

## CHAPTER 113

## IRRIGATION, OTHER PROVISIONS

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**113.01 DAMS AND DIKES AUTHORIZED FOR IRRIGATION PURPOSES.**

The owner of any land in this state which is suitable for the culture of wire grass, cranberries, rice, or other crops requiring irrigation, may, upon being licensed, as hereinafter provided, construct upon the lands so owned, and across or upon that portion of any public ditch, drain, or watercourse situated within the boundaries of the land, such dams, dikes, or other regulating or controlling works, as may be necessary to secure the use of the water for irrigation. Any dam so constructed shall contain properly constructed gates of sufficient size to carry off the flood water above high-water mark within 24 hours.

[1915 c. 189 s. 1] (6927)

**113.02 LICENSE TO BE SECURED FROM STATE DRAINAGE ENGINEER.**

Any owner desiring to avail himself of the provisions of sections 113.01 to 113.06 shall apply for license so to do to the state drainage engineer, who shall issue a license to the applicant for the same, under such rules and regulations and guarantees as he may require.

[1915 c. 189 s. 2] (6928)

**113.03 BOND.** Before any license is granted the licensee shall execute a bond to the State of Minnesota for the use of all persons who may be injured by the construction, conditioned for the payment of all damages to persons or property by reason of the construction of the dams, dikes, or the use of the water.

[1915 c. 189 s. 3] (6929)

**113.04 UNDER SUPERVISION OF ENGINEER.** All dams, dikes, or other works or structures constructed or erected under the provisions of sections 113.01 to 113.06 shall be under the supervision and direction of the state drainage engineer.

[1915 c. 189 s. 4] (6930)

**113.05 NOT TO INTERFERE WITH PUBLIC DITCHES.** Nothing in sections 113.01 to 113.06 shall be construed as authorizing any act interfering with the benefit and utility of any public ditch, drain, or watercourse, nor to in any manner authorize the use of the water to the damage or injury of the land of any other person; and, if at any time it appears that the structures herein authorized cannot be maintained without impairing the utility of a public drain or watercourse, nor without depriving other land owners of the benefit thereof, then and in that case, such license shall, upon demand of the owner or owners of such other land, be immediately revoked.

[1915 c. 189 s. 5] (6931)

**113.06 VIOLATION A MISDEMEANOR.** Any person violating any provision of sections 113.01 to 113.05 shall be guilty of a misdemeanor.

[1915 c. 189 s. 6] (6932)

**113.07 ERRORS.** Whenever in any county or judicial ditch proceedings conducted under Laws 1905, Chapter 230, and acts amendatory thereof and supplementary thereto, it shall appear that the ditch has been regularly established and the contract let and tabular statement made and filed and the bonds issued and sold

as provided in Chapter 230, and the contract wholly completed, and that by reason of an error on the part of the engineer in computing the yardage or other work pertaining to the ditch, or by reason of unforeseen obstacles having arisen after the letting of the contract, thereby increasing the total cost of the ditch; or where for any other reason it shall appear, when the ditch is completed, that the total amount of the tabular statement filed and the amount of bonds issued is less than the total cost of the ditch, and that the total amount of benefits, as returned by the viewers and shown by the records in the proceedings, exceeds the amount of the tabular statement filed and bonds issued and such facts are made to appear to the county board by report of the county auditor, or otherwise, the county board is hereby authorized, by resolution made and entered, to direct the county auditor to issue notice to the parties interested in the ditch proceedings and serve the same by publication for at least two weeks and by mailing notice to the last known addresses of all parties interested, as shown by the records in the proceedings, requiring all such parties to show cause before the county board why an order should not be made directing the county auditor to file another tabular statement assessing against the property affected by the proceedings, in the same proportion as the original assessment, the total cost of the ditch in excess of the total amount of the tabular statement previously filed, not to exceed the total amount of benefits as shown by the viewers' report; and, upon the hearing, the county board is hereby authorized to cause to be made and entered an order directing the county auditor to make and file an additional tabular statement in form as provided in section 313.03, covering the deficiency between the amount of the previous tabular statement filed and the total cost of the ditch and assess the same against the lands benefited in the same proportion as the original summary statement filed; and the county board is further hereby authorized, when the amount so levied shall exceed the sum of \$5,000, to issue and sell bonds of the county, as provided in section 106.40, to include the whole or such portion of the amount as it may direct, covered by the additional tabular statement so filed; and the tabular statement so filed, as herein provided, shall constitute a first lien against the property, as provided in section 106.41, except only as to previous statement filed; and it shall be the duty of the county auditor to cause the statement to be recorded, as provided in section 106.42; and the provisions of sections 106.45 and 106.46 shall apply to and govern the acts and duties of the several officials in the collection of the assessment so levied. This section shall not apply in any case where the matter in issue has already been determined by the court.

[1919 c. 471 s. 15] (6913-B)

**113.08 REASSESSMENT FOR INCREASED COST.** In any county when a ditch has been established under the provisions of Laws 1905, Chapter 230, and tabular lists and statements have been made, filed, and recorded, as provided by Chapter 230, Sections 19 and 20, which have not included the increased cost of such ditch, caused by a modification of the plans and specifications by the engineer as the work has proceeded, or where a part of the cost of such ditch was erroneously assessed against the right of way or other land owned by a railroad company, which was exempt by law from such assessment, the amount of such increased cost arising from such modification of plans when the same does not exceed two per cent of the total original cost of such ditch, or the part of the original cost so erroneously assessed against railroad property, may be assessed against the property which was properly subjected to the assessment for such ditch, and the board of county commissioners of any county in which such ditch has been established is hereby authorized to determine what proportion of such assessment each piece, parcel, or tract of land affected shall bear, and to assess the same against such lands according to the same rules which governed the first assessment.

[1907 c. 246 s. 1] (6914)

**113.09 DUTIES OF ENGINEER.** The engineer in charge of the construction of any such ditch, who, as the work has proceeded, has modified the plans and specifications of the same, whereby changes have been made which have increased the total cost of such ditch, shall ascertain the correct amount of such cost and shall forthwith make and file with the county auditor a detailed and verified report of the same.

[1907 c. 246 s. 2] (6915)

**113.10 SPECIAL MEETING OF COUNTY BOARD; NOTICE.** Upon the filing of such engineer's report with him, or upon his own ascertainment of the fact that any part of the original cost of the ditch was assessed against exempt railroad property, the county auditor shall forthwith call a special meeting of the board of county commissioners, by giving to each member thereof not less than 15 days' written notice, and cause a notice of the time and place of such special meeting to be given to all persons interested, by publication for one week prior thereto in a newspaper printed and published in the county, and by posting at least one week before such meeting printed copies thereof in three public places in each township where such ditch is located, which notice shall state the object and purpose of such meeting, and in addition thereto the auditor shall mail a notice of the meeting to all persons interested whose addresses are known to him or can be ascertained by inquiring at the treasurer's office.

[1907 c. 246 s. 3] (6916)

**113.11 HEARING.** The board of county commissioners at the special meeting being satisfied that the notice thereof has been given as provided in section 113.10, shall (or at any time to which it may adjourn from time to time, as necessity may require, but not otherwise) proceed to hear and consider the matter, and all persons interested may appear and be heard by and before it.

[1907 c. 246 s. 4] (6917)

**113.12 ORDER FOR ASSESSMENT.** If from the engineer's report and such other evidence as may be adduced before it the county board shall find that by a modification of the plans and specifications the total cost of the ditch has been increased by not more than two per cent of the total original contract price for the construction thereof, or that any part of the original cost was erroneously assessed against exempt railroad property, it shall by order determine the proportionate part thereof which shall be assessed against each piece, parcel, or tract of unexempt land affected.

[1907 c. 246 s. 5] (6918)

**113.13 DUTY OF AUDITOR; LIEN.** The board having made its order reassessing the lands it shall be the duty of the county auditor forthwith to make out, file, and have recorded, a tabular list and statement, as provided in Laws 1905, Chapter 230, Sections 19 and 20, and the amount assessed against each piece, parcel, or tract of land, as stated in such list and statement, shall be a lien thereon from the time of the recording of such statement in the office of the register of deeds until collected and fully paid, as provided in Chapter 230.

[1907 c. 246 s. 6] (6919)

**113.14 STATEMENT FILED.** The fees of the register of deeds for recording such supplemental list and statement shall be paid by the county, on the allowance of the board of county commissioners, and the statement, after the same has been recorded, shall be returned to the auditor to be by him placed with other papers relating to such ditch and carefully preserved by him.

[1907 c. 246 s. 7] (6920)

**113.15 APPEAL.** Any person or corporation aggrieved thereby may appeal from the order of the board of county commissioners made with reference to such reassessment, for the same reasons and in the manner prescribed in Laws 1905, Chapter 230, Section 12.

[1907 c. 246 s. 8] (6921)

**113.16 REPAIR AND MAINTENANCE OF CERTAIN DISTRICTS.** In all counties in this state which now have or may hereafter have 292,000 inhabitants or more according to the last state census, where a judicial ditch has been constructed along a creek or watercourse and where such creek or watercourse flows into a navigable lake lying wholly or in part within such county the board of county commissioners thereof shall pay for the repair and maintenance of the ditch or watercourse out of the lake improvement fund and shall not assess the expense thereof upon the adjoining lands.

[1907 c. 75] (6922)

**113.17 CONSTRUCTION AND MAINTENANCE OF BRIDGES.** In all cases where a public drainage ditch has been, or shall hereafter be constructed wholly or partly along a boundary line between towns or counties and the excavated material or a portion thereof has been or shall hereafter be deposited on the boundary

line or within two rods on either side thereof, the cost of construction and maintenance of all bridges heretofore or hereafter constructed across any such ditch along the boundary line shall be paid for and borne equally by the town and county wherein the bridges are or shall be constructed and the town and county adjoining the boundary line.

[1917 c. 441 s. 20] (6925)

**113.18 PROCEEDINGS HERETOFORE COMMENCED TO BE COMPLETED UNDER PROVISIONS OF THEN EXISTING LAW.** In all cases where a petition has been filed and proceedings have been instituted thereunder for the establishment of any drainage improvement under any drainage law of this state prior to the passage of this section, the proceedings may be completed under the provisions of law existing prior to the passage thereof, and the provisions of such law shall continue for the purpose of completing such unfinished proceedings, notwithstanding the amendments provided for in section 113.17.

[1917 c. 441 s. 21] (6926)

**113.19 IMPROVEMENT OF CERTAIN DITCHES.** In any case where one or more ditches or drainage systems, whether open or tiled, whether public or private, shall have been, or are being, or may hereafter be, constructed, or for the construction of which proceedings have been, or may hereafter be, initiated, the waters from which do, or it is contemplated shall, empty into any existing ditch or any creek, draw, watercourse, or body of water, whether meandered or not, and it is found or believed that the operation, performance, or additional ditch construction or drainage improvement shall cause, or is likely to cause, by reason of accumulated waters, the overflow of the waters of the drainage ditch, creek, draw, watercourse, or body of water into and through which said waters flow, and the inundation of the adjoining land, and it is believed that it is necessary to construct off-take or outlet ditches so as to create additional outlets for such waters in order to relieve said overflow conditions, or if it is believed that the deepening and widening of such existing drainage ditch, creek, draw or watercourse, which forms the outlet for other drainage systems, is necessary to take care of the waters coming into the same, then, and in that event, upon the filing of a petition by the county board of any county affected, or by not less than 25 per cent of the freeholders whose property is affected by such overflow, with the clerk of the district court of any county affected by the proposed improvement, setting forth in general terms the existence of the ditch or drainage system and the conditions of the creek, draw, watercourse, or body of water and outlet, and the necessity for the improvement hereinbefore specified; and, if need be, the controlling of the waters therein or in the body of water, or both, and that the proposed improvement will be a public benefit and utility and improve the public health and protect the land from overflow, and asking for the assessment of all lands in any existing or proposed drainage system, together with an assessment against any additional lands that may be benefited thereby by reason of the fact that waters therefrom empty in whole or in part into said outlet, and the extension of the same so as to furnish a proper outlet for all waters of the basin that naturally drain into or through said outlet or outlets, and that the cost of constructing, widening or improving said off-take or outlet ditch or of constructing additional outlet ditches, shall be borne by all of the lands that are or will be benefited, including the lands in any existing or proposed drainage system, and in order to equitably apportion the cost of the construction of the drainage improvement, the extension of the outlet, or construction of additional outlet ditches, to all lands to be benefited, and that the petition, except when presented by a county, shall be accompanied by a proper bond, as provided in section 106.03, the clerk of the court shall notify the judge thereof and the judge shall make an order fixing the time and place for a hearing upon the petition and ordering all proceedings then pending in any or all of said drainage proceedings to be stayed until the hearing and determination of such petition, which petition and order shall be served upon all persons and parties interested in such drainage proceedings by publication thereof once a week for three successive weeks prior to the date of the hearing in a legal newspaper in each county in which the proposed drainage improvements or any part thereof are situated; and, if any such proposed drainage proceedings are pending before the county board of any

county the petition and order shall be served upon the county auditor and the clerk of the district court of the county.

[1945 c. 33 s. 1]

**113.20 HEARING; ORDER.** Upon such hearing, the court shall proceed to hear all testimony offered in relation to the matter and, if it be made to appear that the allegations of the petition are true and that the same should be granted, he shall make an order granting the petition and giving said drainage proceedings a title and number by which it shall, in all subsequent proceedings, be designated, and appointing a competent civil engineer to make such additional surveys, and such changes and modifications of the surveys, reports, plans and estimates theretofore made as may be necessary, and fixing the time within which the modified and amended report of the engineer shall be filed in the office of the clerk of the district court of the county.

Upon the filing of the modified and amended report of the engineer, if any, the judge shall appoint three viewers to assess the benefits and damages in this drainage proceeding in accordance with the provisions of the drainage laws of this state, and thereafter the proceedings shall be continued and carried to final determination under the general drainage laws of this state as though originally commenced as one proceeding before the judge.

[1945 c. 33 s. 2]

**113.21 MAINTENANCE.** Said off-take ditches or additional outlets and outlet ditches shall thereafter be maintained by the county or counties in which said drainage system is located and the cost of maintenance shall be assessed against all lands benefited thereby.

[1945 c. 33 s. 3]

**113.22 ASSESSMENTS UPON STATE AND SUBDIVISIONS.** The state and its various subdivisions shall be assessed, and shall pay toward the improvements specified in sections 113.19 to 113.22, in proportion to the benefits each will derive therefrom and to such extent assist in the payment thereof.

[1945 c. 33 s. 4]

**113.23 PUBLIC ROAD DITCHES.** Subdivision 1. **Improving and draining.** For the purpose of draining public roads and preventing accumulations of water in road ditches, the overflow of which may damage adjacent lands, the various authorities having supervision over public roads, in addition to all other powers granted to said authorities, are authorized and empowered to expend moneys from funds available therefor in repairing, cleaning out, deepening, widening and improving public road ditches within the jurisdiction and supervision of such authorities. The necessity for such work shall be determined by the authorities which now have the supervision of said public roads; provided, that before said work may be done said road supervising authority shall determine that said road ditch as so improved will be provided with an adequate outlet.

Subd. 2. **Rental of ditch machinery by county board to municipalities.** The county board of any county now or hereafter owning machinery or equipment used in the construction and maintenance of ditches may lease such machinery and its incidental appliances to municipalities within such county upon such rate of rental and upon such terms and conditions as the county board may prescribe.

[1945 c. 36]