

1936 Supplement
To
Mason's Minnesota Statutes
1927

(1927 to 1936)
(Superseding Mason's 1931 and 1934 Supplements)

Containing the text of the acts of the 1929, 1931, 1933 and 1935 General Sessions, and the 1933-34 and 1935-36 Special Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with digest of all common law decisions.



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Lease was not terminated by condemnation by city of part of building so as to exclude lessee from asserting right to share in compensation, notwithstanding covenant in lease that in case building should become untenable, lessee shall be relieved of rent and lease shall terminate unless lessor rebuilds within reasonable time. *Siggelkow v. A.*, 187M395, 245NW629. See Dun. Dig. 5412.

In action for conversion of personal property, question whether city's conduct in entering upon condemned property was in contravention of forcible entry and unlawful detainer statute, held not presented by record. *Dow-Arneson Co. v. C.*, 191M28, 253NW6. See Dun. Dig. 386.

City taking possession of condemned real property held to create relationship in nature of constructive bailment of personal property thereon and to have become gratuitous bailee liable only for failure to exercise good faith as regards care of property. *Id.* See Dun. Dig. 728.

6578-3. Commissioner of conservation to acquire certain lands.—Authority is given to the Commissioner of Conservation to acquire and to use the procedure set forth in Chapter 52 of the Laws of 1935 [§§5620-29, 5620-30], as far as applicable, in acquiring the land necessary for the Talcot Lake Project in Murray and Cottonwood Counties, such land to be paid for

from any available funds of the Department of Conservation or from money provided by the United States government. (Act Apr. 1, 1935, c. 105, §1.)

Preamble.

Whereas, the federal government has allocated \$75,000 for the improvement of Talcot Lake in Murray and Cottonwood Counties and the lands in the vicinity thereof as a public hunting ground and game refuge on condition that the state acquire title to the necessary land on great advantage to the state, and

Whereas, the acquisition of such lands and the improvement thereof for said public purposes will be of great advantage to the state, and

Whereas, other projects of a similar character are pending in which the federal government may provide funds for improvement in case the state promptly acquires title to the necessary land:

6578-4. Authority of commissioner.—Authority is likewise given to the Commissioner of Conservation to acquire and to use the procedure set forth in said Chapter 52, so far as applicable, in acquiring any land necessary for other projects of a similar character in which the United States shall provide the funds for necessary improvements. (Act Apr. 1, 1935, c. 105, §2.)

CHAPTER 42

Water Powers

MILLS AND DAMS

6579. Dams—For what purposes—Eminent domain.

Owner and operator of a dam for industrial purposes in a river or natural water course is not an insurer of its safety, but is bound to exercise a degree of care in its construction, maintenance, and operation proportionate to injuries likely to result to others; care commensurate with danger. *Willie v. M.*, 190M95, 250NW 809. See Dun. Dig. 10191, n. 78.

Doctrine of *res ipsa loquitur* applies where a dam is wholly within control of defendant and its failure or operation results in injury to others such as could reasonably be anticipated. *Id.* See Dun. Dig. 7044.

Negligence of owner and operator of dam in flooding river valley, held for jury, notwithstanding rainfall was unusually heavy and other flood water came into valley and contributed to flood and notwithstanding there were obstructions in river below dam. *Id.* See Dun. Dig. 10191.

UNIFORM STAGE OF WATER IN LAKES AND STREAMS

6588. County board may establish—Eminent domain.

Section confers no authority upon a county board to fix levels or erect dams on lakes, major parts of which lie outside county, and, where there is no adoption or ratification by county of acts of board in fixing a level above high-water mark or furthering erection of a dam which so raises water in such a lake, defense of ultra vires is available to county. *Erickson v. C.*, 190M433, 252 NW219. See Dun. Dig. 10187-10189.

Right of riparian owners does not prevent raising of lake level to natural highwater mark, though lake is temporarily dry. *Op. Atty. Gen.*, Jan. 30, 1934.

6594. Cost of maintenance, etc.—Management.

There cannot be a second assessment for benefit. *Op. Atty. Gen.* (408b), May 6, 1935.

6595. Lakes in two or more counties—water boards.—Whenever any such navigable lake lies partly within two or more counties having fewer than one hundred and fifty thousand inhabitants each, the chairman of the county boards thereof shall constitute a water board for said counties, and, as such, shall have all the powers and be subject to all the duties in respect to the waters of such lake that are conferred and imposed upon the county board by Sections 6588-6594. And except as otherwise provided in Section 6596, all the provisions aforesaid relating to the raising and retention of the waters in navigable lakes, the acquiring of property therefor, and the assessment and collection of benefits arising therefrom, shall apply to cases wherein such water boards are formed. (R. L. '05, §2559; G. S. '13, §5445; Apr. 1, 1935, c. 99.)

6597. Council given right to acquire title to navigable lakes.

State may legally delegate to village council authority to supervise operation of dam in connection with control of water level. *Op. Atty. Gen.* (4007), June 14, 1935.

6602-2. Control of shore lines.—That in order to preserve shore lines, rapids, waterfalls, beaches, and other natural features in an unmodified state of nature, no dam and no addition to any existing dam shall hereafter be constructed in or across any public stream or body of water within or bordering upon those portions of the area of Cook, Lake, and St. Louis Counties designated in the Act of Congress of July 10, 1930 (Chapter 880), and no alteration of the natural water level or volume of flowage of any such stream or body of water shall be made and no easement for flooding or overflowing or otherwise affecting lands of the State of Minnesota adjacent thereto shall be granted, unless and until specific authority shall have first been obtained by Act of the Legislature of the State of Minnesota: Provided, that with the written approval and consent of the Department of Conservation, together with the signed authority of the Executive Council of the State of Minnesota, dams for public recreational uses or dams essential for logging or for logging reservoirs that do not exceed 100 acres in extent may be constructed to maintain temporarily water levels not higher than the normal high water mark: Provided, however, that every such approval shall be subject to suitable charges, time limitation, and other conditions designed fully to protect the public interest in the intent of this Act. Provided further, that the provisions of this Act shall not apply to that portion of any proposed development for water power purposes now or heretofore actually occupied and maintained by any applicant for license to make such development under the terms of the Federal Water Power Act if the application for such license was pending on or before January 1, 1928. Such occupancy is hereby legalized and confirmed and such occupant is hereby granted the right to occupy and use for water power purposes, and so long as required and used for such purposes, the state lands and waters now or heretofore so occupied and used up to an elevation not exceeding 2 feet above the lowest crest of the spillway or overflow dam of such occupant as now constructed; provided that no water control structures shall be used higher than those now or heretofore used. The occupant shall pay to the state annually reason-

able compensation for the use of the state lands affected, to be determined by the Commissioner of Conservation after investigation. The occupant shall comply with the following requirements: (1) to pay the State within ninety days after the passage of this Act for all merchantable timber heretofore killed by such development at treble prevailing stumpage prices at the time such timber was killed; (2) to pay the State promptly reasonable compensation for any further damage to state lands or timber heretofore or hereafter caused by such development, other than such as is covered by the compensation paid for the use of the lands as hereinbefore provided; (3) within one year after the passage of this Act to clear all state lands subject to flooding of all timber and brush so far as not already cleared. (Act Apr. 22, 1933, c. 412, §1.)

Provision permitting perpetual lease of land for dam purposes is invalid. Op. Atty. Gen., Aug. 7, 1933.

6602-3. Violations a misdemeanor.—Any person who shall wilfully or knowingly violate any of the provisions of this Act or of any order made thereunder by the Department of Conservation shall be guilty of a gross misdemeanor. (Act Apr. 22, 1933, c. 412, §2.)

6602-11. Definitions.—When used in this act—

(a) "Commission" shall mean the conservation commission of the state of Minnesota.

(b) "Commissioner" shall mean the commissioner of conservation of the state of Minnesota.

(c) "Court" shall mean the district court of the district wherein the proceedings are pending.

(d) "Judge" shall mean the judge of the district court wherein the proceedings are pending.

(e) "Clerk" shall mean the clerk of the district court of the county in which the proceedings are pending.

(f) "Engineer" shall mean the engineer designated by the commissioner of conservation to act as engineer in the proceedings.

(g) "Appraisers" shall mean the persons appointed by the judge of the district court and the commissioner of conservation to ascertain and report the benefits and damages arising from the proposed work. (Act Apr. 29, 1935, c. 369, §1.)

6602-12. Commissioner may construct dams, etc.—The commissioner, in order to improve navigation, protect and improve domestic water supplies, protect and preserve fish and other wild life, protect the public interest in shores and shore lines and promote public health, shall have power to construct and maintain as hereinafter provided all necessary dikes, dams, sluiceways and other structures or devices necessary and essential to maintain such uniform water levels as may be established under authority of this act. He shall have the power to appoint competent and experienced civil engineers and assistants whose duties it shall be to make surveys and estimates as are required to secure the information and data the commissioner may deem necessary. Provided, however, that the wages and salaries of any engineer, assistant or other person, together with the expense incurred by such appointee or employe, under the provisions of this section, shall be included as a part of the costs of such proceedings and included in the assessments against the property benefited, when approved by the district court in the county where said engineering work is done and performed. (Act Apr. 29, 1935, c. 369, §2.)

6602-13. Owners may initiate proceedings.—A majority of the owners of property abutting upon any lake or other body of water and/or the proper officials of any city or village authorized by resolution of the council thereof liable to be affected by or assessed for the cost of the proposed improvement, may initiate a proceeding for the establishing of a uniform water level in any lake or other body of water by filing with the commissioner a petition signed by a majority of such owners of property, asking the commissioner to take steps for the establishment of

such water level. The said petition shall set forth the desired levels and, where the costs of the improvement are to be paid for by the state of Minnesota or by an owner or group of owners, the petition shall so state, and shall further set out the names of said owners and the description of the lands owned by each of said parties including the state of Minnesota. Before the commissioner shall accept for filing any such petition he shall require the petitioners to file with him a surety bond conditioned for the payment, in case the court shall deny such petition, of all the costs of the necessary surveys and of the court proceedings. Upon receipt of said petition the said commissioner shall file with the clerk of the district court of the county containing such lake or other body of water or portion of any such lake or other body of water likely to be affected, in whole or in part, by such improvement a petition addressed to the court setting forth the following information:

(a) The legal description of each tract of land bordering on such lake or other body of water.

(b) The name of the owner of each such tract of land as shown by the records in the office of the register of deeds and the name of any persons in possession thereof.

(c) A declaration that the number of signers appearing on the petition constitutes a majority of the owners of property abutting on the lake or other bodies of waters to be improved.

(d) A map showing the lake or other body of water affected and the tracts of land bordering on such lake or other body of water and the area of each tract.

(e) An engineer's report fixing the high water level of said lake and recommending a permanent uniform level and also the elevation of the original natural outlet to be maintained by suitable dams or other structures.

(f) The various reasons why the project is believed to be of public advantage.

(g) Which of the following parties, in the opinion of the commissioner, should share the expense of the project: Riparian owners, the state, the county or counties, other interested municipalities. Provided, that when structures are to be built affecting waters located in more than one county, the commissioner may file a petition with the clerk of the district court in any one of the counties affected and thereafter that court shall have jurisdiction of all proceedings, subject to the statutes providing for a change of venue.

Whenever proposed improvements under this act do not contemplate the raising of the elevations of the lake above ordinary high water or where no part of the costs of said improvements are to be assessed against property surrounding the lake, the petition to the court authorized by this section may be presented by the commissioner on his own initiative without bond. (Act Apr. 29, 1935, c. 369, §3.)

6602-14. Appointment of appraisers.—Within 10 days after the filing of such petition with the clerk as specified in section 3, the judge of said court shall make an order appointing three resident free holders of the county or counties in which said construction is proposed, not interested in the proposed works and not related by blood or marriage within the fourth degree, according to the rules of the common law, to any party known to be interested therein, to act as appraisers to ascertain and report to said court the amount of benefits and damages that will result to any lands or other property affected or to be affected by reason of the proposed works. Such appraisers shall meet at a time and place to be specified by said court, preparatory to commencing their duties. (Act Apr. 29, 1935, c. 369, §4.)

6602-15. Duties of appraisers.—The said appraisers shall qualify by subscribing to the oath provided by Mason's Minnesota Statutes of 1927, Section 6964. The duties of said appraisers shall be as follows:

(a) To assemble in the vicinity of the lake, lakes or bodies of water in question within 15 days after their appointment.

(b) Upon being furnished a copy of the petition, engineer's report, maps and plans, to examine all property around said lake, lakes or bodies of water and all lands included and described in the engineer's report.

(c) To ascertain and determine the amount of benefits and damages, respectively, that will result to each parcel of property included within the area described by the engineer and shown on the map.

(d) To ascertain and determine the value of each parcel of the lands or other property to be acquired for the construction of dams, sluiceways, and other necessary structures and devices and the amount of injury to all property to be damaged by the construction of the improvements petitioned for by the commissioner.

(e) To ascertain and determine the amount of benefits or damages to municipalities and corporations because of an increased or more dependable water supply, or both.

(f) To ascertain and determine whether the proposed improvements of such lake, lakes or bodies of water will be of advantage for the preservation, propagation and protection of fish and other forms of wild life. (Act Apr. 29, 1935, c. 369, §5.)

6602-16. To make tabular statements.—(a) The said appraisers shall prepare a tabular statement showing as far as practicable:

(1) The names of the owners of each tract of land to be benefited or damaged, including lands owned by the state of Minnesota or any department thereof; a description of each tract to be benefited or damaged and the total number of acres of said tracts and the estimated number of acres in each of said tracts to be benefited or damaged.

(2) The names of municipalities and corporations and the amount that each will be benefited or damaged.

(3) The amount of benefit, if any, that will accrue to the state by reason of the improvement of said lake, lakes or bodies of water as a place for the propagation, protection and preservation of fish and other forms of wild life assessable against the state of Minnesota.

(4) The total estimated benefits and damages of every kind and nature ascertained and determined by them.

(5) The total expenses incurred by them and the actual time each appraiser was engaged. (Act Apr. 29, 1935, c. 369, §6.)

6602-17. Filing of report—Compensation.—The appraisers shall file their completed report with the clerk within 30 days after their appointment. As soon as said report shall have been filed the court may issue its order directing the payment of compensation at the rate of Five Dollars per day for each appraiser, and their expenses, which sums may be taxed as costs by the clerk. (Act Apr. 29, 1935, c. 369, §7.)

6602-18. Hearings.—Upon the filing of the engineer's and appraisers' reports with the clerk, it shall be the duty of said judge to fix a time and place for hearing said petition and said engineer's and appraisers' reports, and such evidence as interested parties may present, which hearing shall be set for a date not less than 30 nor more than 60 days from the date of the notice thereof and shall be held in the county where the proceedings are pending. Said notice shall recite the filing of said petition, the appointment of the appraisers and the filing of their reports; shall give a description of all lands and properties affected and the amount of benefits and damages assessed against each parcel described in the appraisers' report. Said notice shall be published for three successive weeks in a legal newspaper in each county containing property affected by such proceedings and described in said appraisers' report, but it shall be necessary to publish in each county only

the description of lands or property affected within such county. A copy of such notice shall be mailed by the clerk of court to all parties who are named in the proceedings, and a certificate of such mailing filed by him in his office. (Act Apr. 29, 1935, c. 369, §8.)

6602-19. Confirmation of assessments.—(a) At the time fixed in the notice the judge shall receive and consider all evidence for and against the granting of such petition and may revise, correct, amend or confirm such assessments, in whole or in part, or may order a new assessment, in whole or in part. If, after a hearing, such court shall find that the fixing and maintenance of the stage of water in said lake, lakes or bodies of water or streams connecting the same as prayed for or as recommended by the engineer will promote the public health and general welfare and secure better public use of such lake, lakes or bodies of water, and/or improve the use of such bodies of water for navigation and/or for the propagation, preservation and protection of fish and other forms of wild life, and that the benefits resulting will exceed the cost of the construction of the improvement prayed for, and damage, the said court may so find and by order:

(1) Set the normal high water level and fix the elevation of the original natural outlet, which elevation shall be the minimum elevation below which the level may be lowered by operation of artificially constructed control works with reference to a permanent bench mark.

(2) Confirm the reports of said engineer and appraisers as originally filed or as subsequently amended.

(3) Direct the construction of the improvements prayed for or as much thereof as shall be found to be necessary.

(4) Direct that all property described in the appraisers' report, as finally confirmed, that is benefited by such proceedings, shall be assessed for its proportionate share of the cost of construction of such improvement in proportion to the benefits received.

(5) Make an equitable allotment of the costs incurred in proportion to the benefits accruing to the separate counties, persons, corporations and municipalities and as to improved facilities for the propagation, preservation and protection of fish and other forms of wild life, to the state of Minnesota and determine the amount thereof and fix the manner and times of payment.

(b) When the appraisers shall have determined the amount of the benefits to said lake, lakes or bodies of water from the construction of the improvements and works authorized herein which will accrue to the state of Minnesota through increased or improved facilities for the propagation, preservation and protection of fish and other forms of wild life, as provided in sub-section (f) of section 5 and section 6 of this chapter, the judge, in his order confirming the appraisers' report, shall direct the commissioner to pay the state's pro rata portion of the costs of said improvement represented by such benefits, and the commissioner shall have authority to pay such portion of the costs out of state funds which are available therefor.

Upon the filing of such order by the court with the clerk, it shall be his duty to furnish to the auditor of each county affected a complete certified list giving the description of all the property affected in said proceedings in their respective counties, the names of the owners as shown in the appraisers' report, the amounts of benefits or damages as to each tract and a copy of the order of the court confirming the report of the engineer and appraisers and directing the construction of the improvement; provided, that whenever it appears from the engineer's report that the total estimated cost of any improvement contemplated under the provisions of this act will exceed \$2500.00 or whenever the funds to defray the cost of such improvements are to be provided by the issuance of warrants or other evidences of indebtedness by the counties affected, the board of county commissioners in

each county affected thereby shall approve such project by resolution, and a certified copy of such resolution shall be filed with the clerk of the district court where such proceedings are pending, before such clerk shall be authorized to give notice of a final hearing as herein provided. (Act Apr. 29, 1935, c. 369, §9.)

6602-20. Judge may make orders.—The judge before whom any petition may be filed, under the provisions of this act, shall have power to make such orders as may be necessary from time to time in any proceeding hereunder and to modify the same as justice may require at any time during the pendency thereof. He shall not lose jurisdiction of the proceedings by reason of failure to give proper notice or failure to hold any hearing noticed or ordered to be held for the consideration of any matter connected with the proceedings or committed to them, and may make such new and additional orders in the premises as justice may require, to bring the parties interested before them and to promote the final completion of the works petitioned for under the provisions of this act. (Act Apr. 29, 1935, c. 369, §10.)

6602-21. May demand jury trials.—Any party interested in any proceedings brought under the provisions of this act, whether a petitioner, an owner of land affected, an interested municipality or the state, may at any time prior to the commencement of the hearing demand a jury trial with respect to the following questions:

(1) The amount of assessed benefits to any tract of land owned by him.

(2) The amount of damages allowed to any tract of land owned by him. (Act Apr. 29, 1935, c. 369, §11.)

6602-22. Act to be liberally construed.—This act shall be liberally construed so as to promote public health, improve navigation, protect and preserve fish and other forms of wild life, and protect the general public interest in shore lines, lakes and waters. (Act Apr. 29, 1935, c. 369, §12.)

6602-23. Certified copy to be delivered to commissioner.—(a) At the time of the filing of the order and findings by the court, the clerk shall furnish a certified copy thereof to the commissioner. Within 30 days of the receipt thereof said commissioner shall proceed to advertise for bids for the construction of the works ordered by said judge as provided in section 9 hereof, by giving notice by publication for three successive weeks in the official paper of the county in which the proceedings are pending, of the letting of a contract for such works.

(b) At the time and place fixed in the notice the commissioner shall proceed to award the contract to the lowest responsible bidder. Such bidder shall furnish good and sufficient bond, to be approved by the court in an amount of not less than 75 per cent of the total amount of the contract, guaranteeing the faithful performance of the contract and payment of all labor, material and supplies furnished in the performance of the contract; provided, that wherever a dam or other improvement authorized under this act is to be included within a state or federal public emergency relief project and where the costs of such improvements are to be provided from state or federal emergency relief funds, the provisions of this section with reference to the award of contract shall not apply.

(c) The contract and bond for the construction of any works in this chapter shall be approved by the attorney general.

(d) Payment shall be made to the contractors as the work progresses, not exceeding 80 per cent thereof, by the county board upon certificates showing the progress of such work to be furnished to the county board by the commissioner.

(e) A copy of all contracts awarded by the commissioner shall be filed with the county auditor in each county affected. (Act Apr. 29, 1935, c. 369, §13.)

6602-24. To be under supervision of engineer.—

(a) Any and all work provided for in this chapter shall be done under the constant supervision and inspection of the engineer designated by the commissioner.

(b) In all proceedings instituted under the provisions of this act, the engineer and the assistant, and the appraisers and their assistants shall have the right to enter upon any lands for the purpose of making the survey, examining the property and estimating the benefits and damages, but in so doing they shall commit no unnecessary damages. (Act Apr. 29, 1935, c. 369, §14.)

6602-25. Auditors to prepare tabular statements.—(a) As soon as practicable after the filing by the clerk of the certified copy of the court's order and findings with the auditor or auditors, as the case may be, and as provided in section 9, the said auditor or auditors shall prepare a tabular statement showing:

(1) The names of the owners of all lands and the names of public or private corporations and municipalities (except the state of Minnesota) benefited by the construction of said works as appears from the court's order on file in the proceedings.

(2) The description of said lands as the same appears in such order.

(3) The estimated number of acres benefited in each such tract.

(4) The estimated amount of benefits and damages to each such tract of land; the estimated amount of benefits to each public or private corporation and municipality, as the same appears in the court's order.

(5) The amount that each of said tracts of land and each public and private corporation and municipality so benefited must pay into the treasury of each county for the establishment and construction of the structures as shown by the order of the court on file in said proceedings.

(b) Such statement or statements 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 of each county affected and of each county containing municipalities affected and of each county in which is located any land described in said statement. (Act Apr. 29, 1935, c. 369, §15.)

6602-26. Benefits to be paramount lien.—(a) The amount of benefits assessed against each tract of land, and the interest thereon as hereinafter provided shall be and remain a first and paramount lien on such land until fully paid and shall take precedence over all mortgages, charges, incumbrances or other liens whatsoever, except real estate taxes, and shall be on a parity with real estate taxes.

(b) Payments may be made as hereinafter provided in accordance with the order of the court as provided for in subdivision (4), sub-section (a) of section 9.

(c) Such filing shall be deemed notice to all parties of the existence of such lien.

(d) The fees of the register of deeds for such recording shall be paid by the county auditor and shall be included in said statement as a part of the costs of the improvement.

(e) Such recorded statement shall be returned to the auditor and preserved by him. (Act Apr. 29, 1935, c. 369, §16.)

6602-27. Liens to bear interest.—(a) The amount that each tract of land, public or private, shall be liable for on account of the construction of works authorized in this chapter, shall bear interest from the date of the filing of the auditor's statement in the register of deed's office at the legal rate until paid.

(b) Such liens may be paid to the county treasurer at any time after the recording of said auditor's statement in the office of the register of deeds.

(c) When payment of the full amount of said liens, with interest, shall at any time be made, the county auditor, upon presentation of a receipt from

the county treasurer to that effect, shall issue under his hand 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.

(d) On or before November 15 next following the filing by the auditor of such statement, said auditor shall enter on the tax lists of the county the amount of the lien against each tract of land, all of which shall be payable as directed by the court on such tract which shall be subject to and be collected with like penalties as all other taxes.

(e) The county auditor of the county or counties wherein the proceedings are held is hereby authorized upon order of the court to issue warrants of the county to pay the official costs of such proceedings and when the costs are assessed against the lands in more than one county such costs are to be determined and apportioned between the counties affected in proportion to the benefits assessed against the lands and property in such county. The issued warrants are to draw interest at the legal rate, subject to their payment as provided under Mason's Minnesota Statutes of 1927, Section 6840-108. (Act Apr. 29, 1935, c. 369, §17.)

6602-28. Not to proceed unless funds are available.—No proceedings shall be instituted under the provisions of this act whereby the state of Minnesota shall be assessed or charged for a portion or the whole of the cost of such improvement unless at the time of the institution of such proceedings funds are avail-

able for the payment of the same. (Act Apr. 29, 1935, c. 369, §18.)

6602-29. Inconsistent acts repealed.—All acts and parts of acts inconsistent herewith are hereby superseded, modified, or amended so far as necessary to give effect to the provisions of this act except that nothing in this act shall amend, alter, supersede, or otherwise change the provisions set forth in Chapter 412, Session Laws of Minnesota 1933, or Amendments thereto or Mason's Minnesota Statutes of 1927, Sections 751, 6588, 6589, 6590, 6591, 6592, 6593, 6594, 6595, 6596, and 6597; Provided, further that the provisions of this act shall in no manner apply to public waters of an area of more than 10,000 acres, situated wholly or partially within counties now or hereafter having a population of more than 450,000 inhabitants, and an assessed valuation of more than \$450,000,000, including moneys and credits, and in which is situated a city of the first class within a distance of 20 miles from said body of public water, and provided further that as to such public waters nothing herein contained shall be construed to authorize the diversion of any water from any stream, river or lake located in any county adjoining or abutting in part upon the county wherein a major portion of such public waters are located. (Act Apr. 29, 1935, c. 369, §19.)

6602-30. Provisions severable.—The various provisions of this act are declared to be severable. If any provision thereof shall be declared unconstitutional the remaining provisions shall remain in full force and effect. (Act Apr. 29, 1935, §369, §20.)

CHAPTER 43.

Logs and Lumber

6604. Duty of surveyor general.

Authority to scale state timber is still vested in the surveyor general of logs and lumber, but is now subject to supervision of commissioner of conservation and director of division of forestry instead of state auditor. Op. Atty. Gen., June 27, 1933.

6613. Posting scales—Scribner's rule, etc.

Scribner rule prescribed by statute and not revised Scribner Decimal C log rule is to be used by surveyor

general when not otherwise agreed on. Op. Atty. Gen., Dec. 4, 1933.

Contracting private parties need not consider legal rule in purchase or sale of logs, law not requiring official scaling in private sale. Id.

In private sale of logs, in case log rule has not been agreed upon, true quantity and log scales made by competent persons would be best available evidence, but any scaling done by surveyor general would constitute strong showing to court. Id.

CHAPTER 44

Drainage

STATE DRAINAGE COMMISSION [DEPARTMENT OF DRAINAGE AND WATERS]

6634. Department of drainage and waters.

Laws 1931, c. 186, ante, §§53-23a to 53-231, creates the Department of Conservation and transfers to it the powers of the Department of Drainage and Waters.

6635. Powers of commissioner of drainage and waters.

—Subd. (a). The commissioner of drainage and waters established by this act, shall have power to construct as hereinafter provided, any ditch, drain or other watercourse within the State of Minnesota, and such ditch, drain or other watercourse may in whole or in part follow and consist of the bed of any creek, stream or river, whether meandered or not, and he may widen, deepen, straighten, change, lower or drain the channel or bed of any creek, river, lake or other natural watercourse, whether navigable or whether meandered or not, and may construct new and additional outlets to any marshy, shallow or meandered lake for the purpose of draining the same, and may follow and extend the same into or through any city or village within the state far enough to secure a sufficient fall and flow of water to reasonably effectuate the purpose for which the work is extended, and may confine any such creek, river or other natural watercourse by means of dykes, levees and embankments to its natural or artificial bed, as laid out, and shall also, whenever it shall appear to his satis-

faction that the drainage of any territory may be made more effective by the construction and maintenance of dams, or other works, for retaining and controlling the flood waters, tributary to such territory, have the power to construct or acquire such dams or other work, and flowage rights therefor, and to maintain and operate the same.

Provided, that when in any such proceedings, the waters of any creek, river or other 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 creek, river or watercourse, and terminate therein.

And, provided further, that no meandered lake shall be drained under the authority of this act, except in case such lake is normally shallow and grassy and of a marshy character or except in case such meandered lake is no longer of sufficient depth and volume to be capable of any beneficial public use of a substantial character for fishing, boating or public water supply.

Provided further, that no meandered lake shall be drained or lowered under the authority of this act unless petitioned for by at least sixty per cent of the legal voters residing within four miles of such lake, who are freeholders, whose lands are affected as shown by the viewers' report and filed in the office of the