

any question involved in such determination, as in civil actions. The notice of appeal shall be served on the clerk of the district court and need not be served on any other person or corporation.

Sec. 16. This act shall take effect and be in force from and after its passage.

Approved April 18, 1921.

#### CHAPTER 326—S. F. No. 671.

*An act to amend Sections 5, 6, 9, 11, 12, 21, 22, and 23 of Chapter 442 of the General Laws of 1917, entitled "an act to provide for the formation of drainage and flood control districts in river basins abutting upon or adjoining boundary waters and providing for the drainage of low and wet lands within said district and for the control of flood waters therein and in boundary waters or water courses and to authorize the governing board of such drainage and flood control districts to construct such ditches, dykes, levys, dams, locks, spillways, or other structure necessary to secure proper drainage and flood control of waters within said district including said boundary waters and to provide for joint action and co-operation between the governing board of such district or other authorities in this state having control of drainage and flood control matters and like authorities in any adjoining state for the purpose of providing flood control in such boundary waters and water courses and in streams and waters flowing into and from such boundary waters; and to provide for the construction of such improvements by assessment upon property benefited within the limits of the states affected in proportion to the benefits received." And by adding a section thereto to be known as Section 33 a, so that same will form a part of said Chapter 442 of the Laws of 1917.*

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

Section 1. Court to file findings and decree on petition for flood control district with clerk of court and secretary of state. —That Section 5, Chapter 442 of the General Laws of 1917 be and the same hereby is amended so as to read as follows:

Section 5. At the time and place set for hearing on said petition, all parties interested may appear and be heard for and against the granting of said petition, but no delay shall be granted at said hearing except when necessary and as the court may order, and if upon said hearing it shall appear that the purpose of this act would be subserved by the creation of a drainage and flood control district, comprising the whole or certain portions of the territory outlined in the petition, and the court shall so determine, then said court shall immediately make and file its findings of all matters involved in said peti-

tion, and shall by order, direct and declare said district organized, designating in said order the name by which it shall thereafter be known, and upon the filing of said order with the clerk of the court, where said petition was filed, and a certified copy thereof in the office of secretary of state, said district shall be and become for all purposes of this act, a body corporate endowed with all the rights, privileges and authorities herein designated with power to sue and be sued, to incur debts and obligations and to do and perform and exercise all the rights and privileges in this act enumerated.

Said order or decree shall designate the place where the office or principal place of business of the district shall be located, which, unless special reasons arise to the contrary, shall be where the petition is filed; shall designate the number of directors or officers who shall constitute the first board of said district, who shall be no less than three or more than five, *and name and appoint such directors.*

If upon said hearing the court finds that any portion of the territory named in said petition should not be included in said district the same may be excluded, but any territory not included in said petition within the forty mile limit hereinbefore defined may at said hearing or any subsequent hearing ordered by the court upon petition of twenty-five freeholders of said territory to be included be added to said district, and the boundaries thereof fixed accordingly, and if upon full hearing the court determine that the territory described in said petition or some part thereof should not be organized in said district, then said petition may be dismissed and the cost incurred be taxed against the petitioners. After an order is entered, establishing the district, the same shall be deemed final and binding upon all persons and property within said district, and the organization of said district shall not be collaterally questioned in any suit or action in any court in this state.

**Sec. 2. Authority of board of directors—Procedure of board.**—That Section 6, Chapter 442 of the General Laws of 1917 be and the same is hereby amended so as to read as follows:

**Section 6.** Within ten days after the filing of the order organizing said district, in the office of the secretary of state, the parties named therein as the first board of directors shall meet at the office of the clerk of the district court, where said petition was filed, each take and severally subscribe the oath provided by statute, to be taken by public officials, and shall severally file with the clerk of said court a bond in the sum of *one thousand dollars (\$1,000.00)*, furnished by a proper surety company, the cost to be paid by the district conditioned for the faithful performance of their duties, and shall thereupon organize, by electing one of their number as president, and one

of their number or a third party as secretary or clerk of said board, and shall provide the necessary books and records, and if the place designated in said order, as the general offices for said district, shall be a county seat said board shall have the authority to elect the clerk of the district court of such county as clerk of said board, and thereupon and thereafter all papers filed with said clerk shall be and constitute a filing with said board, and the office of said clerk shall be the general office of said board, and it shall be the duty of said clerk to keep and preserve the record of said board in his office and to do and perform such duties as shall be designated and required by said board, who shall have authority to fix his compensation. If said board shall consist of more than five members they shall elect an executive committee of three of their members consisting of the president and two other members, who shall have active charge of all work and improvements under the direction of the board.

Said board shall meet at least semi-annually and at such other times as they may designate or as occasion may require, and at all such meetings a majority of the members thereof shall constitute a quorum and a legal meeting thereof may at any time be called upon eight (8) days notice by mail, given by the clerk or any member of the board.

Sec. 3. Board of directors to cause surveys, maps, plats, etc., covering improvements in flood control district to be made.—That Section 9, Chapter 442 of the General Laws of 1917 be and the same is hereby amended so as to read as follows:

Section 9. After the organization of the board of directors of any drainage and flood control district organized under the provisions of this act, said board of directors shall upon filing with them of a petition signed by not less than 25 freeholders of said district, or by the board of county commissioners of any county or council of any village or city likely to be affected by the proposed improvement therein asking for the construction of any of the improvements authorized by the provisions of this act relative to drainage or flood control of any waters or any lake, pond, marsh or body of water or river, stream or water course within said district, therein describing the nature of the proposed improvement, the extent thereof and describing the bodies of water, stream or water course proposed to be improved or reservoir or other improvement constructed and if the construction of a ditch or drain as a part of the proposed improvement, a description of the starting place, the general course and terminus thereof and setting forth the reasons and necessity for such improvement and that the same will affect the public health and general welfare and said petition is accompanied by a bond signed by said petitioners, or any number

of them or other parties in their behalf in such sum as the board of directors of said district may specify conditioned for the payment of all costs and expenses in the event said petition is not granted, it shall be the duty of said board of directors of said district to cause to be made at the earliest date possible by its engineer all necessary surveys, maps, plats, profiles, and plans covering said proposed improvement and in the performance of his duties in making said surveys and report said engineer shall conform as near as practicable to the requirements of Sections 5526 and 5527 of the General Statutes of 1913, and amendments thereto, and said board of directors upon receipt of the report of their engineer shall appoint three disinterested parties residents of this state to act as viewers, who upon being notified of such appointment shall within ten days proceed to inspect and examine all lands, highways or other property likely to be affected by such improvement or that may be used or taken for the construction or maintenance thereof and make and file with the clerk of said board with said plans and specifications a detailed statement showing the benefits and damages that will result to all individuals, land and other property or corporation, public or private, from the construction of said improvement and a list of the land claimed to be benefited and damaged and the amount thereof and of all land subject to assessment for the construction and maintenance of such improvement and in the performance of their duties such viewers shall observe and comply with so far as practicable the requirements of section 5528 of the General Statutes of 1913, and amendments thereto, except as required by the provisions of this act, and if said improvement relates to any lake, body of water, stream or water course forming the boundary between this state and any other state and bordering on said district and is of such a nature as to call for, or render necessary the deepening, widening, straightening of the channel of any stream or water course forming the boundary line between this state and any other state or the dyking, and raising, lowering, or fixing the stage of water in any lake or body of water forming such boundary line rendering necessary co-operation with the drainage authorities of such adjoining state or the deepening, straightening or dyking of any stream or river flowing into or from and materially affecting such boundary waters or the use or control thereof then and in that event the board of directors of said district are hereby authorized to confer with and enter into all necessary contracts and arrangements with the governing board of drainage district or other tribunal in charge of drainage and flood control in such adjoining state or states, affected by said proposed improvement, for the purpose agreeing upon a joint plan for the making of said improvements and the nature and extent thereof, and shall have full authority, together with the representa-

tives of said other state or states to employ one or more engineers to make a joint survey of such boundary waters and water courses and to report to said joint contracting parties all such information as they may require to enable them to determine and agree upon a joint plan for the construction of the proposed improvement and may make all necessary arrangements for all expense that will be incurred in connection with the making of said survey and report by said engineers and adoption of said joint plan.

**Sec. 4. Board to petition district court for authority to construct or proceed with improvements.**—That Section 11, Chapter 442 of the General Laws of 1917 be and the same is hereby amended so as to read as follows:

Section 11. The board of directors of such drainage and flood control district in this state upon the filing in their office of the report required to be made by them under the provisions of section 9, where the proposed improvement relates to streams or bodies of water lying wholly within this state, or upon filing in their office where the proposed improvement relates to boundary waters or water courses, of the engineers' and viewers' report and the report and findings of said joint conference including the findings as to joint plans and division of the total cost of construction among the several states as provided in section 10, of this act, said board shall cause to be made a petition to the district court in the county where the proposed improvement or some part thereof is located, therein petitioning said court for authority to construct said improvement as shown in the original petition filed with said board or as subsequently modified by them and the finding and reports filed in their office relating to said improvement therein setting forth the necessity for such improvement and fully describing the nature and purpose thereof and setting forth the facts required to be alleged in case of petitions to the district court in judicial ditch proceedings required by the laws of this state and the engineers' and viewers' report as to benefits and damages shall be referred to or attached and made a part of said petition and asking that a time and place be fixed by said court for a hearing upon said petition and reports and requiring all parties interested to appear and show cause why the reports accompanying said petition should not be adopted and the rights of all parties interested fixed and determined and said improvement ordered constructed in accordance with said report and said petition. Upon the filing of such petitions and such reports with the clerk of said court, he shall immediately notify the judge thereof who shall within ten days fix a time and place for hearing upon said petition and report which may be in any county most convenient for the parties interested, due notice

of which shall be given by publication for two (2) weeks in one newspaper published in each county affected by the proposed improvement, which notice shall contain a description of the property affected and the names of the owners thereof as appears in the office of the county treasurer on the last assessment roll of said county together with the names of all corporations affected by such proceedings, a copy of which notice shall also be mailed by the clerk to each property owner, at least two weeks before the date set for hearing at his last known address or if not known, as shown by the records in the county treasurer's office where the property is located and requiring all parties in any manner interested to appear before said court at the time and place specified in said notice to show cause why the reports accompanying said petition should not be confirmed and the prayer of said petition granted and said improvement ordered constructed in accordance with the plans and specifications and the report of the engineer and viewers accompanying said petition. Upon the filing of said petition and reports and the publication and mailing of said notice, said court shall have full jurisdiction of all parties, corporations, property and matters named and referred to in said petition and said reports and the holders of all mortgages and liens against all lands there described.

Sec. 5. **Hearing on petition.**—That Section 12, Chapter 442 of the General Laws of 1917 be and the same is hereby amended so as to read as follows:

Section 12. At the time and place specified in the notice of hearing provided for in the last section, the judge of said court or the judge of any district court upon his request, shall appear and hear all parties for and against the matters set forth in said petition and reports accompanying the same *and shall have and may exercise all the authority at said hearing provided in sections 5531 and 5532 of the General Statutes of 1913, so far as is applicable to this act*, provided, he shall have no authority to modify the order adopting the joint plan or the order dividing the total cost among the several states and, if upon full hearing it shall appear *and the court shall find that the engineers' and viewers' report have been made and all their proceedings had in accordance with the provisions of this act and that the total benefits resulting from said improvement together with the total sum assessable against property not directly benefited as reported by the board of said district shall exceed the total cost of said improvement including the damages and that said improvement will be of great public benefit and utility, then the said court shall make its findings accordingly and shall by order confirm the report of the engineer and viewers as finally adopted at said hearing*, and shall order the construction of said improvement accordingly and such findings and order of said court

shall fix and determine the rights of all parties affected in accordance therewith subject only to the right of appeal as provided in this act.

Sec. 6. **Payment of expenses.**—That Section 21, Chapter 442 of the General Laws of 1917 be and the same is hereby amended so as to read as follows:

Sec. 21. After the filing of a petition under this act for the formation of a district, and the furnishing and filing of the bond, as provided in section 2 of this act, the costs of publication and other official costs of such proceedings shall be paid out of the general funds of the county in which the petition is pending. Such payment shall be made on the warrant of the auditor, on the order of the court, *which order shall be made upon application of the district board upon ten (10) days' notice to the county auditor of such county.* In case the district is organized, such costs shall be repaid to the county out of the first funds received by the district, through the levying of taxes or assessments or selling of bonds, or the borrowing of money. If the district is not organized, then the costs shall be collected from the petitioners or their bondsmen; upon organization of the district the court shall make an order, *upon application of the board upon ten (10) days' notice to the county auditors of the several counties affected,* dividing the preliminary expenses between the counties included in the district in proportion to the interests of the various counties as may be estimated by the court; and the court shall issue an order to the auditor of each county to issue his warrant upon the treasurer, for the proportion of the preliminary expenses assigned to that county by order of the court.

As soon as the district shall have been organized under the provisions of this act, and a board of directors shall have been appointed and qualified; said board may petition the district court in the county where said original petition was filed, *upon ten (10) days' notice in writing to the county auditors of each county affected,* asking that an order be made creating a preliminary fund for said district, which shall be of a size in proportion to the size of said district, and in the event said district shall include a number of counties, said funds shall not exceed the sum of \$10,000 and may be of such less amount as the court may order, and the court upon said hearing, may designate the amount of said funds and fix the proportionate amount that each county affected by said district shall pay in proportion to the area within said district, and thereupon the court shall order each of said several counties to advance from its general fund, the sum there named to constitute a preliminary fund for said district, and thereupon the auditors of said several counties shall draw their warrant upon the treasury of their county for the payment of the amount specified in the court's order payable

to the treasurer of said district, and the sum so advanced by each county shall be charged to said district and shall be repaid to each of said several counties as soon as said district has funds for that purpose, and the funds so provided shall be used by the board of said district for preliminary work, and when said board shall incur expense for surveys or other preliminary work, on any proposed improvement, all expenses including time, salaries or otherwise connected with such work shall be kept track of and figured in as the cost of construction in any such proposed improvement, and upon said improvement being ordered by the court and funds being provided for the construction thereof, as hereinafter specified, all sums advanced out of said preliminary funds shall be repaid and said funds replaced for further similar use on other improvements.

Sec. 7. Court to apportion amount of total costs.—That Section 22, Chapter 442 of the General Laws of 1917 be and the same is hereby amended so as to read as follows:

Section 22. *That immediately or at the earliest practicable date following the letting of a contract, or contracts, for the construction of any improvement by the board of directors of said district, they shall cause to be made and filed with the clerk of the district court where said proceedings are pending a statement of all expenses incurred in the construction of said improvement, including the amount for which the contract for the construction of said improvement was let; an estimate of the cost of supervision, fees and all other ascertainable expenses in connection therewith, and at the time of filing such statement, or as soon thereafter as practical, upon ten days' notice in writing given by the board to the auditors of the several counties affected by such improvement, the court shall apportion the amount of the total costs of the construction of said improvements among the several counties affected in proportion to the benefits received and shall fix and determine the amount to be paid by the property and corporations benefited in each county, and upon similar notice to said county auditors, said judge of the district court may at any time modify said order as justice may require, or make additional orders covering additional expense. The word "expense" as used in this section shall be construed to mean every item of cost of said improvement from its inception to its completion and all fees and expenses paid or incurred, including all damages awarded, and upon the filing of said order with the clerk of the court where said proceedings are pending, it shall be the duty of said clerk to make and file a certified copy of said order with the auditors of the respective counties affected, together with a certified copy of the order confirming the report of the board of viewers and the engineer and directing the construction of said improvement and a list of all property affected in each county respectively and a statement of all benefits and damages affecting the*



same, and such other information as the court by order may direct, and upon the filing of such order, it shall be the duty of the county board of each of said counties to provide the necessary funds to meet the proportionate share of the cost of said improvement, allotted to the county by said order in the same manner as now provided by sections 5533 and 5542 of the General Statutes of 1913 and amendments thereto, in the case of judicial ditch proceedings, and upon the filing of the certified copies of said orders with said county auditors it shall be the duty of said auditors of the respective counties to make and file in his office a summary statement as provided in section 5543 of the General Statutes of 1913, containing the assessments against the property and corporations benefited and the property subject to assessment within his county, showing the amount to be paid by such property and corporations in said county, as specified in said order, and shall, in accordance with the provisions of section 5544 of the General Statutes of 1913 make and file in the office of the Register of Deeds of said county such statement and lien against the property and corporations affected. And it shall be the duty of the county board of said several counties to provide the funds to meet the proportionate share of the total cost of said improvement, as shown by the order of the court and they are hereby authorized to exercise all rights and authority in so doing, now granted to county boards or boards of county commissioners under the provisions of section 5542, of the General Statutes of 1913, and other provisions of the General Statutes, relating to county and judicial ditch proceedings, and the said board of county commissioners and the said county auditor and county treasurer and register of deeds are hereby authorized and directed to exercise the authority and perform the several duties assigned to such officials or any of them under the provisions of section 5544, 5546, 5548 and 5551 of the General Statutes of 1913, and amendments thereto, relative to the establishment of liens, and the assessment and collection by installments of all sums levied against property within their respective counties for benefits resulting from the construction of said improvements and to exercise such other authority and perform such other duties relative to the establishment of liens, filing of statements or additional statements and liens as now provided by the laws of this state relating to county and judicial ditches, and the county board is authorized to make the necessary order specifying the period and times of payment of said assessment and the rate of interest. And all moneys received by the county treasurer of any county from the sale of bonds, assessment or otherwise for the benefit of the district shall be by the treasurer of each county accounted for and paid over to the treasurer of said district, and it shall be the duty of the board of said district to pay all damages before entering upon the land, except in case of appeal.

**Sec. 8. Assessments to be split by county auditor.**—That Section 23, Chapter 442 of the General Laws of 1917 be and the same is hereby amended so as to read as follows:

Section 23. Upon the filing by the board of directors of a drainage and flood control district, with the county auditor of any county, of a statement, as provided in section 22 of this act, giving a list of the property and corporations benefited or damaged or otherwise affected by any proposed improvement, it shall be the duty of the county auditor to assess, the amount specified in such list against the municipalities or other corporations, as therein specified, in accordance with the provisions of section 5551 of the General Statutes of 1913 *and amendments thereto*; and said county auditors respectively shall proceed to levy and collect the sums specified in said list against the several corporations in accordance with the provisions of said section, and in the event that any improvement reported in said list shall be for improvements or benefits to any county or state road, then, in that event, the sum so reported shall become a direct charge against said county and may be paid by said county out of its road and bridge fund or otherwise, as its board of county commissioners may direct, and may be paid in whole or in installments, as may be specified by the board of county commissioners of each county. Provided, that no assessment shall be levied against any property or corporation benefited under the provisions of this act in excess of the amount of benefit received, as fixed by the order of court directing the construction of said improvement, or as subsequently determined on appeal.

**Sec. 9. Other laws to apply.**—That there be added to said Chapter 442 of the General Laws of 1917 a new section to be known as Section 33a.

Section 33a. In all cases where reference is made in this act to sections of the General Statutes of 1913 or to other drainage laws of this state and sections thereof are referred to, such sections and provisions shall, so far as applicable, be treated and construed as having the same force and effect, so far as the provisions of this act are concerned, as though herein set forth.

**Sec. 10.** This act shall take effect and be in force from and after its passage.

Approved April 18, 1921.

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#### CHAPTER 327—H. F. No. 694.

*An act to amend Section 5481, General Statutes 1913, relating to powers and duties of commissioner of drainage and waters.*

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