

## CHAPTER 18.

S. F. No. 113.

*An act to enable cities now or hereafter having a population exceeding 50,000; to divert the course of streams and control the flow thereof.*

Diverting  
the course  
of streams.

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

SECTION 1. Any city of this state now or hereafter having a population of more than 50,000 according to the last preceding state or national census, may, if in the judgment of its city council, the public health or welfare of its citizens will be promoted thereby, divert any unnavigable stream, flowing wholly or partly within the corporate limits, from its natural bed to an artificial channel or to another water course.

The diversion may take place at any feasible or desirable point within or without the corporate limits, and the new channel may be created within or without or partly within and partly without the corporate limits. For the purpose of controlling and regulating the flow of such stream in its new channel, the city may, by the erecting of dams or other suitable means, raise the waters of any lake or lakes from which the stream may flow, or through which the new channel may flow, and may control and regulate the discharge from such lake or lakes, and may straighten, enlarge and make such changes and improvements in the channels as may be necessary for such purposes. Such new channels may, where necessary, cross any highway or railway; in which case suitable bridges shall be provided.

Erection  
of dams.

SEC. 2. The city council shall by ordinance first adopt and file with the city clerk a survey and map showing the point at which it is proposed to divert the stream, the route of the new channel, the sites of dams and other controlling works, the lands proposed to be taken for right of way and for flowage purposes, the levels to which it is proposed to raise and between which it is proposed to maintain the waters of any lake, a profile of the route and of the water surface, the cross-section of the proposed new channel, the enlargement, if any, of any existing channel, the bridges, tunnels, culverts to be built, and in general, the entire extent and scope of the improvement as nearly as may be.

Adoption  
by ordinance  
of survey and  
map.

SEC. 3. The city council may acquire in the name of the city by grant, dedication, purchase or devise the lands and the rights necessary to carry out such improvements.

SEC. 4. The power of eminent domain and the power to levy special assessments for benefits are hereby delegated to such cities for the purposes of this act, to acquire the lands and rights needed or any of them, to be exercised as follows:

Cost of im-  
provements.

SEC. 5. The city council shall by ordinance determine and declare as nearly as may be, the cost of such improvements, exclusive of damages to property, and shall appoint five appraisers, who shall be disinterested free-holders and qualified voters of the county, and none of whom shall be residents of the town or ward or wards of the city in which the property so designated is situated, to view the premises and appraise the damages which may be occasioned by the taking of private property or otherwise in making such improvement, and to assess special benefits resulting therefrom.

Appraisers.

Said appraisers shall be notified as soon as practicable by the city clerk to attend at a time fixed by him, for the purpose of qualifying and entering upon their duties.

Whenever a vacancy may occur among said appraisers by neglect or refusal of any of them to act or otherwise, such vacancy shall be filled by the city council.

Oath of  
appraisers.

SEC. 6. The appraisers shall be sworn to discharge their duty as appraisers in the matter with impartiality and fidelity; and to make due return of their acts to the city council.

Official  
notice.

SEC. 7. The appraisers shall give notice of their meeting by publication in the official newspaper of the city, once a week for six consecutive weeks, which last publication shall be at least ten days before the day of such meeting, which notice shall name the stream to be diverted, the point of diversion, the general course of the new channel and the height to which it is proposed to raise or maintain any lake, the location of proposed bridges, culverts or tunnels, the estimated cost of construction, and shall contain a description of the lands designated by the city council to be taken for right of way and for flowage purposes, and give notice that a plan of the improvement has been filed in the office of the city clerk, and that said appraisers will meet at a place and time designated in the notice, and thence proceed to view the premises and appraise the damages for property to be taken, or which may be damaged by the diversion of water or otherwise by such improvement, and to assess benefits in the manner hereinafter specified.

View  
premises.

If any portion of such stream or of the lands to be taken is outside of the county containing such city, then the notice shall also be published for a like time in some newspaper in such outside county.

SEC. 8. A copy of all subsequent notices relating to the proceeding which are required to be published, shall be mailed by the city clerk immediately after the first publication thereof to such persons as shall have appeared in said proceedings and requested in writing that such notices be mailed to them.

Publication  
of notice.

SEC. 9. At the time and place mentioned in the notice, the said appraisers shall meet and thence proceed to view the premises, and shall hear any evidence or proof offered by the parties interested and may adjourn from time to time for the purpose aforesaid. When their view and hearing shall be concluded, they shall determine the amount of damages, if any, suffered by each piece or parcel of land affected by the improvement. They shall also determine the amount of special benefits, if any, occurring by reason of diversion of water, drainage, or otherwise, to each piece or parcel of land wherever situate and whether contiguous to the improvement or not. If the damages exceed the benefits to any particular piece, the excess shall be awarded as damages. If the benefits exceed the damages to any particular piece, the difference shall be assessed as benefits, but the total assessment for benefits shall not be greater than the aggregate net award of damages added to the estimated cost of construction; and in every case the benefits assessed upon the several parcels shall be in proportion to the actual benefits received, and no assessment upon any particular piece shall exceed the amount of actual special benefits after deducting the damages, if any.

Amount of  
damage.

SEC. 10. If there be any buildings standing, in whole or in part, upon any parcel of the land to be taken, the said appraisers shall, in such case, determine the amount of damages which should be paid to the owner or owners thereof, in case such building, or so much as may be necessary, should be taken, and shall also appraise and determine the amount of damages to be paid such owner or owners, in case he, or they, shall elect to remove such buildings.

Damage for  
buildings.

SEC. 11. If the land and buildings belong to different persons or if the land be subject to lease, mortgage or judgment, or if there be any estate less than an estate

in fee, the injury or damage done to such person, or interests, respectively, may be awarded to them separately by the appraisers. *Provided*, that neither such award of the appraisers, nor the confirmation thereof by the city council, shall be deemed to require the payment of such damages to the person or persons named in such award, in case it shall transpire that such person or persons are not entitled to receive the same.

Payment of  
damages.

SEC. 12. The said appraisers having ascertained and appraised the damages and assessed the benefits as aforesaid, shall make and file with the city clerk, a written report of their action in the premises, embracing a schedule and appraisal of the damages awarded and benefits assessed, with descriptions of the lands, and the names of the owners, if known to them, and also a statement of the costs of the proceeding.

Filing  
report.

SEC. 13. Upon such report being filed, the city clerk shall give notice that such appraisal has been returned, and that the same will be considered by the city council at a meeting thereof to be named in the notice, which notice shall contain the schedule of damages awarded and benefits assessed, and shall be published in the official newspaper of said city, once a week for two consecutive weeks, and the last publication shall be at least ten days before such meeting. Any person interested in any building standing in whole or in part upon any land required to be taken by such improvement, shall on or before the time specified for said meeting in such notice, notify the city council in writing of his election to remove such building, if he so elect. The city council, upon the day fixed for the consideration of such report, or at any subsequent meeting to which the same may stand over or be referred, shall have power in their discretion to confirm, revise or annul the appraisal and assessment, giving due consideration to any objections interposed by parties interested in the manner herein-after specified, provided that said city council shall not have the power to reduce the amount of any award, nor increase any assessment. In case the appraisal and assessment is annulled, the city council may thereupon appoint new appraisers, who shall proceed in like manner as in case of the first appraisal, and upon the coming in of their report, the city council shall proceed in a like manner and with the same powers as in the case of the first appraisal.

Considered  
by city  
council.

Power to  
confirm.

SEC. 14. If not annulled or set aside, such award shall be final, and shall be a charge upon the city, for the payment of which the credit of the city shall be pledged. Such assessments shall be and remain a lien and charge upon the respective lands until paid. The award shall be paid to the persons entitled thereto, or shall be deposited and set apart in the treasury of the city for the use of the persons entitled thereto, within six months after the confirmation of the appraisal and award. But in case any appeal or appeals shall be taken from the order confirming said appraisal and assessment as hereinafter provided, then the time for payment of said awards shall be extended until and including sixty days after the final determination of all appeals taken in the proceedings, and in case of any change in the awards or assessment upon appeal, the city council may, by resolution duly adopted, at any time within sixty days after the determination of all appeals, set aside the entire proceeding. Any awards so set aside shall not be paid, and the proceedings as to the tracts for which the awards are so set aside shall be deemed abandoned. Any awards not so set aside shall be a charge upon the city, for the payment of which the credit of the city shall be pledged. All awards shall bear interest at the rate of six per centum per annum from the time of the filing of the original appraisers' report, and all subsequent awards and awards upon appeals shall be made as of the day and date of filing of such original reports.

Payment of  
award.

Rate of  
interest.

SEC. 15. Upon the conclusion of the proceedings and the payment of the awards, the several tracts of land shall be deemed to be taken and appropriated for the purposes of this act, and the title thereto shall vest in the city. In case the city council shall in any case be unable to determine to whom the damages should in any particular case be paid, or in case of adverse claim in relation thereto, or in case of the legal disability of any person interested, the city council shall, and in any and every case the city council may in its discretion deposit the amount of damages with the district court of the county in which such city is situate, for the use of the parties entitled thereto, and the court shall, upon the application of any person interested, and upon such notice as the court shall prescribe, determine who is entitled to the award, and shall order the same paid accordingly. Any such deposit shall have the same effect as the payment to the proper persons.

Title vested  
in city.

Disposition  
of award.

Removal of  
buildings.

SEC. 16. In case any owner or owners of buildings, as aforesaid, shall have elected to remove his or their buildings, he or they, shall remove them within thirty days from the confirmation of said report, or within such further time as the city council may allow for the purpose, and shall be entitled to the payment of the amount of damages awarded in such case, in case of removal. When such person or persons shall not have elected to remove such buildings, or shall have neglected (after having elected) to remove the same within the time above specified, such buildings, or so much thereof as may be necessary, upon paying or depositing the damages awarded for such taking in manner aforesaid, may be taken and appropriated, sold or disposed of as the said city council shall elect.

Appeal from  
assessment.

SEC. 17. Any person whose property is proposed to be taken or interfered with or assessed under any provision of this act, or who claims to be damaged by the improvement, and who deems that there is any irregularity in the proceedings of said city council, or action of the appraisers, by reason of which the award of the appraisers ought not to be confirmed, or who is dissatisfied with the amount of damages awarded to him for the taking of, or interference with his property, or the assessment thereon, may at any time before the time specified for the consideration of the award and assessment by the city council, file with the city clerk in writing, his objections to such confirmation, setting forth therein specifically the particular irregularities complained of, and the particular objection to the award or assessment, and containing a description of the property in which he is interested, affected by such proceedings and his interest therein, and if, notwithstanding such objections the said city council shall confirm the award or assessment, such persons so objecting shall have the right to appeal from such order of confirmation of the city council to the district court of the county in which said city is situate, within twenty days after such order. Such appeal shall be made by serving a written notice of appeal upon the city clerk, which shall specify the property of the appellant affected by such award or improvement, and refer to the objection filed as aforesaid, thereupon said city clerk at the expense of the appellant, shall make out and transmit to the clerk of the district court a copy of the record of the entire proceedings and of the award of the

Made in  
writing.

appraisers as confirmed by the city council, and of the order of the city council confirming the same, and of the objections filed by the appellant as aforesaid, and of the notice of appeal, all certified by said city clerk to be true copies, within ten days after the taking of such appeal. But if more than one appeal be taken in the same proceeding, it shall not be necessary that the city clerk in appeals subsequent to the first shall send up anything but a certified copy of the appellant's objections. There shall be no pleading on any appeal, but the court shall determine in the first instance whether there was in the proceedings any such irregularity or omission of duty prejudicial to the appellant and specified in his written objection that as to him the award or assessment of the appraisers ought not to stand, and whether said appraisers had jurisdiction to take action in the premises.

Court to determine.

SEC. 18. The case may be brought on for hearing on eight days' notice, at any general or special term of the court, and the judgment of the court shall be to confirm or annul the proceedings, only so far as the said proceedings affect the property of the appellant proposed to be taken or damaged or assessed, and described in said written objection. In case the amount of damages or benefits assessed is complained of by such appellant, the court shall, if the proceedings be confirmed in other respects, appoint three disinterested free-holders, residents of said county, appraisers, to reappraise said damages, and reassess benefits as to the property of appellant. The parties to such appeal shall be heard by said court upon the appointment of such appraisers, and the court shall fix the time and place of meeting of such appraisers, they shall be sworn to the faithful discharge of their duties as such appraisers, and shall proceed to view the premises and to hear the parties interested, with their allegations and proofs pertinent to the question of the amount of damages or benefits, and proceed in all other material respects as are in this act provided for the government of appraisers appointed by said city council. They shall, after the hearing and view of the premises, make a report to the said court of their award of damages and assessments of benefits in respect to the property of such appellant. The appellant shall within five days of notice of filing the award file his written election to remove the buildings if he so elect. Such election shall not affect his right to a review. The award shall

Notice of hearing.

Oath.

Filing of notice.

be final unless set aside by the court. The motion to set aside shall be made within fifteen days. In case such report is set aside, the court may, in its discretion, recommit the same to the same appraisers, or appoint new appraisers, as it shall deem best; said court shall allow to said appraisers a reasonable compensation for their services, and make such awards of costs on such appeal, including the compensation of such appraisers, as it shall deem just in the premises, and enforce the same by execution. In case the court shall be of the opinion that such appeal was frivolous or vexatious, it may adjudge double costs against such appellant. An appeal may be taken to the supreme court of the state from any final decision of the district court in said proceedings.

Costs.

Time for payments.

SEC. 19. In case of any appeal the time for making payment of awards shall be extended as to all tracts embraced in the proceeding to sixty days after final determination of all appeals.

SEC. 20. The notice prescribed in section 7 shall be sufficient to charge all persons whose rights or interests may be affected by the diversion of such waters, but whose lands are not otherwise taken, with notice of the pendency of the proceeding, and all such persons may present to the appraiser's evidence of the damages which they will suffer, and the appraisers shall determine and award such damages as they may find, particularly specifying in their award the location and the nature of such damages, and all persons failing to present their claims for damages arising from the diversion of waters, shall be concluded by the proceeding hereunder, whether any award of damages is made to them or not, and shall be barred from claiming damages afterwards in any other form of action or proceeding.

Certified copy of awards.

SEC. 21. Upon the final determination of all appeals in such proceeding, the city clerk shall transmit to the auditor of the county or counties in which the respective lands lie a copy by him duly certified of the awards and assessment of the appraisers as confirmed by the city council; and the clerk of the district court shall, in like manner, certify the award and assessment as finally made upon all appeals; and the county auditors shall include such assessments of benefits against each tract of land assessed, with and as a part of the taxes upon such respective tracts of land in the next annual list of taxes for general, state, county and other purposes, and the same

Included in tax-assessments.

proceedings shall be had for the collection and enforcement thereof, as for such general taxes, including like penalties in case of non-payment, and including also proceedings for the collection and enforcement of delinquent taxes. Whenever any of such assessments are collected, they shall be credited to the city conducting such proceedings, and paid over and accounted for in like manner as other taxes.

SEC. 22. It shall be the duty of such city to proceed with all reasonable dispatch to complete such improvements, unless the proceedings are set aside by the city council as hereinbefore provided.

SEC. 23. The city council shall have power and it shall be its duty after the construction of such works to maintain the same and to prevent injury or obstruction to the channel or works and contamination of the waters. And for such purposes the city council may enact suitable ordinances and prescribe penalties for their violation, not exceeding a fine of one hundred (\$100) dollars for each offense, or confinement in the city workhouse not exceeding ninety days. The municipal court of the city shall have jurisdiction of such offenses.

Power of  
city  
council.

SEC. 24. This act shall take effect and be in force from and after its passage.

Approved Feb. 28, 1905.

## CHAPTER 19.

S. F. No. 169.

*An act to authorize cities of this state owning a system of water works to borrow money and issue bonds for the purpose of improving and extending their water works system and of providing means for purifying the water furnished thereby.*

Bonds for  
water works.

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

SECTION 1. In addition to the rights and powers heretofore conferred by any general or special law upon the several cities of this state, there is hereby granted to any city organized or which may hereafter be organized under or by virtue of any general or special law of this state and which now or shall hereafter own a system of water works, power and authority to extend and improve its system of water works, including the installing of filters or other means for purifying the water fur-

Improve-  
ment of wa-  
ter works.