

CHAPTER 112

WATERSHEDS

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112.01-112.33 [Repealed, 1955 c 799 s 52]**112.34 WATERSHED ACT.**

Subdivision 1. **Policy.** To conserve the natural resources of the state through land use, flood control and other needs on sound scientific principles for protection of public health and welfare and provident use of natural resources, a public corporation as an agency of the state, may be established under this chapter. This chapter must be construed and administered to make these purposes effective.

Subd. 2. **Citation.** This chapter may be cited as the "Minnesota watershed act."

History: 1955 c 799 s 1; 1967 c 634 s 1; 1987 c 229 art 3 s 1

112.35 DEFINITIONS.

Subdivision 1. **Applicability.** The terms in this chapter have the meanings given them in this section.

Subd. 2. **Person.** "Person" includes firm, copartnership, association, or corporation but does not include public or political subdivision.

Subd. 3. **Public corporation.** "Public corporation" means a county, town, school district, or a political division or subdivision of the state. Public corporation, except where the context clearly indicates otherwise, does not mean a watershed district.

Subd. 4. **"Board"** means the board of water and soil resources established by section 110B.35.

Subd. 5. **Managers.** "Managers" means the board of managers of a watershed district.

Subd. 6. **Publication.** "Publication" means publication once a week for two successive weeks in accordance with section 645.11.

Subd. 7. **Public health.** "Public health" means any act or thing tending to improve the general sanitary conditions of the district.

Subd. 8. **Public welfare.** "Public welfare," "general welfare," and "public benefit" mean any act or thing tending to improve or benefit or contribute to the safety or well-being of the general public or benefit the inhabitants of the district.

Subd. 9. **County auditor.** "County auditor" means the county auditor of any county affected by a watershed district.

Subd. 10. **Court administrator.** "Court administrator" means the court administrator of the district court of the county in which a judicial proceeding concerning a district is pending.

Subd. 11. **Engineer.** "Engineer" means the engineer designated by the managers to act as engineer.

Subd. 12. **Appraisers.** "Appraisers" means the persons appointed by the managers of the district to ascertain and report benefits and damages arising from proposed work.

Subd. 13. **Director.** "Director" means the director of the division of waters of the department of natural resources.

Subd. 14. **Commissioner.** "Commissioner" means the commissioner of natural resources.

Subd. 15. **Petition.** "Petition" means an initiating petition for "work" and may consist of one or more petitions.

Subd. 16. **Nominating petition.** "Nominating petition" means an initiating petition for the creation of a watershed district and may consist of one or more petitions.

Subd. 17. **Hearing.** "Hearing" means a hearing conducted by either the managers or the board, which, if conducted by the board under its rules, may be formal. All interested parties must be given a reasonable opportunity to be heard.

Subd. 18. **Interested party.** "Interested party" means any public corporation or any person with an interest in the subject pending or involved. "Interested party" includes the director or any agency of government.

Subd. 19. **Project.** "Project" or "projects" means any construction, maintenance, repairs, or improvements of a watershed district including planning and development to accomplish a purpose for which a district is organized.

Subd. 20. **Notice by mail; mailed notice.** "Notice by mail" or "mailed notice" means a notice mailed and addressed to each person entitled to receive notice if the address is known to the auditor or court administrator or can be obtained at the office of the county treasurer of the county where the affected land or property is located.

Subd. 21. **Resident owner; resident freeholder.** "Resident owner" or "resident freeholder" means the owner of land or the contract purchaser and who resides in the state.

Subd. 22. **Metropolitan area.** "Metropolitan area" has the meaning given in section 473.121, subdivision 2.

History: 1955 c 799 s 2; 1961 c 601 s 1; 1967 c 634 s 2; 1967 c 905 s 5; 1969 c 1129 art 3 s 1; 1973 c 712 s 1; 1982 c 509 s 12; 1982 c 540 s 1; 1Sp1986 c 3 art 1 s 82; 1987 c 229 art 3 s 1; 1987 c 358 s 104

112.36 ESTABLISHMENT OF DISTRICTS.

Subdivision 1. **General power.** The board has jurisdiction, power, and authority, upon filing a nominating petition, to establish a watershed district and define its boundaries. All areas included in the district must be contiguous. The district may be entirely within or partly within and partly outside any county. The district may include the whole or part of any watershed within the discretion of the board. The district may include the whole or part of one or more counties. The board appoints the first managers of the watershed district, as provided in this chapter.

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

- (1) control or lessen damage by flood waters;
- (2) improve stream channels for drainage, navigation, and any other public purpose;
- (3) reclaim or fill wet and overflowed lands;
- (4) provide water supply for irrigation;
- (5) regulate the flow of streams and conserve their waters;
- (6) divert or change watercourses in whole or part;
- (7) provide and conserve water supply for domestic, industrial, recreational, agricultural, or other public use;
- (8) provide for sanitation and public health and regulate the use of streams, ditches, or watercourses for disposal of waste;
- (9) repair, improve, relocate, modify, consolidate, and abandon, in whole or part, drainage systems within a watershed district;
- (10) impose preventive or remedial measures to control or reduce land and soil erosion and siltation of watercourses or bodies of water affected by erosion;
- (11) regulate improvements by riparian landowners of the beds, banks, and shores of lakes, streams, and marshes by permit or otherwise to preserve them for beneficial use;
- (12) provide for the generation of hydroelectric power;
- (13) protect or enhance the quality of water in watercourses or bodies of water; and
- (14) protect groundwater and regulate its use to preserve it for beneficial use.

History: 1955 c 799 s 3; 1957 c 279 s 1; 1959 c 239 s 1; 1961 c 601 s 2; 1969 c 971 s 1; 1981 c 256 s 2; 1985 c 236 s 1; 1987 c 229 art 3 s 1

112.37 PROCEDURE FOR ESTABLISHMENT.

Subdivision 1. **Signers of petition.** To begin proceedings to establish a watershed district, a nominating petition must be filed with the secretary of the board. The nominating petition must be signed by any one of the following groups:

- (1) at least one-half of the counties within the proposed district; or
- (2) a county or counties having at least 50 percent of the area within the proposed district; or
- (3) a majority of the cities within the proposed district; or
- (4) at least 50 resident freeholders of the proposed district, except resident freeholders within the corporate limits of a city on whose behalf the authorized official has signed the petition.

Subd. 1a. **Contents of petition.** The nominating petition must include:

- (1) the name of the proposed district and a statement in general terms setting forth its territory;
- (2) the necessity for the district, the contemplated improvements in it, and the reasons why the district and the contemplated improvements would be conducive to public health and public welfare, or accomplish any purpose of this chapter;
- (3) the number of manager positions proposed for the district and a list of nominees;
- (4) a map of the proposed district; and
- (5) a request for the establishment of the district as proposed.

At least three but not more than nine manager positions must be proposed. Managers must be chosen from a list of nominees containing at least twice the number to be chosen. A manager must not be a public officer of the county, state, or federal government, except that a soil and water conservation supervisor may be a manager.

Subd. 1b. **Persons served with petition.** The petitioners shall have a copy of the

petition served on the county auditors of the counties affected by the proposed district, the commissioner, and the director. Proof of service must be attached to the original petition and filed with the secretary of the board.

Subd. 2. County auditor's search of tax records. On receiving a copy of the nominating petition the county auditors shall determine whether the petitioners are freeholders. The determination must be made from the tax records, which are prima facie evidence of ownership. The auditor shall certify the determination to the board.

Subd. 3. Director's map and report. On receiving a copy of the nominating petition, the director shall:

- (1) acknowledge its receipt to the board;
- (2) prepare a preliminary watershed map of the proposed district showing its natural boundaries and subdivisions;
- (3) prepare a preliminary report based on the nominating petition and other available data, stating an opinion about the desirability of organizing the district, and submit the report to the board with any recommendation the director considers proper. The report must be submitted to the board within 30 days from the date of the service of the petition upon the director, unless the board extends the time.

Subd. 4. [Repealed, 1967 c 634 s 17]

Subd. 5. Petition corrections; consolidation. No petition containing the requisite number of signatures or petitioners or signed by the requisite number of counties or cities shall be void or dismissed on account of defects. Before the close of hearing, the board shall permit the petition to be amended in form and substance to correct any errors in the description of the territory or other defects. Several similar petitions, or duplicate copies of the same petition, for the establishment of the same district may be filed together and regarded as one petition. All petitions filed before the hearing provided in section 112.38 shall be considered by the board as part of the original petition.

After a petition has been filed, no petitioner may withdraw from it without the written consent of all other petitioners filed with the board.

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

Subd. 7. Metro area district; managers. In a district wholly within the metropolitan area there must be at least five and not more than nine managers. They must be chosen to fairly represent by residence the various hydrologic areas within the district. They must be chosen from a list of persons nominated jointly or severally by statutory and home rule charter cities and towns having territory within the district. The list must contain at least three nominees for each position to be filled. If the cities and towns fail to nominate in accordance with this subdivision, the managers must be chosen as provided in subdivision 1a.

History: 1955 c 799 s 4; 1959 c 248 s 1-3; 1961 c 601 s 3,4; 1967 c 634 s 3,4; 1969 c 1072 s 1; 1973 c 123 art 5 s 7; 1982 c 509 s 13,14; 1982 c 540 s 2; 1984 c 411 s 1; 1985 c 236 s 2; 1986 c 444; 1987 c 229 art 3 s 1

112.38 HEARING; NOTICE.

When it appears to the board that a sufficient nominating petition has been filed, the board shall, within 35 days thereafter, order a time and place for a hearing on it. The place of hearing must be within the district limits. If there is no suitable place within the proposed district, the board may select a place within the limits of the counties in which publication of the notice of the hearing is required. The board must publish notice of the hearing once each week for two successive weeks before the date of hearing. The notice must be published in a legal newspaper in the counties in which a part or all of the affected waters and lands are located. The last publication must occur at least ten days before the hearing. Notice must also be mailed by the board to the county auditor and to the chief executive official of any municipality affected. The mailed notice must contain the following:

(1) a statement that a nominating petition has been filed with the board and a copy filed with the county auditors of the counties affected;

(2) a general description of the purpose of the contemplated improvement and the territory to be included in the proposed district;

(3) the date, time, and place of hearing; and

(4) a statement that all persons affected or interested may appear and be heard.

History: 1955 c 799 s 5; 1957 c 279 s 2; 1959 c 245 s 1; 1973 c 712 s 2; 1987 c 229 art 3 s 1

112.39 ACTION OF BOARD UPON PETITION.

Subdivision 1. Hearing. At the hearing on the nominating petition, all persons interested in or affected by the proposed watershed district must be given an opportunity to be heard. The board may continue the hearing from time to time as it finds necessary.

Subd. 2. Witnesses; proceedings. To carry out the provisions of this chapter and to hold hearings, the chair of the board or any board member may subpoena witnesses, administer oaths, and compel the production of books, records, and other evidence. Witnesses shall receive the same fees and mileage as in civil actions. All persons must be sworn before testifying. The right to examine and cross-examine witnesses is the same as in civil actions. The board shall make a record of all proceedings before it and file it with the secretary of the board. Copies of the record may be obtained upon terms and conditions the board prescribes.

Subd. 3. Findings and order. Upon the hearing if it appears to the board that the establishment of a district as asked for in the nominating petition would be for the public welfare and public interest, and would serve the purpose of this chapter, the board shall, by its findings and order, establish a watershed district and give it a corporate name. When a certified copy of the findings and order is filed with the secretary of state, the watershed district becomes a political subdivision of the state and a public corporation with the authority, power, and duties prescribed in this chapter.

Subd. 4. Findings and order; later changes. The findings and order of the board must name the first board of managers of the district. Their term of office shall be for one year and until their successors are appointed and qualified. The finding and order must designate the place within the district where the principal place of business of the district is located and define the boundaries of the district.

The boundaries may be changed by petition. The petition must be signed as provided in section 112.37, subdivision 1, or by the managers of a watershed district after passage of a resolution authorizing the petition, and a notice and hearing on it, in the same way as in the original proceeding. When a petition for a boundary change involves a common boundary of two or more watershed districts the board may determine in which district the hearing must be held.

The managers may change the principal place of business within the district by passing a resolution authorizing the change and conducting a hearing. The managers must publish notice of the hearing once each week for two successive weeks before the date of hearing in a legal newspaper published in the counties in which a part or all of the affected waters and lands are located. The last publication must be at least ten days before the hearing. Notice of hearing must be mailed to the county auditor of each county affected ten days before the hearing. After the hearing the managers may order the change in place of business. The change is effective when a certified copy of the order is filed with the secretary of state and the secretary of the board.

Subd. 5. Copies mailed. When the certified copy of the board's findings and order is filed with the secretary of state, a copy must be mailed to the county auditor of each county affected, the commissioner, and director.

Subd. 6. Order to dismiss. If the board finds that the establishment of the district would not be for the public welfare and public interest, and would not serve the purpose of this chapter, the board shall, by its decision, dismiss the proceedings. A copy of the

dismissal order must be mailed immediately to the county auditor of each county affected, the commissioner, and director.

Subd. 7. [Repealed, 1959 c 270 s 2]

Subd. 8. [Repealed, 1959 c 270 s 2]

History: 1955 c 799 s 6; 1959 c 270 s 1; 1965 c 651 s 1; 1967 c 634 s 5,6; 1969 c 1072 s 2; 1982 c 540 s 3; 1986 c 444; 1987 c 229 art 3 s 1

112.40 RULES OF PRACTICE.

The board shall adopt rules of practice for its proceedings and hearings as it finds necessary and expedient. The rules must be consistent with this chapter and other law.

History: 1955 c 799 s 7; 1987 c 229 art 3 s 1

112.401 BOARD HEARINGS.

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

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

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

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

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

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

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

(c) The notice:

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

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

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

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

History: 1961 c 601 s 24; 1985 c 236 s 3; 1987 c 229 art 3 s 1

112.41 PERPETUAL EXISTENCE.

A district created under this chapter has perpetual existence. To the extent necessary for lawful conservation purposes, it may:

- (1) sue and be sued;
- (2) incur debts, liabilities, and obligations;

- (3) exercise the power of eminent domain;
- (4) provide for assessments;
- (5) issue certificates, warrants, and bonds;
- (6) do anything expressly authorized in this chapter; and
- (7) do anything else necessary and proper to exercise its express powers.

History: 1955 c 799 s 8; 1987 c 229 art 3 s 1

112.411 PROCEDURE FOR TERMINATION.

Subdivision 1. Petition contents. Proceedings to terminate a watershed district shall be initiated only by filing a petition with the secretary of the board. The petition must be signed by at least 25 percent of the resident freeholders of the district. The petition must state that the existence of the district is no longer in the public welfare and public interest and that it is not needed to accomplish the purposes of the Minnesota watershed act.

The petitioners shall have a copy of the petition served on the county auditors of the counties affected. Proof of service must be attached to the original petition, to be filed with the secretary of the board.

Subd. 2. Determining status of signers. On receiving a copy of the petition the county auditors shall determine whether the petitioners are resident freeholders within the district. The determination must be made from the tax records, which are prima facie evidence of ownership. From them the auditor shall certify the determination to the board.

Subd. 3. Bond. When the petition is filed or before notice of a hearing on it is given, the petitioners shall file a bond with the board, to be approved by it in an amount it determines. The bond must state that in case the petition is dismissed or denied, the petitioners will pay all costs and expenses.

Subd. 4. Hearing; order to terminate. When it appears to the board that a sufficient petition has been filed, the board shall, within 35 days thereafter, order a time and place, within the district, for a hearing on the petition. The provisions of this chapter relating to notice and conduct of a hearing upon a nominating petition shall govern.

If the board finds that the existence of the district is no longer in the public welfare and public interest and that it is not needed to accomplish the purpose of the Minnesota watershed act, the board shall by its findings and order terminate the district. When a certified copy of the findings and order is filed with the secretary of state, the district ceases to be a political subdivision of the state.

Subd. 5. When petitions may be considered. The board shall not entertain a petition for termination of a district within five years from the date of its formation. The board shall not make determinations on petitions in accordance with this section more often than once in five years.

History: 1959 c 244 s 1; 1961 c 563 s 1,2; 1986 c 444; 1987 c 229 art 3 s 1

112.42 MANAGERS.

Subdivision 1. Oath. When a certified copy of the findings and order establishing a district is filed with the secretary of state, the board shall have a copy of them personally served on the managers named. Within ten days after the personal service, the managers shall meet at the named principal place of business of the district. They shall then take and sign the oath defined in Minnesota Constitution, article V, section 6. The signed oath must be immediately filed with the secretary of the board.

Subd. 1a. Bond. Each manager shall then file with the board a bond in the sum of \$1,000, the premium to be paid by the district for the faithful performance of the manager's duties. The board may increase the amount of the bond if it judges the increase necessary. The managers shall then organize by electing one of their number as president, one as secretary, and one as treasurer, and provide the books, records, furniture, and equipment needed for their official duties.

In lieu of individual bonds the managers may give a schedule or position bond or undertaking. Alternatively, a single corporate surety fidelity, schedule or position bond or undertaking may be given covering all managers and employees of the watershed district, including officers and employees required by law to furnish an individual bond or undertaking, in the amounts fixed by law or by the person or board authorized to fix the amounts. The bond or undertaking must be conditioned substantially as provided in section 574.13.

Subd. 2. Seal; record. The managers shall adopt a seal and keep a record of all proceedings, minutes, certificates, contracts, bonds of its employees, and other business transacted or action taken by the board. The record must be, at all reasonable times, open to inspection by the property owners within the district, and other interested parties.

Subd. 3. Terms; successor appointments; vacancies. (a) At least 30 days before the expiration of the term of office of the first managers named by the board, the county commissioners of each county affected shall meet and appoint successors to the first managers. If the nominating petition for the district originated from a majority of the cities in the district, or if the district is wholly within the metropolitan area, the county commissioners shall appoint the managers from a list of persons nominated jointly or severally by the towns and municipalities within the district. The list must contain at least three nominees for each position to be filled. Managers for a district wholly within the metropolitan area must be appointed to fairly represent by residence the various hydrologic areas within the district.

(b) The list of nominees must be submitted to the affected county board at least 60 days before the expiration of the term of office. If the list is not submitted within 60 days prior to the expiration of the term of office, the county commissioners shall select the managers from eligible individuals within the district. The county commissioners shall meet and appoint the successors at least 30 days before any manager's term expires. If the district affects more than one county, distribution of the managers among the counties affected shall be as directed by the board.

(c) Ten years after the order of establishment, the board may redistribute the managers among the counties if redistribution is in accordance with the purposes of this chapter. The board may take this action upon petition of the county board of commissioners of any county affected by the district and after public hearing on the petition. A petition for the redistribution of managers must not be filed with the board more than once in ten years.

(d) If the number of manager positions in the board's findings and order establishing the district is three, the terms of office of the first county-appointed managers shall be one for a term of one year, one for a term of two years, and one for a term of three years. If the number of managers is five, one manager's term shall be one year, two managers' terms shall be two years, and two managers' terms shall be three years. If the board of managers consists of more than five members, the managers shall be appointed so that as nearly as possible one-third serve terms of one year, one-third serve terms of two years, and one-third serve terms of three years. If the district affects more than one county, the board shall direct the distribution of the one-, two-, and three-year terms among the affected counties. Thereafter, the term of office for each manager must be three years, and until a successor is appointed and qualified. If the district affects more than five counties, in order to provide for the orderly distribution of the managers, the board may determine and identify the manager areas within the territory of the district and select the appointing county board of commissioners for each manager's area. Any vacancy in an office of a manager must be filled by the appointing county board of commissioners.

(e) A record of all appointments made under this subdivision must be filed with the county auditor of each county affected, with the secretary of the board of managers, and with the secretary of the board. A person appointed as a manager must be a voting resident of the district and must not be a public officer of the county, state, or federal government, except that a soil and water conservation supervisor may be a manager.

Subd. 3a. Restructuring boards of old districts. The board shall restructure the boards of managers of districts established before August 2, 1982, and located wholly within the metropolitan area to ensure compliance with subdivision 3 and section 112.37, subdivision 7. The board shall request recommendations from the district and the affected local government units. Additional managers, if any, must be appointed by the county designated by the board, to terms designated by the board, at the time of and in the manner provided for the next regular appointment of successors to managers of the district.

Subd. 4. Vacancies. Section 351.02 applies to the managers.

Subd. 5. Per diem. The compensation of managers for meetings and other necessary duties must not exceed \$50 per day. Managers are entitled to reimbursement for traveling and other expenses necessarily incurred in the performance of official duties.

Subd. 6. Business rules. The managers shall adopt bylaws and rules consistent with this chapter to conduct district business. Rules adopted under this subdivision are not subject to section 112.43, subdivision 1c.

Subd. 7. Meetings. The managers shall meet annually and at other times necessary to do the business of the district. If public facilities are not available for a district's principal place of business within the district, the board shall name the nearest suitable public facility as the district's principal place of business. A meeting may be called at any time upon the request of any manager. When so requested the secretary of the district shall mail a notice of the meeting to each member at least eight days before the meeting.

History: 1955 c 799 s 9; 1959 c 340 s 1; 1961 c 601 s 5,6; 1967 c 259 s 1; 1967 c 634 s 7; 1969 c 1072 s 3; 1973 c 123 art 5 s 7; 1973 c 712 s 3; 1976 c 2 s 172; 1978 c 513 s 1; 1982 c 509 s 15,16; 1982 c 540 s 4-6; 1984 c 411 s 2; 1986 c 444; 1987 c 229 art 3 s 1

112.421 PROCEDURE FOR INCREASING NUMBER OF MANAGERS.

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

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

History: 1985 c 236 s 4; 1987 c 229 art 3 s 1

112.43 MANAGERS; POWERS, DUTIES.

Subdivision 1. The managers, to carry out this chapter, may:

(1) Make necessary surveys or use other reliable surveys and data and develop projects to accomplish the purposes for which the district is organized and may initiate, undertake, and construct projects not required to be instituted by a petition under section 112.47.

(2) Cooperate or contract with any state or subdivision of a state or federal agency or private or public corporation or cooperative association.

(3) Construct, clean, repair, alter, abandon, consolidate, reclaim, or change the course or terminus of any public ditch, drain, sewer, river, watercourse, natural or artificial, within the district.

(4) Acquire, operate, construct, and maintain dams, dikes, reservoirs, water supply systems, and appurtenant works.

- (5) Regulate, conserve, and control the use of water within the district.
 - (6) Acquire by gift, purchase, or the right of eminent domain necessary real and personal property. The district may acquire property outside the district where necessary for a water supply system.
 - (7) Contract for or purchase insurance the managers find necessary for the protection of the district.
 - (8) Establish and maintain devices for acquiring and recording hydrological data.
 - (9) Enter into contracts of construction authorized by this chapter.
 - (10) Enter lands inside or outside the district to make surveys and investigations to accomplish the purposes of the district. The district is liable for actual damages resulting from entry.
 - (11) Take over when directed by the joint county ditch authority or county board all joint county or county drainage systems within the district, together with the right to repair, maintain, and improve them. When a joint county or county drainage system is taken over in whole or in part, it becomes part of the works of the district to the extent taken over.
 - (12) Provide for sanitation and public health and regulate the use of streams, ditches, or watercourses to dispose of waste and prevent pollution.
 - (13) Borrow funds from: (a) any agency of the federal government; (b) any state agency; (c) any county in which the district is located in whole or in part; or (d) a financial institution authorized under chapter 47 to do business in this state. A county board may lend the amount requested by a district. No district may have more than a total of \$200,000 in loans from counties and financial institutions under this clause outstanding at any time.
 - (14) Prepare a flood plain map of the lands of the district that are in the flood plain of lakes and watercourses. The map must be made available to the counties and local municipalities for inclusion in flood plain ordinances. It must conform to state rules setting standards for designation of flood plain areas.
 - (15) Prepare an open space and greenbelt map of the lands of the district that should be preserved and included in the open space and greenbelt land areas of the district. The map must be made available to the counties and local municipalities for inclusion in flood plain and shoreland ordinances.
 - (16) Appropriate necessary funds to provide for membership in a state association of watershed districts whose purpose is to improve watershed governmental operations.
 - (17) Control the use and development of land in the flood plain and the greenbelt and open space areas of the district. To do this, the managers may adopt, amend, or repeal rules to control encroachments, the changing of land contours, the placement of fill and structures, the placement of encumbrances or obstructions and require the landowner to remove fill, structures, encumbrances, or other obstructions and restore the previously existing land contours and vegetation. The managers may by rule provide a procedure by which the district can do the work required and assess its cost against the affected property as a special assessment. The rules apply only in the absence of county or municipal ordinances regulating the items set forth in this clause. The rules must be adopted in accordance with subdivision 1c.
- Subd. 1a. Notice to city.** A resolution or rule approved by the managers after August 1, 1978, that affects land or water within the boundaries of a home rule charter or statutory city is not effective within the city's boundaries until the governing body of the city is notified.
- Subd. 1b. Metropolitan watershed districts.** A watershed district located wholly within the metropolitan area has the duties and powers in sections 473.875 to 473.883. Notwithstanding any contrary provision of subdivision 1, a watershed district located wholly within the metropolitan area may regulate the use and development of land only under the conditions specified in section 473.877, subdivision 1, clause (c).
- Subd. 1c. District rules.** Each district shall adopt rules to accomplish the

purposes of this chapter and to implement the powers of the managers. Rules of the district must be adopted or amended by a majority vote of the managers, after public notice and hearing. They must be signed by the secretary of the board of managers and recorded in the district's official minute book. For each county of the district the managers shall publish a notice of any hearing or adopted rules in one or more legal newspapers published in the county and generally circulated in the district and file adopted rules with the county recorder of each county affected. A copy of the rules must be mailed by the managers to the governing body of each municipality affected.

Any ordinance of a district in effect on March 23, 1982, remains in effect until the district adopts rules under this subdivision.

Subd. 2. Enforcement powers. The district court may enforce by injunction or other appropriate order sections 112.34 to 112.89 and any rule adopted or order issued by the managers under them.

Subd. 3. Business report. The managers shall annually make and file a report of the financial conditions of the district, the status of all projects in the district, the business transacted by the district, other matters affecting the interests of the district, and a discussion of the managers' intentions for the succeeding year. Copies of the report must be sent to the secretary of the board, the commissioner, and the director within a reasonable time.

Subd. 4. Board review of managers. The exercise of the managers' powers is subject to review by the board as provided in this chapter.

History: 1955 c 799 s 10, 12 subd 3; 1961 c 601 s 7; 1963 c 834 s 1-4; 1965 c 51 s 17; 1969 c 971 s 2; 1969 c 1072 s 4; 1971 c 662 s 1; 1978 c 513 s 2; 1Sp1981 c 4 art 1 s 71; 1982 c 509 s 17; 1982 c 540 s 7-9; 1985 c 248 s 70; 1987 c 229 art 3 s 1; 1988 c 445 s 1

112.431 DRAINAGE IMPROVEMENTS.

Subdivision 1. Findings. The legislature finds that because of urban growth and development in the metropolitan area problems arise for the improvement and repair of drainage systems which were originally established for the benefit of land used for agriculture. The procedure for improvement and repair of drainage systems now in the metropolitan area should be simplified to more adequately and economically improve and repair drainage systems.

Subd. 2. Definitions. (a) The terms in this section have the meanings given them in this subdivision.

(b) "Drainage system" has the meaning given in section 106A.005, subdivision 11.

(c) "Watershed district" means any watershed district established under this chapter, wholly or partially in a metropolitan county.

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

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

Subd. 3. Drainage improvements. With the concurrence of the governing bodies of the home rule charter or statutory cities and the town boards of the towns where the drainage system is located, the managers of a watershed district where there is a drainage system may improve and repair any drainage system transferred to the district under section 112.65, by conforming to sections 429.031; 429.041, subdivisions 1 and 2; 429.051; 429.061; and 429.071.

Subd. 4. Alternative power. With the concurrence of the governing bodies of the home rule charter or statutory cities and the town boards of the towns where the drainage system is located, the managers may improve and repair a drainage system under the power granted to them in this chapter.

Subd. 5. Appeal. A person aggrieved by an order for improvement or repair by the managers or by an assessment may appeal as provided in sections 112.801 and 112.82.

History: 1980 c 614 s 85; 1985 c 172 s 113; 1987 c 229 art 3 s 1; 1987 c 239 s 132

112.44 ADVISORY COMMITTEE.

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

History: 1955 c 799 s 11; 1959 c 247 s 1; 1969 c 637 s 1; 1969 c 1072 s 5; 1973 c 712 s 4; 1986 c 444; 1987 c 229 art 3 s 1

112.45 EMPLOYEES; DUTIES.

The managers may employ a chief engineer, professional assistants, and other employees as necessary, and provide for their qualifications, duties, and compensation. The chief engineer shall be superintendent of all the works and improvements. The chief engineer shall make a full report to the managers each year, or more often if necessary. A copy of the report and all recommendations by the chief engineer must be sent to the managers and the director. The managers may require any officer or employee of the district to give a bond for the faithful performance of duties in an amount prescribed by them. The cost of the bond must be paid from the funds of the district.

History: 1955 c 799 s 12; 1961 c 601 s 8; 1986 c 444; 1987 c 229 art 3 s 1

112.46 OVERALL PLAN.

Subdivision 1. Plan contents. Within a reasonable time after qualifying, the managers shall adopt an overall plan for the purposes for which a district may be established. The overall plan must contain narrative statements of existing water and water-related problems in the district, possible solutions, and the general objectives of the district. The plan may also include as a separate section any proposed projects. The separate statement of proposed projects or petitions for projects to be undertaken according to the overall plan shall be considered as a comprehensive plan of the district for all purposes of review by the metropolitan council under section 473.165, if the district is within the metropolitan area.

Subd. 2. Adoption procedures. A copy of the plan shall be sent immediately to the county auditor of each county affected, the secretary of the board, the commissioner, the director, the governing bodies of all municipalities, any soil and water conservation district having territory within the district, and the metropolitan council if the district is within the metropolitan area. On receiving the copy the director and the council shall examine it and within 60 days, unless the time is extended by the board, the director and the council shall transmit recommendations about the plan to the board. A copy of the recommendations must be sent to the managers, the county auditor of each county affected, the governing bodies of all affected municipalities, and any affected soil and water conservation districts. Within 45 days from receipt of the director's and the council's recommendations the board shall have a public hearing on the proposed overall plan. The provisions of this chapter relating to notice, time, and place of hearing on a nominating petition govern the hearing. After the public hearing the board shall, by order, prescribe an overall plan for the district. A copy of the order must be sent to the managers, the county board of each county affected, the commissioner, the director, the governing bodies of all municipalities affected, any affected soil and water conservation districts, and the council. When sent, the plan becomes the

overall plan for the district. The plan may be amended upon a petition submitted by the managers. The board shall have a hearing on the amendment in the same way as in the original overall plan proceeding.

Subd. 3. Plan revision. The managers and the board shall revise the overall plan for the district at least once every ten years and make amendments as it finds advisable. The managers shall consider including the following items in the revised overall plan and any other information they find appropriate:

(1) updates of and supplements to the existing hydrological and other statistical data of the district;

(2) specific projects completed;

(3) a statement setting forth the extent to which the purposes for which the district had been established have been accomplished;

(4) a description of problems requiring future action by the district;

(5) a summary of completed studies on active or planned projects, including financial data;

(6) an analysis of the effectiveness of the district's rules and permits in achieving its water management objectives in the district.

Subd. 4. Board review of revised outline. After ten years and six months have elapsed from the date that the board prescribed an overall plan or the last revised plan, the managers shall adopt a revised overall plan outline and shall transmit a copy of the outline to the board. On receiving a copy the board shall examine it and within 60 days adopt recommendations regarding the outline and report them to the managers.

Subd. 5. Further review. Within 120 days after receiving the board's recommendations regarding the revised overall plan outline, the managers shall complete the revised overall plan. A copy of the plan must be sent to the board, the county board and county auditor of each county affected, the director, the governing bodies of all municipalities affected, any soil and water conservation district having territory within the district, and the metropolitan council if the district is within the metropolitan area. On receiving the copy, the director and the council shall examine it and within 60 days, unless the time is extended by the board, the director and the council shall transmit recommendations on the revised plan to the board. A copy of the recommendations must be sent to the managers, the county auditor of each county affected, the governing bodies of all affected municipalities, and any affected soil and water conservation districts.

Within 45 days from transmittal of the revised overall plan to the board, the board shall have a public hearing on the proposed revised overall plan. The provisions of this chapter relating to notice, time, and place of hearing on a nominating petition govern this proceeding. After public hearing the board shall, by order, prescribe a revised plan for the district. A copy of the revised plan must be sent to the managers, the county board of each county affected, the commissioner, the director, the governing bodies of all municipalities affected, any affected soil and water conservation districts, and the council. Upon transmittal the plan becomes the overall plan for the district.

History: 1955 c 799 s 13; 1959 c 246 s 1; 1963 c 834 s 5; 1965 c 652 s 1; 1967 c 634 s 8; 1969 c 637 s 1; 1971 c 662 s 2; 1980 c 509 s 25; 1982 c 540 s 10; 1987 c 229 art 3 s 1

112.47 PROJECTS INSTITUTED.

Projects of the district that are to be paid by assessment on the benefited properties must be instituted: (1) by a petition filed with the managers; (2) by unanimous resolution of the managers; or (3) as otherwise prescribed by this chapter.

History: 1955 c 799 s 14; 1965 c 652 s 2; 1973 c 712 s 5; 1982 c 540 s 11; 1987 c 229 art 3 s 1

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

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

(1) by not less than 25 percent of the property owners, or by the owners of more than 25 percent of the land within the limits of the area proposed to be improved, unless the project consists of the establishment of a new drainage system as defined in chapter 106A or the improvement of an existing drainage system;

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

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

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

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

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

Subd. 1a. **Contents.** The petition shall contain the following:

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

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

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

(4) a statement of the need and necessity for the proposed improvement;

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

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

Subd. 2. **Bond.** When a petition is filed and before any action is taken on it, one or more of the petitioners shall deposit at least \$2,000 with the managers, conditioned to pay all costs and expenses incurred if the project is not constructed. Alternatively, with the approval of the managers, one or more of the petitioners may make and file a bond payable to the watershed district named in the petition in the sum of at least \$2,000 with sufficient sureties, to be approved by the managers of the district with which the bond is filed, conditioned to pay all costs and expenses which may be incurred if the proceedings are dismissed or for any reason no contract is entered into for the construction of the project.

If it appears at any time before the making of the order establishing a project that the deposit or bond of petitioners is too small to protect the watershed district from loss on account of any costs or expenses incurred or to be incurred, the watershed district shall require an additional deposit or bond. All further proceedings must then be stayed until the deposit or bond is furnished. If the additional deposit or bond is not furnished within the time the watershed district fixes, the proceedings may be dismissed.

In all project proceedings, the expenses incurred before establishment must not exceed the required deposit or the penalty named in the bond given by the parties. No claim in excess of the amount of the deposit or bond shall be audited or paid by

direction of the watershed district unless one or more parties in the proceeding, within the time the watershed district directs, files an additional deposit or bond in an amount as directed by the watershed district.

If the petition is signed by the proper officials of a county or city, no bond is required.

Subd. 3. Agreements with state or federal agencies. The procedure in this section must be followed when an improvement is to be constructed within the district under an agreement between the managers and the state, or a state department or agency, or the United States of America, or a federal department or agency, where the cost of the improvement is to be paid for in whole or in part by the governmental agency but the rights-of-way and the expenses of the improvement are assumed by the district or where the managers are undertaking all or a portion of the basic water management project as identified in the overall plan. A copy of the project plan must be forwarded to the board and director for their reports. The managers shall then hold a public hearing on the proposed improvement. Notice of the hearing must be published once each week for two successive weeks before the date of the hearing in a legal newspaper, published in the counties in which a part or all of the affected waters and lands are located. The last publication must occur not more than 30 days and at least ten days before the hearing. The notice must state the time and place of hearing, the general nature of the proposed improvement, its estimated cost and how the cost of the improvement is to be paid, including the cost to be allocated to each affected municipal corporation or the state or state department. At least ten days before the hearing, notice by mail must be given to the director and to the municipal corporations wholly or partly within the improvement project area. Failure to give mailed notice or defects in the notice do not invalidate the proceedings. At the time and place specified in the notice the managers shall hear all parties interested in the proposed project or improvement. If upon full hearing the managers find that the improvement will be conducive to public health and promote the general welfare, and complies with the overall plan and the provisions of this chapter, they shall make findings accordingly and authorize the project.

Subd. 4. Resolution; hearing. The managers may institute projects upon a resolution of at least a majority of the managers if:

(1) each project is financed by one or more grants totaling at least 50 percent of the estimated cost; and

(2) the engineer's estimate of local costs to the district, including assessments against benefited properties but excluding state, federal, or other grants, is not over \$750,000 for any single project. No resolution under this subdivision shall be used to establish a project, the essential nature and purpose of which is for drainage.

The managers shall hold a public hearing on the proposed resolution for the project following publication once each week for two successive weeks. The publication must be in a legal newspaper published in the counties in which the watershed district is situated. The last publication must occur at least ten days before the meeting at which the resolution will be heard. The notice must contain the date, time, and place of hearing, the substance of the proposed resolution, the means of financing the project, and a statement that all persons who might be affected by the project or who may be interested in it may appear and be heard. Defects in the notice do not invalidate the proceedings.

The managers shall secure from the district engineer or other competent person they select a report advising them in a preliminary way whether the proposed project is feasible and estimating the cost of the project. An error or omission in the report does not invalidate the proceeding. The managers may also take other steps before the hearing that will in their judgment help determine the desirability and feasibility of the improvement. If after the hearing it appears to the managers that the proposed project promotes the public interest and welfare, and is practicable and conforms with the overall plan of the district, they shall adopt a final resolution for the project. They shall identify the proceeding by name and number. If the report of the engineer is unfavorable the managers shall fix a time and place for a hearing in the manner provided for

the hearing on the resolution. The matter may then be referred back to the engineer for further study and report or the managers may dismiss the proceeding.

When a final resolution is adopted, the matter shall proceed like a project instituted by petition under this chapter. Upon filing by the managers with the auditor of a county of a statement listing the property and corporations benefited or damaged or otherwise affected by any project under this subdivision as found by the appraisers and approved by the managers, proceedings shall begin under section 112.60.

History: 1955 c 799 s 15; 1959 c 243 s 1; 1961 c 601 s 9,10; 1965 c 647 s 1; 1969 c 1072 s 6,7; 1973 c 123 art 5 s 7; 1973 c 712 s 6-8; 1978 c 513 s 3; 1982 c 540 s 12-14; 1985 c 172 s 114; 1987 c 229 art 3 s 1; 1987 c 239 s 133

112.49 SURVEYS; PLANS.

Subdivision 1. Contents of plan. If it appears to the managers that the petition is sufficient, that the proposed project promotes the public interest and welfare and is practicable and in conformity with the overall plan of the district, they shall properly identify the proceeding by name and number. As soon as possible, they shall have necessary surveys and maps made for the proposed project as provided in this subdivision. The engineer designated by the managers shall report to the managers findings and recommendations about the proposed project. If the engineer finds the improvement feasible the engineer shall include in the report a plan of the proposed project including:

(1) a map of the area to be improved, drawn to scale, showing the location of the proposed improvements; the location and adequacy of the outlet; the watershed of the project area; the location of existing highways, bridges, and culverts; all lands, highways, and utilities affected, and the names of the known owners; the outlines of public lands and public bodies of water affected; and other physical characteristics of the watershed necessary for the understanding of the area;

(2) the estimated total cost of completing the project, including costs of construction, supervision, and administration;

(3) the acreage which will be required and taken as right-of-way listed by each lot and 40-acre tract, or fraction of a lot or tract, under separate ownership; and

(4) other details and information to inform the managers of the practicability and necessity of the proposed project together with the engineer's recommendations on these matters.

Subd. 2. State and federal project plans. The engineer may adopt and approve and include as a part of the report, any project of the state or the United States which is pertinent to the project. The engineer may accept any data, plats, plans, details, or information pertaining to the state or federal project furnished to the engineer by the state or federal agency. The engineer shall omit from the report the items called for in subdivision 1 if the data furnished by the state or federal agency meets the requirements of subdivision 1.

Subd. 3. Hearing. If the engineer's report is unfavorable the managers shall, within 35 days thereafter, order a time and place within the district for a hearing at which the petitioners shall show cause why the managers shall not refer the petition back to the petitioners for further proceedings that the managers may determine, or the managers may dismiss the petition. The notice must state that the engineer's report is unfavorable, that it is on file with the managers and is subject to inspection, and the time and place for hearing on it. The managers shall mail a copy of the notice to each of the petitioners at least 14 days before the hearing.

Subd. 4. Petition dismissal. The petitioners may dismiss the petition, upon payment of costs and expenses.

Subd. 5. [Repealed, 1963 c 834 s 26]

Subd. 6. Director and board reports. When the engineer's report is filed, the managers must send a complete copy to the director and the board.

The director and the board shall examine the report and within 30 days report on it to the managers. If they find the report incomplete and not in accordance with this chapter, they shall so report. If they approve it as being a practical plan they shall so state. If they do not approve the plan they shall file their recommendations for changes they find advisable. If in their opinion the proposed project or improvement is not practical they shall so report. If a soil survey appears advisable they shall so advise. In that case the engineer shall make the soil survey and report on the survey before the final hearing. Their reports shall be directed to and filed with the managers. The reports are advisory only.

No notice shall issue for the hearing until the board's and the director's reports are filed or the time for filing them has expired.

Subd. 7. Engineering reports. The findings, recommendations, and content of engineering reports for projects under this chapter must conform as nearly as practicable to the requirements of this section. The managers must send a copy of each report to the board.

History: 1955 c 799 s 16; 1959 c 242 s 1-3; 1961 c 601 s 11; 1963 c 834 s 6,7; 1967 c 634 s 9; 1969 c 1072 s 8; 1978 c 513 s 4; 1982 c 540 s 15,16; 1986 c 444; 1987 c 229 art 3 s 1

112.50 APPRAISALS.

Subdivision 1. Appointment; duties. When the engineer's report is filed the managers shall, with the least possible delay, appoint three disinterested resident freeholders of the state to act as appraisers. The appraisers shall sign an oath to faithfully and impartially perform their duties. With or without the engineer, they shall determine the benefits or damages to all lands and properties affected by the proposed project or improvement, including lands owned by the state or a state department, highways, and other property likely to be affected by the proposed improvement or that may be used or taken for its construction or maintenance. Benefits and damages to lands owned by the state or a state department held and used for the purposes described in sections 106A.025 and 106A.315, subdivision 1, shall be determined subject to those sections, so far as applicable. Each appraiser may be paid on a per diem basis for every day necessarily engaged in the performance of duties and for actual and necessary expenses. The compensation must be fixed by the managers, to be paid by the district and included in the cost of improvement. The managers of the watershed districts may use the following procedure to determine benefits and damages. When the engineer's report is filed, the managers with the help of the engineer shall determine the benefits or damages to all lands and properties affected by the proposed project or improvement. The lands and properties include lands owned by the state or a state department, highways, and other property likely to be affected by the proposed improvement or that may be used or taken from its construction or maintenance. Benefits and damages to lands owned by the state or a state department held and used for the purposes described in sections 106A.025 and 106A.315, subdivision 1, must be determined subject to those sections, so far as applicable. The managers shall also determine the amount to be paid and generally assessed by the watershed district for the basic water management portion of improvement projects.

Subd. 2. [Repealed, 1959 c 313 s 2]

Subd. 3. [Repealed, 1959 c 313 s 2]

History: 1955 c 799 s 17; 1959 c 313 s 1; 1961 c 601 s 12; 1963 c 834 s 8; 1971 c 662 s 3; 1978 c 513 s 5; 1985 c 172 s 115; 1986 c 444; 1987 c 229 art 3 s 1

112.501 BENEFITED PROPERTY; DETERMINATION.

Subdivision 1. Appraisers' standards. If the proposed improvement includes construction or improvement of a ditch, stream, river, or watercourse, or a structure for the control or alleviation of damages from flood waters, the appraisers shall be governed by sections 106A.311 to 106A.321.

Subd. 2. **Determination of benefits.** In proceedings under this chapter assessments for benefits against lands must be made upon benefits to the lands by reason of the project or improvement affecting them. Benefits and benefited properties include:

(1) Lands, including lands owned by the state or a subdivision of the state receiving direct benefits. Direct benefits include but are not limited to assessments for drainage, recreation, commercial navigation, disposal of sewage or waste material, bank stabilization, flood control, land reclamation, prevention of siltation, control of erosion, and maintenance of lake levels.

(2) Lands that are contributing water or are furnished an improved drainage outlet and lands that contribute waters that are stored, handled, or controlled by the proposed improvement.

(3) Lands that are not receiving but need drainage and that are furnishing waters that are handled or controlled by the proposed improvement.

(4) Benefits to the state by reason of the improvement of lakes, streams, or other bodies of water as a place for propagation, protection, and preservation of fish and other forms of wildlife. These benefits are assessable against the state to the extent and in the manner provided for assessments against the state in section 84A.55, subdivision 9, and within the available appropriation.

(5) Benefits to municipal corporations that occur to the lands in the municipality generally and which may be in addition to special benefits to specific lands within the municipality.

(6) Benefits that will result to all lands used for railway or other utility purposes.

History: 1959 c 272 s 1; 1961 c 563 s 3; 1963 c 834 s 9,10; 1965 c 774 s 1,2; 1969 c 1072 s 9; 1985 c 172 s 116; 1987 c 229 art 3 s 1

112.51 APPRAISERS' REPORT; EXAMINATION.

When the appraisers' report is filed the managers shall examine it to determine if it conforms to the requirements of this chapter, and if the total benefits found are greater than the total estimated costs and damages. If the appraisers' report is lacking in any particulars the managers may return it to the appraisers for further study and report.

History: 1955 c 799 s 18; 1987 c 229 art 3 s 1

112.52 HEARING UPON PETITION AND REPORTS.

Upon the filing of the report of the engineer and the appraisers appointed by the managers, the managers shall, within 35 days thereafter, order a time and place within the district for a hearing on the petition or resolution and reports. Due notice of the hearing must be given by the managers as provided in this chapter.

History: 1955 c 799 s 19; 1959 c 220 s 1; 1963 c 834 s 11; 1973 c 712 s 9; 1987 c 229 art 3 s 1

112.53 NOTICE OF HEARING.

Subdivision 1. **Contents of notice.** The managers shall by publication give notice of the pendency of the petition or resolution; the time and place for hearing on it; and that the engineer's and appraisers' reports, including the plans, have been filed with the managers and are subject to inspection. The notice shall contain a brief description of the proposed project, together with a description of the properties benefited or damaged, the names of the owners of the properties, and the public and other corporations affected by the project as shown by the engineer's and appraisers' reports. A map of the affected area may be included in the notice instead of the names of the owners or of the descriptions of the properties affected by the project or both. The notice shall require all parties interested in the proposed project to appear before the managers at the time and place designated in the notice to present any objections they may have, and to show cause why an order should not be made by the managers granting the

petition, confirming the reports of the engineer and appraisers, and ordering the establishment and construction of the project.

Subd. 2. Mailing. The managers shall give notice by mail, within one week after the beginning of publication, to the director and to each person, corporation, and public body that owns property benefited or damaged by the proposed improvement as shown by the engineers and appraisers report. The notice must contain a brief description of the proposed improvement and state:

(1) that the engineer's and appraisers' report are on file with the managers and available for public inspection;

(2) the time and place of hearing; and

(3) that the addressee's name appears as an affected party.

Subd. 3. Special requirements; acquiring land. When it is required that the managers acquire land in fee simple estate, they shall, before the filing of the appraiser's report, record in the office of county recorder of the county in which the lands are situated, a notice of the pendency of a proceeding initiated by the managers to acquire the lands. The notice must state the purpose for which the lands are to be taken. At least 20 days before the hearing, notice of the hearing in addition to that required in subdivisions 1 and 2 must be served upon owners of the property, in the same manner as the summons in a civil action. The notice must describe the land, state by whom and for what purpose it is to be taken, and give the names of all persons appearing of record or known to the managers to be the owners. The notice must also state that benefits and damages have been determined, and that a hearing will be held by the managers at the time and place specified in the notice.

Subd. 4. Special notice; land in two or more counties. If the improvement affects the lands and properties in more than one county, separate notices must be prepared and published in each county affected. The notices must include a general description of the proposed improvement and the names and descriptions of the properties affected in the county or, instead of the names or descriptions or both, a map of the area affected in the county. Notice by mail as provided in subdivision 2 must be given.

History: 1955 c 799 s 20; 1961 c 601 s 13,14; 1963 c 834 s 12-15; 1973 c 712 s 10; 1976 c 181 s 2; 1981 c 256 s 3-5; 1982 c 540 s 17; 1987 c 229 art 3 s 1

112.54 HEARING BEFORE MANAGERS.

At the time and place specified in the notice, the managers shall hear all parties interested for and against the establishment of the proposed improvement and confirming the reports. Questions about the proposed improvement including jurisdiction, sufficiency of the petition or resolution, practicability, and necessity must be determined upon evidence presented at the hearing. Findings made by the managers before the hearing are not conclusive but are subject to further investigation, consideration, and determination at the hearing. The managers may order the modification of the engineer's report within the scope of the overall improvement plan for the district and the assessment of benefits and damages and amend the list of property reported as assessable for the construction and maintenance of the improvement. If the amended reports include property not included in the original reports, the managers shall adjourn and publish and mail, as in the original notice, the proper notice with reference to all lands and properties not included in the previous notice. If upon full hearing the managers find that the improvement will be conducive to public health and promote the general welfare, and is in compliance with this chapter, and that its benefits will be greater than the cost of the construction and damages, they shall make findings accordingly and order and direct the construction of the improvement and confirm the report of the engineer and the findings and report of the appraisers. The managers may by the order authorize the construction of the proposed improvement as a whole or different parts separately. The managers shall order the engineer to proceed to make the necessary surveys and prepare the plans and specifications needed to construct the proposed improvements and report them to the managers with reasonable dispatch. The hearing

then shall be recessed to await the engineer's report and receipt of bids, when it may again be recessed to allow compliance with section 112.541 if it applies.

History: 1955 c 799 s 21; 1959 c 241 s 1; 1963 c 834 s 16; 1973 c 712 s 11; 1987 c 229 art 3 s 1

112.541 PROCEDURE WHEN CONTRACT IS NOT LET.

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

History: 1963 c 834 s 18; 1985 c 172 s 117; 1986 c 444; 1987 c 229 art 3 s 1

112.55 ORDER OF MANAGERS ESTABLISHING IMPROVEMENT; FILING.

An order of the managers establishing the improvement and authorizing its construction must immediately be filed with the secretary of the district. A certified copy of the order must be filed with the auditor of each county affected, the board, the commissioner, the director, the Minnesota pollution control agency, and the state department of health.

History: 1955 c 799 s 22; 1973 c 712 s 12; 1978 c 513 s 6; 1987 c 229 art 3 s 1

112.56 [Repealed, 1963 c 834 s 26]

112.57 BIDS.

After the managers have ordered the establishment of each improvement, they shall call for bids for the construction of the work. They shall give notice of the call for bids by publishing the time and place when the bids will be opened for letting a contract for the construction of the work. The contract may be let in sections or as a whole, as the managers may direct. Notice must be published in at least one of the newspapers in the state where such notices are usually published. At a time and place specified in the notice, the managers may accept or reject any bids and may let the contract to the lowest responsible bidder, who shall give a bond, with ample security, conditioned for the carrying out of the contract. Bids must not be considered which in the aggregate exceed by more than 30 percent the total estimated cost of construction. The contract must be in writing and be accompanied by or refer to the plans and specifications for the work to be done and prepared by the engineer for the district. The plans and specifications become a part of the contract. The contract must be approved by the managers, signed by the president and secretary, and by the contractor.

History: 1955 c 799 s 24; 1963 c 834 s 17; 1987 c 229 art 3 s 1

112.58 EMERGENCY PROCEDURES.

If the managers find that there is a clear and imminent danger to the health or welfare of the people of the district, and that to delay action would prejudice the interests of the people or would be likely to cause irreparable harm, the managers may declare an emergency and designate its location, nature, and extent. When an emergency has been declared, and to the extent necessary to protect the interests of the district, the managers may order that work be done under the direction of the managers and the engineer, without a contract. The cost of work undertaken without a contract may be assessed against benefited properties or, if the cost is not more than 25 percent of the latest administrative ad valorem levy of the district and the work is found to be of common benefit to the district, may be raised by an ad valorem tax levy upon all taxable property within the district, or both.

History: 1955 c 799 s 25; 1982 c 540 s 18; 1987 c 229 art 3 s 1

112.59 CONTROL OF CONTRACTS.

When contracts are let by the managers, they have full control of all matters pertaining to the contracts. If a contractor fails to complete the improvement within

the time or in the manner specified in the contract, the managers may extend the time for completion or refuse an extension of time or cancel the contract and readvertise and relet the contract. They may require the surety for the contractor to complete the improvement or have the contract otherwise completed at the expense of the contractor and the surety. They may take other action with reference to the contract as the occasion requires in the interest of the district. Chapter 106A, so far as pertinent, govern the relations between the engineer and the contractor, including the examination and report of the engineer and the amount and time of payment. The managers shall keep an accurate account of all expenses incurred. The account must include the compensation of the engineer and the assistants, the appraisers as provided in section 112.50, and the petitioners' attorney; the cost of petitioners' bond; the fees of all county officials necessitated by the improvement, which shall be in addition to all fees otherwise allowed by law; and the time and expenses of all employees of the district, including the expenses of the managers while engaged in any improvement. The fees and expenses provided for in this section shall be audited, allowed and paid upon the order of the managers and must be charged to and be treated as a part of the cost of the improvement.

History: 1955 c 799 s 26; 1961 c 601 s 15; 1985 c 172 s 118; 1986 c 444; 1987 c 229 art 3 s 1; 1987 c 239 s 134

112.60 ASSESSMENTS; LEVIES.

Subdivision 1. Auditor's duties. When the managers file with the auditor of any county a statement listing the property and corporations benefited or damaged or otherwise affected by any improvement as found by the appraisers and approved by the managers, the auditor shall assess the amount specified in the list against the lands and municipalities or other corporations as specified in the list in accordance with the pertinent provisions of chapter 106A.

Subd. 1a. Assessment notice for metropolitan watersheds. For a watershed district entirely within the metropolitan area, the auditor must mail an assessment notice to property owners and corporations benefited and damaged before the assessment is made in subdivision 1. The assessment notice must include:

- (1) the amount to be specially assessed against the property;
- (2) the right of the property owner to prepay the entire assessment and to whom prepayment must be made;
- (3) whether partial prepayment of the assessment is authorized;
- (4) the time within which prepayment may be made without interest being charged; and
- (5) the rate of interest to be charged if the assessment is not prepaid within the required time period.

Subd. 2. County board duties. When a statement is filed as provided in subdivision 1, the county board of each county affected shall provide funds to meet its proportionate share of the total cost of the improvements, as shown by the report and order of the managers of the district. For that purpose it may issue bonds of the county in the necessary amount as provided by section 106A.635. If an improvement is to be constructed under section 112.69, section 106A.635 requiring the county board to let a contract for construction before issuing bonds does not apply to bonds issued to provide the funds required by this section.

Subd. 3. Levy and collection. The respective county auditors and county treasurers shall levy and collect the amount shown in the tabular statement and lien as provided in sections 106A.601 to 106A.631. All money received by the treasurer of any county from the sale of bonds, assessments, or otherwise, for the benefit of the district must be accounted for by the auditor and paid over to the treasurer of the district.

Subd. 4. Exceptions. No assessment shall be levied against any property or corporations benefited under this chapter in excess of the amount of benefits received

as fixed by the order of the managers authorizing the construction of the improvement or subsequently determined on appeal.

Subd. 5. **Prepayment for metropolitan watershed districts.** (a) For a watershed district entirely within the metropolitan area, a property owner or corporation may prepay the entire assessment at any time before the first installment of the assessment is entered on the tax lists for the year with the interest that has accrued to the date of payment, except that interest may not be charged on an assessment that is prepaid within 30 days after the assessment notice is mailed.

(b) After the first installment of an assessment is entered on the tax list, a property owner or corporation may prepay the entire assessment remaining due before November 15 with interest accrued to December 31 of the year in which the prepayment is made.

History: 1955 c 799 s 27; 1963 c 41 s 1; 1985 c 172 s 119-121; 1986 c 444; 1987 c 207 s 1,2; 1987 c 229 art 3 s 1; 1987 c 239 s 135

112.61 FUNDS OF DISTRICT.

Subdivision 1. **Enumeration of funds.** The money of a district organized under this chapter consists of the funds described in subdivisions 2 to 8.

Subd. 2. **Organizational expense fund.** The organizational expense fund consists of an ad valorem tax levy, not to exceed two-thirds of one mill on each dollar of gross tax capacity of all taxable property within the district or \$60,000 whichever is less. The funds shall be used for organizational expenses and preparation of an overall plan for projects and improvements. The managers of the district may borrow from the affected counties up to 75 percent of the anticipated funds to be collected from the organizational expense fund levy and the counties affected may make the advancements. The advancement of anticipated funds shall be apportioned among affected counties in the same ratio as the gross tax capacity of the area of the counties within the district bears to the gross tax capacity of the entire district. If an established district is enlarged, an organizational expense fund may be levied against the area added to the district in the way provided in this subdivision. Unexpended funds collected for the organizational expense may be transferred to the administrative fund and used for the purposes authorized for it.

Subd. 3. **Administrative fund.** The administrative fund consists of an ad valorem tax levy not to exceed one mill on each dollar of gross tax capacity of all taxable property within the district, or \$125,000, whichever is less. The funds shall be used for general administrative expenses and to construct and maintain projects of common benefit to the district. The managers may make an annual levy for this fund as provided in section 112.611. In addition to the annual administrative levy, the managers may annually levy a tax of not to exceed one-third of one mill for a period of not to exceed 15 consecutive years to pay the cost attributable to the basic water management features of projects initiated by petition of a municipality of the district.

Subd. 4. **Bond fund.** The bond fund consists of the proceeds of bonds issued by the district under this chapter, secured upon the property of the district which is producing or is likely to produce a regular income. The bond fund is to be used to pay the purchase price of the property or its value as fixed by the court in proper proceedings and for its improvement and development.

Subd. 5. **Construction fund.** The construction fund is supplied by the sale of county bonds; construction loans from any agency of the federal government; and by special assessments levied under this chapter to supply funds to construct the improvements of the district, including reservoirs, ditches, dikes, canals, channels, and other works, together with the expenses connected with it. Construction loans from any agency of the federal government may be repaid from money collected by special assessments upon properties benefited by the improvement under this chapter.

Subd. 6. **Preliminary fund.** The preliminary fund consists of funds provided under this chapter and is used for preliminary work on proposed works of the district.

Subd. 7. Repair and maintenance funds. The repair and maintenance funds are established under section 112.64.

Subd. 8. Survey and data acquisition fund. The survey and data acquisition fund is established or used only when no other funds are available to the district to pay to make necessary surveys and acquire data. The fund consists of an ad valorem levy, which can be levied not more than once every five years, not to exceed one mill on each dollar of gross tax capacity of all taxable property within the district. The balance of the survey and data acquisition fund must never exceed \$50,000. In a subsequent proceeding for a work where a survey has been made, the attributable cost of the survey as determined by the managers shall be included as a part of the cost of the work and repaid to the survey and data acquisition fund.

History: 1955 c 799 s 28; 1959 c 271 s 1; Ex1959 c 67 s 1; 1961 c 601 s 16; 1963 c 834 s 19; 1965 c 648 s 1,2; 1967 c 634 s 10-12; 1969 c 1072 s 10; 1971 c 662 s 4; 1973 c 773 s 1; 1978 c 513 s 7; 1982 c 540 s 19; 1987 c 229 art 3 s 1; 1988 c 719 art 5 s 84

112.611 BUDGET; TAX LEVY.

Subdivision 1. Budget procedures. On or before October 1 of each year the managers shall adopt a budget for the ensuing year and decide the total amount necessary to be raised from ad valorem tax levies to meet its budget. Before adopting a budget the managers shall hold a public hearing on the proposed budget. The managers shall publish a notice of the hearing together with a summary of the proposed budget in one or more newspapers of general circulation in each county into which the watershed district extends. The notice and summary must be published once each week for two successive weeks before the hearing. The last publication must be at least two days before the hearing.

After adoption of the budget and no later than October 1, the secretary of the district shall certify to the auditor of each county within the district the county's share of the tax. The share must be an amount bearing the same proportion to the total levy as the gross tax capacity of the area of the county within the watershed bears to the gross tax capacity of the entire watershed district. The maximum amount of any levy must not exceed that provided for in section 112.61.

Subd. 2. Tax levy and collection. The auditor of each county in the district shall add the amount of any levy made by the managers to the other tax levies on the property of the county within the district for collection by the county treasurer with other taxes. When collected, the county treasurer shall make settlement of the taxes with the treasurer of the district in the same way as other taxes are distributed to the other political subdivisions. The levy authorized by this section is in addition to any other county taxes authorized by law.

History: 1959 c 256 s 1; 1963 c 834 s 20; 1981 c 88 s 1; 1987 c 229 art 3 s 1; 1988 c 719 art 5 s 84

112.62 PRELIMINARY FUND.

Subdivision 1. Petition. When a proper petition has been filed with the managers for the construction of a project within the district, the managers may file a petition with the district court in the county where the district has its principal place of business asking that a preliminary expense fund be created for the district. The managers may later amend or supplement the petition if necessary. At least ten days' notice of a petition or amended or supplementary petition must be given to the auditor of each county affected by the proposed project. The fund applied for must be of a size proportionate to meet the needs of the district for preliminary work on the proposed project.

Subd. 2. District court; establishment of fund. The district court upon hearing may designate the amount of the fund and fix the proportionate amount that each county affected by the improvement shall pay, in proportion to the area in the county affected by the proposed improvement. The court shall order the auditor of each

county to draw a warrant on the treasurer of the county to pay the amount specified in the order to the treasurer of the district. The sum so advanced by the county must be charged to the district and repaid with interest as soon as the district has funds for that purpose. The funds provided must be used by the managers for preliminary work. When the managers incur expenses for surveys or other preliminary work on a proposed improvement, all expenses connected with the work must be included in the cost of its construction. When the construction of the improvement is authorized by the managers the funds advanced from the preliminary fund must be repaid out of receipts from assessments.

Subd. 3. [Repealed, 1963 c 834 s 26]

Subd. 4. **Appropriations.** The state, a state department, or political subdivision may appropriate sums necessary to pay its proportionate share of preliminary expenses. The proportionate share must be determined by the managers according to the benefits that will probably accrue to the corporation from the contemplated improvements.

Subd. 5. **District court powers.** The district court may order a preliminary fund for all works of the district begun under section 112.47.

History: 1955 c 799 s 29; 1963 c 834 s 21,22; 1978 c 513 s 8; 1982 c 540 s 20; 1986 c 444; 1987 c 229 art 3 s 1

112.63 WARRANTS.

The managers of a district may issue warrants of the district to pay contracts for the construction of improvements, for ordinary general expenses, and for expenses incurred in making repairs, which have been approved by the managers only when there are sufficient funds available for payment in the district treasury.

History: 1955 c 799 s 30; 1969 c 1072 s 11; 1987 c 229 art 3 s 1

112.64 REPAIR OF IMPROVEMENTS.

Subdivision 1. **Managers' duties.** The managers are responsible for maintaining the projects of the district so that they will accomplish the purposes for which they were constructed. The cost of normal or routine maintenance of the projects of the district, and the cost of removing obstructions and accumulations of foreign substances from a drainage system, must be paid from the maintenance fund upon the order of the managers.

Subd. 2. **Creation of maintenance fund.** To create a maintenance fund for routine maintenance of a project, the managers may apportion and assess the amount of the fund against all the parcels of land and municipal corporations previously assessed for benefits in proceedings for the construction of the project. The assessment must be made pro rata according to benefits determined. No assessment for the benefit of the maintenance fund shall be made when the fund exceeds 20 percent of the original cost of construction of the project. Upon receiving the assessment order from the managers, the auditors of the counties affected shall file for record in the offices of the county recorders for the counties a tabular lien statement covering the assessment. The assessment must be collected as provided in the order in the same way as provided in section 106A.731. Before ordering the levy of an assessment for the benefit of the maintenance fund, the managers may give notice of a hearing on the matter.

Subd. 3. **Repairs other than normal maintenance.** The managers may order repairs other than routine maintenance if the engineer certifies to them in the annual report or otherwise:

(1) that an improvement of the district is in such a state of disrepair that it cannot be restored by routine maintenance to its condition when originally constructed or later improved;

(2) that a ditch or channel must be widened or deepened; or

(3) that an improvement of the district must be altered or improved to attain the level of operating efficiency contemplated at the time of the original construction.

Before ordering any repairs other than routine maintenance, the managers shall order the engineer to prepare and submit technical and cost specifications on the work necessary to restore or improve the improvement to the desired level of operating efficiency. Upon receiving the engineer's report, the managers shall set a date for hearing on the report and give notice of the hearing in the same manner as in the original proceeding on the construction of the improvement. If upon hearing the managers find that the repair or improvement is in compliance with the provisions and necessary to accomplish the purposes of this chapter, and that the cost of the repair or improvement will not exceed its benefits, they may order the repair or improvement and assess the cost against the benefited properties. The cost shall be apportioned and assessed pro rata upon all lands and property that were assessed for the construction of the improvement. No single levy for repair shall exceed the amount of benefits originally determined.

The managers shall file a copy of the order for levy with the auditor of each county that contains affected properties. The auditor shall extend the levy against affected properties as in proceedings for the levy, assessment, and collection of taxes levied in drainage proceedings conducted under sections 106A.005 to 106A.811.

Subd. 3a. Notice and prepayment for metropolitan watersheds. For a watershed district entirely within the metropolitan area, the auditor must mail an assessment notice to the owners of affected property as provided in section 112.60, subdivision 1a, before the assessment is levied. The assessment may be prepaid as provided in section 112.60, subdivision 5.

Subd. 4. Bidding requirements. If the managers find that the estimated cost of repair, including all fees and costs incurred for related proceedings, is less than \$20,000, it may have the work done by contract without advertising for bids.

History: 1955 c 799 s 31; 1965 c 775 s 1; 1967 c 634 s 13,14; 1973 c 712 s 13; 1976 c 181 s 2; 1982 c 540 s 21; 1985 c 172 s 122,123; 1986 c 444; 1987 c 207 s 3; 1987 c 229 art 3 s 1

112.65 DRAINAGE SYSTEMS WITHIN DISTRICT.

Subdivision 1. Managers' control. The managers of a district shall take over when directed by a joint county drainage authority or county board any joint county or county drainage system within the district, together with the right to repair and maintain it. The transfer may be initiated by the joint county drainage authority or county board. It may also be initiated by a petition from any person interested in the drainage system or by the managers. The transfer must not be made until the joint county drainage authority or county board has held a hearing on it. Notice of the proposed transfer together with the time and place of hearing must be given by two weeks published notice in a legal newspaper of general circulation in the area involved. All interested persons may appear and be heard. Following the hearing, the joint county drainage authority or county board shall order that the managers of a district take over the affected joint county or county drainage system, unless it appears that the takeover would not be for the public welfare or be in the public interest and would not serve the purpose of this chapter. When the transfer is directed all proceedings for repair and maintenance must conform to chapter 106A.

Subd. 2. Construction or improvement. Construction of new drainage systems or improvements of existing drainage systems in the district must be initiated by filing a petition with the managers. In all proceedings for the construction or improvement of drainage systems in the district, the managers shall conform to chapter 106A.

History: 1955 c 799 s 32; 1959 c 240 s 1; 1967 c 634 s 15,16; 1969 c 1072 s 12; 1982 c 540 s 22; 1985 c 172 s 124; 1987 c 229 art 3 s 1; 1987 c 239 s 136; 1988 c 445 s 2

112.66 DAMAGE TO HIGHWAY OR BRIDGE BY PASSAGE OF EQUIPMENT.

If it is necessary to pass a dredge or other equipment through a bridge or grade of a highway or railroad owned by a corporation, county, town, or municipality, the

managers shall give 20 days' notice to the owner of the bridge or grade so that it may be removed temporarily to allow the passage of the equipment, or an agreement may be immediately entered into for the purpose. The owner of the bridge or grade shall keep an itemized account of the cost of removal and if necessary, of replacing of the bridge or grade. The actual cost must be paid by the district. If the owner of the bridge or grade refuses to provide for the passage of the equipment, the managers may remove the bridge or grade at the expense of the district, interrupting traffic in the least degree consistent with good work and without delay or unnecessary damage. If the managers are prevented from doing so, the owner of the bridge or grade is liable for the damages resulting from the delay.

History: 1955 c 799 s 33; 1987 c 229 art 3 s 1

112.67 CONTRACTS OF COOPERATION AND ASSISTANCE.

The managers may make contracts or other arrangements with the United States government, or any federal department, with persons, railroads, or other corporations, with public corporations, and the state government of this state or other states, or any state department, with drainage, flood control, soil conservation, or other improvement districts, in this state or other states, for cooperation or assistance in constructing, maintaining, and operating the works of the district, or for the control of its waters, or for making surveys and investigations or reports on them. The managers may purchase, lease, or acquire land or other property in adjoining states to secure outlets, to construct and maintain dikes or dams or other structures for the purposes of this chapter.

History: 1955 c 799 s 34; 1987 c 229 art 3 s 1

112.68 OTHER STATUTES APPLICABLE.

Sections 471.59 and 471.64 apply to districts organized under this chapter.

History: 1955 c 799 s 35; 1987 c 229 art 3 s 1

112.69 CONSTRUCTION BY GOVERNMENTAL AGENCIES; PROCEDURE; CONVEYANCES TO FEDERAL GOVERNMENT.

Subdivision 1. Hearing; appraisal. If an improvement is to be constructed within the district under a contract between the managers of the district and the state, or any state department, or by the United States, or any federal department, and if the cost of construction is to be paid by the governmental agency but the rights-of-way, legal, and general expenses of the improvement are to be paid by the district, the managers shall forward a copy of the improvement plan to the board and director for their reports on it.

They shall then hold a public hearing on the proposed contract authorized by section 112.67 following publication of notice. Notice must be published once each week for two successive weeks before the date of the hearing in a legal newspaper, published in the counties in which a part or all of the affected waters and lands are located. The last publication must occur at least ten days before the hearing. The notice must state the time and place of hearing, the general nature of the proposed improvement, its estimated cost, and the area proposed to be assessed. At least ten days before the hearing, notice must be mailed to each resident owner, as shown on the county auditor's most recent records maintained for taxation purposes, within the area proposed to be assessed, and to the director and to each public body within the area to be assessed likely to be affected. Failure to give mailed notice or defects in the notice do not invalidate the proceedings.

At the time and place specified in the notice the managers shall hear all interested parties for and against the proposed project or improvement. All questions relative to it must be determined upon evidence presented at the hearing. If the managers find that the improvement will be conducive to public health and promote the general welfare, and complies with this chapter, they shall make findings accordingly, authorize

the project, and make the proposed contract or other arrangement. The managers shall then appoint three disinterested freeholders of the state to act as appraisers. After the appraisers sign an oath to faithfully and impartially perform their duties, they shall, with or without the engineer, determine the benefits or damages to property affected by the proposed improvement. They shall make and file with the managers a detailed statement showing the actual damages that have resulted or will result to individuals, property, or corporations from the construction of the improvement. They shall make and file with the managers a detailed statement and list of property, including highways and corporations, receiving actual benefits by way of drainage, control of flood waters, or other means authorized in this chapter.

Subd. 2. Hearing on appraisers' report. Upon the filing of the appraisers' report and the plans and engineering data prepared by the governmental agency the managers shall prepare a detailed statement of all costs including damages to be incurred by the district in construction of the improvement. They shall, within 35 days thereafter, order a time and place within the district for a hearing upon the appraiser's report. The managers shall give notice by publication and mailing as provided in subdivision 1 for a hearing on a petition. At the time and place specified in the notice, the managers shall hear all parties interested for and against the confirming of the report. They may order and direct the modification of the assessment of benefits and damages, and amend or change the list of properties reported as benefited or damaged. If the amended reports include property not included in the original report, the managers shall adjourn and publish and mail as in the original notice the proper notice concerning all lands and properties not included in the previous notice. If upon full hearing the managers find that the benefits resulting from the construction will be greater than the assessments including damages they shall confirm the report. Persons or public corporations affected by the order may appeal it under this chapter.

Upon filing by the managers with the auditor of a county a statement listing the property and corporations benefited or damaged or otherwise affected by an improvement as found by the appraisers and approved by the managers, proceedings may be brought under section 112.60.

Section 112.47 does not apply to works of the district constructed under contract as provided in this section.

Subd. 3. Taking land; proceeding. When the managers are required to acquire the fee simple estate or a lesser interest in real property according to this section or convey to the United States government the fee simple estate or a lesser interest in real property, the managers shall, before the filing of the appraiser's report, record in the office of the county recorder of the county in which the lands are situated, a notice of the pendency of a proceeding initiated by the managers to acquire the lands to be conveyed to the United States government. The notice must state the purpose for which the lands are to be taken. At least 20 days before the hearing upon the appraiser's report, notice of the hearing in addition to that required by subdivision 2 must be served upon the owners of the property to be acquired, in the same manner as the summons in a civil action. The notice must describe the land, state by whom and for what purpose it is to be taken, and give the names of all persons appearing of record or known to the managers to be the owners. The notice must also state that appraisers have been appointed as provided by subdivision 1, to determine the benefits and damages, and that a hearing will be held by the managers on the appraiser's report at the time and place specified in the notice. When the managers have confirmed the appraiser's report listing the property benefited or damaged as provided in subdivision 2, the managers have all rights of possession and entry conferred in other cases of condemnation by chapter 117. After confirmation, the attorney for the managers shall make a certificate describing the land taken and the purpose for the taking, and reciting the fact of payment of all awards determined by the appraisers appointed by the managers or judgments in relation to the land. When approved by the managers, the certificate establishes the right of the watershed district in the lands taken. It must be filed for record with the county recorder of the county containing the lands. It

constitutes notice to all parties of the title of the watershed district to the lands described in it. The managers may then convey the lands and interests acquired to the United States government, if necessary.

History: 1955 c 799 s 36; 1961 c 601 s 17; 1963 c 42 s 1; 1965 c 649 s 1; 1973 c 35 s 26; 1973 c 712 s 14; 1976 c 181 s 2; 1978 c 513 s 9; 1987 c 229 art 3 s 1

112.70 [Repealed, 1963 c 798 s 16 subd 2]

112.71 USE OF WATER, CONTRACTS; NOTICE, HEARING.

The rights of private or corporate landowners to use the waters of the district for any purpose shall continue as they existed at the time of the organization of the district. All rights then existing must be recognized by the managers, but when improvements made by the district make possible a greater, better, or more convenient use of or benefit from the waters of the district for any purpose, the right to the greater use or benefit is the property of the district. The district may lease or assign the rights in return for reasonable compensation, as provided in this section.

Leases, assignments, permits, or contracts for the use of water shall be entered into only after the managers of the district have reported to the board the terms and conditions of the lease, permit, or contract relative to the use of any district property. The secretary of the board shall give due notice of the contract to all parties interested, by mail, and shall have notice of the application published. The notice must state the purpose of the application and the time and place of hearing on it. At the time of hearing the board shall hear all interested persons for or against the proposed contract and make its order accordingly on conditions and restrictions necessary to protect the interest of the district and of the public.

History: 1955 c 799 s 38; 1961 c 601 s 19; 1987 c 229 art 3 s 1

112.72 OTHER DRAINAGE LAWS, EFFECT OF REFERENCE.

When this chapter refers to particular sections of drainage laws of this state, the sections and provisions shall, if consistent with this chapter, be treated and construed as having the same effect, so far as the provisions of this chapter are concerned, as though set forth in this chapter. Amendments of those laws passed after the effective date of this chapter become applicable to this chapter.

History: 1955 c 799 s 39; 1963 c 834 s 23; 1987 c 229 art 3 s 1

112.73 ANNUAL AUDIT.

The managers shall make the reports demanded by the state auditor. The managers shall have the books and accounts of the district audited annually. The audit may be made by either a public accountant or by the state auditor. If the audit is to be made by the state auditor it must be initiated by a petition of the resident freeholders of the district or resolution of the managers of the watershed district requesting the audit under the authority granted municipalities under sections 6.54 and 6.55. If the audit is made by the state auditor the district receiving the examination shall pay to the state the total cost and expenses of the examination, including the salaries paid to the examiners while actually engaged in making the examination. The revolving fund of the state auditor must be credited with all collections made for the examinations.

History: 1955 c 799 s 40; 1957 c 95 s 1; 1965 c 513 s 1; 1973 c 492 s 14; 1987 c 229 art 3 s 1

112.74 EXISTING DISTRICTS MAY COME UNDER CHAPTER.

Any district organized before April 23, 1955, under Minnesota Statutes 1953, sections 111.01 to 111.42, or 112.01 to 112.33, may acquire the right to operate under and exercise all the rights and authority of this chapter, instead of the act under which it was organized. To do so, the governing board of the district must file a petition to the court asking that the district be granted the authority. The petition must be filed

in the office of the court administrator of the district court of the county where the governing body's principal place of business is located. The court administrator of district court, as directed by the judge, shall then set a time and place for hearing on the petition. Notice of the hearing must be published for two successive weeks in a newspaper published in each county having territory within the district. The court administrator shall give written notice of the hearing to the secretary of the board. If at the hearing the court finds that it is for the best interests of the district to be granted the authority, it may by order grant the petition. The district may then exercise the authority provided for in this chapter. Thereafter, upon petition by the managers, the name of the district, and the number and distribution of its managers shall be as the board prescribes after notice and hearing. The distribution shall take effect upon the expiration of term of office of the director of the conservancy district as the term of office of each director expires. The appointments shall be made by the county commissioners as provided in section 112.42, subdivision 3.

History: 1955 c 799 s 41; 1965 c 650 s 1; 1Sp1986 c 3 art 1 s 82; 1987 c 229 art 3 s 1

112.75 [Repealed, 1973 c 712 s 16]

112.76 CORPORATE EXISTENCE OF CERTAIN DISTRICTS; TERMINATION.

The corporate existence of any district organized under Minnesota Statutes 1953, sections 112.01 to 112.33, wherein no work has been performed during the five-year period immediately before April 23, 1955, shall be terminated unless within one year thereafter the district makes application for authority to continue its corporate existence under the provisions of this chapter. The procedure to provide a record of the termination of a district must be started by a petition from the board to the district court of the county where its principal place of business is. The petition must contain a statement to the effect that no work was performed during the five-year period immediately prior to April 23, 1955, and that no application was made to continue the district's operation under this chapter. The court administrator of the district court, as directed by the judge, shall fix a time and place for hearing upon the petition. Notice of the hearing shall be given by publication for two successive weeks in a newspaper published in each county having territory within such district. If the court finds that the facts in the petition exist it shall issue an order finding the fact of the termination of the district. A copy of the order shall be filed in the office of the secretary of state.

After April 23, 1955, no new district shall be organized under Minnesota Statutes 1953, chapter 112.

The procedure for termination in this section also applies to a district organized under Minnesota Statutes 1961, sections 111.01 to 111.42, where no work has been performed during the 20-year period immediately before May 21, 1965. After May 21, 1965, no new district shall be organized under sections 111.01 to 111.42.

History: 1955 c 799 s 43; 1963 c 834 s 24; 1965 c 516 s 1; 1Sp1986 c 3 art 1 s 82; 1987 c 229 art 3 s 1

112.761 PROCEEDINGS TO ENLARGE A DISTRICT.

Subdivision 1. Petition. Proceedings to enlarge an existing district must be initiated by a petition filed with the secretary of the board. The required signatures on a petition to enlarge are the same as prescribed for a nominating petition, but the percentages must be calculated only with reference to the territory that is proposed to be added to the district. The petition must state:

- (1) that the area to be added is contiguous to the existing district;
- (2) that the area can be feasibly administered by the managers of the existing district;
- (3) reasons why adding the area to the existing district would be conducive to the public health and welfare;

- (4) a map of the affected area;
- (5) the name of the enlarged district, if other than that of the existing district; and
- (6) a request for the addition of the proposed territory.

The petition must be served and the board must proceed as prescribed for a nominating petition. The requirement of notice and public hearings is as prescribed for the nominating petition. The petition must be served on any affected watershed district.

Subd. 2. Board order. Upon the hearing, if it appears to the board that the enlargement of the district as asked for in the petition would be for the public welfare and public interest and the purpose of this chapter would be served, it shall, by its findings and order, enlarge the district and file a certified copy of the findings and order with the secretary of state. The name of the district may be changed by order of the board if requested in the petition to enlarge the district.

Subd. 3. Distribution of managers in enlarged district. If the enlarged district affects more than one county, distribution of the managers among the counties affected shall be as directed by the board in the order enlarging the district.

History: 1961 c 601 s 23; 1978 c 513 s 10; 1987 c 229 art 3 s 1

112.77 [Repealed, 1959 c 272 s 2]

112.78 FAULTY NOTICES; EFFECT.

When a notice is required for a hearing or proceeding before the board, managers, or district court, if the board or managers or court finds that due notice was not given, it does not lose jurisdiction, and the proceedings are not invalid. The board, managers, or court, in that case, shall order notice to be given. They shall continue the hearing until notice is properly given and then proceed as though notice had been properly given in the first instance. If the original notice was faulty only with reference to publication as to certain tracts, only the persons interested in those particular tracts need be notified by a later notice. If the publication of a notice in a county was defective or not made in time, notice need be given only within the county in which notice was defective.

History: 1955 c 799 s 45; 1987 c 229 art 3 s 1

112.79 HEARINGS; CONTINUANCES.

Whenever an order has been made and notice given for a hearing in any proceeding under this chapter, and the board or managers or court fails to appear at the time and place specified, the secretary of the board or managers or the court administrator of the district court shall continue the hearing to another date as necessary and notify the board or managers or the court of the continuance and the date of hearing. The matter shall be continued to that date without affecting the jurisdiction of the board, the managers, or the court.

History: 1955 c 799 s 46; 1Sp1986 c 3 art 1 s 82; 1987 c 229 art 3 s 1

112.791 [Repealed, 1965 c 873 s 3]

112.792 [Repealed, 1965 c 873 s 3]

112.80 [Repealed, 1965 c 873 s 3]

112.801 APPELLATE PROCEDURES AND REVIEW.

Subdivision 1. What can be appealed. An appeal may be had to the district court or to the board by any party, or jointly by more than one, aggrieved by an order of the managers made in any proceeding and entered upon its record determining any of the following matters:

- (1) the amount of benefits determined;
- (2) the amount of damages allowed;

- (3) the allowance of fees or expenses in any proceedings;
- (4) a matter that affects a substantial right; or
- (5) an order of the managers authorizing or refusing to establish a project and improvement in whole or in part.

Subd. 2. **Amounts awarded on appeal are substituted.** In all cases of appeal, the amount awarded by the jury or the board as finally determined shall stand for and in the place of the amount from which the appeal was taken.

Subd. 3. **Appeals from board orders.** If an appeal is taken from an order authorizing an improvement, the trial of any appeals from benefits or damages in the proceedings must be stayed until the appeal is decided. If the order authorizing is affirmed, the appeal from benefits or damages must then stand for trial as provided by this section. If the appeal is from an order refusing to authorize an improvement and the court or the board later orders the improvement, the secretary of the district shall give notice by publication of the filing of the order. The notice is sufficient if it refers to the proposed improvement by general description and recites the substance of the order and the date of filing in the court.

Subd. 4. **Appeals can involve property other than appellant's own.** Any person or public corporation appealing the amount of benefits or damages may include and have considered and determined benefits or damages affecting property other than that person's own. Notice of the appeal must be served upon the owner or occupant of the other property or upon the attorney who represented the owner in the proceedings. The notice of appeal must be served on the auditor of the county where the property is located and on the court administrator of the district court of the county where the principal place of business of the district is located, or upon the secretary of the board.

Subd. 5. **Notice of appeal.** To make the appeal effective, the appellant shall file a notice of appeal with the court administrator of the district court or the secretary of the board. It must be filed within 30 days of the date of the final order. It must state the grounds upon which the appeal is taken. It must be accompanied by an appeal bond to the district where the property is located of at least \$250. The bond must be approved by the court administrator of the district court or the secretary of the board, as the case may be. The bond must be conditioned that the appellant will prosecute the appeal, pay all costs and disbursements that may be adjudged against the appellant, and comply with the order of the court or of the board, as the case may be.

Subd. 6. **Time and place of trial.** The appeal must be tried by a jury, or by the board at a time and place fixed by it. If it is tried by a jury, it must be tried and determined at the next term of the district court held within the county in which the notice of appeal was filed, or in other counties where the appeal is heard, beginning after the filing of the appeal. Appeals take precedence over all other civil matters.

If there is more than one appeal to the board involving the same project for improvement, or if there is more than one appeal triable in one county, the court or the board may consolidate them and try them together, but the rights of the appellants must be separately determined. Consolidation may be on the court's or board's own motion or on the motion of a party in interest.

In case of appeal as to damages or benefits to property in a county other than the county where the principal place of business of the district is located, and if the appellant requests, the trial must be held at the next term of the district court of the county containing the lands. In that case, the court administrator of the district court where the appeal is filed shall make a transcript of the papers and documents on file in the court administrator's office in the proceeding so far as they pertain to the matter for which the appeal is taken. The court administrator shall certify the transcript and file it in the office of the court administrator of the district court in the county where the appeal will be tried. After the final determination of the appeal, the court administrator of the district court where the action is tried shall certify and return the verdict to the district court of the county where the proceedings were instituted.

If the appeal is to the board, the board shall file its decision with the board's

secretary. If the appeal is taken to the board from the order of the managers, the decision of the board may be reviewed by certiorari proceedings in the district court of a county in which the proposed project lies in whole or in part. If the appeal from the order of the managers is to the district court, and it appears to the court that there are involved facts, circumstances, or matters especially within the knowledge, functions, or duties of the board, the court may refer to the board as referee questions of fact within the scope of the board's knowledge, functions, and duties. The board shall make its findings of fact upon the questions and report them back to the court.

Subd. 7. Trial record. The board shall make a record of all matters tried by it on appeal or referred to it by the district court for findings of fact under this section. The record must meet the requirements of a record of the trial of a matter in district court.

Subd. 8. Administrative procedure. Proceedings before the board must conform to sections 14.57 to 14.62.

History: 1965 c 873 s 1; 1982 c 424 s 130; 1986 c 444; 1Sp1986 c 3 art 1 s 82; 1987 c 229 art 3 s 1

112.81 [Repealed, 1959 c 273 s 2]

112.82 AGGRIEVED PARTIES; RIGHTS.

Subdivision 1. Establishment; appeal. A party may appeal as in other civil cases if aggrieved by a final order or judgment given on appeal to the district court, or by the original order of the court made in proceedings heard and tried before the court.

Subd. 2. Repair; appeal. In a proceeding before the managers for the repair, improvement, maintenance, consolidation, or abandonment of any of the works of the district, the right of appeal is the same as in other civil cases.

History: 1955 c 799 s 49; 1983 c 247 s 48; 1987 c 229 art 3 s 1

112.83 [Repealed, 1959 c 405 s 2]

112.84 DUE PROCESS OF LAW.

No person shall, under this chapter, be deprived or divested of any previously established beneficial uses or rights without due process of law.

History: 1955 c 799 s 51; 1987 c 229 art 3 s 1

112.85 WITHDRAWAL OF TERRITORY.

Subdivision 1. Petition. Proceedings to withdraw territory from an existing district must be initiated by a petition filed with the secretary of the board. The required signatures on a petition for withdrawal are the same as prescribed for a nominating petition, but the percentages must be calculated only with reference to the territory that is proposed to be withdrawn from the district. The petition must state that the territory described has not received or will not receive any benefits from the operation of the district, that the district can perform the functions for which it was established without the inclusion of the territory, and that the territory is not, in fact, a part of the watershed. The petition must request the release of the described territory from the district.

The petition must be served and the board shall proceed as prescribed for a nominating petition. The requirements for notices and public hearings are as prescribed for the nominating petition. The petition must be served on any affected watershed district.

Subd. 2. Board's order of withdrawal. Upon the hearing if it appears to the board that the territory described in the petition has not and will not receive any benefit from the operation of the district and that the district can perform the functions for which it was established without the inclusion of the territory, and that the territory is not, in fact, a part of the watershed, the board may issue an order releasing the territory,

or any part of it, as described in the petition. No lands shall be released which have been determined subject to any benefits or damages for any improvement previously constructed. Territory so released remains liable for its proportionate share of any indebtedness existing at the time of the order. Levies on the lands continue in force until fully paid. If the board determines that the order prescribing the distribution of managers should be amended following the withdrawal of any territory it may so direct in the order authorizing the withdrawal.

History: 1963 c 834 s 25; 1978 c 513 s 11; 1983 c 216 art 1 s 20; 1987 c 229 art 3 s 1

112.86 CONSOLIDATION OF DISTRICTS.

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

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

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

Subd. 2. Board's order and findings. Upon the hearing, if it appears to the board that consolidation of the districts as asked in the petition would serve the public welfare, public interest and the purpose of this chapter, it shall, by its findings and order, consolidate the districts. It shall file a certified copy of the findings and order with the secretary of state. The name of the district may be changed by order of the board.

Subd. 3. New managers. The term of office of all managers of the districts consolidated shall end upon the order of consolidation. Distribution of the managers of the consolidated district shall be as directed by the board in the order of consolidation. Five managers of the consolidated district must be appointed from the managers of the districts consolidated. Their first term shall be for one year. After that, they must be appointed as provided in this chapter.

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

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

History: 1973 c 712 s 15; 1987 c 229 art 3 s 1

112.87 DAMAGES; PAYMENT.

Section 117.155 does not apply to a project financed by special assessment. When the damages for a project financed by special assessment are awarded and confirmed, the managers shall determine that the project's benefits exceed the total costs, including any damages awarded. They shall amend the project's statement filed with the county auditor under section 112.60, subdivision 1, to reflect the amount of damages awarded. Before entering upon property for which damages were awarded to begin construction of the project, the managers shall pay the amount of damages awarded less any assessment against the property from the funds provided by the county board under

section 112.60. If the amount of damages is appealed, no damages shall be paid until the final determination of the appeal.

History: 1978 c 513 s 12; 1979 c 50 s 11; 1987 c 229 art 3 s 1

112.88 FEE FOR PERMIT; BOND.

Subdivision 1. Application fee. A person applying for any permit required by the managers of a watershed district in a rule made under section 112.43, subdivision 1, clause (17), shall accompany the application with a permit application fee to defray the cost of recording and processing the application. The managers may set the fee, but it must not exceed \$10.

Subd. 2. Field inspection fee. The managers of a watershed district may charge, in addition, a field inspection fee of at least \$35. It must be used to cover actual costs related to a field inspection. These costs include investigation of the area affected by the proposed activity, analysis of the proposed activity, services of a consultant, and any required subsequent monitoring of the proposed activity. Costs of monitoring an activity authorized by permit may be charged and collected as necessary after issuance of the permit.

Subd. 3. Government agencies exempt. The fees in subdivisions 1 and 2 must not be charged to an agency of the United States or a governmental unit in this state.

Subd. 4. Bond. The managers of a watershed district may require an applicant for a permit to file a bond with the managers in an amount set by the managers and conditioned on performance by the applicant of authorized activities in conformance with the terms of the permit.

History: 1978 c 513 s 13; 1986 c 444; 1987 c 229 art 3 s 1

112.89 ENFORCEMENT.

Subdivision 1. Misdemeanor. A violation of a provision of this chapter or a rule, order, or stipulation agreement made or a permit issued by the managers of a watershed district under this chapter is a misdemeanor.

Subd. 2. Methods of enforcement. A provision of this chapter or a rule, order, or stipulation agreement made or a permit issued by the managers of a watershed district under this chapter may be enforced by criminal prosecution, injunction under section 112.43, subdivision 2, action to compel performance, restoration, abatement, and other appropriate action.

History: 1978 c 513 s 14; 1987 c 229 art 3 s 1