

CHAPTER 111

DRAINAGE AND CONSERVANCY

Sec.  
 111.01 Definitions  
 111.02 Declaration; citation  
 111.03 Powers granted to courts  
 111.04 Petition for organization of districts  
 111.05 Surety bond for expenses  
 111.06 Notices and hearing by court  
 111.07 Findings of court filed; district boundaries named; office of district located  
 111.08 Authority of board  
 111.09 Treasurer and chief engineer  
 111.10 Terms of office of directors  
 111.11 Establishment of district; classes  
 111.12 Report of board and action by courts  
 111.13 Modifications, approval or rejection  
 111.14 Awarding of contracts  
 111.15 Right of entry  
 111.16 Orders and decrees for various improvements  
 111.17 Bids authorized  
 111.18 Creation of reservoirs  
 111.19 Removal of bridges  
 111.20 Gages  
 111.21 Contracts with U. S. government and individuals  
 111.22 Rights of land owners to use of water  
 111.23 Applications for use of water  
 111.24 When contracts may be made  
 111.25 Regulations, rates  
 111.26 Assessments for benefits  
 111.27 Various funds  
 111.28 Payment of expenses  
 111.29 Preliminary expense fund established  
 111.30 Apportionment of costs  
 111.31 Assessments  
 111.32 Issuance of orders  
 111.33 Upkeep and repair of district  
 111.34 When repairs are to be made  
 111.35 Board to have control of all contracts  
 111.36 Neglect of affairs  
 111.37 Report of directors  
 111.38 Improper notices  
 111.39 Reference to other chapters  
 111.40 Continuation  
 111.41 Districts already established

Sec.  
 111.42 May appeal to supreme court  
 111.43 Water conservation; declaration of purpose  
 111.44 Commissioner to make investigation  
 111.45 Water conservation program  
 111.46 Must have written permission from commissioner  
 111.47 Permission necessary to build dams  
 111.48 Applications  
 111.49 Public hearings upon application  
 111.50 All papers filed, open for inspection  
 111.51 Summoning of witnesses; record kept  
 111.52 Owners to cap artesian wells  
 111.53 Evidence, investigation  
 111.54 Dams and reservoirs examined  
 111.55 May set time limit for building or rebuilding dam  
 111.56 Rules and regulations  
 111.57 Commissioner to appear for state in federal hearings  
 111.58 Dams to be maintained by state  
 111.59 Not to affect existing contracts  
 111.60 Appeals  
 111.61 Violation a gross misdemeanor  
 111.62 May enforce orders of commissioner  
 111.63 Application  
 111.64 Commissioner may construct dams  
 111.65 Owners may initiate proceedings  
 111.66 Appointment of appraisers  
 111.67 Duties of appraisers  
 111.68 Tabular statements  
 111.69 Filing of report; compensation  
 111.70 Hearings  
 111.71 Confirmation of assessments  
 111.72 Judge may make orders  
 111.73 May demand jury trials  
 111.74 Construction; contracts  
 111.75 Work to be supervised by engineer  
 111.76 Auditors to prepare tabular statements  
 111.77 Benefits to be paramount lien  
 111.78 Liens to bear interest  
 111.79 State not liable; county boards may appropriate  
 111.80 Application

**111.01 DEFINITIONS.** Subdivision 1. **Words, terms, and phrases.** Unless the language or context clearly indicates that a different meaning is intended, the words, terms, and phrases defined in subdivisions 2 to 8, for the purposes of sections 111.02 to 111.42, shall be given the meanings subjoined to them; the words, terms, and phrases defined in subdivisions 9 to 13, for the purposes of sections 111.64 to 111.80, shall be given the meanings subjoined to them.

Subdivision 2. **Publication.** "Publication" means publication once a week for three consecutive weeks in one legal newspaper published and of general circulation in each county affected.

Subdivision 3. **Public health.** "Public health" includes any act or thing tending to improve the general sanitary condition of the community whether by way of drainage, relieving low or wet land of stagnant and unhealthful conditions, or by preventing the flooding of any lands thereby producing or tending to produce unhealthful conditions.

Subdivision 4. **Public welfare, general welfare, or public benefit.** The term "public welfare," "general welfare," or "public benefit" extends to and includes any act or thing tending to improve or benefit or contribute to the safety of the general public or benefit the inhabitants of the district and shall be construed to include any improvement contemplated by sections 111.02 to 111.42 which shall prevent fire in areas subject to destruction by fire.

Subdivision 5. **Person.** "Person" means and includes person, firm, copartnership, association, or corporation, other than public or political subdivision.

Subdivision 6. **Corporation.** "Corporation" includes both "municipal corporation" and "private corporation" unless otherwise specifically designated.

Subdivision 7. **Public corporation or municipal corporation.** "Public corporation" or "municipal corporation" means cities, villages, counties, towns, or other political subdivisions or any public commission of the state.

Subdivision 8. **Court.** "Court" means the district court or the judge thereof and applies to the district court wherein the petition for the organization of the district was filed and granted, unless otherwise specified.

Subdivision 9. **Court.** "Court" means the district court of the district wherein the proceedings are pending.

Subdivision 10. **Judge.** "Judge" means the judge of the district court wherein the proceedings are pending.

Subdivision 11. **Clerk.** "Clerk" means the clerk of the district court of the county in which the proceedings are pending.

Subdivision 12. **Engineer.** "Engineer" means the engineer designated by the commissioner of conservation to act as engineer in the proceedings.

Subdivision 13. **Appraisers.** "Appraisers" means the persons appointed by the judge of the district court and the commissioner of conservation to ascertain and report the benefits and damages arising from the proposed work.

[*Ex. 1919 c. 13 s. 1; 1921 c. 325 s. 1; 1923 c. 308 s. 1; 1935 c. 369 s. 1*] (6602-11) (6798)

**111.02 DECLARATION; CITATION.** Drainage and flood control are clearly within the functions of governmental action and the exercise of the right or authority to authorize or direct drainage carries with it the right to care for and control the waters thus gathered and turned into natural or artificial channels.

Sections 111.02 to 111.42 may be known and cited as the "Drainage and Conservancy Act of Minnesota" and any districts organized thereunder shall be known as drainage and conservancy districts and such additional name as the order of the court may designate.

Nothing contained in sections 111.02 to 111.42 shall be construed to abrogate the title of the state in the public waters, but the use and control of certain waters within the limitations and for the purpose therein specified may be granted to the district.

[*Ex. 1919 c. 13 s. 1; 1921 c. 325 s. 1; 1923 c. 308 s. 1*] (6798)

**111.03 POWERS GRANTED TO COURTS.** The district court of any county in this state or any judge thereof in vacation is hereby vested with jurisdiction, power, and authority, upon the filing of a petition as specified in section 111.04, and the conditions stated therein are found to exist to establish a drainage and conservancy district and define and fix boundaries thereof, which may be entirely within or partly within and partly without any county and include the whole or any part of one or more counties, including the county in which the petition is filed, for all or any of the following purposes:

(1) For regulating streams, channels or watercourses, and the flow of water therein, by changing, widening, deepening, straightening the same or otherwise improving the use and capacity thereof;

(2) For reclaiming by drainage, or filling, diking or otherwise protecting lands subject to overflow;

(3) For providing for irrigation where it may be needed;

(4) For the prevention of fires in areas of agricultural lands or in peat areas subject to destruction and damage by fire and for the irrigation of agricultural lands needing the same by regulating, controlling, conserving, and applying the waters in any ditch or drain which has heretofore been or shall hereafter be established and constructed under any law of this state and in streams or watercourses connecting therewith;

(5) For regulation and control of flood waters and the prevention of floods, by deepening, widening, straightening, or diking the channels of any stream or watercourse, and by the construction of reservoirs or other means to hold and control such waters;

(6) For diverting, in whole or in part, streams or watercourses and regulating the use thereof; streams so diverted shall follow the natural course of drainage and terminate in the same natural outlet; and

(7) As incident to and for the purpose of accomplishing and effectuating all the purposes of sections 111.02 to 111.42 may, under the conditions specified herein, straighten, widen, deepen, or change the course or terminus of any natural or artificial watercourse and build, construct, and maintain all necessary dikes, ditches,

canals, levees, wall embankments, bridges, dams, sluiceways, locks, and other structures that may be found necessary and advisable to create, establish, and maintain the necessary reservoirs or other structures, to hold, control, and regulate any and all waters within the district, and to acquire title in the name of the district to all necessary lands and other property, to construct and maintain reservoirs, dikes, or other structures, including dams for power purposes, and conserve and utilize such waters for any purpose consistent with the purposes of sections 111.02 to 111.42.

The provisions of sections 111.02 to 111.42 shall not be construed to authorize the diverting of the waters of one general watershed to another general watershed and no river or any tributary of any river or stream in this state shall be diverted from its natural outlet by any diversion channel or flood control work, or by any other work authorized by or mentioned in sections 111.02 to 111.42 at any point in its course distant more than two miles from such natural outlet.

[*Ex. 1919 c. 13 s. 2; 1921 c. 325 s. 2; 1923 c. 308 s. 2*] (6799)

**111.04 PETITION FOR ORGANIZATION OF DISTRICTS.** Before any district court shall establish any district, as outlined in section 111.03, a petition shall be filed in the office of the clerk of any county containing territory included in the petition, signed by not less than 25 per cent of the resident freeholders of the district (but not in any event shall more than 50 signers be required), or by the proper officials of any county, city, or village authorized by resolution duly passed by the governing board of the county, city, or village. The petition may be signed by one or more such counties, cities, or villages and, if signed by two or more counties or by five or more cities or villages, the same need not be signed by any of the freeholders of the proposed district.

The petition shall set forth:

(1) The proposed name of the district;

(2) The necessity for the proposed work, in respect to one or more of the objects or purposes mentioned in section 111.03, and that it will be conducive to the public health, safety, and convenience and promote the welfare of the inhabitants of the district, and be of public benefit;

(3) A description of the nature, purpose, and plan of the contemplated improvement and shall include in general terms a description of the territory proposed to be included in the district, which need not be given by metes and bounds or by legal subdivision, but shall be a definite and accurate description so that the territory to be included may be understood therefrom; unless good reason be shown to the contrary, the same shall include all territory within a given watershed or drainage basin or all territory from which the water from natural or artificial channels find their course through one general stream or channels; provided, that in all cases where any river basin or watershed in this state contains more than 10,000 square miles of territory, no district shall be organized under sections 111.02 to 111.42 which shall include in one district the main stream of such basin or watershed, and any of its tributaries, but the valley of the main stream, and the valley of each of such tributaries thereto, may be organized separately; and in organizing the main stream of any such river basin or watershed into such separate district, there may be included therein the lands along the main stream that are likely to be affected, benefited, or damaged by any proposed improvement in the valley of such main stream, together with such territory immediately adjoining thereto as will permit the boundary line of the district to be given by the lines of government survey, but no part of any tributary of such main stream or river shall be included in the district except so much thereof as lies in the immediate valley of the main channel and such part thereof as is likely to be affected by or form a part of any improvement constructed in or connected with the main stream of such basin for the proposed control of the flood waters of the main stream;

(4) The organization of the district, the appointment of a governing board therefor, and the boundaries thereof to be specifically fixed and defined by order of the court.

No petition containing the requisite number of signatures or petitioners or signed by the requisite number of counties, villages, or cities shall be void or dismissed on account of any defects therein, but the court shall at any time permit the petition to be amended in form and substance to conform to the facts by correcting any errors in the description of the territory or by supplying any of the defects therein. Several similar petitions, or duplicate copies of the same petition, for the

organization, of the same district may be filed and all together be regarded as one petition and any withdrawal of any signatures or petitioners from such petition after the same has been filed shall in no manner affect the jurisdiction of the court, and all petitions filed prior to the hearing hereinafter provided shall be considered by the court as a part of the original petition.

[*Ex. 1919 c. 13 s. 3; 1921 c. 325 s. 3; 1923 c. 308 s. 3*] (6800)

**111.05 SURETY BOND FOR EXPENSES.** At the time of filing the petition provided for in section 111.04, or before the notice of hearing thereon is given, a bond shall be filed by the petitioners with the clerk, to be approved by the court, in such sum as the court shall designate, sufficient to pay all expenses connected with the proceeding in case the court refuses to organize the district. If, at any time during the proceeding, the court shall be satisfied that an additional bond is needed, it may so order; provided, that if the petition be signed by the proper officials of one or more counties, accompanied by a copy of a resolution passed by the board of county commissioners thereof that the county or counties will be responsible for such costs, then and in that event no bond shall be necessary.

[*Ex. 1919 c. 13 s. 4; 1923 c. 308 s. 4*] (6801)

**111.06 NOTICES AND HEARING BY COURT.** Upon the filing of the petition with the clerk of the district court, as provided in section 111.04, he shall immediately notify the judge of the court of the filing thereof, who shall, within ten days thereafter, by order fix a time and place for hearing on the petition at some point within the limits of the proposed district, notice of which hearing shall be given by publication, the last of which publication shall be at least ten days prior to the date set for hearing. If the territory described in the petition shall be situate in more than one county comprising two or more judicial districts, the judge of the court where the petition is filed shall arrange with the judges of the other districts for a joint hearing upon the petition, which hearing may be at such time and place within the territory described in the petition as the judges shall jointly specify. At this hearing each judicial district shall be represented by one judge only, but the district court in which the petition was originally filed shall, for all other purposes, except for the purpose of the joint hearing, and except as hereinafter otherwise provided, have and retain original jurisdiction.

[*Ex. 1919 c. 13 s. 5; 1923 c. 308 s. 5*] (6802)

**111.07 FINDINGS OF COURT FILED; DISTRICT BOUNDARIES NAMED; OFFICE OF DISTRICT LOCATED.** At the time and place set for hearing on the petition all parties interested may appear and be heard for or against the granting of the petition, but continuance of the hearing shall be granted by the court when necessity therefor is shown. Upon the hearing, if the facts required by sections 111.02 to 111.42 to be set forth in the petition are proven by competent evidence and found by the court to exist and if the purposes of sections 111.02 to 111.42 would be subserved by the creation of a drainage and conservancy district comprising the whole or certain portions of the territory outlined in the petition, the court shall make and file its findings of all matters involved in the petition, and by order designate the boundaries of the district and, in case the main stream of a river basin containing more than 10,000 square miles is organized into a drainage and conservancy district, such boundaries shall conform, as nearly as practicable, using government lines, to the property and corporations affected or benefited and direct and declare the district organized, designating in the order the name by which it shall thereafter be known; and, upon the filing of the order with the clerk and a certified copy thereof in the office of the secretary of state, the district shall become and be for all purposes of sections 111.02 to 111.42 a body corporate endowed with all the rights, privileges, and authorities therein designated, with power to sue and be sued, to incur debts and obligations for the purposes specified in sections 111.02 to 111.42 and to do and perform and exercise all the rights and privileges in sections 111.02 to 111.42 enumerated. The inclusion of any land, property, or corporation within the limits of the district shall not be construed to render the property or the corporations liable to assessment under any provisions of sections 111.02 to 111.42 unless the same falls within the class of property or corporations actually benefited, as specified in section 111.11.

The order or decree shall designate the place where the office or proper place of business of the district shall be located, which, unless special reasons arise to the contrary, shall be where the petition is filed; designate the number of commissioners or officers who shall constitute the first board of directors, which shall be

not less than three nor more than five; and name and appoint such officers who shall be residents of the district.

If upon the hearing the court finds that any portion of the territory named in the petition should not be included in the district, the same shall be excluded from the district, but any territory benefited by the proposed improvement not included in the petition may, at the hearing, or at any subsequent hearing ordered by the court, upon petition from resident freeholders of the territory or from the board, upon due notice, be added to the district and the boundaries thereof fixed accordingly. If upon full hearing the court shall determine that the territory described in the petition, or some part thereof, should not be organized in the district, the petition shall be dismissed and the costs incurred be taxed against the petitioners.

[*Ex. 1919 c. 13 s. 6; 1921 c. 325 s. 4; 1923 c. 308 s. 6*] (6803)

**111.08 AUTHORITY OF BOARD.** Within ten days after the filing of the order organizing the district in the office of the secretary of state, the parties named therein as the first board of directors shall meet at the office of the clerk, take and severally subscribe the oath provided by statute to be taken by public officials, and file with the clerk a bond in the sum of \$1,000, furnished by a proper surety company, the cost to be paid by the district, conditioned for the faithful performance of his duties, and thereupon organize by electing one of their number as president and one of their number, or a third party, as secretary or clerk of the board, and provide the necessary books and records. If the place designated in the order as general offices of the district shall be a county-seat, the board shall have the authority to elect the clerk of the district court of such county as clerk of the board, and thereupon and thereafter all papers filed with the clerk shall be and constitute a filing with the board, and it shall be the duty of the clerk to keep and preserve the record of the board in his office and to do and perform such duties as shall be designated and required by the board, who shall have authority to fix his compensation.

The board shall meet at least semiannually and at such other times as it may designate or as occasion may require and at all meetings a majority of the members thereof shall constitute a quorum and a legal meeting thereof may at any time be called upon eight days' notice by mail given by the clerk or any member of the board, and the compensation of the members shall be such as the board shall fix, not to exceed \$7.00 per day and expenses.

[*Ex. 1919 c. 13 s. 7*] (6804)

**111.09 TREASURER AND CHIEF ENGINEER.** The board of directors shall have full authority to elect or appoint a treasurer, who shall be a resident of the district and may be one of its members, who, before entering upon his duties as such, shall subscribe the oath required by statute in the case of public officials and give bond in such sum as the board shall direct, which shall not be less than the total sum that shall at any time be likely to be in his hands or under his control belonging to the district, which bond shall be by a surety company, to be approved by the board, and the duties of the treasurer shall be such as the board may from time to time designate; and, among other things, it shall be his duty to receive all moneys belonging to the district and deposit the same in such banks as the board shall designate; and it shall be the duty of the treasurer to require such banks to give a proper bond for the care and accounting for such moneys; and the treasurer shall pay out this money only on proper orders signed by the president and the secretary of the board. The board may employ a chief engineer and an attorney and such other engineers and attorneys or agents or assistants as may from time to time be needful and necessary and provide for their compensation, all of which expenses shall be taken and treated as a part of the costs of each particular improvement, but the charges of the engineer that can be included as a part of the cost of any improvement together with his duties, shall, as far as applicable, be governed by the provisions of section 106.66 and neither the engineer nor the attorney shall receive any compensation except when employed in the construction of some specific improvement to which that expense can be charged. The chief engineer shall be superintendent of all the works and improvements and have general charge of all work pertaining to drainage and flood control done under proceedings had under sections 111.02 to 111.42 within the limits of the district and before any court or board of county commissioners shall order or authorize

the construction of any drainage ditch within the district, notice shall be given to the engineer and he given an opportunity to be heard with reference to any objection thereto.

[*Ex. 1919 c. 13 s. 8*] (6805)

**111.10 TERMS OF OFFICE OF DIRECTORS.** The members of the board of directors of the district shall hold their office, where their number does not exceed three, one for a period of two years; two for four years; and where their number shall consist of five members, two of the board shall hold their office for a period of two years, three for a period of four years, and thereafter all shall hold their office for four years. The district court of the county wherein the general office is located shall have authority to fill all vacancies that occur in the board from any cause and each member of the board shall hold his office until his successor is elected and qualifies. The board when organized shall, for all purposes of sections 111.02 to 111.42, be and constitute a commission for the purpose of carrying into effect any and all orders, judgments, decrees, or directions made by the district court relative to any improvement authorized by sections 111.02 to 111.42 within the limits of the district.

[*Ex. 1919 c. 13 s. 9*] (6806)

**111.11 ESTABLISHMENT OF DISTRICT; CLASSES.** After the organization of the board of directors of any drainage and conservancy district organized under the provisions of sections 111.02 to 111.42 and upon filing with the clerk of the board a petition signed by not less than 25 freeholders of the district (but in no event shall more than 25 per cent of the owners of the property affected be required), or by the board of county commissioners of any county, or the council of any city or village likely to be affected by the proposed improvement therein, asking for the construction within the limits of the conservancy district of any of the improvements authorized by the provisions of sections 111.02 to 111.42 relative to drainage, regulation, control, or conservation of the waters of any lake, pond, marsh, or body of water, river, stream, watercourse, ditch, or drain within the district which may cover the whole or any part of the improvement contemplated when the district was organized, therein describing the need of the proposed improvement, the extent thereof, and describing in general terms the bodies of water, streams, or watercourses proposed to be improved, or reservoirs or other improvements constructed; and, if the construction of a ditch or drain as a part of the proposed improvement contemplated, a description of the starting point, the general course and termination thereof shall be given therein, or if the contemplated improvements require that any ditch or drain established and constructed under any law of this state, or any portion thereof, be utilized for the protection of fires in areas subject to destruction or damage by fire or for irrigation, all as specified, a description of such ditch and drain, or the portions thereof so required, and a general description of such areas, protection whereof from fire is sought, or irrigation is sought, setting forth the reasons and necessity for such improvements and that the same, if constructed, will benefit public health and general welfare of the inhabitants in that vicinity, and the petition is to be accompanied by a bond signed by the petitioners, or any number of them, or other parties in their behalf, in such sum as the board of directors of such district may specify and such as it shall approve, conditioned for payment of all costs or expenses in connection with such improvements in the event the petition, as therein set forth or subsequently modified, is not granted; it shall be the duty of the board of directors of the district to cause to be made, at the earliest possible date, by its engineer, all necessary surveys, maps, plats, profiles, and plans covering the proposed improvements so as to fully inform the board as to the merits and practicability of proposed improvements, and, in making the surveys, plats, profiles, and report, the engineer shall, so far as practicable, conform to the requirements of General Statutes 1923, Section 6678, and the board shall have authority to correct, change, or modify the proposed improvements, as outlined in the petition, and if the report of the engineer is favorable to the construction of the improvements, and is approved by the board of directors, the board shall, with the least possible delay, appoint three disinterested citizens of the state to act as viewers, and the viewers so selected shall, after subscribing an oath to faithfully and impartially perform their duties, proceed to personally inspect and examine all lands, highways, and other property likely to be affected by the improvements, or that may be used or taken for the construction or maintenance thereof and shall, in the perform-

ance of their duties so far as practicable comply with the provisions of sections 106.16 and 106.17 and make and file with the clerk of the board with such plans and specifications a detailed statement showing the actual benefits and damages that will result to individuals, property, or corporations from the construction of the improvements, and a list of lands and other property, including highways and corporations, that will be actually benefited or damaged, and the amount thereof, and include lands, roads, corporations, and other property receiving actual benefits by way of drainage or control of flood waters, or by regulation, conservation, and application of waters for fire protection and irrigation, as hereinbefore authorized, and lands or water powers further down the valley and include all lands to which a drainage outlet is supplied by such improvement by way of increased facilities for drainage or control of flood waters or protection from fire or for irrigation, and all such property and corporations shall be assessable for the cost of the proposed improvement in proportion to the actual benefits received, as finally determined by the court; provided, the board of directors of the district may elect to levy no assessment under this section upon water powers, but collect for such improvement as otherwise provided in sections 111.02 to 111.42. General Statutes 1923, Sections 6681 and 6682, so far as applicable, shall apply to and govern the work of the viewers under sections 111.02 to 111.42. In any case where fire protection is part of the relief prayed for in the petition and the utilization of any existing ditch or drain, or any portion thereof, is alleged to be necessary thereto, the petition for such improvements, before being presented to the board of directors, shall be signed by not less than 50 per cent of the resident freeholders (but in no event shall more than 25 signers be required) whose lands are affected by the ditch or drain, or portion thereof, to be utilized, and approved by resolution of the board of county commissioners of each county wherein the same is located.

[*Ex. 1919 c. 13 s. 10; 1921 c. 325 s. 5; 1923 c. 308 s. 7*] (6807)

**111.12 REPORT OF BOARD AND ACTION BY COURTS.** Before proceeding with the construction of any improvement, the board of directors shall file in the office of the clerk the original petition filed with them, together with the report of the engineer and all plats connected therewith and the report of the viewers on benefits and damages and a list of lands assessable, with a petition or report on behalf of the board, therein setting forth the nature and extent of the improvement in general terms, the necessity therefor, an estimate of the costs thereof, and that the same will be of public utility and will result in the improvement of the public health and general welfare (reference may be made to the reports of the engineer and the viewers for greater particularity), and asking that a time and place be fixed for a hearing upon the petition and the reports, and that at the hearing an order be made establishing the drain or improvement and authorizing the construction thereof, and confirming the reports of the engineer and the viewers and fixing the rights of the parties. Upon the filing of the petition and these reports, the clerk shall immediately notify the judge thereof, who shall, within ten days thereafter, by order, fix a time and place within the district for a hearing upon the petition and reports, of which due notice shall be given by the clerk by publication, in general terms describing the lands, public roads, and corporations, including any ditch or drain established and constructed under any law of this state, or any portions thereof, in such county affected by the improvement, and the lands, and property, if any, reported by the viewers as assessable for the construction and maintenance thereof, giving notice of the pendency of the proceedings and the nature of the proposed improvement, that plans and specifications thereof, including the engineer's and the viewers' reports, are on file in his office subject to inspection, and requiring all parties interested, as shown in the petition and the reports, to appear before the court at the time and place designated in the notice and present their objections, if any they have, and show cause why an order should not be made by the court granting the petition and confirming the reports of the engineer and the viewers and ordering the establishment and construction of the improvement. If any improvement required that any ditch or drain established and constructed under any law of this state, or any portions thereof, be utilized for any purposes authorized under sections 111.02 to 111.42, a printed copy of the notice shall be served by the clerk upon each public corporation in this state charged by law with the maintenance and repair of such ditch or drain, at least ten days before the day

set for the hearing, in the manner provided by law for the service of a summons in a civil action.

[*Ex. 1919 c. 13 s. 11; 1923 c. 308 s. 8*] (6808)

**111.13 MODIFICATIONS, APPROVAL OR REJECTION.** At the time and place specified in the notice, the court shall hear all parties interested for and against the granting of the petition and confirming the reports, and may order and direct the modification of the plans and specifications and the assessments of benefits and damages and amend or change the list of property reported as assessable for the construction and maintenance thereof, or may recommit the same to the engineer or viewers, or both, for changes. If upon full hearing the court shall find that the improvement will be conducive to the public health and promote the general welfare and cause the protection and reclamation of wet or overflowed lands or the control of flood waters in streams, channels, and reservoirs, or aid in the prevention of fires in the areas, or any purpose authorized by sections 111.02 to 111.42, in the drainage and conservancy district and that the benefits resulting therefrom will be greater than the costs of the construction and damages, and a sum equal to 15 per cent of the cost of the construction, exclusive of damages, for maintenance, then the court shall make its findings accordingly and order and direct the construction of the improvement and confirm the report of the engineer and the findings and report of the board or the viewers with reference to benefits and damages and lands assessable, and may, by this order, authorize the board of the district to construct the whole or any part of the improvement petitioned for or to let contracts for the improvement ordered as a whole or for different parts thereof separately. All persons, parties, or corporations affected by the order shall have the right to appeal on questions of benefits and damages in the manner now provided for appeals in the case of judicial ditches, pursuant to provisions of section 106.89.

If any ditch or drain, or any portion thereof, mentioned in the petition and reports is proper to be utilized for any of the objects or purposes of sections 111.02 to 111.42, the court shall include in its findings all matters in respect thereto and in and by the order fix and limit the use and application of the same therefor, taking care not to destroy the ditch, or any part thereof, so used for the purposes for which it was established. Upon the entry of the order, the board of directors of the district shall have and exercise all the authority thereover theretofore vested in any public corporation or administrative body as to such ditch or drain, or portion thereof, and be charged with all the duties of any such public corporation or administrative body as to the upkeep, repair, and maintenance of any such ditch, or the part thereof taken under sections 111.02 to 111.42.

[*Ex. 1919 c. 13 s. 12; 1921 c. 325 s. 6; 1923 c. 308 s. 9*] (6809)

**111.14 AWARDING OF CONTRACTS.** The board of directors of any drainage and conservancy district organized under the provisions of sections 111.02 to 111.42 shall have full authority to let contracts for the construction of, and cause to be constructed, any and all works of improvement in accordance with the order of the court and the plans and specifications referred to in the order pursuant to the provisions of section 111.17, and under the conditions named therein, may employ and use men and equipment under supervision of the chief engineer or other agents for the construction, repair, or improvement of any portion of the work not let by contract.

[*Ex. 1919 c. 13 s. 13*] (6810)

**111.15 RIGHT OF ENTRY.** The board of directors of any district organized under sections 111.02 to 111.42 and the agents and employees, including contractors, may enter upon lands within or without the district in order to make surveys and examinations to accomplish all necessary preliminary purposes, the district being liable only for actual damage done; and any person or corporation preventing such entrance shall be guilty of a misdemeanor.

[*Ex. 1919 c. 13 s. 14*] (6811)

**111.16 ORDERS AND DECREES FOR VARIOUS IMPROVEMENTS.** In order to effect the drainage reclamation, irrigation, or protection of land or other property within the limits of any drainage and conservancy district, and to effectuate all the purposes of sections 111.02 to 111.42, the district court of the several districts in this state and the judges thereof in vacation where any portion of such judicial district extends, within the limits of any drainage and conservancy district organized under the provisions of sections 111.02 to 111.42, are hereby fully empowered to make all



necessary orders and decrees and direct the entry of all necessary judgments upon the filing of a petition, as provided in section 111.12, by the board of directors of any such district, and finding that grounds exist for the granting of such petition to order established and constructed any of the improvements specified in sections 111.02 to 111.42, and authorize the board of directors of such district to cause to be constructed any such improvement and to clean out, straighten, widen, alter, or deepen, or change the course or terminus of any drain, ditch, river, creek, or natural stream and to fix the height of water in any lake, pond, or reservoir and cause the same to be raised or lowered and fill up or abandon or alter any ditch, drain, river, or watercourse, pond, lake, or any natural or artificial basin or stream, and to divide the flow of water in or out of any such lake, pond, reservoir, or watercourse and to cause to be constructed and to maintain any lateral ditches, sewers, canals, dikes, dams, sluiceways, reservoirs, or flood basins and construct and maintain pumping stations and other similar works and any works of improvement that may be deemed necessary for the prevention of fires in areas subject to damage or destruction thereby, or to secure the drainage of lands within the limits of the district, and the control of waters therein, either in the channels of any stream or waterway, or ditch, or drain, or in any lake, pond, reservoir, or other structure for holding and controlling water, including the power to exercise the right of eminent domain for the purpose of enlarging any lake, pond, or other body of water for reservoir purposes, or the flooding of land for the creation and establishment of reservoirs, and the board of directors of any district organized under sections 111.02 to 111.42, upon being authorized by order or decree of the district court, shall have full authority to do and perform all things necessary to effectuate the purposes of sections 111.02 to 111.42 and cause to be constructed and maintain any and all canals, levees, dikes, dams, or sluiceways, including reservoirs, holding basins, floodways, and pumping stations and any other work of improvement that may be deemed necessary and proper to be constructed for the purpose of securing drainage of wet and overflow lands and protection of lands and property within the limits of the district from flood and inundation and from fire and as such board under the provisions of sections 111.02 to 111.42 may exercise the right of eminent domain in behalf of such district in acquiring the necessary land for the creation of reservoirs or other improvements along or in the vicinity of the channels or waterways within the limits of the district, which authority may be exercised under the provisions of sections 111.02 to 111.42 or under the provisions of chapter 117, and the board shall have full control thereof and full authority to hold, operate, lease, or control any water power created by any improvement authorized by sections 111.02 to 111.42 and to enter into all contracts for the furnishing of water for irrigation, or for any other purposes, or for the leasing or furnishing of power when authorized by order of the court and all sums realized from any such purpose shall be paid into the treasury of the district and be and become the property of the district and may be used by the board to defray its general expenses and for the upkeep of any improvement made within the district and the improvement of the channel of any stream or waterway therein.

[*Ex. 1919 c. 13 s. 15; 1923 c. 308 s. 10*] (6812)

**111.17 BIDS AUTHORIZED.** After the order has been made by the district court directing the establishment of each improvement, as provided in section 111.13, it shall be the duty of the board of the district to call for bids for the construction of the work and give notice thereof, specifying therein the time and place when bids will be opened for the letting of a contract for the construction of the work; and the contract may be let in sections or as a whole as the board may direct, notice of which shall be published also in at least one of the newspapers in the state where notices of such contracts are usually published. At the time and place specified in the notice, the board may let the contract to the lowest responsible bidder, who shall give a bond, with ample security, conditioned for the carrying out of the contract. The contract shall be in writing and refer to the plans and specifications, as approved by the court and prepared by the engineer, and be in such form as the attorney for the board shall direct and such as shall be approved by the engineer and the board. In all cases where a sudden emergency may arise rendering it necessary in order to protect the interests of the district, work may be done under

the direction of the board and engineer without contract to the extent that may be necessary to protect the interest of the district.

[*Ex. 1919 c. 13 s. 16*] (6813)

**111.18 CREATION OF RESERVOIRS.** In all cases where a reservoir is created, either in a natural basin or otherwise, and the board shall conclude that the creation of the reservoir will create a water power or establish conditions whereby water power can profitably be constructed in connection with the reservoir, the board may petition the court for a hearing on the petition, notice of which hearing shall be given by publication. If upon the hearing the court shall find that it is practical to utilize the waters of the reservoir for water-power purposes and that the same will be of benefit to the public and to the district, the court shall have authority to authorize the board to issue the bonds of the district in such sum as such improvement may require, not to exceed 90 per cent of the reasonable value of the proposed water power. Upon the making of the order, the board of directors is hereby authorized to issue bonds of the district, not to exceed such sum as specified in the order of the court, in such denominations and in such form as the board may determine, payable in not less than ten, or not more than 20, years from date, with interest not to exceed six per cent per annum, payable annually, which bonds shall be signed by the clerk and the president of the board and registered in the same manner as county bonds under the laws of this state, and the same shall be and constitute a first lien upon the water power and upon all of the property connected therewith and the income therefrom; and, upon the issuance of the bonds, it shall be the duty of the board to create an interest fund and provide for the accumulation of the necessary sum to pay the interest on the bonds promptly when due.

[*Ex. 1919 c. 13 s. 17*] (6814)

**111.19 REMOVAL OF BRIDGES.** In case it is necessary to pass any dredge boat or other equipment through a bridge or grade of any railroad company or other corporation, county, town, or municipality, the board of directors shall give 20 days' notice to the owner of the bridge or grade that the same shall be removed temporarily to allow the passage of such equipment or that an agreement be immediately entered into in regard thereto. The owner of the bridge or grade shall keep an itemized account of the cost of the removal and, if necessary, of the replacing of the bridge or grade, and the actual cost shall be paid by the district. In case the owner of the bridge or grade shall refuse to provide for the passage of the equipment, the board of directors may remove such bridge or grade at its own expense, interrupting traffic in the least degree consistent with good work and without delay or unnecessary damage. In case the board shall be prevented from doing so, the owner of the bridge or grade shall be liable for damage for the resulting delay.

[*Ex. 1919 c. 13 s. 18*] (6815)

**111.20 GAGES.** The board of directors shall have the right to establish and maintain stream gages, rain gages, a flood-warning service with telephone or telegraph lines or telephone or telegraph service, and may make such surveys and examinations of rainfall and flood conditions, stream flow, and other scientific and engineering subjects as are necessary and proper for the purpose of the district and issue reports of its findings.

[*Ex. 1919 c. 13 s. 19*] (6816)

**111.21 CONTRACTS WITH U. S. GOVERNMENT AND INDIVIDUALS.** The board of directors shall have the right and authority to enter into contracts or other arrangements with the United States government, or any department thereof, with persons, railroads, or other corporations, with public corporations and the state government of this state or other states, with drainage, conservation, conservancy, or other improvement districts, in this state or other states, for cooperation or assistance in constructing, maintaining, and operating the works of the district, or for the control of the waters thereof, or for making surveys and investigations or reports thereon; and may purchase, lease, or acquire land or other property in adjoining states in order to secure outlets to construct and maintain dikes or dams, or for other purposes of sections 111.02 to 111.42, and may let contracts or spend money for securing such outlets or other works in adjoining states. The board may exercise all the authorities granted the board of drainage and flood control districts by sections 112.29 to 112.31, so far as relate to cooperation with adjoining states, or drainage authorities thereof, and, in the event that for any reason it may

be deemed advisable to include in any drainage and conservancy district organized under the provisions of sections 111.02 to 111.42 a drainage and flood control district organized under chapter 112, the district board organized under the provisions of sections 111.02 to 111.42 is hereby authorized to enter into any contract or arrangement necessary to take over and control and maintain any works or improvements constructed, including surveys made and expenses incurred by any board under chapter 112, and adopt or assume and carry out or modify any plans or works completed or partially completed by such board and make the same a part of the system to be developed under the provisions of sections 111.02 to 111.42.

[*Ex. 1919 c. 13 s. 20; 1921 c. 325 s. 7*] (6817)

**111.22 RIGHTS OF LANDOWNERS TO USE OF WATER.** The rights enjoyed by landowners, whether private or corporate, to the use of the waters of the district for any purpose shall continue as they existed at the time of the organization of the district and all such rights then existing shall be recognized and observed by the managing authorities of such district, and when the boundary line of any property abutting upon any stream or body of water is changed in consequence of any improvement constructed by the district, either raising or lowering the stage of water in such stream or body of water, the rights of such abutting property owner of access to and use of such waters shall remain as they existed at and prior to the time of the construction of the improvement, but when improvements made by the district make possible a greater, better, or more convenient use of or benefit from the waters of the district for any purpose, the right to such greater, better, or more convenient use of or benefit from such waters shall be the property of the district, and such rights may be leased or assigned by the district in return for reasonable compensation, as provided in sections 111.02 to 111.42.

[*Ex. 1919 c. 13 s. 21; 1921 c. 325 s. 8*] (6818)

**111.23 APPLICATIONS FOR USE OF WATER.** Persons, corporations, municipalities, or other parties desiring to secure such use of the waters or watercourses, or the district rights therein, may make application to the board of directors for lease or permission for such use. The application shall state the purpose and character of such use, the period and degree of continuity, and the amount of water desired. In case any party makes greater, better, or more convenient use of the waters of the district without formal application, the fact of such use shall serve all purposes of an application, and the board may proceed to determine a reasonable rate of compensation the same as though formal application had been made. Such use shall not be deemed an application unless the district shall have given the user three days' notice in writing that such greater, better, or more convenient use of water is available; nor shall the user be obligated to pay for any use occurring prior to such notice. Where it is not possible or reasonable to grant all applications, preference shall be given to the greatest need and to the most reasonable use, as may be determined by the board of directors, subject to the approval of the court. Preference shall be given, first, to domestic and municipal water supply, and no charge shall be made for the use of water taken by private persons for home and farm use, or for watering stock.

[*Ex. 1919 c. 13 s. 22; 1921 c. 325 s. 8½*] (6819)

**111.24 WHEN CONTRACTS MAY BE MADE.** The board of directors shall not sell, lease, assign, or grant any permit or otherwise part with permanent control by the district of the use of the waters thereof, and all leases, assignments, or permits of any kind or other contracts for the use of water shall be entered into only after a report has been made by the board of such district to the court setting forth the terms and conditions of the lease, permit, or other contract relative to the use of any property of the district, whereupon the clerk of the court shall give due notice to all parties interested; by mail, and shall cause to be published notice of the application, stating therein the purpose of the application and the time and place of hearing thereof, at which time the court may hear all showing made for and against such proposed contract and make its order accordingly; but subject to revision and control by the state law and such conditions and restrictions as may be necessary at all times to protect the interests of the district and of the public. The leases or permits may be made for periods not to exceed ten years, but subject to the conditions and subject to the rights of renewal for further reasonable period, not to exceed ten years, on condition that a new determination may be made as to the reasonable charge therefor.

[*Ex. 1919 c. 13 s. 23*] (6820)

**111.25 REGULATIONS, RATES.** The board of directors may make regulations for the determination and measurement of the increased, or better, or more convenient use of, or benefit from, the water supply of the district, for the purpose of determining rates of compensation and for the purpose of securing to all parties interested, either within or without the district, including water power company, the greatest and best use of the water thereof. The board shall have power to determine the rates of compensation for such greater, better, or more convenient use of, or benefit from, the water supply of the district, which rates of compensation shall be reasonable and may be based upon either a unit price per cubic foot used or unit price for theoretical horse-power developed or other practical method, and may require bond to be given to secure the payment for such use. Upon the determination of any rate, the board shall make a report of its determination to the court. The court shall thereupon cause personal notice, by summons, to be given to the parties interested, stating that such determination of rate has been made, that a hearing before the court will be had thereon on a certain day, and that objection may be made at such time to such determination of rates. A hearing may be had before the court, objections may be made and appeals taken in the same manner as in the case of the appraisal of benefits, but the rates as fixed by the court shall control until modified on appeal. In case no appeal is made within the time provided, or upon the final determination of the matter by the court, the determination of such rates of compensation shall be conclusive and binding for the term and under the conditions specified in the lease or other agreement. In case of failure of any user to pay for the use in the manner specified by order of the court, the board may compel payment or may enjoin further use until such payment is made. The rights under any lease or sale shall not extend to a change of use or of place, time, or manner of use, except in so far as is specifically stated in the lease or other agreement.

[*Ex. 1919 c. 13 s. 24*] (6821)

**111.26 ASSESSMENTS FOR BENEFITS.** When the board of directors of any district shall ascertain that any improvement will benefit lands or other property outside of the district, the board may file a petition for change of the boundaries of the district, or resident freeholders of the district may, in like manner, file petition for change of boundaries of the district, upon which petition a like notice shall be given and like proceedings had as in the case of organization of a drainage and conservancy district, but the same shall be had in the district court of the county in which are situated the lands sought to be included in the district, if in only one county, otherwise in the district court of the county in which the original organization proceedings were had.

[*Ex. 1919 c. 13 s. 25; 1921 c. 325 s. 9*] (6822)

**111.27 VARIOUS FUNDS.** The moneys of any drainage and conservancy district organized under the provisions of sections 111.02 to 111.42 shall consist of three separate funds:

(1) A preliminary fund, which shall consist of funds to be provided as herein-after specified, and can be used for preliminary work and general expenses;

(2) A bond fund, which is the proceeds of bonds issued by such district, as herein provided, secured upon property of the district which is producing or is likely to produce a regular income and to be used for the payments of the purchase price of the property or the value thereof, fixed by the court in proceedings, as therein provided, and for the improvement and development of such property; and

(3) A construction and maintenance fund, which shall be supplied by sale of county bonds and by special assessments to be levied as therein provided to supply funds for the construction and upkeep of the improvements of the district, including the reservoirs, ditches, dikes, canals, and other works, together with the expenses incident thereto and connected therewith.

[*Ex. 1919 c. 13 s. 26*] (6823)

**111.28 PAYMENT OF EXPENSES.** After the filing of a petition under sections 111.02 to 111.42 for the formation of a district, and the furnishing and filing of the bond, as provided in sections 111.04 and 111.05, the costs of publication and other official costs of such proceedings shall be paid out of the general funds of the county in which the petition is pending, by warrant of the county auditor issued upon order of the court. In case the district is organized, such costs shall be repaid to the county, out of the first funds received, by the district, through the levy of taxes or assessments or selling of bonds, or the borrowing of money. If the district

is not organized, the costs shall be collected from the petitioners or their bondsmen; upon the organization of the district the court may, upon ten days' notice to the county auditors of the counties affected, make an order dividing the preliminary expenses between the counties included in the district, in proportion to the interests of the various counties as may be estimated by the court; and direct the auditor of each county to issue his warrant upon the treasurer for the proportion of the preliminary expenses assigned to that county by the order.

[*Ex. 1919 c. 13 s. 27*] (6824)

**111.29 PRELIMINARY EXPENSE FUND ESTABLISHED.** As soon as the district shall have been organized under the provisions of sections 111.02 to 111.42, and a board of directors shall have been appointed and has qualified and a petition and bond have been filed with the clerk of the board, as provided in section 111.11, the board may file a petition with the district court in the county where the original petition was filed, asking that an order be made creating a preliminary fund for the district, at least ten days' notice of which shall be given to the auditor of each county affected by the proposed improvement, which fund shall be of a size in proportion to the size of the district. In the event the district shall include the whole or portions of five or more counties, the funds shall not exceed the sum of \$20,000 and may be of such less amount as the court may order; and the court, upon the hearing, may designate the amount of the fund and fix the proportionate amount that each county affected by the improvement shall pay, in proportion to the area within the county affected by the proposed improvement, and thereupon the court shall order the auditor of each county to draw his warrant upon the treasurer of the county for the payment of the amount specified in the court's order, payable to the treasurer of the district, and the sum so advanced by the county shall be charged to the district, and shall be repaid with interest to each county as soon as the district has funds for that purpose, and the funds so provided shall be used by the board of the district for preliminary work, and when the board shall incur expense for surveys or other preliminary work on any proposed improvement, all expense, including time, salaries, or other expense connected with such work, shall be kept track of and figured in as the cost of construction in any such proposed improvement, and upon the improvement being ordered by the court and funds being provided for the construction thereof, as therein specified, all sums advanced out of the preliminary funds shall be repaid and the funds replaced for further similar use on other improvements. The board of directors for any such district is authorized to include in its petition to the court asking the creation of a preliminary fund, or by separate petition at a subsequent date, a request that the court shall, in addition to the creation of the fund, make a further order authorizing the board of the district to levy upon the lands affected by the proposed improvement an assessment of such sum as may be found necessary to reimburse any county for the sum advanced to create the preliminary fund, not to exceed, however, the sum of 20 cents per acre, and the court is hereby authorized to make such order; provided, that in all cases where the district includes the main stream of a basin draining more than 10,000 square miles, such application shall be accompanied by a plat, describing thereon, according to government survey, the lands that it is claimed will be benefited by the proposed improvement, and the order of the court in such cases shall designate the land in each county subject to such assessment. Upon the receipt of the order the board of directors of such district shall cause to be levied upon such benefited lands such assessments as the court shall authorize and shall file with the auditor of each county a list of lands within the county affected by the assessment and, upon the filing thereof, or as soon thereafter as may be necessary, it shall be the duty of the auditor to levy such assessment upon the lands specified and spread the same upon the assessment roll as in the case of other taxes; and it shall be the duty of the county treasurer to collect and receive such assessment and credit the same to the district and deduct from such assessment any sum, if any there is due, to the county and account to the district for all sums remaining.

[*Ex. 1919 c. 13 s. 28; 1921 c. 325 s. 10*] (6825)

**111.30 APPORTIONMENT OF COSTS.** At the time set for hearing on the report and petition of the board of directors of any district and the report of the engineer asking for the establishment of any improvement under the provisions of sections 111.02 to 111.42, or at any time subsequent thereto, upon five days' notice, in writing, to the auditor of each county containing property affected by such

improvement, the court shall apportion the amount of the total costs of the construction of the improvements among the counties affected in proportion to the benefits received and shall fix and determine the amount to be paid by each and, upon similar notice to the auditor, the judge of the district court may, at any time, modify his order as justice may require, or make additional orders covering additional expense. The word "expense," as used in this section, shall be construed to mean every item of cost of the improvement from its inception to its completion and all fees and expenses paid or incurred, including all damages awarded; and, upon the filing of the order, or a certified copy thereof, with the auditor of each county affected, together with a list of all property in the county affected and a statement of all benefits and damages affecting the same, and such other information as the court, by order, may direct, it shall be the duty of the county board of each county to provide the necessary funds to meet the proportionate share of the cost of the improvement, as specified in the order, in the same manner as now provided in the case of judicial ditch proceedings, under section 106.40. Immediately, or at the earliest date possible following the letting of contracts for the construction of the improvement by the board of directors of the district, it shall cause to be made and filed, with its clerk and with the auditor of each county affected, a statement showing the total cost of the improvement, including expenses as nearly as they can be ascertained, and the proportionate amount that the property within each county affected shall be required to pay on the basis fixed by the order of the court, together with a list of all property benefited within such county; and thereupon it shall become the duty of the auditor of each county to cause to be made and recorded the tabular statement and lien against the property benefited within the county the amount to be paid by the property in the county, in accordance with the provisions of sections 106.41 and 106.42; and it shall be the duty of the county commissioners of each county to provide funds to meet the proportionate share of the total cost of the improvement, as shown by the report of the board of the drainage and conservancy district and the order of the court, and the county board is authorized to exercise all rights and authority in so doing now granted to the board of county commissioners under the provisions of sections 106.40 and 106.41 and other provisions relating to county and judicial ditch proceedings. It shall be the duty of the respective county auditors and county treasurers to levy and collect the amount shown in the tabular statement and lien, as provided in sections 106.45 and 106.46. All moneys received by the treasurer of any county from the sale of bonds, assessments, or otherwise for the benefit of the district shall be by him accounted for and paid over to the treasurer of the district.

[*Ex. 1919 c. 13 s. 29; 1921 c. 325 s. 11*] (6826)

**111.31 ASSESSMENTS.** Upon the filing by the board of directors of a drainage and conservancy district with the auditor of any county of a statement as provided in section 111.30, giving a list of the property and corporations benefited or damaged or otherwise affected by any proposed improvement, it shall be the duty of the auditor to assess the amount specified in such list against the lands and municipalities or other corporations as therein specified in accordance with the provisions of section 106.19, he shall proceed to levy and collect the sums specified in the lists against the property and corporations in accordance with the provisions thereof and, in the event the sum so reported shall become a direct charge against the county, it may be paid by such county out of its road and bridge fund, or otherwise, as the county commissioners may direct, and may be paid in whole or in instalments as may be specified by the board of county commissioners of the county. No assessment shall be levied against any property or corporation benefited under the provisions of sections 111.02 to 111.42 in excess of the amounts of benefits received as fixed by the order of the court directing the construction of the improvement or subsequently determined on appeal.

[*Ex. 1919 c. 13 s. 30; 1921 c. 325 s. 12*] (6827)

**111.32 ISSUANCE OF ORDERS.** The board of directors of any drainage and conservancy district is hereby authorized to issue the orders of the district in payment for any contracts for the construction of any improvement and also for all ordinary general expenses and all expenses incurred by contract or otherwise in making repairs, and when sufficient funds are not available to pay the same, the order shall, after presentation to the treasurer of the district, draw interest at the rate of six per cent per annum until paid or until notice shall be given by the district that funds are available; provided, the board of directors shall never, at any

time, issue, or have outstanding, orders of the district exceeding the sum of \$5,000, except orders issued in payment of construction on any improvement the funds for which have been provided or arranged for.

[*Ex. 1919 c. 13 s. 31*] (6828)

**111.33 UPKEEP AND REPAIR OF DISTRICT.** The board of directors of any drainage and conservancy district organized under sections 111.02 to 111.42 is authorized, after the construction of any improvement, to levy, from time to time, as occasion may require, upon the property and corporations benefited by such improvement, such sum as the court may order or direct upon application by the board for the purpose of providing funds for the upkeep and repair of such improvement, which application shall be heard upon such notice as the court shall direct, and upon filing a copy of the order and levy with the auditor of each county affected by such improvement, accompanied by a list of the property and corporations within the limits of the county, it shall be the duty of the auditor to extend the levy against the property within the limits of the county, as provided in other cases for the levy, assessment, and collection of taxes ordered, levied, and collected by the board of county commissioners in ditch proceedings; and, upon like application and order, the board of directors of any drainage and conservancy district is authorized to levy upon the property and corporations benefited, within the district, as shown by the engineer's and the viewers' reports, as finally adopted by order of the court, such sum as the court may authorize and direct and to cover the general expenses of the board, not to exceed in any one district the sum of \$5,000, and the court shall, by such order, apportion the amount of such levy among the several counties according to the area or valuation of the portion of each county within the district benefited by any particular improvement, as shown by the engineer's and the viewers' reports, and upon the filing of a copy of the order showing the amount to be levied upon such property and corporations benefited within the limits of each county, the auditor of such county shall levy the same upon such property and corporations contained in such list within the limits of his county in the same manner and with like effect as in the levy of other taxes by municipal corporations in this state; and all sums collected and received by the treasurer of such county shall be accounted for to the treasurer of the drainage and conservancy district and the same shall be placed in the fund, as provided in sections 111.02 to 111.42, and used for the purposes for which the assessment was made.

[*Ex. 1919 c. 13 s. 32; 1921 c. 325 s. 13*] (6829)

**111.34 WHEN REPAIRS ARE TO BE MADE.** It shall be the duty of the board of directors of any drainage and conservancy district, upon being notified by the county board of any county, portions of which shall be within the limits of the district, that certain ditches, channels, or watercourses within the county and district are in need of repair or improvement, to immediately, or at the earliest possible date, investigate and report to the county commissioners the condition of the ditches, drains, watercourses, or other improvement needing repair, the amount and nature of the repairs required and the probable cost thereof and, upon the county providing the funds, it shall be the duty of the board to take charge of all matters pertaining to the making of the repairs, and let contracts therefor, or proceed to employ assistants and have the repairs made under the direction of the chief engineer; and, in like manner, it shall be the duty of the board of any drainage and conservancy district organized under sections 111.02 to 111.42, upon the request of the county board, in case of a county ditch, or of the district court, in case of a judicial ditch, to take charge of the construction of any ditch then petitioned for; and thereafter all work done upon the construction of any such ditch shall be under the supervision and control of the board of such drainage and conservancy district, which shall make reports thereon to the county board or the court as may be required, and the engineer of the drainage and conservancy district shall have supervision of the work and perform all duties as assigned and specified, with reference to the engineer in charge of county or judicial ditch proceedings, and shall have and may exercise like authority.

[*Ex. 1919 c. 13 s. 33*] (6830)

**111.35 BOARD TO HAVE CONTROL OF ALL CONTRACTS.** In all cases where contracts are let by the board of directors of any drainage and conservancy district, it shall have full control of all matters pertaining thereto and, in the event of a contractor failing to complete the improvement within the time or in the

manner specified in his contract; it shall have full authority to extend the time or refuse the extension and cancel the contract, and re-advertise and relet the contract it may deem proper, or may require the bondsmen for the contractor to complete the same or proceed to have the contract otherwise completed at the expense of the contractor and his bondsmen, and take any other action with reference thereto that occasion may require in the interest of the district, and the provisions of General Statutes 1923, Section 6694, shall apply to and govern the relations between it and the contractor, including the examination and report of the engineer and the amount and time of payment, so far as applicable; and, in all cases, it shall have full control of all agents and employees engaged or appointed by it, and may fix their compensation and remove them at pleasure. The board shall keep an accurate account of all expenses incurred; and the time and expenses of all employees, including the expenses of the members while engaged in any improvement, which shall be charged to and be treated as part of the costs of the improvement, and the compensation of the members of the board of directors of any district for such services shall not exceed the sum of \$5.00 per day and their necessary expenses for the time actually employed in performing such duties, of which accurate account shall be kept by the secretary.

[*Ex. 1919 c. 13 s. 34*] (6831)

**111.36 NEGLECT OF AFFAIRS.** The provisions of section 106.92 relating to the obstruction or injury of work or neglect of duties by employees or officers shall apply to any and all improvements made or authorized under the provisions of sections 111.02 to 111.42, and any other provision contained in the laws of this state relating to judicial or county ditches providing for punishment for damages committed to or interfering with such work shall apply to all improvements made under the provisions of sections 111.02 to 111.42.

[*Ex. 1919 c. 13 s. 35*] (6832)

**111.37 REPORT OF DIRECTORS.** At least once a year, or oftener, if the court shall so order, the board of directors shall make a report to the court of its proceedings and an accounting of its receipts and disbursements to that date, which shall be filed with the clerk of the court, and it shall be the duty of the board from time to time to make such report as may be demanded by the public examiner, and it shall be the duty of the public examiner to check up and report to the court, not less than once a year and at such other time as the court may direct, the financial condition of the district.

[*Ex. 1919 c. 13 s. 36*] (6833)

**111.38 IMPROPER NOTICES.** In any case where a notice is provided for in sections 111.02 to 111.42, if the court finds for any reason that due notice was not given, the court shall not thereby lose jurisdiction and the proceeding in question shall not thereby be void; but the court shall, in that case, order due notice to be given, and shall continue the hearing until such time as such notice shall be properly given, and thereupon shall proceed as though notice had been properly given in the first instance. In case any individual appraisal, assessment, or levy shall be held void for want of legal notice, or in case the board may determine that any notice, with reference to any land, may be faulty, then the board may file a motion in the original cause asking that the court order notice to the owner of such land to be given and set a time for hearing, as provided in sections 111.02 to 111.42. In case the original notice, as a whole, was sufficient and was faulty only with reference to publication as to certain tracts, only the owners of, and persons interested in, those particular tracts need be notified by such subsequent notice. If the publication of any notice in any county was defective or not made in time, republication of the defective notice need be had only in the county in which the defect occurred.

[*Ex. 1919 c. 13 s. 37*] (6834)

**111.39 REFERENCE TO OTHER CHAPTERS.** In all cases where reference is made to chapters of General Statutes 1913, or to other drainage laws of this state, and sections thereof are referred to, the sections and provisions shall, so far as applicable, be treated and construed as having the same force and effect, so far as the provisions of sections 111.02 to 111.42 are concerned, as though therein set forth.

[*Ex. 1919 c. 13 s. 41*] (6838)

**111.40 CONTINUATION.** Nothing contained in sections 111.02 to 111.42 shall be construed to interfere with the application and use of any other drainage law of this state and all proceedings now pending may be completed under such drainage



law, and any proceedings hereafter instituted under such law may be conducted thereunder, except where such proceedings are instituted within, or affect property within the limits of any district organized under the provisions of sections 111.02 to 111.42, notice of the institution of such proceedings shall be given to the board of the district and the board or its engineer given an opportunity to be heard with reference to such proceedings affecting, interfering with, or injuring the plans and work of such district. All rights and privileges that may be acquired by any drainage and conservancy district organized under the provisions of sections 111.02 to 111.42 shall, at all times, be subject to regulation and control by act of the legislature and all such rights and interests that may be acquired by any district hereupon shall be subject to the right of the state to take over and acquire title thereto upon such conditions and compensation as the legislature may specify.

[*Ex. 1919 c. 13 s. 42*] (6839)

**111.41 DISTRICTS ALREADY ESTABLISHED.** Any drainage or flood control district organized under chapter 112 may acquire the right to operate under and exercise all the rights and authorities of sections 111.02 to 111.42, instead of chapter 112, as though organized thereunder by the governing board of the district, filing in the office of the clerk a petition to the court asking that the district be granted such authority, whereupon the clerk, with the consent of the judge, shall fix a time and place of hearing upon the petition, notice of which shall be given by publication. If at the hearing the court shall find that it is for the best interests of the district to be granted such authority, the court may by order grant such petition and thereupon and thereafter the district may exercise the authorities provided for in sections 111.02 to 111.42, as though incorporated thereunder.

[*Ex. 1919 c. 13 s. 43*] (6840)

**111.42 MAY APPEAL TO SUPREME COURT.** All persons or public corporations affected by any order of the district court, establishing or refusing to establish a drainage and conservancy district, or affected by any order approving or refusing to approve the plans and directing the construction of the improvement, or affected by the determination of any district court of any assessment of benefits or damages, including the board and the petitioners, may appeal to the supreme court on any question involved in such determination, as in civil actions. The notice of appeal shall be served on the clerk and need not be served on any other person or corporation.

[*Ex. 1919 c. 13 s. 43B; 1921 c. 325 s. 15*] (6840-B)

**111.43 WATER CONSERVATION; DECLARATION OF PURPOSE.** In order to conserve, protect, and utilize the water resources of the state, in accordance with the best interests of the people of the state, it is hereby declared to be the policy of the state that, subject to existing rights, all waters in streams and lakes wholly within the state and such portions of all boundary streams and lakes as lie within the state, whether meandered or non-meandered, which are navigable in fact, shall be public waters and that the state, so far as practicable, shall control the appropriation and use of surface and underground waters of the state. It is also declared to be the policy of the state, for the purpose of promoting the public safety and welfare, to control and supervise, so far as practicable, the construction, reconstruction, repair, removal, and abandonment of dams, reservoirs, and all other control structures in any of the waters of the state.

[*1937 c. 468 s. 1*] (6602-51)

**111.44 COMMISSIONER TO MAKE INVESTIGATION.** For the purpose of enforcing the provisions of sections 111.43 to 111.63, the commissioner shall be authorized and empowered to cause to be made investigations into the extent, value, conservation, and control, in the general public interest, of the state's water resources, to receive and hear applicants for permits to use and appropriate the surface and underground waters of the state; to control and supervise, so far as practicable, the construction, reconstruction, repair, removal, and abandonment of dams, reservoirs, and other control structures in any of the waters of the state and to make or cause to be made all surveys, maps, investigations, and studies necessary to effectually perform these functions and to do such other acts as are specifically provided in sections 111.43 to 111.63.

[*1937 c. 468 s. 2*] (6602-52)

**111.45 WATER CONSERVATION PROGRAM.** The commissioner shall devise and develop a general water resources conservation program for the state. This

# MINNESOTA STATUTES 1941

983

## DRAINAGE AND CONSERVANCY 111.49

program shall contemplate the proper conservation, allocation, and development of all of the waters, surface and underground, of the state for the best interests of all of the people of Minnesota, and shall guide the commissioner in the issuing of permits for the use and appropriation of the waters of the state and the construction, reconstruction, repair, removal, or abandonment of dams, reservoirs, and other appurtenant structures, as hereinafter provided. The commissioner is hereby authorized and empowered to make, or cause to be made, all such surveys, maps, investigations, and studies of the water resources of the state as he may deem necessary to provide him with sufficient information to formulate a program, and to perform his duties under sections 111.43 to 111.63. He is also authorized to cooperate with any department, bureau, or body of the federal government, state agency, county board, town board, city or village council, private corporation or organization or individual in carrying out the provisions of sections 111.43 to 111.63.

[1937 c. 468 s. 3] (6602-53)

**111.46 MUST HAVE WRITTEN PERMISSION FROM COMMISSIONER.** From and after July 1, 1937, except as hereinafter provided, it shall be unlawful for the state or any agency thereof, any person, partnership, association, private or public corporation, county, municipality, or other political subdivision of the state, to appropriate or use any waters of the state, surface or underground, without the written consent or permit of the commissioner, previously obtained upon written application therefor to the commissioner. Nothing in this section shall be construed to apply to the use of water for domestic purposes serving at any time less than 25 persons, or to the use of water for any purpose originating within the geographical limits of any municipality; nor shall it apply to beneficial uses in existence on July 1, 1937, or interfere with or infringe upon existing rights.

[1937 c. 468 s. 4] (6602-54)

**111.47 PERMISSION NECESSARY TO BUILD DAMS.** From and after July 1, 1937, it shall be unlawful for the state, or any agency thereof, any person, partnership, association, private or public corporation, county, municipality, or other political subdivision of the state, to construct, reconstruct, remove, or abandon any reservoir, dam, or waterway obstruction; or to make or construct, or permit to be made or constructed, any change therein or addition thereto; or to make, or permit to be made, any change in, addition to, remove, or abandon, any existing dam, reservoir, or waterway obstruction; or in any manner, other than in the course of usual operation of dams beneficially using water prior to July 1, 1937, to change or diminish the course, current, or cross-section of any stream or body of water, wholly or partly within this state, without a written permit from the commissioner previously obtained, upon written application, on forms to be furnished by the commissioner therefor, to the commissioner, as provided in section 111.46. Nothing in this section shall be construed to apply to any dam or obstruction in a stream or other body of water which has less than one square mile of drainage area or a normal flow of less than two cubic feet per second or to the erection, use, or control of structures operated or to be operated for the production of water power. Nothing in this section shall be construed to apply to the construction of any highway, public road, bridge, or culvert thereon by the department of highways, railroad, or by any county, town, city, or village; provided, that any data available or secured by the authorities having charge of the construction of any such highway, public road, railroad, bridge, or culvert, and which pertains to the topography, flowage, and volume of water and watershed areas, shall be transmitted, as soon as practicable, to the commissioner.

[1937 c. 468 s. 5; 1939 c. 125] (6602-55)

**111.48 APPLICATIONS.** Each application for a permit required by sections 111.43 to 111.63 shall be accompanied by maps, drawings, and specifications describing the proposed appropriations and use of waters or of the changes, additions, or repairs proposed to be made, and such other data and information as the commissioner may require.

[1937 c. 468 s. 6] (6602-56)

**111.49 PUBLIC HEARINGS UPON APPLICATION.** Subdivision 1. When held. As soon as convenient after the filing with the commissioner of any application for a permit to appropriate or use any waters of the state, or to construct or reconstruct or remove or abandon any reservoir, dam, or waterway obstruction, in any waters of the state, under the provisions of sections 111.43 to 111.63, or upon

his own initiative, for any of the above reasons, in the interests of conserving, utilizing, or protecting the water resources of the state, the commissioner shall set a day for a public hearing upon the application. The applicant shall give notice to the public of the application and hearing, either in the manner prescribed by the commissioner, or by the publication, once in each week for two successive weeks prior to the hearing, in a legal newspaper published within the county within which a part or all of the proposed appropriation or use, or construction, reconstruction, removal, or abandonment is located; provided, nothing in sections 111.43 to 111.63 shall apply to ordinary or usual repairs or replacements or any necessary emergency repairs or replacements. The county commissioners of each such county, the mayor, or chief executive official of each such city, and the proper officials or any interested agency of the state, or political subdivision thereof, designated by the commissioner, shall also be notified by the applicant, by mail, and satisfactory evidence of such notices filed with the commissioner. The published notice of the application shall recite the date, place, and time fixed by the commissioner for the public hearing on the application, and shall recite the levels sought to be established by the application, any control structures requiring modification, change, or construction, and any proposed plan of operation to effectuate the purpose of the application. At such public hearing, the applicant, and all other affected persons or corporations, municipal or private, shall be given an opportunity to be heard for or against the granting of the application.

**Subdivision 2. Procedure.** Hearings herein provided for shall be so conducted as to afford all affected persons a full and complete opportunity to be heard. All testimony shall be taken under oath and the right of cross-examination shall be accorded. A record of all testimony shall be preserved, together with all exhibits entered, and all objections to evidence shall be recorded in the record, together with rulings thereon. The commissioner shall make findings of fact upon all issues necessary for determination of the matters before him. He shall not be bound by common law or statutory rules of evidence or by technical or formal rules of pleadings or procedure, except as herein provided, but shall make his investigation and inquiries and conduct his hearings so as to ascertain the substantial rights of all parties. All orders of the commissioner shall be based upon findings of fact made only upon competent evidence. Notice of any orders made after any hearing hereunder shall be given by publication of such order once each week for two consecutive weeks in a legal newspaper in the county where the hearing was held.

[1937 c. 468 s. 7; 1939 c. 327 s. 1] (6602-57)

**111.50 ALL PAPERS FILED, OPEN FOR INSPECTION.** All applications or petitions, all orders, proof of publication or service of notices or orders and all other papers and documents required to be made and kept hereunder shall be filed by the commissioner and shall be open for inspection by any interested person or his attorney.

[1939 c. 327 s. 2] (6602-57a)

**111.51 SUMMONING OF WITNESSES; RECORD KEPT.** The commissioner shall have power to subpoena and compel the attendance of witnesses and to examine them under oath, to be administered by him, to subpoena and compel the production of all books, papers, and documents, whether in official or private custody, material to the purposes of the hearing or investigation being conducted. Disobedience of any such subpoena, or refusal to be sworn, or to answer as a witness, shall be punishable as a contempt in like manner as a contempt of the district court upon proceedings instituted by the attorney general on complaint of the commissioner before the district court of the county where such disobedience or refusal occurred.

The commissioner shall cause a complete record of all proceedings on these hearings to be made and shall provide a stenographer to take testimony and record of proceedings at the hearings and the stenographer shall furnish a transcript of the testimony or proceedings to any person requesting it upon payment to him of a reasonable charge therefor to be fixed by the commissioner.

[1939 c. 327 ss. 3, 4] (6602-57b) (6602-57c)

**111.52 OWNERS TO CAP ARTESIAN WELLS.** For the conservation of the underground water supplies of the state, the department of conservation is hereby authorized to require the owners to cap artesian wells not in continuous use.

[1939 c. 327 s. 5] (6602-57d)

**111.53 EVIDENCE, INVESTIGATION.** Before acting on any application, the commissioner shall weigh all of the evidence offered in behalf of and in opposition to the action prayed for in the application. If he deems it necessary, he shall make appropriate investigations of his own. If the commissioner shall be of the opinion, from all of the evidence submitted, that, in pursuance of the policy of the state for the conservation of its water resources in the general public interest, as herein declared, the plans of the applicant provide for the greatest practicable utilization of the waters of the state and will adequately protect public safety and will promote the general public welfare, he shall grant the permit to appropriate or to use the waters, or to construct, reconstruct, or remove or abandon the proposed reservoir, dam, or waterway obstruction, or to accomplish any combination of these objects. If the commissioner is of the opinion, from the evidence before him, that the proposed appropriation or use of state waters or the proposed construction is inadequate, wasteful, dangerous, impracticable, or will be detrimental to the best public interest, he may reject such application or may order such modifications of the proposed plans as he deems sufficient to protect the public welfare and safety. In granting a permit authorizing the use or appropriation of water or the construction or alteration or the removal or abandonment of any reservoir, dam, or waterway obstruction, the commissioner may include in the permit such reasonable conditions, terms, and reservations with respect to the character, amount, means, and manner of such use or appropriation of water or method of construction reasonably necessary to preserve the proper control in the state of the waters to be affected and to insure the safety and welfare of the people of the state. It shall be unlawful to construct or begin construction, or to make or begin any change or addition, or reconstruct, abandon, or remove any reservoir, dam, or waterway obstruction, except in accordance with the terms, conditions, regulations, and restrictions of a written permit first obtained therefor from the commissioner, and such rules and regulations, with regard to the construction, changes, or additions, as may be prescribed by the commissioner. The commissioner may determine and specify, in each permit granted for the construction of a dam or other water-works, what provisions, if any, should be made for the passage of fish, low-water flows, and flood water discharges and that the elevation of the control sill of the dams shall at no time be lower than the elevation of the natural outlet in the state of nature. The commissioner shall approve, modify, or disapprove applications within 60 days after filing of application or within 60 days after date of hearing, if any be deemed necessary.

[1937 c. 468 s. 8] (6602-58)

**111.54 DAMS AND RESERVOIRS EXAMINED.** Upon complaint or upon his own initiative, the commissioner shall have power to cause an investigation or examination to be made of any reservoir, dam, or waterway obstruction now existing or hereafter constructed. If the commissioner shall determine that such reservoir, dam, or waterway obstruction is unsafe or needs repair, he shall, in writing, notify the owner or owners thereof to repair or remove the same, as the exigencies of the case may require; such work to be commenced and prosecuted to completion within such reasonable time as may be prescribed in the notice by the commissioner.

[1937 c. 468 s. 9] (6602-59)

**111.55 MAY SET TIME LIMIT FOR BUILDING OR REBUILDING DAM.** The commissioner shall prescribe a time limit of not more than two years from the granting of any permit within which the construction or reconstruction must be begun. The commissioner shall fix the time within which all construction or reconstruction of reservoirs, dams, or waterway construction authorized in the permit must be completed, or the appropriation or use of water must be made, which time shall in no instance exceed five years from the date of the granting of the permit. The commissioner shall have authority for good cause to extend the time for commencing and completing the work authorized under a permit for the use of water in connection therewith.

[1937 c. 468 s. 10] (6602-60)

**111.56 RULES AND REGULATIONS.** The commissioner, with the advice and approval of the attorney general, is hereby authorized and empowered to make such reasonable rules and regulations and issue such orders as may be proper for effecting the purposes of sections 111.43 to 111.63.

[1937 c. 468 s. 11] (6602-61)

**111.57 COMMISSIONER TO APPEAR FOR STATE IN FEDERAL HEARINGS.** The commissioner may appear, represent, and act for the state in any matter relating to any application to be made to the federal government, or to any of its officers, boards, or commissioners, for permit to develop or use water power in the state and may do and perform such acts in connection therewith as he deems proper to protect the interests of the people of the state consistent with the provisions of sections 111.43 to 111.63.

[1937 c. 468 s. 15] (6602-65)

**111.58 DAMS TO BE MAINTAINED BY STATE.** All dams owned by the state or erected upon lands owned by the state or for which the state has acquired permanent easement shall be maintained by the state from funds appropriated by the legislature directed for such purpose or from such other sources as may be provided by law. When in the interest of public health or welfare it may be necessary to acquire dam sites, flowage rights, or rights of way for the construction, operation, and maintenance of water control works and other appurtenant construction for the development of the water conservation program of the state, the commissioner, subject to the provisions of section 111.59, is authorized to acquire such lands or any necessary interest therein by purchase, gift, or condemnation when the necessary funds have been provided by legislative appropriation or from such other sources as may be provided or authorized by law. The commissioner is authorized to accept from local governmental and civic agencies or persons funds for the purpose of maintaining or constructing such dams and appurtenant or control structures or the lands required therefor.

[1937 c. 468 s. 16; 1941 c. 88] (6602-66)

**111.59 NOT TO AFFECT EXISTING CONTRACTS.** Nothing in sections 111.43 to 111.63 shall apply to existing contracts with, or permits, grants, or other authorizations by, this state, any other state, or the federal government for the appropriation, use, or diversion of public waters, nor to existing dams, reservoirs, or control structures owned, leased, or operated by municipalities, individuals, private corporations or commercial companies operated for the production of power, except as may be necessary in emergencies to protect the health and safety of the people of the state.

[1937 c. 468 s. 17] (6602-67)

**111.60 APPEALS.** Any party in interest may appeal from any determination of the commissioner to the district court of the county in which the project is wholly or partially located or to the district court of Ramsey county. Appeals may likewise be taken from the judgments of the district court to the supreme court. Such appeal may be taken and the rules of pleading and procedure on such appeal shall be the same as now provided by law for appeals from orders of the railroad and warehouse commission, as provided in section 237.25, and on the trial or appeal the judge of the district court having jurisdiction, or the supreme court, may set aside, modify, or confirm such determination as the evidence or law may require. The pendency of any such appeal shall not of itself stay or suspend the operation of the order or determination of the commissioner, but the district court or the supreme court, in their discretion, may restrain or suspend, in whole or in part, the operation of the commissioner's determination, pending the final hearing and determination of the appeal, by requiring the filing of an appropriate bond or other undertaking by the appellant, conditioned that the appellant shall answer for all damages caused by the delay in the enforcement of the determination of the commissioner. The court may, in lieu of such bond, require or permit of such other security as it may deem proper.

[1937 c. 468 s. 12; 1941 c. 86] (6602-62)

**111.61 VIOLATION A GROSS MISDEMEANOR.** Any person, partnership, association, or corporation, public or private, that shall do or cause to be done any act or thing contrary to or required by the provisions of sections 111.43 to 111.63, or that shall fail, neglect, or refuse to do or cause to be done any act required by the provisions of sections 111.43 to 111.63, or that shall violate or fail to comply with any order of the commissioner of which due notice shall be given; or that shall violate any of the provisions of sections 111.43 to 111.63 shall be guilty of a gross misdemeanor; and, upon conviction thereof, sentenced to pay a fine of not more than \$1,000, or, in the discretion of the court, such person, or the members of such partnership or association, or the officers and directors of such corporation, public or private, as the case may be, shall be sentenced to imprisonment for a

# MINNESOTA STATUTES 1941

987

DRAINAGE AND CONSERVANCY 111.65

period not exceeding one year, either or both, in the discretion of the court. In the case of the state or any agency thereof, counties, municipalities, and other political subdivisions of the state, the officials responsible for the violation shall, after hearing, be subject to removal from office by the governor.

[1937 c. 468 s. 13; 1941 c. 71] (6602-63)

**111.62 MAY ENFORCE ORDERS OF COMMISSIONER.** Upon application of the commissioner, verified by oath or affirmation, the district court of any county in which the project is wholly or partially located, or the district court of Ramsey county, may, by injunction, enforce the compliance with, or restrain the violation of, any order or notice, or rule or regulation of the commissioner made pursuant to the provisions of sections 111.43 to 111.63, or restrain the violation or attempted violation of any of the provisions of sections 111.43 to 111.63. The attorney general shall act as legal adviser to the commissioner.

[1937 c. 468 s. 14] (6602-64)

**111.63 APPLICATION.** Nothing in sections 111.43 to 111.62 shall be construed so as to interfere with the exercise of the lawful jurisdiction of the government of the United States, or its duly constituted agencies, over the waters of the state and provided that nothing in sections 111.43 to 111.62 shall in any way supersede, alter, or amend the provisions of sections 92.45 and 110.13.

[1937 c. 468 s. 18] (6602-68)

**111.64 COMMISSIONER MAY CONSTRUCT DAMS.** The commissioner, in order to improve navigation, protect and improve domestic water supplies, protect and preserve fish and other wild life, protect the public interest in shores and shore lines, and promote public health, shall have power to construct and maintain, as hereinafter provided, all necessary dikes, dams, sluiceways, and other structures or devices necessary and essential to maintain such uniform water levels as may be established under authority of sections 111.64 to 111.80. He shall have the power to appoint competent and experienced civil engineers and assistants whose duties it shall be to make surveys and estimates as are required to secure the information and data he may deem necessary. The wages and salaries of any engineer, assistant, or other person, together with the expense incurred by such appointee or employee, under the provisions of this section, shall be included as a part of the costs of such proceedings and included in the assessments against the property benefited, when approved by the district court in the county where the engineering work is done and performed.

[1935 c. 369 s. 2] (6602-12)

**111.65 OWNERS MAY INITIATE PROCEEDINGS.** A majority of the owners of property abutting upon any lake or other body of water or the proper officials of any city or village authorized by resolution of the council thereof liable to be affected by or assessed for the cost of the proposed improvement may initiate a proceeding for the establishing of a uniform water level in any lake or other body of water by filing with the commissioner a petition signed by a majority of such owners of property, asking him to take steps for the establishment of such water level. The petition shall set forth the desired levels and, where the costs of the improvement are to be paid for by the state of Minnesota or by an owner or group of owners, the petition shall so state, and shall further set out the names of the owners and the description of the lands owned by each of the parties, including the state of Minnesota. Before the commissioner shall accept for filing any such petition he shall require the petitioners to file with him a surety bond conditioned for the payment, in case the court shall deny such petition, of all the costs of the necessary surveys and of the court proceedings. Upon receipt of the petition the commissioner shall file with the clerk of the district court of the county containing such lake or other body of water or portion of any such lake or other body of water likely to be affected, in whole or in part, by such improvement, a petition addressed to the court setting forth the following information:

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

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

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

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

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

(6) The various reasons why the project is believed to be of public advantage; and

(7) Which of the following parties, in the opinion of the commissioner, should share the expense of the project; riparian owners, the state, the county or counties, other interested municipalities.

When structures are to be built affecting waters located in more than one county, the commissioner may file a petition with the clerk of the district court in any one of the counties affected and thereafter that court shall have jurisdiction of all proceedings, subject to the statutes providing for a change of venue.

When proposed improvements under sections 111.64 to 111.80 do not contemplate the raising of the elevations of the lake above ordinary high water or where no part of the costs of the improvements are to be assessed against property surrounding the lake, the petition of the court authorized by this section may be presented by the commissioner of conservation on his own initiative, without bond.

[1935 c. 369 s. 3] (6602-13)

**111.66 APPOINTMENT OF APPRAISERS.** Within ten days after the filing of such petition with the clerk, as specified in section 111.65, the judge shall make an order appointing three resident freeholders of the county or counties in which the construction is proposed, not interested in the proposed works and not related by blood or marriage within the fourth degree, according to the rules of the common law, to any party known to be interested therein, to act as appraisers to ascertain and report to the court the amount of benefits and damages that will result to any lands or other property affected or to be affected by reason of the proposed works. Such appraisers shall meet at a time and place to be specified by the court, preparatory to commencing their duties.

[1935 c. 369 s. 4] (6602-14)

**111.67 DUTIES OF APPRAISERS.** The appraisers shall qualify by subscribing to the oath provided by section 358.06. The duties of the appraisers shall be:

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

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

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

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

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

(6) To ascertain and determine whether the proposed improvements of such lake, lakes, or bodies of water will be of advantage for the preservation, propagation, and protection of fish and other forms of wild life.

[1935 c. 369 s. 5] (6602-15)

**111.68 TABULAR STATEMENTS.** The appraisers shall prepare a tabular statement showing, as far as practicable:

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

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

(3) The amount of benefit, if any, that will accrue to the state by reason of the improvement of the lake, lakes, or bodies of water as a place for the propagation,

protection, and preservation of fish and other forms of wild life assessable against the state of Minnesota;

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

(5) The total expenses incurred by them and the actual time each appraiser was engaged.

[1935 c. 369 s. 6] (6602-16)

**111.69 FILING OF REPORT; COMPENSATION.** The appraisers shall file their completed report with the clerk within 30 days after their appointment. As soon as this report shall have been filed the court may issue its order directing the payment of compensation at the rate of \$5.00 per day for each appraiser, and their expenses, which sums may be taxed as costs by the clerk.

[1935 c. 369 s. 7] (6602-17)

**111.70 HEARINGS.** Upon the filing of the engineer's and the appraisers' reports with the clerk, it shall be the duty of the judge to fix a time and place for hearing the petition and the engineer's and the appraisers' reports, and such evidence as interested parties may present, which hearing shall be set for a date not less than 30, nor more than 60, days from the date of the notice thereof and shall be held in the county where the proceedings are pending. The notice shall recite the filing of the petition, the appointment of the appraisers and the filing of their reports; shall give a description of all lands and properties affected and the amount of benefits and damages assessed against each parcel described in the appraisers' report. The notice shall be published for three successive weeks in a legal newspaper in each county containing property affected by such proceedings and described in the appraisers' report, but it shall be necessary to publish in each county only the description of lands or property affected within such county. A copy of the notice shall be mailed by the clerk of court to all parties who are named in the proceedings and a certificate of such mailing filed by him in his office.

[1935 c. 369 s. 8] (6602-18)

**111.71 CONFIRMATION OF ASSESSMENTS.** Subdivision 1. **Hearing, findings, order.** At the time fixed in the notice the judge shall receive and consider all evidence for and against the granting of the petition and may revise, correct, amend, or confirm such assessments in whole or in part or may order a new assessment in whole or in part. If after a hearing such court shall find that the fixing and maintenance of the stage of water in the lake, lakes, or bodies of water or streams connecting the same, as prayed for or as recommended by the engineer, will promote the public health and general welfare and secure better public use of such lake, lakes, or bodies of water, improve the use of such bodies of water for navigation or for the propagation, preservation, and protection of fish and other forms of wild life, and that the benefits resulting will exceed the cost of the construction of the improvement prayed for, and damage, the court may so find and by order:

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

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

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

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

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

Subdivision 2. **Affirmance of appraisers' report.** When the appraisers shall have determined the amount of the benefits to the lake, lakes, or bodies of water from the construction of the improvements and works authorized herein which will accrue to the state of Minnesota through increased or improved facilities for the propagation, preservation, and protection of fish and other forms of wild life, as



provided in section 111.67, clause (6), and section 111.68, the judge, in his order confirming the appraisers' report, shall direct the commissioner to pay the state's pro rata portion of the costs of the improvement represented by such benefits, and the commissioner shall have authority to pay such portion of the costs out of state funds which are available therefor.

Upon the filing of the order by the court with the clerk, it shall be his duty to furnish to the auditor of each county affected a complete certified list giving the description of all the property affected in the proceedings in his county, the names of the owners, as shown in the appraisers' report, the amounts of benefits or damages as to each tract, and a copy of the order of the court confirming the report of the engineer and appraisers, and directing the construction of the improvement. When it appears from the engineer's report that the total estimated cost of any improvement contemplated under the provisions of sections 111.64 to 111.80 will exceed \$2,500, or when the funds to defray the cost of such improvements are to be provided by the issuance of warrants or other evidences of indebtedness by the counties affected, the board of county commissioners in each county affected thereby shall approve such project by resolution, and a certified copy of the resolution shall be filed with the clerk of the district court where the proceedings are pending, before the clerk shall be authorized to give notice of a final hearing.

[1935 c. 369 s. 9] (6602-19)

**111.72 JUDGE MAY MAKE ORDERS.** The judge before whom any petition may be filed, under the provisions of sections 111.64 to 111.80, shall have power to make such orders as may be necessary, from time to time, in any proceeding hereunder and to modify the same as justice may require at any time during the pendency thereof. He shall not lose jurisdiction of the proceedings by reason of failure to give proper notice or failure to hold any hearing noticed or ordered to be held for the consideration of any matter connected with the proceedings or committed to them, and may make such new and additional orders in the premises as justice may require, to bring the parties interested before him and to promote the final completion of the works petitioned for under the provisions of sections 111.64 to 111.80.

[1935 c. 369 s. 10] (6602-20)

**111.73 MAY DEMAND JURY TRIALS.** Any party interested in any proceedings brought under the provisions of sections 111.64 to 111.80, whether a petitioner, an owner of land affected, an interested municipality, or the state, may, at any time prior to the commencement of the hearing, demand a jury trial with respect to the following questions:

- (1) The amount of assessed benefits to any tract of land owned by him;
- (2) The amount of damages allowed to any tract of land owned by him.

[1935 c. 369 s. 11] (6602-21)

**111.74 CONSTRUCTION; CONTRACTS.** Subdivision 1. **Bids, advertising.** At the time of the filing of the order and findings by the court, the clerk shall furnish a certified copy thereof to the commissioner. Within 30 days of the receipt thereof the commissioner shall proceed to advertise for bids for the construction of the works ordered by such judge, as provided in section 111.71, by giving notice by publication for three successive weeks in the official newspaper of the county in which the proceedings are pending, of the letting of a contract for such works.

Subdivision 2. **Contracts awarded.** At the time and place fixed in the notice the commissioner shall proceed to award the contract to the lowest responsible bidder. Such bidder shall furnish good and sufficient bond, to be approved by the court, in an amount not less than 75 per cent of the total amount of the contract, guaranteeing the faithful performance of the contract and payment of all labor, material, and supplies furnished in the performance of the contract; provided, that wherever a dam or other improvement authorized under sections 111.64 to 111.80 is to be included within a state or federal public emergency relief project and where the costs of such improvements are to be provided from state or federal emergency relief funds, the provisions of this section with reference to the award of contract shall not apply.

Subdivision 3. **Approval of contracts.** The contract and bond for the construction of any works in sections 111.64 to 111.80 shall be approved by the attorney general.

Subdivision 4. **Payments under contracts.** Payment shall be made to the contractors as the work progresses, not exceeding 80 per cent thereof, by the county

board upon certificates showing the progress of such work to be furnished to the county board by the commissioner.

**Subdivision 5. Filing of copy of contract.** A copy of all contracts awarded by the commissioner shall be filed with the county auditor in each county affected.

[1935 c. 369 s. 13] (6602-23)

**111.75 WORK TO BE SUPERVISED BY ENGINEER.** Any and all work provided for in sections 111.64 to 111.80 shall be done under the constant supervision and inspection of the engineer designated by the commissioner.

In all proceedings instituted under the provisions of sections 111.64 to 111.80, the engineer and the assistant, and the appraisers and their assistants, shall have the right to enter upon any lands for the purpose of making the survey, examining the property and estimating the benefits and damages, but in so doing they shall commit no unnecessary damages.

[1935 c. 369 s. 14] (6602-24)

**111.76 AUDITORS TO PREPARE TABULAR STATEMENTS.** As soon as practicable after the filing by the clerk of the certified copy of the court's order and findings with the auditor or auditors, as the case may be, and as provided in section 111.71, the auditor or auditors shall prepare a tabular statement showing:

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

(2) The description of the lands as the same appears in the order;

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

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

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

Such statement, signed by the auditor in the presence of two attesting witnesses and acknowledged by him, shall then be duly filed with and recorded by the register of deeds of each county affected and of each county containing municipalities affected and of each county in which is located any land described in the statement.

[1935 c. 369 s. 15] (6602-25)

**111.77 BENEFITS TO BE PARAMOUNT LIEN.** The amount of benefits assessed against each tract of land and the interest thereon as hereinafter provided shall be and remain a first and paramount lien on such land until fully paid and take precedence over all mortgages, charges, encumbrances, or other liens, except real estate taxes, and shall be on a parity with real estate taxes.

Payments may be made as hereinafter provided in accordance with the order of the court, as provided for in section 111.71, subdivision 1, clause (4).

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

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

The recorded statement shall be returned to the auditor and preserved by him.

[1935 c. 369 s. 16] (6602-26)

**111.78 LIENS TO BEAR INTEREST.** The amount that each tract of land, public or private, shall be liable for on account of the construction of works authorized in sections 111.64 to 111.80 shall bear interest from the date of the filing of the auditor's statement in the office of the register of deeds at the legal rate until paid.

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

When payment of the full amount of the liens with interest shall at any time be made the county auditor, upon presentation of a receipt from the county treasurer to that effect, shall issue under his hand a certificate of such payment and the same when recorded in the office of the register of deeds shall release and discharge the lien of record.

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

# MINNESOTA STATUTES 1941

## 111.79 DRAINAGE AND CONSERVANCY

992

The auditor of the county wherein the proceedings are held is hereby authorized, upon order of the court, to issue warrants of the county to pay the official costs of such proceedings and when the costs are assessed against the lands in more than one county such costs are to be determined and apportioned between the counties affected in proportion to the benefits assessed against the lands and property in such county. The issued warrants are to draw interest at the legal rate, subject to their payment as provided under section 106.88.

[1935 c. 369 s. 17] (6602-27)

**111.79 STATE NOT LIABLE; COUNTY BOARDS MAY APPROPRIATE.** No proceedings shall be instituted under the provisions of sections 111.64 to 111.80 whereby the state of Minnesota shall be assessed or charged for a portion or the whole of the cost of such improvement unless, at the time of the institution of such proceedings, funds are available for the payment of the same. The boards of county commissioners may appropriate money to purchase such materials and supplies and to rent such equipment as may be necessary for the construction of dams, dikes, and other works under the provisions of sections 111.64 to 111.80 and also on projects sponsored by the department of conservation to be constructed by the several state and federal relief agencies.

[1935 c. 369 s. 18; 1937 c. 96 s. 1; 1937 c. 162 s. 1] (6602-28)

**111.80 APPLICATION.** Nothing in sections 111.64 to 111.79 shall amend, alter, supersede, or otherwise change the provisions set forth in sections 110.01 to 110.10, 110.13, and 378.07. The provisions of sections 111.64 to 111.79 shall in no manner apply to public waters of an area of more than 10,000 acres, situated wholly or partially within counties now or hereafter having a population of more than 450,000 and an assessed valuation of more than \$450,000,000, including money and credits, and in which is situated a city of the first class within a distance of 20 miles from the body of public water; and, as to such public waters, nothing contained in sections 111.64 to 111.79 shall be construed to authorize the diversion of any water from any stream, river, or lake located in any county adjoining or abutting in part upon the county wherein a major portion of such public waters is located.

[1935 c. 369 s. 19] (6602-29)