

CHAPTER 585—S.F.No.711

An act relating to trusts; court jurisdiction of trustees; amending Minnesota Statutes 1969, Section 501.33.

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

Section 1. Minnesota Statutes 1969, Section 501.33, is amended to read:

501.33 TRUSTS; COURT JURISDICTION OF TRUSTEES. Upon petition of any person appointed as trustee of an express trust by any will or other written instrument, or upon petition of any beneficiary of such trust, the district court of the county wherein such trustee resides or has his place of business, or the district court of the county wherein the will is being probated in the case of an express trust by will, shall consider the application to confirm the appointment of the trustee and specify the manner in which he shall qualify. Thereafter such district court shall have jurisdiction of such trust as a proceeding in rem.

Approved May 27, 1971.

CHAPTER 586—S.F.No.776

An act relating to drainage systems; the hydraulic capacity of structures across such systems; amending Minnesota Statutes 1969, Sections 106.121, Subdivision 4; 106.271; 106.471, Subdivision 4; and 106.491.

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

Section 1. Minnesota Statutes 1969, Section 106.121, Subdivision 4, is amended to read:

Subd. 4. DRAINAGE; BRIDGES AND CULVERTS; HYDRAULIC CAPACITY; DATA AND REPORT. The engineer shall prepare and submit the following data and report:

(a) A complete map of the drainage system or improvement drawn to scale, showing thereon (1) the termini and course of each drain and whether open or tile, and the location of all other proposed

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improvements; (2) the location and situation of the outlet; (3) the watershed of the drainage system and the sub-watershed of main branches, if any, together with the location of existing highway bridges and culverts; (4) all lands and properties affected, together with the names of the owners thereof so far as known; (5) public streets, highways and railways affected; (6) the outlines of any meandered lake and public body of water affected; (7) such other physical characteristics of the watershed as may appear necessary for the understanding thereof.

(b) A profile of all lines of ditch proposed showing graphically, the elevation of the ground and gradient at each 100-foot station, the station number at each section line and at each property line, whether open or tiled, the size of tile and the bottom width and side slope of open ditch sections, and such other information as may appear necessary for the understanding thereof.

(c) Plans for all private bridges and culverts proposed to be constructed by and as a part of the ditch system, together with plans for all other works and items of construction necessary for the completion of the drainage system or improvement. A list showing the required minimum waterway opening hydraulic capacity of all bridges and culverts at all railway and highway open ditch crossings and at other prospective open ditch crossings where bridges and culverts are not specified to be constructed as a part of the ditch, together with plans and estimates of the cost of highway bridges and culverts required for the information of the viewers in determining benefits and damages.

(d) A tabular statement showing the number of cubic yards of earth to be excavated on all open ditches, the footage of each size of tile on each tile line with the average depth thereof, and all bridges, culverts, works and other construction items required by the plans for the completion of the system, together with the estimated unit cost of each of said items and a summary of the total cost thereof. Such summary shall include an estimate of the cost of fully completing the system, including supervision and other costs thereof.

(e) The acreage which will be required and taken as right of way upon each government lot and 40-acre tract or fraction thereof under separate ownership required for right of way for any open ditch.

(f) Specifications for drain tile shall require that all drain tile used shall comply with the requirements of the American Society for Testing Materials standard specifications for drain tile, except where the depths to which the drains are to be laid or the conditions of the soil, in the opinion of the engineer, require tile of a special and higher quality.

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(g) When more economical construction will result, the engineer may recommend that the work be divided into sections and let separately, and that open and tile work or tile and labor thereon be let separately, and the time and manner so far as practicable in which the whole work or any section thereof shall be done.

(h) Such other detail and information as shall appear requisite to fully inform the board or court of the practicability and necessity of the proposed improvements, together with his recommendations thereon.

Sec. 2. Minnesota Statutes 1969, Section 106.271, is amended to read:

106.271 CONSTRUCTION AND MAINTENANCE OF BRIDGES; AUTHORITY OF DIRECTOR. The auditor or clerk shall notify the state and each municipality, railroad company, or other corporation to construct any bridge or culvert required upon its road or right of way, within a reasonable time named in the notice.

If the work is not done within the time limited, the county board or district court may order the same built as a part of the construction of the system and the cost thereof shall be deducted from the damages allowed the corporation or collected from it as in case of an assessment for benefits, and in all cases where the report of the engineer or viewers shows the necessity for the construction of such bridge, the board or court may order sufficient retained from any sum due such municipality, railroad, or other corporation to secure the construction of the bridge or culvert.

On public highways, all bridges and culverts required by the construction and improvement of any public open ditch, shall be constructed and maintained by the public authority charged by law with the duty of keeping such highway in repair, except as hereinafter in this section noted.

In all cases where a public road or street, not a state trunk highway, is on the line between two public corporations, whether in the same county or not, such corporations shall bear jointly and in equal shares the cost of constructing any bridge or culvert on such road or street made necessary by the construction or improvement of any public drainage ditch; and such corporations shall bear jointly and in equal shares the cost of thereafter maintaining the same.

In all cases where a public drainage ditch is constructed along the boundary line between towns or counties, and excavated material therefrom is deposited on the boundary line or within two rods thereof, the cost of constructing and maintaining all bridges and culverts constructed across such ditch along the boundary upon town or county roads shall be paid and borne equally by the town or county

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wherein the bridge or culvert is located and by the other town or county adjoining the boundary.

Private bridges or culverts, constructed as a part of any ditch system hereafter established, shall be maintained by the county board as a part of the ditch. Private bridges or culverts constructed as a part of any ditch system established by proceedings instituted before March 25, 1947, may be maintained, repaired, or rebuilt as a part of the ditch by the county board at the option of the board the cost of which may be paid in whole or part by the ditch system.

No bridge or culvert, public or private, shall be constructed or maintained in or across any public drainage ditch with ~~less-waterway opening hydraulic capacity~~ than specified in the engineer's report, except with the written approval of the director. If the engineer's report does not specify the ~~waterway opening hydraulic capacity~~, no bridge or culvert, public or private, in or across any public drainage ditch, may be constructed or reconstructed without the approval of the director of the ~~dimensions of waterway opening hydraulic capacity of such bridge or culvert~~.

Sec. 3. Minnesota Statutes 1969, Section 106.471, Subdivision 4, is amended to read:

Subd. 4. **PETITION; PROCEEDINGS.** (a) Upon the filing of a petition by any party or corporation, municipal or otherwise, interested in or affected by a drainage system, with the auditor in the case of a drainage system lying wholly within the county, or with the clerk of the district court having jurisdiction over said ditch in the case of a drainage system affecting two or more counties, therein setting forth that the drainage system is out of repair, it shall be the duty of the auditor in the case of a drainage system lying wholly within the county to present the same to the county board at its next meeting, and of the clerk in the case of a drainage system affecting two or more counties, to present the petition to the judge of the court within ten days from the filing thereof. Thereupon, if it appears to the board or court that such ditch is out of repair, the board or court shall appoint an engineer to examine the ditch and make report of the necessary repairs, with the estimated cost thereof, and all details, plans and specifications required to supply the necessary details to let a contract therefor. The board or court may order a hearing on the petition before appointing the engineer on such notice as it may require, if a hearing is deemed advisable.

(b) Upon the filing of the engineer's report, notice of hearing thereon shall be given as required by section 106.101. If at this hearing it appears from the engineer's report and the evidence presented that the repairs recommended are necessary and for the best interests of the property owners affected, and the board or court shall so find, the board or court shall make findings and order

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accordingly. In the case of a drainage system lying wholly within the county, the order shall direct the county auditor and the chairman of the county board, and in the case of a drainage system affecting two or more counties the order shall direct the auditors of the several counties affected to proceed and let a contract for the repair of the system as shown in the engineer's report and as determined necessary by the board or court, in the manner provided in this chapter for original ditch construction.

(c) If the petition referred to in subparagraph (a) be made by the owners of not less than 26 percent of the area of the property affected by and assessed for the original construction of the ditch, and if upon the hearing required by subparagraph (b) it appears that the ditch is in need of repair so that it no longer serves its original purpose, then the board or court shall order the repairs and the letting of a contract therefor as provided by subparagraph (b); provided, that no job of repair shall be ordered if it appears that the cost thereof will exceed the total benefits theretofore determined in the ditch proceeding.

(d) In all proceedings before the court, the judge shall, by order, apportion the costs and expenses between the several counties in the same manner as required in the original construction of the ditch.

(e) If it is proposed to repair a ditch by resloping of open ditches, leveling waste banks, or removing trees, or by two or all of these actions, before ordering the repair, the board or court shall find and determine whether the resloping, leveling, and tree removal will require the taking of any property not contemplated and included in the original proceeding for the establishment of the ditch, and further, whether the waste bank leveling will directly benefit land upon which bank leveling is specified. If it appears that such resloping, leveling and tree removal will require such taking, or directly benefit such land, or both, before ordering the repair, the board or court shall appoint viewers to report thereon and hear and determine such damages and benefits, as provided by Minnesota Statutes, Sections 106.151, 106.161, 106.171, 106.191 and 106.201. Such damages, if any, shall be paid as provided by Minnesota Statutes, Section 106.251 as a part of the cost of the repair, and such benefits, if any, shall be added to the benefits theretofore determined as the basis for the pro rata assessment for the repair of such ditch in such repair proceeding only.

If in proceedings under this chapter for the repair of a ditch the engineer determines that by reason of the inclusion of added lands under subdivision 7 or otherwise, any bridge constructed or culvert installed as a part of the original ditch, or any bridge constructed or culvert installed later as a replacement of such original bridge or culvert, or in proceedings for the improvement of such ditch, provides insufficient waterway opening hydraulic capacity for the efficient

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operation of said ditch to serve its original purpose, he shall so report to the court or board and shall include in his report plans and specifications of replacement bridges and culverts required to supply the necessary details to let a contract therefor, together with the estimated cost thereof.

Upon the filing of the engineer's report notice of hearing on such report shall be given as provided by section 106.101 and such notice may be given in conjunction with and as a part of the notice required under subparagraph (b), but the notice shall specifically state that the enlargement of such waterway openings increasing such hydraulic capacity will be considered by the court or board at such hearing.

Upon hearing on the engineer's report the board or court shall hear all interested parties and if the board or court finds that existing bridges and culverts provide insufficient waterway openings hydraulic capacity for the efficient operation of the ditch as originally constructed or subsequently improved, the board or court shall make findings accordingly, and may order that such waterway openings be enlarged hydraulic capacity be increased and that bridges be constructed or culverts be installed of such capacity as will provide such efficient waterway openings hydraulic capacity and shall determine the kind of and plans for such replacement bridges or culverts, which order shall direct the state and each municipality, railroad company or other corporation to construct any bridge or culvert required by such order upon its road or right-of-way within a reasonable time named in the order, and the auditor or clerk shall notify the state, municipality, railroad company or other corporation to construct same in accordance with the order.

If the work is not done within the time limited, the county board or district court may order the same built and the cost thereof collected from it as in case of an assessment for benefits.

If, however, any municipality, railroad company or other corporation, upon such hearing or upon being notified to construct any bridge or install any culvert, requests that such bridge or culvert be installed as part of the repair of the drainage system, the board or court may so order and order the cost thereof assessed and collected from such municipality, railroad company or other corporation in the manner provided by subdivision 5.

Sec. 4. Minnesota Statutes 1969, Section 106.491, is amended to read:

106.491 OBSTRUCTION OF DITCH. If it at any time appears to the board that any ditch has been obstructed by the installation of bridges or culverts of insufficient waterway opening hydraulic capacity or otherwise, the board shall forthwith notify the person or public authority responsible for such obstruction to remove the same

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or to show cause before the board at a time and place fixed in the notice why such obstruction should not be removed. If such obstruction be on private property, the owner thereof shall be deemed prima facie responsible therefor and shall in any event be so notified. Such notice shall be by registered mail not less than ten days before the return date thereof. At the time and place fixed in the notice, the board shall hear all interested parties and if it appears that the ditch has been obstructed by any person or public authority, the board shall so find and order the obstruction removed by the person or authority responsible therefor within a reasonable time fixed in the order. If the obstruction be not removed within the time fixed, the board shall cause the same to be removed and in such event the auditor shall make a statement of the cost thereof and shall file the same in the office of the register of deeds of the county as a lien upon the premises on which the obstruction is located or against the public or other corporation responsible therefor; and such lien shall be enforced and collected the same as liens made for ditch repairs as provided in this chapter; except that no lien may be filed against private property if it appears that the owner thereof is not responsible for the obstruction. In such event the cost of removal may be enforced against the responsible party by civil action.

Approved May 27, 1971.

CHAPTER 587—S.F.No.785

An act relating to game and fish; reducing the minimum acreage of lakes for which the state may acquire public access; amending Minnesota Statutes 1969, Section 97.48, Subdivision 15.

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

Section 1. Minnesota Statutes 1969, Section 97.48, Subdivision 15, is amended to read:

Subd. 15. **GAME AND FISH; LAKES; PUBLIC ACCESS.** The commissioner shall acquire by gift, lease, purchase, or condemnation in the manner prescribed by chapter 117, in the name of the state, from the game and fish fund, parking or camping areas of not to exceed five acres, adjacent to public waters to which the public theretofore had no access or where the access is inadequate and upon which the public has a right to hunt and fish, and such easements and rights of way as may be required to connect such areas with public

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