

to him of the certificate of the auditor that the principal, interest, and taxes have been paid, and that the purchaser is entitled to a patent *and provided further that the governor shall in like manner issue a patent for such land, where the land certificate of sale has been lost or destroyed, upon filing with the state auditor by the person claiming such land an affidavit stating that he is the owner of the land, that the land certificate has been lost or destroyed and that he is and has been the owner of such land and paid the taxes thereon continually for the last fifteen years. The state auditor shall certify on such affidavit that the principal, interest, and taxes have been paid and that the owner is entitled to a patent."*

Sec. 2. This act shall take effect and be in force from and after its passage.

Approved April 29, 1935.

CHAPTER 369—H. F. No. 1510

An act relative to establishing and maintaining uniform stages of water in lakes and bodies of water in the State of Minnesota and providing the procedure in connection therewith.

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

Section 1. **Definitions.**—When used in this act—

- (a) "Commission" shall mean the conservation commission of the state of Minnesota.
- (b) "Commissioner" shall mean the commissioner of conservation of the state of Minnesota.
- (c) "Court" shall mean the district court of the district wherein the proceedings are pending.
- (d) "Judge" shall mean the judge of the district court wherein the proceedings are pending.
- (e) "Clerk" shall mean the clerk of the district court of the county in which the proceedings are pending.
- (f) "Engineer" shall mean the engineer designated by the commissioner of conservation to act as engineer in the proceedings.

(g) "Appraisers" shall mean the persons appointed by the judge of the district court and the commissioner of conservation to ascertain and report the benefits and damages arising from the proposed work.

Sec. 2. Commissioner may construct dams, etc.—The commissioner, in order to improve navigation, protect and improve domestic water supplies, protect and preserve fish and other wild life, protect the public interest in shores and shore lines and promote public health, shall have power to construct and maintain as hereinafter provided all necessary dikes, dams, sluiceways and other structures or devices necessary and essential to maintain such uniform water levels as may be established under authority of this act. He shall have the power to appoint competent and experienced civil engineers and assistants whose duties it shall be to make surveys and estimates as are required to secure the information and data the commissioner may deem necessary. Provided, however, that the wages and salaries of any engineer, assistant or other person, together with the expense incurred by such appointee or employee, under the provisions of this section, shall be included as a part of the costs of such proceedings and included in the assessments against the property benefited, when approved by the district court in the county where said engineering work is done and performed.

Sec. 3. Owners may initiate proceedings.—A majority of the owners of property abutting upon any lake or other body of water and/or the proper officials of any city or village authorized by resolution of the council thereof liable to be affected by or assessed for the cost of the proposed improvement, may initiate a proceeding for the establishing of a uniform water level in any lake or other body of water by filing with the commissioner a petition signed by a majority of such owners of property, asking the commissioner to take steps for the establishment of such water level. The said petition shall set forth the desired levels and, where the costs of the improvement are to be paid for by the state of Minnesota or by an owner or group of owners, the petition shall so state, and shall further set out the names of said owners and the description of the lands owned by each of said parties including the state of Minnesota. Before the commissioner shall accept for filing any such petition he shall require the petitioners to file with him a surety bond conditioned for the payment, in case the court shall deny such petition, of all the costs of the necessary surveys and of the court proceedings. Upon receipt of said petition the said commissioner shall file with the clerk of the district court of the county containing

such lake or other body of water or portion of any such lake or other body of water likely to be affected, in whole or in part, by such improvement a petition addressed to the court setting forth the following information:

(a) The legal description of each tract of land bordering on such lake or other body of water.

(b) The name of the owner of each such tract of land as shown by the records in the office of the register of deeds and the name of any persons in possession thereof.

(c) A declaration that the number of signers appearing on the petition constitutes a majority of the owners of property abutting on the lake or other bodies of waters to be improved.

(d) A map showing the lake or other body of water affected and the tracts of land bordering on such lake or other body of water and the area of each tract.

(e) An engineer's report fixing the high water level of said lake and recommending a permanent uniform level and also the elevation of the original natural outlet to be maintained by suitable dams or other structures.

(f) The various reasons why the project is believed to be of public advantage.

(g) Which of the following parties, in the opinion of the commissioner, should share the expense of the project: Riparian owners, the state, the county or counties, other interested municipalities. Provided, that when structures are to be built affecting waters located in more than one county, the commissioner may file a petition with the clerk of the district court in any one of the counties affected and thereafter that court shall have jurisdiction of all proceedings, subject to the statutes providing for a change of venue.

Wherever proposed improvements under this act do not contemplate the raising of the elevations of the lake above ordinary high water or where no part of the costs of said improvements are to be assessed against property surrounding the lake, the petition to the court authorized by this section may be presented by the commissioner on his own initiative without bond.

Sec. 4. Appointment of appraisers.—Within 10 days after the filing of such petition with the clerk as specified in section 3, the judge of said court shall make an order appointing three resident free holders of the county or counties in which said construction is proposed, not interested in the proposed works

and not related by blood or marriage within the fourth degree, according to the rules of the common law, to any party known to be interested therein, to act as appraisers to ascertain and report to said court the amount of benefits and damages that will result to any lands or other property affected or to be affected by reason of the proposed works. Such appraisers shall meet at a time and place to be specified by said court, preparatory to commencing their duties.

Sec. 5. Duties of appraisers.—The said appraisers shall qualify by subscribing to the oath provided by Mason's Minnesota Statutes of 1927, Section 6964. The duties of said appraisers shall be as follows:

(a) To assemble in the vicinity of the lake, lakes or bodies of water in question within 15 days after their appointment.

(b) Upon being furnished a copy of the petition, engineer's report, maps and plans, to examine all property around said lake, lakes or bodies of water and all lands included and described in the engineer's report.

(c) To ascertain and determine the amount of benefits and damages, respectively, that will result to each parcel of property included within the area described by the engineer and shown on the map.

(d) To ascertain and determine the value of each parcel of the lands or other property to be acquired for the construction of dams, sluiceways, and other necessary structures and devices and the amount of injury to all property to be damaged by the construction of the improvements petitioned for by the commissioner.

(e) To ascertain and determine the amount of benefits or damages to municipalities and corporations because of an increased or more dependable water supply, or both.

(f) To ascertain and determine whether the proposed improvements of such lake, lakes or bodies of water will be of advantage for the preservation, propagation and protection of fish and other forms of wild life.

Sec. 6. To make tabular statements.—(a) The said appraisers shall prepare a tabular statement showing as far as practicable:

(1) The names of the owners of each tract of land to be benefited or damaged, including lands owned by the state of Minnesota or any department thereof; a description of each

tract to be benefited or damaged and the total number of acres of said tracts and the estimated number of acres in each of said tracts to be benefited or damaged.

(2) The names of municipalities and corporations and the amount that each will be benefited or damaged.

(3) The amount of benefit, if any, that will accrue to the state by reason of the improvement of said lake, lakes or bodies of water as a place for the propagation, protection and preservation of fish and other forms of wild life assessable against the state of Minnesota.

(4) The total estimated benefits and damages of every kind and nature ascertained and determined by them.

(5) The total expenses incurred by them and the actual time each appraiser was engaged.

Sec. 7. Filing of report—Compensation.—The appraisers shall file their completed report with the clerk within 30 days after their appointment. As soon as said report shall have been filed the court may issue its order directing the payment of compensation at the rate of Five Dollars per day for each appraiser, and their expenses, which sums may be taxed as costs by the clerk.

Sec. 8. Hearings.—Upon the filing of the engineer's and appraisers' reports with the clerk, it shall be the duty of said judge to fix a time and place for hearing said petition and said engineer's and appraisers' reports, and such evidence as interested parties may present, which hearing shall be set for a date not less than 30 nor more than 60 days from the date of the notice thereof and shall be held in the county where the proceedings are pending. Said notice shall recite the filing of said petition, the appointment of the appraisers and the filing of their reports; shall give a description of all lands and properties affected and the amount of benefits and damages assessed against each parcel described in the appraisers' report. Said notice shall be published for three successive weeks in a legal newspaper in each county containing property affected by such proceedings and described in said appraisers' report, but it shall be necessary to publish in each county only the description of lands or property affected within such county. A copy of such notice shall be mailed by the clerk of court to all parties who are named in the proceedings, and a certificate of such mailing filed by him in his office.

Sec. 9. Confirmation of assessments.—(a) At the time fixed in the notice the judge shall receive and consider all evidence for and against the granting of such petition and

may revise, correct, amend or confirm such assessments, in whole or in part, or may order a new assessment, in whole or in part. If, after a hearing, such court shall find that the fixing and maintenance of the stage of water in said lake, lakes or bodies of water or streams connecting the same as prayed for or as recommended by the engineer will promote the public health and general welfare and secure better public use of such lake, lakes or bodies of water, and/or improve the use of such bodies of water for navigation and/or for the propagation, preservation and protection of fish and other forms of wild life, and that the benefits resulting will exceed the cost of the construction of the improvement prayed for, and damage, the said court may so find and by order:

- (1) Set the normal high water level and fix the elevation of the original natural outlet, which elevation shall be the minimum elevation below which the level may be lowered by operation of artificially constructed control works with reference to a permanent bench mark.
- (2) Confirm the reports of said engineer and appraisers as originally filed or as subsequently amended.
- (3) Direct the construction of the improvements prayed for or as much thereof as shall be found to be necessary.
- (4) Direct that all property described in the appraisers' report, as finally confirmed, that is benefited by such proceedings, shall be assessed for its proportionate share of the cost of construction of such improvement in proportion to the benefits received.
- (5) Make an equitable allotment of the costs incurred in proportion to the benefits accruing to the separate counties, persons, corporations and municipalities and as to improved facilities for the propagation, preservation and protection of fish and other forms of wild life, to the state of Minnesota, and determine the amount thereof and fix the manner and times of payment.

(b) When the appraisers shall have determined the amount of the benefits to said lake, lakes or bodies of water from the construction of the improvements and works authorized herein which will accrue to the state of Minnesota through increased or improved facilities for the propagation, preservation and protection of fish and other forms of wild life, as provided in sub-section (f) of section 5 and section 6 of this chapter, the judge, in his order confirming the appraisers' report, shall direct the commissioner to pay the state's pro rata portion of the costs of said improvement represented by

such benefits, and the commissioner shall have authority to pay such portion of the costs out of state funds which are available therefore.

Upon the filing of such order by the court with the clerk, it shall be his duty to furnish to the auditor of each county affected a complete certified list giving the description of all the property affected in said proceedings in their respective counties, the names of the owners as shown in the appraisers' report, the amounts of benefits or damages as to each tract and a copy of the order of the court confirming the report of the engineer and appraisers and directing the construction of the improvement; provided, that whenever it appears from the engineer's report that the total estimated cost of any improvement contemplated under the provisions of this act will exceed \$2500.00 or whenever the funds to defray the cost of such improvements are to be provided by the issuance of warrants or other evidences of indebtedness by the counties affected, the board of county commissioners in each county affected thereby shall approve such project by resolution, and a certified copy of such resolution shall be filed with the clerk of the district court where such proceedings are pending, before such clerk shall be authorized to give notice of a final hearing as herein provided.

Sec. 10. Judge may make orders.—The judge before whom any petition may be filed, under the provisions of this act, shall have power to make such orders as may be necessary from time to time in any proceeding hereunder and to modify the same as justice may require at any time during the pendency thereof. He shall not lose jurisdiction of the proceedings by reason of failure to give proper notice or failure to hold any hearing noticed or ordered to be held for the consideration of any matter connected with the proceedings or committed to them, and may make such new and additional orders in the premises as justice may require, to bring the parties interested before them and to promote the final completion of the works petitioned for under the provisions of this act.

Sec. 11. May demand jury trials.—Any party interested in any proceedings brought under the provisions of this act, whether a petitioner, an owner of land affected, an interested municipality or the state, may at any time prior to the commencement of the hearing demand a jury trial with respect to the following questions:

(1) The amount of assessed benefits to any tract of land owned by him.

(2) The amount of damages allowed to any tract of land owned by him.

Sec. 12. Act to be liberally construed.—This act shall be liberally construed so as to promote public health, improve navigation, protect and preserve fish and other forms of wild life, and protect the general public interest in shore lines, lakes and waters.

Sec. 13. Certified copy to be delivered to commissioner.—
(a) At the time of the filing of the order and findings by the court, the clerk shall furnish a certified copy thereof to the commissioner. Within 30 days of the receipt thereof said commissioner shall proceed to advertise for bids for the construction of the works ordered by said judge as provided in section 9 hereof, by giving notice by publication for three successive weeks in the official paper of the county in which the proceedings are pending, of the letting of a contract for such works.

(b) At the time and place fixed in the notice the commissioner shall proceed to award the contract to the lowest responsible bidder. Such bidder shall furnish good and sufficient bond, to be approved by the court in an amount of not less than 75 per cent of the total amount of the contract, guaranteeing the faithful performance of the contract and payment of all labor, material and supplies furnished in the performance of the contract; provided, that wherever a dam or other improvement authorized under this act is to be included within a state or federal public emergency relief project and where the costs of such improvements are to be provided from state or federal emergency relief funds, the provisions of this section with reference to the award of contract shall not apply.

(c) The contract and bond for the construction of any works in this chapter shall be approved by the attorney general.

(d) Payment shall be made to the contractors as the work progresses, not exceeding 80 per cent thereof, by the county board upon certificates showing the progress of such work to be furnished to the county board by the commissioner.

(e) A copy of all contracts awarded by the commissioner shall be filed with the county auditor in each county affected.

Sec. 14. To be under supervision of engineer.—(a) Any and all work provided for in this chapter shall be done under the constant supervision and inspection of the engineer designated by the commissioner.

(b) In all proceedings instituted under the provisions of this act, the engineer and the assistant, and the appraisers and their assistants shall have the right to enter upon any lands for the purpose of making the survey, examining the property and estimating the benefits and damages, but in so doing they shall commit no unnecessary damages.

Sec. 15. Auditors to prepare tabular statements.—(a) As soon as practicable after the filing by the clerk of the certified copy of the court's order and findings with the auditor or auditors, as the case may be, and as provided in section 9, the said auditor or auditors shall prepare a tabular statement showing:

(1) The names of the owners of all lands and the names of public or private corporations and municipalities (except the state of Minnesota) benefited by the construction of said works as appears from the court's order on file in the proceedings.

(2) The description of said lands as the same appears in such order.

(3) The estimated number of acres benefited in each such tract.

(4) The estimated amount of benefits and damages to each such tract of land; the estimated amount of benefits to each public or private corporation and municipality, as the same appears in the court's order.

(5) The amount that each of said tracts of land and each public and private corporation and municipality so benefited must pay into the treasury of each county for the establishment and construction of the structures as shown by the order of the court on file in said proceedings.

(b) Such statement or statements signed by the auditor in the presence of two attesting witnesses and acknowledged by him shall then be duly filed with and recorded by the register of deeds of each county affected and of each county containing municipalities affected and of each county in which is located any land described in said statement.

Sec. 16. Benefits to be paramount lien.—(a) The amount of benefits assessed against each tract of land, and the interest thereon as hereinafter provided shall be and remain a first and paramount lien on such land until fully paid and shall take precedence over all mortgages, charges, incumbrances or other liens whatsoever, except real estate taxes, and shall be on a parity with real estate taxes.

(b) Payments may be made as hereinafter provided in accordance with the order of the court as provided for in subdivision (4) of sub-section (a) of section 9.

(c) Such filing shall be deemed notice to all parties of the existence of such lien.

(d) The fees of the register of deeds for such recording shall be paid by the county auditor and shall be included in said statement as a part of the costs of the improvement.

(e) Such recorded statement shall be returned to the auditor and preserved by him.

Sec. 17. **Liens to bear interest.**—(a) The amount that each tract of land, public or private, shall be liable for on account of the construction of works authorized in this chapter, shall bear interest from the date of the filing of the auditor's statement in the register of deed's office at the legal rate until paid.

(b) Such liens may be paid to the county treasurer at any time after the recording of said auditor's statements in the office of the register of deeds.

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

(d) On or before November 15 next following the filing by the auditor of such statement, said auditor shall enter on the tax lists, of the county the amount of the lien against each tract of land, all of which shall be payable as directed by the court on such tract which shall be subject to and be collected with like penalties as all other taxes.

(e) The county auditor of the county or counties wherein the proceedings are held is hereby authorized upon order of the court to issue warrants of the county to pay the official costs of such proceedings and when the costs are assessed against the lands in more than one county such costs are to be determined and apportioned between the counties affected in proportion to the benefits assessed against the lands and property in such county. The issued warrants are to draw interest at the legal rate, subject to their payment as provided under Mason's Minnesota Statutes of 1927, Section 6840-108.

Sec. 18. **Not to proceed unless funds are available.**—No proceedings shall be instituted under the provisions of this

act whereby the state of Minnesota shall be assessed or charged for a portion or the whole of the cost of such improvement unless at the time of the institution of such proceedings funds are available for the payment of the same.

Sec. 19. Inconsistent acts repealed.—All acts and parts of acts inconsistent herewith are hereby superseded, modified, or amended so far as necessary to give effect to the provisions of this act except that nothing in this act shall amend, alter, supersede, or otherwise change the provisions set forth in Chapter 412, Session Laws of Minnesota 1933, or amendments thereto or Mason's Minnesota Statutes of 1927, Sections 751, 6588, 6589, 6590, 6591, 6592, 6593, 6594, 6595, 6596, and 6597; Provided, further that the provisions of this act shall in no manner apply to public waters of an area of more than 10,000 acres, situated wholly or partially within counties now or hereafter having a population of more than 450,000 inhabitants, and an assessed valuation of more than \$450,000,000, including moneys and credits, and in which is situated a city of the first class within a distance of 20 miles from said body of public water, and provided further that as to such public waters nothing herein contained shall be construed to authorize the diversion of any water from any stream, river or lake located in any county adjoining or abutting in part upon the county wherein a major portion of such public waters are located.

Sec. 20. Provisions severable.—The various provisions of this act are declared to be severable. If any provision thereof shall be declared unconstitutional the remaining provisions shall remain in full force and effect.

Approved April 29, 1935.

CHAPTER 370—H. F. No. 1525

An act authorizing any city of the first class now existing or hereafter organized under a home rule charter under Section 36, Article IV, of the Constitution of the State of Minnesota, to indemnify employees of the police department thereof against liability arising out of the discharge of any firearm by them, within or without the corporate limits of said city, while in the performance of their duties after June 1, 1933, and before June 1, 1935.

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

Section 1. City may indemnify police officers.—Any city of the first class now existing or hereafter organized under