

CHAPTER 110

WATERS; LAKE WATER LEVELS; DAMS

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**110.01 COUNTY BOARD MAY ESTABLISH UNIFORM WATER LEVEL IN NAVIGABLE LAKES.** When the whole or a major part of any navigable lake is situated in a single county, the county board, in order to improve navigation thereon, or to promote the public health or welfare, may establish a uniform height at which the waters of such lake shall be held and erect and maintain all dams necessary to such holding. It may acquire, in the name of the county, by gift or purchase, or by condemnation proceedings under chapter 117, any existing dam which may affect the level of such waters, and all other lands and property needful or convenient in fully carrying out the purposes hereof.

[R. L. s. 2552] (6588)

**110.02 RESOLUTION; FILING COPY AND MAP.** Upon the petition of one or more owners of land abutting upon such lake, or upon its own motion when it sees fit, the county board shall consider the establishing of such level; and, if satisfied that the improvement of navigation thereon or the public health or welfare requires it, shall adopt a resolution specifying the level at which such waters shall be maintained and designating the lands necessary to be acquired in order to raise and hold such waters to the height so fixed. It shall cause a certified copy of the resolution and a map of the lands to be filed with the clerk of the district court, and thereupon purchase or otherwise acquire such lands and cause such waters to be so raised and retained.

[R. L. s. 2553] (6589)

**110.03 ASSESSMENT OF BENEFITS AND DAMAGES.** When the entire cost of acquiring such lands and raising the waters of such lake to the specified height shall have been ascertained with reasonable certainty the county board shall apply to the court, upon two weeks' published notice, for the appointment of three disinterested resident freeholders of the state as assessors of benefits and damages. Upon proof of such service being filed, the court shall hear all persons interested; and, if satisfied that the same is proper, appoint such assessors, fix their compensation, and the time and place of their first meeting. The order of appointment shall state the maximum sum which may be assessed upon benefited lands.

[R. L. s. 2554; 1909 c. 211 s. 1] (6590)

**110.04 ASSESSMENT, HOW MADE; VACANCIES.** The assessors having duly qualified shall meet at the appointed time and place and perform their duties. They may adjourn from time to time giving oral notice to those present of the time and place of their next meeting. If vacancies occur or any become disabled, the court may appoint others without notice. They shall first determine what lands, if any, are specially benefited by the improvement, whether abutting upon the lake or not, and then assess upon each tract thereof such sum as they deem just, not exceeding in the aggregate the total sum to be assessed, with the cost of the assessment added. They shall hear and consider all pertinent testimony offered by interested parties, and when their assessment is completed shall sign and file the same with the clerk. The tracts so assessed shall be deemed to include all the lands benefited.

[R. L. s. 2555] (6591)

**110.05 APPLICATION TO CONFIRM.** The county board shall give two weeks' published notice of the filing of such assessment and of the time and place of its application to the court to confirm the same; and the notice shall set forth the boundaries of the district within which assessments have been made. The court, upon such application, shall consider all written objections filed before the hearing, which shall specify the particular tract to which they relate; but objections to the amount assessed shall be disregarded unless it be made to appear that in fixing the amount the assessors were governed by improper motives, or acted upon erroneous principles, or under an obvious mistake as to the facts.

[R. L. s. 2556] (6592)

**110.06 REVISION AND CONFIRMATION OF ASSESSMENTS.** The court may revise, correct, amend, or confirm such assessment, in whole or in part, or it may order a new assessment, in whole or in part; and, upon like notice, revise, correct, amend, or confirm the same. A copy of the assessment, as finally determined, or of so much thereof as relates to assessed lands lying in the several counties, shall be filed with the auditor of each such county; and such assessment shall be a lien upon the tract to which it relates. Such assessment may be distributed over a term of years, not exceeding ten, and shall be extended and collected with the taxes levied thereon.

[R. L. s. 2557; 1917 c. 395 s. 1] (6593)

**110.07 COST OF MAINTENANCE OF IMPROVEMENTS; MANAGEMENT.** The cost of maintaining such improvements, and so much of the cost of making the same as is not paid by the assessment of benefits, shall be borne by the county in which the proceedings are taken; and the county board thereof shall so control and manage the improvement as best to promote the public good.

[R. L. s. 2558] (6594)

**110.08 LAKES IN TWO OR MORE COUNTIES; WATER BOARDS.** When any such navigable lake lies partly within two or more counties having fewer than 150,000 inhabitants each, the chairman of each county board shall constitute a water board for the counties; and as such shall have all the powers and be subject to all the duties in respect to the waters of such lake that are conferred and imposed upon the county board by sections 110.01 to 110.07. Except as otherwise provided in section 110.09, all the provisions aforesaid relating to the raising and retention of the waters in navigable lakes, the acquiring of property therefor, and the assessment and collection of benefits arising therefrom, shall apply to cases wherein such water boards are formed.

[R. L. s. 2559; 1935 c. 99] (6595)

**110.09 ORGANIZATION; SPECIAL PROVISIONS.** The member of the water board from the most populous of the counties shall be its chairman, and the water board shall elect one of its members as the clerk thereof. All petitions to the water board may be filed with the clerk or delivered to one of its members. Its meetings shall be held at the county-seat nearest to such lake and all court proceedings instituted by the water board shall be conducted in the court sitting thereat. The cost of all such proceedings and all expenditures incident to such improvements shall be borne by these counties in equal parts and the title to all property so acquired shall be vested in the water board for the equal use and benefit of such counties. All damages awarded for lands taken or injured shall be paid by the county in which the lands lie, and all benefit money collected shall be divided by the water board amongst the several counties in proportion to the damages by them incurred.

[R. L. s. 2560] (6596)

**110.10 COUNCIL MAY ACQUIRE TITLE TO NAVIGABLE OR MEANDERED LAKES.** The council of any city or village within which the whole or any part of any navigable or meandered lake is situated or the council of any city or village which is a riparian owner on any such lake adjoining such village or city shall have all the powers in respect to establishing and maintaining the waters thereof at a uniform level that are conferred by this chapter upon county boards, and all the provisions of this chapter regulating the exercise of such powers shall be applicable in such cases. The council of any village or city may, for the purpose of this chapter, acquire title to any navigable lake which is not meandered. Such village or city is authorized to issue its certificates of indebtedness or bonds at a rate not to exceed six per cent per annum, to mature at a date corresponding with the date of payment

of assessments upon benefited property, as provided by section 110.06. This section shall not apply to cities or municipalities incorporated under a home rule charter.

[*R. L. s. 2561; 1909 c. 163 s. 1; 1917 c. 395 s. 2*] (6597)

**110.11 LOGGING DAMS AND WATERS EXEMPT.** All dams maintained and used for the sluicing and driving of logs, lumber, or timber shall be exempt from the provisions of this chapter relating to the maintenance of lakes at a uniform level and nothing herein shall be construed as authorizing any interference therewith, nor with the stage of any waters used in such sluicing or driving.

[*R. L. s. 2562*] (6598)

**110.12 IMPROVEMENT OF LAKES IN CERTAIN COUNTIES.** When the whole or major part of any navigable lake in this state is situated in a single county having a population of not more than 18,000 the county board of that county, in order to improve navigation on the lake or to promote the public health or welfare, may appropriate a sum not exceeding \$1,000 in any one year, for any or all of the following purposes:

To erect or maintain sufficient dams or embankments upon and along the shores of the lake or across any of its outlets;

To raise and maintain the waters therein at such uniform height as the board may establish, as provided by law;

To acquire, by condemnation or otherwise, the necessary lands for the erection of such dams or embankments;

To acquire, by condemnation or otherwise, the right of way for such public highways leading to such lake, dam, or embankment as may be necessary or convenient for public uses;

To acquire, by condemnation or otherwise, lands for public playgrounds or public parks and for public roads thereto;

To acquire, by condemnation or otherwise, all lands to be overflowed by raising the waters of such lake;

To pay for such damages as may be caused to or upon adjacent lands by the overflowing thereof;

To pay the cost and expenses of such proceeding; and

For any other purpose incidental or necessary to such improvements.

Any such dam, embankment, lands, or highways may be located in either county in which such lake, or any part thereof, is located. The money so appropriated shall be expended under the direction of the county board.

The county board of the county in which the smaller part of any such lake is located may likewise appropriate a sum not exceeding \$500.00 in any one year, for any of the purposes mentioned.

This section shall in nowise curtail any of the powers or authority granted to such county board by the provisions of this chapter.

[*1917 c. 338 ss. 1, 2, 3, 4*] (6599) (6600) (6601) (6602)

**110.13 CONTROL OF SHORE LINES; VIOLATION.** In order to preserve shore lines, rapids, waterfalls, beaches, and other natural features in an unmodified state of nature, no dam and no addition to any existing dam shall hereafter be constructed in or across any public stream or body of water within or bordering upon those portions of the area of Cook, Lake, and St. Louis counties designated in the act of congress of July 10, 1930 (Chapter 880), and no alteration of the natural water level or volume of flowage of any such stream or body of water shall be made and no easement for flooding or overflowing or otherwise affecting lands of the state of Minnesota adjacent thereto shall be granted, unless and until specific authority shall have first been obtained by an act of the legislature. With the written approval and consent of the department of conservation, together with the signed authority of the executive council, dams for public recreational uses or dams essential for logging or for logging reservoirs that do not exceed 100 acres in extent may be constructed to maintain temporarily water levels not higher than the normal high-water marks. Every such approval shall be subject to suitable charges, time limitation, and other conditions designed fully to protect the public interest in the intent of this section. The provisions of this section shall not apply to that portion of any proposed development for water-power purposes now or heretofore actually occupied and maintained by any applicant for license to make such development under the terms of the federal water power act if the application for such license was pending on or before January 1, 1928. Such occupancy is hereby legalized and con-

firmed and such occupant is hereby granted the right to occupy and use for water-power purposes, and so long as required and used for such purposes, the state lands and waters now or heretofore so occupied and used up to an elevation not exceeding two feet above the lowest crest of the spillway or overflow dam of such occupant as now constructed; provided, that no water control structures shall be used higher than those now or heretofore used. The occupant shall pay to the state annually reasonable compensation for the use of the state lands affected, to be determined by the commissioner of conservation after investigation. The occupant shall comply with the following requirement:

To pay the state promptly reasonable compensation for any further damage to state lands or timber heretofore or hereafter caused by such development, other than such as is covered by the compensation paid for the use of the lands as hereinbefore provided.

Any person who shall wilfully or knowingly violate any of the provisions of this section or of any order made thereunder by the department of conservation shall be guilty of a gross misdemeanor.

[1933 c. 412 ss. 1, 2] (6602-2) (6602-3)

**110.14 DAMS; PURPOSES; EMINENT DOMAIN.** When any person in order to create or improve a water power for milling or manufacturing purposes shall desire to erect and maintain upon his own land a dam across any stream or other watercourse not navigable, or to raise or extend any such dam already erected, whereby lands owned by other persons shall be overflowed or otherwise damaged, he may acquire the right so to do by causing such damages to be ascertained and paid as prescribed in chapter 117. No such dam shall be erected, raised, or maintained to the injury of any water power previously improved.

[R. L. s. 2543] (6579)

**110.15 NON-USER; FORFEITURE; EXCEPTIONS.** When the right to erect, raise, or extend any such dam shall have been acquired hereunder, the improvement shall be commenced within one year, and completed and the water power applied to the purpose stated in the petition within three years after such acquisition; and if any such dam, or the machinery connected therewith, be destroyed, the rebuilding thereof shall be commenced and completed within the same periods after such destruction. Failure to comply with the foregoing requirements shall work a forfeiture of all rights so acquired and a like forfeiture shall result from a failure to operate such mill or machinery after the same is erected for one consecutive year; provided, that if the owner be an infant, or be otherwise legally disabled, the periods herein named shall be allowed after the disability is removed.

[R. L. s. 2544] (6580)

**110.16 RIGHT TO OVERFLOW, OBSTRUCT, OR IMPAIR HIGHWAYS GRANTED BY GOVERNING BODY.** When it shall be necessary in creating, improving, or operating any water power to overflow, obstruct, or impair any public street or other highway, or to dig any raceway therein, the right so to do may be granted by the town board or common council, as the case may be, of the town or municipality in which the part of such highway to be affected lies. Such grant shall be made upon petition and by an order, defining all the terms and conditions thereof, passed at a meeting of the board or council called to consider the petition, of which meeting and the purpose thereof ten days' posted notice shall have been given. Testimony may be taken, and all expenses of the meeting and examination shall be paid by the petitioner, whether his prayer be granted or refused.

[R. L. s. 2545] (6581)

**110.17 REPAIRS; SERVIENT ESTATE; DAMAGES.** When the right to overflow the land of another by means of a dam shall have been acquired, either by condemnation or contract, and thereafter, by reason of the breaking away of the banks on the land, the waters of the stream shall be diverted, the owner of the dam may enter upon the lands of such person and repair the banks so as to restore the previous flow of such stream. All damages caused by such entry and repairs shall be paid by the owner of the dam.

[R. L. s. 2546] (6582)

**110.18 DAMS BY MUNICIPAL CORPORATIONS ON RED RIVER OF THE NORTH.** Any municipality owning or permanently controlling land upon which a proposed dam is to be constructed may construct a dam thereon and across that portion of the Red River of the North that forms a part of the boundary common

to the state of Minnesota and the state of North Dakota for the purpose of conserving water for municipal, commercial, and domestic use, constructing in connection therewith any appliances, fishways, raceways, sluiceways, and wasteways as may be necessary or convenient for the proper construction and utility of such dam and as may be required by law. If required by law or treaty, the consent of the United States and of the state of North Dakota shall be first obtained.

[1925 c. 30] (6582-1)

**110.19 COUNTY BOARD MAY LICENSE LOGGING DAMS.** The county board may license any suitable person applying therefor to erect and maintain a dam or dams across any stream within the county, or bordering thereon, for the purpose of sluicing and driving logs, lumber, and timber thereon, upon being satisfied of the necessity therefor at the places specified, and that the land on both sides of the stream at such points is owned or controlled by the licensee. If the stream runs between two counties, the county board first granting such license shall have exclusive jurisdiction in the premises.

[R. L. s. 2547] (6583)

**110.20 NOTICE; FORM OF LICENSE; BOND.** The applicant shall give 20 days' posted notice of the time and place of his intended application and of the site of the several dams proposed, one copy of which notice shall be posted in the office of the surveyor general, who is required by law to scale the logs and timber running over such dams. The license shall state the purpose and location of such dams, and be signed by the members of the board and sealed with its seal; but it shall not be valid until the licensee shall have given bond to the county, in the sum of at least \$1,000, conditioned for the construction and maintenance of the dams with all reasonable diligence and skill for the purposes named.

[R. L. s. 2548] (6584)

**110.21 TOLLS; LIEN.** Upon granting such license, the county board shall fix the tolls which may be demanded by the licensee for the sluicage of logs, lumber, and timber, which shall not exceed the rate of six cents per thousand feet for each dam. Such tolls shall be due and payable as soon as the logs, lumber, or timber are sluiced. To secure the payment thereof a lien is hereby given upon such property, which the holder may enforce by seizing and selling at auction so much thereof as may be necessary to pay the same, with the cost of seizure and sale. Ten days' posted notice of such sale shall be given in the county where the seizure was made, and at the office of the surveyor general.

[R. L. s. 2549] (6585)

**110.22 LOGGING STREAMS; BOUNDARY WATERS.** The owner of land bordering upon that part of any stream or other watercourse not navigable by steam but available for the floating of logs, lumber, or timber, may dam the same, and construct in connection with such dam all raceways and other appliances necessary to the development of water power for any lawful purpose or for the supplying of water to municipalities. If such stream or watercourse be a common boundary between this state and any other state or country, the consent, if any, required by law or treaty from owners of the opposite bank, from the states or countries bordering thereon, and from the United States, shall first be obtained.

Every dam so erected shall be provided with a sluiceway, lock, or other means for floating logs, lumber, and timber over or around the same, without unnecessary hindrance or delay, and with a fishway as required by law. All private property necessary to be taken or damaged for the purposes of such dam may be condemned under the provisions of chapter 117.

[R. L. ss. 2550, 2551] (6586) (6587)