

CHAPTER 112

WATERSHEDS

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112.36 ESTABLISHMENT OF DISTRICTS.

[For text of subd 1, see M.S.1984]

Subd. 2. **Purposes of district.** A watershed district may be established for any or all of the following conservation purposes:

- (1) control or alleviation of damage by flood waters;
- (2) improvement of stream channels for drainage, navigation, and any other public purpose;
- (3) reclaiming or filling wet and overflowed lands;
- (4) providing water supply for irrigation;
- (5) regulating the flow of streams and conserving the waters thereof;
- (6) diverting or changing watercourses in whole or in part;
- (7) providing and conserving water supply for domestic, industrial, recreational, agricultural, or other public use;
- (8) providing for sanitation and public health and regulating the use of streams, ditches, or watercourses for the purpose of disposing of waste;
- (9) repair, improve, relocate, modify, consolidate, and abandon, in whole or in part, drainage systems within a watershed district;
- (10) imposition of preventive or remedial measures for the control or alleviation of land and soil erosion and siltation of watercourses or bodies of water affected thereby;
- (11) regulating improvements by riparian landowners of the beds, banks, and shores of lakes, streams, and marshes by permit or otherwise in order to preserve the same for beneficial use;
- (12) providing for the generation of hydroelectric power;
- (13) protecting or enhancing the quality of water in watercourses or bodies of water; and
- (14) providing for the protection of groundwater and regulating groundwater use to preserve groundwater for beneficial use.

History: 1985 c 236 s 1

112.37 PROCEDURE FOR ESTABLISHMENT.

[For text of subd 1, see M.S.1984]

Subd. 1a. The nominating petition shall set forth the following:

- (1) the name of the proposed district and a statement in general terms setting forth the territory to be included in the district;

(2) the necessity for the district, the contemplated improvements within the district, and the reasons why the district and the contemplated improvements would be conducive to public health and public welfare, or accomplish any of the purposes of this chapter;

(3) the number of managers proposed for the district shall be not less than three nor more than nine, and shall be selected from a list of nominees containing at least twice the number of managers to be selected. No manager shall be a public officer of the county, state, or federal government, provided that a soil and water conservation supervisor may be a manager;

(4) a map of the proposed district; and,

(5) a request for the establishment of the district as proposed.

[For text of subds 1b to 5, see M.S.1984]

Subd. 6. [Repealed, 1985 c 236 s 7]

[For text of subd 7, see M.S.1984]

History: 1985 c 236 s 2

112.401 BOARD HEARINGS.

Subdivision 1. **Procedure.** (a) A rulemaking hearing shall be conducted under chapter 14.

(b) A hearing must be conducted as a contested case under the provisions of chapter 14 if the hearing is:

- (1) in a proceeding to establish or terminate a watershed district; or
- (2) of an appeal under section 112.801.

(c) Notwithstanding chapter 14, other hearings under this chapter, except hearings under paragraphs (a) and (b), shall be conducted by the board under this section. The board may refer the hearing to one or more members of the board, or an administrative law judge to hear evidence and make findings of fact and report them to the board.

Subd. 2. **Procedure for noncontroversial plans or petitions.** (a) If the board finds that a watershed plan or petition that would be given a hearing under subdivision 1, paragraph (c), is noncontroversial, the board may proceed under this subdivision.

(b) The board must give notice that the plan or petition has been filed. The notice must be made:

- (1) by publication once each week for two successive weeks in a legal newspaper in each county affected;
- (2) by mail to the county auditor of each county affected; and
- (3) by mail to the chief official of each home rule charter and statutory city affected.

(c) The notice:

- (1) must describe the actions proposed by the plan or petition;
- (2) invite written comments on the plan or petition for consideration by the board;
- (3) state that a person who objects to the actions proposed in the plan or petition may submit a written request for hearing to the board within 30 days of the last publication of the notice of filing of the plan or petition; and

(4) state that if a timely request for hearing is not received, the board may make a decision on the plan or petition at a future meeting of the board.

(d) If one or more timely requests for hearing are received, the board must hold a hearing on the plan or petition.

Subd. 3. **Appeal.** A party that is aggrieved by the decision made by the order of the board may appeal the order to the district court.

History: 1985 c 236 s 3

112.421 PROCEDURE FOR INCREASING NUMBER OF MANAGERS.

Subdivision 1. **Petition and notice.** A petition must be filed with the secretary of the board to initiate proceedings to increase the number of managers of a watershed district. The petition must be signed as provided in section 112.37, subdivision 1, or signed by the board of managers of the watershed district. When the petition is filed, the board shall order a hearing to be held on the petition. Notice of hearing must be given in the same manner as a nominating petition.

Subd. 2. **Hearing.** If the board determines at the hearing that an increase in the number of managers would serve the public welfare, public interest, and the purpose of this chapter, the board shall increase the number of managers. If the district affects more than one county, the board, by order, shall direct the distribution of the managers among the affected counties.

History: 1985 c 236 s 4

112.431 DRAINAGE IMPROVEMENTS.

[For text of subd 1, see M.S.1984]

Subd. 2. **Definitions.** (a) For the purpose of this section the terms defined in this subdivision have the meanings ascribed to them.

(b) "Drainage system" means a ditch as defined by section 106A.005, subdivision 11.

(c) "Watershed district" means any watershed district established pursuant to the provisions of chapter 112, wholly or partially in a metropolitan county.

(d) "Metropolitan county" means any one of the following counties: Anoka, Carver, Dakota, Hennepin, Ramsey, Scott or Washington.

(e) "Metropolitan area" means the combined area of the metropolitan counties.

[For text of subds 3 to 5, see M.S.1984]

History: 1985 c 172 s 113

112.48 APPROVAL OF PROJECT; FILING OF PETITION; CONTENTS; HEARING; BONDS.

Subdivision 1. After the overall plan of the district has been prescribed by the board, as provided in section 112.46, a petition may be filed with the managers for any project within the district conforming in general with the plan. The petition must be signed:

(1) by 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 unless the project consists of the establishment of a drainage system as defined in sections 106A.005 to 106A.811 or the improvement of an existing drainage system;

(2) by a majority of the resident owners of the land over which the proposed project passes or is located, or by the owners of at least 60 percent of the area of the land, if the project consists of the establishment of a drainage system as defined in sections 106A.005 to 106A.811;

(3) by not less than 26 percent of the resident owners of the property affected by the proposed project or over which the proposed project passes or by the owners of not less than 26 percent of the area affected or over which the proposed project passes if the project consists of the improvement of an existing drainage system as defined in sections 106A.005 to 106A.811;

(4) by a county board of any county affected; or

(5) by the governing body of any city lying wholly or partly within the area proposed to be improved; provided that if the proposed project affects lands exclusively within a city, the petition shall originate from the governing body of the city.

For the purpose of this subdivision, holders of easements for electric or telephone transmission or distribution lines are not considered freeholders or owners.

The petition shall contain the following:

(a) a description of the proposed project, and the purpose to be accomplished;

(b) a description of the lands over which the proposed project passes or is located;

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

(d) the need and necessity for the proposed improvement;

(e) that the proposed project will be conducive to public health, convenience, and welfare;

(f) 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 construction contract is let for the project.

[For text of subds 2 to 4, see M.S.1984]

History: 1985 c 172 s 114

112.50 APPRAISALS.

Subdivision 1. Upon the filing of the engineer's report the managers shall, with the least possible delay, appoint three disinterested resident freeholders of the state to act as appraisers. These appraisers shall subscribe an oath to faithfully and impartially perform their duties, and with or without the engineer, shall determine the benefits or damages to all lands and properties affected by the proposed project or improvement, including lands owned by the state of Minnesota or any department thereof, highways, and other property likely to be affected by the proposed improvement or that may be used or taken for the construction or maintenance thereof. Benefits and damages to lands owned by the state of Minnesota or any department thereof held and used for the purposes described in sections 106A.025 and 106A.315, subdivision 1, shall be determined subject to the provisions thereof, so far as applicable. Each appraiser may be paid on a per diem basis for every day necessarily engaged in the performance of his duties and for his actual and necessary expenses. The compensation shall be fixed by the managers, to be paid by the district and included in the cost of improvement. The managers of the watershed districts may in their discretion use the following procedure for the purpose of determining benefits and damages. Upon the filing of the engineer's report the

managers with the assistance of the engineer shall determine the benefits or damages to all lands and properties affected by the proposed project or improvement, including lands owned by the state of Minnesota or any department thereof, highways, and other property likely to be affected by the proposed improvement or that may be used or taken from the construction or maintenance thereof. Benefits and damages to lands owned by the state of Minnesota or any department thereof held and used for the purposes described in sections 106A.025 and 106A.315, subdivision 1 shall be determined subject to the provisions thereof, so far as applicable. The managers shall also determine the amount to be paid and generally assessed by the watershed district for the basic water management portion of the improvement projects.

History: 1985 c 172 s 115

112.501 BENEFITED PROPERTY, DETERMINATION.

Subdivision 1. Where the proposed improvement, includes or prays for the construction or improvement of any ditch, stream, river, or watercourse, or any structures for the control or alleviation of damages from flood waters, the appraisers shall be governed by sections 106A.311 to 106A.321.

[For text of subd 2, see M.S.1984]

History: 1985 c 172 s 116

112.541 PROCEDURE WHEN CONTRACT IS NOT LET.

If after the receipt of the bids, no bids are received except for a price more than 30 percent in excess of the engineers estimate as contained in his report, or for a price in excess of the benefits, less damages and other costs, the managers shall follow the procedure described in section 106A.511.

History: 1985 c 172 s 117

112.59 CONTROL OF CONTRACTS.

In all cases where contracts are let by the managers, they shall have full control of all matters pertaining thereto. If a contractor fails to complete the improvement within the time or in the manner specified in the contract, the managers may extend the time for completion or may refuse an extension of time or may cancel the contract and readvertise and relet the contract. They may require the surety for the contractor to complete the improvement or proceed to have the contract otherwise completed at the expense of the contractor and his surety. They may take such other action with reference thereto that the occasion may require in the interest of the district. The provisions of sections 106A.005 to 106A.811, so far as pertinent, apply to and govern the relations between the engineer and the contractor, including the examination and report of the engineer and the amount and time of payment. The managers shall keep an accurate account of all expenses incurred, which shall include the compensation of the engineer and his assistants, the compensation and expenses of the appraisers as provided in section 112.50, the compensation of petitioners' attorney, the cost of petitioners' bond, the fees of all county officials necessitated by the improvement which shall be in addition to all fees otherwise allowed by law, and the time and expenses of all employees of the district, including the expenses of the managers while engaged in any improvement. The fees and expenses provided for herein shall be audited, allowed and paid upon the order of

the managers and shall be charged to and be treated as a part of the cost of the improvement.

History: 1985 c 172 s 118

112.60 ASSESSMENTS, LEVIES.

Subdivision 1. Upon the filing by the managers with the auditor of any county of a statement listing the property and corporations benefited or damaged or otherwise affected by any improvement as found by the appraisers and approved by the managers, he shall assess the amount specified in such list against the lands and municipalities or other corporations as therein specified in accordance with the pertinent provisions of sections 106A.005 to 106A.811.

Subd. 2. Upon filing of the statement as provided in subdivision 1 the county board of each county affected shall provide funds to meet its proportionate share of the total cost of the improvements, as shown by the report and order of the managers of the district, and for such purposes is authorized to issue bonds of the county in such amount as may be necessary in the manner provided by section 106A.635. In the event an improvement is to be constructed under the provisions of section 112.69, the provisions of section 106A.635 requiring the county board to let a contract for construction before issuing bonds shall not be applicable to bonds issued to provide the funds required to be furnished by this section.

Subd. 3. The respective county auditors and county treasurers shall levy and collect the amount shown in the tabular statement and lien as provided in sections 106A.601 to 106A.631. All money 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.

[For text of subd 4, see M.S.1984]

History: 1985 c 172 s 119-121

112.64 LEVY FOR REPAIR OF IMPROVEMENT.

[For text of subd 1, see M.S.1984]

Subd. 2. For the purpose of creating a maintenance fund for normal and routine maintenance of a project, the board of managers is authorized to apportion and assess the amount of the fund against all the parcels of land and municipal corporations previously assessed for benefits in proceedings for the construction of the project. The assessment shall be made pro rata according to benefits determined. No assessment for the benefit of the maintenance fund shall be made when the fund exceeds 20 percent of the original cost of construction of the project. Upon receiving the assessment order from the board of managers, the auditors of the counties affected shall file for record in the office of the county recorder for the county a tabular lien statement covering the assessment. The assessment shall be collected as provided in the order in the same manner as provided in section 106A.731. Before ordering the levy of an assessment for the benefit of the maintenance fund, the board of managers, in its discretion, may give notice of a hearing on the matter.

Subd. 3. If the engineer certifies to the board of managers, in his annual report or otherwise, that an improvement of the district is in such a state of disrepair that it cannot be restored by normal and routine maintenance to the same condition as when originally constructed or subsequently improved, or that a ditch or channel must be widened or deepened, or that any improvement of the district must be

altered or improved, in order to attain the level of operating efficiency contemplated at the time of the original construction, the board of managers, before ordering any repairs other than normal and routine maintenance, shall order the engineer to prepare and submit to the board of managers technical and cost specifications on the work necessary to restore, or improve the improvement to the desired level of operating efficiency. Upon receiving the engineer's report, the board of managers shall set a date for hearing on the report and give notice of the hearing in the same manner as in the original proceeding on the construction of the improvement. If upon hearing the board of managers finds that the repair or improvement is in compliance with the provisions, is necessary to accomplish the purposes of this chapter, and that the cost of the repair or improvement will not exceed its benefits, they may order the repair or improvement and assess the cost against the benefited properties. The cost shall be apportioned and assessed pro rata upon all lands and property that were assessed for the construction of the improvement. No single levy for repair shall exceed the amount of benefits originally determined. The board of managers shall file a copy of the order for levy with the auditor of each county which contains affected properties. The auditor shall extend the levy against affected properties as in proceedings for the levy, assessment and collection of taxes levied in drainage proceedings conducted under sections 106A.005 to 106A.811.

[For text of subd 4, see M.S.1984]

History: 1985 c 172 s 122,123

112.65 DRAINAGE SYSTEMS WITHIN DISTRICT.

Subdivision 1. The managers of a district shall take over when directed by the district court or county board any judicial or county drainage system within the district, together with the right to repair and maintain the same. Such transfer may be initiated by the district court or county board, or such transfer may be initiated by a petition from any person having an interest in the drainage system or by the managers. No such transfer shall be made until the district court or county board has held a hearing thereon. Due notice of the proposed transfer together with the time and place of hearing shall be given by two weeks published notice in a legal newspaper of general circulation in the area involved. All interested persons may appear and be heard. Following the hearing, the district court or county board shall make its order directing that the managers of a district take over the affected judicial or county drainage system, unless it appears that the take over would not be in the public welfare or public interest and would not serve the purpose of this chapter. When the transfer is directed all proceedings for repair and maintenance shall thereafter conform to the provisions of sections 106A.005 to 106A.811.

[For text of subd 2, see M.S.1984]

History: 1985 c 172 s 124