

Drainage and Waters

CHAPTER 105

DIVISION OF WATER RESOURCES AND ENGINEERING

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**105.01 DEFINITIONS.** Subdivision 1. **Words, terms, and phrases.** Unless the language or context clearly indicates that a different meaning is intended, the words, terms, and phrases defined in subdivisions 2 and 3, for the purposes of chapters 105 to 114, shall be given the meanings subjoined to them; and the term defined in subdivision 4, for the purposes of this chapter, shall be given the meaning subjoined to it.

Subdivision 2. **Division.** "Division" or "the division" means the division of water resources and engineering in the department of conservation of the State of Minnesota.

Subdivision 3. **Director.** "Director" or "the director" means the director of the division of water resources and engineering.

Subdivision 4. **Ditch.** When the word "ditch" is used it shall be construed to mean "ditch," "drain," "creek," "pond," "watercourse," "outlet," "river" (whether navigable or otherwise), and "lake" (whether navigable or otherwise).

[1907 c. 470 s. 19; 1941 c. 138] (6652)

**105.02 TRANSFERRED POWERS AND AUTHORITY.** All power and authority vested in the state drainage commission under General Statutes 1913, Chapter 44, and amendments thereof, was, by Laws 1907, Chapter 470, Section 1, as amended by Laws 1919, Chapter 471, Section 1, vested in the commissioner of drainage and waters and he was thereby authorized to exercise all the power and authority specified and granted to the state drainage commission by General Statutes 1913, Chapter 44, and in addition thereto those specifically enumerated in Laws 1907, Chapter 470, as amended.

~~The commissioner of conservation shall have and exercise all of the powers and shall perform all of the duties which were, at the time of the passage of Laws 1931, Chapter 186; vested in or imposed upon the commissioner of drainage and waters or the department of drainage and waters by any existing law.~~ R 1943-60-12

[1907 c. 470 s. 1; 1919 c. 471 s. 1; 1925 c. 426 art. 5 s. 1; 1931 c. 186 s. 2] (53-20 1/2 a)- (53-24) (6634)

**105.03 POWERS OF DIVISION.** The division of water resources and engineering shall have administration over state waters and water power, including regulation of drainage, elimination of stream and lake pollution, and the establishment and maintenance of minimum lake levels and water storage basins, such minimum levels at no time to be lower than the natural level in its original state of nature. R 1943-60-12

[1937 c. 310 s. 3; 1941 c. 138] (53-23 1/2 n)-

**105.04 POWERS OF DIRECTOR.** Subdivision 1. **Construction of ditches.** The director shall have power to construct, as hereinafter provided, any ditch, drain, or other watercourse within the state, 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 construct new and additional outlets to any marshy, shallow, or meandered lake for the purpose of draining the same, and 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 confine any such creek, river, or other natural watercourse by means of dikes, levees, and embankments, to its natural or artificial bed, as laid out, and shall when it appears to his satisfaction 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.

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.

No meandered lake shall be drained under the authority of this chapter 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.

No meandered lake shall be drained or lowered under the authority of this chapter unless petitioned for by at least 60 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 clerk of the district court of the county in which such proceedings are had.

Subdivision 2. **Investigations of topographical features.** The director in addition to the authorities now granted is hereby authorized to make all necessary investigations to ascertain and determine the topographical features of the various watersheds of the state, the several tributaries of the Minnesota river, the Mississippi river, and other rivers in the state, and ascertain and determine the works necessary to secure proper drainage outlet for the lands in each basin, and the construction of the necessary works to improve such outlet and control flood waters therein, including, as nearly as can be ascertained, the probable run-off waters of each basin and the important streams entering therein, and shall ascertain and secure the necessary facts to determine what streams have natural facilities adapted to the creation of water power and the extent of the horse-power that can be secured, or other information that the director shall deem necessary and essential to the proper planning of the work of each basin to supply proper drainage outlet and control of flood waters including the conservation and use of such waters.

Subdivision 3. **Investigation of drain-tile.** The director is authorized to investigate into the methods employed in the manufacture of drain-tile, to make research and experimentation with a view to improving the quality of drain-tile; to make investigations into the cause or causes of failure that may occur in tile drains after construction, and, when requested by the courts, county boards, or engineers in public drainage proceedings, he shall make tests for the presence of elements in the soil and soil waters destructive to drain-tile and such other tests and investigations as may be requested by the courts, county boards, or engineers, these tests to be requested, made, and reported in accordance with regulations to be furnished by the director.

Subdivision 4. **Requirements for drain-tile.** All drain-tile to be used in the construction of drains established in public drainage proceedings within the state shall comply with the requirements of the American society for testing materials standard specifications for drain-tile, except where the depths to which the drains are to be laid or conditions of the soil, in the opinion of the engineer, require tile of a special and higher quality. The director shall cause these specifications to be published and made available to officials, contractors, and manufacturers concerned

with public drainage proceedings for their information and guidance. The director shall make inspection and tests of materials used in the manufacture of drain-tile and of the manufactured product in any or all of the drain-tile manufacturing plants located within the state where drain-tile is made or sold to the general public, at such time or times and at such intervals as may be found advisable; to keep a record of and publish reports of the results of such tests for the information of officials concerned in public drainage proceedings, tile manufacturers and others within the state who may be concerned with land drainage. For the purpose of making these inspections and tests, the director or his duly authorized representatives shall have free access to materials, manufacturing plants, and appurtenances and to the manufactured drain-tile at all times, and samples on which to make tests and inspection shall be furnished by the manufacturers without cost to the state.

**Subdivision 5. Testing machines for drain-tile.** It shall be the duty of all manufacturers of drain-tile within the state who sell their products to the general public, to equip and install as a part of each manufacturing plant a first-class and up-to-date testing machine, on which tests to determine the bearing strength of drain-tile may be made by the director, or his duly authorized representatives, the general design and capacity of which testing machine shall be approved by him. The original cost to any one manufacturer of drain-tile by reason of the installation of the testing machine herein provided shall in no instance exceed the sum of \$250.00.

**Subdivision 6. Information furnished as to drain-tile.** The director shall ascertain and secure the necessary information from the various parts of the state to enable him to make and furnish to engineers of the state all necessary information as to the proper size of tile and the discharge thereof under various conditions, including information as to the proper size and discharge of open ditch construction, and such information shall be included in the rules to be furnished and followed, as provided in section 105.06.

**Subdivision 7. Cooperation with other governmental agencies.** The director is hereby authorized to cooperate and enter into agreement with the Minnesota state agricultural experiment station and the United States government, or any department thereof, whenever, in his opinion, such cooperation is advisable.

[1907 c. 470 s. 2; 1915 c. 273 s. 1; 1919 c. 471 s. 2; 1921 c. 327 s. 1; 1923 c. 328 s. 1; 1931 c. 350] (6635)

**105.05 ADDITIONAL POWERS OF COMMISSIONER.** The commissioner, in addition to other powers, shall have the power whenever the same will be of public benefit and utility and will promote the public health and welfare:

(1) To clean out, repair, extend, or otherwise improve any state ditch heretofore or hereafter constructed and to determine and decide whether or not any other public ditch shall empty therein; and, if allowed so to do, to determine and prescribe upon what terms and conditions it be allowed so to empty into such state ditch;

(2) To make surveys of rivers, creeks, or streams within this state for the improvement thereof and to widen, deepen, straighten, change the course of, clean out, or otherwise improve any river, creek, or stream in this state whenever the same shall overflow, by reason of the water or sediment from any public drainage ditch or ditches emptying therein, or otherwise by reason of the drainage ditches, and causing damage to abutting or adjacent lands. The commissioner shall, as a condition precedent to the making of any of these improvements, or to his exercise of any of the powers conferred by this section, require that any portion of the cost or expense to be incurred thereby shall be paid by the town or county or by the persons benefited or liable to be benefited by such improvement; and in carrying out the provisions of this section the commissioner is hereby authorized to enter into any necessary contract with any such town, county, or person.

The commissioner shall have the power to acquire title to any private property necessary for any authorized purpose by purchase or by the exercise of the right of eminent domain, and in such last mentioned case he may request the attorney general to take proceedings for that purpose, and it shall thereupon be the duty of the attorney general to proceed to acquire the necessary title to the private property in the manner and according to the provisions of chapter 117, anything therein contained to the contrary notwithstanding, and the use of these lands for these purposes, or either of them or otherwise, by the commissioner in the furtherance of lawful projects is hereby declared to be a public purpose. He shall have the power to let contracts for all such work and to change the plans thereof when necessary, and to supervise, control, and accept the same when complete and to

cause the same and all preliminary expense in connection therewith to be paid for out of any funds appropriated to the use of the commissioner.

[1907 c. 470; 1909 c. 207 s. 1] (6667)

**105.06 POWERS OF COMMISSIONER AND PROCEDURE OF ENGINEERS.** The commissioner is hereby authorized and empowered and it shall be his duty to prescribe rules and regulations for the establishment and construction of drainage projects under the drainage laws of the state in accordance with what may seem to him to be just and proper and consistent with the provision of law governing ditch proceedings. He shall furnish copies of these rules and regulations for the use of engineers, county officials, and others engaged in such work, but these rules and regulations shall be construed to be advisory only.

It shall be the duty of any engineer appointed by any court or board to take charge of any drainage project to proceed therein and be governed as far as practicable in his work therein by the rules and regulations made by the commissioner, and all such engineers engaged in any such project shall make an additional copy of their plats, maps, profiles, and reports, and transmit a copy of all these papers to the commissioner, who shall file and keep the same and make and keep a permanent record of such items thereof as he may deem proper in books to be prepared for that purpose and kept in his office.

In taking the levels of the surface of the ground over which the engineer shall make his survey for any such drainage project, he shall when practicable use as his base datum the sea level datum as determined by the use of the elevation of bench marks, which have heretofore been or may hereafter be established by the United States geological survey, the United States coast and geodetic survey, the United States corps of engineers, and other reliable engineering authorities.

[1917 c. 441 s. 1] (6635A)

**105.07 COMMISSIONER TO CAUSE EXAMINATIONS TO BE MADE AND REPORT TO COURT WHEN REQUESTED.** The commissioner is further authorized and directed upon request to examine, criticize, and pass upon any plans for the construction of drainage projects which may be submitted to him by officials having the same under consideration.

Any court or county board having before it any proceedings to establish or repair any drainage project may submit to the commissioner the petition, engineers' reports, and other papers in connection therewith and propound to him any question relative to these proceedings or the project which it may desire to have answered, and the commissioner and the state engineer, or his deputies and assistants, shall forthwith proceed to examine all the papers so submitted and in good faith answer all such questions so propounded; and, if there is any defect in any of the plans and designs so submitted, the commissioner shall report the same back to the court or county board, with recommendations as to what alterations, corrections, or additions should be made.

When, in his opinion or that of the state engineer, it shall be deemed advisable and for the best interest of such drainage project that an examination upon the ground should be made of the route of the proposed drainage project, then the commissioner is hereby authorized to cause such examination to be made before passing upon the report of the engineer in the proceedings. In case such physical examination shall be made of the proposed route, the expense thereof shall be at once reported to the court or board and such expense, as it may be allowed by the board, shall form a part of the expenses of the drainage project and shall be paid as other claims against the same.

During the proceedings carried on relative to the drainage project the commissioner shall give advice to the courts or county boards, engineers, and other officials connected with or in charge of such proceedings when advice is required.

[1917 c. 441 s. 2] (6635B)

**105.08 RECORDS OF SURVEYS, DEPUTIES AND ASSISTANTS.** The commissioner shall keep complete record of all surveys and investigations made by him or under his direction and of all reports made to him by other engineers connected with drainage work throughout the state, as required by law.

[1907 c. 470 s. 3; 1919 c. 471 s. 3] (6636)

**105.09 TOPOGRAPHICAL SURVEY OF WATERSHEDS.** The commissioner is hereby authorized and directed to cause to be made a topographical survey of the

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several watersheds of the state for the purpose of securing data from which complete plans for a uniform system of drainage may be prepared.

[1907 c. 471 s. 1] (6668)

**105.10 MAPS, PLANS, REPORTS.** As soon as practicable after the completion of the survey of any watershed or a part of a watershed the commissioner shall cause to be prepared such maps, plans, specifications, and estimates of the cost as he may deem necessary for the system or systems of drains or ditches for the several counties included, in whole or in part, in such watersheds; such maps, plans, and estimates to be prepared in duplicate and to be divided into sections so as to include in each section or sections as far as practicable the plans and estimates relating to any county included in the survey.

On the completion of the report of the survey, or part thereof relating to any county in this state, a copy of so much of the report relating to the county shall be filed with the auditor of the county included therein.

Upon the filing of the report with the auditor, all subsequent drainage work carried out under any of the drainage laws of this state shall be constructed in conformity with these plans, except as modified by the commissioner.

[1909 c. 471 ss. 2, 3, 4] (6669) (6670) (6671)

**105.11 COMMISSIONER TO PRESCRIBE RULES.** The commissioner shall prescribe such rules and regulations governing the construction of ditches in any county in this state under the provisions of this chapter as may seem to him just and proper.

[1909 c. 471 s. 5] (6672)

**105.12 COOPERATION WITH UNITED STATES DEPARTMENT OF AGRICULTURE.** The commissioner is hereby authorized to cooperate with the department of agriculture of the United States in the execution of drainage or topographical surveys in any county in this state when he deems it expedient and in the best interest of the state so to do.

[1909 c. 471 s. 6] (6673)

**105.13 PETITION TO DISTRICT COURT.** Before the commissioner shall construct any ditch, drain, and watercourse, or deepen, drain, change, straighten, or lower the channel or bed of any creek, river, lake, or other natural watercourse or other construction named in section 105.04, he shall, except as hereinafter provided, file with the judge of the district court for the county or counties wherein it is proposed to construct this ditch, drain, or other construction, a petition setting forth the necessity thereof, and that it will be of public benefit or promote the public health, with a map showing the route of the proposed construction, estimates of the cost of the same, and description of the lands likely to be affected by the construction, the map, estimates, and description of lands to be prepared by the engineer, for the commissioner, or under his direction.

[1907 c. 470 s. 4] (6637)

**105.14 VIEWERS; DUTIES, REPORT.** Within ten days after the filing of such petition the judge of the district court shall make an order appointing two resident freeholders of the county or counties in which the construction is proposed, not interested in the construction of the proposed work and not kin to any of the parties known to be interested therein and the commissioner shall appoint one who is not a resident of the county, as viewers, to meet at a time and place to be specified by the court, preparatory to commencing their duties. The viewers, after taking oath to faithfully perform their duties, shall proceed at the time fixed in the order, with or without the commissioner, and prepare a tabular statement showing as far as practicable the names of the owners of each tract of land to be benefited or damaged; the description of each tract benefited or damaged (names of owners to be the same as appear on the county tax duplicate of the county, and the description to be given in legal form), and the total number of acres in each tract; the estimated number of acres in each tract of land to be benefited or damaged, as the case may be; the number of acres added to any tract by the total or partial drainage of any meandered lake, or by the change of any 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 the work. When any ditch established under this chapter drains, in whole or in part, any public or corporate road or benefits any such road so that the roadbed or traveled track of the road will be made better by the construction of the ditch, the viewers shall estimate the benefit arising therefrom to these roads or roadbeds, and report the

benefits (names of roads and other particulars necessary to identify the corporations, private or public, to be benefited thereby, and amounts of benefits to each) as a part of their tabular statement provided for in this section; and the viewers shall also report, as a part of such tabular statement, the damages awarded to each municipal or other corporation for injury to any road or roadbed, and from the necessary construction and maintenance of any bridged culverts or other works rendered necessary by the establishment of such ditch, stating the same separately; and they shall report the total estimated benefits in respect to the entire ditch and branches, if any, and whether or not 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 for any reason, stating the reason why it should not be constructed.

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

[1907 c. 470 ss. 5, 6] (6638) (6639)

**105.15 PRIVATE DITCH; DEDUCTION FROM BENEFITS.** When a public ditch is located wholly or in part in the bed of a private ditch already or partially constructed the engineer shall make an estimate of the number of cubic yards of earth already excavated on each tract of land and of the amount of the reduction in the cost of constructing the portion of the ditch on each such tract of land by reason of such private drain having been constructed and the viewers shall deduct such amount from their estimate of benefits, if any, against such tract of land, making an appropriate notation thereof on their report.

[1907 c. 470 s. 7] (6640)

**105.16 WHAT LANDS ASSESSED; BENEFITS, HOW ESTIMATED.** All lands benefited by a public ditch, drain, or watercourse, and all public or corporate roads so benefited in whole or in part shall be assessed in proportion to the benefits for the construction thereof, whether the ditch passes through the land or along or near the line of such road or not, and the viewers, in estimating the benefits to lands or roads not traversed by the ditch, shall not consider what benefits such lands or roads will receive after some other ditch or ditches shall be constructed, but only the benefits that shall be received by reason of the construction of the public ditch, as it affords an outlet for drainage, or prevents overflowing of or otherwise directly or indirectly benefits such lands or roads, and in determining the cost of draining the land or lands there shall be included the amount paid for damages to private owners of lands and the cost of right of way of any other ditches through such private land to the main stream, together with the cost of the construction of the ditch, office expenses, field expenses, salaries of all clerks and employees, and all fees necessarily paid to officers or other persons in the proceedings.

[1907 c. 470 s. 8] (6641)

**105.17 DAMAGES; REMEDY OF PARTY AGGRIEVED.** In running the ditch or works through private lands not necessary to drain, it shall be the duty of the viewers to report the amount of damages to be allowed to such owners for the right of way or other damages for the construction of the ditch or ditches through such lands. Any person or party interested aggrieved by the amount of damages so allowed or of the disallowance of the amount of damages claimed or any part thereof for the land so appropriated for such ditch or laterals, or any other work authorized to be done under this chapter, may within ten days after the filing of the viewers' report petition the district court before whom the proceedings are pending for the appointment of appraisers in the same manner as is now provided by law for the appropriation of private property for public uses, with all the rights and authority incidental thereto, but the construction of any such work, ditch, or laterals thereof shall not be delayed by such proceedings.

[1907 c. 470 s. 9] (6642)

**105.18 VIEWERS' REPORT, WHEN FILED.** The viewers shall forthwith file with the clerk of court a report of all their doings and findings in detail including expenses and the actual time they were engaged. They shall in every case completely perform every duty by this chapter imposed upon them, except in case of a re-reference, as hereinafter provided, within 30 days from the date of their first meeting; provided that, if the water be so high or the weather so inclement, or such unavoidable accident occur as in the opinion of the judge of the district court to practically and reasonably prevent them from so doing, the necessary delay caused thereby may be excused by the judge; but the report of the viewers must in each

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case state the reason for such delay and if such reason be not deemed sufficient by the court, such viewers shall forfeit one-half of their compensation.

[1907 c. 470 s. 10] (6643)

**105.19 ORDER FOR HEARING; NOTICE.** Within three days after the filing of the viewers' report it shall be the duty of the clerk of court to prepare and transmit forthwith to the judge of the court, and to the auditor of each county described in the petition, a written notice of the filing of the report. Upon the receipt of such notice, the judge shall make an order fixing the time and place of hearing the petition and engineer's and viewers' reports. He shall cause a notice of the time and place of such meeting to be given to all persons interested by publication for three successive weeks prior thereto in a newspaper printed and published in the county and by posting, at least three weeks before such meeting, printed copies thereof in three public places in each township where the proposed work is located, and one at the door of the court-house in the county, of the pendency of the petition, and engineer's and viewers' reports, and of the time and place set for the hearing thereof, which notice shall be signed by the clerk of court and briefly state substantially the starting points and terminal of the ditch, drain, creek, or watercourse and branches, together with a description of the land through which they pass, all as appears by the engineer's report, together with the names of the owners of the land and the names of the municipal corporations that will be affected thereby, as the same appear in the report of the viewers; and, within one week after beginning such publication, the clerk of the court shall mail a printed copy of the notice to all non-residents of the county named in the viewers' report as affected by such proposed work, whose address is known to him or can be ascertained by him by inquiry at the county treasurer's office. In all cases in which for any cause the notice shall not be given or in any case the notice shall be legally defective, the clerk of court shall cause the same to be given again, so that the petition may be heard at another special or adjourned meeting, which will occur more than seven days after the expiration of another notice by the publication, posting, and mailing, as provided in the first instance, the date of which meeting and hearing to be fixed by the court.

[1907 c. 470 s. 11] (6644)

**105.20 HEARING; FINDINGS, ORDER; RE-SUBMISSION TO VIEWERS; BENEFITS AND DAMAGES; REHEARING, WHERE ORDER SET ASIDE.** 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 to hear and consider the same; and all persons interested may appear and be heard by and before the court. Unless excused by the court, the engineer and at least two of the viewers shall be present at such hearing. If the court, from the report of the engineer and from the report of the viewers, and such other evidence as may be adduced before him, find that the engineer's and viewers' reports and all other proceedings in the matter have been made and taken in accordance with the provisions of this chapter, and that the estimated benefits to be derived from the construction of the work are greater than its total costs, including damages awarded, and that such damages and benefits have been duly awarded and assessed, and that the work will be of public utility and promote the public health, and that the reports are complete and correct, he shall by an order containing such findings establish such a ditch as specified in the report of the commissioner and establish and confirm the viewers' report. In case the viewers' report is found to be defective or erroneous in any particular, the judge of the district court shall have authority to remedy such defect by reference to the viewers, if necessary, or otherwise, and to cause the expense of such re-reference, if any, to be assessed against the land benefited. In case the viewers have not agreed or shall not agree in their findings, the court shall determine the proper findings and change the viewers' reports accordingly. If it appears from the evidence adduced before the court that unequal and disproportionate assessments have been made, the matter shall be re-submitted to the viewers, who shall proceed summarily to make the necessary correction under the instructions of the court and forthwith report the same to the court. Thereupon the court shall by an order containing such findings establish such ditch as specified in the report of the civil engineer, and establish and confirm the viewers' report, and shall in such findings determine the total cost of the construction of such ditch, drain, or watercourse, laterals and branches thereof, based upon the engineer's and viewers' reports, which shall include all the costs and expenses and fees that may be necessarily

incurred in the construction of the same and connected therewith, all to be allowed by the court, and shall by an order to be made and filed therein determine the total cost to be equitably assessed against each separate tract or parcel of land so benefited by the construction of the ditch, drain, or watercourse, in proportion to the benefits, and the damages, if any, are to be allowed, and to be paid on account of the construction of the same, which shall be included in the cost of the same, in order to arrive at the total cost, which order and findings shall be filed in the office of the clerk of court of the county where such proceedings are pending, whereupon the clerk of court shall endorse his filing thereon and forthwith file a certified copy of the same in the office of the auditor of the county and, in case the ditch, drain, or watercourse extends into more than one county, the clerk shall file a certified copy in each county. When any final order of the court establishing or refusing to establish any ditch in proceedings under this chapter shall be set aside, annulled, or declared void by any court by reason of a failure to give proper notice of the pendency of the petition and viewers' report, and of the time and place set for the hearing thereof, or any adjourned hearing, the court shall issue an order at any time within one year thereafter upon application of the commissioner for a rehearing thereof, notice of such meeting and rehearing shall be given in the same manner provided for in the first instance, and at such meeting and hearing the court shall proceed to reconsider such report, act upon the same, and make findings thereon as justice may require, and may reestablish such ditch in conformity with the provisions of this chapter.

[1907 c. 470 s. 12] (6645)

**105.21 STATE LANDS.** In case any lands belonging to the state are drained or benefited under the provisions of this chapter, the clerk of court shall also file a certified copy of the order and findings of the court, so far as it affects state lands, but private lands shall not be included in the report, with the state auditor.

[1907 c. 470 s. 13] (6646)

**105.22 STATEMENT.** As soon as practicable after the filing of the certified copy in the office of the county auditor, or county auditors, as the case may be, as provided for in section 105.20, the auditor or auditors shall make in tabular form a list and statement showing the following facts:

(1) The names of the owners of all lands, except state lands, which shall not be included; the names of all public or corporate roads within their respective counties benefited by the construction of such proposed work, as appear from the order on file in the proceedings;

(2) The description of the lands as the same appears in such findings, and so affected, together with the total number of acres of each tract according to the assessment rolls and tax lists of such county;

(3) The estimated number of acres in each tract of land;

(4) The estimated amount of benefits and damages to each of the tracts of land, the estimated amount of benefits and damages to each public or corporate road, as the same appears in the viewers' report, or as affected by the order of the court made in the proceedings; and

(5) The amount each tract of land and each corporate road so benefited will be liable for and must pay into the treasury of each county for the location, construction, and establishment of such ditch, drain, or watercourse, as shown by the order of the court on file in the petition.

[1907 c. 470 s. 14] (6647)

**105.23 RECORD OF STATEMENT; LIEN; FEES.** The statement provided for in section 105.22 shall then be signed by the auditor in the presence of two attesting witnesses and duly filed with and recorded by the register of deeds of such county. The amount which each tract of land and each public or corporate road will be liable for, and the interest thereon, as herein provided, shall be and remain a first and paramount lien on such land, public or corporate roads, until fully paid; and take precedence of all mortgages, charges, encumbrances, or other liens. Such payments may be made as herein provided. Such filings shall be deemed notice to all parties interested in the existence of such lien. The fees of the register of deeds for such recording shall be paid by the county, on the allowance and order of the court, by auditor's warrant, and the statement, after the same has been recorded, shall be returned to the auditor, to be by him placed with the other papers relating to such ditch, and carefully preserved by him.

[1907 c. 470 s. 15] (6648)

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**105.24 JURY TRIAL.** Any land owner aggrieved at the decision and amount finally assessed against his land on account of the construction of the ditch, or on account of the disallowance in the amount of damages claimed for right of way or other damages, may demand a jury trial. The costs and disbursements of such trial shall be taxed against the party demanding such trial in case he fails to increase the amount of the award for damages or decrease the amount of the assessment.

[1907 c. 470 s. 16] (6649)

**105.25 APPEAL; INCREASED COST, HOW PAID.** Any party may appeal from the judgment of any appealable order of the district court, or who claims damages or against whose property benefits are assessed, may appeal to the supreme court as in civil actions from any final order, except an order establishing such ditch or drain in proceedings under this chapter, within 30 days after the filing of such order by filing the notice of appeal and bond required as in civil actions upon appeal to the supreme court. The appellant shall serve a copy of the notice of appeal and appeal bond on the respective attorneys in the proceeding, the attorney general, and the clerk of the district court, and file proof of such service and the original notice with the clerk, whereupon the clerk shall certify the case to the supreme court in the same manner as in other cases appealed to the supreme court. In case the appellant prevails in the supreme court, and the cost of the construction of the ditch, drain, or watercourse is increased on account of the appeal having been determined in favor of the appellant, and damages or costs are awarded to the appellant, upon a remittitur from the supreme court to the district court, the clerk of the district court shall notify the judge of the judicial district wherein the appeal was taken, advising the court of the action of the supreme court in the proceeding, whereupon the judge of the district court shall make a further finding and order assessing the amount against the tracts of land originally assessed for the construction of the ditch and proportionately distribute the same in proportion to and in the same manner as the original assessment. The clerk shall thereupon certify the same to the county auditor, or county auditors, as the case may be, and the county auditor or auditors shall cause the same to be spread upon the tax duplicate record and a statement thereof to be filed in the office of the register of deeds in the same manner as under the original assessments.

[1907 c. 470 s. 17] (6650)

**105.26 CONTRACT, HOW LET; PAYMENT.** At the time of filing of the order and findings by the court, as provided for the general assessment, the clerk of the district court shall also furnish a certified copy thereof to the commissioner, who shall thereupon proceed to advertise for bids for the construction of any proposed ditch or lateral, or for the repairing, extending, deepening, strengthening, altering, or cleaning out of any ditch, river, or natural watercourse proposed to be repaired, extended, deepened, altered, or cleaned out, or for the construction of new and additional outlets, for the purpose of draining any shallow, marshy, or meandered lake, or draining any lake or body of water that has been caused to overflow, on account of additional drains or watercourses running into the same which have been constructed for the purpose of the drainage of land or for the benefit of the public health. The bid shall be made with reference to plans and specifications to be furnished by the commissioner and the contract for the construction of these works shall be let to the lowest responsible bidder. The successful bidder shall be required to furnish good and sufficient bond for the faithful performance and construction of such work and the payment of all labor, material, and supplies furnished in the construction of such ditch, or in such repairing, extending, deepening, straightening, or cleaning out of any such ditch or work authorized to be done under this chapter. Payment shall be made as the work progresses in accordance with the rules that may be adopted by the commissioner or specified in the contract. Such contracts and rules shall be approved by the attorney general. Before the final payment is made the ditch or work under contract for construction shall be carefully inspected and the work approved by the commissioner; and in case the contractors and the commissioner cannot agree upon the approval of the contract they shall have the authority to submit the same to any competent disinterested civil engineer whom they may agree upon, whose compensation therefor shall be paid, one-half by the contractor, and the balance out of any appropriation available for draining state lands upon the warrant of the state auditor approved by the commissioner, and whose decision when filed in the court where the proceedings are had shall be final.

[1907 c. 470 s. 18] (6651)

**105.27 SUPERVISION.** Any and all work provided for in this chapter shall be done under the constant supervision and inspection of the commissioner or any engineer duly appointed by him.

[1907 c. 470 s. 20] (6653)

**105.28 AUTHORITY TO ENTER ON LAND.** The viewers and engineer shall have the right to enter upon any lands for the purpose of making preliminary surveys or locating such ditch or estimating damages and to do any act necessary for the proper performance of their duties and any person attempting to prevent or interfere with them in so doing shall be punished, upon conviction, by the court as for a misdemeanor.

[1907 c. 470 s. 21] (6654)

**105.29 COOPERATION WITH COUNTY BOARD.** The commissioner is hereby authorized to cooperate with the county board of each county wherein a county ditch or judicial ditch, or a portion thereof, is or may be located, in enlarging, extending, repairing, or otherwise bettering any such ditch now completed, or that may be now in the course of construction, or hereafter constructed, or in deepening, widening, straightening, or otherwise improving, any natural watercourse into which the water of any county, judicial, or state ditch flows, or in the construction of additional outlets to any lake, body of water, or meandered lake that has become overflowed by reason of additional drain, and ditches having been constructed into the same, and the waters flowing therefrom into such lake, body of water, or meandered lake, causing the lake, body of water, or meandered lake to overflow and damage abutting and adjacent land, whenever in his judgment it is necessary and desirable so to do.

[1907 c. 470 s. 22] (6655)

**105.30 POWERS AND DUTIES OF COMMISSIONER.** The commissioner shall have authority to act in all matters and perform all duties pertaining to the drainage of the state lands and such private lands as he may be compelled to pass through in draining these lands, and shall, from such records and surveys as are now in existence and from such surveys and records as he may find it necessary to make, ascertain the number of acres of low or wet lands belonging to the state that it is necessary to drain in order to protect the public health, convenience, and welfare of the community and to make these lands fit for agricultural purposes. He shall ascertain where the same are located, what ditch or ditches are necessary to drain the land, and he is hereby authorized, without any petition or judicial procedure provided for in section 105.13, to construct as many main and lateral ditches of the size and capacity as are necessary to effectually drain such land. He may repair, extend, deepen, and alter or clean out any ditch constructed by the state or under its direction, when necessary to drain the land originally intended to be drained by such ditch. He shall drain the state lands that are most accessible to highways, villages, and railroads before draining state lands more remote. In the execution of the provisions of this chapter he may appoint as many agents and employees as are necessary.

[1907 c. 470 s. 26] (6659)

**105.31 STATE DITCH; SURVEY, MAP, PROFILE.** Wherever the commissioner shall find the State of Minnesota owns land in sufficient bodies to warrant a state ditch he shall proceed to determine the course of the ditch, the size thereof as to depth and width at the top and bottom, and cause an accurate survey to be made upon the ground, with stakes, on which shall be written in plain figures the station number and the amount, in feet, to be cut. These stakes shall be set at least every 100 feet. Every main ditch shall run to some permanent watercourse, stream, or lake, of sufficient size to carry the water coming into the same from such ditch without overflowing the banks thereof at high-water mark. He shall cause a map of the ditch to be made on a uniform or convenient scale showing the location of the ditch, all topography for a width of at least one-quarter of a mile on each side, the depths of soundings made in marshes and lakes, and designate the character and kind of surface and subsoil, so far as the same may be readily ascertained, and the legal subdivision of all lands drained by the ditch, and if the same passes through or drains private lands, the map shall show the names of all the owners, so far as known or can be ascertained, and if unknown, to so state; the map shall also designate what private lands, if any, are drained and what private lands, if any, are not drained by the ditch. All topographical features to be located by actual survey to the center line of the ditch. He shall cause a profile of the center line of

the ditch to be made, which as to details will at least show the elevations of the natural surface at each station of 100 feet, or any necessary fraction thereof, or as nearly as practicable the elevations of the grade line; the ratio of the grade; the cutting at each station; the elevation and description of permanent bench marks, of which one shall be established at each end of the ditch, and one as nearly as practicable midway between the source and the outlet. Where natural objects do not exist upon which to make such bench marks artificial posts shall be set in a stable and permanent manner for such bench marks. All elevations so far as possible or practicable to be referred to the standard datum of sea level. The map, profile, and specifications signed by the commissioner shall be filed in his office and certified copies thereof filed with the auditor of each county in which the ditch is to be located.

[1907 c. 470 s. 27] (6660)

**105.32 RIVERS AND WATERCOURSES; WIDENING, DEEPENING.** When, in any drainage proceeding under any laws of this state whereby the cost of construction is assessed against the benefited property or corporations, it is proposed to widen, deepen, straighten, or clean out any river or other natural watercourse or drain any low, shallow, or grassy lake, or any body of water that has become overflowed by reason of the water from ditches previously constructed, under any drainage act, flowing into the same and causing damage to abutting and adjacent lands, or by which it is proposed to promote the public health and which will be of public benefit and general utility; and the commissioner shall be satisfied that it is expedient and necessary, he is hereby authorized and empowered to appropriate, out of any state drainage funds which may be created by law, sufficient to defray not to exceed one-half of the actual cost and expense of doing such work. No contract for the work shall be let without the approval of the commissioner.

[1907 c. 470 s. 28] (6661)

**105.33 ORDERS OF COURT; JURISDICTION.** The judges of the district court of the state before whom any petition may be filed under the provisions of this chapter shall have power to make any order necessary from time to time in any proceedings hereunder or modify the same as justice may require at any time during the pendency thereof and 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 any new and additional order in the premises as justice may require, to bring the parties interested before them, to promote the final completion of the ditch or works petitioned for or to establish and complete any state ditch, drain, or watercourse, or drain any marshy or meandered lake under the provisions of this chapter.

[1907 c. 470 s. 29] (6662)

**105.34 OBSTRUCTING COMMISSIONER; PENALTY.** It shall be unlawful for any person to interfere with or obstruct the commissioner, or any officer, servant, or employee thereof, or of the court, from entering upon the land for the purpose of making a survey for the purpose of establishing any ditch, drain, or watercourse, or interfere with or obstruct the viewers appointed by the court or the commissioner or other person lawfully engaged in constructing the ditch, drain, or watercourse. Any person found guilty thereof shall be punished as if for a misdemeanor under the statutes.

[1907 c. 470 s. 30] (6663)

**105.35 TRAVELING EXPENSES.** The commissioner shall receive his necessary traveling expenses for viewing or inspecting the work or proposed work or other duties connected therewith.

[1907 c. 470 s. 31] (6664)

**105.36 EXPENSES; FEES.** The commissioner shall keep complete records of all his proceedings and of all surveys and works under this chapter. All officers or persons performing any services in any proceeding, except the judge of the district court, shall receive reasonable compensation to be allowed by the commissioner, except contractors, payments to whom shall be made as provided for in section 105.26, and all bills or claims, including expenses of the engineers and viewers, shall be audited by the commissioner and paid by warrant out of the state drainage fund.

[1907 c. 470 s. 32] (6665)