

CHAPTER 108

DRAINAGE; COUNTY AND JUDICIAL

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108.01 DEFINITION. "Drainage ditch bonds," as used in this chapter, means any bonds issued under the provisions of Laws 1905, Chapter 230, or any act amendatory thereof or supplemental thereto.

[1923 c. 72 s. 1] (6697)

108.02 APPLICATION. Sections 108.01 to 108.05 shall apply and be operative in the case of any county which, at any time, shall have paid any of the principal or interest of any of its drainage ditch bonds: (1) with moneys in its general ditch fund applicable to a ditch other than the ditch in connection with which the bonds were issued; or (2) out of county funds other than the general ditch fund; or (3) out of the proceeds of county warrants issued and outstanding, and a shortage in respect to the general ditch funds exists by reason thereof, and also in the case of any county where it shall at any time appear that the moneys in its general ditch fund will not be sufficient to pay in full the principal and interest of its drainage ditch bonds to become due according to their terms within one year following the date of the county auditor's certificate provided for in those sections.

[1923 c. 72 s. 2] (6698)

108.03 DITCH BONDS ISSUED BY COUNTY BOARDS. The county board of any such county is authorized and empowered to issue and sell, from time to time, the county's bonds for the purposes of its general ditch fund. These bonds shall be designated drainage funding bonds or by some other appropriate name. Their issuance shall be authorized by resolution of the county board and they shall be signed by its chairman and attested by the county auditor, who shall affix his seal. They shall bear interest at a rate not exceeding six per cent per annum, payable semiannually, and shall mature serially in annual instalments as nearly equal as conveniently may be, the first instalment to be payable in not more than five years, and the last instalment in not more than 15 years, from the date thereof. They shall be sold as provided by section 475.15.

[1923 c. 72 s. 3; 1925 c. 198 s. 1] (6699)

108.04 AUDITOR TO MAKE CERTIFICATE. Before any bonds shall be authorized or issued under the provisions of sections 108.01 to 108.05, there shall first be presented to the county board and entered in its records a certificate signed by the county auditor under his seal. This certificate shall state: (1) the amount which will be required to make good any existing shortage within the meaning of section 108.02, and (2) the probable amount which will be required to pay the principal or interest of the county's outstanding drainage ditch bonds to become due within one year from the date of such certificate. The certificate shall state

such amounts in detail and specify the part thereof which is applicable to each of the several county ditches. Such certificate of the county auditor shall be conclusive evidence that the county has authority to issue bonds under the provisions of sections 108.01 to 108.05 to an amount not exceeding the aggregate amount specified in any such certificate.

[1923 c. 72 s. 4; 1925 c. 198 s. 2] (6700)

108.05 PURPOSE; OBLIGATION. The proceeds of any such bonds paid into the treasury shall be placed in the general ditch fund and applied to the purpose for which they are issued. The county auditor shall keep a separate account with each ditch in connection with which any of the proceeds of any such bonds are used. When the collection of assessments on account of such ditch at any time produces a surplus in excess of the obligation on account of the ditch to the general ditch fund such surplus shall be applied to the payment of the principal or interest of such bonds.

Any bonds which a county may issue under sections 108.01 to 108.05 shall be general obligations of the county but shall not be included in determining the county's net indebtedness under the provisions of any applicable law.

[1923 c. 72 ss. 5, 6] (6701) (6702)

108.06 DAMAGES ARISING AFTER CONSTRUCTION. When any land adjacent to any ditch or drain constructed, either under the provisions of sections 108.06 and 108.07, or under any prior drainage law by which the original cost of the 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 the ditch or drain, or by the deposit of earth or any other foreign substance (snow and ice excepted) on the 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, except as provided in section 108.07, after the completion of the ditch or drain causing the damage, petition the county board of the county where the land claimed to be damaged is situated for the appointment of viewers to ascertain and report the amount of the damages, the petition shall state the description of the land alleged to have been damaged, the amount of damage claimed, the location of the ditch or drain, the description of the land found in the proceedings to construct the 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 a bond in the sum of \$100.00, conditioned that if it finally be determined that no damages have been sustained that are properly allowable under this section, the petitioner will pay all the expense of the proceedings had under the petition, it shall be the duty of the county board, at its next regular or a special meeting, to appoint three persons who are qualified under the provisions of sections 108.06 and 108.07 as viewers, selecting, if practicable, the same persons as 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 the first meeting of the viewers, which shall be not more than 20 days from the date of their appointment. The county board may, at any time within 15 years after the completion of the ditch or drain causing the damage, upon petition of the owner of any land adjacent to any ditch constructed, as hereinbefore provided, and if in its judgment such petition is a meritorious one, appoint three persons, who are qualified under the provisions of sections 108.06 and 108.07, as viewers to determine such damages. No damages reported by these viewers which have arisen more than six, but not to exceed 15, years after the completion of the ditch shall be paid without being audited, allowed, and approved by the county board; but, upon such audit, allowance, and approval, these damages shall be paid in the same manner as the damages that arose prior to six years after the completion of the ditch, as is now provided by law. In case any viewer so appointed shall fail to qualify, the county auditor shall designate some proper person to take his place. Each viewer, 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 county auditor. Upon the appointment of the viewers, the county auditor shall give notice to parties interested, whose lands are liable to be assessed for the payment of the damages claimed, by one publication, at least one week before the first meeting of the viewers, in the newspaper in which the last

delinquent real estate tax list was published, if it is still published in the county, or, if not, in some legal newspaper printed and published in the county, or, if there be none, in some newspaper published at the state capital, stating the date of the first meeting of the viewers, and that any party interested may appear at the 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 the notice shall be filed in the office of the county auditor prior to the first meeting of the viewers.

[1905 c. 230 s. 39; 1927 c. 133 s. 1] (6728)

108.07 TIME LIMITATION. After the first day of October, 1927, no claim for damages under the provisions of section 108.06 shall be entertained or allowed unless duly presented within six years after the completion of the ditch.

[1927 c. 133 s. 2] (6728-1)

108.08 CHANGES. Subdivision 1. **Method of construction.** When proceedings are taken to lay out a drainage ditch according to law, the same laid out and established, the contract for the construction thereof let, and it be impossible, by reason of unfavorable weather or other good cause, for the contractor to construct the same, and the engineer in charge of such ditch concludes, after examination, that better results can be obtained by a different method of construction, thereupon, upon a petition of not less than 75 per cent of the owners of the land affected by the construction of the drainage ditch, as shown by the viewers' report in the proceedings, and upon the filing with the auditor of the county where the proceedings are pending, in case of a county ditch, or with the clerk of the district court where the proceedings are pending, in case of a judicial ditch, by the contractor and his bondsmen of an agreement in writing consenting thereto, the county auditor or the county clerk or the county auditors, as the case may be, may alter or modify the contract theretofore entered into with the contractor as to the manner, method, or time within which the drainage ditch shall be constructed, in accordance with the recommendation of the engineer in charge thereof, upon the filing of the recommendation with the auditor, or auditors, or the clerk, as the case may be.

Subdivision 2. **Alteration.** If after the establishment of any county or judicial ditch and before the completion thereof it shall become apparent that the ditch, or any of the branches thereof, should be enlarged, deepened, or otherwise changed, or that a change or alteration in the location should be made for the better service thereof, the county board, in case of a county ditch, or the court, in case of a judicial ditch, may authorize such changes as the engineer shall recommend. Before any action shall be taken by the court or the county board, as the case may be, a petition signed by 25 per cent of the resident owners of lands affected by the ditch, as named in the order establishing the ditch, not exceeding in any case more than 50 such resident owners, shall be filed with the county auditor, if a county ditch, or with the clerk of court, if a judicial ditch, setting forth the necessity for the changes or alterations in the ditch. At the time of filing the petition, one or more of the petitioners shall give a bond, with good and sufficient freehold sureties, payable to the county, to be approved, including amount and sureties, by the court or the county auditor, as the case may be, conditioned to pay all expenses in case the county board or the court shall fail to make the alteration or change prayed for in the petition. The same notice shall be given as is given on the filing of an original petition for a new ditch. If upon the hearing of the petition the county board or the court, as the case may be, from the evidence considers it necessary or advisable that changes or alterations be made in the ditch, either in size, location, or otherwise, the county board or the court, as the case may be, shall have authority to resubmit the same to the engineer who had charge of the ditch or appoint a new engineer to reexamine the ditch and make report as to changes or alterations he may deem necessary for the betterment of the ditch. The engineer shall within 30 days make report as to the changes and alterations for the improvement of the ditch. If changes and alterations in the ditch are recommended by the engineer, the viewers shall reexamine the ditch with the proposed changes and alterations and shall within 20 days after the filing of the engineer's report file with the auditor or with the clerk of court, as the case may be, their amended report.

Subdivision 3. **Procedure.** Upon the filing of the amended viewers' report with the county auditor, in the case of a county ditch, or with the clerk of the district court, in the case of a judicial ditch, the county auditor or the clerk of court,

as the case may be, shall give the same form of notice as was given on the filing of the original viewers' report and thereupon procedure identical with the proceedings of sections 106.17 and 106.24 shall be had and followed and the court or the county board, as the case may be, shall have the same powers as provided by law as upon the hearing of the original viewers' report thereon.

[1907 c. 138 s. 1; 1917 c. 350 s. 1] (6765)

108.09 ENGINEER'S REPORT; HEARING; NOTICE OF HEARING; ORDER.

If the contract is so modified or altered, the engineer shall report to the board of county commissioners, in a county ditch, and to the judge of the district court, in a judicial ditch, the difference, if any, in the cost of construction and the difference, if any, in the benefits that will accrue to benefited lands or public roads and the difference, if any, in the damages which will result to lands or property by reason of such modification or alteration and the changes, if any, which should be made in the order establishing the ditch, or in the viewers' report, or in the engineer's report therein, as may be necessary to make the same conform to the modified or altered contract. The board or the judge, as the case may be, shall thereupon cause to be given three weeks' published notice in the official newspaper of any county in which the ditch is situated of the time and place of the hearing to consider the questions and issues involved in the report of the engineer, and to modify as may be necessary the original order establishing the ditch. The hearing shall be conducted as nearly as practicable in the same manner as the hearing for establishing a ditch provided for in Laws 1905, Chapter 230, and such board or the judge, as the case may be, may thereupon make a supplementary order modifying or amending the original order establishing a ditch or the viewers' or engineer's reports therein, or each or all of them, as necessity may require, which order shall be supplementary to and amendatory of the original order establishing the ditch and shall be filed and may be appealed from in the same manner and form as an original order establishing a ditch under Laws 1905, Chapter 230, and shall have the same force and effect as if a part of the original order establishing the ditch.

[1907 c. 138 s. 2] (6766)

108.10 ACCEPTANCE BY ENGINEER. The engineer shall accept the ditch or any part thereof constructed under such modified or altered contract in the same manner as is now provided by law for the acceptance of the construction of public ditches under Laws 1905, Chapter 230.

[1907 c. 138 s. 3] (6767)

108.11 MODIFICATION OF CONTRACT BY AGREEMENT. Nothing contained in sections 108.08 to 108.11 shall in any manner prevent the persons whose lands are affected by the construction of any such county or judicial ditch from uniting in a written agreement with the contractor and his bondsmen for the alteration or modification of any such contract which the engineer may in writing recommend and to which he shall consent, as to the manner or time within which such ditch or drain shall be constructed. Thereupon the contract shall be deemed to be so altered and modified, upon the filing of the agreement and recommendations and consent with such county auditor or county auditors or clerk of the district court, as the case may be, and the ditch construction shall thereupon be accepted by the engineer with reference to such altered or modified contract.

[1907 c. 138 s. 4] (6768)

108.12 DITCHES IN COUNTIES CREATED AFTER PETITION; TRANSFER OF FILES. In all cases where proceedings are instituted by petition filed with the auditor of any county, praying for the construction of any public drainage ditch, drain, or watercourse, or for the repair thereof, and after the filing of such petition and before the bonds of the county have been issued for securing funds for payment of expenses of construction of such ditch, a new county is created and organized out of any of the territory embraced within the boundaries of the county wherein the petition is filed and such public ditch, drain, or watercourse, and the lands affected thereby, lie wholly within the boundaries of the new county, the auditor of the old county, upon demand to him made by the auditor of the new county, shall transmit to the auditor of the new county all petitions, reports, and files in the proceedings, and certified copies of all book entries therein, relative to any and all such ditches, drains, watercourses, or for the repair thereof, the same to be filed in his office, and all book entries and proceedings relative thereto shall be transcribed by the auditor of the new county into the records of his office, and thereafter the officers

of the new county shall proceed in such matter, and the drainage ditch proceedings shall be continued and completed in the same manner and with like force and effect as though the proceedings had been originally instituted in the new county.

[1911 c. 278 s. 1] (6772)

108.13 OBLIGATIONS AND CONTRACTS; MONEYS EXPENDED. At the time of the transmission of the petition and files mentioned in section 108.12 the auditor of the old county shall certify to the auditor of the new county an itemized statement of all obligations and contracts, and all indebtedness paid, incurred, or entered into by the old county relative to any such ditch, drain, watercourse, or repairs thereof, verified by the auditor of the old county, and the same shall be assumed and paid, carried out and entered into by the proper officers of the new county, the same as if originally made and entered into by the new county, and all moneys paid out or expended relative to any such ditch, drain, watercourse, or the repair thereof, by the old county prior to such transmission, shall, with accumulated interest thereon, be paid into the treasury of the old county by auditor's warrants of the new county, payable as provided by law for payment of warrants for expenses of construction of drainage ditches under drainage laws of this state.

[1911 c. 278 s. 2] (6773)

108.14 DITCHES PARTLY IN COUNTIES CREATED AFTER PETITION; TRANSFER OF FILES; PROCEEDINGS; APPORTIONMENT. In all cases where proceedings have been instituted by petition for the construction of a public drainage ditch, drain, watercourse, or for the repair thereof under conditions mentioned in section 108.12, except that such ditch, drain, or watercourse, or the lands, roads, or public corporations assessed, or to be assessed, for the benefits arising therefrom, shall lie partly within the old county and partly within the new county, but such construction, or the repair thereof, shall not have been completed and bonds for securing funds for payment of expense of construction have not been issued, the auditor of the old county shall immediately certify and transmit to the clerk of the district court in and for the old county all petitions and files in his office relative to such construction, together with all book entries and proceedings relative thereto, and thereupon such district court and such respective counties and the county officials of the old and new counties, shall have jurisdiction thereof, and shall proceed from the completed stage of proceedings, the same as if petition for such ditch were originally filed in the office of the clerk of the district court, and thereafter all further proceedings shall be had in the court as in the case of judicial ditches and with like force and effect as though originally commenced in the court, and the clerk shall forthwith proceed to cause to be filed in the office of the auditor of the new county certified copies of all instruments which would have been required had such proceedings been originally instituted in such court and all payments made and liabilities incurred by the old county, prior to the court assuming jurisdiction, shall be apportioned between the old county and the new county, as in the case of judicial ditches, and paid upon the order of the district court.

[1911 c. 278 s. 3] (6774)

108.15 OUTSTANDING BONDS; ASSUMPTION OF INDEBTEDNESS; AGREEMENT. If, prior to the creation of any such new county, such old county shall have established or constructed any such ditch, drain, or watercourse, the whole or any part of which, or any parts of the land assessed for benefits arising therefrom, lie within the territory of the new county, for the construction of which the old county has issued its bonds and interest coupons, the same being outstanding at the time of the creation of the new county, the new county shall assume and pay a share of such outstanding bonds and accumulated interest in proportion to the amounts of benefits assessed and levied against lands and roads, public and private corporations within the territory, respectively, of such old county and such new county; provided, that from the total amount of assessments of benefits levied for such construction and paid into the treasury of the old county prior to the creation of the new county, or to the apportionment herein provided for, as payment upon the bonds and interest coupons issued against such construction, shall be deducted the total amount of money paid by such old county prior to the creation of such new county or to such apportionment, upon such bonds and interest coupons, and the balance of the money remaining in the treasury of the old county to the credit of such ditch shall, after such deduction, be apportioned between the old county and the new county in the same proportion as the total amount of assessments of benefits in each county bears

to the total assessment of benefits levied for such construction as shown by the viewers' report, approved as provided by law, and the amount due the new county shall be paid by the auditor's warrant of such old county to such new county. The amount of such indebtedness to be assumed and paid by the new county and the amount of such money in the treasury of the old county to be paid to the new county shall be ascertained and agreed upon by the auditors of the old county and the new county, and, for that purpose, they shall meet at the auditor's office in the old county upon ten days' notice given by either auditor and served upon the other. A written agreement stating all the facts so ascertained shall be signed, in duplicate, by both auditors and filed in their respective offices, and shall be final and conclusive as to all facts therein stated. If the county auditors are unable to agree as to the facts to be so ascertained, they shall call to their assistance a disinterested auditor of any other county in the state, and the auditors shall proceed to ascertain the facts, and the agreement, if signed by any two thereof, shall have the same force and effect as if signed by the auditor of the old county and the auditor of the new county and shall be final and conclusive as to all facts so ascertained.

[1911 c. 278 s. 4] (6775)

108.16 DUTIES OF AUDITORS; PAYMENTS. At least 30 days before any bond or interest coupon mentioned in section 108.15, and which represents a debt to be partly assumed and paid by such new county, falls due, the auditor of such old county shall certify to the auditor of such new county the amount and due date thereof and the proportionate amount to be paid by the new county, and the auditor of the new county shall, on or before the due date thereof, draw his warrant therefor payable to the treasurer of the old county, as provided by law for payment of outstanding bonds under the drainage laws of this state, for the proportionate share to be paid by the new county, as herein provided, and deliver the same to the treasurer of the old county to be applied to the payment of such due indebtedness.

[1911 c. 278 s. 5] (6776)

108.17 ASSESSMENTS; LIENS; TRANSCRIPTION OF RECORDS; DUTIES OF OFFICERS OF NEW COUNTY. The auditor of the new county shall transcribe into the records of his office all records of the old county relative to the assessments levied or to be levied upon the lands, roads, or public or private corporations within the territory of the new county for ditches established by the old county prior to the organization of the new county, which ditches, or the lands assessed therefor, lie wholly or partly within the new county, as set forth in section 108.15; and the register of deeds of the new county shall transcribe into his official records all lien statements in such ditch proceedings recorded in the office of the register of deeds of the old county, and affecting lands in the new county.

Such transcribed records shall have all the force and effect of the original records, the same as if the proceedings to establish the ditch in question had been commenced in the new county; and the auditor of the new county shall thereafter extend upon the tax books of the county and of the proper subdivisions and public corporations thereof each annual assessment levied against and a lien upon the lands within the new county, in the same manner and with the same force and effect as if such ditch proceedings had been commenced and completed in the new county, and such annual assessments shall be thereafter paid into the treasury of the new county, in the same manner and at the same time as provided by law for the payment of county ditch assessments in this state, or as provided in the order establishing such ditch.

[1911 c. 278 s. 6] (6777)

108.18 SERVICES AND COMPENSATION OF OFFICERS. In carrying out the provisions of sections 108.12 to 108.19, the respective county boards, in the case of a county ditch, and the district court, in the case of a judicial ditch, may require the services of the county auditor, register, county attorney, clerk of court, and such other officers as shall be deemed necessary. The compensation of such county boards and such other officers for services performed in carrying out the provisions hereof shall be paid as provided by the general laws of this state in the establishment of county and judicial ditches and shall be in addition to any other salary or fees received by them in the performance of the regular duties of their offices.

[1911 c. 278 s. 7] (6778)

108.19 DITCHES IN ADJOINING COUNTIES DIVIDED AFTER PETITION IN CERTAIN CASES. Where any petition for a judicial ditch has been or shall hereafter be filed with the clerk of any district court of any county in this state,

praying for the construction of a public drainage ditch, partly within or affecting such county where such petition is filed, and partly within or affecting an adjoining county or counties, and where, after the filing of the petition and prior to the issuance of bonds for securing funds for payment of expenses of construction of such ditch, any such adjoining county has been or may hereafter be divided and a new county created out of a part of the territory thereof, and when such drainage ditch, so far as the same affects the territory comprising such adjoining county which was divided, only affects lands or municipal corporations wholly within the territory, of such new county, the provisions of sections 108.12 and 108.13 shall govern and be applicable.

[1911 c. 278 s. 8] (6779)

108.20 REASSESSMENT WHERE ASSESSMENT DECLARED INVALID; PRELIMINARY STATEMENT. When any county board has attempted to construct, repair, enlarge, or extend any county ditch, which may theretofore have been begun or constructed, and shall have caused or shall hereafter cause to be constructed, repaired, enlarged, or extended any such ditch or drain, and caused an assessment to be made therefor, which assessment shall have been heretofore or shall hereafter be set aside or declared invalid by any court for non-compliances with any law of the state or because such action was not justified or permitted by any law of the state, the county board shall with all reasonable dispatch proceed to reassess the property benefited by such ditch, as shown by the report of the viewers, and to that end shall prepare in tabular form a preliminary statement giving:

- (1) A description of each tract of land by them deemed damaged or benefited thereby;
- (2) The names of the owners of each of the tracts;
- (3) The total number of acres in each of the tracts;
- (4) The number of acres in each of the tracts by them deemed benefited or damaged thereby;
- (5) The amount that each of the tracts in their judgment is benefited or damaged thereby;
- (6) The entire cost of the construction, repair, enlargement, or maintenance of such ditch, drain, or watercourse.

In making the statement the names of the owners and the descriptions of the tracts shall be the same as nearly as practicable as the same appear in the county tax duplicates of the county.

[1911 c. 113 s. 1] (6780)

108.21 BENEFITS ASSESSED. Subdivision 1. **Public or corporate roads or railroads drained.** In making such preliminary statement and the final statement hereinafter provided for when any such ditch, drain, or watercourse drains in whole or in part any public or corporate road or railroad or benefits any such roads so that the roadbed or traveled track of any such road was made better by the construction of the ditch, drain, or watercourse, the county board shall estimate the benefits arising therefrom to such roads, roadbeds, or railroads, and the statements shall show such benefits, together with the names of the roads, roadbeds, and railroads benefited, and the amount of benefits to each, and all roads benefited by such ditch, drain, or watercourse, and all public or corporate roads or railroads so benefited in whole or in part shall be assessed the benefits received from the construction, repair, enlargement, or extension thereof, whether the ditch passes through the lands or along or near the line of such road or railroad or not, and the county board in estimating the benefits to lands, roads, or railroads not traversed by the ditch shall not consider what benefits such roads or railroads will receive after some other ditch, drain, or watercourse shall be constructed, repaired, enlarged, or extended, but only the benefits they shall have received by reason of the construction, repair, enlargement, or extension of the ditch, drain, or watercourse as it affords an outlet to the drainage of such lands, roads, or railroads.

Subdivision 2. **Lands liable.** All lands owned by any land company or railroad company benefited by any such ditch, drain, or watercourse shall be liable to and shall pay for such benefits, the same as the owners of taxable lands.

[1911 c. 113 ss. 2, 3] (6781) (6782)

108.22 HEARING; NOTICE. After having completed such preliminary statement, the county board shall fix a time and place for a hearing on the same and cause the county auditor to give notice of the completion of the preliminary state-

ment and of the time and place so fixed for the hearing thereon by having a copy of the preliminary statement, together with a notice of the time and place so set for the hearing thereon signed by him published for two successive weeks at least once in each week in a newspaper printed and published in the county, if there be one, or, if not, in a newspaper printed and published at the capital of the state, and by having a copy of such printed notice at least ten days before the time set for the hearing posted in a public place in each township where the ditch, drain, or watercourse is located, and also at the front door of the court-house in the county, and by also mailing a printed copy of the notice at least ten days before the time set for the hearing to all non-residents of the county interested in such work whose address is known to him or can be ascertained by inquiring at the county treasurer's office.

If the county board is unable to proceed at the time stated in the notice by reason of non-compliance with any of the provisions of this section, the county board shall fix a new time and place for such hearing, and proceed de novo to give the notice herein provided for and in the manner herein set forth.

[1911 c. 113 s. 4] (6783)

108.23 COUNTY BOARD MAY CHANGE DAMAGES OR BENEFITS; AMENDED PRELIMINARY STATEMENT; NOTICE. The county board, at the time set for the hearing (which hearing may be adjourned from time to time until it shall complete the assessment and make the final order confirming the same, as hereinafter provided), shall proceed to hear the same, at which hearing all parties interested in the matter shall have the right to be present and be heard in person or by attorney as to any and all matters contained in or which should be contained in such statement, and the county board at the hearing shall have the power to raise, lower, or alter the amount of any and all damages and benefits as fixed in the preliminary statement. The county board shall have the power to amend the statement by altering or adding thereto so as to make the same conform to the requirements of sections 108.20 to 108.33. If the county board shall alter or add thereto, except to raise or lower the amount of benefits or damages assessed, a new notice of hearing of such amended preliminary statement shall be given as and in the manner provided in section 108.22. After the assessment shall have been completed in the manner herein set forth the county board shall confirm the same by an order to be entered in its records and the same, as so confirmed, shall constitute the assessment of damages and benefits in the matter, except as it may be altered on appeal. After the making of the final order the county auditor will cause notice to be given by causing a copy of the completed statement to be once published in the same newspaper in which the preliminary statement was published, together with a statement that it is the completed statement as confirmed by the county board.

[1911 c. 113 s. 5] (6784)

108.24 APPEAL TO DISTRICT COURT. Any person or corporation feeling aggrieved by the assessment as confirmed by the county board may appeal from the order confirming the same upon the following grounds:

- (1) That the amount of damages allowed to any tract in which he is interested is inadequate;
- (2) That the amount of benefits assessed against any tract of land in which he is interested is greater than the actual benefits received by it;
- (3) That the county board had no jurisdiction to make the final order confirming the assessment.

The appeal may be taken by the appellant filing with the county auditor a notice of appeal, which shall briefly state the grounds upon which such appeal is taken, accompanied by an appeal bond, with at least two freehold sureties, to be approved by the auditor, conditioned that the appellant will duly prosecute such appeal and pay all the costs thereof. Such notice of appeal and bond shall be filed with the county auditor within 15 days after the publication of the notice of the completion of the assessment. In the event of any appeal being taken the county auditor shall within 20 days after the notice of appeal and appeal bond is filed make a complete transcript of the proceedings had before the county board under sections 108.20 to 108.33 and certify the same, together with all the papers filed in his office in the reassessment proceedings pertaining to such ditch, drain, or watercourse, including the notice of appeal and appeal bond, to the clerk of the district court, upon being

paid by the appellant the sum of \$2.00 therefor. If the appellant shall not pay such sum therefor before the expiration of the 20 days, the appeal shall be deemed abandoned.

[1911 c. 113 s. 6] (6785)

108.25 CONSOLIDATION OF CASES. If more than one party appeal the judge of the district court may order the cases to be consolidated and tried together, and the rights of each party shall be separately determined by the jury in its verdict. In all cases of appeal the amount awarded by the jury shall stand for and in the place of the amount from which the appeal was taken. No assessment shall be set aside unless the party appealing shows that he has been injured thereby.

[1911 c. 113 s. 7] (6786)

108.26 TABULAR STATEMENT; DUTY OF AUDITOR; LIEN. Within 20 days after the confirmation of such assessment by the county board, if no appeal is taken within 20 days from the final determination taken or, if an appeal is taken within 30 days from the final determination of all appeals taken, the county auditor shall make in tabular form a statement showing the following facts in the order named:

(1) A description of each tract of land benefited by the construction, repair, enlargement, or extension of such work;

(2) The names of the respective owners, as shown by the tax lists of the county, of the premises;

(3) The amount of the benefits assessed against the premises, respectively.

This statement he shall sign and acknowledge before some officer authorized to take acknowledgments, and cause to be recorded in the office of the register of deeds of the county, and posted upon the abstract books in his office, if he has any such books, and the amount for which each tract of land, as shown by the statement, is assessed, shall be and remain a lien upon such lands, public or corporate roads, or railroads from the time of filing the same in the office of the register of deeds until fully paid, the payment to be made as provided by sections 108.27 to 108.33, and the filing of the statement in the office of the register of deeds shall constitute notice to all the world of the existence of such lien. The statement, after it has been recorded, shall be returned by the register of deeds to the county auditor and by him carefully preserved and filed with the other papers relating to the ditch, drain, or watercourse.

[1911 c. 113 s. 8] (6787)

108.27 INTEREST. The amount each tract of land, public or corporate road, or railroad shall pay for the location, construction, and establishment of such ditch, drain, or watercourse shall bear interest, from the date of the filing of the auditor's statement in the office of the register of deeds, at the rate of six per cent per annum until fully paid, and the interest shall constitute an additional lien upon the lands, public or corporate road, or railroad upon which the assessments bearing the interest shall be a lien, which interest when paid shall be computed by the county treasurer.

[1911 c. 113 s. 9] (6788)

108.28 PAYMENT BY PUBLIC OR CORPORATE ROADS OR RAILROADS. All public or corporate roads or railroads shall pay the amounts taxed against them, as follows:

When any public highway is benefited by such ditch, or drain the town which is by law charged with the duty of keeping the highway in repair shall be assessed for the amounts of benefits accruing to such highway in such town by reason of the ditch or drain, and the same shall be paid out of the treasury of such town upon demand of the county auditor; and when any railroad or the lands of any railroad company are benefited by the ditch, drain, or watercourse, the railroad or railroad company shall be assessed the benefits received by the land by reason of the construction of the ditch, drain, or watercourse, the same as other lands benefited are assessed, which assessments shall be collected from such railroad corporation or company in the same manner as personal taxes are collected by law, or the liens against any such company may be foreclosed by suit in the same manner as provided by law for the foreclosure of mortgage liens upon real estate by action.

[1911 c. 113 s. 11] (6790)

108.29 PAYMENT OF DAMAGES. When any one shall be entitled to damages by reason of the construction of such ditch, drain, or watercourse and has not already been paid the amount of such damages a warrant shall be drawn therefor, signed by the chairman of the county board and attested by the county auditor, in

favor of the party entitled to receive the damages, which warrant shall become due and payable, with interest thereon from the time of the letting of the contract for the construction of the ditch, drain, or watercourse, upon the filing of the statement in the office of the register of deeds. The county shall be bound for their payment. If there is then sufficient money in the county treasury belonging to the ditch, drain, or watercourse fund to pay the warrants, they shall be paid out of the same; if not, such funds shall be used as far as they will go and the balance paid out of the general county fund. The amount so taken from the general county fund shall be replaced from the moneys collected on account of the benefits assessed as soon as collected, so far as they shall be sufficient for and are available for this purpose.

[1911 c. 113 s. 12] (6791)

108.30 WARRANTS TO BE FULL COMPENSATION. The conforming with the provisions of sections 108.20 to 108.33 and the issuance of warrants for damages shall be held and construed to be a just and full compensation to all persons interested in the lands damaged by the construction, repair, enlargement, or extension of the ditch, drain, or watercourse, and the condemnation of all lands and rights taken for such construction and the maintenance of the ditch, drain, or watercourse.

[1911 c. 113 s. 13] (6792)

108.31 COMPENSATION OF COUNTY BOARD; EXPENSES; BENEFITS. The members of the county board, in addition to the compensation allowed them under the general law, shall receive as special compensation for their labors performed under sections 108.20 to 108.33 the same per diem and mileage allowed under the general law for the actual time devoted by them in carrying out the provisions of sections 108.20 to 108.33, and the auditor shall receive such compensation for his services under sections 108.20 to 108.33 as shall be allowed him by the county board. All the expenses of the proceedings under sections 108.20 to 108.33, and the entire cost of the construction, repair, enlargement, or extension of such ditch, drain, or watercourse, over and above the total amount of benefits assessed, shall also be paid by the county out of its general fund. The amount of benefits assessed against the property benefited shall not exceed the total amount of the contracts awarded for the construction, repair, enlargement, or extension of the ditch, drain, or watercourse, anything in sections 108.20 to 108.33 to the contrary notwithstanding.

[1911 c. 113 s. 14] (6793)

108.32 RECORDS AS EVIDENCE. The record thereof and a certified copy of the record of any order of the county board made under sections 108.20 to 108.33 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.

[1911 c. 113 s. 15] (6794)

108.33 AMOUNTS PREVIOUSLY PAID TO BE CREDITED; APPEAL. All persons who shall pay any assessments made for the same purposes for which the second assessment is made because of the invalidity of such first assessment shall be credited with the amount paid by them on such assessment, and if such payments have exceeded the amount of the second assessment, as made under the provisions of sections 108.20 to 108.33, the amount overpaid shall be repaid to the persons who have made such payments, upon the allowance of a claim therefor by the county board and by means of a warrant of the county auditor upon the general ditch fund of the county, if any, and, if none, from the general revenue fund of the county. An appeal will lie from the allowance of a claim of this kind the same as from the allowing of ordinary claims against the county.

[1911 c. 113 s. 16] (6795)

108.34 TAXATION; REDUCTION IN ACREAGE BY DITCH TO BE CONSIDERED. In all cases where a drainage ditch has been or shall be constructed under county or judicial ditch proceedings, it shall be the duty of the persons and boards having to do with the making of the assessment, when determining the valuation of such land for taxation purposes, to take into consideration a reduction in the acreage of each tract or lot sufficient to cover the amount of land actually used for the ditch and its waste bank.

[1913 c. 208 s. 1] (6797)

108.35 ADDITIONAL ASSESSMENTS FOR INTEREST ON DITCH BONDS. When a ditch has been established by county or judicial proceedings and the county

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board has issued and sold bonds to pay a part or the entire cost thereof, and has assessed the lands benefited, which assessments have been paid and there are insufficient funds to pay the interest due or to become due upon such bonds, the county board is authorized to determine the amount that each piece, parcel, or tract of land shall bear to pay such interest deficiency and to assess the same according to the rules which governed the first assessment.

[1941 c. 173]