

CHAPTER 109

DRAINAGE; TOWN

Sec.		Sec.	
109.01	Definitions	109.22	Suspension; completion, certificate of
109.02	Petition	109.23	Tabular statement and summary
109.03	Proceedings	109.24	Tabular statement, how executed; record;
109.04	Notice of hearing		lien
109.05	Hearing	109.25	Collection of assessments; interest; discharge
109.06	Engineer's report; viewers		of lien
109.07	Attorney at law	109.26	Roads benefited; liability of municipalities;
109.08	Establishing ditch		assessments, how collected
109.09	Ascertaining benefits and damages	109.27	Assessments, how disposed of
109.10	Costs and expenses	109.28	Documents, where filed
109.11	Securities required	109.29	Meetings of board, how called
109.12	Authority to enter lands	109.30	Appointment of other engineers
109.13	Appeal to district court; jury	109.31	Duty of railroads; penalty
109.14	Appeal from order refusing to establish	109.32	Repairing township ditches
109.15	Appeal to supreme court	109.33	Obstructing or injuring work; failure of offi-
109.16	Extension of time for construction		cers; penalties
109.17	Job, how sold; bond	109.34	Compensation of engineer and viewers
109.18	Bond and contract	109.35	Parties not affected cannot question proceed-
109.19	Modification of plans		ings
109.20	Failure of contractors	109.36	Record as evidence
109.21	Damages, how paid	109.37	Orders and notices, how served

109.01 DEFINITIONS. Subdivision 1. **Words, terms, and phrases.** Unless the language or context clearly indicates that a different meaning is intended, the following words, terms, and phrases, for the purposes of this chapter, shall be given the meanings subjoined to them.

Subdivision 2. **Ditch.** "Ditch" includes any open, covered, or tiled ditch or drain of any ditch or drain in part open and in part tiled or covered, and any drain, water-course, or creek, and any side, lateral, spur, or branch ditches.

Subdivision 3. **Board.** "Board" means the board of supervisors of the town in which the lands or roads described in the petition are located; or, if the lands or roads are located in more than one town, then "board" means all of the supervisors of each one of the towns in which any of such lands or roads are located acting together as one body at a legally called meeting. The clerk of the town in which the petition was filed shall act as clerk of such board and shall keep a detailed record of its doings. Two or more of these supervisors shall constitute a quorum of this board and a majority of the supervisors present shall have power to act.

Subdivision 4. **Town clerk.** "Town clerk" refers to and means the clerk of the town in which the petition was filed.

Subdivision 5. **Town treasurer.** "Town treasurer" refers to and means the treasurer of the town in which the petition was filed.

Subdivision 6. **Engineer.** "Engineer" includes any competent surveyor.

[1909 c. 127 s. 1; 1917 c. 293 s. 1] (6841)

109.02 PETITION. Before any ditch shall be established under this chapter there shall be filed with the clerk of any town in which any part of the ditch is proposed to be located a petition therefor, signed by one or more persons or corporations owning lands which will probably be benefited by the construction of the ditch, or by the chief executive officer of any city or village whose streets will probably be benefited by the construction of the ditch, or by the board of supervisors of any town whose highways will probably be benefited by the construction of the ditch, setting forth the necessity therefor, and that it will be of public benefit or promote the public health, with a description of the proposed starting points, routes, and termini and of the general character, size, and depth of the ditch. The petition shall also contain a legal description of all lands through which the proposed ditch shall run, or to be drained, as nearly as can be ascertained, and contain a description of all public roads and streets likely to be benefited thereby, as nearly as can be ascertained. The town board of any town shall have the same power of condemnation for the purpose of town drainage projects as are possessed by county boards in county ditch proceedings. In the petition the petitioners may, at their option, ask the appointment of an engineer to perform the duties hereinafter in this chapter specified, and may at their option ask the appointment of an attorney at law to

perform the duties hereinafter in this chapter specified. They may ask for the appointment of three resident freeholders of the town not interested in the construction of the proposed work and not of kin to any of the parties known to be interested therein, as viewers, to meet at a time and place fixed by the board. The petition may include any side, lateral, spur, or branch ditches necessary to secure the object of the improvement and may ask for the different parts of the ditch to flow in different directions with more than one outlet. No meandered lake adjoining an incorporated village, or within four miles of any city of the fourth class, or upon which any incorporated village is a riparian owner, shall be drained or lowered under the provisions of this chapter unless by the approval of a majority vote of the legal voters of such village or city at any annual election or a special election held for that purpose.

In case any such lake has no natural outlet and, at times of high-water, the run-off from adjacent lands fills up the bed of the lake so as to damage adjacent lands, then, and in such case, it shall be legal, without the vote of such cities of the fourth class, to lower the surface of such lake by drainage until it shall reach the normal stage.

The special election, if any, held for such purpose, shall be called in the way and manner provided by law for calling a special election.

[1909 c. 127 s. 2; 1919 c. 471 s. 14] (6842)

109.03 PROCEEDINGS. Upon the filing of the petition the proceedings shall be designated and numbered by the town clerk as "Town Ditch No..... of town of....." and may be so referred to in all subsequent proceedings, regardless of whether or not the ditch is in fact in more than one town.

[1909 c. 127 s. 3; 1917 c. 380 s. 1; 1919 c. 471 s. 14 1/4] (6843)

109.04 NOTICE OF HEARING. The town clerk shall forthwith fix a time and place for the hearing on the petition and shall forthwith give notice of the filing of the petition and of the time and place of the hearing thereon, as follows:

(1) By posting at least three weeks prior to the hearing a copy of the notice and the petition in a manner likely to attract attention in each of three of the most public places in each township in which lands described in the petition are located;

(2) By filing at least three weeks prior to the date of the hearing a copy of the notice and the petition in the office of the clerk of each town, village, or city in which lands described in the petition are located;

(3) By mailing at least three weeks prior to the hearing a copy of the notice and the petition to each owner of lands described in the petition who is a resident of the state and whose post-office is known to the town clerk or can be ascertained by him from the petitioners; and

(4) By serving at least three weeks prior to the hearing a copy of the notice upon each occupant of the several tracts of land described in the petition.

When the notice is not legally given or is defective for any reason the town clerk shall give a new notice of a time and place for a hearing on the petition, as provided in this chapter.

[1909 c. 127 s. 4] (6844)

109.05 HEARING. At the time and place set for the hearing of the petition, or at any time or place to which the hearing may be adjourned from time to time as necessity may require, but not otherwise, the supervisors of all the towns containing lands described in the petition shall meet and hear and consider the petition, acting as one board.

[1909 c. 127 s. 5] (6845)

109.06 ENGINEER'S REPORT; VIEWERS. If the petition asks for the appointment of an engineer in the matter, the board shall at the hearing, before taking final action on the petition, appoint a competent engineer to make plans and specifications for the ditch and to superintend the construction thereof when established. Before entering upon his duties the engineer shall give a bond, in the sum fixed by the board, payable to the towns in which any part of the ditch is proposed to be constructed for the use of such towns and for the use of all persons aggrieved or injured by the negligence or malfeasance of the engineer, to be approved by the town clerk, conditioned that the engineer will diligently and honestly and to the best of his skill and ability perform his duties as such engineer. The engineer shall not be required to continue his bond after the conclusion or abandonment of the work. He shall take an oath to faithfully perform his duties, make a survey of the

ditch, prepare detailed plans and specifications for the construction thereof, and make prompt written report of his doings to the board. Upon the appointment of the engineer the board shall adjourn the hearing a sufficient time to enable the engineer to make and file his report in the office of the town clerk. Upon the filing of the engineer's report in the office of the town clerk the board shall immediately fix a time and place in which the viewers, if any are appointed, are to meet for the purpose of viewing the proposed ditch. If no viewers have been appointed then the committee appointed by the board shall immediately proceed with or without the engineer to assess benefits and damages by reason of the construction of the proposed ditch, in accordance with the rules as mentioned in section 109.09, and file its report in the town clerk's office. The town clerk shall forthwith fix a time and place for a hearing on this report and again give notice to all parties interested and to all land owners whose lands are liable to be benefited or damaged by reason of the construction of the proposed ditch. The notice shall conform in all requirements as the notice required on the petition as set forth in section 109.04.

[1909 c. 127 s. 6; 1917 c. 380 s. 2] (6846)

109.07 ATTORNEY AT LAW. If the petition asks for the appointment of an attorney at law in the proceeding, the board shall forthwith at the beginning of the hearing by resolution employ an attorney at law to superintend the drafting of all papers, contracts, and orders in the proceeding and to give legal advice on all legal matters and questions arising in the proceeding. The rate of compensation of the attorney at law may at the option of the board be fixed in the resolution employing him.

[1909 c. 127 s. 7] (6847)

109.08 ESTABLISHING DITCH. All persons interested may appear and be heard by and before the board. If the board from such evidence as may be adduced before it shall find that all of the proceedings in the matter have been in accordance with the provisions of this chapter, that the estimated benefits of the work are greater than the total cost, including damages awarded, and that the work will be of public utility or promote the public health, it shall establish the ditch by an order to be signed by it and include in the order, either expressly or by reference to maps, plats, specifications, or papers on file in the office of the town clerk in the matter, an accurate description of the ditch and of the starting points, routes, and termini, size and depth of the ditch, and whether open, tiled, or covered. The board shall fix a time for the completion of the ditch and include in the final order establishing the ditch a tabular statement showing the names of the owners of, the legal descriptions of, and the number of acres in, each tract of land to be benefited or damaged, the names to be the same as appear on the tax duplicates of the county, the estimated number of acres in each tract to be benefited or damaged, the number of acres added to any tract by the change of any watercourse and the location and value of the added land, the damage, if any, to riparian rights pertaining to any tract, and the amount that such tract will be benefited or damaged by the construction of the work. When any ditch established under this chapter benefits either in whole or in part any public road or street within the limits of any town, village, or city charged with the repair thereof the board shall estimate and report separately in such tabular statement the benefits to each public road or street, together with the name of the town, village, or city charged with the repair thereof. The board shall report in such tabular statement the damages awarded for injury to any road or roadbed; and, after the construction and maintenance of any bridges, culverts, or other work necessary to the establishment of such ditch, make an order setting forth that fact and the reasons therefor.

[1909 c. 127 s. 8; 1917 c. 380 s. 3] (6848)

109.09 ASCERTAINING BENEFITS AND DAMAGES. The board, in ascertaining benefits and damages, and the court, on appeal, shall be guided as far as the same are applicable by the rules for ascertaining benefits and damages in case of county ditches, as set forth in Laws 1905, Chapter 230.

[1909 c. 127 s. 9] (6849)

109.10 COSTS AND EXPENSES. The ditch petitioners shall advance all costs and expenses of the ditch proceeding from its inception to its completion, including damages awarded and the costs of constructing the ditch, which costs, expenses, and damages so advanced shall be repaid pro rata to the petitioners as hereinafter provided. They shall promptly, upon making such payments, whether complete or

partial, file with the town clerk a verified statement showing in detail the amount and date of payment and to whom and for what paid.

[1909 c. 127 s. 10] (6850)

109.11 SECURITIES REQUIRED. The board is hereby directed to require such securities as are necessary, suitable, and proper from the petitioners for the proper performance of all their duties under the terms of this chapter.

[1909 c. 127 s. 11] (6851)

109.12 AUTHORITY TO ENTER LANDS. For the purpose of making examinations and surveys, the board, the engineer, and any person named by the court, on appeal, are authorized to enter upon any land and to do any act necessary for the proper performance of their duties. Any person attempting to prevent or interfere with them shall be guilty of a misdemeanor.

[1909 c. 127 s. 12] (6852)

109.13 APPEAL TO DISTRICT COURT; JURY. Any person aggrieved may appeal from any order of the board made in the proceedings and filed in the office of the town clerk, determining any of the following matters:

- (1) The amount of benefits to any tract of land or to any public road or street;
- (2) The amount of damages allowed to any person, town, village or city;
- (3) Refusing to establish such proposed ditch.

To render such appeal effectual the appellant shall file with the town clerk within 20 days from the date of the filing of such order in his office a notice of appeal stating briefly the grounds upon which the appeal is taken, accompanied by an appeal bond to the town treasurer, in an amount of not less than \$250.00, to be approved by the town clerk, conditioned that the appellant will duly prosecute the appeal, pay all costs that may be adjudged against him, and abide the order of the court. Within 20 days after such filing the town clerk, at the expense of the appellant, shall file in the office of the clerk of the district court of the county in which the town clerk resides a complete transcript of all the papers and proceedings in the premises on file and of record in his office, including the notice of appeal. Any appellant deeming himself aggrieved by the determination in an order of the board establishing the proposed ditch as to the amount of his benefits or damages may demand in writing a jury trial to determine the amount of his benefits or damages and such demand shall be filed in the office of the clerk of the district court within 20 days after the filing of the notice of appeal in the office of the town clerk. If no such demand is filed, the appeal shall be tried by the court without a jury. The appeal shall be duly tried and determined at the next term of the district court held within the county beginning after the filing of such transcript and shall take precedence of all matters of a civil nature therein. If there be more than one appeal, they may be consolidated and tried together. If the appellant is unsuccessful, he shall pay to the town treasurer all of respondent's costs and disbursements to be taxed and allowed by and before the clerk of court. The construction of such ditch shall not be delayed or prevented by the prosecution of any appeal, if the petitioners shall give bond in amount and with sureties to be fixed and approved by the town clerk, conditioned for the payment of all damages finally awarded on the appeal and to abide the orders and judgments of the court entered thereon. It shall not be necessary to serve any notice of trial or file any note of issue in the district court on such appeal.

[1909 c. 127 s. 13] (6853)

109.14 APPEAL FROM ORDER REFUSING TO ESTABLISH. Upon an appeal from an order refusing to establish the ditch, the court shall hear the entire matter de novo without a jury and include in its final order and findings all of the matters and data required in the final order of the town board. As soon as final judgment is entered on an appeal a certified copy thereof shall be transmitted by the clerk of the district court to the town clerk, which shall be attached to the original order of the board and have the effect of modifying the original order so as to make it conform with the judgment.

[1909 c. 127 s. 14] (6854)

109.15 APPEAL TO SUPREME COURT. Any aggrieved party to the ditch proceeding may appeal to the supreme court, as in civil actions, from any final order made in the district court within 30 days after the filing of such order. The

notice of appeal shall be served on the clerk of the district court and need not be served upon any other person or corporation.

[1909 c. 127 s. 15] (6855)

109.16 EXTENSION OF TIME FOR CONSTRUCTION. When the letting of the contract for the construction of the ditch is delayed, either by lack of bidders or by appeals or by other proceedings in court, the town clerk shall by his order in writing extend the time limit in the order establishing the ditch for the construction thereof to compensate for the delay and as necessity may require.

[1909 c. 127 s. 16] (6856)

109.17 JOB, HOW SOLD; CONTRACT; BOND. Within ten days after the filing of the order establishing the ditch, the town clerk shall post a notice in each of three of the most public places in each of the towns through which the ditch extends, and in the office of the auditor of the county in which the ditch is located, of the time and place at which he will sell to the lowest responsible bidders the jobs of constructing the ditch. When the estimated cost of the construction is more than \$1,000, the town clerk shall also advertise such sale of jobs in two newspapers, one of which shall be the paper in which the delinquent tax list is published in the county in which the ditch is located, and the other a legal newspaper published nearest the proposed work. The notice shall state the approximate amount of work and the estimated cost and invite bids for the work as one job and also in such divisions as the petitioners may in writing request and reserve the right to reject any and all bids, and no bid shall be entertained which exceeds the estimated cost of the construction of the part of the work covered by the bid more than 30 per cent. The town clerk may adjourn such letting from time to time until the whole work shall be taken. If an engineer has been appointed, no contract shall be let without his approval. The town clerk may sell separately any job of building of flumes or other wood or masonry work, fencing, or other construction work specified, either directly or by reference, in the order establishing the ditch. The town clerk shall contract separately, in the name of the petitioners, with each party to whom any of such jobs are sold, requiring him to construct the same in the time and manner specified in the provisions of the final order establishing the ditch and take from him a bond, in the penal sum of not less than the contract price, payable to the petitioners, for the use of such petitioners and of all persons and municipalities and towns who may show themselves to be aggrieved or injured by any breach thereof or of the contract for which the bond is given, with sureties, to be by the town clerk approved, conditioned that the party will faithfully perform and fulfill his contract, and pay all damages which may accrue by reason of failure to complete the work in the manner and within the time required in the contract therefor, which bond shall include a stipulation that no change, extension, alteration, or addition to the terms of the contract or specifications shall in any wise affect the obligation of the principal or sureties on the bond. The contractors may each require the signatures of each of the petitioners to the contracts, and if any of the petitioners fail to sign the contracts, the contractors may require that an amount of money equal to the contract price be deposited with the town treasurer to secure payment of the contract price upon the completion of a contract.

[1909 c. 127 s. 17] (6857)

109.18 BOND AND CONTRACT. The bond and contract shall be attached to each other and the contract shall contain a specific description of the work to be done, either expressly or by reference to plans, specifications, the order establishing the ditch, or other papers on file in the town clerk's office, and provide that the work be done and completed as provided for in the final order establishing the ditch and subject to the approval of the engineer, if there be one, and, if not, then to the approval of the board. The contract and bond shall be drawn to the satisfaction of the engineer, if there be one, and to the satisfaction of the attorney at law, if there be one. Every such contract shall embrace all the provisions provided by law for the giving of bond by contractors for public works and improvements and for the better security of the parties performing labor and furnishing material in and about the performance of such contracts and provide that time shall be of the essence of the contract in that if there should be any failure to perform the work according to the terms of the contract within the time limited therein originally or by extension the contractor shall forfeit and pay to the petitioners a certain sum to be named therein and which shall be fixed by the town clerk, for each day that

such failure shall continue. No extension of time shall be granted unless applied for in writing to the town clerk, stating, to his satisfaction, good and sufficient reasons therefor, nor, in case there be an engineer, shall an extension of time be granted unless the engineer is satisfied that good and sufficient reasons exist therefor, nor shall any extension affect the right to enforce such forfeiture, if any, as shall occur after the time originally limited and before such extension or occurring after the limit of the extension. The bond shall expressly provide that the bondsmen shall be liable for all damages resulting from such failure whether the work be re-sold or not, and that any person showing himself injured by such failure may maintain an action upon such bond, in his own name, and that such actions may be successive in favor of all persons so injured. Such contractor shall be considered a public officer and such bond an official bond within the meaning of the statutory provisions construing such official bonds of public officers as security to all persons and providing for actions on such bonds by any injured party in the district court.

[1909 c. 127 s. 18] (6858)

109.19 MODIFICATION OF PLANS. The engineer, if there be one, or, if there be no engineer, the board, shall have the right to modify the plans and specifications contained in the final order establishing the ditch as the work proceeds and as circumstances may require; provided, no changes are made that will substantially impair the usefulness of any part of the ditch or substantially alter its original character or increase its total cost by more than two per cent of the total contract price for the construction thereof.

[1909 c. 127 s. 19] (6859)

109.20 FAILURE OF CONTRACTORS. If a job be not completed within the time fixed in the contract therefor, the town clerk shall forthwith notify the bondsmen in writing and order them to complete the job within a time specified by him. If the completion of the job be not undertaken by the bondsmen within 20 days after the date of the order, the petitioners may proceed to complete the job upon the giving of a bond containing like conditions as the original contractor's bond. The board shall determine the proportion of the contract price to be paid to the contractor and the proportion thereof to be paid to the parties completing the ditch. The petitioners and all other parties damaged or injured by the failure of the contractor to complete his job, as called for by his contract, shall have a right of action and recover against the bondsmen.

[1909 c. 127 s. 20] (6860)

109.21 DAMAGES, HOW PAID. No ditch shall be constructed until the damages assessed shall have been paid or deposited, as follows: Payment of the damages awarded may be made or tendered at any time after the filing of the order establishing the ditch, and acceptance of such payment shall be taken as a waiver of all objections to the order and to the proceedings leading thereto on the part of the payee and of all persons for whom he is lawfully empowered to act. In case any party to whom an award of damages is made be not a resident of the state or his place of residence be unknown or he be an infant or other person under legal disability, or, being legally capable, refuses to accept payment, or, if for any reason it be doubtful to whom an award should be paid, the petitioners may pay the sum to the town treasurer to be paid out under the direction of the board; and, unless an appeal be taken, as herein provided, such deposit with the town treasurer shall be deemed a payment of the award. If an appeal be taken from the award of damages, then, when judgment is entered fixing the amount of damages, the petitioners shall pay the damages as fixed by the judgment of the court, with costs and interest, in the same manner as if the damages, as fixed by the judgment of the court, with costs and interest, had been the amount originally awarded in the order establishing the ditch.

[1909 c. 127 s. 21] (6861)

109.22 SUPERVISION; COMPLETION, CERTIFICATE OF. If no engineer has been appointed, the ditch shall be constructed under the supervision of the board, which shall have authority to approve the same. If an engineer is appointed, the ditch shall be constructed under the supervision of the engineer, who shall have authority to approve the same. Upon the town clerk being advised that the ditch is completed, he shall notify the engineer, if there be one, and if not, call a meeting of the board. Thereupon the engineer or the board, as the case may be, shall inspect the ditch and if found complete and according to the order establishing the same

certify to that fact in writing and file the certificate in the office of the town clerk. The contractor shall, upon the certificate being filed, be entitled forthwith to payment in full from the petitioners.

[1909 c. 127 s. 22] (6862)

109.23 TABULAR STATEMENT AND SUMMARY. Upon the filing of the certificate of the board or of the engineer, as the case may be, the town clerk shall at the earliest practicable time make a tabular list and statement showing the following facts and in the order named:

(1) The names of the owners of all lands benefited by the construction of such proposed work, as appear from the order establishing the ditch as affected by the judgment of the district court on appeal;

(2) The description of such lands as the same appear in the order establishing the ditch as so affected, together with the total number of acres in each tract according to the assessment rolls or tax lists of the county;

(3) The estimated number of acres benefited in each tract of the land as shown as aforesaid;

(4) The estimated amount of benefits and damages to each of the tracts of land as the same appears in the order as changed, on appeal, by the district court;

(5) The respective public roads and streets benefited by the ditch, the estimated amount of such benefits to each of the public roads and streets, and the names of the respective cities, towns, and villages charged with the repair thereof, all as appear in the order establishing the ditch, as affected by the judgment of the court on appeal;

(6) The amount that each tract of land and each town, village, or city charged with the repair of the several benefited public roads and streets will be liable for and must pay for the ditch, to be determined as follows: The town clerk shall make a full statement showing the total cost of such ditch from its inception to its completion, to whom paid, for what paid, and the amount paid.

The statement shall be summed up to show in figures the total cost of each ditch and shall be attached to and form a part of the list and statement herein provided for. The total cost shall then be divided by the total estimated benefits for the rate of cost on each dollar of benefit, not using a smaller fraction than one-tenth of one mill. The amount of estimated benefits to each tract of land shall be multiplied by this rate and the result set down in the proper column opposite each tract of land, and the result so obtained shall be the amount that each tract of land will be liable for on account of such improvement. The amount of estimated benefits to each public street or road shall be multiplied by this rate and the result set down opposite the name of the town, village, or city charged with the repair of the respective roads and streets and shall be the amount that each town, village, or city will be liable for on account of such improvement. All assessments against tracts of land owned by any one or more petitioners shall be marked paid by the town clerk. It is the intention of this chapter that the balance of the assessments shall be ultimately paid over when collected to the petitioners to recompense them for the costs advanced on the ditch.

[1909 c. 127 s. 23] (6863)

109.24 TABULAR STATEMENT, HOW EXECUTED; RECORD; LIENS. Such tabular statement, signed by the town clerk in the presence of two attesting witnesses and acknowledged by him, shall then be duly filed with and recorded by the register of deeds of each county in which lands, roads, or streets described in the statement are located. The amount which each tract of land and each town, village, or city will be liable for and the interest thereon, as hereinafter provided, shall be and remain a first paramount lien on such land and on such town, village, or city until fully paid and take precedence of all mortgages, charges, encumbrances, or other liens. Such payments may be made as hereinafter provided. Such filing shall be deemed notice to all parties interested of the existence of such lien. The fees of the register of deeds for such recording shall be paid by the petitioners and included in the statement as a part of the total cost of the ditch. The recorded statement shall be returned to the town clerk and preserved by him with the other papers relating to the ditch.

[1909 c. 127 s. 24] (6864)

109.25 COLLECTION OF ASSESSMENTS; INTEREST; DISCHARGE OF LIEN. The amount that each tract of land, public or corporate road shall be liable

for on account of the location, construction, and establishment of any ditch shall bear interest from the time of the filing of the town clerk's statement in the office of the register of deeds at the rate of six per cent per annum until paid. Such liens may be paid to the county treasurer at any time after the recording of such statements in the office of the register of deeds. When payment of the full amount of such liens, with interest, shall at any time be made the town clerk, upon presentation of a receipt from the county treasurer to that effect, shall issue under his hand and seal a certificate of such payment and the same when recorded in the office of the register of deeds shall release and discharge such lien of record. On or before November fifteenth, next following such filing, the town clerk shall notify the auditor of each county, in which the statement is filed, of the time of such filing and of the book and page in the office of the register of deeds of the county at which the statement is filed and of the certificates of payment in full that he has issued, and the auditor shall thereupon forthwith enter on the tax lists of the county the amount of such lien then remaining unpaid against each tract of land subject thereto, as a tax on such tract, which shall be subject to and be collected with like penalties as all other taxes for that year, until all are paid.

[1909 c. 127 s. 25] (6865)

109.26 ROADS BENEFITED; LIABILITY OF MUNICIPALITIES; ASSESSMENTS, HOW COLLECTED. When any public road or street shall have been found by the order establishing the ditch to have been benefited, the town, village, or city which is by law chargeable with the duty of keeping such road or street in repair, shall be assessed, as hereinbefore provided, the pro rata amount of such benefits accruing to such roads or streets within the city, village, or town by reason of such ditch and the same shall thereupon become a liability of such city, village, or town and due on the filing of the town clerk's statement in the office of the register of deeds for record. Thereupon the town clerk shall forthwith issue a warrant to the treasurer of the town in which the petition was filed requiring him to pay into the ditch fund of the ditch the amount of the assessment of the town of which he is treasurer, which the town treasurer shall forthwith do upon receiving the warrant. The town clerk shall at the same time notify by mail or otherwise the clerk of each other town, city, or village of the amount due from the town, city, or village. If not paid to the town treasurer within 30 days, the town clerk shall notify the auditor of the proper county in writing thereof, who shall thereupon extend the amount thereof, with interest at six per cent per annum from the day of filing in the office of the register of deeds, against all the property in such city, village, or town liable to taxation and the same shall become due, be paid, and collected in the same manner and with like penalties as other taxes for that year.

[1909 c. 127 s. 26] (6866)

109.27 ASSESSMENTS, HOW DISPOSED OF. All assessments when collected by the county treasurer shall forthwith be transmitted to the town treasurer of the town in which the petition was filed, to be kept by him in a separate fund to be known as "Fund of Town Ditch No..... of Town of.....," and the petitioners for the ditch who have paid for the construction thereof and for the costs and expenses of the ditch shall be entitled to repayment from the fund of all moneys received by the town treasurer as the proceeds of the assessments and interest. Such payment shall only be made upon warrant drawn by the town clerk, who shall have power to draw such warrant without any order of the board.

[1909 c. 127 s. 27] (6867)

109.28 DOCUMENTS, WHERE FILED. All petitions, resolutions, orders, engineer's reports, notices of appeal, bonds of engineer, affidavits, oaths, and other instruments and papers having to do with the ditch proceeding shall be forthwith filed in the office of the town clerk where the petition was originally filed.

[1909 c. 127 s. 28] (6868)

109.29 MEETINGS OF BOARD, HOW CALLED. The town clerk of the town in which the petition is filed shall have power, when necessary, in the ditch proceeding to call a meeting of the board at such time and place as he may designate, upon three days' notice given each member of the board of supervisors of each of the towns in which any of the lands or public roads described in the petition are located. It shall be a sufficient statement of the objects and purposes of the meeting to say in the notice that it is called pursuant to the provisions of this chapter.

[1909 c. 127 s. 29] (6869)

109.30 APPOINTMENT OF OTHER ENGINEERS. If the engineer appointed by the board fails to qualify or at any time resigns, dies, or becomes disabled during the progress of the work, the board shall forthwith appoint another civil engineer having the qualifications required by this chapter in the stead and place of the engineer first appointed, who shall give the bond and take the oath required by this chapter and do all things remaining to be done by the original appointee.

[1909 c. 127 s. 30] (6870)

109.31 DUTY OF RAILROADS; PENALTY. It shall be the duty of every railroad company in this state, owning a right of way therein, over, under, or through which it shall be necessary to construct any ditch in any drainage proceeding hereunder, to permit such ditch to be constructed over its right of way; provided, such ditch across the right of way shall be an underground ditch when practicable, otherwise to be constructed in the usual and ordinary manner and so as not to impair the usefulness of the railroad. Any railroad company in this state refusing permission or continuing to obstruct the construction of such drain across its right of way after the same has been ordered and written permission demanded for the construction of the same by the contractor or party entitled to construct the same shall forfeit the sum of \$25.00 for each and every day that such refusal or obstruction continues or is made after such written demand, to be recovered in a civil action by the contractor or other party aggrieved.

[1909 c. 127 s. 31] (6871)

109.32 REPAIRING TOWNSHIP DITCHES. The town board of any town in which is located a town ditch shall have the same powers to repair such town ditch as are conferred upon the board of county commissioners by section 106.49 to repair county ditches. Any such town board may provide for repairs of such town ditch by a like petition and the same procedure as is provided for repairs of county ditches by section 106.49.

[1939 c. 384 s. 2] (6872-1)

109.33 OBSTRUCTING OR INJURING WORK; FAILURE OF OFFICERS; PENALTIES; TREBLE DAMAGES. Any person wilfully or negligently obstructing or in any way injuring any work constructed under the provisions of this chapter or allowing such ditch to be injured or obstructed by his live stock, horses, or cattle or diverting the water in the ditch or interfering with the construction of the ditch, shall be guilty of a misdemeanor and be liable to any or all persons or corporations injured by the act, in treble damages. Any town clerk, member of a town board of supervisors, town treasurer, register of deeds, or other officer who refuses or neglects to perform any of the duties imposed upon him by this chapter, shall be guilty of a misdemeanor and be liable to any person injured by this act, in treble damages. The county attorney of the county shall prosecute all criminal actions arising under this chapter.

[1909 c. 127 s. 33] (6873)

109.34 COMPENSATION OF ENGINEER AND VIEWERS. The engineer, if appointed, shall receive the sum of \$5.00 per day for every day he is necessarily engaged in performing the duties required of him by this chapter, and his actual and necessary expenses incurred in and about the same. The members of the board shall each receive \$3.00 for every day they are necessarily employed in acting on the ditch proceeding or in viewing the ditch and making up and filing their orders, and their actual and necessary expenses. The viewers shall receive the same compensation as the town board does for its work. Each rodman shall receive the sum of \$2.00 per day and may be allowed, in addition thereto, his board and lodging for each day he is employed. Each chainman, axeman, and other employee necessary to the prompt execution of the work of locating or inspecting the ditch shall be allowed \$1.50 per day and may be allowed, in addition thereto, his board and lodging for the time he is thus actively employed. The town clerk, the town treasurer, the register of deeds, the constable, and other officers shall be paid the same fees as are allowed by law for similar service or, if no fees are allowed, they shall receive reasonable compensation for their services. Such compensation shall be in addition to all sums allowed by law at the time of the passage of this chapter. The attorney at law shall receive reasonable compensation for his services. The fees per diem, compensation, and expenses shall be before payment audited and allowed by the town clerk and paid by the petitioners from time to time.

[1909 c. 127 s. 34; 1917 c. 380 s. 4] (6874)

109.35 PARTIES NOT AFFECTED CANNOT QUESTION PROCEEDINGS.

No person shall be permitted to take advantage of any error committed in any proceeding under this chapter either by the board, engineer, town clerk, town treasurer, or by the court or by any person, nor of any informality, error, or defect appearing in the record of such proceedings, unless the party complaining thereof is directly affected thereby. If the court shall at any time modify an assessment or enjoin the collection thereof or release any person from the liability thereof, it shall in no manner affect the liability or rights of any other person.

[1909 c. 127 s. 35] (6875)

109.36 RECORD OF EVIDENCE. The record of every order of the board laying out and establishing any ditch or refusing to establish the same under the provisions of this chapter and the record of every judgment on appeal, or a certified copy of such record, shall be prima facie evidence of the facts therein stated and of the regularity of all the proceedings prior to the making of the order or judgment.

[1909 c. 127 s. 37] (6877)

109.37 ORDERS AND NOTICES, HOW SERVED. All orders, judgments, and notices prescribed in this chapter, not otherwise provided for, shall be served by any constable or other disinterested person designated by the town clerk or by the court and such constable or other person so designated shall be paid the same fees by the petitioners as are allowed by law for similar service.

[1909 c. 127 s. 38] (6878)