

CHAPTER 378—S. F. No. 1294

[Not Coded]

An act to authorize the board of municipal works of any city of the second class not operating under a home rule charter to maintain an improvement and extension fund to lay, re-lay, enlarge and repair all water mains.

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

Section 1. Winona, improvement fund. The expense of laying, re-laying, enlarging and repair of water mains in any city of the second class not operating under a home rule charter, except as otherwise specially provided in this act, may be defrayed by an assessment upon the real estate benefited thereby, to be levied, enforced and collected in the manner prescribed, except that all or any part of the expense of laying water mains through street intersections, may if the board of municipal works of such city deems it expedient, be paid out of its general fund.

Sec. 2. Plans and specifications. Prior to the passage of any resolution for the doing of any work or the making of any improvement hereinbefore specified, the expense of which is to be assessed upon the property benefited, except as otherwise specially provided in this act, the board shall cause plans and specifications of such proposed work, together with an estimate of the probable expense thereof, to be made by the city engineer of the city, or by such other person as may be employed by the board for that purpose and presented to the board for its consideration and approval, and the same shall immediately upon approval thereof by the council be filed with the secretary of the board for the inspection of all parties interested.

The board shall then designate a time, not less than 20 days distant, and a place at which it will meet and act in relation to the doing of the proposed work and the making of the proposed improvement, and direct that notice be given by the secretary of such meeting, and the time, place and purpose thereof, and that in the meantime sealed proposals for the doing of such work and the furnishing of all materials thereof, if required, will be received by the secretary, and opened in the presence of the board at such meeting.

In such notice shall be concisely stated the location of the proposed work, the general nature of the proposed improvement; that the plans, specifications and estimate therefor have been so filed with the secretary, and that all persons interested will be heard at such time and place; the notice shall

be given by publication thereof in the official paper of such city, at least once in each week for two successive weeks prior to the time designated by the board.

Sec. 3. Contracts. Any contract for the making of any improvement designated in this act may be for the entire improvement complete and include all labor, material and whatever may be necessary for the full completion thereof, or may for the doing of the work alone, such board furnishing the necessary materials therefor, as the board may deem to be the best interest of the city; and the board may also, at its discretion, cause the making of any improvement by separate contracts for different portions thereof or by separate contracts for the labor, material and machinery required for the making of such improvement; in each instance the notice, prescribed by section 2 of this act, shall contain a distinct statement of the nature and extent of the separate contracts, and shall definitely describe such separate portions of the improvement.

Whenever any machinery or mechanical appliances shall form a part of any improvement authorized by this act, the board may award a contract for the same after taking into consideration the efficiency, duty, cost of operation and maintenance and construction, workmanship and operation generally of the several machines or appliances designated in the several bids, without regard to the amount of the bids.

Sec. 4. Hearings and resolution. At the time and place designated in the notice prescribed by section 2 of this act, an opportunity shall be given by the board to any and all interested parties to be heard for or against the proposed work designated in such notice, and the secretary of the board shall, in the presence of the board, open and read all sealed proposals which may have been received for the doing of such work or the furnishing of material, if any, therefor, or both, as the case may be, and the board may then, by an affirmative vote of a majority of all its members, by resolution in writing, accept the most favorable proposal (such proposal to be that of the lowest responsible bidder) and by such resolution authorize the doing of the proposed work or any part thereof, by the person or persons whose proposals shall have been accepted, and direct that written contract be made with him or them therefor; or may reject any or all proposals offered and refuse to authorize to do such work or any particular part thereof; or if it is deemed by the board to be the best interest of the city and the estimate of the city engineer is less than the lowest bid for the work and material, may reject all proposals offered, and authorize the doing of such work under the direction of the city engineer without contract, or may

in its discretion, from lack of quorum or any other reasons, postpone the consideration and decision of the whole matter or any branch thereof to a future definite time, of which postponement all parties interested shall be required and deemed to take notice.

The resolution, after the same has been duly adopted by the board, shall be signed by the president of the board and attested by the secretary thereof, and on the next day after the adoption the resolution shall be transmitted by such secretary to the mayor of the city for his approval. If the mayor approves the resolution he shall append his signature, with the date of his approval thereto, and return the same to the secretary within five days, Sundays excepted from the date of its transmission to him; and if he declines to approve the same he shall, within the period of five days (Sundays excepted), return the same to the secretary with a statement of his objections thereto, to be presented to the board at its next meeting.

Upon the return of the resolution to the board without the mayor's approval, the question shall again be put upon the passage of the resolution, notwithstanding the objections of the mayor, and if upon such vote, which shall be taken by a call of the ayes and nays, two-thirds of all the members of the board shall vote in favor of the adoption and shall have the same force and effect as if approved by the mayor.

If the resolution, transmitted to the mayor, shall not be returned by him to the secretary, within five days (Sundays excepted), after presentation to him the resolution shall be deemed to be approved by him and he shall deliver the resolution to the secretary on demand.

Sec. 5. Contracts, executed by. All contracts authorized by this act for any of the improvements designated, shall be executed on behalf of the board by the president and attested by the secretary.

Sec. 6. Contractor's liability. Any contractor or person who accepts a contract authorized by this act, under any such board, shall take the same with the condition that he shall be personally and directly responsible for any and all loss, damage, or injury which may arise or in any way, directly or indirectly, be suffered by the city by reason of any occurrence while the work is going on, and before acceptance thereof by such city, caused by any negligence or misconduct on his part or in the part of his servants or employees in doing the same, and every such contractor shall guard all such work by suitable guards by day and with lights at night, so as to prevent any loss, damage or accident.

Sec. 7. Bond by contractor. Before any contract whatever for the doing of any work or furnishing any skill or material, contemplated in this act, to any such board for the making of any improvement herein authorized shall be valid for any purpose, the contractor therefor shall execute a bond to such city, with sureties to be approved by the city attorney in such amounts as the board may direct, not less than the contract price agreed to be paid for the performance of such contract and in no event less than \$1,000, conditioned as provided by the general laws of this state requiring the giving of bonds by contractors for public works and improvements, and conditioned further that such contractor will indemnify and hold harmless such city against any damage, loss or injury which may arise in any way, directly or indirectly, be suffered by the city by reason of any occurrence while the work is going on and before acceptance thereof by such city, caused by any negligence or misconduct on the part of such contractor, his servants or employees in doing the same.

The bond shall in all respects be executed as required by the general laws, and all provisions in such laws contained, shall be applicable, as near as may be, to contracts herein authorized.

Every such bond shall be, filed with the contract in the office of the secretary of the board, the custodian thereof.

Sec. 8. Bids, bonds required. The board shall have power to require all bids for the doing of all work or the furnishing of all skill or material, authorized by this act, to be accompanied by a bond, on the part of the bidder in such sums and with such sureties as the board may prescribe, or in lieu of such bond a certified check payable to the board upon a bank located in such city, or cash of the same amount, conditioned that he will enter into a contract with such board for the doing of the work or the furnishing skill or material for the price mentioned in his bid and according to the plans and specifications therefor in case the contract shall be awarded to him; and in case of default on his part to sign and enter into such contract or fail to furnish the required bond therefor, within the time prescribed by such board in and by the specifications therefor, the same shall be deemed forfeited, and if a check or cash be so deposited the same shall be the property of the board absolutely, and in case of a bond the same may be used and judgment recovered thereon by such board, for the full amount in any court having jurisdiction of the amount.

Sec. 9. Board to make assessments. It is hereby made the duty of the board to make without unnecessary

delay, at the proper time or times, all assessments for improvements authorized by this act.

Sec. 10. Apportionment of costs and assessments. Upon the completion of any improvement authorized under the provisions of this act, the board of municipal works of such city shall proceed without delay to apportion and assess the cost of such improvement, when not herein otherwise provided, upon the real estate by them deemed benefited, to the extent of benefits received, and in proportion, as near as may be, to the benefits resulting thereto from the improvement; and it shall constitute no objection to such assessment that the amount thereof either exceeds or falls short of the original estimate of the cost of the improvement submitted to the board, or that the board has not fully adjusted all matters with the contractors for the work or approved his final estimate therefor, or that the board has refused at that time to relieve the contractor from further duties in connection herewith.

In all proceedings and advertisements for the making and collection of any assessments under this act, letters, figures and customary abbreviations may be used to designate lots, parts of lots, land and blocks, sections, townships, ranges and parts thereof, the year and the amounts; such assessment shall be in writing, in which shall be given a description of each lot or parcel so assessed, the name of the owner thereof, if known, and the exact amount assessed thereto.

Sec. 11. Filing of assessment. Upon the completion of any assessment authorized by this act, the board shall direct that the assessment be placed on file with the secretary, and shall appoint a time, not less than ten days distant, and a place when and where it will meet to consider and act upon such assessment, and the secretary shall thereupon cause notice of such meeting, and the time, place and purpose thereof, to be given by one publication of such notice in the official newspaper of such city, at least five days prior to the time so appointed for the meeting, in such notice shall be given a brief description of the improvement for which the assessment has been made, and the territory embraced in such assessment, and shall be to the effect that such assessment is on file with the secretary of the board and open to the inspection of all interested parties, and that all objections to the same must be filed in writing with the secretary of such board at least one day (Sundays and legal holidays excepted) prior to the meeting, and that unless sufficient cause is shown to the contrary the same will be confirmed.

Sec. 12. Hearings on assessments. At the time and place so appointed, as provided in the last preceding section,

the board shall proceed to consider the assessment and hear all objections which parties interested may desire to make thereto, and may adjourn as often as deemed expedient to a future definite time and place, and if none of the members are present the secretary may adjourn to some other convenient time and place, of which postponement all parties interested shall be required and deemed to take notice. All objections to the assessment shall be in writing and filed with the secretary at least one day (Sunday and legal holidays excepted, prior to the meetings of the board; provided, however, that the board may, in its discretion allow any party interested, who has accidentally or inadvertently omitted to file his objection, to do so at the time of meeting of the board. The board may give a new notice of such hearing if the previous notice shall be found imperfect or for any other reason.

The board shall, after due consideration, make such correction or changes in the assessment, and may revise the assessment as they may deem necessary to perfect and equalize the assessment on the basis prescribed in this act, and shall confirm and establish the assessment when so corrected and equalized. The assessment, when so confirmed and established, shall be final, conclusive and binding upon all parties interested therein, and the several amounts charged in such assessment, as so confirmed and established against the several lots and parcels of land therein mentioned, shall be enforced and collected as hereinafter provided. If any assessment be annulled or set aside the board shall proceed de novo to make another new assessment in like manner, and a like notice shall be given as herein required in relation to the first, and all parties interested shall have the like rights.

Sec. 13. Railroad property assessment. When in any case, any portion of the cost and expense of making any improvement mentioned in this act shall by virtue of any valid law or ordinance, or by virtue of any contract be chargeable upon any railway company in any such city, the amount or amounts so chargeable may be assessed upon such railway company, and the balance only upon the real estate benefited thereby, and such board may collect the amount so assessed upon the railway company, by distress and sale of personal property in the manner provided for in the general laws of this state in the case of taxes levied upon personal property, or by suit brought for that purpose; provided, however, that any real estate belonging to such railway company subject to assessment under the general laws of this state or any valid ordinance or contract, and deemed benefited by the improvement, shall be assessed as in other cases.

Sec. 14. Lien of assessment. All assessments levied

under the provisions of this act shall be a paramount lien on the real estate upon which the same may be imposed, from the date of the confirmation of such assessment.

Sec. 15. Records to be kept by secretary. The secretary of each such board shall keep in his office, in books to be provided for that purpose, a correct record of all assessments confirmed by such board and authorized by this act; the books to be properly ruled and headed so as to show at all times a substantial description and history of each assessment on each lot and parcel of ground, whether payable in installments as hereinafter provided, and whether paid to the city or county treasurer or remaining unpaid.

Sec. 16. Warrants for assessments. When any special assessment, authorized by this act shall be confirmed and established by such board as herein provided for, it shall be the duty of the secretary to issue a warrant for the collection, which shall be under the seal of the board and signed by the president and secretary of such board and shall contain a printed or written copy of the assessment roll as confirmed, or so much thereof as describes the real estate and the amount of the assessment in each case.

Sec. 17. Warrants to city treasurer. All warrants issued for the collection of any special assessment as herein authorized, shall be delivered by the secretary to the city treasurer of such city as soon as practicable after the assessment has been confirmed and established.

Sec. 18. Publication and notice by treasurer. Upon the receipt of any warrant for the collection of any special assessment authorized by this act, the city treasurer of such city shall forthwith give notice by one publication in the official newspaper of such city, that such warrant is in his hands for collection, briefly describing its nature and the improvements for which such assessment has been made, and the territory embraced in such assessment.

Such notice shall require all persons interested to make payments within 30 days from the date of such notice, at his office, or at the option of the treasurer, at some bank in the city acting for such treasurer.

Sec. 19. Delinquent assessment warrants. If the assessments charged in any special assessment warrant, made for any improvement, whatsoever under the provisions of this act, shall not be paid within 30 days after the publication of the notice by the city treasurer that he has received such warrant for collection, the treasurer shall return to the secretary of such board a list, duly certified by him, the treasurer, of the

assessments so made which still remain unpaid, giving in such lists the description of the several lots and parcels on which the assessment has not been paid, with the names of the respective owners thereof, if known, and the several amounts assessed thereto.

The secretary shall thereupon add to such delinquent and unpaid assessment a penalty of ten percent, and before the first day of December, following, transmit a duly certified list of such unpaid assessments, with a description of the several lots and parcels of land on which the same are made, and the names of the respective owners thereof, if known, to the auditor of the county in which such board is located, who shall enter the several amounts of the unpaid assessments on the tax list for such city for the next ensuing year, and levy the same upon the several lots and parcels of land to which the same are respectively chargeable, and the same shall thereupon be enforced and collected as other taxes on real estate are enforced and collected under the general laws of this state.

Sec. 20. Validity of assessment. No assessment in this act provided for shall be set aside or held invalid by reason of any informality in the proceedings prior to the entry thereof on the tax list by the auditor of the county, as required, unless it shall appear that by reason of such informality or irregularity substantial injury has been done to the party or parties claiming to be aggrieved.

Sec. 21. New assessments. If for any cause the proceedings of the board or any of its officers, may be found irregular or defective, whether jurisdictional or otherwise, the board may make a new assessment from time to time, and as often as needs be, upon all real estate benefited and on which no payment has been made for the improvement, until the full amount of all benefits assessed have been realized from the real estate benefited by such improvement.

Sec. 22. Payment, extension of time. The board shall have power and authority and may by resolution in writing, adopted by an affirmative vote of a majority of all its members, extend the time for the payment of any assessment made and confirmed by it for the purposes as in this act designated, against any lot or parcel of land, and may provide that such assessment may be paid in annual installments of any number, not exceeding ten. When such assessments are fully completed and have been confirmed and established, the board shall by resolution determine the number of annual installments, if any, in which said assessment may be paid, which

resolution shall be attached to and form a part of such assessment.

Sec. 23. Installment payments. If such board shall adopt the resolution, specified in the foregoing section, the city treasurer shall in his notice that warrants are in his hand for collection required by section 18 of this act, include a notice that the owner or person interested in any lot, or parcel so assessed and described in such assessment, may at his election and written request pay the sum assessed in installments, as designated in the resolution.

Sec. 24. Installment payments, requisites. Any person desiring to so pay such assessment in installments, as a condition precedent to the exercising of such right, shall file, in duplicate, a written notice of such election and request for permission to so pay in annual installments, within 30 days after such publication and before such assessment becomes delinquent, with the city treasurer of such city and at the same time pay the first installment then due and payable. Upon failure to so file the notice and request to pay the first installment, the whole amount of the assessment shall be due and payable the same as though no extension for payment had been provided for.

Upon the filing of such notice and request by any person interested, the treasurer shall divide the assessment into the proper installments, and make proper record of the same, and transmit one of such duplicate notices to the secretary of such board, who shall note such fact in his record book of assessments.

Sec. 25. Interest on installments. Each of the installments so extended shall bear interest, payable annually at a rate to be determined in and by such resolution, not exceeding five percent per annum.

Sec. 26. Assessments not payable in installments. No assessment of less than ten dollars against any one lot or parcel of land shall be divided into installments, and no assessment shall be divided so that the amount of any of the installments into which it is divided shall be less than five dollars, and the several installments may be of different amounts as the board may determine.

The time for the payment of the installments, and for the enforcement of the same against the property affected by the assessment shall be extended so that the several amounts shall become due and payable as follows: The first installment at the time the assessment would have been payable if the time of payment had not been extended, as provided by section

18 of this act; the second installment on October 1 of the succeeding year, the third installment on October 1 of the second succeeding year, and so on; each installment, excepting the first shall be made due and payable on the first day of October in the year when payable.

Sec. 27. Delinquent assessments certified to county auditor. After the time of payment of any assessment has been so extended and divided into installments, if any installment so extended shall not be paid when it becomes due and payable together with the interest to that time on all future installments, the city treasurer of the city shall on the first day of December in each year, certify to the secretary of the board, such extended installment which has become due and payable on the first day of October in that year, and which has not been paid, together with all interest then due and unpaid on the whole assessment, as a special tax on the property in the same manner as other delinquent assessments in his hands for collection; the secretary shall thereupon certify the same to the county auditor in the same manner, at the same time and with the same penalty added thereto as in cases of other delinquent assessments, as in all respects as provided in and by section 19 of this act; the county auditor on receipt thereof, shall enter and carry out the same upon the proper tax list for that year, in the same manner as in other cases of unpaid assessments certified to him under the provisions of this act, and the same shall thereupon be collected and payment thereof enforced the same as other taxes on real estate are collected and enforced, and when collected paid over to the treasurer of the city.

Sec. 28. Application to pay in installments. Upon application in writing of any owner or party interested in any lot or parcel of land against which any assessment has been made, and has been confirmed by the board, the board shall have power and authority and may by resolution in writing, adopted by an affirmative vote of a majority of all its members, extend the time for the payment of the assessment as to the lot or parcel, and may provide that such assessment may be paid thereafter in annual installments of any number not exceeding ten providing such assessment so made prior to the date thereof exceeds the sum of \$20 against such lot or parcel of land.

Whenever any assessment, be so divided into installments, and the time of payment extended, all provisions of this act applicable to extending the time of payment of assessments, shall apply thereto, and control in the collection and enforcement of the assessment.

Sec. 29. Assessment may be paid in full. Any owner or party interested in any piece or parcel of land against which an assessment is levied, may, after such assessment has been divided into installments, pay all of the installments at any time before maturity, but in such event shall pay interest thereon to the first day of October immediately following such payment.

Sec. 30. Lien for unpaid installments. Every installment, the time of payment of which has been extended under this act, shall continue to be and shall be and constitute a paramount lien in favor of such city, and against each of the lots or parcels of land as to which the extension is granted, for the amount so extended for each lot or parcel, and until the same is fully paid.

Sec. 31. Assent to assessment presumed. When such application, election or request for an extension of the time of payment in installments of an assessment shall have been made and filed as provided, the owner or person interested and so filing the same, and his or their heirs, personal representatives or assigns, or any lot or parcel of land as to which an extension has been granted, shall be held to have recognized and assented to the validity and regularity of the assessment and of all proceedings had thereon prior to the granting of the application, and shall be estopped from denying the validity of the assessment or the amount thereof.

Sec. 32. Board created; powers, duties. There is hereby created in the board of municipal works in each city of the second class, for the purpose of facilitating and the carrying out of contract for laying, relaying, enlarging and repair of water mains, a fund to be known and designated as the improvement and extension fund, to be constituted and preserved and the moneys to be used as designated.

The board of municipal works shall have power, from year to year, to include in its estimate of expenses for the levies of taxes such amounts for this fund as it may deem necessary, subject to all the limitations for the levy of taxes contained in the charter of the city. All moneys which may be collected upon improvements made, or hereafter to be made, and to be paid for by special assessment shall be paid into this fund. All moneys so transferred, collected, and paid shall constitute this fund and shall be known as the improvement and extension fund of the board. The fund shall be kept inviolate and no money shall be paid out of this fund for any other purpose by the city treasurer than as designated.

All contracts made for water main extensions which are

to be paid for in whole by special assessments, and no other, shall be paid for out of this improvement and extension fund.

If at any time it shall be found that the moneys in this fund shall not be sufficient to pay all amounts due and earned on any such contracts as the work thereunder progresses, then and in such event the board is authorized and empowered to issue from time to time its certificates of indebtedness in anticipation of the collection of the special assessments for such contracts in such amounts as may be deemed necessary by its board of municipal works to pay for contracts and to negotiate and sell these certificates upon the best terms for the city, subject to all the conditions contained in this section.

The issue of such certificates shall first be authorized by a resolution in writing passed by an affirmative vote of a majority of all the members of the board and approved by the city council of the city.

This resolution shall designate the number of the certificates so to be issued; the principal sum of each certificate; the time when payable and the purpose for which the money realized is to be paid.

The certificates shall be numbered consecutively, commencing with number one, without regard to the time of issue, shall be made payable to bearer or to the order of the person or corporation to whom the same may be delivered, as the board may designate; shall draw interest at a rate not exceeding six percent per annum, shall be payable at the treasury of the city issuing the same, not later than five years from the date of issue; shall be payable out of the improvement and extension fund, and no other, of said board, shall be signed by the mayor and attested by the secretary of the board and shall have imprinted thereon the corporate seal of the board. The secretary of the board and the treasurer of the city shall each keep an accurate record of all certificates so issued in a book to be kept for that purpose. No certificates shall be sold for less than par value and accrued interest.

Any and all proceeds realized from the sale of these certificates shall be turned into the improvement and extension fund and no other, of the board and neither the certificates nor the proceeds from the sale thereof, nor any part or portion thereof, shall be used for or devoted to any purpose other than that designated in the resolution authorizing their issue; the secretary of the said board and the treasurer of such city shall keep an accurate account of such fund showing in detail all moneys received for and turned into the fund and all expenditures from the same.

No irregularity or informality in the letting of any contract paid for out of the proceeds of these certificates or in the making of any special assessment in anticipation of which such certificates were issued shall affect the liability of the city to redeem the same, but the faith and credit of the city issuing the same is irrevocably pledged for the redemption of the certificates so issued.

The city treasurer shall, immediately after any certificate shall be redeemed by the board, cancel the certificate by a writing upon the face thereof showing the date of redemption and the amount and to whom paid and shall affix his signature thereto; and shall, within 24 hours thereafter transmit the certificate so cancelled to the secretary of the board and take his receipt therefor, who shall immediately make an entry of the redemption and cancellation in his certificates register, and enter such payment in fund account.

Approved April 10, 1957.

CHAPTER 379—S. F. No. 1298

An act relating to inspection of potatoes; amending Minnesota Statutes 1953, Section 30.16.

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

Section 1. Minnesota Statutes 1953, Section 30.16, is amended to read:

30.16 Potatoes shall be inspected. All potatoes shipped by any person, in lots of 3,000 pounds or more from the state shall be inspected by an authorized federal-state inspector to determine the grade, quality, and condition of such shipments. All fees shall be assessed against the firm or individual that bills the shipment. Sections 30.16 to 30.20 shall not apply to Minnesota-grown potatoes between July 1 and October 1 of each year.

Approved April 10, 1957.

CHAPTER 380—H. F. No. 1303

An act extending from 30 to 99 years the term of lease which municipal airport owners are authorized to grant to private parties, or governmental agencies desiring to lease