

112.35 WATERSHEDS

CHAPTER 112. WATERSHEDS

Sec.		Sec.	
112.35	Definitions.	112.53	Notice of hearing, contents.
112.38	Hearing, notice.	112.54	Hearing before managers.
112.42	Managers; organization, ap- pointment of successors.	112.55	Order of managers establishing improvement, filing.
112.44	Advisory committee.	112.64	Levy for repair of improvement.
112.47	Works instituted.	112.69	Construction by governmental agencies; procedure, convey- ance to federal government.
112.48	Approval of overall plan; fil- ing of petition; contents; hearing; bonds.	112.75	Repealed.
112.52	Hearing upon petition and re- ports.	112.86	Consolidation of districts [New].

112.35 Definitions.

[For text of subds. 1 to 18, see M.S.1971]

Subd. 19. "Work" or "works" means any construction, maintenance, repairs or improvements of a watershed district and includes the development of projects to accomplish the purposes for which a district is organized.

[1973 c 712 s 1]

[For text of subds. 20 and 21, see M.S.1971]

112.38 Hearing, notice

When it has been made to appear to the board that a sufficient nominating petition has been filed, the board shall, within 35 days thereafter, by its order, fix a time and place, within the limits of the proposed district, for a hearing thereon; provided that if there is not a suitable place within the proposed district, the board may select a place within the limits of the county or counties in which publication of the notice of the hearing is required. Notice of such hearing shall be given by the board by publication published once each week for two successive weeks prior to the date of hearing in a legal newspaper, published in the county or counties in which a part or all of the affected waters and lands are located, the last publication shall occur at least ten days before the hearing. Notice shall also be mailed by the board to the county auditor and to the chief executive official of any municipality affected, which notice shall contain the following:

- (1) That a nominating petition has been filed with the board, and a copy thereof with the county auditor of the county or counties affected;
- (2) A general description of the purpose of the contemplated improvement, and the territory to be included in the proposed district;
- (3) The date, time, and place of hearing, and
- (4) That all persons affected thereby or interested therein may appear and be heard.

[1973 c 712 s 2]

112.42 Managers; organization, appointment of successors

[For text of subds. 1 and 2, see M.S.1971]

Subd. 3. At least 30 days prior to the expiration of the term of office of the first managers named by the board, the county commissioners of each county affected shall meet and proceed to appoint successors to the first managers. Provided, however, if the nominating petition that initiated the district shall be originated from a majority of the cities, villages, or boroughs within the district the county commissioners shall appoint the managers from a list of nominees submitted by the townships and municipalities within the district. Said list shall contain at least three nominees for each position to be filled. It shall be submitted to the affected county board at least 60 days prior to the expiration of the term of office. If such list is not submitted within 60 days prior to the expiration of the term of office the county commissioners shall select the managers from eligible individuals within the district. Said county commissioners shall at least 30 days before the expiration

of the term of office of any managers meet and appoint the successors. If the district affects more than one county, distribution of the managers among the counties affected shall be as directed by the board. Ten years after the order of establishment, upon petition of the county board of commissioners of any county affected by the district, the board after public hearing thereon, may redistribute the managers among the counties if such redistribution is in accordance with the policy and purposes of chapter 112. No petition for the redistribution of managers shall be filed with the board more often than once in ten years. The term of office of each manager, if the number does not exceed three, shall be one for a term of one year, one for a term of two years, and one for a term of three years. If the managers consist of five members, one shall be for a term of one year, two for a term of two years, and two for a term of three years. If the district affects more than one county, the board shall direct the distribution of the one, two and three year terms among the affected counties. Thereafter, the term of office for each manager shall be for a term of three years, and until his successor is appointed and qualified. If the district affects more than five counties, in order to provide for the orderly distribution of the managers, the board may determine and identify the manager areas within the territory of the district and select the appointing county board of commissioners for each manager's area. Any vacancy occurring in an office of a manager shall be filled by the appointing county board of commissioners. A record of all appointments made under this subdivision shall be filed with the county auditor of each county affected, with the secretary of the board of managers, and with the secretary of the water resources board. No person shall be appointed as a manager who is not a voting resident of the district and none shall be a public officer of the county, state, or federal government.

[1973 c 712 s 3]

[For text of subds. 4 to 7, see M.S.1971]

112.44 Advisory committee

The managers, upon qualifying, shall appoint an advisory committee consisting of at least five members, who shall be selected if practicable as follows: one shall be a supervisor of a soil and water conservation district; one shall be a member of a county board; one shall be a member of a sportsmen's organization, and one shall be a member of a farm organization and others may be appointed at the discretion of the managers, which appointees shall be residents of the district, and shall serve during the pleasure of the managers. The committee shall advise and assist the managers upon all matters affecting the interests of the district, and shall make recommendations to the managers upon all contemplated projects and works of improvement within the district. In addition the managers may appoint other interested and technical persons who may or may not reside within the district who shall serve during the pleasure of the managers. Each member of the advisory committee, in the discretion of the managers, shall be entitled to reimbursement for actual traveling and other expenses necessarily incurred in the performance of his duties as provided for state employees.

[1973 c 712 s 4]

112.47 Works Instituted

All works of the district which are to be paid by assessment upon the benefited properties, shall be instituted: (1) by a petition filed with the managers; or (2) by unanimous resolution of the managers; or (3) as otherwise prescribed by this chapter.

[1973 c 712 s 5]

112.48 Approval of overall plan; filing of petition; contents; hearing; bonds

Subdivision 1. After the overall plan of the district has been prescribed, as provided for in section 112.46, a petition may be filed with the managers

112.48 WATERSHEDS

for any project or improvement within the district conforming in general with said plan. The petition therefor must be signed by: (1) Not less than 25 percent of the resident freeholders, or by the owners of more than 25 percent of the land within the limits of the area proposed to be improved, provided however if the project or improvement consists of a drainage proceeding as defined in chapter 106, such petition shall be signed by a majority of the resident owners of the land described in the petition or by the owners of at least 60 percent of the areas of such land. The lands described in the petition shall be those over which the proposed improvement passes or is located. For the purposes of this subdivision, holders of easements for electric or telephone transmission or distribution lines shall not be deemed freeholders or owners; or (2) a county board of any county affected; or (3) the governing body of any city, village, or borough lying wholly or partly within the area proposed to be improved. Provided, however, if the proposed project affects lands exclusively within a city, village, or borough, the petition shall originate from the governing body of such city, village, or borough. Such petition shall contain the following:

(1) A description of the work proposed, and the purpose to be accomplished;

(2) A description of the lands over which the proposed improvement passes or is located;

(3) A general description of the part of the district which will be affected, if less than the entire district;

(4) The need and necessity for the proposed improvement;

(5) That the proposed improvement will be conducive to public health, convenience, and welfare;

(6) A statement that the petitioners will pay all costs and expenses which may be incurred in case the proceedings are dismissed or for any reason no contract for the construction thereof is let.

[1973 c 712 s 6]

[For text of subd. 2, see M.S.1971]

Subd. 3. Where an improvement is to be constructed within the district under an agreement between the managers and the state of Minnesota, or any department or agency thereof, or the United States of America, or any department or agency thereof, wherein the cost of the improvement is to be paid for in whole or in part by the governmental agency but the rights of way, and the expenses of the improvement are assumed by the district or where the managers are undertaking all or a portion of the basic water management project as identified in the overall plan, the following procedure shall be followed. A copy of the project plan shall be forwarded to the board and director for their reports after which the managers shall hold a public hearing on the proposed improvement following publication once each week for two successive weeks prior to the date of the hearing in a legal newspaper, published in the county or counties in which a part or all of the affected waters and lands are located. The last publication shall occur not more than 30 days and at least ten days before the hearing. The notice shall state the time and place of hearing, the general nature of the proposed improvement, the estimated cost thereof and the method by which the cost of the improvement is to be paid, including the cost to be allocated to each affected municipal corporation or the state of Minnesota or any department thereof. Not less than ten days before the hearing, notice by mail shall be given to the director and to the municipal corporations wholly or partly within the improvement project area, but failure to give mailed notice or defects in the notice shall not invalidate the proceedings. At the time and place specified in the notice the managers shall hear all parties interested in the proposed project or improvement. If upon full hearing the managers find that the improvement will be conducive to public health and promote the general wel-

fare, and is in compliance with the overall plan and the provisions of chapter 112, they shall make findings accordingly and authorize the project.

[1973 c 712 s 7]

Subd. 4. Works of the district which are to be paid by assessment upon benefitted properties may be instituted upon a resolution of the board of managers, provided, the engineers' preliminary estimate of costs is not over \$125,000 for any project in any calendar year, and that no such resolution shall be used for the establishment of a project, the essential nature and purpose of which is for drainage. The managers shall hold a public hearing on the proposed resolution for improvement following publication published once each week for two successive weeks. The publication shall be in a legal newspaper published in the county or counties in which the watershed district is situated, the last publication shall occur at least ten days before the meeting at which the resolution will be heard. The notice shall contain the following: The date, time and place of hearing, the substance of the proposed resolution, a statement that the improvement would be paid for by special assessment upon benefitted property and that all persons who might be affected thereby or who may be interested therein may appear and be heard. Defects in the notice shall not invalidate the proceedings. The managers shall secure from the district engineer or other competent person of their selection a report advising them in a preliminary way as to whether the proposed improvement is feasible and the estimated cost thereof, no error or omission in the report shall invalidate the proceeding. The managers may also take such other steps prior to the hearing, as will in their judgment provide helpful information in determining the desirability and feasibility of the improvement. If after the hearing it appears to the managers that the proposed improvement is for public interest and welfare, and is practicable and in conformity with the overall plan of the district, they shall adopt a resolution therefor, properly identify the proceeding by name and number and shall cause to be made at the earliest time all necessary surveys and plans for the construction of the proposed improvement, as is provided in the case of a work instituted by petition. If the report of the engineer is unfavorable the managers shall fix a time and place for a hearing thereon in the matter provided for the hearing on the resolution. Thereafter the matter may be referred back to the engineer for further study and report or the managers may dismiss the proceeding. If the report of the engineer is favorable the matter shall proceed as in the case of a work instituted by petition as is prescribed by this chapter.

[1973 c 712 s 8]

112.52 Hearing upon petition and reports

Upon the filing of the report of the engineer and the appraisers appointed herein by the managers, they shall, within 35 days thereafter, by order, fix a time and place within the district for a hearing upon the petition or resolution and reports. Due notice thereof shall be given by the managers as herein provided.

[1973 c 712 s 9]

112.53 Notice of hearing, contents

Subdivision 1. The managers shall by publication give notice of the pendency of the petition or resolution; the time and place for hearing thereon; that the engineer's and appraisers' reports, including the plans, have been filed with the managers and are subject to inspection. The notice shall contain a brief description of the proposed improvement, together with a description of the properties benefitted or damaged, and the names of the owners thereof, the public and other corporations affected thereby as shown by the engineer's and appraisers' reports; and require all parties interested in the proposed improvement to appear before the managers at the time and place designated in the notice and there present their objections, if any they have,

112.53 WATERSHEDS

and show cause why an order should not be made by the managers granting the petition and confirming the reports of the engineer and the appraisers and ordering the establishment and construction of the improvement.

[1973 c 712 s 10]

[For text of subds. 2 to 4, see M.S.1971]

112.54 Hearing before managers

At the time and place specified in the notice, the managers shall hear all parties interested for and against the establishment of the proposed improvement and confirming the reports. All questions relative to the proposed improvement including jurisdiction, sufficiency of the petition or resolution, practicability and necessity shall be determined upon evidence presented at the hearing. Any findings made by the managers prior to the hearing shall not be conclusive but shall be subject to further investigation, consideration, and determination at the hearing. They may order and direct the modification of the engineer's report within the scope of the overall improvement plan for the district, and the assessment of benefits and damages and amend or change the list of property reported as assessable for the construction and maintenance thereof. If the amended reports include property not included in the original reports, the managers shall adjourn and cause to be published and mailed, as in the original notice, the proper notice with reference to all lands and properties not included in the previous notice. If upon full hearing the managers find that the improvement will be conducive to public health and promote the general welfare, and is in compliance with the provisions and purposes of this chapter, and that the benefits resulting therefrom will be greater than the cost of the construction and damages, they shall make 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 appraisers and may by this order authorize the construction of the proposed improvement as a whole or for different parts thereof separately. The managers shall order the engineer to proceed with making the necessary surveys and preparing such plans and specifications as are needed to construct the proposed improvements and report the same to the managers with reasonable dispatch. The hearing then shall be recessed to await the engineer's report and receipt of bids, when it may again be recessed to allow compliance with section 112.541 if said section 112.541 becomes applicable.

[1973 c 712 s 11]

112.55 Order of managers establishing improvement, filing

The order of the managers establishing the improvement and authorizing the construction thereof shall forthwith be filed with the secretary of the district, and a certified copy thereof shall be filed with the auditor of each county affected, the board, the commissioner, the director, the Minnesota pollution control agency and the state department of health.

[1973 c 712 s 12]

112.64 Levy for repair of improvement

[For text of subds. 1 to 3, see M.S.1971]

Subd. 4. If the managers find that the estimated cost of such repair, including all fees and costs incurred for proceedings relating thereto, is less than \$10,000, it may have such work done by day labor without advertising for bids or entering into a contract therefor.

[1973 c 712 s 13]

112.69 Construction by governmental agencies; procedure; conveyances to federal government

Subdivision 1. Where an improvement is to be constructed within the district under a contract between the managers of said district and the state of Minnesota, or any department thereof, or by the United States of America, or

any department thereof, wherein the cost of the improvement is to be paid for by the governmental agency but the rights-of-way, legal, and general expenses of the improvement are assumed by the district, the managers shall forward a copy of the improvement plan to the board and director for their reports thereon; thereupon, they shall hold a public hearing on the proposed contract authorized by section 112.67 following publication once each week for two successive weeks prior to the date of the hearing in a legal newspaper, published in the county or counties in which a part or all of the affected waters and lands are located. The last publication shall occur at least ten days before the hearing. The notice shall state the time and place of hearing, the general nature of the proposed improvement, the estimated cost thereof and the area proposed to be assessed. Not less than ten days before the hearing notice by mail shall be given to each resident owner, as shown on the county auditor's most recent records maintained for taxation purposes, within the area proposed to be assessed, and to the director and to each public body within the area to be assessed likely to be affected, but failure to give mailed notice or defects in the notice shall not invalidate the proceedings. At the time and place specified in the notice the managers shall hear all parties interested for and against the proposed project or improvement and all questions relative thereto shall be determined upon evidence presented at the hearing. If upon full hearing the managers find that the improvement will be conducive to public health and promote the general welfare, and is in compliance with the provisions and purposes of this chapter they shall make findings accordingly and authorize the project and enter into the proposed contract or other arrangement. Thereupon the managers shall appoint three disinterested freeholders of the state to act as appraisers. After the appraisers so selected subscribe to an oath to faithfully and impartially perform their duties, they shall, with or without the engineer, determine the benefits or damages to all lands and properties affected by the proposed improvement. They shall make and file with the managers a detailed statement showing the actual damages that have resulted or will result to individuals, property, or corporations from the construction of the improvement and make and file with the managers a detailed statement and list of lands and other property, including highways and corporations, receiving actual benefits by way of drainage, control of flood waters, or by other means herein authorized.

[1973 c 712 s 14]

[For text of subd. 2, see M.S.1971]

Subd. 3. When it is required that the board of managers convey to the United States Government the fee simple estate or a lesser interest in real property, the managers shall, prior to the filing of the appraiser's report, record in the office of the register of deeds of the county in which the lands are situated, a notice of the pendency of a proceeding initiated by the managers to acquire the lands to be conveyed to the United States government which notice shall state the purpose for which the lands are to be taken. At least 20 days before the hearing upon the appraiser's report, notice of the hearing in addition to that required by subdivision 2 hereof shall be served upon the owners of the property to be conveyed to the federal government, in the same manner as the summons in a civil action, which notice shall describe the land, state by whom and for what purpose it is to be taken and give the names of all persons appearing of record or known to the managers to be the owners. The notice shall also state that appraisers have been appointed in the manner provided by subdivision 1 hereof, to determine the benefits and damages, and that a hearing will be held by the managers upon the appraiser's report at the time and place specified in the notice. When the managers have confirmed the appraiser's report listing the property benefitted or damaged as provided in subdivision 2, the managers shall have all rights of possession and entry conferred in other cases of condemnation by chapter 117. Thereafter, the attorney for the managers shall make a certificate describing the land taken, the purpose for which taken, and reciting the fact of payment of

112.69 WATERSHEDS

all awards as determined by the appraisers appointed by the managers or judgments in relation thereto, which certificate, upon approval thereof by the managers, shall establish the right of the watershed district in the lands taken and shall be filed for record with the register of deeds of the county in which the lands are situated, which record shall be notice to all parties of the title of the watershed district to the lands therein described. Thereafter the managers are authorized to convey such lands and interests acquired to the United States government.

[1973 c 35 s 26]

112.75 [Repealed, 1973 c 712 s 16]**112.86 Consolidation of districts**

Subdivision 1. Proceedings for the consolidation of two or more districts shall be initiated by a petition filed with the board. The petition shall be signed by each district affected and shall state:

- (1) The names of the districts to be consolidated.
- (2) That the districts are adjoining.
- (3) That the consolidated districts can be feasibly administered as one district.
- (4) The proposed name of the consolidated district.
- (5) The reasons why it would be conducive to the public health, convenience and welfare to consolidate the districts.
- (6) A request for the consolidation.

The petition shall be served and the board shall proceed in a manner as prescribed for a nominating petition. The requirement of notice, and public hearings shall be as prescribed for the nominating petition.

Subd. 2. Upon the hearing, if it appears to the board that consolidation of the districts as prayed for in the petition would be for the public welfare and public interest and the purpose of chapter 112, would be served, it shall, by its findings and order, consolidate the districts and file a certified copy of said findings and order with the secretary of state. The name of the district may be changed by order of the board.

Subd. 3. The term of office of all managers of the districts consolidated shall end upon the order of consolidation. Distribution of the managers of the consolidated district shall be as directed by the board in the order of consolidation. The managers of the consolidated district shall be appointed from the managers of the districts consolidated. They shall be five in number and their first term shall be for one year, thereafter they shall be appointed as provided in chapter 112.

Subd. 4. All of the assets, real and personal, of the districts involved and all legally valid and enforceable claims and contract obligations of the districts pass to the new district. Levies on the property of the districts consolidated shall continue in force until fully paid and all land shall remain liable for its proportionate share of any indebtedness existing at the time of the order.

Subd. 5. The overall plans of the existing districts shall become the overall plan of the consolidated district.

[1973 c 712 s 15]