

CHAPTER 127—H. F. No. 47.

An Act providing for town ditches and local assessments therefor, for the drainage of lands, and, in certain cases, of meandered bodies of water, for the tiling of lands, for the construction and repair of ditches, dykes, roads, drains and water courses, for the reimbursement in certain cases of owners of lands damaged thereby, for the collection of the costs and expenses of the same, and for the co-operation of the State Drainage Board; prescribing the powers and duties of the Supervisors of Towns, of the Town Clerk, Town Treasurer, County Treasurer and County Register of Deeds, and other officers in the premises; prescribing penalties for the violation thereof; and repealing certain acts therein mentioned and referred to.

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

Section 1. Particular Words.—The following words used in this act shall have the meaning herein given unless another intention clearly appears.

The word "ditch" as used in this act shall be held to include any open, covered or tiled ditch or drain or any ditch or drain in part open and in part tiled or covered, and any drain, water course or creek and any side, lateral, spur or branch ditches and each and all of the constructions referred to in this act.

The word "board" as herein used means the board of supervisors of the town in which the lands or roads described in the petition are located or, if said lands or roads are located in more than one town, then the word "board" means all of the supervisors of each one of the towns in which any of said lands or roads are located, acting together as one body at a legally called meeting.

The town clerk of the town in which the petition was filed shall act as the clerk of said board and keep a detailed record of its doings.

Two or more of said supervisors shall constitute a quorum of said board and a majority of the supervisors present shall have power to act.

The words "town clerk" and "town treasurer" as herein used shall always be held to refer to the town clerk and town treasurer of the town in which the petition was filed.

Sec. 2. Petition.—Before any ditch shall be established under this act there shall be filed with the town clerk of any town in which any part of said ditch is proposed to be located, a petition therefor signed by one or more persons or corporations owning lands which will probably be benefited by the construction of said ditch or by the chief executive officer of any city or village whose streets will probably be benefited by the con-

struction of said ditch or by the town board of supervisors of any town whose highways will probably be benefited by the construction of said ditch, setting forth the necessity thereof and that it will be of public benefit or promote the public health, with a description of the proposed starting points, routes and termini and of the general character, size and depth of said ditch.

Said petition shall also contain a legal description of all lands through which said proposed ditch shall run, or to be drained, as near as can be ascertained and shall also contain a description of all public roads and streets likely to be benefited thereby, as nearly as can be ascertained.

In such petition the petitioners may, at their option, ask the appointment of an engineer to perform the duties hereinafter in this act specified, and may also, at their option, ask the appointment of an attorney-at-law to perform the duties hereinafter in this act specified.

Such petition may include any side, lateral, spur or branch ditches necessary to secure the object of the improvement and may ask for the different parts of the ditch to flow in different directions, with more than one outlet.

Provided, that no meandered lake adjoining an incorporated village, or within four (4) miles of any city of the fourth class, or upon which any incorporated village is a riparian owner, shall be drained or lowered under the provisions of this act unless by the approval of a majority vote of the legal voters of such village or city at an annual, or special election held for that purpose.

Such special election, if any, held for such purpose, shall be called in the way and manner now provided by law for calling special elections.

Sec. 3. Ditches—How Designated.—Upon the filing of the petition such proceedings shall be designated and numbered by the town clerk as "Town Ditch No. of town of" and may be so referred to in all subsequent proceedings regardless of whether or not said ditch is in fact in more than one town.

Sec. 4. Notice.—Said town clerk shall forthwith fix a time and place for the hearing on said petition and shall forthwith give notice of the filing of said petition and of the time and place of the hearing thereon as follows:

(a) By posting at least three weeks prior to said hearing a copy of said notice and petition in a manner likely to attract attention in each of three of the most public places in each township in which lands described in the petition are located.

(b) By filing at least three weeks prior to the date of said hearing a copy of said notice and petition in the office of the clerk

of each town, village or city in which lands described in the petition are located.

(c) By mailing at least three weeks prior to said hearing a copy of said notice and petition to each owner of lands described in the petition who is a resident of the state, and whose postoffice is known to said town clerk or can be ascertained by him from the petitioners.

(d) By serving at least three weeks prior to said hearing a copy of such notice upon each occupant of the several tracts of land described in the petition.

When said notice is not legally given or is defective for any reason, the town clerk shall give a new notice of a time and place for hearing on said petition, as hereinbefore provided.

Sec. 5. Hearing.—At the time and place set for the hearing of said petition (or at any time or place to which said hearing may be adjourned from time to time as necessity may require, but not otherwise) the supervisors of all the towns containing lands described in said petition shall meet and hear and consider said petition, acting as one board.

Sec. 6. Engineer.—If the petition asks for the appointment of an engineer in said matter, said board shall, at said hearing and before taking final action on said petition, appoint a competent engineer to make plans and specifications for said ditch and to superintend the construction thereof when established.

Said engineer before entering upon his duties shall give a bond in the sum fixed by said board, payable to the towns in which any part of the ditch is proposed to be constructed, for the use of such towns and also for the use of all persons aggrieved or injured by the negligence or malfeasance of said engineer, to be approved by said town clerk, conditioned that he will diligently and honestly and to the best of his skill and ability, perform his duties as such engineer, but said engineer shall not be required to continue his bond after the conclusion or abandonment of the work.

He shall take an oath to faithfully perform his duties.

Said engineer shall forthwith make a survey for said ditch and prepare detailed plans and specifications for the construction thereof and make prompt report in writing of his doings to said board.

Upon the appointment of such engineer said board shall adjourn said hearing a sufficient time to enable said engineer to make and file his report in the office of said town clerk.

Sec. 7. Attorney-at-Law.—If the petition asks for the appointment of an attorney-at-law in said proceeding, said board shall forthwith, at the beginning of said hearing, by resolution, employ an attorney-at-law to superintend the drafting of all pa-

pers. contracts and orders in said proceeding and to give legal advice on all legal matters and questions arising in said proceeding.

The rate of compensation of said attorney-at-law may, at the option of said board, be fixed in the resolution employing him.

Sec. 8. View—Final Order.—All persons interested may appear and be heard by and before said board and either all of the members of said board or a committee of not less than three of said supervisors shall examine personally the lands, public streets and public roads likely to be benefited or damaged by said ditch.

If such board, from such evidence as may be adduced before them, shall find that all of the proceedings in the matter have been in accordance with the provisions of this act and that the estimated benefits of said work are greater than the total cost, including damages awarded and that said work will be of public utility or promote the public health, they shall establish said ditch by an order to be signed by them and shall include in said order, either expressly or by reference to maps, plats, specifications or papers on file in the office of said town clerk in said matter, an accurate description of said ditch and of the starting points, routes and termini, size and depth of said ditch and whether open, tiled or covered.

They shall also fix a time for the completion of said ditch.

Said board shall also include in their final order establishing said ditch a tabular statement showing the names of the owners of the legal description of and the number of acres in each tract of land to be benefited or damaged, said names to be the same as appear on the tax duplicates of said county, the estimated number of acres in each of said tracts of land to be benefited or damaged, the number of acres added to any tract by the change of any water course and the location and value of said added land, the damage, if any, to riparian rights pertaining to any tract, the amount that each tract will be benefited or damaged by the construction of said work.

When any ditch established under this act, benefits either in whole or in part any public road or street within the limits of any town, village or city, charged with the repair thereof, said board shall estimate and report separately in such tabular statement the benefits to each public road or street, together with the name of the town, village or city charged with the repair thereof.

They shall also report in such tabular statement the damages awarded for injury to any road or road-bed, and for the construction and maintenance of any bridges, culverts or other works rendered necessary by the establishment of such ditch and include such benefits and damages as a part of said tabular statement.

If said board refuses to establish said ditch they shall make an order setting forth that fact and their reasons therefor.

Sec. 9. Benefits and Damages.—The board in ascertaining benefits and damages, and also the court on appeal, shall be guided as far as the same are applicable, by the rules for ascertaining benefits and damages in case of county ditches as set forth in Chapter 230 of the General Laws of Minnesota for 1905.

Sec. 10. Costs and Expenses.—The ditch petitioners shall advance all costs and expenses of said ditch proceeding from its inception to its completion, including damages awarded and the costs of constructing said ditch, which costs, expenses and damages so advanced shall be repaid pro rata to said petitioners as hereinafter provided.

They shall promptly upon making such payments, no matter whether complete or partial, file with the town clerk a verified statement showing in detail the amount and date of payment and to whom and for what paid.

Sec. 11. Securities may be required.—The board are hereby directed to require such securities as they may deem necessary, suitable and proper, from the petitioners for the proper performance of all their duties under the terms of this act.

Sec. 12. Authority to enter lands for survey.—For the purpose of making examinations and surveys, the board and the engineer and any person or persons named by the court on appeal, are authorized to enter upon any land and to do any act necessary for the proper performance of their duties, and any person attempting to prevent or interfere with them shall be guilty of a misdemeanor.

Sec. 13. Appeal to district court—Jury trial.—Any person aggrieved thereby may appeal from any order of said board made in the proceedings and filed in the office of said town clerk, determining any of the following matters:

- (1) The amount of benefits to any tract of land or to any public road or street.
- (2) The amount of damages allowed to any person, town, village or city.
- (3) Refusing to establish such proposed ditch.

To render such appeal effectual the appellant shall file with the town clerk within twenty days from the date of the filing of such order in his office, a notice of appeal stating briefly the grounds upon which the appeal is taken, accompanied by an appeal bond to the town treasurer in an amount of not less than \$250.00, to be approved by the town clerk, conditioned that said appellant will duly prosecute the appeal, pay all costs that may be adjudged against him and abide the order of the court.

Within twenty days after such filing the town clerk, at the expense of the appellant shall file in the office of the clerk of the district court of the county in which said town clerk resides, a complete transcript of all the papers and proceedings in the premises on file and of record in his office, including the notice of appeal.

Any appellant deeming himself aggrieved by the determination in an order of the board establishing the proposed ditch, as to the amount of his benefits or damages, may demand in writing, a jury trial to determine the amount of his benefits or damages and such demand shall be filed in the office of the clerk of the district court within twenty days after the filing of the notice of appeal in the office of said town clerk.

If no such demand is filed, the appeal shall be tried by the court without a jury.

The appeal shall be duly tried and determined at the next term of the district court held within said county, beginning after the filing of such transcript and shall take precedence of all matters of a civil nature in said court.

If there be more than one appeal they may be consolidated and tried together.

If the appellant is unsuccessful he shall pay to said town treasurer all of respondent's costs and disbursements, to be taxed and allowed by and before the clerk of said court.

The construction of such ditch shall not be delayed or prevented by the prosecution of any appeal if the petitioners shall give bond in amount and with sureties to be fixed and approved by the town clerk, conditioned for the payment of all damages finally awarded on said appeal and to abide the orders and judgments of the court entered thereon.

It shall not be necessary to serve any notice of trial or file any note of issue in the district court on such appeal.

Sec. 14. Judgment upon appeal.—Upon an appeal from an order refusing to establish said ditch the court shall hear the entire matter de novo, without a jury and include in its final order and findings all of the matters and data required in the final order of the town board.

As soon as final judgment is entered on an appeal, a certified copy thereof shall be transmitted by the clerk of the district court to said town clerk and shall be attached to the original order of the board and shall have the effect of modifying said original order so as to make it conform with said judgment.

Sec. 15. Appeal to supreme court.—Any aggrieved party to said ditch proceeding may appeal to the supreme court as in civil actions, from any final order made in the district court, within thirty days after the filing of such order.

The notice of appeal shall be served on the clerk of the district court and need not be served upon any other person or corporation.

Sec. 16. **Extension of time.**—Whenever the letting of the contract for the construction of said ditch is delayed either by lack of bidders or by appeals or by other proceedings in court, said town clerk shall by his order in writing extend the time limit in the order establishing said ditch for the construction thereof to compensate for said delay and as necessity may require.

Sec. 17. **Sale of jobs—Contractor's bonds.**—Within ten days after the filing of the order establishing said ditch the town clerk shall post notice in each of three of the most public places in each of the towns through which said ditch extends, and also in the office of the auditor of the county in which said ditch is located of the time and place at which he will sell to the lowest responsible bidder or bidders the jobs of constructing said ditch.

When the estimated cost of the construction is more than \$1,000.00 the town clerk shall also advertise such sale of jobs in two newspapers, one of which shall be the paper in which the delinquent tax list is published in the county in which said ditch is located, and the other a legal paper published nearest the proposed work.

Said notice shall state the approximate amount of work and the estimated cost and shall invite bids for the work as one job and also in such divisions as the petitioners may in writing request, and shall reserve the right to reject any and all bids, and no bid shall be entertained which exceeds the estimated cost of the construction of the part of said work covered by said bid more than 30 per cent.

Said town clerk may adjourn such letting from time to time until the whole work shall be taken.

If an engineer has been appointed, no contract shall be let without the approval of said engineer.

Said town clerk may sell separately any job of building of flumes or other wood or masonry work, fencing or other construction work specified either directly or by reference in the order establishing said ditch.

The town clerk shall contract separately in the name of the petitioners, with each party to whom any of such jobs are sold, requiring him to construct the same in the time and manner specified in the provisions of the final order establishing said ditch, and shall take from him a bond in the penal sum of not less than the contract price, payable to the petitioners for the use of such petitioners and of all persons and municipalities and towns who may show themselves to be aggrieved or injured by any

breach thereof, or of the contract for which said bond is given with sureties, to be by said town clerk approved, conditioned that said party shall faithfully perform and fulfill his contract, and pay all damages which may accrue by reason of failure to complete the work in the manner and within the time required in the contract therefor, which bond shall include a stipulation that no change, extension, alteration or addition to the terms of the contract or specifications shall in any wise affect the obligation of the principal or sureties on said bond.

The contractor or contractors may each require the signatures of each of the petitioners to the contract and if any of the petitioners fail to sign said contract or contracts, said contractor or contractors may require that an amount of money equal to the contract price be deposited with the town treasurer to secure payment of said contract price upon the completion of said contract.

Sec. 18. Bond and contract.—The bond and contract shall be attached to each other and the contract shall contain a specific description of the work to be done, either expressly or by reference to plans, specifications, the order establishing said ditch or other papers on file in said town clerk's office and shall provide that the work shall be done and completed as provided for in the final order establishing said ditch and subject to the approval of the engineer, if there be one, and if not then to the approval of the board.

Said contract and bond shall be drawn to the satisfaction of the engineer, if there be one, and to the satisfaction of the attorney-at-law, if there be one.

Every such contract shall embrace all the provisions provided by law for the giving of bond by contractors for public works and improvements and for the better security of the parties performing labor and furnishing material in and about the performance of such contracts, and shall provide that time shall be of the essence of the contract in that if there should be any failure to perform the work according to the terms of said contract, within the time limited therein originally, or by extension, the contractor shall forfeit and pay to the petitioners a certain sum to be named therein and which shall be fixed by the town clerk for each day that such failure shall continue.

No extension of time shall be granted unless applied for in writing to the town clerk, stating to his satisfaction good and sufficient reasons therefor, nor, in case there be an engineer, shall an extension of time be granted unless said engineer is satisfied that good and sufficient reasons exist therefor, nor shall any extension affect the right to enforce such forfeiture if any, as shall occur after the time originally limited and before such extension or occurring after the limit of the extension.

The bond shall expressly provide that the bondsmen shall be liable for all damages resulting from such failure whether the work be resold or not, and that any person showing himself injured by such failure may maintain an action upon such bond in his own name and that such actions may be successive in favor of all persons so injured.

Such contractor shall be considered a public officer and such bond an official bond within the meaning of the statutory provisions construing such official bonds of public officers as security to all persons and providing for actions on such bonds by any injured party in the district court.

Sec. 19. Modification of plans.—The engineer, if there be one, and if there is no engineer, then the board, shall have the right to modify the plans and specifications contained in the final order establishing said ditch as the work proceeds and as circumstances may require; *provided*, no changes are made that will substantially impair the usefulness of any part of the ditch or substantially alter its original character or increase its total cost by more than two per centum of the total contract price for the construction thereof.

Sec. 20. Failure of contractors.—If a job be not completed within the time fixed in the contract therefor the town clerk shall forthwith notify the bondsmen in writing and order them to complete said job within a time specified by him.

If the completion of said job shall not be undertaken by said bondsmen within twenty days after the date of said order, the petitioners may proceed to complete said job upon the giving of a bond containing like conditions as the original contractor's bond.

The board shall determine the proportion of the contract price to be paid to the contractor and the proportion thereof to be paid to the parties completing said ditch.

The petitioners and all other parties damaged or injured by the failure of the contractor to complete his job as called for by his contract shall have right of action and recover against the bondsmen.

Sec. 21. Damages—Payment of.—No ditch shall be constructed until the damages assessed shall have been paid or deposited as follows:

Payment of the damages awarded may be made or tendered at any time after the filing of the order establishing said ditch and acceptance of such payment shall be taken as a waiver of all objections to said order and to the proceedings leading thereto on the part of the payee and of all persons for whom he is lawfully empowered to act.

In case any party to whom an award of damages is made be not a resident of the state or his place of residence be unknown or he be an infant or other person under legal disability or being legally capable, refuse to accept payment, or if for any reason it be doubtful to whom an award should be paid, the petitioners may pay the sum to the town treasurer, to be paid out under the direction of the board and unless an appeal be taken as herein provided, such deposit with the said treasurer shall be deemed a payment of said award. If an appeal be taken from the award of damages then when judgment is entered fixing the amount of damages, the petitioners shall pay said damages as fixed by the judgment of the court, with costs and interest in the same manner as if said damages as fixed by the judgment of the court with costs and interest had been the amount originally awarded in the order establishing said ditch.

Sec. 22. Certificate of completion.—If no engineer has been appointed, then said ditch shall be constructed under the supervision of the board, which shall have authority to approve the same.

If an engineer is appointed, then said ditch shall be constructed under the supervision of said engineer, who shall have authority to approve the same.

Upon the town clerk being advised that said ditch is completed, he shall notify the engineer, if there is one, and if not, call a meeting of the board.

Thereupon said engineer or said board, as the case may be, shall inspect said ditch and if found complete and according to the order establishing the same, shall certify to said fact in writing and file said certificate in the office of said town clerk.

The contractor or contractors shall, upon said certificate being filed, be entitled forthwith to payment in full from said petitioners.

Sec. 23. Statement and summary.—Upon the filing of said certificate of the board or of the engineer, as the case may be, the town clerk shall, at the earliest practicable time make a tabular list and statement showing the following facts and in the order named.

1. The names of the owners of all lands benefited by the construction of such proposed work as appears from the order establishing said ditch as affected by the judgment of the district court on appeal.

2. The description of such lands as the same appears in said order establishing said ditch as so affected, together with the total number of acres in each tract according to the assessment rolls or tax lists of the county.

3. The estimated number of acres benefited in each tract of said land as shown as aforesaid.

4. The estimated amount of benefits and damages to each of said tracts of land as the same appears in said order as changed, on appeal, by the district court.

5. The respective public roads and streets benefited by said ditch, the estimated amount of such benefits to each of said public roads and streets, and the names of the respective cities and towns and villages charged with the repair thereof, all as appears in said order establishing said ditch, as affected by the judgment of the court on appeal.

6. The amount that each of said tracts of land and that each of said towns, villages and cities that are charged with the repair of the several benefited public roads and streets, will be liable for and must pay for said ditch to be determined as follows:

Said town clerk shall make a full statement showing the total cost of such ditch from its inception to its completion, show to whom paid, for what paid and the amount paid.

Said statement shall be summed up to show in figures the total cost of each ditch and shall be attached to and form a part of the list and statement herein provided for.

The total cost shall then be divided by the total estimated benefits for the rate of cost on each dollar of benefit, not using a smaller fraction than one-tenth of one mill.

The amount of estimated benefits to each tract of land shall be multiplied by said rate and the result set down in the proper column opposite each of said tracts of land, and the result so obtained shall be the amount that each of said tracts of land will be liable for on account of such improvement.

The amount of estimated benefits to each public street or road shall be multiplied by said rate and the result set down opposite the name of the respective towns, villages and cities charged with the repair of said respective roads and streets, and shall be the amounts that each of said towns, villages and cities will be liable for on account of such improvement.

All assessments against tracts of land owned by any one or more petitioners shall be marked paid by the town clerk.

It is the intention of this act that the balance of the assessments shall be ultimately paid over when collected to said petitioners to recompense them for the costs advanced on said ditch.

Sec. 24. Recording of statement and summary.—Such statement signed by the town clerk in the presence of two attesting witnesses and acknowledged by him, shall then be duly filed with and recorded by the register of deeds of each county in which lands, roads or streets are located, that are described in said statement.

The amount which each tract of land and each town, village or city will be liable for and the interest thereon as hereinafter provided, shall be and remain a first paramount lien on such land and on such town, village or city until fully paid and shall take precedence of all mortgages, charges, encumbrances or other liens whatever.

Such payments may be made as hereinafter provided.

Such filing shall be deemed notice to all parties interested of the existence of such lien.

The fees of the register of deeds for such recording shall be paid by the petitioners and shall be included in said statement as a part of the total cost of said ditch.

Said recorded statement shall be returned to the town clerk and preserved by him with the other papers relating to such ditch.

Sec. 25. Collection of assessments—Interest.—The amount that each tract of land, public or corporate road shall be liable for on account of the location, construction and establishment of any ditch, shall bear interest from the time of the filing of the town clerk's statement in the register of deeds' office, at the rate of 6 per cent per annum until paid.

Such liens may be paid to the county treasurer at any time after the recording of such statements in said register of deeds' office.

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

On or before November 15th next following such filing, the town clerk shall notify the auditor of each county in which said statement is filed, of the time of such filing and of the book and page in the office of said register of deeds of said county at which said statement is filed and of the certificates of payment in full that he has issued and said auditor shall thereupon forthwith enter on the tax lists of said county the amount of such lien then remaining unpaid against each respective tract of land subject thereto, as a tax on such tract which shall be subject to and be collected with like penalties as all other taxes for said year, until all is paid.

Sec. 26. Towns and municipalities.—Whenever any public road or street shall have been found by the order establishing said ditch to have been benefited, the town, village or city which is by law chargeable with the duty of keeping such road or street in repair shall be assessed as hereinbefore provided, the pro rata

amount of such benefits accruing to such roads or streets within said city, village or town by reason of such ditch, and the same shall thereupon become a liability of such city, village or town and shall be due on the filing of the town clerk's statement in the office of the register of deeds for record.

Thereupon the town clerk shall forthwith issue a warrant to the treasurer of the town in which said petition was filed, requiring him to pay into the ditch fund of said ditch the amount of the assessment of the town of which he is treasurer, which said town treasurer shall forthwith do upon receiving said warrant.

Said town clerk shall at the same time notify, by mail or otherwise, the clerk of each other town, city or village of the amount due from said respective town, city or village.

If not paid to the town treasurer within thirty days, the town clerk shall notify the county auditor of the proper county in writing, thereof, who shall thereupon extend the amount thereof with interest at six per centum per annum from said day of filing in said register of deeds' office against all the property in such city, village or town liable to taxation, and the same shall become due, be paid, and collected in the same manner and with like penalties as other taxes for that year.

Sec. 27. Assessments—Town treasurer.—All assessments when collected by the county treasurer or county treasurers shall forthwith be transmitted to the town treasurer of the town in which said petition was filed, to be kept by him in a separate fund to be known as "Fund of Town Ditch No. of town of." and the petitioners for said ditch who have paid for the construction thereof and for the costs and expenses of said ditch, shall be entitled to repayment from said fund of all moneys received by the town treasurer as the proceeds of said assessments and interest.

Such payment shall only be made upon warrant drawn by the town clerk who shall have power to draw such warrant without any order of said board.

Sec. 28. Place of filing.—All petitions, resolutions, orders, engineer's reports, notices of appeal, bonds of engineer, affidavits, oaths and other instruments and papers having to do with said ditch proceeding shall be forthwith filed in the office of the town clerk where said petition was originally filed.

Sec. 29. Meetings of board—How called.—The town clerk of the town in which said petition is filed shall have power whenever necessary in said ditch proceeding to call a meeting of the board at such time and place as he may designate, upon three days' notice given each member of the board of supervisors of each one of the towns in which any of the lands or public roads described in the petition are located.

It shall be a sufficient statement of the objects and purposes of said meeting in said notice to say that it is called pursuant to the provisions of this act.

Sec. 30. Appointment of other engineers.—If the engineer appointed by the board fails to qualify, or at any time resigns, dies or becomes disabled during the progress of the work, the board shall forthwith appoint another civil engineer having the qualifications required by this act in the stead and place of the engineer first appointed, who shall give the bond and take the oath required by this act and shall do all things remaining to be done by the original appointee.

Sec. 31. Duty of railroads—Penalty.—It shall be the duty of every railroad company in this state, owning a right of way therein, over, under or through which it shall be necessary to construct any ditch in any drainage proceeding hereunder, to permit such ditch to be constructed over its said right of way; *provided*, such ditch across said right of way shall be an underground ditch when practicable, otherwise to be constructed in the usual and ordinary manner, and so as not to impair the usefulness of the railroad.

Any railroad company in this state refusing permission or continuing to obstruct the construction of such drain across its right of way after the same has been ordered and written permission demanded for the construction of the same by the contractor or party entitled to construct the same, shall forfeit the sum of \$25 per day for each and every day that such refusal or obstruction continues or is made after such written demand, to be recovered in a civil action by the contractor or other party aggrieved.

Sec. 32. Repairs.—Said board shall have power to enlarge, deepen, widen, lengthen and repair said ditch and the proceedings therefor shall be commenced by a like petition and the costs and expenses thereof shall be paid in like manner by the petitioners and the assessments shall be made and collected and all other proceedings shall be had, as nearly as may be, as in case of a new ditch.

Sec. 33. Obstructions—Penalties.—Any person wilfully or negligently obstructing or in any way injuring any work constructed under the provisions of this act or allowing such ditch to be injured or obstructed by his live stock, horses or cattle or diverting the water in said ditch or interfering with the construction of said ditch, shall be guilty of a misdemeanor and shall also be liable to any or all persons or corporations injured by said act, in treble damages.

Any town clerk, member of a town board of supervisors, town treasurer, register of deeds or other officer who refuses or

neglects to perform any of the duties imposed upon him by this act shall be guilty of a misdemeanor and shall also be liable to any person injured by this act, in treble damages.

The county attorney of said county shall prosecute all criminal actions arising under this act.

Sec. 34. Compensation of members of board, etc.—The engineer, if appointed, shall receive the sum of \$5.00 per day for every day he is necessarily engaged in performing the duties required of him by this act and his actual and necessary expenses incurred in and about the same.

The members of the board shall each receive \$3.00 per day for every day they are necessarily engaged in acting on said ditch proceeding or in viewing said ditch and in making up and filing their orders and their actual and necessary expenses.

Each rodman shall receive the sum of \$2.00 per day and may be allowed in addition thereto his board and lodging for each and every day he is employed, and each chairman, axeman and other employe necessary to the prompt execution of the work of locating or inspecting said ditch shall be allowed \$1.50 per day and may be allowed in addition thereto his board and lodging for the time such person is thus actively employed.

The town clerk, the town treasurer, the register of deeds, constable and other officers shall be paid the same fees as are allowed by law for similar service, or if no fees are allowed, then they shall receive reasonable compensation for their services.

Such compensation shall be in addition to all sums allowed by law at the time of the passage of this act.

The attorney-at-law shall receive reasonable compensation for his services.

The fees per diem, compensation and expenses shall be before payment, audited and allowed by the town clerk and shall be paid by the petitioners from time to time.

Sec. 35. Parties not affected cannot question proceedings.—No person shall be permitted to take advantage of any error committed in any proceeding under this act either by the board, engineer, town clerk, town treasurer or by the court or by any person nor of any informality, error or defect appearing in the record of such proceedings unless the party complaining thereof is directly affected thereby.

If the court shall at any time modify an assessment or enjoin the collection thereof or release any person from the liability thereof, it shall in no manner affect the liability or rights of any other person.

Sec. 36. Act liberally construed.—This act shall be liberally construed so as to promote the public health, the construction

and improvement of roads and the drainage and reclamation of wet or overflowed lands.

It shall not be construed as repealing any drainage law except as herein expressly provided.

Sec. 37. Record as evidence.—The record of every order of the board laying out and establishing any ditch or refusing to establish the same under the provisions of this act and the record of every judgment on appeal or a certified copy of such record shall be prima facie evidence of the facts therein stated and of the regularity of all the proceedings prior to the making of said order or judgment.

Sec. 38. Orders and notices—How served.—All orders, judgments and notices herein prescribed, not otherwise provided for, shall be served by any constable or other disinterested person designated by the town clerk or by the court, and such constable or other person so designated shall be paid the same fees by the petitioners as are allowed by law for similar service.

Sec. 39. Repeal.—Chapter 191 of the General Laws of Minnesota for 1907 is hereby repealed.

Approved March 29, 1909.

CHAPTER 128—H. F. No. 104.

An act to appropriate money to pay the expense of preventing and suppressing forest and prairie fires in 1908.

WHEREAS, the appropriation of five thousand dollars for the present fiscal year provided by section 1784 of the Revised Laws of Minnesota, 1905, to enable the forestry commissioner to prevent or suppress forest and prairie fires in a season of unusual drought, has become exhausted and accounts of various persons for services in suppressing, principally forest fires in such season in 1908, to the amount of twelve thousand, four hundred and two dollars and five cents, (\$12,402.05) are unpaid, therefore

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

\$12,600 appropriated for paying of claims for suppressing forest fires.—Section 1. There is hereby appropriated out of any money in the treasury not otherwise appropriated, the sum of twelve thousand and six hundred dollars (\$12,600) or so much thereof as may be necessary, to pay. *Provided*, that before any of the funds provided for hereunder, shall be paid to any person claiming the same, the state auditor shall satisfy himself that the alleged services were actually rendered and were of the value