

where the clerk of the district court receives a stated salary and no fees, the amount allowed to be retained by the clerk of the district court shall be paid into the county treasury and credited to the general revenue fund of the county. The clerk of court shall forward all applications and fees, less the amount herein allowed to be retained for expense, to the department within 15 days of the receipt by him. The clerks of the district courts may appoint agents to assist in accepting applications, but the clerks shall require every such agent to forward to the clerk by whom he is appointed all applications accepted and fees collected by him. The clerks of court shall be responsible for the acts of agents appointed by them and for the forwarding to the department of all applications accepted and all fees collected by such agents and by themselves.

Approved April 23, 1955.

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CHAPTER 799—S. F. No. 1575

[Coded]

*An act to provide for watershed districts, setting forth their powers and duties, prescribing the duties of certain officers and boards; and repealing certain statutes.*

Be it enacted by the Legislature of the State of Minnesota:

**Section 1. [112.34] Declaration of policy.** 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 creation of a public corporation, as an agency of the state for the aforesaid purposes, has been provided. This act shall be construed and administered so as to make effective these purposes.

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

**Sec. 2. [112.35] Definitions.** For the purposes of this act the terms defined in this section have the meanings ascribed to them.

(1) "Person" includes firm, copartnership, association, or corporation but does not include public or political subdivision.

(2) "Public corporation" means a county, town, school

district, or a political division or subdivision of the state, other than a watershed district.

(3) "Board" means the state water resources board established by the legislature.

(4) "Managers" mean the board of managers of a watershed district.

(5) "Publication" means publication once a week for two successive weeks in accordance with M.S. 1953, Section 645.11.

(6) "Public health" includes any act or thing tending to improve the general sanitary conditions of the district.

(7) "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.

(8) "County auditor" means the county auditor of any county affected by a watershed district.

(9) "Clerk" means the clerk of the district court of the county in which any judicial proceeding concerning a district is pending.

(10) "Engineer" means the engineer designated by the managers to act as engineer.

(11) "Appraisers" mean the persons appointed by the managers of the district to ascertain and report benefits and damages arising from proposed work.

(12) "Director" means the director of the Division of Waters.

(13) "Commissioner" means the commissioner of conservation.

(14) "Petition" means an initiating petition for "work", and may consist of one or more petitions therefor.

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

(16) "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.

(17) "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.

(18) "Work" or "works" means any construction, maintenance, repairs or improvements of a watershed district.

Sec. 3. [112.36] **Water resources board to establish watershed 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, which may be entirely within or partly within and partly without any county, and include the whole or any part of one or more counties, and to appoint the first board of managers thereof, as herein provided.

The territory embraced within a watershed district shall be contiguous, and when feasible it shall include all territory within the affected watershed or drainage basin, or all territory from which the water from natural or artificial channels finds its outlet through a main stream or channel. 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;
- (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, and 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.

Nothing in this act shall authorize the board or managers to establish and operate a commercial venture or enterprise.

Sec. 4. [112.37] **Procedure for establishment.** Subdivision 1. Proceedings for the establishment of a watershed district shall be initiated only by the filing of a nominating petition with the secretary of the board, which nominating petition shall be signed either by not less than 25 percent of the resident freeholders of the proposed district, or by the authorized officials of any county, city, village, and borough authorized by resolution duly passed by the governing body thereof, and, if signed by one or more counties, or by three or more cities, villages, and boroughs, the same need not be signed by any of the freeholders of the proposed district, which 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 not more than ten nominees. They shall be selected as representative of the local units of government affected and none shall be a public officer of the state or federal government, or of any political subdivision thereof;
- (5) A map of the proposed district showing the contemplated improvements;
- (6) A request for the organization of the district as proposed.

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

Subd. 2. Upon receipt of a copy of such nominating petition the county auditor or auditors, as the case may be, shall determine whether or not the petitioners are freeholders, which determination shall be made upon the tax records,

which shall be prima facie evidence of ownership, and from which the auditor shall certify his determination to the board.

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

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

Subd. 4. At the time of filing the nominating petition, or before notice of a hearing thereon is given, a bond shall be filed by the petitioners with the board, to be approved by it, in such sum as the board shall determine. If at any time during the proceedings the board deems it necessary to require an additional bond it may, by its order, so direct. Whenever the nominating petition is signed by the proper officials of one or more counties, or by the governing bodies of three or more cities, villages, and boroughs, as authorized by this act, no bond shall be required.

Sec. 5. [112.38] **Hearing.** When it has been made to appear to the board that a sufficient nominating petition has been filed, the board shall, within 10 days thereafter, by its order, fix a time and place, within the limits of the proposed district, for a hearing thereon. Notice of such hearing shall be given by the board by mail to each freeholder affected; the last notice shall occur at least 10 days before the hearing, 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.

**Sec. 6. [112.39] Actions 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 act 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 public interest in the conservation of the natural resources within the proposed district, including wild life, water resources, forests, and soils, will be served and protected, that the engineering and economic practicability of creating a district will be sound and feasible when considered in relation to the public interest and the resulting cost to the owners of the property to be assessed, and that the purpose of this act would be subserved by the creation of a watershed district, the board shall, by its findings and order, establish and create a watershed district and give it a corporate name by which, in all proceedings, it shall thereafter be known, and upon filing a certified copy of said findings and order with the secretary of state such watershed district shall become a political subdivision of the state, with the authority, power, and duties as prescribed in this act.

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

Subd. 5. A copy of the findings and order shall, at the time of filing a certified copy thereof with the secretary of

state, be mailed to the county auditor of each county affected, the commissioner, and director.

Subd. 6. If the board should determine that the establishment of a district as prayed for in the nominating petition would not be for the public welfare and public interest, and would not serve the purpose of this act, 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. Any person aggrieved by any final order, rule, regulation, or final decision of the board may have the same reviewed by certiorari proceedings in the district court in the county in which a part of the district is located. The court of its own motion, or on application of any party, may, in its discretion, take additional testimony on any issue of fact, or may try any or all of such issues de novo, but no jury trial shall be had. If the court shall determine that the action of the board involved is lawful and reasonable and is warranted by the evidence in case an issue of fact is involved, the action of the board shall be approved; otherwise the court may vacate or suspend the action of the board involved, in whole or in part, as the case may require, and thereupon the matter shall be remanded to the board for further action in conformity with the decision of the court. The provision for review by certiorari, as herein provided, is not exclusive, and judicial action by mandamus, injunction, or other judicial remedy may be resorted to.

Subd. 8. In any certiorari proceeding, or other judicial proceeding involving any order, rule, regulation, or other decision of the board, the action of the board shall be prima facie reasonable and valid, and it shall be presumed that all requirements of the law pertaining thereto have been complied with. All findings of fact made by the board shall be prima facie evidence of the matter therein stated. The burden of proving the contrary shall rest upon the party questioning the action of the board.

Sec. 7. [112.40] **Rules of practice.** The board shall adopt rules of practice for its proceedings and hearings, not inconsistent with the provisions of this act and other provisions of law, as it deems necessary and expedient.

Sec. 8. [112.41] **District, perpetual existence.** A district created under the provisions of this act 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.

Sec. 9. [112.42] **Managers, powers and duties.** 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 the Constitution of the State of Minnesota, Art. V., Section 8, which oath as subscribed shall be forthwith filed with the secretary of the board. The managers 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 their 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 board or boards of each county affected shall meet at the time and place to be designated by the board and proceed to appoint the successors to the first managers. If the district affects more than three and not more than five counties, the number of the managers shall be accordingly increased so that there will be a manager appointed for each county affected, not exceeding five. The county board or boards shall appoint one manager for each county affected, not exceeding five; 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 more than three and not more than five members, the number in excess of three shall

be appointed for a term of three years. Thereafter, the term of office of each manager shall be for a term of three years, and until his successor is appointed and qualified. Any vacancy occurring in the office of a manager shall be filled by the county board or boards in the same manner as the initial appointment. Such county board or boards shall, at least 30 days before the expiration of the term of office of any manager, meet and appoint a successor. 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 the secretary of the state water resources board. No person shall be appointed as a manager who is not a resident of the district, or who holds any public office.

Subd. 4. The provisions of M. S. 1953, Section 351.02 shall apply to members of the board of managers.

Subd. 5. The compensation of the members of the board of managers shall not exceed \$10.00 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 act 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 the transaction of the business of the district. A meeting may be called at any time upon the request of any manager, and when so requested the secretary of the district shall mail a notice of such meeting to each member at least eight days prior thereto.

Sec. 10. [112.43] **Proper conservation practices.**  
Subdivision 1. The managers, in order to give effect to proper conservation practices within the scope of the proposed project and improvement may:

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

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

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

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

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

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

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

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

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

(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.

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

Sec. 11. [112.44] **Advisory committee.** The managers, upon qualifying, shall appoint an advisory committee consisting of five members, who shall be selected as follows: one shall be a supervisor of a soil conservation district; one shall be a member of a county board; one shall be a member of a governing body of a city, village, or borough; one shall be a member of a sportsmen's organization, and one shall be a member of farm organization, 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.

**Sec. 12. [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, which, with all other necessary expenditures, shall be included as a part of the cost of the project or improvement. 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.

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

**Sec. 13. [112.46] Overall plan.** The managers shall, within a reasonable time after qualifying, adopt an overall plan for projects and improvements within the district for reclamation, drainage, erosion, and flood control, and improvement of lands, soils, waters, forests, wild life, and projects therein. A copy of such plan shall forthwith be transmitted to the county auditor of each county affected, the secretary of the board, the commissioner, and the director. The managers shall forthwith cause a notice that such plan has been adopted to be posted at three conspicuous places within the district. Upon receipt of such copy the commissioner and the director shall examine the same and within 20 days thereafter shall transmit to the board recommendations in connection therewith, a copy of which shall be transmitted to the managers and the county auditor of each county affected. Within 45 days the board shall have a hearing on the proposed plan, the provisions of this act relating to notice, time and place of hearing upon a nominating petition governing. After such public hearing the board shall, by its order, prescribe a project and improvement plan for the district. A copy thereof shall be transmitted to the managers, the county board of each county affected, the commissioner, and the director, whereupon said plan shall become the project and improvement plan for the district.

**Sec. 14. [112.47] Works instituted only upon petition.** All works of the district authorized by the general plan, as adopted, which are to be paid by assessment upon the benefited properties, shall be instituted only upon a petition filed with the managers of the district, as prescribed by this act.

Sec. 15. [112.48] **Projects, upon petition.** Subdivision 1. After the project and improvement plan of the district has been approved and adopted, as provided for in Sec. 13 of this act, a petition may be filed with the managers for any project or improvement within the district conforming in general with said plan. The petition therefor must be signed by not less than 25 per cent of the resident freeholders, or by the owners of more than 25 per cent of the property within the limits of the area proposed to be improved, or such petition may be signed by a county board of any county affected, or by the governing body of any city, village, or borough lying wholly or partly within the area proposed to be improved. Such petition shall contain the following:

(1) A description of the work proposed, the plan of construction, and the purpose to be accomplished;

(2) The part of the district which will be affected, if less than the entire district;

(3) The need and necessity for the proposed improvement;

(4) That the proposed improvement will be conducive to public health, convenience, and welfare;

(5) If the petition is not signed by a county board or the governing body of a city, village, or borough, that petitioners will pay all costs and expenses incurred thereby if the petition is not granted.

Subd. 2. The petition shall be accompanied by a bond in such an amount as the managers shall prescribe, conditioned that the petitioners, in case the petition is dismissed or denied, will pay all costs and expenses resulting therefrom. No bond shall be required when the petition is signed by a county board or the governing body of a city, village, or borough.

Sec. 16. [112.49] **Surveys and plans.** Subdivision 1. If it appears to the managers that the petition is sufficient, that the proposed improvement is for public interest and welfare, and is practicable and in conformity with the project and improvement plan of the district, they shall cause to be made, at the earliest time possible, all necessary surveys and plans for the construction of the proposed improvement. The engineer employed by the managers shall make a full report to the managers of his findings and recommendations relative to the proposed improvement, which shall contain a statement of

(1) The estimated costs;

(2) The estimated costs for survey, engineering, and supervision;

(3) The estimated benefits to lands and property which will result from the proposed improvement;

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

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

Subd. 2. Where the proposed improvement includes or prays for the construction or improvement of any ditch, drain, stream, river, or watercourse, the engineer's report shall, so far as applicable, conform to the provisions of M. S. 1953, Section 106.121.

Subd. 3. If the engineer's report is unfavorable the managers shall refer the petition back to the petitioners for such further proceedings thereon as the managers may determine, or dismiss the petition.

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

Subd. 5. If the report of the engineer is favorable for the construction of the improvement the managers shall adopt the report and provide for a final hearing.

Sec. 17. [112.50] **Appraisers.** Subdivision 1. Upon the filing of the engineer's detailed survey and report the managers shall, with the least possible delay, appoint three disinterested resident freeholders of the state to act as appraisers. These appraisers shall subscribe an oath to faithfully and impartially perform their duties, and then proceed to personally inspect and examine all lands, 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. The appraisers shall receive \$25.00 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 the improvement.

Subd. 2. The appraisers shall make and file with the managers a detailed statement showing the actual benefits or damages that will result to individuals, property, or corporations from the construction of the improvement as herein provided, which shall include corporations, public or private, and other property receiving benefits by way of drainage or control of flood waters or by regulation, conservation, and application

of waters as authorized by this act, and include all lands to which a drainage outlet is supplied by such improvement by way of increased facilities for drainage or control of flood waters or land and soil erosion.

Subd. 3. The appraisers shall classify the lands found to be benefited. Where the proposed improvement includes or prays for the construction or improvement of any ditch, stream, river, or watercourse or any structures for the control or alleviation of damages from flood waters, the appraisers shall be governed by M. S. 1953, Section 106.151. In all other proceedings the appraisers shall conform, so far as practicable, to M. S. 1953, Sections 111.67 and 111.68.

Sec. 18. [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 act, 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.

Sec. 19. [112.52] **Hearing upon petition and reports.** Upon the filing of the final report of the engineer and the appraisers appointed herein with the managers, they shall, within ten days thereafter, by order, fix a time and place within the district for a hearing upon the petition and reports. Due notice thereof shall be given by the managers as herein provided.

Sec. 20. [112.53] **Notice of hearing.** Subdivision 1. The notice shall state the pendency of the petition; the time and place for hearing thereon; that the engineer's and appraisers' reports, including the plans and specifications, have been filed with the managers, and are subject to inspection. The notice shall contain a brief description of the proposed improvement, together with a description of the properties benefited or damaged, and the names of the owners thereof, the public and other corporations affected thereby as shown by the engineer's and appraisers' reports; and require all parties interested in the proposed improvement to appear before the managers at the time and place designated in the notice and there present their objections, if any they have, and show cause why an order should not be made by the managers granting the petition and confirming the reports of the engineer and the appraisers and ordering the establishment and construction of the improvement.

Subd. 2. The managers shall cause notice of the time and place of such hearing to be given to all persons interested by publication. Within one week after the beginning of publica-

tion, the managers shall mail a printed copy of the notice to the director and to each person, corporation, and public body affected by the proposed improvement as shown by the engineer's and appraisers' reports.

Subd. 3. Where the improvement affects the lands and properties in more than one county, separate notices shall be prepared for use and published and mailed 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.

Sec. 21. [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 granting of the petition and confirming the reports, and may order and direct the modification of the plans and specifications within the scope of the general improvement plan for the district, and the assessment of benefits and damages and amend or change the list of property reported as assessable for the construction and maintenance thereof. If 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 act, and that the benefits resulting therefrom will be greater than the cost of the construction and damages, they shall make findings accordingly and order and direct the construction of the improvement and confirm the report of the engineer and the findings and report of the appraisers and may by this order authorize the construction of the proposed improvement as a whole or for different parts thereof separately. All persons, parties, or corporations affected by the order may appeal therefrom as in this act provided.

Sec. 22. [112.55] **Order of managers establishing the improvement.** The order of the managers establishing the improvement and authorizing the construction thereof shall forthwith be filed with the secretary of the district, and a certified copy thereof shall be filed with the auditor of each county affected, the board, the commissioner, the director, and the state department of health.

Sec. 23. [112.56] **Assessment area, division into sub-districts.** If the assessment area, as reported by the viewers and approved by the managers for the establishment of the improvement, includes only a severable portion of the lands and properties of the district, the managers shall order establish such area as a sub-district and said order shall thereafter establish the relationship between all lands and properties situate in said area for the repair and maintenance of the improvement so established.

**Sec. 24. [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, conditioned for the carrying out of the contract. Such contract shall be in writing and shall be accompanied by or shall refer to the plans and specifications for the work to be done, and prepared by the engineer for the district. The plans and specifications shall become a part of the contract. The contract shall be approved by the managers, signed by the president and secretary thereof, and by the contractor.

**Sec. 25. [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.

**Sec. 26. [112.59] Managers, control of work, done without a contract.** 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 M. S. 1953, 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, and the time and expenses of all employees, including the expenses of the managers while engaged in any improvement, which shall be charged to and be treated as a part of the cost of the improvement.

**Sec. 27. [112.60] List of property or corporations benefited.** 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 M. S. 1953, Chapter 106.

Subd. 2. The county board of each county affected shall provide funds to meet the proportionate share of the total cost of the improvement, as shown by the report and order of the managers of the district and for such purposes the pertinent provisions of M. S. 1953, Chapter 106 shall apply.

Subd. 3. The respective county auditors and county treasurers shall levy and collect the amount shown in the tabular statement and lien as provided in M. S. 1953, Sections 106.341 to 106.401, inclusive. 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 act 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.

**Sec. 28. [112.61] Preliminary fund, bond fund, construction and maintenance fund.** The moneys of any district organized under the provisions of this act consist of:

(1) A preliminary fund, which consists of funds provided as herein specified, and is to be used for preliminary work and general expenses.

(2) 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.

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

Sec 29. [112.62] **District court to create a preliminary fund.** Subdivision 1. As soon as the managers are appointed and have qualified, and a petition and bond have been filed with the managers praying for the construction of an improvement within the district, the managers may file a petition with the district court in the county wherein the principal place of business of the district is situate asking that an order be made creating a preliminary expense fund for the district. At least ten days' notice of such application shall be given to the auditor of each county affected by the proposed improvement. The fund applied for shall be of a size proportionate to the needs of the district, but shall not exceed \$20,000.

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

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

Subd. 4. Upon receipt of the order of the managers of the district the auditor shall cause to be levied upon such benefited lands and municipalities the assessment authorized by the district court. The managers shall file with the auditor of each county a list of lands within the county affected by the assessment and upon the filing thereof, or as soon thereafter as may be necessary, the auditor shall levy such assessment

upon the lands and municipalities specified and spread the same upon the assessment roll as in the case of other taxes. The county treasurer shall collect and receipt such assessment and credit the same to the district and deduct from such assessment any sum due to the county and account to the district for all sums remaining. Each municipal corporation may appropriate such sums as are necessary to pay its proportionate share of such preliminary expenses, determined by the managers according to the benefits that will probably accrue to the corporation from the contemplated improvements.

**Sec. 30. [112.63] Warrants.** The managers of any district may issue warrants of the district in payment of any contracts for the construction of any improvements, for all ordinary general expenses, and for all expenses incurred in making repairs. When sufficient funds are not available to pay any warrant after its presentation to the treasurer of the district, the warrant draws interest at a rate not to exceed six per cent per annum until paid or until notice is given by the district that funds are available for its payment. Except for warrants issued in payment of construction of any improvement, the funds for which have been provided, the outstanding warrants of the district shall not exceed \$5,000.

**Sec. 31. [112.64] Levy for repair of improvement.** The managers of any district, upon the certification of the engineer that an improvement situate in the district is in a state of disrepair, may levy upon the benefited land and property, as originally assessed for such improvement. The managers may order or direct the repair or provide funds for the maintenance or repair of such improvement upon filing a copy of the order for levy by the managers with the auditor of each county affected by such improvement against property and corporations within the limits of the county originally benefited thereby. The auditor shall extend the levy against the property within the limits of the county as provided in other proceedings for the levy, assessment, and collection of taxes ordered, levied, and collected by the district court or the county board in drainage proceedings.

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

**Sec. 32. [112.65] Investigation of drainage needing repair.** Subdivision 1. The managers of any district, upon being notified by the county board of any county which is within the limits of the district, that certain ditches, channels,

or watercourses within the county or district are in need of repair or improvement, shall immediately investigate and report to the county board the condition of the ditch, drains, watercourses, or other improvements needing repair, the amount and nature of the repairs required, and the probable cost thereof. Upon the county providing the funds, the managers shall take charge of the making of the repair and let contracts therefore or have the repair made under the direction of the district engineer.

Subd. 2. The managers of such district, upon the request of the county board, in cases of a county ditch, or of the district court, in cases of a judicial ditch, to take charge of the construction of any ditch situate within the district and thereafter all work done upon the construction, repair, or improvement of any such ditch shall be under the supervision and control of the managers of such district and the engineer of such district shall supervise the work and perform all duties assigned and specified with reference to the engineer in county or judicial ditch proceedings, and shall have and exercise like authority.

Sec. 33. [112.66] **Damage to highway grade 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.

Sec. 34. [112.67] **Contracts with federal agencies.** 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 act.

Sec. 35. [112.68] **Other statutes applicable.** The provisions of M. S. 1953, Sections 471.59 and 471.64 are hereby made applicable to districts organized under this act.

Sec. 36. [112.69] **Construction by federal agencies under contract.** Subdivision 1. Where an improvement is constructed within the district by the State of Minnesota, or any department thereof, or by the United States of America, or any department thereof, under a contract between the managers of said district and a governmental agency, wherein the cost of the improvement is paid for by the governmental agency but the rights-of-way, legal, engineering, and general expenses of the improvement are assumed by the district, the managers shall, upon the completion of the project, 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 proceed to personally inspect all lands, highways, and other property affected by the improvement as certified by the district engineer. 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' and the engineer's report the managers shall prepare a detailed statement of all costs and damages incurred in the construction of the improvement and shall file the same, together with the engineer's report and the appraisers' report, and a petition for hearing upon these reports, with the clerk of the district court of the county in which the principal place of business of the district is located. Upon the filing of the petition and these reports, the clerk of the district court shall immediately notify the judge thereof. Within ten days thereafter, he shall by order fix a time and place within the district for a hearing upon the petition and reports, of which due notice shall be

given by the clerk, by such publication as is determined by the court. Thereafter all proceedings shall be had as upon the hearing of the viewers' report in a drainage proceeding.

**Sec. 37. [112.70] Claims for damages.** Every person who claims damages from the district for or on account of any loss or injury sustained by reason of any defect in the construction or operation of any improvement constructed by a governmental agency under contract with the managers, as herein provided, or by reason of the negligence of its officers, agents, servants, or employees, shall present to the managers at the office of the secretary, within 30 days after the alleged loss or injury, a written notice stating the time, place, and circumstances thereof and the amount of damages claimed or other relief demanded. No action therefor may be maintained unless such notice is given. The action shall be commenced within one year after the occurrence of the loss or injury.

**Sec. 38. [112.71] Use of water, contracts.** 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.

**Sec. 39. [112.72] Other drainage laws, effect of reference to.** Whenever reference is made herein to any drainage laws of this state and sections thereof are referred to, the sections and provisions shall, so far as practicable, be treated and construed as having the same force and effect, so far as the provisions of this act are concerned, as though herein set forth. Any amendments of such act or acts passed after the effective date of this act shall become applicable to this act.

**Sec. 40. [112.73] Managers' reports.** The managers shall make such reports as are demanded by the public examiner. The public examiner shall audit the books and accounts of the district once each year.

**Sec. 41. [112.74] Existing districts may come under**

**this law.** Any district heretofore organized under the provisions of M. S. 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 act, instead of the act under which it was organized, upon the filing by the governing board of such district, in the office of the clerk of district court of the county in which its principal place of business is situate, a petition to the court asking that the district be granted such authority. The clerk of district court, as directed by the judge, shall thereupon fix a time and place for hearing upon the petition. Notice of the hearing shall be given by publication for two successive weeks in a newspaper published in each county having territory within such district. If at the hearing the court finds that it is for the best interests of the district to be granted such authority, it may by order grant such petition. Thereafter the district may exercise the authority provided for in this act.

**Sec. 42. [112.75] Pending proceedings for the establishment of a district.** In any proceeding for the establishment of a district under M. S. 1953, Chapters 111 or 112, pending at the effective date of this act, any person affected thereby or interested therein may petition the district court of the judicial district wherein the lands affected are situated for an order transferring such proceedings to the state water resources board, and the court shall thereupon make an order transferring such pending proceedings to said board, whereupon the board shall be vested with jurisdiction and all further proceedings shall be subject to the provisions of this act. The court by its order shall direct that all records pertaining to said proceedings shall be delivered to the state water resources board.

**Sec. 43. [112.76] Corporate existence of certain districts, termination.** The corporate existence of any district organized under the provisions of M. S. 1953, Sections 112.01 to 112.33, wherein no work has been performed during the five-year period immediately prior to the effective date of this act shall be terminated unless within one year of the effective date of this act such district makes application for authority to continue its corporate existence under the provisions of this act.

After the effective date of this act, no new district shall be organized under the provisions of M. S. 1953, Chapter 112.

**Sec. 44. [112.77] Assessments are based upon benefits, classifications.** In all proceedings under this act, assessments for benefits against lands or corporations shall be made upon the basis of benefits to such lands or corporations by

reason of the project or improvement affecting the same, and for the purpose of such assessment may be divided into three classes:

Class No. 1, includes all lands or corporations receiving direct benefits such as drainage or protection from overflow by flood control improvements or prevention of siltation or control of erosion.

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

Class No. 3, includes all lands that are not receiving, but need drainage and that are furnishing waters that will be handled or controlled by the proposed improvement.

Classes Nos. 1 and 2 shall be treated as direct assessments.

Class No. 3 shall be treated as secondary assessments on account of the control of the waters furnished by these lands. All lands within or without the limits of the district falling within Classes 1 and 2 are hereby declared assessable for the construction of such improvements under the provisions of this act a lands directly benefited, and all lands falling within the provisions designated as Class 3 are subject to assessment as lands receiving benefit from the improvement.

Sec. 45. [112.78] **Faulty notices, effect.** In any case where a notice is provided for in this act 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.

Sec. 46. [112.79] **Hearings, continuances.** Whenever an order has been made and notice given for a hearing in any proceeding under this act, and the board or managers or court fail to appear at the time and place specified, the sec-

retary 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.

Sec. 47. [112.80] **Appeals to district court.** Subdivision 1. An appeal may be had to the district court by any party aggrieved by an order of the managers made in any proceeding and entered upon its record determining any of the following matters:

- (1) the amount of benefits determined;
- (2) the amount of damages allowed;
- (3) relative to the allowance of fees or expenses in any proceeding, or
- (4) which affects a substantial right.

Subd. 2. Any person appealing on the first or second ground 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 situate and upon the clerk of the district court of the county wherein the principal place of business of the district is located.

Subd. 3. To render the appeal effectual, the appellant shall file with such clerk of the district court within 30 days of the date of such final order a notice of appeal which shall state the grounds upon which the appeal is taken. The notice of appeal shall be accompanied by an appeal bond to the district where the property is situate of not less than \$250 to be approved by the clerk of district court, condition [conditioned] that the appellant will duly prosecute the appeal and pay all costs and disbursements which may be adjudged against him and abide the order of the court.

Subd. 4. The issues raised by the appeal shall stand for trial by a jury and shall be tried and determined at the next term of the district court held within the county in which the notice of appeal was filed, or in such other counties in which the appeal shall be heard, beginning after the filing of the appeal; and shall take precedence over all other court matters of a civil nature. If there is more than one appeal

triable in one county, the court may, on its own motion or upon the motion of a party in interest, consolidate two or more appeals and try them together, but the rights of the appellants shall be separately determined. If the appellant fails to prevail, the cost of the trial shall be paid by the appellant. In case of appeal as to damages or benefits to property situate in the county other than the county where the principal place of business of the district is located, and if the appellant so requests, the trial shall be held at the next term of the district court of the county wherein the lands are situated. In such case, the clerk of the district court where the appeal is filed, shall make, certify and file in the office of the clerk of district court of the county where the trial is to be had, a transcript of the papers and documents on file in his office in the proceeding so far as they pertain to the matter on account of which the appeal is taken. After the final determination of such appeal, the clerk of the district court where the action is tried, shall certify and return the verdict to the district court of the county where the proceedings were instituted.

Subd. 5. The clerk of the district court shall file a certified copy of the final determination of any such appeal with the auditor of the county affected and with the secretary of the district board.

Subd. 6. An appeal on the third ground may be to the district court of any county wherein lands are affected. Such appeal shall be made within 30 days after the order allowing or disallowing the claim and shall be governed as far as practicable by the provisions of this section.

Sec. 48. [112.81] **Effect of appeal.** Subdivision 1. In all cases of appeal, the amount awarded by the jury as finally determined shall stand for and in the place of the amount from which the appeal was taken.

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

Sec. 49. [112.82] **Aggrieved parties, rights.** Subdi-

vision 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 act 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.

Sec. 50. [112.83] **Time for appeal.** Any person aggrieved by an order of the managers authorizing or refusing to establish any project and improvement in whole or in part or by any other order may have such order reviewed by the board by serving a copy of a demand for such review upon the managers within 30 days after the filing of such order. Such demand shall state the grounds upon which such review is sought, and the original demand with proof of service attached shall be forthwith filed with the board. The board may provide by rule [that] a reasonable cost bond shall be required as a condition to a public hearing on any review to the end that as far as practicable appeals will have substantial merit. Thereupon the board shall consider said matter and may hold a public hearing in the manner provided herein upon a nominating petition. The board shall thereafter make an order amending, modifying, approving, or rejecting the order of the managers and remand the matter to the managers with directions to proceed in accord with the order of the board.

Sec. 51. [112.84] **Due process of law required to deprive persons of rights.** No person shall, under this act, be deprived or divested of any previously established beneficial uses or rights without due process of law.

Sec. 52. M. S. 1953, Sections 112.01 to 112.33, are hereby repealed.

Approved April 23, 1955.