

## CHAPTER 112

## FLOOD CONTROL

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

Subd. 2. **Person.** "Person" means and includes person, firm, copartnership, association, or corporation other than public or political subdivisions.

Subd. 3. **Public corporation or municipal corporation.** "Public corporation" or "municipal corporation" means counties, towns, school districts, road districts, or other political divisions or subdivisions.

Subd. 4. **Court.** "Court" means the district court or the judge thereof and applies to the district court wherein the petition for the organization of the district was filed and granted, unless otherwise specified.

Subd. 5. **Board or board of directors or commissioners.** "Board" or "board of directors" or "commissioners" means the board of managers of the drainage district in this state in charge of the improvement.

Subd. 6. **Joint contracting parties.** "Joint contracting parties" means the parties representing the board of directors of the drainage district or districts in this state in charge of the improvement and the board, commission, or authorities representing such other state or states.

[1917 c. 442 s. 27] (6905)

**112.02 DISTRICT COURT JUDGE MAY ESTABLISH FLOOD CONTROL DISTRICTS.** When it becomes necessary or expedient in order to facilitate or control drainage into or from any lake, pond, or other body of water or any river, stream, or watercourse which forms to any extent the boundary line between this state and any other state or when it shall become necessary in order to control, to any extent floodwaters into, through, or from any such lake, body of water, stream, or watercourse, to raise, lower, or otherwise affect the stage or depth of water therein or in any stream, river, or watercourse flowing into this state therefrom or from any drainage basin in another state, which drainage or flood control shall cause benefit or damage to, or otherwise affect, property in this state and, to some extent, in such other state, the district court of any county in this state, or any judge thereof in vacation, is hereby vested with jurisdiction, power, and authority, upon the filing of a petition as specified in section 112.03 and the conditions stated are found to exist, to establish a drainage and flood control district and define and fix the boundaries thereof, which districts shall include territory abutting upon such boundary waters or affected by waters flowing into or from such boundary waters, and may include territory within or partly within and partly without any county

and may include the whole or any part of one or more counties, including the county in which the petition is filed, but shall include territory forming the whole of a natural river or drainage basin and within which the waters, directly or through tributaries, find their way into and through one common outlet, and the court is hereby vested with jurisdiction, power, and authority, under the conditions provided in this chapter, to make all necessary orders providing for the construction of any and all improvements specified in this chapter as may be found necessary for any of the following purposes within any such district so organized, or affecting such boundary waters or any river, stream, or watercourse flowing into or from the same within the limits of this state, including rivers or bodies of water affected by the overflow from such boundary waters:

(1) For regulating streams, channels, or watercourses by changing, widening, deepening, straightening the same, or otherwise improving the use and capacity thereof;

(2) For reclaiming by drainage, or filling, diking, or otherwise protecting lands subject to overflow;

(3) For providing for irrigation where it may be needed;

(4) For regulating the flow of water in streams or watercourses;

(5) For regulation and control of flood waters and the prevention of floods, by deepening, widening, straightening, or diking the channels of any stream or watercourse, and by the construction of reservoirs, or other means to hold and control such waters; and

(6) For diverting in whole or in part streams or watercourses and regulating the use thereof and, as incident to and for the purpose of accomplishing and effectuating all the purposes of this chapter, may make all such orders as may be necessary to authorize and direct the straightening, widening, deepening, or changing of the course or terminus of any natural or artificial watercourse, and to build, construct, or maintain all necessary dikes, ditches, canals, levees, wall embankments, bridges, dams, sluiceways, locks, and other structures that may be found necessary and advisable, and to create, establish, and maintain the necessary reservoirs or other structures; to hold, control, and regulate any and all flood waters within these districts, and acquire title to, in the name of the district, all necessary lands and other property, to construct and maintain reservoirs, dikes, or other structures to secure the proper control of the flood waters within the district. Nothing in this chapter shall be construed to interfere with the operation and use of any drainage law of this state.

[1917 c. 442 s. 1] (6879)

**112.03 PETITION FOR DRAINAGE DISTRICT.** Subdivision 1. **Where filed.** Before any district court shall establish any drainage and flood control district, as outlined in section 112.02, a petition shall be filed in the office of the clerk of the district court in any county containing territory to the extent of five townships included in the proposed district, which shall be signed by not less than 25 resident freeholders from each county abutting upon the main stream of the district having more than five townships within the proposed district.

Subd. 2. **Contents.** The petition shall set forth:

(1) The proposed name of the district;

(2) The necessity for the proposed work; and that it will be conducive to the public health, safety, and convenience and promote the welfare of the inhabitants of the district, and aid in the control of flood waters in such boundary waters and streams or rivers flowing into or from the same in this state; and

(3) A general description of the nature and purposes of the contemplated plan of improvement, explaining the necessity therefor, and shall include, in general terms, a description of the territory proposed to be included in the district. This description need not be given by metes and bounds or by legal subdivision, but shall be a sufficiently definite and accurate description so that the territory affected may be generally understood and, unless good reason be shown to the contrary, the same shall include all territory within a given watershed or drainage basin or all territory from which the waters from natural or artificial channels find their course through one general stream or channel. The territory to be thus included in any district shall be limited to territory within the natural watershed of the particular basin petitioned to be organized.

The petition shall pray for the organization of the district, the appointment of a governing board therefor, and that the boundaries thereof may be specifically fixed and defined by order of the court, and the district organized.

**Subd. 3. Petitions may be combined; limitation.** No petition containing a requisite number of signatures or petitioners shall be void or dismissed on account of any defects therein, but the court shall at any time permit the petition to be amended in form and substance to conform to the facts by correcting any errors in the description of the territory or by supplying any of the defects therein. Several similar petitions, or duplicate copies of the same petition, for the organization of the same district may be filed and all together be regarded as one petition, and any withdrawal of any signatures or petitioners from such petition after the same has been filed shall in no manner affect the jurisdiction of the court, and all petitions filed prior to the hearing hereinafter provided shall be considered by the court as a part of the original petition. No district shall be organized under the provisions of this chapter in any basin consisting of a stream or river wherein waters are flowing from any lake or body of water constituting the boundary waters where the territory of the district shall extend farther than 40 miles in a direct line along the valley from the boundary waters, but may include all tributaries that enter the basin or connect the stream within the limits of the district.

[1917 c. 442 s. 2] (6880)

**112.04 PETITIONERS' BOND FOR EXPENSES.** At the time of filing the petition provided for in section 112.03, or before the notice of hearing thereon is given, a bond shall be filed by the petitioners with the clerk, to be approved by the court and in such sum as he shall designate, sufficient to pay all expenses connected with the proceeding, in case the court refuses to organize the district, and, if at any time during the proceeding the court shall be satisfied that an additional bond is needed, he may so order; provided, that, if the petition is signed by the proper officials of two or more counties, accompanied by a copy of a resolution, passed by the board of county commissioners of the counties, that the counties will be responsible for such costs, then, and in that event, no bond shall be necessary.

[1917 c. 442 s. 3] (6881)

**112.05 HEARING ON PETITION.** Upon the filing of the petition with the clerk of the district court, as provided in section 112.04, he shall immediately notify the judge of the court of the filing thereof, who shall within ten days thereafter by order fix a time and place for hearing on the petition at some point within the limits of the proposed district, notice of which hearing shall be given by publication in at least one legal newspaper in each county affected by the petition for three successive weeks, the last of which publications shall be at least ten days prior to the date set for hearing. If the territory described in the petition shall include more than one county and territory within two or more judicial districts, the judge of the court where the petition is filed shall arrange with the judges of the other districts for a joint hearing upon the petition, which hearing may be at such time and place, within the territory described in the petition, as these judges shall jointly specify, and the finding by the majority of these judges shall be treated as the finding of the court, and at the hearing such districts shall be represented by one judge only; but the district court in which the petition was originally filed shall, for all other purposes except for the purposes of the joint hearing, and except as herein-after otherwise provided, have and retain original jurisdiction; but the absence from the hearing of the judge of one or more of the districts shall not affect the judgment or decree then entered, provided two or more judges are present.

[1917 c. 442 s. 4] (6882)

**112.06 FINDINGS AND DECREE, FILING.** At the time and place set for hearing on the petition, all parties interested may appear and be heard for and against the granting of the petition, but no delay shall be granted at the hearing except when necessary and as the court may order. If upon the hearing it shall appear that the purpose of this chapter would be subserved by the creation of a drainage and flood control district comprising the whole or certain portions of the territory outlined in the petition and the court shall so determine, the court shall immediately make and file its findings of all matters involved in the petition and shall by order direct and declare the district organized, designating in the order the name by which the district shall thereafter be known; and, upon the filing of the order with the clerk of the court where the petition was filed and a certified copy thereof in the office of the secretary of state, the district shall be and become

for all purposes of this chapter, a body corporate endowed with all the rights, privileges, and authorities herein designated, with power to sue and be sued, to incur debts and obligations, and to do and perform and exercise all the rights and privileges in this chapter enumerated.

The order or decree shall designate the place where the office or principal place of business of the district shall be located, which, unless special reasons arise to the contrary, shall be where the petition is filed; shall designate the number of directors or officers who shall constitute the first board of the district, who shall be no less than three, nor more than five, and name and appoint such directors.

If upon the hearing the court finds that any portion of the territory named in the petition should not be included in the district, the same may be excluded; but any territory not included in the petition within the 40-mile limit defined in section 112.03, subdivision 3, may at the hearing or at any subsequent hearing ordered by the court upon petition of 25 freeholders of the territory to be included, be added to the district and the boundaries thereof fixed accordingly; and if upon full hearing the court determine that the territory described in the petition or some part thereof should not be organized in the district, the petition may be dismissed and the cost incurred be taxed against the petitioners. After an order is entered establishing the district, the same shall be deemed final and binding upon all persons and property within the district and the organization of the district shall not be collaterally questioned in any suit or action in any court in this state.

[1917 c. 442 s. 5; 1921 c. 326 s. 1] (6883)

**112.07 BOARD OF DIRECTORS.** Within ten days after the filing of the order organizing the district in the office of the secretary of state the parties named therein as the first board of directors shall meet at the office of the clerk of the district court where the petition was filed, each take and subscribe the oath provided by statute to be taken by public officials, and file with the clerk of the court a bond in the sum of \$1,000 furnished by a proper surety company, the cost to be paid by the district, conditioned for the faithful performance of his duties, and they shall thereupon organize, by electing one of their number as president, and one of their number or a third party as secretary or clerk, and provide the necessary books and records; and if the place designated in the order as the general offices for the district shall be a county-seat, the board shall have the authority to elect the clerk of the district court of such county as clerk of the board and thereupon and thereafter all papers filed with the clerk shall be and constitute a filing with the board and the office of the clerk shall be the general office of the board and it shall be the duty of the clerk to keep and preserve the record of the board in his office and to do and perform such duties as shall be designated and required by the board, who shall have authority to fix his compensation. If the board shall consist of more than five members, it shall elect an executive committee of three of its members, consisting of the president and two other members, who shall have active charge of all work and improvements under the direction of the board.

The board shall meet at least semiannually and at such other times as it may designate or as occasion may require and at all such meetings a majority of the members thereof shall constitute a quorum and a legal meeting thereof may at any time be called upon eight days' notice by mail given by the clerk or any member of the board.

[1917 c. 442 s. 6; 1921 c. 326 s. 2] (6884)

**112.08 SELECTION OF TREASURER AND ENGINEER.** The board shall have full authority to elect or appoint a treasurer, who shall be a resident of the district and may be one of its members, who, before entering upon his duties as such, shall subscribe the oath required by statute in the case of public officials, and give bond in such sum as the board shall direct, which shall be not less than the total sum that shall at any time be in his hands or under his control belonging to the district, which bond shall be by a surety company, to be approved by the board, and the duties of the treasurer shall be such as the board may from time to time designate. Among other things, it shall be his duty to receive all moneys belonging to the district and deposit the same in such banks as the board shall designate, and it shall be the duty of the treasurer to require such banks to give a proper surety bond for the care and accounting for such moneys, and the treasurer shall pay out this money only on proper orders signed by the president and the secretary of the board.

The board may also employ a chief engineer and an attorney and such other engineers and attorneys or agents or assistants as may from time to time be needful

and necessary and provide for their compensation, all of which expense shall be taken and treated as a part of the cost of each particular improvement. The chief engineer shall be superintendent of all the works and improvements and shall have general charge of all work pertaining to flood control within the limits of the district.

[1917 c. 442 s. 7] (6885)

**112.09 TERMS OF MEMBERS OF BOARD.** The members of the board of directors of the district shall hold their office, where their number does not exceed three, one for a period of two years, two for four years; and, where their number shall consist of five members, two of the board shall hold their office for a period of two years, three for a period of four years, and in all other cases where the total number is divisible by two, then one-half shall be appointed for, and hold office for, two years, and the other one-half for four years; and, if there is an odd number, then the extra member shall hold his office for four years, and thereafter all shall be appointed for four years, and the judge of the district court wherein the county is located shall fill vacancies that occur in the board from any cause in the counties in his district; and each member of the board shall hold his office until his successor is elected and has qualified. The board when organized shall, for all purposes of this chapter, constitute a commission for the purpose of carrying into effect any and all orders, judgments, decrees, or directions made by the district court relative to any improvement authorized by this chapter within the limits of the district.

[1917 c. 442 s. 8] (6886)

**112.10 IMPROVEMENTS; MAPS, PLANS, SURVEYS.** After the organization of the board of directors of any drainage and flood control district organized under the provisions of this chapter, the board shall, upon the filing with it of a petition signed by not less than 25 freeholders of the district, or by the board of county commissioners of any county, or by the council of any village or any city likely to be affected by the proposed improvement, therein asking for the construction of any of the improvements authorized by the provisions of this chapter relative to drainage or flood control of any waters or any lake, pond, marsh, or body of water or river, stream, or watercourse within the district, therein describing the nature of the proposed improvement, the extent thereof, and describing the bodies of water, stream, or watercourse proposed to be improved or reservoir or other improvement constructed and, if the construction of a ditch or drain as a part of the proposed improvement, a description of the starting place, the general course, and terminus thereof, and setting forth the reasons and necessity for such improvement and that the same will affect the public health and general welfare; and the petition is accompanied by a bond signed by the petitioners, or any number of them, or other parties in their behalf, in such sum as the board may specify, conditioned for the payment of all costs and expenses in the event the petition is not granted, it shall be the duty of the board to cause to be made, at the earliest date possible, by its engineer, all necessary surveys, maps, plats, profiles, and plans covering the proposed improvement, and, in the performance of his duties in making the surveys and report, the engineer shall conform, as nearly as practicable, to the requirements of General Statutes 1913, Sections 5526 and 5527, and amendments thereto, and the board of directors, upon receipt of the report of its engineer, shall appoint three disinterested parties residents of this state to act as viewers, who, upon being notified of such appointment, shall, within ten days, proceed to inspect and examine all lands, highways, or other property likely to be affected by such improvement or that may be used or taken for the construction or maintenance thereof and make and file with the clerk of the board, with the plans and specifications, a detailed statement showing the benefits and damages that will result to all individuals, land and other property, or corporation, public or private, from the construction of the improvement and a list of the land claimed to be benefited and damaged and the amount thereof and of all land subject to assessment for the construction and maintenance of such improvement, and in the performance of their duties such viewers shall observe and comply with, so far as practicable, the requirements of section 106.17, except as required by the provisions of this chapter, and if the improvement relates to any lake, body of water, stream, or watercourse forming the boundary between this state and any other state and bordering on the district and is of such a nature as to call for, or render necessary, the deepening, widening, or straightening of the channel of any stream or watercourse forming the boundary line between this state and any other state, or the diking, and raising, lowering, or fixing the stage of water in any lake or body of water forming such boundary line, rendering necessary cooperation with

the drainage authorities of such adjoining state, or the deepening, straightening, or diking of any stream or river flowing into or from and materially affecting such boundary waters, or the use or control thereof, then, and in that event, the board of directors of the district is hereby authorized to confer with and enter into all necessary contracts and arrangements with the governing board of the drainage district or other tribunal in charge of drainage and flood control in such adjoining state or states, affected by the proposed improvement, for the purpose of agreeing upon a joint plan for the making of the improvement and the nature and extent thereof, and shall have full authority, together with the representatives of the other state or states, to employ one or more engineers to make a joint survey of such boundary waters and watercourses and to report to the joint contracting parties all such information as they may require to enable them to determine and agree upon a joint plan for the construction of the proposed improvement and may make all necessary arrangements for all expense that will be incurred in connection with the making of the survey and report by the engineers and adoption of the joint plan.

[1917 c. 442 s. 9; 1921 c. 326 s. 3] (6887)

**112.11 PROCEDURE OF JOINT CONTRACTING PARTIES.** Upon the filing of the report of the engineers appointed as provided in section 112.10, with the commissioners or board of directors of the drainage district in this state and with the commissioners or tribunals representing drainage in such other state, the joint contracting parties shall proceed to consider such report and to adopt such joint plan for the construction of the proposed improvement and the joint contracting parties may give notice of a hearing of the time and place for the consideration of the report and adoption of the joint plan, if deemed advisable, but, upon the adoption of the plan, the joint contracting parties shall appoint three disinterested parties to act as viewers, at least one of whom shall be resident of each state, and who shall, after taking the oath for the faithful performance of their duties, proceed, together with the engineer, to examine all the property affected or that is likely to be affected by the construction of the proposed improvement and shall make such report as shall be required, and, among other things, shall give a full description of all property and corporations affected by the improvement, together with a statement of benefits and damages that will result thereto; and it shall be their duty to assess the benefits and damages upon the property in the various states upon the same basis so that each will be charged and credited with its proper proportion of the benefits received and damages sustained, and shall include in the report a statement of the total cost of the proposed improvement, including damages and all costs and expenses, and shall make such report in duplicate or triplicate, as the case may require, and file one copy with the representative of each state and, upon the filing of the reports, the board of directors of the drainage district in this state and the representatives of such other state or states, shall fix a time and place in the vicinity of the proposed improvement, or some part thereof, convenient of access to all parties interested, for a hearing upon the report of the viewers and engineers, of which hearing notice shall be given by publication for two successive weeks in at least one weekly newspaper published in each county containing property affected by the improvement, the last of which publications shall be at least eight days prior to the date set for hearing; at which hearing the representatives of the several states shall attend in joint session and all parties interested shall be given a hearing for or against any matters contained in the report of the viewers and engineers, including joint plan and benefits and damages, and the representatives of the drainage and flood control district in this state and the representatives from such other states shall have full authority to consider and modify the report and, after full hearing, to adopt or reject the same; and if it shall then appear that the amount assessable against the property and corporations benefited shall be greater than the benefits received, then the petition shall be dismissed; but, if it shall appear that the total benefits are greater than the total sums assessable against the property and corporations benefited and that such improvement will be of great public benefit, the same shall be adopted; and, in that event, it shall be the duty of the joint contracting parties then in session to divide the total cost of the improvement, including all expenses in any manner connected therewith, among the several states in proportion to the benefits received as shown by the reports as finally adopted, and the joint plans as thus adopted and the division of the total costs so assigned to the several states shall be binding upon all parties to the joint arrangement in all subsequent proceedings relating thereto, and the findings and order so made

by the parties to the joint arrangement shall be executed in duplicate or in triplicate, as the case may require, and filed with the proper representatives of the several states.

[1917 c. 442 s. 10] (6888)

**112.12 BOARD TO PETITION DISTRICT COURT FOR AUTHORITY TO CONSTRUCT OR PROCEED WITH IMPROVEMENTS.** The board of directors of such drainage and flood control district in this state, upon the filing in its office of the report required to be made by it under the provisions of section 112.10, where the proposed improvement relates to streams or bodies of water lying wholly within this state, or upon the filing in its office, where the proposed improvement relates to boundary waters or watercourses, of the engineer's and the viewers' reports and the report and findings of the joint conference, including the findings as to joint plans and division of the total cost of construction among the several states, as provided in section 112.11, the board shall cause to be made a petition to the district court in the county where the proposed improvement, or some part thereof, is located, therein petitioning the court for authority to construct the improvement, as shown in the original petition filed with the board, or as subsequently modified by it, and the findings and reports filed in its office relating to the improvement, therein setting forth the necessity for such improvement and fully describing the nature and purpose thereof and setting forth the facts required to be alleged in case of petitions to the district court in judicial ditch proceedings required by the laws of this state, and the engineer's and the viewers' reports as to the benefits and damages shall be referred to or attached and made a part of the petition, and asking that a time and place be fixed by the court for a hearing upon the petition and reports and requiring all parties interested to appear and show cause why the reports accompanying the petition should not be adopted and the rights of all parties interested fixed and determined and the improvement ordered constructed in accordance with the reports and the petition. Upon the filing of the petition and reports with the clerk of the court, he shall immediately notify the judge thereof, who shall, within ten days, fix a time and place for hearing upon the petition and reports, which may be in any county most convenient for the parties interested, due notice of which shall be given by publication for two weeks in one newspaper published in each county affected by the proposed improvement, which notice shall contain a description of the property affected and the names of the owners thereof, as appear in the office of the county treasurer on the last assessment roll of the county, together with the names of all corporations affected by such proceedings, a copy of which notice shall also be mailed by the clerk to each property owner, at least two weeks before the date set for hearing, at his last known address, or, if not known, as shown by the records in the county treasurer's office where the property is located, and requiring all parties in any manner interested to appear before the court at the time and place specified in the notice to show cause why the reports accompanying the petition should not be confirmed and the prayer of the petition granted and the improvement ordered constructed in accordance with the plans and specifications and the reports of the engineer and the viewers accompanying the petition. Upon the filing of the petition and reports and the publication and mailing of the notice, the court shall have full jurisdiction of all parties, corporations, property, and matters named and referred to in the petition and the reports and the holders of all mortgages and liens against all lands therein described.

[1917 c. 442 s. 11; 1921 c. 326 s. 4] (6889)

**112.13 HEARING ON PETITION.** At the time and place specified in the notice of hearing provided for in section 112.12, the judge of such court, or the judge of any district court upon his request, shall appear and hear all parties for and against the matters set forth in the petition and reports accompanying the same and shall have and may exercise all the authority at such hearing provided in General Statutes 1913, Sections 5531 and 5532, so far as is applicable to this chapter; provided, he shall have no authority to modify the order adopting the joint plan or the order dividing the total cost among the several states and, if upon full hearing it shall appear and the court shall find that the engineer's and the viewers' reports have been made and all their proceedings had in accordance with the provisions of this chapter and that the total benefits resulting from the improvement, together with the total sum assessable against the property not directly benefited, as reported by the board of the district, shall exceed the total cost of the improvement, including the damages, and that the improvement will be of great public benefit and utility,

then the court shall make its findings accordingly and shall, by order, confirm the reports of the engineer and the viewers as finally adopted at the hearing and shall order the construction of the improvement accordingly; and such findings and orders of the court shall fix and determine the rights of all parties affected in accordance therewith, subject only to the right of appeal as provided in this chapter.

[1917 c. 442 s. 12; 1921 c. 326 s. 5] (6890)

**112.14 APPEAL TO SUPREME COURT.** Subdivision 1. Within 20 days from the date of a final order of the district court establishing a flood control district or dismissing a petition therefor or rendered in proceedings under subdivision 2 any party aggrieved by the order may appeal therefrom to the supreme court as in civil proceedings or may petition the supreme court to review the district court proceedings in certiorari. The board of directors has a like right of appeal or review.

Subd. 2. Within 20 days after the filing of any order of the board of directors, any person aggrieved thereby may present to the district court a verified petition setting forth that the same is unlawful and specifying the grounds therefor. Upon presentation of the petition the court may allow a writ of certiorari, directed to the board, to review the order, and prescribing the time within which a return thereto must be served on relator's attorney, which shall not be less than ten days and may be extended by the court. If upon a hearing upon the question of benefits and damages the court deems that testimony is necessary for a proper disposition of the matter, evidence may be taken by the court or by a referee appointed by the court; or the court may remand the matter to the board for additional findings and report of facts.

Unless ordered by the court for cause no appeal taken on the question of benefits and damages shall delay further proceedings toward the construction of the improvement.

[1917 c. 442 s. 13; 1953 c. 663 s. 1] (6891)

**112.15 ASSESSMENT OF LANDS OUTSIDE OF DISTRICT.** When the board of directors of any district shall ascertain that any improvement will benefit lands outside the district it shall assess such lands for such benefit as though within the district and report such facts to the court, together with its findings and recommendation; and thereupon notice of the filing of such assessment and recommendation shall be served upon the parties interested and they shall be given the same notice of hearing upon the petition and for assessment as provided for in case all parties affected by the proceedings are within the district, and the assessments considered modified or confirmed as in other cases. At any time, upon filing with the district court where the original petition was filed a petition by the board of directors of any district or any parties in interest outside the district asking for a change of the boundary lines of the district, either adding to or taking from the district any territory, the court shall, upon the filing of the petition, cause notice thereof to be given and hearing had thereupon in the same manner and with like effect as in the original hearing for the formation of the district, except the notice to be published shall be only in such counties as shall be directly affected by the change. No assessments shall be levied under the provisions of this section upon lands directly benefited in excess of ten miles outside of the boundary of the district as fixed by the 40-mile limitation provided for in this chapter.

[1917 c. 442 s. 14] (6892)

**112.16 AUTHORITY TO LET CONTRACTS FOR CONSTRUCTION.** The board of directors of any district organized under the provisions of this chapter shall have full authority to let contracts for the construction of and cause to be constructed any and all works of improvement in accordance with the order of the court and the plans and specifications referred to in such order, the contract to be let only on three weeks' published notice calling for bids at such time and place as the board shall designate, and may employ and use men and equipment, under the supervision of the chief engineer, or other agents, of all portions of such works not let by contract, and may cause to be repaired any and all works of improvement by this chapter authorized to be constructed and to employ men therefor; the work to be done under the direction of the chief engineer, or his assistants, and the cost of all such work, except that of repair, shall be treated and considered as part of the construction. No money shall be expended in the construction of the work,



except that in the preparation of the necessary surveys and plans, including the work of viewing and estimating the amount of benefits and damages or connected therewith, until after a petition for such construction has been filed and the same ordered constructed, as provided in this chapter, and in the event the improvement relates to boundary waters or watercourses, then the board of such district shall have full authority to enter into and make all necessary contracts and arrangements with the board, commission, or other tribunal of any adjoining state or states interested in such improvement, for the letting of the contract for such improvement, and the board, together with the representatives of the other states, shall have full authority to advertise and call for bids for the construction of the improvement, giving such notice of the time and place of opening bids as the parties may provide and shall have full authority to make all necessary arrangements relative to the making of the contracts, the form of the contracts, and the supervision of the work and payment therefor, but the contract shall provide for the completion of the work in accordance with the plans and specifications within a given time and shall require sufficient bonds to secure the performance of the contract, and shall further provide that such drainage district or authorities in this state shall not be responsible except for the furnishing of the funds provided to be furnished by this state and the completion of so much of the improvement as lies within the limits of this state, and may contain like provisions relative to the rights of the authorities representing such other state or states. The board of directors of such district shall also have authority to enter into such contracts or arrangements as may be deemed advisable with the authorities of such other state or states relative to the cost of repair, improvement, and upkeep of all parts of the improvement connected with such boundary waters or watercourses and provide the funds therefor, and also for a proper division of any income that may be realized from use of such waters.

[1917 c. 442 s. 15] (6893)

**112.17 BOARD MAY ENTER UPON LANDS FOR SURVEYS AND EXAMINATIONS.** The board of directors of any district organized under this chapter and its agents and employees, including contractors, may enter upon lands within or without the district in order to make surveys and examinations to accomplish all necessary preliminary purposes, the district being liable only for any actual damage done, and any person or corporation preventing such entrance shall be guilty of a misdemeanor.

[1917 c. 442 s. 16] (6894)

**112.18 ESTIMATED VALUE OF PROPERTY IN CONNECTION WITH RESERVOIR SHOWN IN PETITION.** The board of directors shall also have the authority to condemn, for the use of the district, any land or property within the district when the same shall become necessary to protect the property of the district and to carry out the purposes of this chapter, and when it shall appear, in any proceedings to establish any improvement, including reservoirs or holding basins or other similar improvements, that sufficient land was not acquired in the proceedings to properly handle and control the waters in the reservoir or protect adjoining property from such waters or the waters of any stream, ditch, or watercourse, or when the board shall determine that it is necessary and advisable to increase the size of any lake, basin, or reservoir previously established and desires further lands to properly create and utilize the same, the board may acquire title thereto for the benefit of the district, by filing a petition with the district court of any county in the district wherein the reservoir or other improvements or some part thereof is located, accompanied by proper plats, plans, and specifications, as provided in section 112.12; and thereupon, after hearing as therein provided for, the court may by order provide for the appropriation of such land, if it shall be shown that the same is necessary and advisable, and assess the damages resulting therefrom as in other cases providing for the construction of improvements for flood control.

In all cases where a reservoir is created, either in a natural basin or otherwise, and the board shall conclude that the creation of the reservoir will create a water power or establish conditions whereby water power can profitably be constructed in connection with the reservoir, the board, either in the original petition providing for the creation of the reservoir, or at any subsequent time, may petition the court, presenting maps and details therewith and ask that such additional land and other rights or privileges as may be deemed necessary be condemned and title acquired

in connection with the reservoir property, to enable the board to improve the same and use the waters of the reservoir and other waters in any manner connected therewith for water-power purposes, to the end that the waters of the reservoir or holding basins, together with all streams connected therewith, may be utilized and produce income for the benefit of the district and to aid in the general expense thereof and in the upkeep of all drainage and flood control improvements within the district.

The board may include in the petition a statement giving the reasonable value of the property owned by the district in connection with the reservoir and proposed water power and a detailed estimate of the amount of water power likely to be produced by the proposed improvement and the probable income to be derived therefrom annually; and may in the petition ask the court to fix and determine the amount of bonds that the board may issue against the property of the district in connection with the reservoir, together with the income therefrom, and the court shall have authority to authorize the board to issue the bonds of the district in such sum as such improvement may require, not to exceed 60 per cent of the reasonable value of the proposed water power and not to exceed such sum as the income from the water power may reasonably be expected to pay the interest on. Upon the making of this order, the board of directors is hereby authorized to issue the bonds of the district, not to exceed such sum as specified in the order of the court, in such denomination and in such form as the board may determine, payable in not less than ten, nor more than 20, years from date, with interest not to exceed six per cent per annum, payable annually, which bonds shall be signed by the clerk and the president of the board and registered in the same manner as county bonds under the laws of this state. Upon the issuance of these bonds, it shall be the duty of the board to create an interest fund and provide for the accumulation of the necessary sum to pay the interest on these bonds promptly when due.

If, at the time of the filing of the petition for the establishment of any reservoir or holding basin, or at any time thereafter, it shall appear that the waters of such reservoir or holding basin can be utilized for the purpose of irrigation or for any other purpose and the board of the district shall, after examination, so determine, it may cause to be made all necessary plats, plans, and specifications, and upon filing the same, together with a petition, with the clerk of the district court of any county affected by such proposed improvements or use, a hearing shall be had thereon upon like notice, as provided in section 112.12, at which hearing the court, after due consideration of the showing made, shall have authority to make such order as may be necessary to authorize the board to acquire title to all necessary rights of way, ditches, or property to enable it to utilize waters of any such reservoir for irrigation purposes, and to hold, keep, and control the same, and all property so acquired in any such proceeding shall be and become the property of the district.

[1917 c. 442 s. 17] (6895)

**112.19 CONTRACTS WITH UNITED STATES GOVERNMENT.** The board of directors shall also have the right and authority to enter into contracts or other arrangements with the United States government, or any department thereof, with persons, railroads, or other corporations, with public corporations, with the government of this state or other states, and with drainage, flood control, conservation, conservancy, or other improvement districts in this state or other states for cooperation or assistance in constructing, maintaining, using, and operating the works of the district or the waters thereof, or for making surveys and investigations or reports thereon; and may purchase, lease, or acquire land or other property in adjoining states in order to secure outlets to construct and maintain dikes or dams, or for other purposes of this chapter, and may let contracts or spend money for securing such outlets or other works in adjoining states. No board of directors of any drainage district organized under the provisions of this chapter shall have the right, power, or authority to connect, by artificial means, boundary waters having different natural outlets so that the waters of one may be discharged into the other. Nothing herein contained shall interfere with any action by the congress of the United States.

[1917 c. 442 s. 18] (6896)

**112.20 RIGHTS OF VARIOUS PARTIES TO WATERS IN FLOOD CONTROL DISTRICTS.** The rights of land owners, municipalities, corporations, and other users of water to the waters of the district for domestic use, water supply, industrial purposes, for water power, or for any other purposes, shall extend only to such

rights as were owned by them prior to the organization of the district. Wherever the organization of, or the improvements made by, the district make possible a greater, better or more convenient use of, or benefit from, the waters of the district for any purpose, the right of such greater, better, or more convenient use of, or benefit from, such waters shall be the property of the district; and such rights may be leased, or assigned, by the district in return for reasonable compensation; but the appraisal of benefits made by the board or any appraisers in any proceeding for the establishment of any improvement under the provisions of this chapter shall not be construed to in any manner include benefits for such greater, better, or more convenient use of, or benefit from, the waters of the district, unless so specified in the petition or report of the board, but the compensation for such benefits shall be made in accordance with the provisions of this section, except as hereinafter provided.

Persons, corporations, municipalities, or other parties desiring to secure such use of the waters or watercourses of the district, or of the district rights therein, may make application to the board of directors for lease or permission for such use. Such application shall state the purpose and character of such use, the period and degree of continuity and of the amount of water desired. In case any party makes greater, better or more convenient use of the waters of the district without formal application, the fact of such use shall serve all purposes of an application, and the board may proceed to determine a reasonable rate of compensation the same as though formal application had been made. Where it is not possible or reasonable to grant all applications, preference shall be given to the greatest need and to the most reasonable use, as may be determined by the board of directors, subject to the approval of the court. Preference shall be given, first, to domestic and municipal water supply, and no charge shall be made for the use of water taken by private persons for home and farmyard use, or for watering stock.

The board of directors shall not permanently sell, lease, assign, or grant any permit or otherwise part with permanent control by the district of the use of the waters thereof and the rates for light, power, or other services charged by vendees, assignees, lessees, or licensees of such district, but such leases, assignments, or permits of any kind or other contracts for the use of water shall be entered into only after a report has been made by the board of such district to the court setting forth the terms and conditions of the lease, permit, or other contract and corporations claiming under the district, the excess of the cost of improvements made pursuant to this chapter and damages therefrom, over the benefits to lands affected.

[1917 c. 442 s. 19] (6897)

**112.21 FINANCIAL PROVISIONS.** The moneys of any drainage and flood control district organized under the provisions of this chapter shall consist of three separate funds:

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

(2) A bond fund, which is the proceeds of bonds issued by the district, as herein provided, upon property of the district that is producing, or is likely to produce, a regular income and to be used for the payments of the purchase price of the property of the value thereof, fixed by the court in proceeding, as herein provided, and for the improvement and development of such property; and

(3) A maintenance fund, which shall be supplied by special assessments to be levied from time to time as occasion may require to supply funds for the upkeep of the property and improvement of the district, including the reservoirs, ditches, dikes, canals, and other improvements, together with the expenses incident thereto and connected therewith.

[1917 c. 442 s. 20] (6898)

**112.22 PAYMENT OF EXPENSES.** After the filing of a petition under this chapter for the formation of a district, and the furnishing and filing of the bond, as provided in section 112.03, the costs of publication and other official costs of such proceedings shall be paid out of the general funds of the county in which the petition is pending. Such payment shall be made on the warrant of the auditor, on the order of the court, which order shall be made upon application of the district board upon ten days' notice to the auditor of such county. In case the district is organized, such costs shall be repaid to the county out of the first funds received

by the district, through the levying of taxes or assessments or the selling of bonds, or the borrowing of money. If the district is not organized; then the costs shall be collected from the petitioners or their bondsmen; upon organization of the district, the court shall make an order, upon application of the board upon ten days' notice to the auditors of the several counties affected, dividing the preliminary expenses between the counties included in the district in proportion to the interests of the various counties as may be estimated by the court; and the court shall issue an order to the auditor of each county to issue his warrant upon the treasurer for the proportion of the preliminary expenses assigned to that county by order of the court.

As soon as the district shall have been organized under the provisions of this chapter and a board of directors appointed and qualified the board may petition the district court in the county where the original petition was filed, upon ten days' notice in writing to the auditor of each county affected, asking that an order be made creating a preliminary fund for the district, which shall be of a size in proportion to the size of the district and, in the event the district shall include a number of counties, the funds shall not exceed the sum of \$10,000 and may be of such less amount as the court may order, and the court upon the hearing may designate the amount of the funds and fix the proportionate amount that each county affected by the district shall pay in proportion to the area within the district, and thereupon the court shall order each of the several counties to advance from its general fund the sum therein named, to constitute a preliminary fund for the district, and thereupon the auditors of the several counties shall draw their warrants upon the treasurers of their counties for the payment of the amount specified in the court's order, payable to the treasurer of the district, and the sum so advanced by each county shall be charged to the district and shall be repaid to each of the counties as soon as the district has funds for that purpose, and the funds so provided shall be used by the board of the district for preliminary work, and when the board shall incur expense for surveys or other preliminary work on any proposed improvement, all expenses, including time, salaries, or otherwise connected with such work, shall be kept track of and figured in as the cost of construction in any such proposed improvement, and upon the improvement being ordered by the court and funds being provided for the construction thereof, as hereinafter specified, all sums advanced out of the preliminary funds shall be repaid and the funds replaced for further similar use on other improvements.

[1917 c. 442 s. 21; 1921 c. 326 s. 6] (6899)

**112.23 COURT TO APPORTION AMOUNT OF TOTAL COSTS.** Immediately, or at the earliest practicable date following the letting of a contract, or contracts, for the construction of any improvement by the board of directors of such district, it shall cause to be made and filed with the clerk of the district court where the proceedings are pending a statement of all expenses incurred in the construction of the improvement; including the amount for which the contract for the construction of the improvement was let; an estimate of the cost of supervision, fees, and all other ascertainable expenses in connection therewith, and at the time of filing the statement, or as soon thereafter as practicable, upon ten days' notice in writing given by the board to the auditors of the several counties affected by the improvement, the court shall apportion the amount of the total costs of the construction of the improvements among the several counties affected in proportion to the benefits received and shall fix and determine the amount to be paid by the property and corporations benefited in each county and, upon similar notice to the county auditors, the judge of the district court may at any time modify the order as justice may require or make additional orders covering additional expense. The word "expense," as used in this section, shall be construed to mean every item of cost of the improvement, from its inception to its completion, and all fees and expenses paid or incurred, including all damages awarded, and upon the filing of the order with the clerk of the court where the proceedings are pending, it shall be the duty of the clerk to make and file a certified copy of the order with the auditor of each county affected, together with a certified copy of the order confirming the report of the board of viewers and the engineer and directing the construction of the improvement and a list of all property affected in each county and a statement of all benefits and damages affecting the same, and such other information as the court, by order, may direct, and upon the filing of the order, it shall be the duty of

the county board of each county affected to provide the necessary funds to meet the proportionate share of the cost of the improvement allotted to the county by the order, in the same manner as provided by sections 106.29 and 106.40, in the case of judicial ditch proceedings, and upon the filing of the certified copies of these orders with the county auditor it shall be the duty of the auditor to make and file in his office a summary statement, as provided in section 106.41, containing the assessments against the property and corporations benefited and the property subject to assessment within his county, showing the amount to be paid by such property and corporations in the county, as specified in the order, and shall, in accordance with the provisions of section 106.42 make and file in the office of the register of deeds of the county such statement and lien against the property and corporations affected. It shall be the duty of the county board of each county affected to provide the funds to meet the proportionate share of the total cost of the improvement, as shown by the order of the court, and it is authorized to exercise all rights and authority in so doing now granted to county boards or boards of county commissioners under the provisions of section 106.40 and other provisions of the General Statutes, relating to county and judicial ditch proceedings, and the board of county commissioners, the county auditor, the county treasurer, and the register of deeds are hereby authorized and directed to exercise the authority and perform the several duties assigned to such officials, or any of them, under the provisions of sections 106.42, 106.45, 106.46, and 106.19, relative to the establishment of liens, and the assessment and collection by instalments of all sums levied against property within their respective counties for benefits resulting from the construction of the improvement and to exercise such other authority and perform such other duties relative to the establishment of liens, filing of statements, or additional statements and liens as now provided by the laws of this state relating to county and judicial ditches, and the county board is authorized to make the necessary order specifying the period of times of payment of the assessment and the rate of interest. All moneys received by the treasurer of any county from the sale of bonds, assessment, or otherwise for the benefit of the district shall be by him accounted for and paid over to the treasurer of the district and it shall be the duty of the board of the district to pay all damages before entering upon the land, except in case of appeal.

[1917 c. 442 s. 22; 1921 c. 326 s. 7] (6900)

**112.24 ASSESSMENTS TO BE SPLIT BY COUNTY AUDITOR.** Upon the filing by the board of directors of a drainage and flood control district, with the auditor of any county, of a statement, as provided in section 112.23, giving a list of the property and corporations benefited or damaged or otherwise affected by any proposed improvement, it shall be the duty of the county auditor to assess the amount specified in such list against the municipalities or other corporations, as therein specified, in accordance with the provisions of section 106.19; and the county auditors shall proceed to levy and collect the sums specified in the list against the several corporations in accordance with the provisions of such section, and in the event that any improvement reported in the list shall be for improvements or benefits to any county or state road, then and in that event, the sum so reported shall become a direct charge against the county and may be paid by the county out of its road and bridge fund, or otherwise, as its board of county commissioners may direct, and may be paid in whole or in instalments, as may be specified by the board of county commissioners of each county. No assessment shall be levied against any property or corporation benefited under the provisions of this chapter in excess of the amount of benefit received, as fixed by the order of court directing the construction of the improvement, or as subsequently determined on appeal.

[1917 c. 442 s. 23; 1921 c. 326 s. 8] (6901)

**112.25 DIRECTORS TO ORDER PAYMENT OF CONTRACTS.** The board of directors of any drainage and flood control district is hereby authorized to issue the orders of the district on payment for any contract for the construction of any improvement, and also for all ordinary general expenses, and for all expenses incurred by contract or otherwise in making reports. When sufficient funds are not available to pay the same, the order shall, after presentation to the treasurer of the district, draw interest at the rate of six per cent per annum until paid or until notice shall be given by the district that such funds are available.

[1917 c. 442 s. 24] (6902)

**112.26 LEVY FOR UPKEEP AND REPAIRS.** The board of directors of any drainage and flood control district organized under this chapter is hereby authorized, after the construction of any improvement, to levy, from time to time as occasion may require, upon the land benefited by the improvement, such sum as the court may order or direct, upon application by the board, for the purpose of providing funds for the upkeep and repairs of the improvement. Upon filing a copy of the order and levy with the auditor of each county affected by the improvement, accompanied by a list of the property within the limits of the county affected by the levy, it shall be the duty of the auditor to extend the levy against the property within the limits of his county as provided in other cases for the levy, assessment, and collection of taxes ordered, levied, and collected by the board of county commissioners in ditch proceedings. Upon like application, the board of directors of any drainage and flood control district is authorized to levy upon the property of the district such sum as the court may authorize and direct to cover the general expenses of the board, not to exceed in any one district the sum of \$5,000, and the court shall by such order apportion the amount of the levy among the several counties according to the area or valuations of the portion of each county within the district. Upon the filing of a copy of the order, showing the amount to be levied upon the property of the district within the limits of each county, the auditor of the county shall levy the same upon that portion of the property of the county within the limits of the district in the same manner and with like effect as in the levy of other taxes by municipal corporations in this state; and all sums collected and received by the treasurer of such county shall be accounted for to the treasurer of the drainage and flood control district; and the same shall be placed in the fund as provided in this chapter and used for the purposes for which the assessment was made.

[1917 c. 442 s. 25] (6903)

**112.27 CHARGE AND CONTROL OF PUBLIC WATERS IN DISTRICT.** The board of directors of all drainage and flood control districts shall have charge and control of the public waters of the district and especially all bodies of water used as reservoirs and streams flowing into and from the same, and may cause these reservoirs when deemed practicable to be stocked with fish and shall have full charge and control of all fish caught in these waters for sale or other commercial purposes and the sole right and authority to make all contracts or issue all licenses therefor and, in all cases, such contracts shall provide for the payment of the reasonable value of such fish into the treasury of the district and the district shall receive all benefits and income therefrom, but the board shall have no authority to authorize the catching of any game fish for commercial purposes or to grant any authority relative to fishing in violation of the laws of this state or interfere with private individuals fishing with hook and line or in such other manner as the laws of this state shall provide, during the seasons when such fishing is permitted.

[1917 c. 442 s. 26] (6904)

**112.28 CLASSIFICATION FOR ASSESSMENT PURPOSES.** In all proceedings by the board of directors under the provisions of this chapter to assess benefits to any land resulting from any improvements, the board shall as nearly as practicable divide the lands for the purpose of assessment into three classes:

Class No. 1, shall include all lands or corporations receiving direct benefits such as drainage or protection from overflow by flood-control improvements;

Class No. 2, shall include all lands or corporations to which are furnished a drainage outlet by the construction or improvement of any artificial or natural drain or watercourse; and

Class No. 3, shall include all lands that are now receiving, or that need, drainage and that are furnishing waters that will be handled or controlled by the proposed improvement.

Classes Nos. 1 and 2 shall be treated as a direct assessment.

Class No. 3 may be treated as a secondary assessment to aid in the control of the waters furnished by these lands and all lands within or without the limits of the district falling within Classes 1 and 2 are hereby declared assessable for the construction of such improvement under the provisions of this chapter as lands directly benefited, and all lands falling within the provisions designated as Class 3 are hereby declared assessable as lands receiving benefits from the general plan of drainage and flood control provided for by this chapter and assessable.

[1917 c. 442 s. 28] (6906)

**112.29 DIRECTORS TO COOPERATE WITH BOARD OF ADJOINING DISTRICTS.** The board of directors of any drainage and flood control district organized under this chapter shall have authority to enter into all necessary contracts to enable it to cooperate with the managing board of any adjoining district whether organized under any law of this state relative to any matters connected with drainage or flood control or other matters connected with or relating to the management of affairs connected with the district. In the event the formation of districts should be authorized by any other law of this state, for the purpose of having charge of drainage and flood control matters, and any such district should be formed bordering upon streams or bodies of water forming the boundary of this state, the governing board of such district shall have and may exercise all the authority granted by this chapter.

[1917 c. 442 s. 29] (6907)

**112.30 BOARD TO REPORT TO COURT.** At least once a year, or oftener, if the court shall so order, the board of directors shall make a report to the court of its proceedings and an accounting of its receipts and disbursements to that date, which shall be filed with the clerk of court, and it shall be the duty of the board from time to time to make such report as may be demanded by the public examiner, and it shall be the duty of the public examiner to check up and report to the court, not less than once a year and at such time as the court may direct, the financial condition of the district.

[1917 c. 442 s. 30] (6908)

**112.31 COURT NOT TO LOSE JURISDICTION BY REASON OF FAILURE TO GIVE NOTICE.** In every case where a notice is provided for in this chapter, if the court finds for any reason that due notice was not given, it shall not thereby lose jurisdiction and the proceeding in question shall not thereby be void; but the court shall, in that case, order due notice to be given and shall continue the hearing until such time as such notice shall be properly given, and thereupon shall proceed as though notice had been properly given in the first instance.

In case any individual appraisal, assessment, or levy shall be held void for want of legal notice, or in case the board may determine that any notice with reference to any land may be faulty, the board may file a motion in the original cause asking that the court order notice to the owner of such land to be given and set a time for hearing, as provided in this chapter. In case the original notice as a whole was sufficient, and was faulty only with reference to publication as to certain tracts, only the owners of and persons interested in those particular tracts need be notified by subsequent notice. If the publication of any notice in any county was defective or not made in time, republication of the defective notice need be had only in the county in which the defect occurred.

[1917 c. 442 s. 31] (6909)

**112.32 APPLICATION OF OTHER LAWS.** In all cases where reference is made in this chapter to sections in General Statutes 1913, or to other drainage laws of this state and sections thereof are referred to, such sections and provisions shall, so far as applicable, be treated and construed as having the same force and effect, so far as the provisions of this chapter are concerned, as though herein set forth.

[1917 c. 442 s. 33; 1921 c. 326 s. 9] (6912)

**112.33 COUNTY BOARD MAY NEGOTIATE FOR EXTENSION OF PAYMENT OF BONDS.** The county board of any county in which there is situated any drainage district having a bonded indebtedness shall have authority to negotiate with the holders of the bonds of such drainage district for the extension of the time of payment and the reduction of the rate of interest. In the event the holders of two-thirds of the aggregate amount of such bonds shall consent, in writing, to such extension of the time of payment or to such reduction of the rate of interest, or to both, and the county board shall agree to such changes in the terms of such bonds, such changes shall become binding upon each county drainage district and upon all the holders of bonds against such drainage district who shall have consented thereto, or who shall hereafter consent thereto, in writing.

[1933 c. 140] (6912-1)