

one locality than is paid for the same commodity by said person, firm, co-partnership or corporation in another locality after making due allowance for the difference, if any, in the actual cost of transportation from the locality of purchase to the locality of manufacture shall be deemed guilty of unfair discrimination and upon conviction thereof shall be punished by a fine not exceeding five hundred dollars (\$500.00) or by imprisonment in the county jail not to exceed six months.

Approved April 23, 1909.

CHAPTER 469—H. F. No. 1090.

An Act amending chapter 230 of the General Laws of 1905, relating to drainage and repealing section 3½ and section ten (10) of chapter 367, and all of chapter 448, of General Laws of 1907, and all of chapter 44 of Revised Laws 1905, relating to drainage and validating certain drainage proceedings heretofore had.

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

County board and judges of district courts given power to construct ditches—Proceedings.—Section 1. That section one (1) of chapter 230 of the Laws of the state of Minnesota for the year 1905 be and the same is hereby amended so that the same shall read as follows:

Section 1. The county board of the several counties of this state within their respective counties and the judges of the district courts of this state shall have the power when the conditions stated in the third section of this act are found to exist, to cause to be constructed as hereinafter provided.

Any ditch, drain, creek or other water course within their respective jurisdiction; 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, and they may widen, deepen, straighten, change, lower or drain 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 jurisdiction, 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 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 *provided, further*, that no meandered lake shall be drained under the authority of this act, except in case such lake is normally shallow and grassy and of a marshy character, or except in case such meandered lake is no longer of sufficient depth and volume to be capable of an beneficial public use of 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 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 county auditor of the county in which such proceedings are had or in the office of the clerk of court, if such proceedings are in district court.

Provided, further, that no meandered lake adjoining an incorporated village or city or upon which an incorporated village or city is a riparian owner, shall be drained or lowered unless by the approval of a majority vote of the legal voters of said city or village at any annual election or special election held for such purpose.

Ten days' posted notice thereof shall be given, and such election held upon written request of five (5) or more riparian owners upon any such meandered lake; but the provisions of this chapter shall not grant to any person or to any county board, or to the judge or judges of any district court of this state, the right or privilege 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.

Petition to be filed.—Sec. 2. That section three (3) of chapter 230 of the General Laws of the state of Minnesota for the year 1905, as amended by section one of chapter 367 of the General Laws of the state of Minnesota for the year 1907, be and the same hereby is amended so that the same shall read as follows:

Section 3. Before the county board shall establish any ditch, drain or water course, or other construction named in section one (1) of this chapter, there shall be filed with the auditor of such county a petition signed by one or more of the land owners whose

land will be liable to be affected by or assessed for the expense of the construction of the same, or by the supervisors of any township, or the duly authorized officers of any city or village council, which township, village or city is liable to be affected by or assessed for the proposed construction, or by the duly authorized agent of any public institution, corporation or railroad, whose lands or property will be liable to be affected by or assessed for the expense of the construction of the same, or by the state board of control or its duly authorized agent, setting forth the necessity thereof and that it will be of public benefit and promote the public health, with a description of the proposed starting points, routes and termini: and one or more of such petitioners shall give bond, with good and sufficient freehold sureties payable to the county, to be approved including amount and sureties, by the auditor, conditioned to pay all expenses in case the county board or the court shall fail to establish said proposed ditch, drain or water course.

Whenever it shall appear to the county auditor (first) that any bond so approved and filed as aforesaid is insufficient in amount to cover all the preliminary costs and expenses of the ditch in the matter of which the said bond is given or

(Second) That the sureties of said bond are not sufficient or

(Third) That the security afforded by said bond is in any way impaired, the said auditor shall cite the principal and sureties on the said bond to appear before him at a time and place stated, not less than ten days after service of notice or citation, to show cause why a new and sufficient bond should not be filed.

At the time and place stated, the county auditor shall hear and determine the matter and if he determines a new bond to be necessary he shall order same to be made and filed, and fix the amount thereof.

The requirements as to the conditions, execution, approval and other matters affecting the prior bond shall govern the bond so required to be made, and within ten days after making said order, the said bond so ordered shall be filed with the said county auditor, and the said new bond if accepted and approved by the county auditor, shall thereafter stand as security for the payment of all costs and expenses thereafter incurred in the matter of said ditch, in case the county board or the court shall fail to establish said proposed ditch, drain or water course.

In case said new bond is not filed as ordered, no further proceedings shall be had in relation to the proposed ditch, and the county board may thereupon upon motion at any meeting thereof and upon showing of above facts, dismiss said ditch proceedings and collect from the principal or principals and sureties or either of them, all expenses paid or incurred to date in the matter of constructing said ditch.

All notices or citations herein required to be given shall be in writing and shall be served by the publication thereof once each week for two successive weeks in the newspaper designated by the county board, to publish the delinquent tax lists that year and at any time between the day of the first and the last publication thereof by mailing a copy thereof to each person so to be served at their last known postoffice address.

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

Notice of the filing of said petition, and of the time and the place of the hearing to be had thereon, shall be given by the auditor to all persons interested, by causing a copy of such petition, preceded by a statement of the time and place set for the hearing thereof, to be published for three successive weeks in a newspaper printed and published in said county, and by posting, at least three weeks before such hearing, printed copies thereof, in three public places in each township, where the proposed work is located and one at the door of the court house in said county, and at the same time the auditor shall mail a printed copy of said notice to all non-residents of the county whose lands lie within two miles on either side of the routes specified in the petition, whose address is known to him or can be ascertained by inquiry at the county treasurer's office:

Provided, that in all cases in which from any cause, said notice shall not be given, or in case said notice shall be defective, the county auditor shall cause the same to be given so that the petition may be heard at the next session of said board, after the expiration of such, or any new, three weeks' publication.

When said board shall be satisfied that all of the foregoing conditions have been complied with they shall cause an accurate survey of the line of said proposed ditch, drain, creek or water course from its source to its outlet, to be made by a competent and experienced civil engineer, to be appointed by them by resolution to that effect.

The auditor shall forthwith transmit to such engineer a certified copy of such resolution.

Upon the filing of the petition such proceeding may be designated and numbered by the county auditor as "County Ditch No.," and may be so referred to in all subsequent proceedings.

Reports to be filed with auditor and clerk.—Sec. 3. That section five (5) of chapter 230 of the Laws of 1905, be and the same hereby is amended by adding the following thereto:

“All reports, except reports as to assistants and expenses incurred, all plans, specifications, maps or profiles herein required to be made by the engineer shall be made by him in duplicate and filed in the office of the county auditor or the clerk of the district court, as the case may be, and one of each thereof together with a copy of the contract shall be delivered to the contractor at his request at any time after the execution of the contract.”

Appointment of viewers.—Sec. 4. That section 6 of chapter 230 of the General Laws of the state of Minnesota for the year 1905, be and the same hereby is amended so that the same shall read as follows:

Section 6. At the session of said county board, when said civil engineer is appointed, or at such time thereafter as may be appointed by them, not later than ten (10) days thereafter, said board shall make an order appointing three (3) resident freeholders of the county not interested in the construction of the proposed work, and not of kin to any of the parties known to be interested therein, as viewers to meet at a time and place to be specified by the county auditor as hereinafter provided, preparatory to commencing their duties as hereinafter specified.

It shall be the duty of the county auditor, within five days after the filing of the engineer's report, to make an order designating time and place for the first meeting of the viewers, which time shall be within fifteen (15) days after the filing of the engineer's report, and it shall further be the duty of the county auditor, within five (5) days after the filing of the engineer's report, to issue to said viewers a certified copy of the petition and of the order of the county board 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 county auditor shall designate some person having the qualifications 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: the description of each tract benefited or damages (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 railroad, or benefits any of such road so that the roadbed or traveled track of any such road will be made better by the construction of such ditch, the viewers shall estimate the benefit arising therefrom to such roads, roadbeds or railroads, and report said benefits (names of roads and other particulars necessary to identify the corporations private or public, to be benefited thereby, and amounts of benefits to each) as a part of their tabular statement provided for in this section; and the viewers shall also report as a part of such tabular statement the damages awarded to each municipal or other corporation, and to any person, persons, or association of persons, telephone and telegraph companies, for injury to any road, railroad, or roadbed, telephone or telegraph line or other personal property, and from the necessary construction and maintenance of any bridges, culverts 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 also whether or not, in their opinion, the estimated expense of the construction of such ditch, including the damages awarded therefor, are greater than the utility of the proposed ditch, or that the construction of such ditch is impracticable, for any reason, stating the reason why it should not be constructed.

In case the viewers are unable to agree each viewer shall state separately in the report his findings on the matters 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 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 such amount from their estimate of benefits, if any, against such tract of land, making an appropriate notation thereof on their report.

Public and other lands to be assessed—\$5,000 appropriation for state land.—Sec. 5. That section seven (7) of chapter 230 of the General Laws of the state of Minnesota for the year 1905, be and the same hereby is amended so that the same shall read as follows:

Section 7. All lands benefited by a public ditch, drain or water course, and all public or corporate roads or railroads so benefited, in whole or in part, shall be assessed in proportion to

the benefits for the construction thereof, whether said ditches pass through said lands or along or near the line of such roads or railroads or not, and the viewers in estimating the benefits to lands, roads or railroads not traversed by said ditch shall not consider what benefits such lands, roads or railroads will receive after some other ditch or ditches shall be constructed, but only the benefits that will be received by reason of the construction of the public ditch as it affords an outlet for the drainage, or prevents the overflowing of or otherwise directly benefits such lands, roads or railroads.

All lands owned by the state of Minnesota or any department thereof benefited by such ditch, drain or water course shall be liable for such benefit, the same as taxable land.

The sum of \$5,000.00 for the year 1909 and annually thereafter, or so much thereof as may be necessary to meet all assessments against state lands under this act, is hereby appropriated out of the general revenue fund for that purpose.

Inspection by engineer and report.—Sec. 6. That section seventeen (17) of chapter 230, of the General Laws of Minnesota for 1905, be and the same hereby is amended so that the same shall read as follows:

Section 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 board of county board 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 board of the county or counties, as the case may be, and upon the 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 certificate, as herein provided; and that said warrant shall be paid out of the general ditch fund to be provided by the county board as hereinafter specified.

Said warrant shall become due and payable out of said fund at once, and if there shall be no cash in said fund to pay said warrant when the same is presented the county treasurer shall endorse said warrant "Not paid for want of funds," and date and sign such indorsement, and the amount of said warrant shall draw interest at the rate of six (6) 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.

Provided, that the said certificate or certificates of the engineer in the matter of any county or judicial ditch proceedings, or any other estimate or certificate required under any of the drainage laws of this state to be made by him, shall not constitute prima facie evidence of the truth of the contents thereof, or of the completion of any ditch or any part thereof by the contractor or otherwise, or of the fulfillment of the contract or any part thereof unless and until said certificate is approved by resolution of the county board.

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 every thirty days during the progress of the work to report in writing to the county board or the judge of the district court as the case may be, as to all work completed since the last prior report, 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.

Also it shall be the duty of the engineer, at the request of the contractor, immediately upon the completion of each continuous mile of ditch hereunder constructed by dredge work to inspect the said mile of work and to determine and certify whether or not the same is completed to the depth required by the contract, plans and specifications, and if not so completed the further depth necessary to comply therewith.

Said certificates shall be made in duplicate and one thereof shall be given to the contractor and the other filed in the office of the county auditor of the county where the drainage proceedings were instituted, and said engineer's certificate shall be prima facie of its necessary contents to the same extent and under the same circumstances as other engineer's certificates herein mentioned.

County board to issue bonds.—Sec. 7. That section 18 of chapter 230, of the General Laws of Minnesota for the year 1905, as amended by section three of chapter 367, of General Laws of Minnesota for 1907, be and the same hereby is amended so that the same shall read as follows:

Section 18. The county board of each and every county wherein any drainage ditch is proposed to be wholly or partly located and established, or wherein lands are located which are assessed for benefits by reason of the construction thereof, 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 said county; or in such relation to such county as to affect lands therein within the terms of this act.

The word "expenses" shall be construed to mean and to cover every item of cost of said ditch from its inception to its completion, and all fees and expenses to be incurred in pursuance thereof.

Such bonds shall be payable at such time or times not to exceed 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 county board 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 such bond may be 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 county board shall have power to negotiate said bonds as they shall deem for the best interest of said county, but for not 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 county 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 it may transfer any surplus moneys remaining in the general revenue fund or other funds of the county which can properly be used for the purpose 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 are 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 with interest at the rate of six per cent per annum

from collections of unpaid assessments, for ditches, drains or water courses constructed under any proceedings had hereunder.

Liens.—Sec. 8. That section 22 of chapter 230, of the General Laws of Minnesota for the year 1905, be and the same hereby is amended so that the same shall read as follows:

Lien—When due—Section 22. The payment of such liens shall be made to the treasurer of such county as follows:

One-tenth of such principal on or before one year from such filing in the office of the register of deeds, and one-tenth each year thereafter until the whole thereof is paid.

Provided, that if in the final order establishing said ditch, or at any time thereafter, the judge of the district court or the county board, in his or its discretion, so orders, then payment of such lien shall be made to the said treasurer as follows:

One-fifteenth of said principal on or before five years from the date of said filing in the office of the register of deeds, and one-fifteenth each year thereafter until the whole amount of said principal is paid.

The said principal lien shall bear interest at a rate not to exceed six per cent (6%) per annum reckoned from the date of the filing of the lien statement in the office of the register of deeds, and interest on the whole of the principal of such lien remaining from time to time unpaid shall be paid annually except as hereinafter in this section otherwise provided.

On or before the 15th day of November next following such filing the county auditor shall enter on the tax lists of said county the whole amount of such lien remaining unpaid against each respective tract of land subject thereto, with a proper notation to secure the successive entry each year thereafter of the unpaid balance of such lien and the interest thereon and the portion of the principal of such lien due each year and all accumulated interest, and each thereof shall become due and payable and shall be collected at the same time and in the same manner as real estate taxes for that year on the tract in question become due, payable and are collected, and all of the provisions of law now or hereafter existing in relation to the collection of real estate taxes so far as applicable thereto, are hereby adopted for the purpose of enforcing payment of such liens and of the installments thereof and of the interest thereon and of each of the same.

Provided, that in case of delay in the construction of the ditch or in the proceedings therefor, or in the payment therefor to the contractor, the county board, or the judge of the district court, as the case may be, may each year during such delay, except after ditch bonds for such ditch have been issued and sold upon verified petition therefor in such ditch proceedings by any party interested and upon proper proof of facts, order the abatement of such proportion of the interest on such liens due that

year as the cost and expense of such ditch paid to date bears to the total estimated cost of such ditch, including the cost of preliminary proceedings, and it shall thereupon be the duty of the county auditor to make such entries and notations in his books as is necessary in complying with such order of abatement.

After the amount of any lien provided for in this chapter, or any installment thereof, or of the interest thereon has been entered on the tax lists, with the taxes, if any, due any year and default has been made in the payment of such lien or part thereof, no penalty therefor shall be added to such lien, or shall attach thereto at the time or times that penalty attaches to unpaid real estate taxes, but after said lien or any installment thereof becomes delinquent with real estate taxes, same shall bear interest as in case of delinquent real estate taxes.

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.

Benefits to be assessed.—Sec. 9. That section 25 of chapter 230, of the General Laws of Minnesota for the year 1905, be and the same hereby is amended so that the same shall read as follows:

Section 25. The benefits accruing to any municipal corporation by reason of the improvement of any public road or street within the limits of or connecting with such municipal corporation, shall be assessed, levied and enforced as follows:

Whenever any public road or street shall have been found to be so benefited, the city, village or town which is by law chargeable with the duty of keeping such road or street in repair shall be assessed the amount of such benefits accruing to such roads or streets within such city, village or town by reason of such ditch, and the same shall thereupon become a liability of such city, village or town, and shall be due and payable in ten annual installments, beginning on the first day of June next following the date of the entry of the lien against private individuals as herein provided; but if any of such installments are not paid within thirty (30) days after its maturity, the amount thereof, with interest, shall be extended by the county auditor against all the property in such city, village or town liable to taxation, and a levy thereof made thereon, and the same shall become due, be paid and collected in the same manner and at the same time as other taxes.

Provided, however, that in all counties now or hereafter having a population of more than two hundred thousand inhabitants

when any public road heretofore or hereafter found to be benefited is a county road, as county roads are defined under the laws of this state, the benefits accruing thereto shall not be assessed against the city, village or town chargeable with the duty of keeping such road in repair, but the same shall be assessed against the county by which said road has been built or is maintained, and the amount thereof shall be charged to and paid out of the general road and bridge fund of said county, and where any such city, town or village has been heretofore charged with said benefits accruing to any such road, the liability therefor shall be and is hereby discharged and the same shall be paid from said general road and bridge fund of said county.

Whenever any railroad or the lands of any railroad company shall be determined in any such proceedings to be benefited by any such ditch, such railroad, or the lands of such railroad company shall be assessed their just proportion of such benefits as other lands benefited are assessed, which assessment shall be collected from the owners of such railroad or from such railroad company in the same manner as personal taxes are collected by law.

From the date of the filing by the county auditor or in the office of the register of deeds of the statement aforesaid, the amount of such assessment, with interest, shall constitute a lien against all property of such owners and railroad company within such county.

Such lien may be foreclosed by action in the same manner as provided by law for the foreclosure of mortgage liens.

County board to keep in repair and assess cost.—Sec. 10. That section 26 of chapter 230, of the General Laws of the state of Minnesota for the year 1905, as amended by section 4 of chapter 367, of the General Laws of Minnesota for the year 1907, be and the same hereby is amended to read as follows:

Section 26. After the construction of any public drainage ditch within the state of Minnesota under any law of this state, the county board of the county in which the said ditch or any part thereof is located shall keep the same or such part thereof in proper repair and free from obstruction and shall widen or deepen the same so as to answer its purposes, and pay for the same out of the general revenue fund of the county, and to raise the necessary money to reimburse that fund, it is hereby authorized to apportion and assess the cost thereof, upon all lands originally assessed for benefits by reason of the construction of said ditch; said apportionment and assessment to be in the same proportion as was the original assessment for benefits.

It 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 next succeeding tax duplicates of said county and

such assessment shall be a first and paramount lien upon the lands affected, the same as state and county taxes.

In case such assessment or any part thereof is chargeable against lands in another county, then the amount thereof chargeable against such other county shall by the county board of the county which has paid the same, be certified to the county auditor of such other county chargeable therewith and such county auditor shall thereupon draw his warrant therefor in favor of and deliver the same to the county treasurer of the county which has paid the same, and such auditor drawing such warrant shall thereupon apportion and assess the amount thereof upon all the lands in his said county originally assessed for benefits by reason of the construction of said ditch in the same proportion as was the original assessment for benefits.

The provisions of this section shall apply to all works constructed for the purpose of drainage under any law now or heretofore in force in this state including state ditches.

In case of repair of state ditches by the county board the cost of the same shall be paid out of the general revenue fund of the county, and to raise the necessary money to reimburse that fund, the county board is hereby authorized and empowered, and it shall be their duty to appoint viewers to assess and apportion the cost of such repairs and preliminary and other expenses in connection therewith, said assessment and apportionment to be for benefits to all lands which may have been benefited by the construction of said state ditch and of any lateral or spur ditch emptying therein in proportion to such benefits.

All the laws of this state in regard to county drainage ditches, designating the number and qualification and the duties and compensation of viewers, prescribing rules and directions governing the making of assessments of benefits and the manner and time of giving notice of meeting, governing the making, filing and the approval, change and adoption of the final report of the viewers, providing for a hearing thereon, and such other provisions thereof as is necessary and as is adaptable therefor, shall govern proceedings for repair of state ditches, and a statement of the assessment for repairs shall be made, and such assessment levied and collected in like manner as is hereinbefore in this section provided for the making of a statement of and collecting assessments for repairs of county or judicial ditches.

Provided, that, if the repairs for any county or judicial ditch is made necessary or if the same is widened or deepened as consequence of the construction of lateral or private ditches, which increases the volume of water to be taken care of by the original ditch or deposits sediment in the original ditch, then the board, in assessing or apportioning the cost of repairs, or of widening or deepening said ditch, shall include in such assessment the

lands benefited by such lateral or private ditches, and shall assess benefits against the said land, after such assessments, shall apportion and assess the balance of the cost of the repairs or of widening or deepening said ditch as hereinbefore provided.

Provided, further, that before ordering repairs for any ditch and before widening or deepening the same, the estimated cost thereof shall be ascertained and reported to the county board by a competent civil engineer appointed for that purpose, and a hearing held before the said county board to determine the necessity of such repairs and the apportionment and assessment of the cost thereof, said hearing to be held after notice thereof stating time, place and purpose thereof, signed by the county auditor, which notice shall be served in the manner provided in section 9 of chapter 230 of the Laws of 1905 for the service on parties interested of the final meeting of the county board to act on the viewers' report.

Provided, further, that in case there are any moneys in the general ditch fund of the county to the credit of the particular ditch in question and available for the purpose aforesaid, the same may be used by the said county board for any of the said purposes without notice.

The repairs herein provided shall be construed to include the taking from said ditch of sediment deposited therein, the removal of obstructions therein, the widening and deepening thereof so as to answer its original purpose, or so as to provide for additional flow of water caused by other ditches or any other reason, the cutting and removal of weeds or grass from the bottom, sides, banks or right of way of such ditch and such other changes or alteration therein as will enhance its usefulness for the purpose of drainage, and shall further be construed to include the extension of said ditch to a new outlet when in case the same is found by the county board to be necessary or advisable.

Petition to district judge.—Sec. 11. That section 27 of chapter 230, of the General Laws of Minnesota for the year 1905, be and the same hereby is amended so that the same shall read as follows:

Section 27. Before any district judge shall establish any ditch, drain, water course or other construction named in section 1 of this chapter, there shall be presented to a judge of the district court in the judicial district in which any part of the proposed ditch is to be located, a petition such as is required by section 3, of chapter 230, of the General Laws of Minnesota for the year 1905, as amended by this act.

Before such presentation, such petition shall be filed with the clerk of the district court of the county wherein the said ditch, or any part thereof, is to be located or constructed, and a

copy thereof, duly certified by the said clerk shall be filed with the county auditor of each of the counties wherein any of the lands mentioned or described in the said petition are located.

Such proceedings may be designated and numbered by the said clerk of said district court as follows, "Judicial Ditch No.," and may be so referred to at all subsequent times.

Fees and expenses.—Sec. 12. That section 45 of chapter 230, of the General Laws of Minnesota for the year 1905, as amended by section 5 of chapter 367, of the General Laws of Minnesota for the year 1907, be and the same hereby is amended so as to read as follows:

The following fees and expenses shall be allowed and paid for services rendered under this act:

To engineers the sum of five (\$5.00) dollars per day for every day necessarily engaged, and actual and necessary expenses.

To each viewer the sum of three (\$3.00) dollars per day for every day necessarily engaged in viewing ditches, in traveling therefor, and in making up their reports, and actual and necessary expenses.

To each roadman a sum not exceeding two and fifty hundredths (\$2.50) dollars per day, and actual necessary expenses.

To each chainman, axman and every other like employe not herein mentioned, and necessary to the prompt execution of the work of locating or constructing a public ditch, a sum not exceeding two (\$2.00) dollars per day, and actual and necessary expenses.

To each member of the county board the sum of three (\$3.00) dollars per day for each day actually occupied in proceedings to establish or repair, or in inspecting any ditch after its completion or during the course of the work if appointed as a committee for that purpose, and the sum of ten cents (10c) per mile each way for travel necessary in attending any special meeting of the county board called for the purpose of transacting any business pertaining to such ditch, and for travel in inspecting ditches, or other necessary travel in the said ditch matter.

To the county auditor, the county attorney, the clerks of the district court, the register of deeds, the sheriff and other officers performing duties hereunder, such reasonable compensation as shall be fixed by the county board in case of a county ditch, and by the judge of the district court in case of a judicial ditch, and the fees and compensation of all such county officers in ditch proceedings shall be in addition to all other sums and fees allowed by law.

All other fees, per diem, compensation and expenses provided for in this act, and such other legal services or expenses as may be necessary shall be fixed, audited, allowed and paid upon the

order of the county board: *provided*, that in case of a judicial ditch, the judge of the district court having charge thereof shall first approve the same.

Application for sale of work.—Sec. 13. That said chapter 230, of the General Laws of Minnesota for the year 1905, be and the same hereby is amended by adding thereto certain sections to be numbered respectively as section 69, section 70, section 71, section 72, section 73, section 74, section 75 and section 76, the same to read as follows, respectively:

Application for sale of job for more than estimated cost.—Section 69. Whenever it is made to appear to judge of the district court or to the county board 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 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 engineer's report, on account that 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 30 per cent (30%) 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 the judge or the county board, as the case may be, may proceed to hear and determine the same without notice or with such notice as is considered necessary and as is ordered by said judge or said county board, as the case may be, and the said judge or county board, as the case may be, 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 the amount not exceeding that stated in said petition as offered by the lowest bidder for said work, and the said judge of the district court or county board, as the case may be, shall thereupon amend the 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 file same and shall include such additional amounts in the statement required by section 19 of chapter 230 of Laws of 1905 to be made by said auditor or auditors: and same shall be entered and collected in like manner as is provided by law for the collection of the assessments for benefits for construction of such ditch.

Appeal to supreme court.—Section 70. Any party who claims damages or against whose property benefits are assessed may appeal from the district court to the supreme court as in civil actions from any final appealable 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 proceedings, 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 appellant, and damages or costs are awarded to the appellant, upon a remittitur from the supreme court to the district court, the clerk of the district court shall notify the judge of the judicial district wherein such 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 such sum 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 for such sum or sums 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 duplicates against said respective lands, in the same manner and proportion as provided for in the original order in said proceedings, which said additional amount shall become a lien against the said land, and be due and payable in the same manner as provided for in sections twenty-one and twenty-two of this act.

Section 71. If the engineer finds that there is no practicable or feasible outlet for a ditch except through the lands of an adjoining state, he shall include said findings in his report, together with an accurate description of the needed right of way in such adjoining state and his estimate of the cost of obtaining the same.

If such finding is confirmed in the final order establishing said ditch, the county board or judge or judges of the district court making said order.

(a) Shall require the county auditor, in case of a county ditch, or the auditors of the respective counties, in case of a judicial ditch, to purchase such needed right of way at an expense not exceeding the estimated cost therefor specified in the engineer's report; said right of way to be paid for as part of the cost and expenses of said ditch, and

(b) Shall provide in said final order establishing said ditch that the jobs of digging and constructing the ditch shall not be advertised, let or sold until such purchase of such needed right of way in such adjoining state has been in all things completed.

Penalty for obstruction.—Section 72. 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, and any person who is not authorized so to do by the engineer in charge of any ditch, and who wilfully changes or alters the location of or the markings on any stakes set, placed or marked by such engineer or under his direction in the matter of laying out or the construction of any ditch, and any person digging or constructing or causing to be dug or constructed any ditch or drain which thereby empties into any ditch or drain constructed under the provisions of this chapter without having first secured permission from the county board of the county in which such principal ditch or drain is located. "shall be guilty of a misdemeanor, and shall also be liable to any person, persons or association of persons or corporation injured by such act, in treble damages."

Any county auditor, clerk of court, member of the county board, or any other officer who refuses or wilfully neglects to perform any of the duties imposed upon him by this act, shall be guilty of a misdemeanor, and shall also be liable therefor to any person, persons, association of persons or corporation injured thereby, in treble damages.

The county attorney of the proper county shall prosecute all criminal actions arising under this chapter.

Jurisdiction of judges.—Section 73. 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 and the record thereof, if recorded, 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, that if for any reason during the pendency of any proceeding thereunder, the court or county board 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 or county board shall not lose jurisdiction of such proceedings, but may make any new additional order that may be necessary in the premises or that justice may require, in order to arrive at a speedy determination of all matters connected with said proceedings, and the final completion of the ditch, drain or water course petitioned for.

Section 74. After the completion of any ditch constructed under any law of this state, excepting state or town ditches, no public or private drains or drainage ditches and no side lateral or spur ditch or ditches shall be so dug or constructed by any person or persons or any association of persons or by any corporation or any township or other municipal or corporations or the authorities of either of them without having first secured express authority so to do from the county board of the county where such principal ditch is located, or in case of a judicial district from the county board of both counties meeting jointly for that purpose in the county wherein such drainage proceedings were originally instituted, upon notice by the county auditor of such county to the members of said county board or boards as in case of special board meetings.

Such proceedings shall be instituted by a petition to the county board filed with such county auditor and signed by parties interested in and affected by said proposed branch, setting forth the source, course, terminus, and the size and dimensions of said proposed side lateral or spur ditch.

Thereupon the said auditor shall appoint a time and place to consider the same and shall call a special meeting of the county board or boards, as the case may be, to meet at such time and place for that purpose and shall cause notice thereof to be published once each week for two successive weeks in a newspaper published in each county affected.

The said county board or county boards, as the case may be, may employ a competent and experienced civil engineer to investigate and report on the matter.

On the day of hearing so appointed, or at any adjourned day thereof, the county board or boards shall proceed to hear all testimony offered in relation to said matter, and shall determine and decide the same, and if the county board or boards decide to permit such branch or lateral ditch to be built, or such other ditch to empty therein, determine and decide the terms and conditions under which same may be built, and the amount to be paid by petitioners therefor, if any, and upon compliance therewith, and not otherwise, said petitioner or petitioners may pro-

ceed to construct and complete said private ditch or side lateral or spur ditch so petitioned for.

Section 75. In all cases where petition has been made for the construction of a drainage ditch under any of the provisions of the drainage laws of this state now or heretofore existing, the same may be considered and completed under the provisions of this chapter by the county board or the judge of the district court at the election of the bondsmen and sureties thereon upon written application of said bondsmen and the sureties thereon made to said county board or the judge of the district court.

Upon the receipt of said application the said county board, or the judge of the district court, as the case may be, shall fix a time and place for the hearing of said application and shall cause a two weeks' published notice thereof to be given to all parties interested, and at the time and place of the hearing thereof the county board or the judge of the district court, as the case may be, shall hear and consider the same and if found to be of sufficient public benefit, shall order the said pending ditch proceedings to be heard and completed under the provisions of this chapter and thereupon the said county board or the judge of the district court, as the case may be, shall have full and complete jurisdiction thereof for the purpose of completing the proceedings thereunder the same as if the said ditch proceedings had been originally commenced under the provisions of this chapter.

Provided, that whenever in proceedings in the district court of this state the construction of any ditch heretofore or hereafter ordered by the county board under any drainage law of this state by which the cost for construction were or are assessed against the benefited property, was or is restrained or enjoined by said court for any reason, that within one (1) year after the entry of final judgment in such proceedings any person whose land is liable to be assessed therefor may cause the entire proceedings relating to said ditch to 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 (8) days before the date of hearing on said motion, upon the county auditor, chairman of the county board, and the parties upon whose motion the construction of said ditch was enjoined or the attorneys representing them in such proceedings.

The county auditor, upon service of the notice of such motion, shall forthwith transmit to the clerk of the proper district court all original papers filed in said matter.

At the time named for the hearing of such motion or on any date to which the same is continued, upon proof of the service of such notice of motion, the court shall proceed and consider the same and the viewers' report, the same in all respects as if such proceedings had been originally commenced in said court, and due notice thereof given as provided in this chapter, and the report of

the viewers, appointed in such proceedings by the county board shall by the court on such motion be considered the same in all respects as if the viewers had been appointed by the court in proceedings originally commenced in said court, and the court shall thereupon make such findings as justice may require, and may order said ditch constructed in conformity with the provisions of this chapter, and all further proceedings relating to said ditch shall be had before such court, the same in all respects as if the same had originally been commenced therein.

Section 76. Where the county board of any county in this state or the judge or judges of any district of this state has heretofore located, established or constructed, or attempted to locate, establish or construct, any ditch, drain or other water course within their respective jurisdiction, and said county board or said judge of the district court, as the case may be, has found and determined that such ditch, drain or other water course will be of public utility and will promote the public health, and that the benefits or estimated benefits to be derived from the construction thereof are greater than the total cost, including damages awarded, and the final order establishing said ditch is ineffective for the reason that same does not correctly describe or designate the course or the size or dimensions of said ditch, or is ineffective for any other reason, and the contract or contracts for the construction of such ditch have been actually entered into, and the county auditor has executed and filed in the office of the register of deeds the tabular statement required by law and making assessments for the costs and expenses of location, establishment and construction of the same against the lands, corporations, roads and other property benefited thereby, and no appeal has been taken therefrom or from any such proceedings, then the said proceedings, and any assessment or liens so levied or attempted to be assessed or levied, for the cost of said ditch, including damages awarded, and the said contract so entered into, and all ditch bonds, if any, issued in said proceedings, and such of the same are hereby legalized and declared to be valid and in full force and effect, the same as if the proceedings in the matter of locating and establishing said ditch were in all respects regular and the same as if the final order establishing said ditch had been regularly and correctly made.

Provided, that this section shall not apply to or affect the right of appeal from said proceedings, as now provided by law, or apply to or affect any action or appeals now pending in which the validity of such proceedings is called in question.

Certain sections of chapter 367, General Laws 1907, repealed.

—Sec. 14. That section numbered 3½ and section numbered 10 of chapter 367 of the Laws of Minnesota for the year 1907, and all of chapter numbered 448 of the General Laws of Minnesota for the year 1907, and all of chapter 44 of the Revised Laws of

1905, be and the same is hereby expressly repealed, save as to pending proceedings under said chapter 448 of the General Laws of Minnesota for the year 1907, which pending proceedings may be completed under the provisions of this chapter, if so elected as hereinbefore provided.

Sec. 15. This act shall take effect and be in force from and after its passage.

Approved April 23, 1909.

CHAPTER 470—H. F. No. 431.

An Act to provide salaries for the sheriffs of certain counties for certain of the services rendered by them to and paid for by their respective counties in lieu of fees, and to provide for the payment of their expenses in such cases, and the compensation of their deputies.

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

Limitation of scope of act.—Section 1. In each county less than twenty-five hundred (2500) square miles in area, now or hereafter having a population of less than thirty-five thousand (35,000) inhabitants, according to the then next preceding state or federal census, the sheriff shall receive an annual salary and his expenses for official services rendered by him for his county in lieu of fees, as hereinafter provided.

Classification.—Sec. 2. All such counties now or hereafter so having a population of less than ten thousand (10,000) inhabitants, shall be known as counties of "Class A"; those having ten thousand (10,000) or more, but less than fifteen thousand (15,000), shall be known as counties of "Class B"; those having fifteen thousand (15,000) or more, but less than twenty thousand (20,000), shall be known as counties of "Class C"; those having twenty thousand (20,000) or more, but less than twenty-five thousand (25,000), shall be known as counties of "Class D"; those having twenty-five thousand (25,000) or more, but less than thirty thousand (30,000), shall be known as counties of "Class E"; those having thirty thousand (30,000) or more, but less than thirty-five thousand (35,000), shall be known as counties of "Class F".

Salaries—Expenses.—Sec. 3. The several sheriffs of all such counties shall, in lieu of fees therefor, receive a yearly salary, payable monthly, on the first day of each month, out of the county revenue fund, on warrants drawn by the county auditor upon the county treasurer, in full of their compensation for all official services rendered by them and their deputies for their respective