

General Statutes 1923, be and the same is hereby amended to read as follows:

"(4) A high school department shall be a school giving instruction in *high school subjects* beyond the eight-year elementary course. Such school shall be located in a school district which maintains a graded elementary school and *which employs one or more fully qualified high school teachers to give instruction in such high school subject. The principal may be one of the high school teachers if fully qualified to teach high school subjects.*"

Approved April 25, 1925.

CHAPTER 414—H. F. No. 1272.

An act authorizing villages to require any one improving any lot or parcel of land within the village to file a written legal description of the lot or parcel to be so improved.

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

Section 1. **Description of property to be improved to be filed with village authorities.**—The several villages of this state, however organized, are hereby authorized and empowered to require, by ordinance, that any person improving any lot or parcel of land within the corporate limits thereof by building thereon any structure or any addition to any existing structure thereon, the estimated cost of which improvement exceeds \$100, to make and file with the recorder thereof, before such improvement shall be commenced, a statement in writing giving the legal description of the lot or parcel of land to be so improved, the number of the lot to be given if within a portion of the village platted into lots.

Approved April 25, 1925.

CHAPTER 415—S. F. No. 126.

(Secs. 6634 to 6932, G. S. 1923.)

An act authorizing the county boards of the several counties, and the district courts of the several judicial districts in this state to establish and order the construction of public drainage systems, providing for the protection or drainage of lands and in certain cases bodies of water and meandered lakes, and for the construction, maintenance and repair of such systems including both open and tile drains, and for the construction of such other works as may be found necessary to complete such systems including the building of dykes, roads, drains, and the enlargement, cleaning out, and in certain cases changing water courses and providing for the reimbursement of owners of land damaged thereby, and the determination of

benefits and damages and for the collection of costs and expense of the construction and maintenance of such systems by assessments against the property and corporations benefited, and prescribing and defining the authorities and duties of the County Auditor or Auditors and other officers in the premises, and prescribing penalties for the violation of certain provisions of this act and authorizing the issuance of county bonds for the purpose of supplying funds to carry into effect the provisions hereof and the repeal of certain laws herein specified.

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

Section 1. **Definitions.**—Whenever any of the following terms are used in this act, and the intent not otherwise clearly defined, they shall be understood and construed as follows:

Wherever the term “publication” is used in this act and the period or manner not specifically defined, it shall be taken and construed to mean publication once a week for three successive weeks in one legally qualified newspaper published and in general circulation in each county affected.

Wherever the term “board” or “County board” is used in this act, and not otherwise specifically defined, it shall be taken and construed to mean the county board of the county where the drainage proceedings are pending, and wherever the term “court” or “the court” or “the district court” or “district judge” is used in this act, and not otherwise specifically defined it shall be taken and construed to mean and refer to the district court or a judge thereof of the county where the judicial drainage proceedings are pending.

Wherever the term “board or court” or “county board or district court” is used in this act, and not otherwise specifically defined, it shall be taken and construed to mean that the specific enactment or language used shall apply to the county board in any case where proceedings are pending before a county board, or the district court, or a judge thereof, in all proceedings pending before the district court.

Provided that whenever any lake having a water area of four or more square miles, situate in two judicial districts, shall be affected in proceedings in the district court, such court shall be composed of one judge from each such judicial district and one appointed by the Governor.

Wherever the term “county auditor” or “auditor” is used in this act, and not otherwise specifically defined, it shall be taken and construed to mean the county auditor of the county wherein county drainage proceedings are pending, and wherever the term “clerk” or “clerk of the district court” is used in this act and not otherwise defined, it shall be taken and construed to mean and refer to the clerk of the district court where the petition is filed in judicial proceedings.

Wherever the term "person" is used in this act, and not otherwise specifically defined, it shall be taken and construed to mean and include a person, firm, co-partnership, association or corporation other than public or political subdivision, and wherever the term "public corporation" or "municipal corporation" is used the same shall be taken and construed to mean and include cities, villages, boroughs, counties, townships, school districts, road districts or other political subdivision.

Wherever the term "public health" is used in this act, it shall be taken and construed to extend to and include any act or thing tending to improve the general sanitary condition of the community, whether by drainage, relieving low, wet land of stagnant and unhealthful conditions, or by preventing the overflow of any lands, thereby producing or tending to produce unhealthful conditions.

Wherever the term "public welfare" or "public benefit" is used, it shall be taken and construed to extend to and include any act or thing tending to improve or benefit the general public, either as a whole or any particular part or community, and shall be construed to include any improvement contemplated by this act which shall protect from overflow or reclaim and render suitable for cultivation tracts of land normally wet or needing drainage, or subject to overflow.

Wherever the term "county ditch" or "county drainage proceeding" is used in this act, and not otherwise specifically defined, it shall be taken and construed to mean drainage proceedings under the provisions of this act, instituted by petition as provided herein before the county board of any county, and wherever the term "judicial ditch" or "judicial drainage proceedings" or "judicial proceedings" is used in this act, and not otherwise specifically defined, it shall be taken and construed to mean and refer to judicial proceedings under the provisions of this act instituted before the district court of any county and may include proceedings in one or more counties.

Wherever the term "ditch" or "drainage system" or "public drainage system" or "drainage proceedings" is used in this act, and not otherwise specifically defined, it shall be construed to mean and include either an open or tiled systems and all laterals or parts thereof, also the improvement of any natural run, water course or waterway included in or utilized in the construction of any drainage system, and shall unless otherwise specified be construed to include any work, excavation, structure or improvement necessary to complete the system as adopted and ordered constructed by the county board or district court.

Wherever the term "road" or "public road" or "highway" is used in this act without a more specific designation, the same shall in all cases be understood and construed to mean and include any road or highway used by the public for highway purposes, whether the same be under the control of any town, county or other municipal

corporation or under the control and direction of the State Commissioner of Highways and to include, town roads, county roads, state aid roads and trunk highways, and any road or public highway under the charge and control of any municipal corporation, whether within or without the limits of said municipality, and in all cases where benefits or damages are assessed or allowed with reference to a town road, the name of the town shall be included in the viewers' report in connection with the description of said road, and in all cases of assessment for benefits or award of damages with reference to a county road or state aid road, the same shall be reported in the viewers' report in the name of the county within which the road is located, and in all cases where benefits or damages are assessed or awarded to a portion of a trunk highway, the same shall be reported in the viewers' report under the name of the state or State Highway Department, as a part of the description of said road and therein designating the county or counties within which the benefits are assessed or damages allowed, and when so reported the same shall constitute a valid assessment against such town, county or the state.

Wherever the term "resident owner" or "resident freeholder" is used in this act, it shall be construed to mean and include the owners of such land or party who holds the same under contract of purchase from the owner and who resides in the State of Minnesota.

Sec. 2. County Board and District Court to order drainage system.—The county board of the several counties and the district court of the several districts of the State of Minnesota, are hereby authorized and empowered to make all necessary orders for and cause to be constructed and maintained, public drainage systems, drains and ditches to deepen, widen, straighten or change the channel or bed of any river, creek or waterway following the general direction thereof, and when practical terminating therein, to extend the same into or through any city or village for the purpose of securing a suitable outlet to construct all needed dykes, dams and controlling works and also power appliances, pumps and pumping machinery when a pumping outlet is deemed necessary to drain in whole or in part, meandered lakes which have become normally shallow and of a marshy character or which are no longer of sufficient depth or volume to be of any substantial public use, and when deemed necessary to control flood waters therein, may raise, lower or establish the height of water in any lake, body of water or water course and cause to be constructed all necessary structures and improvements and to maintain the same for flood control or other public purposes, and where only a part of a meandered lake is to be drained, to cause to be constructed dykes or dams for the purpose of holding the water at the height designated by the board or court, in that part of the lake not to be drained, but no meandered lake upon which any city or village is now a riparian owner shall be drained or lowered unless by the approval of a majority vote of the legal voters of said city or

village at any annual or special election held for such purpose; provided, however, that no meandered lake shall be drained except by the consent of the State of Minnesota, filed in the proceedings, and for that purpose the consent of the governor shall be sufficient.

Sec. 3. Petition—Bond.—Before any public drainage system, drain or other improvement authorized by this act, shall be established under the provisions herein, a petition signed by not less than a majority of the resident owners of the land described in the petition or by the owners of not less than 51 per cent of the area of such land, setting forth the necessity thereof that the same will be of public utility and will promote the public health, the description of the starting point, the general course and terminus of the same together with a description of the lands over which the proposed ditch or improvement passes, and that the petitioners will pay all costs and expenses which may be incurred in case the proceedings are dismissed, or for any reason no contract for the construction thereof is let, shall be filed if for a county drainage system with the county auditor, if for a judicial drainage system, with the clerk of the district court. That such petition may also be signed by the supervisors of any township, or the proper officers of any city or village authorized by resolution of the council thereof, which township, village or city is liable to be affected by or assessed for the proposed construction, or by the duly authorized agent of any public institution, corporation or railroad whose lands or property may be affected by or assessed for the expense of the construction or by the State Board of Control or its duly authorized agent, but that in such case the signature of such supervisors, village officers, agents, public institution, Board of Control, or other corporation, or any or either of them, shall each count only as one signature on such petition.

Upon the filing of such petition and before any action is taken thereon, one or more of such petitioners shall make and file a bond payable, in case of a county drainage system, to the county, and in case of a judicial drainage system to the counties named in the petition in the sum of not less than \$2,000.00 with good and sufficient sureties to be approved by the officer with whom the same is filed, conditioned to pay all costs and expenses which may be incurred in case the proceedings are dismissed or for any reason no contract is entered into for the construction of the improvement petitioned for. If it be made to appear at any time prior to the making of the order directing the construction of such improvement, that the bond of the petitioners is insufficient either in amount or as to sureties to protect the county, or counties from loss on account of any costs or expenses incurred, or to be incurred, the court or board may, and it shall require a further and additional bond, and all further proceedings shall be stayed until such bond is furnished, and if such additional bond is not furnished within such time as the board or court shall designate, the proceedings may be dismissed.

Sec. 4. Expense not to exceed penalty of bond.—In all drainage proceedings in which a survey of the proposed drainage system has been ordered by the court or county board, the expense of such survey shall not exceed the penalty named in the bond given by the petitioners in said proceeding and no claim in excess of the amount of such bond shall be audited or paid by direction of the court or board unless in any such proceeding one or more of the petitioners therein shall within such time as the board or court shall direct, make and file a bond with sufficient sureties in such amount as such board or court shall direct, conditioned as required by Section 3 of this act.

Sec. 5. Engineer to be appointed.—Upon the filing of the petition and bond as herein provided, the county board in a county drainage proceeding, and the judge of the district court in a judicial drainage proceeding, shall within thirty days thereafter by order appoint a competent and experienced civil engineer and direct him to proceed and examine into and report within the time fixed in said order to said board or court all matters necessary and essential to disclose the practicability, necessity and advisability of the construction of the proposed improvement, and the engineer so appointed shall within ten days thereafter take and subscribe an oath to faithfully perform the duties assigned to him according to the best of his ability, and shall give a bond not less than the sum of \$5,000.00 with good and sufficient surety, payable to the county or counties affected by the proposed improvement for the benefit of such county or counties, and also for the use of all parties aggrieved or injured by any negligence or malfeasance on the part of said engineer so long as he is in any manner employed in said proceedings, conditioned that he will diligently, honestly, and to the best of his skill and ability, during the full period of his employment, perform his duties as such engineer in said proceeding, said bond to be approved by the auditor or clerk, as the case may be.

Sec. 6. Duties of engineer.—It shall be the duty of said engineer without delay to proceed and examine all matters named and referred to in said petition, and order, and make such preliminary survey of the territory likely to be affected by the proposed improvement as will enable him to fully determine whether the same is necessary or practical and report accordingly, and if some other or different plan than that described in the petition is found practical, said engineer shall so report, giving such detail and information as will be necessary to fully inform the court or county board on all matters pertaining to the practicability or feasibility of the proposed plan, either as outlined in said petition or according to some other or different plan that may be designated or recommended by said engineer, but it shall be his duty to outline and designate all changes whether by extension, adding laterals or otherwise, that may be necessary to make the plan of the proposed improvement practicable

and feasible, showing the probable size, character and cost of such laterals, and if the construction of a ditch or drain is involved in the proposed improvement, said engineer shall especially examine and report the nature and capacity of the outlet and any extension that may be necessary to supply the same, and if he finds the improvement petitioned for is feasible, he shall include on his report a map of the proposed improvement, giving the description of the different tracts of land likely to be affected, and outline thereon any recommended changes, and give so far as known the names of the owners of the property and corporation affected, and the probable area that is likely to be drained or affected by the proposed improvement, and such other information as the board or court may order. Provided the engineer appointed pursuant to the provisions of Section 5 of this act shall confine his preliminary survey to the drainage area described in the petition except to secure outlet, unless authorized by order of the Board or court with the consent of the bondsmen at a hearing after ten days notice by mail to the petitioner and bondsmen, and any investigation made by the engineer as to outlet without such order, shall be confined to running the necessary levels to ascertain the distance necessary to secure the proper fall.

Sec. 7. County Auditor or Clerk of District Court to give notice.—Upon the filing of the report of the engineer as provided in Section 6, with the county auditor or clerk of the district court, as the case may be, it shall be the duty of said auditor to immediately notify the county board, or the clerk, the judge of the district court of the filing of said report, and the said auditor or said clerk, with the approval of the judge, shall fix a time for the hearing thereon, not to exceed thirty days from the date of the filing thereof, and within ten days thereafter shall by mail notify the several petitioners and the owners of the several tracts of land and corporation, public or private, affected by the proposed improvement as shown in the engineer's report, of the time and place of said hearing; and at such time and place said engineer shall attend before said county board or district court, and make such explanation and supply such information as may be necessary to fully inform said board or court of all facts named or referred to in his report, and such other facts as affect or relate to such improvement petitioned for or as recommended by him. The petitioners and all other parties interested may appear and be heard, and if upon full hearing it shall appear that the proposed improvement is not practical and no plan is reported by the engineer whereby it can be made practical, or is not of public benefit or utility, or that the outlet is not of sufficient capacity, then said petition shall be dismissed, but if the county board or district court shall be satisfied that the proposed improvement as outlined in said petition or as modified and recommended by the engineer is practical, that there is necessity therefor, and that it will be a public benefit and promote the public health, and have an outlet

of sufficient capacity, then said board or court shall so find and by said order shall designate the change that shall be made in the proposed improvement from that outlined in the petition; said changes may be described in general terms, and shall be sufficiently described by attaching to said order and said petition, a map drawn by said engineer outlining the proposed improvement thereon, and the changes made, and thereafter said petition shall be treated as modified accordingly.

Provided, the findings required in this section shall not be construed as conclusive except only to determine the nature and extent of the plan and the necessity for ordering a permanent survey; all questions relative to the practicability and necessity of the proposed improvement shall be subject to further investigation and consideration at the final hearing if the permanent survey discloses facts not discovered in making the preliminary survey.

Sec. 8. County Board or District Judge to order detailed survey.—Upon the filing of the order as specified in Section 7, said board or court shall order said engineer or any other engineer, if a change of engineers shall be determined, to proceed to make a detailed survey and furnish all necessary plans and specifications for the proposed improvement, and report the same to said board or court with all reasonable dispatch, and in case of a change of engineers, each new engineer shall make and file the oath and bond as provided in section 6.

Sec. 9. Vacancy in office of engineer.—If the engineer appointed by the board or court fails to qualify, or at any time resigns, dies or becomes disabled during the progress of the work, the board or court, as the case may be, that originally appointed him shall forthwith appoint another civil engineer having the qualifications required by this chapter in place and stead of the engineer first appointed, who shall give the bond and take the oath required by this chapter and shall do all things remaining to be done by the original appointee under the requirements of this chapter.

Sec. 10. Engineer to make survey.—Upon the filing of the order named in Section 8, such engineer shall forthwith make a correct survey of the line of said drainage improvement petitioned for and approved by order of the board or court at the preliminary hearing, and of the branches thereof, if any, from its source or sources, to its outlet or outlets; and he shall cause stakes or monuments to be set along said line numbered progressively up or down stream, each one hundred feet; and shall fix and establish bench marks upon permanent objects not more than one mile apart along each line surveyed so that the same will not be destroyed in constructing the system, and carefully note the location in his field book and upon the plats contained in his report. In case of an open ditch or an improvement of a creek or water course, he shall, in tabular form, give the depth of the cut, the width at the top and the

width at the bottom at each one hundred foot stake or monument, the number of cubic yards of material to be excavated from said ditch, creek or water course, the estimated price per cubic yard and the estimated total cost of the work in each one hundred foot section. In the case of tile drain construction he shall, in tabular form, show the depth to which the tile shall be laid at each one hundred foot stake or monument, and shall give the kind, size and estimated cost of tile; the estimated cost of hauling, trenching, laying and backfilling and the total cost of said tile drain for each one hundred foot section. Said engineer shall make estimate of the costs of the removal of obstructions in water courses, building of flumes, culverts, bulkheads, intakes, clearing and grubbing and of all items of construction and work, temporary and permanent, found necessary for the completion of the entire drainage system. He shall, in tabular form and by suitable classification recapitulate and give the total estimated number of cubic yards of excavation and the unit and total estimated cost thereof for the entire drainage system; the kind and total number of lineal feet of each size of tile and the unit and total estimated cost thereof; the total estimated cost of hauling, trenching, laying and backfilling of all of the tile drains. He shall supply all detailed plans for all needed structures and report the unit costs and total estimated costs of flumes, culverts, bulkheads, intakes, fences, dikes, dams, controlling works including power appliances and pumping machinery when necessary, and all other items necessary for the completion of the drainage system; all preliminary and other expenses incurred, including the estimated cost of supervising construction, inspecting and certifying to the work until the same is fully completed, and an estimated grand total cost of the whole drainage system up to and including its completion. Whenever a more economical construction will result or the interest of the land owners may be better served thereby, the engineer may sub-divide the work into sections and shall designate in his specifications the time, so far as practicable and the manner in which the whole work or any section of the work shall be done.

In locating a public drainage system, whether the same be open or tiled or following the course of a drain, creek or water course or the branches of such system, the engineer may vary from the line described in the petition as finally adopted by the board or court at the preliminary hearing or from the starting point thereof and as he finds necessary for the complete drainage of the land likely to be assessed for the drainage system described in the petition and approved at the preliminary hearing. He shall have authority to survey and recommend the location of such branch, ditch or ditches as may be found necessary to give owners of lands likely to be assessed for the construction of the drainage system as finally approved by the court or board, the full benefit thereof, and he shall

do the same things and report the same data, tabulations and estimates with reference to said branches as are required by this act with reference to the public drainage system described in the petition as ordered at the preliminary hearing. Provided all laterals recommended by the engineer may be established as provided in Section 6 of this act and the time and manner of their construction may be fixed by the court or board. In all cases in which the route proposed is along highways already established the engineer shall locate the improvement, if an open ditch at sufficient distance from the center of such highway to admit of a good road along the center line thereof. That earth taken from the ditch shall be so placed, and the brush or timber taken from the right-of-way of such ditch may be so used upon the roadway as to form a turnpike which shall be provided with sufficient and suitable culverts or openings so as not to obstruct the natural flow of surface water and no nearer to the margin thereof than two feet. When there is not sufficient fall in the drainage system described in the petition, as adopted at the preliminary hearing to drain the land adjacent thereto or when for other reason it appears expedient, he may shorten or extend the ditch from the outlet named in the petition, far enough to reasonably effectuate the purpose for which the work was intended. When, it will not be detrimental to the usefulness of the whole work or of any extensive section thereof, he shall as far as practicable, locate the ditch on division lines between the lands owned by different persons, and he shall as far as practicable avoid laying the same diagonally across land, but he shall not sacrifice the general utility of the ditch to avoid diagonal lines.

Sec. 11. Engineer may provide for more than one outlet.—Where better results will be accomplished, and a more desirable outlet secured, the engineer may provide for different parts of the drainage to flow in different directions with more than one outlet. It shall not be necessary for such ditches to connect if they embrace the drainage area to be affected by the petition instituting the proceedings. Where no practical outlet can be had but through the lands of an adjoining state the engineer may procure a description of the necessary right-of-way and probable cost thereof and estimate the cost of constructing an outlet and include the same in his report. Provided, any changes or branches recommended by the engineer be established only as provided in Section 6 of this Act.

Sec. 12. Records of engineer.—The engineer shall enter all field notes made during the survey and period of construction in a field book properly ruled, and make a complete and accurate map and profile of the drainage system as surveyed by him, upon good tracing cloth; such map shall be drawn to a scale, show the number of section, township and range in which the lands affected are situated, also each station number in figures, location of bench

marks, the public streets, highways and railroad right-of-ways affected, the name of the county, township and municipality in which such lands or any part thereof are situated, and all other matters necessary to the understanding of the board or court. The profile shall be drawn on a scale, show the elevation, grade, depth of cut, size of tile, and the elevation in figures of each branch and lateral at its source, outlet, and at each one hundred foot stake. He shall make a complete set of plans and specifications covering all the work and construction ordered by the board or court, and make a full, detailed and complete report of his work and recommendations to the board or court and shall include all maps, profiles, specifications and matters herein provided for and file the same with the county auditor or clerk of the district court, where the proceedings are pending. All plans, specifications, maps and profiles herein required shall be made in triplicate and shall be filed with the auditor or clerk where the proceedings are pending, and within 5 days from the filing of such report and before further proceedings are had thereon, one of the copies of said report shall be forwarded by said auditor or clerk to the commissioner of drainage and waters who, within the next 15 days shall examine and approve the same as presented and shall file with the auditor or clerk his approval thereof, or if he does not approve he shall file instead his recommendation for such modifications thereon as he may deem necessary, provided, that if for any reason the said commissioner of drainage and waters finds it impossible or impracticable to complete examination and report on an engineer's report within the time limited herein, said commissioner may make application to the said auditor or clerk for an extension of time, and the said auditor or clerk shall have authority to grant such extension. Upon the filing of the approval or recommendations of the commissioner of drainage and waters with the auditor or clerk, said auditor or clerk shall make an order designating the time and place for the first meeting of the viewers as provided in Section 16 of this Act after which all further proceedings shall be had as provided in this Act. One copy of said engineer's report as originally filed with the auditor or clerk or as modified by the board or court at the final hearing shall be retained by said auditor or clerk, and one copy with a copy of the contract attached shall be delivered to the contractor at his request at any time after the execution of the contract. It shall further be the duty of the engineer, when the work of construction is completed, or when for any cause the engineer ceases to longer act as such, to cause all original plats, profiles and field books to be filed in the office of the county auditor or clerk of the district court where such proceedings are pending, and the said county auditor or county auditors, are hereby forbidden to draw an order making final settlement with the engineer until proper proof has been sup-

plied that the requirements of this section have been complied with by the engineer.

Sec. 13. Engineer to provide for contract in report.—It shall be the duty of the engineer to include in his report a form of contract as complete in its provisions as practicable, which shall contain detailed and complete specifications, by direct statement or by reference to other parts of the report, and shall provide for all necessary supervision of the laying of tile, excavation and other construction work of the contractor, or contractors, and define the relation that shall exist between the county or counties and the contractor or contractors, and shall give the engineer the right with the consent of the county board or district court, as the case may be, to modify his reports, plans and specifications as the work proceeds and as circumstances may require, provided no changes shall be made that will substantially impair the usefulness of any part of the drainage system or structures, or substantially alter its original character or increase its total cost by more than ten per cent of the total original contract price for the construction thereof, but no change shall be made that will cause the cost of the system or work to exceed the total estimated benefits as found by the court or board, provided the increased cost resulting from such changes will be paid by the county to the contractor at not to exceed the price fixed for like work in said contract. The county attorney upon request of the engineer shall assist in the preparation of the specifications and the formal provisions of said contract.

Sec. 14. Engineer to report expenses and progress of work.—It shall be the duty of the engineer every two weeks after the beginning of his work and during the time he is engaged in the same until the letting of the contract, to make an accurate report of all expenses incurred by him, or under his direction, in connection with such drainage project, and include in such report the names of assistants and laborers, and the time each was employed by him, together with his own time and every other item of expense by him incurred in and about said work, and shall forthwith file such report with the county auditor or clerk of the district court where the proceedings are pending, and in no case shall he incur in any manner any greater expense on account of such project than the amount of the bond provided by the petitioners. It shall further be the duty of the engineer to inspect all work during the period of construction in all drainage proceedings, and in all such cases he shall make a prompt, full and detailed report of the progress of the work and include therein a description of the nature, extent and value of the work completed and material furnished.

Sec. 15. County Board and District Court to provide for supervision.—It shall be the duty of the county board of the several counties in this state in case of county drainage construction,

and of the judges of the district court in case of judicial drainage construction, to provide for proper supervision and inspection of all construction work included in any contract, and to cause all contracts entered into under the provisions of this act to be carried into effect, and to cause all ditches, drains or other structures included in the contract to be constructed according to the terms of such contract and in compliance with the plans and specifications of the engineer, and the said county board or district court shall require strict and accurate inspection by the engineer in charge. But in all cases the parties in charge of such inspection work shall be under bond to the county or counties affected, conditioned for the faithful and efficient performance of their duties as such inspectors.

Sec. 16. Viewers to be appointed.—As soon as conveniently can be done following the appointment of the engineer, the county board, in case of a county drainage proceeding or the district court in the case of judicial drainage proceedings, shall make an order appointing three resident freeholders of the county, or counties, not interested in the construction of the proposed work and not of kin to any of the parties known to be interested therein, as viewers, to meet at the time and place to be specified by the county auditor or clerk of the district court as hereinafter provided, preparatory to commencing their duties as hereinafter specified. It shall be the duty of the county auditor in the case of county drainage proceedings or the clerk of the district court in the case of judicial proceedings, within five (5) days after the filing of the report of the commissioner of drainage and waters approving or recommending modifications of engineer's report, to make an order designating the time and place of the first meeting of the viewers, and it shall further be the duty of the county auditor or clerk of the district court within five (5) days after the filing of the approval or recommendation of the said commissioner of drainage and waters on the said engineer's report to issue to said viewers, if then appointed, a certified copy of the petition, the order appointing them and of the order designating the time and place of their first meeting; Provided, that if the said viewers have not been appointed at the time of the filing of the approval or recommendation of the said commissioner of drainage and waters on the said engineer's report, it shall be the duty of said auditor or clerk, within 5 days of the date of the order appointing said viewers, to make his order fixing the time and place of the first meeting of said viewers, as provided in this section. In case any of the viewers so appointed shall fail for any cause to qualify in time for the first meeting, the county auditor, in case of county drainage proceedings and the clerk of the district court in case of judicial proceedings, shall designate some

other person having the qualifications above stated to take his place.

Sec. 17. Duties of viewers.—The viewers after taking the oath to faithfully perform their duties, shall proceed at the time set in said order, with or without said civil engineer, and shall prepare a tabular statement showing as far as practicable the description of each tract of land benefited or damaged; with the name of the owners as the same appear on the last county said duplicate of said county, the total number of acres in each said tracts of land benefited or damaged, as the case may be, the number of acres added to any tract by the total or partial drainage of any meandered lake, or by the change of any water course, and the location and value of such added land; the damage, if any, to riparian rights pertaining to any tract; and the amount that each tract of land will be benefited or damaged by the construction of said work; when any drainage system established under this act drains in whole or in part any public or corporate road or railroad, or benefits any such road or railroad, so that the roadbed or traveled track of any such road or railroad, will be made better by the construction of such system, the viewers shall estimate the benefits arising therefrom to such road, roadbeds or railroads, and report said benefits, giving the names of such roads or railroads, and other particulars necessary to identify the corporations, private or public, that will be benefited thereby, and the amount of benefits to each, as a part of their tabular statement provided for in this section; and the viewers shall also report as a part of such tabular statement the benefits that will result to villages or cities by way of increased drainage facilities or improvements to public health and also the damages awarded to each municipal or other corporation, and to each person, persons, or associations of persons, telephone or telegraph line or other personal property, and from the necessary construction and maintenance of any bridges, culverts or other works rendered necessary by the establishment of such drainage improvement, stating the same separately; and they shall also report the total estimated benefits in respect to the entire system and branches, if any, and also whether or not, the estimated expense of the construction of such improvement, including the damages awarded therefor, are greater than the utility of the proposed drainage system, or that the construction of such system is impracticable for any reason, stating the reason why it should not be constructed.

In case the viewers are unable to agree, each viewer shall state separately in his report his findings on the matters disagreed upon.

A majority of the viewers shall be competent to perform the duties required of them by this act.

Sec. 18. Procedure in case old ditch is used.—Whenever a public ditch is located wholly or in part in the bed of a private ditch already or partially constructed, the engineer shall make an estimate

of the number of cubic yards of earth already excavated on each tract of land, the amount of the reduction in the cost of constructing the portions of the ditch on each tract of land by reason of such private drain having been constructed, and the viewers shall deduct such amount from their estimate of benefits, if any, against such tract of land, making an appropriate notation thereof on their report.

Sec. 19. Railroad lands to be liable for benefits.—All lands owned by any railroad or other corporation, benefited by any such drainage system, drain or water course, shall be liable for such benefits the same as taxable lands.

Sec. 20. State and municipalities to be liable for benefits.—The State of Minnesota, all counties, cities, villages, boroughs and towns or other municipalities and all railroads, receiving any benefits from the construction of any drainage improvement under the provisions of this act shall be assessable therefor for any improvement to any public roads, street or other property including trunk highway or any street or other property owned by or of which the state or any such municipality has the charge and control, and every railroad receiving any benefits from the construction of any drainage system to its road bed, right-of-way or other property used for railroad purposes shall be assessable for such benefits, and in the case of villages or cities they shall also be assessable for any benefits derived from the construction of such drainage improvement by way of furnishing an outlet for drainage of surface waters from within or in the vicinity of such city or village and for the removal of unhealthful conditions in such vicinity by the drainage of stagnant waters from within or in the vicinity of such city or village, or for the furnishing of any other drainage or sewer outlet that may result in any benefit to or improvement of the healthful condition of said city or village, and it shall be the duty of the viewers appointed under the provisions of this act to assess such benefits to such railroads, the state and such municipalities. Whenever any public road or street shall be found to be so benefited, the state, county, city, village, town or borough which is by law chargeable with the duty of keeping such road or street in repair shall be assessed the amount of such benefits accruing to such road or street, and all benefits that shall result to any such village or city in consequence of being furnished an outlet for drainage of any kind or improvement of the healthful condition of said city or village as hereinafter specified, shall also be assessed against such village or city, by reason of the construction of such an improvement and the same, being fixed and determined by order of the board or court at any final hearing, or in the case of appeal at any subsequent hearing before the court, the amount of the liability of any such municipality for such assessed benefits shall be determined in the manner provided in section 44 of this act, and the amount thus ascertained

shall thereupon become a liability of such city, village, town or municipality and shall be due and payable in ten annual installments beginning on the first day of June next following the date or entry of the lien against private individuals as herein provided, and in the case of city, village or towns, if such installments are not paid within thirty days after maturity the amount thereof shall be extended by the county auditor against all the property in such city, village or town liable to taxation, and a levy thereof made thereon and the same shall become due, to be paid and collected in the same manner and at the same time as other taxes. In the event that for any reason an additional lien statement shall be filed in any drainage improvement the same method shall be pursued to ascertain the actual liability of the state and each municipality or other party, and additional lien statement made and filed with reference to municipalities the same as in the case of lands or individuals. Provided; when any public road found to be benefited is a county or state aid road, as defined by the laws of this state, the benefits accruing thereto shall be assessed against the county and the amount thereof shall be charged to and paid out of the general road and bridge fund of said county, and in case of assessment against the state for benefits to trunk highways the same shall be chargeable to and payable out of the trunk highway fund, and it shall be the duty of the commissioner of highways upon presentation of a certified copy of the assessment against the state for such improvement to any trunk highway to settle therefor by drawing an order upon the state treasurer payable out of the trunk highway fund. Whenever the lands of any railroad company shall be determined in any such proceeding to be benefited by any such improvement said lands shall be assessed their just proportion of the benefits as other lands are assessed, and such assessments shall be collected in the same manner as in the case of other lands.

Whenever any road bed, right-of-way or other property used by a railroad company for railroad purposes shall be determined in such proceedings to be benefited by any such drainage system such railroad company shall be assessed its just proportion of such benefits as in the case of other lands assessed, which assessment shall be collected from such railroad company in the same manner as personal taxes are collected by law. From the date of the filing by the county auditor in the office of the register of deeds of the lien statement the amount of such assessment, with interest, shall constitute a lien against all property of such railroad company within such county. Such lien may be foreclosed by action in the same manner as provided by law for the foreclosure of mortgage liens, and the county or counties where such proceedings are pending shall have a right of action against any such railroad company or the enforcement of such assessment and the collection of the amount thereof.

Sec. 21. Assessment not to be greater than benefit.—The

amount that any tract of land, public or corporate road or railroad shall be liable for on account of the location, construction and establishment of any drainage system or systems under the provisions of this chapter, or on account of the repair thereof, shall in no event exceed the benefits which will accrue thereto as determined in the proceedings for such location, construction and establishment or repair.

Sec. 22. Adjoining municipalities to share cost of bridges.—*In all cases where a public drainage system has been or shall hereafter be constructed wholly or partly along a boundary line between towns or in such manner as to cross such boundary line, the cost of construction and maintenance of bridges heretofore or hereafter constructed across any such drainage system on said boundary line shall be paid for and born equally by the towns abutting upon said boundary lines; and all damages awarded shall be divided equally between said towns.*

Sec. 23. County Auditor or Clerk of Court to direct construction of bridges.—*The county auditor, or clerk of the district court wherein the proceeding is pending, shall notify each municipality, railroad company or other corporations to construct any bridge or culvert across or upon its road or right-of-way within a reasonable time named in such notice. If any such work is not done within the time limited, the county board or district court may order the same built as a part of the construction of the system, and the cost thereof shall be deducted from the damages allowed such corporation, or collected from it as in case of an assessment for benefits, and in all cases where the report of the engineer or viewers show the necessity for the construction of such bridge, the board or court may order sufficient retained from any sum due such municipality, railroad or other corporation to secure the construction of such bridge or culvert.*

Sec. 24. All benefited property to be assessed.—*All lands, public or corporate roads, or railroads, including town, county, state aid, and trunk highways, and all villages and cities, in any manner benefited, in whole or in part, by the construction of any public drainage system under the provisions of this act shall be assessable for the costs of the construction thereof, including the costs and expenses connected with such proceeding in proportion to the benefits received, whether such benefits result directly from the construction of said system or some part thereof, or as the same affords an outlet for drainage or prevents the overflow or otherwise directly benefits such land, roads, railroads, villages or cities, provided, that in all cases where land is assessed for an outlet and the lateral connecting the same with the main ditch or branch thereof is not constructed at the time of constructing the system, such land shall be assessed only for the estimated benefits less the estimated cost of connecting the same with said system or some part thereof. Pro-*

vided, further that in any cases where drainage by pumping outlet is established, the board or court shall have authority when necessary to provided for maintenance of the pumping system by annual assessment upon the property benefited.

All lands owned by the state of Minnesota or any department thereof benefited by such drainage system or any branch thereof shall be assessable for such benefit, the same as taxable land, and trunk highways, the same as town, county and state aid roads, provided that in all cases a notice of final hearing on the petition, engineer's and viewers' reports shall in case of assessment of state lands be served upon the state auditor and the commissioner of drainage and waters; and in case of assessment of trunk highways, be served on the commissioner of highways as in the case of individual land owners.

Sec. 25. Viewers to file report.—Said viewers shall upon the completion of their work file with county auditor, in case of a county drainage proceeding or with the clerk of the district court in the case of a judicial proceeding, a report of all their doings and findings in detail, including expenses and actual time they were engaged. They shall in every case completely perform the several duties by this act imposed upon them, at the earliest date possible following their first meeting.

Sec. 26. Hearing—Notices—Publication.—Within three days after the filing of the report of the viewers it shall be the duty of the county auditor in county drainage proceedings to fix a date for hearing on the petition and engineer's and viewers' reports in said proceedings, said date shall not be less than thirty-five nor more than fifty days from the date of notice, and give to the several members of the county board the usual notice of calling a special meeting for that date in the manner provided by law, and in the case of judicial proceedings it shall be the duty of the clerk of the district court where such proceedings are pending, with the approval of the judge, to fix a time and place for hearing on the petition and engineer's and viewers' reports. It shall further be the duty of said auditor or said clerk where such proceedings are pending to cause notice of the time and place of such hearing to be given to all persons interested by publication of such notice for three successive weeks prior to date of hearing in a newspaper printed and published in each county affected. Provided, that in the case of judicial proceedings extending into two or more counties, it shall not be necessary to publish in any county the description of any real estate or the names or description of any roads, railroads or municipal corporations, except such as are located in said county. Printed copies of such notices, so printed for the respective counties, shall be posted at least three weeks before such date of hearing in three public places in each township in each respective county where such work is located, and one at the front door of the court

house in each respective county. Said notice shall briefly state the pendency of said petition and shall state that the engineer's and viewers' reports have been made and filed with said county auditor or the clerk of the district court where such proceedings are pending, and shall state the time and place set for such hearing. Said notice shall contain a brief description of the proposed drainage system, giving in general terms the starting point of the main ditch and branches, the general course of each and terminus, and shall designate the governmental sections of land over which such system or branches or any part thereof is surveyed, as the same is shown by the report of the engineer, and shall give the names of the owners of land and the municipal and other corporations affected thereby, as shown by the engineer's and viewers' reports.

Within one week after the beginning of such publication the county auditor in the case of a county drainage proceeding or the clerk of the district court in case of judicial proceedings shall mail a printed copy of said notice to the commissioner of drainage and waters, state auditor, game and fish commissioner, state forester and to all persons and corporations who are the owners of land or are otherwise affected by said proposed drainage system as shown by the engineer's and viewers' reports, whose address is known to such county auditor in the case of a county drainage proceeding or the clerk of the district court in a judicial proceeding, or can be ascertained respectively by said auditor or clerk by inquiry at the county treasurer's office of the county wherein such lands, roads or railroads or municipal corporations are situated. Provided that in all judicial proceedings extending into two or more counties, it shall be the duty of the clerk to mail to all persons and corporations who are the owners of lands, roads or railroads, or otherwise affected by said proceedings, not less than ten days before the date of hearing, copies of the notice printed in their respective counties. Provided, further, that in all cases in which for any cause said notice shall not be given or shall be legally defective, the county auditor or clerk of the district court, as the case may be, shall cause the same to again be given so that the petition, engineer's and viewers' reports and final hearing thereon may be heard at another meeting or session of said county board or district court which will occur more than seven days after the expiration of another notice by the publication, posting and mailing as provided in the first instance.

Provided, further, if it shall appear at the date of said hearing before the county board or district court that said notice has been properly made, published, posted and served, as to a part of the lands, roads, railroads and corporations, public or private, named in the engineer's and viewers' reports, but was legally defective, either as to publication, posting or service as to other lands, roads, railroads or corporations, or that said notice was properly made, published, served and mailed but through error certain descriptions

of lands, roads, railroads or corporations, public or private, were omitted from such notice or defectively described, then or in either case said county board or district court where said proceedings are pending may adjourn or continue said hearing and order notice to be given as required in the first instance, describing such lands, roads, railroads or corporations, public or private, omitted from the first notice or with reference to which the first notice was in any manner defective, either as to form and contents or as to publication, posting or service, and in that event, the jurisdiction of said board or court shall continue as to all lands, roads, railroads or corporations, public or private, with reference to which proper notice was given, published and served, and in case of judicial proceedings, if it shall appear that proper notice was given, published, posted and mailed only as to lands, roads, railroads or corporations, public or private, within one county but defective as to one or more counties, then the proceedings may be adjourned as herein provided, but it shall not be necessary to publish, post or mail said notice except in the county or counties with reference to which notice or publication, posting or mailing was defective.

Provided, further, that in all cases where service of notice is required by this section to be given by publication, posting and mailing, or otherwise, a personal service of the printed notice in the manner provided for the service of a summons in district court, not less than ten days prior to the date of hearing, the same shall be considered as equivalent to and as in lieu of all other service, and in any case where a party has received a copy of the notice required to be served not less than ten days prior to the date of the hearing, such party shall not be permitted to object because some other manner of service has not been made as provided by this act; and provided, further, that in all cases where an adjournment of the hearing is had because of defective notice or service, the board or court may order personal service upon such parties with reference to whom a previous notice or service was defective, and if personal service is made not less than ten days prior to the date of the adjourned hearing, the same shall be treated as sufficient and as in lieu of all other manner of service required by this act.

Sec. 27. Jurisdiction—When acquired.—Upon due publication, posting and mailing of the notice provided for in section 26 of this act, the county board in the case of county drainage proceedings and the district court in the case of judicial proceedings, shall have jurisdiction of each tract of land, all public highways, railroads and all other property in said engineer's and viewers' reports described, including any land added by the drainage of any meandered lake or the change of any water course and of each tract of land described in said notice, and of each tract of land owned by any of the persons or private corporations and of each municipal corporation whose name appears in said notice, that is affected by the proposed drainage

system or laterals and all persons and corporations, municipal and otherwise that are named in said notice, and all persons or corporations having or owning any interest whatever in any mortgage, lien or incumbrance against any of the tracts of land or other property heretofore in this paragraph referred to or named or referred to in the engineer's and viewers' reports.

Sec. 28. County Board or Judge of District Court to consider petition.—At the time and place specified in the notice or at any adjournment thereof, the county board in case of a county drainage proceeding, or the judge of the district court in case of a judicial proceeding shall proceed to consider the petition for such drainage system together with all matters pertaining to the engineer's and viewers' reports therein, and consider the testimony presented in behalf of all parties interested. At such final hearing the engineer, or his deputy assistant, and at least two viewers shall be present. Such hearing may be continued or adjourned from time to time as shall be found necessary by said board or court.

If at such final hearing it shall appear to the satisfaction of such board or district court from the evidence presented, and from the engineer's and viewers' reports filed, that the general plan of said proposed system as surveyed and reported by such engineer may be improved by the addition of other branches connecting therewith or by a change in the course or dimensions of either the main ditch or any branches or by the elimination of one or more of such branches, or if it shall appear to said board or court at such hearing that the viewers have made unequal or improper assessments affecting any of the property or corporations public or private assessed, or have awarded benefits in an unequal or improper proportion to any such property or corporations, then and in such case the said county board or district court where the proceeding is pending, shall have authority to forthwith amend or correct said viewer's or engineer's reports, or both as the case may be, or to make findings in relation thereto, or to either of the same as shall be deemed necessary from such evidence or such reports, and shall have authority if deemed advisable to resubmit such matters to the engineer or to such viewers for immediate consideration, and shall have authority to order such viewers or engineer, or either of the same, to proceed forthwith and summarily consider said matter and make such change in such proposed drainage system or in the location, course, number of dimensions of the branches thereof, or in relation to the amount of the benefits or damages, or both, respectively awarded, or in relation to the course or dimensions of such main ditch or branches, or either or all of the same as shall appear to such viewers or such engineer to be just, reasonable, necessary and as shall appear to be required by such evidence, and thereupon such viewers or such engineer, as the case may be, shall forthwith proceed to reconsider such matters, at such final hearing, or shall within

such time thereafter as shall be fixed or determined by such board or court, as the case may be, and make and file amended findings and report accordingly. Such amended reports shall thereupon be and become a part of such original report, the same as if originally filed therewith. At such final hearing and after such amendment or amendments are made to such report, the county board or district court may further hear and consider all evidence offered and admissible concerning such report or reports as amended, and may determine accordingly.

If the county board or district court, where such proceedings are pending, from the evidence shall consider it necessary or advisable for the engineer or viewers or both to re-examine the course of said proposed system or the lands to be benefited or damaged thereby, or if other lands not included in the notice given it is found should be included and assessed, then in that case or either of them, the said county board or district court shall have authority to re-submit said reports to said engineer or viewers or both thereof as circumstances may require and order such re-examination and continue said hearing for such time as may be necessary to make such examination and report, and in such case said viewers and the said engineer shall proceed to re-examine the course of said ditch and the lands affected thereby and shall within thirty days after such re-submission file with the county auditor or clerk of the district court, where said proceedings are pending, their amended report. Provided, that in the event said amended report shall include lands, roads, railroads or corporations not included in the original report, or that it shall appear at such hearing that notice of said hearing as theretofore published and served was defective or that such notice was improperly published, posted, mailed or served, or any of the lands, roads, railroads or corporations were improperly or erroneously described therein or were omitted from the original notice, or in case of a judicial proceeding that the notice or the publication, posting or service thereof was defective as to one or more counties but properly served as to others, then or in any such case, the board or court where such proceedings are pending may, by order, adjourn or continue said hearing for such time as may be necessary and direct the county auditor, in case of county proceedings or the clerk of the district court in case of judicial proceedings to cause to be given, published, posted, mailed and served as required by this act a proper notice with reference to all such lands, roads, railroads or corporations not included in the previous notice or with reference to which the notice was in any manner defective or deficiently served, and in any such case the jurisdiction of the county board or district court where such proceedings are pending shall continue in all respects as to all lands, roads, railroads or corporations, public or private, for which proper notices were published, posted and served for the first hearing, and no new or additional notice

shall be required with reference thereto, and all proceedings may be had at said adjourned hearing as in the case of the first hearing and the jurisdiction of said court or board where said proceedings are pending shall extend to and include all property, parties and corporations included in said notice.

Sec. 29. County Board or Judge of District Court to establish ditch.—If at such hearing or any adjournment thereof such county board or district court where said proceedings are pending shall from the reports filed and the evidence produced before them find that the engineer's report and the viewers' reports have been made and all other proceedings in the matter have been had and taken in accordance with the provisions of this act, and that the estimated benefits to be derived from the construction of said improvement are greater than the total costs including damages awarded, and such damages and benefits have been duly awarded and assessed, and that said improvement will be of public utility and benefit or will promote the public health and that such reports are complete, just and correct, then such county board or the district court shall by order containing such findings establish such drainage improvement as specified in the original report or if amended as specified in the amended report of the civil engineer, and shall by such order establish, adopt, and confirm the original report, or if amended, then the amended viewers' report. In case a majority of the viewers have not agreed or shall not agree in their findings, the county or board or the district court, shall determine the proper findings and amend and adopt or confirm the viewers' report accordingly.

Sec. 30. Clerk of Court to make certified copy of viewers report.—In all proceedings pending in the district court it shall be the duty of the clerk, within twenty (20) days following the date of the order directing the construction of the drainage improvements, to make a certified copy of the viewers' report and file the same in the office of the county auditor of each county affected by said proceedings, and it shall be the duty of the court at the time of making the order directing the construction of the drainage improvement or at any time thereafter upon five days' notice in writing to the county auditor of each county affected to apportion and determine the items of expense and the proportion of the cost of the construction of the drainage system to be paid by the respective counties, which unless reason exists to the contrary shall be in proportion to the benefits received, and upon similar notice to said county auditors, the district court or a judge thereof may at any time modify such order or orders as justice may require, or make any additional order in the premises.

Sec. 31. Damages to be paid out of general ditch fund.—When damages are awarded to any person or persons as the owner of any property affected, or to corporations, either public or private,

and the same shall have been duly confirmed, the county board of each county in which any of the land affected for which such damages are awarded is located, shall before entering upon such lands for the construction of said improvement order the same paid less any benefits assessed against the property of any such person out of the general ditch fund if funds are there available, if not out of the treasury of such county on warrants to be drawn and attested by the auditor and signed by the chairman of the board. Such warrants may be issued after the letting of the contract of construction for such improvement. In case of appeal or in case of any postponement or delay in determining the amount of damages due to any person or corporation, the warrants in favor of such person or corporation shall not be issued until the final determination thereof. When the award is confirmed by the court, it shall be the duty of the clerk to immediately transmit to the county auditor of each county affected thereby a certified copy thereof, and likewise any final order or judgment thereafter made in case of any appeal or jury trial; and thereupon the same duty shall devolve upon each county board and auditor as hereinbefore provided. If in any case there shall be doubt as to who is entitled to the damages such board may require of the claimant a bond with good and sufficient sureties to hold the county harmless from all loss, costs, and expense in case any person should thereafter claim and show himself entitled to any part of such damages.

Sec. 32. Appeal—Hearing.—Any person or corporation aggrieved thereby may appeal to the district court from an order of the county board or district court made in any proceeding and entered upon its record determining either of the following matters:

First: The amount of benefits assessed against any tract of land or any road, railroad or corporation.

Second: The amount of damages allowed to any land, person, or corporation.

Third: An order refusing to establish the improvement. Any party appealing from an order of the county board refusing to establish the improvement petitioned for may appeal to the district court and all appeals taken from an order of the district court refusing to establish the improvement may be taken to the supreme court in the manner provided in civil action.

Any person so appealing on the first or second ground may include and have considered and determined benefits or damages affecting land other than his own in such drainage proceedings, but in all such cases he shall specify in his order of appeal the particular land, road or railroad and the assessment appealed from, and such notice of appeal shall be served upon the owner or occupant of such land, road or railroad, or upon the attorney who represents such owner in the proceedings before the court or board. In case such owner has made no appearance by attorney or otherwise in

such drainage proceedings then the said notice of appeal shall be served upon the clerk of the district court or county auditor where such proceedings are pending. To render such appeal effectual such appellant shall file with the county auditor in county drainage proceedings or with the clerk of the district court in judicial proceedings within thirty days of the date of such final order a notice of appeal which shall briefly state the grounds upon which such appeal is taken and in all cases of appeal from an order of the district court or the county board said appellant shall include in his notice a demand for a jury trial, which notice shall be accompanied by an appeal bond to the county board where such property or public roads or railroads are located with sufficient surety of not less than two hundred and fifty (\$250.00) dollars, to be approved in case of a county drainage proceeding by the county auditor and in case of a judicial proceeding by the clerk of the district court where such proceedings are pending, conditioned that said appellant will duly prosecute the appeal and pay all costs and disbursements that may be adjudged against him and to abide the order of the court. Within thirty days after such filing, the auditor in case of a county drainage proceeding shall return and file with the clerk of the district court the original notice and bond of appeal.

The issues raised by such appeal shall stand for trial and shall be fully tried and determined at the next term of the district court, held within the county in which such proceedings were commenced or in such other county in which such appeal shall be heard as hereinafter provided, beginning after the filing of such appeal and shall take precedence of all other matters of a civil nature in said court. If there be more than one appeal on the question of benefits or damages triable in one county the court may of its own motion or upon the motion of the party in interest consolidate two or more such appeals and try them together, but the right of such appellants shall be separately determined. If the appellant fails to recover more damages than awarded to him or fails to reduce the amount of benefits assessed against his land, then the cost of such trial shall be paid by the appellant. In case of demand for a jury trial as to assessment of damages or benefits to lands situated in a county other than the county where such drainage proceedings are pending, and in case such appellant for a jury trial so requests, in such appeal, such trial as to the land situated in such other county shall be held at the next term of the district court of the county wherein such lands are situated, and in such case the clerk of the district court, where such appeal is filed shall make, certify and file in the office of the clerk of the district court in the county where such trial is to be had a transcript of the papers and documents on file in his office in such proceedings so far as they pertain to the matter on account of which such appeal is taken. After such trial the clerk of the district court where such action is tried, shall make, certify

and return the verdict to the district court of the county wherein such proceedings were instituted, and such verdict or order shall be entered and enforced as a part of the proceedings of such last mentioned county.

Sec. 33. Contracts for construction to be let.—After the expiration of thirty days following the filing in the office of the auditor or clerk, as the case may be, of the order establishing a drainage system, the auditor and chairman of the county board in the first instance, and in the second instance, the auditors of the respective counties meeting for that purpose at the office of the auditor of the county in which the proceedings are pending, or a majority of them, shall proceed as hereinafter provided, to sell the job of digging and constructing the entire work either as one job or in one or more linear sections of 100 feet each. The auditor and chairman of the county board or auditors, as the case may be, or a majority of them, may with the approval of the engineer, sell separately from the jobs of excavation, any job of building flumes or other wood or masonry work, fencing or other construction work specified in the engineer's report. The auditor and the chairman of the county board, or auditors, as the case may be, may if deemed for the best interests of all concerned, let a separate contract for the furnishing of material for the construction of such system. The auditor with such chairman or auditors, as the case may be, shall contract in the name of the county or in the name of the respective counties, as the case may be, each acting by and through its auditor, with the party to whom any of such jobs of construction work or any section or sections is or are sold, requiring him to construct the same in the time and manner and according to the specifications, provisions and form of contract upon which the drainage system is established, and shall take from him a bond in the penal sum of not less than 75 per cent of the entire contract price with sufficient surety to the county or to the respective counties, or any two or more of them, as the case may be, for the use of such counties, or county, as the case may be, and also for the use of all persons who may show themselves to be aggrieved or injured by any breach thereof, or of any contract for which such bond is given; to be by said auditor and chairman, or auditors, approved, conditioned that such party shall faithfully perform and fulfill his contract, and pay all damages which may accrue by reason of the failure to complete the work in the manner and within the time required in the contract therefor, and otherwise conditioned as in this act provided, 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 this obligation of the principal or principals or surety on said bond. The auditor of the county in which the proceedings were taken shall give notice of the letting of such contract by publication for three successive weeks in the official paper of

such county of the time when and place where such contract shall be let to the lowest responsible bidders, and such notice shall state the approximate amount of work and the estimated cost and shall invite bids for the work as one job, and also for any one or more of such sections or any one or more of such construction jobs, and if a separate contract for the furnishing of material shall be deemed advisable such notice shall contain all matters hereinbefore specified, so far as applicable, and a statement of the kind and size of tile, the number of lineal feet of each size required, the estimated cost thereof, the time within which the same are to be furnished, with such other matters as he may deem proper for the information of bidders. He shall reserve the right to reject any and all bids and no bid shall be entertained which exceeds by more than 30 per cent the estimated cost of the construction of the part of said work covered by said bid; nor unless accompanied by his certified check payable to the auditor or to the respective auditors, as the case may be, for not less than 10 per cent of the bid; and said auditor or auditors, chairman and clerk, may adjourn such letting from time to time until the whole work shall be taken and with the approval of the engineer may let any one or more of such sections or any one or more of such construction jobs. When the estimated cost of the construction is more than three thousand (\$3,000.00) dollars, the auditor may also advertise such letting in a trade paper. The engineer shall attend to the letting of the work, and no bid shall be accepted without his approval, as to compliance with plans and specifications. Provided, if it shall appear at the expiration of thirty days from the date of the order establishing the improvement that one or more appeals have been taken involving the question of benefits or damages then no steps shall be taken for the letting of said contract unless ordered by the board or court, upon application of the auditor or auditors or of any interested person or persons and on notice by mail to all persons who have appeared in said proceeding or to their attorneys.

Sec. 34. Contract and bond to contain description of work to be done.—The contract to be executed by the contractor and the bond furnished by him as required by this act shall be attached to each other and the contract shall contain the specific description of the work to be done, either expressly or by reference to plans and specifications forming a part of the engineer's report and refer to the number of section or sections included in the contract as provided for in the preceding section, and shall provide that the work shall be done and completed as provided in the plans and specifications and the report of the engineer and subject to his inspection and approval as provided in this act. The engineer and county attorney and attorney for petitioners shall take part in the framing of the contract and shall insist that the same shall contain the proper specifications as required herein. Said contractor shall exe-

cute, acknowledge and file with the county auditor in county proceedings and with the clerk of the district court where such proceedings are pending, in judicial proceedings, a bond with good and sufficient surety, to be approved by such county auditor or such clerk, as the case may be, in a sum not less than 75 per cent of the contract price of the work. Every such contract and bond shall embrace all of the provisions as required by this act and as provided by law for the giving of a bond by contractors for public works and improvements and shall carry all the liability provided by statute in case of public contractors for the better security of the contracting county or counties and of parties performing labor and furnishing material in and about the performance of 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 contractors shall forfeit and pay the county or counties a certain sum, to be named therein, and which shall be fixed by the county auditor or auditors, as the case may be, for each day that such failure shall continue. The bond shall expressly provide that the bondsmen shall be liable for all damages resulting from any such failure, whether the work be resold or not, and that any person or corporation, public or private, showing himself injured by such failure may maintain an action upon such bond in its or his own name, and that 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 action on such bonds by any injured party.

Sec. 35. No extension to be granted—Exceptions.—No extension of time shall be granted by the auditor or auditors, as the case may be, unless applied for in writing, stating to his or their satisfaction good and sufficient reasons 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 accruing after the limit of such extension. One such extension may be made for a period of time not exceeding one year, but ten days' notice of such application shall be given to the engineer and the attorney for the petitioners, and in case of judicial proceedings, also to the county auditors of the several counties.

No extension after the first above provided for, shall be granted until a hearing upon such application shall be held after such notice as hereinafter provided. Upon the filing of such application, the auditor or auditors, as the case may be, shall cause to be prepared and served upon the engineer and attorney for the petitioners, at least ten days before the date set for the hearing and shall publish a brief notice setting forth the filing of such application, and the

time and place when and where the said application will be heard, considered and determined by said auditor or auditors, as the case may be. At the time and place so designated the said auditor or auditors shall proceed to hear, consider and determine such application, and shall make written order in relation thereto.

Such notice of hearing shall be published for two successive weeks prior to such hearing in each county affected by such drainage proceeding in the newspaper therein duly designated to publish the delinquent tax list for such year, and shall be served upon the county auditor of each county affected. The expense of such hearing and publication and service of such notice shall be paid by such contractor applying for such extension.

Sec. 36. Separate bids for tile construction.—Whenever tiling is used in the construction of any drainage improvement or any part thereof, or if at any time previous to the commencement of advertising for the sale of the job or jobs for the construction of the same, upon request of a majority of the petitioners in writing therefor, filed with the county auditor in a county proceeding and with the clerk of the district court in case of a judicial proceeding, that separate bids be called for on such tile construction, one of which shall be based upon the construction of such tile work according to the plans and specifications; the others shall include the construction of such tile work according to the plans and specifications and shall require the contractor to guarantee all such tile work done for a period of three years after the completion of such contract against any fault or negligence on the part of any such contractor. Thereupon, said county auditor, or auditors, as the case may be, shall include such requirements in their notice and shall call for bids, and said contractors shall be required to make their bids accordingly, and said auditor, or auditors, as the case may be, shall have authority to designate which of said bids shall be accepted, and in the event that the bids requiring the guarantee of said work for the period named shall be accepted, the contract shall require the contractor of the whole tile work or of any part thereof, as the case may be, to guarantee all of such tile work done by such contractor for a period of three years after the completion of such contract against any fault or negligence on the part of such contractor, and any failure during said period of any part of said tile work constructed by any such contractor to accomplish the purpose of such drainage for which it was intended, shall be prima facie evidence that the same is due to the fault and negligence of such contractor. It shall further be the duty of the contractor and a condition of securing the contract that he shall give a good and sufficient bond for the performance of said contract and the sureties thereon shall be liable under such guarantee as herein provided. The acceptance of such tile construction by the engineer or county board shall not relieve or exempt said contractor or his bondsmen

from the liability therein imposed on said contractor for such three-year period.

Sec. 37. Bonds may be reduced upon partial completion of contract.—The contractor at the end of each season's work after giving the contractor's bond and prior to the completion and acceptance of such job of construction, may make a verified application to the county board in case of a county proceeding, or the district court where such proceedings are instituted, in case of judicial proceedings, setting forth approximately the total yardage of excavation completed in case of open work and the total size and length of work in case of tile construction and the total amount of other work completed, the contract price thereof, and the value of the work therefore certified as completed by the engineer and the amount of money received by the contractor and the amount held back under the terms of said contract, and further setting forth the amount then owing and unpaid by said contractor for labor or material already furnished in the matter of the completion of such contract and asking an order reducing amount of the contractor's bond.

Upon the filing of such application with the county auditor, in the case of county proceedings, and with the clerk of the district court in case of judicial proceedings, it shall be the duty of said auditor or the clerk of said court, with the consent of the judge thereof, to make an order fixing a time and place for the hearing on such application, which shall be at a time not less than twenty days, nor more than thirty days from the date of such notice, which notice shall recite the filing of such application, giving an outline of the facts obtained therein and stating the time and place for hearing thereon, and shall cause said notice to be served by mail upon the engineer and the attorney for the petitioners and in case of a judicial proceeding upon the county auditor of each county affected, all within ten days from the date of said order, and shall cause said notice to be published in a legal newspaper printed and published in each county for two weeks prior to the date of such hearing. At the time and place specified in said notice, said county board or district court, as the case may be, shall hear all parties interested for or against the granting of the petition of said contractors and if upon such hearing said board or court shall find and determine that no loss will result thereby, that the contractor is not in default, and that the possibility of the county or counties sustaining any loss will not thereby be increased, the said court or county board may by order reduce the penalty of such bond to such sum as shall be found by such court or county board sufficient to save the county or counties from loss or damage, as the case may be, but such reduction shall in no case exceed more than 35 per cent of the amount already paid to the contractor, and such reduction shall not affect the validity or the enforcement, or in any manner otherwise affect the remaining

amount of the penalty of such bond, nor any liability on such bond incurred prior to the reduction.

Sec. 38. Contractor to be notified of default.—If a job be not completed within the time fixed in the contract therefor, it shall be the duty of the county auditor in the case of a county drainage proceeding and the clerk of the district court in case of a judicial proceeding within ten days after the date fixed for the completion of the contract to notify in writing, by mail, the contractor, his bondsmen and the engineer of such default, and in case of a judicial proceeding the county auditors of each county affected, and in said notice said bondsmen shall be notified of such failure to complete said contract, and further that if the same is not completed within the time specified in said notice, which shall not exceed sixty (60) days from the date of the notice, the unfinished portion of said contract will be relet after notice as required in the original letting of a contract for the construction of drainage work as provided in this act; provided, that if the bondsmen of such contract shall within ten days after the mailing of such notice undertake the completion of said work, then and in that event the county board in the case of county proceedings or the district court in the case of judicial proceedings, may upon application of such bondsmen upon ten (10) days' notice to the county auditor, or auditors, as the case may be, grant such additional time as to the board or court may seem just and reasonable, and in the event said contract is completed by said bondsmen within the time specified by the court or board, the balance due on the contract shall be paid to such bondsmen, less such damages as such county or counties, as the case may be, shall have sustained by reason of such default, which damages shall be fixed by such board or court and deducted from any balance due the contractor upon such contract at the time of default.

Provided, further, that if said bondsmen do not undertake the completion of said contract as herein provided and the same is not completed within the time specified in said notice, then said auditor in the case of county drainage proceedings and the county auditors of the counties affected in case of judicial proceedings shall advertise for bids for the completion of said contract in the manner provided for the original letting of contracts under the provisions of this act. Provided, that in the event of letting a contract for the completion of the unfinished work no contract shall be let for more than thirty per cent above the original contract price for such work, and in the event of a failure to complete said contract by the bondsmen, all sums due and unpaid the original contractor upon said contract at the time of default shall be forfeited to the county or counties, as the case may be, and no such contract shall be let a second time to the same party. Upon the letting of a contract to complete said work, a new contract and bond shall be required of the contractor as provided in case of original contracts, and any excess that

is paid to the contractor under a resale of such work shall be recoverable from the bondsmen of the first contractor as damages in favor of the county or counties affected, as the case may be.

Sec. 39. Procedure in case of default.—In proceedings before a county board or district court for the construction of any drainage improvement where a contract has been let and the date of the completion of such contract has expired, or in any case where such contract has been forfeited but for any reason has not been re-let, and the original contractor and bondsmen, or the contractor offering to furnish new bonds, or the bondsmen without the contractor, shall petition the county board in county proceedings or the district court in judicial proceedings, asking that said contract be reinstated on the original terms, if it has been forfeited, and extend the same for such reasonable time as may be deemed necessary to complete the work, and such petition shall be filed in the office of the county auditor in county proceedings or the clerk of the district court in judicial proceedings; the said auditor in case of county proceedings and the clerk of the district court, with the consent of the judge thereof, in judicial proceedings shall, within ten days, by order, fix a time and place for hearing on said petition which shall be at a date not less than twenty days, nor more than thirty days from the date of said order, and give notice thereof; said notice shall specify that said petition has been filed, and give the time and place for hearing thereon, shall briefly state the amount of said contract remaining unperformed, the amount withheld by the county or counties on the portion of said contract that has been performed by the contractor, and shall cause said notice to be served by mail upon the engineer, the attorney for the petitioners, and in case of judicial proceedings the county auditor of each county affected, and within ten days after the date of said notice shall cause a copy thereof to be published in a legal newspaper in each county affected, for two weeks before the date set for the hearing. At the time and place specified in said notice, said board or court shall hear all parties interested, for or against such petition, and if it shall appear that the contractor and his bondsmen consent thereto, and that the said bondsmen are responsible, and that said bondsmen shall, in writing, re-obligate themselves as fully as under the original contract for the performance of said contract, according to the plans and specifications, or, in case the bondsmen do not assent, but other satisfactory bond is furnished by the contractor that will be approved by the said board or court, or, in case the petition is by the bondsmen, that they are responsible and capable of completing said contract in accordance with the plans and specifications and furnish a proper bond therefor, then in that event said board or court shall have authority to reinstate said contract, if it has been canceled, and specify the time within which it shall be completed. Provided, the provisions of this section shall not be construed to release the

original bondsmen from any obligation to the county or counties under the original contract or any damages sustained by such counties or other counties by reason of the default, and said board or court may as a condition of granting such extension require that all damages that the county or counties have sustained by reason of the default shall first be paid, or the amount thereof deducted from the balance retained in the hands of the county or counties on the work already performed.

Provided, further, that this act shall not be construed to affect any action or proceeding now pending in any of the courts of this state.

Sec. 40. Engineer to inspect work in progress.—It shall be the duty of the engineer to properly inspect all work during the progress of construction and see that the same is performed according to the specifications and the terms and conditions of the contract and upon being notified by the contractor that his job is completed, to inspect the same, and all portions thereof included in said contract and if he finds it complete according to the contract, plans and specifications, he shall report that fact to the board or court, as the case may be, and give the contractor a certificate stating that said section or sections (by number) or other jobs of construction are completed according to the contract, plans and specifications as set forth in the report of the engineer. When the work for which such certificate is to be issued, affects more than one county, proportionate certificates shall be issued to each county. Upon the filing of such report of the engineer that any drainage improvement has been completed, the board or court shall fix a time and place for hearing on said engineer's report, which shall be not less than twenty (20) days nor more than thirty-five (35) days from the date of said order, and upon the filing of such order it shall be the duty of the county auditor in case of county proceedings, or the clerk of the district court in the case of judicial proceedings to cause to be given by mail a notice to all land owners and corporation whose lands or property are assessed for benefits for the construction whose postoffice address is known, or can be ascertained from the county treasurer, also the engineer, contractor and attorney for the petitioners. Such notice shall state the filing of the report, and the order of the board or court, granting hearing thereon, and specify the time and place for such hearing, and that all parties objecting to the acceptance of the work can then appear and be heard.

Service of such notice shall be sufficient if the same is mailed ten days before the date of such hearing; at the time and place specified in such notice, said board or court shall give all parties interested an opportunity to appear and be heard for or against the approval of said report, and if it shall appear from the evidence presented to the satisfaction of the board or court that said contract has been completed in accordance with the plans and

specifications, it shall so find and by order direct the payment thereof specifying the balance found due, and upon presentation and surrender of said certificate with such approval endorsed thereon to the auditor in case of county proceedings, he shall draw a warrant upon the treasurer of his county for the balance due on said contract, and in case of judicial proceedings, the clerk of the district court shall draw an order on the county auditor of the respective counties for their proportionate share of the amount found due on said contract, and upon the presentation of such order it shall be the duty of such county auditor to draw a warrant upon the county treasurer of his county, payable to the contractor for the amount specified in the order of the clerk. In every case said warrant shall be paid out of the general ditch fund to be provided by the county board as hereinafter specified. Said warrant shall become due and payable out of said funds at once, and if there shall be no cash in said fund to pay said warrant when the same is presented, the county treasurer shall endorse said warrant "Not paid for want of funds" and date and sign such endorsement, and the amount of said warrant shall draw interest at the rate of six per cent per annum until called in by the treasurer or auditor of said county and paid. Provided no county auditor shall issue any order as a part of the plan of settlement with the contractor until the hearing provided for in this section has been had and the report of the engineer approved.

Sec. 41. Engineer to superintend laying of tile, etc.—It shall be the duty of the engineer during the progress of the work to inspect the laying of tile, excavation and all other work of construction from time to time as provided for in the specifications and provisions in his report and as provided in the contract for construction, and every thirty days during the progress of the work to report in writing to the county board or the district court, as the case may be, as to all work completed since the last prior report, including all material furnished in accordance with the provisions of the contract, and his services for making such inspection shall be at the rate and in the same manner as other services rendered, and each thirty days or at such times as provided in the contract, during the progress of the work of construction, the engineer may issue preliminary certificates for work done and approved, in accordance with the plans and specifications, or for material or other supplies furnished and delivered along the line of said improvement, or otherwise delivered in accordance with the contract and to be used for the construction or installment of tile or other enclosed drains or for bridges or culverts along the line of and as a part of said proposed drainage system, which preliminary certificate shall contain the station number or numbers of the work covered by such certificate, and in case of an open ditch

the actual yardage of the excavation certified, and the total value thereof according to the contract of construction, or in case the same is for material furnished, then an estimate of the total value of such material according to contract. Such certificate shall further show the percentage of such total value of the work or material to be paid, by the county or counties, and if the proportion has been fixed by order of the court such certificates shall further show the proportion of such total value to be paid by the respective counties. Such certificate shall be executed in duplicate by said engineer or in such manner as may be necessary, and as many thereof marked "duplicate" shall be delivered to the contractor as there are counties affected, and such engineer shall further file one thereof with the county auditor of each county affected; provided, that except as hereinafter provided, no engineer in drainage proceedings shall by preliminary certificate certify or recommend for payment, and no county auditor shall cause to be paid a sum exceeding 75 per cent of the total value of material furnished or delivered as such total value as shown by such preliminary certificate; but such material shall be delivered only as required for use in the course of construction, and at such reasonable times and in such quantities as the engineer shall determine and direct.

Provided, that in case of the construction of an open ditch where the contract provided for the construction of highway bridges across the ditch when any such bridge has been completed and opened for public use and has been finally accepted by the engineer and the county board, then the contractor shall be entitled to full payment therefor.

Provided, further, that no certificate of partial completion or of furnishing material shall be furnished or delivered by the engineer unless said certificate shall be accompanied by the engineer's written certificate that no loss will result from such partial payment.

Provided, further, that the said certificate of the engineer in the matter of any county or judicial drainage proceeding or any other estimate or certificate required under any of the drainage laws of this state to be made by him shall not constitute prima facie evidence of the truth of the contents thereof or the completion of any ditch or any part thereof by the contractor or otherwise, or of the fulfillment of the contract or part thereof, and in all cases where the county or counties have paid for material furnished and delivered on a preliminary estimate of the engineer, such county or counties shall have a lien on the said material to the amount of all payments made thereon by such county or counties.

Sec. 42. Partial payment on jobs.—In all county and judicial drainage proceedings where the cost of the construction of the

system exceeds fifty thousand (\$50,000) dollars, and where fifty per cent of the total amount of the excavation work or tile construction work, independent of the cost of the tile, as shown by the engineer's report, is completed and the contractor is not in default, the contractor may file with the county auditor in county proceedings or with the clerk of the district court where the proceedings are pending in judicial proceedings, a petition setting forth the total cost of the drainage improvement, the total contract value of the construction work completed, the total amount of warrants issued to such contractor for such work, the total amount reserved by a county under the terms of the contract and the total balance of the contract at the contract price unperformed, and the proportion of the cost of construction to be paid by each county in a judicial proceeding, and praying therein that an order be made authorizing or directing the county auditor or auditors to pay the contractor a certain percentage of the sums reserved by the county or counties on the work already completed.

Upon the filing of such a petition duly verified, with the county auditor in case of a county proceeding, and with the clerk of the district court where the proceedings are pending in judicial proceedings, it shall be the duty of said county auditor or said clerk, with the consent of the judge, within ten days, to fix by order a time and place for hearing upon said petition before the board or court where the proceedings are pending which shall be not less than twenty (20) days nor more than thirty (30) days from the date of the order; and within five (5) days from the date of said order, said auditor or said clerk shall issue and cause to be served a notice therein reciting the filing of said petition and substantially the facts contained therein, and the date and place of hearing thereon, which notice shall be served within ten days from the date of said order by mail upon the engineer, the attorney for the petitioners, and in judicial proceedings upon the auditors of the several counties affected.

At the time and place specified in said order and notice, said county board in county proceedings, or district court in judicial proceedings shall attend and hear all parties interested, for or against the granting of said petition, and if it shall appear from the showing made to the satisfaction of said board or court, that the contractor is not in default and to the extent that he has completed the work, has performed it in a satisfactory manner; that more than fifty per cent of the total contract price, aside from the material furnished, has been completed; that the portion that has been performed, and that a portion of the sum reserved by the county or counties on the part of the contract that has been performed can be reduced without endangering the interests of the county or counties, then said board or court shall so find and shall have authority

to order paid to said contractor a portion of the sums reserved by the county on the work already performed, and not to exceed forty (40) per cent of such reserve.

Sec. 43. Bonds may be authorized and sold for construction.
—The county board of each and every county wherein any drainage system is proposed to be wholly or partly located and established, or wherein lands are located which are assessed for benefits by reason of the construction thereof, are hereby authorized after the lien statement prepared by the county auditor has been filed in the office of the register of deeds, to issue the bonds, of their respective counties in such amounts as may be necessary to defray in whole or in part, the expenses incurred or to be incurred in locating, constructing and establishing or repairing so much of any such ditch as may be located within said county; or in such relation to such county as to affect lands therein with the terms of this act. All such bonds shall be sold as provided by Section 1856 of the General Statutes of Minnesota 1913, and not otherwise. The word "expenses" shall be construed to mean and cover every item of cost of said drainage improvement from its inception to its completion, and all fees and expenses to be incurred in pursuance thereof. Such bonds shall be payable at such time or times not to exceed thirty years from their date, and shall bear such rate of interest not to exceed six per cent per annum, payable annually or semi-annually, all as the county board shall by resolution determine; provided the time or times when said bonds shall be payable as fixed by said resolution shall conform to the order of the board or court fixing the time of payment of the principal and interest on the ditch lien, as provided in Section 51 of this act. Each bond shall contain a recital that it is issued by authority of, and in strict accordance with the provisions of this act, and shall be signed by the county auditor, who shall keep a record thereof. Said county board shall have power to sell and negotiate said bonds, as hereinafter provided, but for not less than their par value. The proceeds from the sale of all such bonds shall be placed to the credit of the drainage proceedings in which they are issued and shall be placed in the general ditch fund as provided in this act. The county auditor shall keep a separate account with each drainage system, which account shall be credited with all moneys arising from the sale of bonds, all moneys received as interest on penalties or upon liens, charges, assessments, and from all other sources on account of such drainage system, and which account shall be debited with every item of expenditure made on account of such drainage system. Such county board shall provide moneys for the payment of the principal and interest of said bonds as they severally mature, which moneys shall be placed in the general ditch fund, into which fund it may transfer any surplus moneys remaining in the general

revenue fund or other funds of the county which can be properly used for the purpose of this act, into which fund shall be paid all moneys received from the payment of any liens under the provisions of this act. And such board is hereby authorized to pay drainage bonds issued under the provisions of this chapter out of any available funds in the county treasury, when the moneys on hand in the general ditch fund of the treasury are insufficient to meet the payment of bonds issued in ditch proceedings when the same mature, but the funds from which such money have been taken or used for the payment of bonds as they mature shall be replenished with interest at the rate of six per cent per annum from collections of unpaid assessments for drainage improvement constructed under any proceedings hereunder. Provided, the county board shall have authority to provide in the contract for the sale of the bonds for the delivery of such bonds as the work proceeds and the funds are needed, and for the payment of interest only from the date of the delivery of such bonds.

Sec. 44. Auditor to make tabular statements.—At the earliest practicable time after the letting of the contract for the construction of any drainage improvement, as herein provided, the auditor of each county affected thereby shall make in tabular form a list and statement showing the following facts, and in the order named, viz:

First. The names of the owners of all lands and the names of all public and corporate roads, railroads, and municipal corporations, within their respective counties benefited by the construction of such proposed work as appears from the viewers' report, as modified, if at all, and approved by the order of confirmation of the board or court.

Second. The description of said lands as the same appears in such report as so affected, together with the total number of acres in each tract according to the assessment roll or tax lists of such county.

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

Fourth. The estimated amount of benefits and damages to each of said tracts of land and the estimated amounts of benefits and damages to each public or corporate road, railroad or municipal corporation, as the same appears in the viewers' report, as affected by the order of confirmation of the board or court or as changed by the jury or court.

Fifth. The amount that each tract of land, and that each of said public roads, including trunk highways, railroads or municipal corporations so benefited will be liable for and must pay into the treasury of each county for the establishment and construction of

such drainage system, which said amount shall be determined as follows:

Said auditor shall make a full statement showing the total cost of each drainage system, under each separate petition for such system, and each petition and each drainage system located, established and constructed shall be known and designated by a number to be given it. Such statement shall be headed as follows:

Statement showing cost of drainage system No....., to whom paid..... For what paid.....

..... Amount paid..... Said statement shall be summed up, showing in figures the total cost of each system, and shall be attached to and form a part of the statement herein provided for. The total cost shall then be divided by the total estimated benefits as provided for in subdivision five of this section, for the rate of cost on each one dollar of benefits, the auditor not to be obliged to carry out and use a smaller fraction than one-tenth of one mill. The amount of estimated benefits to each tract of land, and to each public or corporate road, railroad or municipal corporation (as hereinbefore provided for), shall be multiplied by said rate, and the interest set down in the proper column opposite each of said tracts of land, public or corporate roads, railroads or municipal corporations, and such results so obtained, less the amount of damages, if any, shall be the amount that each of said tracts of land, public or corporate roads, railroads or municipal corporations, will be liable for on account of such improvement.

Sec. 45. Statement to be acknowledged and filed with register of deeds.—Such statement shall be signed by the auditor in the presence of two attesting witnesses, and be duly acknowledged by him, and shall then be duly filed with and recorded by the register of deeds of such county. The amount that each tract of land and each public or corporate road, railroad or municipal corporation will be liable for, and the interest thereon, as hereinafter provided, shall be and remain a first and paramount lien on such land, public or corporate roads, railroads or municipal corporations, until fully paid; and shall take precedence of all mortgages, charges, incumbrances or other liens whatever, such payments may be made as hereinafter provided. Such filings shall be deemed notice to all parties interested of the existence of such lien. The fees of such register of deeds for recording shall be paid by the county, on the allowance of the board of county commissioners, and said statement, after the same has been recorded, shall be returned to the auditor, to be placed by him with other files relating to such drainage system, and carefully preserved by him.

Sec. 46. Corrected statements may be filed.—That in all cases where a public drainage system has been regularly established by order of a county board or district court or a judge thereof pursuant to the provisions of this act or any other law

requiring the filing of such tabular statement, and where a county auditor or county auditors, as the case may be, has made a tabular statement and summary as required by law, and filed the same for record in the office of the register of deeds in and for the proper county, which said statement and summary is erroneous and does not conform to the order of the county board or district court, or where it has occurred that certain items of cost of construction or expenses in said proceedings have been omitted from the original tabular statement and assessment made and filed for record with the register of deeds and said items of cost have been paid by the county, then and in either of such cases, it shall thereupon be the duty of the county auditor in the case of county drainage proceedings and of the county auditors in the case of judicial drainage proceedings to make a new and correct tabular statement and summary in accordance with the facts and the order of the county board or district court and attach thereto a petition supplying the necessary explanation and asking for an order authorizing the filing of the new statement as a correct summary and tabular statement, and in the case of judicial proceedings the county auditors shall file such petition with the clerk of the district court where said proceedings are pending, and thereupon the county auditor in the case of county proceedings, and the clerk of the district court, with the approval of the judge in the case of judicial proceedings shall by order fix a time and place for a hearing upon said petition before the county board or district court, where said proceedings are pending, which shall be at a time not less than twenty nor more than sixty days from the date of said order, and it shall thereupon within ten days from the date of said order be the duty of said county auditor or said clerk of the district court to cause a copy of said order, giving the time and place of hearing before said board or court, to be served by mail upon the engineer, the attorney for the petitioners, all parties and corporations whose property is assessed for benefits in said proceedings. At the time and place specified in said order or notice, said county board or district court, where said proceedings are pending, shall attend and hear all parties interested for or against the granting of said petition, and if at said hearing it shall appear to the satisfaction of said board or court from the evidence presented that an error was made in the first tabular statement filed, and that the same does not conform to the facts and order of the board of court, or where it has occurred that certain items of cost of construction or expenses in said proceedings have been omitted from the original tabular statement and assessment made and filed of record with the register of deeds and said items of cost have been paid by the county or counties, then and in either of such cases said board or court shall so find and by order direct the auditor or auditors to make and file for record in the office of the register of deeds, a new and correct

tabular statement in accordance with said order and findings and shall then authorize the said county auditor, or auditors, upon the filing of the new and correct tabular statement to cancel and discharge of record the first or erroneous tabular statement theretofore filed, and thereupon the said county auditor, or county auditors shall cause to be made and filed in the office of the county auditor or respective county auditors, a correct statement and summary together with a certified copy of the order authorizing and directing the same and a certified copy thereof in the office of the register of deeds, and shall by proper instrument discharge of record in the office of the register of deeds the erroneous summary statement previously filed.

When said corrected statement and summary has been compared and filed for record as hereinbefore provided, then and thereupon the said corrected statement and summary shall take the place of the said erroneous statement and summary and the amounts set forth therein shall be of the same force and effect as liens against the lands described therein as if the erroneous statement and summary had been correctly made and in conformity with the order of the county board or of the district court, as the case may be.

Sec. 47. Former lien to be released.—That in any case where it becomes necessary to make a corrected tabular statement as hereinbefore provided, the auditor of any county affected is hereby authorized to release and discharge of record the liens set forth in the erroneous statement and summary in the manner following, to-wit; he shall issue under his hand and official seal a certificate stating that the original statement and summary has been found to be incorrect; that a true and correct statement and summary has been filed in his office and for record in the office of the register of deeds, and that the liens set forth in the corrected statement and summary are substitutes and in lieu of the liens set forth in the erroneous statement and summary, and shall authorize the register of deeds in and for the proper county to release and discharge the liens set forth in said erroneous statement and summary, and shall direct said register of deeds to substitute in lieu thereof as liens against the lands described there in the amounts set forth in the corrected statement and summary; and when said certificate is recorded in the office of the register of deeds and the liens evidenced by the erroneous statement and summary shall thereupon be released and discharged and the corrected statement and summary and the liens evidenced thereby shall take the place and be in lieu thereof, and the register of deeds in and for the proper county shall thereupon be authorized to release and discharge the original tabular statement and summary and the liens evidenced thereby of record.

Sec. 48. Adjustments on account of erroneous collections.—That in any case where a corrected statement and summary is made and filed as hereinbefore provided after one or more installments

of the liens set forth in the erroneous statement and summary have been collected by the treasurer of the proper county, or have been placed on the tax rolls for any year but not collected, then if the amount of the liens set forth in the corrected statement and summary against any particular description is less than the amount set forth in the erroneous statement and summary, the county auditor of the proper county shall make each of the installments proportionately less, so that the total collected as a lien against any particular description shall be equal to the amount set forth in the corrected tabular statement and summary with interest thereon; and if the amount of the lien set forth in the corrected statement and summary is more than the amount set for in the erroneous statement and summary, the county auditor of the proper county shall make each of the installments unpaid proportionately larger so that the total amount collected as a lien against any particular description shall be equal to the amount set forth in the corrected tabular statement and summary with interest thereon.

Sec. 49. Supplementary liens.—In any case where a drainage system has been established under the provisions of this act, or any other law of this state requiring the filing of tabular statements and liens, as provided in said law, a tabular statement and lien has been made, filed and recorded as provided by this act or by Sections 5543 and 5544 General Statutes 1913, and subsequent to the filing of such statement and lien, increased costs in the construction of said drainage system have been incurred by reason of the modification of the plans and specifications by the engineer, or by reason of the encountering unforeseen conditions in the construction of said drainage system, such as requiring the installation of culverts or a change in the plan of construction and the use of tile or covered construction or other change rendered necessary by unforeseen conditions, or where a part of the cost of such drainage system has been erroneously assessed against property not subject to assessments, or which is exempt by law from such assessments, or where certain items of cost regularly incurred in said proceedings have been paid, or for which the county is liable but through some mistake or oversight were omitted from the original lien statement, then and in that event the amount of such increased cost, or change in the amount of assessment or omission of costs incurred arising from any of the foregoing causes but not to exceed, however, the margin between the former lien statement and the total benefits reported and approved, may be included in an additional tabular statement and lien, in the following manner:

When any of the conditions hereinbefore enumerated shall arise in the construction of any drainage system, it shall be the duty of the engineer to make and file a detailed statement and special report to the county auditor in case of county proceedings or to the clerk of the district court, where said proceedings are pending, in case of

judicial proceedings therein, setting forth the necessity for the change in the plans and specifications and increased cost of the work, if any, or a description of the property not assessable, or exempt from assessment, as the case may be, together with the total amount of the increased cost resulting from such change, and upon the filing of such report with such county auditor or clerk, it shall be the duty of said auditor or said clerk, with the consent of the judge, by order, to fix a time and place for a hearing upon such report, not less than twenty nor more than thirty days from the date of said order, and thereupon it shall be the duty of such auditor or such clerk to cause to be made and served a notice of the filing of such report which shall be treated as an application for the filing of an additional lien, which notice shall recite the filing of such report by the engineer, reciting the substance thereof and specifying the time and place for hearing thereon and shall be served by mail upon the engineer, the attorney for the petitioners and all parties and corporations whose property is assessed in said proceedings, and in judicial proceedings also upon the county auditors of each county affected at least ten days before said hearing.

At the time and place specified in the notice, the county board or district court, shall hear all parties interested for or against the matters involved in said report, and after due consideration of the showing made, if it shall appear to the satisfaction of said board or court that the change in the plans and specifications were necessary and proper; that additional costs in the construction of said drainage system were necessarily incurred; that in such proceedings property was erroneously assessed, or was exempt from such assessment, then such board or court shall make findings accordingly and may order the auditor or auditors, as the case may be, to release or discharge such property so erroneously assessed, or not assessable, and to make and file an additional tabular statement and lien against the property and corporations benefited in such proceedings in the same form and manner as the original statement and lien, and assess the same against said property and corporations benefited in the same proportion as the original lien, and cause the same to be recorded in the office of the register of deeds of the proper county; provided, no additional tabular statement of lien shall be made or filed which shall authorize the filing of a lien against any such property or corporations beyond the margin between the tabular statement and liens previously filed and the total benefits returned by the viewers' report and approved by such board or court, and provided further, that in the event the increased assessment included in such additional lien shall not exceed one-tenth of the original cost as shown by the original lien filed, the same may be extended when so ordered by the board or court as an additional installment, payable one year following the last payment on the original lien.

Sec. 50. Interest on ditch liens.—The amount that each tract of land, public or corporate road, railroad, or municipal corporation, shall be liable for on account of the establishment and construction of any drainage system, and shall bear interest from the date of the filing of the auditor's statement in the register of deeds office, at a rate of interest not exceeding six per cent per annum until paid, such rate of interest to be fixed and determined by the county board in case of county proceedings, or by the district court in judicial proceedings, at the time of establishing the rate of interest to be paid on the bonds issued in such proceedings. And when bonds are issued by the county for the establishment and construction of such improvement, the same rate of interest shall be charged on the lien statement as is paid on the bonds issued; provided, that in any case and at any time after the establishment of any drainage system, the county board in case of county proceedings, or the district court in case of a judicial proceedings, may upon such notice as shall be respectively ordered, and upon a showing of cause therefor, either change or modify any order previously made fixing and determining the rate of interest, or fix the rate of interest in case the same has not been previously fixed, or change the existing rate; provided, if no such order is made the rate of interest on the lien shall be understood as fixed by the rate of interest payable on the bonds.

All interest shall constitute an additional lien on said lands, roads, railroads or corporations until fully paid, which said interest when about to be paid shall be computed by the county auditor. If the bonds are sold at a premium, such premium shall be used as far as may be to make up any deficiency in the assessments levied by the county auditor or county auditors on the proceedings, and the balance remaining of such premium, if any, shall be used as far as practicable in keeping such system in proper repair and free from obstruction so as to answer its original purpose. Provided, in all cases of delay in the construction of a drainage system the owners of each tract of land and other property assessed but not yet benefited, shall be entitled to credit for unearned interest in proportion to the interest saved by delay in the delivery of the bonds as provided in Section 43 of this Act. If no bonds are sold no interest shall be collectable only as the work progresses and the property benefited.

Sec. 51. Payments to be in installments.—Liens filed against property benefited under the provisions of this act shall be paid to the treasurer of such county as follows:

One-tenth of such principal on or before November 1st subsequent to the filing of a lien in the office of the register of deeds and one-tenth on the first day of November of each year thereafter until the whole thereof is paid.

Provided, that if the final order establishing such drainage system or at any time thereafter, in said proceedings, the judge of the district court in judicial proceedings, or the county board in county proceedings, in his or its discretion so orders, then payment of such lien shall be made to said treasurer as follows:

One-fifteenth of said principal on or before five years from November 1st subsequent to date of said filing in the office of the register of deeds, and one-fifteenth on the first day of November of each year thereafter until the whole amount of said principal is paid or when so ordered by said court or board the same may be paid, one-twentieth of said principal on or before ten years from November 1st, subsequent to the date of filing of said lien in the office of the register of deeds and one-twentieth on the first day of November each year thereafter until the whole amount of said principal is paid.

In all drainage systems heretofore established, or as provided by Section 43; in all systems hereafter established under the provisions of this act, said principal lien shall bear interest at the rate not to exceed six per cent (6%) per annum payable on November 1st, reckoned from the date of the filing of the lien statement in the office of the register of deeds, and the interest on the whole of the principal of such lien remaining from time to time unpaid shall be paid annually November 1st, except as hereinafter in this section otherwise provided. In case bonds shall be issued by the county then the lien shall bear the same rate of interest as such bonds.

On or before the fifteenth day of November next following such filing the county auditor shall for the purpose of enforcing payment of such lien enter on a ditch lien record of said county the whole amount of such lien remaining unpaid against each respective tract of land subject thereto, and shall at the same time or before tax lists for such year are turned over to the county treasurer, compute interest as in this law provided on such unpaid amount to the first day of June following, and shall enter such interest together with the installment, if any then due, on the tax lists for such year and each thereof (installment and interest) shall be collected in the same manner as real estate taxes for that year on the tract in question are collected, and the county auditor shall, in same manner, each year thereafter compute interest on the amount of such lien remaining unpaid and not previously entered on tax lists of prior year or years, together with interest to the first day of June, and enter the same on the tax lists with such portion of the principal of such lien as shall be due, said installment and interest to be collected in the same manner as the first payment until the whole amount of any such lien and accumulated interest shall have been so entered on the tax list of such county and all of the provisions of law now or hereafter existing in relation to the collection

of real estate taxes so far as applicable hereto are hereby adopted for the purpose of enforcing payment of such liens and installments thereof and of the interest thereon and of each of the same, but no penalty shall be added to any such installment of principal or interest in case of default in the payment thereof, but such installments of principal or interest in case of default in the payment thereof, but such installments of principal and interest shall draw interest from said first day of June until paid, at six per cent per annum.

When payment of the full amount of such liens, with accumulated interest shall thus, or at any time be made, the auditor, upon presentation of a receipt from the treasurer to that effect, shall issue under his hand and official seal a certificate of such payment, and the same when recorded in the office of the register of deeds, shall release and discharge said lien of record for which service the auditor shall be entitled to receive from the applicant for release the sum of 25 cents for each description of one hundred and sixty (160) acres or less in his certificate.

If any item of the cost of a drainage system established under this or any prior drainage law by the terms of which the cost of construction is assessed against the benefited property or corporation, has been or shall be omitted from the original tabular statement for assessment made and filed by the auditor or auditors, with the register of deeds, then a corrected tabular statement, including such omitted costs or expense may be made and filed in the office of the register of deeds as provided in Section 46 of this act, and upon the filing and recording of such corrected tabular statement in the office of the register of deeds the same shall be due, payable and collectible in the same manner, time and form as if a part of the original statement.

Sec. 52. Liens to be sub-divided in certain cases.—In all cases in which a lien has been established against any tract or tracts of land comprising more than one governmental lot or forty-acre subdivision by reason of benefits assessed thereon in any drainage ditch proceeding and no installment of such assessment or interest thereon shall be in default, any person or corporation having an interest in said land, or any part thereof, may petition the district court of the county wherein such land is situated to have such lien apportioned between or among specified portions of such tract or tracts. Upon the filing of such petition the court shall, by its order fix a time and place at which said petition shall be heard and requiring personal service of a notice of such hearing to be served upon the county auditor, the occupants of such premises and on all parties having an interest in said premises as shown by the records in the office of the register of deeds of such county at least ten days before such hearing; or if for any reason personal service

cannot be made upon all of such persons, notice shall be given by two weeks' publication in a legal newspaper published at the county seat of such county in lieu of personal service. At the time and place appointed by the court for a hearing upon such a petition or at the time to which such hearing may have been adjourned, the court shall hear any and all evidence bearing upon the matter set out in said petition and as to what will be a proper and equitable apportionment of said lien between or among the portions of such original tract which it is desired shall be encumbered by separate liens and shall thereafter by its order apportion such lien among such tracts, but in no case shall the aggregate of said separate liens be different from the amount of the unpaid portion of the original lien. A certified copy of the order apportioning said lien shall be recorded in the office of the register of deeds of such county and filed in the office of the county auditor which shall operate as a division and apportionment of such original lien between such various tracts of land originally covered thereby and shall operate as a release of each of said tracts from said lien, except the amount so apportioned against it and thereafter the amount apportioned to each of such respective tracts shall be entered separately against such tract upon the tax list and so reported to the treasurer for collection and no reduction or abatement of the amount so apportioned shall thereafter be made.

Sec. 53. Expense of repair and cleaning out to be paid from county revenue fund.—The county board of the several counties in this state within which is constructed or may hereafter be constructed, any state, county or judicial drainage system lying wholly or partly within such county, shall keep the same or such part thereof as lies within such county in proper repair and free from obstruction in the manner specified in this act so as to answer its purpose, and in case there is sufficient funds to the credit of the drainage system to make such repair and the improvement consists of cleaning out and repair only, such funds may be expended by the county board for such purpose without further assessment as specified in this act; but no part of the original ditch fund shall be used for repair or cleaning out a system or any part thereof until the same has been completed according to plans and specifications. In case there is not sufficient funds to the credit of such drainage system so to be repaired, the county board may pay for the same out of the general revenue fund of the county, and to raise the necessary money to reimburse that fund it is hereby authorized to apportion and assess the costs of such repairs upon all lands originally assessed for benefits in proceedings for the construction of such system said apportionment and assessment to be in the same proportion as was originally assessed for benefits. If the improvement consists of the cleaning out and repair of a state ditch that

has been constructed otherwise than by assessment against property benefited, or if it consists of the deepening, widening or extending of a county, state or judicial ditch, then the county board or district court, as the case may be, is hereby authorized to cause the benefits and damages that will result from such improvements to be ascertained and determined and to assess the cost of the same against the property benefited by the construction of the original system and all property benefited by the construction of any subsequent ditch or lateral, public or private, emptying into said original system or any lake or pond to which said original system forms an outlet or which contributes to the necessity of deepening, widening or extending said original system to obtain a better outlet, in proportion to the benefits received in the manner provided in this act.

Sec. 54. Petitions for repair of ditches.—Upon the filing of a petition by any party, parties or corporation, municipal or otherwise, interested in or affected by a drainage system with the county auditor or any county in the case of a county, state or judicial drainage system lying wholly within such county, or with the clerk of the district court of any county affected, in the case of a state drainage system affecting two or more counties, or with the clerk of the district court where the original petition was filed in case of a judicial drainage system affecting two or more counties, therein setting forth that such drainage system, describing the same by number or other description sufficient to identify the same, is out of repair or that portions thereof are obstructed and describing in general terms the nature, extent and location of such obstruction, or that such system by reason of the additional laterals, either public or private, or for any other reason is of insufficient capacity, or needs deepening, widening or extending so as to furnish sufficient capacity or better outlet, it shall be the duty of the county auditor in case of a drainage system lying wholly within such county to present the same to the county board at their next meeting, and of such clerk of the district court in case of a system affecting two or more counties to present the same to the judge of said court, within ten days from the filing thereof, and thereupon it shall be the duty of the county board or the judge of the district court, as the case may be, to appoint a competent engineer to examine such drainage system and make report thereon to said board or court, as the case may be. Provided, that in all cases of a drainage system lying wholly within one county, the county board shall have authority to act upon their own motion and appoint an engineer upon information supplied to said board by report of the ditch inspector or otherwise, to their satisfaction, that a drainage system is out of repair or obstructed, warranting such appointment.

Sec. 55. Engineer to give bond in repair proceeding.—Such engineer shall give bond in the manner now provided by law for

the construction of county drainage systems and shall within thirty days from the date of such appointment commence such examination and surveys if necessary, and make report to the board or court, as the case may be, at as early a date as practicable, with his recommendations thereon, and he shall submit with such report a map of such drainage system or such portion thereof as is obstructed or otherwise needs improvement or extending, and include therein sufficient detail to show the nature and extent of such obstruction and necessary improvements and in case he shall recommend that such drainage system needs deepening, widening or extending, a map of the original drainage system, including all laterals or extensions, public or private, open or tiled added thereto and all lands affected by such original system and such additions and descriptions of all the land affected by such deepening, widening or extending of said system shall be submitted therewith including details, plans and specifications and estimate of the cost sufficiently complete to enable the board or court to fully understand the nature of the improvement and extent and probable cost thereof, and supply the necessary details to let a contract therefor, and so far as applicable and necessary said engineer shall, in the performance of his duties comply with the requirements of sections 10 and 12 of this act, and in case of a state drainage system that has been constructed other than by assessment against the property benefited the engineer's report shall cover the same ground and in addition thereto shall give the description of all lands affected thereby and so far as practicable the names of the owners thereof.

Sec. 56. Report of engineer procedure.—Upon the filing of the report of the engineer with the county auditor, or with the clerk of the district court, as the case may be, it shall be the duty of such board of court to make the necessary inquiry to determine to their satisfaction the accuracy of the facts set forth and recommended in such report and if at said hearing it shall appear from such report and the evidence presented that the repairs recommended are necessary and the board or court shall so find and that all the improvement that is necessary is that said drainage system, or some part thereof needs cleaning out or repairing, said board or court shall make its findings and order accordingly and direct in the case of county drainage proceedings, the county auditor and chairman of the county board of such county, or in the case of judicial proceedings the county auditors of the several counties affected, to proceed and let a contract for the repair of said system as shown in the engineer's report in the manner as provided in section 33 of this act. Provided, that in all cases of cleaning out or repair of a judicial drainage system extending into two or more counties, it shall be the duty of the district court upon not less than five days' notice to the county auditors of the several counties affected to

apportion the total cost and expense connected with such repairs among the several counties in the same proportion as the original cost of construction of said system, and thereupon it shall become the duty of the county board of such county to provide for the payment of such expense, and if there is not sufficient funds to the credit of such system in any county to make such repairs, it shall be the duty of the board of such county to order the county auditor to make and file in his office, and file for record in the office of the register of deeds a summary statement and lien as provided in section 44 and 45 of this act, as in the case of county drainage systems, and shall be the duty of the auditor to make and file such statement and assess the costs of said repairs against the property benefited in said original drainage proceeding in the same proportion as in the construction of said original system. Provided, that in all cases where the total cost of such cleaning out and repair including the expenses, shall not exceed the sum of three thousand (\$3,000) dollars, the same may be payable, when ordered by the board, in three or five equal annual installments, and be so specified in the lien statement, and in the event that the cost of said repairs, including expenses shall exceed three thousand (\$3,000) dollars, the same may be payable when so ordered by the board in five equal annual installments and the county board shall have authority in such case, if they so determine, to sell the bonds of said county as provided in section 43 of this act as in the case of the original construction of a drainage system and in such case the county board shall have and may exercise all the authority provided in said section 43, and the proceeds of the sale of said bonds shall be entered in the general ditch fund and credited to the system being repaired. It shall be the duty of the auditor, in all such cases, to include in such statement and provide for the collection for the benefit of the county when funds have been advanced as herein provided, interest upon the total sum so advanced at six per cent per annum. And it shall be the duty of the county auditor and the county treasurer to levy, assess and collect the amounts included in such lien statement in the same manner as provided in Section 51 of this act.

Sec. 57. Viewers to be appointed.—If it shall appear from the report of the engineer or the evidence presented in support of the same as provided in sections 55 and 56 of this act that said drainage system is a state ditch that has been constructed other than by assessment upon the property benefited, or that the improvement needed consists in deepening, widening or extending the original system and the board or court, as the case may be, shall so find, then it shall be the duty of said board or court to appoint three disinterested viewers whose duties and responsibilities in the premises shall be the same as viewers appointed under sections 16 and 17 of this act, and in the performance of their duties said viewers

shall in the case of repairs only to a state drainage system constructed other than by assessments on the property benefited make complete report of all the property benefited by the original construction of said system together with any lateral or extension thereto, whether public or private, and the amount of such benefit, but if the improvement consists of deepening, widening or extending a drainage system whether state, county or judicial, said viewers shall examine and report all benefits to all property resulting from the construction of the system and all extensions or laterals thereto, and the deepening, widening or extension reported by the engineer and ordered by the board or court, and shall report the damages resulting from such deepening, widening, cleaning out or extending in the same manner as provided for in the construction of a county or judicial drainage system.

Sec. 58. Viewers report to be filed.—Upon the filing of such viewers' report with the county auditor or the clerk of the district court, as the case may be, it shall be the duty of such auditor or such clerk with the consent of the judge to give notice of a hearing upon the report of the engineer and viewers in the same manner as provided in section 26 of this act, in the case of the construction of a county or judicial drainage system and at such hearing the board or court, as the case may be, shall have and may exercise the same authority as provided in sections 27 and 28 of this act.

Sec. 59. Contracts for repairs to be let.—It shall be the duty of the board or court where such proceedings are pending to appear at the time and place specified in the notice given as provided in section 58 of this act, and if it shall appear from the showing made to the satisfaction to the board or court that the improvement specified in the petition or some part thereof as recommended in the engineer's report would be of public benefit and utility and is necessary to the proper use of the drainage system described in the petition, and that the engineer's and viewers' reports have been regularly and properly made, then said board or court shall so find and by order confirm the report of the engineer and viewers, either as originally presented or as subsequently modified and order the construction of the improvement as specified in the engineer's report as approved, and such board or court at such hearing shall have, and may exercise the same power and authority to cause to be corrected, changed or modified the report of the engineer or viewers as provided in section 28 of this act.

It shall be the duty of the county auditor and chairman of the county board in the case of proceedings before the county board, or the county auditors of the counties affected in proceedings before the district court to proceed and let a contract for the construction of such improvement, as ordered by the board or court in accordance

with the plans and specifications pursuant to the provisions of section 33 of this act.

In all cases of a judicial drainage system or a state system extending into two or more counties, it shall be the duty of the clerk of the district court where said proceedings are pending to cause to be made following the order of the court hereinbefore specified a copy of the engineer's and viewers' reports and file the same in the office of the county auditor of each county affected, in said proceedings, and it shall be the duty of the court in said proceedings at any time upon not less than five days' notice to the several county auditors of the counties affected, to apportion the costs of said improvements among the several counties affected in proportion to the benefits received.

Sec. 60. Auditor to prepare lien statement.—In all proceedings pending before the county board within ten days after the letting of the contract as provided in the preceding section or in the proceedings pending before the district court, within ten days after filing of the order apportioning the costs and expense of the improvement among the several counties, the county auditor, or the county auditors, as the case may be, shall make and file in their respective offices a summary statement in form and substance as provided in sections 44 and 45 of this act, and shall forthwith make a certified copy thereof and file the same for record in the office of the register of deeds of their county, as provided in section 45 of this act. Upon the filing and recording of such copy in the office of the register of deeds, the amount specified in such statement for lien shall constitute a lien against each tract of land and each public or corporate road or railroad, and such land, road or railroad will be liable for such sum and interest thereon, and the same shall be and remain a first and paramount lien on such land, public or corporate road or railroad until fully paid, and shall take precedence of all mortgages, charges, incumbrances or other liens whatsoever, except only a prior ditch lien and payment of the several installments of said lien may be made in the manner provided in section 51 of this act. 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 county on the allowance of the board, and said lien statement after the same has been recorded shall be returned to the county auditor and be by him preserved as a part of the record of such proceedings. That the provisions of section 51 relative to the duties of the county auditor and the county treasurer governing the assessment and collection of such lien shall apply to and govern the acts of the county auditors and treasurers in the respective counties in this proceeding, provided that in all cases where the total cost of such improvement does not exceed the sum of three thousand (\$3,000.00) dollars said

lien may, when ordered by the county board be collected in equal annual installments for three or five years, and where the total costs shall exceed three thousand (\$3,000.00) dollars the county board may, and they shall have authority to provide the funds by the sale of county bonds as in the case of county or judicial drainage system, as provided in section 43, and it shall be the duty of the respective county boards to provide the funds for the payment of the cost and expense of such improvement, and they are hereby authorized so to do in accordance with the provisions of this act, and may pay such cost and expense out of the general ditch fund when funds are available therein, or out of the general revenue fund of the county, but in either case it shall be the duty of the county auditor to provide for and collect as part of the expense of such improvement, interest upon all sums advanced by the county at the rate of six per cent per annum, and it shall be the duty of the county auditor and county treasurer of the respective counties to extend such assessments upon the records of their office in accordance with the provisions of section 51 of this act, and collect the same as in case of other assessments against said property.

Sec. 61. Private owners not to use drainage system without permit.—After the completion of any drainage system under any law of this state, except town ditches, no public or private lateral, either open or tiled, for the drainage of land, not assessed for benefits resulting from the construction of the main system, shall be constructed so as to use the existing system as an outlet, by any person, persons, association or corporation either private or public without having first secured expressed authority so to do from the county board in case of a system lying wholly within one county or from the district court that originally ordered the construction in the case of a system extending into two or more counties upon such terms and conditions as such board or court shall determine and require. That in determining the terms and conditions upon which such public or private lateral may be constructed so as to use such existing drainage system as an outlet, the board or court, as the case may be, shall, among other things, take into consideration the benefit to lands drained by such lateral, the cost of the construction of such lateral.

Sec. 62. Owners to petition county board.—Whenever two or more parties owning land adjoining or in the vicinity of any public drainage system or in the vicinity of any body of water forming a part of or connecting with any such system, drain or outlet, shall petition the county board where an outlet is desired in a public drainage system, lying wholly within one county, or the district court that originally ordered the system where the drainage system extends into two or more counties therein, asking to be permitted to construct a lateral to connect with the system described

in said petition and therein in said petition describing in general terms the starting point, the general course and terminus of said proposed lateral and setting forth the necessity for the construction thereof, and that the same if constructed would be of public utility and promote the public health, and giving a description of the land over which the proposed lateral would pass and therein specifying that the petitioners will pay all costs and expenses which may be incurred in case the proceedings are dismissed, or for any reason no contract for the construction thereof is let, and shall file said petition with the county auditor in case of proceedings to use a drainage system lying wholly within one county as an outlet, or with the clerk of the district court where the petition for the construction of the original system was filed in case of judicial proceedings, and shall accompany said petition with a bond of not less than the sum of one thousand (\$1,000.00) dollars with sufficient sureties to be approved by the county auditor in case of county proceedings or by the clerk of the district court in case of judicial proceedings and payable to the county or counties, as the case may be, conditioned to pay all costs and expenses which may be incurred in case the proceedings are dismissed or for any reason no contract is let for the construction of the proposed lateral, it shall be the duty of the county board in case of county proceedings, or the district court in case of judicial proceedings, to appoint a competent civil engineer and direct him to proceed and examine into, and report within the time fixed in said order to said board or court all matters necessary and essential to disclose the necessity and advisability of the construction of the proposed lateral drain, whether the same be open or tiled. The engineer when so appointed, shall within ten days thereafter take an oath and furnish a bond in such sum as the board or court shall specify, as provided in section 5 of this act, and shall within thirty days thereafter proceed to make such examination and preliminary survey as may be necessary to enable him to report to the board or court upon the necessity and advisability of the construction of such lateral drain. And said engineer shall include in his report a plat of said proposed lateral describing thereon all lands affected by such lateral and through which the same would pass and shall determine whether said lateral is necessary or practical and report accordingly, and if the plan petitioned for is not found practical but some other or different plan than that described in the petition is found practical, said engineer shall so report to the board or court, and upon the completion of said report shall file the same with the county auditor in case of county proceedings, or with the clerk of the district court in case of judicial proceedings.

Sec. 63. Hearing to be held.—Upon the filing of the report of the engineer as provided in the last section, it shall be the duty

of the county auditor in county proceedings, or the clerk of the district court, with the consent of the judge, in judicial proceedings, to fix by order a time and place for hearing upon said report, which shall be not more than thirty days from the date of said order, and shall at least ten days before the date for hearing serve notice by mail upon all the petitioners and upon the attorney for the petitioners and all parties and corporations affected as shown by the engineer's report in said proceedings, and the engineer, and at the time and place specified it shall be the duty of said board in county proceedings, and said court in judicial proceedings to appear and have considered the evidence presented by all parties interested, and the engineer and petitioners and all parties having any interest may appear and be heard, for or against the granting of said petition, and if from the showing made said board or court shall be satisfied that necessity exists for the construction of such lateral, that the same will be of public benefit and utility; that the same is practical and that the benefits derived therefrom will exceed the cost of construction, including damages, then said board or court shall so find and by order direct the engineer to proceed and make a permanent survey, and make report thereon to said board or court and thereupon within thirty days thereafter shall proceed and make a permanent survey of the proposed improvement and make a full report of his work in connection with said survey, including therewith a map of the system and all laterals and of the proposed improvement, together with plans and specifications for the construction thereof, all as provided in section 12 and 13 of this act, the provisions of which shall apply to and govern his work in the proceedings. Upon the completion of such report the engineer shall file the same with the county auditor or clerk of the district court where said proceedings are pending.

Sec. 64. Engineers report.—Upon the filing of the report of the engineer as provided in the last section, it shall be the duty of the county board in county proceedings, or the district court in judicial proceedings to make and file an order appointing three disinterested parties, citizens of the county or counties affected, as viewers to view the premises affected and appraised and report the benefits and damages resulting from the construction of said improvements and said viewers within ten days after their appointment shall subscribe the oath as such and proceed to examine the property affected, and shall make and cause to be filed a report of their doings in connection with said proceedings as required by sections 17 and 25 of this act, and all the provisions of sections 25 and 24 relative to the duties of the viewers in case of the construction of county or judicial drainage systems, shall so far as applicable apply to and govern the action and define the duties of the viewers in this proceeding; and upon the completion of their report shall

file the same with the county auditor or clerk of the district court where such proceedings are pending.

Sec. 65. Notices of hearing—Time of hearing.—Within ten days after the filing of the viewers' report as provided in the last section it shall be the duty of the auditor in county proceedings or the clerk of the district court, with the consent of the judge in judicial proceedings, by order, to fix a time and place for hearing upon the petition and the engineer's and viewers' reports, which shall be not less than twenty (20) nor more than sixty (60) days from said hearing, to be published in at least one legal newspaper in the county or counties affected for at least two weeks prior to said hearing, therein, briefly reciting the filing of said petition and of the engineer's and viewers' reports, giving briefly the starting point, the general course and terminus of the proposed lateral and a description of the land across which the same would pass and the name of the owners thereof as shown in the last tax list of said county, and shall at least ten days prior to the date of hearing serve by mail a copy of said printed notice upon the several parties owning land or owning or controlling roads or railroads or other property affected as shown in the viewers' report. Provided, that in all cases affecting two or more counties, it shall not be necessary to publish in any county the description of the land, roads, railroads or corporations not situated within such county.

Sec. 66. Hearing—Procedure.—At the time and place specified for the hearing on the petition, engineer's and viewers' reports specified in the last section, it shall be the duty of the county board in county proceedings and the district court in judicial proceedings to appear and hear and consider all evidence presented by all parties interested for or against the granting of the petition and the said board or court at such hearing shall have all authority relative to modification or changes in the report of the engineer or viewers as provided in section 28 of this act, and if upon full hearing the said county board or district court shall find that a necessity exists for the construction of said lateral; and that the same will be of public utility and that the benefits that will be derived therefrom will exceed the costs of construction, including expenses and damages; that the report of the engineer and viewers, either as originally presented or as subsequently amended is correct and true, then said board or court shall so find and by order direct the construction of such improvement according to the plans and specifications of the engineer as finally adopted by the board or court. Within ten days after the filing of said order in judicial proceedings, it shall be the duty of the clerk to make and file in the office of the county auditors in the counties affected by said proceedings a certified copy of said report of the engineer and viewers. Within fifteen days after the filing of the order directing the construction

of said improvement it shall be the duty of the county auditor in the case of county proceedings, and the county auditors in case of judicial proceedings to advertise for bids for the construction of said improvement in the manner provided in section 33 of this act, and the provisions of said section so far as applicable shall apply to and govern the duties of said county auditor or auditors, as the case may be, in advertising for bids and letting of contracts for the construction of said improvements and the provisions of section 34 of this act so far as applicable relating to the form and terms of the contract and bond of the contractors and the duties of the county auditor or county auditors relative thereto shall apply to and govern the duties of the auditor or auditors in this proceeding, and it shall be the duty of the district court in judicial proceedings at any time after the letting of the contract upon not less than five days' notice to the several county auditors of the county affected, to, by order, apportion the costs of the construction of said improvements, including expenses and damages among the several counties affected in proportion to the benefits received.

Sec. 67. Lien statement to be filed with register of deeds.— Within ten days after letting of the contract in the case of county proceedings or after making the order apportioning the costs of the improvement among the several counties by the district court in judicial proceedings, it shall be the duty of the county auditor or the several county auditors, as the case may be, to make and file in their respective offices a summary statement as provided in section 44 of this act, and all the provisions of said section so far as applicable shall apply to and govern the action of the county auditor or county auditors in this proceeding; and thereupon it shall be the duty of such county auditor or auditors respectively to make a certified copy of said summary statement and lien in their office and file the same for record in the office of the register of deeds of their respective counties as provided in section of this act, and all the provisions of sections 44 and 45 shall apply to and govern the duties of the county auditor or auditors and register of deeds so far as applicable in this proceeding, and upon the filing and recording of said lien the same shall constitute a first lien against the several pieces of land, roads and railroads described therein to the extent and the amount specified in such lien statement, and the provisions of sections 44 and 45 of this act, shall apply to and govern the rights and obligations of all parties; provided, that in all cases where the cost of said improvement including expenses and damages shall not exceed the sum of three thousand (\$3,000.00) dollars, the same may be levied, assessed and collected in three or five equal annual installments, when so ordered by the board or court, and in all cases where the cost of such improvement, including damages and expenses shall exceed the

sum of three thousand (\$3,000.00) dollars, then the same may be made payable and be assessed and collected in five equal annual installments and the county board of the several counties shall provide the funds for the construction of said improvements including expenses and damages, and when they deem it necessary or advisable to do so, they shall have authority to issue and sell the bonds of said county to cover the whole or such portions of the cost of said improvements as they deem necessary and all the provisions of sections 43 and 51 relative to issuance and sale of county bonds or the payments from the general ditch fund, shall apply to and govern the duties and authorities of the county board in this proceeding. It shall be the duty of the county auditor and of the county treasurer to perform the same duties relative to the levying of assessments and the collection of the same for each installment of said liens as provided in sections 45 and 51, and it shall be the duty of said county auditor and said county treasurer to perform the several duties and exercise the authority in the collection of liens under this proceeding as provided in section 51 of this act.

Sec. 68. Sewers may be drained into drainage ditches.—The county board in the case of a drainage system lying wholly within one county and the district court that ordered the construction of the system in all cases where it extends into two or more counties, upon such terms as such board or court may deem proper may permit any municipality having a population of two thousand five hundred (2,500) or less to drain into any drainage system now or hereafter to be constructed, the overflow from any such sewerage system having and using a properly constructed and operated sewerage treatment plant subject to the following conditions:

(1) Such overflow shall empty into the drainage system at a point below the limits of the municipality or below the settled portion thereof and where the waters from the system may not flow back and flood the sewerage plant.

(2) Storm waters from the municipality shall not be permitted to enter or run through the sewage plant. Provided, however, that in all cases where sewerage systems now exist in which certain portions the storm waters have access to the sewerage plant, such systems may nevertheless continue in operation where they have been approved by the state board of health, subject, however, to the conditions that such municipalities shall from time to time modify and correct their system in such manner as may be specified by the state board of health.

(3) No such overflow into any drainage system shall be permitted unless the same has first been rendered sanitary and inoffensive.

(4) The municipality shall pay for the use of a public drainage system as an outlet, to the county board in all cases where the

system lies wholly within one county such sum as the board may direct, and to the county auditor of each county affected such sum as the court shall direct in all judicial proceedings extending into two or more counties. The sum so collected in either case to be credited to the account of the system used as outlet.

Sec. 69. Municipalities to petition county board.—Any municipality containing not to exceed two thousand five hundred (2,500) inhabitants, desiring to use any public drainage system as an outlet for the sewerage system, shall petition the county board in all cases where the system desired to be used as an outlet lies wholly within one county or the district court that ordered the system in all judicial proceedings which extend into two or more counties, setting forth in said petition the necessity for the use of such system as an outlet; that the same will be of public benefit and utility and promote the public health and shall be accompanied by a plat showing the location of said drainage system and of the sewerage system of said municipality, with plans and specifications showing the plan of connection, together with sufficient detail to be used in letting the contract and be approved by the state board of health, and in case the drainage system intended to be used has been petitioned for either to the county board or district court, but not yet established, said petition shall be filed in the office of the county auditor, in all cases pending before the county board, and with the clerk of the district court in all judicial proceedings, and be presented to the county board or the district court at the final hearing called for the consideration of the engineer's and viewers' reports, notice of which shall be included in the notice of final hearing and the said county board or district court shall have full authority to consider the matters set forth in said petition and cause the benefits and damages to be regularly assessed and included in the viewers' report as in other cases. And the said board or district court may receive all evidence of parties interested for or against the granting of such petition, and if at said hearing said board or court shall find that necessity exists for the construction of said improvement; that it will be of public benefit and utility and promote public health and that said connection can be made without serious damage to the drainage system described in the petition, and that the system proposed provides for a proper treatment plant rendering the sewage sanitary and inoffensive, before it is discharged into the drainage system, then said board or court shall make findings accordingly and, by order, make said municipality a party to said drainage proceedings and determine the amount which it shall pay for the privilege of using the drainage system as an outlet, and may include in such order such other and further conditions as may be deemed proper to protect the rights of the parties in interest and the general public.

Sec. 70. Petition—Procedure.—In all cases where the drainage system desired to be used as an outlet has already been established and constructed, the municipality desiring to use such system as an outlet shall file a petition accompanied by plans and specifications as described in section 69 of this act, in the office of the county auditor in all cases where the drainage system is located entirely within one county or with the clerk of the district court where the proceedings were instituted, when the drainage system extends into two or more counties, and upon the filing of such petition it shall be the duty of the county auditor, or the clerk of the district court, with the approval of the judge, by order, to fix a time and place for hearing on said petition and cause notice thereof to be given by mail at least 15 days before the date of hearing upon the county attorney and chairman of the board of county commissioners in county proceedings and upon the county attorney and county auditor of each county affected in judicial proceedings. At the time and place specified in said notice said board or court where said proceedings are pending shall attend and hear all the evidence presented by all parties in any manner interested, and if at said hearing upon the evidence presented said board or court shall be satisfied that necessity exists for the construction of the improvement and permitting the connection with the said drainage system, that said improvement will be of public utility and promote the public health; that the system conforms to the requirements of the state board of health and provides for the construction and use of a purification tank so that the sewage when passing through the same will be sanitary and inoffensive, said board or court may grant such petition upon such terms as may be prescribed and order the construction of the necessary connection and appliances to enable the municipality to utilize such drainage system as an outlet and said board or court may include in such order such additional conditions as may be deemed necessary and proper to protect the rights of the parties and safeguard the interest of the general public.

Sec. 71. Municipalities may acquire outlets by condemnation.—Any municipality interested in any project hereinbefore specified may acquire by purchase or condemnation the necessary right-of-way over any lands within or without such municipality for the construction of such sewage plant and overflow drain and proceedings to condemn such lands as may be made and instituted by such municipality and prosecuted to final judgment under the statutes of this state in respect to taking the property by the right of eminent domain, and all the general laws of this state in respect to the condemnation of property shall apply thereto and govern and control such proceedings. The cost of the condemnation and acquisition of such right-of-way as well as the amount required to be paid for the right to make such connection and all

other expenses incurred by such municipality in the establishment and construction of such overflow drain shall be paid from the general fund of such municipality. In case of the denial by the court or board, as the case may be, of any petition in this act provided for, the municipality in whose behalf the same was made, shall pay the cost of the proceedings to be taxed in the usual way.

Sec. 72. Appeals.—In all cases pending before the county board any interested party feeling aggrieved by any order made by such board, either granting or denying any such petition, may appeal from any such order to the district court of the county in which said proceedings are pending. The proceedings on such appeal shall be the same as those provided in section 32 of this act.

Sec. 73. Plat of tile ditches.—That in all cases where tile drain is required to be or is being laid as a part of the plan or system of any public drainage project under any drainage law of this state, or in case of any drain being constructed by private party, it shall be the duty of the engineer in charge of such drainage project to make at the request of the owner of any land connected with such system and as a part of his duties as such engineer a complete plat of all tile drain used as a part of such system or any tract or piece of land connected therewith or affected by, said drainage tile system, showing thereon the complete location and outlet of such tile and size and kind thereof, course and distance of each line, and the description of the land upon which the same is located and so connect the same with the main ditch and outlet and the adjoining bench marks and government corners that the said system or any part thereof may readily be located at any subsequent period from such plat.

The expense of furnishing such plat shall be paid for by the party requesting the same, who may file said plat in the office of register of deeds of the county or counties in which said tile drain is located. The engineer and register of deeds shall be entitled and received the same compensation as for other like services in ditch proceedings, and the said register of deeds shall preserve said plat and make a notation thereof in his index and reception book so that the same may be preserved for future reference.

Sec. 74. Fees for engineers, viewers, etc.—The following fees and expenses shall be allowed and paid for services rendered under this act. To the engineers a sum not exceeding \$12.50 per day, to be fixed by the county board or court making the appointment, for every day necessarily engaged and actual necessary expenses, including cost of bond. To each viewer the sum of \$5.00 per day for every day necessarily engaged in viewing ditches and traveling therefor and making up the reports and actual and necessary expenses. To each rod man a sum of not exceeding \$4.00 per day and actual and necessary expenses. To each chainman, axeman

and other like employes not herein mentioned and necessary to the prompt execution of the work of locating or constructing a public ditch, a sum of not exceeding \$4.00 per day and actual and necessary expenses. To each member of the county board the sum of \$5.00 per day for each day actually occupied in proceedings to establish or repair or inspect any drainage improvement after its completion or during the course of the work if appointed as a committee for that purpose and the sum of ten cents per mile each way for traveling necessary in attending any special meeting of the county board called for the purpose of transacting any business pertaining to such drainage system and for traveling in inspecting ditches or any other necessary travel in said drainage matter. To the county auditor, attorney for petitioners, clerk of the district court, the register of deeds and the sheriff performing duties thereunder, such reasonable compensation as shall be fixed by the county board or court, as the case may be, and the fees and compensation of all such county officials in drainage proceedings shall be in addition to all sums and fees allowed them by law, provided that the fees of such auditor shall in no case exceed \$250.00. That the fees, compensation and expenses hereinbefore specified for members of the county board in drainage proceedings shall be in addition to all other fees, salaries, compensation and expenses allowed to such members of the county board by any other law of this state. In all drainage proceedings where any county is directly interested, the county attorney thereof, shall represent the county. No county attorney or his assistants or any attorney associated with him in business shall otherwise appear in any drainage proceeding for any person or party whatsoever interested therein.

All fees per diem, compensations and expenses provided for in this act and fees and for such other legal services and expenses as may be necessary, shall, in the case of a county ditch, be audited, allowed and paid upon the order of the county board and in case of a judicial ditch the judge of the district court having charge thereof shall audit, allow and order the same paid upon ten days' written notice to the county or counties interested which notice may be given to the county auditor or the interested county or counties, that all bills on file with the clerk of the court where such proceeding is pending at the date of such notice, will be brought on for hearing and for allowance at the time and place named therein.

And in all cases where a judicial ditch proceeding has, for any reason, been dismissed by the court, all fees and expenses connected therewith shall be audited, allowed and ordered paid in like manner.

Sec. 75. Referee may be appointed.—The judge or county board as the case may be, may appoint a referee who shall be a consulting engineer in any drainage proceedings to perform the duties hereinafter set forth, and such referee shall qualify by taking

the appropriate oath and giving bond to the county or counties affected by such drainage system in such sum as shall be fixed by such judge or board, as the case may be. Such bonds shall be conditioned for the faithful performance of his duties as referee. Said referee shall be a qualified civil engineer. The fees of such referee shall be fixed by said judge or board, as the case may be, and shall be paid out of the funds of such drainage system as shall be ordered by said judge or board. It shall be the duty of such referee if appointed, to consider all bills of account or applications for payment in such ditch proceedings and to hear evidence if offered in relation thereto and to report in writing to such judge or county board his approval, rejection or amendment thereof as such referee who shall also keep accurate record and account of all bills of account and all applications for payment acted upon by him and reported to said judge or county board, together with copies of all such reports and all proceedings had in relation thereto. It shall further be the duty of said referee by order of said judge or board to inspect and examine and make report upon all work of construction in the matter of such drainage system prior to final acceptance thereof and for the purpose of making such examinations or inspections and upon application of such referee said judge or board may appoint and designate a competent and experienced civil engineer, other than the one officially acting as such in such drainage proceedings, to examine such ditch and the plans and specifications thereof and report thereon to said referee and it shall be the duty of said referee if requested to appear and testify before the judge or county board considering the final acceptance of such drainage system. When order of said judge or county board approving a report of such referee and allowing a bill of account or application for payment in such drainage proceedings shall constitute and be construed as an accounting and allowing of such account by such judge or county board within the meaning of this section and the approval by said judge or county board or any order of said referee shall constitute the said report of said referee, the order of said judge or county board (in such proceedings, provided in all cases and said judge or county board) may reject such report and make an independent order in relation thereto covered by or contained in such report. Such referee shall be subject to removal at the pleasure of said judge or county board.

Sec. 76. Appeal from orders of county board.—Any land owner, employee or other person aggrieved by any order of court or county board relative to the allowance of fees, or fees and expenses, may appeal from such order to the district court of any county in which the proceeding is pending and by notice given on or before the first day of the term, demand and obtain a jury trial. All such appeals shall be within thirty (30) days after the order

allowing such claim and shall be governed as far as applicable by the provisions of section 32 of this act, save that in all appeals taken by parties whose lands are assessed for said improvements, then the expense thereof shall be paid by the county and assessed against said improvement.

Sec. 77. Jurisdiction not lost by defective notice.—In any and every case where a notice is required under the provisions of this act, and for any reason proper notice was not given, published or served or description of property, persons or corporations omitted, the board or court shall not thereby lose jurisdiction but in every such case such proceedings may be continued by order of the board or court for such time as may be necessary to again publish, post and serve a proper notice, and a new notice shall be ordered published, posted, and served as required by this act, as to all property, persons or corporations with reference to which the first notice was defective or not properly published or served, and in all cases where it shall appear that proper notice has been given published or served as to land, parties and corporations, in certain counties, and is defective or not given in others, then the jurisdiction in all cases shall continue as to land, roads, railroads, parties or corporations with reference to which proper notice has been given, published and served and such proceedings may be continued by order of the board or court for such time as may be necessary to publish and serve a new notice, and in all cases where the defective notice, publication or service has occurred in only one or more counties, but is completed in others, then the new notice need be published only in such county or counties wherein the first notice was defective. Provided, that in all cases where proper notice and service has been given as to certain property, persons or corporations and is defective as to others, or certain others have been omitted and a continuance is had and new notice ordered as to the property, persons or corporations with reference to which the notice was defective or omitted, then the jurisdiction of the board or court shall continue and on the adjourned day the hearing may proceed as though conducted on the date fixed in the first notice.

Sec. 78. Orders and notices may be served by sheriff.—All orders and notices, the issuance of which are provided for by this act, and are issued by the officer or tribunal herein authorized, may be served by the sheriff of the county or other disinterested person designated by the auditor or clerk, as the case may be, and such service in the absence of specific provisions to the contrary shall be made in the manner provided for the service of the summons in the district court, and in all cases where more than one manner of service is provided for, a personal service made as herein provided shall be sufficient, providing the same is made not less than ten days before the date of hearing. The officer making such service

shall receive the same fees as are allowed by law for the service of such summons.

Sec. 79. Purposes of act.—The purpose of this act being to secure improvements in the interest of the public health and general welfare and for the protection of property from floods, it shall be liberally construed in the interests of the general welfare, and in case any section or parts of any section shall be found to be unconstitutional the remainder of the act shall not be invalidated, *but shall remain in full force and effect.*

Sec. 80. Application.—In all cases where reference is made in this act to other chapters or sections of the General Statutes of 1913, or any chapters or sections of any session laws, or any other sections of this act or other drainage laws of the state, all such chapters, sections and provisions thereof shall so far as applicable for all purposes of this act be treated and construed as having the same force and effect as though herein in full set forth.

Sec. 81. Appeal to the Supreme Court.—Any aggrieved party, who claims damages, or against whose property benefits are assessed, may appeal to the supreme court, as in civil actions, from any final order except an order establishing such drainage system in proceedings under this chapter, 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 on any other person or corporation.

Sec. 82. Engineer and assistants to enter upon lands.—In all proceedings instituted under the provisions of this act, the engineer and his assistants and the viewers and their assistants shall have the right to enter upon any lands for the purpose of making the survey, locating the drain, examining the property and estimating the benefits and damages, but in so doing shall commit no unnecessary damages.

Sec. 83. Record to be prima facie evidence of proceedings.—The record of any proceedings conducted under the provisions of this act and any order made by the county board or district court in such proceedings, the record thereof and the certified copy of the record or of any order of the board or court made in proceedings conducted under this act shall be prima facie evidence of the facts therein stated and of the regularity of all the proceedings prior to the making of such order.

Sec. 84. Penalties for obstructing work.—Any person wilfully or negligently obstructing or in any way injuring any work constructed under the provisions of this chapter or under any other law of this state relating to drainage or diverting the water from its proper channel and any person who is not authorized so to do by the engineer in charge of any drainage system and who wilfully changes or alters the location of or the markings on any stakes

set, placed or marked by such engineer or under his direction in the matter of laying out or the construction of any drainage system, and any person digging or constructing or causing to be dug or constructed any drain which thereby empties any drain constructed under the provisions of this chapter without having first secured the permission from the county board of the county in which such principal drain is located, "shall be guilty of misdemeanor and shall be liable to any person or association of persons or corporation injured by such act in treble damages."

Any county auditor, clerk of court, member of the county board or any other officer who refuses or wilfully neglects to perform any of the duties imposed upon him by this act shall be guilty of misdemeanor and shall also be liable therefor to any person, persons, association of persons, or corporation injured thereby in treble damages.

The county attorney of the proper county shall prosecute all criminal action arising under this chapter.

Sec. 85. Proceeding in case of outlet in adjoining state.—If the engineer finds that there is no practicable or feasible outlet for a drain except through the lands in an adjoining state, he shall include said findings in his report, together with an accurate description of the needed right-of-way in such adjoining state and his estimate of the cost of obtaining the same.

If such finding is confirmed in the final order establishing said drainage system the county board or district court making said order

(a) Shall require the county auditor, in case of a county drainage system, or the auditors of the respective counties, in case of a judicial drainage system, to purchase such needed right-of-way at an expense not exceeding the estimated cost therefor specified in the engineer's report, said right-of-way to be paid for as part of the cost and expense of said drainage system; and

(b) Shall provide in said final order establishing said drainage system that the jobs of digging and constructing the drainage system shall not be advertised, let or sold until such purchase of such needed right-of-way in such adjoining states has been in all things completed.

Sec. 86. Proceedings where system extends into two or more judicial districts.—In case any proposed drainage system extends into two or more judicial districts proceedings may be commenced before the district court of either of said districts and the court before whom such proceedings are commenced shall thereafter have jurisdiction of all subsequent proceedings and matters in relation to said drainage system and every order made by the court laying out or establishing any drain or refusing to establish the same, and every other order made in relation thereto, under the provisions

of this chapter and the record thereof, if recorded, or a certified copy of such record shall be prima facie evidence thereof, and of the facts therein stated and of the regularity of all the proceedings had therein.

Sec. 87. Board not to lose jurisdiction by failure to attend hearing.—In all cases in any proceeding under this act, if the court or board for any reason shall fail to attend a hearing pursuant to a notice or order previously made and given for the holding of any special or adjourned meeting or hearing in relation to any matter connected with such proceeding, the court or board, shall not thereby lose jurisdiction of such proceedings but may make such new or additional order as may be necessary in the premises in order to arrive at speedy determination of the matters connected with such proceeding. Provided, that in all cases where an order has been made or a notice given calling a hearing in any matter connected with the proceedings under this act, and said board or court from any cause shall fail to appear at the time and place specified in said notice or order, then it shall be the duty of the county auditor in proceedings before the county board and the clerk of the district court in judicial proceedings, and they are hereby authorized to continue such hearing to such other date as may be deemed necessary and notify the board or court, as the case may be, of such continuance and the date of hearing, and such continuance made by such auditor or clerk shall continue the hearing and jurisdiction to the date fixed by said auditor or clerk.

Sec. 88. May join with adjoining state or county in establishing drainage project.—Whenever it is necessary to construct, widen, deepen, straighten, or change any drainage system or water course lying on, along or near the state line between this state and any adjoining state or country, or wherever it is necessary to repair or improve any drainage work provided for in this act, which drainage system water course or other drainage work cannot be constructed, repaired, or improved in a proper manner without extending the same into an adjoining state or country, and thereby affecting lands therein the county board of the proper county or the district court before whom such drainage proceeding is pending in a county or counties adjoining or near such state line, shall have power to join with the board or tribunal of such adjoining state or country having power to lay out and construct public drainage ditches in such adjoining county or district or another state or country, in the construction, widening, deepening, straightening, repairing or improving of any such drainage system water course or other work of drainage. Such board or tribunal in this state shall have the power to enter into joint contract or arrangements with such board or tribunal in such adjoining state or country and construct, repair, or improve any such drainage work, each to pay

such share of the cost and expenses of such work as shall be agreed upon by the contracting bodies. Such work of drainage and the construction thereof so far as it relates to lands in this state, shall be done on petition of owners of lands as provided for in the drainage laws of this state relating to county or judicial drainage proceedings, and the provisions of such laws so far as applicable shall govern such county board or district court, as the case may be, in relation to such joint work of drainage. Provided, such adjoining county or district in another state or country shall pay its proper share of the necessary costs and expenses of the construction of any such drainage system of work including damages. In case the benefits to lands in such adjoining state or country are not sufficient to pay all costs of construction, repair, or improvements of such drainage system therein, including damages to lands therein, such board or court, as the case may be, is hereby given authority to authorize and direct the proper county or counties of such drainage system in such adjoining states or counties to contribute sufficient funds to complete the construction, repair or improvement of such drainage system in such adjoining state or country, if the same will be of sufficient benefit to the lands in this state affected by such drainage work, to warrant such contribution.

Sec. 89. Appeal when meandered lake is effected.—Whenever any order of the board of county commissioners made and entered as herein provided drains in whole or in part any meandered lake, any person or corporation aggrieved by any such order, or any tax payer residing within four miles of any meandered lake effected by any such order, may appeal to the district court from any such order and the procedure and manner of taking such appeal shall conform to the provisions herein set forth for other appeals. Such appeal shall bring before said court all questions and proceedings involved in such order. Provided, that the party taking such appeal shall accompany the same with an appeal bond to the board of county commissioners with at least two freehold sureties in the sum of one thousand dollars, to be approved by the auditor of the county in which such appeal is taken, conditioned that said appellant will duly prosecute the appeal and pay all costs that may be adjudged against him and abide the order of the court.

Sec. 90. Proceeding in case of overflow.—In any case where one or more ditches or drainage systems whether open or tiled, whether public or private, shall have been or are being constructed or may hereafter be constructed, or for the construction of which proceedings have already been, or may hereafter be initiated, the waters from which do or it is contemplated shall empty into any existing system or any creek, draw, water course or body of water, whether meandered or not, and the construction of said ditch or

drainage improvement shall cause or is likely to cause by reason of the added waters, the overflow of the waters of said drainage system, creek, draw, water course or body of water, and the inundation of the adjoining land, then and in that event, upon the filing of a petition by the county board of any county affected, or by not less than twenty-five per cent of the freeholders whose property is affected by such overflow, with the clerk of the district court of any county affected by such proposed improvement, setting forth in general terms of existence of said ditch or drainage system and the conditions of said creek, draw or water course or body of water and outlet, and the necessity for the improvement of said outlet, and if need be, the controlling of said waters therein or in said body of water, or both, and that said proposed improvement will be a public benefit and utility and improve the public health and protect said land from overflow, and asking for the consolidation of all said drainage systems or drainage proceedings, whether public or private, connected with or emptying its waters into said outlet or into said body of water into one system, and the extension of the same so as to furnish a proper outlet for all waters of said basin that naturally drain into or through said outlet, and that the cost of constructing such outlet shall be borne by all of the lands that are or will be benefited, and in order to equitably apportion the cost of the construction of said drainage improvement and the extension of said outlet to all lands to be benefited, it is necessary that such proceedings be merged and consolidated, and that said petition except when presented by a county shall be accompanied by a proper bond as provided in section 3 of this act; thereupon the clerk of said court shall notify the judge thereof and said judge shall make an order fixing the time and place for hearing upon said petition and ordering all proceedings then pending in any or all of said drainage proceedings to be stayed until the hearing and determination of said petition, which petition and order shall be served upon all persons and parties interested in such drainage weeks prior to the date of such hearing, in a legal newspaper in each proceedings by publication thereof once a week for three successive county in which such proposed drainage improvements or any part thereof are situated, and if any such proposed drainage proceedings are pending before the county board of any county, such petition and order shall be served upon the county auditor and clerk of the district court of such county.

Sec. 91. Judge to order consolidation of system.—Upon such hearing the judge shall proceed to hear all testimony offered in relation to said matter, and if it be made to appear that the allegations of such petition are true, and that the same should be granted, he shall make and order granting said petition and merging and consolidating all of said drainage proceedings, or drainage

systems, and giving to said drainage proceedings as consolidated, a title and number by which it shall in all subsequent proceedings be designated, and appointing a competent civil engineer to make such additional surveys, and such changes and modifications of the surveys, reports, plans and estimates theretofore made, as may be necessary, and fixing the time within which such modified and amended report of the engineer shall be filed in the office of the clerk of the district court of said county.

Sec. 92. Viewers may be appointed.—Upon the filing of such modified and amended report of the engineer, the judge shall appoint three viewers to assess the benefits and damages in said drainage proceeding in accordance with the provisions of the drainage laws of this state, and thereafter said proceeding shall be continued and carried to final determination under the general drainage laws of this state as though originally commenced as one proceeding before said judge.

Sec. 93. Rights and liabilities of persons affected.—No person or corporation shall be permitted to take advantage of any error in any proceedings under this chapter, either by the county board or district court or by the engineer, viewers, county auditor or other officer, person or persons, not 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 any assessment or assessments or enjoin the collection thereof, or release any person from liability thereof, it shall in no manner affect the rights or liability of any other person. Whenever a drainage system has been established, either under the provisions of this chapter or any prior drainage law, by which the cost of construction was assessed against a corporation or property benefited, and when the contract or contracts for the construction thereof has been or shall be let without collusion and in good faith and at a reasonable price, no defect or lack of notice in letting, making or executing of said contract, or contracts, and no variance between the advertisement and the contract as to the length of time or manner in which said drainage system shall be constructed, shall invalidate in any way the ditch liens of ditch assessments, nor shall the fact that said contract has been or may be let containing provisions different from the advertisement with reference to the time or method in which the proposed work shall be completed or constructed, in any way invalidate said contract, provided such extension of time or change of method was made in good faith and by reason of delay in obtaining bids for the construction of said drainage system or for other good causes, and provided such contract or contracts have been or shall be let with the approval of the engineer and auditor or auditors, and said drainage system or some part thereof has been constructed pursuant to the contract and in accordance with the plans and specifications

approved by the board or court, the contractor may recover the contract price thereof from the county or counties and no ditch lien or ditch assessment shall in any way be delayed or invalidated by reason of such variance between the contract and notice of letting thereof.

Sec. 94. County ditch inspector in certain counties.—In all counties where drainage systems now constructed have cost in the aggregate more than fifty thousand dollars (\$50,000.00), or which shall hereafter have drainage systems costing not less than said sum, the county board in any county, may at such time or times as the board may deem necessary appoint a competent man as county ditch inspector whose duties shall be to examine and inspect all such county drainage systems as the board shall designate and require, such appointment shall be for such time and at such compensation as the board shall specify. The party so appointed shall within twenty days after making such inspection report in writing to the county board the result of his examination and specifically designate each drainage system or lateral that is in need of repair, specifically designating the location and nature of the repair needed. He shall also include in his report an itemized statement of the time spent upon each system and the expense incurred in connection therewith. It shall be the duty of the county board at as early a date as possible following the filing of such report with the county auditor to proceed and have such repairs made as provided in section 54 of this act, and the county board is hereby authorized to act upon said report in the manner of repairing or cleaning out any drainage system or part thereof without any further petition than simply the filing of such report.

Sec. 95. Ditch engineers to appoint assistants.—The engineer appointed for the purpose of making a survey and report under any provisions of this act, shall have authority to appoint such assistant engineers as circumstances may require to aid in the completion of said work for whose acts he shall be responsible and whom he may remove at pleasure. Any such assistant engineer shall before entering on his duties take the oath required by this act and such oath and appointment shall be filed in case of a county proceeding with the county auditor, and in case of a judicial proceeding with the clerk of the district court. The compensation of such assistant engineer shall in no case exceed three-fourths of the regular rate fixed by this act as compensation for the engineer. Such compensation may be fixed, in case of a county proceeding by the county board and in case of a judicial proceeding by the district court.

Sec. 96. Use of former survey.—In any proceedings heretofore or hereafter instituted for the establishment of a drainage system under any law of this State, or for the changing or improvement of any water course, where an engineer has been appointed and has

made a survey and a report thereon to the proper authorities, and for any reason, the improvement has been abandoned or the proceedings dismissed, and afterwards proceedings are instituted for the establishment of another drainage system, or the changing of any water course for the benefit or reclamation of the same territory surveyed in said former proceedings, or a part thereof, or a part of the same territory and additional territory, and the engineer in the new proceedings has used the engineer's report, survey stakes and monuments made in said former proceedings or as much thereof as may be applicable and the cost of such subsequent proceedings is proportionately lessened, the amount thus saved in said subsequent proceedings by the use of said former survey, or any part thereof, shall be paid for by said subsequent proceedings to the proper parties as herein provided, namely to the engineer in said former survey, if he has not been paid, or to the petitioners or bondsmen, if they or either of them have paid the expenses of said former survey or to the county, if for any reason, after it has borne the expense of such former survey. It shall be the duty of the County Board, or the District Court, where such new proceedings are pending upon petition of the party or parties interested who paid the expense of said former survey, to determine the amount of benefit that was derived by said subsequent proceedings from the said former survey, or any part thereof, and to order the amount thus determined to be treated and considered as a part of the expenses in said subsequent proceedings, and upon the letting of the contract in said subsequent proceedings to order the amount thus determined to be paid to the party or parties entitled thereto.

Sec. 97. Individual owners may have lands jointed to drainage system.—Whenever two or more parties owning land in any county in this state, adjoining or in the vicinity of any drainage system, natural drain, creek, river or outlet, or in the vicinity of any body of water forming a part of or connected with any such drain, creek or outlet, shall petition the county board of such county for the construction of a drainage system, either open or tiled, or partly open and partly tiled, therein setting forth the necessity for the construction of such drainage system and that the same will be of public utility and benefit, will promote the public health, and give in general terms a description of the proposed drainage system, therein specifying as near as may be, the starting point, general course and terminus of the proposed drain and laterals, and giving therein a description of the land to be crossed thereby, together with the names of the owners, and a description of all public highways, roads or rialroads to be crossed or otherwise affected or damaged, with the names of the municipalities or corporations affected, and therein specifying that the petitioners will pay all costs of the construction of said drainage system, including the

cost of the proceedings and damages, and shall file said petition with the county auditor of such county and shall present and file therewith a bond signed by the petitioners and any other parties that may be deemed necessary to secure the approval thereof, said bond to be for a sum not less than one thousand dollars (\$1,000.00) and payable to the county; to be conditioned for the payment by the petitioners of all costs and expenses connected with such proceedings; if said system is not ordered constructed, or for any reason a contract therefor is not let, the same to be approved by the county auditor before being filed.

Sec. 98. Filing of petition—Bond—Duties of auditor.—Upon the filing of such petition and bond duly approved, it shall be the duty of the auditor to present the same to the county board of such county at the next general or special meeting of said board, and it shall then be the duty of said board forthwith to appoint a competent, experienced civil engineer and direct him to proceed and examine, and report to the board within thirty (30) days from the date of such appointment, with reference to the necessity and practicability of the construction of the proposed improvement as specified in section 5 of this act, and it shall be the duty of such engineer to qualify and make said report within the time specified in sections 5 and 6 of this act, and the provisions of said sections so far as practicable shall apply to and govern the actions of the board and said engineer in such proceedings. Upon the filing of the engineer's report it shall be the duty of the county auditor to notify by mail the several petitioners and their attorneys, if they have an attorney, and the engineer and the owners of all land and property affected as shown by the engineer's report that said report has been filed and that the same will be heard by the county board at the time and place specified in said notice, and said auditor shall have authority if deemed necessary and so requested by the petitioners, to call a special meeting of the board for such purpose. The notice so provided for shall be served by mail at least ten days before the day set for hearing.

Sec. 99. Hearing by county board.—At the time and place specified in said notice it shall be the duty of said board to appear and consider the evidence presented for and against the granting of such petition and it shall be the duty of the engineer to appear before said board at such time and place and make such explanation as may be necessary to fully inform said board of all the facts named and referred to in his report with reference to the necessity and practicability of said proposed improvement, and the petitioners may appear and be heard with reference to the matters involved in said petition, and if upon full hearing it shall appear to the satisfaction of the board that the proposed improvement is practical and necessary and will be of public benefit and utility,

and that the outlet is of sufficient capacity, said board shall so find and by order shall direct said engineer, or another engineer if a change in engineers is made, to proceed and make a permanent survey, and in said order shall designate whether the original ditch as petitioned for or as changed by the engineer, or by order of the board, shall be surveyed, and the proposed improvement shall be sufficiently described by attaching to the order of the board, a map or plat prepared by the engineer, thereon giving a description of the land crossed and an outline of the proposed improvement, all as provided in section 7 of this act, and the provisions of this section as far as applicable shall apply to the proceedings hereunder.

Sec. 100. Engineer to make survey.—Within twenty (20) days from the date of said order it shall be the duty of said engineer to proceed and make a permanent survey of the proposed system and report the same to the board with all reasonable dispatch, and in the work performed and the report made said engineer shall be guided by the provisions of sections 10, 11, 12 and 13 of this act, and the provisions of said sections as far as applicable shall apply to and govern his actions in making the survey and report thereon to the board. Upon the filing of the report of the engineer with the county auditor, it shall be the duty of the auditor to notify the county board, and at the next regular or special meeting following said engineer's report it shall be the duty of the board to appoint three disinterested freeholders of the county as viewers who shall be forthwith notified by mail by such county auditor of their appointment, and they shall within ten days appear at the office of the county auditor and qualify as provided in section 16 of this act. The viewers shall within ten days thereafter proceed with the performance of their duties in connection with the examination of the property affected by the proposed improvement, and the provisions of sections 16, 17, 18, 19, 20, 22, 23, 24 and 25, shall apply to and govern the action of said viewers as far as applicable, and with all reasonable dispatch they shall make and file with the county auditor their report in such proceedings.

Sec. 101. Report of viewers.—Upon the filing of the report of the viewers with the county auditor as provided in the last section, it shall be the duty of the county auditor within ten days thereafter, by order, to fix a time and place for hearing on the petition and engineer's and viewers' reports in said proceeding, and notice of the time and place specified in said order for a hearing shall be given by the county auditor as provided in Section 26 of this act, and the provisions of Section 26 so far as applicable shall apply to and govern the action of the county auditor in the giving and service of the notice of said hearing.

Sec. 102. Hearing—Procedure.—That at the time and place specified in said notice, provided for in the last section, it shall

be the duty of the county board to appear and consider all evidence presented for and against the granting of the petition and the merits of the reports of the engineer and viewers, and at said hearing the board shall have and possess all the authority as specified in Section 27 and Section 28 of this act, and the provisions of said sections so far as applicable shall apply to and govern the actions of the board at said hearing. If at said hearing it shall appear to the satisfaction of the board upon evidence presented that necessity exists for the construction of said improvement, that the same will be of public benefit and utility and will promote the public health, and that the same is feasible, then said board shall so find and by order confirm the report of the engineer and viewers and direct the construction of said improvement, provided, that no order shall be made for the construction of said improvement until the petitioners shall provide the funds to cover all expenses attending said proceedings, and all costs of the construction thereof, including damages. And he shall make and file in his office a statement apportioning the costs of such improvement in the manner provided in Section 44 of this Act showing the amount apportioned to each tract of land or other property covering all the costs of such improvement including damages.

Sec. 103. Letting of contract for improvement.—That if at the hearing provided for in the last preceding section, the board shall make the findings and order the construction of said improvement, and the petitioners shall have provided the funds for the construction thereof, then it shall be the duty of the county auditor within ten days thereafter to call for bids as provided in Section 33 of this act, and the provisions of said section shall apply to and govern so far as practical his action relative to the calling for bids and the letting of the contract in said proceeding.

Sec. 104. Appeal.—Any party or parties feeling aggrieved by the order of the board confirming the report of the viewers provided for in the last section may appeal to the district court on the question of benefits or damages in the manner provided in Section 32 of this act, and the provisions of said section so far as they relate to appeals on the question of benefits and damages shall apply to and govern appeals under the provisions of this proceedings.

Sec. 105. Payment of assessments.—It shall be the duty of the petitioners before a contract is let to pay the county treasurer or to such bank as the county board shall direct the amount of the assessment against their property as shown by the viewers' report, and in all cases where assessments for benefits are reported by the viewers and confirmed by the board against any party, municipal or other corporation, if the same is not paid by said party or corporations, upon demand by the county auditor or party representing the petitioners, it shall be the duty of the county auditor to assess

the amount of such benefits as shown in his apportionment against said party or corporations, and the same may be assessed when ordered by the county board in installments, in two or three equal annual installments, and in that event it shall be the duty of the county auditor to file a lien therefor in his office and cause the same to be recorded in the office of the register of deeds of said county as provided in sections 44 and 45 of this act, and in that event it shall be the duty of the county auditor to levy and assess against the property benefited or against said corporations, annually a tax as provided in sections 51 and 52 of this act, except that in this proceedings the total amount of the lien shall be assessed in two or three annual installments as may be provided by order of the county board, and it shall be the duty of the treasurer to collect and pay into the general ditch fund for the benefit of the system so constructed under this proceeding and credit the same to the number that is given the drainage system so constructed.

That upon the completion of said drainage system and the payment of all costs, damages and fees in connection therewith by the County, the County Treasurer shall, upon the order of the Board of County Commissioners, return and pay over to said petitioners any unexpended balance remaining in the hands of said Treasurer deposited by said petitioners as herein provided. Said refund to be made pro rata, according to the benefits assessed.

Sec. 106. Re-assessment in case of error.—In all cases in proceedings before the county board of any county, or the district court of any district for the establishment and construction of any drainage system under the provisions of this act, or the provisions of any other law relating to the establishment and construction of county or judicial ditches, where a petition in due form has been regularly filed, engineer appointed and preliminary hearing held, permanent survey ordered and the engineer's and viewers' reports duly filed, and in all cases where a hearing was had thereon and the improvement ordered constructed, a contract let and ditch lien regularly filed, under which the cost of said proceedings and the cost of construction was assessed against the property and corporations benefited, and where said ditch lien and assessment has been or may hereafter be set aside and vacated or canceled for any reason arising out of a defect in the notice given, or publication, posting, mailing or service thereof, or defect in the description of the property or corporations affected, then or in any such case a re-assessment of the benefits and a re-award of the damages, or either of them, in said proceedings may be made in the following manner.

If such proceedings are, or were pending before the district court of any district it shall be the duty of said court within a reasonable time after the rendering of said decision annulling said assessment or damages, either on its own motion or on motion of the attorney for the petitioners or any party or corporation interested to order

and direct the clerk of said court to cause to be issued, published, posted, mailed or served as required by the provisions of Section 26, this act, if such proceedings were being conducted under the provisions hereof, or in accordance with the provisions of the act under which the same were conducted, a new notice fixing a time and place for hearing upon the petition and engineer's and viewers' reports, and at said hearing upon it appearing that notice in proper form has been published, posted, mailed or served, in accordance with the order as hereinbefore specified, the court shall have jurisdiction and may have and exercise all the same authority and the same proceedings may be had as in case of the original hearing, and at said hearing said court shall have authority to confirm the report of the engineer and viewers, either as originally reported or as subsequently modified, and shall reassess and reaward benefits and damages in said proceedings as in the first instance, and the parties interested shall have the same right of appeal as provided in an original hearing.

In case said proceedings are pending before the county board of any county it shall be the duty of the county board at as early a date as possible following the rendering of the judgment annulling such assessment and award of damages, either upon its own motion or upon application of the county auditor or any parties interested in such proceeding to make an order directing the county auditor to proceed and issue and cause to be published, posted, mailed or served notices required by Section 26 of this act, if such proceedings were being conducted under the provisions hereof, or in accordance with the provisions of the act under which said proceedings were conducted, for final hearing on the petition, engineer's and viewers' reports, therein fixing a time and place for a re-hearing upon said petition, engineer's and viewers' reports, and if at such time and place it shall appear that notice in due form has been given, published, posted, mailed or served, as provided in this act, if such proceedings were pending hereunder, or in accordance with the provisions of the act under which said proceedings were instituted and conducted, said county board shall have jurisdiction and authority to proceed to reconsider all matters relative to the petition and approval of the engineer's and viewers' reports, and said board shall have, and may exercise the same authority as in the case of an original hearing, and if at said hearing the board shall confirm the engineer's and viewers' reports, either as presented or as subsequently modified, and shall direct the county auditor to make and file and cause to be recorded in the office of the register of deeds a new lien statement and assessment covering the property, and corporations affected, as provided in Sections 44 and 45; it shall thereupon become the duty of the county auditor to cause to be made and filed a new lien re-assessing the property and corporations benefited in said proceedings in the same form and manner as provided by said Sections 44 and 45 of this act, and thereupon such re-assessment shall stand and have in

all respects the same force and effect as the original assessment, and shall be carried into effect and collected in the same manner as provided in this act.

Sec. 107. Procedure in case no bids are received.—Whenever it shall occur in case of any drainage proceedings before any county board or district court that a petition in due form has been regularly made and filed, an engineer appointed and a permanent survey made and reported, viewers appointed and report made and filed, due notice given and hearing had thereon, and the improvements ordered constructed by the board or court, but upon advertising for bids for the construction of said improvement by the county auditor or county auditors, they are unable to secure a bid or let a contract for the construction of said improvement according to the plans and specifications, except for a price more than 30% in advance of the engineer's estimate, and a petition presenting such facts shall be presented by the petitioners or any number of them or other party or corporation interested, to the board or court where such proceedings are pending; and further alleging that an error has been made by the engineer in his estimate therein specifying the nature thereof, or that the plans and specifications of the engineer could be changed or modified in a manner materially affecting the cost of the improvement without interfering with the efficiency thereof, and when so modified the improvement could be constructed at a price within the limits of the benefits as reported by the viewers and asking that an order be made reconsidering and rescinding the order theretofore made confirming the report of the engineer and viewers and ordering the construction of said improvement, and the said engineer's and viewers' reports referred back to the engineer and viewers for further consideration; on the presentation of such petition such board or court where the proceedings are pending shall order a hearing thereon designating in such order the time and place for hearing on said petition, and cause notice thereof to be given by publication for two weeks in the same newspaper or newspapers where the notice of final hearing was theretofore published, which date shall be at a time not exceeding thirty days from the date of such order. At the time and place specified in such notice and order it shall be the duty of the board or court where the proceedings are pending to appear and consider the evidence presented. If from the showing made it shall appear to the satisfaction of said board or court that as the result of an error in the estimates or computations or misunderstanding, the estimate of costs made and contained in the engineer's report was erroneous, and if corrected to conform to the truth one or more of the bids submitted by the contractors for the construction of the improvement would be within the 30% limitation, and shall further find that the benefits returned by the viewers are sufficient to permit the letting of a contract at the price of such bids, then in that event said board or court may by order au-

thorize the engineer to so amend his report, and upon the filing of such amended report, shall authorize the county auditor or county auditors, as the case may be, to let said contract or authorize them to again call for bids, but should said board or court at said hearing find that the estimates in the report of the engineer as previously filed are correct but that certain changes could be made in the plans and specifications or in the plan, course, size and length of the ditch without impairing its utility, but which will enable a contract to be let for the construction thereof at a price that the benefits will warrant, then said board or court shall so find and shall have authority by order, to reopen and reconsider the former order confirming the report of the engineer and viewers and ordering the construction of said improvements, and refer back the report of the engineer and viewers for further consideration with such directions as said board or court shall deem necessary. Provided, that if the recommendations deemed necessary by the board or court shall not include a re-examination or re-survey but shall consist only of such changes as can be immediately made at such hearing, then they shall so order, and if the changes required or recommended by the engineer are not such as to affect the benefits or damages it shall not be necessary to refer back the viewers' report for further consideration but the same may stand as formerly reported. But if the changes made in the engineer's report in any manner affect the amount of benefits or damages resulting from the construction of said improvement, then said viewers' report shall be referred back to the viewers and they be required to re-examine and again report the same to said board or court; provided, that said board or court where said proceedings are pending shall have authority, when deemed necessary, to continue said hearing for the purpose of giving the engineer or viewers additional time for consideration and completing the filing of their amended reports, and in such case the jurisdiction of the board or court shall continue in all respects to said adjourned hearing.

Upon the filing of the engineer's report and viewers' report, if the same is referred back to the viewers, the board or court shall have full authority to consider the same and to modify and amend the same, as in the case of an original hearing as provided in Section 28 of this act, and after full consideration to confirm the engineer's and viewers' reports as originally made or as amended, and order the construction of said improvement, as so amended, the same as in the case of a general hearing in the first instance, as provided in Sections 29 of this act, and such order when so made, shall in all respects be of the same force and effect as an order made by said board or court in the first instance.

Upon the filing of said order referred to in the previous section, if any change has been made in the viewers' report, affecting

the amount of benefits or damages, the parties so affected shall have the same right of appeal as provided for in Section 32 of this act, and it shall be the duty of the county auditor in county proceedings and the county auditors in judicial proceedings to again advertise for bids for the construction of said improvement as provided in the amended plans and specifications, and all further proceedings had thereon shall be the same as though no change had been made in said plans and specifications, and the amended plans and specifications and reports shall stand as the original, and of the same force and effect as though no changes had been made.

Sec. 108. Registry of warrants.—That in all cases where a warrant shall be issued by the auditor of any county under the provisions of this act, and there shall be no cash in the fund herein mentioned to pay said warrant when the same is presented and the county treasurer shall endorse said warrant, "not paid for want of funds" and shall date and sign said endorsement, then, and in that event, the interest on said warrant may be paid on the first day of July each year thereafter until said warrant is called in and paid by the treasurer, provided, no interest shall be paid on any such warrants after funds are available in the hands of the treasurer for the payment thereof.

Sec. 109. Public Examiner to examine accounts.—Upon application of any county in this state, indicated by the resolution of the Board of County Commissioners entered in its minutes, it shall be the duty of the public examiner, in addition to other duties imposed upon him by law, to examine into the accounts and records relating to any drainage proceedings conducted in said county, and when so requested to establish a system of accounts with each drainage system in such county, the expenses of the examination and the establishment of the accounting system provided for herein incurred, the compensation of the examining accountant and not to exceed eight dollars (\$8.00) per day and travel and hotel expenses shall be audited and allowed by the county board and paid into the State Treasurer and credited to the public examiner's contingent fund. It shall in all such cases be the duty of the county board to cause such expenses to be apportioned among the several drainage systems in said county affected and to cause the county to be reimbursed from the accounts of said several drainage systems.

Sec. 110. Commissioner of Drainage and Waters, Game and Fish Commissioner and State Forester to be heard in proceedings.—In all proceedings under the provisions of this Act, where a notice is required to be served upon the State Auditor, the Commissioner of Drainage and Waters, the Game and Fish Commissioner and the State Forester, said officials shall have the right to appear in said proceedings and represent the interests of the

State and the general public, and in all judicial proceedings the county boards of the several counties affected shall have the right to appear and represent the interest of their respective counties; and all such parties at such hearings shall have the right to present and have considered in addition to other matters evidence relative to the value of any body of water as materially affecting the water supply or water level in the surrounding territory, the effect of the proposed improvement upon the conservation of the forests of the state, or as affecting the conservation of wild life of the state.

Sec. 111. Proceedings heretofore commenced may be completed under provisions of old law or under provisions of this act.—In all cases where proceedings have been instituted under existing laws before the county board or district court and are pending at the time of the passage of this Act, such proceedings may be completed under the provisions of the existing law or under the provisions of this Act, and in all cases where the parties to such proceedings desire to complete such proceedings under the provisions of this act, a petition therefor signed by the petitioners in said proceedings, or two or more of them shall be presented to the county board or court where said proceedings are pending and it shall thereupon be the duty of said board or court to fix the time and place for hearing thereon which shall be at a date not less than 12 or more than 20 days from the date of said order, and notices thereof shall be given by the county auditor or clerk of district court by mail to the petitioners and bondsmen and attorney for petitioners in such proceedings, and also in judicial proceedings to the county auditors of the several counties affected. At the time and place set for said hearing it shall be the duty of the board or court to attend and listen to the showing made on behalf of the parties for and against granting the relief asked for in said petition, and if said board or court shall find from the evidence presented that it is in the best interest of the parties that such change be made they may so find and by order direct that all further proceedings therein be conducted under the provisions of this Act and upon the filing of such order, the provisions of this act shall apply to and govern all further proceedings therein.

Sec. 112. Dismissal of proceedings.—That in any proceeding under the provisions of this Act the petitioners may at any time prior to the making of the order establishing the improvement, upon payment of all lawful costs, charges, expenses and fees in said proceeding, dismiss the same.

Sec. 113. Laws repealed.—That chapter 230 of the General Laws of 1905 and amendments thereto and the following numbered sections of the General Statutes of 1913, namely Sections numbered, 5523, 5525, 5526, 5527, 5528, 5529, 5530, 5531, 5532,

5533, 5534, 5535, 5536, 5537, 5538, 5539, 5540, 5541, 5542, 5543, 5544, 5545, 5546, 5548, 5550, 5551, 5552, 5553, 5554, 5555, 5556, 5557, 5558, 5559, 5560, 5561, 5562, 5568, 5569, 5570, 5571, 5572, 5573, 5574, 5575, 5576, 5577, 5579, 5581, 5582, 5583, 5584, 5585, 5586, 5587, 5588, 5589, 5590, 5591, 5592, 5593, 5594, 5595, 5596, 5597, 5605, 5606, and 5607, also Chapter 300 of the General Laws of 1915, Chapters 274, 178, 246 and 268 of the General Laws of 1915, Chapter 171 of the General Laws of 1917 and Sections 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 19 of Chapter 441 of the General Laws of 1917, Sections 4, 6, 7, 8, 9, 10, 11, 12, 13 and 16 of Chapter 471 of the General Laws of 1919 and Sections 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 of Chapter 508 of the General Laws of 1921, and Chapter 248 of the General Laws of 1923, and all other acts or parts of acts inconsistent with the provisions of this act are hereby repealed save only as to unfinished proceedings instituted under any of said chapters or sections and not completed at the date of this act, any proceedings so instituted and incomplete at the date of the passage of this act, may be completed under the provisions of the act or laws under which the same were instituted and for all such purposes the provisions of such acts, sections or chapters shall continue and apply to such proceedings, and shall continue and apply for all purposes of correcting and amending and completing any proceedings instituted under such laws, provided further, that in all cases where under the provisions of any other act heretofore passed, reference is made to any of the sections or chapters hereinbefore enumerated and performance required or provided for in accordance with the provisions of such sections or chapters, then and in that event the provisions of such sections or chapters, shall continue for all purposes of such acts as though in fact constituting a part thereof.

Sec. 114. This act shall take effect and be in force from and after its passage.

Approved April 25, 1925.

CHAPTER 416—S. F. No. 776.

An act to regulate traffic and the operation of vehicles upon streets and highways; to appropriate moneys therefor, to provide penalties; and to repeal Sections 2621, 2625, 2626, 2627, 2632, 2633, 2634, 2635, 2636, 2701, 2702, 2705, 2706, 2707, 2708, 2709, 2710, 2711, 2714, 2716, and 2718, General Statutes 1923, and all other acts and parts of acts inconsistent herewith.

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

Section 1. **Definitions.**—Unless the language or context clearly indicates that a different meaning is intended, the follow-