

SEC. 2. All ordinances, by-laws and regulations of all villages in this state not contravening any provisions of this act shall be and remain in force under this act.

SEC. 3. This act shall take effect and be in force from and after its passage.

Approved April 11, 1901.

CHAPTER 258.

H. F. No. 453

An act providing for the drainage of lands in certain cases, prescribing the powers and duties of county commissioners and other officers in the premises, and appropriating funds for the payment of assessments against state lands affected thereby, and prescribing penalties for the violation thereof, and repealing certain acts therein mentioned and referred to.

Counties.
Drainage
of lands.

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

SECTION 1. The board of county commissioners of any county shall have power, and it shall be their duty, at any session, when they shall find the conditions stated in the second section of this act to exist, to cause to be constructed as hereinafter provided, any ditch, drain, creek or other water course within said county; and such ditch, drain, creek, or other water course may, in whole or in part, follow and consist of the bed of any stream, creek or river, whether navigable or not, and they may widen, deepen, straighten and change the channel of any creek, river or other natural water course, whether navigable and whether meandered or not, and may confine any such creek, river or other water course by means of dykes, levees and embankments to its natural or artificial bed, as laid out. *Provided*, that when in any such proceedings the waters of any creek, river or other water course are diverted from their natural bed by such artificial ditch or drain, such ditch or drain shall as nearly as practicable follow the general direction of such creek, river or water course, and terminate therein.

Powers and
duties of
county com-
missioners,
etc.

SEC. 2. Before the board of county commissioners shall establish any ditch, drain or water course, there shall be filed with the auditor of such county a petition signed by one or more of the land owners whose lands will be liable to be affected by or assessed for the expense of the construction of the same, setting forth the necessity thereof, with a description of the proposed starting point, route and terminus; and one or more of such petitioners

Petition.

Bond, notice of hearing, etc.

shall give bond, with good and sufficient freehold sureties, payable to the county, to be approved, including amount and sureties, by the auditor, conditioned to pay all expense, in case the board of county commissioners or the court shall fail to establish said proposed ditch, drain or water course. Notice of the filing of said petition, and of the time and place of the hearing to be had thereon, shall be given by the auditor to all persons interested, by causing a copy of such petition, preceded by a statement of the time and place set for the hearing thereof, to be published for three successive weeks in a newspaper printed and published in said county, and by posting, at least three weeks before such hearing, printed copies thereof in three public places in each township where the proposed work is located and one at the door of the court house in said county, and at the same time the auditor shall mail a printed copy of said notice to all non-residents of the county whose lands lie within two miles on either side of the route specified in the petition, whose address is known to him or can be ascertained by inquiry at the county treasurer's office. *Provided*, that in all cases in which, from any cause, said notice shall not be given, or in case said notice shall be defective, the county auditor shall cause the same to be given so that the petition may be heard at the next session of said board, after the expiration of such, or any new, three weeks' publication. When said board shall be satisfied that all of the foregoing conditions have been complied with, they shall cause an accurate survey of the line of such proposed ditch, drain, creek or other water course from its source to its outlet, to be made by a competent and experienced civil engineer, to be appointed by them by resolution to that effect. The auditor shall forthwith transmit to such engineer a certified copy of such resolution.

Survey.

SEC. 3. It shall be the duty of such engineer, after taking an oath to faithfully perform his duties, to make an accurate survey of the line of said ditch, drain, creek or water course, from its source to its outlet; and he shall cause stakes or monuments to be set along said line, numbered progressively down stream, at each one hundred feet; and he shall make a computation of the number of cubic yards of earth to be excavated and removed from said ditch, drain, creek or water course between each of the one hundred foot stakes, and the estimated cost per cubic yard for the removal thereof, and shall sum up the total number of cubic yards of earth to be excavated and removed for the entire length of such ditch, drain, creek or water course, and make an estimate of the total cost of

Total cost, etc.

laying out, establishing and constructing the whole work (including branch ditches, if any), including all preliminary and other expenses connected therewith, and with the inspecting and certifying to the work when and as the same is completed. He shall also, in tabular form, give the depth of cut, width at bottom and width at top, at the source, outlet, and at each one hundred foot stake or monument of said ditch, creek or water course; and he shall specify the time, so far as practicable, and the manner in which the work shall be done; and may for that purpose set a different time for completing the several contracts; and also for completing any station or stations included in each contract, and shall have power, when he finds it necessary, to provide for running said ditch under ground, through drain tiles, or other materials, as he deems best, by specifying the size and kind of tile or other material to be used in such underground work, and shall estimate the cost of the same as a part of the total cost of the work. In locating a public ditch, drain, creek or water course, the engineer may vary from the line described in the petition, or from the starting point thereof, as he deems best; *provided*, he commence the ditch at or as near the point described in the petition as is reasonably practicable, and follow down the line therein described as nearly as practicable; and provided further, that he shall have authority to specify such branch ditch or ditches as, in his opinion, may be necessary to give owners of lands likely to be assessed for the construction of the main ditch the full benefit thereof; *provided*, that such branch ditch or branch ditches may either be opened at the same time and in the same manner as the main ditch, or the engineer may only locate said branch ditch or ditches for future construction. In all cases in which the route proposed is along highways already established, the engineer shall locate the ditch at sufficient distance from the center of such highway to admit of a good road along the central line thereof; the earth taken from the ditch shall be so placed upon the roadway as to form a turnpike, which shall be provided with sufficient and suitable culverts or openings so as not to obstruct the natural flow of surface water in times of high water, and no nearer to the margin thereof than two feet; but in locating a drain as above the engineer shall not materially depart from the terminal points described in said petition; *provided further*, that when there is not sufficient fall in length of the route described in the petition to drain the land adjacent thereto, or when for other reasons it appears expedient, he may shorten or extend the ditch from

the outlet named in the petition far enough to reasonably effectuate the purpose for which the work is extended. When, in his opinion, it will not be detrimental to the usefulness of the whole work, he shall, as far as practicable, locate the ditch on division lines between lands owned by different persons; and he shall, as far as practicable, avoid laying the same diagonally across the lands; but he shall not sacrifice the general utility of the ditch to avoid diagonal lines.

Report.

SEC. 4. He shall thereupon make a detailed and complete report of his doings, and submit therewith the necessary plans and specifications and a description of the lands over which the ditch is surveyed. Such report shall give the names of assistants and laborers and the time each was employed by or under him, and every other item of expense by him incurred in and above said work, and he shall forthwith file such report with the auditor, after having subscribed and sworn to the same.

Viewers.

SEC. 5. At the first regular or special session of said board of county commissioners after the filing of such report, or such time thereafter as may be appointed by them, not later than ten (10) days thereafter, said board shall make an order appointing three (3) resident freeholders of the county not interested in the construction of the proposed work and not of kin to any parties known to be interested therein, as viewers, to meet at a time and place specified by said board, and not more than ten days distant, preparatory to commencing their duties as hereinafter specified. It shall be the duty of the county auditor thereupon to issue to said viewers a certified copy of the petition and of the order of the board of county commissioners, and viewers, after taking the oath to faithfully perform their duties, shall proceed at the time set in said order, with said civil engineer, and shall in tabular form give the names of the owners of each tract of land to be benefited or damaged, the description of each tract benefited or damaged (said names of owners to be the same as appear on the county tax duplicates of said county, and the description to be given in legal form), and the total number of acres in each of said tracts, the estimated number of acres in each of said tracts of land to be benefited or damaged (as the case may be), and the amount that each tract of land will be benefited or damaged by the construction of said work. When any ditch established under this act drains either in whole or in part, any public or corporate road or railroad, or benefits any of such road so that the

roadbed or traveled track of any such road will be made better by the construction of such ditch, the viewers shall estimate the benefits arising therefrom to such roads, roadbeds or railroads, and report said benefits (names of roads and other particulars necessary to identify the corporations, private or public, to be benefited thereby, and amounts of benefits to each), as a part of their tabular statement provided for in this section; and they shall also report the total estimated benefits in respect to the entire ditch and branches, if any, and also whether or not, in their opinion, the estimated expense of the construction of such ditch, including the damages awarded therefor, are greater than the utility of the proposed ditch, or that the construction of such ditch is impracticable, for any reason, stating the reason why it should not be constructed.

SEC. 6. All lands benefited by a public ditch, drain or water course, and all public or corporate roads or railroads so benefited, in whole or in part, shall be assessed in proportion to the benefits for the construction thereof, whether said ditch passes through said lands, or along or near the line of such roads or railroads or not, and the viewers in estimating the benefits to lands, roads or railroads not traversed by said ditch shall not consider what benefits such lands, roads or railroads will receive after some other ditch or ditches shall be constructed, but only the benefits that will be received by reason of the construction of the public ditch as it affords an outlet for the drainage of such lands, roads or railroads.

Assessments.

SEC. 7. Said viewers shall forthwith file with the county auditor a report of all their doings and findings in detail, including expenses and the actual time they were engaged. They shall in every case completely perform every duty by this act imposed upon them (except in case of a re-reference, as hereinafter provided), within thirty days from the date of their appointment: *provided*, that if the water be so high, or the weather so inclement, or such unavoidable accident occur as in the opinion of the board of county commissioners to practically and reasonably prevent them from so doing the necessary delay caused thereby may be excused by such board; but the report of said viewers must in such case state the reason for such delay, and if such reason be not deemed sufficient by the board of county commissioners, such viewers shall forfeit one-half of the compensation hereinafter provided.

Viewers' report.

SEC. 8. Within three days after the filing of such report it shall be the duty of the auditor to call a special meeting of the board of county commissioners, by giv-

Special meet-
ing of coun-
ty commis-
sioners.

Publication
and notice.

Non-resi-
dents.

Failure to
give notice,
or notice
illegal.

Hear peti-
tion and
report.

ing to each member thereof not more than thirty-five days' notice, in the manner provided by law for notifying county commissioners of special meetings. He shall also cause a notice of the time and place of such special meeting to be given to all persons interested, by publication for three successive weeks prior thereto in a newspaper printed and published in said county, and by posting, at least three weeks before such meeting, printed copies thereof in three public places in each township where the proposed work is located, and one at the door of the court house in said county, of the pendency of said petition and viewers' report, and of the time and place set for the hearing thereof, which notice shall briefly state substantially where said ditch commences, a description of the land through which it passes, and where it terminates, together with the names of the owners of the lands that will be affected thereby, as the same appears in the report of the viewers; and within one week after beginning such publication the auditor shall mail a printed copy of said notice to all non-residents of the county named in such viewers' report as affected by such proposed work, whose address is known to him, or can be ascertained by him by inquiry at the county treasurer's office: *provided*, that in all cases in which, for any cause, said notice shall not be given, or in any case said notice shall be legally defective, the county auditor shall cause the same to be again given, so that the petition may be heard at another special adjourned or regular meeting of said board, which will occur more than seven days after the expiration of another notice by like publication, posting and mailing, as provided in the first instance.

SEC. 9. Said board of county commissioners, at the time which may as aforesaid, upon such proper notice thereof, be set for the hearing of said petition and report (or at any time to which said hearing may be adjourned from time to time, as necessity may require, but not otherwise), shall proceed to hear and consider the same; and all persons interested may appear and be heard by and before them. If said board, from the report of the viewers and such other evidence as may be adduced before them, shall find that the viewers' report and all other proceedings in the matter have been made and taken in accordance with the provisions of this act, and that the estimated benefits to be derived from the construction of said work, are greater than its total cost, including damages awarded, and that such damages and benefits have been duly awarded and assessed, and that such report is complete and correct, they shall by an order

containing such findings establish such ditch as specified in the report of the civil engineer, and establish and confirm the viewer's report; *provided*, that in case the viewers' report is found to be defective or erroneous in any particular, the board of county commissioners shall have authority to remedy such defect by re-reference to said viewers, if necessary, or otherwise, and to cause the expense of such re-reference, if any, to be assessed against the land benefited. In case of such re-reference the viewers shall proceed summarily to make the necessary corrections, and forthwith report the same to said board of county commissioners.

Establishing
ditch.

SEC. 10. When damages are awarded to any person or persons or corporation, as provided by this act, in excess of benefits, if any, the board of county commissioners shall order the same to be paid out of the county treasury, on warrants to be drawn and attested by the auditor and signed by their chairman; said warrants to be issued to the person or persons or corporations entitled thereto, at the expiration of the time for appeal, if no appeal be taken, and to be dated and become due and payable immediately after the letting of the contracts by the auditor, as hereinafter provided. In case of appeal, such warrants shall not be issued until the final determination thereof; and in case the proceedings had in relations to the laying out or establishing such ditch shall be declared void, and such proceedings set aside and vacated by the judgment of any court, no such warrants shall be issued.

Damages
awarded
paid out of
county
treasury.

SEC. 11. Any person or corporation aggrieved thereby may appeal from any order or judgment of the board of county commissioners made in the proceedings, and entered upon their records, determining either of the following matters, viz.:

Appeal.

First—Whether the benefits to be derived from the construction of said ditch are greater than the total cost thereof, including damages awarded.

Second—The amount of benefits to any tract of land, or owner of any public or corporate road or railroad.

Third—The amount of damages allowed to any person or persons or corporation.

Fourth—Whether estimated benefits to each tract of land and to each public or corporate road or railroad are greater than the actual benefits to be derived therefrom.

The appellant shall file with the county auditor a notice of appeal, which shall briefly state the grounds upon which such appeal is taken; *provided*, that such notice of appeal shall be filed within twenty days after such final

Time for fil-
ing appeal.

order or judgment of the board of county commissioners is made; and after the lapse of twenty days no appeal can be taken. If an appeal be taken the auditor shall within twenty days after the notice of appeal is filed make a complete transcript of the proceedings had before the board of county commissioners, and certify and transmit the same, together with all the papers filed in his office pertaining to such proposed work, including the notice of appeal, to the clerk of the district court.

Several appeals consolidated.

SEC. 12. If more than one party appeal, the judge of the district court may, in his discretion, order the cases to be consolidated and tried together; and in such case the rights of each party shall be separately determined by the jury in its verdict. And in all cases of appeal, *provided* the action of the commissioners be sustained, in whole or in part, the location and establishment of such ditch, to such extent shall be ordered by said court, and the court shall, in such order, fix as near as may be the time when the auditor shall give notice for the letting of the contract for the construction of the proposed work.

Auditor to let contracts.

Bond.

SEC. 13. If no appeal be taken within the time limited, or if appealed, then within ten days after the filing in the district clerk's office of the final decision thereon, the auditor shall proceed, as hereinafter provided, to sell the jobs of digging and constructing the entire work either as one job, or in one or more linear sections of one hundred feet each, each of said sections to be known and numbered by the stake or monument set by the engineer at the foot of each said section, as shown in the engineer's report, commencing at the one including the outlet, and thence in succession up the stream to the one including the source. The auditor shall contract in the name of the county with the party to whom a section or sections is or are sold, requiring him to construct the same in the time and manner set forth in the report of the engineer, on which the ditch is established; and shall take from him a bond, with not less than two freehold sureties, payable to the county, and to any person who may show himself to be aggrieved or injured by any breach thereof, or of the contract for which said bond is given, for not less than double the amount for which the same is sold, to be by said auditor approved, conditioned that said party will faithfully perform and fulfil his contract and pay all damages which may accrue by reason of the failure to complete the work within the time required in the contract therefor, and otherwise conditioned as in this act provided.

And the auditor shall give notice of the letting of such contracts by publication for three successive weeks in the official paper of the county wherein such work is located, of the time when and the place where such contracts will be let to the lowest responsible bidder or bidders; and in such notice shall invite bids for the work as one job, and also for any one or more of such sections, and shall reserve the right to reject any and all bids, and no bid shall be entertained which exceeds more than thirty per cent of the estimated cost of the construction of the part of said work covered by said bid; nor unless accompanied by a certified check, payable to the auditor, for not less than ten per cent of the bid; and said auditor may adjourn such letting from time to time until the whole work shall be taken, and, with the approval of the engineer, may let any one or more of such stations. The engineer shall attend at each letting of the work, and no bid shall be accepted without his approval as to the compliance with plans and specifications.

Publication
of notice
to bidders.

SEC. 14. The bond and contract shall be attached to each other, and the contract shall contain the specific description of the work to be done, either expressly or by reference to plans and specifications, and refer to the number of the section or sections, as provided for in the preceding section; and shall provide that the work shall be done and completed as provided for in the report of the engineer, and subject to his approval and that of the board of county commissioners. Such contract shall be drawn to the satisfaction of the engineer. Every such contract shall embrace the provisions of chapter 354 of the General Laws of 1895, as amended by the provisions of chapter 307, General Laws of 1897, applicable thereto, and shall provide that time shall be of the essence of the contract, in that if there should be any failure to perform the work according to the terms of said contract within the time limited therein, originally or by extension, the contractor shall forfeit and pay to the county a certain sum, to be named therein, and which shall be fixed by the county auditor, for each day that such failure shall continue. No extension of time shall be granted unless applied for in writing to the auditor, stating to his satisfaction good and sufficient reasons therefor, nor shall any extension affect the right to enforce such forfeiture, if any, as shall occur after the time originally limited, and before such extension, or occurring after the limit of the extension. The bond shall expressly provide that the bondsmen shall be liable for all damages resulting from any such failure, whether the work be re-

Bond and
contract at-
tached.

Extension
of contract.

sold or not, and that any person showing himself injured by such failure may maintain an action upon such bond in his own name, and that such actions may be successive in favor of all persons so injured. Such contractor shall be considered a public officer and such bond an official bond within the meaning of sections 5951, 5952, 5953 and 5954, "General Statutes 1894."

SEC. 15. If a job be not completed within the time fixed in the contract therefor, it shall be the duty of the bondsmen to notify the county auditor in writing of that fact within five days after the expiration of the time fixed in the contract, whereupon the auditor shall order said bondsmen to complete said job within a time specified by him, and they shall receive from the county the amount due on such job, or part thereof, that they have so completed, less the proper deduction for forfeiture, if any. The amount due said bondsmen for such work shall be determined by said civil engineer; *provided*, that a job not completed as hereinbefore specified by the original contractor, and the completion of which shall not be undertaken by the bondsmen as herein above provided, within ten days after such order, or of the failure to complete which the bondsmen shall not so notify said auditor, shall be resold by the county auditor after ten days' notice by publication, to the lowest responsible bidder, but not for a sum exceeding fifty per cent in excess of the original estimated cost of such work, not a second time to the same party. A contract and bond shall thereupon be entered into as hereinbefore provided, and such contract shall provide for the completion of the work resold within six months from the date thereof. Such excess, if any, shall be recoverable against the bondsmen on the original contract.

SEC. 16. It shall be the duty of the civil engineer, on being notified by any contractor that his job is completed, to inspect the same, and if he find it complete, according to contract, plans and specifications, he shall accept it, and give to the contractor a certificate of acceptance, stating that said section or sections (by number) are completed according to the contract, plans and specifications, as set forth in the report of said engineer, whereupon, if approved by the board of county commissioners, and upon the presentation and surrender of said certificate of acceptance by said contractor to the auditor, said auditor shall draw a warrant on the county treasurer of his county for the full amount found to be due on said contract, or preliminary certificate, as hereinafter provided for, and said warrant shall be paid out of the general

Bondsmen
to finish
work.

Inspection
and accept-
ance.

ditch fund to be provided by the board of county commissioners, as hereinafter specified. Said warrant shall become due and payable out of said fund at once, and if there shall be no cash in said fund to pay said warrant when the same is presented, the county treasurer shall endorse said warrant, "Not paid for want of funds," and date and sign such endorsement, and the amount of said warrant shall draw interest at the rate of six per cent per annum until called in by the treasurer or auditor of said county, and paid; *provided, however*, that the engineer, upon the written approval of the auditor, may issue preliminary certificates for not to exceed fifty per cent of work already done and approved, which certificates shall be treated as hereinbefore provided; but no such certificate shall be furnished except when accompanied by the engineer's written certificate that no loss will result therefrom.

SEC. 17. The board of county commissioners of each county wherein such ditch or ditches are proposed to be located and established are hereby authorized to issue the bonds of said county in such sums as may be necessary for the purpose of defraying the expenses incurred or to be incurred in locating, constructing and establishing the same, said word "expenses" to be construed to mean and to cover every item of cost of said ditch, from its inception to its completion, and all fees and expenses to be incurred in pursuance thereof, and the said counties shall be reimbursed as hereinafter provided. Said bonds shall bear interest at a rate not exceeding six per cent, and shall be payable at any time on or before ten years, at the option of said board of county commissioners; and the said commissioners shall provide a fund for the payment of annual interests on said bonds. The bonds issued under the provisions of this act shall be signed by the chairman of the board of county commissioners of said county, and countersigned by the county auditor, who shall keep a record of the bonds issued under the provisions of this act. The said board shall have the power to negotiate said bonds as they shall deem best for the interest of said county; *provided*, that they shall not negotiate the same at less than par value. All such bonds shall contain a recital that the same are issued in accordance with the provisions and pursuant to the authority of this act. The county commissioners are also hereby authorized and empowered to transfer from the general revenue fund of the county to such drainage fund any surplus moneys that may be in such revenue fund that can be properly used for the purposes of this act.

County commissioners may issue bonds.

List and
statement
by county
auditor.

SEC. 18. At the earliest practicable time after the letting of the contracts for the construction of any ditch, drain or water course, as herein provided, the county auditor shall make, in tabular form, a list and statement showing the following facts, and in the order named, viz.:

First—The names of the owners of all lands and the names of all public or corporate roads or railroads benefited by the construction of such proposed work.

Second—The description of said lands as the same appear in the report of the viewers, together with the total number of acres in each tract, according to the assessment rolls or tax lists of the county.

Third—The estimated number of acres benefited in each piece or parcel of said lands, as shown by the viewers' report.

Fourth—The estimated amount of benefits to each of said tracts of land and the estimated benefits to each public or corporate road or railroad as the same appears in the viewers' report, or as changed by the jury or court in case of appeal, if any changes are made by such jury or court.

Fifth—The amount that each of said tracts of land, and that each of said corporate roads or railroads so benefited, will be liable for, and must pay for, the location, construction and establishment of such ditch or ditches so benefiting them, which said amount shall be determined by the county auditor of said county, as follows:

The said auditor shall make a full statement showing the total cost of each ditch or ditches, under each separate petition for said ditch or ditches; and each petition and each ditch located, constructed and established, shall be known and designated by a number to be given to it by the county auditor. Such statement shall be headed as follows:

Statement showing cost of ditch No.....
To whom paid
For what paid.....
Amount paid

Said statement shall be summed up, showing in figures the total cost of each ditch or ditches and shall be attached to and form a part of the statement herein provided for. The total cost shall then be divided by the total estimated benefits, as provided for in subdivision five of this section, for the rate of cost on each one dollar of benefits, the auditor not to be obliged to carry out and use a smaller fraction than one-tenth of one mill.

The amount of estimated benefits on each tract of land, and on each public or corporate road or railroad (as hereinbefore provided for), shall be multiplied by said rate, and the result set down in the proper column opposite each of said tracts of lands, public or corporate roads or railroads; and such result so obtained shall be the amount that each of said tracts of land, public or corporate roads or railroads will be liable for on account of such improvement, less the amount of damages allowed, if any.

SEC. 19. Said statement, as provided for in section 18 of this act, having been completed by the auditor, he shall sign and acknowledge the same before some officer authorized to take acknowledgments; which said signature shall be witnessed by two persons. The said statement shall then be recorded by the register of deeds, and posted upon the abstract books in his office, if any such books are there, of the proper county, and the amount that each tract of land and each public or corporate road or railroad will be liable for, and the interest thereon, as hereinafter provided, shall be and remain a lien on such lands, public or corporate roads or railroads, until fully paid; said payments to be made as hereinafter provided. The filing of such statement in the register of deeds' office shall be notice to all parties interested of the existence of such lien. The fee of such register of deeds for such recording shall be paid by the county, on the allowance of the board of county commissioners, and said statement, after the same has been recorded, shall be returned to the county auditor, to be by him placed with the other papers relating to such ditch or ditches, and carefully preserved by him.

Auditor's statement to be recorded with register of deeds.

Lien on lands.

SEC. 20. The amount that each tract of land, public or corporate road or railroad shall be liable for on account of the location, construction and establishment of any ditch or ditches, under the provisions of this act, shall bear interest from the date of the filing of the auditor's statement in the register of deeds' office at the rate of six per cent per annum until paid, and said interest shall constitute an additional lien on said lands or roads until fully paid; which said interest, when about to be paid, shall be computed by the auditor.

Additional lien.

SEC. 21. The payment of such liens shall be made to the county treasurer of said county by the owners, as follows, viz.: One-tenth of said principal, with the interest thereon, on or before one year from such filing in the register of deeds' office; one-tenth of same on or before two years; one-tenth of same on or before three years; one-tenth of same on or before four years; one-tenth of

How paid.

same on or before five years; one-tenth of same on or before six years; one-tenth of same on or before seven years; one-tenth of same on or before eight years; one-tenth of same on or before nine years; one-tenth of same on or before ten years. *Provided*, that if such first installment is not paid by the owners before the first day of January next succeeding the date of filing the aforesaid statement in the office of the register of deeds, and each succeeding installment before the first day of January of each succeeding year, until all such installments shall have been fully paid, then and in that case the auditor shall enter said one-tenth payment for the year in which such delinquency occurs against the tract of land affected thereby on the tax lists of the county, as a tax on said tract, and the same shall become due and payable, with the accumulated interest thereon, and be collected with like penalties and in the same manner as all other taxes are collected for said year on said lands; *provided further*, that when full payment shall have been made on any tract of land, the auditor shall certify to the fact, and the record of such certificate in the office of the register of deeds, at the instance of any person interested, shall release and discharge the same of record; *provided further*, that any person may pay the full amount of said lien, with accumulated interest, at any time, upon presentation to the treasurer of a statement by the county auditor showing such amount.

State and
corporate
lands liable.

SEC. 22. All lands owned by this state, and all lands owned by any railroad or other corporation benefited by any such ditch, drain or water course, shall be liable for such benefits the same as owners of taxable lands.

State appro-
priation.

SEC. 23. The sum of five thousand dollars for the year one thousand nine hundred and one, and annually thereafter, or so much thereof as may be necessary to meet all assessments against state lands under this act, is hereby appropriated out of the general revenue fund for that purpose.

Public
roads, or
railroads.

SEC. 24. All public or corporate roads or railroads benefited shall pay the amounts taxed up against them, as follows: Whenever any public highway is benefited by such drain or ditch, the town which is by law charged with the duty of keeping such highway in repair shall be assessed with the amount of benefits accruing to such highway in said town by reason of said ditch or drain, and the same shall be paid out of the treasury of such town upon demand of the county auditor; and if not paid within sixty days thereafter shall be assessed with interest against such town, and enforced in the same

manner as judgments against a town; and whenever any railroad, or the lands of any railroad company, is or are benefited by such ditch or drain, such road or railroad company shall be assessed its just proportion of such benefits, the same as other lands benefited are assessed; which assessments shall be collected from such railroad corporation or company in the same manner as personal taxes are collected by law. Or said liens against any such company may be foreclosed by suit in the same manner as provided by law for the foreclosure of mortgage liens upon real estate by action.

SEC. 25. After the construction of any such work, the town supervisors of such township in which the same is, or any part thereof, shall keep the same, or such part thereof, in proper repair and free from obstruction, so as to answer its purpose, and pay for the same out of the general township fund; and to raise the necessary money to reimburse that fund they shall apportion and assess the cost thereof upon the lands which will be benefited by such repairs or removal of obstructions, according to such benefits, in their judgment. They shall make a written statement of such assessments, and deliver the same to the auditor of the county, who shall put the same upon the succeeding tax duplicate, and it shall be a lien upon the lands, and be collected in the same manner as state and county taxes. The provisions of this section shall also apply to all works constructed for the purpose of drainage, under any law now or heretofore in force in this state, except state ditches. If they shall be of opinion that such assessment, or any part thereof, ought to be charged to lands in other townships, the supervisors thereof shall, on request and written notice, not less than ten days prior thereto, meet with them at a time and place by them appointed, and they shall jointly make such assessments and certificates to the auditors of the proper counties. A majority of such supervisors as attend any such meeting shall have power to act and decide any question, and to make the assessments and certificates; and upon failure of any township supervisor to perform the work required of him by this section, after ten days' notice, in writing, to him by any person interested, he shall be liable for all damages caused by such failure to perform his duty, to be recovered by the person or persons so damaged. He shall also be deemed guilty of a misdemeanor, and on conviction thereof fined not less than ten nor more than fifty dollars.

Town supervisors
to keep
in repair.

State ditches
excepted.

SEC. 26. If any person shall wilfully obstruct any public ditch, or shall willfully divert the water from its

Violations.

proper channel, he shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than five dollars nor more than fifty dollars, and shall also be liable for any and all damages accruing to any person or persons, or corporation, by such act.

SEC. 27. The orders issued by the auditor to engineers and viewers shall be served by the sheriff, or other disinterested person designated by such auditor, and such sheriff or other person shall be paid by the county for such services the same fees as are allowed by law for similar services.

Engineers,
viewers and
others, how
paid.

SEC. 28. The engineer shall receive the sum of five dollars per day for every day he is necessarily engaged in performing the duties required of him by this act, and his actual and necessary expenses incurred in and about the same, to be audited by the board of county commissioners. The viewers shall each receive three dollars per day for every day they are necessarily engaged in viewing ditches and making up and filing their reports, and their actual and necessary expenses, to be likewise audited. Each rodman shall receive the sum of two dollars per day, and may be allowed in addition thereto his board and lodging for each and every day he is employed; and each chainman, axman and every other employe necessary to the prompt execution of the work of locating or inspecting a public ditch, shall be allowed one dollar and fifty cents per day, and may be allowed in addition thereto his board and lodging, for the time each is actually employed. The county auditor of each county shall receive reasonable compensation for his services under this act, and such compensation shall be in addition to all sums allowed by law at the time of the passage of this act. The fees, per diem, compensation and expenses provided for in this act shall be audited, examined, allowed and paid [upon the order of the board of county commissioners].

SEC. 29. A majority of the viewers shall be competent to perform the duties required of them by this act.

Definition
of "ditch."

SEC. 30. The word "ditch," as used in this act, shall be held to include a drain or water course, and the petition for any public ditch may include any side, lateral, spur or branch ditch necessary to secure the object of the improvement.

SEC. 31. This act shall be liberally construed, so as to promote the public health and the drainage and reclamation of wet or overflowed lands.

SEC. 32. Every order of the county commissioners of any county laying out and establishing any ditch or

drain, or in refusing to establish the same, under the provisions of this chapter, the record thereof, or a certified copy of such record, shall be prima facie evidence of the facts therein stated, and of the regularity of all the proceedings prior to the making of such order.

SEC. 33. Chapter 97 of the General Laws of the year 1887, chapters 81, 82, 83, 84 and 293 of the General Laws of the year 1895, chapter 328 of the General Laws of the year 1897, and chapters 274, 323 and 347 of the General Laws of the year 1899, and all other acts and parts of acts inconsistent with the provisions of this act, are hereby repealed save as to unfinished proceedings thereunder.

Repeal of laws.

SEC. 34. None of the limitations contained in section 665, "General Statutes 1894," shall apply to any proceedings hereunder.

SEC. 35. This act shall take effect and be in force from and after its passage.

Approved April 11, 1901.

CHAPTER 259.

H. F. No. 467.

An act to amend chapter one hundred and thirty-two (132) General Laws of one thousand eight hundred and ninety-nine (1899), being an act entitled "An act authorizing appropriations by board of county commissioners for public improvements in, on or about navigable lakes, in counties having a population of not less than one hundred and fifty thousand (150,000) and not more than two hundred and ten thousand (210,000) inhabitants."

Amends chapter 132, General Laws 1899. Counties or 150,000 to 210,000 inhabitants.

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

SECTION 1. That section one of chapter one hundred and thirty-two of the General Laws of one thousand eight hundred and ninety-nine, being an act entitled, "An act authorizing appropriations by board of county commissioners for public improvements in, on or about navigable lakes, in counties having a population of not less than one hundred and fifty thousand and not more than two hundred and ten thousand inhabitants," be and is hereby amended so as to read as follows:

Sec. 1. That wherever there exists in any organized county in the State of Minnesota, having a population of not less than one hundred and fifty thousand (150,000), and not more than two hundred and ten thousand (210,000) inhabitants, a navigable lake or lakes, which is or

County commissioners may appropriate money to improve lakes.