

CHAPTER 106A

DRAINAGE

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106A.005 DEFINITIONS.

[For text of subd 1, see M.S.1986]

Subd. 2. **Affected.** "Affected" means benefited or damaged by a drainage system or project.

Subd. 3. **Auditor.** "Auditor" means the auditor of the county where the petition for a drainage project was properly filed.

Subd. 4. **Board.** "Board" means the board of commissioners of the county where the drainage system or project is located.

[For text of subs 5 to 8, see M.S.1986]

Subd. 9. **Drainage authority.** "Drainage authority" means the board or joint county drainage authority having jurisdiction over a drainage system or project.

Subd. 10. **Drainage lien.** "Drainage lien" means a lien recorded on property for

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the costs of drainage proceedings and construction and interest on the lien, as provided under this chapter.

Subd. 10a. **Drainage project.** "Drainage project" means a new drainage system, an improvement of a drainage system, an improvement of an outlet, or a lateral.

Subd. 11. **Drainage system.** "Drainage system" means a system of ditch or tile, or both, to drain property, including laterals, improvements, and improvements of outlets, established by, and constructed by a drainage authority. "Drainage system" includes the improvement of a natural waterway used in the construction of a drainage system and any part of a flood control plan proposed by the United States or its agencies in the drainage system.

Subd. 12. **Engineer.** "Engineer" means the engineer for a drainage project appointed by the drainage authority under section 106A.241, subdivision 1.

Subd. 13. **Established.** "Established" means the drainage authority has made the order to construct the drainage project.

Subd. 14. **Lateral.** "Lateral" means any drainage construction by branch or extension, or a system of branches and extensions, or a drain that connects or provides an outlet to property with an established drainage system.

[For text of subds 15 and 16, see M.S.1986]

Subd. 16a. **Owner.** "Owner" means an owner of property or a buyer of property under a contract for deed.

Subd. 16b. **Passes over.** "Passes over" means in reference to property that has a drainage project or system, the 40-acre tracts or government lots and property that is bordered by, touched by, or underneath the path of the proposed drainage project.

[For text of subds 17 and 18, see M.S.1986]

Subd. 19. **Proceeding.** "Proceeding" means a procedure under this chapter for or related to drainage that begins with filing a petition and ends by dismissal or establishment of a drainage project.

[For text of subds 20 to 24, see M.S.1986]

Subd. 25. [Repealed, 1987 c 239 s 139]

[For text of subd 26, see M.S.1986]

History: 1987 c 239 s 2-14

106A.011 DRAINAGE AUTHORITY POWERS.

[For text of subds 1 and 2, see M.S.1986]

Subd. 3. **Permission of commissioner for work in public waters; application.** (a) The drainage authority must receive permission from the commissioner to:

- (1) remove, construct, or alter a dam affecting public waters;
- (2) establish, raise, or lower the level of public waters; or
- (3) drain any portion of a public water.

(b) The petitioners for a proposed drainage project or the drainage authority may apply to the commissioner for permission to do work in public waters or for the determination of public waters status of a water body or watercourse.

Subd. 4. **Flood control.** The drainage authority may construct necessary dams, structures, and improvements and maintain them to impound and release flood water to prevent damage. The dams, structures, and improvements may be constructed with or without a drainage project. For a water body or watercourse that is not public waters the drainage authority may:

- (1) lower, or establish the height of water in the water body or watercourse to control flood waters;

(2) build structures and improvements to maintain a water body or watercourse for flood control or other public purposes; and

(3) construct dikes or dams in a water body to maintain water at the height designated by the drainage authority and to drain part of the water body.

History: 1987 c 239 s 15,16

106A.015 CONSIDERATIONS BEFORE DRAINAGE WORK IS DONE.

Subdivision 1. **Environmental and land use criteria.** Before establishing a drainage project the drainage authority must consider:

(1) private and public benefits and costs of the proposed drainage project;

(2) the present and anticipated agricultural land acreage availability and use in the drainage project or system;

(3) the present and anticipated land use within the drainage project or system;

(4) flooding characteristics of property in the drainage project or system and downstream for 5, 10, 25, and 50-year flood events;

(5) the waters to be drained and alternative measures to conserve, allocate, and use the waters including storage and retention of drainage waters;

(6) the effect on water quality of constructing the proposed drainage project;

(7) fish and wildlife resources affected by the proposed drainage project;

(8) shallow groundwater availability, distribution, and use in the drainage project or system; and

(9) the overall environmental impact of all the above criteria.

Subd. 2. **Determining public utility, benefit, or welfare.** In any proceeding to establish a drainage project, or in the construction of or other work affecting a public drainage system under any law, the drainage authority or other authority having jurisdiction of the proceeding must give proper consideration to conservation of soil, water, forests, wild animals, and related natural resources, and to other public interests affected, together with other material matters as provided by law in determining whether the project will be of public utility, benefit, or welfare.

History: 1987 c 239 s 17

106A.021 DITCHES MUST BE PLANTED WITH PERMANENT GRASS.

[For text of subs 1 to 3, see M.S.1986]

Subd. 4. **Compliance work by drainage authority.** If a property owner does not bring an area into compliance with this section as provided in the compliance notice, the inspection committee or drainage inspector must notify the drainage authority. If a property owner does not bring an area into compliance after being notified under section 106A.705, subdivision 1a, the drainage authority must issue an order to have the work performed to bring the property into compliance. After the work is completed, the drainage authority must send a statement of the expenses incurred to bring the property into compliance to the auditor of the county where the property is located and to the property owner.

Subd. 5. **Collection of compliance expenses.** (a) The amount of the expenses to bring an area into compliance with this section is a lien in favor of the drainage authority against the property where the expenses were incurred. The auditor must certify the expenses and enter the amount in the same manner as other drainage liens on the tax list for the following year. The amount must be collected in the same manner as real estate taxes for the property. The provisions of law relating to the collection of real estate taxes shall be used to enforce payment of amounts due under this section. The auditor must include a notice of collection of compliance expenses with the tax statement.

(b) The amounts collected under this subdivision must be deposited in the drainage system account.

History: 1987 c 239 s 18,19

106A.031 CONNECTION WITH DRAINS IN ADJOINING STATES.

Subdivision 1. **Procedure.** If it is necessary to construct a drainage project at or near the boundary between this state and another state or country and the work cannot be done in a proper manner without extending the drainage project into the adjoining state or country, the drainage authority may join with the board or tribunal of the adjoining state or country having jurisdiction to plan and construct public drainage systems. The drainage authority in this state may enter into contracts or arrangements with the board or tribunal of the adjoining state or country to construct the drainage project. The proceeding and construction related to property in this state and, as applicable, the drainage authority in relation to the joint drainage work, are governed by this chapter.

Subd. 2. **Payment of costs.** The adjoining county or district in another state or country must pay its proper share of the necessary costs of the construction of any drainage work including damages. If the benefits to property in the adjoining state or country are not sufficient to pay all the costs of construction of the drainage project in that state or country, including damages, the drainage authority may authorize or direct the affected counties to contribute sufficient funds to complete the construction of the drainage project in the adjoining state or country, if the construction will be of sufficient benefit to the affected property in this state to warrant the contribution.

History: 1987 c 239 s 20

106A.043 INFORMAL MEETINGS.

A drainage authority may hold informal meetings in addition to the meetings and hearings required in this chapter to inform persons affected by the drainage system about the drainage proceedings and provide a forum for informal discussions.

History: 1987 c 239 s 21

106A.051 DEFECTIVE PROCEEDINGS.

(a) A party may not take advantage of an error in a drainage proceeding or an informality, error, or defect appearing in the record of the proceeding or construction, unless the party complaining is directly affected. The modification of the benefits or damages to any property, or the enjoining of collection of any assessment, does not affect any other property or the collection of any assessment on other property.

(b) If a drainage project has been established and a contract awarded in good faith, without collusion, and at a reasonable price:

(1) a defect or lack of notice in awarding, making, or executing the contract does not affect the enforcement of an assessment; and

(2) if the contract is performed in good faith in whole or in part, a defect does not invalidate the contract.

History: 1987 c 239 s 22

106A.055 REIMBURSEMENT OF COST OF FORMER SURVEYS WHEN USED LATER.

If after a proceeding has begun a survey has been made and a proceeding to establish a drainage project has been dismissed or the drainage project has not been established, and all or a part of the former survey is used by the engineer for a drainage proceeding in the same area, the amount saved in the subsequent proceedings must be paid to the proper parties according to this section. If the parties who paid the expense of the former survey make a petition, the drainage authority shall:

(1) determine the amount of benefit that was derived by the subsequent proceedings from the former survey;

(2) order the amount of the benefit to be paid to the proper parties; and

(3) charge the amount paid as a cost of the subsequent drainage proceeding.

History: 1987 c 239 s 23

106A.081 CRIMES RELATED TO DRAINAGE SYSTEMS; PENALTIES.

[For text of subd 1, see M.S.1986]

Subd. 2. **Obstruction or damage of a drainage system.** A person may not willfully obstruct or damage a drainage project or system.

Subd. 3. **Altering engineer's marking of stakes.** A person may not willfully change the location or alter markings of stakes set by the engineer in a drainage project or system.

[For text of subd 4, see M.S.1986]

History: 1987 c 239 s 24,25

106A.085 ENFORCEMENT.

Subdivision 1. **Warrants and arrests.** An enforcement officer, as defined in section 97A.015, subdivision 18, may execute and serve warrants, and arrest persons detected in actual violation of sections 106A.005 to 106A.811 as provided in sections 97A.205 and 97A.211.

[For text of subd 2, see M.S.1986]

History: 1987 c 149 art 2 s 7

106A.091 APPEALS.

[For text of subs 1 to 3, see M.S.1986]

Subd. 4. **Appeal trial.** (a) The issues in the appeal are entitled to a trial by a jury in the district court of the county where the drainage proceeding was pending.

(b) At the request of the appellant, the trial must be held at the district court of the county where the affected property is located. The court administrator of the district court where the appeal is first filed shall make, certify, and file with the court administrator of the district court of the county where the trial is transferred, a transcript of the papers and documents on file in the court administrator's office in the proceedings related to the matters of the appeal. After the final determination of the appeal, the court administrator of the district court that tried the appeal shall certify and return the verdict to the district court of the county where the drainage proceedings were filed.

(c) The appeal shall take precedence over all other civil court matters. If there is more than one appeal to be tried in one county, the court may, on its own motion or the motion of an interested party, consolidate two or more appeals and try them together, but the rights of the appellants must be determined separately. If the appellant does not prevail, the cost of the trial must be paid by the appellant.

(d) The court administrator of the district court where the appeal is filed shall file a certified copy of the final determination of the appeal with the auditor of the affected counties.

[For text of subd 5, see M.S.1986]

History: 1987 c 239 s 26

106A.095 APPEAL FROM ORDERS DISMISSING OR ESTABLISHING DRAINAGE SYSTEMS.

Subdivision 1. **Notice of appeal.** A party may appeal an order made by the board that dismisses drainage proceedings or establishes or refuses to establish a drainage project to the district court of the county where the drainage proceedings are pending. The appellant must serve notice of the appeal to the auditor within 30 days after the order is filed. After notice of the appeal is served, the appeal may be brought to trial by the appellant or the drainage authority after notifying the other party at least ten days before the trial date.

[For text of subd 2, see M.S.1986]

Subd. 3. Determination of benefits and damages after court order. If the order establishing a drainage project is appealed, the trial of appeals related to benefits or damages in the drainage proceeding must be stayed until the establishment appeal is determined. If the order establishing the drainage project is affirmed, appeals related to benefits and damages must then be tried.

Subd. 4. Procedure if appeal order establishes drainage project. If an order refusing to establish a drainage project is appealed, and the court, by order, establishes the drainage project, the auditor shall give notice by publication of the filed order. The notice is sufficient if it refers to the drainage project or system by number or other descriptive designation, states the meaning of the order, and states the date the court order was filed. A person may appeal the establishment order to the district court as provided in this section.

[For text of subd 5, see M.S.1986]

History: 1987 c 239 s 27-29

106A.097 PAYMENT OF ATTORNEY FEES ON APPEAL.

If the commissioner of natural resources is a party making an appeal under section 106A.091 or 106A.095 and the commissioner does not prevail on the issues appealed, the court may award attorney fees to the party prevailing on the appeal. If more than one issue is appealed and the commissioner prevails on some issues and does not prevail on others, the court shall determine the amount of the attorney fee to be awarded.

History: 1987 c 239 s 30

106A.101 DRAINAGE PROCEEDING AND CONSTRUCTION RECORDS.

[For text of subd 1, see M.S.1986]

Subd. 2. Record requirements. All maps, plats, profiles, plans, and specifications prepared and used in relation to a proceeding must:

- (1) be uniform;
- (2) have each sheet bound and marked to identify the proceeding by the drainage project and system number;
- (3) show the name of the person preparing the sheet;
- (4) show the date the sheet was prepared; and
- (5) conform to rules and standards prescribed by the director of the division of waters.

[For text of subd 3, see M.S.1986]

Subd. 4. Engineer's documents. All original plats, profiles, records, and field books made by the engineer during the proceedings or the construction of a drainage project are public records and the property of the drainage authority. These public records must be filed with the auditor under the direction of the drainage authority when construction is completed or when the engineer stops acting for the drainage project, whichever is earlier.

[For text of subds 5 and 6, see M.S.1986]

History: 1987 c 239 s 31,32

106A.201 [Repealed, 1987 c 239 s 139]

106A.202 PETITIONS.

Subdivision 1. **Applicability.** This section applies to a petition for a drainage project and a petition for repair.

Subd. 2. **Signatures on petition.** (a) A petition must be signed by a requisite number of owners of 40-acre tracts or government lots and property that the drainage project described in the petition passes over, or by the property owners of the required percentage of the property area determined by the total and percentage of area of 40-acre tracts or government lots that the proposed drainage project passes over, excluding areas in and holders of easements for utilities and roads. A petition may be signed by the commissioner of transportation or by a political subdivision if the property is in their jurisdiction and is passed over by the proposed drainage project.

(b) Each separate parcel of property counts as one signature but must be signed by all owners to count as a signature. The signature of each entity regardless of the number of parcels of property owned counts as one signature on the petition.

(c) Paragraph (a) does not apply to a petition for an improvement of an outlet.

Subd. 3. **Withdrawal of a petitioner.** After a petition has been filed, a petitioner may not withdraw from the petition except with the written consent of all other petitioners on the filed petition.

Subd. 4. **Filing petition and bond.** A petition for a drainage project and a bond must be filed with the auditor. If a drainage system is within two or more counties, the petition must be filed with the auditor of the county with the greatest area of property that the proposed drainage project passes over.

Subd. 5. **Petitioners' bond.** One or more petitioners must file a bond with the petition for at least \$10,000 that is payable to the county where the petition is filed, or for a petition for a proposed joint county drainage system or a petition for a drainage project affecting a joint county drainage system, the bond must be payable to all of the counties named in the petition. The bond must have adequate surety and be approved by the county attorney where the petition is filed. The bond must be conditioned to pay the costs incurred if the proceedings are dismissed or a contract is not awarded to construct the drainage system proposed in the petition.

Subd. 6. **Expenses not to exceed bond.** The costs incurred before the proposed drainage project is established may not exceed the amount of the petitioners' bond. A claim for expenses greater than the amount of the bond may not be paid unless an additional bond is filed. If the drainage authority determines that the cost of the proceeding will be greater than the petitioners' bond before the proposed drainage project is established, the drainage authority must require an additional bond to cover all costs to be filed within a prescribed time. The proceeding must be stopped until the additional bond prescribed by the drainage authority is filed. If the additional bond is not filed within the time prescribed, the proceeding must be dismissed.

History: 1987 c 239 s 33

106A.205 [Repealed, 1987 c 239 s 139]

106A.211 [Repealed, 1987 c 239 s 139]

106A.212 NEW DRAINAGE SYSTEM PROJECTS.

Subdivision 1. **Procedure.** To establish a new drainage system under this chapter, the petitioners and drainage authority must proceed according to this section and the provisions applicable to establishment of drainage projects.

Subd. 2. **Signatures on petition.** The petition for a new drainage system must be signed by a majority of the owners of the property that the proposed drainage system described in the petition passes over, or by the property owners of at least 60 percent of the area that the proposed new drainage system passes over.

Subd. 3. **Petition requirements.** The petition must:

(1) describe the 40-acre tracts or government lots and property where the proposed

new drainage system passes over, including names and addresses of the property owners from records in the county assessor's office;

(2) describe the starting point, the general course, and the terminus of the proposed drainage system;

(3) state why the proposed drainage system is necessary;

(4) state that the proposed drainage system will benefit and be useful to the public and will promote public health; and

(5) state that the petitioners will pay all costs of the proceedings if the proceedings are dismissed or the contract for the construction of the proposed drainage system is not awarded.

History: 1987 c 239 s 34

106A.215 IMPROVEMENT OF DRAINAGE SYSTEM.

[For text of subs 1 to 3, see M.S.1986]

Subd. 4. Petition. (a) A petition must be signed by:

(1) at least 26 percent of the owners of the property affected by the proposed improvement;

(2) at least 26 percent of the owners of property that the proposed improvement passes over;

(3) the owners of at least 26 percent of the property area affected by the proposed improvement; or

(4) the owners of at least 26 percent of the property area that the proposed improvement passes over.

(b) The petition must be filed with the auditor or, for a drainage system in more than one county, with the auditor of the county having the largest area of property the improvement is located on.

(c) The petition must:

(1) designate the drainage system proposed to be improved by number or another description that identifies the drainage system;

(2) state that the drainage system has insufficient capacity or needs enlarging or extending to furnish sufficient capacity or a better outlet;

(3) describe the starting point, general course, and terminus of any extension;

(4) describe the improvement, including the names and addresses of owners of the 40-acre tracts or government lots and property that the improvement passes over;

(5) state that the proposed improvement will be of public utility and promote the public health; and

(6) contain an agreement by the petitioners that they will pay all costs and expenses that may be incurred if the improvement proceedings are dismissed.

Subd. 5. Subsequent proceedings. When a petition and the bond required by section 106A.205 are filed, the auditor shall present the petition to the board at its next meeting or, for a joint county drainage system, to the joint county drainage authority within ten days after the petition is filed. The drainage authority shall appoint an engineer to examine the drainage system and make an improvement report. The improvement proceedings must proceed under this chapter as provided for the original proceedings for the establishment of a drainage project. The benefits and damages determined must be as a result of the proposed improvement. Assessments for the repair of the improvement must be based on the benefits determined for the improvement.

[For text of subd 6, see M.S.1986]

History: 1987 c 239 s 35,36

106A.221 IMPROVEMENT OF OUTLETS.

Subdivision 1. Conditions for improvement of outlets. If a public or private, proposed drainage project or existing drainage system has waters draining into an existing drainage system, watercourse, or body of water, and the construction or proposed construction of the drainage project causes an overflow of the existing drainage system, watercourse, or body of water on adjoining property, an affected county or the owners of the overflowed property may start outlet improvement proceedings under this section.

Subd. 2. Petition. (a) A petition must be signed by the board of an affected county, by at least 26 percent of the owners of adjoining overflowed property, or by the owners of at least 26 percent of the area of the overflowed property. The petition must:

(1) describe the property that has been or is likely to be overflowed including the names and addresses of the property owners from records in the county assessor's office;

(2) state in general terms by number or otherwise the drainage systems that have caused or are likely to cause the overflow;

(3) describe the location of the overflowed drainage system, watercourse, or body of water and the outlet;

(4) show the necessity of the improvement by enlarging the system or controlling the waters by off-take ditches, additional outlets, or otherwise;

(5) show that the outlet improvement will protect the adjoining property from overflow;

(6) state that the improvement will be of public benefit and utility and improve the public health; and

(7) state that the petitioners will pay all costs incurred if the proceedings are dismissed or a contract for the construction outlet improvement is not awarded.

(b) The petitioners, except for a petition made by the board, shall give the required bond.

Subd. 3. Filing of petition. The petition shall be filed with the county auditor. If the board makes the petition, it must be addressed to the drainage authority and filed with the auditor. If part of the improvement or the overflowed property is located in more than one county, the petition must be filed with the auditor of the county with the greatest affected area.

Subd. 4. Jurisdiction of drainage authority. After the petition is filed, the board or joint county drainage authority where the petition is filed, has jurisdiction of the petition, the improvement, the affected property, and all proceedings for the establishment and construction of the outlet improvement and the assessment of property benefited by the outlet improvement, as provided for establishment and construction of a drainage project under this chapter.

Subd. 5. Preliminary survey report requirements. In the preliminary survey report, the engineer shall show the existing or proposed drainage projects or systems that cause the overflow, the property drained or to be drained by the drainage project, and the names of affected property owners.

Subd. 6. Benefited property to be determined by viewers. If, after the preliminary survey report hearing, a detailed survey is ordered and viewers appointed, the viewers shall determine and report the benefits to all property from the outlet improvement including property drained or to be drained by the existing drainage system and proposed drainage project.

History: 1987 c 239 s 37

106A.225 LATERALS.

Subdivision 1. Petition. (a) Persons that own property in the vicinity of an existing drainage system may petition for a lateral that connects their property with the drainage system. The petition must be signed by at least 26 percent of the owners of the property or by the owners of at least 26 percent of the area of the property that the lateral passes

over. The petition must be filed with the auditor, or for property in more than one county, the petition must be filed with the auditor of the county with the largest property area passed over by the lateral. The petition must:

- (1) describe in general terms the starting point, general course, and terminus of the proposed lateral;
 - (2) describe the property traversed by the lateral including the names and addresses of the property owners from records in the county assessor's office;
 - (3) state the necessity to construct the lateral;
 - (4) state that, if constructed, the lateral will be of public benefit and utility and promote the public health;
 - (5) request that the lateral be constructed and connected with the drainage system; and
 - (6) provide that the petitioners will pay all costs incurred if the proceedings are dismissed or if a contract for the construction of the lateral is not awarded.
- (b) The petitioners shall give the bond required by section 106A.202, subdivision 5.

Subd. 2. **Establishment procedure.** After the petition is filed, the procedure to establish and construct the lateral is the same as that provided in this chapter to establish a drainage project.

Subd. 3. **Authority necessary for property not assessed.** A lateral may not be constructed to drain property that is not assessed benefits for the existing drainage system until express authority for the use of the existing drainage system as an outlet for the lateral has been obtained under section 106A.401.

History: 1987 c 239 s 38

106A.231 DISMISSAL OR DELAY OF PROCEEDINGS BY PETITIONERS.

Subdivision 1. **Dismissal.** (a) A proceeding under this chapter may be dismissed by a majority of the petitioners if they own at least 60 percent of the area owned by all of the petitioners as described in the petition.

(b) The proceeding may be dismissed at any time before the proposed drainage project is established after payment of the cost of the proceeding. If the costs cannot be collected, each and all petitioners are liable for unpaid assessments. The drainage authority shall determine and assess the cost of the proceeding against the persons liable. After the proceeding is dismissed any other action on the proposed drainage project must begin with a new petition.

Subd. 2. **Delay.** The drainage authority may delay drainage proceedings and drainage project construction under this chapter if a majority of the petitioners petition for a delay and the drainage authority holds a hearing on the petition. The delay may be for a period determined by the drainage authority. The drainage authority shall determine the cost of the proceedings up to the time the proceedings are delayed and when the costs are to be paid. The costs may include interest on the costs due.

History: 1987 c 239 s 39

106A.235 DRAINAGE SYSTEM IN TWO OR MORE COUNTIES.

Subdivision 1. **Designation.** A petition for a proposed drainage project in two or more counties must be designated as a joint county drainage system with a number assigned by the auditor of the county with the largest area of property in the drainage system.

Subd. 2. **Joint county drainage authority.** The board where a petition for a proposed joint county drainage project is filed shall notify the board of each county where property is affected by the drainage system and request the boards to meet jointly and consider the petition. The boards shall select five of their members at the meeting to be the drainage authority. At least one member must be from each board. The drainage authority shall be known as the joint county drainage authority with a joint

county drainage project or system number. A vacancy in the membership of the joint county drainage authority must be filled by joint action of the boards.

[For text of subd 3, see M.S.1986]

History: 1987 c 239 s 40,41

106A.238 COUNTY ATTORNEY REVIEW OF PETITION AND BOND.

The county attorney must review each petition and bond filed with the county to determine if it meets the requirement of the proceedings for which it is intended. The county attorney must review the petition and bond within 30 days after it is filed. The county attorney must:

- (1) refer the petition and bond back to the petitioners if it does not meet the requirements, with the county attorney's opinion describing the deficiencies of the petition; or
- (2) refer the petition to the drainage authority.

History: 1987 c 239 s 42

106A.241 ENGINEER.

Subdivision 1. Appointment. Within 30 days after receiving a petition and bond from the county attorney, the drainage authority shall, by order, appoint an engineer to make a preliminary survey within a prescribed time. The engineer must be the county highway engineer of a county where the affected property is located or a professional engineer registered under state law. The engineer is the engineer for the drainage project throughout the proceeding and construction unless otherwise ordered. Each appointed engineer must file an oath and bond. The engineer may be removed by the drainage authority at any time. If the engineer position is vacant, the drainage authority shall appoint another engineer as soon as possible.

Subd. 2. Oath; bond. An appointed engineer must subscribe to an oath to faithfully perform the assigned duties in the best manner possible and file a bond with the auditor. Within ten days after being appointed, the drainage authority shall set an amount of at least \$5,000 for the bond. The bond must have adequate surety and be payable to the county where the petition is filed, or for a proposed joint county drainage project to all counties in the petition. The bond must be conditioned to pay any person or the drainage authority for damages and injuries resulting from negligence of the engineer while the engineer is acting in the proceedings or construction and provide that the engineer will diligently and honestly perform the engineer's duties. The bond is subject to approval by the auditor. The aggregate liability of the surety for all damages may not exceed the amount of the bond.

[For text of subds 3 and 4, see M.S.1986]

Subd. 5. Consulting engineer. After the engineer is appointed and before construction of the drainage project is finished, the drainage authority may employ an engineer as a consulting engineer for the proceeding and construction. A consulting engineer shall advise the engineer and drainage authority on engineering matters and problems that may arise related to the proceeding and construction of the drainage project. The drainage authority shall determine the compensation for the consulting engineer.

History: 1987 c 239 s 43-45

106A.245 PRELIMINARY SURVEY AND PRELIMINARY SURVEY REPORT.

Subdivision 1. Survey. The engineer shall proceed promptly to:

- (1) examine the petition and order;
- (2) make a preliminary survey of the area likely to be affected by the proposed drainage project to enable the engineer to determine whether the proposed drainage project is necessary and feasible with reference to the environmental and land use criteria in section 106A.015, subdivision 1;

(3) examine and gather information related to determining whether the proposed drainage project substantially affects areas that are public waters; and

(4) if the proposed drainage project requires construction of an open channel, examine the nature and capacity of the outlet and any necessary extension.

Subd. 2. Limitation of survey. The engineer shall restrict the preliminary survey to the drainage area described in the petition, except that to secure an outlet the engineer may run levels necessary to determine the distance for the proper fall. The preliminary survey must consider the impact of the proposed drainage project on the environmental and land use criteria in section 106A.015, subdivision 1. The drainage authority may have other areas surveyed after:

(1) giving notice by mail of a hearing to survey additional areas, to be held at least ten days after the notice is mailed, to the petitioners and persons liable on the petitioners' bond;

(2) holding the hearing;

(3) obtaining consent of the persons liable on the petitioners' bond; and

(4) ordering the additional area surveyed by the engineer.

Subd. 3. Adoption of federal project. The engineer may approve and include as a part of the report, a project of the United States relating to drainage or flood control that is within the proposed drainage project area, and may accept data, plats, plans, or information relating to the project furnished by United States engineers. The engineer does not need to make the preliminary survey if the material furnished by the United States is sufficient for the engineer to make the preliminary survey report.

Subd. 4. Preliminary survey report. The engineer shall report the proposed drainage project plan or recommend a different practical plan. The report must give sufficient information, in detail, to inform the drainage authority on issues related to feasibility, and show changes necessary to make the proposed plan practicable and feasible including extensions, laterals, and other work. If the engineer finds the proposed drainage project in the petition is feasible and complies with the environmental and land use criteria in section 106A.015, subdivision 1, the engineer shall include in the preliminary survey report a preliminary plan of the drainage project showing the proposed ditches, tile, laterals, and other improvements, the outlet of the project, the watershed of the drainage project or system, and the property likely to be affected and its known owners. The plan must show:

(1) the elevation of the outlet and the controlling elevations of the property likely to be affected referenced to standard sea level datum, if practical;

(2) the probable size and character of the ditches and laterals necessary to make the plan practicable and feasible;

(3) the character of the outlet and whether it is sufficient;

(4) the probable cost of the drains and improvements shown on the plan;

(5) all other information and data necessary to disclose the practicability, necessity, and feasibility of the proposed drainage project;

(6) consideration of the drainage project under the environmental and land use criteria in section 106A.015, subdivision 1; and

(7) other information as ordered by the drainage authority.

History: 1987 c 239 s 46

106A.251 FILING PRELIMINARY SURVEY REPORT.

The engineer shall file the completed preliminary survey report in duplicate with the auditor. The auditor shall send one copy of the report to the director. If the proposed drainage project involves a joint county drainage project or system, a copy of the report must be filed with the auditor of each affected county.

History: 1987 c 239 s 47

106A.261 PRELIMINARY HEARING.

Subdivision 1. **Notice.** When the preliminary survey report is filed, the auditor shall promptly notify the drainage authority. The drainage authority in consultation with the auditor shall set a time, by order, not more than 30 days after the date of the order, for a hearing on the preliminary survey report. At least ten days before the hearing, the drainage authority after consulting with the auditor shall give notice by mail of the time and location of the hearing to the petitioners, owners of property, and political subdivisions likely to be affected by the proposed drainage project in the preliminary survey report.

[For text of subd 2, see M.S.1986]

Subd. 3. **Sufficiency of petition.** (a) The drainage authority shall first examine the petition and determine if it meets the legal requirements.

(b) If the petition does not meet the legal requirements of this chapter, the hearing shall be adjourned until a specified date by which the petitioners must resubmit the petition. The petition must be referred back to the petitioners who, by unanimous action, may amend the petition. The petitioners may obtain signatures of additional property owners as added petitioners.

(c) When the hearing is reconvened, if the petition is not resubmitted or does not meet the legal requirements, the proceedings must be dismissed.

Subd. 4. **Dismissal.** (a) The drainage authority shall dismiss the proceedings if it determines that:

(1) the proposed drainage project is not feasible;

(2) the adverse environmental impact is greater than the public benefit and utility after considering the environmental and land use criteria in section 106A.015, subdivision 1, and the engineer has not reported a plan to make the proposed drainage project feasible and acceptable;

(3) the proposed drainage project is not of public benefit or utility; or

(4) the outlet is not adequate.

(b) If the proceedings are dismissed, any other action on the proposed drainage project must begin with a new petition.

Subd. 5. **Findings and order.** (a) The drainage authority shall state, by order, its findings and any changes that must be made in the proposed drainage project from those outlined in the petition, including changes necessary to minimize or mitigate adverse impact on the environment, if it determines that:

(1) the proposed drainage project outlined in the petition, or modified and recommended by the engineer, is feasible;

(2) there is necessity for the proposed drainage project;

(3) the proposed drainage project will be of public benefit and promote the public health, after considering the environmental and land use criteria in section 106A.015, subdivision 1; and

(4) the outlet is adequate.

(b) Changes may be stated by describing them in general terms or filing a map that outlines the changes in the proposed drainage project with the order. The order and accompanying documents must be filed with the auditor.

Subd. 6. **Outlet is existing drainage system.** If the outlet is an existing drainage system, the drainage authority may determine that the outlet is adequate and obtain permission to use the existing drainage system as an outlet. The drainage authority shall assign a number to the proposed drainage project and proceed under section 106A.401 to act in behalf of the proposed drainage project.

Subd. 7. **Effect of findings.** (a) For all further proceedings, the order modifies the petition and the order must be considered with the petition.

(b) The findings and order of the drainage authority at the preliminary hearing are

conclusive only for the signatures and legal requirements of the petition, the nature and extent of the proposed plan, and the need for a detailed survey, and only for the persons or parties shown by the preliminary survey report as likely to be affected by the proposed drainage project. All questions related to the practicability and necessity of the proposed drainage project are subject to additional investigation and consideration at the final hearing.

History: 1987 c 239 s 48-53

106A.265 ORDER FOR DETAILED SURVEY AND DETAILED SURVEY REPORT.

Subdivision 1. **Order.** When the preliminary hearing order is filed with the auditor, the drainage authority shall order the engineer to make a detailed survey with plans and specifications for the proposed drainage project and submit a detailed survey report to the drainage authority as soon as possible.

[For text of subd 2, see M.S.1986]

History: 1987 c 239 s 54

106A.271 DETAILED SURVEY.

Subdivision 1. **Survey and examination.** When an order for a detailed survey is filed, the engineer shall proceed to survey the lines of the proposed drainage project in the preliminary hearing order, and survey and examine affected property.

[For text of subd 2, see M.S.1986]

History: 1987 c 239 s 55

106A.275 ENGINEER'S VARIANCE FROM DRAINAGE AUTHORITY ORDER.

(a) In planning a proposed drainage project, the engineer may vary from the starting point and the line and plan described by the preliminary hearing order if necessary to drain the property likely to be assessed in the proposed drainage project.

(b) The engineer may:

- (1) survey and recommend the location of additional necessary ditches and tile;
- (2) where better results will be accomplished and more desirable outlets secured, provide for the extension of the outlet; and
- (3) provide for different parts of the drainage to flow in different directions with more than one outlet.

(c) The open ditches do not have to connect if they drain the area to be affected in the petition. The variance must be reported with similar information in the detailed survey report.

History: 1987 c 239 s 56

106A.281 SOIL SURVEY.

The engineer shall make a soil survey if: (1) the drainage authority orders a soil survey; (2) the commissioner requests a soil survey; or (3) the engineer determines a soil survey is necessary. The soil survey must show the nature and character of the soil in the proposed drainage project area and include the engineer's findings from the soil survey. The report on the soil survey must be included in the detailed survey report or reported and filed separately before the final hearing.

History: 1987 c 239 s 57

106A.285 DETAILED SURVEY REPORT.

[For text of subd 1, see M.S.1986]

Subd. 2. **Map.** A complete map of the proposed drainage project and drainage system must be drawn to scale, showing:

- (1) the terminus and course of each drain and whether it is ditch or tile, and the location of other proposed drainage works;
- (2) the location and situation of the outlet;
- (3) the watershed of the proposed drainage project and the subwatershed of main branches, if any, with the location of existing highway bridges and culverts;
- (4) all property affected, with the names of the known owners;
- (5) public roads and railways affected;
- (6) the outline of any lake basin, wetland, or public water body affected;
- (7) other physical characteristics of the watershed necessary to understand the proposed drainage project and the affected drainage system; and
- (8) the area to be acquired to maintain a grass strip under section 106A.021.

[For text of subd 3, see M.S.1986]

Subd. 4. Bridge and culvert plans. Plans for private bridges and culverts to be constructed by and as a part of the proposed drainage project and plans for other works to be constructed for the proposed drainage project must be presented. A list must be made that shows the required minimum hydraulic capacity of bridges and culverts at railways and highways that cross ditches, and at other prospective ditch crossings where bridges and culverts are not specified to be constructed as part of the proposed drainage project. Plans and estimates of the cost of highway bridges and culverts must be prepared for the viewers to determine benefits and damages.

Subd. 5. Tabular statement of excavation, construction, and cost. A tabular statement must be prepared showing:

- (1) the number of cubic yards of excavation, linear feet of tile, and average depth on each tile line;
- (2) the bridges, culverts, and works to be constructed under the plans for the drainage project; and
- (3) the estimated unit cost of each item, a summary of the total cost, and an estimate of the total cost of completing the proposed drainage project that includes supervision and other costs.

Subd. 6. Right-of-way acreage. The acreage must be shown that will be taken for ditch right-of-way on each government lot, 40-acre tract, or fraction of a lot or tract under separate ownership. The ditch right-of-way must include the area to be taken to maintain a grass strip under section 106A.021.

[For text of subds 7 and 8, see M.S.1986]

Subd. 9. Recommendation for division of work. If construction of the proposed drainage project would be more economical, the engineer may recommend: (1) that the work be divided into sections and contracted separately; (2) that the ditch and tile work or tile and labor on the project be contracted separately, or (3) the time and manner for the work to be completed.

Subd. 10. Other information on practicability and necessity of drainage project. Other data and information to inform the drainage authority of the practicability and necessity of the proposed drainage project must be made available including a comprehensive examination and the recommendation by the engineer regarding the environmental and land use criteria in section 106A.015, subdivision 1.

[For text of subds 11 and 12, see M.S.1986]

History: 1987 c 239 s 58-63

106A.295 REVISION OF ENGINEER'S DETAILED SURVEY REPORT AFTER ACCEPTANCE.

After the final acceptance of the proposed drainage project, the engineer shall revise the plan, profiles, and designs of structures to show the drainage project as

actually constructed on the original tracings. The engineer shall file the revised detailed survey report with the auditor. The auditor shall forward the original or a copy to the director as a permanent record.

History: 1987 c 239 s 64

106A.301 COMMISSIONER'S FINAL ADVISORY REPORT.

(a) The commissioner shall examine the detailed survey report and within 30 days of receipt make a final advisory report to the drainage authority. The final advisory report must state whether the commissioner:

(1) finds the detailed survey report is incomplete and not in accordance with the provisions of this chapter, specifying the incomplete or nonconforming provisions;

(2) approves the detailed survey report as an acceptable plan to drain the property affected;

(3) does not approve the plan and recommendations for changes;

(4) finds the proposed drainage project is not of public benefit or utility under the environmental and land use criteria in section 106A.015, subdivision 1, specifying the facts and evidence supporting the findings; or

(5) finds a soil survey is needed, and, if it is, makes a request to the engineer to make a soil survey.

(b) The commissioner shall direct the final advisory report to the drainage authority and file it with the auditor.

History: 1987 c 239 s 65

106A.305 VIEWERS' APPOINTMENT AND QUALIFICATION.

Subdivision 1. **Appointment.** When the order for a detailed survey is made, the drainage authority shall, by order, appoint viewers consisting of three disinterested residents of the state qualified to assess benefits and damages. The drainage authority may establish qualifications for viewers.

[For text of subs 2 and 3, see M.S.1986]

History: 1987 c 239 s 66

106A.311 VIEWERS' DUTIES.

The viewers, with or without the engineer, shall determine the benefits and damages to all property affected by the proposed drainage project and make a viewers' report.

History: 1987 c 239 s 67

106A.315 ASSESSMENT OF DRAINAGE BENEFITS AND DAMAGES.

Subdivision 1. **State land.** Property owned by the state must have benefits and damages reported in the same manner as taxable lands subject to the provisions relating to conservation areas in section 106A.025.

Subd. 2. **Government property.** The viewers shall report the benefits and damages to the state, counties, and municipalities from the proposed drainage project. The property within the jurisdiction of a municipality, whether owned by the municipality or by private parties, may be assessed as benefits and damages to the municipality.

[For text of subs 3 and 4, see M.S.1986]

Subd. 5. **Extent and basis of benefits.** (a) The viewers shall determine the amount of benefits to all property within the watershed, whether the property is benefited immediately by the construction of the proposed drainage project or the proposed drainage project can become an outlet for drainage, makes an outlet more accessible, or otherwise directly benefits the property. The benefits may be based on:

(1) an increase in the current market value of property as a result of constructing the project;

(2) an increase in the potential for agricultural production as a result of constructing the project; or

(3) an increased value of the property as a result of a potential different land use.

(b) Benefits and damages may be assessed only against the property benefited or damaged or an easement interest in property for the exclusive use of the surface of the property.

Subd. 6. Benefits for proposed drainage project as outlet. (a) If the proposed drainage project furnishes an outlet to an existing drainage system and benefits the property drained by the existing system, the viewers shall equitably determine and assess:

(1) the benefits of the proposed drainage project to each tract or lot drained by the existing drainage system;

(2) a single amount as an outlet benefit to the existing drainage system; or

(3) benefits on a watershed acre basis.

(b) Assessments that conform with the provisions in this subdivision are valid. If a single sum is assessed as an outlet benefit, the lien for the assessment must be prorated on all property benefited by the existing drainage system in proportion to the benefits determined for the existing drainage system.

(c) Within the watershed that drains to the area where a project is located, the viewers may assess outlet benefits on:

(1) property that is responsible for increased sedimentation in downstream areas of the watershed; and

(2) property that is responsible for increased drainage system maintenance or increased drainage system capacity because the natural drainage on the property has been altered or modified to accelerate the drainage of water from the property.

Subd. 7. Benefits for project that increases drainage capacity. If part of a drainage project increases drainage capacity and the increased capacity is necessary due to increased drainage in the project watershed rather than increased drainage in a specific area, the viewers may assess benefits on property in the project watershed on a pro rata basis.

Subd. 8. Extent of damages. Damages to be paid may include:

(1) the fair market value of the property required for the channel of an open ditch and the permanent grass strip under section 106A.021;

(2) the diminished value of a farm due to severing a field by an open ditch;

(3) loss of crop production during drainage project construction; and

(4) the diminished productivity or land value from increased overflow.

History: 1987 c 239 s 68-73

106A.321 VIEWERS' REPORT.

Subdivision 1. Requirements. (a) The viewers' report must show, in tabular form, for each lot, 40 acre tract, and fraction of a lot or tract under separate ownership that is benefited or damaged:

(1) a description of the lot or tract, under separate ownership, that is benefited or damaged;

(2) the names of the owners as they appear on the current tax records of the county and their addresses;

(3) the number of acres in each tract or lot;

(4) the number and value of acres added to a tract or lot by the proposed drainage of public waters;

(5) the damage, if any, to riparian rights;

- (6) the damages paid for the permanent grass strip under section 106A.021;
- (7) the total number and value of acres added to a tract or lot by the proposed drainage of public waters, wetlands, and other areas not currently being cultivated;
- (8) the number of acres and amount of benefits being assessed for drainage of areas which before the drainage benefits could be realized would require a permit to work in public waters under section 105.42, to excavate or fill a navigable water body under United States Code, title 33, section 403, or a permit to discharge into waters of the United States under United States Code, title 33, section 1344;
- (9) the number of acres and amount of benefits being assessed for drainage of areas that would be considered conversion of a wetland under United States Code, title 16, section 3821, if the area was placed in agricultural production;
- (10) the amount of right-of-way acreage required; and
- (11) the amount that each tract or lot will be benefited or damaged.

Subd. 1a. **Benefits and damages statement.** (a) The viewers' report must include a benefits and damages statement that shows for each property owner how the benefits or damages for similar tracts or lots were determined. For similar tracts or lots the report must describe:

- (1) the existing land use, property value, and economic productivity;
 - (2) the potential land use, property value, and economic productivity after the drainage project is constructed; and
 - (3) the benefits or damages from the proposed drainage project.
- (b) The soil and water conservation districts and county assessors shall cooperate with viewers to provide information required under paragraph (a).

[For text of subs 2 and 3, see M.S. 1986]

History: 1987 c 239 s 74,75

106A.323 PROPERTY OWNERS' REPORT AND FINAL PETITION NOTICE.

Subdivision 1. **Report to property owners.** Within 30 days after the viewers' report is filed, the auditor must make a property owners' report from the information in the viewers' report showing for each property owner benefited or damaged by the proposed drainage project:

- (1) the name and address of the property owner;
- (2) each lot or tract and its area that is benefited or damaged;
- (3) the total number and value of acres added to a tract or lot by the proposed drainage of public waters, wetlands, and other areas not currently being cultivated;
- (4) the number of acres and amount of benefits being assessed for drainage of areas which before the drainage benefits could be realized would require a permit to work in public waters under section 105.42, to excavate or fill a navigable water body under United States Code, title 33, section 403, or a permit to discharge into waters of the United States under United States Code, title 33, section 1344;
- (5) the number of acres and amount of benefits being assessed for drainage of areas that would be considered conversion of a wetland under United States Code, title 16, section 3821, if the area was placed in agricultural production;
- (6) the damage, if any, to riparian rights;
- (7) the amount of right-of-way acreage required;
- (8) the amount that each tract or lot will be benefited or damaged;
- (9) the net damages or benefits to each property owner;
- (10) the estimated cost to be assessed to the property owner based on the cost of the drainage project in the engineer's detailed survey report; and
- (11) a copy of the benefits and damages statement under section 106A.321, subdivision 1a, paragraph (a), relating to the property owner.

Subd. 2. **Mailing.** The auditor must mail a copy of the property owners' report to each owner of property affected by the proposed drainage project, and may prepare and file an affidavit of mailing.

History: 1987 c 239 s 76

106A.325 FINAL HEARING.

[For text of subd 1, see M.S.1986]

Subd. 2. **Notice.** (a) The final hearing notice must state:

- (1) that the petition is pending;
- (2) that the detailed survey report is filed;
- (3) that the viewers' report is filed;
- (4) the time and place set for the final hearing;
- (5) a brief description of the proposed drainage project and affected drainage system, giving in general terms the starting point, terminus, and general course of the main ditch and branches;
- (6) a description of property benefited and damaged, and the names of the owners of the property; and
- (7) the municipal and other corporations affected by the proposed drainage project as shown by the detailed survey report and viewers' report.

(b) Names may be listed in a narrative form and property affected may be separately listed in narrative form by governmental sections or otherwise.

(c) For a joint county proceeding, separate notice may be prepared for each county affected, showing the portion of the proposed drainage project and the names and descriptions of affected property in the county.

Subd. 3. **Method of notice.** The auditor shall notify the drainage authority, auditors of affected counties, and all interested persons of the time and location of the final hearing by publication, posting, and mail. A printed copy of the final hearing notice for each affected county must be posted at least three weeks before the date of the final hearing at the front door of the courthouse in each county. Within one week after the first publication of the notice, the auditor shall give notice by mail of the time and location of the final hearing to the commissioner, all property owners, and others affected by the proposed drainage project and listed in the detailed survey report and the viewers' report.

[For text of subd 4, see M.S.1986]

History: 1987 c 239 s 77,78

106A.335 PROCEEDINGS AT THE FINAL HEARING.

Subdivision 1. **Consideration of petition and reports.** At the time and location for the final hearing specified in the notice, or after the hearing adjourns, the drainage authority shall consider the petition for the drainage project, with all matters pertaining to the detailed survey report, the viewers' report, and the commissioner's final advisory report. The drainage authority shall hear and consider the testimony presented by all interested parties. The engineer or the engineer's assistant and at least one viewer shall be present. The director may appear and be heard. If the director does not appear personally, the final advisory report shall be read during the hearing. The final hearing may be adjourned and reconvened as is necessary.

[For text of subd 2, see M.S.1986]

Subd. 3. **Reexamination.** If the drainage authority determines that property not included in the notice should be included and assessed or that the engineer or viewers, or both, should reexamine the proposed drainage project or the property benefited or damaged by the system, the drainage authority may resubmit the reports to the engineer

and viewers. If a report is resubmitted the final hearing may be continued as is necessary to make the reexamination and reexamination report. If the reexamination report includes property not included in the original report, the drainage authority may, by order, adjourn the hearing and direct the auditor to serve or publish, post, and mail a final hearing notice with reference to all property not included in the previous notice. The jurisdiction of the drainage authority continues in the property given proper notice, and new or additional notice is not required for that property.

History: 1987 c 239 s 79,80

106A.341 DRAINAGE AUTHORITY FINAL ORDER.

Subdivision 1. **Dismissal of proceedings.** The drainage authority must dismiss the proceedings and petition, by order, if it determines that:

- (1) the benefits of the proposed drainage project are less than the total cost, including damages awarded;
- (2) the proposed drainage project will not be of public benefit and utility; or
- (3) the proposed drainage project is not practicable after considering the environmental and land use criteria in section 106A.015, subdivision 1.

Subd. 2. **Establishment of proposed drainage project.** (a) The drainage authority shall establish, by order, a proposed drainage project if it determines that:

- (1) the detailed survey report and viewers' report have been made and other proceedings have been completed under this chapter;
- (2) the reports made or amended are complete and correct;
- (3) the damages and benefits have been properly determined;
- (4) the estimated benefits are greater than the total estimated cost, including damages;
- (5) the proposed drainage project will be of public utility and benefit, and will promote the public health; and
- (6) the proposed drainage project is practicable.

(b) The order must contain the drainage authority's findings, adopt and confirm the viewers' report as made or amended, and establish the proposed drainage project as reported and amended.

History: 1987 c 239 s 81

106A.345 APPORTIONMENT OF COST FOR JOINT COUNTY DRAINAGE SYSTEMS.

For joint county proceedings, the auditor where the petition is filed shall file a certified copy of the viewers' report with the auditor of each affected county within 20 days after the date of the final order establishing the system. When the final order to establish the drainage project is made, the drainage authority shall determine and order the percentage of the cost of the drainage project to be paid by each affected county. The cost shall be in proportion to the benefits received, unless there is a contrary reason. An auditor of an affected county may petition the drainage authority after the final order is made to determine and order the percentage of costs to be paid by the affected counties. The drainage authority shall hold a hearing five days after giving written notice to the auditor of each affected county. After giving the notice to the auditors of the affected counties, the drainage authority may, at any time that it is necessary, modify an order or make an additional order to allocate the cost among the affected counties.

History: 1987 c 239 s 82

106A.351 REDETERMINATION OF BENEFITS AND DAMAGES.

Subdivision 1. **Conditions to redetermine benefits and damages; appointment of viewers.** If the drainage authority determines that the original benefits or damages

determined in a drainage proceeding do not reflect reasonable present day land values or that the benefited or damaged areas have changed, or if more than 50 percent of the owners of property benefited or damaged by a drainage system petition for correction of an error that was made at the time of the proceedings that established the drainage system, the drainage authority may appoint three viewers to redetermine and report the benefits and damages and the benefited and damaged areas.

Subd. 2. Hearing and procedure. (a) The redetermination of benefits and damages shall proceed as provided for viewers and the viewers' report in sections 106A.311 to 106A.321.

(b) The auditor must prepare a property owners' report from the viewers' report. A copy of the property owners' report must be mailed to each owner of property affected by the drainage system.

(c) The drainage authority shall hold a final hearing on the report and confirm the benefits and damages and benefited and damaged areas. The final hearing shall proceed as provided under sections 106A.325, 106A.335, and 106A.341, except that the hearing shall be held within 30 days after the property owners' report is mailed.

Subd. 3. Redetermined benefits and damages replace original benefits and damages. The redetermined benefits and damages and benefited and damaged areas must be used in place of the original benefits and damages and benefited and damaged areas in all subsequent proceedings relating to the drainage system.

Subd. 4. Appeal. A person aggrieved by the redetermination of benefits and damages and benefited and damaged areas may appeal from the order confirming the benefits and damages and benefited and damaged areas under section 106A.091.

History: 1987 c 239 s 83

106A.401 USE OF DRAINAGE SYSTEM AS AN OUTLET.

Subdivision 1. Commissioner must recognize drainage outlet proceedings when purchasing wetlands. If the commissioner purchases wetlands under section 97A.145, the commissioner must recognize that when a majority of landowners or owners of a majority of the land in the watershed, petition for a drainage outlet, the state should not interfere with or unnecessarily delay the drainage proceedings if the proceedings are conducted according to this chapter.

Subd. 2. Express authority necessary. After the construction of a drainage project, a public or private drainage system that drains property not assessed for benefits for the established drainage system may not be constructed to use the established drainage system as an outlet without obtaining express authority from the drainage authority of the drainage system proposed to be used as the outlet. This section is applicable to the construction of a public or private drainage system that outlets water into an established drainage system regardless of the actual physical connection.

[For text of subds 3 to 5, see M.S.1986]

Subd. 6. Payment of outlet fee. The outlet fee for a proposed drainage project is a part of the cost of the proposed drainage project and is to be paid by assessment against the property benefited by the proposed drainage project, under section 106A.601, and credited to the established drainage system account.

Subd. 7. Unauthorized outlet into drainage system. (a) The drainage authority must notify an owner of property where an unauthorized outlet into a drainage system is located and direct the property owner to block the outlet or otherwise make the outlet ineffective by a specified time. The outlet must be blocked and remain ineffective until:

(1) an outlet fee is paid, which is determined by the drainage authority based on the benefits received by the property for the period the unauthorized outlet was operational; and

(2) the drainage authority approves a petition for the outlet and establishes the outlet fee.

(b) If a property owner does not block or make the outlet ineffective after being notified, the drainage authority must issue an order to have the work performed to bring the outlet into compliance. After the work is completed, the drainage authority must send a statement to the auditor of the county where the property is located and to the property owner where the unauthorized outlet is located, containing the expenses incurred to bring the outlet into compliance and the outlet fee based on the benefits received by property during the period the unauthorized outlet was operational.

Subd. 8. Collection of unauthorized outlet compliance expenses. (a) The amount of the expenses and outlet fee is a lien in favor of the drainage authority against the property where the unauthorized outlet is located. The auditor must certify the expenses and outlet fee and enter the amount in the same manner as other drainage liens on the tax list for the following year. The amount must be collected in the same manner as real estate taxes for the property. The provisions of law relating to the collection of real estate taxes shall be used to enforce payment of amounts due under this section. The auditor must include a notice of collection of unauthorized outlet compliance expenses with the tax statement.

(b) The amounts collected under this subdivision must be deposited in the drainage system account.

History: 1987 c 149 art 2 s 8; 1987 c 239 s 84-87

106A.405 OUTLETS IN ADJOINING STATES.

In any drainage proceeding, at the hearing on the detailed survey report and viewers' report, if the drainage authority determines that a proper outlet for the drainage system does not exist, except through property in an adjoining state, the drainage authority may adjourn the hearing. If the hearing is adjourned the drainage authority shall require the auditor or, for a joint county drainage system, the auditors of affected counties to procure an option to acquire the needed right-of-way at an expense not exceeding the estimated cost specified in the detailed survey report. The order establishing the drainage project may not be made until the option is procured. If the option is procured and the drainage project established, the option shall be exercised and the cost of the right-of-way shall be paid as a part of the cost of the drainage project.

History: 1987 c 239 s 88

106A.411 DRAINAGE SYSTEM AS OUTLET FOR MUNICIPALITY.

[For text of subs 1 and 2, see M.S.1986]

Subd. 3. Filing; notice. (a) If proceedings to establish the drainage project to be used as an outlet are pending, the petition must be filed with the auditor. The municipal drainage system petition must be presented to the drainage authority at the final hearing to consider the detailed survey report and viewers' report. Notice of the municipal drainage system petition must be included in the final hearing notice.

(b) If the drainage system to be used as an outlet is established, the municipal drainage system petition must be filed with the auditor. When the petition is filed, the drainage authority in consultation with the auditor shall, by order, set a time and place for hearing on the petition. Notice of the hearing must be given by publication and by mailed notice to the auditor of each affected county.

Subd. 4. Hearing and order. (a) At the hearing the drainage authority may receive all evidence of interested parties for or against the granting of the petition. The drainage authority, by order, may authorize the municipality to use the drainage system as an outlet, subject to the conditions that are necessary and proper to protect the rights of the parties and safeguard the interests of the general public, if the drainage authority determines:

(1) that a necessity exists for the use of the drainage system as an outlet for the municipal drainage system or the overflow from the system;

(2) that use of the drainage system will be of public utility and promote the public health; and

(3) that the proposed connection conforms to the requirements of the pollution control agency and provides for the construction and use of proper disposal works.

(b) The drainage authority must, by order, make the municipality a party to the drainage proceedings and determine the benefits from using the drainage project or system as an outlet.

[For text of subd 5, see M.S.1986]

History: 1987 c 239 s 89,90

106A.501 CONTRACT AND BOND.

[For text of subds 1 to 3, see M.S.1986]

Subd. 4. Contract provisions for changes during construction. The contract must give the engineer the right, with the consent of the drainage authority, to modify the detailed survey report, plans, and specifications as the work proceeds and as circumstances require. The contract must provide that the increased cost resulting from the changes will be paid by the drainage authority to the contractor at a rate not greater than the amount for similar work in the contract. A change may not be made that will substantially impair the usefulness of any part of the drainage project or system, substantially alter its original character, or increase its total cost by more than ten percent of the total original contract price. A change may not be made that will cause the cost to exceed the total estimated benefits found by the drainage authority or that will cause any detrimental effects to the public interest under section 106A.015, subdivision 1.

[For text of subd 5, see M.S.1986]

Subd. 6. Guaranty of tile work. If tile is used to construct any part of the drainage project, a majority of the persons affected may file a written request with the auditor to contract the tile work separately. The request must be filed before advertising for the sale of the work has begun. If the request is properly made, the tile work must be contracted separately. The contractor must guarantee the tile work under the contract for three years after its completion against any fault or negligence on the part of the contractor. The advertisement for bids must include this requirement.

Subd. 7. Modification of contract by agreement. This chapter does not prevent the persons with property affected by the construction of a drainage project from uniting in a written agreement with the contractor and the surety of the contractor's bond to modify the contract as to the manner or time when any portion of the drainage project is constructed, if the modification is recommended, in writing, by the engineer and approved by the drainage authority.

History: 1987 c 239 s 91-93

106A.505 AWARDING THE CONSTRUCTION CONTRACT.

Subdivision 1. Auditors and drainage authority to proceed. Thirty days after the order establishing a drainage project is filed, the auditor and the drainage authority or, for a joint county drainage project, a majority of the auditors of the affected counties shall proceed to award the contract to construct the drainage project.

Subd. 2. Pending appeal of benefits and damages. If an appeal regarding the determination of benefits and damages is made within 30 days after the order establishing the drainage project has been filed, a contract may not be awarded until the appeal has been determined, unless the drainage authority orders the contract awarded. The auditor of an affected county or an interested person may request the drainage authority to make the order. If the request is not made by an affected auditor, the auditors of affected counties must be given notice five days before the hearing on the request.

Subd. 3. **Notice of contract awarding.** The auditor of an affected county shall give notice of the awarding of the contract by publication in a newspaper in the county. The notice must state the time and location for awarding the contract. For a joint county drainage project the auditors shall award the contract at the office of the auditor where the proceedings are pending. If the estimated cost of construction is more than \$3,000, the auditor must also place a notice in a drainage construction trade paper. The trade paper notice must state:

- (1) the time and location for awarding the contract;
- (2) the approximate amount of work and its estimated cost;
- (3) that bids may be for the work as one job, or in sections, or separately, for bridges, ditches and open work, tile, or tile construction work, if required or advisable;
- (4) that each bid must be accompanied by a certified check or a bond furnished by an approved surety corporation payable to the auditors of affected counties for ten percent of the bid, as security that the bidder will enter into a contract and give a bond as required by section 106A.501; and
- (5) that the drainage authority reserves the right to reject any and all bids.

[For text of subs 4 to 6, see M.S.1986]

Subd. 7. **Affected counties contract through auditor.** The chair of the drainage authority and the auditor of each affected county shall contract, in the names of their respective counties, to construct the drainage project in the time and manner and according to the plans and specifications and the contract provisions in this chapter.

Subd. 8. **Work done by federal government.** If any of the drainage work is to be done by the United States or its agencies, a notice of awarding that contract does not need to be published and a contract for that construction is not necessary. Affected municipalities may contract or arrange with the United States or its agencies for cooperation or assistance in constructing, maintaining, and operating the drainage project and system, for control of waters in the district, or for making a survey and investigation or reports on the drainage project or system. The municipalities may provide required guaranty and protection to the United States or its agencies.

History: 1987 c 239 s 94-98

106A.511 PROCEDURE IF CONTRACT IS NOT AWARDED DUE TO BIDS OR COSTS.

Subdivision 1. **Conditions to use procedure in this section.** The procedure in this section may be used if, after a drainage system is established:

- (1) the only bids received are for more than 30 percent in excess of the engineer's estimated cost, or in excess of the benefits, less damages and other costs; or
- (2) a contract is awarded, but due to unavoidable delays not caused by the contractor, the contract cannot be completed for an amount equal to or less than the benefits, less damages and other costs.

Subd. 2. **Petition after cost estimate error or change to lower cost.** A person interested in the drainage project may petition the drainage authority if the person determines that the engineer made an error in the estimate of the drainage project cost or that the plans and specifications could be changed in a manner materially affecting the cost of the drainage system without interfering with the efficiency. The petition must state the person's determinations and request that the detailed survey report and viewers' report be referred back to the engineer and to the viewers for additional consideration.

Subd. 3. **Petition after excessive cost due to inflation.** (a) A person interested in the drainage project may petition the drainage authority for an order to reconsider the detailed survey report and viewers' report if the person determines:

- (1) that bids were received only for a price more than 30 percent in excess of the detailed survey report estimate because inflation increased the construction cost between the time of the detailed survey cost estimate and the time of awarding the contract; or

(2) that after the contract was awarded there was unavoidable delay not caused by the contractor, and between the time of awarding the contract and completion of construction inflation increased construction costs resulting in the contract not being completed for an amount equal to or less than the assessed benefits.

(b) The person may request in the petition that the drainage authority reconsider the original cost estimate in the detailed survey report and viewers' report and adjust the cost estimate consistent with the increased construction cost.

[For text of subd 4, see M.S.1986]

Subd. 5. Hearing on cost petition. (a) At the hearing the drainage authority shall consider the petition and hear all interested parties.

(b) The drainage authority may, by order, authorize the engineer to amend the detailed survey report, if the drainage authority determines that:

- (1) the detailed survey report cost estimate was erroneous and should be corrected;
- (2) the plans and specifications could be changed in a manner materially affecting the cost of the drainage project without interfering with the efficiency; and
- (3) with the correction or modification a contract could be awarded within the 30 percent limitation and equal to or less than benefits.

(c) If the drainage authority determines that the amended changes affect the amount of benefits or damages to any property or that the benefits should be reexamined because of inflated land values or inflated construction costs, it shall refer the viewers' report to the viewers to reexamine the benefits and damages.

(d) The drainage authority may, by order, direct the engineer and viewers to amend their detailed survey report and viewers' report to consider the inflationary cost increases if the drainage authority determines that:

- (1) bids were not received; or
- (2) because of inflationary construction cost increases, construction under the awarded contract cannot be completed for 30 percent or less over the detailed survey cost estimate or in excess of the benefits, less damages and other costs.

(e) The drainage authority may continue the hearing to give the engineer or viewers additional time to amend the reports. The jurisdiction of the drainage authority continues at the adjourned hearing.

(f) The drainage authority has full authority to consider the amended reports and make findings and orders. A party may appeal to the district court under section 106A.091, subdivision 1.

History: 1987 c 239 s 99-102

106A.515 DAMAGES, PAYMENT.

The board of each county where the damaged property is located must order the awarded damages to be paid, less any assessment against the property, before the property is entered for construction of the drainage project. If a county or a municipality that is awarded damages requests it, the assessment may not be deducted. If there is an appeal, the damages may not be paid until the final determination. If it is not clear who is entitled to the damages, the board may pay the damages to the court administrator of the district court of the county. The court shall direct the court administrator, by order, to pay the parties entitled to the damages.

History: 1987 c 239 s 103

106A.525 CONSTRUCTION AND MAINTENANCE OF BRIDGES AND CULVERTS.

[For text of subd 1, see M.S.1986]

Subd. 2. Road authority responsible for construction. Bridges and culverts on public roads required by the construction or improvement of a drainage project or

system must be constructed and maintained by the road authority responsible for keeping the road in repair, except as provided in this section.

Subd. 3. **Notice; changing cost.** The auditor shall notify the state and each railroad company, corporation, or political subdivision that they are to construct a required bridge or culvert on a road or right-of-way under its jurisdiction, within a reasonable time in the notice. If the work is not done within the prescribed time, the drainage authority may order the bridge or culvert constructed as part of the drainage project construction. The cost must be deducted from the damages awarded to the corporation or collected from it as an assessment for benefits. If the detailed survey report or viewers' report shows that the construction of the bridge or culvert is necessary, the drainage authority may, by order, retain an amount to secure the construction of the bridge or culvert from amounts to be paid to a railroad, corporation, or political subdivision.

Subd. 4. **Construction on line between two cities paid equally.** The costs of constructing a bridge or culvert that is required by construction of a drainage project on a public road that is not a state trunk highway on the line between two statutory or home rule charter cities, whether in the same county or not, must be paid jointly, in equal shares, by the cities. The cities shall pay jointly, in equal shares, for the cost of maintaining the bridge or culvert.

[For text of subd 5, see M.S.1986]

History: 1987 c 239 s 104-106

106A.541 EXTENSION OF TIME ON CONTRACTS.

The auditors of affected counties may extend the time for the performance of a contract as provided in this section. The contractor may apply, in writing, for an extension of the contract. Notice of the application must be given to: (1) the engineer and the attorney for the petitioners; and (2) for a joint county drainage project, to the auditors of the affected counties. The auditors may grant an extension if sufficient reasons are shown. The extension does not affect a claim for liquidated damages that may arise after the original time expires and before an extension or a claim that may arise after the time for the extension expires.

History: 1987 c 239 s 107

106A.555 ACCEPTANCE OF CONTRACT.

[For text of subd 1, see M.S.1986]

Subd. 2. **Hearing.** At the hearing the drainage authority may, by order, direct payment of the balance due if it determines that the contract has been completed in accordance with the plans and specifications. If good cause is shown, the drainage authority may waive any part of the liquidated damages accruing under the contract. When the order is filed, the auditor shall draw a warrant on the treasurer of the county for the balance due on the contract. For a joint county drainage project or system the auditor shall make an order to the auditors of the affected counties to pay for their proportionate shares of the balance due on the contract. After receiving the order, the auditor of each affected county shall draw a warrant on the treasurer of the county for the amount specified in the order.

History: 1987 c 239 s 108

106A.601 DRAINAGE LIEN STATEMENT.

Subdivision 1. **Determination of property liability.** When the contract for the construction of a drainage project is awarded, the auditor of an affected county shall make a statement showing the total cost of the drainage project with the estimated cost of all items required to complete the work. The cost must be prorated to each tract of property affected in direct proportion to the benefits. The cost, less any damages, is

the amount of liability for each tract for the drainage project. The property liability must be shown in the tabular statement under subdivision 2, opposite the property owner's name and description of each tract of property. The amount of liability on a tract of property for establishment and construction of a drainage project may not exceed the benefits determined in the proceedings that accrue to the tract.

Subd. 2. Drainage lien statement. The auditor of each affected county shall make a lien statement in tabular form showing:

(1) the names of the property owners, corporate entities, or political subdivisions of the county benefited or damaged by the construction of the drainage project in the viewers' report as approved by the final order for establishment;

(2) the description of the property in the viewers' report, and the total number of acres in each tract according to the county tax lists;

(3) the number of acres benefited or damaged in each tract shown in the viewers' report;

(4) the amount of benefits and damages to each tract of property as stated in the viewers' report and confirmed by the final order that established the drainage project unless the order is appealed and a different amount is set; and

(5) the amount each tract of property will be liable for and must pay to the county for the establishment and construction of the drainage project.

Subd. 3. Supplemental drainage lien statement. If any items of the cost of the drainage project have been omitted from the original drainage lien statement, a supplemental drainage lien statement with the omitted items must be made and recorded in the same manner provided for a drainage lien statement. The total amount of the original drainage lien and any supplemental drainage liens may not exceed the benefits.

Subd. 4. Recording drainage lien statement. The lien against property in the drainage lien statement and supplemental drainage lien statements must be certified by the auditor and recorded on each tract by the county recorder of the county where the tract is located. The county recorder's fees for recording must be paid if allowed by the board. The drainage lien statement and any supplemental drainage lien statements, after recording, must be returned and preserved by the auditor.

History: 1987 c 239 s 109

106A.605 EFFECT OF FILED DRAINAGE LIEN.

The amount recorded from the drainage lien statement and supplemental drainage lien statement that each tract of property will be liable for, and the interest allowed on that amount, is a drainage lien on the property. The drainage lien is a first and paramount lien until fully paid, and has priority over all mortgages, charges, encumbrances, and other liens, unless the board subordinates the drainage lien to liens of record. The recording of the drainage lien, drainage lien statement, or a supplemental drainage lien statement is notice to all parties of the existence of the drainage lien.

History: 1987 c 239 s 110

106A.611 PAYMENT OF DRAINAGE LIENS AND INTEREST.

[For text of subd 1, see M.S.1986]

Subd. 2. Interest. (a) Interest is an additional drainage lien on all property until paid. The interest rate on the drainage lien principal from the date the drainage lien statement is recorded must be set by the board, but may not exceed the rate determined by the state court administrator for judgments under section 549.09.

(b) Before the tax lists for the year are given to the county treasurer, the auditor shall compute the interest on the unpaid balance of the drainage lien at the rate set by the board. The amount of interest must be computed on the entire unpaid principal from the date the drainage lien was recorded to August 15 of the next calendar year, and afterwards from August 15 to August 15 of each year.

(c) Interest is due and payable after November 1 of each year the drainage lien principal or interest is due and unpaid.

Subd. 3. **Collection of payments.** Interest and any installment due must be entered on the tax lists for the year. The installment and interest must be collected in the same manner as real estate taxes for that year by collecting one-half of the total of the installment and interest with and as a part of the real estate taxes.

[For text of subs 4 and 5, see M.S.1986]

Subd. 6. **Drainage lien record.** The auditor shall keep a drainage lien record for each drainage project and system showing the amount of the drainage lien remaining unpaid against each tract of property.

Subd. 7. **Collection and enforcement of drainage liens.** The provisions of law that exist relating to the collection of real estate taxes are adopted to enforce payment of drainage liens. If there is a default, a penalty may not be added to an installment of principal and interest, but each defaulted payment, principal, and interest draws interest from the date of default until paid at the rate determined by the state court administrator for judgments under section 549.09.

History: 1987 c 239 s 111-114

106A.615 ENFORCEMENT OF ASSESSMENTS.

[For text of subs 1 to 3, see M.S.1986]

Subd. 4. **Assessment for vacated town roads.** If a town is assessed for benefits to a town road in a drainage project proceeding under this chapter and the town road is later vacated by the town board under section 164.07, the town board may petition the drainage authority to cancel the assessment. The drainage authority may cancel the assessment if it finds that the town road for which benefits are assessed has been vacated under section 164.07.

[For text of subd 5, see M.S.1986]

Subd. 6. **Assessments on wildlife lands to be paid from wildlife acquisition fund.** An assessment against state land acquired for wildlife habitat shall be paid from the wildlife acquisition fund as provided in section 97A.071, subdivision 4.

Subd. 7. **Railroad and utility property.** Property owned by a railroad or other utility corporation benefited by a drainage project is liable for the assessments of benefits on the property as other taxable property. From the date the drainage lien is recorded, the amount of the assessment with interest is a lien against all property of the corporation within the county. Upon default the assessment may be collected by civil action or the drainage lien may be foreclosed by action in the same manner as provided by law for the foreclosure of mortgage liens. The county where the drainage lien is filed has the right of action against the corporation to enforce and collect the assessment.

History: 1987 c 149 art 2 s 9; 1987 c 239 s 115,116

106A.635 DRAINAGE BOND ISSUES.

Subdivision 1. **Authority.** After the contract for the construction of a drainage project is awarded, the board of an affected county may issue the bonds of the county in an amount necessary to pay the cost of establishing and constructing the drainage project.

[For text of subs 2 to 9, see M.S.1986]

Subd. 10. **Bond recital.** Each drainage bond, temporary drainage bond, and definitive drainage bond must contain a recital that it is issued by authority of and in strict accordance with this chapter. The recital is conclusive in favor of the holders of the bonds as against the county, that the drainage project has been properly established,

that property within the county is subject to assessment for benefits in an amount not less than the amount of the bonds, and that all proceedings and construction relative to the drainage systems financed by the bonds have been or will be made according to law.

[For text of subd 11, see M.S.1986]

History: 1987 c 239 s 117,118

106A.645 ALLOWANCE AND PAYMENT OF FEES AND EXPENSES.

[For text of subds 1 to 6, see M.S.1986]

Subd. 7. **Payment.** The fees and expenses provided for in this chapter for a drainage project or system in one county must be audited, allowed, and paid by order of the board or for a drainage project or system in more than one county must be audited, allowed, and paid by order of the drainage authority after ten days' written notice to each affected county. The notice must be given by the auditor to the auditors of affected counties. The notice must state the time and location of the hearing and that all bills on file with the auditor at the date of the notice must be presented for hearing and allowance.

History: 1987 c 239 s 119

106A.651 DRAINAGE SYSTEM ACCOUNT.

Subdivision 1. **Funds for drainage system costs.** The board shall provide funds to pay the costs of drainage projects and systems.

[For text of subds 2 to 4, see M.S.1986]

History: 1987 c 239 s 120

106A.655 PAYMENT OF DRAINAGE SYSTEM COSTS.

Subdivision 1. **Payment made from drainage system account.** The costs for a drainage project proceeding and construction must be paid from the drainage system account by drawing on the account.

[For text of subds 2 and 3, see M.S.1986]

History: 1987 c 239 s 121

106A.701 REPAIRS.

Subdivision 1. **Definition.** The term "repair," as used in this section, means to restore all or a part of a drainage system as nearly as practicable to the same condition as originally constructed and subsequently improved, including resloping of ditches and leveling of waste banks if necessary to prevent further deterioration, realignment to original construction if necessary to restore the effectiveness of the drainage system, and routine operations that may be required to remove obstructions and maintain the efficiency of the drainage system.

Subd. 1a. **Repairs affecting public waters.** Before a repair is ordered, the drainage authority must notify the commissioner if the repair may affect public waters. If the commissioner disagrees with the repair depth, the engineer, a representative appointed by the director, and a soil and water conservation district technician must jointly determine the repair depth using soil borings, field surveys, and other available data or appropriate methods. Costs for determining the repair depth beyond the initial meeting must be shared equally by the drainage system and the commissioner. The determined repair depth must be recommended to the drainage authority. The drainage authority may accept the joint recommendation and proceed with the repair.

[For text of subds 2 to 4, see M.S.1986]

History: 1987 c 239 s 122,123

106A.705 REPAIR PROCEDURE.

Subdivision 1. **Inspection.** After the construction of a drainage system has been completed, the drainage authority shall maintain the drainage system that is located in its jurisdiction including grass strips under section 106A.021 and provide the repairs necessary to make the drainage system efficient. The drainage authority shall have the drainage system inspected on a regular basis by an inspection committee of the drainage authority or a drainage inspector appointed by the drainage authority.

Subd. 1a. **Grass strip inspection and compliance notice.** (a) The drainage authority having jurisdiction over a drainage system must inspect the drainage system for violations of section 106A.021. If an inspection committee of the drainage authority or a drainage inspector determines that permanent grass strips are not being maintained in compliance with section 106A.021, a compliance notice must be sent to the property owner.

(b) The notice must state:

(1) the date the ditch was inspected;

(2) the persons making the inspection;

(3) that spoil banks are to be spread in a manner consistent with the plan and function of the drainage system and the drainage system has acquired a grass strip 16-1/2 feet in width or to the crown of the spoil bank, whichever is greater;

(4) the violations of section 106A.021;

(5) the measures that must be taken by the property owner to comply with section 106A.021 and the date when the property must be in compliance; and

(6) that if the property owner does not comply by the date specified, the drainage authority will perform the work necessary to bring the area into compliance with section 106A.021 and charge the cost of the work to the property owner.

(c) If a property owner does not bring an area into compliance with section 106A.021 as provided in the compliance notice, the inspection committee or drainage inspector must notify the drainage authority.

(d) This subdivision applies to property acquired under section 106A.021.

Subd. 2. **Drainage inspector report.** For each drainage system that the board designates and requires the drainage inspector to examine, the drainage inspector shall make a drainage inspection report in writing to the board after examining a drainage system, designating portions that need repair or maintenance of grass strips and the location and nature of the repair or maintenance. The board shall consider the drainage inspection report at its next meeting and may repair all or any part of the drainage system as provided under this chapter. The grass strips must be maintained in compliance with section 106A.021.

Subd. 3. **Inspection report to drainage authority.** If the inspection committee or drainage inspector reports, in writing, to the drainage authority that maintenance of grass strips or repairs are necessary on a drainage system and the report is approved by the drainage authority, the maintenance or repairs must be made under this section.

Subd. 4. **Repairs less than \$50,000.** If the drainage authority finds that the estimated cost of repairs and maintenance of one drainage system for one year will be less than the greater of \$50,000 or \$1,000 per mile of open ditch in the ditch system, it may have the repair work done by hired labor and equipment without advertising for bids or entering into a contract for the repair work.

Subd. 5. **Annual repair assessment levy limits.** The drainage authority may give notice of and hold a hearing on the repair levy before ordering the levy of an assessment for repairs. In one calendar year the drainage authority may not levy an assessment for repairs or maintenance on one drainage system for more than 20 percent of the benefits of the drainage system, \$1,000 per mile of open ditch in the ditch system, or \$50,000, whichever is greater, except for a repair made after a disaster under subdivision 6 or under the petition procedure.

Subd. 6. **Repair and construction after disaster.** The drainage authority may repair

and reconstruct the drainage system without advertising for bids and without regard to the \$1,000 per mile of open ditch or \$50,000 limitation if:

- (1) a drainage system is destroyed or impaired by floods, natural disaster, or unforeseen circumstances;
- (2) the area where the drainage system is located has been declared a disaster area by the President of the United States and federal funds are available for repair or reconstruction; and
- (3) the public interests would be damaged by repair or reconstruction being delayed.

History: 1987 c 239 s 124

106A.715 PROCEDURE FOR REPAIR BY PETITION.

[For text of subs 1 to 5, see M.S.1986]

Subd. 6. Repair by resloping ditches, leveling waste banks, installing erosion control and removing trees. (a) For a drainage system that is to be repaired by resloping ditches, leveling waste banks, installing erosion control measures, or removing trees, before ordering the repair, the drainage authority must appoint viewers to assess and report on damages and benefits if it determines that:

- (1) the resloping, leveling, installing erosion control measures or tree removal will require the taking of any property not contemplated and included in the original proceeding for the establishment of the drainage system;
- (2) any waste bank leveling will directly benefit property where the bank leveling is specified; and
- (3) the installation of erosion control measures will aid the long-term efficiency of the drainage system.

(b) The viewers shall assess and report damages and benefits as provided by sections 106A.315 and 106A.321. The drainage authority shall hear and determine the damages and benefits as provided in sections 106A.325, 106A.335, and 106A.341. The hearing shall be held within 30 days after the property owners' report is mailed. Damages must be paid as provided by section 106A.315 as a part of the cost of the repair, and benefits must be added to the benefits previously determined as the basis for the pro rata assessment for the repair of the drainage system for the repair proceeding only.

History: 1987 c 239 s 125

106A.728 APPORTIONMENT OF REPAIR COSTS.

Subdivision 1. Generally. The cost of repairing a drainage system shall be apportioned pro rata on all property and entities that have been assessed benefits for the drainage system except as provided in this section.

Subd. 2. Additional assessment for agricultural practices on grass strip. (a) The drainage authority may, after notice and hearing, charge an additional assessment on property that has agricultural practices on or otherwise violates provisions related to the permanent grass strip acquired under section 106A.021.

(b) The drainage authority may determine the cost of the repair per mile of open ditch on the ditch system. Property that is in violation of the grass requirement shall be assessed a cost of 20 percent of the repair cost per open ditch mile multiplied by the length of open ditch in miles on the property in violation.

(c) After the amount of the additional assessment is determined and applied to the repair cost, the balance of the repair cost may be apportioned pro rata as provided in subdivision 1.

Subd. 3. Soil loss violations. The drainage authority after notice and hearing may make special assessments on property that is in violation of a county soil loss ordinance.

History: 1987 c 239 s 126

106A.731 ASSESSMENT; BONDS.

Subdivision 1. **Repair cost of assessments.** If there is not enough money in the drainage system account to make a repair, the board shall assess the costs of the repairs on all property and entities that have been assessed benefits for the drainage system.

[For text of subds 2 to 6, see M.S.1986]

History: 1987 c 239 s 127

106A.741 INCLUSION OF PROPERTY THAT HAS NOT BEEN ASSESSED BENEFITS.

[For text of subds 1 to 4, see M.S.1986]

Subd. 5. **Property benefited in hearing order included in future proceedings.** For the repair of the drainage system under this section that included the property that was not assessed and in all future proceedings relating to repairing, cleaning, improving, or altering the drainage system, the property benefited in the viewers' report hearing is part of the property benefited by the drainage system and must be assessed, in the same manner provided for the assessment of the property originally assessed for and included in the drainage system.

History: 1987 c 239 s 128

106A.811 ABANDONMENT OF DRAINAGE SYSTEM.

[For text of subd 1, see M.S.1986]

Subd. 2. **Petitioners.** A petition must be signed by at least 51 percent of the property owners assessed for the construction of the drainage system or by the owners of not less than 51 percent of the area of the property assessed for the drainage system. For the purpose of the petition, the county is the resident owner of all tax-forfeited property held by the state and assessed benefits for the drainage system, and the board may execute the petition for the county as an owner.

[For text of subd 3, see M.S.1986]

Subd. 4. **Filing petition; jurisdiction.** If all property assessed for benefits in the drainage system is in one county, the petition must be filed with the auditor unless the petition is signed by the board, in which case the petition must be made to the district court of the county and filed with the court administrator. If property assessed for benefits is in two or more counties, the petition must be filed with the auditor. When the petition is filed, the drainage authority in consultation with the auditor, or the court administrator with the approval of the court, shall set a time and location for a hearing on the petition. The auditor or court administrator shall give notice by publication of the time and location of the abandonment hearing to all persons interested. The drainage authority or the district court where the petition is properly filed has jurisdiction of the petition.

Subd. 5. **Abandonment hearing.** (a) At the hearing, the drainage authority or court shall examine the petition and determine whether it is sufficient and shall hear all interested parties.

(b) If a property owner assessed benefits for the drainage system appears and makes a written objection to the abandonment of the drainage system, the drainage authority or court shall appoint three disinterested persons as viewers to examine the property and report to the drainage authority or court. The hearing must be adjourned to make the examination and report and a date set to reconvene. The viewers, if appointed, shall proceed to examine the property of the objecting owner and report as soon as possible to the drainage authority or court with the description and situation of the property and whether the drainage system drains or otherwise affects the property.

(c) When the hearing is reconvened, the drainage authority or court shall consider the viewers' report and all evidence offered, and:

(1) if the drainage authority determines that the drainage system serves any useful purpose to any property or the general public, the petition for abandonment must be denied; or

(2) if the drainage authority determines that the drainage system does not serve any useful purpose to any affected property and is not of public benefit and utility, the drainage authority or court shall make findings and shall, by order, abandon the drainage system.

[For text of subd 6, see M.S.1986]

History: 1987 c 239 s 129-131