

the general fund in the state treasury the sum of \$50,000 for the purposes of this act.

Approved June 7, 1971.

CHAPTER 916—H.F.No.2035

[Coded]

An act relating to public water and sewer improvements; establishing powers of county boards and district courts; providing for proceedings, assessment procedures, bond issues, a water and sewer commission, and tax exemptions.

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

Section 1. [116A.01] COUNTIES AND JUDICIAL DISTRICTS; PUBLIC WATER AND SEWER SYSTEMS; POWERS OF COUNTY BOARDS AND OF DISTRICT COURTS. Subdivision 1. GENERALLY.

The county boards of the several counties except Mower county and, except counties in the seven county metropolitan area, and the district courts are authorized to make, with respect to any area of the county or judicial district not organized into cities or villages, all necessary orders for, and cause to be constructed and maintained, public water or sewer systems or combined water and sewer systems to serve such area, including outlets, treatment plants, pumps, lift stations, service connections, mains, valves, hydrants, wells, reservoirs, tanks, and other appurtenances of public water or sewer systems.

Subd. 2. ESTABLISHMENT OF SYSTEM. Upon receipt of a petition for the establishment of a water or sewer system or combined water and sewer system within any area of the county not organized into cities or villages, and after determining the sufficiency of the petition as provided in section 2 and making such investigations and surveys as it considers necessary to ascertain whether it should be granted, the court or board may by resolution provide for the establishment of such a system; cause plans and specifications to be prepared for water system facilities adequate to obtain, store, treat, and distribute water for domestic, commercial, and industrial use therein, or sewer system facilities adequate to collect, treat, and dispose of sewage and waste in a sanitary manner, or both such types of facilities; contract for the construction of such facilities; acquire land and easements for the purpose by purchase, gift, condemnation, or other lawful means; establish, collect, and revise charges for the

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use and availability of water or sewer service or both to all premises within the area to which service is furnished or made reasonably available, and for connection to the facilities, in the manner provided in Minnesota Statutes, Section 444.075; levy special assessments upon properties specially benefited by the construction of the facilities; issue bonds of the county to finance such construction as provided in section 20, and require hook up or attachment to the system by all residents in the service area.

Subd. 3. SYSTEMS EXTENDING INTO MORE THAN ONE JUDICIAL DISTRICT. In case any proposed sewer or water system extends into two or more judicial districts, proceedings may be commenced before the district court of any of the districts, and the court before which such proceedings are commenced shall thereafter have jurisdiction of all subsequent proceedings and matters in relation to the sewer or water system.

Sec. 2. [116A.02] PETITION. Subdivision 1. **FORM.** Before any public water or sewer system or combined water and sewer system or other improvement authorized by this act is established, a petition therefor shall be filed with the county auditor, if for a system entirely within one county, or with the clerk of the district court, if for a system within two or more counties. The petition shall be signed by the owners of at least 50 percent of the area of such land, exclusive of the holders of easements for electric or telephone transmission and distribution lines. The lands described in the petition shall be those to be served by the proposed system or the improvement, and the improvements shall be of public benefit and utility and shall promote the public health. The petition shall state that the petitioners will pay all costs and expenses which may be incurred in case the proceedings are dismissed or for any reason no contract for the construction thereof is let. The petition may be signed by the authorized representative of any municipal corporation or by the commissioner of highways, or the authorized agent of any public institution or any corporation which may be affected by or assessed for the proposed construction if the signature of the representatives, commissioner, agent, or corporation shall each count only as one signature on the petition. Petitioners may employ an attorney to represent them in all proceedings pursuant to this act, and said attorney shall be compensated as ordered by the board or court.

Subd. 2. WITHDRAWAL. After a petition has been filed, no petitioner may withdraw therefrom except with the written consent of all other petitioners filed with the auditor or clerk.

Subd. 3. PROCEEDING INITIATED BY COUNTY BOARD. Any county board, by duly adopted resolution, and without a petition filed therefor, may initiate the proceedings for the formation of a water or sewer district or combined water and sewer district as

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provided in this act. The proceedings thereafter shall be the same as for proceedings initiated by petition except that no bond need be filed. If any proceeding initiated by resolution of a county board is dismissed, the county shall pay all expenses connected with such proceeding.

Sec. 3. **[116A.03] PETITIONERS' BOND.** Upon the filing of a petition and before any action is taken thereon, one or more of the petitioners shall make and file a bond payable, in case of a county system, to the county, and in case of a judicial system, to the counties named in the petition, in the sum of not less than \$2,000, with good and sufficient sureties, to be approved by the officer with whom the same is filed, conditioned to pay all costs and expenses which may be incurred in case the proceedings are dismissed or for any reason no contract is entered into for the construction of the system or other improvement petitioned for. In lieu of a bond cash may be deposited and forfeited to the county or counties in the event the proceedings are dismissed and if for any reason no contract is entered into for construction of the system or other improvement petitioned for. If the project is approved, the cash so deposited shall be returned to the petitioners.

Sec. 4. **[116A.04] INSUFFICIENT BOND; EXPENSES NOT TO EXCEED PENALTY OF BOND.** If it shall appear at any time prior to the making of the order establishing the system that the bond of petitioners is insufficient in amount to protect the county or counties from loss on account of any costs or expenses incurred or to be incurred, the court or board shall require an additional bond. In such event, all further proceedings shall be stayed until such bond is furnished, and if additional bond is not furnished within the time fixed by the board or court, the proceedings may be dismissed.

In all proceedings, the expenses incurred prior to establishment shall not exceed the penalty named in the bond or bonds given by the parties. No claim in excess of the amount of the bond or bonds shall be audited or paid by direction of the board or court unless one or more of the parties in the proceeding shall, within such time as the board or court directs, make and file an additional bond with sufficient sureties in such amount as the board or court directs.

Sec. 5. **[116A.05] DISMISSAL OF PROCEEDINGS.** Sixty per cent of the petitioners may dismiss a proceeding under the provisions of this act at any time prior to the order establishing the improvement, upon payment of all lawful costs, charges, expenses, and fees in the proceeding.

Sec. 6. **[116A.06] ENGINEER.** Subdivision 1. **APPOINTMENT.** Upon filing of the petition and bond, the board or court shall, within 30 days, by order appoint an engineer to make a preliminary survey within the time fixed in the order. The engineer shall act as engineer throughout the proceeding unless otherwise ordered.

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Subd. 2. **QUALIFICATION.** The engineer shall within ten days after his appointment take and subscribe an oath to faithfully perform the duties assigned to him according to the best of his ability, and give a bond in an amount fixed by the board or court, but not less than \$5,000, with good and sufficient surety, payable to the county or counties affected by the proposed improvement for their benefit and for the use of all parties aggrieved or injured by any negligence or malfeasance by the engineer while in any manner employed in the proceedings, conditioned that he will diligently, honestly, and to the best of his skill and ability, during the full period of his employment, perform his duties as engineer. The bond shall be approved by the auditor or clerk, and the aggregate liability of the surety for all such damages shall not exceed the amount of the bond. In case of a change of engineers, each succeeding engineer shall make and file the required oath and bond.

Subd. 3. **CONSULTING ENGINEER.** After appointment of the engineer, and during the pendency of any proceeding or during the construction of the system, the board or court may employ an engineer as a consulting engineer in the proceeding. The consulting engineer shall advise the engineer and the board or court as to engineering matters and problems which may arise in connection with the system. His compensation shall be fixed by the board or court.

Sec. 7. **[116A.07] PRELIMINARY SURVEY AND REPORT.** The engineer shall promptly examine all matters set forth in the petition and order, make such preliminary survey of the territory likely to be affected by the proposed improvement as will enable him to determine whether it is necessary and feasible, and report accordingly. If some plan other than that described in the petition is found practical, the engineer shall so report, giving such detail and information as is necessary to inform the court or board on all matters pertaining to the feasibility of the proposed plan, either as outlined in the petition or according to a different plan recommended by the engineer. Upon completion of his survey and report, the engineer shall file his report in duplicate with the auditor or clerk.

Sec. 8. **[116A.08] PRELIMINARY HEARING.** Subdivision 1. **NOTICE.** Upon the filing of the report of the engineer, the auditor shall promptly notify the board, or the clerk shall promptly notify the judge, thereof, and the auditor, or the clerk with the approval of the judge, shall by order fix a time for the hearing thereon, not more than 60 days after the date of the order. Not less than ten days before the time of hearing, the auditor or clerk shall give notice by mail of the time and place of hearing to the petitioners and the owners of the lands and properties, and corporations, public or private, likely to be affected by the proposed improvement as shown by the engineer's report. Notice also shall be published in the official

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papers covering the area of the proposed system called for in the petition, at least once not less than three weeks before the hearing.

Subd. 2. HEARING. The engineer shall attend the hearing and supply such information as may be necessary. The petitioners and all other parties interested may appear and be heard.

Subd. 3. SUFFICIENCY OF PETITION. The board or court shall examine the petition, and if the petition is found sufficient as required by law, shall so find. If the petition is found insufficient in that it is not signed by the requisite number of owners, or otherwise, the hearing shall be adjourned and the petition referred back to the petitioners for such action thereon as may be advised. The petitioners, by unanimous action, may thereupon amend the recitals in the petition. They may procure the signatures of additional owners as added petitioners. At the adjourned hearing, if the petition is found insufficient, the proceedings shall be dismissed.

Subd. 4. DISMISSAL. At the hearing or any adjournment thereof, if it shall appear that the proposed improvement is not feasible, and no plan is reported by the engineer whereby it can be made feasible, or that it is not of public benefit or utility, the petition shall be dismissed.

Subd. 5. FINDINGS AND ORDER. If the board or court is satisfied that the proposed improvement as outlined in the petition or as modified and recommended by the engineer is feasible, that there is necessity therefor, that it will be of public benefit and promote the public health, it shall so find and by order shall designate any changes to be made in the proposed improvement. Changes may be described in general terms and shall be sufficiently described by filing with the order a map outlining the proposed improvement. Thereafter the petition shall be treated as modified accordingly.

Subd. 6. EFFECT OF FINDINGS. The findings shall be construed as conclusive only as to the sufficiency of the petition, the nature and extent of the proposed plan and the need of a permanent survey, and only as to the persons or parties shown by the engineer's preliminary report as likely to be affected by the improvement. All questions relative to the practicability and necessity of the proposed improvement shall be subject to further investigation and consideration at the final hearing.

Sec. 9. [116A.09] ORDER FOR DETAILED SURVEY. Upon the filing of the order as specified in section 8, the board or court shall order the engineer to proceed to make a detailed survey and furnish all necessary plans and specifications for the proposed improvement and report the same to the board or court with all reasonable dispatch.

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Sec. 10. [116A.10] **ENGINEER'S SURVEY AND EXAMINATION.** Upon the filing of the order calling for a detailed survey, the engineer shall prepare the complete set of plans, specifications and estimates of cost, and shall make a complete report in duplicate of his work and recommendations to the board or court, including therein all maps and profiles, and shall file the report with the auditor or clerk. If the report is filed with the clerk, a complete copy also shall be filed with the auditor of each county affected. After final acceptance of the system, the engineer shall make revisions of his plan, profiles and designs of structures to show the project as actually constructed on the original tracings, and shall file the revisions in duplicate with the auditor or clerk. When more economical construction will result, the engineer may recommend that the work be divided into sections and let separately, and may recommend the time and manner in which the work or any section shall be done.

Sec. 11. [116A.11] **VIEWERS; APPOINTMENT; QUALIFICATION.** Subdivision 1. **APPOINTMENT.** Following the filing of the order for a detailed survey the board or court shall make an order appointing as viewers three disinterested resident freeholders of the county or counties affected.

Subd. 2. **QUALIFICATION.** Within 30 days after the filing of the final report and survey of the engineer, the auditor or clerk shall make an order designating the time and place of the first meeting of the viewers and he shall issue to the viewers a certified copy of the order appointing them and the order designating the time and place of their first meeting. At the meeting and before entering upon their duties, the viewers shall take and subscribe an oath to faithfully perform their duties.

Subd. 3. **FAILURE TO QUALIFY.** If any viewer shall fail to qualify at the meeting, the auditor or court shall designate some other qualified person to take his place.

Subd. 4. **VIEWERS; DUTIES.** The viewers, with or without the engineer, shall determine damages to all lands and properties affected by the proposed system and shall report their findings. The report shall show in tabular form the description of each lot and tract, or fraction thereof, under separate ownership, damaged and the names of the owners as the same appear on the current tax duplicate of the county. Damages shall be reported on all lands owned by the state the same as upon taxable lands. The viewers shall report all damages that will result to all railways and other utilities, including lands and property used for railway or other utility purposes. In case the viewers are unable to agree, each viewer shall state separately his findings on any matter disagreed upon. A majority of the viewers shall be competent to perform the duties required of them by this act.

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Subd. 5. **FILING OF VIEWERS' REPORT.** Upon the completion of their work, the viewers shall file their report with the auditor or clerk. They shall file with the report a detailed statement showing the actual time they were engaged and expenses incurred and shall be reimbursed at such a rate as determined by the board or court. The viewers shall perform their duties and make their report at the earliest possible date following their first meeting. If the report be filed with the clerk, a copy thereof shall also be filed with the auditor of each county affected.

Sec. 12. [116A.12] **SECOND HEARING.** Subdivision 1. **TIME.** Promptly after the filing of the viewer's report and the engineer's survey the auditor, or the clerk with the approval of the judge, shall fix a time and place for hearing on the petition and the engineer's and viewers' reports. The hearing shall not be less than 25 nor more than 50 days from the date of the notice thereof. The auditor shall notify the members of the county board of the time and place of the meeting as provided by law.

Subd. 2. **FORM OF NOTICE.** The notice shall state the pendency of the petition, that the engineer's and viewers' reports have been filed, and the time and place set for the hearing. The notice shall contain a brief description of the proposed system in general terms, the lands affected thereby, and the municipal and other corporations affected thereby as shown by the engineer's and viewers' reports. It shall be sufficient if the names are listed in narrative form and if the lands affected are separately listed in narrative form by governmental sections or otherwise.

In judicial proceedings, separate notices may be prepared, published, posted and mailed in each county affected, showing only that portion of the water or sewer system or combination thereof and the names and descriptions of the properties affected in the county.

Subd. 3. **GIVING OF NOTICE.** The auditor or clerk shall cause notice of the time and place of the hearing to be given to all persons interested by publication, posting and mailing, at least once not less than three weeks prior to the hearing. A printed copy of the notice so made for each county, shall be posted at least three weeks before the date of the hearing at the front door of the courthouse in each county. Within one week after the beginning of publication, the auditor or clerk shall give notice by mail of the time and place of hearing to all persons, corporations, and public bodies affected by the proposed system as shown by the engineer's and viewers' reports.

Subd. 4. **DEFECTIVE NOTICE.** If notice is not given or is defective, the auditor or clerk shall require the same to again be fully given.

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Subd. 5. **FINDINGS AND ORDER.** If the board or court is satisfied that the project, as shown by the petition, engineer's survey, and viewers' reports, will be of public benefit and promote public health, it shall find and order that the proposed improvement shall be constructed.

Sec. 13. **[116A.13] LETTING CONTRACT.** Subdivision 1. After the filing of the order ordering the improvement, the auditor and the county board, in the instance of a county system, and the auditors of the respective counties, or a majority of them, in the instance of a judicial system, shall proceed to let the job of constructing the system. In judicial systems the auditors shall hold the letting at the office of the auditor of the county in which the proceedings are pending.

Subd. 2. If it shall appear at the expiration of 30 days from the filing of the order ordering the improvement, that one or more appeals have been taken involving the question of damages, no contract shall be let until the appeals have been determined, unless ordered by the board or court. Application for such order may be made by the auditor or auditors or any interested person. If application be made by some person other than an auditor, then the auditor or auditors shall be given five days' notice of hearing upon such application.

Subd. 3. The auditor of the county in which the proceedings are pending shall give notice of the letting of the contract by publication in a newspaper in such county stating the time and place where the contract shall be let. When the estimated cost of construction is more than \$3,000, the auditor shall also advertise such letting in a trade paper. Such notice shall state the approximate amount of work and the estimated cost thereof and shall invite bids for the work as one job or in sections. The right shall be reserved to reject any and all bids. The notice shall require that each bid be accompanied by a certified check or a bond furnished by an approved surety bonding corporation payable to the auditor or auditors for not less than ten percent of the bid, as security that the bidder will enter into a contract and give a bond as required by section 15.

Subd. 4. The engineer shall attend the letting and no bid shall be accepted without his approval as to compliance with plans and specifications.

Subd. 5. The job may be let in one job, or in sections, or separately for labor and material, and shall be let to the lowest responsible bidder or bidders therefor.

Subd. 6. Bids shall not be entertained which in the aggregate exceed by more than 30 percent the total estimated cost of construction.

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Subd. 7. The auditor, with such chairman, or auditors, as the case may be, shall contract, in the name of the county, or in the names of the respective counties, each acting by and through its auditor, with the party to whom such work or any part thereof is let, requiring him to construct the same in the time and manner and according to the plans and specifications and the contract provisions as set forth in this act.

Subd. 8. In the event all or any portion of such work is to be done by the United States, or any of its agencies, no notice of letting of a contract need be published and no contract for its construction need be entered into as to such portion so to be constructed. The court or county boards concerned may enter into a contract or other arrangement with the United States, or any agency or department thereof, for cooperation or assistance in constructing, maintaining and operating such system or in making a survey and investigation or reports thereon, and may provide such guaranty and protection to the United States or its agencies as may be required.

Sec. 14. **[116A.14] PROCEDURE WHEN CONTRACT NOT LET.** Subsequent to the establishment of any water or sewer system, if no bids are received except for a price more than 30 percent in excess of the engineer's estimate proceedings may be had as follows:

If it shall appear to the persons interested in said system that the engineer made an error in his estimate or that the plans and specifications could be changed in a manner materially affecting the cost of the improvements without interfering with the efficiency thereof, then any of said persons may petition the board or court so stating and asking that an order be made reconsidering and rescinding the order theretofore made establishing the system, and that the engineer's and viewers' reports be referred back to the engineer and to the viewers for further consideration.

Upon presentation of such petition, the board or court shall order a hearing, therein designating the time and place for hearing, and cause notice thereof to be given by publication in the same newspapers where the notice of final hearing was theretofore published.

At the time and place specified in the order and notice, the board or court shall consider the petition and hear all interested parties.

Upon said hearing, if it shall appear that the engineer's original estimate was erroneous and should be corrected, or that the plans and specifications could be changed in a manner materially affecting the cost of the improvement without interfering with the efficiency thereof, and further, that upon said correction or modification, a contract could be let within the 30 percent limitation then the board or court may, by order, authorize the engineer to amend his report. If the changes recommended by the engineer in any manner affect

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the amount of damages to any property, the viewers' report shall be referred back to the viewers to re-examine the damages and report the same to the board or court.

The board or court may continue the hearing to give the engineer or the viewers additional time for the making of their amended reports and in such case the jurisdiction of the board or court shall continue in all respects at the adjourned hearing.

Upon said hearing the board or court shall have full authority to reopen the original order establishing said system, and to set said order aside, and to consider the amended engineer's report and the amended viewers' report, if any, and to make findings and an order thereon the same as is provided in section 12. All proceedings thereafter taken shall be the same as is provided upon the original findings and order of the board or court.

Sec. 15. [116A.15] CONTRACT AND BOND. Subdivision 1. **PROVISIONS.** The contract and bond to be executed and furnished by the contractor shall be attached. The contract shall contain the specific description of the work to be done, either expressly or by reference to the plans and specifications, and shall provide that the work shall be done and completed as provided in the plans and specifications and subject to the inspection and approval of the engineer. The county attorney, the engineer, and the attorney for the petitioners shall prepare the contract and bond. The contractor shall make and file with the auditor or clerk a bond, with good and sufficient surety, to be approved by the auditor or clerk, in a sum not less than 100 percent of the contract price of the work. Every such contract and bond shall embrace all the provisions required by this act and provided by law for bonds given by contractors for public works, and shall be conditioned as provided by statute in case of public contractors for the better security of the contracting county or counties and of parties performing labor and furnishing material in and about the performance of the contract. It shall be provided that time will be of the essence of the contract, and that if there be any failure to perform the work according to the terms of the contract within the time therein limited, originally or by extension, the contractors shall forfeit and pay the county or counties a certain sum to be named therein, as liquidated damages. Such sum shall be fixed by the auditor or auditors for each day that such failure shall continue. The bond shall provide that the bondsmen shall be liable for all damages resulting from any such failure, whether the work be resold or not, and that any person or corporation, public or private, showing himself injured by such failure, may maintain an action upon such bond in his own name, and actions may be successive in favor of all persons so injured; provided, however, that the aggregate liability of the surety for all such damages shall in no event exceed the amount of said bond. Such contractor shall be considered a public officer, and such bond an official bond within the meaning of the

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statutory provisions construing the official bonds of public officers as security to all persons, and providing for actions on such bonds by any injured party.

Subd. 2. CHANGES DURING CONSTRUCTION. The contract shall give the engineer the right, with the consent of the board or court, to modify his reports, plans and specifications as the work proceeds and as circumstances may require. It shall provide that the increased cost resulting from such changes will be paid by the county to the contractor at not to exceed the price for like work in the contract. No change shall be made that will substantially impair the usefulness of any part of the water or sewer system or substantially alter its original character or increase its total cost by more than ten percent of the total original contract price.

Subd. 3. CONTRACT WITH FEDERAL UNIT. In case all or any portion of the work is to be done by the United States, or any of its agencies, no such bond or contract need be attached as to that portion of the work, but a contract shall be attached between the local governmental units concerned and the United States, or its appropriate agency, containing such terms, conditions, provisions and guaranties as the United States or its agencies may require before proceeding with said work.

Sec. 16. [116A.16] APPORTIONMENT OF COST. The cost of any improvement, or any part thereof, may be assessed upon property benefited by the improvement, based upon the benefits received, whether or not the property abuts on the improvement or whether or not any part of the cost of the improvement is paid from the county state aid highway fund, the municipal state aid street fund, or the trunk highway fund. The area assessed may be less than but may not exceed the area proposed to be assessed as stated in the notice of hearing on the improvement.

Sec. 17. [116A.17] ASSESSMENT PROCEDURE AND FINAL HEARING. Subdivision 1. **CALCULATION, NOTICE.** At any time after a contract is let, the expense incurred or to be incurred in its making shall be calculated under the direction of the board or court. The county auditor, with the assistance of the engineer or other qualified person selected by the board or court shall calculate the proper amount to be specially assessed for the improvement against every assessable lot, piece or parcel of land, without regard to cash valuation. The proposed assessment roll shall be filed with the county auditor and open to public inspection. In a judicial proceeding the assessment roll shall be filed with the county auditor in each county wherein assessments are to be levied. The auditor or clerk shall then, under the board's or court's direction, publish notice of a hearing in the official papers covering the area of the improvement to consider the proposed assessment. The notice shall be published in the newspaper at least once and shall be mailed to the owner of each

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parcel described in the assessment roll. For the purpose of giving mailed notice under this subdivision, owners shall be those shown to be such on the records of the county auditor or, in any county where tax statements are mailed by the county treasurer, on the records of the county treasurer; but other appropriate records may be used for this purpose. Publication and mailing shall be no less than two weeks prior to the hearing. Except as to the owners of tax exempt property or property taxed on a gross earnings basis, every property owner whose name does not appear on the records of the county auditor or the county treasurer shall be deemed to have waived the mailed notice unless he has requested in writing that the county auditor or county treasurer, as the case may be, include his name on the records for such purpose. The notice shall state the date, time, and place of the meeting, the general nature of the improvement, the area proposed to be assessed, that the proposed assessment roll is on the file with the auditor, and that written or oral objections thereto by any property owner will be considered.

Subd. 2. ADOPTION; INTEREST. At the hearing or at any adjournment thereof the board or court shall hear and pass upon all objections to the proposed assessment, whether presented orally or in writing. The board or court may amend the proposed assessment as to any parcel and by resolution adopt the same as the special assessment against the lands named in the assessment roll. Notice of any adjournment of the hearing shall be adequate if the minutes of the meeting so adjourned show the time and place when and where the hearing is to be continued, or if three days notice thereof be published in the newspaper. The assessment, with accruing interest, shall be a lien upon all private and public property included therein, from the date of the resolution adopting the assessment, concurrent with general taxes; but the lien shall not be enforceable against public property as long as it is publicly owned, and during such period the assessment shall be recoverable from the owner of such property only in the manner and to the extent provided in section 435.19. All assessments shall be payable in equal annual installments extending over such period, not exceeding 30 years. The first installment shall be payable on the first Monday in January next following the adoption of the assessment unless the assessment is adopted too late to permit its collection during the following year. All assessments not paid in full within 30 days from the date of confirmation of the assessments shall bear interest at the ~~rate~~ fixed by the board or court, but not exceeding eight percent per annum. To the first installment shall be added interest on the entire assessment from the date of levying the assessment until December 31 of the year in which the first installment is payable. To each subsequent installment shall be added interest for one year on all unpaid installments. Alternatively, special assessments may be made payable in equal annual installments including principal and interest, each in the amount annually required to pay the principal over such period with interest

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at such rate as previously determined not exceeding the maximum period and rate specified. In this event no prepayment shall be accepted without payment of all installments due to and including December 31 of the year of prepayment, and the original principal amount reduced only by the amounts of principal included in such installments, computed on an annual amortization basis.

Subd. 3. ASSESSMENT ROLL AND PREPAYMENT. After the adoption of the assessment the auditor shall prepare a final assessment roll with each installment of the assessment, and interest thereon, set forth separately, and shall extend same on the proper tax lists of the county. All assessments and interest thereon shall be collected and paid over in the same manner as other county taxes. The owner of any property so assessed may, at any time pay the whole of the assessment on such property, with interest accrued to the date of payment, except that no interest shall be charged if the entire assessment is paid within 30 days from the adoption thereof; and, except as hereinafter provided, he may at any time prior to November 15 of any year prepay the whole assessment remaining due with interest accrued to December 31 of the year in which said prepayment is made.

Subd. 4. COLLECTION; TAX EXEMPT PROPERTY. On the confirmation of any assessments the auditor shall notify the county board of commissioners the amount payable by any county and shall mail a notice to the clerk or recorder of any other political subdivision specifying the amount payable by the political subdivision, and to the owner of any right of way at its principal office in the state, a notice specifying the amount payable on account of any right of way. The amount payable on account of any right of way or public property shall be payable to the water or sewer system's special fund and shall be payable in like installments and with like interest and penalties as provided for in reference to installments payable on account of assessable real property, except that interest accruing shall not begin to run until the notice provided in this subdivision has been properly given and 30 days thereafter have elapsed. The governing body of any such political subdivision shall provide for the payment of these amounts and shall take appropriate action to that end. If the assessment is not paid in a single installment, the auditor shall annually mail to the owner of any right of way and, as long as the property is publicly owned, to the owner of any public property a notice stating that an installment is due and should be paid to the water or sewer district's special fund. The auditor may collect the amount due on account of the right of way of any railroad or privately owned public utility by distress and sale of personal property in the manner provided by law in case of taxes levied upon personal property or by suit brought to enforce the collection of this indebtedness unless a different method of collecting such amounts is provided for by any contract between the owner of any right of way and the board or court.

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Sec. 18. [116A.18] **SUPPLEMENTAL ASSESSMENTS; REASSESSMENT.** Subdivision 1. **SUPPLEMENTAL ASSESSMENTS.** The county board or court may make supplemental assessments to correct omissions, errors, or mistakes in the assessment relating to the total cost of the improvement or any other particular. A supplemental assessment shall be preceded by personal or mailed notice to the owner of each parcel included in the supplemental assessment and a hearing as provided for the original assessment.

Subd. 2. **REASSESSMENT.** When an assessment is, for any reason, set aside by a court of competent jurisdiction as to any parcel or parcels of land, or in event the board or court finds that the assessment or any part thereof is excessive, or determines on advice of the county attorney that the assessment or proposed assessment or any part thereof is or may be invalid for any reason, the board or court may, upon notice and hearing as provided for the original assessment, make a reassessment or a new assessment as to such parcel or parcels.

Subd. 3. **REAPPORTIONMENT UPON LAND DIVISION.** When a tract of land against which a special assessment has been levied is thereafter divided or subdivided by plat or otherwise, the board or court may, on application of the owner of any part of the tract or on its own motion equitably apportion among the various lots or parcels in the tract all the installments of the assessment against the tract remaining unpaid and not then due if it determines that such apportionment will not materially impair collection of the unpaid balance of the original assessment against the tract. The board or court may, and if the special assessment has been pledged to the payment of improvement warrants shall, require the owner or owners, as a condition of such apportionment, to furnish a satisfactory surety bond fully protecting the county against any loss resulting from failure to pay any part of the reapportionment assessment when due. Notice of such apportionment and of the right to appeal shall be mailed to or personally served upon all owners of any part of the tract. Within 30 days after the mailing or service of the notice of such apportionment any such owner may appeal as provided in section 16 of this act.

Sec. 19. [116A.19] **APPEALS.** Subdivision 1. **PROCEDURE.** Any party aggrieved may appeal to the district court from an order of the board or court made in any proceeding.

(a) To render the appeal effectual, the appellant shall file with the auditor or clerk within 30 days after the filing of such final order a notice of appeal which shall state the particular damages appealed from and the ground upon which the appeal is taken. The notice of appeal shall be accompanied by an appeal bond to the county where the property is located of not less than \$250 with sufficient surety to be approved by the auditor or clerk, conditioned that the appellant

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will duly prosecute the appeal and pay all costs and disbursements which may be adjudged against him and abide the order of the court. Within 30 days after such filing, the auditor, in case of a county water or sewer improvement proceeding, shall return and file with the clerk of the district court the original notice and appeal bond.

(b) The issues raised by the appeal shall stand for trial by jury and shall be tried and determined at the next term of the district court held within the county in which the proceedings were commenced, or in such other county in which the appeal shall be heard, beginning after the filing of the appeal; and shall take precedence of all other matters of a civil nature in court. If there be more than one appeal triable in one county, the court may, on its own motion or upon the motion of a party in interest, consolidate two or more appeals and try them together, but the rights of the appellants shall be separately determined. If the appellant fails to prevail, the cost of the trial shall be paid by the appellant. In case of appeal as to damages to property situated in the county other than the county where the sewer or water proceedings are pending, and if the appellant so requests, the trial shall be held at the next term of the district court of the county wherein the lands are situated. In such case, the clerk of the district court where the appeal is filed, shall make, certify and file in the office of the clerk of the district court of the county where the trial is to be had, a transcript of the papers and documents on file in his office in the proceedings so far as they pertain to the matters on account of which the appeal is taken. After the final determination of such appeal, the clerk of the district court where the action is tried, shall certify and return the verdict to the district court of the county where the proceedings were instituted.

(c) The clerk of the district court shall file a certified copy of the final determination of any such appeal with the auditor of the county affected.

Subd. 2. EFFECT OF DETERMINATION. In all cases of appeal, the amount awarded by the jury as finally determined shall stand for and in the place of the amount from which the appeal was taken.

Subd. 3. APPEAL FROM ORDERS. Any party aggrieved thereby may appeal to the district court of the county where the proceedings are pending from any order made by the county board dismissing the petition for any water or sewer system or establishing or refusing to establish any water or sewer system or the assessment of benefits. The appellant shall serve notice of appeal and give bond as provided in subdivision 1. Upon appeal being perfected, it may be brought on for trial by either party upon ten days notice to the other, and shall then be tried by the court without a jury. The court shall examine the whole matter and receive evidence to determine whether the findings made by the county board can be sustained. At the trial

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the findings made by the county board shall be prima facie evidence of the matters therein stated and the order of the county board shall be deemed prima facie reasonable. If the court shall find that the order appealed from is lawful and reasonable, it shall be affirmed. If the court finds that the order appealed from is arbitrary, unlawful, or not supported by the evidence, it shall make such order to take the place of the order appealed from as is justified by the record before it or remand such matter to the county board for further proceeding before the board. After determination of the appeal, the county board shall proceed in conformity therewith.

Subd. 4. **APPEAL TO SUPREME COURT.** Any party aggrieved by a final order or judgment rendered on appeal to the district court, or by the order made in any judicial improvement proceeding dismissing the petition therefor or establishing or refusing to establish any judicial improvement or assessing benefits, may appeal therefrom to the supreme court in the manner provided in civil actions. Such appeal shall be made and perfected within 30 days after the filing of the order or entry of judgment. The notice of appeal shall be served on the clerk of the district court and need not be served on any other person.

Sec. 20. **[116A.20] BOND ISSUES.** Subdivision 1. The county board of each county wherein properties are located which are assessed or to be assessed for benefits by reason of the construction of any water or sewer system, is authorized, at any time after the execution of a contract for the construction of any system or portion thereof, to issue the bonds of the county in such amount as may be necessary to defray, in whole or in part, the cost of establishing and constructing the system. The county board may include in a single issue bonds for two or more systems, but the total amount thereof shall not exceed the total cost of the system or systems, including all expenses incurred and to be incurred in connection therewith, as ascertained or estimated by the board at the time of issuance of the bonds. The board may in like manner issue bonds to pay the cost of improvement or extension of any system or systems, when ordered and contracted for in accordance with sections 12 and 13. It may also issue bonds to refund outstanding bonds issued pursuant to this section, in accordance with Minnesota Statutes, Chapter 475.

Subd. 2. Such bonds shall be sold and issued in accordance with Minnesota Statutes, Chapter 475, as amended, and shall pledge the full faith, credit, and resources of the county for the prompt payment of the principal and interest thereof, but shall be primarily payable from the special assessments and revenues to be credited to the funds of the systems financed by the bonds or from a common water and sewer improvement bond redemption fund of the county. An election shall be required to authorize obligations to be issued under this act if less than 80 percent of the cost of the improvement referred to in section 16 hereof is to be assessed against the property benefited by

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the improvement. The common water and sewer improvement bond redemption fund may be created by resolution of the county board as a debt redemption fund for the payment of any or all bonds issued under the provisions of this act. The board may further secure the bonds by a pledge of any or all revenues from the system or systems financed thereby to the debt redemption fund, and a covenant that rates and charges shall be established for the service of such systems, sufficient to pay all costs of operation and maintenance thereof and to produce net revenues adequate, with special assessments received in the fund, to pay all of the bonds and interest thereon when due.

Subd. 3. The bonds shall be payable at such time or times, not to exceed 30 years from their date, and bear such rate or rates of interest not exceeding eight percent per annum, payable annually or semi-annually as the county board shall by resolution determine. The years and amounts of principal maturities shall be such as in the opinion of the county board are warranted by the anticipated collections of the water and sewer improvement assessments without regard to any limitations on such maturities imposed by Minnesota Statutes, Section 475.54.

Subd. 4. Each bond shall contain a recital that it is issued by authority of and in strict accordance with this act. The recital shall be conclusive in favor of the holders of the bonds, that the water or sewer improvement has been properly established, that property within the county is subject to assessment for benefits in amount not less than the amount of the bonds, and that all proceedings relative to the construction of the system or systems financed by the bonds have been or will be taken according to law.

Subd. 5. The board shall pay the principal of and interest on bonds issued under the provisions of this act out of any available funds in the county treasury when the moneys on hand in the fund from which they are primarily payable are insufficient therefor; but the funds from which said moneys have been taken shall be replenished with interest for the time actually needed at the rate of eight percent per annum from assessments on such water or sewer system or from the sale of funding bonds as hereinafter provided.

Sec. 21. [116A.21] **EMERGENCY CERTIFICATES OF INDEBTEDNESS.** If in any budget year the receipts of tax and other revenues should from some unforeseen cause become insufficient to pay current expenses, or if any calamity or other public emergency should cause the necessity of making extraordinary expenditures, the board may make an emergency appropriation of an amount sufficient to meet the deficiency and may authorize the issuance, negotiation, and sale of certificates of indebtedness in this amount. The board shall forthwith levy on all taxable property in the affected water or sewer improvement area a tax sufficient to pay the certificates and interest thereon, and shall appropriate all collections of such tax to a

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special fund created for that purpose. The certificates may mature not later than April in the year following the year in which the tax is collectible.

Sec. 22. [116A.22] SERVICES CHARGES; A SPECIAL ASSESSMENT AGAINST BENEFITED PROPERTY. In addition to any other method authorized by law or charter, the board of any county may provide for the collection of unpaid special charges for all or any part of the cost of or the operation of a water or sewer system, as a special assessment against the property benefited. The board may by ordinance adopt regulations consistent with this section to make this authority effective. Any special assessment levied under this section shall be payable in a single installment.

Sec. 23. [116A.23] AUTHORITY TO ACCEPT GIFTS AND GRANTS. The county boards may accept gifts, may apply for and accept grants or loans of money or other property from the United States, the state, or any person for purposes of constructing, operating and maintaining a water or sewer or combined system, may enter into any agreement required in connection therewith, and may hold, use, and dispose of such money or property in accordance with the terms of the gift, grant, loan or agreement relating thereto.

Sec. 24. [116A.24] APPOINTMENT AND POWERS OF WATER AND SEWER COMMISSION. Subdivision 1. In all proceedings wherein a board or court orders the establishment of a water or sewer or combined water or sewer system, the board or boards may after the issuance of the order appoint a water or sewer or water and sewer commission. The court shall file notice with the auditors in each county wherein a judicial proceeding has established a system. Upon receiving notice the boards may appoint commission members. The commission shall have not less than five members and not more than 11. Members shall be appointed at large from within the area served by the improvement. Commission members shall serve at the pleasure of the county board or boards of the counties served by the improvement. When multicounty systems are formed, commission membership shall be apportioned among counties on the basis of population served by the improvement or system.

Subd. 2. Subject to the approval of the board or boards, the water or sewer or water and sewer commission or county board may do all things necessary to construct, operate and maintain a system including but not limited to the following:

(a) Employ on such terms as it deems advisable, persons or firms performing engineering, legal or other services of a professional nature; require any employee to obtain and file with it an individual bond or fidelity insurance policy; and procure insurance in such amounts as it deems necessary against liability of the board or its officers and employees or both, for personal injury or death and

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property damage or destruction, with the force and effect stated in chapter 466, and against risks of damage to or destruction of any of its facilities, equipment, or other property as it deems necessary.

(b) Construct or maintain its systems or facilities in, along, on, under, over, or through public streets, bridges, viaducts, and other public rights of way without first obtaining a franchise from any local government unit having jurisdiction over them; but such facilities shall be constructed and maintained in accordance with the ordinances and resolutions of any such government unit relating to construction, installation, and maintenance of similar facilities in such public properties and shall not obstruct the public use of such rights of way.

(c) Enter into any contract necessary or proper for the exercise of its powers or the accomplishment of its purposes.

(d) Have the power to adopt rules and regulations relating to the establishment of water or sewer rentals or user fees as may be deemed advisable and the operation of any system operated by it, and may provide penalties for the violation thereof not exceeding the maximum which may be specified for a misdemeanor. Any rule or regulation prescribing a penalty for violation shall be published at least once in a newspaper having general circulation in the area.

(e) Act under the provisions of section 471.59, or any other appropriate law providing for joint or cooperative action between government units.

(f) Acquire by purchase, lease, condemnation, gift, or grant, any real or personal property including positive and negative easements and water and air rights, and it may construct, enlarge, improve, replace, repair, maintain, and operate any system determined to be necessary or convenient for the collection and disposal of sewage or collection, treatment, and distribution of water in its jurisdiction. Any local government unit and the commissioners of highways and natural resources are authorized to convey to or permit the use of any such facilities owned or controlled by it by the board or commission, subject to the rights of the holders of any bonds issued with respect thereto, with or without compensation, without an election or approval by any other government agency. The board or commission may hold such property for its purposes, and may lease any such property so far as not needed for its purposes, upon such terms and in such manner as it shall deem advisable. Unless otherwise provided, the right to acquire lands and property rights by condemnation shall be exercised in accordance with sections 117.01 to 117.202, and shall apply to any property or interest therein owned by any local government unit; provided, that no such property devoted to an actual public use at the time, or held to be devoted to such use within a reasonable time, shall be so acquired unless a court of competent

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jurisdiction shall determine that the use proposed by the commission is paramount to such use. Except in case of property in actual public use, the board or commission may take possession of any property for which condemnation proceedings have been commenced at any time after the issuance of a court order appointing commissioners for its condemnation.

(g) Contract with the United States or any agency thereof, any state or agency thereof, or any local government unit or governmental agency or subdivision, for the joint use of any facility owned by the board or such entity, for the operation by such entity of any system or facility of the board, or for the performance on the board's behalf of any service, on such terms as may be agreed upon by the contracting parties.

Sec. 25. [116A.25] **PROPERTY EXEMPT FROM TAXATION.** Any properties, real or personal, owned, leased, controlled, used, or occupied by a water or sewer or water and sewer commission or board for any purpose referred to in this act are declared to be acquired, owned, leased, controlled, used and occupied for public, governmental, and municipal purposes, and shall be exempt from taxation by the state or any political subdivision of the state, provided that such properties shall be subject to special assessments levied by a political subdivision for a local improvement in amounts proportionate to and not exceeding the special benefit received by the properties from such improvement. No possible use of any such properties in any manner different from their use as part of a distribution or disposal system at the time shall be considered in determining the special benefit received by such properties. All such assessments shall be subject to final confirmation by the county board or boards in whose jurisdiction the system is constructed and whose determination of the benefits shall be conclusive upon the political subdivision levying the assessment. All bonds, certificates of indebtedness or other obligations of the commission or boards, and the interest thereon, shall be exempt from taxation by the state or any political subdivision of the state.

Sec. 26. In Olmsted county only, before a contract for improvements is let, the county board shall request the creation of a joint district comprised of a petitioned area and a city or village. The governing body of the county, city or village shall by resolution filed with the county board determine whether it is feasible to create a joint district for the purpose of providing water or sewer service to the petitioned area. If the resolution of the city or village approves the creation of a joint district, the county board without creation of a commission may proceed to make the improvements and issue bonds as provided in this act. Any city or village in Olmsted county comprising part of a joint district may by ordinance annex the petitioned area of such joint district at any time after the fifth year after creation of the joint district whether or not the area abuts the city or village. Annexation under this section is final upon filing a

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copy of the ordinance with the Minnesota municipal commission, the clerk of the town where the annexed land is situated, and county auditor and the secretary of state.

Sec. 27. [116A.26] **POLLUTION CONTROL AGENCY.** No action taken under this act shall be inconsistent with Minnesota Statutes, Chapters 115 or 116, or lawful standards, regulations, orders or permits promulgated or issued thereunder.

Approved June 7, 1971.

CHAPTER 917—H.F.No.2094

An act relating to the number of jurors in civil and criminal actions; impaneling the jurors; and challenges of the panel or individual jurors; amending Minnesota Statutes 1969, Sections 593.01, 546.09, and 546.10; and repealing Minnesota Statutes 1969, Section 593.15.

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

Section 1. Minnesota Statutes 1969, Section 593.01, is amended to read:

593.01 JURIES; SIZE; IMPANELING; CHALLENGES; PETIT JURY. Subdivision 1. Notwithstanding any law or rule of court to the contrary, a petit jury is a body of ~~12~~ six men or women, or both, impaneled and sworn in ~~the district~~ any court to try and determine, by a true and unanimous verdict, any question or issue of fact in a civil or criminal action or proceeding, according to law and the evidence as given them in court.

Subd. 2. The provisions of subdivision 1, as to the number of jurors does not apply to a criminal action where the offense charged is a gross misdemeanor or a felony. In that event the petit jury is a body of 12 persons, unless the defendant consents to a jury of six.

Sec. 2. Minnesota Statutes 1969, Section 546.09, is amended to read:

546.09 JURY, HOW IMPANELED; BALLOTS; RULES OF COURT; EXAMINATION; CHALLENGES. When a jury issue is to be tried the clerk shall draw from the jury box ballots containing the names of jurors until the jury is completed or the ballots are

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