

REVISED LAWS

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1905

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or near the banks thereof in search of any such property which he may have lost, and any person who shall wilfully prevent or obstruct such search shall upon conviction thereof be liable to a penalty of not less than twenty dollars nor more than fifty dollars for every such offence. (2419; '95 cc. 35, 36)

2582. Receiver likewise guilty—Whoever shall purchase, secrete, or receive any such timber, taken as in § 2581 described, shall likewise be deemed guilty of the larceny thereof, unless the same was duly scaled to him by a surveyor general of logs and the scale bill thereof be by him produced. (2420)

2583. Falsifying scale bill—Any surveyor general of logs or any deputy or other person employed or permitted by any such surveyor general to aid in the performance of his official duties, who shall knowingly do, or permit or cause to be done, any act or thing whatsoever, whereby any false or untrue scale bill of logs or other timber surveyed in the district or within the jurisdiction of such surveyor general shall be issued or made, or who, with knowledge, or with reason to believe, that any scale bill, or the scale represented thereby, is false or untrue, shall cause any person to part with money or property in the belief that the same is correct, shall be guilty of a gross misdemeanor. ('95 c. 344)

2584. Side booms—The parties constructing and operating side booms upon any of the rivers or streams of this state, shall construct and operate the same so as to admit their own property and at the same time as far as practicable exclude the property of other parties. No person or party shall open or in any way injure such private boom, or otherwise interfere with the same, except so far as may be necessary to obtain any logs, timber or floatables which by accident or mistake have run or been driven therein, and then only when it can be done without injury to such private boom. When, however, in such case such release cannot be made without hazard to such private boom, such logs and timber shall, upon the request of the owner thereof, be scaled and other floatables counted, by the surveyor general of the district, and the value thereof fixed by him, or by consent of the parties, to be paid for by the owners of such pond or private boom, within thirty days from the time such scale is made: Provided, that the provisions of this section shall not apply to the first lumber district. (2422)

2585. Wilfully injuring booms, etc.—Any person who wilfully and maliciously opens, breaks, cuts, or otherwise destroys or injures any side or other boom or turns the whole, or any part, of the logs or timber contained therein loose or adrift (unless such boom materially obstructs the navigation of any navigable stream, or unlawfully intrudes upon the property of any such person) or who wilfully or maliciously cuts loose or turns adrift any boom, grill, string, or raft of logs, timber or lumber, is guilty of a felony, and shall be liable for all the damages sustained by reason of such wrongful act. (2423)

CHAPTER 44

DRAINAGE

[This chapter is superseded by 1905 c. 230]

COUNTY DITCHES

2586. Power of county board—The county board when they find the conditions stated in § 2587 to exist, shall construct as hereinafter provided, any ditch, drain or other watercourse within their county; and such ditch, drain or other watercourse may, in whole or in part, follow the bed of any stream, and may change, lower or drain the bed of any such natural watercourse, and may confine the same by means of dykes, levees and embankments to its natural or artificial bed as laid out: Provided, that when in any such proceedings the

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waters of any such watercourse are diverted from their natural bed by such artificial ditch or drain, such ditch or drain shall as nearly as practicable follow the general direction of such watercourse, and terminate therein.

See 1905 c. 311

2587. Petition—Bond—Notice—Before the county board shall establish any ditch, drain, watercourse, or other construction there shall be filed with the auditor the petition of one or more landowners whose lands will be liable to be affected by or assessed for the construction of the same, or by the governing body of any municipality, which is liable to be affected by or assessed for the proposed construction, or by the duly authorized agent of any such public institution, corporation or railroad whose lands or property are liable to be affected by, or assessed for the construction of the same, or by the state board of control, or its duly authorized agent, setting forth that it will be of public benefit or promote the public health, with a description of the proposed starting point, routes and termini; and one or more of such petitioners shall give bond payable to the county, to be approved by the auditor, conditioned to pay all expense, in case the county board, or the court shall fail to establish such proposed ditch, drain or watercourse: Provided, that the principal and sureties who have signed said bond, at any time prior to the final order establishing such ditch, drain or watercourse, and subsequent to the filing of the engineer's report, upon ten days' notice, in writing to the petitioners, of their intention so to do, may pay the costs of the proceedings and dismiss the same, unless one or more of such petitioners shall, within ten days, give a new bond payable to the county to be approved by the auditor, conditioned the same as the original bond. The auditor shall give notice of the filing of said petition, and of the time and place of the hearing thereon by three weeks' publication of said petition and notice, and by three weeks' posted notice thereof in each township where the proposed work is located and at the door of the courthouse in said county. The auditor shall mail a copy of said notice and petition to all non-residents of the county whose lands lie within two miles of the routes specified in the petitions, whose address is known to him, or can be ascertained: Provided, that when said notice shall not be given, or is defective, the auditor shall give the same so that the petition may be heard at the next session of said board, after the expiration of such, or any new, three weeks' publication and posting thereof. When all of the foregoing conditions have been complied with, the board shall cause an accurate survey of the entire line of such proposed ditch, drain, or watercourse to be made by a competent civil engineer, appointed by them by resolution, to whom certified copy thereof shall be forthwith transmitted. Upon the filing of the petition such proceeding may be designated and numbered by the auditor as "County Ditch No.," and may be so referred to in all subsequent proceedings.

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2588. Engineer—Survey—Before entering upon his duties such engineer shall give a bond in the sum of two thousand dollars, payable to the county or counties, in which any part of the work is to be done, for the use of such county, counties, or persons aggrieved or injured by the negligence or malfeasance of said engineer, to be approved by the auditor of the county in which the proceedings are commenced, conditioned that he will diligently and honestly, and to the best of his skill and ability perform his duties as such engineer, and shall take an oath to faithfully perform his duties: Provided, that the engineer shall not be required to continue his bond after the conclusion or abandonment of the work; and provided, that in all proceedings commenced before the county board of any county, the engineer may, in place and stead of giving a separate bond as above required in each proceeding, give a sufficient bond covering all said proceedings within two years after the filing and approving of such bond, in the sum of four thousand dollars, to be approved by the auditor, payable to the county for the protection of said county, and all parties who may show themselves to be aggrieved or injured by any negligence or malfeasance on his part as such engineer in each and all such proceedings. He shall make a correct and complete survey of the line of such ditch, drain or watercourse, and its branches, and he shall cause stakes or monuments to be set along said line numbered progressively down stream, at each one

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hundred feet; and he shall make a computation of the number of cubic yards of earth to be excavated and removed from said ditch, drain or watercourse, between each of the one hundred-foot stakes, and the estimated cost per cubic yard of the removal thereof (and shall sum up the total number of the cubic yards of earth to be excavated and removed from said ditch, drain, or watercourse, between each of the one hundred-foot stakes, and the estimated cost per cubic yard for the removal thereof), and shall sum up the total number of cubic yards of earth to be excavated and removed for the entire length of such ditch, drain or watercourse, and shall make an itemized tabulation of all cleaning of obstructions of watercourse, building of flumes, of other wood, or masonry work, construction of fences for the protection of the ditch, bridges or other additional construction work found necessary, together with the estimated cost thereof, and make an estimate of the total cost of laying out, establishing and constructing the whole work, including all preliminary and other expenses connected therewith, and with the inspection and certification of the work when completed. He shall also, in tabular form, give the depth of cut, its width at the bottom and top, at the source, outlet, and at each one hundred-foot stake or monument of said ditch, drain or watercourse, and all its branches, and he shall specify the time and manner in which the work shall be done; and for that purpose may set a different time for completing the several contracts, and also for completing any station or stations included in each contract, and shall have power to provide for running said ditch under ground by specifying the size and kind of tile, or other material to be used in such underground work, and shall estimate the cost of the same as a part of the total cost of the work. In locating a public ditch, drain or watercourse, or the branches thereof, the engineer may vary from the line described in the petition, or from the starting point thereof, provided he commence the ditch at or as near the point described in the petition as is reasonably practicable, and follow down the line therein described as nearly as practicable, to and including its termination, and provided further, that he shall have authority to specify such branch ditch or ditches, as, in his opinion, may be necessary to give owners of lands likely to be assessed for the construction of the main ditch the full benefit thereof. He shall also include in his report a form of contract as complete in its provisions as practicable, and which shall contain detailed and complete specifications by direct statement, and shall provide for all necessary supervision of the laying of tile, excavation and other construction work of the contractor, and said report shall define the relation between the contractor or contractors and give the engineer the right, with the consent of the auditor or auditors, to modify his plans and specifications as circumstances may require, provided, no changes are made that will substantially impair the usefulness of any part of the ditch, or substantially alter its original character, or increase its total cost by more than two per cent. of the total original contract price, and the county attorney, upon request from the engineer, shall assist him in the preparation of said form of contract, specifications and provisions. He shall report the same data, tabulations and estimates with reference to said branches as are required by this chapter, with reference to the public ditch, drain or watercourse, or the branches thereof, described in the original petition. Such branch ditch or ditches may be opened either at the same time and in the same manner as the main ditch, or the engineer may only locate said branch ditch or ditches for future construction. In all cases, in which the route proposed is along highways already established, the engineer shall locate the ditch at sufficient distance from the center of such highway to admit of a good road along the central line thereof. The 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 placed 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 in time of high water, and no nearer to the margin thereof than two feet. When, however, there is not sufficient fall in the length of the route described in the petition, to drain the land adjacent thereto, or

when for other reasons, 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 is extended. When, in his opinion, it will not be detrimental to the usefulness of the whole work, or any extensive section thereof, he shall locate the ditch on division lines between lands owned by different persons; and he shall, as far as practicable, avoid laying the same diagonally across lands, but he shall not sacrifice the general utility of the ditch to avoid diagonal lines: Provided, that the engineer, when desirable and practicable, and upon the written agreement of the bondsmen for the petitioner, may provide for the drainage of lands not likely to be assessed for said ditch by extending it beyond the limits named in the petition, or by putting in branches: Provided, further, that if the engineer finds that better results can be obtained, and upon the written agreement of the bondsmen for the petitioners, he may plan for the different parts of the ditch, drain or watercourse to flow in different directions, with more than one outlet.

2589. Report—At the completion of his said survey, the engineer shall make a detailed, complete and verified report of his doings, and submit therewith the necessary plans, specifications and a description of the lands over which the ditch is surveyed, the names of assistants and laborers, the time each was employed by or under him, together with his own time on the work, and every other item of expense by him incurred in and about said work, and he shall forthwith file such report with the auditor.

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2590. Viewers' report—At the session of the said county board, when said civil engineer is appointed, or within ten days thereafter, said board shall appoint three resident freeholders of the county not interested in the construction of the proposed work, and not of kin to any of the interested parties, as viewers, who shall meet at a time and place specified by the auditor preparatory to commencing their duties as hereinafter specified. The auditor, within five days of the filing of the engineer's report, shall designate the time and place for the first meeting of the viewers, which time shall be within fifteen days after the filing of said report, and the auditor shall issue to said viewers a certified copy of the petition, a notice of their appointment and of the time and place of their first meeting. When any of the viewers so appointed fail to qualify the auditor shall designate some person to take his place. The viewers, after taking the oath with said civil engineer, at the time set, shall prepare a tabular statement, showing the names of the owners of, the legal description and the number of acres of each tract of land to be benefited or damaged; said names to be the same as appear on the tax duplicates of said county, the estimated number of acres in each of said tracts of land to be benefited or damaged; the number of acres added to any tract by the change of any watercourse, 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 ditch established under this act drains either in whole or in part, any public or corporate road or railroad, or benefits any of such road so that the roadbed or travel track of any such road will be made better by the construction of such ditch, the viewers shall estimate the benefits arising therefrom to such roads, roadbeds or railroads, and report said benefits, the damages awarded to each municipal or other corporation for injury to any road or roadbed and from the necessary construction and maintenance of any bridges, culverts or other works rendered necessary by the establishment of such ditch, and include such benefits and damages as a part of said tabular statement; and they shall also report the total estimated benefits, if any, and also whether in their opinion, the estimated expense of the construction of such ditch, including the damages awarded therefor, are greater than the utility of the proposed ditch, or that the construction of such ditch is impracticable and the reason therefor. In case the viewers are unable to agree, each shall report separately on such matters. 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

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cubic yards of earth already excavated on each tract of land and of the reduction in the cost of constructing the portion of the ditch of each such tract of land by reason thereof, 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.

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2591. What lands assessed—All lands and public or corporate roads or railroad so benefited shall be assessed in proportion to the benefits for the construction thereof, and said viewers, in estimating said benefits, shall consider only the benefits to be received by reason of the construction of said ditch.

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2592. Unavoidable delays—Said viewers shall forthwith file with the auditor a report of all their doings and findings in detail, including expenses and the actual time they were engaged, within thirty days from the date of their first meeting: Provided, that high water, inclement weather or unavoidable accident may excuse the viewers, but their report must in such case state the reason for such delay, and if not deemed sufficient by the county board, such viewers shall forfeit one-half of the compensation hereinafter provided.

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2593. Notice of meeting—Jurisdiction—Improper service—Continuance—Within three days after the filing of such report, the auditor shall call a special meeting of the county board in the manner provided by law for special meetings, and shall give three weeks' published notice of the time and place of such special meeting and weeks' posted notice thereof in three public places in each township where the proposed work is located, and one at the door of the courthouse in said county, of the pendency of said petition and engineer's and viewers' reports, and of the time and place set for the hearing thereof, which notice shall state the starting points and termini of the ditch, drain or watercourse, and branches, and a legal description of the land through which they pass, all as appears by the engineer's report, and the names of the owners of the lands and the names of the municipal and other corporations to be affected thereby, as the same appears in the report of the viewers. Within one week after beginning such publication, the auditor shall mail a printed copy of said notice to all non-residents of the county named in such viewers' report as affected by such proposed work, whose address is known or can be ascertained: Provided, that if notice shall not be given, or shall be legally defective, the county auditor shall cause the same to be given again, so that the petition may be heard at another special, adjourned or regular meeting of said board, to occur more than seven days after the expiration of another notice by like publication, posting and mailing, as provided in the first instance: Provided, further, that whenever any final order of the county board establishing or refusing to establish any ditch in proceedings under this chapter (shall have been heretofore or shall be hereafter) set aside, annulled or declared void by any court by reason of a failure to give proper notice of the said pendency of said petition and viewers' report and of the time and place set for the hearing thereof, the auditor, at any time within one year after said judgment, upon the application of any petitioner in such case, or upon being directed by resolution of the county board, shall call a special meeting of such county board for a rehearing on such petition and viewers' report, and shall give notice of such meeting and rehearing as hereinbefore provided, and at such meeting said board shall reconsider and act upon said report and make findings thereon and may establish such ditch in conformity with the provisions of this chapter. Upon due publication, posting and mailing of said notice, the county board shall have jurisdiction of each tract of land and of all other property in said viewers' report described, including any land added by the change of any watercourse, and of each tract of land described in said notice, and of each tract of land owned by any of the persons or corporations whose names appear in said notice that is affected by the proposed drain, and of all persons and corporations, municipal and otherwise named in said notice, and of all persons and corporations having or owning any interest whatever in or any mortgage lien or incumbrance against any of said tracts of land.

2594. Hearing of county board—Said county board at the time set for the hearing of said petition and reports (or at any time to which said hearing may be adjourned from time to time, as necessity may require, but not otherwise), shall hear and consider the same; and all persons interested may appear and be heard by and before them, and the engineer and viewers shall be present at such hearing. If such board, from the reports of the engineer and the viewers and such other evidence as may be adduced before them, shall find that the engineer's report and the viewers' report and all other proceedings in the matter have been in accordance with the provisions of this chapter, and that the estimated benefits of said work are greater than the total cost, including damages awarded, and that such damages and benefits have been duly awarded and assessed and that said work will be of public utility or promote the public health and that such reports are complete and correct, they shall establish such ditch as specified in said engineer's report and establish and confirm the viewers' report: Provided, that the county board may remedy any defect in said viewers' report and may assess the expense of such re-reference against the land benefited. If the viewers do not agree in their report, the county board shall change the viewers' report accordingly. In case of re-reference, the viewers shall summarily make the necessary corrections, and forthwith report the same to the board.

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2595. Damages—How paid—When damages are awarded to any person in excess of benefits and the same shall have been duly confirmed, the county board of each county where the lands for which such damages are awarded, are located, shall order the same paid out of such county treasury on warrants which shall be issued at the expiration of the time for appeal in favor of such persons as shall not have appealed, and shall be dated and become due and payable immediately, after the letting of the contracts as hereinafter provided. In case of appeal, postponement or delay in determining the damages due to any person, warrants in favor of such person shall not issue until the final determination thereof. When the award is confirmed by order of the court, the clerk shall transmit forthwith to the auditor of each county affected thereby a certified copy thereof and likewise of any final order or judgment thereafter made in case of any appeal or jury trial; and thereupon the same duties shall devolve upon the county board and auditor as hereinbefore provided. Whenever an award is finally confirmed, the county board shall cause to be forthwith paid to the owner of such property, the damages over and above all benefits which may have been awarded therefor, with interest at the rate of six per cent. per annum, from the date to which such assessment relates to the date of such payment. If there shall be doubt as to who is entitled to the damages for land taken, such board may require of the claimant a bond, with good and sufficient sureties to hold the county harmless from all loss, costs and expenses, in case any person should thereafter claim and show himself entitled to any part of such damages.

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2596. Appeal to district court—Jury trial—Any person aggrieved thereby may appeal from any order of the county board made in the proceedings and entered upon their records, determining any of the following matters:

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1. The amount of benefits to any tract of land, or owner of any public or corporate road or railroad.
2. The amount of damages allowed to any person.
3. Refusing to establish such proposed ditch.

To render such appeal effectual, the appellant shall file with the auditor, within twenty days from the date of such order, a notice of appeal, stating briefly the grounds upon which such appeal is taken, accompanied by an appeal bond to the county board, in an amount of not less than two hundred and fifty dollars to be approved by the auditor, conditioned that said appellant will duly prosecute the appeal, pay all costs that may be adjudged against him, and abide the order of the court. Within twenty days after such filing, the auditor shall make a complete transcript of all the papers and proceedings in the premises on file and of record in his office, together with the notice of appeal, to the clerk of the district court. Any person deeming himself

aggrieved by the determination in any order establishing the proposed ditch as to the amount of his benefits or damages, may demand in writing a jury trial to determine the amount of his benefits or damages and such demand shall be filed in the office of the clerk of the district court within twenty days after the filing therein of the order confirming the report of the viewers. The issues raised by such demand shall be duly tried and determined at the next term of the district court held within said county, beginning after the filing of such demand and shall take precedence of all matters of a civil nature in said court. If there be more than one demand, they may be consolidated and tried together, but the rights of such persons shall be separately determined by the jury: Provided, however, that if the demandant fails to recover more damages than awarded to him or fails to reduce the amount of benefits assessed against his land, then the costs of such trial shall be paid by the demandant. The construction of any such ditch shall not be hindered, delayed or prevented by the prosecution of any appeal or demand herein mentioned.

97 2597 - 138 **2597. Letting of job**—Within ten days after the filing of the order establishing a county ditch, or, when the proceedings are taken in court, then within ten days after the filing of the order establishing a judicial ditch, in the office of the clerk, the auditor, 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, shall proceed as hereinafter provided to sell the jobs of digging, and constructing the entire work either as one job, or in one or more linear sections of one hundred feet each, said sections to be known and numbered by the stake or monument set by the engineer at the foot thereof, as shown in the engineer's report, commencing at the one including the outlet, and thence in succession up the stream to the one including the source. The auditor may, with the approval of the engineer, sell separately from the jobs of excavation, any jobs of building of flumes, or other wood or masonry work, fencing or other construction work specified in the engineer's report. The auditor shall contract in the name of the county, with the party to whom any of such jobs of construction work, or any section is sold, requiring him to construct the same in the time and manner, specified in the provisions and form of said contract, and shall take from him a bond in the penal sum of not less than the contract price, payable to the county for the use of such county, and of all persons who may show themselves to be aggrieved or injured by any breach thereof, or of the contract for which such bond is given, to be by said auditor approved, conditioned that said party shall faithfully perform and fulfil his contract and pay all damage which may accrue by reason of failure to complete the work in the manner and within the time required in the contract therefor and otherwise conditioned as in this chapter 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 the obligation of the principal or sureties on said bond. The auditor of the county where proceedings are instituted shall give three weeks' published notice of the letting of such contracts; of the time when and the place where such contracts shall be let to the lowest responsible bidders. 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 shall reserve the right to reject any and all bids, and no bid shall be entertained which exceeds more than thirty per cent. the estimated cost of the construction of the part of said work covered by said bid. Each bid shall be accompanied by a certified check payable to the auditor for not less than ten per cent. of the bid; and said auditor 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 dollars, the auditor may also advertise such letting in a trade paper. If no bids are received which can be entertained the bonds-

men for the petitioners may have the right at any time, to pay the costs of the proceedings and dismiss the same. The engineer shall attend to the letting of the work and no bid shall be accepted without his approval.

2598. Contract and bond—The bond shall be attached to said contract, which shall contain the specific description of the work to be done, and refer to the number of the linear section as provided in § 2597; and shall provide that the work shall be done and completed according to the report of the engineer, and subject to his approval and that of the auditor. Such contract shall be drawn to the satisfaction of the engineer and shall embrace all of the provisions provided for the giving of bond by contractors for public works and improvements and for the better security of the contracting county, and of the parties performing labor and furnishing material in and about the performance of such contracts, and shall provide that time shall be of the essence of the contract, in that if there 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 to the county where the work is located, a certain sum named therein and fixed by the auditor, for each day that such failure shall continue. No extension of time shall be granted unless applied for in writing to the auditor, stating to his satisfaction, good and sufficient reasons therefor, nor shall any extension affect the right to enforce such forfeiture, if any shall occur. 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 injured by such failure, may maintain an action upon such bond and that actions may be successive in favor of all persons so injured. Such contractor shall be considered a public officer and his bond, an official bond within the meaning of the statutory provisions construing such official bonds of public officers.

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2599. Failure to complete—Reletting—If a job be not completed within the time fixed in the contract, the bondsmen shall notify the auditor in writing of that fact, within five days after the expiration of the time fixed in the contract; whereupon the auditor shall, in writing duly dated, order said bondsmen to complete said job within a time specified by him, and said bondsmen shall receive from the proper county the amount due on such job or part thereof that they have so completed, less the proper deduction for forfeiture, to be determined by said engineer: Provided, that a job not completed as hereinbefore specified by the original contractor, and the completion of which is not undertaken by the bondsmen as hereinbefore provided, within ten days after the date of such order, or of which failure to complete the bondsmen shall not so notify said auditor, shall be resold by the auditor after ten days' published notice, to the lowest responsible bidder, but not for a sum exceeding fifty per cent. in excess of the original estimated cost of such work, nor a second time to the same party. A contract and bond shall thereupon be entered into as hereinbefore provided and such contract shall provide for completion of the work resold within six months from the date thereof.

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2600. Payment—Inspection—When notified by any contractor that his job is completed, the engineer shall inspect the same, and if he finds it complete according to the contract shall report that fact to the county board and shall notify the contractor what sections or other jobs of construction are completed according to the contract, as set forth in said report: Provided, that when the completed part of said work affects more than one county, such proportionate certificates shall be issued; whereupon, if approved by the county board, upon the presentation and surrender of said approved certificate to the auditor, said auditor shall draw a warrant on the county treasurer for the proportionate amount found to be due on said contract, as hereinafter provided; and that said warrant shall be paid out of the general ditch fund to be provided by the county board 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 indorse said warrant, "Not paid for want of funds," and date and sign such indorsement, and the amount of said warrant shall draw interest at the rate of six per cent. per annum until called in by the treasurer

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or auditor and paid: Provided, however, that the engineer, upon the written approval of the auditor, may issue preliminary certificates not exceeding seventy-five per cent. of work already done and approved, which certificate shall be treated as hereinbefore provided; but no such certificate shall be furnished except when accompanied by the engineer's written certificate that no loss will result therefrom. The engineer shall inspect the laying of tile, excavation and all other work of construction from time to time as provided for in the specifications and provisions of this report and in the contract for construction, and his services therefor shall be paid for at the same rate and in the same way as his services in making his original survey and report.

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2601. Bonds of county—The county board is hereby authorized to issue the bonds of its county in an amount necessary to defray in whole or in part the expense incurred or to be incurred in locating, constructing and establishing so much of any such ditch as may be located within such county, or shall affect lands therein within the meaning of this chapter. The word "expenses" shall be construed to mean and to cover every item of cost of said ditch from its inception to its completion, and all fees and expenses to be incurred in pursuance thereof. Such bonds shall run not to exceed ten years from date and shall bear interest not to exceed six per cent. per annum, payable annually, or semiannually as the county board shall by resolution, determine. Each bond shall recite that it is issued by authority of, and in strict accordance with the provision of this chapter and shall be signed by the chairman of said board and countersigned by the auditor who shall keep a record thereof. Said board shall have power to negotiate said bonds for not less than their par value. The proceeds from the sale of all such bonds shall be placed in a general ditch fund which is hereby created. Such board shall provide for the payment of the principal and interest of said bonds as they severally mature, and shall create a general ditch fund, into which fund they may transfer any surplus moneys remaining in the general revenue fund or other funds of the county, which can properly be used for the purposes of this act, into which fund shall also be paid all moneys received from the payment of any liens created under the provisions of this act.

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2602. Statement and summary—At the earliest practicable time, after the letting of said contract, 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:

1. The names of the owners of all lands and the names of all public or corporate roads or railroads within their respective counties benefited by the construction of such proposed work as appears from the viewers' reports, as affected by the order of confirmation of the board or judge as aforesaid.
2. 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 rolls or tax lists of such county.
3. The estimated number of acres benefited in each tract of said land as shown as aforesaid.
4. The estimated amount of benefits and damages to each of said tracts of land and to each public or corporate road or railroad, as the same appears in such viewers' report as affected by the order of confirmation of the board or judge as aforesaid, or as changed by the jury or court.
5. The amount that each of said tracts of land, and that each of said corporate roads or railroads so benefited, will be liable for and must pay into the treasury of each county for the location, construction and establishment of such ditch, to be determined as follows:

Said auditor shall make a full statement showing the total cost of each ditch, under each separate petition for such ditch; and each petition and each ditch located, constructed and established shall be known and designated by a number to be given to it. Such statement shall be headed as follows: "Statement showing cost of ditch number.....to whom paid..... for what paid.....amount paid....." Said statement shall be summed up, showing in figures the total cost of each ditch, 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 subd. 5 of this section for the rate of cost on each one dollar of benefits, not using 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 or railroad, shall be multiplied by said rate, and the result set down in the proper column opposite each of said tracts of land, public or corporate roads or railroads; and the result so obtained, less the amount of damages, if any, shall be the amount that each of said tracts of land, public or corporate roads, or railroads, will be liable for on account of such improvement.

2603. Record of statement—Such statement signed by the auditor in the presence of two attesting witnesses and acknowledged by him, shall then be duly filed with and recorded by the register of deeds for such county. The amount which each tract of land and each public or corporate road or railroad 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, or railroads until fully paid; and shall take precedence of all mortgage, charges, incumbrance or other liens whatever. Such payments may be made as hereinafter provided. Such filing shall be deemed notice to all parties interested of the existence of such lien. The fees of the register of deeds for such recording shall be paid by the county on the allowance of the county board and said recorded statement shall be returned to the auditor and preserved by him with the other papers relating to such ditch.

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2604. Interest—Premium on bonds—The amount that each tract of land, public or corporate road or railroad shall be liable for on account of the location, construction and establishment of any ditch shall bear interest from the date of the filing of the auditor's statement in the register of deeds' office at the rate of six per cent. per annum until paid: Provided, that when bonds are issued by the county for the construction and establishment of such ditch the same rate of interest shall be charged as said bonds so issued bear, and said interest shall constitute an additional lien on said lands or roads until fully paid, which said interest when about to be paid shall be computed by the auditor, provided, that if said 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 in the proceedings, and the balance remaining of such premium, shall be used if practicable, in keeping such ditch in proper repair and free from obstruction.

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2605. Liens how paid—Such liens shall be paid to the county treasurer, as follows: One-tenth of said principal, with the interest thereon, on or before one year from such filing in the register of deed's office, one-tenth of the same on or before two years; one-tenth of the same on or before three years; one-tenth of the same on or before four years; one-tenth of the same on or before five years; one-tenth of the same on or before six years; one-tenth of the same on or before seven years; one-tenth of the same on or before eight years; one-tenth of the same on or before nine years; one-tenth of the same on or before ten years, all reckoned from the date of such filing; provided, where the annual instalment to be assessed is less than one mill per year, the auditor shall levy one mill per year for as many years as is necessary at that rate to pay the full lien levied against the tract or parcel of land. On or before November 15 next following such filing the auditor shall enter on the tax list of said county the amount of such lien then remaining unpaid against each respective tract of land subject thereto, as a tax on said tracts, with a proper notation to secure the successive entry each year thereafter of the unpaid balance of such lien. One-tenth of such tax shall become due and payable, with accumulated interest thereon, at the time and in the manner and be subject to and be collected with like penalties as all other taxes for said year, and another one-tenth with and as the taxes of each successive year, until all is paid. When payment of the full amount of such lien, with accumulated interest, shall thus. or at any one time be made, the auditor, upon presentation of a receipt from the treasurer to that effect, shall issue

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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 such lien of record.

2606. State and railroad lands assessable—All lands owned by this state, and by any railroad or other corporation, benefited by any such ditch, drain or watercourse, shall be liable for such benefits the same as taxable lands.

2607. Standing appropriation—The sum of five thousand dollars for the year 1905, and annually thereafter, or so much thereof as may be necessary to meet all assessments against state lands under this chapter, is hereby appropriated out of the general revenue fund for that purpose.

2608. Assessment for repair—The benefits accruing to any municipal corporation, or to the owners of any corporate roads, or any railroad, by reason of the improvement of any public road within the limits of, or connecting with such municipal corporation, or of such corporate road or railroad, by the construction of any such ditch, shall be assessed, levied and enforced as follows: Whenever any public road shall have been found to be so benefited, the town chargeable with keeping such road in repair, shall be assessed the amount of such benefits in said town accruing to such roads and the same shall thereupon become a liability of such town, and shall be due and payable in ten equal annual instalments, beginning on June 1 next following the date of the entry of the lien against private individuals, as herein provided; but if any of such instalments are not paid within thirty days after its maturity, the amount thereof, with interest, shall be enforced in the same manner as judgments against the town. Whenever any railroad or the lands of any railroad company, shall be determined in any such proceeding to be benefited by any such ditch, such railroad, or the lands of such railroad company, legally subject to local assessment, shall be assessed their just proportion of such benefits as other lands so benefited are assessed, which assessment shall be collected from the owners of such railroad or from such railroad company in the same manner as personal taxes are collected by law. From the date of the filing by the auditor in the office of the register of deeds of the statement aforesaid, the amount of such assessment, with interest, shall constitute a lien against all the property of such owners and railroad company with such county. Such lien may be foreclosed by action in the same manner as the foreclosure of mortgage liens.

2609. Repair—Joint assessment—Several counties—After the construction of any such work, the county board shall keep the same in proper repair and free from obstruction and pay for the same out of the general revenue fund. To raise the necessary money to reimburse that fund, said board is hereby authorized to apportion and assess the cost thereof upon the lands which will be benefited by such repairs or removal of obstructions, according to such benefits, and shall make a written statement of such assessments and deliver the same to the county auditor who shall put the same upon the succeeding tax duplicate, and it shall be a first and paramount lien upon the lands the same as state and county taxes and be collected in the same manner. The provisions of this section shall apply to all works constructed for the purpose of drainage under any law now or heretofore in force in this state except state ditches. If it shall be of the opinion that such assessment or any part thereof ought to be charged to lands in other counties, the county board thereof shall on request and written notice of not less than ten days meet with them at a time and place by them appointed and they shall jointly make such assessments and certificates to the auditors of the proper counties. A majority of such commissioners as attend any such meeting shall have power to act upon and decide any question and to make the assessments and certificates; and upon failure of any commissioner to perform the work required of him by this section after ten days' notice in writing to him by any person interested, he shall be liable for all damages caused by such failure to perform his duty, to be recovered by the person so damaged. He shall also be deemed guilty of a misdemeanor and, upon conviction thereof, be fined not less than ten or more than fifty dollars.

JUDICIAL DITCHES

2610. Adjoining counties—Judicial ditch—Whenever it is desired to construct a ditch extending into or through part or the whole of more than one county, or if entirely within one county, the ditch is to be so located that it will probably result in benefit or damage, or both, to land in an adjoining county or counties, then in either of such cases, the petition required by § 2587, shall be addressed and presented to the judge of the district court of the district in which any one of such counties is situated. Before such presentation, such petition shall be filed with the clerk of the district court in which such proceedings are commenced and a certified copy thereof, shall be filed with the auditor of each of the counties wherein any of the lands described in said petition are located. Such proceeding may be designated and numbered by said clerk of the district court as follows: "Judicial Ditch No. . . .," and may be so referred to at all subsequent times.

07 2610 - 75

2611. Hearing in district court—Upon presentation of such petition, the judge shall fix a time and place for the preliminary hearing, provided for in § 2587 as before the county board, and the same notice thereof shall be given by such clerk and posted and published in each county wherein a copy of such petition shall have been filed.

07 2611 - 138

2612. Appointment of engineer—Survey—Report—Upon such hearing, the judge, if satisfied that the requisite conditions exist and have been complied with, shall order a survey to be made, as provided in § 2587 and shall appoint a competent and experienced civil engineer to make the same and direct a copy of such order to be forthwith transmitted by the clerk to such engineer to the auditor of each county, described in the petition. The same proceedings shall be taken by such engineer as provided in §§ 2588, 2589 save that the findings shall be filed with such clerk.

07 2612 - 138

2613. Appointment of viewers—As soon as reasonably possible after the filing of such report, the judge shall appoint viewers, as provided in § 2590, and the proceedings thereafter shall be as specified in §§ 2590-2592, save that the duties therein specified in respect of the county board shall be performed by such judge, and those in respect of the auditor shall be performed by such clerk; and that the viewers may be residents of any county described in the petition, and that their jurisdiction shall extend throughout all such counties, and that the reports shall be filed with such clerk.

2614. Filing report—Notice of hearing—Immediately upon the filing of such report, it shall be the duty of such clerk to transmit forthwith a certified copy thereof to the auditor of the counties described in the petition, and within three days after the filing of such report, to transmit to the judge of said court a written notice of the filing of such report. Upon the receipt of such notice, the judge shall make an order fixing the time and place of hearing said petition and engineer's and viewers' report. The same notice thereof shall be given by the clerk as provided in § 2593 in respect of the auditor, save that it shall be published and posted in each county described in the petition.

07 2614 - 138

2615. Hearing—At the time and place fixed for the hearing, if the court shall be satisfied that notice thereof has been given according to law he shall proceed as in § 2594. All the provisions of this chapter, except §§ 2596, 2597, shall apply to judicial ditches, so far as consistent with the special provisions relating thereto. In a judicial ditch proceeding, the judge of the district court shall perform all the duties required of and have all the powers vested in the county board in a county ditch proceeding. In a judicial ditch proceeding the clerk of the district court of the county in which the proceeding is commenced shall until the making of the order-establishing or refusing to establish the ditch perform all the duties required of and have all the powers vested in the county auditor in a county ditch proceeding.

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2616. Order apportioning expenses—Further orders—In a judicial ditch proceeding the judge of the district court shall by his orders made either at the times of the respective hearings or at any other time upon five days' notice

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in writing of the time and place of such hearing to the auditor of each county affected, apportion and determine the items of expense, or portions thereof to be paid by the respective counties. Upon similar notice to said county auditors, said judge of the district court may at any time modify said order, as justice may require, or make any additional order in the premises. The word "expenses" as used in this section shall be construed to mean every item of cost of said ditch from its inception to its completion and all fees and expenses paid or incurred in pursuance thereof, including all damages awarded. Nothing in this section contained shall be so construed as limiting the authority of the respective counties to issue their bonds as provided in § 2602, and the respective auditor's statements shall be filed in the respective counties and the assessments collected and bonds paid by the respective counties as hereinbefore provided.

2617. Engineer—Vacancy—If the engineer appointed by the court or county board fails to qualify, or at any time resigns, dies or becomes disabled during the progress of the work, the court or county board that originally appointed him, shall forthwith appoint another civil engineer, having the qualifications required by this chapter, who shall give the bond and take the oath required by this chapter and do all the things remaining to be done by the original appointee under the requirements of this chapter.

2618. Assistant engineers—Such engineer, if the board or court that appointed him, consents thereto, shall appoint assistant engineers, when necessary, 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 chapter of the engineer, and such oath and appointment shall be filed in the office where the original petition was filed. The rate of compensation of assistant engineers shall in no case exceed the rate of compensation of the engineer and shall be fixed at the time of appointment by the board or the judge as the case may be.

2619. Abandoned or dismissed proceedings—Use of former survey—If any proceeding heretofore or hereafter had for the establishment of a ditch or drain, or the changing of a watercourse, where an engineer has been appointed and has made a complete survey and report thereof, and the improvement has been abandoned and the proceedings dismissed, and afterwards proceedings are instituted to establish a ditch or drain, or to change a watercourse, for the benefit or reclamation of the same territory surveyed in said former proceedings or a part thereof, or the same territory, or part thereof, and territory additional thereto, the engineer shall use the engineer's report, survey, stakes and monuments made in said former proceedings, as far as practicable, or as much thereof as may be applicable and the costs thereof in said former proceedings, or of such part thereof as is used, shall be paid for as part of the subsequent proceedings in which such report, survey, stakes and monuments or part thereof, is used.

2620. Notice to municipal, railroad or other corporations—The auditor shall notify each municipal, railroad or other corporation 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 may cause the same to be done, 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.

2621. Assessment not to exceed benefits—The amount for which any tract of land, public or corporate road or railroad, shall be liable on account of the location, construction and establishment of any ditch 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.

2622. Damages arising after construction—That whenever any land adjacent to any ditch or drain, constructed either under the provisions of this chapter or under any prior drainage law by which the original cost of said

ditch or drain was assessed against the benefited property, may be or has been damaged subsequent to the construction of such ditch or drain, by reason of a part of the soil being carried away by water flowing through said ditch or drain, or by the deposit of earth or any foreign substance (snow and ice excepted) on said land and which damage was not considered and included in the award of the viewers appointed in the proceedings to construct such ditch or drain, the owner of the land so damaged, may, at any time within six years after the completion of the ditch or drain causing such damage, petition the county board for the appointment of viewers to ascertain and report the amount of such damages. Such petition shall state the legal description of the land alleged to have been damaged, the amount of damage claimed, the location of the ditch or drain, the legal description of the land found in the proceedings to construct such ditch or drain to have been benefited by its construction, and the names of the owners of the land benefited, as shown by the last assessment roll. Upon the filing of the petition and bond in the sum of one hundred dollars, conditioned that if it be finally determined that no damages properly allowable have been sustained, the petitioner will pay all the expense of the proceeding had under the petition, the county board at its next regular or special meeting, shall appoint three qualified persons as viewers, selecting if practicable, the same persons who acted as viewers in the proceedings to construct the drain or ditch causing the damage, and the county board shall fix the time and place for their first meeting, not more than twenty days from the date of their appointment. In case any of said viewers shall fail to qualify, the auditor shall designate some proper person to take his place. Each of said viewers before entering upon the duties of his office, shall take and subscribe an oath that he will faithfully perform his duty as viewer and file the same in the office of the auditor. Upon the appointment of said viewers, the auditor shall give at least one week's published notice before the meeting of the viewers in the newspaper in which the last real estate delinquent tax list was published, if that paper is still published in the county, and if not, in some legal newspaper published in the county, and if there is none, in some newspaper published at the state capital, stating the date and first meeting of the viewers, and that any party interested may appear at that meeting and at such other time and place as the viewers may fix, and be heard in relation to the damages and such other matters, as the viewers are authorized to hear and determine, and proof of the publication of said notice shall be filed in the office of the auditor prior to the first meeting of the viewers.

2623. Viewers' report—Fees—The viewers shall meet at the time and place named by the county board for their first meeting and hear such evidence as shall be offered, and for that purpose, they may adjourn their hearing from time to time and to such places in the county as they may deem proper. They shall make a personal examination of the premises claimed to be damaged and inquire into the cause and amount of damage, and if they find that any damage contemplated by § 2622, has been done, they shall make a written award stating the cause and amount of damage and file the same in the office of the auditor, who shall, after the time to appeal has expired, if no appeal is taken, issue a warrant on the county treasurer for the amount of such award in favor of the party entitled thereto, and the amount so paid, together with the fees and expenses of the viewers, shall be assessed against the land that was found in the proceeding to construct the ditch in question, to have been benefited in the proportion and manner provided by this chapter for the assessment of benefits. If the viewers find that no damages have been sustained that are properly allowable under the provisions of this chapter, they shall so report, and the expense of the proceeding, shall be paid by the petitioner and upon his failure to pay, the county may maintain an action on the bond hereinbefore provided for. Each of the viewers shall receive three dollars per day for each day actually and necessarily spent in the performance of his duty as viewer, not exceeding five days, together with his actual necessary expenses, an itemized account thereof to be filed with and audited and allowed by the auditor, and paid by the county treasurer on the warrant of the auditor.

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2624. Appeal to district court—Bond—If either the county board, the petitioners, or any party whose lands are liable to assessment for the damages awarded, feel aggrieved, they may within thirty days after the filing of the viewers' award, appeal to the district court of the county in which the proceedings are had, by serving on the parties who have appeared in the proceedings before the viewers and filing with the auditor, a notice of appeal, stating that an appeal is taken to the district court from the award of the viewers, and filing with the auditor a bond in the sum of five hundred dollars with sufficient sureties to be approved by him, conditioned that if the award and decision of the viewers is sustained, the appellant will pay the cost of the appeal and abide and satisfy any judgment the court may render against him in the premises. Before the taking of the appeal, the auditor shall forthwith file with the clerk of the district court, the original petition, the award and bond on appeal, and thereupon a civil action shall be pending in the district court, to determine whether any damage has been done the land described in the petition, that comes within the provisions of § 2596 and the amount of such damages, and such action shall be tried in the manner provided for the trial of civil actions. Any party may appeal from the judgment of any appealable order of the district court to the supreme court in the same manner as appeals in civil actions are taken. The final judgment in the action, if in favor of the petitioner, shall be certified to the county auditor, and assessed in the manner provided in § 2623, for the assessment of the award of the viewers.

2625. State drainage board to co-operate with county board—The state drainage board is hereby authorized to co-operate with the county board of each county wherein a county or judicial ditch is, or may be located, in enlarging, repairing or otherwise bettering any such ditch now completed or now or hereafter in course of construction.

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2626. Overflowed watercourse—The county board of any county, wherein is situated any river, watercourse or creek in which the natural flow of water has been raised or increased by reason of any artificial drainage flowing into the same or any of its tributaries, are hereby authorized by a unanimous vote of all the members of such board to appropriate such a sum of money out of the county revenue fund to aid in defraying the expenses in deepening, straightening or widening such river, watercourse or creek as in their judgment is just and right, but said money appropriated shall in no event exceed one-half of the expense so incurred in deepening, straightening and widening said river, watercourse or creek and the balance of such expense shall be assessed against the lands benefited as provided in this chapter, and for the purpose of reimbursing the county for the money so expended as in this section provided, the county board may levy a tax not exceeding one-half mill in any one year, upon the taxable property of said county, to be assessed, levied and collected in addition to, and in like manner as, all other taxes.

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2627. Obstruction of work—Penalty—Any person wilfully 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, shall be guilty of a misdemeanor, and shall also be liable to any person injured by such act in treble damages. Any county auditor, clerk of court, member of the county board, or other officer, who refuses, or wilfully neglects to perform any of the duties imposed upon him by this chapter, shall be guilty of a misdemeanor and shall also be liable to any person injured by said act in treble damages. The county attorney of the proper county shall prosecute all criminal actions arising under this chapter.

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2628. Orders and notices—How served—All orders and notices herein prescribed not otherwise provided for, shall be issued by the auditor or the judge, as the case may be, and the same shall be served by the sheriff or other disinterested person designated by said auditor or judge, and such sheriff or other person so designated, shall be paid by the county the same fees as are allowed by law for similar services.

2629. Compensation of engineers, viewers, etc.—The engineer shall receive the sum of five dollars per day for every day necessarily engaged in performing the duties required of him by this chapter and his actual and necessary expenses incurred in and about the same. The viewers shall each receive three dollars per day while necessarily engaged in viewing ditches and making up and filing their reports, and their actual and necessary expenses. Each rodman shall receive the sum of two dollars per day and may be allowed in addition thereto his board and lodging, for each and every day employed; and each chainman, axman and every other employee necessary to the prompt execution of the work of locating or in inspecting a public ditch, shall be allowed one dollar and fifty cents per day, and may be allowed in addition thereto his board and lodging for the time such person is thus actually employed. The auditor of each county and the clerk of the district court shall receive reasonable compensation for their services under this chapter, and such compensation shall be in addition to all sums allowed by law at the time of the passage of this chapter. The fees, per diem compensation, and expenses provided for herein, shall be audited, examined, allowed and paid upon the order of the county board: Provided, that in case of a judicial ditch, the judge shall first approve of such fees, per diem compensation and expenses.

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2630. Quorum of viewers—A majority of the viewers shall be competent to perform the duties required of them by this chapter.

2631. Chapter liberally construed—This chapter shall be liberally construed, so as to promote the public health, the construction and improvement of roads and the drainage and reclamation of wet or overflowed lands.

2632. Record as evidence—Every order of the county board, or the judge of the district court, laying out and establishing any ditch or refusing to establish the same, under the provisions of this chapter, the record thereof, or a certified copy of such record, shall be prima facie evidence of the facts therein stated and of the regularity of all the proceedings prior to the making of such order.

2633. Authority to enter lands for survey—For the purpose of making examinations and surveys the viewers, county board and the engineer, are authorized to enter upon any land and to do any act necessary for the proper performance of their duties; and any person attempting to prevent or interfere with them, shall be guilty of a misdemeanor.

2634. Stranger to proceedings cannot question same—No person shall be permitted to take advantage of any error committed in any proceedings under this chapter, either by the county board, engineer, viewers, auditor or other person, nor of any informality, error or defect appearing in the record of such proceedings unless the party complaining thereon is directly affected thereby. If the court shall at any time, modify any assessment or enjoin the collection thereof, or release any person from liability thereon, it shall in no manner affect the rights or liability of any other person.

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2635. Appeal to 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 made in the district court, except an order establishing such ditch in proceedings under this chapter, 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.

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2636. Pay of county board—None of the statutory provisions limiting the number of days for which a county commissioner may draw pay for attendance at the sessions of said board and upon which such commissioner shall be entitled to mileage shall apply to any proceedings under this chapter.

2637. Definition of ditch—The word "ditch" as used in this chapter, shall be held to include any open, covered or tiled ditch, and any drain, watercourse or creek, and any side, lateral, spur or branch ditches, and each and all of the constructions referred to in this chapter, and the petition for any public ditch,

may include any side, lateral, spur or branch ditch, necessary to secure the object of the improvement.

2638. Maintenance of ditch by petitioners—In case the petitioner shall offer to construct and maintain such county or judicial ditch at his own expense, the petition need only offer so to do and set forth the public utility or benefit to the public health resulting from such work; a general description of the proposed ditch with its starting points, termini and routes, as nearly as the same can be determined; a legal description of all lands to be crossed or otherwise damaged thereby with the name of each owner thereof, if the same is known, or can be ascertained; all public highways, corporated roads, and railroads to be crossed or otherwise damaged thereby, with the names of the towns in which such public highways are located and of the corporation owning each corporate road and railroad. For further certainty, the petitioner may file in the office where the petition is required to be filed, any maps, plats or specifications describing the proposed ditch, which, when so filed, may be referred to said petition. All provisions of this chapter shall apply to ditches thus petitioned for, so far as consistent with the special provisions relating thereto.

2639. Bond—The petitioner or petitioners shall also accompany said petition with a bond to the county, in case of a county ditch, and to the respective counties in case of a judicial ditch, for the benefit of such county or counties in case of a county ditch, and to the respective counties in case of a judicial ditch, for the benefit of such county or counties and of all persons and corporations interested, in an amount to be fixed and with sureties to be approved by the auditor in the case of a county ditch and by the court in case of a judicial ditch, conditioned to pay all damages that may be awarded or assessed and all fees and expenses that may be paid or incurred in the proceeding under said petition.

2640. Hearing—The auditor in case of a county ditch, and the clerk of the district court in case of a judicial ditch, upon the filing of such petition and bond, shall fix a time and place for the hearing of said petition, not more than forty nor less than fifteen days from said date of filing, and at least ten days before said hearing, a copy of such petition preceded by a statement of the time and place set for such hearing thereon shall be posted in three public places in each township where the proposed ditch is located and shall be served on all persons and corporations named in said petition who are residents of the state, and upon the persons, if any, actually occupying any tract of land described in the petition, which belongs to non-residents of the state, in the manner provided by law for service of summons in the district court, and shall be mailed to all such persons non-residents of the state, whose address can be obtained by inquiry at the office of the auditor, or the treasurer of the respective county or counties.

2641. Appointment of viewers—Report—If, upon the hearing, the court or county board shall find the proposed ditch of general and public utility or beneficial to the public health, it shall appoint three disinterested persons as viewers, and shall fix a time and place for hearing the report of said viewers, who shall have the same qualifications, take the same oath, and receive the same compensation as the viewers provided for in § 2590, except that if any one of them is a civil engineer, he need not be a freeholder. Said viewers, one of whom may be a civil engineer, at least ten days prior to the time set for a hearing thereon, shall file a report showing either by direct statement or by reference to any maps, plats, specifications or other papers on file in said proceeding; the location and character of the proposed ditch over and across said lands, public highways and railroads; place of entrance, course through and exit from each tract of land; the size and depth of said ditch; when it shall be constructed; how kept in repair; what connections may be made therewith; what compensation shall be made to the owners of such tract of land, or by any public or private corporation, or to any person for damages by reason of such construction. In locating a public ditch in a proceeding under such petition, the viewers shall vary from the starting points, routes and termini

described in said petition no more than is necessary to enable said ditch to reasonably effectuate the purpose for which it is intended.

2642. Determination—County board—At the time appointed for said hearing on such report, the county board or the court, as the case may be, shall consider and pass upon any objections filed and any competent evidence offered and shall correct and change said report and the assessments therein contained, as justice may require, and may continue the hearing from day to day, not to exceed thirty days and to a different place. The county board or the court, shall thereupon make its order, laying out and establishing said ditch, and confirming such report as changed and permitting the construction of such work; upon the payment or tender of damages as finally assessed, but such order shall be void unless such damages are paid or tendered within one year after the filing of the final order of the county board, or the final order of the district court on appeal, in a county ditch proceeding, or within one year after the filing of the final order of the district court in a judicial ditch proceeding. In case of doubt as to who is entitled to damages, awarded or assessed, or if the person entitled thereto cannot be found, such damages may be paid into the office where the original petition was filed, for the person showing himself entitled thereto.

2643. Appeal—Any aggrieved party may appeal from that part of such order of the county board fixing the amount of his damages or the damages awarded to any person by filing the notice and bond required by § 2596 and the auditor shall in such case, make and file a transcript as required by § 2596.

07 2643 - 138

2644. Right to enter land—The viewers shall have the right to enter on any lands for the purpose of estimating damages and of locating such ditch and after payment or tender of damages the petitioners may, in like manner, enter upon such lands for the purpose of constructing, maintaining or repairing such work.

2645. Agreement as to damages—The bondsmen for the petitioners may agree with any person claiming or entitled to damages, as to the amount thereof. Such agreement shall be filed in the office where the original petition was filed and lands covered thereby shall not be considered by the viewers.

STATE DITCHES

2646. State drainage commission—The governor, the state auditor and the secretary of state, shall constitute the drainage commission of the state of Minnesota. The governor shall be chairman thereof and a majority of the members of said commission shall have authority to act in all matters and perform all duties pertaining thereto.

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09 - - 127
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2647. Power to construct ditches—The commission shall ascertain the number of acres of low wet lands belonging to the state that it is necessary to drain in order to make them fit for agricultural purposes, where the same are located, and what ditches are necessary to drain said land, and they shall construct as many ditches of the size and capacity as are necessary to effectually drain said lands in a fit manner for farming. They may repair, extend, deepen or alter any ditch heretofore or hereafter constructed by the state or under its direction when necessary to drain the lands originally intended to be drained by such ditch; and they may further determine when, where and how the work provided herein shall be done: Provided, that the said commission shall first construct the main ditches or drain they find most necessary, leaving those where the necessity for drainage is less pressing for subsequent construction, and if the moneys available are not sufficient to construct all the ditches or drains said commission find necessary to be constructed to effectually drain the said state lands, they shall construct as many as the money they have at their disposal will allow. In the execution of the provisions of this chapter, the said commission may appoint and employ as many agents and servants as are necessary to comply with the provisions hereof.

05 2647 - 150

2648. May take land—Viewers—In performing their duties, the commission hereby created shall have the right to take and appropriate all land of any person, firms, or corporation necessary for the right of way for said ditches, and if the said commission are not able to agree with the owner thereof on the price to be paid for the land necessary to be taken for the right of way for the said ditches or the damage that will be sustained by reason of the construction thereof, or when the owner is unknown, the said commission shall file a petition in the district court of the county wherein the land described is situated, describing the land they deem necessary to take for the construction of said ditch, the name of the owner of the land, if known to said commission, and if not known, said petition shall so state. Whereupon the court shall appoint three disinterested persons as viewers whose duty it shall be to assess the valuation of the land so to be taken and damages sustained for the taking of the same, taking into consideration any benefits to the adjoining land of said owner by reason of the construction of said ditches. The viewers, before assuming office, shall severally take and subscribe an oath that they will faithfully perform their duties as such viewers without partiality and to the best of their knowledge and ability and shall file such oath in the office of the clerk of the district court of the county where such proceedings are pending.

2649. Hearing—Award—Damages—Appeal—The viewers shall fix a time and place for hearing and give ten days' notice to the owner thereof, if he is a resident of this state, by serving a notice in writing on him personally and if he is not a resident of the state, by one publication of said notice in the county where the land to be taken is situate. The said notice shall state that the drainage commission have determined it necessary to take certain lands, describing them, for the purpose of the construction or drain (describing the location of such drain); that the parties subscribing such notice have been appointed viewers by the district court to assess the damages for taking the land described in such notice; the name of the owners, if known, and if unknown, such fact shall be stated; the time and place fixed by the viewers for a hearing as to the value of the land taken and the damages sustained thereby. At said time and place, the viewers shall hear any evidence offered and after a personal inspection of the premises, the said viewers shall assess and determine the value of the land taken and the damages sustained by reason thereof, stating the value of each parcel of land and the damage sustained thereby separately, and file the same in the office of the clerk of the district court, and unless an appeal is taken as hereinafter provided, the finding of said viewers shall be conclusive as to the amount of damages sustained and the value of the property taken, and the drainage commission hereby appointed shall pay the same to the owner of said land, and in case there appears of record a judgment, mortgage or other lien against the land so taken, the drainage commission, shall pay the amount so found into the court to be paid to the parties entitled thereto. That within ten days after the filing of the report of said viewers with the clerk, either the owner or any party interested in the land taken, or the drainage commission, may appeal to the district court, wherein the proceedings are pending from the award of said viewers. If the owner or other party interested in the land taken appeals, he shall serve a notice of such appeal in writing on the attorney general, stating the county in which said award is filed, the date of filing, and the title of the proceedings. If the drainage commission desire to appeal, they shall cause a similar notice to be served on the owner of the land or his attorney, if one appeared for him before the said viewers. Upon the perfecting of such appeal there shall be an action pending in the district court to determine the value of the land taken and the amount of damages sustained by the taking thereof, and the same shall be tried in said court in like manner as civil actions and either party may appeal to the supreme court as provided for appeals in civil actions.

2650. Appeal not to delay work—The proceedings provided in § 2649 shall not delay the construction of the contemplated ditch or drain, but the drain-

age commission may take possession of the land they deem necessary, and commence and prosecute the work required from and after the date of the filing of the petition in the district court.

2651. County board to repair ditches—The county board of every county where ditches are constructed under this chapter, shall preserve such ditches or drains from growth of weeds or accumulation of debris and any expense thereof shall be paid out of the general county fund.

07 2651 75

CHAPTER 45

SEALS

2652. Private seals abolished—Private seals are abolished, and all written instruments formerly required by law to be sealed shall be equally effective for all purposes without a seal; but nothing herein shall apply to the use of corporate seals. ('99 c. 86)

80-397, 83+385; 90-393, 96+1128. See 93-106, 100+636.

2653. Great seal—Description, where deposited—The seal heretofore used as the seal of the state is declared to be the seal thereof; and a description of the same, in writing, shall be recorded with the secretary of state, and remain a public record in his office. (2208)

2654. Form of official seals—Upon every seal of a court or officer authorized or required to have a seal there shall be engraved the same device that is engraved on the seal of the state, and the name of the court or office in which it is to be used. Such seals shall be one and five-eighths inches in diameter. (2209)

40-65, 70, 41+459.

2655. Temporary seal, when used—When any court of record is unprovided with a seal, the judge thereof may authorize the use of any temporary seal, or of any device by way of seal, until one is provided. (2210)

CHAPTER 46

NOTARIES PUBLIC

2656. Appointment—Fee—The governor may appoint and commission as notaries public, by and with the advice and consent of the senate, as many citizens of this state, over the age of twenty-one years, resident in the county for which appointed, as he deems necessary. The fee for each commission shall not exceed three dollars, and shall be paid to the governor's private secretary. (2268)

2657. Term—Bond—Oath—Every notary so commissioned shall hold office for seven years, unless sooner removed by the governor or the district court; and, before entering upon the duties of his office, he shall give a bond to the state in the sum of two thousand dollars, to be approved by the governor, conditioned for the faithful discharge of the duties of his office, which, with his oath of office, shall be filed with the secretary of state. (2269)

Liability on defective bond (55-187, 56+751).

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2658. Seal—Register—Every notary shall provide himself with an official seal, with which he shall authenticate his official acts, and upon which shall be engraved the arms of this state, the words "Notarial Seal," and the name of the county in which he resides. Such seal, with his official register, shall be exempt from execution, and, on his death or removal from office, such

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