

## CHAPTER 116A

## PUBLIC WATER AND SEWER SYSTEMS

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**116A.01 POWERS OF COUNTY BOARDS AND OF DISTRICT COURTS.**

**Subdivision 1. Generally.** The county boards of the several counties except counties in the seven county metropolitan area, and the district courts are authorized to make all necessary orders for, and cause to be constructed and maintained, public water or sewer systems or combined water and sewer systems, including outlets, treatment plants, pumps, lift stations, service connections, mains, valves, hydrants, wells, reservoirs, tanks, and other appurtenances of public water or sewer systems, in any area of the county or judicial district not organized into cities, or in any area added to a public water or sewer system or combined water and sewer system by action taken in accordance with subdivision 4.

**Subd. 1a. Municipal authority.** Any county board that has established a water or sewer system or combined water and sewer system under the provisions of this chapter, or that has formed a district under the provisions of section 116A.02, subdivision 4, may acquire, construct, finance, operate and maintain the system under and exercise all the rights and authority and perform all the duties of a statutory city under chapters 117, 412, 429 and 475 and sections 115.46, 444.075 and 471.59, instead of this chapter, upon receiving authorization in accordance with this subdivision. To receive authorization the county board shall file, in the office of the court administrator of district court of the county, a petition to the court asking that the county board be granted such authority. The court administrator of district court, as directed by the judge, shall thereupon fix a time and place for hearing upon the petition. Notice of the hearing shall be given by publication for two successive weeks in a newspaper published in the county. The court administrator of district court shall give written notice of the hearing to the Minnesota pollution control agency. If at the hearing the court finds that it is for the best interests of the county board to be granted such authority, it may by order grant such petition. Thereafter the county board is authorized to acquire, construct, finance, operate and maintain the water or sewer system or combined water and sewer system in the same manner and to the same extent accorded a statutory city under chapters 117, 412, 429 and 475 and sections 115.46, 444.075 and 471.59.

**Subd. 2. Establishment of system.** Upon receipt of a petition for the establishment of a water or sewer system or combined water and sewer system in any area of the county not organized into cities, or in any area to be included within a system in accordance with subdivision 4, and after determining the sufficiency of the petition as provided in section 116A.02 and making such investigations and surveys as it considers necessary to ascertain whether it should be granted, the court or board may by resolution provide for the establishment of such a system; cause plans and specifications to be prepared for water system facilities adequate to obtain, store, treat, and distribute water for domestic, commercial, and industrial use therein, or sewer system

facilities adequate to collect, treat, and dispose of sewage and waste in a sanitary manner, or both such types of facilities; contract for the construction of such facilities; acquire land and easements for the purpose by purchase, gift, condemnation, or other lawful means; establish, collect, and revise charges for the use and availability of water or sewer service or both to all premises within the area to which service is furnished or made reasonably available, and for connection to the facilities, in the manner provided in section 444.075; levy special assessments upon properties specially benefited by the construction of the facilities; issue bonds of the county to finance such construction as provided in section 116A.20, and require hook up or attachment to the system by all residents in the service area.

**Subd. 3. Systems extending into more than one judicial district.** In case any proposed sewer or water system extends into two or more judicial districts, proceedings may be commenced before the district court of any of the districts, and the court before which such proceedings are commenced shall thereafter have jurisdiction of all subsequent proceedings and matters in relation to the sewer or water system.

**Subd. 4. Area to be served.** The area to be served by any public water or sewer or combined system or to be included in a district formed under section 116A.02, subdivision 4, may include any part or all of the area of any city which by resolution of its governing body requests that its facilities be connected to the system, or that all or any part of the area within its corporate limits be included in the area to be served by the system or included in the district. For the purpose of any petition filed or special assessment levied with respect to any system, the entire area to be served within any city shall be treated as if it were owned by a single person, provided that in any event mailed notice of all hearings required under this chapter shall also be sent to the actual owners of such property to the same extent and in the same manner provided for owners of property located in an area to be served by the system outside of any city, and the governing body shall exercise all the rights and be subject to all the duties of an owner of the area, and shall have power to provide for the payment of all special assessments and other charges imposed upon the area with respect to the system by the appropriation of money, the collection of service charges, or the levy of taxes, which shall be deemed special levies and shall be subject to no limitation of rate or amount; provided that in the alternative the board or boards and the court with jurisdiction over the system, or a water and sewer commission to the extent authorized by the board or boards and the court under section 116A.24, may, to the extent authorized by resolution of the governing body of the city, exercise within the area of the city served by the system, or any extensions of the system, the same powers granted to the county board or boards and the court for areas located outside any city by this chapter.

**Subd. 5. Exclusion of land from area to be served.** After any land has been included in the area to be served by any public water or sewer or combined system or in a district formed under section 116A.02, subdivision 4, the county board, or if two or more county boards are involved, the court, upon petition of the county boards or the commission formed under section 116A.24, may at any time order the exclusion from such area or district of any land that has not been specially assessed under section 116A.17, upon determining that the land is contiguous to land located outside the area or district and will not be served by such system, provided that either the owner or owners of the land first consent to the exclusion, or the proposed exclusion first be considered at one of the public hearings required under this chapter and be made a part of the order thereafter required of the board or court or at a separate public hearing on the proposed exclusion after notice of the hearing has been given in the manner and to the extent required in section 116A.08, subdivision 1.

**History:** 1971 c 916 s 1; 1973 c 123 art 5 s 7; 1973 c 322 s 1; 1973 c 407 s 1; 1973 c 702 s 25; 1975 c 294 s 1-3; 1976 c 239 s 22; 1977 c 442 s 1-4; 1Sp1986 c 3 art 1 s 82

## **116A.02 PETITION.**

**Subdivision 1. Form.** Before any public water or sewer system or combined water and sewer system authorized by sections 116A.01 to 116A.26 is established, a petition

therefor shall be filed with the county auditor, if for a system entirely within one county, or with the court administrator of the district court, if for a system within two or more counties. The petition shall be signed by the owners of at least 50 percent of the area, exclusive of the holders of easements for electric or telephone transmission and distribution lines of lands described in the petition as those to be served by the proposed system, and shall state that the system will be of public benefit and utility and will promote the public health and 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. The petition may be signed by the authorized representative of any municipal corporation or by the commissioner of transportation, or the authorized agent of any public institution or any corporation which may be affected by or assessed for the proposed construction. Petitioners may employ an attorney to represent them in all proceedings pursuant to sections 116A.01 to 116A.26, and said attorney shall be compensated as ordered by the board or court.

**Subd. 2. Withdrawal.** After a petition has been filed, no petitioner may withdraw therefrom except with the written consent of all other petitioners filed with the auditor or clerk.

**Subd. 2a. Use of petitioner's land.** Each owner who joins in the petition or who prior to June 3, 1977 has signed a petition for such a district, grants to the county or counties or commission, if the system is thereafter established, an easement to use the owner's land within the system area for the purposes of the system in any manner that will not permanently and substantially disturb the owner's use, including the right to enter upon that land temporarily for construction or maintenance of the system, if notice that the petition has the effect of granting the easement is set forth in the petition or is otherwise given in writing to the owner prior to the owner's execution of the petition, or the petition was signed prior to June 3, 1977. Unless an emergency exists, the owner may require one week's notice before entry upon the property is permitted pursuant to this subdivision.

**Subd. 3. Proceeding initiated by county board.** Any county board, by duly adopted resolution, and without a petition filed therefor, may initiate the proceedings for the establishment of a water or sewer system or combined water and sewer system as provided in sections 116A.01 to 116A.26. The proceedings thereafter shall be the same as for proceedings initiated by petition except that no bond need be filed. If any proceeding initiated by resolution of a county board is dismissed, the county shall pay all expenses connected with such proceeding.

**Subd. 4. Initial formation of district.** A county board, or boards if more than one county is involved, by duly adopted resolution, may, without a petition filed therefor and after making such investigations as the board or boards consider necessary, form a water or sewer district or combined water or sewer district within the county or counties and may expend available funds for this purpose without the board or, if more than one county is involved, the court first ordering the establishment of a water or sewer system or combined water and sewer system as provided in sections 116A.01 to 116A.26. Thereafter the county board or court may establish for all or a part of the district one or more water systems or sewer systems or combined water and sewer systems either by petition or on the initiative of the board of any county located in whole or part within the district, as provided in sections 116A.01 to 116A.26, except that no bond need be filed whenever the county board elects to proceed on its own initiative. If a proceeding is initiated by resolution of a county board and is dismissed, the county shall pay the expenses connected with the proceeding.

**History:** 1971 c 916 s 2; 1973 c 322 s 2; 1975 c 294 s 4,5; 1976 c 166 s 7; 1977 c 442 s 6; 1986 c 444; 1Sp1986 c 3 art 1 s 82

### 116A.03 PETITIONERS' BOND.

Upon the filing of a petition and before any action is taken thereon, one or more of the petitioners shall make and file a bond payable, in case of a county system, to the county, and in case of a judicial system, to the counties named in the petition, in the

sum of not less than \$2,000, with good and sufficient sureties, to be approved by the officer with whom the same is filed, conditioned to pay all costs and expenses which may be incurred in case the proceedings are dismissed or for any reason no contract is entered into for the construction of the system or other improvement petitioned for. In lieu of a bond cash may be deposited and forfeited to the county or counties in the event the proceedings are dismissed and if for any reason no contract is entered into for construction of the system or other improvement petitioned for. If the project is approved, the cash so deposited shall be returned to the petitioners.

**History:** 1971 c 916 s 3

#### **116A.04 INSUFFICIENT BOND; EXPENSES NOT TO EXCEED PENALTY OF BOND.**

If it shall appear at any time prior to the making of the order establishing the system that the bond of petitioners is insufficient in amount to protect the county or counties from loss on account of any costs or expenses incurred or to be incurred, the court or board shall require an additional bond. In such event, all further proceedings shall be stayed until such bond is furnished, and if additional bond is not furnished within the time fixed by the board or court, the proceedings may be dismissed.

In all proceedings, the expenses incurred prior to establishment shall not exceed the penalty named in the bond or bonds given by the parties. No claim in excess of the amount of the bond or bonds shall be audited or paid by direction of the board or court unless one or more of the parties in the proceeding shall, within such time as the board or court directs, make and file an additional bond with sufficient sureties in such amount as the board or court directs.

**History:** 1971 c 916 s 4

#### **116A.05 DISMISSAL OF PROCEEDINGS.**

Sixty percent of the petitioners may dismiss a proceeding under the provisions of sections 116A.01 to 116A.26 at any time prior to the order establishing the improvement, upon payment of all lawful costs, charges, expenses, and fees in the proceeding.

**History:** 1971 c 916 s 5

#### **116A.06 ENGINEER.**

**Subdivision 1. Appointment.** Upon filing of the petition and bond, the board or court shall, within 30 days, by order appoint an engineer to make a preliminary survey within the time fixed in the order. The engineer shall act as engineer throughout the proceeding unless otherwise ordered.

**Subd. 2. Qualification.** The engineer shall within ten days after appointment take and subscribe an oath to faithfully perform the assigned duties according to the best of the engineer's ability, and give a bond in an amount fixed by the board or court, but not less than \$5,000, with good and sufficient surety, payable to the county or counties affected by the proposed improvement for their benefit and for the use of all parties aggrieved or injured by any negligence or malfeasance by the engineer while in any manner employed in the proceedings, conditioned that the engineer will diligently, honestly, and using the best skill and ability, during the full period of employment, perform the duties as engineer. The bond shall be approved by the auditor or court administrator, and the aggregate liability of the surety for all such damages shall not exceed the amount of the bond. In case of a change of engineers, each succeeding engineer shall make and file the required oath and bond.

**Subd. 3. Consulting engineer.** After appointment of the engineer, and during the pendency of any proceeding or during the construction of the system, the board or court may employ an engineer as a consulting engineer in the proceeding. The consulting engineer shall advise the engineer and the board or court as to engineering matters and problems which may arise in connection with the system. Compensation shall be fixed by the board or court.

**History:** 1971 c 916 s 6; 1986 c 444; 1Sp1986 c 3 art 1 s 82

**116A.07 PRELIMINARY SURVEY AND REPORT.**

The engineer shall promptly examine all matters set forth in the petition and order, make such preliminary survey of the territory likely to be affected by the proposed improvement as will enable the engineer to determine whether it is necessary and feasible, and report accordingly. If some plan other than that described in the petition is found practical, the engineer shall so report, giving such detail and information as is necessary to inform the court or board on all matters pertaining to the feasibility of the proposed plan, either as outlined in the petition or according to a different plan recommended by the engineer. Upon completion of the survey and report, the engineer shall file the report in duplicate with the auditor or clerk.

**History:** 1971 c 916 s 7; 1986 c 444

**116A.08 PRELIMINARY HEARING.**

**Subdivision 1. Notice.** Upon the filing of the report of the engineer, the auditor shall promptly notify the board, or the court administrator shall promptly notify the judge, thereof, and the auditor, or the court administrator with the approval of the judge, shall by order fix a time for the hearing thereon, not more than 60 days after the date of the order. Not less than ten days before the time of hearing, the auditor or court administrator shall give notice by mail of the time and place of hearing to the petitioners and the owners of the lands and properties, and corporations, public or private, likely to be affected by the proposed improvement as shown by the engineer's report. Notice also shall be published in the official papers covering the area of the proposed system called for in the petition, at least once not less than three weeks before the hearing.

**Subd. 2. Hearing.** The engineer shall attend the hearing and supply such information as may be necessary. The petitioners and all other parties interested may appear and be heard.

**Subd. 3. Sufficiency of petition.** The board or court shall examine the petition, and if the petition is found sufficient as required by law, shall so find. If the petition is found insufficient in that it is not signed by the requisite number of owners, or otherwise, the hearing shall be adjourned and the petition referred back to the petitioners for such action thereon as may be advised. The petitioners, by unanimous action, may thereupon amend the recitals in the petition. They may procure the signatures of additional owners as added petitioners. At the adjourned hearing, if the petition is found insufficient, the proceedings shall be dismissed.

**Subd. 4. Dismissal.** At the hearing or any adjournment thereof, if it shall appear that the proposed improvement is not feasible, and no plan is reported by the engineer where by it can be made feasible, or that it is not of public benefit or utility, the petition shall be dismissed.

**Subd. 5. Findings and order.** If the board or court is satisfied that the proposed improvement as outlined in the petition or as modified and recommended by the engineer is feasible, that there is necessity therefor, that it will be of public benefit and promote the public health, it shall so find and by order shall designate any changes to be made in the proposed improvement. Changes may be described in general terms and shall be sufficiently described by filing with the order a map outlining the proposed improvement. Thereafter the petition shall be treated as modified accordingly.

**Subd. 6. Effect of findings.** The findings shall be construed as conclusive only as to the sufficiency of the petition, the nature and extent of the proposed plan and the need of a permanent survey, and only as to the persons or parties shown by the engineer's preliminary report as likely to be affected by the improvement. All questions relative to the practicability and necessity of the proposed improvement shall be subject to further investigation and consideration at the final hearing.

**History:** 1971 c 916 s 8; 1Sp1986 c 3 art 1 s 82

**116A.09 ORDER FOR DETAILED SURVEY.**

Upon the filing of the order as specified in section 116A.08, the board or court shall order the engineer to proceed to make a detailed survey and furnish all necessary plans and specifications for the proposed improvement, together with an estimate of the total cost of construction of the system, and report the same to the board or court with all reasonable dispatch. The cost estimate shall include the amounts payable to contractors at and prior to completion of construction in accordance with the plans and specifications; all court costs; estimated damages payable as reported by the viewers in accordance with section 116A.11; the cost of acquisition of all lands and easements required; the cost of necessary engineering, financial, legal, and other professional service; the cost of printing, publication, and mailing of all required notices of court proceedings, hearings, and bond sales; interest estimated to accrue on money to be borrowed for the system from the date or dates of borrowing to the initial date or dates of collection of special assessments or revenues of the system sufficient to carry current interest cost; and all other items of expense incurred and estimated to be incurred in the establishment of the system from its inception to its completion. The board or court may direct the engineer to include in the report an assessment roll based upon calculation, by the county auditor or auditors with the assistance of the engineer or another qualified person selected by the board or court, of the proper amount to be specially assessed for the system against every assessable lot, piece, or parcel of land, without regard to cash valuation. The assessment roll shall be based upon the engineer's estimate of the total cost, but the board or court may direct the engineer also to calculate the expenses of operation of the system when completed, the times and numbers of connections thereto from buildings on individual lots, pieces, and parcels of land, the rates and amounts of connection charges and periodic use charges which may be made for the use and availability of the service of the system, the net revenues, over and above the current cost of operation and maintenance, which are estimated to be available, after completion, for the payment of principal and interest on money borrowed for the system, and the amounts by which the special assessments to be collected annually may be reduced or their payment deferred if such net revenues are realized.

**History:** 1971 c 916 s 9; 1973 c 322 s 3; 1977 c 442 s 7; 1986 c 444

**116A.10 ENGINEER'S SURVEY AND EXAMINATION.**

Upon the filing of the order calling for a detailed survey, the engineer shall prepare the complete set of plans, specifications and estimates of cost, and shall make a complete report in duplicate of the work and recommendations to the board or court, including therein all maps and profiles, and shall file the report with the auditor or court administrator. If the report is filed with the court administrator, a complete copy also shall be filed with the auditor of each county affected. After final acceptance of the system, the engineer shall make revisions of the plan, profiles and designs of structures to show the project as actually constructed on the original tracings, and shall file the revisions in duplicate with the auditor or court administrator. When more economical construction will result, the engineer may recommend that the work be divided into sections and let separately, and may recommend the time and manner in which the work or any section shall be done.

**History:** 1971 c 916 s 10; 1986 c 444; 1Sp1986 c 3 art 1 s 82

**116A.11 VIEWERS; APPOINTMENT; QUALIFICATION.**

**Subdivision 1. Appointment.** Following the filing of the order for a detailed survey the board or court shall make an order appointing as viewers three disinterested resident freeholders of the county or counties affected.

**Subd. 2. Qualification.** Within 30 days after the filing of the final report and survey of the engineer, the auditor or court administrator shall make an order designating the time and place of the first meeting of the viewers and shall issue to the viewers a certified copy of the order appointing them and the order designating the time and

place of their first meeting. At the meeting and before entering upon their duties, the viewers shall take and subscribe an oath to faithfully perform their duties.

Subd. 3. **Failure to qualify.** If any viewer shall fail to qualify at the meeting, the auditor or court shall designate some other qualified person to take that viewer's place.

Subd. 4. **Viewers; duties.** The viewers, with or without the engineer, shall estimate damages to all lands and properties affected by the proposed system and shall report their findings. The report shall show in tabular form the description of each lot and tract, or fraction thereof, under separate ownership, damaged and the names of the owners as the same appear on the current tax duplicate of the county. Estimated damages shall be reported on all lands owned by the state the same as upon taxable lands. The viewers shall report all estimated damages that will result to all railways and other utilities, including lands and property used for railway or other utility purposes. In case the viewers are unable to agree, each viewer shall state separately that viewer's findings on any matter disagreed upon. A majority of the viewers shall be competent to perform the duties required of them by sections 116A.01 to 116A.26.

Subd. 5. **Filing of viewers' report.** Upon the completion of their work, the viewers shall file their report with the auditor or court administrator. They shall file with the report a detailed statement showing the actual time they were engaged and expenses incurred and shall be reimbursed at such a rate as determined by the board or court. The viewers shall perform their duties and make their report at the earliest possible date following their first meeting. If the report be filed with the court administrator, a copy thereof shall also be filed with the auditor of each county affected.

**History:** 1971 c 916 s 11; 1977 c 442 s 8; 1986 c 444; 1Sp1986 c 3 art 1 s 82

#### 116A.12 SECOND HEARING.

Subdivision 1. **Time.** Promptly after the filing of the viewers' report and the engineer's survey the auditor, or the court administrator with the approval of the judge, shall fix a time and place for hearing on the petition and the engineer's and viewers' reports. The hearing shall not be less than 25 nor more than 50 days from the date of the notice thereof. The auditor shall notify the members of the county board of the time and place of the meeting as provided by law.

Subd. 2. **Form of notice.** The notice shall state the pendency of the petition, that the engineer's and viewers' reports have been filed, the time and place set for the hearing, and, if an assessment roll has been prepared in accordance with section 116A.09, that hearing will also be held on the special assessments proposed therein. The notice shall contain a brief description of the proposed system in general terms, the area proposed to be assessed, and the lands and properties damaged thereby as shown by the engineer's and viewers' reports. It shall be sufficient if the lands affected are listed in narrative form by governmental sections or otherwise.

In judicial proceedings, separate notices may be prepared, published, posted and mailed in each county affected, showing only that portion of the water or sewer system or combination thereof and the descriptions of the properties affected in the county.

Subd. 3a. **Persons entitled to notice; publication.** The auditor or court administrator shall cause notice of the time and place of the hearing to be given to all persons interested by publication, posting and mailing. The publication shall be made no less than three weeks before the date of the hearing. A printed copy of the notice of hearing made for each county shall be posted within one week after the beginning of publication at the front door of the court house in each county. Within one week after the beginning of publication, the auditor or court administrator shall give notice by mail of the time and place of the hearing to all persons, corporations, and public bodies affected by the proposed system as shown by the engineer's and viewers' reports. The notice mailed to the owner of each parcel damaged by the improvement shall describe the parcel and state the amount of the damages as ascertained by the viewers. The notice mailed to the owner of each parcel appearing on the assessment roll, if filed for hearing at this time, shall describe the parcel and state the amount of the cost potentially assessable

thereto as set forth in the assessment roll. Ownership of the respective parcels shall be established as provided in section 116A.17, subdivision 1.

**Subd. 4. Defective notice.** If notice is not given or is defective, the auditor or court administrator shall require the same to again be fully given.

**Subd. 5a. Jurisdiction.** Upon due publication, posting and mailing of the notice provided in this section, the board or court shall have jurisdiction of all lands and properties described in the engineer's and viewers' reports, and of all persons and corporations, municipal or otherwise, named therein, and all persons or corporations having any interest in any mortgage, lien or encumbrance against any of the lands or properties referred to in such reports.

**Subd. 6. Findings and order.** At the time and place specified in the notice, or at any adjournment thereof, the board or court shall consider the petition for the water or sewer system, together with all matters pertaining to the engineer's and viewers' reports, and consider all oral or written testimony presented by interested parties. The board or court shall have authority to amend the engineer's and viewers' reports as it deems necessary or proper. If the board or court shall find that the engineer's and viewers' reports have been made and all other proceedings in the matter had in accordance with law, that the estimated benefits are greater than the total estimated cost, including damages, that the benefits and damages have been duly determined, that the proposed water or sewer system will be of public utility and benefit, and will promote the public health, and that the proposed system is practicable, then the board or county shall by order containing such findings establish the water or sewer improvement and adopt and confirm the viewers' report as made or amended.

**Subd. 7. Assessment roll; payments.** If an assessment roll has been made and filed, the board or court may take action with respect thereto at the hearing or at any adjournment thereof in the manner provided in section 116A.17; provided that the board or court may permit prepayment of any assessment in full, without interest, within any stated period from the date of confirmation of the assessments, and may provide that the first installment shall be payable in the year following the expiration of such period. The board or court may in its order confirm the special assessments in the full amounts required to pay the total estimated cost of the system, as set forth in the assessment roll, or may confirm them at any fraction not less than 25 percent thereof. If special assessments are confirmed in any amount less than the total cost of the system as finally ascertained, the board or court may at any subsequent time make supplemental assessments as provided in section 116A.18, to the full amount required to pay the total cost of the system including the principal of and interest on all bonds issued to finance the system.

**Subd. 8. Orders; special assessments.** No order shall be entered confirming special assessments for any system under the provisions of this section or section 116A.17 unless it is determined that the amount of the special assessments confirmed in the order, and to be extended upon the tax rolls in each year of the term of any bonds issued to finance the system, together with interest payable on such assessments, the taxes, if any, and the net revenues to be received in excess of the cost of operation of the system during the same period, will be sufficient to pay all of such bonds and interest thereon when due. The board or court may make this determination in the order establishing the system or by subsequent order, based upon the engineer's report and such other investigation as it may deem necessary, whether or not special assessments are finally confirmed at the time of the entry of such order.

**Subd. 9. Jurisdiction for special assessments; enlargement of assessable area.** The board or court, after ordering the establishment of any water or sewer or combined system, shall retain jurisdiction thereof for the purpose of the levy of special assessments therefor, unless confirmed by the order establishing the system, the levy of supplemental assessments, reassessments, and reapportionment assessments when required, the approval of all contracts for construction, extension, and improvement of the system, and the enlargement of the area assessable for the original system and any extensions or improvements, when determined to be necessary or expedient and in the



public interest. Proceedings for enlargement of the assessable area shall be taken in the same manner as provided for establishment of the system in sections 116A.01 to 116A.12, except that the owner of any property may petition for the inclusion of such property in the area and for connection to the system, and the board or court may grant such petition with or without further hearing as it may deem expedient. No hearing shall be required on any improvement or extension, but proceedings for contracting and levying special assessments for any improvement or extension shall be taken in accordance with the provisions of sections 116A.13 to 116A.19.

**Subd. 10. Damages, payment.** When damages are awarded and duly confirmed with respect to any property, the board or court may order the same paid and provide for the filing with the county recorder of the county in which the property is located a copy of the viewers' report and the order confirming the damages. Thereafter the board or court or commission may enter upon the property for the purpose of constructing or maintaining the water or sewer or combined system as contemplated in the viewers' report without first securing for that purpose a separate easement by purchase, condemnation under chapter 117, or otherwise. In case of appeal, the damages shall not be paid until the final determination thereof. If there is doubt as to who is entitled to the damages, the board or court may pay the same to the court administrator of the district court in the county in which the property is located, and the damages shall be disbursed by the court administrator, upon order of the district court, to the persons thereunto entitled.

**History:** 1971 c 916 s 12 subds 1,2,4; Ex1971 c 20 s 5-8; 1973 c 322 s 4-8; 1975 c 294 s 6; 1977 c 442 s 5; 1Sp1986 c 3 art 1 s 82

### 116A.13 LETTING CONTRACT.

**Subdivision 1.** After the filing of the order ordering the improvement, the auditor and the county board, in the instance of a county system, and the auditors of the respective counties, or a majority of them, in the instance of a judicial system, shall proceed to let the job of constructing the system. In judicial systems the auditors shall hold the letting at the office of the auditor of the county in which the proceedings are pending.

**Subd. 2.** If it shall appear at the expiration of 30 days from the filing of the order ordering the improvement, that one or more appeals have been taken involving the question of damages, no contract shall be let until the appeals have been determined, unless ordered by the board or court. Application for such order may be made by the auditor or auditors or any interested person. If application be made by some person other than an auditor, then the auditor or auditors shall be given five days' notice of hearing upon such application.

**Subd. 3.** The auditor of the county in which the proceedings are pending shall give notice of the letting of the contract by publication in a newspaper in such county stating the time and place where the contract shall be let. When the estimated cost of construction is more than \$3,000, the auditor shall also advertise such letting in a trade paper. Such notice shall state the approximate amount of work and the estimated cost thereof and shall invite bids for the work as one job or in sections. The right shall be reserved to reject any and all bids. The notice shall require that each bid be accompanied by a certified check or a bond furnished by an approved surety bonding corporation payable to the auditor or auditors for not less than ten percent of the bid, as security that the bidder will enter into a contract and give a bond as required by section 116A.15.

**Subd. 4.** The engineer shall attend the letting and no bid shall be accepted without the engineer's approval as to compliance with plans and specifications.

**Subd. 5.** The job may be let in one job, or in sections, or separately for labor and material, and shall be let to the lowest responsible bidder or bidders therefor.

**Subd. 6.** Bids shall not be entertained which in the aggregate exceed by more than 30 percent the total estimated cost of construction.

Subd. 7. The auditor, with such chair, or auditors, as the case may be, shall contract, in the name of the county, or in the names of the respective counties, each acting by and through its auditor, with the party to whom such work or any part thereof is let, requiring that party to construct the same in the time and manner and according to the plans and specifications and the contract provisions as set forth in sections 116A.01 to 116A.26.

**History:** 1971 c 916 s 13 subds 1-7; 1986 c 444

#### **116A.14 PROCEDURE WHEN CONTRACT NOT LET.**

Subsequent to the establishment of any water or sewer system, if no bids are received except for a price more than 30 percent in excess of the engineer's estimate proceedings may be had as follows:

If it shall appear to the persons interested in said system that the engineer made an error in the estimate or that the plans and specifications could be changed in a manner materially affecting the cost of the improvements without interfering with the efficiency thereof, then any of said persons may petition the board or court so stating and asking that an order be made reconsidering and rescinding the order theretofore made establishing the system, and that the engineer's and viewers' reports be referred back to the engineer and to the viewers for further consideration.

Upon presentation of such petition, the board or court shall order a hearing, therein designating the time and place for hearing, and cause notice thereof to be given by publication in the same newspapers where the notice of final hearing was theretofore published.

At the time and place specified in the order and notice, the board or court shall consider the petition and hear all interested parties.

Upon said hearing, if it shall appear that the engineer's original estimate was erroneous and should be corrected, or that the plans and specifications could be changed in a manner materially affecting the cost of the improvement without interfering with the efficiency thereof, and further, that upon said correction or modification, a contract could be let within the 30 percent limitation then the board or court may, by order, authorize the engineer to amend the report. If the changes recommended by the engineer in any manner affect the amount of damages to any property, the viewers' report shall be referred back to the viewers to reexamine the damages and report the same to the board or court.

The board or court may continue the hearing to give the engineer or the viewers additional time for the making of their amended reports and in such case the jurisdiction of the board or court shall continue in all respects at the adjourned hearing.

Upon said hearing the board or court shall have full authority to reopen the original order establishing said system, and to set said order aside, and to consider the amended engineer's report and the amended viewers' report, if any, and to make findings and an order thereon the same as is provided in section 116A.12. All proceedings thereafter taken shall be the same as is provided upon the original findings and order of the board or court.

**History:** 1971 c 916 s 14; 1986 c 444

#### **116A.15 CONTRACT AND BOND.**

Subdivision 1. **Provisions.** The contract and bond to be executed and furnished by the contractor shall be attached. The contract shall contain the specific description of the work to be done, either expressly or by reference to the plans and specifications, and shall provide that the work shall be done and completed as provided in the plans and specifications and subject to the inspection and approval of the engineer. The county attorney, the engineer, and the attorney for the petitioners shall prepare the contract and bond. The contractor shall make and file with the auditor or court administrator a bond, with good and sufficient surety, to be approved by the auditor or court administrator, in a sum not less than 100 percent of the contract price of the

work. Every such contract and bond shall embrace all the provisions required by sections 116A.01 to 116A.26 and provided by law for bonds given by contractors for public works, and shall be conditioned as provided by statute in case of public contractors for the better security of the contracting county or counties and of parties performing labor and furnishing material in and about the performance of the contract. The bond shall provide that the bonding agents shall be liable for all damages resulting from any such failure, whether the work be resold or not, and that any person or corporation, public or private, showing itself injured by such failure, may maintain an action upon such bond in its own name, and actions may be successive in favor of all persons so injured; provided, however, that the aggregate liability of the surety for all such damages shall in no event exceed the amount of said bond. Such contractor shall be considered a public officer, and such bond an official bond within the meaning of the statutory provisions construing the official bonds of public officers as security to all persons, and providing for actions on such bonds by any injured party.

**Subd. 2. Changes during construction.** The contract shall give the engineer the right, with the consent of the board or court, to modify the reports, plans and specifications as the work proceeds and as circumstances may require. It shall provide that the increased cost resulting from such changes will be paid by the county to the contractor at not to exceed the price for like work in the contract. No change shall be made that will substantially impair the usefulness of any part of the water or sewer system or substantially alter its original character, or will increase its total cost by more than ten percent of the total original contract price, unless determined by the board or court to be necessary to complete the system described in the original plans and specifications in such manner as to make it usable for the purpose contemplated.

**History:** 1971 c 916 s 15 subds 1,2; 1973 c 322 s 9,10; 1986 c 444; 1Sp1986 c 3 art 1 s 82

#### **116A.16 APPORTIONMENT OF COST.**

The cost of any water or sewer or combined system and of any improvement or extension thereof, or any part of such cost, may be assessed upon property benefited thereby, based upon the benefits received, whether or not the property abuts on the improvement. If less than all of the cost is assessed, the remainder, including the principal of and interest on all bonds issued to pay the cost, shall be paid or reimbursed to the county or counties paying it from the net revenues from time to time received, in excess of the current costs of operating and maintaining the system, from the establishment and collection of charges for connection to the system and for service furnished and made available by it to any person, firm, corporation, or political subdivision or from any federal or state grant moneys, or from any combination of these receipts.

**History:** 1971 c 916 s 16; 1973 c 322 s 11; 1977 c 442 s 9

#### **116A.17 ASSESSMENT PROCEDURE AND FINAL HEARING.**

**Subdivision 1. Calculation, notice.** At any time after the expense incurred and to be incurred in the completion of a water or sewer or combined system, or of any subsequent improvement or extension thereof, has been calculated under the direction of the board or court the county auditor or auditors, with the assistance of the engineer or another qualified person shall calculate the proper amount to be specially assessed for the improvement against every assessable lot, piece or parcel of land, without regard to cash valuation. The proposed assessment roll shall be filed with the county auditor and open to public inspection. In a judicial proceeding the assessment roll shall be filed with the county auditor in each county wherein assessments are to be levied. The auditor or court administrator shall then, under the board's or court's direction, publish notice of a hearing in the official papers covering the area of the improvement to consider the proposed assessment. The notice shall be published in the newspaper at least once and shall be mailed to the owner of each parcel described in the assessment roll. For the purpose of giving mailed notice under this subdivision, owners shall be

those shown to be such on the records of the county auditor or, in any county where tax statements are mailed by the county treasurer, on the records of the county treasurer; but other appropriate records may be used for this purpose. Publication and mailing shall be no less than two weeks prior to the hearing. Except as to the owners of tax exempt property or property taxed on a gross earnings basis, every property owner whose name does not appear on the records of the county auditor or the county treasurer shall be deemed to have waived the mailed notice unless that owner has requested in writing that the county auditor or county treasurer, as the case may be, include that owner's name on the records for such purpose. The notice shall state the date, time, and place of the meeting, the general nature of the improvement, the area proposed to be assessed, that the proposed assessment roll is on file with the auditor, and that written or oral objections thereto by any property owner will be considered.

**Subd. 2. Adoption; interests.** At the hearing or at any adjournment thereof the board or court shall hear and pass upon all objections to the proposed assessment, whether presented orally or in writing. The board or court may amend the proposed assessment as to any parcel and by resolution adopt the same as the special assessment against the lands named in the assessment roll. Notice of any adjournment of the hearing shall be adequate if the minutes of the meeting so adjourned show the time and place when and where the hearing is to be continued, or if three days notice thereof be published in the newspaper. The assessment, with accruing interest, shall be a lien upon all private and public property included therein, from the date of the resolution adopting the assessment, concurrent with general taxes; but the lien shall not be enforceable against public property as long as it is publicly owned, and during such period the assessment shall be recoverable from the owner of such property only in the manner and to the extent provided in section 435.19. All assessments shall be payable in equal annual installments extending over such period, not exceeding 30 years, as the board or court may direct. The first installment shall be payable on the first Monday in January next following the adoption of the assessment and its extension on the tax rolls, which shall be completed as soon as practicable; except that the board or court may direct the payment of the assessment on one or more lots, pieces, and parcels of land to be deferred for a specified period, or until it is connected to the system, or to be extended over a longer period not exceeding 50 years, if it finds that such method of payment in any case will be more commensurate with the benefits to be received by the property and that the net revenues of the system will be sufficient to meet any deficiency in funds available to pay principal and interest when due on bonds to be issued to finance the system, resulting from deferment or extension of such assessment payments. All assessments not paid in full within 30 days from the date of confirmation of the assessments shall bear interest at the rate fixed by the board or court, but not exceeding eight percent per annum. To the first installment shall be added interest on the entire assessment from the date of levying the assessment until December 31 of the year in which the first installment is payable; provided that the board or court, if payment of the first installment on any property is deferred, may provide that interest during the period of the deferment shall be paid annually, or shall be forgiven in whole or in part, or, if not paid or forgiven, shall be added to the principal amount of the special assessment payable in annual installments after the expiration of the period of deferment. To each installment after the first one there shall be added interest for one year on all unpaid installments. In lieu of the method of payment provided above, special assessments may be made payable in equal annual installments including both principal and interest, each in the amount annually required to pay the principal over such period with interest at such rate as previously determined not exceeding the maximum period and rate specified. In this event no prepayment shall be accepted without payment of all installments due to and including December 31 of the year of prepayment, and the original principal amount reduced only by the amounts of principal included in such installments, computed on an annual amortization basis. No special assessments levied under the provisions of section 116A.12 or this section shall be subject to deferment under the provisions of section 273.111, subdivision 11, or of any other law except this subdivision.

**Subd. 3. Assessment roll and prepayment.** After the adoption of the assessment the auditor shall prepare a final assessment roll with each installment of the assessment, and interest thereon, set forth separately, and shall extend same on the proper tax lists of the county. All assessments and interest thereon shall be collected and paid over in the same manner as other county taxes. The owner of any property so assessed may, at any time before the assessment has been extended on the tax lists pay the whole of the assessment on such property, with interest accrued to the date of payment, except that no interest shall be charged if the entire assessment is paid within 30 days from the adoption thereof; and, except as hereinafter provided, that owner may at any time prior to November 15 of any year prepay the whole assessment remaining due with interest accrued to December 31 of the year in which said prepayment is made.

**Subd. 4. Collection; tax exempt property.** On the confirmation of any assessments the auditor shall notify the county board of commissioners of the amount payable by any county and shall mail a notice to the clerk or recorder of any other political subdivision specifying the amount payable by the political subdivision, and to the owner of any right-of-way at its principal office in the state, a notice specifying the amount payable on account of any right-of-way. The amount payable on account of any right-of-way or public property or by any city connected to the system shall be payable to the water or sewer system's special fund and shall be payable in like installments and with like interest and penalties as provided for in reference to installments payable on account of assessable real property, except that interest accruing shall not begin to run until the notice provided in this subdivision has been properly given and 30 days thereafter have elapsed. The governing body of any such political subdivision shall provide for the payment of these amounts and shall take appropriate action to that end. If the assessment is not paid in a single installment, the auditor shall annually mail to each connected city, to the owner of any right-of-way and, as long as the property is publicly owned, to the owner of any public property a notice stating that an installment is due and should be paid to the water or sewer district's special fund. The auditor may collect the amount due on account of the right-of-way of any railroad or privately owned public utility by distress and sale of personal property in the manner provided by law in case of taxes levied upon personal property or by suit brought to enforce the collection of this indebtedness unless a different method of collecting such amounts is provided for by any contract between the owner of any right-of-way and the board or court. Any amount payable by any city connected to the system, if not paid when due, may be extended by the auditor as a tax upon all taxable property within the city for collection with other taxes in the following year.

**History:** 1971 c 916 s 17; Ex1971 c 20 s 9; 1973 c 123 art 5 s 7; 1973 c 322 s 12-14; 1986 c 444; 1Sp1986 c 3 art 1 s 82

#### **116A.18 SUPPLEMENTAL ASSESSMENTS; REASSESSMENT.**

**Subdivision 1. Supplemental assessments.** The county board or court may make supplemental assessments to correct omissions, errors, or mistakes in the assessment relating to the total cost of the improvement or any other particular, or whenever it is ascertained that the collections of special assessments and interest thereon, together with the net revenues of the system, are not sufficient to pay all bonds issued to finance the system and interest thereon when due. A supplemental assessment shall be preceded by personal or mailed notice to the owner of each parcel included in the supplemental assessment and a hearing as provided for the original assessment.

**Subd. 2. Reassessment.** When an assessment is, for any reason, set aside by a court of competent jurisdiction as to any parcel or parcels of land, or in event the board or court finds that the assessment or any part thereof is excessive, or determines on advice of the county attorney that the assessment or proposed assessment or any part thereof is or may be invalid for any reason, the board or court may, upon notice and hearing as provided for the original assessment, make a reassessment or a new assessment as to such parcel or parcels.

**Subd. 3. Reapportionment upon land division.** When a tract of land against which

a special assessment has been levied is thereafter divided or subdivided by plat or otherwise, the board or court may, on application of the owner of any part of the tract or on its own motion equitably apportion among the various lots or parcels in the tract all the installments of the assessment against the tract remaining unpaid and not then due if it determines that such apportionment will not materially impair collection of the unpaid balance of the original assessment against the tract. The board or court may, and if the special assessment has been pledged to the payment of improvement warrants shall, require the owner or owners, as a condition of such apportionment, to furnish a satisfactory surety bond fully protecting the county against any loss resulting from failure to pay any part of the reapportionment assessment when due. Notice of such apportionment and of the right to appeal shall be mailed to or personally served upon all owners of any part of the tract. Within 30 days after the mailing or service of the notice of such apportionment any such owner may appeal as provided in section 116A.19.

*History: 1971 c 916 s 18; Ex1971 c 20 s 10; 1973 c 322 s 15*

#### **116A.19 APPEALS.**

**Subdivision 1. Procedure.** Any party aggrieved may appeal to the district court from an order of the board or court made in any proceeding.

(a) To render the appeal effectual, the appellant shall file with the auditor or court administrator within 30 days after the filing of such final order a notice of appeal which shall state the particular damages appealed from and the ground upon which the appeal is taken. The notice of appeal shall be accompanied by an appeal bond to the county where the property is located of not less than \$250 with sufficient surety to be approved by the auditor or court administrator, conditioned that the appellant will duly prosecute the appeal and pay all costs and disbursements which may be adjudged against the appellant and abide the order of the court. Within 30 days after such filing, the auditor, in case of a county water or sewer improvement proceeding, shall return and file with the court administrator of the district court the original notice and appeal bond.

(b) The issues raised by the appeal shall stand for trial by jury and shall be tried and determined at the next term of the district court held within the county in which the proceedings were commenced, or in such other county in which the appeal shall be heard, beginning after the filing of the appeal; and shall take precedence of all other matters of a civil nature in court. If there be more than one appeal triable in one county, the court may, on its own motion or upon the motion of a party in interest, consolidate two or more appeals and try them together, but the rights of the appellants shall be separately determined. If the appellant fails to prevail, the cost of the trial shall be paid by the appellant. In case of appeal as to damages to property situated in the county other than the county where the sewer or water proceedings are pending, and if the appellant so requests, the trial shall be held at the next term of the district court of the county wherein the lands are situated. In such case, the court administrator of the district court where the appeal is filed, shall make, certify and file in the office of the court administrator of the district court of the county where the trial is to be had, a transcript of the papers and documents on file in the court administrator's office in the proceedings so far as they pertain to the matters on account of which the appeal is taken. After the final determination of such appeal, the court administrator of the district court where the action is tried, shall certify and return the verdict to the district court of the county where the proceedings were instituted.

(c) The court administrator of the district court shall file a certified copy of the final determination of any such appeal with the auditor of the county affected.

**Subd. 2. Effect of determination.** In all cases of appeal from an order determining damages to property from the construction of any system, improvement, or extension, the amount awarded by the jury as finally determined shall stand for and in the place of the amount from which the appeal was taken. In all cases of appeal from an order confirming special assessments, the court shall either affirm the assessment or set it aside and order a reassessment as provided in section 116A.18, subdivision 2. The

court may order reassessment of one or more or all of the properties appearing on any special assessment roll. Upon reassessment of any property, the board or court shall have jurisdiction to reassess such other properties as it may deem necessary to spread the cost equitably, provided that notice is given to the owners of all properties reassessed. In any case of appeal from a special assessment, no reassessment shall be ordered unless the original assessment is determined to be arbitrary, unreasonable, or based on a mistake of law.

**Subd. 3. Appeal from orders.** Any party aggrieved thereby may appeal to the district court of the county where the proceedings are pending from any order made by the county board dismissing the petition for any water or sewer system or establishing or refusing to establish any water or sewer system or the assessment of benefits. The appellant shall serve notice of appeal and give bond as provided in subdivision 1. Upon appeal being perfected, it may be brought on for trial by either party upon ten days notice to the other, and shall then be tried by the court without a jury. The court shall examine the whole matter and receive evidence to determine whether the findings made by the county board can be sustained. At the trial the findings made by the county board shall be prima facie evidence of the matters therein stated and the order of the county board shall be deemed prima facie reasonable. If the court shall find that the order appealed from is lawful and reasonable, it shall be affirmed. If the court finds that the order appealed from is arbitrary, unlawful, or not supported by the evidence, it shall make such order to take the place of the order appealed from as is justified by the record before it or remand such matter to the county board for further proceeding before the board. After determination of the appeal, the county board shall proceed in conformity therewith.

**Subd. 4. Appeal.** Any party aggrieved by a final order or judgment rendered on appeal to the district court, or by the order made in any judicial improvement proceeding dismissing the petition or establishing or refusing to establish any judicial improvement or assessing benefits, may appeal as in other civil cases.

**Subd. 5. Additional surety bonds.** Whenever any appeal from an order of the board or court is taken under section 116A.19, any involved county or, if two or more counties are involved and a commission is formed under section 116A.24, the commission, may move the court having jurisdiction over the appeal for an order requiring the appellant, or appellants, to file a surety bond as hereinafter set forth. Three days written notice of the motion shall be given. If the court determines that loss or damage to the public or taxpayers may result from the pendency of the appeal, the court may require the appellant, or appellants, to file a surety bond, which shall be approved by the court, in such amount as the court may determine. The bond shall be conditioned for payment to the county, or commission, of any loss or damage which may be caused to the county, the commission or the taxpayers by the pendency of the appeal, to the extent of the penal sum of such bond, if the appellant, or appellants, shall not prevail therein. If the surety bond is not filed within a reasonable time allowed therefor by the court, the appeal shall be dismissed with prejudice. If such appellant, or appellants, file a bond as herein required and prevail in the appeal, any premium paid on the bond shall be repaid by or taxed against the county or commission.

**History:** 1971 c 916 s 19; 1973 c 322 s 16; 1975 c 294 s 7; 1983 c 247 s 53; 1986 c 444; 1Sp1986 c 3 art 1 s 82

## **116A.20 BOND ISSUES.**

**Subdivision 1.** The county board of each county is authorized, at any time after the establishment of any system, or the formation of any district under section 116A.02, subdivision 4, to issue the bonds of the county in such amount as may be necessary to defray, in whole or in part, the cost of establishing and constructing a system. The board may in like manner issue bonds to pay the cost of improvement or extension of any system, when ordered in accordance with section 116A.12. It may also issue bonds to refund outstanding bonds issued pursuant to this section, in accordance with chapter 475.

Subd. 2. Such bonds shall be sold and issued in accordance with chapter 475, as amended, and shall pledge the full faith, credit, and resources of the county for the prompt payment of principal and interest. An election shall be required to authorize bonds to be issued under this section, unless the board or court having jurisdiction of the system has determined that special assessments and revenues are sufficient for their payment, by order entered pursuant to section 116A.12, subdivision 8. The bonds shall be further secured by pledge of the net revenues from the systems financed by the bonds to the debt redemption fund, and a covenant that rates and charges shall be established for the service of such system, sufficient to pay all costs of operation and maintenance thereof and to produce net revenues adequate, with special assessments received in the fund, to pay all of the bonds and interest thereon when due.

Subd. 3. The bonds shall be payable at such time or times, not to exceed 30 years from their date, and bear such rate or rates of interest not exceeding eight percent per annum, payable annually or semiannually as the county board shall by resolution determine. The years and amounts of principal maturities shall be such as in the opinion of the county board are warranted by the anticipated collections of the water and sewer improvement assessments without regard to any limitations on such maturities imposed by section 475.54.

Subd. 4. Each bond shall contain a recital that it is issued by authority of and in strict accordance with sections 116A.01 to 116A.26. The recital shall be conclusive in favor of the holders of the bonds, that the water or sewer improvement has been properly established, that property within the county is subject to assessment for benefits in amount not less than the amount of the bonds, and that all proceedings relative to the construction of the system or systems financed by the bonds have been or will be taken according to law.

Subd. 5. The board shall pay the principal of and interest on bonds issued under the provisions of this section out of any available funds in the county treasury when the moneys on hand in the fund from which they are primarily payable are insufficient therefor; but the funds from which said moneys have been taken shall be replenished with interest for the time actually needed at the rate of eight percent per annum from the assessments levied for the water or sewer or combined system or from the net revenues of the system or from the taxes, if any, levied for the payment of principal and interest on the bonds.

Subd. 6. Notwithstanding anything in sections 116A.01 to 116A.26 to the contrary, the county board of each county is authorized, at any time after the conditions in subdivision 1 exist, to issue for any of the purposes set forth in subdivision 1, general obligation temporary bonds in anticipation of and in an amount not to exceed any grant or loan of state or federal funds. Such bonds shall mature within not more than three years from the date of issuance and shall otherwise be sold and issued in accordance with chapter 475, and shall pledge the full faith, credit, and resources of the county for the prompt payment of the principal and interest thereof, except that no election shall be required and the debt limitations of chapter 475 shall not apply to such bonds. Prior to the issuance of such bonds the board shall secure a commitment for the grant or loan in anticipation of which the bonds are to be issued, and if any of the bonds are to be issued in anticipation of a loan, the board shall also determine that all conditions exist precedent to the authorization of definitive bonds in an amount equal at least to the principal sum of the loan. In the event such temporary bonds are issued, the proceeds of the grant or loan when received shall be irrevocably appropriated to the sinking fund for the temporary bonds, and the estimated amount thereof may be deducted from the tax which would otherwise be required by section 475.61, subdivision 1, to be levied. The provisions of subdivision 4 shall apply to such bonds. Any amount of the temporary bonds which cannot be paid at maturity from the proceeds of the grant or loan or from any other funds appropriated by the board for the purpose, shall be paid from the proceeds of definitive obligations to be issued and sold before the maturity date in accordance with subdivisions 2, 3 and 4, except that no election shall be required; or, if sufficient funds are not available for payment in full of the temporary



obligations at maturity, the holders thereof shall have the right to require the issuance in exchange therefor of such definitive obligations bearing interest at the maximum rate permitted by law.

**History:** 1971 c 916 s 20; 1973 c 322 s 17-19; 1975 c 294 s 8-11; 1976 c 239 s 23; 1977 c 347 s 17; 1977 c 442 s 11

#### **116A.21 EMERGENCY CERTIFICATES OF INDEBTEDNESS.**

If in any budget year the receipts of revenues of the system should from some unforeseen cause become insufficient to pay current expenses of the operation, maintenance, or debt service of the system, or if any calamity or other public emergency should cause the necessity of making extraordinary expenditures, the board may make an emergency appropriation of an amount sufficient to meet the deficiency and may authorize the issuance, negotiation, and sale of certificates of indebtedness in this amount. The board shall forthwith levy on all taxable property subject to special assessment for the system a tax sufficient to pay the certificates and interest thereon, and shall appropriate all collections of such tax to a special fund created for that purpose. The certificates may mature not later than April in the year following the year in which the tax is collectible. Emergency certificates of indebtedness shall be a general obligation of the county, and may be refunded by the issuance of bonds pursuant to section 116A.20, if the board determines that payment thereof in one year would place an undue burden upon property assessable for the system and that net revenues of the system will be sufficient to pay the refunding bonds as well as outstanding bonds and interest thereon when due.

**History:** 1971 c 916 s 21; 1973 c 322 s 20

#### **116A.22 SERVICE CHARGES; A SPECIAL ASSESSMENT AGAINST BENEFITED PROPERTY.**

Charges established for connections to and the use and availability of service from any water or sewer or combined system, if not paid when due, shall, together with any penalties established for nonpayment, become a lien upon the property connected or for which service was made available. On or before July 1 in each year written notice shall be mailed to the owner of any property as to which such charges are then due and unpaid, stating the amount of the charges and any penalty thereon and that unless paid by October 1 thereafter, or unless a hearing is desired on the question whether such amount and penalty is properly due and payable, the same will be certified, extended, and assessed as a tax or special assessment upon the property for collection with and as a part of other taxes in the following year. Any property owner requesting notice shall be notified of the time and place of such hearing, and the county board, or the commission appointed pursuant to section 116A.24 shall then hear all matters presented by the owner and determine the amount and penalty, if any, which is properly due and payable, and shall cause the same to be certified, extended, and assessed as stated in the notice. The county board or the commission may also provide by resolution for discontinuance of water services to any premises in the event of nonpayment of charges for any water or sewer service provided to the premises, upon reasonable notice to the owner and opportunity for hearing upon any claim that the charges are not properly due and payable.

**History:** 1971 c 916 s 22; Ex1971 c 48 s 45; 1973 c 322 s 21; 1986 c 444

#### **116A.23 AUTHORITY TO ACCEPT GIFTS AND GRANTS.**

The county boards may accept gifts, may apply for and accept grants or loans of money or other property from the United States, the state, or any person for purposes of constructing, operating and maintaining a water or sewer or combined system, may enter into any agreement required in connection therewith, and may hold, use, and dispose of such money or property in accordance with the terms of the gift, grant, loan or agreement relating thereto.

**History:** 1971 c 916 s 23

**116A.24 APPOINTMENT AND POWERS OF WATER AND SEWER COMMISSION.**

Subdivision 1. Any time after the establishment of a water or sewer or combined water or sewer system, or the formation of a district under section 116A.02, subdivision 4, the board or boards or, when a multicounty system is established under section 116A.12, the court may provide for the appointment of a water or sewer or water and sewer commission. Such a commission shall be appointed before the final award of a contract for the construction of any system ordered by the district court. The commission shall have not less than five members and not more than 11. Members shall be appointed at large by the county board or boards from within the areas in their respective counties which are served by the system or from within a district formed under section 116A.02, subdivision 4, which district includes the served areas. Commission members shall serve for terms of four years and until their successors are appointed and qualify. The commencement date of the term of each member and the member's successors shall be fixed by order of the board or boards or court so that as nearly as possible an equal number of members will be replaced or reappointed each year. When multicounty systems are involved, commission membership shall be apportioned by the boards or court among the counties on the basis of their population served by the system or, if a district has been formed, on the basis of population located within that portion of each county situated within the district. When the area served by any system is enlarged and the commission members are not appointed from within a district formed under section 116A.02, subdivision 4, which includes the enlarged system, the board or boards or court shall reapportion or increase the membership and reestablish the terms so as to conform to the foregoing provisions, but each member shall continue to serve for the term appointed. Vacancies due to death, incapacity to serve, removal, or resignation shall be filled by the appointing boards for the unexpired terms.

Subd. 2. Subject to the approval of the board or boards except to the extent that approval is waived by the board or boards in an order filed with and confirmed by order of the district court, the water or sewer or water and sewer commission or when a multicounty system is involved a county board may do all things necessary to establish, construct, operate and maintain a system including but not limited to the following:

(a) Employ on such terms as it deems advisable, persons or firms performing engineering, legal or other services of a professional nature; require any employee to obtain and file with it an individual bond or fidelity insurance policy; and procure insurance in such amounts as it deems necessary against liability of the board or its officers and employees or both, for personal injury or death and property damage or destruction, with the force and effect stated in chapter 466, and against risks of damage to or destruction of any of its facilities, equipment, or other property as it deems necessary.

(b) Construct or maintain its systems or facilities in, along, on, under, over, or through public streets, bridges, viaducts, and other public rights-of-way without first obtaining a franchise from any local government unit having jurisdiction over them; but such facilities shall be constructed and maintained in accordance with the ordinances and resolutions of any such government unit relating to construction, installation, and maintenance of similar facilities in such public properties and shall not obstruct the public use of such rights-of-way.

(c) Enter into any contract necessary or proper for the exercise of its powers or the accomplishment of its purposes.

(d) Have the power to adopt rules and regulations relating to the establishment of water or sewer rentals or user fees as may be deemed advisable and the operation of any system operated by it, and may provide penalties for the violation thereof not exceeding the maximum which may be specified for a misdemeanor. Any rule or regulation prescribing a penalty for violation shall be published at least once in a newspaper having general circulation in the area.

(e) Act under the provisions of section 471.59, or any other appropriate law providing for joint or cooperative action between government units.

(f) Acquire by purchase, lease, condemnation, gift, or grant, any real or personal property including positive and negative easements and water and air rights, and it may construct, enlarge, improve, replace, repair, maintain, and operate any system determined to be necessary or convenient for the collection and disposal of sewage or collection, treatment, and distribution of water in its jurisdiction. Any local government unit and the commissioners of transportation and natural resources are authorized to convey to or permit the use of any such facilities owned or controlled by it by the board or commission, subject to the rights of the holders of any bonds issued with respect thereto, with or without compensation, without an election or approval by any other government agency. The board or commission may hold such property for its purposes, and may lease any such property so far as not needed for its purposes, upon such terms and in such manner as it shall deem advisable. Unless otherwise provided, the right to acquire lands and property rights by condemnation shall be exercised in accordance with sections 117.011 to 117.232, and shall apply to any property or interest therein owned by any local government unit; provided, that no such property devoted to an actual public use at the time, or held to be devoted to such use within a reasonable time, shall be so acquired unless a court of competent jurisdiction shall determine that the use proposed by the commission is paramount to such use. Except in case of property in actual public use, the board or commission may take possession of any property for which condemnation proceedings have been commenced at any time after the issuance of a court order appointing commissioners for its condemnation.

(g) Contract with the United States or any agency thereof, any state or agency thereof, or any local government unit or governmental agency or subdivision, for the joint use of any facility owned by the board or such entity, for the operation by such entity of any system or facility of the board, or for the performance on the board's behalf of any service, on such terms as may be agreed upon by the contracting parties.

(h) Exercise any other powers granted to the board or boards or court under section 116A.01, subdivision 2, relating to the establishment of a water or sewer or water and sewer system, except for the power to issue bonds.

(i) Retain the services of a certified public accountant for the purposes of providing an annual audited operating statement and balance sheet and other financial reports. The reports must be prepared in accordance with general accounting principles and must be filed within six months after the close of the fiscal year in the office of each county auditor within the district and with the office of the state auditor. The reports may be prepared by the state auditor instead of by a certified public accountant if the commission so requests.

Subd. 3. The payment of the cost of construction of a multicounty system established by order pursuant to section 116A.12, and of the subsequent improvement or extension of the system when ordered by the court, is the obligation of each of the counties containing property assessable for the system, in proportion to the area of such property situated within the county, or in any other proportion which the counties, by concurring resolutions, confirmed by order of the court, may determine is just and reasonable. When bonds are sold and issued by the counties to pay such cost pursuant to section 116A.20, the proceeds of the bonds, except such portion as the county shall retain to pay interest until the system is self-supporting, shall be remitted to the commission, and the commission shall receive and disburse all revenues of the system, and shall act as agent of the counties in supervising the construction, improvement, and extension thereof, and thereafter in operating and maintaining the system. All collections of special assessments and any debt service ad valorem taxes levied for the system on property within each county shall be deposited as received in the sinking fund for bonds issued by that county to finance the system or extensions or improvements thereof, or in a single joint account administered by the commission on behalf of the counties for payment into the respective sinking fund accounts of the counties at such times and in such amounts as the county boards mutually determine is just and reasonable. The commission shall remit to the counties the net revenues from time to time received in excess of the amounts needed to pay current operation and mainte-

nance expenses of the system and to maintain a reasonable operating reserve. The net revenues remitted each year shall be apportioned among the counties in proportion to the principal amount of bonds of each county then outstanding, which were issued for the establishment, improvement, or extension of the system or any other proportion which the counties mutually determine is just and reasonable; provided that with the consent of the county boards, the commission may retain any portion of the net revenues not needed for the payment of their bonds in a special fund to be expended for the improvement or extension of the system.

All accounts authorized by this subdivision may be established within a single fund administered by the commission on behalf of the counties and held in a single bank mutually designated by the county boards to serve as a depository for all sums, including bond proceeds, special assessments, tax levies and revenues received on account of the system.

Subd. 4. [Repealed, 1977 c 442 s 16]

**History:** 1971 c 916 s 24; 1973 c 35 s 32; 1973 c 322 s 22-24; 1975 c 294 s 12-14; 1976 c 166 s 7; 1976 c 239 s 24; 1977 c 442 s 12-14; 1983 c 265 s 1; 1986 c 444

#### **116A.25 PROPERTY EXEMPT FROM TAXATION.**

Any properties, real or personal, owned, leased, controlled, used, or occupied by a water or sewer or water and sewer commission or board for any purpose referred to in sections 116A.01 to 116A.26 are declared to be acquired, owned, leased, controlled, used and occupied for public, governmental, and municipal purposes, and shall be exempt from taxation by the state or any political subdivision of the state, provided that such properties shall be subject to special assessments levied by a political subdivision for a local improvement in amounts proportionate to and not exceeding the special benefit received by the properties from such improvement. No possible use of any such properties in any manner different from their use as part of a distribution or disposal system at the time shall be considered in determining the special benefit received by such properties. All such assessments shall be subject to final confirmation by the county board or boards in whose jurisdiction the system is constructed and whose determination of the benefits shall be conclusive upon the political subdivision levying the assessment.

**History:** 1971 c 916 s 25; 1983 c 213 s 4

#### **116A.26 POLLUTION CONTROL AGENCY.**

No action taken under sections 116A.01 to 116A.26 shall be inconsistent with chapter 115 or 116, or lawful standards, rules, orders or permits promulgated or issued thereunder.

**History:** 1971 c 916 s 27; 1985 c 248 s 70