

CHAPTER 107

DRAINAGE; LIENS, BONDS, AND REFUNDING

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107.01 COUNTY BONDS. The county board in each county in this state wherein any state or judicial ditch is proposed to be wholly or partly located and established under the provisions of chapter 105 shall issue the bonds of their respective counties in an amount not greater than the assessments against lands in such county, as evidenced by the statement provided for by sections 105.22 and 105.23, to defray the expenses incurred in locating, constructing, and establishing as much of any ditch as may be located within such county, or in such relation to such county as to affect lands therein within the terms of Laws 1907, Chapter 470.

The word "expense" shall be construed to mean and to cover every item of the cost of the ditch from its inception to its completion and all fees and expenses incurred in pursuance thereof.

Such bonds shall pledge the full faith, credit, and resources of the county issuing the same for the prompt payment of the principal and interest thereof, and shall be payable at such time or times, not to exceed 20 years from their date, and bear such rate of interest, not to exceed six per cent per annum, payable annually or semi-annually as the county board shall by resolution determine.

Each bond shall contain a recital that it is issued by authority of and in strict accordance with the provisions of Laws 1907, Chapter 470, be signed by the chairman of the board, and countersigned by the county auditor, who shall keep a record thereof.

The county board shall have power to negotiate these bonds as it shall deem for the best interest of the county, but not for less than their par value. The proceeds from the sale of these bonds, when received by the county treasurer, shall be paid to the state treasurer and by him credited to the state drainage fund, which is hereby created. The county board shall provide moneys for the payment of the principal and interest of the bonds as they severally mature, which moneys shall be placed in the general county ditch fund, into which fund it may transfer any surplus moneys remaining in the general revenue fund or other funds of the county which can properly be used for the purposes of Laws 1907, Chapter 470, into which fund shall be paid all moneys received from the payment of any liens created under the provisions of Laws 1907, Chapter 470, and the board is hereby authorized to pay these drainage bonds out of any available funds in the county treasury when the moneys on hand in the general ditch fund of the county are insufficient to meet the payment of bonds issued in ditch proceedings when the same mature, but the fund from which such moneys shall be taken or used for the payment of bonds as they mature shall be replenished, with interest at the rate of six per cent per annum, from collections of unpaid assessments for ditches, drains, or watercourses constructed under any proceedings had under Laws 1907, Chapter 470.

[1907 c. 470 s. 23; 1913 c. 4 s. 1] (6656)

107.02 INTEREST; PREMIUM ON BONDS. The amount each tract of land, public or corporate road, shall be liable for on account of the location, construction, and establishment of any ditch under the provisions of Laws 1907, Chapter 470, shall

bear interest from the date of the filing of the auditor's statement in the office of the register of deeds at the rate of six per cent per annum until paid; provided, that when bonds are issued by the county for the construction and establishment of such ditch the same rate of interest shall be charged as the bonds so issued bear, and the interest shall constitute an additional lien on these lands or roads until fully paid, which interest, when about to be paid, shall be computed by the county auditor; provided, that if these bonds are sold at a premium, the premium shall be used as far as may be to make up any deficiency in the assessments levied by the presiding judge of the court in the proceedings and the balance remaining of such premium, if any, shall be used as far as practicable in keeping the ditch in repair and free from obstruction so as to answer its original purpose.

[1907 c. 470 s. 24] (6657)

107.03 LIENS, WHEN PAYABLE; TAXES; CERTIFICATE OF PAYMENT.

The payment of such liens shall be made to the treasurer of the county, as follows: One-fifteenth of the principal, with interest thereon, on or before five years from such filing in the office of the register of deeds; one-fifteenth of the same on or before six years; one-fifteenth of the same on or before seven years; one-fifteenth of the same on or before eight years; one-fifteenth of the same on or before nine years; one-fifteenth of the same on or before ten years; one-fifteenth of the same on or before 11 years; one-fifteenth of the same on or before 12 years; one-fifteenth of the same on or before 13 years; one-fifteenth of the same on or before 14 years; one-fifteenth of the same on or before 15 years; one-fifteenth of the same on or before 16 years; one-fifteenth of the same on or before 17 years; one-fifteenth of the same on or before 18 years; one-fifteenth of the same on or before 19 years; all reckoned from the date of filing; provided where the annual instalment to be assessed amounts to less than one mill per year, the auditor shall levy the amount of one mill per year for as many years as may be necessary at that rate to pay the full lien levied against the tract or parcel of land. On or before the fifteenth of November, of the fourth year next following such filing, the auditor shall enter on the tax list of the county the amount of the lien then remaining unpaid against each tract of land subject thereto as a tax on the tract with a proper notation to secure the successive entry each year thereafter of the unpaid balance of the lien. One-fifteenth of the taxes shall become due and payable, with accumulated interest thereon, at the time and in the manner and be subject to and be collected with like penalties as all other taxes for the year on the tract in which the entry was made, and another one-fifteenth with and as the taxes of each successive year, until all are paid. The provisions of sections 107.01 and 107.03 shall be applicable in all proceedings for the construction of ditches heretofore commenced and prosecuted under the provisions of Laws 1907, Chapter 470, where bonds have not been issued. When payment of the full amount of the lien, with accumulated interest, shall thus or at any time be made the auditor, upon presentation of a receipt from the treasurer to that effect, shall issue under his hand and official seal a certificate of the payment, and the same when recorded in the office of the register of deeds shall release and discharge the lien of record.

[1907 c. 470 s. 25] (6658)

107.04 DITCH LIENS, EXTENSION OF TIME FOR PAYMENT; COUNTY BOARD, POWERS.

The county board of each county in this state, within its jurisdiction, is hereby authorized, upon the filing of a petition, as provided in section 107.05, asking for the extension of the time for payment of the whole or certain instalments of the ditch lien filed, in any county or judicial ditch proceeding lying wholly or partly within the county, and the publication of the notices and the making of the findings, as herein specified, to make and cause to be filed and recorded in the office of the auditor of the county the necessary order directing the extension of the whole, or certain portions, of the unpaid instalments of the ditch lien filed in proceedings to establish and construct any such ditch, in the manner provided in sections 107.04 to 107.09.

[1923 c. 345 s. 1] (6840-114)

107.05 PETITION; HEARING, NOTICE OF HEARING. Upon the filing with the auditor of any county of a petition by parties owning or having an interest in property that was assessed in any ditch proceedings heretofore conducted wholly within the county, either by the county board or the district court or by parties owning land within that portion of a judicial ditch lying within the county, containing the signatures of not less than three parties owning land that was assessed in

the proceedings and who reside in the county and against whose property there remain unpaid portions of the original ditch lien, giving the number and other necessary designation of the ditch to fully identify the same and setting forth that many of the owners of the land have defaulted in the payment of the instalments of principal or interest or are unable to pay such instalments or interest, together with any other facts showing the necessity for such extension and petitioning the county board, in accordance with the provisions of sections 107.04 to 107.09, to cause to be extended the whole or certain portions of certain unpaid instalments of the ditch lien filed in such proceedings as shown on the ditch lien record in the office of the county auditor, thereupon it shall be the duty of the auditor to call a hearing thereon before the county board of the county at a time not less than 30, nor more than 60, days from the time of filing the petition. The auditor is hereby authorized to call a special meeting of the board, if necessary, for such hearing and he shall give notice to all parties interested by the publication of a notice of the hearing in the official newspaper of the county for at least two weeks prior to the date of the hearing, therein stating that the petition has been filed, giving the number of the ditch or other sufficient description to fully identify the proceedings, and further stating the purpose of the hearing. Such notice may include any number of petitions.

[1923 c. 345 s. 2] (6840-115)

107.06 HEARING; EXTENSION OF TIME FOR PAYMENTS OF DITCH LIENS. At the time and place specified in the notice, if it shall appear that a petition in due form, as required by sections 107.04 to 107.09, has been filed and the notice of the hearing duly published, the board shall have jurisdiction of all property described in the ditch lien record referred to in the petition and all parties interested therein or holding any liens or encumbrances thereon, and shall have full authority to hear all parties for or against granting the petition, and it may adjourn the hearing from time to time as it deems proper; and, if it shall further appear that default has been made in payment of the interest or principal on the instalments due on the ditch lien in the proceedings or many of the parties owning land covered by the ditch lien in the proceedings are unable to pay the instalments of principal due or which shall come due, or that the conditions are such that extension of the time of payment of the amounts remaining unpaid on the principal of the ditch lien is necessary to protect the credit of or to prevent loss to the county and the board after full hearing shall so find, the board shall have full authority and may by order direct that the payment of the whole, or a specified portion of the amount of the several instalments of the lien which is payable under the terms of the lien statement and supplemental lien statement, if any, in the proceedings, as shown on the auditor's lien record, for any or all of the years 1930, 1931, 1932, 1933, 1934, 1935, 1936, 1937, 1938, 1939, 1940, 1941, 1942, and 1943, or one or more of such years, shall be extended for a specified number of years, not exceeding ten, and direct the county auditor to enter on the ditch lien record of the county a proper notation of such extension showing the portions of the principal of such lien that is so extended and the date to which the extension is made. The entire unpaid principal of the lien so modified and extended, pursuant to this section, shall draw interest as though no extension had been made. The certificate of the county auditor that the petition contains the requisite number of signatures of property owners, together with the resolution of the county board approving the petition, shall be conclusive evidence of the sufficiency thereof.

[1923 c. 345 s. 3; 1927 c. 129 s. 1; 1931 c. 16; Ex. 1936 c. 108 s. 1; 1939 c. 334] (6840-116)

107.07 DRAINAGE REFUNDING BONDS ISSUED AND SOLD. In any county where the county board has made an order for the extension of the time of payment of principal of liens in accordance with sections 107.04 to 107.09, and where county bonds which have been issued in such drainage proceedings are outstanding, the county board shall have authority at any time after a date seven months prior to the date of maturity of any such outstanding bonds to issue and sell the drainage refunding bonds of the county for the purpose of refunding a like amount of such maturing outstanding bonds in an amount not exceeding the aggregate amount of instalments of liens, originally made payable prior to the maturity of such bonds, that have been extended in accordance with sections 107.04 to 107.09, less any amount of refunding bonds theretofore issued on account of any such extension. Such refunding bonds shall be in such form, shall bear such rate of interest, not exceeding

six per cent per annum, payable semiannually, shall be dated and be payable, either in instalments or as a whole, at such date as shall be fixed in the resolution, not exceeding the longest date of extension of any of the lien instalments, and shall be signed by the chairman of the county board and countersigned by the county auditor, all as the county board may by resolution direct. All bonds issued pursuant to the provisions of sections 107.04 to 107.09 shall conform to the requirements of sections 108.03 and 108.04 and the obligation of the county shall be as therein specified and shall be sold in accordance with section 475.15.

[1923 c. 345 s. 4; 1927 c. 129 s. 2] (6840-117)

107.08 DRAINAGE REFUNDING BONDS. When the county board of any county has adopted resolutions extending the time of payment of liens on more than one ditch within the county, and which is authorized by the terms hereof to issue refunding bonds on account of more than one such ditch, it may by resolution authorize the issue and sale of one or more series of refunding bonds of the county in an amount sufficient to cover the aggregate amount which may be required for refunding purposes on account of all or any number of such ditches within a period of seven months from the date of adoption of the resolution authorizing such refunding bonds; in all such cases the resolution shall name the several ditches, portions of which bonded indebtedness are included in such issue and the amount thereof and when the bonds are sold the proceeds shall be credited to the several ditches in accordance with such resolution. The resolutions authorizing the issuance of any such bonds may recite that the county board has investigated the facts with reference to the establishment of any ditch therein referred to and the issuance of bonds for payment of expenses in connection with the construction thereof and, if the county board in a resolution finds and declares that the ditches were legally established and that the bonds for construction thereof were legally issued, the determination by such resolution shall be conclusive evidence to the purchaser or owner of the refunding bonds therein authorized of the validity of the debts thereby authorized to be refunded and no purchaser or owner shall be obligated to inquire into the validity of the bonds by such bonds refunded.

[1923 c. 345 s. 5] (6840-118)

107.09 EXISTING LIENS NOT AFFECTED. In all cases where the county board of any county, under the provisions of sections 107.04 to 107.09, has passed a resolution authorizing the extension of the time of payment of one or more instalments of any ditch lien, or any part thereof, or authorizing the issuance and sale of bonds to refund any existing bonds, or any portion thereof, against any ditch rendered necessary by reason of the extension of the time of payments of existing liens, such extension of the time of payments of any ditch liens or the refundment of existing bonds or the sale of new bonds for the purpose of such refundment shall not operate or in any manner be treated as a payment of any existing lien indebtedness against any land described in such proceeding, but such lien indebtedness shall continue as though no extension had been made and such land continue subject to all lien indebtedness existing against the same, including costs incurred in proceedings to collect such lien indebtedness, under the tax laws, and shall for all and every purpose continue and remain a first lien against the property notwithstanding such extension and notwithstanding the existence or renewal of mortgages or other liens against the same or the execution of new mortgages or liens or the transfer of the property, and the rights of the county to claim a first lien upon the property for the payment of such ditch lien shall continue and exist the same as though no such extension of the ditch lien had been made or bond refundment executed. Nothing contained in sections 107.04 to 107.09 shall prevent the owner of any land from at any time paying the total amount of any instalment or of any ditch lien and securing the release of his land therefrom in the manner now provided by statute.

[1923 c. 345 s. 6] (6840-119)

107.10 ABANDONMENT OF PART OF COUNTY DITCH; REASSESSMENT OF BENEFITS AND DAMAGES IN CERTAIN CASES; PETITION. When any person whose lands have been assessed for the construction of a county ditch, or any contractor for the construction of the same, or of any part thereof, shall file a petition with the auditor of any county, setting forth that certain portions of a county ditch, which has been duly established in the county and the contracts for construction thereof duly let and the construction of a part thereof completed, are practically impossible of construction because of certain physical conditions, to be

specified in the petition, encountered, or which will be encountered, in the course of construction thereof, and specifying by station numbers such parts and, separately, such further parts, likewise specifically designated, the utility of which will be impaired or destroyed by an abandonment of construction of any parts, and praying that the construction of such parts practically impossible of construction shall be abandoned and the construction of the parts the utility of which will be impaired or destroyed by the abandonment of construction be also abandoned, or the plans and specifications and contracts for the construction thereof be modified, and that the contract for all such parts as shall be abandoned shall be canceled and compensation thereunder be adjusted, and assessments of benefits and damages of all lands affected by the ditch and the abandonments and modifications be reassessed, the auditor of the county shall thereupon designate a day for hearing on the petition before the county board of the county, and give like notice of the meeting as on the final hearing for the establishment of a county ditch.

[1927 c. 39 s. 1] (6840-123)

107.11 ABANDONMENT OF COUNTY DITCH; FINDINGS. Upon the hearing, if the county board shall find that the county ditch has been in part constructed, that certain parts are practically impossible of construction because of physical conditions encountered or which will be encountered in the course of further construction thereof, and that the construction of these parts should be abandoned; and, if the board shall further find that the abandonment of these parts will impair or destroy the utility of other parts not constructed; and, if the contractor for the construction of the parts so found advisable to be abandoned shall file with the board a consent to the abandonment, and the board and the contractor shall agree upon the further abandonment or modification of the contract as to the parts the utility of which will be impaired or destroyed, and shall agree upon terms of adjusted compensation of the contractor for the abandonment and modification, if any, the board shall make its formal findings, and its order, particularly specifying such parts so to be abandoned or the construction thereof modified and embodying the plans and specifications, as modified; and, if the contractor shall file his acceptance thereof, then the abandonment, adjusted compensation, and the plans and specifications for the modification, if any, shall be effective; provided, that the cost of construction of the ditch shall not thereby be increased.

[1927 c. 39 s. 2] (6840-124)

107.12 ABANDONMENT OF COUNTY DITCH; HEARING. Upon the making of the order and its acceptance, or at such further time to which the board may adjourn, the board shall hear all interested parties whose lands are affected upon the reassessment of benefits and damages to lands previously assessed or for which damages were allowed in the ditch proceeding, and upon the hearing shall reassess the benefits and damages previously assessed or allowed and modify the same in as far as the same are affected by the abandonment, and modification, if any, in accordance with the principles of assessments in the original proceedings; and if the reassessment shall reduce the amounts realized or to be realized from the assessments below the amounts expended or to be expended in the ditch proceeding, the board shall order the deficiency to be paid out of the general revenue fund of the county.

[1927 c. 39 s. 3] (6840-125)

107.13 ABANDONMENT OF COUNTY DITCH; CREDIT FOR ORIGINAL ASSESSMENTS PAID. All original assessments actually paid shall be credited as payments on the benefits as reassessed. Where the payments upon the original assessments exceed the amount of benefits, as fixed in the reassessments made, the county board shall authorize the county auditor to issue his warrants on the general revenue fund for the amount of the excess payments to the persons entitled thereto.

[1927 c. 39 s. 4] (6840-126)

107.14 REVISSED LIEN STATEMENT FILED. Within 30 days after the adoption of the reassessment, the county auditor shall file with the register of deeds his revised lien statement in accordance with such reassessment.

[1927 c. 39 s. 5] (6840-127)

107.15 APPEALS. From the reassessment of benefits or damages, an appeal may be taken to the district court in like manner and with like effect as on the original assessments.

[1927 c. 39 s. 6] (6840-128)

107.16 INVESTMENT OF SURPLUS DITCH FUNDS. The county board of any county having in the general ditch fund a surplus over the amount required for payment of obligations presently due and payable from the fund hereby is authorized and empowered to invest any part of this surplus in bonds or certificates of indebtedness of the State of Minnesota, or in bonds of any other state, or in bonds of any county, school district, city, village, or town of this state, of such maturities and marketable character as to be immediately available for use in paying obligations payable from the general ditch fund as they become due.

[1927 c. 195] (6840-135)

107.17 REPAIR OF SYSTEMS. Subdivision 1. **Appeals.** In any proceeding under the provisions of chapter 106 for repair of a public drainage system, an appeal may be taken to the district court from an order of the county board or the district court made therein, by any person aggrieved thereby in any case wherein, under the provisions of chapter 106, an appeal might be taken by such person from a similar order made in a proceeding to establish such public drainage system, and on like grounds.

Subdivision 2. **Procedure on appeal.** Such appeal shall be taken, perfected, heard, tried, and determined in the manner and form, including trial by jury, prescribed by section 106.89, subdivision 1.

Subdivision 3. **Procedure on appeals applies to repairs of drainage systems.** The provisions of section 106.89, subdivision 1, are applicable to appeals in proceedings for repairs of public drainage systems.

[1927 c. 204 ss. 1, 2, 3] (6840-136) (6840-137) (6840-138)

107.18 MODIFICATION OF COUNTY DITCHES BENEFITING TRUNK HIGHWAYS; PAYMENTS MADE FROM GENERAL REVENUE FUND AND TRUNK HIGHWAY FUND; PETITION; HEARING; NOTICE OF. In all cases in which a county ditch has been or shall be established, a contract for the construction thereof awarded, an assessment made against property benefited, but by reason of unforeseen obstacles the contractor has been unable to complete the work of construction and construction under the contract has been abandoned, and the completion thereof will result in the draining of the right of way of a trunk highway substantially adjacent to or extending through the lands described in the petition and in the substantial benefit and betterment of such trunk highway, the owners whose lands have been assessed for the improvement, or a majority of them, and the commissioner of highways may present to the county board a petition for the completion of the ditch according to the plans and specifications therefor, or in such modified form as may be suggested in such petition, which shall be accompanied by a general plan of the proposed completion improvement and an estimate of the cost thereof, which may not exceed \$10,000, and a statement of the part of such cost which the department of highways is willing to assume. Upon the presentation of such petition, the board shall appoint a competent engineer to examine and report upon the general plan of the proposed completion improvement; and, if, in his judgment, the same is practicable and can be carried out at an expense not exceeding the amount estimated in the petition, he shall so report to the board, with a more detailed plan and specifications of the proposed completion improvement. Upon the filing of such report, the board shall fix a time and place for hearing thereon and give notice thereof by publication in a newspaper published at the county-seat, if there be one, and if not, in a newspaper published elsewhere in the county, which publication shall be made at least ten days before the time fixed for such hearing. If upon such hearing the board shall find that the completion of the ditch will be of public benefit and promote the public health, and that in justice to the owners of the lands so assessed for benefits in such drainage proceeding the ditch should be completed without further assessment against such owners; and further find that the completion of such ditch will result in substantial benefit and betterment of such trunk highway, and that the cost of completion should be borne by the county and such department of highways in the proportion stated in the petition and without further assessment upon the lands of the owners assessed benefits in the proceedings for the establishment of such ditch, the board by appropriate order may direct the completion of such ditch and by such order may further direct that the cost of such completion, except the portion thereof to be paid by the department of highways, may be paid from the general revenue fund of the county. Upon the making of such order, the county auditor and the chairman of the county board

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shall proceed to award a contract for the construction of such completion improvement in accordance with the provisions of section 106.30, which contract shall be signed in behalf of the county by the chairman of the county board and the county auditor and signed in behalf of the department of highways by the commissioner of highways, and provide for the payment of the contract price by the county and by the department of highways in accordance with the order so made.

[1927 c. 226 s. 1] (6840-139)

107.19 PAYMENT, MANNER OF. Upon completion of such drainage ditch in accordance with the contract therefor and the certificate of the engineer that it has been performed and the ditch completed in accordance with the terms thereof, the county board shall so certify to the county auditor and to the commissioner of highways, and thereupon the auditor shall issue his warrant to the contractor for the payment of the portion thereof chargeable to the county under the terms of the contract and the department of highways shall pay the remainder thereof under the direction of the commissioner of highways in the same manner that other expenditures of the department of highways are made under existing provisions of law.

[1927 c. 226 s. 2] (6840-140)