

CHAPTER 448—H. F. No. 879. *Repeals*

*An Act providing for a judicial system of 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 tiling of land 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, prescribing the powers and duties of the county auditor, or auditors, 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 providing for the issuance of bonds for the purpose of carrying the act into effect.*

07 C 448  
09 - - 10  
09 - - 83  
09 - - 469  
104-M - 389  
105-M - 60  
110-NW 736

1907 C 448  
108-M - 8  
110-M - 501  
121-NW 217  
129-NW 376  
12 CL  
1834 " 43

1907 C 448  
113-M - 21

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

**Power of the court—drainage of meandered lake—remonstrance—water not to be diverted from water supply.**—Section 1. The judges of the district courts of the state shall have power, when they shall find the conditions stated in the third section of this act to exist, to cause to be constructed, as hereinafter provided, any ditch, drain, creek or water course within their several judicial districts; 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, or any lake, whether meandered or not. The said judges may widen, deepen, straighten, change, lower or cause to be drained the channel or bed of any creek, river, lake or other natural water course, whether navigable and whether meandered or not, and may follow and extend the same into or through any city or village within any such county, far enough to secure a sufficient fall and flow of water to reasonably effectuate the purpose for which the work is extended, 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 such 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.

*And provided further*, that no meandered lake shall be drained under the authority of this act, except in case such lake is no longer of sufficient depth and volume to be capable of any beneficial public use of a substantial character for fishing, boating or public water supply. *Provided, further*, that the overflow waters from any meandered lake that may have overflowed, or may hereafter overflow outside of its natural bed may be drained away under the authority of this act.

*Provided, further*, that when a petition shall be filed as hereinafter provided for the purpose of draining any shallow meandered or marshy lake, or lake-bed, under the provisions of this act, the court shall have the power to order to be constructed and established a new, independent and additional drain, ditch or water course, outlet or outlets, for the purpose of effectually draining such marshy, meandered or shallow lake-bed in whole or in part, as the case may be and petitioned for.

*Provided further*, that no meandered lake shall be drained or lowered under the authority of this act if objection is made thereto by remonstrance signed by at least seventy-five legal voters residing within four miles of such lake, who are freeholders, whose lands are affected as shown by the viewers' report, and filed in the office of the clerk of the district court in the county where such proceedings are had.

*Provided further*, that no meandered lake adjoining an incorporated village, or within four miles of any city of the fourth class, or upon which an incorporated village is a riparian owner, shall be drained or lowered unless by the approval of a majority vote of the legal voters of said village or city at any annual or special election held for such purpose. Ten days' posted notice thereof shall be given, and such election held upon written request of three or more riparian owners upon any such meandered lake; but the provisions of this chapter shall not grant to any person or the judges of any district court in this state the right to divert in any manner the waters from any lake, stream or other body of water that constitutes a part of or is connected with the water supply of any city or village in this state.

**Additional outlets.**—Sec. 2. The county board in any county in this state wherein is situated any river, water course, creek, or lake in which the natural flow or stage of

water has been raised, increased or obstructed by reason of its tributaries, and causing surrounding or abutting land to be overflowed thereby, are hereby authorized to appropriate such a sum of money out of the county revenue fund to aid in defraying the expenses in deepening and widening any ditch now or hereafter constructed, and in deepening, straightening, or widening such river, water course or creek, or removing such obstruction therefrom, or constructing additional outlets for the purpose of draining any lake so overflowed, as in the judgment of the court before whom any drainage proceedings are pending, is just and right, and as may be petitioned for and approved by the court, but said moneys so appropriated shall in no event exceed one-half of the expense so incurred, in deepening, straightening, and widening said river, water course or creek, or in removing such obstruction therefrom, or draining such lake, and the balance of such expense shall be assessed against the lands benefited as provided in this act.

**Petition to court—proceedings may be dismissed by bondsmen.**—Sec. 3. Before any district judge shall establish any ditch, drain or water course, or other construction named in section one of this chapter, there shall be presented to the judge of the district court in the judicial district in which any part of the proposed ditch is to be located, 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 the city, or village council, which township, village or city is liable to be affected by or assessed for the proposed construction, or by the duly authorized agent of any public institution or corporation, 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, and that such ditch or drain is necessary for the purpose of drainage of lands therein described with a description of the proposed starting point, 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 district judge, conditioned to pay all expense in case the court shall fail to establish said proposed ditch, drain or water course. Said petition shall also contain a legal de-

scription of all lands through which said proposed ditch shall run, or to be drained, as near as can be ascertained, and in case a marshy, shallow or meandered lake is to be drained in whole or in part the legal description of all of such lands within a radius of four miles of such lake, or portion of lake as the case may be, which lands may be affected thereby and assessed for the construction of any proposed ditch or outlet to said lake.

*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 all 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 court, conditioned the same as the original bond.

Upon the presentation of such petition, and the approval of such bond by the court, the court shall fix a time and place for the hearing of said petition, allowing a sufficient time for the service of the notice on the land owners described in said petition in the manner hereinafter provided by an order endorsed on said petition fixing such time and place of hearing, and which petition and bond, and order, shall be filed in the office of the clerk of the district court of the county where such land or a portion of such lands are situated.

Notice of the filing of said petition, and of the time and place of hearing to be had thereon shall be served upon all parties whose lands shall be assessed or affected thereby for the construction of such proposed ditch as set forth in said petition in the same manner as the service of a summons in the district court, except that only ten (10) days notice may be required, and shall be substantially in the following form, and subscribed by the attorney for the petition or petitioners.

State of ....., County of .....

.....Judicial District.

In the matter of the judicial ditch proceedings now pending in .....county, Minnesota, and known as judicial ditch number....., under chapter number....., Laws 1907.

To Whom It May Concern:

Notice is hereby given that a petition for the construction of a judicial ditch, drain or water course, commencing at or near.....in Sec.....  
 Town..... Range..... and terminating at or near the  
 .....of Sec..... Township..... Range..... in.....  
 county, Minnesota; together with such branches and laterals  
 as may be necessary to effectually drain the lands described in  
 said petition, has been filed in the office of the clerk of the  
 district court of.....county, Minne-  
 sota, and that pursuant to an order of the court made, and  
 filed therein, the first hearing upon said petition will be had  
 before the court at .....in the.....  
 of.....county, Minnesota, at.....o'clock  
 ...m., on the .....day of .....190...  
 and that you are required to appear at said time and place,  
 and show cause, if any there be, why said ditch, drain or water  
 course should not be constructed in accordance with said  
 petition.

.....  
 Attorney for Petitioners.

Dated .....

*Provided*, that in case any of the land owners through  
 which such proposed ditch, drain or water course passes, and  
 all persons affected thereby as mentioned in said petition  
 cannot be served on the first instance on account of being  
 non-residents, personal service outside of the state shall be  
 sufficient when proof of such service by affidavit is made, and  
 filed with the clerk in said proceedings.

*Provided, further*, that in case of failure to procure per-  
 sonal service upon any of the parties interested in or out of  
 the state, service by publication of said notice may be had  
 as in the case of service of summons by publication in the  
 district court, except that a two weeks' publication only of  
 said notice shall be required.

After the service of said notice as hereinbefore provided,  
 and proof thereof filed in the office of the clerk of said court,  
 the court shall be deemed to have acquired jurisdiction of all  
 of the parties so served with said notice in said proceedings,  
 and that all subsequent orders made by the court, including  
 assessment for damages, and all other matters in said pro-

ceedings, shall be binding upon the parties so served with said notice, without any further notice whatever in said proceedings, except that subsequent notice of hearing may be given.

*Provided, further,* that the court may, upon application, extend the time for the service of said notice upon non-residents, and in such case the court shall fix a new and different date, time and place for the hearing of said petition.

At the hearing upon said petition the court shall ascertain, first, whether said proposed ditch is necessary for the protection of the public health, convenience and welfare of the community; and for the drainage of the land therein described, and if not, to then and there dismiss the proceedings with costs to be taxed against the principal and bondsmen. Otherwise, to proceed and determine whether it will be necessary to employ a civil engineer or engineers, and to proceed and determine the size and general course of said ditch, and where the petitioners allege that they will pay all expenses, and damages, to hear and determine the amount of damages due to each land owner, and fix a time when the same must be paid, and the court shall by its order provide for a final decree giving the petitioners a right to construct said proposed ditch upon filing with the clerk of the court proof of the payment in full of such damages.

Should the judge at such hearing find it necessary to appoint a civil engineer in order to make a proper determination of the allegations set forth in said petition, he shall make, and file his order appointing some suitable civil engineer whose duty it shall be, within such time as the court by his order may fix, or such additional time as the court may by order allow to make a correct survey of the line of said ditch, drain, creek, or water course, and of the branches thereof, if any, from its source, or sources, to its outlet or outlets; and cause a plat or map to be made of the same, and make a computation of the number of cubic yards of earth to be excavated and removed from said ditch, drain, creek or water course, for each of the one hundred feet to be indicated by stakes 100 feet apart. 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 shall make an itemized tabulation of all cleaning of obstructions of water courses, building of flumes, tiling of

either wood or masonry work, construction of fences for the protection of the ditch, bridges or other additional construction work found necessary, together with the estimated cost thereof, and make an estimate of the total cost of 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 the bottom, and width at the top, at the source and 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 of tile or other material to be used in such underground work, and when requested by the owner or owners, and if upon examination said engineer shall deem that such underground tile drainage will be of public benefit, and promote the public health, and that such underground tile drainage is necessary for the purpose of draining such land or lands, he shall make a complete survey of any tract of land to be so drained if requested by the owner thereof, for the purpose of establishing a system of underground tile drainage so as to effectually drain said land, and shall estimate the cost of the same as a part of the total cost of the construction of the public ditch or drain petitioned for, including the cost and expense of the survey thereof. In locating a public ditch, drain or water course, or the branches thereof, 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, *provided, further*, that he shall have the 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, and where a system of tile drainage is requested by the owner or owners of any of the lands affected thereby in addition to the cost of the construction of the main ditch, its branches, and laterals, and to report the specific amount to be assessed for

cost of the construction of the system of tile drainage against each tract of land so surveyed, and to be tile drained, including expense of the survey in addition to the proportionate amount to be assessed for the construction of the main ditch, laterals or branches.

He also shall include in his report a form of contract as complete in its provisions as practicable and which contain detailed and complete specifications by direct statement, or by reference to other parts of the report, and shall provide for all necessary supervision of the laying of tile, excavation and other construction work of the contractor or contractors, and which shall define the relation which shall exist between the county and the contractor, or contractors, and which shall give the engineer the right with the consent upon application and order of the court therein, to modify his plans and specifications as the work proceeds, and as circumstances may require, provided no changes are made that will substantially impair the usefulness of any part of the ditch, or substantially alter its original character or increase its total cost by more than 2 per cent of the total original contract price for the construction thereof, and the county attorney, upon request from the engineer, shall assist him in the preparation of said form of contract, specifications, and provisions, which proposed contract shall be approved, modified or rewritten, as the judge may deem proper. 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 placed, and the brush or timber taken from the right of way of such ditch may 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 time of high water, and no nearer to the margin thereof than two feet; but in locating a ditch, drain or water course or the branches thereof, as above, the engineer shall not materially depart from the terminal points described in said petition; *provided, however*, that when there is not sufficient fall in the 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 for enough to reasonably effectuate the purpose for which the work is extended. When, in his opinion, it will not be detrimental to the useful-



ness of the whole work, or the usefulness of any extensive section 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 lands, but he shall not sacrifice the general utility of the ditch to avoid diagonal lines.

*Provided*, that the engineer, when it is desirable and practicable, and if the bondsmen for the petitioner agree thereto in writing, may provide for the drainage of additional lands not originally described in the petition when the owners thereof shall petition the court to be made parties to said proceedings, by extending the ditch, drain or water course beyond the limits named in the petition, or by putting in branches or a tile drainage system, and in such case the viewers shall assess benefits and damages to such additional lands as hereinafter provided.

*Provided, further*, that if the bondsmen for the petitioners agree thereto in writing, he may substantially alter the starting points, routes and termini of such ditch, drain or water course, or he may plan for the different parts of the ditch, drain or water course to flow in different directions, with more than one outlet, making in fact more than one ditch.

**Bond of engineer.**—Sec. 4. Before entering upon his duties, such engineer shall give a bond in the sum of two thousand dollars (\$2,000), with good and sufficient freehold sureties, payable to the county (or to the respective counties, or any two of them, as the case may be), in which any part of the work is to be done, for the use of such county, or counties, as the case may be, and also for the use of all parties who may show themselves to be aggrieved or injured by any negligence or malfeasance on his part in acting as such engineer to be approved by the district judge of the district in which proceedings are commenced, conditioned that he will, diligently, honestly, and to the best of his skill and ability perform his duties as such engineer, and shall take the oath to faithfully perform his duties.

*Provided*, that the engineer shall not be required to continue his bond any longer than six months after the completion or abandonment of the work. The engineer may, in place or instead of giving a separate bond as above required in each proceeding, give a bond covering all proceedings for ditches, drains, or water course in said judicial

districts, upon or in which he may be appointed engineer under the provisions of this chapter within two (2) years after the filing and approval of such bond, in the sum of four thousand dollars (\$4,000), with good and sufficient freehold sureties, to be approved by the judge of said court, payable to the county for the use of said county or counties, and also for the use of all parties who may show themselves to be aggrieved or injured by any negligence or malfeasance on his part in acting as such engineer, conditioned that he will diligently, honestly, and to the best of his skill and ability, perform his duties as such engineer in each and all proceedings.

**Report of engineer.**—Sec. 5. He shall thereupon, and within the time prescribed by the court, make a detailed and complete report of his doings, submit therewith the necessary plans and specifications and description of the lands over which the ditch or ditches is or are surveyed, and a separate and detailed report of each tract of land surveyed upon request of the owner for a system of underground tile drainage, and the cost thereof, including the expenses and cost of the survey. Such report shall give the names of assistants and laborers, and the time each was employed by or under him, together with his own time on the work, and every other item of expense by him incurred in, and about the said work, and he shall forthwith file such report with the clerk of the court after having subscribed and sworn to the same.

**Appointment of viewers—qualification—statement—benefits and damages—disagreement.**—Sec. 6. Upon the filing of the civil engineer's report, or prior thereto, if the judge shall deem it best, he may by order, appoint three (3) resident freeholders of his judicial district, not interested in the construction of the proposed work, and not of kin to any of the parties known to be interested therein, as viewers, to meet at a time and place to be specified by the court as hereinafter provided, preparatory to commencing their duties as hereinafter specified, which time and place shall be within fifteen (15) days after date of appointment, and it shall further be the duty of the clerk within five days after the viewers are appointed to furnish said viewers a certified copy of the petition, and of the order of the court appointing them, and of his order designating the time, and place of their first meeting. In case any of the viewers so appointed

shall fail for any cause to qualify in time for the first meeting the judge shall designate some person having the qualification above stated to take his place. The viewers, after taking the oath to faithfully perform their duties, shall proceed at the time set in said order, with or without said civil engineer, and shall prepare a tabular statement showing, as far as practicable, the names of the owners of each tract of land to be benefited or damaged (said names of owners to be the same as appears 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 of land to be benefited or damaged (as the case may be); the number of acres added to any tract by the total or partial drainage of any meandered lake, or by the change of any water course, and the location and value of such added land; the damage, if any, to riparian rights pertaining to any tract; 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 benefits any of such roads so that the road bed or traveled track of any such road will be made better by the construction of such ditch, the viewers shall estimate the benefit arising therefrom to such roads or roadbeds, and report said benefits, (names of roads and other particulars necessary to identify the corporations, private or public to be benefited thereby, the amounts of benefits to each) as a part of their tabular statement provided for in this section; and the viewers shall also report as a part of such tabular statement the damages awarded to each municipal or other corporation for injury to any road or railroad, and from the necessary construction and maintenance of any bridges, culverts, drains or other works rendered necessary by the establishment of such ditch stating the same separately; and they shall also report the total estimated benefits in respect to the entire ditch and branches, if any, and the total acreage of land drained and to be benefited thereby, and where a system of underground tile drainage has been surveyed, and reported by the engineer to report the additional specific amount to be assessed against each specific tract of land so surveyed for the cost of such underground tile drainage.

In case the viewers are unable to agree each viewer shall state separately in the report his findings on the matter disagreed upon.

Whenever a public ditch is located wholly or in part in the bed of a private ditch already or partially constructed the engineer shall make an estimate of the number of cubic yards of earth already excavated on each tract of land, and of the amount of the reduction in the cost of constructing the portion of the ditch, on each such tract of land by reason of such private drain having been constructed, and the viewers shall deduct from such tract of land the estimated cost of such proposed ditch, making an appropriate notation thereof on their report.

**Assessments.**—Sec. 7. All lands benefited by a public ditch, drain or water course, and all public or corporate roads 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 not, and the viewers in estimating the benefits to such lands or roads 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, or prevents the overflowing of, or otherwise directly benefits such lands or roads.

*Provided*, that in addition thereto, a specific amount shall be assessed for the total cost of a system of tile drainage against each separate tract of land to be tiled and drained at the request of the owners thereof.

**To report within thirty days—may be amended.**—Sec. 8. Said viewers shall forthwith file with the clerk of court 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 herein-after provided), within thirty days from the date of their first meeting, or such additional time as the court may by order fix, stating the reason therefor.

*Provided*, if it shall appear to the court upon the hearing of any original petition and after such hearing of all parties interested, and before a final order is made establishing such ditch, drain or drainage system that the same may be improved by the addition of other branches or laterals coming within the prescribed limits of the original petition, or by the elimination of one or more of such branches and laterals as shown by the engineer's report, or that changes in other

important particulars will render more substantial justice to the parties whose lands may be assessed for the construction of the same, or that the viewers have made *improper* or *disproportionate* assessments in proportion to the benefits, or in allowance or disallowance of damages, or that the engineer or viewers have not complied with the provisions of this act, the court may thereupon adjourn said hearing, if necessary, and as justice may require, and resubmit the said petition and matters therein involved to said engineer and said viewers, and by an order made therein require said engineer and said viewers or either of them to reconsider said petition, and their said report and their doings theretofore made in the premises, and make a further report to the court of their doings thereon on or before the date to which said hearing may be adjourned by the court. Thereupon, the said petition and the said reports or amended reports as the case may be, shall be reconsidered by the court, and a final order be made therein, as justice may require, in the manner hereinbefore provided for such final order establishing such ditch, drain or water course.

**Clerk to notify court—notice.**—Sec. 9. Within five (5) days after the filing of the original report by the viewers, it shall be the duty of the clerk of court, where said proceeding is pending, to notify the judge thereof, who shall by his order fix a time and place for an adjourned meeting and hearing to be had upon said petition and viewers' reports, to be given to all persons and parties interested and affected thereby, allowing a sufficient time for the service of said notice, which notice of hearing may be served in the same manner as in the case of a summons in the district court, except that only ten (10) days' notice shall be required, in case of personal service, and only a two weeks' successive publication shall be necessary, and non-residents may be served personally outside of the state without a publication of said notice.

Said notice shall briefly state the pendency of the said petition, that the engineers and viewers' reports have been filed therein, the time and place set for a hearing thereon, and sufficiently described the ditch or drain so as to locate the same, by stating the starting point and termini, and shall be subscribed by the attorney or attorneys for the petitioners, proof of the service of said notice on each of the persons or parties interested or affected thereby, shall be filed with

the clerk of the court in said proceedings, which proof may be made by the certificate of the officer serving the same, or by the person making the service, by affidavit stating the facts, or by the affidavit of the printer in case of a publication of the summons, and such proof shall be sufficient in the service of all notices under this act.

*Provided*, that in all cases in which for any reason the said notice shall not have been given, or in case the said notice shall be found to be legally defective, the judge shall order the same to be again given, so that the petition may again be heard at another adjourned meeting or hearing thereon, at a time and place to be fixed by the court.

Upon due service of the several notices hereinbefore provided and proof thereof filed with the clerk, the court shall have jurisdiction of all parties or persons interested or affected thereby in such proceedings, as shown by the viewers' reports, and of each tract of land and all other property included in said viewers' reports 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, parties or corporations whose names appear in said notice, that are affected by the proposed ditch, drain or water course, and of all persons, parties and corporations, having, owning, or claiming any interest, title, mortgage, lien or incumbrance in and to, or upon any of the tracts of land involved in said drainage proceedings.

**Hearing of report—allowance of petition—findings to be filed—rehearing.**—Sec. 10. The court at the time fixed for the hearing of said petition and reports (or at any time to which said hearing may be adjourned from time to time, as necessity may require), shall proceed to hear and consider the same; and all persons interested may appear and be heard by and before him, the engineer and at least two of the viewers shall be present at such hearing. If said court from the report of the engineer and from the report of the viewers and such other evidence as may be adduced before him, shall find that the engineer's report and 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 said work will be of public utility or promote the public health, and that said ditch or drain is necessary for the purpose of drainage of lands therein described and that such reports are complete and correct, he shall, by an order containing such findings, establish such ditch as specified in the report of the civil engineer, and establish and confirm the viewers' report, and shall in such findings determine the total cost of the construction of such ditch, drain or water course, laterals and branches thereof, based upon the engineers' and viewers' reports which shall include the costs and expense of the engineer, chairman, viewers, clerks, sheriffs, auditors, and registers' fees, attorneys' fees, if any, to be allowed by the court, and all expenses and costs connected therewith, all to be allowed by the court; and shall, by an order to be made and filed therein determine the total costs to be equitably assessed against each separate tract or parcel of land owned by different owners, so benefited by the construction of said ditch, drain, or water course, and in proportion to said benefits and the damages if any which are to be allowed, and paid on account of the construction of the same, which shall be included in the cost of such ditch, drain, or water course in order to arrive at the total cost of the same, and shall determine by such findings the additional amount to be assessed against each separate tract of land when the same has been surveyed for a system of underground tile drainage, and the cost thereof is included, assessed, and reported to the court in the engineers' and viewers' report, which order and findings shall be filed in the office of the clerk of the court of the county where such proceedings are pending, whereupon the clerk of said court shall endorse his filing thereon, and forthwith file a certified copy of the same in the office of the county auditor of such county, and in case such ditch, drain or water course extends into more than one county the said clerk shall file a certified copy in each of the several counties.

*Provided, further,* that whenever any final order of the court, or board of county commissioners establishing or refusing to establish any ditch in proceedings under this chapter or any prior drainage law by which the cost of construction was assessed against the benefited property or corporations, 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 pendency of said petition and viewers' report, and of the time and place set for

the hearing thereof, or for any other cause, the court shall issue an order within one year thereafter upon the application of any petitioner in such case for a rehearing on such petition and viewers' report, notice of such meeting and rehearing shall be given in the same manner hereinbefore provided, for the giving of other notices, and at such meeting (and hearing) the said court shall proceed to reconsider such report, shall act upon the same, and make findings thereon as justice may require, and may re-establish such ditch in conformity with the provisions of this chapter.

**Damages—when and how paid.—**Sec. 11. When damages are awarded to any person or persons, or corporation in excess of benefits, if any, and the same shall have been duly confirmed by the court, the court shall order the same paid out of the treasury of the counties in which such lands lie on warrant to be drawn, and attested by the auditor of each county, and signed by the chairman of the board of said respective counties, such warrant shall be issued at the expiration of the time for appeal in favor of such persons as shall have not appealed, and shall be dated and become due and payable immediately after the letting of contracts as hereinafter provided.

In case of appeal, or in case of any postponement or delay in determining the amount of damages due to any person or corporation, warrants in favor of such person or corporation shall not be issued until the final determination thereof. When the award is confirmed by order of the court, it shall be the duty of the clerk to immediately transmit to the county auditor of each county affected thereby a certified copy thereof, and likewise of any final order or judgment thereafter made in case of any appeal or jury trial; and thereupon the same duty shall devolve upon the county commissioners and auditors as hereinbefore provided. Whenever an award shall have been finally confirmed the same shall be paid upon order of the court, in the same manner as hereinbefore provided, to the owner of such property an amount of damages over and above all benefits which may have been awarded therefor with interest at the rate of six per cent per annum, from the date to which such assessment relates to the date of such payment. If in any case there shall be doubt as to who is entitled to the damages for the land taken, or otherwise awarded such auditor and chairman of the board may require of the claimant a bond with good



and sufficient sureties in favor of such county, to hold such county harmless from all loss, costs and expenses in case any person shall thereafter claim and show himself entitled to any part of such damages.

**Appeals.**—Sec. 12. Any person or corporation aggrieved thereby may appeal from an order of the court made in the proceedings, and entered upon the records, determining either of the matters, viz. : .

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

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

Third—Refusing to establish such proposed ditch. To render such appeal effectual the appellant shall file with the county auditor, also with the clerk of the district court within and not after twenty days (20) from the date that such final order is issued, a notice of appeal, which shall briefly state the ground upon which such an appeal is taken, accompanied by an appeal bond to the county within which such appellants' land is situated with at least two freehold sureties, in an amount of not less than two hundred fifty dollars (\$250), to be approved by the clerk of said court in which such appeal is taken, conditioned that said appellant will duly prosecute the appeal, and pay all costs that may be adjudged against him, and to abide the order of the court therein. Thereupon the said clerk shall file a copy of said notice of appeal in the office of the county auditor, and shall mail a like copy to the county attorney, and to the attorney for the petitioners.

Any person deeming himself aggrieved by the determination in any order establishing the proposed ditch of the amount of his benefits or damages may demand a jury trial to determine the amount of his benefits or damages on account of the construction of such ditch, drain or water course. Such demand shall be in writing, signed by the party making the same, or by his agent or attorney, and shall be filed in the office of the clerk of the district court within and for the county in which the proceeding is pending, within twenty (20) days after the filing therein of the order confirming the report of the viewers. The issues raised by such demand shall stand for trial and shall be fully tried and determined at the next term of the district court held within the county

in which such proceedings were commenced, beginning after the filing of such demand, and shall take precedence of all matters of a civil nature in said court. If there be more than one demand, they may be consolidated and tried together, but the rights of such persons shall be separately determined by the jury in its verdict; *provided, however*, that if the demandant fails to recover more damages than awarded to him, or fails to reduce the amount of benefits assessed against his land, then the costs of such trial shall be paid by the demandant.

The construction of any such ditch shall not be hindered, delayed or prevented by the prosecution of any appeal or demand herein mentioned.

**Suits may be consolidated.**—Sec. 13. If more than one party appeals, the court may, in his discretion, order the cases consolidated and tried together; in such case, the right of each party shall be separately determined.

**Duties of auditors.**—Sec. 14. Within ten (10) days after the filing of the order establishing a judicial ditch, in the office of the clerk and auditor as aforesaid, the auditor of the county in which such proceedings are commenced, or if in more than one county, the auditors of the respective counties, meeting for that purpose at the office of the auditor of the county in which the proceedings are pending, 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 100 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 such 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 or auditors, as the case may be, may, with the approval of the engineer, sell separately from the jobs of excavation, any job of building of flumes or other wood or masonry work, fencing or other construction work specified in the engineer's report. The auditor or auditors, as the case may be, shall contract in the name of the county, or in the name of the respective counties, as the case may, each acting by and through its auditor, with the party to whom any such jobs of construction work or any section or sections is or are sold, requiring him to construct the same in the time and manner, and according to the specifications, provisions and form of contract, set forth in

the report of the engineer, on which the ditch is established; and shall take from him a bond in the penal sum of not less than the contract price, with not less than two (2) freehold sureties, or if a bond of an approved surety company, authorized to transact business in this state, said surety company to be approved by said county auditor, or auditors, payable to the county, or to the respective counties, or any two or more of them, as the case may be, for the use of such county or counties, as the case may be, and also for the use of all persons who may show themselves to be aggrieved or injured by any breach thereof, or of the contract for which such bond is given, to be by said auditor or auditors, as the case may be, approved, conditioned, that said party shall faithfully perform and fulfill his contract, and pay all damages which may accrue by reason of the failure to complete the work in the manner and within the time required in the contract therefor, and otherwise conditioned as in this act provided, which bond shall include a stipulation that no change, extension, alteration or addition to the terms of the contract or specifications shall in any wise affect the obligations of the principal or principals or sureties on said bond.

The auditor of the county in which the proceedings were taken shall give notice of the letting of such contracts by publication for three (3) successive weeks, in the official paper of such county, of the time when and the place where such contracts shall be let to the lowest responsible bidders, and in such notice shall state the approximate amount of work and the estimated cost, and shall invite bids for the work as one job, and also for any one or more of such sections, or any one or more of such construction jobs, and shall reserve the right to reject any and all bids, and no bid shall be entertained which exceeds the estimated cost of the construction of the part of said work covered by said bid; unless upon order of the court as hereinafter provided; nor unless accompanied by a certified check, payable to the auditor, or to the respective auditors, as the case may be, for not less than ten (10) per cent of the bid; and said auditor or auditors 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 sections; or any one or more of such construction jobs, when the estimated cost of the construction is more than \$3,000.00, the auditor may also advertise such letting in a trade paper; if no bids are received which can be entertained the bondsmen for the

petitioners may have the right, at any time, to pay the costs of the proceedings and dismiss the same. The engineer shall attend to the letting of the work, and no bid shall be accepted without his approval as to the compliance with plans and specifications.

**Bond and contract.**—Sec. 15. 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 auditor or auditors, as the case may be.

Such contract and bond shall be drawn to the satisfaction of the engineer and county attorney, or county attorneys, interested. Every such contract shall embrace all the provisions provided by law for the giving of bond by contractors for public works and improvements, and for the better security of the contracting county or counties, and of the parties performing labor and furnishing material in and about the performance of such contracts, 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 or by extension, the contractors shall forfeit and pay to the county in which the portion of the work in default shall be located, a certain sum, to be named therein, and which shall be fixed by the county auditor, or auditors, as the case may be, for each day that such failure shall continue. No extension of time shall be granted unless applied for in writing to the auditor, or auditors, as the case may be, stating to his or their 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 resold 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 the statutory provisions construing such official bonds of public officers as security to all persons and providing for actions on such bonds by any injured party in the district court.

**Failure of contractors.**—Sec. 16. 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 of each county in which any part of the lands affected thereby is located, in writing, of that fact, within five (5) days after the expiration of the time fixed in the contract; whereupon the auditor, or auditors, as the case may be, shall, in writing, duly dated, order said bondsmen to complete said job within a time specified by him or them and said bondsmen shall receive from the proper county or counties, as the case may be, 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 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 hereinbefore provided, within ten (10) days after the date of such order, or of the failure to complete, which, the bondsmen shall not so notify the auditor, or auditors, as the case may be, shall be resold by the auditor, or auditors, as the case may be, after ten (10) days' notice of publication, to the lowest responsible bidder, but not for a sum exceeding fifty (50) per cent in excess of the original estimated cost of such work, nor 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.

**Engineer to be notified—certificate to be issued.**—Sec. 17. It shall be the duty of the engineer, on being notified by any contractor that his job is completed, to inspect the same, and if he finds it complete according to the contract, plans and specifications, he shall report that fact to the county auditor, and give to the contractor a certificate stating that said section or sections (by number), or other jobs of construction, are completed according to the contract plans, and specifications, as set forth in the report of said engineer; *provided*, that when the work for which such certificate is to

be issued affects more than one county, proportionate certificates, shall be issued, whereupon, if approved by the county auditor, or auditors of the county or counties, as the case may be, and upon presentation and surrender of said certificate with such approval indorsed thereon, to the auditor of the proper county, or counties, said auditor shall draw a warrant on the county treasurer of his county for the proportionate amount found to be due in respect of lands in his county on said contract; according to such preliminary certificates, as herein provided; and that said warrant shall be paid out of the general ditch fund to be approved by the board of county commissioners as hereinafter specified. Said warrant shall become due and payable out of said funds at once, if there shall be no cash in said fund to pay said warrant when the same is presented the county treasurer shall indorse said warrant "Not paid for want of funds." and date and sign indorsement, 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 auditor, upon the written approval of the engineer, may issue preliminary certificates for not to exceed seventy-five (75) per cent of work already done and approved, within the county of which he is such auditor, which certificate 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.

It shall also be the duty of the engineer to inspect the laying of tile, excavation and all other work of construction from time to time as provided for in the specifications and provisions in his report, and as provided for in the contract for construction, and his services for making such inspection shall be paid for at the same rate and in the same way as his services in making his original survey and report.

**County board to issue bonds.**—Sec. 18. The county board of 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 the bonds of their respective counties in such amount as may be necessary to defray, in whole or in part the expense incurred or to be incurred in locating, constructing and 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 lands

therein within the terms of this act. The word "expense" shall be constructed 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 twenty 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, or in such form as the state board of investment may prescribe, and shall be signed 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. And such board is hereby authorized to pay drainage bonds issued under the provisions of this chapter out of any available funds in the county treasury, when the moneys on hand in the general ditch fund of the treasury is insufficient to meet the payment of bonds issued in ditch proceedings when the same mature, but the fund from which such moneys have been taken or used for the payment of bonds as they mature shall be replenished, and refunded from the taxes collected in unpaid assessments, for ditches, drains, or water courses constructed under any proceedings had hereunder.

**Duties of county auditor.**—Sec. 19. At the earliest practicable time after the letting of the contract for the construction of any ditch, as herein provided, the auditor of each county affected thereby shall make in tabular form a list and statement showing the following facts, and in order named, viz.:

First—The names of the owners of all lands and the names of all public or corporate roads within their respective counties benefited by the construction of such proposed work as appears from the viewers' report, as affected by the order of confirmation of the judge, as aforesaid.

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

Third—The estimated number of acres benefited in each tract of said land, as shown as aforesaid.

Fourth—The estimated amount of benefits and damages to each of said tracts of land and the estimated amount of benefits and damages to each public or corporate road, as the same appears in such viewers' report, as affected by the order of confirmation of the judge as aforesaid, or as changed by the jury or court.

Fifth—The amount that each of said tracts of land, and that each of said corporate roads so benefited will be liable for and must pay unto the treasury of each county for the location, construction and establishment of such ditch, which said amount shall be determined as follows:

Said auditor shall make a full statement showing the total cost of each ditch, under separate petition for such ditch, and each petition and ditch located, constructed and established shall be known and designated by a number to be given to it.

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, 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 \$1 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 to each tract of land, and to each public or corporate road; and such result, so obtained, less the amount of damages, if any, shall be the amount that



each of said tracts of land, public or corporate roads will be liable for on account of such improvement.

**To be verified by auditor.**—Sec. 20. Such statement shall then be signed by the auditor in the presence of two attesting witnesses, and be duly acknowledged by him, and shall then be duly filed with and recorded by the register of deeds of such county. The amount which each tract of land, and each public or corporate road will be liable for, and the interest thereon, as hereinafter provided, shall be and remain a first and paramount lien on such land, public or corporate road, until fully paid; and shall take precedence of all mortgages, charges, incumbrances or other liens whatever, such payments may be made as hereinafter provided. Such filings shall be deemed notice to all parties interested of the existence of such lien. The fees of such register of deeds for such recording shall be paid by the county, on the allowance and order of the court by auditor's warrant, and said statement after the same has been recorded shall be returned to the auditor, to be by him placed with the other papers relating to such ditch, and carefully preserved by him.

**Premium on bonds.**—Sec. 21. The amount that each tract of land, public or corporate road, shall be liable for on account of the location, constructing 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 (6 per cent) per annum until paid; *provided*, that when bonds are issued by the county for the construction and establishment of such ditch the same rate of interest shall be charged as said bonds so issued bear, 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 county auditor, providing that if said bonds are sold at a premium, such premium shall be used as far as may be to make up any deficiency in the assessments levied by the presiding judge of the court in the proceedings, and the balance remaining of such premium, if any, shall be used as far as practicable, in keeping such ditch in repair and free from obstruction so as to answer its original purpose.

**Lien, when due.**—Sec. 22. The payment of such liens shall be made to the treasurer of such county (unless otherwise ordered by the court) as follows:

One-tenth of said principal, on or before one (1) year from such filing in the register of deeds' office, one-tenth of the same on or before two (2) years, one-tenth of the same on or before three (3) years; one-tenth of the same on or before four (4) years; one-tenth of the same on or before five (5) years; one-tenth of the same on or before six (6) years; one-tenth of the same on or before seven (7) years; one-tenth of the same on or before eight (8) years; one-tenth of the same on or before nine (9) years; one-tenth of the same on or before ten (10) years; at the time of making any payment upon the principal, accrued interest shall also be paid upon the whole amount of unpaid principal.

All reckoned from the date of such filing, *provided*, where the annual installment to be assessed amounts to less than one mill per year, the auditor shall levy the amount of one mill per year for as many years as is necessary at that rate to pay the full lien levied against the tract or parcel of land. On or before the 15th day of November next following such filing the auditor shall enter on the tax list of said county the amount of such lien then remaining unpaid against each respective tract of land subject thereto, as a tax on said tracts, with a proper notation to secure the successive entry each year thereafter of the unpaid balance of such lien. One-tenth of such tax shall become due and payable, with accumulated interest, at the time and in the manner, and be subject to and be collected with like penalties as all other taxes for said year on said tracts in which such entry was made, and another one-tenth with, and as the taxes of each successive year, until all is paid. When payment of the full amount of such lien, with accumulated interest, shall thus or at any one time be made, the auditor, upon presentation of a receipt from the treasurer to that effect, shall issue under his hand and official seal a certificate of such payment and the same when recorded in the office of the register of deeds, shall release and discharge such lien of record.

*Provided*, that in the final order establishing said ditch, the judges of the district court may, in their discretion, order that payment of such liens shall be made to the treasurer of said county as follows:

One-fifteenths of said principal, with interest thereon, on or before five years from said filing in the register of deed's office.

One-fifteenth of the same on or before six years.

One-fifteenth of the same on or before seven years.

One-fifteenth of the same on or before eight years.

One-fifteenth of the same on or before nine years.

One-fifteenth of the same on or before ten years.

One-fifteenth of the same on or before eleven years.

One-fifteenth of the same on or before twelve years.

One-fifteenth of the same on or before thirteen years.

One-fifteenth of the same on or before fourteen years.

One-fifteenth of the same on or before fifteen years.

One-fifteenth of the same on or before sixteen years.

One-fifteenth of the same on or before seventeen years.

One-fifteenth of the same on or before eighteen years.

One-fifteenth of the same on or before nineteen years.

All reckoned from the date of such filing, *provided*, where the annual installment to be assessed amounts to less than one mill per year, the auditor shall levy the amount of one mill per year for as many years as it is necessary at that rate to pay the full lien levied against the tract or parcel of land.

In case the court orders payment of such liens in fifteen installments, as last above provided, then on or before the fifteenth day of November of the fourth year next following such filing the auditor shall enter on the tax list of said county the amount of such lien then remaining unpaid against each respective tract of land subject thereto, as a tax on said tracts, with the proper notation to secure the successive entry each year thereafter of the unpaid balance of such lien; then one-fifteenth of said tax shall become due and payable, with accrued interest thereon, at the time and in the manner and be subject to and be collected for said year on said tracts in which such entry was made, and another one-fifteenth with and as the taxes of each successive year until all is paid.

When payment of the full amount of such liens, with accumulated interest, shall thus, or at any one time be made, the auditor, upon presentation of a receipt from the treasurer to that effect shall issue under his hand and official seal a certificate of such payment, and the same, when recorded in the office of the register of deeds shall release and discharge said lien of record.

**What lands liable.**—Sec. 23. All lands owned by the state benefited by any such ditch, drain or water course shall be liable for such benefit the same as taxable lands.

**Appropriations.**—Sec. 24. The sum of five thousand dollars for the year one thousand nine hundred and seven, and annually thereafter, or as 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.

**Corporations—how assessed.**—Sec. 25. The benefits accruing to any municipal corporation, or to the owners of any corporate road, respective, by reason of the improvement of any public road within the limits of, or connecting with such municipal corporation, or of such corporate road by the construction of any such ditch, shall be assessed, levied and enforced, as follows: Whenever any public road shall have been found to be so benefited, the town which is by law chargeable with the duty of keeping such road in repair, shall be assessed the amount of such benefits in said town accruing to such roads within said town, by reason of such ditch, and the same shall thereupon become a liability of such town, and shall be due and payable in ten 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 such installments are not paid within thirty (30) days after its maturity, the amount thereof, with interest, shall be enforced in the same manner as judgment against the town.

**Repairs by commissioners.**—Sec. 26. After the construction of a public ditch or drain, 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 shall widen or deepen so as to answer its purpose, except as to any system of tile drainage, 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 obstruction, 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 such lands the same as state and county taxes, 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 the opinion that such assessment, or any part thereof, ought to be charged to 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 counties.

A majority of such commissioners as attend any such meeting shall have power to act and decide any question and to make the assessment 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 \$10 nor more than \$50.

#### **Application for sale of job for more than estimated cost.**

—Sec. 27. Whenever it is made to appear to the court by petition setting forth the facts which petition may be presented by the county attorney or the attorney for the petitioners, that the county auditor or auditors, of the respective counties in which such judicial ditch is located is unable to sell the jobs for the letting of said ditch, and the work necessary for the construction thereof, as shown by the engineer's report on account of the estimated cost of the construction of said work for the whole of said ditch, or any separate portion thereof which may be sold separately, is less than any offer or bid received for the same, and said petition shall set forth the amount of said estimated cost, and the amount of said offer or bid for the job, for the construction of the same, and one-half of the persons or parties interested whose lands may be assessed for the construction of said ditch, shall consent thereto in writing, the court may by an order direct the county auditor, or county auditors, as the case may be, to sell such job of work to such responsible bidder for an amount not exceeding that stated in said petition as offered by the lowest bidder for said work, and

the court shall thereupon amend its findings so as to equitably distribute such increased costs for the construction of said ditch, or such part thereof, that may be embraced in said petition and original findings among the several land owners affected by such change or changes in the cost of the construction of the same, and in proportion to the assessments made under the original findings, and the county auditor or several county auditors upon receipt of a certified copy of such amended findings shall distribute the same, and enter the same upon the tax duplicates against the lands to be assessed for the construction of said ditch, or drain, and in the same manner as hereinbefore provided for entering up such assessments on the tax duplicate, and filing a verified statement or statements in the office of the register of deeds.

**Appointment of other engineers.**—Sec. 28. If the engineer appointed by the court fails to qualify, or at any time resigns, dies or becomes disabled during the progress of the work, the court shall forthwith appoint another civil engineer having the qualifications required by this chapter instead and place of the engineer first appointed, who shall give the bond and take the oath required by this chapter and shall do all things remaining to be done by the original appointee.

**Assistant engineers.**—Sec. 29. The engineer shall have power if the court that appointed him consent thereto, to appoint assistant engineers, when necessary, for whose acts he shall be responsible, and whom he may remove at pleasure. Any such assistant engineer shall, before entering on his duties, take the oath required by this chapter of the engineer, and such oath and appointment shall be filed in the office where the original petition was filed. The rate of compensation of assistant engineer shall in no case exceed the rate of compensation of the engineer and shall be fixed at the time of appointment by the court.

**Paid by county.**—Sec. 30. In any proceedings heretofore or hereafter had for the establishment of a ditch or drain or the changing of a water course, when an engineer has been appointed and has made a complete survey and report thereof, and for any reason the improvement has been abandoned, and the proceedings dismissed, and afterwards proceedings are instituted for the establishment, of a ditch or drain, or the changing of a water course, for the benefit of reclamation of the same territory surveyed in said

former proceedings, or a part thereof, and territory additional thereto, the engineer shall use the engineer's report, survey, stakes and monuments made in said former proceedings, as far as practicable, or as much thereof as may be applicable and the cost thereof in said former proceedings, or of such part thereof as used, shall be paid for as part of the subsequent proceedings in which such report, survey, stakes and monuments, or part thereof, is used.

*Provided*, that when a bond has been heretofore given under and pursuant to the provisions of any drainage law of this state, and the party or parties giving said bond have, because of the refusal of the court to order the construction of the ditch petitioned for, been called upon to pay to the county the expenses incurred in said proceeding, and said party or parties have actually paid to said county such expenses, and after such refusal by said court proceedings are instituted anew for the establishment of a ditch or drain or the changing of a water course for the benefit or reclamation of the same territory surveyed in said former proceedings, or a part thereof, or territory additional thereto, and the engineer uses the engineer's report, survey, stakes and monuments, made in said former proceedings, then, and in that event, the cost of said work of said engineer, and his assistants in said former proceedings, shall be assessed against the lands benefited and payment of the costs incurred by reason of the work of said engineer, and his assistants in said former proceedings, shall be made by said county upon collecting the same, to said party or parties who have made payments as aforesaid under their bond.

**Damage to land by deposit.**—Sec. 31. That whenever any land adjacent to any ditch or drain constructed, either under the provisions of this chapter, by which the original cost of said ditch or drain was assessed against the benefited property may be or has been damaged subsequent to the construction of such ditch or drain, by reason of a part of the soil being carried away by water flowing through said ditch or drain, or by the deposit of earth or any other foreign substance (snow and ice excepted), on said land, and which damage was not considered and included in the award of the viewers appointed in the proceedings to construct such ditch or drain, the owner of the land so damaged may, at any time within six years after the completion of the ditch or drain causing such damage, petition the court for the

appointment of viewers to ascertain and report the amount of such damages, such petition shall state the description of the land alleged to have been damaged, the amount of damage claimed, the location of the ditch or drain, the description of the land found in the proceedings to construct such ditch or drain to have been benefited by its construction, and the names of the owners of the land benefited, as shown by the last assessment roll, which petition shall also designate, and refer to the original petition by the number, which the latter contains. The said petitioners shall also present with said petition a good and sufficient bond in the sum of two hundred dollars (\$200), with two or more sureties, payable to the county to be approved by the court conditioned that if it finally be determined that no damages have been sustained that are properly allowable under this section, the petitioner will pay all expenses of the proceedings had under the petition, the court shall thereupon make an order fixing a time when said petition may be heard allowing a sufficient time for the service of a notice upon all parties interested or who were parties to the former proceedings, their successors or assigns or grantees, which notice shall briefly state that said petition has been filed stating the county and court, refer to the original petition by its number, and the names of the parties claiming damages and the amount of damages claimed, which notice may be served in the same manner as the service of the notice referred to in section 3 of this act; the court shall also at said time appoint three viewers, having the qualifications referred to in section 6 of this act, and in case any of said viewers so appointed fail to qualify within five days the court may appoint others in their place instead, which petition, bond, and order shall thereupon be filed in the office of the clerk of the district court, in which said proceeding is pending. Said notice hereinbefore referred to shall be subscribed by the attorney for the petitioners, and dated on the date which it is issued, said viewers shall within five days after their appointment, and notice thereof qualify in the manner referred to in section six of this act, and shall thereupon forthwith make a personal examination of the premises claimed to be damaged, and inquire into the cause, and amount of damage, and if they find any damage contemplated, by the provisions of this section of this act, has been done to the land described in the petition they shall make an award in writing, stating the cause, and the amount of damage, and file said



award in the office of the clerk of the district court, of the county where said proceedings are pending, on or before the date fixed by the court, for the hearing on said petition.

If the viewers find that no damages have been sustained that are properly allowable under the provisions of this chapter they will so report to the court, and said proceeding shall thereupon be dismissed, and the expense of the proceedings shall be paid by the petitioner, and on his failure to pay, the county may maintain an action therefor on the bond hereinbefore provided for.

Upon said hearing on the date fixed by the court, or in case said matter be adjourned by the court, on such adjourned day, the court shall hear and consider such petition, and the evidence offered by the petitioner in support thereof, and also any evidence offered in opposition thereto by parties who may be assessed for any damages allowed in said proceeding, and shall also take into consideration the report of the viewers, and award if any made by them, and if upon such hearing the court shall find that the said petitioner is entitled to damages in accordance with said viewers' report, it shall be the duty of the court to make an order and findings to that effect which damage may include all the expenses, and costs of the viewers, and other expenses connected therewith, which order and findings shall be filed in the office of the district court of the county where said proceedings are pending, and said clerk shall thereupon forthwith file a certified copy of the same, in the office of the county auditor, and if the original proceedings were had in more than one county he shall file a certified copy in the office of the county auditor or county auditors as the case may be, shall cause the same to be assessed against the land that was found in the original proceedings to construct the ditch in question to have been benefited in the proportion and manner, and under the like proceedings theretofore had and as provided for in the original order, on file in his office.

After the expiration of the time for an appeal has expired as provided for in this act, and no appeal has been taken, the court shall issue an order on the county treasurer or county treasurers as the case may be, in favor of the petitioner, for the amount due and payable to him under said award, if any, from said county or each of said counties as the case may be, by proportionately dividing the same if in more than one county in accordance with the assessments made in the original petition on file in said cause.

**Appeal to supreme court.**—Sec. 32. Any party may appeal from the judgment of any appealable order of the district court, or who claims damages or against whose property benefits are assessed may appeal to the supreme court as in civil actions from any final order, except an order establishing such ditch, or drain in proceedings under this chapter, within thirty days after the filing of such order, by filing the notice of appeal, and bond required as in civil actions upon an appeal to the supreme court. The appellant shall also serve a copy of the notice of appeal and bond on the respective attorneys of record in the proceeding, and file proof thereof with the clerk. In case the appellant prevails in the supreme court, and the cost of the construction of said ditch, or drain is increased on account of said appeal having been determined in favor of said appellant, and damages or costs are awarded to the appellant upon a remittur from the supreme court to the district court, the clerk of the district court shall notify the judge of the judicial district wherein said appeal was taken, whereupon the judge shall make an order directing the county auditor or auditors, if in more than one county, to pay the amount adjudged to be due the appellant upon such appeal, together with his costs, if said appeal involves land in more than one county the judge shall order the same to be paid proportionately out of the general ditch fund of each county, in proportion to the amount assessed upon the lands in each county for the construction of said ditch, thereupon the auditor or auditors of each county shall issue county warrants upon the county treasurer and payable out of the general ditch fund in the county treasury. The said auditor shall thereupon, or in case the same is in more than one county, the several auditors shall distribute the amount so paid among the several land owners, who were originally assessed for the construction of said ditch, drain or water course, and enter the same upon tax duplicate against said respective lands, in the same manner and proportion as provided for in the original order in said proceedings, which said amount shall become a lien against said land, and be due and payable in the same manner as provided for in sections twenty-one and twenty-two of this act.

**Private ditch petition.**—Sec. 33. In case the petitioner or petitioners shall offer to construct and maintain such ditch, or drain at their own expense, the petitioner need only offer to so state in the petition and set forth: the public util-

ity or benefit to the public health resulting from such work, and that such ditch or drain is necessary in order to drain, and reclaim lands described in said petition, a general description of the proposed ditch with its starting points, termini, and routes, as nearly as the same can be determined; a description of all lands to be crossed or otherwise damaged thereby, with the name of each owner thereof, if the same is known or can be ascertained with reasonable diligence; all public highways, corporate roads and railroads to be crossed or otherwise damaged thereby, with the names of the towns in which such public highways are located, and of the corporation owning each corporate road and railroad. For further certainty, the petitioner or petitioners may file in the office where the petition is required to be filed any maps, plats or specifications describing the proposed ditch, which, when so filed, may be referred to in said petition. All provisions of this chapter shall apply to ditches or drains thus petitioned for so far as consistent with the special provisions relating thereto.

**Right of way—viewers—damages awarded.**—Sec. 34. —The petitioner or petitioners shall also accompany said petition with a bond in the sum of not less than two hundred fifty dollars (\$250), payable to the county or counties, as the case may be, for the benefit of such county or counties and of all persons, parties or corporations interested, and with at least two or more sureties who are freeholders, or a surety company, and acceptable to the court or county attorney, which bond may, on request of the county attorney, or order of the court, be increased in amount as circumstances may demand, or the prospective amount of costs, and expenses to be incurred may require, conditioned to pay all damages, costs and expenses that may be awarded, assessed or incurred in the proceeding under said petition. In case an additional bond shall be ordered by the court, and the petitioners fail or neglect within a reasonable time to furnish the same, the proceedings may be dismissed, otherwise the court shall proceed to hear and determine said petition, and like proceedings shall be had, as is set forth in section three of this act, except that at the first hearing upon said petition the court shall appoint three viewers, having the same qualifications, and shall take the same oath, and shall receive the same compensation as the viewers, provided for in section six of this chapter, except that one of said viewers may be a civil engineer, and need not be a freeholder, or resident of the

judicial district. Said viewers shall within ten days prior to the time set for a hearing thereon, file a report showing either by direct statement or by reference on file in said proceeding, the location and character of the proposed ditch over and across said lands, public highways and railroads; place of entrance, course through and exit from each tract of land; the size and depth of said ditch, when it shall be constructed, how kept in repair, what connections may be made therewith, what compensation, if any, shall be made to the owners of such tracts of land, or to any public or private corporations, or to any persons for damages by reason of such construction, and upon satisfactory proof that such damages have been paid the court may within a reasonable time thereafter make an order directing and permitting the construction of such ditch or drain.

In locating a public ditch in a proceeding under such petition, the viewers shall vary from the starting points, routes, and termini described in said petition no more than is necessary to enable said ditch to reasonably effectuate the purpose for which it is intended.

**Act to be liberally constructed.**—Sec. 35. This act shall be liberally construed so as to promote the public health, and construction and improvement of roads, and the drainage and reclamation of wet or overflowed lands, and the court shall consider and pass upon any objections filed to any petition, and any competent evidence, offered in support or in opposition to the petition for any ditch, drain or water course, and shall correct and change, a report of the viewers, and the assessments therein contained, and may modify the same and make any order in the premises necessary, or that justice may require.

**Rights of viewers.**—Sec. 36. The viewers shall have the right to enter on any lands for the purpose of estimating damages, and of locating such ditch, and after payment or tender of damages the petitioners may, in like manner, enter upon such lands for the purpose of constructing, maintaining or repairing such work.

**Bondsmen and petitioners may agree as to damages.**—Sec. 37. The bondsmen for the petitioners may agree with any person claiming or entitled to damages as to the amount thereof; such agreement shall be filed in the office where the

original petition was filed and in case such lands covered thereby shall not be considered by the viewers.

**Error in proceedings not to prejudice rights of parties.—**

Sec. 38. No person or corporation shall be permitted to take advantage of any error committed in any proceedings under this chapter either by the board of county commissioners, engineer, viewers, county auditor, or other 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 thereon, 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 corporations 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 execution 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 the letting thereof.

**Items of cost omitted may be reassessed.—**Sec. 39. 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 cor-

porations, from its inception to its completion, has been or shall be omitted from the original tabular statement for assessment made by the auditor and filed 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.

**Lands benefited may be assessed.**—Sec. 40. Whenever lands or public roads not assessed for the construction of a ditch established under this or any chapter, 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 works, 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.

**Authority of counties to issue bonds.**—Sec. 41. Nothing in this act contained shall be construed as limiting the authority of the respective counties to issue their bonds as provided in this chapter, and the respective auditor's statement shall be filed in the respective counties and the assessments collected and bonds paid by the respective counties as hereinbefore provided.

**Definition of word "ditch".**—Sec. 42. The word "ditch" as used in this act, shall be held to include any open, covered or tiled ditch and any drain, water course or creek, and any side lateral, spur or branch ditches and each and all of the constructions referred to in section one of this chapter, and the petition of any public ditch, may include any side lateral, spur or branch ditch necessary to secure the object of the improvement.

**Duty of railroad companies—penalty for refusal.—Sec. 43.** It shall be the duty of every railroad company in this state, owning a right of way therein, over, under or through which it shall be necessary to construct any ditch, drain or water course in order to effectually drain the lands described in any petition or any drainage proceedings hereunder to permit such ditch, drain or water course to be constructed over its said right of way, *provided*, such drain, ditch or water course, across said right of way shall be an underground drain when practicable, otherwise to be constructed in the usual and ordinary manner, and so as not to impair the usefulness of the railroad. Any railroad company in this state refusing permission or continues to obstruct the construction of such drain, ditch or water course across its said right of way after the same has been ordered and written permission demanded for the construction of the same by the contractor or party entitled to construct the same, shall forfeit the sum of \$25 per day for each and every day that such refusal or obstruction continues or is made after such written demand, to be recovered in a civil action by the contractor or other party aggrieved.

**Viewers competent.—Sec. 44.** A majority of the viewers shall be competent to perform the duties required by them by this act.

**Compensation of engineers—compensation of officers and attorneys.—Sec. 45.** 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 rodman 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, 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 (\$1.50) per day, and may be allowed in addition thereto his board and lodging for the time such person is thus actually employed. The county auditor of each county, and the clerk of the district court, county attorney, register, sheriff, and county commissioners, shall receive rea-

sonable compensation for their 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 of officers shall be such as is usually allowed by law for similar services or modified as the court may direct, except that the court shall fix the compensation of the county attorney, and attorneys for the petitioners, but no fees shall be allowed the county attorney for services rendered in the prosecution of any criminal action arising or growing out of proceedings, but he shall advise the county officers from time to time when called upon in relation thereto. The fees per diem compensation, and expenses shall be audited and allowed by the court, and paid upon the order of the court by the auditor's warrant, and if the said ditch, or drain extends into more than one county, the court shall in his findings establishing such ditch apportion the same among such several counties as justice may require, and order the same paid accordingly, and in determining the total expenses to be incurred the judge may take into account and consider the accruing costs, fees, and expenses.

**Penalty for obstruction.**—Sec. 46. Any person wilfully or negligently obstructing, or in any way injuring any work constructed under the provisions of this chapter, or under any other law of this state, relating to drainage, or diverting the water from its proper channel, shall be guilty of a misdemeanor, or shall also be liable to any person or corporation, 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 wilfully neglects to perform any of his 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.

**Authority of viewers and engineers to enter upon land.**—Sec. 47. For the purpose of making examinations and surveys the viewers, county commissioners and the engineer are authorized to enter upon any land, and to do any act necessary for the proper performance of their duties; and any person attempting to prevent or interfere with them, in so doing, shall be punished upon conviction by the court for a misdemeanor.



**Jurisdiction of judges.**—Sec. 48. In case any proposed ditch extends into any other judicial district proceedings may be commenced before the judge of either of said judicial districts, and the judge before whom such proceedings are commenced shall thereafter have jurisdiction of all subsequent proceedings, and matters in relation to said ditch, and every order made by the judge laying out or establishing any drain, ditch or water course, or refusing to establish the same, and every order made in relation thereto under the provisions of this chapter the record thereof or a certified copy of such record shall be *prima facie* evidence thereof, and of the facts therein stated, and of the regularity of all the proceedings had therein.

*Provided, further,* that if for any reason during the pendency of any proceeding thereunder, the court for any reason shall fail to hold a meeting or hearing at any time pursuant to any previous order made therein for the holding of any special or adjourned meeting or hearing in relation to any matter connected with said proceedings, the court shall not lose jurisdiction of such proceedings, but may make any new and additional order or orders that may be necessary in the premises as justice may require, in order to arrive at a speedy determination of all matters and the final disposition of all matters connected with said proceedings, and the final completion of the ditch, drain or water course petitioned for.

**Surveys—how made—tabulation—estimate—drainage commission and judges to co-operate.**—Sec. 49. The state drainage commission is hereby authorized to co-operate with the district judges of the state, or either or both, as the case may be, in any county wherein a ditch, drain or water course has been or is to be located, for the purpose of establishing or making any preliminary surveys for the same, or in enlarging and repairing the same after its construction. In making such survey the engineer shall cause stakes or monuments to be set along the line of said survey, numbered progressively down stream, at each one hundred feet, or within said distance as near as practical, and 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 said 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 shall make an

itemized tabulation of all cleaning of obstructions of water courses, building of flumes, or other wood or masonry work, construction of fences for the protection of the ditch, drain or water course, bridges or other additional construction work found necessary, together with the estimated cost thereof, and make an estimate of the total cost of laying out, establishing and constructing the whole work (including branch ditches, if any), including all preliminary and other expenses connected therewith, including inspection and certification to the work when, and as the same is completed. He shall also, in tabular form, give the depth of cut, width at the bottom and width at the top, at the source, outlet, and at each 100-foot stake or monument of said ditch, drain, creek or water course in making the survey for any new ditch, drain, creek or water course, or the branches thereof, he shall be guided by the same rules that are prescribed in section 4 of this act. The said state drainage commission may also cooperate with the several district judges and several county boards in this state for the purpose of establishing and making maps of drainage water sheds, or a topographical survey of any county or counties for drainage purposes, and the engineer making such survey shall cause the proper maps thereof to be made showing all the details of such survey of any ditch, drain or water course constructed under authority of this act showing all the data pertaining to said ditch properly marked thereon, which map, or a blue print thereof, shall be filed in the office of the county auditor where the land lies that has been surveyed, or if in more than one county, a blue print of said map shall be filed in each county, and if any state lands are included in such survey the original map shall be filed in the office of the state auditor, and whenever such drainage water sheds are established all ditches thereafter constructed, in the locality where such survey has been made, must conform to the drainage plan laid out and indicated on the map showing such drainage water course. The cost of making such survey shall be paid by the county in which such lands lie, except, however, that when any state lands will be benefited, by thereafter constructing a ditch in accordance with such survey, the expense and cost thereof shall be paid jointly by the state and county in proportion to the benefits derived therefrom, the state share to be paid out of the state drainage fund, and the proportion to be paid by the county shall be made from the general revenue fund of the county, and in case a ditch is subsequently constructed in

accordance with such survey, all private lands benefited by such ditch shall be assessed therefor in the same manner as hereinbefore provided for assessments for the construction of any ditch under this act. Whenever the state drainage commission has funds available belonging to the state drainage fund, and they shall deem it to be for the public benefit, or to promote the public health, they may pay such portion of the cost and expense, not to exceed one-half of the same, for the purpose of widening, deepening or straightening any stream or water course which has been, or may hereafter be made to overflow its banks by reason of an extra amount of water flowing into the same from ditches previously constructed by the state or local authorities, and in the construction of additional outlets to any marshy or meandered lakes, that have been caused to overflow by reason of an extra amount of water flowing into the same from any ditch or ditches previously constructed by the state or local authorities, or that is so shallow and marshy, as to be no longer fit for hunting and fishing or of beneficial public use of a substantial character for fishing, boating or public water supply, and be of public benefit or promote the public health to drain the same.

**When judge may order construction of ditch.—Sec. 50.**

In any ditch proceeding now pending before any county board of this state in which for any reason the board has refused to order the ditches petitioned for, or the proceedings are hindered and delayed by the refusal of the county board to further act upon the matters devolving upon them to pass upon, order or determine in the proceedings, said proceedings may, upon motion of any petitioner whose land is liable to be assessed therefor, be transferred to the judge of the district court in the judicial district where the same is pending, by service of a notice of motion to that effect eight days before the day of hearing of such motion upon the county auditor and chairman of the board. Upon proof of the service of such notice the court shall hear and consider such motion at the time therein stated, or as soon thereafter as counsel can be heard, and, unless it appears that said county board will speedily proceed with said petition and order the construction of said ditch, drain or water course, or make the necessary orders from time to time for the speedy construction of the same, as justice may require, or other valid reason offered in opposition to said motion to the satisfaction of the court, the court shall make an order trans-

ferring said proceedings from said county board to the judge of the district court, and thereafter the said judge of the district court shall have jurisdiction of said ditch proceedings, and of all matters connected therewith, and all subsequent proceedings had therein shall be had in conformity with the provisions of this chapter.

**Hearing—judgment.**—Sec. 51. In all cases where judicial ditch proceedings instituted under any law of this state heretofore have been, or hereafter shall be dismissed, or any such judicial ditch proceedings heretofore have been, or hereafter shall be heard and determined adversely to the petitioners, and the prayer of such petitioners denied, or such proceedings dismissed after hearing on the merits, the judge of the district court may, upon five (5) days' notice in writing duly given and served upon the interested parties, which notice shall state the time and place of hearing thereon, fix and determine the amount of the expenses, if any, which the petitioner and the principal and sureties of their bond are liable for, and shall have full power to determine the amount of the expense which the petitioner and the principal and sureties upon the bonds should pay, and full power to determine upon the liability of the petitioner, principal and surety on such bond and to order judgment for the amount thereof, and direct the entry of such judgment in the same manner as in causes tried before the court without a jury. The court shall by order fix the date of said hearing, and direct the manner of the service of said notice upon the interested parties. The word "expenses" in cases of dismissal or determination adverse to the petitioner as hereinbefore mentioned, shall include all expenses legally chargeable against the petitioners and the principal and sureties upon their bond.

Sec. 52. This act shall take effect and be in force from and after its passage.

Approved April 25, 1907.