

CHAPTER 112

WATERSHEDS

Sec.		Sec.	
112.34	Watershed act; declaration of policy, citation	112.58	Work may be done without a contract
112.35	Definitions	112.59	Control of contracts
112.36	Establishment of districts	112.60	Assessments, levies
112.37	Procedure for establishment	112.61	Funds of district
112.38	Hearing, notice	112.611	Budget; tax levy
112.39	Action of board upon petition	112.62	District court to create preliminary fund
112.40	Rules of practice	112.63	Warrants
112.401	Hearings; reference	112.64	Levy for repair of improvement
112.41	Perpetual existence	112.65	Drainage systems within district
112.411	Procedure for termination	112.66	Damage to highway or bridge by passage of equipment
112.42	Managers; organization, appointment of successors	112.67	Contracts of cooperation and assistance
112.43	Managers; powers, duties	112.68	Other statutes applicable
112.44	Advisory committee	112.69	Construction by governmental agencies; procedure; conveyances to federal government
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	112.73	Annual audit
112.48	Approval of overall plan; filing of petition; contents; hearing; bonds	112.74	Existing districts may come under chapter
112.49	Surveys, plans	112.76	Corporate existence of certain districts, termination
112.50	Appraisals	112.761	Proceedings for enlargement of district
112.501	Benefited property, determination	112.78	Faulty notices, effect
112.51	Appraisers' report, examination	112.79	Hearings, continuances
112.52	Hearing upon petition and reports	112.801	Appellate procedures and review
112.53	Notice of hearing, contents	112.82	Aggrieved parties, rights
112.54	Hearing before managers	112.84	Due process of law
112.541	Procedure when contract is not let	112.85	Withdrawal of territory
112.55	Order of managers establishing improvement, filing	112.86	Consolidation of districts
112.57	Bids		

112.01-112.33 [Repealed, 1955 c 799 s 52]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 provident use of the natural resources, the establishment of a public corporation, as an agency of the state for the aforesaid purposes, is provided in this chapter of Minnesota Statutes. 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; 1967 c 634 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. Public corporation, except where the context clearly indicates otherwise, does not mean 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" means 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 waters, soils and minerals.

Subd. 14. "Commissioner" means the commissioner of natural resources.

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 and includes the development of projects to accomplish the purposes for which a district is organized.

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; 1967 c 634 s 2; 1967 c 905 s 5; 1969 c 1129 art 3 s 1; 1973 c 712 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, agricultural, 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; 1969 c 971 s 1]

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 by any one of the following groups: either by

- (1) at least one-half of the counties within the proposed district;
- (2) or by a county or counties having at least 50 percent of the area within the proposed district;

(3) or by a majority of the cities within the proposed district;

(4) or a nominating petition also may be filed if signed by at least 50 resident freeholders of the proposed district, exclusive of the resident freeholders within the corporate limits of any city on whose behalf the authorized official has signed the petition.

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 at least 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 establishment 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. [Repealed, 1967 c 634 s 17]

Subd. 5. No petition containing the requisite number of signatures or petitioners or signed by the requisite number of counties or cities 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 establishment 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.

Subd. 6. In the event there are more than all or parts of six counties in a proposed watershed district, the board, upon request of the petitioners in their nominating petition, may in its discretion increase the number of managers of a watershed district from five to seven to a maximum of nine.

[1955 c 799 s 4; 1959 c 248 s 1-3; 1961 c 601 s 3, 4; 1967 c 634 s 3, 4; 1969 c 1072 s 1; 1973 c 123 art 5 s 7]

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; provided that if there is not a suitable place within the proposed district, the board may select a place within the limits of the county or counties in which publication of the notice of the hearing is required. 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; 1973 c 712 s 2]

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 establishment of a watershed district, the board shall, by its findings and order, establish 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 and a public corporation, 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, signed and provided in section 112.37, subdivision 1 or signed by the board of managers of a watershed district upon resolution duly passed authorizing the same, and a notice and hearing thereon, in the same manner as in the original proceeding. Whenever a petition for a boundary change involves a common boundary of two or more watershed districts the board may determine in which district the hearing shall be held. The principal place of business may be changed within the district by the managers upon resolution duly passed authorizing the same, with a notice and a hearing to be conducted by the managers. Notice of such hearing shall be given by the managers of 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 of hearing shall be mailed to the county auditor of each county affected ten days before the hearing. After the hearing the managers may order the change in place of business which shall be effective upon the filing of a certified copy thereof with the secretary of state and the secretary of the board.

MINNESOTA STATUTES 1974

112.40 WATERSHEDS

1550

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; 1965 c 651 s 1; 1967 c 634 s 5, 6; 1969 c 1072 s 2]

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 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. Ten years after the order of establishment, upon petition of the county board of commissioners of any county affected by the district, the board after public hearing thereon, may redistribute the managers among the counties if such redistribution is in accordance with the policy and purposes of chapter 112. No petition for the redistribution of managers shall be filed with the board more often than once in ten years. 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. If the district affects more than five counties, in order to provide for the orderly distribution of the managers, the board may determine and identify the manager areas within the territory of the district and select the appointing county board of commissioners for each manager's area. Any vacancy occurring in an office of a manager shall be filled by the appointing county board of commissioners. 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 \$35 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. If public facilities are not available for a district's principal place of business within the district, the board shall determine and designate the nearest suitable public facility as the district's principal place of business. 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; 1967 c 259 s 1; 1967 c 634 s 7; 1969 c 1072 s 3; 1973 c 123 art 5 s 7; 1973 c 712 s 3]

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 and may initiate, undertake, and construct projects not required to be instituted by a petition under section 112.47.

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

(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, water supply systems, 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. The district may acquire such property without the district where necessary for a water supply system.

(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 the following: (a) any agency of the federal government; (b) any county in which the district is located in whole or in part, provided assessments are pledged to repay the amount of the loan. A county board may lend the amount requested by a district. No district may have more than \$20,000 in loans from counties under this clause outstanding at any time.

(14) Prepare a flood plain map of the lands of the district which are in the flood plain of lakes and watercourses, which map shall be made available to the counties and local municipalities for inclusion in flood plain ordinances and shall be in conformity with state regulations setting standards and criteria for designation of flood plain areas.

(15) Prepare an open space and greenbelt map of the lands of the district which should be preserved and included in the open space and greenbelt land areas of the district, which map shall be made available to the counties and local municipalities for inclusion in flood plain and shoreland ordinances.

(16) Appropriate necessary funds to provide for membership in a state

association of watershed districts which has as its purpose the betterment and improvement of watershed governmental operations.

(17) Adopt rules and regulations to effectuate the purposes of the act and the powers of the managers. In the protection and the control of the use and development of land in the flood plain and the greenbelt and open space areas of the district, the managers shall have a limited authority to adopt ordinances to control encroachments, the changing of land contours, the placement of fill and structures of every type, to prevent the placement of encumbrances or obstructions and to require the landowner to remove such fill, structures, encumbrances, or other obstructions and to restore the previously existing land contours and vegetation. The managers may by ordinance provide a procedure whereby the district can do the work required and assess the cost thereof against the affected property as a special assessment. Such ordinances shall be applicable only in the absence of county or municipal ordinances for the regulation of those items set forth in this paragraph. Every ordinance shall be enacted by a majority vote of the managers of the district. The ordinance shall be signed by the secretary of the district and published once in a legal newspaper of the district. Proof of the publication shall be attached to and filed with the ordinance. Every ordinance shall be recorded in the official minute book and shall be substantially in the style, "The managers of theWatershed District ordain:".

Subd. 2. The district court may enforce by injunction or other appropriate order the provisions of sections 112.37 to 112.80 and any rule or regulation adopted or order issued by the managers thereunder.

Subd. 3. 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 state water resources board, the commissioner, and the director.

Subd. 4. 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, 11, subd 3; 1961 c 601 s 7; 1963 c 834 s 1-4; 1965 c 51 s 17; 1969 c 971 s 2; 1969 c 1072 s 4; 1971 c 662 s 1]

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 and water conservation district; one shall be a member of a county board; one shall be a member of a sportmen'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. In addition the managers may appoint other interested and technical persons who may or may not reside within the district who shall serve during the pleasure of the managers. Each member of the advisory committee, in the discretion of the managers, shall be entitled to reimbursement for actual traveling and other expenses necessarily incurred in the performance of his duties as provided for state employees.

[1955 c 799 s 11; 1959 c 247 s 1; 1969 c 637 s 1; 1969 c 1072 s 5; 1973 c 712 s 4]

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 any or all of the purposes for which a district may be established. The overall plan shall be composed of narrative state-

ments of existing water and water related problems within the district, possible solutions thereto and the general objectives of the district. The overall plan may also include as a separate section any proposed work or projects. The separate statement of proposed work or projects or petitions for projects to be undertaken pursuant to the overall plan shall be considered as a comprehensive plan of the district for all purposes of review by the metropolitan council under section 473B.06, subdivision 6, if the district is within the metropolitan area. 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, the governing bodies of all municipalities, any soil and water conservation district having territory within the district and the metropolitan council if the district is within the metropolitan area. Upon receipt of such copy the commissioner, the director and the council shall examine the same and within 60 days thereafter, unless such time is extended by the board, the director and the council shall transmit to the board recommendations in connection therewith, a copy of which shall be transmitted to the managers, the county auditor of each county affected, the governing bodies of all affected municipalities and any affected soil and water conservation districts. Within 45 days from receipt of the director's and the council's recommendations the board shall have a hearing on the proposed overall 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 an overall plan for the district. A copy thereof shall be transmitted to the managers, the county board of each county affected, the commissioner, the director, the governing bodies of all municipalities affected, any affected soil and water conservation districts and the council whereupon said plan shall become the overall plan for the district. Said plan may be amended upon a petition submitted by the managers therefor, and the board shall have a hearing thereon, in the same manner as in the original overall plan proceeding. The managers and the board shall review the overall plan for the district at least once every two years after the board originally prescribes the overall plan and shall make such amendments thereto as may be deemed advisable.

[1955 c 799 s 13; 1959 c 246 s 1; 1963 c 834 s 5; 1965 c 652 s 1; 1967 c 634 s 8; 1969 c 637 s 1; 1971 c 662 s 2]

112.47 WORKS INSTITUTED. All works of the district which are to be paid by assessment upon the benefited properties, shall be instituted: (1) by a petition filed with the managers; or (2) by unanimous resolution of the managers; or (3) as otherwise prescribed by this chapter.

[1955 c 799 s 14; 1965 c 652 s 2; 1973 c 712 s 5]

112.48 APPROVAL OF OVERALL PLAN; FILING OF PETITION; CONTENTS; HEARING; BONDS. Subdivision 1. After the overall plan of the district has been prescribed, 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: (1) Not less than 25 percent of the resident freeholders, or by the owners of more than 25 percent of the land within the limits of the area proposed to be improved, provided however if the project or improvement consists of a drainage proceeding as defined in 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. For the purposes of this subdivision, holders of easements for electric or telephone transmission or distribution lines shall not be deemed freeholders or owners; or (2) a county board of any county affected; or (3) the governing body of any city lying wholly or partly within the area proposed to be improved. Provided, however, if the proposed project affects lands exclusively within a city, the petition shall originate from the governing body of such city. 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 or city no bond shall be required.

Subd. 3. Where an improvement is to be constructed within the district under an agreement between the managers and the state of Minnesota, or any department or agency thereof, or the United States of America, or any department or agency thereof, wherein the cost of the improvement is to be paid for in whole or in part by the governmental agency but the rights of way, and the expenses of the improvement are assumed by the district or where the managers are undertaking all or a portion of the basic water management project as identified in the overall plan, the following procedure shall be followed. A copy of the project plan shall be forwarded to the board and director for their reports after which the managers shall hold a public hearing on the proposed improvement following publication once each week for two successive weeks prior to the date of the 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 not more than 30 days and at least ten days before the hearing. The notice shall state the time and place of hearing, the general nature of the proposed improvement, the estimated cost thereof and the method by which the cost of the improvement is to be paid, including the cost to be allocated to each affected municipal corporation or the state of Minnesota or any department thereof. Not less than ten days before the hearing, notice by mail shall be given to the director and to the municipal corporations wholly or partly within the improvement project area, but failure to give mailed notice or defects in the notice shall not invalidate the proceedings. At the time and place specified in the notice the managers shall hear all parties interested in the proposed project or improvement. 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 overall plan and the provisions of chapter 112, they shall make findings accordingly and authorize the project.

Subd. 4. Works of the district which are to be paid by assessment upon benefitted properties may be instituted upon a resolution of the board of managers, provided, the engineers' preliminary estimate of costs is not over \$125,000 for any project in any calendar year, and that no such resolution shall be used for the establishment of a project, the essential nature and purpose of which is for drainage. The managers shall hold a public hearing on the proposed resolution for improvement following publication published once each week for two successive weeks. The publication shall be in a legal newspaper published in the county or counties in which the watershed district is situated, the last publication shall occur at least ten days before the meeting at which the resolution will be heard. The notice shall contain the following: The date, time and place of hearing, the substance of the proposed resolution, a statement that the improvement would be paid for by special assessment upon benefitted property and that all persons who might be affected thereby or who may be interested therein may appear and be heard. Defects in the notice shall not invalidate the proceedings. The managers shall secure from the district engineer or other competent person of their selection a report advising them in a preliminary way as to whether the proposed improvement is feasible and the estimated cost thereof, no error or omission in the report shall invalidate the proceeding. The managers may also take such other steps prior to the hearing, as will in their judgment provide helpful information in determining the desirability and feasibility of the improvement. If after the hearing it appears to the managers that

the proposed improvement is for public interest and welfare, and is practicable and in conformity with the overall plan of the district, they shall adopt a resolution therefor, properly identify the proceeding by name and number and shall cause to be made at the earliest time all necessary surveys and plans for the construction of the proposed improvement, as is provided in the case of a work instituted by petition. If the report of the engineer is unfavorable the managers shall fix a time and place for a hearing thereon in the matter provided for the hearing on the resolution. Thereafter the matter may be referred back to the engineer for further study and report or the managers may dismiss the proceeding. If the report of the engineer is favorable the matter shall proceed as in the case of a work instituted by petition as is prescribed by this chapter.

[1955 c 799 s 15; 1959 c 243 s 1; 1961 c 601 s 9, 10; 1965 c 647 s 1; 1969 c 1072 s 6, 7; 1973 c 123 art 5 s 7; 1973 c 712 s 6-8]

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 overall plan for projects and improvements of the district, they shall properly identify the proceeding by name and number and shall cause to be made, at the earliest time possible, all necessary surveys and plans for the construction of the proposed improvement. The engineer designated by the managers shall make a report to the managers of his findings and recommendations relative to the proposed improvement. If he finds the improvement feasible he shall include in his report a plan of the proposed project including:

(1) A map of the area to be improved, drawn to scale, showing thereon: the location of the proposed improvements; the location and adequacy of the outlet; the watershed of the project area; the location of existing highways, bridges and culverts; all lands, highways and utilities affected, together with the names of the owners thereof, so far as known; the outlines of any public lands and public bodies of water affected; such other physical characteristics of the watershed as may appear necessary for the understanding thereof;

(2) The estimated total cost of the completion of the project including costs of construction and all supervision and administrative costs of the project;

(3) The acreage which will be required and taken as right of way listed by each lot and 40 acre tract, or fraction thereof, under separate ownership;

(4) Such other details and information to inform the managers of the practicability and necessity of the proposed improvements together with his recommendations thereon.

Subd. 2. The engineer may adopt and approve and include as a part of his report, any project of the state of Minnesota or the United States which is pertinent to the project and may accept any data, plats, plans, details, or information pertaining to such state or federal project furnished to him by the state or federal agency and the engineer shall omit from his report those items called for in subdivision 1 if the data furnished by the state or federal agency is sufficient to meet the requirements of subdivision 1.

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. [Repealed, 1963 c 834 s 26]

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

The director and the board shall examine the same and within 30 days make their reports thereon to the managers. If they find the report incomplete and not in accordance with the provisions of Minnesota Statutes, Chapter 112, they shall so report. If they approve the same as being a practical plan they shall so state. If they do not approve the plan they shall file their recommendations for changes as they

deem advisable, or if in their opinion the proposed project or improvement is not practical they shall so report. If a soil survey appears advisable they shall so advise and in such event the engineer shall make the soil survey and report thereon before the final hearing. Their reports shall be directed to and filed with the managers. Such reports shall be deemed advisory only.

No notice shall issue for the hearing until the board's and the director's reports are 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; 1963 c 834 s 6, 7; 1967 c 634 s 9; 1969 c 1072 s 8]

112.50 APPRAISALS. Subdivision 1. Upon the filing of the engineer's 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 not to exceed \$35 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. The managers of the watershed districts may in their discretion use the following procedure for the purpose of determining benefits and damages. Upon the filing of the engineer's report the managers with the assistance of 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 from 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 managers shall also determine the amount to be paid and generally assessed by the watershed district for the basic water management portion of the improvement projects.

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

[1955 c 799 s 17; 1959 c 313 s 1; 1961 c 601 s 12; 1963 c 834 s 8; 1971 c 662 s 3]

112.501 BENEFITED PROPERTY, DETERMINATION. Subdivision 1. 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.

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

(1) All lands, including lands owned by the state of Minnesota or any subdivision thereof receiving direct benefits. Direct benefits include, but are not limited to assessments for drainage, recreation, commercial navigation, disposal of sewage or waste material, bank stabilization, flood control, land reclamation, prevention of siltation, control of erosion, and maintenance of lake levels;

(2) All lands that are contributing water or are furnished an improved drainage outlet and all lands that contribute waters that are stored, handled or controlled by the proposed improvement;

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

(4) Benefits to the state by reason of the improvement of lakes, streams, or other bodies of water as a place for propagation, protection and preservation of fish and other forms of wildlife, which benefits shall be assessable against the state of Minnesota to the extent and in the manner provided for assessments against the state in section 84A.55, subdivision 9, and within the available appropriation.

(5) Benefits to municipal corporations which occur to the lands in the municipality generally and which may be in addition to special benefits to specific lands within the municipality.

(6) Benefits that will result to all lands used for railway or other utility purposes.

[1959 c 272 s 1; 1961 c 563 s 3; 1963 c 834 s 9, 10; 1965 c 774 s 1, 2; 1969 c 1072 s 9]

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 report of the engineer and the appraisers appointed herein by the managers, they shall, within 35 days thereafter, by order, fix a time and place within the district for a hearing upon the petition or resolution and reports. Due notice thereof shall be given by the managers as herein provided.

[1955 c 799 s 19; 1959 c 220 s 1; 1963 c 834 s 11; 1973 c 712 s 9]

112.53 NOTICE OF HEARING, CONTENTS. Subdivision 1. The managers shall by publication give notice of the pendency of the petition or resolution; the time and place for hearing thereon; that the engineer's and appraisers' reports, including the plans, 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 give notice by mail, within one week after the beginning of publication, to the director and to each person, corporation, and public body affected by the proposed improvement as shown by the engineers and appraisers report. The notice shall contain a brief description of the proposed improvement and state: that the engineer's and appraisers' report are on file with the managers and available for public inspection; the time and place of hearing; and that the addressee's name appears as an affected party.

Subd. 3. When it is required that the managers acquire land in fee simple estate, they shall, prior to the filing of the appraiser's report, record in the office of register of deeds of the county in which the lands are situated, a notice of the pendency of a proceeding initiated by the managers to acquire the lands, which notice shall state the purpose for which the lands are to be taken. At least 20 days before the hearing, notice of the hearing in addition to that required in subdivisions 1 and 2 hereof shall be served upon owners of the property, in the same manner as the summons in a civil action, which notice shall describe the land, state by whom and for what purpose it is to be taken and give the names of all persons appearing of record or known to the managers to be the owners. The notice shall also state that benefits and damages have been determined, and that a hearing will be held by the managers at the time and place specified in the notice.

Subd. 4. 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; 1963 c 834 s 12-15; 1973 c 712 s 10]

112.54 HEARING BEFORE MANAGERS. At the time and place specified in the notice, the managers shall hear all parties interested for and against the establishment of the proposed improvement and confirming the reports. All questions

relative to the proposed improvement including jurisdiction, sufficiency of the petition or resolution, practicability and necessity shall be determined upon evidence presented at the hearing. Any findings made by the managers prior to the hearing shall not be conclusive but shall be subject to further investigation, consideration, and determination at the hearing. They may order and direct the modification of the engineer's report within the scope of the overall 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. The managers shall order the engineer to proceed with making the necessary surveys and preparing such plans and specifications as are needed to construct the proposed improvements and report the same to the managers with reasonable dispatch. The hearing then shall be recessed to await the engineer's report and receipt of bids, when it may again be recessed to allow compliance with section 112.541 if said section 112.541 becomes applicable.

[1955 c 799 s 21; 1959 c 241 s 1; 1963 c 834 s 16; 1973 c 712 s 11]

112.541 PROCEDURE WHEN CONTRACT IS NOT LET. If after the receipt of the bids, no bids are received except for a price more than 30 percent in excess of the engineers estimate as contained in his report, or for a price in excess of the benefits, less damages and other costs, the managers shall follow the procedure described in Minnesota Statutes, Section 106.241.

[1963 c 834 s 18]

112.55 ORDER OF MANAGERS ESTABLISHING 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, the Minnesota pollution control agency and the state department of health.

[1955 c 799 s 22; 1973 c 712 s 12]

112.56 [Repealed, 1963 c 834 s 26]

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 when 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, conditions for the carrying out of the contract. Bids shall not be entertained which in the aggregate exceed by more than 30 percent the total estimated cost of construction. 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; 1963 c 834 s 17]

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 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 ASSESSMENTS, 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. Upon filing of the statement as provided in subdivision 1 the county board of each county affected shall provide funds to meet its proportionate share of the total cost of the improvements, as shown by the report and order of the managers of the district, and for such purposes is authorized to issue bonds of the county in such amount as may be necessary in the manner provided by Minnesota Statutes, Section 106.411. In the event an improvement is to be constructed under the provisions of section 112.69, the provisions of Minnesota Statutes, Section 106.411 requiring the county board to let a contract for construction before issuing bonds shall not be applicable to bonds issued to provide the funds required to be furnished by this section.

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; 1963 c 41 s 1]

112.61 FUNDS OF DISTRICT. Subdivision 1. The moneys of any district organized under the provisions of this chapter consist of:

Subd. 2. An organizational expense fund, which consists of an ad valorem tax levy, not to exceed two-thirds of one mill on each dollar of assessed valuation of all taxable property within the district or \$60,000 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 valua-

tion 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;

Subd. 3. 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 \$75,000, whichever is the lesser. Such funds shall be used for general administrative expenses and for the construction and maintenance of projects of common benefit to the district. The managers may make an annual levy for this fund as provided in section 112.611. In addition to the annual administrative levy and solely in the instance of projects initiated by petition of a municipality of the district, the managers may annually levy a tax of not to exceed one-third of one mill for a period of not to exceed 15 consecutive years; the funds to be used to pay the cost which is attributed to the basic water management features of improvement projects initiated by petition of a municipality.

Subd. 4. 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;

Subd. 5. A construction fund, which is to be supplied by: the sale of county bonds; construction loans from any agency of the federal government; and by special assessments to be levied as herein provided to supply funds for the construction of the improvements of the district, including reservoirs, ditches, dikes, canals, channels, and other works, together with the expenses incident thereto and connected therewith. Construction loans from any agency of the federal government may be repaid from monies collected by special assessments upon properties benefited by the improvement as herein provided;

Subd. 6. 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.

Subd. 7. Repair and maintenance funds to be established pursuant to the provisions of section 112.64 as amended or hereafter amended.

[1955 c 799 s 28; 1959 c 271 s 1; Ex1959 c 67 s 1; 1961 c 601 s 16; 1963 c 834 s 19; 1965 c 648 s 1, 2; 1967 c 634 s 10, 11, 12; 1969 c 1072 s 10; 1971 c 662 s 4; 1973 c 773 s 1]

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 that provided for in Minnesota Statutes 1961, Section 112.61 and acts amendatory thereof.

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; 1963 c 834 s 20]

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 dis-

trict 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 meet the needs of the district, for preliminary work on the proposed improvement.

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. [Repealed, 1963 c 834 s 26]

Subd. 4. The state of Minnesota and any department or political subdivision thereof 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 corporation from the contemplated improvements.

[1955 c 799 s 29; 1963 c 834 s 21, 22]

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, which have been approved by the managers only when there are sufficient funds available for payment in the district treasury.

[1955 c 799 s 30; 1969 c 1072 s 11]

112.64 LEVY FOR REPAIR OF IMPROVEMENT. Subdivision 1. The board of managers shall be responsible for maintaining the works of the district in such condition that they will accomplish the purposes for which they were constructed. The cost of normal or routine maintenance of the works of the district, and the cost of removing obstructions and accumulations of foreign substances from a drainage system, will be paid from the maintenance fund upon the order of the board of managers.

Subd. 2. For the purpose of creating, to the credit of a work of improvement of the district, a maintenance fund to be used for normal and routine maintenance of that work of improvement, the board of managers is authorized to apportion and assess the amount of such fund against all the parcels of land and municipal corporations theretofore assessed for benefits in proceedings for the construction of the work of improvement. Such assessment shall be made pro rata according to benefits determined. No assessment for the benefit of the maintenance fund shall be made at any such time that the fund exceeds 20 percent of the original cost of construction of the work of improvement. Upon receiving the assessment order from the board of managers, the auditors of the counties affected thereby shall file for record in the office of the register of deeds for the county a tabular lien statement covering the assessment. The assessment shall be collected as provided in the order in the same manner as provided in Minnesota Statutes, Section 106.471. Before ordering the levy of an assessment for the benefit of the maintenance fund, the board of managers, in its discretion, may give such notice of hearing thereon as it may deem advisable.

Subd. 3. If the engineer certifies to the board of managers, in his annual report or otherwise, that a work of improvement of the district is in such a state of disrepair that it cannot be restored by normal and routine maintenance to the same condition as when originally constructed or subsequently improved, or that a

ditch or channel must be widened or deepened, or that any work of improvement of the district must be altered or improved, in order to attain the level of operating efficiency contemplated at the time of the original construction, the board of managers, before ordering any repairs other than normal and routine maintenance, shall order the engineer to prepare and submit to the board of managers technical and cost specifications on the work necessary to restore, or improve, the work of improvement to the desired level of operating efficiency. Upon receiving the engineer's report, the board of managers shall set a date for hearing thereon and give notice thereof in the same manner as in the original proceeding on the construction of the work of improvement. If upon full hearing the board of managers finds that the repair or improvement is in compliance with the provisions, and is necessary to accomplish the purposes of this chapter, and that the cost thereof will not exceed the benefits therefrom, they may order the repair or improvement and assess the benefited properties to defray the cost thereof. The cost will be apportioned and assessed prorata upon all lands and property as were assessed for the construction of the work of improvement. No single levy for repair shall exceed the amount of benefits originally determined. The board of managers shall file a copy of the order for levy with the auditor of each county which contains affected properties. The auditor shall extend the levy against affected properties as in proceedings for the levy, assessment and collection of taxes levied in drainage proceedings conducted under Minnesota Statutes, Chapter 106.

Subd. 4. If the managers find that the estimated cost of such repair, including all fees and costs incurred for proceedings relating thereto, is less than \$10,000, it may have such work done by day labor without advertising for bids or entering into a contract therefor.

[1955 c 799 s 31; 1965 c 775 s 1; 1967 c 634 s 13, 14; 1973 c 712 s 13]

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 and maintain 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. Following the hearing, the district court or county board shall make its order directing that the managers of a district take over the affected judicial or county drainage system, unless it appears that the take over would not be in the public welfare or public interest and would not serve the purpose of chapter 112. When the transfer is directed all proceedings for repair and maintenance shall thereafter conform to the provisions of 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. In all proceedings for the improvement of existing drainage systems within the district, the managers shall conform to the provisions of Minnesota Statutes, Section 106.501.

[1955 c 799 s 32; 1959 c 240 s 1; 1967 c 634 s 15, 16; 1969 c 1072 s 12]

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 public 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; PROCEDURE; CONVEYANCES TO FEDERAL GOVERNMENT. 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 forward a copy of the improvement plan to the board and director for their reports thereon; thereupon, they shall hold a public hearing on the proposed contract authorized by section 112.67 following publication once each week for two successive weeks prior to the date of the 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. The notice shall state the time and place of hearing, the general nature of the proposed improvement, the estimated cost thereof and the area proposed to be assessed. Not less than ten days before the hearing notice by mail shall be given to each resident owner, as shown on the county auditor's most recent records maintained for taxation purposes, within the area proposed to be assessed, and to the director and to each public body within the area to be assessed likely to be affected, but failure to give mailed notice or defects in the notice shall not invalidate the proceedings. At the time and place specified in the notice the managers shall hear all parties interested for and against the proposed project or improvement and all questions relative thereto shall be determined upon evidence presented at the hearing. 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 they shall make findings accordingly and authorize the project and enter into the proposed contract or other arrangement. Thereupon 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

MINNESOTA STATUTES 1974

1565

WATERSHEDS 112.71

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.

Subd. 3. When it is required that the board of managers convey to the United States Government the fee simple estate or a lesser interest in real property, the managers shall, prior to the filing of the appraiser's report, record in the office of the register of deeds of the county in which the lands are situated, a notice of the pendency of a proceeding initiated by the managers to acquire the lands to be conveyed to the United States government which notice shall state the purpose for which the lands are to be taken. At least 20 days before the hearing upon the appraiser's report, notice of the hearing in addition to that required by subdivision 2 hereof shall be served upon the owners of the property to be conveyed to the federal government, in the same manner as the summons in a civil action, which notice shall describe the land, state by whom and for what purpose it is to be taken and give the names of all persons appearing of record or known to the managers to be the owners. The notice shall also state that appraisers have been appointed in the manner provided by subdivision 1 hereof, to determine the benefits and damages, and that a hearing will be held by the managers upon the appraiser's report at the time and place specified in the notice. When the managers have confirmed the appraiser's report listing the property benefitted or damaged as provided in subdivision 2, the managers shall have all rights of possession and entry conferred in other cases of condemnation by chapter 117. Thereafter, the attorney for the managers shall make a certificate describing the land taken, the purpose for which taken, and reciting the fact of payment of all awards as determined by the appraisers appointed by the managers or judgments in relation thereto, which certificate, upon approval thereof by the managers, shall establish the right of the watershed district in the lands taken and shall be filed for record with the register of deeds of the county in which the lands are situated, which record shall be notice to all parties of the title of the watershed district to the lands therein described. Thereafter the managers are authorized to convey such lands and interests acquired to the United States government.

[1955 c 799 s 36; 1961 c 601 s 17; 1963 c 42 s 1; 1965 c 649 s 1; 1973 c 35 s 26; 1973 c 712 s 14]

112.70 [Repealed, 1963 c 798 s 16 subd 2]

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 if not inconsistent with Minnesota Statutes, Chapter 112, 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; 1963 c 834 s 23]

112.73 ANNUAL AUDIT. The managers shall make such reports as are demanded by the state auditor. The managers shall cause to be made an annual audit of the books and accounts of the district. Such audit may be made by either a public accountant or by the state auditor. If the audit is to be made by the state auditor it shall be initiated by a petition of the resident freeholders of the district or resolution of the managers of the watershed district requesting such audit pursuant to the authority granted municipalities under the provisions of sections 6.54 and 6.55. If the audit is made by the state auditor 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 state auditor shall be credited with all collections made for any such examinations.

[1955 c 799 s 40; 1957 c 95 s 1; 1965 c 513 s 1; 1973 c 492 s 14]

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. The clerk of district court shall give written notice of the hearing to the secretary of the water resources board. 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. Thereafter, upon petition by the managers, the name of the district, the number and distribution of the board of managers of the same shall be as the water resources board shall prescribe after notice and hearing. The distribution shall take effect upon the expiration of term of office of the director of the conservancy district as the term of office of each director expires. The appointments shall be made by the county commissioners as provided in Minnesota Statutes 1961, Section 112.42, Subdivision 3.

[1955 c 799 s 41; 1965 c 650 s 1]

112.75 [Repealed, 1973 c 712 s 16]

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. The procedure to provide a record of the termination of a district shall be initiated by a petition from the Minnesota Water Resources Board to the district court of the county in which its principal place of business is situated. Said petition shall contain a statement to the effect that no work was performed during the five-year period immediately prior to April 23, 1955 and that no application was made to continue the districts' operation under Minnesota Statutes, Chapter 112. The clerk of the district court, as directed by the judge, shall fix a time and place for hearing upon the petition. Notice of the hearing shall be given by publi-

cation for two successive weeks in a newspaper published in each county having territory within such district. If the court finds that the facts in the petition exist it shall issue an order finding the fact of the termination of the district. A copy of such order shall be filed in the office of the secretary of state.

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

The above procedure for termination shall apply with like force and effect to any district organized under the provisions of Minnesota Statutes 1961, Sections 111.01 to 111.42, wherein no work has been performed during the 20-year period immediately prior to May 21, 1965. After May 21, 1965, no new district shall be organized under the provisions of Minnesota Statutes 1961, Sections 111.01 to 111.42.

[1955 c 799 s 43; 1963 c 834 s 24; 1965 c 516 s 1]

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 [Repealed, 1965 c 873 s 3]

112.792 [Repealed, 1965 c 873 s 3]

112.80 [Repealed, 1965 c 873 s 3]

112.801 APPELLATE PROCEDURES AND REVIEW. Subdivision 1. An appeal may be had to the district court or to the Minnesota water resources board by any party, or jointly by more than one, 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 proceedings,
- (4) Which affects a substantial right, or
- (5) An order of the board of managers authorizing or refusing to establish a project and improvement in whole or in part.

Subd. 2. In all cases of appeal, the amount awarded by the jury or the board 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 or the board 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, or upon the secretary of the board.

Subd. 5. To render the appeal effectual, the appellant shall file with such clerk of the district court or the secretary of the board 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 the district court or the secretary of the board, as the case may be, 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 or of the board, as the case may be.

Subd. 6. The issues raised by the appeal shall stand for trial by the board at a time and place fixed by it or by a jury, and if by a jury, 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 to the board involving the same project for improvement, or if there is more than one appeal triable in one county, the court or the board 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. 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. If the appeal is to the board, the board shall file its decision with the secretary thereof. If the appeal is taken to the board from the order of the managers, the decision of such board may be reviewed by certiorari proceedings in the district court of a county in which the proposed project lies in whole or in part. If the appeal from the order of the managers is to the district court, and it appears to the court that there are involved facts, circumstances, or matters peculiarly or especially within the knowledge, functions, or duties of the Minnesota water resources board, the court may refer to such board as referee questions of fact within the scope of such knowledge, functions, and duties. Thereupon such board shall make its findings of fact upon the questions of fact so submitted to it and report the same back to the court.

Subd. 7. The board shall make a record of all matters tried by it on appeal or referred to it by the district court for findings of fact under the provisions of this section. Such record shall meet the requirements of a record of the trial of a matter in district court.

Subd. 8. All proceedings before the board shall be in conformity with Minnesota Statutes, Sections 15.0411 to 15.0422.

[1965 c 873 s 1]

NOTE: Laws 1965, Chapter 873, Section 2, reads:

"Section 2. No provision of this act shall preclude an appeal from any order of the Minnesota water resources board made prior to or after this enactment in a presently pending proceeding."

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]

112.85 WITHDRAWAL OF TERRITORY. Subdivision 1. Proceedings to withdraw any territory from an existing district shall be initiated by a petition filed with the secretary of the board. The required signatures on a petition for withdrawal 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 withdrawn from the district. Such petition shall state that the territory so described has not received or will not receive any benefits from the operation of the district, that the district can perform the functions for which it was established without the inclusion of said territory and that said territory is not, in fact, a part of the watershed. The petition shall request the release of the described territory from the district.

The petition shall be served and the board shall proceed in a manner as pre-

scribed for a nominating petition. The requirements for notices and public hearings shall be as prescribed for the nominating petition.

Subd. 2. Upon the hearing if it appears to the board that the territory as described in the petition has been not and will not receive any benefit from the operation of the district and that the district can perform the functions for which it was established without the inclusion of said territory, and that said territory is not, in fact, a part of the watershed, the board may issue an order releasing the territory, or any part of said territory, as described in the petition. No lands shall be released which have been determined subject to any benefits or damages for any improvement previously constructed. The territory so released shall remain liable for its proportionate share of any indebtedness existing at the time of the order. Levies on the lands shall continue in force until fully paid. If the board shall determine that the order prescribing the distribution of managers should be amended following the withdrawal of any territory it may so direct in the order authorizing the withdrawal.

[1963 c 834 s 25]

112.86 CONSOLIDATION OF DISTRICTS. Subdivision 1. Proceedings for the consolidation of two or more districts shall be initiated by a petition filed with the board. The petition shall be signed by each district affected and shall state:

- (1) The names of the districts to be consolidated.
- (2) That the districts are adjoining.
- (3) That the consolidated districts can be feasibly administered as one district.
- (4) The proposed name of the consolidated district.
- (5) The reasons why it would be conducive to the public health, convenience and welfare to consolidate the districts.
- (6) A request for the consolidation.

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 consolidation of the districts as prayed for in the petition would be for the public welfare and public interest and the purpose of chapter 112, would be served, it shall, by its findings and order, consolidate the districts 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.

Subd. 3. The term of office of all managers of the districts consolidated shall end upon the order of consolidation. Distribution of the managers of the consolidated district shall be as directed by the board in the order of consolidation. The managers of the consolidated district shall be appointed from the managers of the districts consolidated. They shall be five in number and their first term shall be for one year, thereafter they shall be appointed as provided in chapter 112.

Subd. 4. All of the assets, real and personal, of the districts involved and all legally valid and enforceable claims and contract obligations of the districts pass to the new district. Levies on the property of the districts consolidated shall continue in force until fully paid and all land shall remain liable for its proportionate share of any indebtedness existing at the time of the order.

Subd. 5. The overall plans of the existing districts shall become the overall plan of the consolidated district.

[1973 c 712 s 15]