

CHAPTER 112

WATERSHEDS

Sec.		Sec.	
112.34	Watershed act; declaration of policy, citation	112.59	Control of contracts
112.35	Definitions	112.60	Assessments, levies
112.36	Establishment of districts	112.61	Funds of district
112.37	Procedure for establishment	112.611	Budget; tax levy
112.38	Hearing, notice	112.62	District court to create preliminary fund
112.39	Action of board upon petition	112.63	Warrants
112.40	Rules of practice	112.64	Levy for repair of improvement
112.401	Hearings; reference	112.65	Drainage systems within district
112.41	Perpetual existence	112.66	Damage to highway or bridge by passage of equipment
112.411	Procedure for termination	112.67	Contracts of cooperation and assistance
112.42	Managers; organization, appointment of successors	112.68	Other statutes applicable
112.43	Managers; powers, duties	112.69	Construction by governmental agencies; appraisers' report
112.44	Advisory committee	112.70	Claims for damages
112.45	Employees, duties	112.71	Use of water, contracts; notice, hearing
112.46	Overall plan	112.72	Other drainage laws, effect of reference
112.47	Works instituted only upon petition	112.73	Managers' reports; audit by public examiner
112.48	Approval of project and improvement plan; filing of petition; contents; bonds	112.74	Existing districts may come under chapter
112.49	Surveys, plans	112.75	Pending proceedings for establishment of district
112.50	Appraisers, duties	112.76	Corporate existence of certain districts, termination
112.501	Benefitted property, determination	112.761	Proceedings for enlargement of district
112.51	Appraisers' report, examination	112.78	Faulty notices, effect
112.52	Hearing upon petition and reports	112.79	Hearings, continuances
112.53	Notice of hearings, contents	112.791	Review by board
112.54	Hearing before managers, appeal	112.792	Appeals from decision of board
112.55	Order of managers establishing improvement, filing	112.80	Appeals to district court
112.56	Assessment area, divided into sub-districts	112.82	Aggrieved parties, rights
112.57	Bids	112.84	Due process of law
112.58	Work may be done without a contract		

112.01-112.33 [Repealed, 1955 c 799 s 52]

112.34 WATERSHED ACT; DECLARATION OF POLICY, CITATION. Subdivision 1. In order to carry out conservation of the natural resources of the state through land utilization, flood control and other needs upon sound scientific principles for the protection of the public health and welfare and the prudent use of the natural resources, the creation of a public corporation, as an agency of the state for the aforesaid purposes, has been provided. This chapter shall be construed and administered so as to make effective these purposes.

Subd. 2. This chapter shall be known and may be cited as "Minnesota Watershed Act."

[1955 c 799 s 1]

112.35 DEFINITIONS. Subdivision 1. For the purposes of this chapter the terms defined in this section have the meanings ascribed to them.

Subd. 2. "Person" includes firm, copartnership, association, or corporation but does not include public or political subdivision.

Subd. 3. "Public corporation" means a county, town, school district, or a political division or subdivision of the state, other than a watershed district.

Subd. 4. "Board" means the Minnesota water resources board established by Minnesota Statutes, Section 105.71.

Subd. 5. "Managers" means the board of managers of a watershed district.

Subd. 6. "Publication" means publication once a week for two successive weeks in accordance with Minnesota Statutes, Section 645.11.

Subd. 7. "Public health" includes any act or thing tending to improve the general sanitary conditions of the district.

Subd. 8. "Public welfare," "general welfare," and "public benefit" include any act or thing tending to improve or benefit or contribute to the safety or well-being of the general public or benefit the inhabitants of the district.

Subd. 9. "County auditor" means the county auditor of any county affected by a watershed district.

Subd. 10. "Clerk" means the clerk of the district court of the county in which any judicial proceeding concerning a district is pending.

Subd. 11. "Engineer" means the engineer designated by the managers to act as engineer.

Subd. 12. "Appraisers" mean the persons appointed by the managers of the

district to ascertain and report benefits and damages arising from proposed work.

Subd. 13. "Director" means the director of the division of water.

Subd. 14. "Commissioner" means the commissioner of conservation.

Subd. 15. "Petition" means an initiating petition for "work," and may consist of one or more petitions therefor.

Subd. 16. "Nominating petition" means an initiating petition for the creation of a watershed district, and may consist of one or more petitions therefor.

Subd. 17. "Hearing" means a hearing conducted by either the managers or the board, which, if conducted by the board pursuant to rules promulgated by it, may be formal, provided, however, that all interested parties shall be given a reasonable opportunity to be heard.

Subd. 18. "Interested party" means any public corporation or any person having an interest in the subject matter pending or involved, and shall include the director or any agency of government.

Subd. 19. "Work" or "works" means any construction, maintenance, repairs or improvements of a watershed district.

Subd. 20. "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. 21. "Resident owner" or "resident freeholder" means the owner of land or the contract purchaser, and who resides in the state.

[1955 c 799 s 2; 1961 c 601 s 1]

112.36 ESTABLISHMENT OF DISTRICTS. The board is hereby vested with jurisdiction, power, and authority, upon filing of a nominating petition, to establish a watershed district and define and fix the boundaries thereof, all areas of which shall be contiguous and which may be entirely within or partly within and partly without any county, and may include the whole or any part of any watershed or watersheds within the discretion of the board and may include the whole or any part of one or more counties, and to appoint the first board of managers thereof, as herein provided.

A watershed district may be established for any or all of the following conservation purposes:

- (1) Control or alleviation of damage by flood waters;
- (2) Improvement of stream channels for drainage, navigation, and any other public purpose;
- (3) Reclaiming or filling wet and overflowed lands;
- (4) Providing water supply for irrigation;
- (5) Regulating the flow of streams and conserving the waters thereof;
- (6) Diverting or changing watercourses in whole or in part;
- (7) Providing and conserving water supply for domestic, industrial, recreational, or other public use;
- (8) Providing for sanitation and public health and regulating the use of streams, ditches, or watercourses for the purpose of disposing of waste;
- (9) Repair, improve, relocate, modify, consolidate, and abandon, in whole or in part, drainage systems within a watershed district;
- (10) Imposition of preventive or remedial measures for the control or alleviation of land and soil erosion and siltation of watercourses or bodies of water affected thereby;
- (11) Regulating improvements by riparian landowners of the beds, banks, and shores of lakes, streams, and marshes by permit or otherwise in order to preserve the same for beneficial use.

[1955 c 799 s 3; 1957 c 279 s 1; 1959 c 239 s 1; 1961 c 601 s 2]

112.37 PROCEDURE FOR ESTABLISHMENT. Subdivision 1. Proceedings for the establishment of a watershed district shall be initiated only by the filing of a nominating petition with the secretary of the board, which nominating petition shall be signed either by not less than 25 percent of the resident freeholders of the proposed district, exclusive of the resident freeholders within the corporate limits of any city, village or borough on whose behalf the authorized officials have signed the petition, or by the authorized officials of any county, city, village, and borough authorized by resolution duly passed by the governing body thereof; however, if signed by at least one-half of the counties within the proposed district or by a county or counties having at least 50 percent of the area within the

proposed district; or by a majority of the cities, villages or boroughs within the proposed district, the same need not be signed by freeholders.

Said nominating petition shall set forth the following:

- (1) The name of the proposed district;
- (2) The necessity for the district, and why it would be conducive to public health and public welfare, or accomplish any of the purposes of a watershed district;
- (3) A statement in general terms setting forth the purpose of the contemplated improvements, the territory to be included in the district, and all proposed subdivisions thereof, if any, of the district;
- (4) The number of managers proposed for the district. The managers shall be not less than three nor more than five and be selected from a list of ten nominees. They shall be selected as representative of the local units of government affected and none shall be a public officer of the county, state, or federal government;
- (5) A map of the proposed district;
- (6) A request for the organization of the district as proposed.

The petitioners shall cause to be served upon the county auditor or auditors of the counties affected by the proposed district, the commissioner, and the director, a copy of said nominating petition, and proof of service thereof shall be attached to the original petition, to be filed with the secretary of the board.

Subd. 2. Upon receipt of a copy of such nominating petition the county auditor or auditors, as the case may be, shall determine whether or not the petitioners are freeholders, which determination shall be made upon the tax records, which shall be prima facie evidence of ownership, and from which the auditor shall certify his determination to the board.

Subd. 3. Upon receipt of a copy of the nominating petition by the director he shall

- (1) Acknowledge receipt thereof to the board;
- (2) Prepare a preliminary watershed map of the proposed district showing the natural boundaries and subdivisions thereof;
- (3) Prepare a preliminary report based upon the nominating petition and other available data, stating his opinion as to the desirability of organizing the district, and submit his report to the board with such recommendation as he may deem proper, which report shall be submitted to the board within 30 days from the date of the service of the petition upon the director, unless such time is extended by the board.

Subd. 4. At the time of filing the nominating petition, or before notice of a hearing thereon is given, a bond shall be filed by the petitioners with the board, to be approved by it, in such sum as the board shall determine. Such bond shall be so conditioned that the petitioners, in case the petition is dismissed or denied, will pay all costs and expenses arising therefrom. If at any time during the proceedings the board deems it necessary to require an additional bond, it may by its order so direct. In such event no further proceedings shall be had until such additional bond is filed. No bond shall be required when the petition is signed by a county board or the governing body of three or more cities, villages, or boroughs.

Subd. 5. No petition containing the requisite number of signatures or petitioners or signed by the requisite number of counties, cities, villages or boroughs shall be void or dismissed on account of any defects therein, but the board shall, at any time prior to the close of hearing, 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 other defects therein. Several similar petitions, or duplicate copies of the same petition, for the organization of the same district may be filed and altogether be regarded as one petition. All petitions filed prior to the hearing hereinafter provided shall be considered by the board as part of the original petition.

After a petition has been filed, no petitioner may withdraw therefrom except with the written consent of all other petitioners filed with the water resources board.

[1955 c 799 s 4; 1959 c 248 s 1-3; 1961 c 601 s 3, 4]

112.38 HEARING, NOTICE. When it has been made to appear to the board that a sufficient nominating petition has been filed, the board shall, within 35 days thereafter, by its order, fix a time and place, within the limits of the proposed district, for a hearing thereon. Notice of such hearing shall be given by the board by publication published once each week for two successive weeks prior to the date

of hearing in a legal newspaper, published in the county or counties in which a part or all of the affected waters and lands are located, the last publication shall occur at least ten days before the hearing. Notice shall also be mailed by the board to the county auditor and to the chief executive official of any municipality affected, which notice shall contain the following:

- (1) That a nominating petition has been filed with the board, and a copy thereof with the county auditor of the county or counties affected;
- (2) A general description of the purpose of the contemplated improvement, and the territory to be included in the proposed district;
- (3) The date, time, and place of hearing, and
- (4) That all persons affected thereby or interested therein may appear and be heard.

[1955 c 799 s 5; 1957 c 279 s 2; 1959 c 245 s 1]

112.39 ACTION OF BOARD UPON PETITION. Subdivision 1. At the time and place fixed for the hearing on the nominating petition, all persons interested in or affected by the contemplated improvement shall be given an opportunity to be heard. The board may continue the hearing from time to time as it may deem necessary.

Subd. 2. For the purpose of carrying out the provisions of this chapter and to hold hearings, the chairman of the board, or any member thereof, shall have the power to subpoena witnesses, to administer oaths, and to compel the production of books, records, and other evidence. Witnesses shall receive the same fees and mileage as in civil actions. All persons shall be sworn before testifying, and the right to examine and cross-examine witnesses shall be the same as in civil actions. The board shall cause a record of all proceedings before it to be made and filed with the secretary of the board. Copies thereof may be obtained upon such terms and conditions as the board shall prescribe.

Subd. 3. Upon the hearing if it appears to the board that the establishment of a district as prayed for in the nominating petition would be for the public welfare and public interest, and that the purpose of this chapter would be subserved by the creation of a watershed district, the board shall, by its findings and order, establish and create a watershed district and give it a corporate name by which, in all proceedings, it shall thereafter be known, and upon filing a certified copy of said findings and order with the secretary of state such watershed district shall become a political subdivision of the state, with the authority, power, and duties as prescribed in this chapter.

Subd. 4. The findings and order of the board shall name the first board of managers of the district whose term of office shall be for one year, and until their successors are appointed and qualified, and shall designate the place within the district where the principal place of business of the district shall be located, and define the boundaries of the district, which may be changed upon a petition therefor, and a notice and hearing thereon, in the same manner as in the original proceeding.

Subd. 5. A copy of the findings and order shall, at the time of filing a certified copy thereof with the secretary of state, be mailed to the county auditor of each county affected, the commissioner, and director.

Subd. 6. If the board should determine that the establishment of a district as prayed for in the nominating petition would not be for the public welfare and public interest, and would not serve the purpose of this chapter, the board shall, by its decision, dismiss the proceedings. A copy of such order shall be forthwith mailed to the county auditor of each county affected, and to the commissioner, and director.

Subd. 7, 8. [Repealed, 1959 c 270 s 2]

[1955 c 799 s 6; 1959 c 270 s 1]

112.40 RULES OF PRACTICE. The board shall adopt rules of practice for its proceedings and hearings, not inconsistent with the provisions of this chapter and other provisions of law, as it deems necessary and expedient.

[1955 c 799 s 7]

112.401 HEARINGS; REFERENCE. In any proceeding under Minnesota Statutes, Chapter 112, where a public hearing is required, the board may refer any question of fact to a member of the board or referee either to hear evidence and report it

to the board or to hear evidence and make findings of fact and report them to the board.

[1961 c 601 s 24]

112.41 PERPETUAL EXISTENCE. A district created under the provisions of this chapter shall have perpetual existence with power, but only to the extent necessary for lawful conservation purposes, to sue and be sued, to incur debts, liabilities and obligations, to exercise the power of eminent domain, to provide for assessments, and to issue certificates, warrants, and bonds and do and perform all acts herein expressly authorized, and all other acts necessary and proper for carrying out and exercising the powers expressly vested in it.

[1955 c 799 s 8]

112.411 PROCEDURE FOR TERMINATION. Subdivision 1. Proceedings for the termination of a watershed district shall be initiated only by the filing of a petition with the secretary of the board, which petition shall be signed by not less than 25 percent of the resident freeholders of the district. Such petition shall state that the existence of the district is no longer in the public welfare and public interest and that it is not needed to accomplish the purposes of the Minnesota watershed act.

The petitioners shall cause to be served upon the county auditor or auditors of the counties affected a copy of said petition and proof of service thereof shall be attached to the original petition, to be filed with the secretary of the board.

Subd. 2. Upon receipt of a copy of such petition the county auditor or auditors shall determine whether or not the petitioners are resident freeholders within the district, which determination shall be made, upon the tax records, which shall be prima facie evidence of ownership, and from which the auditor shall certify his determination to the board.

Subd. 3. At the time of filing the petition or before notice of a hearing thereon is given, a bond shall be filed by the petitioners with the board to be approved by it and in such sum as the board may determine, conditioned that the petitioners, in case the petition is dismissed or denied, will pay all costs and expenses therefrom.

Subd. 4. When it appears to the board that a sufficient petition has been filed, the board shall within 35 days thereafter, by its order fix a time and place, within the district, for a hearing thereon. The provisions of this section relating to notice and conduct of a hearing upon a nominating petition shall govern.

If the board should determine that the existence of the district is no longer in the public welfare and public interest and that it is not needed to accomplish the purpose of the Minnesota watershed act the board shall by its findings and order terminate the district. Upon filing a certified copy of said findings and order with the secretary of state such district shall cease to be a political subdivision of the state.

Subd. 5. The board shall not entertain a petition for termination of a district within five years from the date of its formation nor shall it make determinations pursuant to petitions in accordance with provisions of this section, more often than once in five years.

[1959 c 244 s 1; 1961 c 563 s 1, 2]

112.42 MANAGERS; ORGANIZATION, APPOINTMENT OF SUCCESSORS. Subdivision 1. At the time of filing a certified copy of the findings and order with the secretary of state, the board shall cause personal service of a copy thereof to be made upon the managers named therein. Within 10 days after such personal service has been made the managers shall meet at the designated principal place of business of the district and shall take and subscribe the oath defined in Minnesota Constitution, Article V, Section 8, which oath as subscribed shall be forthwith filed with the secretary of the board. Each manager shall thereupon file with the board a bond in the sum of \$1,000, the premium to be paid by the district for the faithful performance of his duties. The amount of such bond may be increased by the board if in the judgment of the board it becomes necessary. The managers shall thereupon organize by electing one of their number as president, another as secretary, and another as treasurer, and provide the necessary books, records, furniture, and equipment for the conduct and the transaction of their official duties.

Subd. 2. The board of managers shall adopt a seal and shall efficiently keep a record of all proceedings, minutes, certificates, contracts, bonds of its employees, and all other business transacted or action taken by the board, which record shall be, at all reasonable times, open to inspection by the property owners within the

district, and all other interested parties.

Subd. 3. At least 30 days prior to the expiration of the term of office of the first managers named by the board, the county commissioners of each county affected shall meet and proceed to appoint successors to the first managers. Provided, however, if the nominating petition that initiated the district shall be originated from a majority of the cities, villages, or boroughs within the district the county commissioners shall appoint the managers from a list of nominees submitted by the townships and municipalities within the district. Said list shall contain at least three nominees for each position to be filled. It shall be submitted to the affected county board at least 60 days prior to the expiration of the term of office. If such list is not submitted within 60 days prior to the expiration of the term of office the county commissioners shall select the managers from eligible individuals within the district. Said county commissioners shall at least 30 days before the expiration of the term of office of any managers meet and appoint the successors. If the district affects more than one county, distribution of the managers among the counties affected shall be as directed by the board. The term of office of each manager, if the number does not exceed three, shall be one for a term of one year, one for a term of two years, and one for a term of three years. If the managers consist of five members, one shall be for a term of one year, two for a term of two years, and two for a term of three years. If the district affects more than one county, the board shall direct the distribution of the one, two and three year terms among the affected counties. Thereafter, the term of office for each manager shall be for a term of three years, and until his successor is appointed and qualified. Any vacancy occurring in an office of a manager shall be filled by the county commissioners representing the county in which the vacating manager did reside. A record of all appointments made under this subdivision shall be filed with the county auditor of each county affected, with the secretary of the board of managers, and with the secretary of the water resources board. No person shall be appointed as a manager who is not a voting resident of the district and none shall be a public officer of the county, state, or federal government.

Subd. 4. The provisions of Minnesota Statutes, Section 351.02, shall apply to members of the board of managers.

Subd. 5. The compensation of the members of the board of managers shall not exceed \$10 per day, and each member shall be entitled to reimbursement for all traveling and other expenses necessarily incurred in the performance of his official duties.

Subd. 6. The managers shall adopt by-laws, rules, and regulations not inconsistent with this chapter for the administration of the business and affairs of the district.

Subd. 7. The managers shall meet annually and at such other times as may be necessary for the transaction of the business of the district. A meeting may be called at any time upon the request of any manager, and when so requested the secretary of the district shall mail a notice of such meeting to each member at least eight days prior thereto.

[1955 c 799 s 9; 1959 c 340 s 1; 1961 c 601 s 5, 6]

112.43 MANAGERS; POWERS, DUTIES. Subdivision 1. The managers, in order to give effect to the purposes of this chapter may:

(1) Make necessary surveys or utilize other reliable surveys and data and develop projects to accomplish the purposes for which the district is organized.

(2) Cooperate or contract with any state or subdivision thereof or federal agency or private or public corporation.

(3) Construct, clean, repair, alter, abandon, consolidate, reclaim or change the course or terminus of any public ditch, drain, sewer, river, watercourse, natural or artificial, within the district.

(4) Acquire, operate, construct, and maintain dams, dikes, reservoirs, and appurtenant works.

(5) Regulate, conserve, and control the use of water within the district.

(6) Acquire by gift, purchase, or the right of eminent domain necessary real and personal property.

(7) Contract for or purchase such insurance as the managers deem necessary for the protection of the district.

(8) Establish and maintain devices for acquiring and recording hydrological data.

(9) Enter into all contracts of construction authorized by this chapter.

(10) Enter upon lands within or without the district to make surveys and investigations to accomplish the purposes of the district. The district shall be liable for actual damages resulting therefrom.

(11) To take over when directed by the district court or county board all judicial and county drainage systems within the district, together with the right to repair, maintain, and improve the same. Whenever such judicial or county drainage system is taken over in whole or in part, the same, to the extent so taken over, shall become a part of the works of the district.

(12) Provide for sanitation and public health and regulate the use of streams, ditches, or watercourses for the purpose of disposing of waste and preventing pollution.

(13) Borrow funds from any agency of the federal government.

(14) Adopt rules and regulations to effectuate the purposes of the act and the authority of the managers.

Subd. 2. The managers shall annually make and file a report of the financial conditions of the district, the status of all projects and work therein, the business transacted by the district, and other matters affecting the interests of the district. Copies of said report shall be transmitted to the secretary of the state water resources board, the commissioner, and the director.

Subd. 3. The exercise of said powers by the managers shall at all times be subject to review by the board as herein provided.

[1955 c 799 s 10, 12, subd 3; 1961 c 601 s 7]

112.44 ADVISORY COMMITTEE. The managers, upon qualifying, shall appoint an advisory committee consisting of at least five members, who shall be selected if practicable as follows: one shall be a supervisor of a soil conservation district; one shall be a member of a county board; one shall be a member of a sportsmen's organization, and one shall be a member of a farm organization and others may be appointed at the discretion of the managers, which appointees shall be residents of the district, and shall serve during the pleasure of the managers. The committee shall advise and assist the managers upon all matters affecting the interests of the district, and shall make recommendations to the managers upon all contemplated projects and works of improvement within the district.

[1955 c 799 s 11; 1959 c 247 s 1]

112.45 EMPLOYEES, DUTIES. The managers may employ a chief engineer, professional assistants, and such other employees as may be necessary, and provide for their qualifications, duties and compensation. The chief engineer shall be superintendent of all the works and improvements; he shall make a full report to the managers each year, or more often if necessary. A copy of such report and all recommendations by the chief engineer shall be transmitted to the managers and the director. The managers may require any officer or employee of the district to give a bond for the faithful performance of his duties, in an amount prescribed by them, the cost thereof to be paid from the funds of the district.

[1955 c 799 s 12; 1961 c 601 s 8]

112.46 OVERALL PLAN. The managers shall, within a reasonable time after qualifying, adopt an overall plan for projects and improvements within the district for reclamation, drainage, erosion, and flood control, and improvement of lands, soils, waters, forests, wild life, and projects therein. A copy of such plan shall forthwith be transmitted to the county auditor of each county affected, the secretary of the board, the commissioner, the director, and the chief executive official of any municipality affected. The managers shall forthwith cause a notice that such plan has been adopted to be posted at three conspicuous places within the district. Upon receipt of such copy the commissioner and the director shall examine the same and within 20 days thereafter shall transmit to the board recommendations in connection therewith, a copy of which shall be transmitted to the managers and the county auditor of each county affected and to the chief executive official of any municipality affected. Within 45 days the board shall have a hearing on the proposed plan, the provisions of this chapter relating to notice, time, and place of hearing upon a nominating petition governing. After such public hearing the board shall, by its order, prescribe a project and improvement plan for the district. A copy thereof shall be transmitted to the managers, the county board of each county affected, the commissioner, and the director, and to the chief executive official of any municipality affected whereupon said plan shall become the project and improve-

MINNESOTA STATUTES 1961

ment plan for the district. Said plan may be amended upon a petition therefor, and a notice and hearing thereon, in the same manner as in the original proceeding.

[1955 c 799 s 13; 1959 c 246 s 1]

112.47 WORKS INSTITUTED ONLY UPON PETITION. All works of the district authorized by the general plan, as adopted, which are to be paid by assessment upon the benefited properties, shall be instituted only upon a petition filed with the managers of the district, as prescribed by this chapter.

[1955 c 799 s 14]

112.48 APPROVAL OF PROJECT AND IMPROVEMENT PLAN; FILING OF PETITION; CONTENTS; BONDS. Subdivision 1. After the project and improvement plan of the district has been approved and adopted, as provided for in section 112.46, a petition may be filed with the managers for any project or improvement within the district conforming in general with said plan. The petition therefor must be signed by not less than 25 percent of the resident freeholders, or by the owners of more than 25 percent of the property within the limits of the area proposed to be improved, provided however if the project or improvement petition consists of a drainage proceeding as defined in Minnesota Statutes, Chapter 106, such petition shall be signed by a majority of the resident owners of the land described in the petition or by the owners of at least 60 percent of the areas of such land. The lands described in the petition shall be those over which the proposed improvement passes or is located, or such petition may be signed by a county board of any county affected, or by the governing body of any city, village, or borough lying wholly or partly within the area proposed to be improved. Provided, however, if the proposed project affects lands exclusively within a city, village, or borough, the petition shall originate from the governing body of such city, village, or borough. For the purposes of this section, holders of easements for electric or telephone transmission or distribution lines shall not be deemed freeholders or owners. Such petition shall contain the following:

- (1) A description of the work proposed, and the purpose to be accomplished;
- (2) A description of the lands over which the proposed improvement passes or is located;
- (3) A general description of the part of the district which will be affected, if less than the entire district;
- (4) The need and necessity for the proposed improvement;
- (5) That the proposed improvement will be conducive to public health, convenience, and welfare;
- (6) A statement 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.

Subd. 2. 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 to the watershed district named in the petition in the sum of not less than \$2,000 with good and sufficient sureties, to be approved by the board of managers of the district with whom the bond is filed, conditioned to pay all costs and expenses which may be incurred in case the proceedings are dismissed or for any reason no contract is entered into for the construction of the improvement petitioned for. If the costs incurred or to be incurred exceed the amount of the existent bond the managers shall require an additional bond under the conditions and as provided in Minnesota Statutes, Section 106.051, insofar as applicable. Provided that if the petition is signed by the proper officials of a county, city, village, or borough no bond shall be required.

[1955 c 799 s 15; 1959 c 243 s 1; 1961 c 601 s 9, 10]

112.49 SURVEYS, PLANS. Subdivision 1. If it appears to the managers that the petition is sufficient, that the proposed improvement is for public interest and welfare, and is practicable and in conformity with the project and improvement plan of the district, they shall cause to be made, at the earliest time possible, all necessary surveys and plans for the construction of the proposed improvement. The engineer employed by the managers shall make a full report to the managers of his findings and recommendations relative to the proposed improvement, which shall contain a statement of

- (1) The estimated costs;
- (2) The estimated costs for survey, engineering, and supervision;
- (3) The estimated benefits to lands and property which will result from the

MINNESOTA STATUTES 1961

1159:

WATERSHEDS 112.50

proposed improvement;

(4) The area, lands, and property benefited or damaged, together with the names of the owners thereof as shown by the tax records, and

(5) The names of all corporations, public or private, affected by the proposed improvement.

Subd. 2. The engineer may adopt and approve and include as a part of his report, any project of the United States which is within the district and may accept any data, plats, plans, details, or information pertaining to such United States project furnished by him by the United States, and the engineer shall omit from his survey those items called for in subdivision 1 if the data furnished by the United States is sufficient for the engineer to make his report without additional survey.

Subd. 3. If the engineer's report is unfavorable the managers shall within 35 days thereafter by order fix a time and place within the district for a hearing at which the petitioners shall show cause why the managers shall not refer the petition back to the petitioners for such further proceedings thereon as the managers may determine or dismiss the petition. The notice shall state that the engineer's report is unfavorable, that it is on file with the managers and is subject to inspection, and the time and place for hearing thereon. The managers shall mail a copy of the notice to each of the petitioners at least 14 days before the hearing.

Subd. 4. The petitioners may dismiss the petition, upon payment of costs and expenses.

Subd. 5. If the report of the engineer is favorable for the construction of the improvement the managers shall adopt the report and shall order the engineer to make a detailed survey and furnish all necessary plans and specifications for the proposed improvement and report the same to the managers with all reasonable dispatch. Where the proposed improvement includes or prays for the construction or improvement of any ditch, drain, stream, river, or watercourse the engineer's report shall, so far as applicable, conform to the provisions of Minnesota Statutes, Section 106.121. Such detailed survey may be waived by the managers if it appears that sufficient data, plans, and specifications have been furnished by the United States to make such survey unnecessary.

Subd. 6. Upon the filing of the engineer's report, a complete copy thereof shall be transmitted to the director by the managers.

The director shall examine the same and within 15 days make his report thereon to the managers. If he finds the report incomplete and not in accordance with the provisions of Minnesota Statutes, Chapter 112, he shall so report. If he approves the same as being a practical plan 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 project 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 and filed with the managers. Such report shall be deemed advisory only.

No notice shall issue for the hearing until the director's report is filed or the time for filing thereof has expired.

[1955 c 799 s 16; 1959 c 242 s 1-3; 1961 c 601 s 11]

112.50 APPRAISERS, DUTIES. Subdivision 1. Upon the filing of the engineer's detailed survey and report the managers shall, with the least possible delay, appoint three disinterested resident freeholders of the state to act as appraisers. These appraisers shall subscribe an oath to faithfully and impartially perform their duties, and with or without the engineer, shall determine the benefits or damages to all lands and properties affected by the proposed project or improvement, including lands owned by the state of Minnesota or any department thereof, highways, and other property likely to be affected by the proposed improvement or that may be used or taken for the construction or maintenance thereof. Benefits and damages to lands owned by the state of Minnesota or any department thereof held and used for the purposes described in section 106.672 shall be determined subject to the provisions thereof, so far as applicable. The appraisers shall receive \$25 per day and necessary expenses while engaged in the performance of their official duties, to be paid by the district and included in the cost of improvement.

Subd. 2, 3. [Repealed, 1959 c 313 s 2]

[1955 c 799 s 17; 1959 c 313 s 1; 1961 c 601 s 12]

112.501 BENEFITED PROPERTY, DETERMINATION. Subdivision 1. The appraisers shall classify the lands found to be benefited. Where the proposed improvement includes or prays for the construction or improvement of any ditch, stream, river, or watercourse, or any structures for the control or alleviation of damages from flood waters, the appraisers shall be governed by Minnesota Statutes, Section 106.151. In all other proceedings the appraisers shall conform, so far as practicable, to Minnesota Statutes, Sections 111.67 and 111.68.

Subd. 2. In all proceedings under the Minnesota watershed act assessments for benefits against lands or corporations shall be made upon benefits to such lands or corporations by reason of the project or improvement affecting the same. Benefited properties shall include:

(1) All lands or corporations receiving direct benefits such as drainage, commercial navigation, disposal of sewage or waste material, protection from overflow by flood control improvements, prevention of siltation, control of erosion, or maintenance of lake levels;

(2) All lands that are furnished a drainage outlet by the construction or improvement of any artificial or natural drain or watercourse;

(3) All lands that are not receiving but need drainage and that are furnishing waters that are handled or controlled by the proposed improvement.

[1959 c 272 s 1; 1961 c 563 s 3]

112.51 APPRAISERS' REPORT, EXAMINATION. Upon filing of the appraisers' report the managers shall examine it to determine if it was made in conformity with the requirements of this chapter, and if the total benefits thus found are greater than the total estimated costs and damages. If the appraisers' report is lacking in any particulars the managers may recommit it to the appraisers for further study and report.

[1955 c 799 s 18]

112.52 HEARING UPON PETITION AND REPORTS. Upon the filing of the final report of the engineer and the appraisers appointed herein with the managers, they shall, within 35 days thereafter, by order, fix a time and place within the district for a hearing upon the petition and reports. Due notice thereof shall be given by the managers as herein provided.

[1955 c 799 s 19; 1959 c 220 s 1]

112.53 NOTICE OF HEARING, CONTENTS. Subdivision 1. The notice shall state the pendency of the petition; the time and place for hearing thereon; that the engineer's and appraisers' reports, including the plans and specifications, have been filed with the managers, and are subject to inspection. The notice shall contain a brief description of the proposed improvement, together with a description of the properties benefited or damaged, and the names of the owners thereof, the public and other corporations affected thereby as shown by the engineer's and appraisers' reports; and require all parties interested in the proposed improvement to appear before the managers at the time and place designated in the notice and there present their objections, if any they have, and show cause why an order should not be made by the managers granting the petition and confirming the reports of the engineer and the appraisers and ordering the establishment and construction of the improvement.

Subd. 2. The managers shall, by publication, cause notice of the time and place of such hearing to be given to all persons interested. Within one week after the beginning of publication, the managers shall give notice by mail of the time and place of hearing to the director and to each person, corporation, and public body affected by the proposed improvement as shown by the engineer's and appraisers' reports.

Subd. 3. Where the improvement affects the lands and properties in more than one county, separate notices shall be prepared and published in each county affected showing only the general description of the proposed improvement and the names and descriptions of the properties affected in the county. Notice by mail as provided in subdivision 2 shall be given.

[1955 c 799 s 20; 1961 c 601 s 13, 14]

112.54 HEARING BEFORE MANAGERS, APPEAL. At the time and place specified in the notice, the managers shall hear all parties interested for and against the granting of the petition and confirming the reports, and may order and direct the modification of the plans and specifications within the scope of the general improvement plan for the district, and the assessment of benefits and damages and

amend or change the list of property reported as assessable for the construction and maintenance thereof. If the amended reports include property not included in the original reports, the managers shall adjourn and cause to be published and mailed, as in the original notice, the proper notice with reference to all lands and properties not included in the previous notice. If upon full hearing the managers find that the improvement will be conducive to public health and promote the general welfare, and is in compliance with the provisions and purposes of this chapter, and that the benefits resulting therefrom will be greater than the cost of the construction and damages, they shall make findings accordingly and order and direct the construction of the improvement and confirm the report of the engineer and the findings and report of the appraisers and may by this order authorize the construction of the proposed improvement as a whole or for different parts thereof separately. All persons, parties, or corporations affected by the order may appeal therefrom as in this chapter provided.

[1955 c 799 s 21; 1959 c 241 s 1]

112.55 ORDER OF MANAGERS ESTABLISHING THE IMPROVEMENT, FILING. The order of the managers establishing the improvement and authorizing the construction thereof shall forthwith be filed with the secretary of the district, and a certified copy thereof shall be filed with the auditor of each county affected, the board, the commissioner, the director and the state department of health.

[1955 c 799 s 22]

112.56 ASSESSMENT AREA, DIVIDED INTO SUB-DISTRICTS. If the assessment area, as reported by the viewers and approved by the managers for the establishment of the improvement, includes only a severable portion of the lands and properties of the district, the managers shall by order establish such area as a sub-district and said order shall thereafter establish the relationship between all lands and properties situate in said area for the repair and maintenance of the improvement so established.

[1955 c 799 s 23]

112.57 BIDS. After an order has been made by the managers directing the establishment of each improvement, the managers shall call for bids for the construction of the work and give notice thereof by publication specifying therein the time and place where the bids will be opened for the letting of a contract for the construction of the work. The contract may be let in sections or as a whole, as the managers may direct. Notice thereof shall be published in at least one of the newspapers in the state where such notices are usually published. At a time and place specified in the notice, the managers may accept or reject any or all bids and may let the contract to the lowest responsible bidder, who shall give a bond, with ample security, conditioned for the carrying out of the contract. Such contract shall be in writing and shall be accompanied by or shall refer to the plans and specifications for the work to be done, and prepared by the engineer for the district. The plans and specifications shall become a part of the contract. The contract shall be approved by the managers, signed by the president and secretary thereof, and by the contractor.

[1955 c 799 s 24]

112.58 WORK MAY BE DONE WITHOUT A CONTRACT. In case of emergency, and in order to protect the interests of the district, work may be done under the direction of the managers and the engineer, without a contract, to the extent necessary to protect the interests of the district.

[1955 c 799 s 25]

112.59 CONTROL OF CONTRACTS. In all cases where contracts are let by the managers, they shall have full control of all matters pertaining thereto. If a contractor fails to complete the improvement within the time or in the manner specified in the contract, the managers may extend the time for completion or may refuse an extension of time or may cancel the contract and readvertise and relet the contract. They may require the surety for the contractor to complete the improvement or proceed to have the contract otherwise completed at the expense of the contractor and his surety. They may take such other action with reference thereto that the occasion may require in the interest of the district. The provisions of Minnesota Statutes, Chapter 106, so far as pertinent, apply to and govern the relations between the engineer and the contractor, including the examination and report of the engineer and the amount and time of payment. The managers shall keep an accurate account of all expenses incurred, which shall include the com-

compensation of the engineer and his assistants, the compensation and expenses of the appraisers as provided in section 112.50, the compensation of petitioners' attorney, the cost of petitioners' bond, the fees of all county officials necessitated by the improvement which shall be in addition to all fees otherwise allowed by law, and the time and expenses of all employees of the district, including the expenses of the managers while engaged in any improvement. The fees and expenses provided for herein shall be audited, allowed and paid upon the order of the managers and shall be charged to and be treated as a part of the cost of the improvement.

[1955 c 799 s 26; 1961 c 601 s 15]

112.60 ASSESSMENT, LEVIES. Subdivision 1. Upon the filing by the managers with the auditor of any county of a statement listing the property and corporations benefited or damaged or otherwise affected by any improvement as found by the appraisers and approved by the managers, he shall assess the amount specified in such list against the lands and municipalities or other corporations as therein specified in accordance with the pertinent provisions of Minnesota Statutes, Chapter 106.

Subd. 2. The county board of each county affected shall provide funds to meet the proportionate share of the total cost of the improvement, as shown by the report and order of the managers of the district and for such purposes the pertinent provisions of Minnesota Statutes, Chapter 106 shall apply.

Subd. 3. The respective county auditors and county treasurers shall levy and collect the amount shown in the tabular statement and lien as provided in Minnesota Statutes, Sections 106.341 to 106.401. All moneys received by the treasurer of any county from the sale of bonds, assessments, or otherwise, for the benefit of the district shall be by him accounted for and paid over to the treasurer of the district.

Subd. 4. No assessment shall be levied against any property or corporations benefited under the provisions of this chapter in excess of the amount of benefits received as fixed by the order of the managers authorizing the construction of the improvement or subsequently determined on appeal.

[1955 c 799 s 27]

112.61 FUNDS OF DISTRICT. The moneys of any district organized under the provisions of this chapter consist of:

(1) An organizational expense fund, which consists of an ad valorem tax levy, not to exceed two mills on each dollar of assessed valuation of all taxable property within the district or \$20,000 whichever is the lesser. Such funds shall be used for organizational expenses, and preparation of an over-all plan for projects and improvements. The managers of the district shall be authorized to borrow from the affected counties up to 75 percent of the anticipated funds to be collected from the organizational expense fund levy and the counties affected are hereby authorized to make such advancements. The advancement of anticipated funds shall be apportioned among affected counties in the same ratio as the assessed valuation of the area of the counties within the district bears to the assessed valuation of the entire district. In the event an established district is enlarged, an organizational expense fund may be levied against the area added to the district in the same manner as above provided. Unexpended funds collected for the organizational expense may be transferred to the administrative fund and used for the purposes authorized therein;

(2) An administrative fund, which consists of an ad valorem tax levy not to exceed one mill on each dollar of assessed valuation of all taxable property within the district, or \$20,000, whichever is the lesser. Such funds shall be used for general administrative expenses and for projects of common benefit to the district. The managers may make an annual levy for this fund as provided in section 112.611;

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

(4) A construction and maintenance fund, which is to be supplied by the sale of county bonds and by special assessments to be levied as herein provided to supply funds for the construction and maintenance of the improvements of the district, including reservoirs, ditches, dikes, canals, and other works, together with the expenses incident thereto and connected therewith;

(5) A preliminary fund, which consists of funds provided as herein specified,

and is to be used for preliminary work on proposed works of the district.

[1955 c 799 s 28; 1959 c 271 s 1; Ex:1959 c 67 s 1; 1961 c 601 s 16]

112.611 BUDGET; TAX LEVY. Subdivision 1. On or before October 1 of each year the managers shall adopt a budget for the ensuing year and shall decide upon the total amount necessary to be raised from ad valorem tax levies to meet its budget. After adoption of the budget and no later than October 1, the secretary of the district shall certify to the auditor of each county within the district the county's share of such tax, which shall be an amount bearing the same proportion to the total levy as the assessed valuation of the area of the county within the watershed bears to the assessed valuation of the entire watershed district. The maximum amount of any levy shall not exceed one mill on each dollar of assessed valuation of all taxable property in the watershed district or \$10,000 whichever is the lesser.

Subd. 2. The auditor of each county in the district shall add the amount of any levy made by the managers to the other tax levies on the property of the county within the district for collection by the county treasurer with other taxes. When collected, the county treasurer shall make settlement of such taxes with the treasurer of the district in the same manner as other taxes are distributed to the other political subdivisions. The levy authorized by this section shall be in addition to any other county taxes authorized by law.

[1959 c 256 s 1]

112.62 DISTRICT COURT TO CREATE PRELIMINARY FUND. Subdivision 1. As soon as the managers are appointed and have qualified, and a petition and bond have been filed with the managers praying for the construction of an improvement within the district, the managers may file a petition with the district court in the county wherein the principal place of business of the district is situate asking that an order be made creating a preliminary expense fund for the district. At least ten days notice of such application shall be given to the auditor of each county affected by the proposed improvement. The fund applied for shall be of a size proportionate to the needs of the district, but shall not exceed \$20,000.

Subd. 2. The district court upon hearing may designate the amount of the fund and fix the proportionate amount that each county affected by the improvement shall pay, in proportion to the area in the county affected by the proposed improvement. The court shall order the auditor of each county to draw his warrant upon the treasurer of the county for the payment of the amount specified in the order, payable to the treasurer of the district. The sum so advanced by the county shall be charged to the district, and shall be repaid with interest as soon as the district has funds for that purpose. The funds so provided shall be used by the managers for preliminary work. When the managers incur expenses for surveys or other preliminary work on any proposed improvement, all expenses connected with such work shall be included in the cost of construction of the proposed improvement. When the construction of the improvement is authorized by the managers the funds advanced from the preliminary fund shall be repaid out of receipts from assessments.

Subd. 3. In the petition to the district court requesting the creating of a preliminary fund, the managers may request the court to authorize the managers to levy an assessment against lands and persons benefited in an amount sufficient to reimburse any county for the moneys advanced to create the preliminary fund, which assessment may not exceed ten cents per acre on agricultural land. The managers may request authority to levy such assessment by a separate petition.

Subd. 4. Upon receipt of the order of the managers of the district the auditor shall cause to be levied upon such benefited lands and municipalities the assessment authorized by the district court. The managers shall file with the auditor of each county a list of lands within the county affected by the assessment and upon the filing thereof, or as soon thereafter as may be necessary, the auditor shall levy such assessment upon the lands and municipalities specified and spread the same upon the assessment roll as in the case of other taxes. The county treasurer shall collect and receipt such assessment and credit the same to the district and deduct from such assessment any sum due to the county and account to the district for all sums remaining. Each municipal corporation may appropriate such sums as are necessary to pay its proportionate share of such preliminary expenses, determined by the managers according to the benefits that will probably accrue to the cor-

poration from the contemplated improvements.

[1955 c 799 s 29]

112.63 WARRANTS. The managers of any district may issue warrants of the district in payment of any contracts for the construction of any improvements, for all ordinary general expenses, and for all expenses incurred in making repairs. When sufficient funds are not available to pay any warrant after its presentation to the treasurer of the district, the warrant draws interest at a rate not to exceed six percent per annum until paid or until notice is given by the district that funds are available for its payment. Except for warrants issued in payment of construction of any improvement, the funds for which have been provided, the outstanding warrants of the district shall not exceed \$5,000.

[1955 c 799 s 30]

112.64 LEVY FOR REPAIR OF IMPROVEMENT. The managers of any district, upon the certification of the engineer that an improvement situate in the district is in a state of disrepair, may levy upon the benefited land and property, as originally assessed for such improvement. The managers may order or direct the repair or provide funds for the maintenance or repair of such improvement upon filing a copy of the order for levy by the managers with the auditor of each county affected by such improvement against property and corporations within the limits of the county originally benefited thereby. The auditor shall extend the levy against the property within the limits of the county as provided in other proceedings for the levy, assessment, and collections of taxes ordered, levied, and collected by the district court or the county board in drainage proceedings.

If the managers find that the estimated cost of such repair, including all fees and costs incurred for proceedings relating thereto, is less than \$2,000, it may have such work done by day labor without advertising for bids or entering into a contract therefor.

[1955 c 799 s 31]

112.65 DRAINAGE SYSTEMS WITHIN DISTRICT. Subdivision 1. The managers of a district shall take over when directed by the district court or county board any judicial or county drainage system within the district, together with the right to repair, maintain and improve the same. Such transfer may be initiated by the district court or county board, or such transfer may be initiated by a petition from any person having an interest in the drainage system or by the managers. No such transfer shall be made until the district court or county board has held a hearing thereon. Due notice of the proposed transfer together with the time and place of hearing shall be given by two weeks published notice in a legal newspaper of general circulation in the area involved. All interested persons may appear and be heard. In all proceedings for the repair, maintenance, or improvement the managers shall conform to the provisions of Minnesota Statutes, Chapter 106.

Subd. 2. Construction of all new drainage systems or improvements of existing drainage systems within the district shall be initiated by filing a petition with the managers of the district.

[1955 c 799 s 32; 1959 c 240 s 1]

112.66 DAMAGE TO HIGHWAY OR BRIDGE BY PASSAGE OF EQUIPMENT. In case it is necessary to pass any dredge or other equipment through a bridge or grade of any highway or railroad owned by any corporation, county, town, or municipality, the managers shall give 20 days notice to the owner of the bridge or grade so that the same may be removed temporarily to allow the passage of such equipment, or an agreement may be immediately entered into for such purposes. The owner of the bridge or grade shall keep an itemized account of the cost of removal and if necessary, of the replacing of the bridge or grade and the actual cost shall be paid by the district. In case the owner of the bridge or grade refuses to provide for the passage of the equipment, the managers may remove such bridge or grade at the expense of the district, interrupting traffic in the least degree consistent with good work and without delay or unnecessary damage. In case the managers are prevented from doing so, the owner of the bridge or grade shall be liable for the damages resulting from the delay.

[1955 c 799 s 33]

112.67 CONTRACTS OF COOPERATION AND ASSISTANCE. The managers may enter into contracts or other arrangements with the United States government, or any department thereof, with persons, railroads, or other corporations, with pub-

lic corporations, and the state government of this state or other states, or any department thereof, with drainage, flood control, soil conservation, or other improvement districts, in this state or other states, for cooperation or assistance in constructing, maintaining, and operating the works of the district, or for the control of the waters thereof, or for making surveys and investigations or reports thereon; and may purchase, lease, or acquire land or other property in adjoining states in order to secure outlets; to construct and maintain dikes or dams or other structures for the accomplishment of the purposes of this chapter.

[1955 c 799 s 34]

112.68 OTHER STATUTES APPLICABLE. The provisions of Minnesota Statutes, Sections 471.59 and 471.64, are hereby made applicable to districts organized under this chapter.

[1955 c 799 s 35]

112.69 CONSTRUCTION BY GOVERNMENTAL AGENCIES; APPRAISERS' REPORT. Subdivision 1. Where an improvement is to be constructed within the district under a contract between the managers of said district and the state of Minnesota, or any department thereof, or by the United States of America, or any department thereof, wherein the cost of the improvement is to be paid for by the governmental agency but the rights-of-way, legal, and general expenses of the improvement are assumed by the district, the managers shall appoint three disinterested freeholders of the state to act as appraisers. After the appraisers so selected subscribe to an oath to faithfully and impartially perform their duties, they shall, with or without the engineer, determine the benefits or damages to all lands and properties affected by the proposed improvement. They shall make and file with the managers a detailed statement showing the actual damages that have resulted or will result to individuals, property, or corporations from the construction of the improvement and make and file with the managers a detailed statement and list of lands and other property, including highways and corporations, receiving actual benefits by way of drainage, control of flood waters, or by other means herein authorized.

Subd. 2. Upon the filing of the appraisers' report and the plans and engineering data prepared by the governmental agency the managers shall prepare a detailed statement of all costs and damages to be incurred in the construction of the improvement. They shall within 35 days thereafter by order fix a time and place within the district for a hearing upon the report. The managers shall cause notice to be given by publication and mailing as above provided for a hearing on a petition. At the time and place specified in the notice, the managers shall hear all parties interested for and against the confirming of the report; and may order and direct the modification of the assessment of benefits and damages, and amend or change the list of properties reported as benefited or damaged. If the amended reports include property not included in the original report the managers shall adjourn and cause to be published and mailed as in the original notice the proper notice with reference to all lands and properties not included in the previous notice. If upon full hearing the managers find that the benefits resulting from the construction will be greater than the assessments and damages they shall confirm the report. All persons or public corporations affected by the order may appeal therefrom as herein provided.

Upon the filing by the managers with the auditor of any county of a statement listing the property and corporations benefited or damaged or otherwise affected by any improvement as found by the appraisers and approved by the managers, proceedings shall be had as provided in section 112.60.

Section 112.47 is not applicable to works of the district constructed under contract as provided in this section.

[1955 c 799 s 36; 1961 c 601 s 17]

112.70 CLAIMS FOR DAMAGES. Every person or public corporation claiming damages from the district for or on account of any loss or injury sustained by reason of any defect in the construction or operation of any improvement constructed by a governmental agency under contract with the managers, as herein provided, or by reason of the negligence of its officers, agents, servants, or employees, shall present to the managers at the office of the secretary, within 30 days after the alleged loss or injury, a written notice stating the time, place, and circumstances thereof and the amount of damages claimed or other relief demanded. No action therefor may be maintained unless such notice is given. The

action shall be commenced within one year after the occurrence of the loss or injury.

[1955 c 799 s 37; 1961 c 601 s 18]

112.71 USE OF WATER, CONTRACTS; NOTICE, HEARING. The rights enjoyed by landowners, whether private or corporate, to the use of the waters of the district for any purpose shall continue as they existed at the time of the organization of the district and all such rights then existing shall be recognized and observed by the managers, but when improvements made by the district make possible a greater, better or more convenient use of or benefit from the waters of the district for any purpose, the right to such greater, better or more convenient use of or benefit from such waters shall be the property of the district, and such rights may be leased or assigned by the district in return for reasonable compensation, as provided herein.

All leases, assignments, permits or contracts for the use of water shall be entered into only after a report has been made by the managers of such district to the board setting forth the terms and conditions of the lease, permit, or contract relative to the use of any property of the district. The secretary of the board shall give due notice thereof to all parties interested, by mail, and shall cause to be published notice of the application, stating therein the purpose of the application and the time and place of hearing thereon. At the time of hearing the board shall hear all interested persons for or against such proposed contract and make its order accordingly upon such conditions and restrictions as may be necessary to protect the interest of the district and of the public.

[1955 c 799 s 38; 1961 c 601 s 19]

112.72 OTHER DRAINAGE LAWS, EFFECT OF REFERENCE. Whenever reference is made herein to any drainage laws of this state and sections thereof are referred to, the sections and provisions shall, so far as practicable, 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. Any amendments of such act or acts passed after the effective date of this chapter shall become applicable to this chapter.

[1955 c 799 s 39]

112.73 MANAGERS' REPORTS; AUDIT BY PUBLIC EXAMINER. The managers shall make such reports as are demanded by the public examiner. The public examiner shall audit the books and accounts of the district once each year, if funds and personnel permit. The district receiving such examination shall pay to the state the total cost and expenses of such examination, including the salaries paid to the examiners while actually engaged in making such examination. The revolving fund of the public examiner shall be credited with all collections made for any such examinations.

[1955 c 799 s 40; 1957 c 95 s 1]

112.74 EXISTING DISTRICTS MAY COME UNDER CHAPTER. Any district heretofore organized under the provisions of Minnesota Statutes 1953, Sections 111.01 to 111.42, or Sections 112.01 to 112.33, may acquire the right to operate under and exercise all the rights and authority of this chapter, instead of the act under which it was organized, upon the filing by the governing board of such district, in the office of the clerk of district court of the county in which its principal place of business is situate, a petition to the court asking that the district be granted such authority. The clerk of district court, as directed by the judge, shall thereupon fix a time and place for hearing upon the petition. Notice of the hearing shall be given by publication for two successive weeks in a newspaper published in each county having territory within such district. If at the hearing the court finds that it is for the best interests of the district to be granted such authority, it may by order grant such petition. Thereafter the district may exercise the authority provided for in this chapter.

[1955 c 799 s 41]

112.75 PENDING PROCEEDINGS FOR ESTABLISHMENT OF DISTRICT. In any proceeding for the establishment of a district under Minnesota Statutes 1953, Chapters 111 or 112, pending April 23, 1955, any person affected thereby or interested therein may petition the district court of the judicial district wherein the lands affected are situated for an order transferring such proceedings to the state

water resources board, and the court shall thereupon make an order transferring such pending proceedings to said board, whereupon the board shall be vested with jurisdiction and all further proceedings shall be subject to the provisions of this chapter. The court by its order shall direct that all records pertaining to said proceedings shall be delivered to the state water resources board.

[1955 c 799 s 42]

112.76 CORPORATE EXISTENCE OF CERTAIN DISTRICTS, TERMINATION.

The corporate existence of any district organized under the provisions of Minnesota Statutes 1953, Sections 112.01 to 112.33, wherein no work has been performed during the five-year period immediately prior to April 23, 1955, shall be terminated unless within one year thereafter such district makes application for authority to continue its corporate existence under the provisions of this chapter.

After April 23, 1955, no new district shall be organized under the provisions of Minnesota Statutes 1953, Chapter 112.

[1955 c 799 s 43]

112.761 PROCEEDINGS FOR ENLARGEMENT OF DISTRICT. Subdivision

1. Proceedings for the enlargement of an existing district shall be initiated by a petition filed with the secretary of the board. The required signatures on a petition to enlarge shall be the same as prescribed for a nominating petition, provided, however, the percentages shall be calculated only with reference to the territory which is proposed to be added to the district. Such petition shall state:

- (1) That the area to be added is contiguous to the existing district;
- (2) That it can be feasibly administered by the managers of the existing district;
- (3) The reasons why it would be conducive to the public health and welfare to add the area to the existing district;
- (4) A map of the affected area;
- (5) The name of the enlarged district, if other than that of the existing district; and
- (6) A request for the addition of the proposed territory.

The petition shall be served and the board shall proceed in a manner as prescribed for a nominating petition. The requirement of notice, and public hearings shall be as prescribed for the nominating petition.

Subd. 2. Upon the hearing, if it appears to the board that the enlargement of the district as prayed for in the petition would be for the public welfare and public interest and the purpose of Minnesota Statutes, Chapter 112, would be served, it shall, by its findings and order, enlarge the district and file a certified copy of said findings and order with the secretary of state. The name of the district may be changed by order of the board if requested in the petition to enlarge the district.

Subd. 3. If the district, as enlarged, affects more than one county, distribution of the managers among the counties affected shall be as directed by the board in the order enlarging the district.

[1961 c 601 s 23]

112.77 [Repealed, 1959 c 272 s 2]

112.78 FAULTY NOTICES, EFFECT. In any case where a notice is provided for in this chapter for any hearing or proceeding before the board, managers, or district court, if the board or managers or court finds that due notice was not given, it does not thereby lose jurisdiction, and the proceedings are not thereby invalid, but the board, managers, or court, in such case, shall order notice to be given and 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 the original notice was faulty only with reference to publication as to certain tracts, only the persons interested in those particular tracts need be notified by a subsequent notice. If the publication of any notice in any county was defective or not made in time, notice need be given only within the county in which notice was defective.

[1955 c 799 s 45]

112.79 HEARINGS, CONTINUANCES. Whenever an order has been made and notice given for a hearing in any proceeding under this chapter, and the board or managers or court fail to appear at the time and place specified, the secretary of the board or managers or the clerk of the district court shall continue the hearing to such other date as is deemed necessary and notify the board or managers or the court of the continuance and the date of hearing. The matter shall be continued to the date fixed by the secretary of the board or any manager, or the clerk of

court, without affecting the jurisdiction of the board or managers, or the court.

[1955 c 799 s 46]

112.791 REVIEW BY BOARD. Any person or public corporation aggrieved by an order of the managers authorizing or refusing to establish any project and improvement in whole or in part may have such order reviewed by the board by serving a copy of a demand for such review upon the managers within 30 days after the filing of such order. Such demand shall state the grounds upon which such review is sought, and the original demand with proof of service attached shall be forthwith filed with the board. The board may provide by rule that a reasonable cost bond shall be required as a condition to a public hearing on any review to the end that as far as practicable appeals will have substantial merit. Thereupon the board shall consider said matter and may hold a public hearing in the manner provided herein upon a nominating petition. The board shall thereafter make an order amending, modifying, approving, or rejecting the order of the managers and remand the matter to the managers with directions to proceed in accord with the order of the board.

[1959 c 405 s 1; 1961 c 601 s 21]

112.792 APPEALS FROM DECISION OF BOARD. Subdivision 1. Any person or public corporation aggrieved by any final order, rule, regulations, or final decision of the board may have the same reviewed by certiorari proceedings in the district court in the county in which a part of the district is located. The court of its own motion, or on application of any party, may, in its discretion, take additional testimony on any issue of fact, but no jury trial shall be had. If the court shall determine that the action of the board involved is lawful and reasonable and is warranted by the evidence in case an issue of fact is involved, the action of the board shall be approved; otherwise the court may vacate or suspend the action of the board involved, in whole or in part, as the case may require, and thereupon the matter shall be remanded to the board for further action in conformity with the decision of the court. The provision for review by certiorari, as herein provided, is not exclusive, and judicial action by mandamus, injunction, or other judicial remedy may be resorted to.

To render a review effectual, the aggrieved person or public corporation shall file with the clerk of the district court of the county wherein the principal place of business of the district is located, within 30 days of the date of such final order, rule, regulation, or decision an application for review together with the grounds upon which the review is sought.

Subd. 2. In any certiorari proceeding, or other judicial proceeding involving any order, rule, regulation, or other decision of the board, the action of the board shall be prima facie reasonable and valid, and it shall be presumed that all requirements of the law pertaining thereto have been complied with. All findings of fact made by the board shall be prima facie evidence of the matter therein stated. The burden of proving the contrary shall rest upon the party questioning the action of the board.

[1959 c 547 s 1; 1961 c 601 s 22]

112.80 APPEALS TO DISTRICT COURT. Subdivision 1. An appeal may be had to the district court by any party aggrieved by an order of the managers 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, or
- (4) Which affects a substantial right.

Subd. 2. 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. 3. If an appeal is taken from an order authorizing an improvement, the trial of any appeals from benefits or damages in such proceedings shall be stayed pending the determination of such appeal. If the order authorizing be affirmed, any such appeal from benefits or damages shall then stand for trial as provided by this section. If such appeal be from an order refusing to authorize an improvement, and if the court thereafter orders the improvement the secretary of the district shall give notice by publication of the filing of the order. Such notice shall be sufficient if it refers to the proposed improvement by general description and recites the substance of the order and the date of filing in the court.

Subd. 4. Any person or public corporation appealing on the first or second grounds named in subdivision 1, 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 represented such owner in the proceedings. Such notice of appeal shall be served upon the auditor of the county wherein the property is situated and upon the clerk of the district court of the county wherein the principal place of business of the district is located.

Subd. 5. To render the appeal effectual, the appellant shall file with such clerk of the district court within 30 days of the date of such final order a notice of appeal which shall state the grounds upon which the appeal is taken. The notice of appeal shall be accompanied by an appeal bond to the district where the property is situate of not less than \$250 to be approved by the clerk of district court, 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.

Subd. 6. The issues raised by the appeal shall stand for trial by a jury and shall be tried and determined at the next term of the district court held within the county in which the notice of appeal was filed, or in such other counties in which the appeal shall be heard, beginning after the filing of the appeal; and shall take precedence over all other court matters of a civil nature. If there is 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 situate in the county other than the county where the principal place of business of the district is located, 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 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 proceeding so far as they pertain to the matter 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.

Subd. 7. 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 and with the secretary of the board of managers.

Subd. 8. An appeal taken from an order of the managers authorizing or refusing to establish a project and improvement in whole or in part shall be reviewed by the water resources board as authorized by section 112.791, before an appeal may be taken to the district court.

[1955 c 799 s 47; 1959 c 273 s 1; 1961 c 601 s 20]

112.81 [Repealed, 1959 c 273 s 2]

112.82 AGGRIEVED PARTIES, RIGHTS. Subdivision 1. Any party aggrieved by a final order or judgment rendered on appeal to the district court or by the original order of the court made in any proceedings heard and tried before the court as in this chapter provided, 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. 2. In any proceeding before the managers for the repair, improvement, maintenance, consolidation, or abandonment of any of the works of the district 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 the improvement as herein provided and upon like grounds and with similar procedure.

[1955 c 799 s 49]

112.83 [Repealed, 1959 c 405 s 2]

112.84 DUE PROCESS OF LAW. No person shall, under this chapter, be deprived or divested of any previously established beneficial uses or rights without due process of law.

[1955 c 799 s 51]