

by the county auditor conditioned to pay all expenses already made in the proceedings had for the construction of such drain, and also all expenses to be made after such re-submission, in case the county commissioners shall fail to lay out and establish such drain.

SEC. 34. All acts and parts of acts inconsistent with this act are hereby repealed.

Inconsistent acts repealed.

SEC. 35. This act shall take effect and be in force from and after its passage.

When act to take effect.

Approved March 2, 1887.

CHAPTER 98.

[H. F. No. 332.]

AN ACT TO PROVIDE FOR THE FORMATION AND ORGANIZATION OF DRAINAGE DISTRICTS FOR THE DRAINING OF WET AND OVERFLOWED LANDS FOR AGRICULTURAL AND SANTARY PURPOSES.

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

SECTION 1. Whenever the Board of County Commissioners of any county in this state deem it conducive to the public health, covenience and welfare and of public benefit and utility to drain the wet or overflowed lands in any portion of their county they shall have the power at any regular session to organize such county into a drainage district, and upon such organization the same shall be known and designated as the ".....County Drainage district." Such organization shall be effected by an order adopted by a majority vote of the whole number of commissioners, which order shall be in substantially the following form:

Commissioners "may form county drainage districts" how organized

STATE OF MINNESOTA, }
COUNTY OF ----- } ss.

The Board of County Commissioners of the County of.....(naming the county) do hereby order and determine that the said county be and the same is hereby organized into a drainage district under and by virtue of the provisions of Chapter.....of the general laws of 1887, (citing this act.)

Form of order.

Dated..... Signed.....
Attest. Chairman.

.....
County Auditor.

Order to be recorded in minutes of commissioners

Which order shall be signed by the chairman and attested by the auditor and recorded at length in the records of the proceedings of the county commissioners, and in the drainage record hereinafter provided for; and thereupon such county shall become a drainage district without any further act or ceremony and shall be deemed to have accepted all the provisions of this act and to be bound by all its obligations and requirements.

County commissioners to constitute board of drainage commissioners

SEC. 2. The board of county commissioners of any county so organized into a drainage district as provided in the preceding section shall be the drainage commissioners of such district and shall be known by the corporate name of the "Board of Drainage Commissioners of County Drainage District" and by that name shall be a body corporate with power to sue and be sued, plead and be impleaded, contract and be contracted with. They shall have the general supervision and control of all drainage matters pertaining to their district subject to the provisions and requirements of this act. While acting as a drainage board they shall hold meetings for the transaction of drainage business separate and distinct from their meetings as a board of county commissioners and shall be paid for their services as a drainage board, the same *per diem* and mileage as is now allowed them by law for their services as county commissioners, which fees shall be paid by the treasurer of the county upon the warrant of the clerk of the drainage board out of the drainage fund hereinafter provided for; but they shall in no case draw pay for the same day in both capacities.

The chairman of the board of county commissioners shall be *ex-officio* chairman of the board of drainage commissioners.

Auditor clerk of commission.

SEC. 3. The county auditor of each county so organized into a drainage district shall be the clerk of the board of drainage commissioners of his county. He shall be the custodian of all books, papers and records pertaining to drainage matters in his county and shall keep in a well bound book to be known as the "Drainage Record," a record of all the proceedings of the board of drainage commissioners of his county and shall enter at length therein all orders and findings of the drainage commissioners pertaining to the subject of drainage.

Compensation of clerk.

In addition to the salary allowed him by law as county auditor he shall be paid for his services as clerk of such board of drainage commissioners, three dollars (\$3.) per day for each day such board shall be in session, ten (10) cents per folio for the records he is required to make by the provisions of this act, five (5) cents for filing each petition, order or other paper which he shall be required to file and preserve as such clerk, and a sum equal to one (1) per cent. in

each year of the amount raised by special assessment for drainage purposes in his county for such year as compensation for all other services herein required of him; all such fees and compensation to be audited and allowed to him by the drainage board of his county and paid out of the drainage fund hereinafter provided for.

SEC. 4. The county treasurer of each county so organized into a drainage district shall be the treasurer of such district. He shall give a bond to the board of drainage commissioners of his county with sufficient sureties to be approved by such board and in such amount as they shall determine, but in no case for less than the whole amount of money likely to come into his hands in any one year as such treasurer. Said bond shall be conditioned that such treasurer will faithfully discharge the duties of his office and that he will receive, safely keep, and pay over, according to law, all moneys which shall come into his hands as treasurer of such drainage district. He shall receive and safely keep all moneys directed by law to be paid him as such treasurer and shall pay out the same only on the warrant of the drainage clerk or order of the board of drainage commissioners signed by the chairman and attested by the clerk thereof. He shall keep the funds of the drainage district separate and distinct from those of the county and keep proper accounts of the same in suitable books to be provided by the drainage commissioners and they may at any time require the treasurer to exhibit and count in their presence the funds in his hands belonging to the drainage district when the board deem it advisable. They may make the same arrangements for the deposit of the funds of the drainage district with any bank or banks as are authorized by law for such deposits of county funds. As compensation for the services required of him by this act the treasurer shall be allowed two (2) per cent. on all sums of money coming into his hands as such treasurer from the proceeds of the assessments provided for in this act, the same to be audited and allowed to him, out of the drainage fund of his county by the board of drainage commissioners.

Treasurer of
commission—
bond to be
given.

Compensation
of treasurer.

SEC. 5. The board of drainage commissioners shall be a board of audit for their drainage district and shall audit and allow all legal accounts, claims and demands against their drainage district except their own compensation. Before any such account, claim or demand shall be audited or allowed it shall be itemized and duly verified by the claimant, his agent or attorney to the effect that the same is a just and true demand against such drainage district, that the same is due and that no part thereof has been paid.

Claims—how
audited.

SEC. 6. It shall be the duty of the board of county com-

Supplies furnished at expense of county.

missioners of any county so organized into a drainage district to supply at the expense of their county the clerk of the board of drainage commissioners and the treasurer of the drainage district with such records, account books and stationary as those officers may require for keeping the records and accounts and transacting the necessary business of the drainage district of the county.

Sub-drainage districts may be organized on petition.

SEC. 7. In any county organized into a drainage district under the provisions of this act a majority in number of the owners of land within a tract or territory, in such county, having a common drainage outlet who own one-third ($\frac{1}{3}$) or more in area of the lands to be drained or benefited and who desire to construct a drain or drains, ditch or ditches, embankment or embankments, or to establish in said tract having such common drainage outlet a combined system of drainage and protection from overflow for agricultural and sanitary purposes and maintain the same by special assessments upon the lands and property benefited thereby, may file with the clerk of the board of drainage commissioners, of the county in which such lands are situated a petition signed by them, setting forth a general description of the lands proposed to be effected, with the names of the owners and their post-office address when known, a general description of the proposed work and that the petitioners desire that a sub-drainage district may be organized embracing the lands therein mentioned for the purpose of constructing repairing and maintaining a drain or drains, ditch or ditches, embankment or embankments or a combined system of drainage and protection from overflow or all or either within said tract for agricultural and sanitary purposes by special assessments upon the lands and property to be benefited thereby. Such petition shall be accompanied by a bond signed by two or more free-holders in the sum of two hundred and fifty dollars (\$250), payable to the board of drainage commissioners of the drainage district in which such tract is situated which bond shall be approved by said clerk and conditioned to pay all expenses of the proceedings under such petition in case said board of drainage commissioners shall fail to establish the sub-drainage district prayed for in said petition.

Bond to accompany petition.

Duty of clerk on presentation of petition for sub-drainage district.

SEC. 8. It shall be the duty of said clerk to receive and file said petition and bond in his office and he shall thereupon call a meeting of the board of drainage commissioners of his drainage district to be held at his office not more than thirty (30) nor less than twenty (20) days thereafter. The clerk shall give notice of the time and place of such meeting by causing a written or printed notices signed by him to be posted in at least three dif-

ferent places within such proposed sub-drainage district and by mailing a copy of such notice to each of the town clerks and members of the town boards of supervisors of each town in which any of the lands proposed to be included in such sub-drainage district are situated, at least ten (10) days prior to the time of such meeting. He shall also file a copy of such notice in his office and record the same in the drainage record.

SEC. 9: It shall be the duty of the board of drainage commissioners of such drainage district to meet at the time and place mentioned in such notice and the clerk shall lay before them the said petition and all other papers in the case and they shall thereupon proceed to ascertain whether said petition has the signatures of the required number of owners of land as required by this act and if such signers are owners of one-third ($\frac{1}{3}$) or more in area of the lands situated in said proposed sub-drainage district; and the affidavits of two (2) or more credible signers of said petition, that they have examined the same, are acquainted with the locality of the proposed sub-drainage district and that they believe that said petition is signed by the required number of owners of lands in said proposed sub-drainage district and that the said signers are the owners of one-third ($\frac{1}{3}$) or more of the lands therein, may be taken as *prima facie* evidence of the facts set forth in said petition as against the owners of the lands in the proposed sub-drainage district and as conclusive evidence against all persons signing said petition, of all the facts set forth in said petition and of the necessity for the organization of such proposed sub-drainage district thereunder. At such meeting any other owners of lands within said proposed sub-drainage district shall be permitted to sign said petition if they so desire. Any person or persons owning land in said proposed sub-drainage district whose names do not appear upon said petition may at said time and place appear by himself or attorney and controvert any material statements in said petition; and for the purpose of such hearing the board shall have full power to administer oaths, to examine all witnesses produced and shall decide all questions that may arise at such hearing at such time and place and make a written statement of their findings to be filed with the clerk and recorded in the drainage record. If they find that the petition has not been signed as herein required they shall dismiss the same. For cause shown the board may adjourn from day to day until such hearing is concluded.

Duty of drainage commission on petition for sub-drainage district.

SEC. 10. If said board of drainage commissioners shall find in favor of said petition they shall immediately by order appoint three (3) disinterested persons, residents of the county in which such proposed sub-drainage district

Commissioners to appoint viewers.

is situated as viewers, to meet at a time and place specified in said order preparatory to commencing their duties as herein specified. It shall be the duty of said clerk thereupon to deliver to said viewers a certified copy of the petition and the order of the board thereon who shall proceed at the time set in said order with a surveyor who shall be a civil engineer and who shall make an accurate survey of the proposed work, a map or plat of his survey, and a report of all estimates required of said viewers as a basis of their report to be made to the board of drainage commissioners as herein provided.

Duties of
viewers.

SEC. 11. The said viewers, while such survey and plat are being made or after the same have been completed shall have power to change the boundaries of such proposed sub-drainage district from the boundaries given in the petition, so as to include lands not embraced or exclude lands taken into said proposed sub-drainage district, and shall permit additional signatures to be made to the petition by any person or persons owning land in, or owning land desired to be taken into such proposed sub-drainage district to the end that a majority of the owners of the land in the proposed sub-drainage district as finally to be organized and who shall be owners, in the aggregate of one-third ($\frac{1}{3}$) or more in area of such land, shall have signed the petition, which facts said viewers shall find and put such finding in writing and the same shall be filed with the clerk who shall enter the same in his drainage record, which finding shall be conclusive.

Survey to be
made and
stakes to be set.

SEC. 12. If the viewers, after examination of the proposed work and consideration of the report of the engineer shall find in favor of the proposed work and determine to report in favor of the organization of the proposed sub-drainage district, they shall together with said engineer make an accurate survey of the proposed work and they shall cause stakes and monuments consecutively numbered to be set along the line or lines of the proposed drain or drains, ditch or ditches, embankment or embankments at each one hundred (100) feet and they shall make a computation of the total number of cubic yards of earth to be excavated and removed from such drain or drains, ditch or ditches, or the total number of cubic yards of earth to be used in raising such embankment or embankments and a detailed estimate of the cost of the whole work. They shall accurately describe, as the same is described upon the county tax duplicate each parcel of land to be assessed for the construction of the proposed work, giving the number of acres in each tract assessed and the estimated number of acres benefitted, the amount that each tract of land will be benefited or damaged by the construction of said work and the amount that each tract is assessed therefor, and

they shall in tabular form give the depth of the cut or height of the embankment, width at the bottom and width at the top at each one hundred (100) foot stake or monument of such drain, ditch or embankment, and said viewers shall also ascertain and give the names of the owners of the lands that are assessed for the construction of such work so far as they can be ascertained, upon reasonable inquiry and search of the public records of the county in which such lands are situated.

SEC. 13. All lands owned by any person or persons or by any corporation except the State of Minnesota or the United States which are benefitted by any of such work shall be assessed in proportion to the benefits for the construction thereof whether such work passes through or is partially located upon said lands or not; and the viewers in estimating the benefits to lands not traversed by any drain, ditch or embankment shall not consider what benefits such lands will receive after some other drain, ditch or embankment shall be constructed but only the benefit that will be received by reason of the drain, ditch or embankment then contemplated as it affords an outlet for the drainage of said lands or protection to the same from overflow; and any owner of land within the proposed sub-drainage district who signed the petition for the organization of such proposed sub-drainage district shall be forever barred from objecting that the lands of such owner situated in such sub-drainage district are not subject to assessments for benefits as provided in this act.

Lands to be assessed in proportion to benefits.

SEC. 14. Whenever any railroad company is benefitted by such drain, ditch or embankment such railroad shall be assessed its just proportion of benefits the same as lands benefitted are assessed, which assessments shall be collected from the owner of such railroad in the same manner as personal property taxes are collected by law.

Railroad companies to be assessed.

SEC. 15. Whenever any public highway is benefitted by such drain, ditch or embankment the county or town which is by law charged with the duty of keeping such highway in repair, shall be assessed with the amount of benefits accruing to such highway by reason of such drain, ditch or embankment and the amount thereof shall be collected by a general tax upon such town or county by the proper officer and when collected shall be paid into the treasury of the drainage district of the county for the benefit of the sub-drainage district to which it belongs.

Counties and towns to be assessed.

SEC. 16. The viewers shall estimate the damage to each tract of land, railroad or other property over and upon which any portion of any drain, ditch or embankment may be located, and the amount of such damages shall be added to the estimated cost of the proposed work and be included in the assessment to be made therefor.

Damages to be added to cost of work.

May divert line

SEC. 17. The viewers, if they find the line of any proposed drain, ditch or embankment is not such as best to effect the object sought or that the object of the proposed work can be effected as well in connection with a ditch or embankment *necessary* for the improvement of any highway already established, may proceed to establish the line of such drain, ditch or embankment in connection with such highway ditch, drain or embankment already constructed and make the same a part of the proposed work and the county or town which has constructed such highway drain, ditch or embankment shall be allowed a proper credit for the same in the manner hereinafter provided and in all cases in which the line of any drain, ditch or embankment is located along any highway already established, such work shall not be so constructed as to interfere with the free use of such highway for all purposes of travel thereon.

How viewers shall proceed.

SEC. 18. The viewers in making the special assessments for benefits shall proceed by classifying the lands in the proposed sub-drainage district in tracts of forty acres, more or less, according to the legal or recognized subdivisions on a graduated scale to be numbered according to the benefits to be received by the contemplated work and whenever any railroad or public highway is benefitted such benefit shall be assessed to the same upon the same scale as lands are assessed as near as practicable. The tracts of lands which will receive the most and about equal benefits shall be numbered one hundred (100) and such as all adjudge to receive less benefits shall be marked with a less number denoting its per cent. of benefits. This classification when established as hereinafter provided shall remain as a basis for such assessments as may be needed for the lawful and proper uses of such sub-drainage district. When such classification is completed it shall be properly tabulated and shown by a map which tabulation and map shall be made a part of the viewers report hereinafter provided for.

Damages, how paid.

SEC. 19. Every person or persons or corporation owning lands over or upon which any drain or drains, ditch or ditches, embankment or embankments shall be constructed under the provisions of this act shall be allowed adequate damages and compensation for the taking of the lands upon which such drain or drains, ditch or ditches, embankment or embankments are located and for the injuries to such lands caused thereby; and the board of county commissioners of the county in which such lands are situated shall order such damages to be paid out of the county treasury to the person or persons or corporation entitled thereto, and the amount of damages to which they are entitled shall be specified by said viewers in their report to the board of drain-

age commissioners as herein provided; and the county shall be reimbursed for such payment out of the drainage fund of the sub-drainage district for and on account of which such damages and compensation are paid.

SEC. 20. It shall be the duty of said viewers to perform the duties enjoined upon them by this act with all convenient speed and diligence and within fifteen (15) days after the completion thereof to make and file a full report of all their proceedings under their appointment, verified upon their oaths, with the clerk of the drainage district. If said viewers report in favor of the proposed work and that the same is of public benefit and utility and conducive to the public health; such reports shall contain an accurate map or plat of the proposed work showing the lines thereof and the stakes and monuments along the same, the width of the strip of land along the line of each drain, ditch or embankment necessary to be taken and used in the construction of such drain, ditch or embankment; a computation of the number of cubic yards of earth to be excavated and removed upon each one hundred (100) feet as shown by such stakes and monuments from such drain or drains, ditch or ditches and the number of cubic yards of earth to be used upon each one hundred (100) feet as shown by such stakes and monuments in raising such embankment or embankments, and the total number of cubic yards of earth to be excavated and removed to complete the whole of the proposed work and the detailed estimate of the cost of the whole work. Said report shall also contain an accurate description, as the same is described upon the county tax duplicate of each parcel of land benefited or damaged by the proposed work, giving the number of acres in each tract and the estimated number of acres in each tract benefited or damaged, as the case may be; the amount that each tract of land will be benefited or damaged by the construction of the proposed work; the amount that each tract is assessed therefor and the scale of per centage of benefits as provided for in section eighteen (18) of this act; also the depth of the cut or height of the embankment; width at the bottom and width at the top at each one hundred (100) foot stake or monument of such proposed drain, ditch or embankment; the names of the owners of the lands affected by the proposed work so far as they can be ascertained upon reasonable inquiry; all of which shall be in tabular form. In case the viewers find the proposed work not of public benefit or utility, they may report against the same, in which case their report need only state that they find the proposed work not to be of public benefit or utility.

Instructions to
viewers as to
report.

SEC. 21. A majority of the viewers shall be competent to perform the duties required of them by this act. *Provided*; That for work extending into more than one

Majority of
viewers may
act.

county, there shall be present a majority from each county interested; and any person appointed a viewer under the provisions of this act, shall qualify by taking and subscribing an oath, to faithfully discharge the duties of a viewer as prescribed by this act and while in the discharge of their duties they shall have the right to enter upon any lands within the proposed sub-drainage district for the purpose of making all surveys and estimates required of them.

Clerk to give
notice of time
and place of
meeting of
drainage
commissioners

SEC. 22. It shall be the duty of the clerk of such drainage districts on said report being filed, if it be in favor of the proposed work, to call a meeting of the board of drainage commissioners of such drainage district to be held at his office not more than forty (40) nor less than thirty (30) days after said report had been filed in his office. The clerk shall give notice of the time and place of such meeting by causing written or printed notices, signed by him as clerk, to be posted in at least six (6) different places within such proposed sub-drainage district and by mailing a copy of such notice to each town clerk and member of the town board of supervisors of each town in which any of the lands proposed to be included in such sub-drainage district are situated and to all non-resident owners of any of said lands whose post-office address is known to him or can be ascertained in the office of the auditor or treasurer of such county, at least twenty (20) days prior to the time of such meeting. Said notice shall contain a description of the lands by sections proposed to be included in such sub-drainage district and a statement that the viewers report is filed with the clerk; that the plat and description of the proposed work is on file with said report and that at the time and place mentioned in said notice the said report of the viewers will be acted upon by the board of drainage commissioners at which time and place any person interested may appear and contest the report of said viewers upon any and all matters therein affecting his interests.

Report of
viewers, how
considered.

SEC. 23. It shall be the duty of the board of drainage commissioners of such drainage district to meet at the time and place mentioned in said notice and the clerk shall lay before them the said report of the viewers for their consideration. They shall first ascertain if proper notice has been given of their meeting and if they so find they shall make such finding in writing and cause the same to be entered in the drainage record. If they find that such notice has not been properly given, they shall adjourn to such time as will give the clerk opportunity to complete service of notice of such meeting and the time to which the same has been adjourned. After the board shall have found that due notice of the time and place of their meeting has been given, they shall proceed to consider the report of said viewers. If any objections are made to the report of the

viewers, and any person or person or corporation appear for the purpose of contesting said report, the board shall proceed to hear and determine the same and for that purpose the board shall have full power and authority to administer oaths, to examine all witnesses produced and to decide all questions arising upon the consideration of said report and the objections made thereto by any person or persons interested, and the board may adjourn from day to day until such hearing is completed.

Objections.

SEC. 24. If upon the hearing it shall appear that the report ought to be modified in any particular, the board shall modify the same to conform to the equities in the premises. If after hearing and determining all questions arising thereupon, the board is of the opinion that the sub-drainage district petitioned for should be organized they shall make an order confirming the report of said viewers as made or as modified, if any modification has been made by the board, and organizing the land described in said report into a sub-drainage district to be known as Sub-Drainage District Number of the County Drainage District, which order shall be entered in the drainage record. If after such hearing the board is of the opinion that such sub-drainage district should not be organized, it shall make an order dismissing the proceedings, which order shall be entered in the drainage record.

Order of confirmation.

SEC. 25. Any person or persons or corporation owning any real estate within such proposed sub-drainage district aggrieved thereby, may appeal to the District Court of the proper county from such order and upon such appeal any or either of the following matters may be determined; *First*—Whether the assessment made for the construction of the proposed work upon any tract of land is in proportion to the benefits to be derived therefrom. *Second*—The amount of damages allowed to any person or persons or corporation. The party appealing shall file with the clerk of the drainage district an appeal bond in the sum of five hundred (500) dollars, with at least two freehold sureties to be approved by said clerk, conditioned that he will duly prosecute such appeal and pay all costs that may be adjudged against him in the District Court. *Provided*, That such appeal and appeal bond shall be filed with the clerk of such drainage district within thirty (30) days after such order of the board of drainage commissioners is made and after the lapse of thirty (30) days from the making of such order no appeal can be taken. Upon any appeal being taken the clerk of said drainage district shall within twenty (20) days thereafter make a complete transcript of the proceedings had before said board of drainage commissioners and of such appeal and appeal bond and certify the same to

Grounds and manner of appeal.

gether with a transcript of all papers filed in his office pertaining to the organization of the proposed sub-drainage district to the clerk of the District Court.

Appeal, how
tried.

SEC. 26. Said appeal shall be placed upon the court calendar and brought on for trial in the same manner and under the same rules as appeals from justice court are placed upon the calendar and brought on for trial and shall be tried and disposed of in the same manner as other civil actions. *Provided*, that the party appealing may waive a jury trial and the appeal shall thereupon be tried by the court.

Appeal, costs
of

SEC. 27. If the decision upon the trial of such appeal shall be in favor of the appellant judgment shall be rendered modifying or changing said report so as to fully protect the appellants rights in the premises either as to assessments or damages and the drainage district shall pay the costs of the appeal; but if the decision be against the appellant judgment shall be rendered dismissing the appeal and that the appellant pay all costs thereof; either party to such appeal to have the same right to appeal to the Supreme Court as parties in ordinary civil actions.

Compensation
of viewers and
engineer.

SEC. 28. The viewers shall receive as compensation for their services three dollars (\$3) per day for the time actually engaged in performing their duties under this act, and the engineer employed by said viewers shall receive five dollars (\$5) per day for his services. Such compensation to be paid out of the drainage fund of such sub-district upon the order of the board of drainage commissioners.

Supervisors,
how appointed.

SEC. 29. Upon making and filing the order confirming the report of the viewers and organizing such sub-drainage district, the board of drainage commissioners shall have full power and authority to cause to be constructed the drain or drains, ditch or ditches, embankment or embankments specified in said report, and to cause to be taken the lands shown by said report to be necessary for the construction of the drain or drains, ditch or ditches, embankment or embankments therein specified; and for that purpose shall appoint three suitable persons residing in or near such sub-drainage district, supervisors thereof, who shall have full power and authority to proceed with the construction of all drains, ditches and embankments specified in said report and to enter upon and take the lands shown therein to be necessary for the construction of such drains, ditches and embankments.

Duty of
Supervisors.

SEC. 30. It shall be the duty of the supervisors of such sub-drainage district to attend to the letting of all contracts for the construction of the work specified in said report, and to exercise a general care and supervision over the construction of the same, they shall have the general care and

oversight of all drains, ditches, and embankments constructed in their sub-drainage district under the provisions of this act, and shall perform such other duties as may be herein prescribed. They shall each take and file with the clerk of the drainage district an oath that they will faithfully perform the duties of supervisors of such sub-drainage district, and failure to file such oath within ten (10) days after notice of their appointment shall be deemed a refusal to serve, and the vacancy shall be filled by another appointment.

SEC. 31. The supervisors first appointed and qualified shall hold their offices until the second annual meeting of the board of drainage commissioners appointing them, after their appointment and until their successors are appointed and qualified.

Supervisors,
term of office.

SEC. 32. At their annual meeting to be held on the third (3d) Monday in October in each year after the organization of a sub-drainage district or districts; within their drainage district, the board of drainage commissioners shall appoint three (3) supervisors of each sub-drainage district organized under this act within their drainage district, the term of office of the supervisors of which has expired, such supervisors to have the same powers and duties and to be required to qualify in the same manner as the supervisors first appointed for said sub-drainage district, and to hold their offices for two (2) years and until their successors are appointed and qualified the board of drainage commissioners may at any time remove any supervisor within their drainage district whom they are satisfied is incompetent or has been guilty of wilfull neglect or misconduct in discharging the duties of his office, and in case of such removal shall immediately fill the vacancy. The supervisors of sub-drainage districts shall receive as compensation for their services two dollars (\$2) per day for the time they are actually engaged in the performance of their duties, to be paid out of the drainage fund of their sub-drainage district on the order of the board of drainage commissioners.

Supervisors,
compensation
of.

SEC. 33. As soon as practicable after any sub-drainage district has been organized and work ordered done therein, and the supervisors thereof have been appointed and have qualified, the supervisors of such sub-drainage district shall proceed with the construction of such work which shall be done under contract to be let to the lowest responsible bidder or bidders therefor. Before letting such contract they shall advertise for bids at least two (2) weeks in some newspaper of general circulation in the county wherein such work is to be done, and if the estimated cost of such work is five thousand dollars (\$5,000) or more also in some newspaper of general circulation published at the capital of the state. In such advertisement they shall

Work to be let
to lowest
bidder.

Advertisement.

Contracts.

name the limit of time within which such work shall be done, having due regard to the season of the year and the extent and general character of the work to be done. They may let the work in separate portions or the whole in one contract as they may find can be done most advantageously. All contracts shall be in writing and shall be in the name of the board of drainage commissioners of the drainage district and shall not become or be in force until they have received the approval of at least a majority of such drainage commissioners, either by vote in lawful meeting or by an endorsement upon such contract signed by a majority of the commissioners, and have also been recorded together with all endorsements thereon in the proper drainage record. All contracts shall be for the performance of the work in accordance with the plans and specifications therefor as approved and adopted by the board of drainage commissioners upon the organization of the sub-drainage district, and under the direction of the engineer who laid out the same or such other engineer as the commissioners shall designate for that purpose, and for payment for the whole work upon its proper completion. *Provided*; that in case more than one month will be required for the completion of the work payment may be made upon monthly estimates of ninety (90) per cent, of such estimate in the manner hereinafter provided.

Duties of Engineer.

SEC. 34. It shall be the duty of the engineer having charge of such work to furnish the contractor or contractors directions for their work, and to make and give them written estimates of their work during its progress when their contract so provides, and upon its completion to inspect the same, and if he finds it has been performed in accordance with the plans and specifications therefor, to give the contractor or contractors his final estimate certificate in writing to that effect. The contractor or contractors shall present such final estimate or certificate to the supervisors who shall forthwith inspect the work, and if they approve the same, certify such approval by endorsement upon such final estimate or certificate. Inspection and approval of the final estimate or certificate by a majority of the supervisors shall be sufficient. Each monthly estimate shall be approved in the same manner as the final estimate or certificate. Each monthly estimate when approved as herein provided shall on presentation to the clerk of the drainage district entitle the contractor or contractors to an order on the treasurer of the drainage district for the amount of the estimate less ten per cent, of the same, which shall be held as a reserve or guarantee fund until the final estimate or certificate is presented and the amount of such order shall be endorsed on the estimate. Upon presentation of the final estimate or certificate the clerk shall take up the same

Estimates, how made and paid.

and also monthly estimates made upon such work, and issue to the contractor or contractors an order on the treasurer of the drainage district for the whole amount that shall then remain due upon the same. Upon presentation of said orders the treasurer shall pay the same out of any money in his hands to the credit of such sub-drainage district. In case of any dispute between the contractor or contractors and the engineer or failure of the supervisors or a majority of them to approve any estimate or certificate of the engineer the matter shall be referred to the board of drainage commissioners for settlement.

SEC. 35. The supervisors of sub-drainage districts shall have the care of all drains, ditches and embankments that have been constructed by special assessments within their sub-drainage district, shall see that the same are kept in repair, shall make complaint against and attend to the prosecution of any person or persons injuring or destroying any of the work in their care, and shall see that all drains and ditches in their care are kept open, and that land owners making use of such drains or ditches as outlets for their private drains or ditches do so in a proper manner, and so as not to injure the public drains or ditches.

Drains, &c.,
who shall have
care of.

SEC. 36. Between the first (1) and third (3) Mondays of October in each year the supervisors of each sub-drainage district shall make and file with the clerk of the drainage district of their county a report of the condition of the drains, ditches and embankments in their care, of all work done during the year by them upon the same and the cost thereof, and an estimate of such work and the cost thereof, as in their judgment will be required upon the same for the ensuing year.

Drains, report
on condition of

SEC. 37. At the annual meeting of the board of drainage commissioners of each drainage district in which one (1) or more sub-drainage districts have been organized as herein provided, such board shall make a careful estimate of the amount of money that will be required for the current expenses of such sub-drainage district under their control, and to cover any unpaid expenses or charges already incurred on account thereof, also to meet the interest on any bonds issued on account of and for the benefit of such sub-drainage district and to provide a sinking fund for the payment of the principal of such bonds, and shall thereupon make an order directing the assessment of the amount of such estimate upon the lands subjected to assessment in such sub-drainage district, such order shall be in writing and signed by at least a majority of the board, and may be substantially in the following form:

Estimates for
current ex-
penses.

"The Board of Drainage Commissioners of _____ county _____ Drainage District do hereby order and determine that the sum of _____ dollars be levied as

Order for
assessments.

a special assessment upon the lands and property subjected to assessment for benefits in sub-drainage district No. _____ of _____ county drainage district.

Dated.....

Signed

{

Commissioners.”

Such order shall be recorded in the drainage record.

Assessment roll.

SEC. 38. The clerk of the board of drainage commissioners shall thereupon make and attach to said order an assessment roll of the sub-drainage district to which the order relates; such assessment roll shall contain a description of each tract of land subjected to assessment in such sub-drainage district, the name of the owner if known, its acreage, the per centage of benefit it receives as the same has been fixed and determined in accordance with the provisions of this act, and the amount of assessment against each tract of land, as per such per centage. If any railroad or other property within such sub-drainage district is benefited, such assessment roll shall contain the amount that such railroad or other property is to be assessed according to the scale of per centage fixed upon the same as hereinbefore provided. Such assessment roll when completed shall be attested by such clerk and filed in the office of the county auditor of the county in which such drainage district is situated on or before the first Monday in November of each year.

Assessments, collection of.

SEC. 39. Upon such assessment roll being filed in his office the county auditor of such county shall thereupon enter upon the tax duplicate of the current year against the respective tracts of lands so assessed, the amount of such assessment as shown by such assessment roll, and shall enter the assessment against any railroad or other property upon the appropriate tax roll, so that the same may be collected in the manner provided by this act. Such assessment entered upon the tax duplicate, shall be collected and the payment thereof enforced in the same manner and as a part of the total tax assessment levied against each tract of land for that year, and the assessment against any railroad company shall be collected from the owner of such railroad in the same manner as personal property taxes are collected from individuals. All such assessments when collected shall be paid over to the treasurer of such drainage district and by him credited to the sub-drainage district to which the same may belong.

SEC. 40. As soon as the board of drainage commissioners have organized any sub-drainage district and ordered

work done therein, they shall make a careful estimate of the total expense thereof including the preliminary costs already incurred the construction of the work ordered, and the cost of the supervision thereof. They shall then order the issuance and negotiation of the bonds of their drainage district in an amount equal to the amount of such estimate and ten per cent. of such estimate in addition thereto. In such order they shall fix the time which such bonds shall run, which shall be not less than twenty (20) nor more than thirty (30) years. Such bonds shall bear interest payable annually, at the lowest attainable rate, but in no case shall the interest be at a higher rate than seven (7) per cent. per annum. Such order and estimate shall be in writing, signed by the chairman and attested by the clerk and recorded in the drainage record.

Bonds, how issued and limited.

SEC. 41. It shall be the duty of the chairman of the board of drainage commissioners, and the clerk and treasurer of the drainage district, to negotiate all bonds ordered issued as above provided. They shall negotiate such bonds if practicable within such time as will make the proceeds thereof available for the prompt payment for the work on account of which the same are issued. All such bonds shall be issued in the name of the board of drainage commissioners of county drainage district in the state of Minnesota,—shall specify that they are issued in accordance with the provisions and pursuant to the authority of this act, naming it by its title and date of approval, and the number of the sub-drainage district on account of which the same are issued, and shall be signed by the chairman of the board of drainage commissioners and the clerk thereof. Such clerk shall upon signing said bonds enter in the drainage record, a description of each bond, its number, date, rate of interest, the time when it is payable, and the number of the sub-drainage district on account of which it is issued. The treasurer shall on demand, pay the interest and principal of such bonds as the same becomes due and payable so far as the funds in his hands for that purpose shall permit. All assessments made as herein provided for the payment of the principal or interest or both, shall be used for no other purpose until such interest and principal have been paid in full. And such bonds shall, so long as the same remain unpaid, be a perpetual lien upon the lands subjected to assessments for benefits under this act in the sub-drainage district on account of which such bonds are issued. And no bond issued under the provisions of this act shall be negotiated or sold for less than its face or par value. *Provided*, That such bonds shall not be construed to constitute a lien on any tract or sub-division of land to any greater amount than the amount of the benefits assessed against

Bonds, how negotiated.

Bonds, a lien.

such sub-division or tract, pursuant to the provisions of this act.

Work,
enlargement of

SEC. 42. Whenever the supervisors of any sub-drainage district find that any ditch, drain, embankment, grade or other work constructed in this district by order of the drainage commissioners, requires material enlargement or extension, they shall make a report in writing to the commissioners, setting forth the necessity for such extension or enlargement, and in general terms its extent and character, and affecting any lands not already in the sub-drainage district, a description of such lands and the names of the owners of the same with the post office address of each so far as they can ascertain the same. Such report, when filed with the clerk of the drainage district, shall be treated as a petition for the performance of the work described therein, and the same proceedings as nearly as may be shall be had thereon as in case of the petition for the work of which this proposed enlargement or extension is made, except that should the commissioners order the construction of such enlargement or extension, such order shall not create a new sub-drainage district, but instead shall attach the new territory benefited, if any, to the existing sub-drainage district and shall provide for a separate fund of such sub-drainage district from which the cost of such enlargement or extension shall be paid, and for separate assessments therefor on the basis of the benefits of such enlargement or extension, in case the benefits are found to vary from those of the original work of which the new is an enlargement or extension.

New territory.

All orders
require major-
ity of whole
board.

SEC. 43. A majority of the board of drainage commissioners shall be competent to perform any of the duties required of them by this act, but all orders made by them shall be only on the affirmative vote of the majority of the whole board.

Penalty for
filling up work

SEC. 44. Any person or persons who shall wilfully and unlawfully fill up, injure or destroy any drain, ditch or embankment constructed under the provisions of this act, or shall wilfully and unlawfully prevent, hinder or delay the construction of any such drain, ditch or embankment, shall be deemed guilty of a misdemeanor and upon conviction thereof, before any justice of the peace or other court having jurisdiction, shall be punished by a fine of not less than ten (10) dollars nor more than fifty (50) dollars, or by imprisonment in the county jail not more than ninety (90) days, or both as the court may determine.

Sub-drainage
districts,
organization of

SEC. 45. Sub-drainage districts extending into more than one (1) county may be organized whenever this act has been put in operation in all of such counties as provided by section five (5). In such case the petition for the formation of such sub-drainage district shall be addressed to the com-

missioners of the drainage district of the county in which the greatest part of the lands to be affected are situated, and shall be signed by a majority of the adult owners of the lands situated in each of said counties and proposed to be embraced in such sub-drainage district, and such commissioners of the drainage district of the county in which the greatest part of the lands of the proposed sub-drainage district are situated, shall have authority to organize such sub-drainage district and to exercise control over it to the same extent and in the same manner as in case where the sub-drainage district is all in one county. But copies of all orders in relation to such sub-drainage district shall be filed with the clerk of the drainage district of each of the counties into which it extends; and in making assessments the lands in each county shall be put upon separate rolls and reported to the auditor of the respective counties for collection and payment to the treasurer of the district in which the greatest part of such sub-district is situated. All appeals or suits relating to such sub-drainage district shall be to and brought in the district court of the county in which the greatest part of such sub-drainage district lies.

SEC. 46. Each drainage district shall be liable for any damages which any person or persons or corporation may sustain, by reason of negligent or imperfect manner in which any drain, ditch or embankment is constructed within such drainage district under the provisions of this act and such damages may be recovered in an action at law against such drainage district in its corporate name, in a court of competent jurisdiction. *Provided*, That the amount of the judgment recovered in any such action shall be assessed in the same manner as other assessments herein provided for upon the lands in the sub-drainage district in which the cause of action arose.

Each district
liable for
damages.

SEC. 47. If the county auditor, county treasurer or other county officers required to perform any duties under this act, relating to the levying and collecting of assessments, shall neglect or refuse to perform such duties, they may be compelled to perform the same by mandamus, and they shall be liable to any person or persons or corporation for any damage that such person or persons or corporation may sustain by reason of such neglect or refusal.

Mandamus.

SEC. 48. The amount of assessments made by the viewers and confirmed by the board of drainage commissioners, shall be a lien upon the lands assessed from the date of the order of the board of drainage commissioners organizing the sub-drainage district, and such order together with the report of the viewers, shall be notice to all the world of the existence of such lien, and this act shall be liberally construed, and such order shall be conclusive that all prior proceedings were regular and according to the provisions of this act.

Liens.

Petition may be signed by corporation.

SEC. 49. Any railroad company or other corporation owning lands or other property that will be affected by the organization of any sub-drainage district as provided for in this act, may sign the petition for the organization of such sub-drainage district, by such officer or officers as are by the charter or by-laws empowered to make contracts for such railroad company or other corporation.

Investment of moneys.

SEC. 50. Whenever the amount of money in the treasury of any drainage district belonging to the sinking fund of any sub-drainage district is sufficient to warrant the investment thereof, the board of drainage commissioners shall have power to invest the same in the bonds of any county, township or school district within the state of Minnesota, and all interest received from such investment shall be credited to the sinking fund of such sub-drainage districts.

No member of drainage commission to be interested in contracts.

SEC. 51. No member of the board of drainage commissioners, viewer, engineer or supervisor shall be personally interested in any contract for the construction of any work done under the provisions of this act, and any contract in which any such commissioner, viewer, engineer or supervisor is personally interested, either directly or indirectly as a contractor, shall be void, and the contractor or contractors shall forfeit all pay for any work done under such void contract.

When act to take effect.

SEC. 52. This act shall take effect and be in force from and after its passage.

Approved March 8, 1887.

CHAPTER 99.

[H. F. No. 490.]

AN ACT TO PROVIDE FOR CONSTRUCTING DITCHES BY TOWNS FOR THE PURPOSE OF DRAINAGE.

180-99 }
168 89

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

Supervisors of town may lay out and construct ditch.

SECTION 1. The supervisors of any town may lay out and construct a ditch within the limits of such town for the purpose of drainage, upon a petition of not less than six (6) legal voters who own real estate or who occupy real estate under the homestead and pre-emption law of the United States or under contract from the State of Minnesota within one (1) mile of the ditch to be so constructed.