

CHAPTER 106

DRAINAGE

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106.01 [Repealed, 1947 c 143 s 67]

106.011 **DEFINITIONS.** Subdivision 1. Unless the language or context clearly indicates that a different meaning is intended, the following words, terms and phrases, for the purposes of sections 106.011 to 106.661, shall have the meanings subjoined to them.

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

Subd. 3. "Notice by mail" or "mailed notice" means a notice mailed and addressed to each person entitled to receive notice if the address be known to the auditor or clerk, or can be ascertained by inquiry at the office of the county treasurer of the county wherein the affected land or property is located.

Subd. 4. "Board" or "county board" means the county board of the county where the drainage proceedings are pending.

Subd. 5. "Court," "the court," "the district court," or "district judge" means the district court, or a judge thereof, of the county where the judicial drainage proceedings are pending.

Subd. 6. "Board or court" or "county board or district court" means the county board in any case where proceedings are pending before a county board, or the district court, or a judge thereof, in all proceedings pending before the district court.

Subd. 7. "County auditor" or "auditor" means the auditor of the county wherein county drainage proceedings are pending.

Subd. 8. "Clerk" or "clerk of the district court" means the clerk of the district court where the petition is filed in judicial proceedings.

Subd. 9. "Auditor or clerk" or "county auditor or clerk of the district court" means the county auditor in any case where proceedings are pending before the county board, and means the clerk of the district court in all proceedings pending before the district court.

Subd. 10. "Director" means the director of the division of waters in the department of conservation of the state of Minnesota.

Subd. 11. "Person" means a person, firm, copartnership, association, or private corporation.

Subd. 12. "Public corporation" or "municipal corporation" means cities, villages, boroughs, counties, towns, school districts, and other political subdivisions.

Subd. 13. "Public health" extends to and includes any act or thing tending to improve the general sanitary condition of the community; whether by drainage, relieving low, wet land or stagnant and unhealthful conditions or by preventing the overflow of any lands which produce or tend to produce unhealthful conditions.

Subd. 14. "Public Welfare" or "public benefit" extends to and includes any act or thing tending to improve or benefit the general public, either as a whole or as to any particular community or part, and is construed to include any works contemplated by this chapter which shall drain or protect from overflow public highways, and which shall protect from overflow or reclaim and render suitable for cultivation lands normally wet and needing drainage or subject to overflow.

Subd. 15. "County ditch" or "county drainage proceeding" means a proceeding by authority of this chapter before the county board of any county.

Subd. 16. "Judicial ditch" or "judicial drainage proceeding" means a proceeding by authority of this chapter before the district court of any county.

Subd. 17. "Ditch," "drainage system," "public drainage system," "improvement," or "drainage proceeding" means either an open or tiled system and all laterals or parts thereof; also the improvement of any natural waterway included in or utilized in the construction of any drainage system; also the adoption and inclusion in any drainage project of any overall plan for flood control as proposed by the United States or any of its agencies; and includes any work, excavation, structure, or improvement necessary to complete the system as adopted and ordered by the board or court.

Subd. 18. "Road," "public road," or "highway" means any road or street used by the public for highway purposes.

Subd. 19. "Resident owner" or "resident freeholder" means the owner of land or the contract purchaser, and who resides in the state.

Subd. 20. "Public waters" means streams, lakes and bodies of water which are navigable in fact.

Subd. 21. "Engineer" means a professional engineer registered under the laws of Minnesota, including the county highway engineer of a county wherein affected land or property is located.

Subd. 22. "Lateral" or "lateral system" means any construction either by branch, lateral or upstream extension or branches or laterals thereof required to connect lands with an established ditch.

[1941 c 143 s 1; 1949 c 220 s 1; 1953 c 407 s 1]

106.02 [Repealed, 1947 c 143 s 67]

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

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

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

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

Subd. 5. **Systems extending into more than one judicial district.** In case any proposed drainage system extends into two or more judicial districts, proceedings may be commenced before the district court of any of the districts and the court before which such proceedings are commenced shall thereafter have jurisdiction of all subsequent proceedings and matters in relation to the drainage system.

[1947 c 143 s 2]

106.03 [Repealed, 1947 c 143 s 67]

**106.031 PETITION.** Subdivision 1. **Form of petition.** Before any public drainage system or other improvement authorized by sections 106.011 to 106.661 is established, a petition therefor shall be filed with the county auditor, if for a drainage system entirely within one county, or with the clerk of the district court, if for a drainage system within two or more counties. Such petition shall be signed by not less than a majority of the resident owners of the land described in the petition or by the owners of at least 51 per cent of the area of such land. The lands described in the petition shall be those over which the proposed ditch passes or upon which the improvement is located, and the petition shall set forth the description of such lands and shall set forth the necessity for the ditch or improvement, and that the same will be of public benefit and utility and will promote the public health, with the description of the starting point, the general course, and terminus or location of the same. The petition shall state that the petitioners will pay all costs and expenses which may be incurred in case the proceedings are dismissed or for any reason no contract for the construction thereof is let. Such petition may be signed by the authorized representative of any municipal corporation or by the commissioner of highways, or the authorized agent of any public institution or any corporation which may be affected by or assessed for the proposed construction; but in such case, the signature of such representatives, commissioner, agent, or corporation shall each count only as one signature on the petition. Each ditch proceeding shall be designated by number assigned by the auditor or clerk.

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

[1947 c 143 s 3]

106.04 [Repealed, 1947 c 143 s 67]

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

[1947 c 143 s 4]

106.05 [Repealed, 1947 c 143 s 67]

**106.051 INSUFFICIENT BOND; EXPENSES NOT TO EXCEED PENALTY OF BOND.** If it shall appear at any time prior to the making of the order establishing the drainage system that the bond of petitioners is insufficient in amount to protect

the county or counties from loss on account of any costs or expenses incurred or to be incurred, the court or board shall require an additional bond. In such event, all further proceedings shall be stayed until such bond is furnished, and if such additional bond be not furnished within such time as the board or court shall fix, the proceedings may be dismissed.

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

[1947 c 143 s 5]

**106.06** [Repealed, 1947, c 143 s 67]

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

[1947 c 143 s 6]

**106.07** [Repealed, 1947 c 143 s 67]

**106.071 ENGINEER.** Subdivision 1. **Appointment.** Upon the filing of the petition and bond, the board or court shall, within 30 days thereafter, by order appoint an engineer to make a preliminary survey as provided in section 106.081 within the time fixed in the order.

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

Subd. 2. **Qualification.** The engineer so appointed shall within ten days thereafter take and subscribe an oath to faithfully perform the duties assigned to him according to the best of his ability, and give a bond in the sum fixed by the board or court, but for not less than \$5,000 with good and sufficient surety, payable to the county or counties affected by the proposed improvement, for the benefit of the county or counties, and for the use of all parties aggrieved or injured by any negligence or malfeasance on the part of the engineer so long as he is in any manner employed in the proceedings, conditioned that he will diligently, honestly, and to the best of his skill and ability, during the full period of his employment, perform his duties as such engineer in the proceedings; this bond to be approved by the auditor or clerk; provided, however, that the aggregate liability of the surety for all such damages shall in no event exceed the amount of said bond. In case of a change of engineers, each succeeding engineer shall make and file the oath and bond provided for herein.

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

Subd. 4. **Assistants; compensation.** The engineer may appoint such assistant engineers as circumstances require to aid in the completion of the work, for whose acts he shall be responsible and whom he may remove at pleasure. The engineer may also employ such help as may be requisite to assist him in his duties. The compensation of the engineer and his assistants and other employees shall be fixed as provided by section 106.431.

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

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

Subd. 7. **Reports.** Every two weeks after the beginning of his work and during the time he is engaged in the same until the letting of the contract, the engineer shall make a report of all expenses incurred by him or under his direction in connection with the drainage project, including the names of assistants and employees and the time each was employed, together with his own time and every item of expense by him incurred. He shall forthwith file this report with the auditor or clerk, and in no case shall he incur any greater expense on account of such project than the penalty of the bond provided by the petitioners.

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

[1947 c 143 s 7]

106.08 [Repealed, 1947 c 143 s 67]

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

Subd. 2. **Adoption of federal project, including data, plats, plans, details or information.** The engineer may adopt and approve and include as a part of his report, any project of the United States relating to drainage or flood control which is within the drainage area, and may accept any data, plats, plans, details or information pertaining to such United States project furnished him by the United States engineers, and the engineer need not make the preliminary survey called for in Subdivision 1 if the data furnished by the United States is sufficient for the engineer to make his report without such survey.

Subd. 3. **Inclusion in preliminary report.** If he finds the improvement petitioned for is feasible, he shall include in his report a preliminary plan of the proposed system showing thereon the proposed drain and laterals or other improvements, and the outlet thereof, together with the watershed of such drainage system and the lands and properties likely to be affected, including so far as known the names of the owners thereof. He shall show upon such plan the elevation of the outlet and the controlling elevations of the lands likely to be affected and also the probable size and character of the ditches and laterals necessary to make the plan practicable and feasible. All elevations so far as practical shall be referred to standard sea level datum. He shall show in his report the character of the outlet and the sufficiency thereof and also the probable cost of the drains and improvements shown on his plan, and all other information and data necessary to disclose the practicability, necessity and feasibility of the proposed improvement, including such other information as the board or court may order.

Subd. 4. **Limitation of survey.** The engineer shall confine his preliminary survey to the drainage area described in the petition, except to secure outlet, unless authorized by order of the board or court, with the consent of the bondsmen, at a hearing after ten days' notice by mail to the petitioners and bondsmen; and any investigation made by the engineer as to outlet, without such order, shall be confined to running the necessary levels to ascertain the distance necessary to secure the proper fall.

[1947 c 143 s 8; 1949 c 220 s 2]

106.09 [Repealed, 1947 c 143 s 67]

**106.091 FILING ENGINEER'S REPORT; AUTHORITY OF DIRECTOR.** Subdivision 1. **Filing.** Upon completion of his survey and report, the engineer shall file his report in duplicate with the auditor or clerk. The auditor or clerk shall transmit one copy thereof to the director of the division of waters. If the report be filed with the clerk, a duplicate thereof shall also be filed with the auditor of each county affected.

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

[1947 c 143 s 9]

**106.10** [Repealed, 1947 c 143 s 67]

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

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

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

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

Subd. 5. **Findings and order.** If the board or court shall be satisfied that the proposed improvement as outlined in the petition or as modified and recommended by the engineer is feasible, that there is necessity therefor, that it will be of public benefit and promote the public health, and that the outlet is adequate, the board or court shall so find and by such order shall designate the changes that shall be made in the proposed improvement from that outlined in the petition. These changes may be described in general terms and shall be sufficiently described by filing with the order a map outlining the proposed improvement thereon. Thereafter the petition shall be treated as modified accordingly.

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

Subd. 7. **Court may approve adoption of plan relating to federal flood control project.** In the event that the proposed drainage or flood control project described in the petition therefor, constitutes a part or portion of a general flood control plan proposed by the United States or any of its agencies for the relief of flood conditions in the natural rivers or streams within said county or counties, a substantial portion of the cost of which improvement will be borne by the United States, the court, upon the initial consideration of the petition, or at any time thereafter, upon the submission of preliminary plans and engineering data prepared by the government therefor and such additional information as may be necessary to determine the boundaries, ownership and description of the lands to be affected thereby, may

approve the adoption of such project in accordance with said preliminary plans and may authorize and direct the board of county commissioners in the county or counties affected by said project, to enter into a contract or agreement with the government wherein and whereby the said county boards do undertake and agree to furnish and comply with the necessary elements of local cooperation as are required in the authorization for such project.

[1947 c 143 s 10; 1949 c 220 s 3]

106.10 [Repealed, 1947 c 143 s 67]

**106.111 ORDER FOR DETAILED SURVEY.** Subdivision 1. Upon the filing of the order as specified in section 106.101, subdivision 5, the board or court shall order the engineer or any other engineer, if a change of engineers be determined, to proceed to make a detailed survey and furnish all necessary plans and specifications for the proposed improvement and report the same to the board or court with all reasonable dispatch. All of the provisions of section 106.071 shall be applicable to the employment of the engineer.

Subd. 2. Such detailed survey may be waived by the court if it appears that sufficient data, plans and specifications have been furnished by the United States engineer to make such survey unnecessary.

[1947 c 143 s 11; 1949 c 220 s 4]

106.12 [Repealed, 1947 c 143 s 67]

**106.121 ENGINEER'S SURVEY.** Subdivision 1. **Survey and examination.** Upon the filing of the order named in section 106.111, the engineer shall proceed to survey the lines of the drainage improvement petitioned for and approved by order made upon preliminary hearing, and to survey and examine all lands and properties affected thereby.

Subd. 2. **Waiver.** The engineer need not make such survey if the same has been waived by the court.

Subd. 3. **Survey.** All ditch lines shall be surveyed in 100 foot stations and levels shall be based on standard sea level datum if practical. Bench marks shall be established upon permanent objects along the line of the drains, not more than a mile apart. All field notes made by the engineer shall be entered in bound field books and preserved by him.

Subd. 4. **Data and report.** The engineer shall prepare and submit the following data and report:

a. A complete map of the drainage system or improvement drawn to scale, showing thereon (1) the termini and course of each drain and whether open or tile, and the location of all other proposed improvements; (2) the location and situation of the outlet; (3) the watershed of the drainage system and the sub-watershed of main branches, if any, together with the location of existing highway bridges and culverts; (4) all lands and properties affected, together with the names of the owners thereof so far as known; (5) public streets, highways and railways affected; (6) the outlines of any meandered lake and public body of water affected; (7) such other physical characteristics of the watershed as may appear necessary for the understanding thereof.

b. A profile of all lines of ditch proposed showing graphically, the elevation of the ground and gradient at each 100 foot station, the station number at each section line and at each property line, whether open or tiled, the size of tile and the bottom width and side slope of open ditch sections, and such other information as may appear necessary for the understanding thereof.

c. Plans for all private bridges and culverts proposed to be constructed by and as a part of the ditch system, together with plans for all other works and items of construction necessary for the completion of the drainage system or improvement. A list showing the required minimum waterway opening at all railway and highway open ditch crossings and at other prospective open ditch crossings where bridges and culverts are not specified to be constructed as a part of the ditch, together with plans and estimates of the cost of highway bridges and culverts required for the information of the viewers in determining benefits and damages.

d. A tabular statement showing the number of cubic yards of earth to be excavated on all open ditches, the footage of each size of tile on each tile line with the average depth thereof, and all bridges, culverts, works and other construction items required by the plans for the completion of the system, together with the estimated

unit cost of each of said items and a summary of the total cost thereof. Such summary shall include an estimate of the cost of fully completing the system, including supervision and other costs thereof.

e. The acreage which will be required and taken as right of way upon each government lot and 40-acre tract or fraction thereof under separate ownership required for right of way for any open ditch.

f. Specifications for drain tile shall require that all drain tile used shall comply with the requirements of the American Society for Testing Materials standard specifications for drain tile, except where the depths to which the drains are to be laid or the conditions of the soil, in the opinion of the engineer, require tile of a special and higher quality.

g. When more economical construction will result, the engineer may recommend that the work be divided into sections and let separately, and that open and tile work or tile and labor thereon be let separately, and the time and manner so far as practicable in which the whole work or any section thereof shall be done.

h. Such other detail and information as shall appear requisite to fully inform the board or court of the practicability and necessity of the proposed improvements, together with his recommendations thereon.

Subd. 5. **Soil survey.** If deemed necessary by the engineer, or if ordered by the board or court, or requested by the director, the engineer shall make a soil survey showing the nature and character of the soil in the area proposed to be drained and shall report his findings thereon.

Subd. 6. **Variance.** In planning a public drainage system, the engineer may vary from the line and plan described in the petition as finally adopted by the board or court at the preliminary hearing or from the starting point thereof, as he finds necessary for the proper drainage of the land likely to be assessed for the drainage system described in the petition and approved at the preliminary hearing. He shall have authority to survey and recommend the location of such branch ditch or ditches as may be found necessary. Where better results will be accomplished and more desirable outlets secured, the engineer may provide for the extension of the outlet, or he may provide for different parts of the drainage to flow in different directions with more than one outlet. It shall not be necessary for such ditches to connect if they accomplish the drainage of the area to be affected by the petition instituting the proceedings.

Subd. 7. **Outlet in another state.** Where no practical outlet can be had but through the lands of an adjoining state, the engineer shall procure a description of the necessary right of way and the probable cost thereof and shall estimate the cost of constructing such outlet and include the same in his report.

Subd. 8. **Filing.** The engineer shall prepare and complete set of plans, specifications and estimates of cost required by this section and shall make a complete report in duplicate of his work and recommendations to the board or court, including therein all maps, profiles and matters herein provided for, and file the same with the auditor or clerk where the proceedings are pending. If the same be filed with the clerk, a complete copy thereof shall also be filed with the auditor of each county affected.

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

[1947 c 143 s 12; 1949 c 220 s 5]

106.13 [Repealed, 1947 c 143 s 67]

**106.131 AUTHORITY OF DIRECTOR; DIRECTOR'S REPORT.** Upon the filing of the engineer's report, a complete copy thereof shall be transmitted to the director by the auditor or clerk.

The director shall examine the same and within 15 days make his report thereon to the board or court. If he finds the report incomplete and not in accordance with the provisions of this chapter, he shall so report. If he approves the same as being a practical plan for the drainage of the lands affected, he shall so state. If he does not approve the plan, he shall file his recommendations for changes deemed advisable,



or, if in his opinion, the proposed system or improvement is not practical, he shall so report. If a soil survey appears advisable, he shall so advise, and in such event the engineer shall make the soil survey and report thereon before the final hearing. The director's report shall be directed to the board or court and shall be filed with the auditor or clerk. Such report shall be deemed advisory only.

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

[1947 c 143 s 13]

106.14 [Repealed, 1947 c 143 s 67]

**106.141 VIEWERS; APPOINTMENT; QUALIFICATION.** Subdivision 1. **Appointment.** Following the order for a detailed survey as provided in section 106.111, the board or court shall make an order appointing three disinterested resident freeholders of the county or counties affected as viewers.

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

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

[1947 c 143 s 14]

106.15 [Repealed, 1947 c 143 s 67]

**106.151 VIEWERS, DUTIES.** The viewers, with or without the engineer, shall view all lands and properties benefited or damaged by the proposed drainage system and shall make their report thereon.

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

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

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

They shall report the benefits and damages resulting to the State of Minnesota and all counties and other municipal corporations resulting from the proposed drainage system. When any public road or street shall be found to be benefited or damaged, the state or the county, or other corporation, which is by law charged with the duty of keeping such road or street in repair, shall be assessed or allowed the amount of benefits or damages accruing to such road or street; except that benefits and damages assessed and allowed for bridges or culverts shall be assessed and allowed to the state, county or other municipal corporation which is by law charged with the duty of constructing and maintaining such bridge or culvert as required by Minnesota Statutes, Section 106.271.

The viewers shall find and report the benefits accruing to all lands and properties affected and benefited, whether the same accrue immediately from the construction of the system, or as the same affords an outlet for drainage, makes an outlet more accessible, or otherwise directly benefits such lands or properties.

If the proposed drainage system furnishes outlet to any existing county or judicial ditch and it appears that such outlet will benefit the existing ditch and the lands drained thereby, the viewers may determine and report the benefits from the proposed drainage system to each tract drained by the existing ditch, or, in a lump sum as outlet benefits to such existing ditch, as may appear just and equitable. In case of a lump sum found for outlet benefits, the lien therefor

shall be pro-rated upon all lands and properties benefited by the existing ditch in proportion to the benefits determined in such existing ditch proceeding. All assessments heretofore made in conformity herewith are hereby validated.

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

[1947 c 143 s 15; 1953 c 529 s 1]

**106.16** [Repealed, 1947 c 143 s 67]

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

[1947 c 143 s 16]

**106.17** [Repealed, 1947 c 143 s 67]

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

Subd. 2. **Form of notice.** The notice shall state the pendency of the petition, that the engineer's and viewers' reports have been filed, and the time and place set for the hearing. The notice shall contain a brief description of the proposed drainage system, giving in general terms the starting point, terminus and general course of the main ditch and branches, together with the description of properties benefited or damaged, and the names of the owners thereof, and the municipal and other corporations affected thereby as shown by the engineer's and viewers' reports. It shall be sufficient if such names be listed in narrative form and if the lands affected be separately listed in narrative form by governmental sections or otherwise.

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

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

Subd. 4. **Defective notice.** In all cases in which the notice shall not be given or shall be legally defective, the auditor or clerk shall cause the same to again be fully given, or as provided by section 106.571.

[1947 c 143 s 17]

**106.18** [Repealed, 1947 c 143 s 67]

**106.181 JURISDICTION.** Upon due publication, posting and mailing of the notice provided in section 106.171, the board or court shall have jurisdiction of all lands and properties described in the engineer's and viewers' reports, and of all persons and corporations, municipal or otherwise, named therein, and all persons or corporations having any interest in any mortgage, lien or encumbrance against any of the lands or properties referred to in such reports.

[1947 c 143 s 18]

**106.19** [Repealed, 1947 c 143 s 67]

**106.191 PROCEEDINGS AT HEARING.** Subdivision 1. **Consideration of petition.** At the time and place specified in the notice, or at any adjournment thereof, the board or court shall consider the petition for the drainage system, together with all matters pertaining to the engineer's, viewers' and director's reports. The board or court shall hear and consider the testimony presented in behalf of all parties interested. The engineer, or his assistant, and at least one viewer shall be present.

The director may appear and be heard. If the director does not personally appear, his report shall be read in open hearing. The hearing may be adjourned from time to time as may be found necessary.

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

Subd. 3. **Re-examination.** If the board or court consider it advisable for the engineer or viewers, or both, to re-examine the proposed system, or the lands benefited or damaged thereby, or if it is found that other lands not included in the notice should be included and assessed, then the board or court may resubmit the reports to the engineer or viewers, or both, as circumstances may require. In such case the hearing may be continued for such time as may be necessary to make such examination and report. If the amended report includes lands or property not included in the original report, the board or court may by order adjourn the hearing and direct the auditor or clerk to cause to be published, posted and mailed, or served, the proper notice with reference to all such lands or properties not included in the previous notice. In such case the jurisdiction of the board or court shall continue in all respects as to all lands and properties for which proper notices were given, and no new or additional notice shall be required with reference thereto.

[1947 c 143 s 19]

106.20 [Repealed, 1947 c 143 s 67]

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

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

[1947 c 143 s 20]

106.21 [Repealed, 1947 c 143 s 67]

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

[1947 c 143 s 21]

106.22 [Repealed, 1947 c 143 s 67]

106.221 **CONTRACT AND BOND.** Subdivision 1. **Provisions.** The contract and bond to be executed and furnished by the contractor shall be attached. The contract shall contain the specific description of the work to be done, either expressly or by reference to the plans and specifications, and shall provide that the work shall be done and completed as provided in the plans and specifications and subject to the

inspection and approval of the engineer. The county attorney, the engineer, and the attorney for the petitioners shall prepare the contract and bond. The contractor shall make and file with the auditor or clerk a bond, with good and sufficient surety, to be approved by the auditor or clerk, in a sum not less than 75 per cent of the contract price of the work. Every such contract and bond shall embrace all the provisions required by this chapter and provided by law for bonds given by contractors for public works, and shall be conditioned as provided by statute in case of public contractors for the better security of the contracting county or counties and of parties performing labor and furnishing material in and about the performance of the contract. It shall be provided that time will be of the essence of the contract, and that if there be any failure to perform the work according to the terms of the contract within the time therein limited, originally or by extension, the contractors shall forfeit and pay the county or counties a certain sum to be named therein, as liquidated damages. Such sum shall be fixed by the auditor or auditors for each day that such failure shall continue. The bond shall provide that the bondsmen shall be liable for all damages resulting from any such failure, whether the work be resold or not, and that any person or corporation, public or private, showing himself injured by such failure, may maintain an action upon such bond in his own name, and actions may be successive in favor of all persons so injured; provided, however, that the aggregate liability of the surety for all such damages shall in no event exceed the amount of said bond. Such contractor shall be considered a public officer, and such bond an official bond within the meaning of the statutory provisions construing the official bonds of public officers as security to all persons, and providing for actions on such bonds by any injured party.

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

**Subd. 3. Contract with federal unit.** In case all or any portion of the work is to be done by the United States, or any of its agencies, no such bond or contract need be attached as to that portion of the work, but a contract shall be attached between the local governmental units concerned and the United States, or its appropriate agency, containing such terms, conditions, provisions and guaranties as the United States or its agencies may require before proceeding with said work.

**Subd. 4. Guaranty of tile work.** When tile is used in the construction of any drainage improvement, and, if prior to the commencement of advertising for the sale of the work, a majority of the persons, interested shall file a written request therefor with the auditor or clerk, then such tile work shall be let separately and the contractor shall be required to guarantee the tile work covered by his contract for a period of three years after the completion thereof against any fault or negligence on his part. In such event the call for bids shall include such requirement and the contract and bond shall guarantee all tile work done by such contractor for a period of three years after the completion thereof against any fault or negligence on his part.

**Subd. 5. Modification of contract by agreement.** Nothing contained in this chapter shall in any manner prevent the persons whose lands are affected by the construction of any ditch from uniting in a written agreement with the contractor and his bondsmen for the modification of any such contract as to the manner or time within which such ditch or any part thereof shall be constructed, provided that such modification is recommended in writing by the engineer and approved by the board or court.

[1947 c 143 s 22; 1949 c 220 s 6]

**106.23** [Repealed, 1947 c 143 s 67]

**106.231 LETTING CONTRACT.** Subdivision 1. After the expiration of 30 days following the filing of the order establishing a drainage system, the auditor and chairman of the county board, in the instance of a county ditch, and the audi-

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tors of the respective counties, or a majority of them, in the instance of a judicial ditch, shall proceed to let the job of constructing the system. In judicial ditch proceedings the auditors shall hold the letting at the office of the auditor of the county in which the proceedings are pending.

Subd. 2. If it shall appear at the expiration of 30 days from the filing of the order establishing the system, that one or more appeals have been taken involving the question of benefits or damages, no contract shall be let until the appeals have been determined, unless ordered by the board or court. Application for such order may be made by the auditor or auditors or any interested person. If application be made by some person other than an auditor, then the auditor or auditors shall be given five days' notice of hearing upon such application.

Subd. 3. The auditor of the county in which the proceedings are pending shall give notice of the letting of the contract by publication in a newspaper in such county stating the time and place where the contract shall be let. When the estimated cost of construction is more than \$3,000, the auditor shall also advertise such letting in a trade paper. Such notice shall state the approximate amount of work and the estimated cost thereof and shall invite bids for the work as one job, or in sections, or separately, for bridges, open work, tile, or tile construction work, as may be required or deemed advisable. The right shall be reserved to reject any and all bids. The notice shall require that each bid be accompanied by a certified check payable to the auditor or auditors for not less than ten per cent of the bid, as security that the bidder will enter into a contract and give a bond as required by section 106.221.

Subd. 4. The engineer shall attend the letting and no bid shall be accepted without his approval as to compliance with plans and specifications.

Subd. 5. The job may be let in one job, or in sections, or separately for labor and material, and shall be let to the lowest responsible bidder or bidders therefor.

Subd. 6. Bids shall not be entertained which in the aggregate exceed by more than 30 per cent the total estimated cost of construction.

Subd. 7. The auditor, with such chairman, or auditors, as the case may be, shall contract, in the name of the county, or in the names of the respective counties, each acting by and through its auditor, with the party to whom such work or any part thereof is let, requiring him to construct the same in the time and manner and according to the plans and specifications and the contract provisions in this chapter set forth.

Subd. 8. In the event all or any portion of such work is to be done by the United States, or any of its agencies, no notice of letting of a contract need be published and no contract for its construction need be entered into as to such portion so to be constructed. The municipal units concerned may enter into a contract or other arrangement with the United States, or any agency or department thereof, for cooperation or assistance in constructing, maintaining and operating such drainage work, or the control of waters in such district, or in making a survey and investigation or reports thereon, and may provide such guaranty and protection to the United States or its agencies as may be required.

[1947 c 143 s 23; 1949 c 220 s 7]

106.24 [Repealed, 1947 c 143 s 67]

**106.241 PROCEDURE WHEN CONTRACT NOT LET.** Subsequent to the establishment of any drainage system, if no bids are received except for a price more than 30 per cent in excess of the engineer's estimate, or for a price in excess of the benefits, less damages and other costs, proceedings may be had as follows.

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

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

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

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

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

Upon said hearing the board or court shall have full authority to reopen the original order establishing said ditch, and to set said order aside, and to consider the amended engineer's report and the amended viewers' report, if any, and to make findings and an order thereon the same as is provided in sections 106.191 and 106.201. All proceedings thereafter taken shall be the same as is provided upon the original findings and order of the board or court.

[1947 c 143 s 24]

106.25 [Repealed, 1947 c 143 s 67]

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

[1947 c 143 s 25; 1953 c 15 s 1]

106.26 [Repealed, 1947 c 143 s 67]

**106.261 SUPERVISION OF CONSTRUCTION.** The board or court shall require proper supervision and inspection by the engineer of all construction under contracts. The board or court shall cause all contracts entered into under the provisions of this chapter to be carried into effect and performed in accordance with the terms thereof and the plans and specifications therefor.

[1947 c 143 s 26]

106.27 [Repealed, 1947 c 143 s 67]

**106.271 CONSTRUCTION AND MAINTENANCE OF BRIDGES; AUTHORITY OF DIRECTOR.** The auditor or clerk shall notify the state and each municipality, railroad company, or other corporation to construct any bridge or culvert required upon its road or right of way, within a reasonable time named in the notice.

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.

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

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

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

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

No bridge or culvert, public or private, shall be constructed or maintained in or across any public drainage ditch with less waterway opening than specified in the engineer's report, except with the written approval of the director. If the engineer's report does not specify the waterway opening, no bridge or culvert, public or private, in or across any public drainage ditch, may be constructed or reconstructed without the approval of the director of the dimensions of waterway opening.

[1947 c 143 s 27]

106.28 [Repealed, 1947 c 143 s 67]

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

[1947 c 143 s 28]

106.29 [Repealed, 1947 c 143 s 67]

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

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

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

[1947 c 143 s 29]

106.30 [Repealed, 1947 c 143 s 67]

**106.301 EXTENSION OF TIME ON CONTRACTS.** The auditor or auditors are authorized to extend the time for the performance of any contract as herein provided. Application for extension shall be made by the contractor in writing. Notice of such application shall be given to the engineer and the attorney for the petitioners and, in case of judicial proceedings, to the county auditors of the several coun-

ties. The auditor or auditors may grant such extension for good and sufficient reasons shown. Such extension shall not affect any claim for liquidated damages which may accrue after the time originally limited and before extension, or accruing after the limit of such extension.

[1947 c 143 s 30]

**106.31** [Repealed, 1947 c 143 s 67]

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

[1947 c 143 s 31]

**106.32** [Repealed, 1947 c 143 s 67]

**106.321 CONTRACTOR'S DEFAULTS.** If the contractor defaults in the performance of his contract, the auditor shall notify by mail the contractor, his bondsmen and the engineer and, in a judicial proceeding, the auditors of the other counties affected. The notice shall specify the default and state that if the default is not promptly removed and the contract completed, the unfinished portion of the contract will be re-let. If the bondsmen promptly proceed with the completion of the contract, the auditor or auditors may grant an extension of time. If the contract is completed by the bondsmen, the balance due on the contract shall be paid to them, less such damages as the county or counties have sustained by the default.

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

[1947 c 143 s 32]

**106.33** [Repealed, 1947 c 143 s 67]

**106.331 ACCEPTANCE OF CONTRACT.** Upon the completion of any contract, the engineer shall report that fact to the board or court showing the work performed thereunder, the contract price thereof, the amount paid on partial certificates and the balance unpaid. On filing the report, the auditor, or the clerk with the approval of the court, shall fix a time and place for hearing thereon and give notice of the hearing by publication or by ten days' notice by mail to the owners of all properties affected. The notice shall state the filing of the report, the time and place for hearing, and that any party objecting to the acceptance of the contract may appear and be heard.

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



on the auditors of the respective counties for their proportionate share of the balance found due on the contract, and, upon presentation of the order, the auditor shall draw a warrant upon the treasurer of his county for the amount specified in the order.

[1947 c 143 s 33]

106.34 [Repealed, 1947 c 143 s 67]

**106.341 AUDITOR'S LIEN STATEMENT.** After the letting of the contract for the construction of any drainage system, the auditor of each county affected thereby shall make in tabular form a statement showing the following facts:

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

(2) The description of all such lands and properties as the same appears in such report, together with the total number of acres in each tract according to the tax lists of such county.

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

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

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

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

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

[1947 c 143 s 34]

106.35 [Repealed, 1947 c 143 s 67]

**106.351 FILING LIEN STATEMENT; EFFECT THEREOF.** The lien statement shall be certified by the auditor and recorded by the register of deeds of the county. The fees of the register of deeds for recording shall be paid on allowance by the county board, and the lien statement, after recording, shall be returned and preserved by the auditor.

The amount that each tract and property will be liable for, as shown by the statement, and the interest thereon as hereinafter provided, shall be and remain a first and paramount lien thereon until fully paid; and shall take precedence of all mortgages, charges, encumbrances and other liens. Payment thereof shall be made as hereinafter provided. The filing of the statement shall be notice to all parties interested of the existence of the lien.

[1947 c 143 s 35]

106.36 [Repealed, 1947 c 143 s 67]

**106.361 SUPPLEMENTAL LIEN STATEMENT.** If any items of the cost of the drainage system have been omitted from the original lien statement, then a supplemental lien statement, including the omitted items, shall be made and recorded in the office of the register of deeds in the same manner and with the same force and effect as provided in sections 106.341 and 106.351. The aggregate of the original lien and any supplemental lien or liens may not exceed the benefits.

[1947 c 143 s 36]

106.37 [Repealed, 1947 c 143 s 67]

**106.371 PAYMENT OF LIENS; INTEREST.** Liens filed against property benefited under the provisions of this chapter, shall be payable to the treasurer of the county, as follows:

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

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

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

The principal lien shall bear interest at a rate not to exceed five per cent per annum from the date of the filing of the lien statement in the office of the register of deeds. The rate of interest shall be fixed by the board but, if bonds are issued by the county, the lien shall bear the same rate of interest as the bonds. All interest shall constitute an additional lien on all lands and properties until fully paid and shall be due and payable as follows:

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

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

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

[1947 c 143 s 37]

106.38 [Repealed, 1947 c 143 s 67]

**106.381 ENFORCEMENT OF ASSESSMENTS; PUBLIC AND CORPORATE.**

Assessments filed for benefits to any municipal corporation shall thereupon become a liability of such corporation and shall be due and payable with interest in instalments on November 1 of each year as provided in section 106.371. If such instalments and interest are not paid on or before November 1, the amount thereof, with interest added as provided in section 106.371, shall be extended by the county auditor against all the property in such municipal corporation liable to taxation, a levy thereof made thereon, and the same shall become due, to be paid and collected in the same manner and at the same time as other taxes.

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

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

All state lands and properties, including rural credit lands, shall be assessable for benefits received and such assessment shall be paid by the state from any funds appropriated and available therefor upon certification thereof to the state auditor.

All properties owned by any railroad or other utility corporation benefited by any such drainage system, shall be liable for the assessments for benefits thereto the same as taxable lands. From the date of the filing by the county auditor in the office of the register of deeds of the lien statement, the amount of the assessment

with interest shall constitute a lien against all property of the corporation within the county. Upon default the assessment may be collected by civil action or, the lien may be foreclosed by action in the same manner as provided by law for the foreclosure of mortgage liens, and the county where the lien is filed shall have the right of action against any such corporation for the enforcement and collection of such assessment.

[1947 c 143 s 38]

106.39 [Repealed, 1947 c 143 s 67]

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

[1947 c 143 s 39]

106.40 [Repealed, 1947 c 143 s 67]

**106.401 APPORTIONMENT OF LIENS.** In all cases in which a lien has been established against any tract of land in any drainage ditch proceeding and no instalment of such assessment or interest thereon shall be in default, any person having an interest in the land, or any part thereof, may petition the district court of the county wherein the land is situated to have the lien apportioned between specified portions of the tract. Upon the filing of this petition, the court shall by order fix a time and place when the petition shall be heard and requiring personal service of a notice of the hearing to be made upon the county auditor, the occupants of the premises, and on all parties having an interest in the premises, as shown by the records in the office of the register of deeds of the county, at least ten days before the hearing; or, if for any reason personal service cannot be made upon all of such persons, notice may be given by publication. The court shall hear all evidence bearing upon the matter and shall by order apportion the lien. A certified copy of the order shall be recorded in the office of the register of deeds of the county and filed in the office of the auditor. The petitioner shall pay the costs incurred for service or publication.

[1947 c 143 s 40]

106.41 [Repealed, 1947 c 143 s 67]

**106.411 BOND ISSUES.** The county board of each county wherein properties are located which are assessed for benefits by reason of the construction of any ditch system, is authorized, after the lien statement has been recorded in the office of the register of deeds, to issue the bonds of the county in such amount as may be necessary to defray, in whole or in part, the cost of establishing and constructing the ditch. The county board may include in a single issue bonds for two or more ditch systems, but the total amount thereof shall not exceed the total amount of assessments recorded in the county.

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

Each bond shall contain a recital that it is issued by authority of and in strict accordance with this chapter.

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

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

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

The county board shall provide moneys for the payment of the principal and interest of the bonds as they severally mature. The board may pay drainage bonds issued under the provisions of this chapter out of any available funds in

the county treasury when the moneys on hand in the ditch fund on account of which bonds were issued are insufficient therefor; but the funds from which said moneys have been taken shall be replenished with interest for the time actually needed at the rate of six percent per annum from assessments on such ditch or from the sale of funding bonds as hereinafter provided.

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

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

[1947 c 143 s 41; 1951 c 357 s 1]

106.42 [Repealed, 1947 c 143 s 67]

**106.421 FUNDING BONDS.** Subdivision 1. **Issuance.** The county board of any county may issue ditch funding bonds under the conditions and terms in this section prescribed.

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

Subd. 3. **Auditor's certificate.** Before bonds shall be authorized or issued under the provisions of this section, there shall first be presented to the county board and entered in its records a certificate signed by the county auditor under his seal. This certificate shall state the amount that will be required to make good any existing shortage within the meaning of subdivision 1, and the probable amount which will be required to pay the principal and interest of the county's outstanding ditch bonds to become due within one year thereafter. The certificate shall state such amount in detail and specify the part thereof which is applicable to each of the several ditch systems. The certificate shall be conclusive evidence that the county has authority to issue bonds under the provisions of this section to an amount not exceeding the aggregate amount specified in such certificate.

Subd. 4. **Issuance of bonds.** Pursuant to the filing of the certificate, the county board of such county is empowered to issue and sell, from time to time, the county's bonds for the purpose of the funds of the ditches listed in the certificate. These bonds shall be designated ditch funding bonds. Their issuance shall be authorized by resolution of the county board. They shall be sold and issued and shall bear interest and obligate the county as provided in section 106.411; and shall mature serially in annual instalments payable within not more than 15 years.

Subd. 5. **Obligation.** The proceeds of any such bonds paid into the treasury shall be applied to the purpose for which they are issued.

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

[1947 c 143 s 42]

106.43 [Repealed, 1947 c 143 s 67]

**106.431 FEES AND EXPENSES; PAYMENT.** Subdivision 1. **Fees and expenses.** The following fees and expenses shall be allowed and paid for services rendered under this chapter:

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

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

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

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

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

[1947 c 143 s 43]

106.44 [Repealed, 1947 c 143 s 67]

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

[1947 c 143 s 44]

106.45 [Repealed, 1947 c 143 s 67]

**106.451 PAYMENT OF COSTS AND EXPENSES; WARRANTS; DITCH FUNDS.** The county board shall provide the funds for the payment of the costs and expenses incurred in any drainage system.

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

All costs and expenses incurred in any drainage proceeding shall be paid out of the funds of such ditch by warrants drawn thereon. The funds in any ditch shall not be used to pay costs and expenses in any other ditch. If no funds are available in the ditch fund on which the warrant is drawn, the board may, by unanimous resolution, transfer funds from the general revenue fund of the county to such ditch fund. In such case the county board shall thereafter cause the general revenue fund to be reimbursed from the funds of such ditch together with interest for the time actually needed at the same rate per annum as is charged on the liens and assessments.

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

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

[1947 c 143 s 45]

106.46 [Repealed, 1947 c 143 s 67]

**106.461 DUTIES OF PUBLIC EXAMINER.** Upon application of any county, indicated by resolution of the county board, the public examiner shall examine into the accounts and records relating to any or all drainage proceedings in the county. When so requested, the examiner shall establish a system of accounts with each drainage system in the county.

The compensation of the examining accountant and his travel and hotel expenses, shall be audited and allowed by the county board, paid into the state treasury, and credited to the revolving fund of the public examiner. The auditor shall cause such expenses to be apportioned among the several drainage systems in the county.

[1947 c 143 s 46; 1949 c 34 s 1]

**106.47** [Repealed, 1947 c 143 s 67]

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

(b) After construction, all highway bridges and culverts on any ditch system hereafter established shall be maintained by the municipality or public authority charged with the duty of maintaining the same as set forth in section 106.271. Private bridges and culverts, constructed as a part of any ditch system hereafter established, shall thereafter be maintained by the county as a part of such ditch system.

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

(b) If the board finds that the estimated cost of such repairs will be less than \$1,000, it may have such work done by day labor without advertising for bids or entering into a contract therefor. The county board is limited in the expenditure of money therefor as herein provided. In one calendar year the board shall not spend or contract to be spent for repairs or maintenance on one ditch system a sum greater than ten per cent of the cost of construction thereof in that county, except as provided in subdivision 4. 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.

(c) Before ordering the levy of an assessment for repairs, the county board, in its discretion, may give such notice of hearing thereon as it may deem necessary.

(d) Notwithstanding any other provision of law, the county board shall not order the repair of a drainage system if a portion of the lands assessed for benefit at the time of the establishment of the drainage system lies within a game preserve, area, or project established pursuant to Minnesota Statutes 1945, Sections 84A.01, 84A.20, or 84A.31 unless the commissioner of conservation shall have theretofore consented in writing to the repair, nor shall any lands to which the state has title in any such game preserve, area, or project be assessed for benefits in any proceeding for repair of any such drainage system instituted by petition unless the commissioner of conservation has joined in the petition.

Subd. 3. **Contribution by counties.** In the case of any ditch situated in two or more counties and at the end of each year or other convenient period following its completion, the board of any county affected may petition the court having jurisdiction thereof. Such petition shall show the nature of the repairs made to the ditch in the county during the period and the necessity thereof, and the costs and expenses thereof, and shall pray the order of the court apportioning such costs and expenses among the counties affected. Upon the filing of the petition the court shall, by order, fix a time and place for hearing thereon and shall cause the clerk to give notice of the hearing to each county affected, by publication and by mailed notice to its auditor. At or prior to the time of hearing, the auditor of each county affected, except petitioner, shall file with the court a statement showing all repairs made to the ditch in his county, not previously reimbursed hereunder, together with the nature thereof, the necessity thereof, and the costs and expenses thereof. At such

hearing the court shall have jurisdiction of the respective counties and shall hear all interested parties. If it appears that the repairs made by either or all the counties affected were necessary, and that the amounts expended therefor were reasonable and proper, the court shall so find and shall balance the accounts between the respective counties, charging each county with its proportionate share of the costs and expenses of all such repairs made by all the counties and crediting each county with the portion thereof theretofore paid by it, and shall order reimbursement by any county or counties affected to any other county or counties as shall be just. A certified copy of the order shall be filed by the clerk with the auditor of each county, and the county boards shall respectively make reimbursement as therein required.

**Subd. 4. Petition; proceedings.** (a) Upon the filing of a petition by any party or corporation, municipal or otherwise, interested in or affected by a drainage system, with the auditor in the case of a drainage system lying wholly within the county, or with the clerk of the district court having jurisdiction over said ditch in the case of a drainage system affecting two or more counties, therein setting forth that the drainage system is out of repair, it shall be the duty of the auditor in the case of a drainage system lying wholly within the county to present the same to the county board at its next meeting, and of the clerk in the case of a drainage system affecting two or more counties, to present the petition to the judge of the court within ten days from the filing thereof. Thereupon, if it appears to the board or court that such ditch is out of repair, the board or court shall appoint an engineer to examine the ditch and make report of the necessary repairs, with the estimated cost thereof, and all details, plans and specifications required to supply the necessary details to let a contract therefor. The board or court may order a hearing on the petition before appointing the engineer on such notice as it may require, if a hearing is deemed advisable.

(b) Upon the filing of the engineer's report, notice of hearing thereon shall be given as required by section 106.101. If at this hearing it appears from the engineer's report and the evidence presented that the repairs recommended are necessary and for the best interests of the property owners affected, and the board or court shall so find, the board or court shall make findings and order accordingly. In the case of a drainage system lying wholly within the county, the order shall direct the county auditor and the chairman of the county board, and in the case of a drainage system affecting two or more counties the order shall direct the auditors of the several counties affected to proceed and let a contract for the repair of the system as shown in the engineer's report and as determined necessary by the board or court, in the manner provided in this chapter for original ditch construction.

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

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

(e) If it is proposed to repair a ditch by resloping of open ditches, leveling waste banks, or removing trees, or by two or all of these actions, before ordering the repair, the board or court shall find and determine whether the resloping, leveling, and tree removal will require the taking of any property not contemplated and included in the original proceeding for the establishment of the ditch, and further, whether the waste bank leveling will directly benefit land upon which bank leveling is specified. If it appears that such resloping, leveling and tree removal will require such taking, or directly benefit such land, or both, before ordering the repair, the board or court shall appoint viewers to report thereon and hear and determine such damages and benefits, as provided by Minnesota Statutes, sections 106.151, 106.161, 106.171, 106.181, 106.191 and 106.201. Such damages, if any, shall be paid as provided by Minnesota Statutes, section 106.251 as a part

of the cost of the repair, and such benefits, if any, shall be added to the benefits theretofore determined as the basis for the pro rata assessment for the repair of such ditch in such repair proceeding only.

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

(b) If the assessment be not payable in instalments, no lien need be filed, and the assessment, plus interest from the date of the order to August 15 of the succeeding calendar year, shall be entered on the tax lists for the year and be due and payable with and as a part of the real estate taxes for such year. When any such assessment is levied and made payable in instalments, the county auditor shall file for record in the office of the register of deeds an additional tabular statement in substance as provided in section 106.341, and all the provisions of sections 106.351, 106.371, and 106.381 relating to collection and payment shall apply thereto. Upon the filing of the tabular statement, the county board may issue and sell bonds, as provided by section 106.411 and in such event the rate of interest on the lien shall be the same as the interest rate on the bonds, and the instalments and interest shall be due and payable and shall be entered on the tax lists and collected the same as the original lien.

**Subd. 6. Creation of fund.** For the purpose of creating a fund to the credit of any drainage system to be used for repairs exclusively, the county board is authorized to apportion and assess the amount of such fund against all the parcels of land, corporations and municipalities theretofore assessed for benefits in proceedings for the construction of the ditch system, including lands not originally assessed therefor but subsequently found to be benefited according to law. Such assessment shall be made pro rata according to benefits determined. The fund so created shall not exceed ten per cent of the original cost of construction of the ditch system. Whenever such fund to the credit of one ditch system shall exceed ten per cent of the total original cost of the ditch, no further assessment for the purpose of creating such fund shall be made until such fund shall have fallen below that percentage. Assessments shall be collected as provided in subdivision 5.

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 as hereinbefore provided.

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

(b) Upon the hearing on the engineer's report, if it appears that lands or properties which were not assessed for benefits resulting from the construction of the ditch system have been benefited by reason thereof, the board or court shall so find, and, before ordering the letting of a contract for the making of such repairs, shall appoint viewers as provided by section 106.141. The viewers shall proceed to ascertain and determine the benefits to all lands, roads, corporations, and municipalities benefited by the original construction of such ditch system and not assessed for benefits arising from its construction and shall report the same to the board or court,



as the case may be, as provided by section 106.151. Upon the filing of such report, notice of hearing thereon shall be given as required by section 106.171 and the board or court shall thereupon have jurisdiction of each tract of land and property in the viewers' report described, as set forth in section 106.181.

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

(d) Any person aggrieved by the assessment as determined by the board or court may appeal from the order determining the same as provided by section 106.631.

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

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

[1947 c 143 s 47; 1949 c 498 s 7; 1953 c 532 s 1]

**106.48** [Repealed, 1945 c 82 s 7]

**106.481 DITCH INSPECTORS.** In any county where drainage systems constructed have cost in the aggregate more than \$50,000, the board may, in its discretion, appoint a competent person as county ditch inspector. The inspector may be the county highway engineer. The inspector shall examine all drainage systems within the county as the board shall designate and require. The appointment shall be for such time and for such compensation as the board may specify. The inspector shall report in writing to the county board the result of his examination of any ditch, designating the portion thereof in need of repair, together with the location and nature of the repair needed. The board shall consider such report at its next meeting and is authorized to cause all or any part of such repairs to be made as provided by section 106.471.

[1947 c 143 s 48]

**106.483-106.488** [Repealed, 1947 c 143 s 67]

**106.49** [Repealed, 1945 c 71 s 2; 1945 c 82 s 7]

**106.491 OBSTRUCTION OF DITCH.** If it at any time appears to the board that any ditch has been obstructed by the installation of bridges or culverts of insufficient waterway opening or otherwise, the board shall forthwith notify the person or public authority responsible for such obstruction to remove the same or to show cause before the board at a time and place fixed in the notice why such obstruction should not be removed. If such obstruction be on private property, the owner thereof shall be deemed prima facie responsible therefor and shall in any event be so notified. Such notice shall be by registered mail not less than ten days before the return date thereof. At the time and place fixed in the notice, the board shall hear all interested parties and if it appears that the ditch has been obstructed by any person or public authority, the board shall so find and order the obstruction removed by the person or authority responsible therefor within a reasonable time fixed in the order. If the obstruction be not removed within the time fixed, the board shall cause the same to be removed and in such event the auditor shall make a statement of the cost thereof and shall file the same in the office of the register of deeds of the county as a lien upon the premises on which the obstruction is located or against the public or other corporation responsible therefor; and such lien shall be enforced and collected the same as liens made for ditch repairs as provided in this chapter; except that no lien may be filed against private property if it appears that the owner thereof is not responsible for the obstruction. In such event the cost of removal may be enforced against the responsible party by civil action.

[1947 c 143 s 49]

**106.492 ALTERATION IN PUBLIC DRAINAGE DITCH AFFECTING TRUNK HIGHWAY.** Upon the filing of a petition by the commissioner of highways with the county auditor in the case of a drainage system lying wholly within a county, or with the clerk of the district court having jurisdiction over said ditch in the case of a drainage system affecting two or more counties, therein setting forth that it would be advantageous or desirable in the construction or maintenance of a trunk highway to make a minor alteration or change in a public drainage system directly affecting a trunk highway and that such alteration or change will not affect the functioning or efficiency of such public drainage system, it shall be the duty of, the auditor, or the clerk with the approval of the judge, to fix a time and place for hearing thereon and to give notice of the hearing by publication, as defined by section 106.171. Upon the filing of the petition the commissioner of highways shall also file a plan showing in detail the alteration or change petitioned for. If upon said hearing it appears to the county board or district court that such alteration or change in the public drainage system will not affect or impair the efficiency of such drainage system, the board or court shall make its order allowing the commissioner of highways to make the alteration or change petitioned for. Upon the making of such order by the county board or the court, the commissioner of highways may proceed at the sole cost and expense of the state to make such alterations or changes as may be in said order allowed, damages, if any, for any additional lands necessary for such change or alteration being first duly paid or secured. Upon completion of the alteration or change the commissioner of highways shall file with the auditor or clerk a map drawn to scale showing thereon the change or alteration made and shall also file a profile of all lines of the alteration or change in the ditch showing graphically the elevation of the ground and gradient, whether open or tiled, the size of tile and the bottom width and side slope of open ditch sections, and such other information as may appear necessary for the understanding thereof. If the map and profile be filed with the clerk, duplicates thereof shall also be filed with the auditor of each county affected. Upon the completion of the alteration or change herein provided for, the ditch shall thereafter include such alteration or change as a part thereof with the same force and effect as though it had been originally so constructed and established.

[1949 c 325 s 1]

**106.493 DAMAGE TO LANDOWNERS; RECOVERY.** Within six years after completion of any alteration or change, as provided in section 106.492, any owner or owners of lands in the drainage system claiming damages by reason of such alteration or change may bring an action in the district court of the county in which such lands are located to compel the commissioner of highways to pay the damages, if any, caused by such alteration or change.

[1949 c 325 s 2]

**106.495** [Repealed, 1947 c 143 s 67]

**106.50** [Repealed, 1947 c 143 s 67]

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

cent of the resident owners of the property or by the owners of 26 per cent of the area of the property affected by such laterals or lateral systems or separate main ditch shall be sufficient.

The provisions of section 106.031 relative to signatures of public and corporate officials, shall apply to this section. The petition shall designate the drainage system proposed to be improved by number or other description sufficient to identify the same and set forth that the ditch is of insufficient capacity or needs enlarging or extending so as to furnish sufficient capacity or a better outlet; with a description of the starting point, general course and terminus of any extension, and that the proposed improvement will be of public utility and promote the public health. The petition shall contain an agreement by the petitioners that they will pay all costs and expenses which may be incurred in case the proceedings are dismissed.

**Subd. 2. Subsequent proceedings.** Upon the filing of such petition and a bond as provided by section 106.041, it shall be the duty of the auditor, in the case of a drainage system lying wholly within the county, to present the same to the county board at its next meeting, and of the clerk, in case of a system effecting two or more counties, to present the same to the judge of the court within ten days of the filing thereof. Thereupon the board or court shall appoint an engineer to examine the drainage system and to make report thereon. Thereafter the proceedings shall be as set forth in this chapter, section 106.051 et seq., as provided in the case of original proceedings for the establishment of a ditch system. The benefits and damages determined shall be such as result from the improvements and subsequent assessments for the repair of the improvement shall be based on the benefits so determined.

**Subd. 3. Definition, excludes extension of original ditch system.** The improvement contemplated by this section may include extension only downstream to a more adequate outlet, not exceeding one mile, and the straightening, deepening, or enlarging of the original ditch system, including the construction of open ditches for relief of or in place of tile or the construction of tile in place of open ditch, but shall not include any extension of the original ditch system, except outlet extension. This subdivision shall apply only to ditch improvement proceedings instituted after the effective date of this act.

**Subd. 4. Petition for separable part of ditch system.** If the existing ditch system is out of repair and the petition for the improvement is for a separable part only of the existing ditch system, the engineer may include in his detailed report a statement showing the proportionate estimated cost of the improvement required to repair and restore the separable part of the existing system proposed to be improved and the estimated proportionate cost of the added work required to accomplish the improvement. In such case, notice of hearing on the engineer's report shall be given by publication and mailing to all persons owning lands and properties affected by the existing ditch system. The hearing may be held at the same time and place as the hearing for the establishment of the improvement. At the hearing, if it appears that only a separable portion of the existing ditch system will be improved and that such portion is out of repair, the board or court shall so find and shall find the proportionate cost of the improvement that would be required to repair the portion of said ditch to be improved, and by order direct that such proportion be allocated as repairs to be assessed against all the lands and property benefited by the entire ditch, as provided by Minnesota Statutes, Section 106.471, with the balance only of the cost of the improvement to be assessed in addition thereto against the lands benefited by the improvement.

[1947 c 143 s 50; 1953 c 533 s 1]

106.51 [Repealed, 1947 c 143 s 67]

**106.511 IMPROVEMENT OF OUTLETS; PETITION; PROCEEDINGS.** In any case where one or more ditches or drainage systems, either public or private, have been constructed, or in any case where proceedings are pending for the construction of one or more public drainage systems, the waters from which do, or it is contemplated shall, empty into an existing drain or watercourse or body of water, and the construction of the drains has caused, or is likely to cause, the overflow of the existing drain, watercourse or body of water and the inundation of adjoining lands, any county affected or the owners of such adjoining lands may institute proceedings as follows: A petition shall be signed by the county board of any county affected, or not less than 26 percent of the resident owners of such adjoining lands or by the owners of not less than 26 percent of the area of such lands. The petition shall

describe the lands which have been or are likely to be inundated and in general terms by number or otherwise the drain or drains which have caused, or are likely to cause, such overflow and inundation. The petition shall further describe the situation of the drain, watercourse or body of water and outlet and show the necessity of the improvement thereof by enlarging the same or controlling the waters therein by off-take ditches or additional outlets or otherwise, and that such improvement will protect such adjoining lands from overflow and be of public benefit and utility and improve the public health. The petition shall state that the petitioners will pay all costs and expenses which may be incurred in case the proceedings are dismissed or for any reason no contract for the construction thereof is let. The petitioners, except the petition be made by the county board, shall give bond as provided by section 106.041. If the improvement and the adjoining lands described in the petition and the lands drained by the drain or drains causing the inundation are all located in one county, the petition shall be filed with the county auditor, except in case the petition be made by the county board. In such case it shall be made to the court and filed with the clerk of the court. If the improvement and such lands, or any part thereof, are located in two or more counties, the petition shall be filed with the clerk of the district court of any county in which the improvement or any part thereof is located. Thereafter the county board or the district court, as the case may be, shall have jurisdiction of said petition and the improvement and the lands and properties affected, and all proceedings shall thereafter be had for the establishment and construction of the improvement and the assessment of lands benefited thereby, the same as in the case of a petition for the establishment of a public drainage system as set forth in this chapter.

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

[1947 c 143 s 51]

**106.52** [Repealed, 1947 c 143 s 67]

**106.521 LATERALS.** Persons owning property in the vicinity of an existing public drainage system may petition for a lateral or a lateral system connecting such lands with the drainage system. The petition shall be signed by 26 percent of the resident owners of the property or by the owners of 26 percent of the area of the property traversed by such lateral or lateral system. If the lands to be drained by the lateral are situated in one county, the petition shall be filed with the auditor. If such lands extend into two or more counties, the petition shall be filed with the clerk. The petition shall describe in general terms the starting point, general course and terminus of the proposed lateral or lateral system, together with the lands traversed thereby, and shall set forth the necessity for the construction thereof, and that the same, if constructed, will be of public benefit and utility and promote the public health, and praying that said lateral be constructed and connected with said ditch. The petition shall provide that the petitioners will pay all costs and expenses which may be incurred in case the proceedings are dismissed or if for any reason no contract for the construction thereof is let. The petitioners shall give bond as provided by Minnesota Statutes, Section 106.041, and thereafter the proceedings shall be had and carried to final determination under the provisions of this chapter the same as original proceedings for a ditch system. No lateral or lateral system shall be constructed for the drainage of lands not assessed benefits for such existing public drainage system until express authority for the use of the existing system as an outlet for such lateral or lateral system has been granted pursuant to proceedings under Minnesota Statutes, Section 106.531.

[1947 c 143 s 52; 1953 c 531 s 1]

**106.53** [Repealed, 1947 c 143 s 67]

**106.531 DRAINAGE SYSTEM, USE AS OUTLET.** After the construction of any county or judicial ditch, no public or private ditch or ditch system, either open or tiled, for the drainage of land not assessed for benefits for such ditch, shall be constructed so as to use the ditch as an outlet without having first secured

express authority so to do from the county board, in the case of a system lying wholly within one county, or from the district court that originally ordered the construction, in the case of a system extending into two or more counties. Any person desiring to so utilize an existing ditch shall petition the board or court. Upon filing the petition, the auditor, or clerk with the approval of the judge, shall fix a time and place for hearing thereon and shall give notice of the hearing by publication. Upon the hearing the board or court shall consider the capacity of the outlet ditch and, if consent be given to construct the ditch or ditch system, shall fix by order the terms and conditions for the use of the ditch as an outlet and shall fix the amount that shall be paid therefor. No private ditch or ditch system shall be constructed using the ditch as an outlet until the sum fixed by the order is paid by the petitioner to the county treasurer of the county wherein petitioner's property is located. The amount so fixed for an outlet charge for any proposed public ditch or ditch system shall be deemed a part of the cost of such proposed ditch or ditch system to be paid by assessment against the lands and properties benefited by the proposed ditch or ditch system, as provided by section 106.341, and credited to the fund of the existing ditch. The order shall also describe the property to be benefited by the ditch or ditch system and shall fix the amount of benefits to such property for the outlet. The property so benefited shall be liable for assessments thereafter levied in such ditch system, on the basis of the benefits so found, the same as though such benefits had been determined in the original order establishing the ditch.

[1947 c 143 s 53; 1953 c 530 s 1]

**106.54** [Repealed, 1947 c 143 s 67]

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

[1947 c 143 s 54]

**106.55** [Repealed, 1947 c 143 s 67]

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

[1947 c 143 s 55]

106.56 [Repealed, 1947 c 143 s 67]

**106.561 MUNICIPAL SEWER CONNECTIONS.** Subdivision 1. **Petition.** Any municipality desiring to use any public drainage system as an outlet for its sewer system or the overflow therefrom, may petition the county board where the system desired to be used as an outlet lies wholly within one county, or the court having jurisdiction thereof where the system extends into two or more counties. The petition shall set forth the necessity for the use of the system as an outlet and that the same will be of public benefit and utility and promote the public health. The petition shall be accompanied by a plat showing the location of the drainage system and of the sewerage system of the municipality with plans and specifications showing the plan of connection. The same shall have the approval of the state water pollution control commission.

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

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

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

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

[1947 c 143 s 56]

106.57 [Repealed, 1947 c 143 s 67]

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

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

[1947 c 143 s 57]

106.58 [Repealed, 1947 c 143 s 67]

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

[1947 c 143 s 58]

106.59 [Repealed, 1947 c 143 s 67]

**106.591 RECORDS, PRIMA FACIE EVIDENCE.** The record of any proceedings conducted under the provisions of this chapter and of any order made by the county board or the district court in such proceedings, or the certified copy thereof, shall be prima facie evidence of the facts therein stated and of the regularity of all proceedings prior to the making of the order.

[1947 c 143 s 59]

106.60 [Repealed, 1947 c 143 s 67]

**106.601 FAILURE OF BOARD OR COURT TO ATTEND HEARINGS.** In all cases where an order has been made and notice given calling a hearing in any matter connected with a proceeding under this chapter, and the board or court for any cause shall fail to appear at the time and place specified, the auditor or clerk shall continue the hearing to such other date as may be deemed necessary and notify the board or court of the continuance and the date of hearing. Such continuance shall continue the hearing and jurisdiction to the date fixed by the auditor or clerk.

[1947 c 143 s 60]

106.61 [Repealed, 1947 c 143 s 67]

**106.611 EFFECT OF DEFECTIVE PROCEEDINGS.** No party may take advantage of any error in any drainage proceedings, nor of any informality, error, or defect appearing in the record of the proceedings, unless the party complaining thereof is directly affected thereby. The modification of the benefits or damages to any property, or the enjoining of collection of any assessment, shall in no manner affect any other property or the collection of any assessment thereon.

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

[1947 c 143 s 61]

106.62 [Repealed, 1947 c 143 s 67]

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

[1947 c 143 s 62]

106.63 [Repealed, 1947 c 143 s 67]

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

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

Subd. 2. **Procedure on appeal.** (a) Any person appealing on the first or second ground named, may include and have considered and determined benefits or damages affecting property other than his own. Notice of such appeal shall be

served upon the owner or occupant of such other property or upon the attorney who represents such owner in the proceedings. Such notice of appeal shall also be served upon the auditor or clerk.

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

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

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

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

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

**Subd. 4. Appeal from orders.** Any party aggrieved thereby may appeal to the district court of the county where the proceedings are pending from any order made by the county board dismissing the petition for any drainage system or establishing or refusing to establish any drainage system. The appellant shall serve notice of appeal and give bond as provided in subdivision 2. Upon such appeal being perfected, it may be brought on for trial by either party upon ten days notice to the other, and shall then be tried by the court without a jury. The court shall examine the whole matter and receive evidence to determine whether the findings made by the county board can be sustained. At such trial the findings made by the county board shall be prima facie evidence of the matters therein stated, and the order of the county board shall be deemed prima facie reasonable. If the court shall find that the order appealed from is lawful and reasonable, it shall be affirmed. If the court finds that the order appealed from is arbitrary, unlawful, or not supported by the evidence, it shall make such order to take the place of the order appealed from as is justified by the record before it or remand such matter to the county board for further proceeding before the board. After determination of the appeal, the county board shall proceed in conformity therewith.

If such appeal be from an order establishing a ditch, the trial of any appeals from benefits or damages in the ditch proceeding shall be stayed pending the determination of such appeal; and, if the order establishing be affirmed, any such appeals from benefits or damages shall then stand for trial as provided by this



section. If such appeal be from an order refusing to establish a ditch, and if the court thereafter by order establishes the ditch, the county auditor shall give notice by publication of the filing of the order. Such notice shall be sufficient if it refers to the ditch by number or other descriptive designation and recites the purport of the order and the date of filing in the court. Any person aggrieved thereby may appeal to the district court upon the grounds and as provided by subdivisions 1 and 2, and such appeal shall be made as required by subdivision 2 within 30 days after the completion of publication of notice as herein required.

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

**Subd. 6. Appeal; repair, improvement or improvement of outlet.** In any proceeding before the board or court for the repair pursuant to petition, or for the improvement of any drainage system, or for public laterals thereto, or for the improvement of an outlet under section 106.511 or for the abandonment of any ditch, the same right of appeal to the district or supreme court shall be had as from a similar order made in a proceeding to establish a drainage system as herein provided; and on like grounds and with similar procedure.

[1947 c 143 s 63; 1949 c 357 s 1]

106.64 [Repealed, 1947 c 143 s 67]

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

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

[1947 c 143 s 64]

106.65 [Repealed, 1947 c 143 s 67]

**106.651 DIVERSION OF DRAINAGE.** After the construction of any ditch system, if waters are diverted from any lands or properties assessed for benefits from such ditch system so that the drainage therefrom no longer utilizes or affects the drainage system, then the owner or owners of such lands or properties may petition the board or court for an order setting such lands or properties out of the drainage system. If the drainage system be entirely in one county, the petition shall be filed with the auditor for consideration and determination by the county board and, if the system be in two or more counties, the petition shall be filed with the clerk for consideration and determination by the court. Upon the filing of the petition, the auditor, or the clerk, with the approval of the court, shall fix a time and place for hearing thereon and shall give notice of the hearing by publication to all persons interested in the drainage system. Upon hearing, if it appears that the waters from lands and properties of petitioners have been diverted from the drainage system and that such lands and properties are no longer benefited thereby and no longer utilize or affect the drainage system, and further, that setting such lands and properties off from the drainage system will not prejudice the owners of lands and properties remaining in the system, the board or court shall so find and shall by order direct that the lands and properties of petitioners be set off from the drainage system. No such order shall have effect to release such lands and properties from any lien theretofore filed on account of the drainage system, nor shall it release such lands and properties from any assessment or lien thereafter filed for expenses incurred on account of such ditch prior to the date of the order. The lands and properties so set off shall be deemed no longer affected by the ditch as to any

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proceeding thereafter had for the repair or improvement thereof, and no lien or assessment shall thereafter be made against such lands and properties for repairs or improvements made subsequent to the date of the order.

[1947 c 143 s 65]

106.66 [Repealed, 1947 c 143 s 67]

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

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

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

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

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

[1947 c 143 s 66]

106.67-106.79 [Repealed, 1947 c 143 s 67]

106.80 [Repealed, 1947 c 122 s 1]

106.81-106.93 [Repealed, 1947 c 143 s 67]