

# MINNESOTA STATUTES 1953 ANNOTATIONS

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DIVISION OF WATERS 105.01, 105.02

## 102.30 UPPER AND LOWER RED LAKE; TRANSPORTATION, SALE, AND DISPOSAL

HISTORY. 1949 c 324 s 1.

### DRAINAGE AND WATERS

#### CHAPTER 105

#### DIVISION OF WATERS

NOTE: Laws 1858, Chapter 73 (Aug. 8, 1858) related to the drainage of lands; Laws 1874, Chapter 57, to highway ditches; and Laws 1877, Chapter 91, authorized private parties to drain wet lands, and where necessary to petition the town supervisors to direct the manner of construction and assess damages.

The first general drainage act, Laws 1883, Chapter 108, empowered the county commissioners upon petition to lay out a drainage ditch or system and assess damages. Laws 1883, Chapter 139, authorized the county board to drain shallow lakes.

Laws 1887, Chapter 97, entirely revised all laws relating to county ditches; Laws 1887, Chapter 98, provided for the formation and organization of county drainage districts; and Laws 1887, Chapter 99, revised the laws relating to town ditches.

Laws 1893, Chapter 221, appropriated \$100,000, contributed by the Great Northern Railway Company, to be expended under the direction of an appointed board for the purpose of expediting better drainage by the Red River and its tributaries.

Laws 1897, Chapter 318, created a board of state drainage commissioners consisting of three members appointed by the governor.

The drainage laws were completely revised by Laws 1901, Chapter 258; Laws 1905, Chapter 230; Laws 1907, Chapter 448; Laws 1909, Chapter 469; and Laws 1925, Chapter 415.

Laws 1905, Chapter 230, inaugurated a plan for construction of judicial ditches operating in two or more counties; and created a state drainage commission composed of the governor, state auditor, and secretary of state, empowered to drain state lands. Additional powers and duties were imposed upon the commission by Laws 1907, Chapter 470. The commission was abolished; and a department of drainage and waters created under the supervision of a single commissioner appointed by the governor. This department was continued under the reorganization act, Laws 1925, Chapter 426, Article V.

The department of drainage and waters became a division of the department of conservation pursuant to Laws 1931, Chapter 186, further amended by Laws 1937, Chapter 310, and Laws 1943, Chapter 60, Section 3.

Laws 1945, Chapter 491, created a legislative interim commission to study, revise, and codify the laws relating to drainage and water resources. Based upon the report of the commission, Laws 1947, Chapter 103, 122, 123, 142, 143, and 571, were enacted. The water resources law (Laws 1937, Chapter 468, coded as sections 411.43 to 411.63) was repealed, together with sections 105.01 to 105.12 relating to the powers and duties of the commissioner of conservation and of the director of the division of water resources and engineering. Superseding the repealed sections, the legislature enacted Laws 1947, Chapter 142, coded as Sections 105.37 to 105.55.

Laws 1947, Chapter 571, relating to use of stoplogs is coded as sections 105.60 to 105.62.

105.01, 105.02 Repealed, 1947 c 142 s 20.

**105.03** Repealed, 1943 c 60 s 12.

**105.04-105.12** Repealed, 1947 c 142 s 20.

**105.13-105.36** Repealed, 1947 c 143 s 67.

NOTE: Excepted from Rules of Civil Procedure insofar as inconsistent or in conflict therewith.

### **105.37 DEFINITIONS**

NOTE: Section 105.37 rewrites section 105.01. The definition of "ditch" is eliminated and "commissioner" defined.

### **105.38 DECLARATION OF POLICY**

NOTE: Section 105.38, taken from section 111.43, changes the term "public waters" from "waters navigable in fact" to "waters capable of a substantial beneficial public use."

Declaration of policy as to water conservation and defining powers of the commissioner. 33 MLR 34.

"Surface waters" consist of waters from rain, springs, or melting snow which lie or flow on the surface of the earth but which do not form a part of a well-defined body of water or natural water course. Waters do not lose their character "surface waters" because in a measure they are absorbed by or soak into the marshy or boggy ground where collected. *Enderson v Kelehan*, 226 M 163, 32 NW(2d) 286.

In effecting a reasonable use of land for a legitimate purpose, a landowner, acting in good faith, may drain his land of surface waters and cast them as a burden upon the land of another, although such drainage carries with it some waters which would otherwise have never gone that way but would have remained on the land until they were absorbed or evaporated, if (a) there is a reasonable necessity for such drainage; (b) if reasonable care be taken to avoid unnecessary injury to the land receiving the burden; (c) if the utility or benefit accruing to the land drained reasonably outweighs the gravity of the harm resulting to the land receiving the burden; and (d) if, where practicable, it is accomplished by reasonably improving and aiding the normal and natural system of drainage according to its reasonable carrying capacity; or if, in the absence of a practicable natural drain, a reasonable and feasible artificial drainage system is adopted. *Enderson v Kelehan*, 226 M 163, 32 NW(2d) 286.

### **105.39 AUTHORITY AND POWERS OF COMMISSIONER**

NOTE: Section 105.39 is made up of section 105.03, a part of sections 105.05 and 111.45.

### **105.40 DUTIES OF DIRECTOR; QUALIFICATIONS**

NOTE: Sections 105.03, 105.04, 105.06, 105.07 and 105.10 are rewritten to make section 105.40.

### **105.41 APPROPRIATION AND USE OF WATERS**

NOTE: Section 105.41 is taken from section 111.46.

Prescriptive rights to underground water. 34 MLR 574.

### **105.42 PERMISSION REQUIRED TO BUILD DAMS**

NOTE: This is section 111.47 as amended by Laws 1943, Chapter 344.

Where the course, current or cross section of any public waters is to be changed or diminished, a permit must be previously obtained from the commissioner of con-

servation and this is true whether the structure is within or without the corporate limits of the municipality. The last paragraph of section 105.42 authorizes the commissioner to grant a permit subject to the approval of the county board to establish, construct, maintain, and control wharves, docks, piers, levees, breakwaters, basins, canals and hangars in or adjacent to public waters except within the corporate limits of the municipality; but it is not necessary to secure such a permit where the change does not diminish the course, current or cross section of public waters. OAG Aug. 16, 1949 (273-B-4).

## **105.43 APPLICATION FOR ESTABLISHMENT OF LAKE LEVELS**

**NOTE:** This is a new section recommended by the interim commission.

The county board, with the consent of the commissioner of conservation, may apply for authority to drill wells for the purpose of maintaining levels on any public water. A majority of the owners of property abutting upon any 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 establishment of the uniform water level in a body of water by following the procedure outlined in section 111.65. Proceedings are taken pursuant to sections 111.66, 111.68, 111.70, 111.71, 111.76 and 111.77. If the county board considers the project in the public interest it may appropriate money for the benefit of the project under the provisions of section 475.14 and the county cannot borrow money for the project. In assessing benefits the question of how far back from the shore the property is benefited is a question of fact to be determined by the appraisers and the court. OAG Sept. 9, 1948 (273-A-23).

## **105.44 PROCEDURE UPON APPLICATION**

**HISTORY.** 1947 c 142 s 8; 1951 c 334 s 1.

**NOTE:** Section 105.44 includes provisions found formerly in sections 111.49 and 111.51.

## **105.45 PERMITS AND ORDERS OF COMMISSIONER; NOTICE THEREOF**

**NOTE:** Section 105.45, taken from section 111.49, subdivision 2, and from section 111.53, eliminates the provision for fishways and the requirement that the sill of a dam may not be lower than the natural outlet.

## **105.46 TIME LIMIT**

**NOTE:** Section 105.46 is taken in part from section 111.55.

## **105.47 APPEALS**

**NOTE:** Section 105.47, taken from section 111.60, incorporated into the new section in appropriate language all the necessary provisions relating to appellate procedure.

## **105.48 DAM CONSTRUCTION AND MAINTENANCE BY STATE**

**NOTE:** Section 105.48 combines the provisions of section 111.58 with the first paragraph of section 111.64, without any policy change.

## **105.49 COOPERATION WITH OTHER AGENCIES**

**NOTE:** Section 105.49 combines section 105.04, subdivision 7, with section 105.12, making no material change.

## **105.50 COMMISSIONER TO APPEAR FOR STATE**

**NOTE.** Section 105.50 is taken from section 111.57.

### 105.51 OWNERS TO CAP ARTESIAN WELLS

NOTE: Section 105.51 is taken from section 111.52.

### 105.52 EXAMINATION AND REPAIR OF DAMS AND RESERVOIRS

NOTE: Section 105.52 is taken from section 111.54.

### 105.53 APPLICATION OF SECTIONS 105.37 TO 105.55

NOTE: Section 105.53 is taken from sections 111.59 and 111.63.

### 105.54 VIOLATION A GROSS MISDEMEANOR

NOTE: Section 105.54 is taken from section 111.61.

### 105.55 MAY ENFORCE ORDERS OF COMMISSIONER

NOTE: Section 105.55 is taken from section 111.62.

### 105.63 TRANSFER OF CUSTODY OF CERTAIN DAM AND WATER CONTROLS TO STATE AGENCY

HISTORY. 1949 c 571 s 1.

### 105.64 DRAINAGE OR DIVERSION OF WATER TO FACILITATE MINING

HISTORY. 1949 c 599 s 1-4.

## CHAPTER 106

### DRAINAGE

106.01-106.79 Repealed, 1947 c 143 s 67.

106.80 Repealed, 1947 c 122 s 1 (Saving clause).

106.81-106.93 Repealed, 1947 c 143 s 67.

NOTE: Excepted from Rules of Civil Procedure insofar as inconsistent or in conflict therewith.

### 106.011 DEFINITIONS

HISTORY. 1947 c 143 s 1; 1949 c 220 s 1; 1953 c 407 s 1.

NOTE: This is Section 106.01 with added definitions.

New public drainage system code. 33 MLR 34.

The viewers did not adopt an illegal and improper method in assessing benefits and awarding damages; and even if the lands that should have been assessed were omitted, it does not go to the validity of the order establishing the ditch or making the assessments. Errors in individual assessments may be corrected from the appeal from the assessments. *State v District Court*, 227 M 482, 36 NW (2d) 336.

In a proceeding to establish a judicial ditch under Chapter 106 the court's finding that the proposed drainage system is practical and feasible and such that it will be of public utility and benefit and promote the public health is supported by the evidence. *State v District Court*, 227 M 482, 36 NW (2d) 336.