this chapter, into which fund shall be paid all moneys received from the payment of any liens under the provisions of this chapter. The 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 moneys 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. The county board shall have the authority to provide in the contract for the sale of the bonds for the delivery of the bonds as the work proceeds and the funds are needed, and for the payment of interest only from the date of the delivery of the bonds. The county board is hereby authorized to empower the county treasurer, by proper resolution, to accept in payment of liens under the provisions of this chapter, any outstanding bond or bonds issued on the ditch lien to be paid thereby which are legal obligations of the county under the provisions of this chapter, at the par value thereof plus accrued interest, and the county board shall, by such resolution, prescribe the manner of disposition of bonds so delivered and paid over to the county treasurer.

[1925 c. 415 s. 43; 1935 c. 345] (6840-43)

106.41 TABULAR STATEMENTS. 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:

(1) 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;

(2) The description of these 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;

(3) The estimated number of acres benefited in each tract of land, as shown;

(4) The estimated amount of benefits and damages to each tract of land and the estimated amounts of benefits and damages to each public or corporate road, railroad, or municipal corporation, as the same appear in the viewers' report, as affected by the order of confirmation of the board or court or as changed by the jury or court;

(5) The amount each tract of land and each public road, 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 amount shall be determined as follows:

The 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....."

The 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 benefits, as provided for in clause (5) of this section, for the rate of cost on each 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 this rate and the interest set down in the proper column opposite each tract of land, public or corporate road, railroad, or municipal corporation, and such results so obtained, less the amount of damages, if any, shall be the amount that each tract of land, public or corporate road, railroad, or municipal corporation will be liable for on account of such improvement.

[1925 c. 415 s. 44] (6840-44)

106.42 ACKNOWLEDGMENT AND FILING OF TABULAR STATEMENTS WITH REGISTER OF DEEDS. Such tabular statement shall be signed by the auditor in the presence of two attesting witnesses, duly acknowledged by him, and 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 lands, public or corporate roads, railroads, or municipal corporations, until fully paid; and shall take precedence of all mortgages, charges, encumbrances, or other liens. 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 the register of deeds for recording shall be paid by the county on the allowance of the county board and the 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.

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 any 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 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 the proceedings have been omitted from the original tabular statement and assessment made and filed for record with the register of deeds, and these 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 the 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 proceedings, shall by order fix a time and place for a hearing upon the petition before the county board or district court where the proceedings are pending, which shall be at a time not less than 20, nor more than 60, days from the date of the order, and it shall thereupon, within ten days from the date of the order, be the duty of the county auditor, or the clerk of the district court, to cause a copy of the order, giving the time and place of hearing before the board or court, to be served by mail upon the engineer, the attorney for the petitioners, and all parties and all corporations whose property is assessed for benefits in the proceedings. At the time and place specified in the order or notice the county board or district court where the proceedings are pending shall attend and hear all parties interested for or against the granting of the petition and, if at the hearing it shall appear to the satisfaction of the 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 or court, or where it has occurred that certain items of cost of construction or expenses in the proceedings have been omitted from the original tabular statement and assessment made and filed of record with the register of deeds and the items of cost have been paid by the county or counties, then, and in either of such cases, the 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 the order and findings, and shall then authorize the 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 county auditor or county auditors shall cause to be made and filed in the office of the county auditor or 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 statement and summary previously filed.

When the corrected statement and summary has been compared and filed for record, as hereinbefore provided, then and thereupon the corrected statement and summary shall take the place of the 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.

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: 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. He shall authorize the register of deeds in and for the proper county to release and discharge the liens set forth in the erroneous statement and summary and direct the register of deeds to substitute in lieu thereof as liens against the lands described therein the amounts set forth in the corrected statement and summary. When this certificate is recorded in the office of the register of deeds 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. 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.

[1925 c. 415 ss. 45, 46, 47] (6840-45, 6840-46, 6840-47)

106.43 ADJUSTMENTS ON ACCOUNT OF ERRONEOUS COLLECTIONS. In any case where a corrected statement and summary is made and filed, as hereinbefore provided, after one or more instalments 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 instalments 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 instalments 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.

[1925 c. 415 s. 48] (6840-48)

106.44 LIENS; SUPPLEMENTARY LIENS. In any case where a drainage system has been established under the provisions of any law of this state requiring the filing of tabular statements and liens, and tabular statement and lien has been made, filed, and recorded as provided by this chapter or by General Statutes 1913, Sections 5543 and 5544, and, subsequent to the filing of such statement and lien, increased costs in the construction of the drainage system have been incurred by reason of the modification of the plans and specifications by the engineer, or by reason of encountering unforeseen conditions in the construction of the 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 the 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 the margin between the former lien statement and the total benefits reported and approved, 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 the case of county proceedings, or to the clerk of the district court where the proceedings are pending, in the case of judicial proceedings, 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 the auditor or the clerk, with the consent of the judge, by order, to fix a time and place for a hearing upon such report, not less than 20, nor more than 30, days from the date of the order, and thereupon it shall be the duty of the auditor or the clerk to cause to be made and served a notice of the filing of the report, which shall be treated as an application for the filing of an additional lien, which notice shall recite the filing of the 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 all corporations whose property is assessed in the proceedings, and, in judicial proceedings, also upon the auditor of each county affected, at least ten days before the hearing.

At the time and place specified in the notice, the county board or the district court shall hear all parties interested for or against the matters involved in the report and, after due consideration of the showing made, if it shall appear to the satisfaction of the board or court that the changes in the plans and specifications were necessary and proper; that additional costs in the construction of the 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 the proceedings in the same form and manner as the original statement and lien, and assess the same against the property and the 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. No additional tabular statement or lien shall be made or filed which shall authorize the filing of a lien against any such property or any such corporation beyond the margin between the tabular statement and lien previously filed and the total benefits returned by the viewers' report and approved by such board or court. 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 instalment, payable one year following the last payment on the original lien.

[1925 c. 415 s. 49] (6840-49)

106.45 INTEREST. 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 shall bear interest, from the date of the filing of the auditor's statement in the office of the register of deeds, at a rate 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. 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 judicial proceedings, may, upon such notice as shall be 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 these lands, roads, railroads, or corporations until fully paid, which 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 in 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. 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 106.40. If no bonds are sold, interest shall be collectible only as the work progresses and the property is benefited.

[1925 c. 415 s. 50] (6840-50)

106.46 PAYMENT OF LIENS. Liens filed against property benefited under the provisions of this chapter shall be paid to the treasurer of such county, as follows:

One-tenth of such principal on or before November first 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.

If the final order establishing such drainage system, or at any time thereafter, in the 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 the county treasurer, as follows:

One-fifteenth of the principal on or before five years from November first subsequent to date of such 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 the principal is paid; or when so ordered by the court or board, the same may be paid, one-twentieth of the principal on or before ten years from November first subsequent to the date of filing of the 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 the principal is paid.

In all drainage systems heretofore established, or as provided by section 106.40, and in all systems established under the provisions of this chapter, the principal lien shall bear interest at a rate not to exceed six per cent per annum, payable on November first, 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 first, except as in this section otherwise provided. In case bonds shall be issued by the county, the lien shall bear the same rate of interest as the 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 the county the whole amount of the 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 chapter provided on such unpaid amount to the first day of June following, and enter such interest, together with the instalment, if any then due, on the tax lists for such year, and each thereof (instalment 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 the same manner each year thereafter compute interest on the amount of such lien remaining unpaid and not previously entered on tax lists of prior 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, the instalment 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. All 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 instalments thereof and of the interest thereon and of each of the same, but no penalty shall be added to any such instalment of principal or interest in case of default in the payment thereof, but such instalments of principal or interest, in case of default in the payment thereof, shall draw interest from the 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 the 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 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 106.42, 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.

All interest and penalties accruing upon any tax levied by special assessment on real estate for drainage purposes, where such assessments are payable to the county ditch fund, shall be apportioned to such county ditch fund and credited to the particular drainage project for which the assessment was made.

[1925 c. 415 s. 51; 1929 c. 182] (6840-51, 6840-51½)

106.47 APPORTIONMENT OF LIENS. In all cases in which a lien has been established against any tract of land by reason of benefits assessed thereon in any drainage ditch proceeding and no instalment of such assessment or interest thereon shall be in default, any person or corporation having an interest in the land, or any part thereof, may petition the district court of the county wherein the land is situated to have such lien apportioned between or among specified portions of the tract. Upon the filing of this petition, the court shall by its order fix a time and place at which the petition shall be heard and requiring personal service of a notice

of such hearing to be served upon the county auditor, the occupants of the premises, and on all parties having an interest in the premises, as shown by the records in the office of the register of deeds of the county, at least ten days before 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 the county in lieu of personal service. At the time and place appointed by the court for a hearing upon the petition, or at the time to which the hearing may be adjourned, the court shall hear any and all evidence bearing upon the matter set out in the petition and as to what will be a proper and equitable apportionment of the 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 the separate liens be different from the amount of the unpaid portion of the original lien. A certified copy of the order apportioning the lien shall be recorded in the office of the register of deeds of the county and filed in the office of the county auditor, which shall operate as a division and apportionment of such original lien between the various tracts of land originally covered thereby and as a release of each tract from the lien, except the amount so apportioned against it, and thereafter the amount apportioned to each tract shall be entered 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.

[1925 c. 415 s. 52; 1927 c. 109 s. 1] (6840-52)

106.48 [Repealed by 1945 c. 82 s. 7.]

106.481 ASSESSMENTS FOR CLEANING STATE, COUNTY AND JUDICIAL DITCHES. When the county board, of any county of this state, within which is located a state, county, or judicial drainage ditch, shall adopt a resolution to clean or repair said ditch and there are not sufficient funds to the credit of the drainage system to defray the cost, the county auditor shall, within three days after the contract has been entered into, or the county has commenced the work itself, pursuant to such resolution, file for record with the register of deeds of the county, a notice specifying the adoption of such resolution, the estimated cost of the work to be performed, that the contract has been entered into or that the work has commenced, a brief description of the lands affected and that said lands will be assessed for the cost of such cleaning or repairing in the same proportion as was originally assessed for benefits for the construction of said ditch.

[1943 c. 241 s. 1]

106.483 REPAIR OF DITCHES. The term "repair" used in sections 106.483 to 106.488 means restoring a ditch system or any part thereof as nearly as practicable to the same condition as when originally constructed or subsequently improved, including resloping of open ditches and leveling of waste banks thereon if deemed essential to prevent further deterioration, and such routine operations as may be from time to time required to remove obstructions and preserve the efficiency of the ditch.

[1945 c. 82 s. 1]

106.484 MAINTENANCE; INSPECTION. Subdivision 1. After the construction of a state, county or judicial drainage system has been completed, the county board is empowered to maintain the same or such part thereof as lies within the county and provide the repairs required to render it efficient to answer its purpose. The board shall cause such drainage system to be annually inspected, either by a committee thereof, or a ditch inspector appointed by the board, and, if the committee or inspector shall report to the board that repairs are necessary on any ditch system and such report is approved by the board, it shall cause such repairs to be made in accordance with the provisions of Minnesota Statutes 1941, Chapter 106, as amended.

If the board finds that the estimated cost of such repairs will be less than \$500, it may have such work done by force account without advertising for bids or entering into a contract therefor. The county board is limited in the expenditure of money therefor as herein provided. In one calendar year the board shall not spend or contract to be spent for repairs or maintenance on one ditch system a sum greater than ten percent of the cost of construction thereof in that county, except as provided in Subdivisions 2 and 3 of this section. In case there are sufficient funds to the credit of the drainage system to make such repairs, such funds may be expended by the county board for such purpose without further assessment.

Subd. 2. Upon the filing of a petition by any party or corporation, municipal or otherwise, interested in or affected by a drainage system, with the auditor of any county in the case of a drainage system lying wholly within the county, or with the clerk of the district court of any county affected in the case of a drainage system affecting two or more counties, therein setting forth that the drainage system is out of repair, it shall be the duty of the county auditor in the case of a drainage system lying wholly within the county to present the same to the county board at its next meeting, and the clerk of the district court in the case of a drainage system affecting two or more counties to present the same to the judge of the court within ten days from the filing thereof. Thereupon, if it appears to the board or court that such ditch is out of repair and that the repair thereof is necessary if said ditch is to accomplish its purpose, the board or court shall appoint an engineer, who may be the county highway engineer, to examine the ditch and make report of the necessary repairs, with the estimated cost thereof, and all details, plans, and specifications required to supply the necessary details to let a contract therefor. The board or court may order a hearing on the petition before appointing the engineer on such notice as it may require, if hearing appears necessary, for the purpose of determining the facts as to the necessity of repair.

Subd. 3. Upon the filing of the engineer's report, notice of hearing thereon shall be given as required by Minnesota Statutes 1941, Section 106.07. If at this hearing it shall appear from the engineer's report and the evidence presented that the repairs recommended are necessary, and the board or court shall so find, the board or court shall make findings and order accordingly. In the case of a drainage system lying wholly within the county, the order shall direct the county auditor and the chairman of the county board, and in the case of a drainage system affecting two or more counties the order shall direct the auditors of the several counties affected to proceed and let a contract for the repair of the system as shown in the engineer's report and as determined necessary by the board or court, in the manner provided in Minnesota Statutes 1941, Section 106.30.

[1945 c. 82 s. 2]

106.485 PAYMENT. Subdivision 1. In case there are not sufficient funds to the credit of the drainage system so to be repaired, the county board may pay for the same out of the general revenue fund of the county. To raise the necessary money to reimburse the general revenue fund, the county board is hereby authorized to apportion and assess the cost of the repairs pro rata upon all lands, corporations and municipalities which have participated in the total benefits as theretofore determined. Such assessments may be made payable in annual instalments to be specified in the order for assessment. If the assessments do not exceed 50 per cent of the original cost of the ditch, such instalments shall not exceed five. If such assessments exceed 50 per cent of the original cost of the ditch, the county board may order such assessments to be paid in instalments not to exceed ten. If such order shall provide for payment in instalments, interest from the date of assessment shall be fixed by the county board in the order, at a rate not to exceed six per cent per annum, on the unpaid assessments and shall be collected with each instalment.

Subd. 2. Following the levying of any assessment to be made by authority of this section and before the 1st day of January next following, the county auditor shall enter the amounts of any assessments or instalment thereof to become due in the following calendar year upon the tax lists against the lands assessed by the county board located within the county in accordance with the action of the county board and the same shall be collected in the same manner as real estate taxes. When any such assessment is levied, the county auditor shall file for record in the office of the register of deeds an additional tabular statement in substance as provided in Minnesota Statutes 1941, Section 106.41.

[1945 c. 82 s. 3]

106.486 REPAIR FUND. For the purpose of creating a fund to the credit of any drainage system to be used for repairs exclusively, the county board is authorized to apportion and assess the amount of such fund to be created against all the parcels of land, corporations and municipalities theretofore assessed for benefits in proceedings for the construction of the ditch system including lands benefited although not originally assessed therefor but have been made subject to assessment according to law. Such assessment shall be made pro rata in proportion to benefits determined. The fund so created shall not exceed ten per cent of the original cost

of construction of the ditch system. Whenever such fund to the credit of one ditch system shall exceed ten per cent of the total original assessments of benefits, no further assessment for the purpose of creating such fund shall be made until such fund shall have fallen below that percentage. Assessments shall be collected as provided in section 106.485.

Such assessment, if so provided in the order, may be made payable in equal annual instalments. Thereupon the county auditor shall file for record in the office of the register of deeds a tabular statement in substance as provided in Minnesota Statutes 1941, Section 106.41.

[1945 c. 82 s. 4]

106.487 ENGINEER'S MAPS, REPORT; HEARING; APPEAL. Subdivision 1. In any proceeding for the repair of any state, county, or judicial drainage system, if it shall appear that any lands which were not assessed for benefits arising from its construction have been drained into such drainage system, or have otherwise benefited by reason thereof, the engineer appointed under section 106.484 shall submit a map with his report showing all ditches and main drains, public or private, draining into such drainage system and all lands affected thereby or otherwise benefited by such drainage system, together with the names of the owners thereof so far as practicable. In such event, all such owners shall be notified of the hearing on the engineer's report as provided by section 106.484.

Subd. 2. Upon hearing on the engineer's report, if it shall appear that lands which were not assessed for benefits resulting from the construction of the ditch system have been benefited by reason thereof, the board or court shall so find and, before ordering the letting of a contract for the making of such repairs, shall appoint viewers as provided by Minnesota Statutes 1941, Section 106.16. The viewers shall proceed to ascertain and determine the benefits to all lands, roads, corporations, and municipalities benefited by the original construction of such ditch system and not assessed for benefits arising from its construction and shall report the same to the board or court, as the case may be, as provided by Minnesota Statutes 1941, Section 106.17. Upon the filing of such report, notice of hearing thereon shall be given as required by Minnesota Statutes 1941, Section 106.24, and the board or court shall thereupon have jurisdiction of each tract of land and property in said viewers' report described, as set forth in Minnesota Statutes 1941, Section 106.25.

Subd. 3. Upon hearing upon said viewers' report, the board or court shall hear all interested parties and shall find and determine the benefits to all lands, roads, corporations and municipalities benefited by the original construction of the ditch system and not assessed for benefits therefor.

Subd. 4. Any person aggrieved by the assessment as determined by the board or court may appeal from the order determining the same as provided by Minnesota Statutes 1941, Sections 106.89 and 106.90.

Subd. 5. In the repair of the drainage system then determined and in all future proceedings relating to the repair, cleaning, improvement, or alteration of such drainage system such lands shall be considered a part of the lands benefited by the drainage system described in such order and shall be assessed in the same manner as provided by law for the assessment of the lands and properties originally assessed for and included in the drainage system.

[1945 c. 82 s. 5]

106.488 COSTS AND ASSESSMENTS. All fees and costs incurred for proceedings relating to the repair of any drainage system, including inspections, engineering, viewing, publications, or any other proper proceeding shall be deemed a cost of repair and assessed against the land benefited and against corporations and municipalities as provided in sections 106.483 to 106.488.

[1945 c. 82 s. 6]

106.49 [Repealed by 1945 c. 71 s. 2; 1945 c. 82 s. 7.]

106.495 REPAIR OR IMPROVEMENT. Subdivision 1. Before any public drainage system theretofore established and constructed shall be improved by deepening, widening or extending, the following procedure shall be observed. In the case of the improvement of a ditch system lying wholly within the county, a petition signed by not less than 26 per cent of the owners of the property affected thereby or by the owners of not less than 26 per cent of the property affected shall be filed with the county auditor. In the case of a drainage system affecting two

or more counties, such petition shall be filed with the clerk of the district court of any county affected. If it appears from the petition that lands not assessed for the original construction of the ditch have been subsequently found to be benefited thereby and that such lands or other lands not assessed for such original construction will be benefited by the proposed improvement, then and in such case a petition signed by 26 per cent of the owners of the property affected by and assessed for the original construction of the ditch shall be sufficient. If the ditch proposed to be improved consists of a main ditch and laterals or lateral system or of more than one main ditch with separate outlets, and if the petition be for the improvement of specified laterals or lateral systems or a separate main ditch not affecting the entire ditch system, then and in such case a petition signed by 26 per cent of the owners of the property affected by such laterals or lateral systems or separate main ditch, as the case may be, shall be sufficient. The provisions of Minnesota Statutes 1941, Section 106.03, relative to signature of public and corporate officials shall apply to this section. The petition shall designate the drainage system proposed to be improved by number or other description sufficient to identify the same and set forth that the ditch is of insufficient capacity or needs deepening, widening or extending so as to furnish sufficient capacity or a better outlet, with a description of the starting point, general course and terminus of any extension, and that the proposed improvement will be of public utility and promote the public health. The petition shall contain an agreement by the petitioners that they will pay all costs and expenses which may be incurred in case the proceedings are dismissed.

Subd. 2. Upon the filing of such petition it shall be the duty of the county auditor, in the case of a drainage system lying wholly within the county, to present the same to the county board at its next meeting, and of the clerk of the district court, in case of a system affecting two or more counties, to present the same to the judge of the court within ten days of the filing thereof. Thereupon 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, who may be the county highway engineer, to examine the drainage system and to make report thereon to the board or the court, as the case may be. Thereafter the proceedings shall be as set forth in Minnesota Statutes 1941, Section 106.50, et seq.

Subd. 3. Upon the filing of a petition for the improvement of a drainage system and before any action is taken thereon, one or more of the petitioners shall furnish a bond conditioned to pay all costs and expenses which may be incurred in case the proceedings are dismissed. The amount of the bond shall be fixed by the county auditor, in the case of proceedings before the county board, and by the clerk of the court, in case of proceedings before the judge of the district court.

[1945 c. 71 s. 1]

106.50 REPAIR OR IMPROVEMENT OF DRAINAGE SYSTEM; ENGINEER.

The engineer provided for by section 106.49 shall give bond in the manner now provided by law for the construction of county drainage systems and, within 30 days from the date of his 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 his report a map of the drainage system or that portion thereof as is obstructed or otherwise needs improvement or extending and include therein sufficient detail to show the nature and extent of the 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. All lands affected by the original system and such additions and descriptions of all the land affected by such deepening, widening, or extending of the system shall be submitted with his report, including details, plans, specifications, and estimate of the cost sufficiently complete to enable the board or court to fully understand the nature of the improvement, the extent, and the probable cost thereof, and to supply the necessary details to let a contract therefor.

So far as applicable and necessary the engineer shall, in the performance of his duties, comply with the requirements of sections 106.10 and 106.12, including the filing of a copy of his report with the director. In the case of a state drainage system 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.

[1925 c. 415 s. 55; 1933 c. 312 s. 8] (6840-55)

106.51 REPORT OF ENGINEER; PROCEDURE. 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 the board or court to make the necessary inquiry to determine the accuracy of the facts set forth and recommended in this report and, if, at this hearing, it shall appear from this 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 the drainage system, or some part thereof, needs cleaning out or repairing, the board or court shall make findings and orders accordingly and direct, in the case of county drainage proceedings, the county auditor and the chairman of the county board of the county, or, in the case of judicial proceedings, the auditors of the several counties affected, to proceed and let a contract for the repair of the system, as shown in the engineer's report, in the manner provided in section 106.30.

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 auditors of the counties affected, to apportion the total cost and expense connected with the repairs among these counties in the same proportion as the original cost of construction of the system, and thereupon it shall become the duty of the county board of the county to provide for the payment of this expense; and, if there are not sufficient funds to the credit of the system in any county to make these repairs, it shall be the duty of the board of that county to order the county auditor to make and file, in his office, and to file for record, in the office of the register of deeds, a summary statement and lien, as provided in sections 106.41 and 106.42, as in the case of county drainage systems, and it shall be the duty of the auditor to make and file this statement, and to assess the costs of the repairs against the property benefited in the original drainage proceeding in the same proportion as in the construction of the original system.

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 or repairing shall be assessed in the proportion aforesaid, but only against the lands tributary to and drained through the drains so cleaned out 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 the cleaning out or repairs among these counties.

In all cases where the total cost of cleaning out or repair of a judicial drainage system extending into two or more counties, 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 instalments, and be so specified in the lien statement; and, in the event that the cost of repairs, including expenses, shall exceed \$3,000, the same may be payable when so ordered by the board in five equal annual instalments and the county board shall have authority in such case to sell the bonds of the county, as provided in section 106.40, 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 section 106.40 and the proceeds of the sale of these bonds shall be entered in the general ditch fund and credited to the system being repaired. It shall be the duty of the auditor in all such cases to include in such statement and provide for its collection for the benefit of the county when funds have been advanced as herein provided interest upon the total sum so advanced at a rate to be fixed by the county board but not to exceed six per cent per annum. 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 106.46.

[1925 c. 415 s. 56; 1927 c. 234; 1941 c. 211 s. 1] (6840-56)

106.52 VIEWERS; APPOINTMENT; DUTIES; REPORTS; DUTIES OF COUNTY BOARD OR COURT. If it shall appear from the report of the engineer or the evidence presented in support of the same, as provided in sections 106.50 and 106.51, that the drainage system is a state ditch constructed other than by assess-

ment 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 the board or court to appoint three disinterested viewers whose duties and responsibilities in the premises shall be the same as viewers appointed under sections 106.16 and 106.17. In the performance of their duties the 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 the system, together with any lateral or extension thereto, whether public or private, and the amount of the benefit; but, if the improvement consists of deepening, widening, or extending a drainage system, whether state, county, or judicial, the 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 report the damages resulting from the deepening, widening, cleaning out, or extending in the same manner as provided for in the construction of a county or a judicial drainage system.

Upon the filing of the viewers' report with the county auditor or the clerk of the district court, as the case may be, it shall be the duty of the auditor or the clerk, with the consent of the judge, to give notice of a hearing upon the report of the engineer and the report of the viewers in the same manner as provided in section 106.24 in the case of the construction of a county or a judicial drainage system; and at this hearing the board or court, as the case may be, shall have and may exercise the same authority as provided in sections 106.25 and 106.26.

[1925 c. 415 ss. 57, 58] (6840-57, 6940-58)

106.53 LETTING OF CONTRACTS. 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 106.52; and, if it appear from the showing made to the satisfaction of 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 the board or court shall so find and by order confirm the report of the engineer and the 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 the board or court at this hearing shall have and may exercise the same power and authority to cause to be corrected, changed, or modified the reports of the engineer or the viewers, as provided in section 106.26.

It shall be the duty of the county auditor and the chairman of the county board, in the case of proceedings before the county board, or the auditors of the counties affected, in proceedings before the district court, to proceed and let a contract for the construction of the improvement, as ordered by the board or the court, in accordance with the plans and specifications, pursuant to the provisions of section 106.30.

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 the proceedings are pending to cause to be made, following the order of the court hereinbefore specified, a copy of the engineer's and the viewers' reports and file the same in the office of the auditor of each county affected in the proceedings; and it shall be the duty of the court in the proceedings, at any time, upon not less than five days' notice to the auditors of the counties affected, to apportion the costs of the improvements among the counties affected, in proportion to the benefits received.

[1925 c. 415 s. 59] (6840-59)

106.54 LIENS; STATEMENT, ASSESSMENT, COLLECTION. In all proceedings pending before the county board, within ten days after the letting of the contract, as provided in section 106.53 or, in the proceedings pending before the district court, within ten days after the filing of the order apportioning the costs and expense of the improvement among the several counties, the county auditor or 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 106.41 and 106.42 and forthwith make a certified copy thereof and file the same for record in

the office of the register of deeds of the county, as provided in section 106.42. Upon the filing and recording of this copy in the office of the register of deeds, the amount specified in the statement for lien shall constitute a lien against each tract of land and each public or corporate road or railroad, and this land, road, or railroad will be liable for this sum and interest thereon and the same shall be and remain a first and paramount lien on this land, public or corporate road, or railroad until fully paid and take precedence of all mortgages, charges, encumbrances, or other liens, except only a prior ditch lien, and payment of the several instalments of this lien may be made in the manner provided in section 106.46. This filing shall be deemed notice to all parties interested of the existence of the lien. The fees of the register of deeds for this recording shall be paid by the county on the allowance of the board and the lien statement, after the same has been recorded, shall be returned to the county auditor and be preserved as a part of the record of the proceedings. The provisions of section 106.46 relative to the duties of the county auditor and the county treasurer governing the assessment and collection of the lien shall apply to and govern the acts of the county auditors and county treasurers in the respective counties in this proceeding; provided, that in all cases where the total cost of the improvement does not exceed the sum of \$3,000 the lien may when ordered by the county board be collected in equal annual instalments for three or five years and where the total costs exceed \$3,000 the county board may, and shall have authority to, provide the funds by the sale of county bonds, as in the case of a county or a judicial drainage system, as provided in section 106.40; and it shall be the duty of the respective county boards to provide the funds for the payment of the cost and expenses of the improvement, and the county boards are hereby authorized so to do in accordance with the provisions of this chapter 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 the improvement interest upon all sums advanced by the county at a rate to be fixed by the county board but not to exceed six per cent per annum, and it shall be the duty of the county auditors and county treasurers of the respective counties to extend these assessments upon the records of their offices in accordance with the provisions of section 106.46 and collect the same as in case of other assessments against the property.

[1925 c. 415 s. 60; 1941 c. 211 s. 2] (6840-60)

106.55 USE OF DRAINAGE SYSTEMS FOR OUTLETS. 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, association, or corporation, private or public, without having first secured express authority so to do from the county board, in the case of a system lying wholly within one county, or from the district court that originally ordered the construction, in the case of a system extending into two or more counties, upon such terms and conditions as the board or court shall determine and require. In determining the terms and conditions upon which a public or private lateral may be constructed so as to use the 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 the lateral, and the cost of the construction of the lateral.

[1925 c. 415 s. 61] (6840-61)

106.56 PETITION FOR LATERAL; BOND OF PETITIONERS; APPOINTMENT OF ENGINEER; SURVEY AND REPORT; HEARING. When 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, asking to be permitted to construct a lateral to connect with the system described in the petition and, in the petition describing in general terms the starting point, the general course and terminus of the proposed lateral, setting forth the necessity for the construction thereof and that the same, if constructed, would be of public utility and promote the public health, giving a description of

the land over which the proposed lateral would pass, and 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 file the 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 accompany the petition with a bond of not less than the sum of \$1,000, 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 the order to the board or the 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 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 106.05, and within 30 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 the lateral drain. This engineer shall include in his report a plat of the proposed lateral describing thereon all lands affected by the lateral and through which the same would pass, and shall determine whether the 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, the engineer shall so report to the board or court and, upon the completion of his report, 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.

Upon the filing of the report of the engineer, 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 a hearing upon this report which shall be not more than 30 days from the date of the order; and at least ten days before the date for hearing he shall serve notice by mail upon all the petitioners, upon the attorney for the petitioners, and upon all parties and corporations affected, as shown by the engineer's report in the proceedings, and upon the engineer; and at the same time and place specified it shall be the duty of the board, in county proceedings, and the court, in judicial proceedings, to appear and have considered the evidence presented by all parties interested; and the engineer, the petitioners, and all parties having any interest may appear and be heard, for or against the granting of the petition. If, from the showing made, the board or court shall be satisfied that a 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 the board or court shall so find and by order direct the engineer to proceed and make a permanent survey and report thereon to the board or court. Thereupon within 30 days thereafter the engineer shall proceed and make a permanent survey of the proposed improvement and make a full report of his work in connection with this 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 sections 106.12 and 106.13, the provisions of which shall apply to and govern his work in the proceedings. Upon the completion of his report, the engineer shall file it with the county auditor or the clerk of the district court where the proceedings are pending.

[1925 c. 415 ss. 62, 63] (6840-62, 6840-63)

106.57 VIEWERS; APPOINTMENT, REPORT. Upon the filing of the report of the engineer, as provided in section 106.56, 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 appraise and report

the benefits and damages resulting from the construction of the improvements; and the viewers within ten days after their appointment, shall subscribe the oath as such and proceed to examine the property affected. They shall make and cause to be filed a report of their doings in connection with these proceedings, as required by sections 106.17 and 106.23, and all the provisions of sections 106.22 and 106.23 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 they shall file their report with the county auditor or the clerk of the district court where the proceedings are pending.

[1925 c. 415 s. 64] (6840-64) -

106.58 HEARING ON THE VIEWERS' REPORT. Within ten days after the filing of the viewers' report, as provided in section 106.57, 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 a hearing upon the petition and the engineer's and the viewers' reports, which shall be not less than 20, nor more than 60, days from the hearing, to be published in at least one legal newspaper in the county or counties affected for at least two weeks prior to the hearing, therein briefly reciting the filing of the petition and 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 names of the owners thereof, as shown in the last tax list of the county, and at least ten days prior to the date of hearing, he shall serve by mail a copy of the printed notice upon the parties owning land or owning or controlling roads or railroads or other property affected as shown in the viewers' report. 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 the county.

[1925 c. 415 s. 65] (6840-65)

106.59 HEARING ON VIEWERS' REPORT; CONSTRUCTION, BIDS, CONTRACTS. At the time and place specified for the hearing on the petition and the engineer's and the viewers' reports, specified in section 106.58, it shall be the duty of the county board, in county proceedings, and the district court, in judicial proceedings, to appear and to hear and consider all evidence presented by all parties interested for or against the granting of the petition, and the board or the court at such hearing shall have all authority relative to modification or changes in the reports of the engineer or viewers, as provided in section 106.26; and, if upon full hearing the county board or the district court shall find that a necessity exists for the construction of the lateral, that the same will be of public utility, that the benefits that will be derived therefrom will exceed the costs of construction, including expenses and damages, and that the reports of the engineer and the viewers, either as originally presented or as subsequently amended, are correct and true, then the board or court shall so find and, by order, direct the construction of the 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 the order in judicial proceedings, it shall be the duty of the clerk to make and file in the office of the auditor in each county affected by the proceedings a certified copy of the reports of the engineer and the viewers. Within 15 days after the filing of the order directing the construction of the improvement, it shall be the duty of the county auditor, in the case of county proceedings, and the county auditors, in the case of judicial proceedings, to advertise for bids for the construction of the improvement in the manner provided in section 106.30, and the provisions thereof so far as applicable shall apply to and govern the duties of the county auditor or auditors, as the case may be, in advertising for bids and letting of contracts for the construction of the improvements and the provisions of section 106.31 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 auditor of each county affected, to by order apportion the costs of the construction of the improvements, including

expenses and damages, among the counties affected in proportion to the benefits received.

[1925 c. 415 s. 66] (6840-66)

106.60 LIEN STATEMENTS; ASSESSMENT, LEVY, AND COLLECTION OF LIENS. Within ten days after letting of the contract, in 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 county auditors, as the case may be, to make and file in their offices a summary statement, as provided in section 106.41, and all the provisions of section 106.41 so far as applicable shall apply to and govern the action of the county auditor or county auditors in this proceeding; and thereupon it shall be the duty of the county auditor or auditors to make a certified copy of the summary statement and lien in their office and file the same for record in the office of the register of deeds of the county, as provided in this chapter, and all provisions of sections 106.41 and 106.42 shall apply to and govern the duties of the county auditor or auditors, and the register of deeds so far as applicable in this proceeding; and upon the filing and recording of the 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 the lien statement and the provisions of sections 106.41 and 106.42 shall apply to and govern the rights and obligations of all parties; provided, that in all cases where the cost of the improvement, including expenses and damages, shall not exceed the sum of \$3,000, the same may be levied, assessed, and collected in three or five equal annual instalments when so ordered by the board or the court and in all cases where the cost of the improvement, including damages and expenses, shall exceed the sum of \$3,000, then the same may be made payable, and be assessed and collected, in five equal annual instalments and the county board of the county shall provide the funds for the construction of the improvement, including expenses and damages, and when it deems necessary or advisable to do so, it shall have authority to issue and sell the bonds of the county to cover the whole, or such portions of the cost of the improvements as it deems necessary, and all the provisions of sections 106.41 and 106.46 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 instalment of these liens as is provided in sections 106.42 and 106.46; and it shall be the duty of the county auditor and the county treasurer to perform the several duties and exercise the authority in the collection of liens under this proceeding as is provided in section 106.46.

[1925 c. 415 s. 67] (6840-67)

106.61 OVERFLOW FROM MUNICIPAL SEWERAGE SYSTEM. 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 the board or the court may deem proper, may permit any municipality having a population of 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 sewage-treatment plant, subject to the following conditions:

(1) The 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, that in all cases where sewerage systems now exist in which certain portions the storm waters have access to the sewerage plant, these systems may continue in operation where they have been approved by the state board of health, subject to the condition that these 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; and

(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, to the auditor of each county affected, such sum as the court shall direct, in all cases where the system extends into two or more counties; the sum so collected, in either case, to be credited to the account of the system used as outlet.

[1925 c. 415 s. 68] (6840-68)

106.62 PETITION; FINDINGS AND ORDERS OF COUNTY BOARD OR COURT. Any municipality having not to exceed 2,500 inhabitants desiring to use any public drainage system as an outlet for its 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 cases where the system extends into two or more counties, setting forth in the petition the necessity for the use of the system as an outlet; that the same will be of public benefit and utility, and promote the public health. The petition shall be accompanied by a plat showing the location of the drainage system and of the sewerage system of the municipality, with plans and specifications showing the plan of connection, together with sufficient detail to be used in letting the contract, and be approved by the state board of health. In case the drainage system intended to be used has been petitioned for either to the county board or the district court, but not yet established, the 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 the viewers' reports, notice of which shall be included in the notice of final hearing, and the county board or the district court shall have full authority to consider the matters set forth in the petition and cause the benefits and damages to be regularly assessed and included in the viewers' report as in other cases. The board or the district court may receive all evidence of parties interested for or against the granting of the petition and if at the hearing the board or the court find that a necessity exists for the construction of the improvement, that it will be of public benefit and utility and promote public health, that the 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 the board or the court shall make findings accordingly and by order make the municipality a party to the drainage proceedings and determine the amount it shall pay for the privilege of using the drainage system as an outlet and may include in its order such other and further conditions as may be deemed proper to protect the rights of the parties in interest and the general public.

[1925 c. 415 s. 69] (6840-69)

106.63 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 shall file a petition, accompanied by plans and specifications, as described in section 106.62, 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 the 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 a hearing on the petition, and cause notice thereof to be given by mail at least 15 days before the date of the hearing, upon the county attorney and the chairman of the board of county commissioners, in county proceedings, and upon the county attorney and the auditor of each county affected, in judicial proceedings. At the time and place specified in the notice the board or the court where the proceedings are pending shall attend and hear all the evidence presented by all parties in any manner interested and if at the hearing upon the evidence presented the board or the court shall be satisfied that a necessity exists for the construction of the improvement and permitting the connection with the drainage system, that the 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, the board or the court may grant the petition upon such terms as may be prescribed and order the construction of the necessary connection and appliances to enable the municipality to utilize the drainage system as an outlet, and the board or the 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 interests of the general public.

[1925 c. 415 s. 70] (6840-70)

106.64 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 the municipality for the construction of a sewerage plant and overflow drain, and proceedings to condemn these lands as may be made and instituted by the 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 the connection and all other expenses incurred by the municipality in the establishment and construction of the overflow drain, shall be paid from the general fund of the municipality. In case of the denial by the court or the board, as the case may be, of any petition in this chapter 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.

[1925 c. 415 s. 71] (6840-71)

106.65 PLATS OF TILE-DRAINS. 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 the drainage project to make, at the request of the owner of any land connected with the system and as a part of his duties as such engineer, a complete plat of all tile-drain used as a part of the system, or any tract or piece of land connected therewith or affected by the drainage tile system, showing thereon the complete location and outlet of such tile and the size and kind thereof, the 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 system, or any part thereof, may readily be located, at any subsequent period, from the plat.

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

[1925 c. 415 s. 73] (6840-73)

106.66 FEES AND EXPENSES. The following fees and expenses shall be allowed and paid for services rendered under this chapter:

- (1) To the engineers, a sum not exceeding \$20.00 per day, to be fixed by the county board or the court making the appointment, for every day necessarily engaged and actual and necessary expenses, including cost of bond;
- (2) To each assistant engineer, a sum not exceeding \$12.00 per day for every day necessarily engaged and actual and necessary expenses;
- (3) To each viewer, a sum not exceeding \$10.00 per day and not less than \$7.50 per day, to be fixed by the county board or the court making the appointment, for every day necessarily engaged and actual and necessary expenses;
- (4) To each rod man, a sum not exceeding \$7.00 per day and not less than \$4.00 per day, to be fixed by the county board or the court making the appointment for every day necessarily engaged and actual and necessary expenses;
- (5) To each chainman, axeman, and other like employee not herein mentioned and necessary to the prompt execution of the work of locating or construction of a public ditch, a sum not exceeding \$6.00 per day and actual and necessary expenses;

(6) 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 the drainage matter;

(7) To the county auditor, the attorney for the petitioners, the 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 the 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 the auditor shall in no case exceed \$250 and in all proceedings for repair where the costs of the repair are to be paid from the annual assessment for repairs provided in section 106.48, the fees of the county auditor or the county attorney shall in no case exceed the sum of \$100 for each proceeding.

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 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 interested therein.

All fees, per diem, compensations, and expenses provided for in this chapter 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 each county interested, which notice may be given to the auditor of the county, that all bills on file with the clerk of the court where the proceeding is pending **at the date of the notice** will be brought on for hearing and for allowance at the time and place named therein.

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.

[1925 c. 415 s. 74; 1927 c. 51 s. 4; 1945 c. 112 s. 1] (6840-74)

106.67 REFEREES. The judge or county board, as the case may be, may appoint a referee, who shall be a consulting engineer, in any drainage proceeding to perform the duties hereinafter set forth; and the referee shall qualify by taking the appropriate oath and giving bond to any county affected by the drainage system, in such sum as shall be fixed by the judge or the board, as the case may be. The bond shall be conditioned for the faithful performance of his duties as referee. The referee shall be a qualified civil engineer. The fees of the referee shall be fixed by the judge or the board, as the case may be, and shall be paid out of the funds of the drainage system as shall be ordered by the judge or the board. It shall be the duty of the referee, if appointed, to consider all bills of account or applications for payment in the ditch proceedings, to hear evidence, if offered, in relation thereto, and to report in writing to the judge or the county board his approval, rejection, or amendment thereof as such referee. He shall keep accurate record and account of all bills of account and all applications for payment acted upon by him and reported to the judge or the county board, together with copies of all such reports and all proceedings had in relation thereto. It shall be his duty, by order of the judge or the board, to inspect and examine and make report upon all work of construction in the matter of the drainage system prior to final acceptance thereof and, for the purpose of making such examinations or inspections, and upon application of such referee, the judge or the 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 the ditch and the plans and specifications thereof and report thereon to the referee, and it shall be the duty of the referee, if requested, to appear and testify before the judge or the county board considering the final acceptance of the drainage system. When order of the judge or county board approving a

report of the referee and allowing a bill of account or application for payment in the drainage proceeding shall constitute and be construed as an accounting and allowing of such account by the judge or county board within the meaning of this section and the approval by the judge or county board of any order of the referee shall constitute the report of the referee, the order of the judge or county board (in such proceedings, provided in all cases and the judge or county board) may reject such report and make an independent order in relation thereto covered by or contained in such report. The referee shall be subject to removal at the pleasure of the judge or county board.

[1925 c. 415 s. 75] (6840-75)

106.68 JURISDICTION NOT AFFECTED BY DEFECTIVE NOTICES. In every case where a notice is required under the provisions of this chapter, and for any reason proper notice was not given, published, or served, or description of property, persons, or corporations omitted, the board or the court shall not thereby lose jurisdiction; but, in every such case, the proceedings may be continued by order of the board or the 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 chapter, 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 the proceedings may be continued, by order of the board or the 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 the counties wherein the first notice was defective. 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 the court shall continue and, on the adjourned day, the hearing may proceed as though conducted on the date fixed in the first notice.

[1925 c. 415 s. 77] (6840-77)

106.69 ORDERS, NOTICES; SERVICE OF; FEES. All orders and notices, the issuance of which is provided for by this chapter, which 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 the 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 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, provided the same be 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.

[1925 c. 415 s. 78] (6840-78)

106.70 ENTRY UPON LANDS. In all proceedings instituted under the provisions of this chapter, the engineer and his assistants and the viewers and their assistants shall have the right to enter upon any lands for the purpose of making the survey, locating the drain, examining the property, and estimating the benefits and damages, but in so doing shall commit no unnecessary damages.

[1925 c. 415 s. 82] (6840-82)

106.71 RECORDS PRIMA FACIE EVIDENCE. The record of any proceeding conducted under the provisions of this chapter and any order made by the county board or the district court in such proceeding, the record thereof and the certified copy of the record or of any order of the board or the court made in proceedings conducted under this chapter, 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.

[1925 c. 415 s. 83] (6840-83)

106.72 FAILURE OF BOARD OR COURT TO ATTEND HEARINGS; CONTINUANCES. In all cases in any proceeding under this chapter, if the court or the 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 any proceeding, the court or the board shall not thereby lose jurisdiction of the proceeding, but may make such new or additional order as may be necessary in the premises in order to arrive at a speedy determination of the matters connected with the proceeding. In all cases where an order has been made or a notice given calling a hearing in any matter connected with a proceeding under this chapter and the board or the court from any cause shall fail to appear at the time and place specified in the notice or order, 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, to continue the hearing to such other date as may be deemed necessary and notify the board or the court, as the case may be, of the continuance and the date of hearing and the continuance made by the auditor or the clerk shall continue the hearing and jurisdiction to the date fixed by the auditor or the clerk.

[1925 c. 415 s. 87] (6840-87)

106.73 SYSTEMS EXTENDING INTO MORE THAN ONE JUDICIAL DISTRICT. In case any proposed drainage system extends into two or more judicial districts, proceedings may be commenced before the district court of any of the districts and the court before which such proceedings are commenced shall thereafter have jurisdiction of all subsequent proceedings and matters in relation to the drainage system, 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.

[1925 c. 415 s. 86] (6840-86)

106.74 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 this finding in his report, together with an accurate description of the needed right of way in the adjoining state and his estimate of the cost of obtaining the same.

If this finding is confirmed in the final order establishing the drainage system, the county board or the district court making the order 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 the needed right of way at an expense not exceeding the estimated cost therefor specified in the engineer's report, the right of way to be paid for as part of the cost and expense of the drainage system; and provide in the final order establishing the drainage system that the jobs of digging and constructing the drainage system shall not be advertised, let, or sold until the purchase of the needed right of way in the adjoining states has been, in all things, completed.

[1925 c. 415 s. 85] (6840-85)

106.75 SYSTEMS EXTENDING INTO OR CONNECTING WITH SYSTEMS IN ADJOINING STATES. When it is necessary to construct, widen, deepen, straighten, or change any drainage system or watercourse lying on, along, or near the state line between this state and an adjoining state or country, or where it is necessary to repair or improve any drainage work provided for in this chapter, which drainage system, watercourse, 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 which the drainage proceeding is pending in a county or counties adjoining or near the state line, shall have power to join with the board or tribunal of the adjoining state or country having power to lay out and construct public drainage ditches in that adjoining county or district or another state or country, in the construction, widening, deepening, straightening, repairing, or improving of any such drainage system, watercourse, or other work of drainage. The board or the tribunal in this state shall have the power to enter into joint contracts or arrangements with the board or tribunal in the adjoining state or country

and to construct, repair, or improve any such drainage work, each to pay such share of the cost and expenses of the work as shall be agreed upon by the contracting bodies. The work of drainage and the construction thereof, so far as it relates to lands in this state, shall be done on petition of the owners of lands, as provided for in the drainage laws of this state relating to county or judicial drainage proceedings, and the provisions of these laws so far as applicable shall govern the county board or the district court, as the case may be, in relation to the joint work of drainage; provided, the adjoining county or district in another state or country shall pay its proper share of the necessary costs and expenses of the construction of any such drainage system of work, including damages. In case the benefits to lands in the adjoining state or country are not sufficient to pay all the costs of construction, repair, or improvement of the drainage system therein, including damages to lands therein, the board or the court, as the case may be, is hereby given authority to authorize and direct the proper county or counties of the drainage system in the adjoining state or country to contribute sufficient funds to complete the construction, repair, or improvement of the drainage system in the adjoining state or country, if the same will be of sufficient benefit to the lands in this state affected by the drainage work, to warrant the contribution.

[1925 c. 415 s. 88] (6840-88)

106.76 DRAINAGE AFFECTING MEANDERED LAKES; APPEALS. When any order of the county board 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 taxpayer residing within four miles of a meandered lake affected by the order, may appeal to the district court from the order and the procedure and manner of taking such appeal shall conform to the provisions herein set forth for other appeals. The appeal shall bring before the court all questions and proceedings involved in the order; provided, the party taking the appeal shall accompany the same by an appeal bond to the county board, with at least two freehold sureties, in the sum of \$1,000, to be approved by the auditor of the county in which the appeal is taken, conditioned that the appellant will duly prosecute the appeal and pay all costs that may be adjudged against him and abide the order of the court.

[1925 c. 415 s. 89] (6840-89)

106.77 CONSOLIDATION OF SYSTEMS TO PREVENT OVERFLOWS OR INUNDATIONS. 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, 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, watercourse, or body of water, whether meandered or not, and the construction of the ditch or drainage improvement shall cause, or is likely to cause, by reason of the added waters, the overflow of the waters of the drainage system, creek, draw, watercourse, 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 25 per cent of the freeholders whose property is affected by such overflow, with the clerk of the district court of any county affected by the proposed improvement, setting forth in general terms the existence of the ditch or drainage system and the conditions of the creek, draw, watercourse, or body of water and outlet, and the necessity for the improvement of the outlet; and, if need be, the controlling of the waters therein or in the body of water, or both, and that the proposed improvement will be a public benefit and utility and improve the public health and protect the land from overflow, and asking for the consolidation of all the drainage systems or drainage proceedings, whether public or private, connected with or emptying its waters into the outlet or into the body of water, into one system, and the extension of the same so as to furnish a proper outlet for all waters of the basin that naturally drain into or through the outlet, and that the cost of constructing this 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 the drainage improvement and the extension of the outlet to all lands to be benefited, it is necessary that these proceedings be merged and consolidated, and that the petition, except when presented by a county, shall be accompanied by a proper bond, as provided in section 106.03; the clerk of the court shall notify the judge thereof and the judge shall make an order fixing the time and place for a hearing upon the petition and ordering all proceed-

ings then pending in any or all of these drainage proceedings to be stayed until the hearing and determination of this petition, which petition and order shall be served upon all persons and parties interested in these drainage proceedings by publication thereof once a week for three successive weeks prior to the date of the hearing in a legal newspaper in each county in which the 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, this petition and order shall be served upon the county auditor and the clerk of the district court of the county.

[1925 c. 415 s. 90] (6840-90)

106.78 HEARING; COURT ORDERS; VIEWERS, APPOINTMENT, DUTIES.

Upon such hearing, the judge shall proceed to hear all testimony offered in relation to the matter and, if it be made to appear that the allegations of the petition are true and that the same should be granted, he shall make an order granting the petition and merging and consolidating all of the drainage proceedings or drainage systems, and giving to the consolidated drainage proceeding 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 the modified and amended report of the engineer shall be filed in the office of the clerk of the district court of the county.

Upon the filing of the modified and amended report of the engineer, the judge shall appoint three viewers to assess the benefits and damages in this drainage proceeding in accordance with the provisions of the drainage laws of this state, and thereafter the 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 the judge.

[1925 c. 415 ss. 91, 92] (6840-91, 6840-92)

106.79 EFFECT OF DEFECTIVE PROCEEDINGS. 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 the district court or by the engineer, viewers, county auditor or other officer, person or persons, nor of any informality, error, or defect appearing in the record of the proceedings, unless the party complaining thereof is directly affected thereby. If the court shall at any time modify any assessment 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. When 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 the contract or contracts and no variance between the advertisement and the contract as to the length of time or manner in which the drainage system shall be constructed, shall invalidate in any way the ditch liens or the ditch assessments, nor shall the fact that the 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 the 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 the drainage system or for other good cause; and, provided, such contract or contracts have been, or shall be, let with the approval of the engineer and the auditor or auditors, and the 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 the 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 the variance between the contract and the notice of letting thereof.

[1925 c. 415 s. 93] (6840-93)

106.80 COUNTY DITCH INSPECTORS. Subdivision 1. In all counties where drainage systems now constructed have cost in the aggregate more than \$50,000, or which shall hereafter have drainage systems costing not less than that sum, the

county board may at such time as it may deem necessary appoint a competent man as county ditch inspector whose duties shall be to examine and inspect all county drainage systems as the board shall designate and require; such appointment to be for such time and at such compensation as the board may specify. The party so appointed shall, within 20 days after making 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 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 this report with the county auditor, to proceed to have these repairs made, as provided in section 106.49, and the county board is hereby authorized to act upon this report in the matter of repairing or cleaning out any drainage system, or part thereof, without any further petition than simply the filing of the report. 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 system 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 the ditch, he shall so state in his report, whereupon the county board of the district court shall cause notice to be served upon the owner of the premises on which any such repairs are to be made, requiring the owner to repair or cause to be repaired the ditch or portion of the ditch in the manner recommended by the engineer, the ditch to be repaired within the time prescribed in the notice. If the owner fails to repair the ditch or cause the same to be repaired in compliance with the notice, the county board may proceed to repair the ditch as above specified and it shall be the duty of the county auditor to make a statement showing the estimated repair expense in repairing the ditch and file the same in the office of the register of deeds of the county in which the premises are situated and assess against the premises the full amount of this expense.

Subd. 2. For any drainage system established by district court extending into more than one county now constructed which has cost in the aggregate more than \$400,000, said court shall have jurisdiction upon petition of the owners of 30 per cent of the lands originally assessed for benefits, at a hearing held on such notice as the court may prescribe, to appoint a committee consisting of a chairman and three or more other owners, or agents of owners, of lands so assessed, of which committee the auditors of the counties into which said drainage system extends shall be ex officio members, with power to improve, maintain, and repair said drainage system. For said purposes said committee in the name of, and for, said counties, with or without advertising for bids as the court may direct, shall have power to let contracts for any parts or all of said works of improvement, maintenance or repair, or have such works done by force account, or purchase, and use machinery for said works. Said committee shall at all times be subject to such orders as the court from time to time may file and said committee shall not contract for or expend during any calendar year any amounts of money in excess of those specifically authorized by the court in its orders on file. Before payment by the counties all claims shall first be approved in writing by the court and by a majority of the committee. All petitions, orders and papers shall be filed in the office of the clerk of the district court in which the original petition for the drainage system was filed.

Subd. 3. The court by order shall fix the percentage of the costs of the items referred to in subdivision 2 to be paid by each county and the committee shall annually file its report in the office of the clerk of said court and in the office of each county auditor apportioning all of said costs between said counties pursuant to said percentages. Thereupon the several county officers of each county shall have, exercise and perform all of the several powers and duties recited in Minnesota Statutes 1941, section 106.54.

Subd. 4. The committee shall receive not exceeding the per diem of a viewer, and such actual and necessary travel expense, as the court may order. The membership of the committee, other than the ex officio members, may be changed at any time by the filed order of the court.

Subd. 5. The provisions of this section shall be in addition to, and not in repeal or change of, the other provisions of statute relating to the improvement, maintenance or repairs of drainage systems, but county boards shall be under no duty

to clean or repair a drainage system extending into more than one county when a committee has been appointed and is functioning as herein provided.

[1925 c. 415 s. 94; 1945 c. 214 s. 1] (6840-94)

106.81 ASSISTANT ENGINEERS. The engineer appointed for the purpose of making a survey and report under any provision of this chapter shall have authority to appoint such assistant engineers as circumstances may require to aid in the completion of the work, for whose acts he shall be responsible and whom he may remove at pleasure. Any assistant engineer shall, before entering on his duties, take the oath required by this chapter and such oath and appointment shall be filed, in the case of a county proceeding, with the county auditor, and, in the case of a judicial proceeding, with the clerk of the district court. The compensation of an assistant engineer shall in no case exceed three-fourths of the regular rate fixed by this chapter as compensation for the engineer. This 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.

[1925 c. 415 s. 95] (6840-95)

106.82 USE OF FORMER REPORTS, SURVEYS, AND MONUMENTS. In any proceedings instituted for the establishment of a drainage system under any law of this state or for the changing or improvement of any watercourse, 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 proceeding dismissed, and afterwards proceedings are instituted for the establishment of another drainage system, or the changing of any watercourse for the benefit or reclamation of the same territory surveyed in the 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 the former proceedings, or as much thereof as may be applicable, and the cost of the subsequent proceedings is proportionately lessened, the amount thus saved in the subsequent proceedings by the use of the former survey or any part thereof shall be paid for by the subsequent proceedings to the proper parties, as herein provided, namely, to the engineer of the 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 the former survey, or to the county if, for any reason, it has borne the expense of the former survey. It shall be the duty of the county board or the district court where the new proceedings are pending, upon petition of the party or parties interested who paid the expense of the former survey, to determine the amount of benefit that was derived by the subsequent proceedings from the 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 the subsequent proceedings and, upon the letting of the contract in the subsequent proceedings, to order the amount thus determined to be paid to the party or parties entitled thereto.

[1925 c. 415 s. 96] (6840-96)

106.83 CONSTRUCTION AT COST OF LAND OWNERS. Subdivision 1. **Petition; bond of petitioners.** When 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 the 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 the drainage system and that the same will be of public utility and benefit, will promote the public health, giving in general terms a description of the proposed drainage system, therein specifying, as nearly 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 the drainage system, including the cost of the proceedings and damages, and shall file the petition with the auditor of the county and present and file there-with a bond signed by the petitioners and by any other parties whose signatures may be deemed necessary to secure the approval thereof, the bond to be for a sum of not less than \$1,000, payable to the county, conditioned for the payment by the

petitioners of all costs and expenses connected with the proceedings if the system is not ordered constructed or for any reason a contract therefor is not let, to be approved by the county auditor before being filed.

Subdivision 2. Hearing; filing bond and petition; engineer, appointment, report. Upon the filing of the petition and the bond, duly approved, it shall be the duty of the auditor to present the same to the county board of the county at the next general meeting, or at a special meeting thereof, and it shall then be the duty of the board forthwith to appoint a competent experienced civil engineer and direct him to proceed to examine, and report to the board within 30 days from the date of his appointment, with reference to the necessity and practicability of the construction of the proposed improvement, as specified in section 106.05, and it shall be the duty of this engineer to qualify and make this report within the time specified in sections 106.05 and 106.06, and the provisions of those sections, so far as practicable, shall apply to and govern the actions of the board and the engineer in the 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, the engineer, and the owners of all land and property affected, as shown by the engineer's report, that this report has been filed and that the same will be heard by the county board at the time and place specified in the notice; and the 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.

Subdivision 3. Procedure after hearing. At the time and place specified in the notice it shall be the duty of the board to appear and consider the evidence presented for and against the granting of the petition, and it shall be the duty of the engineer to appear before the board at such time and place and make such explanation as may be necessary to fully inform the board of all the facts named and referred to in his report with reference to the necessity and practicability of the proposed improvement, and the petitioners may appear and be heard with reference to the matters involved in the petition. 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, the board shall so find and by order direct the engineer, or another engineer if a change in engineers is made, to proceed to make a permanent survey and in this 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 106.07, and the provisions of that section as far as applicable shall apply to the proceedings hereunder.

Subdivision 4. Survey and report of engineer; viewers, appointment, duties. Within 20 days from the date of the order, it shall be the duty of the engineer to proceed to 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, the engineer shall be guided by the provisions of sections 106.10 to 106.13, and the provisions thereof 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 the 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 the county auditor of their appointment. They shall within ten days appear at the office of the county auditor and qualify as provided in section 106.16. 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 106.16 to 106.23 shall apply to and govern the action of the viewers as far as applicable and with all reasonable dispatch they shall make and file with the county auditor their report in such proceedings.

[1925 c. 415 ss. 97, 98, 99, 100] (6840-97, 6840-98, 6840-99, 6840-100)

106.84 HEARING. Subdivision 1. **Time and place, notice of.** Upon the filing of the report of the viewers with the county auditor, as provided in section 106.83, 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 the engineer's and the viewers' reports in the proceeding and notice of the time and place specified in the order for a hearing shall be given by the county auditor, as provided in section 106.24, and the provisions of section 106.24 so far as applicable shall apply to and govern the action of the county auditor in the giving and service of the notice of the hearing.

Subdivision 2. **Procedure; orders; apportionment of cost.** At the time and place specified in the notice 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 the viewers and at the hearing the board shall have and possess all the authority specified in sections 106.25 and 106.26 and the provisions of those sections so far as applicable shall apply to and govern the actions of the board at the hearing. If at the hearing it shall appear to the satisfaction of the board upon evidence presented that a necessity exists for the construction of the improvement, that the same will be of public benefit and utility and will promote the public health, and that the same is feasible, the board shall so find and by order confirm the reports of the engineer and the viewers and direct the construction of the improvement; provided, that no order shall be made for the construction of the improvement until the petitioners shall provide the funds to cover all expenses attending the proceedings and all costs of the construction thereof, including damages. The auditor shall make and file in his office a statement apportioning the costs of the improvement, in the manner provided in section 106.41, showing the amount apportioned to each tract of land or other property covering all the costs of such improvement, including damages.

Subdivision 3. **Letting of contracts.** If at the hearing the board shall make the findings and order the construction of the 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 106.30, and the provisions thereof shall apply to and govern so far as practicable his action relative to the calling for bids and the letting of the contract in the proceeding.

Subdivision 4. **Appeals.** Any party feeling aggrieved by the order of the board confirming the report of the viewers may appeal to the district court on the question of benefits or damages in the manner provided in section 106.89, subdivision 1, and the provisions of that subdivision 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 proceeding.

[1925 c. 415 ss. 101, 102, 103, 104] (6840-101, 6840-102, 6840-103, 6840-104)

106.85 ASSESSMENTS; LEVY, PAYMENT. It shall be the duty of the petitioners, before a contract is let, to pay to 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 the party or the corporation upon demand by the county auditor or the 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 the party or the corporation and the same may be assessed, when ordered by the county board in instalments, in two or three equal annual instalments 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 the county, as provided in sections 106.41 and 106.42, and in that event it shall be the duty of the county auditor to levy and assess against the property benefited or against the corporations annually a tax, as provided in sections 106.46 and 106.47, except that in this proceeding the total amount of the lien shall be assessed in two or three annual instalments as may be provided by order of the county board, and it shall be the duty of the county 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.

Upon the completion of the 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 county board return and pay over to the petitioners any unexpended balance remaining in the hands of the treasurer deposited by the petitioners as herein provided. The refund is to be made pro rata according to the benefits assessed.

[1925 c. 415 s. 105] (6840-105)

106.86 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 a drainage system under the provisions of this chapter 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, an engineer appointed, and the preliminary hearing held, a permanent survey ordered, and the engineer's and the viewers' reports duly filed, and in all cases where a hearing has been had thereon and the improvement ordered constructed, a contract let, and a ditch lien regularly filed, under which the cost of the proceedings and the cost of construction were assessed against the property and corporations benefited, and where the ditch lien and assessment have 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 the corporations affected, then, or in any such case, a reassessment of the benefits and a re-award of the damages, or either of them, in the 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 the court, within a reasonable time after the rendering of the decision annulling the assessment or damages, either on its own motion or on motion of the attorney for the petitioners or any party or any corporation interested, to order and direct the clerk of the court to cause to be issued, published, posted, mailed, or served as required by the provisions of section 106.24, if the 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 the engineer's and the viewers' reports, and at the 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 the hearing the court shall have authority to confirm the reports of the engineer and the viewers, either as originally reported or as subsequently modified, and shall reassess and re-award benefits and damages in these proceedings as in the first instance and the parties interested shall have the same right of appeal as provided in the original hearing.

In case the 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 the assessment and award of damages, either upon its own motion or upon application of the county auditor or any parties interested in the proceeding, to make an order directing the county auditor to proceed to issue, and cause to be published, posted, mailed, or served the notices required by section 106.24, if such proceedings were being conducted under the provisions hereof, or in accordance with the provisions of the act under which the proceedings were conducted, for final hearing on the petition, the engineer's and the viewers' reports, therein fixing a time and place for a rehearing upon the petition, the engineer's and the 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 chapter, if the proceedings were pending hereunder, or in accordance with the provisions of the act under which the proceedings were instituted and conducted, the county board shall have jurisdiction and authority to proceed to reconsider all matters relative to the petition and approval of the engineer's and the viewers' reports, and the board shall have and may exercise the same authority as in the case of an original hearing and, if at the hearing the board shall confirm the engineer's and the 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 the corporations affected, as provided in sections 106.41 and 106.42, it shall thereupon become the duty of the county auditor to cause to be made and filed a new lien reassessing the property and the corporations benefited in the proceedings in the same form and manner as provided by sections 106.41 and 106.42, and thereupon such reassessment 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 chapter.

[1925 c. 415 s. 106] (6840-106).

106.87 PROCEDURE WHEN BIDS NOT RECEIVED OR CONTRACTS NOT LET. When it shall occur in case of any drainage proceedings before any county board or any 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 their reports made and filed, due notice given and hearing had thereon, and the improvements ordered constructed by the board or the court, but, upon advertising for bids for the construction of the improvement by the county auditor or county auditors, they are unable to secure a bid or let a contract for the construction of the improvement according to the plans and specifications, except for a price more than 30 per cent in advance of the engineer's estimate and a petition presenting these facts shall be presented by the petitioners, or any number of them, or other party or corporation interested, to the board or the court where such proceedings are pending, 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 reports of the engineer and of the viewers and ordering the construction of the improvement, and the engineer's and the viewers' reports referred back to the engineer and to the viewers for further consideration; on the presentation of the petition, the board or the court where the proceedings are pending shall order a hearing thereon, designating in its order the time and place for hearing on the petition, and cause notice thereof to be given by publication for two weeks in the same newspapers where the notice of final hearing was theretofore published, which date shall be at a time not exceeding 30 days from the date of the order. At the time and place specified in the notice and order, it shall be the duty of the board or the 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 the board or the 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 per cent 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, and in that event, the board or the court may, by order, authorize the engineer to so amend his report and, upon the filing of the amended report, shall authorize the county auditor or county auditors, as the case may be, to let the contract or authorize them to again call for bids, but should the board or the court, at the 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 the board or the court shall so find and shall have authority, by order, to reopen and reconsider the former order confirming the reports of the engineer and the viewers and ordering the construction of the improvements, and refer back the reports of the engineer and the viewers for further consideration, with such directions as the board or the court shall deem necessary. If the recommendations deemed necessary by the board or the court shall not include a reexamination or resurvey but shall consist only of such changes as can be immediately made at the hearing, then the board or the court shall so order. 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. If the changes made in the engineer's report in any manner affect the amount of benefits or damages resulting from the construction of the improvement, then the viewers' report shall be referred back to the viewers and they be required to reexamine and again report the same to the board or the court; provided, that the board or the court where the proceedings are pending shall have authority, when deemed necessary, to continue the hearing for the purpose of giving the engineer or the viewers additional time for consideration and completing the filing of their amended reports and in such case the jurisdiction of the board or the court shall continue in all respects to the adjourned hearing.

Upon the filing of the engineer's and the viewers' reports, if the same is referred back to the viewers, the board or the 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 106.26, and after full consideration to confirm the engineer's and the viewers' reports as originally made or as amended and order the construction of the improvement as so amended the same as in the case of a general hearing in the first instance, as provided in section 106.27, and such order when so made shall in all respects be of the same force and effect as an order made by the board or the court in the first instance.

Upon the filing of the order referred to in section 106.86, 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 106.89, subdivision 1, 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 the 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 the plans and specifications and the amended plans, specifications, and reports shall stand as the original and be of the same force and effect as though no changes had been made.

[1925 c. 415 s. 107] (6840-107)

106.88 COUNTY WARRANTS; ACCOUNTS AND RECORDS EXAMINED; APPEARANCES BY STATE AND COUNTY OFFICIALS. Subdivision 1. **Non-payment of county warrants.** In all cases where a warrant shall be issued by the auditor of any county under the provisions of this chapter, and there shall be no cash in the fund herein mentioned to pay the warrant when the same is presented, the county treasurer shall endorse the warrant, "Not paid for want of funds," and date and sign the endorsement. Then and in that event the interest on the warrant may be paid on the first day of July each year thereafter until the warrant is called in and paid by the treasurer; provided, no interest shall be paid on any warrant after funds are available in the hands of the treasurer for the payment thereof.

Subdivision 2. **Duties of public examiner.** Upon application of any county in this state, indicated by the resolution of the county board 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 the county and when so requested to establish a system of accounts with each drainage system in the 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 \$8.00 per day and travel and hotel expenses, shall be audited and allowed by the county board, paid into the state treasury, and credited to the public examiner's contingent fund. 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 the county affected and to cause the county to be reimbursed from the accounts of these drainage systems.

Subdivision 3. **State and county officials given right to appear at hearings.** In all proceedings under the provisions of this chapter where a notice is required to be served upon the state auditor, the director, or the commissioner, these officials shall have the right to appear in the 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 of the 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 the wild life of the state.

[1925 c. 415 ss. 108, 109, 110; 1933 c. 312 s. 9] (6840-108, 6840-109, 6840-110)

106.89 APPEALS. Subdivision 1. Any person or any corporation aggrieved thereby may appeal to the district court from an order of the county board or the district court made in any proceeding and entered upon its record determining any of the following matters:

- (1) The amount of benefits assessed against any tract of land or any road, railroad, or corporation;
- (2) The amount of damages allowed to any land, person, or corporation; or
- (3) 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 notice of appeal shall be served upon the clerk of the district court or the county auditor where the proceedings are pending. To render the appeal effectual the appellant shall file with the county auditor, in county drainage proceedings, or with the clerk of the district court, in judicial proceedings, within 30 days of the date of such final order, a notice of appeal which shall briefly state the grounds upon which the appeal is taken and, in all cases of appeal from an order of the district court or the county board, the 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 the property, the public roads, or the railroads are located, with sufficient surety, of not less than \$250.00, to be approved, in case of a county drainage proceeding, by the county auditor, or, in case of a judicial proceeding, by the clerk of the district court where the proceedings are pending, conditioned that the 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 30 days after such filing, the auditor, in case of a county drainage proceeding, shall return and file with the clerk of the district court the original notice and bond of appeal.

The issues raised by the 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 the proceedings were commenced or in such other county in which the appeal shall be heard, as hereinafter provided, beginning after the filing of the appeal, and shall take precedence of all other matters of a civil nature in the 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 of these appeals and try them together, but the right of the 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, the cost of the 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 the appellant for a jury trial so requests, in such appeal, the trial, as to the land situated in the other county, shall be held at the next term of the district court of the county wherein the 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 the trial is to be had a transcript of the papers and documents on file in his office in the proceedings so far as they pertain to the matter on account of which the appeal is taken. After the trial the clerk of the district court where the action is tried shall make, certify, and return the verdict to the district court of the county wherein the proceedings were instituted and

the verdict or order shall be entered and enforced as a part of the proceedings of the last mentioned county.

Subdivision 2. In all cases pending before the county board, any interested party feeling aggrieved by any order made by the board, either granting or denying any such petition, may appeal from any such order to the district court of the county in which the proceedings are pending. The proceedings on such appeal shall be the same as those provided in subdivision 1 hereof.

Subdivision 3. Any land owner, employee, or other person aggrieved by any order of the court or the county board relative to the allowance of fees, or fees and expenses, may appeal from the 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 made within 30 days after the order allowing such claim and shall be governed as far as applicable by the provisions of subdivision 1 hereof, save that in all appeals taken by parties whose lands are assessed for the improvements the expense thereof shall be paid by the county and assessed against the improvement.

[1925 c. 415 ss. 32, 72, 76] (6840-32, 6840-72, 6840-76)

106.90 APPEALS TO SUPREME COURT. 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 the drainage system in proceedings under this chapter, made in the district court within 30 days after the filing of the 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.

[1925 c. 415 s. 81] (6840-81)

106.91 DISMISSAL OF PROCEEDINGS. In any proceeding under the provisions of this chapter 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 the proceeding, dismiss the same.

[1925 c. 415 s. 112] (6840-112)

106.92 OFFENSES; PENALTIES. 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 the 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 permission from the county board of the county in which such principal drain is located, shall be guilty of a 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 chapter shall be guilty of a misdemeanor and shall also be liable therefor to any person, association of persons, or any corporation injured thereby, in treble damages.

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

[1925 c. 415 s. 84] (6840-84)

106.93 CONSTRUCTION AND APPLICATION OF OTHER LAWS. In all cases where reference is made in this chapter to other chapters or sections of General Statutes 1913, or any chapters or sections of any session laws, or any other sections of this chapter or other drainage laws of the state, all such chapters, sections, and provisions thereof shall so far as applicable for all purposes of this chapter be treated and construed as having the same force and effect as though herein in full set forth.

[1925 c. 415 s. 80] (6840-80)