

## CHAPTER 367—H. F. No. 881.

1907 C 367  
09 - 469  
11 - 384

*An Act to amend chapter 230 of the General Laws Minnesota for 1905, entitled An act providing for the drainage of lands and meandered bodies of water in certain cases, providing for the construction and repair of ditches, dykes, roads drains and water courses, and for the reimbursement in certain cases of owners of lands damaged thereby, providing methods for doing such construction and repair and for such reimbursement, providing for the collection of the costs and expenses of the same, providing for the co-operation of the state drainage board in such construction and repair, prescribing the powers and duties of county commissioners and other officers in the premises, appropriating funds for the payment of assessments against state lands affected thereby, prescribing penalties for the violation thereof, and repealing certain acts therein mentioned and referred to, and repealing chapter 311, Laws 1905.*

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

**Petitions and notice—bonds.**—Section 1. That section three (3), chapter 230 of the General Laws of 1905 be and the same hereby is amended as follows :

“Section 3. Before the board of county commissioners shall establish any ditch, drain or water course, or other construction named in section one of this chapter, 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, or by the supervisors of any township, or the duly authorized officers of any city or village council, which township, village or city is liable to be affected by or assessed by for the proposed construction, or by the duly authorized agent of any public institution, corporation or railroad, whose lands or property will be liable to be affected by, or assessed for the expense of the construction of the same, or by the state board of control or its duly authorized agent, setting forth the necessity thereof and that it will be of public benefit or promote the public health, with a description of the proposed starting points, routes and termini; and one or more of such petitioners 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 expenses, in case the board of county commissioners or the

1907 C 367  
09 - 469  
134-NW 2

court shall fail to establish said proposed ditch, drain or water course :

*“Provided*, that the principal or principals and sureties who have signed said bond, may, at any time prior to the final order, establishing the ditch, drain or water course, and subsequent to the filing of the engineer's report, upon ten days' notice in writing to the petitioners of their intention so to do, pay the costs of the proceedings and dismiss the same, unless one or more of such petitioners shall, within said ten days, give a new bond with good and sufficient freehold sureties, payable to the county, to be approved, including amount and sureties by the county auditor, conditioned the same as the original bond. 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 routes 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 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.

“Upon the filing of the petition such proceeding may be designated and numbered by the county auditor as ‘County ditch, No. . . . .’ and may be so referred to in all subsequent proceedings.”

**Report—posting of notice—final order.**—Sec. 2. That section 9 of chapter 230 of General Laws of 1905, be and the same is hereby amended to read as follows :

“Section 9. 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 giving 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 the 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 engineers’ and viewers’ reports, and of the time and place set for the hearing thereof, which notice shall briefly state substantially the starting points and termini of the ditch, drain, creek or water course and branches, together with a description of the land through which they pass, all as appears by the engineers’ report, together with the names of the owners of the lands and the names of the municipal corporations and other corporations 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 the publication, posting and mailing, as provided in the first instance:

*Provided, further*, that whenever any final order of the board of county commissioners establishing, or refusing to establish any ditch in proceedings under this chapter shall have been heretofore or shall be hereafter set aside, annulled or declared void by any court by reason of a failure, to give

proper notice of the said pendency of said petition and viewers' report and of the time and place set for the hearing thereof, the county auditor, at any time within one year after the rendering of such judgment or decision, upon the application of any petitioner in such case, or upon being directed by resolution by the board of county commissioners, shall call a special meeting of such board of county commissioners for a rehearing on such petition and viewers' report, and shall give notice of such meeting and rehearing in the manner hereinbefore provided, and at such meeting the said board of county commissioners shall proceed to reconsider such report, shall act upon the same and make findings thereon and may establish such ditch in conformity with the provisions of this chapter;

*Provided, further,* that whenever, upon appeal in proceedings under and pursuant to any drainage law of this state, the court shall have heretofore by order dismissed said proceedings on account of the failure of the county auditor to give proper notice of the pendency of said petition and viewers' report, or of the time and place set for the hearing thereof, as required by such law, then and in that event the county auditor, at any time within one year after the rendering of such order, upon the application of any petitioner in said proceedings, or upon being directed by resolution of the board of county commissioners, shall call a special meeting of the board of county commissioners for a rehearing on such petition and viewers' report and shall give notice of such meeting and rehearing in the manner hereinbefore provided, and at such meeting the said board of county commissioners shall proceed to reconsider such report, shall act upon the same and make findings thereon and may establish such ditch in conformity with the provisions of this chapter.

"Upon due publication, posting and mailing of the notice provided for in this section, the board of county commissioners shall have jurisdiction of each tract of land and of all other property in said viewers' report described, including any land added by the drainage of any meandered lake or the change of any water course, and of each tract of land described in said notice, and of each tract of land owned by any of the persons or private corporations whose names appear in said notice that is affected by the proposed drain, and of all persons and corporations, municipal and otherwise, that are named in said notice, and of all persons and corporations

having or owning any interest whatever in, or any mortgage, lien or incumbrance against any of the tracts of land or other property heretofore in this paragraph referred to;

*Provided*, that if it shall appear to said board after a hearing of all parties interested or before final order establishing a proposed ditch or drainage system, that the general system of said proposed ditch as surveyed by him may be improved by the addition of other branch ditches connecting therewith, or by a change in the course or dimensions of either the main ditch or any branches thereof, or by the elimination of one or more such branches; or if it shall appear to said board at such hearing that the viewers have made unequal or improper assessments affecting any of the property or persons assessed, or have awarded benefits in an unequal or improper proportion to any such parties; or if it shall appear to said board that either the engineer or the viewers have not fully and properly complied with all of the provisions and requirements of this act, then and in such case the said board shall resubmit the same to the said engineer and the said viewers who shall be respectively authorized to re-examine the course of said proposed ditch and lay out and provide for such other and additional branch ditches as may to said engineer appear necessary, or make any changes in the main ditch either as to course or dimensions as may seem advisable, or eliminate any branch ditch formerly provided for, or make any other changes as in his opinion may result in an improvement in the general system of drainage to be affected by said proposed ditch; and the said viewers shall review all the property that may be affected by such drainage ditch as the same may be located and laid out by the engineer, and said viewers shall have the authority to reassess all property, either as to benefits or damages, that may be affected by said ditch or drainage system. The said engineer and viewers, after having the said matters resubmitted to them shall proceed forthwith with their duties under said order and within thirty days shall file with the county auditor their report thereon. Upon the filing of said reports the county auditor shall forthwith proceed as in the case of the filing of the original reports and a hearing upon said amended reports shall be had and the same notices to all parties concerned shall be given as upon the original reports.

“This act shall have application to all ditch proceedings now pending in which the reports of the engineers and

viewers have not been approved or the ditch established by final order.”

**Bonds.**—Sec. 3. That section eighteen (18) of chapter 230 of the General Laws of 1905, be, and the same hereby is, amended so as to read as follows: “The board of county commissioners of each and every county wherein any such ditch is proposed to be wholly or partly located and established are hereby authorized to issue bonds of their respective counties in such amount as may be necessary to defray in whole or in part the expenses incurred or to be incurred in locating, constructing, establishing or repairing so much of any such ditch as may be located within such county; or in such relation to such county as to affect the lands therein within the terms of this act. The word “expenses” shall 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.

“Such bonds shall be payable at such time or times—not to exceed ten years from their date—and shall bear such rate of interest not to exceed six per cent per annum, payable annually or semi-annually, all as the board of county commissioners shall by resolution determine. Each bond shall contain a recital that it is issued by authority of and in strict accordance with the provisions of this act, and shall be signed by the chairman of said board and countersigned by the county auditor, who shall keep a record thereof.

Said board shall have power to negotiate said bonds as they shall deem for the best interest of said county, but not for less than their par value. The proceeds from the sale of all such bonds shall be placed in a general ditch fund, which is hereby created.

“Such board shall provide moneys for the payment of the principal and interest of said bonds as they severally mature, which moneys shall be placed in the general ditch fund, into which fund they may transfer any surplus moneys remaining in the general revenue fund or other funds of the county which can properly be used for the purposes of this act, into which fund shall also be paid all moneys received from the payment of any liens created under the provisions of this act.

“Such board is hereby authorized to pay drainage bonds issued either under this chapter or any prior drainage law of

this state, out of any available funds in the county treasury, when the fund of the ditch for the construction of which the bonds have been issued, is sufficient to pay the bonds when the same mature."

07 C 367 534  
09 - - 409

**Installments.**—Sec. 3½. That section 27 of chapter 230, General Laws of Minnesota, 1905, be and the same is hereby amended, so as to read as follows:

Sec. 25. The benefits accruing to any municipal corporation, by reason of the improvement of any public road or street within the limits of or connecting with such municipal corporation, shall be assessed, levied, and enforced as follows: Whenever any public road or street shall have been found to be so benefited, the city, village or town which is by law chargeable with the duty of keeping such road or street in repair shall be assessed the amount of such benefits accruing to such roads or streets within such city, village or town by reason of such ditch, and the same shall thereupon become a liability of such city, village or town, and shall be due and payable in ten annual equal installments, beginning on the first day of June next, following the date of the entry of the lien against private individuals as herein provided; but if any of such installments are not paid within thirty days after its maturity, the amount thereof, with interest, shall be extended by the county auditor against all the property in such city, village or town liable to taxation, and a levy thereof made thereon, and the same shall become due, be paid and collected in the same manner and at the same times as other taxes.

**Taxes, how collected.**—Sec. 4. That section twenty-six (26) of chapter 230 of the General Laws of 1905, be and the same hereby is amended so as to read as follows: After the construction of any such work, the board of county commissioners of such county in which the same is, or any part thereof, shall keep the same, or such part thereof, in proper repair and free from obstruction and to widen or deepen so as to answer its purpose and pay for the same out of the general revenue fund, of the county; and to raise the necessary money to reimburse that fund, they are hereby authorized to apportion and assess the cost thereof upon the lands which will be benefited by such repairs, removal of obstructions, widening or deepening, 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 first and paramount lien upon the lands the same as state and county taxes. *Provided*, that if the amount of said assessments for repairs exceeds ten per centum of the original cost of constructing said ditch, then said assessment shall be due and payable at the same time and shall be collected in the same manner as the original cost of constructing a ditch and the auditor and other officers shall take the same steps and perform the same acts, as nearly as may be, as provided in this act with reference to assessing the original cost of constructing a ditch. 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 the opinion that such assessment or any part thereof ought to be charged to the lands in other counties, the county commissioners thereof shall, on request and written notice of not less than ten days, 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 county. A majority of such commissioners as attend any such meeting shall have the power to act and decide any question and to make assessments and certificates, and upon failure of any commissioner 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, upon conviction thereof, fined not less than ten or more than fifty dollars.

**Compensation.**—Sec. 5. That section 45 of chapter 230 of the General Laws of 1905, of Minnesota, be and the same is hereby amended so as to read as follows:

The engineer shall receive the sum of five dollars (\$5) 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. The viewers shall each receive three dollars (\$3) 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. Each rod man shall receive the sum of two dollars (\$2) per day and may be allowed in addition thereto his board and lodging, for each and every day he is employed; and each chainman, axeman 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 (\$1.50) per day, and may be allowed in addition thereto his board and lodging for the time such person is actually employed. Each member of the board of county commissioners shall receive three dollars (\$3) per diem for each day actually occupied in proceedings to establish and keep in repair any ditch, and in addition thereto shall be entitled to ten cents (10) per mile each way for each mile necessarily traveled in attending any special meeting of the board called for the purpose of transacting business pertaining to such ditch.

**Contracts.**—Sec. 6. That section 50 of chapter 230 of the General Laws of 1905, of Minnesota, be and the same is hereby amended so as to read as follows:

No person or corporation shall be permitted to take advantage of any error committed in any proceedings under this chapter, either by the county board, engineer, viewers, county auditor or other officer, person or persons, nor of any informality, error or defect appearing in the record of such proceedings unless the party complaining thereof is directly affected thereby. If the court shall at any time modify any assessment or assessments or enjoin the collection thereof, or release any person from liability thereof, it shall in no manner affect the rights or liability of any other person. Whenever a ditch has been established, either under the provisions of this chapter or any prior drainage law, by which the cost of construction was assessed against the benefited property or corporation, and the contract or contracts for the construction thereof has been or shall be let without collusion and in good faith and at a reasonable price, no defect or lack of notice in the letting, making or executing of said contract, or contracts, and no variance between the advertisement and the contract as to length of time or manner in which said ditch shall be constructed, shall invalidate in any way the ditch liens or ditch assessments, nor shall the fact that said contract has been or may be let containing provisions different from the advertisement with reference to the time or method in which the proposed work shall be completed or constructed, in any way invalidate said contract, provided such extension of time or change of method was made in good faith and by reason of delay in obtaining bids for the construction of said ditch or for other good causes, and if such contract or contracts has been or shall be let with the approval of the engineer and auditor or auditors, and if said

ditch has been or shall be constructed pursuant to the contract, the contractor may recover the contract price thereof from the county or counties and no ditch lien or ditch assessment shall in any way be delayed or invalidated by reason of such variance between the contract and the notice of letting thereof."

**Distribution—damages.**—Sec. 7. That section numbered forty-three (43) of chapter 230 of the General Laws of Minnesota of 1905 be and the same is hereby amended to read as follows:

Section 43. Any person wilfully or negligently obstructing, or in any way injuring any work constructed under the provisions of this chapter, or under any law of this state, relating to drainage, or allowing such ditch or drainage work to be injured or obstructed by his live-stock, horses or poultry, or diverting the water from its proper channel, shall be guilty of a misdemeanor, and shall also be liable to any and all persons or corporations, injured by such act, in treble damages. Any county auditor, clerk of court, member of the board of county commissioners, or other officer who refuses or neglects to perform any of the duties imposed upon him by this act shall be guilty of a misdemeanor, and shall also be liable to any person or corporation injured by said act, in treble damages. The county attorney of the proper county shall prosecute all criminal actions arising under this chapter.

**Supplementary statement.**—Sec. 8. That said chapter 230 of the General Laws of Minnesota for 1905, be further amended by adding thereto a section to be numbered as section number sixty-five (65), as follows:

If any items of the cost of a ditch established under this or any prior drainage law by the terms of which the cost of construction is assessed against the benefited property or corporations, from its inception to its completion, has been or shall be omitted from the original tabular statement for assessment made and filed by the auditor, with the register of deeds, then a supplementary statement for assessment shall be made by said auditor in the same form and manner as the original statement, so far as practicable, showing such omitted costs, which supplementary statement for assessment shall be filed for record in the office of the register of deeds and shall be due, payable and collectable in the same

manner, time and form as if a part of the last annual installment of the original assessment.

**Re-assessment—notice.**—Sec. 9. That chapter 230 of the General Laws of Minnesota for the year 1905, be, and the same is hereby amended by adding thereto a section to be known and numbered as section number sixty-six (66), and to read as follows:

In all cases where ditch liens or ditch assessments are made or levied under the provisions of this law or any other prior drainage law by which the cost of construction was assessed against the benefited property or corporations, have been or may hereafter be set aside, vacated, annulled or cancelled for any reason, a reassessment of the estimated benefits and a reaward of damages, or either, may be made by the county board of the county in which the affected land is situated.

Three weeks' written notice of the time and place of hearing therefor shall be served on all owners, land owners, and interested parties in the same manner as provided for the service of a summons in the district court, and appeals to the district court from such reassessment of estimated benefits or reaward of damages, or both, may be taken under the same regulations and in the same manner and form as provided in sections twelve (12) and thirteen (13) of this chapter. And as soon as practicable after the expiration of the time for appealing or after final judgment, if appeal is taken, the county auditor shall multiply said benefits by the same rate of cost on each dollar of benefits that other lands benefited by said proposed ditch were or shall be required to pay. A statement thereof shall be filed in the office of the register of deeds by the county auditor in the manner and with the same force and effect as the statement provided for in sections nineteen (19) and twenty (20) of this chapter, and the amount which said tract of land will be liable to pay—shall be due, payable and collected in the same manner, time and form, as nearly as practicable, as the liens mentioned in sections twenty-one (21) and twenty-two (22) of this chapter.

07 C 367 1  
00 - - 4

**Repairs.**—Sec. 10. That said chapter 230 of the General Laws of Minnesota, for the year 1905, be amended by adding thereto a section to be numbered as section number sixty-seven (67), to read as follows:

Whenever lands or public roads not assessed for the construction of a ditch established under this or any prior drainage law by which the cost of construction was assessed against the benefited property or corporations, are drained into said ditch by the construction of any open, tile or other ditches or by other excavations or work, the owners of said lands, and the public corporations benefited by the drainage of such public roads, shall pay into the treasury of the county charged with the repair of said ditch, the same proportion of the benefits received by said non-assessed lands or public roads that the lands and public roads originally assessed were forced to pay. Said amount, if not paid, can be recovered by the county charged with the repair of said ditch, in a civil action. All moneys received by the county under the provisions of this section shall be placed in the general ditch fund of the county.

**Chapters repealed.**—Sec. 11. That said chapter 230 of the General Laws of Minnesota for the year 1905, be amended by adding thereto a section to be numbered as number sixty-eight (68), to read as follows:

“Chapter 311 of the General Laws of Minnesota for the year 1905, entitled, “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, be and the same is hereby repealed.

Sec. 12. This act shall take effect and be in force from and after its passage.

Approved April 23, 1907.

---

CHAPTER 368—H. F. No. 904.

*An Act to amend section one thousand eight hundred and twenty-five (1825) of chapter twenty-three (23) of the Revised Laws of Minnesota for one thousand nine hundred and five (1905), relating to employment bureaus and bonding thereof.*

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

**License—bond.**—Section 1. That section one thousand eight hundred and twenty-five (1825) of chapter twenty-three