

CHAPTER 110

DAMS; LAKE WATER LEVELS

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110.01 to 110.12 [Repealed, 1947 c 123 s 7]

110.121 AUTHORITY OF COUNTY BOARD. When the whole or any part of any body of water is situated in a single county, the county board of commissioners, in order to improve navigation thereon, or to promote the public health, safety and welfare, may improve the same and maintain the improvement and operate control works; provided that no such improvement affecting public waters be made until a permit therefor be issued by the commissioner of conservation of the state of Minnesota as provided by law.

[1947 c 123 s 1]

110.122 ACQUIRING PROPERTY. The county board may acquire, in the name of the county, by gift or purchase or by condemnation under Minnesota Statutes 1945, Chapter 117, any existing dam or control works that may affect the level of such waters, and all other land and property needful for the purpose of improving any body of water pursuant to section 110.121.

[1947 c 123 s 2]

110.123 ACCESS TO BODY OF WATER. No body of water shall be improved under sections 110.121 to 110.126 unless the public have access to some portion of the shore line thereof.

[1947 c 123 s 3]

110.124 APPROPRIATIONS. The county board is authorized to appropriate money from the general revenue fund of the county for the purpose of carrying out the provisions of sections 110.121 to 110.126, and may accept and receive gifts therefor.

[1947 c 123 s 4]

110.125 COOPERATIVE AGREEMENTS. The county board may make cooperative agreements with the United States or state government or any other county or city, village or borough for the purpose of effecting the provisions of sections 110.121 to 110.126.

[1947 c 123 s 5]

110.126 AUTHORITY OF MUNICIPALITIES. The governing body of any city, village or borough in the state within which the whole or any part of any body of water is situated, shall have all the powers to improve such body of water as are conferred by sections 110.121 to 110.126 on county boards.

[1947 c 123 s 6]

110.127 HENNEPIN COUNTY; IMPROVEMENT OF PUBLIC WATER. Subdivision 1. **Powers of county board.** In any county in this state now or hereafter having a population of 500,000 inhabitants or over, the board of county commissioners thereof, in proceedings for the improvement of any body of water pursuant to sections 110.121 to 110.126, for the purpose of improving navigation thereon and to

promote the public health, safety and welfare through the improvement of marshy areas or otherwise, shall, in addition to the powers granted by said sections 110.121 to 110.126, have the power to determine and award damages to property affected thereby and to determine and assess against property affected thereby special assessments for benefits resulting in any way from such improvement, in the manner herein set forth.

Subd. 2. **Plan, map.** (a) The board of county commissioners shall first cause a detailed plan of the proposed improvement to be made containing a general description of the nature of the improvement; the location and relocation of proposed dams, bridges and culverts; the legal description of each tract of land which may be damaged, affected or benefited as the result of such improvement; the name of the owner of each such tract of land as shown by the most recent available tax list of such county and the names of any persons in possession thereof; a map showing the area of the public water affected and the tracts of land bordering on such area; the estimated cost of such improvement exclusive of damage to property; and an engineer's report showing details of construction of proposed dams, bridges and culverts together with an outline of the probable consequences of the proposed improvement on water supply, water levels and existing structures and improvements. The board of county commissioners shall then approve or disapprove the proposed improvement.

(b) If the proposed improvement be approved and shall relate to the location or relocation of a dam, bridge or culvert the board shall call an election on the question of the improvement. By resolution, the board shall fix a day not less than 20 days nor more than 30 days after the passage of such resolution when an election shall be held at such place or places designated by the board within the area described as being that damaged, affected or benefited by the proposed improvement. The board shall cause a copy of the detailed plan together with a notice of election to be posted in three public places in the area, and the notice of election shall be published in each legal newspaper serving the area at least two weeks prior to the election. The board shall by resolution, for each polling place, appoint three resident electors in the area to act as judges of election. The polls shall be open to permit voting from 7:00 a. m. until 8:00 p. m. The judges shall conduct the election so far as practicable in accordance with the laws regulating the election of town officers. All resident voters in the area and all adult owners of property damaged, affected or benefited by the proposed improvement shall be entitled to vote on the question of the proposed improvement; and if such proposed improvement be on the matter of the location or relocation of a dam, all riparian owners and residents on riparian lands on the body of water affected shall be deemed to be damaged, affected or benefited by the improvement and eligible to vote.

(c) The ballot shall bear the words "For Improvement" and "Against Improvement" with a square placed before each of the phrases so the voter may make a cross in one of the squares to express his choice. The ballots and election supplies shall be provided by the county board.

(d) Immediately upon the completion of the counting of the ballots, the judges of the election shall make a signed and verified certificate declaring the time and place of holding the election, that they have canvassed the ballots cast, and the number cast both for and against the proposition; and they shall then file the certificate with the county board. If the certificate or certificates in total show that a majority of the votes cast were in favor of the improvement, the county board shall proceed with the improvement. If the vote shall be against the improvement, the improvement shall be abandoned and no subsequent petition for the same or similar improvement in the same area shall be entertained by the county board within two years after the election.

Subd. 3. **Appraisal.** When, pursuant to said sections 110.121 to 110.126 and as provided in Minnesota Statutes 1945, sections 117.01 through 117.20, petition is made to the court for the appointment of commissioners of appraisal, petitioner shall annex to the petition a copy of the plan of improvement prescribed by subdivision 2, and the court appointing such commissioners shall in its order of appointment provide that they shall, in addition to the determination and award of damages arising out of such improvement, assess special benefits resulting in any way therefrom to any lands affected thereby.

Subd. 4. Appraisers. The commissioners of appraisal shall, in addition to the determination and appraisal of damages sustained on account of taking under the right of eminent domain, determine and report what lands, if any, are especially benefited by such improvement wherever situate and whether contiguous or not. If the total of all the damages to any particular lands exceeds the benefits thereto, the excess shall be awarded as damages. If the benefits thereto exceed the total of all the damages to any particular lands, the difference shall be assessed as benefits. The total assessment for benefits shall not be greater than the aggregate net award of damages added to the estimated costs of construction, less the amount of moneys appropriated by the county and received by the county in the form of gifts for the purpose of carrying out such improvement. In every case the benefits assessed upon any land shall be in proportion to the actual benefits received, and no assessment upon any particular land shall exceed the amount of actual special benefits after deducting the damages, if any. The lands as to which damages are so awarded or benefits are so assessed shall be deemed to include all the lands damaged and benefited, wherever situate and affected in any way by such improvement.

Subd. 5. Appraiser's report. The commissioners of appraisal having determined and appraised the damages and assessed the benefits, as aforesaid, shall make and file with the court a written report of their action in the premises, under their hands, including 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 or any department or subdivision thereof; (2) 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; (3) the amount of damage, if any, that will accrue to each said tract of land; (4) the amount of benefit, if any, that will accrue to each said tract of land; (5) the total amount of benefit or damages resulting to each said tract of land; (6) the total estimated benefits and damages of every kind and nature ascertained and determined by them; and (7) the total expenses incurred by them and the actual time each appraiser was engaged. This report shall be substituted for and shall be in lieu of the report required pursuant to Minnesota Statutes 1945, Section 117.08.

Subd. 6. Appeal. The same right of appeal as set forth in Minnesota Statutes 1945, Sections 117.13, 117.14, and 117.15, in respect to damages is hereby established as the method of appeal from any assessment of benefits hereunder and judgment shall be entered upon the verdict or decision in the same manner.

Subd. 7. Determination of appeals; levy of taxes. Upon the determination of appeals taken in the proceeding in regard to assessment of benefits and when the period of limitations has run against appeals from such assessment of benefits, the assessments of benefits as reported by the commissioners of appraisal shall be final and conclusive. A copy of the report of the commissioners as to each assessment of benefits as finally determined shall be filed by the clerk of the court with the auditor of the county, and each assessment shall be a lien in the amount thereof upon the land to which it relates. The county auditor shall file a copy of the report of the commissioners as to each assessment of benefits as finally determined with the register of deeds of such county, and the lien shall be effective from the time of such filing. Such assessments may be distributed, on order of the board of county commissioners, over a term of years not exceeding ten and shall be collected with the taxes levied on the lands to which each relates. Assessments when collected shall be paid into the county fund out of which original expenditures for such improvement were made.

Subd. 8. Dams. In the event that a new dam is constructed in connection with such improvement, the board of county commissioners shall have power and authority to remove any dam rendered useless by the construction of said new dam.

Subd. 9. Modification; awards and assessments. The board of county commissioners shall have the right at any time during the pendency of any proceedings for an improvement conducted pursuant hereto, or at any time within 90 days after the final order of the court on the last of all appeals from such proceedings, or if there be no appeals therefrom within 90 days after the period of limitations for such appeals has run, to set aside any or all awards or assessments and abandon all such proceedings as to any or all lands affected when it shall deem it for the best interest of the county to do so.

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

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

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

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

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

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

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

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

110.16 RIGHT TO OVERFLOW, OBSTRUCT, OR IMPAIR HIGHWAYS GRANTED BY GOVERNING BODY. When it shall be necessary in creating, improving, or operating any water power to overflow, obstruct, or impair any public

street or other highway, or to dig any raceway therein, the right so to do may be granted by the town board or common council, as the case may be, of the town or municipality in which the part of such highway to be affected lies. Such grant shall be made upon petition and by an order, defining all the terms and conditions thereof, passed at a meeting of the board or council called to consider the petition, of which meeting and the purpose thereof ten days' posted notice shall have been given. Testimony may be taken, and all expenses of the meeting and examination shall be paid by the petitioner, whether his prayer be granted or refused.

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

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

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

110.18 DAMS BY MUNICIPAL CORPORATIONS ON RED RIVER OF THE NORTH. Any municipality owning or permanently controlling land upon which a proposed dam is to be constructed may construct a dam thereon and across that portion of the Red River of the North that forms a part of the boundary common to the state of Minnesota and the state of North Dakota for the purpose of conserving water for municipal, commercial, and domestic use, constructing in connection therewith any appliances, fishways, raceways, sluiceways, and wasteways as may be necessary or convenient for the proper construction and utility of such dam and as may be required by law. If required by law or treaty, the consent of the United States and of the state of North Dakota shall be first obtained.

[1925 c. 30] (6582-1)

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

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

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

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

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

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

110.22 LOGGING STREAMS; BOUNDARY WATERS. The owner of land bordering upon that part of any stream or other watercourse not navigable by steam but available for the floating of logs, lumber, or timber, may dam the same, and construct in connection with such dam all raceways and other appliances

necessary to the development of water power for any lawful purpose or for the supplying of water to municipalities. If such stream or watercourse be a common boundary between this state and any other state or country, the consent, if any, required by law or treaty from owners of the opposite bank, from the states or countries bordering thereon, and from the United States, shall first be obtained.

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

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

110.31 WATER LEVELS, REGULATION. The provisions of sections 110.31 to 110.39 shall apply in the case of any lake, including any connecting waters affected, being public waters of the state, where the following conditions now exist or shall hereafter exist:

(1) A dam, however constructed or maintained, shall have existed in the outlet of the lake, affecting the water level thereof, for a continuous period of at least 15 years;

(2) The lake shall have been used by the public for navigation, fishing, hunting, or other beneficial public purposes continuously throughout such period so far as permitted by natural conditions;

(3) The use of the dam for any lawful purpose other than regulating, controlling, or maintaining the water level of the lake in aid of navigation, propagation of fish or waterfowl, or other beneficial public purposes shall have been discontinued;

(4) Continuance of the regulation, control or maintenance of the water levels of the lake as affected by the dam during said period would be desirable and in furtherance of the public interests in navigation, propagation of fish or waterfowl, or other beneficial public uses of the lake, and discontinuance thereof through deterioration or removal of the dam or otherwise would be detrimental to such public uses.

[1951 c 667 s 1]

110.32 DEDICATION OF PERPETUAL FLOWAGE EASEMENT. In any such case it shall be presumed that every owner of land or any interest in land bordering on the lake or on any connecting waters affected by such dam has dedicated to the state for the use and benefit of the public a perpetual flowage easement on such land for all overflow and other effects of water thereon resulting from the existence, maintenance, or operation of such dams during such period, which easement shall be of like extent and effect as if the state had owned and controlled such dam and had thereby regulated, controlled, and maintained the water levels of the lake, and any connecting waters affected for the public use and benefit under the conditions existing from time to time during such period and had thereby acquired such easement for such purposes by prescription.

[1951 c 667 s 2]

110.33 CONVEYANCE OF EASEMENT TO COMMISSIONER OF CONSERVATION. The commissioner of conservation may accept a conveyance or release from the owner of any such land or interest therein granting to the state a flowage easement thereon for overflow or other effects of water resulting from the existence, maintenance or operation of such dam or any reconstruction or improvement thereof or any other dam that may be constructed in the outlet of such lake to regulate, control, or maintain the water level thereof in aid of navigation, propagation of fish or waterfowl, or any other beneficial public purpose.

[1951 c 667 s 3]

110.34 DETERMINATION OF EASEMENT RIGHTS. Subdivision 1. The extent and effect of any easement obtained by the state as herein provided and the title and rights of the state therein and in the lands affected thereby and all adverse claims thereto and the rights of all parties interested therein, respectively, may be determined by action brought in the name of the state in the district court of the county in which the lands affected are situated. Such action may be brought by the attorney general upon his own initiative or on request of the

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commissioner of conservation. On request of the attorney general the county attorney of the county in which the lands involved are situated shall assist in carrying on such action.

Subd. 2. Any or all of the lands affected bordering on any one lake and any connecting waters affected and situated in any one county may be included in one action, and any or all parties interested in such lands or any part thereof may be joined as defendants in such action. It shall be sufficient in the complaint and other papers in such action to describe the lands involved in their entirety as comprising all the lands bordering upon the lake and any connecting waters affected or any specified portion thereof and affected by the waters thereof, or to describe such lands in such other manner as may be appropriate, together with the extent and effect of the easement or easements claimed by the state thereon. It shall not be necessary to describe the separate parcels of land affected or to specify in which parcels the defendants respectively are interested. Failure to join any person as a defendant shall not impair the effect of the action as to those joined.

Subd. 3. Except as herein otherwise provided, all provisions of law relating to actions for the determination of title to real estate in the district court shall govern actions hereunder, so far as applicable.

Subd. 4. Expenses of such actions may be paid from any state funds appropriated for such purposes or may be paid by any county in which the lake involved or any part thereof is situated.

[1951 c 667 s 4]

110.35 EASEMENTS, APPURTENANT TO DAM. Every easement obtained by the state on account of any dam as hereinbefore provided shall attach and be appurtenant to such dam if acquired or taken over and maintained or controlled by the commissioner of conservation or any other authorized agency of the state in aid of public navigation, propagation of fish or waterfowl, or other beneficial public purposes, or if acquired or taken over and maintained or controlled for such purposes by any county or counties or other political subdivision of the state or combination thereof thereto authorized by law, and such easement shall be effective for any and all such purposes. Every such easement shall also and with like effect attach and be appurtenant to any reconstruction or improvement of such dam or to any new dam that may be constructed in the outlet of the lake affected and maintained or controlled by the commissioner of conservation or by any other public agency hereinbefore specified for such purposes.

[1951 c 667 s 5]

110.36 HIGH WATER LEVELS. In any case where the water levels maintained by a dam that shall have existed under the conditions specified in section 110.31 shall have established an ordinary high water level above the natural ordinary high water level of the waters affected, the ordinary high water level so established shall be deemed to have superseded the natural ordinary high water level of such waters, and shall have like effect for all purposes. Every owner of land affected by the ordinary high water level so established or of any interest in such land shall be presumed to have consented thereto and to have dedicated such land to the state for the use and benefit of the public for all purposes affected thereby. The commissioner of conservation may determine the ordinary high water level so established in like manner as provided by law for the determination of natural ordinary high water levels. Such determination shall be prima facie evidence of the level involved for all purposes, and otherwise shall have like effect as a determination of natural ordinary high water level by the commissioner.

[1951 c 667 s 6]

110.37 ABANDONMENT OF DAMS. In case any dam affected by the conditions specified in section 110.31 and not owned or controlled by the state or any other public agency shall not have been used or maintained by or under the authority of the owner thereof for any lawful purpose for a continuous period of at least 15 years, it shall be presumed that the owner has abandoned the dam and the site thereof, and has dedicated the same, together with any flowage easements appurtenant thereto, to the state for the use and benefit of the public. Thereupon the commissioner of conservation may, in his discretion,

take possession of such dam and the site thereof and such easements in behalf of the state, and may use, maintain, operate, control, or dispose of the same for public purposes, subject to provisions hereof or as otherwise authorized by law. The title of the state to any such dam, site, or easements may be established and determined by action in the district court as provided by law for actions for the determination of title to real estate, subject to the provisions of section 110.34 so far as applicable. The taking of possession of any such dam, site, or easements by the commissioner of conservation may be manifested by written certificate thereof executed by him and recorded in the office of the register of deeds of the county in which the dam is situated. No responsibility for any such dam shall devolve upon the state or the commissioner or any other agency of the state until such certificate shall have been recorded or a judgment entered in an appropriate action establishing the state's title thereto. In case any county or counties or other political subdivision of the state or combination thereof shall undertake to take over such dam and easements and maintain, operate, control, or dispose of the same for public purposes as authorized by law, the commissioner of conservation, in his discretion, may convey the same in the name of the state to such county or counties or other political subdivision or combination thereof for such purposes.

[1951 c 667 s 7]

110.38 LIMITATIONS. No action or proceeding against the state or the commissioner of conservation or any other officer or agent of the state or against any other public agency specified in section 110.35 or any officer or agent of such agency on account of the taking over, construction, reconstruction, repair, improvement, maintenance, operation, or control of any dam specified in sections 110.31 to 110.39 or on account of the effects of any water levels regulated, controlled or maintained by any such dam shall be maintained unless commenced within one year after such taking over or after the completion of such construction, reconstruction, repair, or improvement, as the case may be.

[1951 c 667 s 8]

110.39 APPLICATION, SUPPLEMENTAL. Subdivision 1. The provisions of sections 110.31 to 110.39 shall not apply so as to impair, prejudice or abrogate any right or interest involved in any action pending on April 21, 1951.

Subd. 2. The provisions of this act shall be supplementary to and not exclusive of other provisions of law relating to the same subject-matter and no such other provision shall be superseded by sections 110.31 to 110.39 except so far as may be necessary to give effect to the provisions hereof.

[1951 c 667 s 9, 10]