

CHAPTER 112—S. F. No. 559.

An Act entitled "An Act providing for the appointment of a Deputy Comptroller, and prescribing his duties and powers, in cities in the State of Minnesota, now or hereafter having a population of over 50,000 inhabitants."

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

Deputy comptroller in certain cities.—Section 1. That in all cities of the first class, the comptroller may appoint and at his pleasure may remove a deputy comptroller, who shall perform such duties as the comptroller may prescribe. During the absence of the comptroller from the city, or his inability for any reason to discharge the duties of his office, the deputy comptroller shall act in his place and stead, and shall have the same powers and duties, and the comptroller and the sureties on his bond shall be liable for the acts of the deputy comptroller, the same as if they were done by the comptroller.

Applicable to certain cities only.—Sec. 2. This act shall only be applicable to cities of the first class governed by a charter adopted under and pursuant to section 36 of article 4 of the constitution of the State of Minnesota.

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

Approved April 10, 1911.

CHAPTER 113—S. F. No. 582.

An Act to provide for the re-assessment in certain cases of lands benefited by any ditch or drain, for the construction, repair, enlargement or extension of such ditch when the original construction, repair, enlargement or extension, or one or all of the same or the assessment therefor has been held invalid.

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

Re-assessment by county board for ditch purposes.—Section 1. When any county board has attempted to construct, repair, enlarge or extend any county ditch which may theretofore have been begun or constructed and shall have caused, or shall hereafter cause to be constructed, repaired, enlarged or extended, any such ditch or drain, and have caused an assessment to be made therefor, which assessment shall have been heretofore or shall hereafter be set aside, or declared invalid by any court for non-compliance with any law of the state, or because such action was not justified or permitted by any law of the state, the County Board aforesaid shall with all reasonable

dispatch proceed to reassess the property benefited by such ditch as shown by the report of the viewers, and to that end shall prepare in tabular form a preliminary statement, giving—

First: A description of each tract of land by them deemed damaged or benefited thereby;

Second: The names of the owners of each of said tracts;

Third: The total number of acres in each of said tracts;

Fourth: The number of acres in each of said tracts by them deemed benefited or damaged thereby;

Fifth: The amount that each of said tracts in their judgment is benefited or damaged thereby;

Sixth: The entire cost of the construction, repair, enlargement or maintenance of such ditch, drain or watercourse.

In making such statement the names of the owners and the descriptions of said tracts shall be the same, as near as practicable, as the same appear in the county tax duplicates of said county.

Assessments against public or corporate roads or railroads.—

Sec. 2. In making such preliminary statement and the final statement hereinafter provided for, when any such ditch, drain or watercourse drains, either in whole or in part, any public or corporate road or railroad, or benefits any such roads so that the roadbed or traveled track of any such road was made better by the construction of such ditch, drain or watercourse, said county board shall estimate the benefits arising therefrom to such roads, roadbeds or railroads, and said statements shall show such benefits, together with the names of the roads, roadbeds and railroads benefited, and the amount of benefits to each, and all roads benefited by such ditch, drain or watercourse, and all public or corporate roads or railroads so benefited in whole or in part shall be assessed the benefits received from the construction, repair, enlargement or extension thereof, whether said ditch passes through said lands or along or near the line of such road or railroad or not, and the said county board, in estimating the benefits to lands, roads or railroads not traversed by said ditch shall not consider what benefits such roads or railroads will receive after some other ditch, drain or watercourse shall be constructed, repaired, enlarged or extended, but the only benefits they shall have received by reason of the construction, repair, enlargement or extension of said ditch, drain or watercourse as it affords an outlet to the drainage of such lands, roads or railroads.

All lands liable.—Sec. 3. All lands owned by any land company or railroad company benefited by any such ditch, drain or watercourse shall be liable to and shall pay for such benefits the same as the owners of taxable lands.

Hearing on assessment.—Sec. 4. After having completed such preliminary statement the said county board shall fix a time and place for a hearing on the same, and shall cause the county auditor to, and he shall cause notice to be given of the completion of said preliminary statement and of the time and place so fixed for the hearing thereon by having a copy of said preliminary statement, together with a notice of the time and place so set for the hearing thereon, signed by him, published for two successive weeks, at least once in each week, in a newspaper printed and published in said county, if there is one, if not, in a newspaper printed and published at the capital of the state, and by having a copy of such printed notice, at least ten days before the time set for said hearing, posted in a public place in each township where said ditch, drain or watercourse is located, and also at the front door of the court house in said county, and by also mailing a printed copy of said notice, at least ten days before the time set for said hearing, to all non-residents of the county interested in such work, whose address is known to him, or can be ascertained by inquiring at the county treasurer's office.

If said county board are unable to proceed at the time stated in said notice, by reason of non-compliance with any of the provisions of this section, the county board shall fix a new time and place for such hearing, and proceed de novo to give the notice herein provided for and in the manner herein set forth.

Board to have power to raise, lower or alter damages assessed or benefits fixed, etc.—Sec. 5. The said county board at the time set for said hearing (which hearing may be adjourned from time to time until they shall complete the assessment and make the final order confirming the same as hereinafter provided) shall proceed to hear the same, at all of which hearings all parties interested in the matter shall have the right to be present and heard in person or by attorney as to any and all matters contained in or which should be contained in such statement, and said county board at said hearings shall have the power to raise, lower or alter the amount of any and all damages and benefits as fixed in said preliminary statement; they shall also have the power to amend said statement by altering or adding thereto to make the same conform to the requirements of this act, *provided*, however, that if they shall alter or add thereto except to raise or lower the amount of benefits or damages assessed, a new notice of hearing of such amended preliminary statement shall be given as and in the manner provided for in the preceding section. After the assessment shall have been completed in the manner herein set forth, the county board shall confirm the same by an order to be entered in their records, and the same as so confirmed shall constitute the assessment of damages and benefits in the matter,

except as it may be altered on appeal as hereinafter provided. After the making of such final order the county auditor will cause notice thereof to be given by causing a copy of such completed statement to be once published in the same newspaper in which the preliminary statement was published, together with a statement that it is the completed statement as confirmed by the county board.

Right of appeal—Procedure.—Sec. 6. Any person or corporation feeling himself aggrieved by said assessment as confirmed by the county board may appeal from the order confirming the same upon the following grounds, to-wit:

First: That the amount of damages allowed to any tract in which he is interested are inadequate;

Second: That the amount of benefits assessed against any tract of land in which he is interested is greater than the actual benefits received by it;

Third: That the said county board had no jurisdiction to make said final order confirming the assessment.

Said appeal may be taken by the appellant filing with the county auditor a notice of appeal, which shall briefly state the grounds upon which such appeal is taken, accompanied by an appeal bond with at least two freehold sureties, to be approved by the auditor, conditioned that said appellant will duly prosecute such appeal, and pay all the costs thereof, *provided* that such notice of appeal and bond shall be filed with the county auditor within fifteen days after the publication of said notice of the completion of said assessment. In the event of any appeal being taken the county auditor shall, within twenty days after the notice of appeal and appeal bond is filed, make a complete transcript of the proceedings had before the county board under this act, and certify the same, together with all the papers filed in his office in the reassessment proceedings pertaining to such ditch, drain or watercourse, including the notice of appeal and appeal bond, to the clerk of the district court, upon being paid by the appellant the sum of two dollars therefor. If the appellant shall not pay said sum therefor before the expiration of said twenty days, said appeal shall be deemed abandoned.

Consolidation of cases.—Sec. 7. If more than one party appeal the judge of the district court may, in his discretion, order the cases to be consolidated and tried together, and in such case the rights of each party shall be separately determined by the jury in its verdict, and in all cases of appeal the amount awarded by the jury shall stand for and in the place of the amount from which the appeal was taken. No assessment, however, shall be set aside unless the party appealing shows that he has been injured thereby.

Tabular statement to be made by county auditor.—Sec. 8. Within twenty days after the confirmation of such assessment by the county board, if no appeal is taken, within twenty days from the final determination taken, or if an appeal is taken within thirty days from the final determination of all appeals taken, the county auditor shall make in tabular form a statement showing the following facts in the order named, to-wit:

First: A description of each tract of land benefited by the construction, repair, enlargement or extension of such work;

Second: The names of the respective owners, as shown by the tax lists of the county, of said premises;

Third: The amount of said benefits assessed against said premises respectively.

Which statement he shall sign and acknowledge before some officer authorized to take acknowledgments, and cause to be recorded in the office of the register of deeds of the county, and posted upon the abstract books in his office, if he has any such books, and the amount for which each tract of land, as shown by such statement, is assessed, shall be and remain a lien upon such lands, public or corporate roads or railroads from the time of filing the same in the office of the register of deeds until fully paid, said payment to be made as hereinafter provided; and the filing of such statement in the said register of deeds' office shall constitute notice to all the world of the existence of such lien. Said statement, after the same has been recorded, shall be returned by the register of deeds to the county auditor to be by him carefully preserved and filed with the other papers relating to said ditch, drain or watercourse.

Amount of assessment to bear interest at 6 per cent.—Sec. 9. The amount that each tract of land, public or corporate road or railroad shall pay for the location, construction and establishment of such ditch, drain or watercourse shall bear interest from the date of the filing of the auditor's statement in the register of deeds' office, at the rate of six per cent per annum until fully paid, and said interest shall constitute an additional lien upon said lands, public or corporate road or railroad, upon which the assessments bearing the interest shall be a lien, which said interest when paid shall be computed by the county treasurer.

Assessments to be paid to county treasurer—Payments.—Sec. 10. The amount of such liens shall be payable to the county treasurer of said county, and they shall become due and be payable at the time and in the manner following, to-wit:

One-tenth of said principal with the interest thereon on or before one year from the filing of said statement in the register of deeds' office.

- One-tenth of same on or before two years from said time.
- One-tenth of same on or before three years from said time.
- One-tenth of same on or before four years from said time.
- One-tenth of same on or before five years from said time.
- One-tenth of same on or before six years from said time.
- One-tenth of same on or before seven years from said time.
- One-tenth of same on or before eight years from said time.
- One-tenth of same on or before nine years from said time.
- One-tenth of same on or before ten years from said time.

Provided that if the first payment is not made before the first day of December next succeeding the date of filing the aforesaid statement in the office of the register of deeds, and the next succeeding payment before the first day of the next succeeding first day of December, and so on until all of said payments shall have been made, then and in that case the auditor shall enter the delinquent payment for said year against the said tract of land against which the same shall have constituted a part of the assessment assessed against the same on the tax lists of the county, as a tax on said tract to become due and payable with the accumulated interest thereon, and a penalty of ten per cent of such payment, which shall be collected as the other taxes are collected for said year on said lands; *provided*, however, that the full amount of any assessment with accumulated interest thereon, may be paid at any time after the filing of said list in said register of deeds' office. When full payment shall have been made on any tract of land, the auditor shall certify to the fact, and the record of such certificate shall release and discharge said lien of record.

Payment by public or corporate roads or railroads.—Sec. 11. All public or corporate roads or railroads shall pay the amounts taxed up against them as follows:

When any public highway is benefited by such ditch, or drain, the town, which is by law charged with the duty of keeping such highway in repair, shall be assessed for the amounts of benefits accruing to such highway in said town by reason of said ditch or drain, and the same shall be paid out of the treasury of such town upon demand of the county auditor; and whenever any railroad or the lands of any railroad company is benefited by such ditch, drain or watercourse, such railroad or railroad company shall be assessed the benefits received by such land by reason of the construction of such ditch, drain or watercourse, the same as other lands benefited are assessed, which assessments shall be collected from such railroad corporation or company in the same manner as personal taxes are collected by

law, or said liens against any such company may be foreclosed by suit in the same manner as provided by law for the foreclosure of mortgage liens upon real estate by action.

Payment of damages assessed.—Sec. 12. When any one shall be entitled to damages by reason of the construction of such ditch, drain or watercourse, and has not already been paid the amount of such damages, a warrant shall be drawn therefor signed by the chairman of the county board and attested by the county auditor in favor of the party entitled to receive said damages, which warrant shall become due and payable with interest thereon from the time of the letting of the contract for the construction of such ditch, drain or watercourse, upon the filing of said statement in said register of deeds' office. The county shall be bound for their payment. If there is then sufficient money in the county treasury belonging to said ditch, drain or watercourse fund to pay said warrants, they shall be paid out of the same; if not, such funds shall be used as far as they will go, and the balance paid out of the general county fund. The amount so taken from the general county fund shall be replaced from the moneys collected on account of the benefits assessed as soon as collected, so far as they shall be sufficient for, and are available for this purpose.

Issuance and acceptance of warrants to be in full payment.—

Sec. 13. The conforming with the provisions of this act and the issuance of said warrants for damages shall be held and construed to be a just and full compensation to all persons interested in the lands damaged by the construction, repair, enlargement or extension of said ditch, drain or watercourse, and the condemnation of all lands and rights taken for such construction and the maintenance of such ditch, drain or watercourse.

Compensation of county commissioners.—Sec. 14. The county board in addition to the compensation allowed them under the general law, shall receive as special compensation for their labors performed under this act the same per diem and mileage allowed under the general law for the actual time devoted by them in carrying out the provisions of this act, and the auditor shall receive such compensation for his services under this act as shall be allowed him by the county board. All the expenses of the proceedings under this act, and the entire cost of the construction, repair, enlargement or extension of such ditch, drain or watercourse over and above the total amount of benefits assessed shall also be paid by the county out of its general fund. The amount of benefits assessed against the property benefited shall not exceed the total amount of the contracts awarded for the construction, repair, enlargement or extension of said ditch, drain or watercourse, anything in this act to the contrary notwithstanding.

Record prima facie evidence.—Sec. 15. The record thereof and a certified copy of the record of any order of the county board made under this act shall be prima facie evidence of the facts therein stated, and of the regularity of all the proceedings prior to the making of such order.

Amounts previously paid to be credited.—Sec. 16. All persons who shall pay any assessments made for the same purposes for which the second assessment is made because of the invalidity of such first assessment, shall be credited with the amount paid by them on such assessment, and if such payments have exceeded the amount of the second assessment, as made under the provisions of this act, the amount overpaid shall be repaid to the person or persons who have made such payments, upon the allowance of a claim therefor by the county board and by means of a warrant of the county auditor upon the general ditch fund of the county, if any, and if none, from the general revenue fund of the county. An appeal will lie from the allowance of a claim of this kind the same as from the allowing of ordinary claims against the county.

Not to affect any action now pending.—Sec. 17. This act shall not affect any action now pending in any of the courts of this state.

Sec. 18. This act shall take effect and be in force from and after its passage.

Approved April 10, 1911.

CHAPTER 114—S. F. No. 662.

An Act to authorize cities in the State of Minnesota now or hereafter having a population of over fifty thousand inhabitants, and all such cities now or hereafter governed by a charter adopted pursuant to Section 36, Article 4, of the Constitution of the State of Minnesota, to acquire, improve, maintain and also to control the use of levees upon either side of any navigable stream within the limits of such city when the channel thereof is changed or moved under or by authority of the United States Government, and to issue and sell bonds to aid in defraying the expense thereof.

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

Certain cities given right to acquire levees.—Section 1. Any city in this state now or hereafter having a population of over fifty thousand inhabitants and any such city now or hereafter governed by a charter adopted pursuant to section 36, article 4