

89022

GENERAL STATUTES OF  
MINNESOTA

SUPPLEMENT 1917

CONTAINING THE AMENDMENTS TO THE GENERAL STATUTES  
AND OTHER LAWS OF A GENERAL AND PERMANENT  
NATURE, ENACTED BY THE LEGISLATURE  
IN 1915, 1916, AND 1917

WITH NOTES OF ALL APPLICABLE DECISIONS

COMPILED BY

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1918

\$1,000.00 in any one year, for any or all of the following purposes, viz: to erect or maintain sufficient dams or embankments upon and along the shores of said lake or across any of its outlets; to raise and maintain the waters therein at such uniform height as said board may establish, as provided by law; to acquire by condemnation or otherwise the necessary lands for the erection of such dams or embankments; to acquire by condemnation or otherwise the right of way for such public highways leading to such lake, dam or embankment as may be necessary or convenient for public uses; to acquire by condemnation or otherwise lands for public play grounds or public parks and for public roads thereto; to acquire by condemnation or otherwise all lands to be overflowed by raising the waters of such lake; to pay for such damages as may be caused to, or upon, adjacent lands by the overflowing thereof, to pay the cost and expenses of such proceeding and for any other purpose incidental or necessary to such improvements. ('17 c. 338 § 1)

Section 5 repeals 1913 c. 287 [5449-5452].

[5452—]2. **Same—Dam, etc., where located**—Any such dam, embankment, lands or highways may be located in either county in which such lake or any part thereof is located. The money so appropriated shall be expended under the direction of such county board. ('17 c. 338 § 2)

[5452—]3. **Same—Power to appropriate**—The county board of the county in which the smaller part of any such lake is located may likewise appropriate a sum not exceeding \$500.00 in any one year, for any of the purposes hereinbefore mentioned. ('17 c. 338 § 3)

[5452—]4. **Same—Other powers not curtailed**—This act shall in nowise curtail any of the powers or authority granted to such county board by the provisions of chapter 42; revised laws 1905, or acts amendatory thereof. ('17 c. 338 § 4)

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## CHAPTER 43

### LOGS AND LUMBER

#### 5479. Wilfully injuring booms, etc.—

One who destroys a boom in a navigable river does not violate this section, where such boom constitutes an unauthorized obstruction to navigation (130-229, 153+532, Ann. Cas. 1916C, 267). Logs and Logging, ↻37.

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## CHAPTER 44

### DRAINAGE

**Prior drainage acts**—1907 c. 448 §§ 3, 5, 17 (122-504, 142+899).

### STATE DRAINAGE COMMISSION

#### 5480. Commission created—How constituted—

125-104, 145+794.

Sections 5480 to 5512 and 5523 to 5589, being chapter 470 of Laws 1907, chapter 230 of Laws 1905, and subsequent amendatory acts, are in pari materia, and should be construed together as one law (133-90, 157+998). Drains, ↻2(2).

5481. **Powers**—The drainage commission of the State of Minnesota shall have power to construct as hereinafter provided, any ditch, drain or other water course within the State of Minnesota, and such ditch, drain or other water [course] may in whole or in part follow and consist of the bed of any creek, stream, or river, whether meandered or not, and they may widen, deepen, straighten, change, lower or drain the channel or bed of any creek, river, lake or other natural water course, whether navigable or whether meandered or not,

and may construct new and additional outlets to any marshy, shallow or meandered lake, for the purpose of draining the same, and may follow and extend the same into or through any city or village within the state far enough to secure a sufficient fall and flow of water to reasonably effectuate the purpose for which the work is extended, and may confine any such creek, river or other natural water course by means of dykes, levees and embankments to its natural or artificial bed, as laid out, (and shall also, whenever it shall appear to its satisfaction that the drainage of any territory may be made more effective by the construction and maintenance of dams, or other works, for retaining and controlling the flood waters tributary to such territory, have the power to construct or acquire such dams or other works, and flowage rights therefor, and to maintain and operate the same;) Provided, that when in any such proceedings the waters of any creek, river or other water course are diverted from their natural bed by such artificial ditch or drain, such ditch or drain shall as nearly as practicable follow the general direction of such creek, river or water course, and terminate therein.

And, provided, further, that no meandered lake shall be drained under the authority of this act, except in case such lake is normally shallow and grassy and of a marshy character or except in case such meandered lake is no longer of sufficient depth and volume to be capable of any beneficial public use of a substantial character for fishing, boating or public water supply. Provided, further, that no meandered lake shall be drained or lowered under the authority of this act unless petitioned for by at least sixty per cent of the legal voters residing within four miles of such lake, who are freeholders, whose lands are affected as shown by the viewers' report and filed in the office of the clerk of the district court of the county in which such proceedings are had. (Amended '15 c. 273 § 1)

1915 c. 273 § 1 adds the words in parenthesis.

[5481—]1. **Application of preceding section**—All the provisions of law applicable to the laying out, establishing and acquisition of the public works authorized by Section 5481 shall apply to the work authorized by said Section 5481 as amended by Section 1 of this act. ('15 c. 273 § 2)

See note under § 5481.

**5481-A. Rules and regulations—Duties of engineer**—The state drainage commission of the state of Minnesota is hereby authorized and empowered and it shall be its duty to prescribe rules and regulations for the establishment and construction of drainage projects under any and all of the drainage laws of the state in accordance with what may seem to said commission to be just and proper and consistent with the provision of law governing ditch proceedings and such commission shall furnish copies of said rules and regulations for the use of engineers, county officials and others engaged in such work, but said rules and regulations shall be construed to be advisory only.

It shall be the duty of any engineer appointed by any court or board to take charge of any drainage project to proceed therein and be governed as far as practicable in his work therein by the rules and regulations made by the said drainage commission and all such engineers engaged in any such project shall make an additional copy of their plats, maps, profiles and reports, and shall transmit such copy of all said papers to the drainage commission and such commission shall file and keep the same and shall make and keep a permanent record of such items thereof as it may deem proper in books to be prepared for that purpose and kept in the office of such commission.

In taking the levels of the surface of the ground over which the engineer shall make his survey for any such drainage project, he shall, whenever practicable, use as his base datum the sea level datum as determined by the use of the elevation of bench marks, which have heretofore or may hereafter be established by the United States geological survey, the United States coast and geodetic survey, the United States corps of engineers and other reliable engineering authorities. ('17 c. 441 § 1)

1917 c. 441 § 1 amends this chapter by adding a section to be known as § 5481-A.

**5481-B.—Commission to pass on plans on request—Submission of questions—Physical examination—Expenses—**The state drainage commission is further authorized and directed upon request to examine, criticize and pass upon any plans for the construction of drainage projects which may be submitted to it by officials having the same under consideration.

Any court or county board having before it any proceedings to establish or repair any drainage project may submit to said drainage commission the petition, engineers' reports and other papers in connection therewith and propound to said commission any question relative to said proceedings or said project which it may desire to have answered and said commission and the state engineer or his deputies and assistants shall forthwith proceed to examine all the papers so submitted and shall in good faith answer all such questions so propounded and if in the opinion of the drainage commission there is any defect in any of the plans and designs so submitted, the said commission shall report the same back to such court or county board with its recommendations as to what alterations, corrections or additions should be made.

And whenever in the opinion of said drainage commission or said engineer it shall be deemed advisable and for the best interest of such drainage project that an examination upon the ground should be made of the route of the proposed drainage project, then said commission is hereby authorized to cause such examination to be made before passing upon the report of the engineer in said proceedings. In case such physical examination shall be made of the proposed route, the expense thereof shall be at once reported to said court or board and such expense, as it may be allowed by said board, shall form a part of the expenses of said drainage project and shall be paid as other claims against the same.

During all the proceedings carried on relative to the drainage project the commission shall give its advice to the courts or county boards, engineers and other officials connected with or in charge of such proceedings whenever advice is required. (1917 c. 441 § 2)

1917 c. 441 § 2 amends this chapter by adding a section to be known as § 5481-B.

**5497. Contract, how let—Payment, how made—**

Notice to the contractor and his surety, as required by § 8249, need not be given before bringing action on the bond given under this section (133-90, 157+998). Drains, 649.

**5511. Duties of secretary—Expenses, fees, etc.—**

125-104, 145+794.

**COUNTY DITCHES**

**5523. Powers of county board—**The county board of the several counties and the district court of the several districts of the state of Minnesota, are hereby authorized and empowered to make all necessary orders for and cause to be constructed and maintained, public drainage systems, drains and ditches to deepen, widen, straighten or change the channel or bed of any river, creek or water way following the general direction thereof, and when practical terminating therein to extend the same into or through any city or village for the purpose of securing a suitable outlet to drain in whole or in part, meandered lakes which have become normally shallow and of a marshy character or which are no longer of sufficient depth or volume to be of any substantial public use for fishing, boating or water supply, and when deemed necessary to control flood waters therein may raise, lower or establish the height of water in any lake body of water or water course and cause to be constructed all necessary structures and improvements to maintain the same for flood control or other public purposes, and where only a part of the meandered lake is to be drained to cause to be constructed dykes or dams for the purpose of holding the water at ordinary high water mark in that part of the lake not to be drained, but no meandered lake upon which any city or village is now a riparian owner shall be drained or lowered unless by the approval of a majority vote of the legal voters of said city or

village at any annual or special election held for such purpose. (Amended '15 c. 300 § 1; '17 c. 441 § 3)

128-69, 150+209; notes under §§ 5531, 5589.

1907 c. 470 and 1905 c. 230, and subsequent amendatory acts, being §§ 5480 to 5512 and §§ 5523 to 5589 herein, are in pari materia, and should be construed together as one law (133-90, 157+998). Drains, ↪2(2).

The act of 1909 confers jurisdiction on the district court, or the judge thereof, though the proposed ditch is wholly within one county and will not result in benefit or damage to lands in an adjoining county (131-43, 154+617). Drains, ↪26.

The act of 1909, in conferring jurisdiction on the district court of proceedings for a ditch located wholly within one county, and not benefiting or damaging lands in an adjoining county, is not unconstitutional as conferring nonjudicial powers (131-43, 154+617). Constitutional Law, ↪70(1), 74.

**5525. Petition—Bond—New bond, etc.**—Before any public ditch or drain or other work specified in section 5523 shall be established under the provisions of this act, a petition signed by not less than 25% of the owners of the land described in such petition, but in no event shall more than eight signers be required, or by the supervisor of any township or the duly authorized officers of any city or village council, which township, village or city is liable to be affected by or assessed for the proposed construction or by the duly authorized agent of any public institution, corporation or railroad whose lands or property will be liable to be affected by or assessed for the expense of the construction of same or by the state board of control or its duly authorized agent, setting forth the necessity thereof that the same will be of public utility and will promote the public health, the description of the starting point, the general course and the terminus of same together with a description of the lands over which the proposed ditch or improvement passes, and that the petitioners will pay all costs and expenses which may be incurred in case the proceedings are dismissed, or for any reason no contract for the construction thereof is let, shall be filed if for a county ditch with the county auditor and if for a judicial ditch, with the clerk of the district court.

Upon the filing of such petition and before any action is taken thereon, one or more of such petitioners shall make and file a bond payable to the county in the sum of not less than two thousand dollars, with good and sufficient sureties to be approved by the officer with whom the same is filed, conditioned to pay all costs and expenses which may be incurred in case the proceedings are dismissed or for any reason no contract is entered into for the construction of the ditch or drain petitioned for. If it be made to appear at any time prior to the letting of the contract for the construction of such ditch or drain, that the bond of the petitioners is insufficient, either in amount or as to surety, to protect the county from loss on account of any cost or expense incurred or to be incurred, the court or the board may, and it shall be its duty, to require, a further and additional bond and all further proceedings shall be stayed until such bond is furnished, and in case such additional bond is not furnished within ten days from such notice, the proceedings shall be dismissed.

Any party signing such bond, either as surety or principal, or a majority of the petitioners, may at any time subsequent to the filing of the engineer's report, and prior to the letting of the contract, pay the costs and expenses incurred to that time, and upon ten days' notice in writing to the petitioners of their intention so to do, cause such proceedings to be dismissed; unless one or more of the petitioners in the meantime cause a new bond to be filed in lieu of the former one. (Amended '17 c. 441 § 4)

**1907 c. 448 §§ 3, 5, 17, cited**—122-504, 142+899.

**In general**—Application to construction of rural highways (see 125-325, 146+1110).

An order directing a survey and appointing an engineer is not a final determination of any rights of persons who might be affected by the establishment of the proposed ditch so as to support certiorari (134-435, 159+965). Certiorari, ↪16.

The act of 1909 confers on the district court or judge thereof jurisdiction of a drainage proceeding, though the proposed ditch is wholly within one county, and does not benefit or damage land in an adjoining county (131-43, 154+617). Drains, ↪26.

**Constitutionality**—The act of 1909, in conferring jurisdiction on the district court of proceedings for a ditch located wholly within one county and not benefiting or damaging lands

in an adjoining county, is not unconstitutional as conferring nonjudicial powers (131-43, 154-617). Constitutional Law, Ⓒ70(1), 74; Drains, Ⓒ26.

**Bond**—In an action on the bond given under this section, the proceedings of the county board cannot be collaterally attacked on the ground that the viewers appointed under § 5528 were disqualified by interest; such defect not being jurisdictional (129-151, 151+897). Drains, Ⓒ39.

Amount of bond (see 134-435, 150+965). Drains, Ⓒ29.

Petitioners executing a bond are liable to the county, which in good faith proceeds with the petition, though the description of the route and termini of the ditch in the petition is so defective as to render the proceeding invalid on jurisdictional grounds (124-495, 145+380). Drains, Ⓒ29.

Where the engineer took the oath, acted in the ditch proceedings, and received his compensation and expenses from the county, it will be presumed, in the absence of evidence, that he gave the bond required in this section (123-437, 143+970). Evidence, Ⓒ83(4).

**Petition—Amendment—Jurisdiction**—An amendment of the petition, made upon notice, by which the object sought to be attained was preserved, though the source and the course of the ditch was changed, did not oust the court of jurisdiction, though the original petition was still technically pending (131-43, 154+617). Drains, Ⓒ28, 41.

A petition is a jurisdictional prerequisite to the authority of the county board to proceed, and where the board denies a petition to establish a particular drainage system described in a petition its power in such proceeding terminates (161+378). Drains, Ⓒ35.

[5525—]1. **Limit of expense of survey—Bond**—In all drainage ditch proceedings in which a survey of the line of the proposed ditch has been directed by order of the court or county board, the expense of such survey shall not exceed the penalty named in the bond given by the petitioners in said proceeding and no claims in excess of such amount shall be audited or paid by direction of the court or board unless in any such proceeding one or more of the petitioners therein shall within such time as the county board, in case of a county ditch, or the court, in case of a judicial ditch, shall direct, make and file a bond with sufficient sureties in such amount as such county board or court shall direct, conditioned as required by section 5525, General Statutes 1913. ('17 c. 455 § 1)

5526. **Appointment of engineer—Oath and bond—Duties—Report—Duties of auditor—Notice of hearing—Order—Survey and report—Powers of engineer, etc.**—Upon the filing of the petition and bond as herein provided, the county board in a county ditch proceeding and the judge of the district court in a judicial ditch proceeding, shall within 30 days thereafter by order appoint a competent and experienced civil engineer, and direct him to proceed and examine into and report within the time fixed in said order to said board or court all matters necessary and essential to disclose the practicability, necessity and advisability of the construction of the proposed ditch or improvement, and the engineer so appointed shall within 10 days thereafter take and subscribe an oath to faithfully perform the duties assigned to him according to the best of his ability, and shall give a bond in the sum of \$5,000 with good and sufficient surety, payable to the county or counties affected by the proposed ditch or improvement, for the benefit of such county or counties, and also for the use of all parties aggrieved or injured by any negligence or malfeasance on the part of said engineer, conditioned that he will diligently, honestly, and to the best of his skill and ability perform his duties as such engineer in said proceeding, said bond to be approved by the auditor or the clerk, as the case may be, and thereupon said engineer shall without delay proceed and examine all matters named and referred to in said petition, and make such preliminary survey of the territory likely to be affected by the proposed improvement as will enable him to fully determine whether the same is necessary or practicable and report accordingly, and if some other or different plan than that described in the petition is found practical, said engineer shall so report, giving such detail and information as will be necessary to fully inform the court or county board on all matters pertaining to the practicability or feasibility of the proposed plan either as outlined in said petition or according to some other or different plan that may be designated or recommended by said engineer, but it shall be his duty to outline and designate all changes whether by extension, adding main laterals or otherwise that may be necessary to make the plan of the proposed improvement practicable and feasible, showing the probable size, character and cost of such laterals, and if

the construction of a ditch or drain is involved in the proposed improvement, said engineer shall especially examine and report the nature and capacity of the outlet and any extension that may be necessary to supply the same, and if he finds the improvement petitioned for is feasible, he shall include in his report a map of the proposed improvement, giving the description of the different tracts of land likely to be affected, and outline thereon any recommended changes, and give so far as known, the names of the owners of the property and corporations affected, and the probable area that is likely to be drained or affected by the proposed improvement, and such other information as the board or court may order.

Upon the filing of the report of the engineer as herein provided with the county auditor or clerk of the district court, as the case may be, it shall be the duty of said auditor to immediately notify the county board, or the clerk, the judge of the district court of the filing of said report, and the said auditor or said clerk with the approval of the judge, shall fix a time for the hearing thereon, not to exceed 30 days from the date of filing thereof, and within 10 days thereafter shall by mail notify the several petitioners and the owners of the several tracts of land affected by the proposed proceeding as shown in the engineer's report, of the time and place of said hearing, and at such time and place fixed, said engineer shall attend before said county board or judge of the district court, and make such explanation and supply such information as may be necessary to fully inform said board or court of all facts named or referred to in his report, and such other facts as affect or relate to such improvement petitioned for or as recommended by him, and the petitioners and all other parties interested may appear and be heard, and if upon full hearing, it shall appear that the proposed improvement is not practical and no plan is reported by the engineer whereby it can be made practical, or is not of public benefit or utility, or that the outlet is not of sufficient capacity, then said petition shall be dismissed, but if the county board or district court shall be satisfied that the proposed improvement as outlined in said petition or as modified and recommended by the engineer is practical, that there is necessity therefor, and that it will be a public benefit and promote the public health, and have an outlet of sufficient capacity, then said board or court shall so find and by said order shall designate the changes that shall be made in the proposed improvement from that outlined in the petition; said changes may be described in general terms, and shall be sufficiently described by attaching to said order and said petition, a map drawn by said engineer outlining the proposed improvement thereon, and the changes made, and thereafter said petition shall be treated as modified accordingly. Upon the filing of said order, said board or court shall order said engineer or any other engineer, if a change of engineers shall be determined, to proceed and make a detailed survey and furnish all necessary plans and specifications for the proposed improvement, and report the same to said board or court with all reasonable dispatch, and in case of a change of engineers, each new engineer shall make and file the oath and bond as provided in this section.

Upon the filing of such order, such engineer shall forthwith make a correct survey of the line of said ditch, drain, creek or water course, and of the branches thereof, if any, from its source, or sources, to its outlet, or outlets; and he shall cause stakes or monuments to be set along said line, numbered progressively up or down stream, each one hundred feet; and he shall make a computation of the number of cubic yards of earth to be excavated and removed from said ditch, drain, creek or water course between each of the one hundred foot stakes, and the estimated cost per cubic yard for the removal thereof, and shall sum up the total number of cubic yards of earth to be excavated and removed for the entire length of such ditch, drain, creek or water course, and shall make an itemized tabulation of all cleaning of obstructions of water courses, building of flumes, of other wood or masonry work, construction of fences for protection of the ditch, and construction of bridges or other additional construction work found necessary, together with the estimated cost thereof, and shall make an estimate of the total cost of laying out, establishing and constructing the whole work (including branch ditches, if

any) and including all preliminary and other expenses connected therewith, and with the inspecting and certifying to the work when and as the same is completed. He shall also, in tabular form, give the depth of cut, width at the bottom and width at the top, at the source, outlet, and at each one hundred foot stake or monument of said ditch, creek or water course; and he shall specify the time, so far as practicable, and the manner in which the work shall be done, and may for that purpose set a different time for completing the several contracts, and also for completing any station or stations included in each contract, and shall have power, when he finds it necessary, to provide for running said ditch under ground, through drain tiles, or other materials, as he deems best, by specifying the size and kind of tile, or other material to be used in such underground work, and shall estimate the cost of the same, as a part of the total cost of the work.

He shall also include in his report a form of contract as complete in its provisions as practicable and which shall contain detailed and complete specifications by direct statement, or by reference to other parts of the report, and shall provide for all necessary supervision of the laying of tile, excavation and other construction work of the contractor or contractors, and which shall define the relation which shall exist between the county and the contractor or contractors and which shall give the engineer the right with the consent of the county board or the judge of the district court, as the case may be, to modify his reports, plans and specifications as the work proceeds, and as circumstances may require, provided no changes are made that will substantially impair the usefulness of any part of the ditch, or substantially alter its original character or increase its total cost by more than ten per centum (10%) of the total original contract price for the construction thereof, but no such increase shall make the cost of the ditch or work exceed the total estimated benefits as found by the court or board, which added cost is to be paid by the county to the contractor at the cost fixed for like work in said contract, and the county attorney, upon request from the engineer, shall assist him in the preparation of said form of contract, specifications and provisions. In locating a public ditch, drain, creek or water course or the branches thereof, the engineer may vary from the line described in the petition, as finally adopted by the board or court, or from the starting point thereof, as he deems best, and as he finds necessary for the complete drainage of the lands likely to be assessed for the ditch originally petitioned for, and, provided, that he shall have authority to specify such branch ditch, or ditches, as in his opinion may be necessary to give owners of lands likely to be assessed for the construction of the main ditch as finally modified by the court or board, the full benefit thereof, and he shall do the same things and report the same data, tabulations and estimates with reference to said branches as are required by this law with reference to the public ditch, drain, creek or water course or the branches thereof, described in the petition; provided, that such branch ditch, or branch ditches may either be opened at the same time and in the same manner as the main ditch, or the engineer may only locate said branch, ditch or ditches for future construction, but he must fix a time limit as to the construction of any such branch ditches. In all cases in which the route proposed is along highways already established, the engineer shall locate the ditch at sufficient distance from the center of such highway to admit of a good road along the central line thereof. That earth taken from the ditch shall be so placed, and the brush or timber taken from the right-of-way of such ditch may be so placed upon the roadway as to form a turnpike, which shall be provided with sufficient and suitable culverts or openings so as not to obstruct the natural flow of surface water in time of high water, and no nearer to the margin thereof than two feet. When there is not sufficient fall in the length of the route described in the petition to drain the land adjacent thereto, or when for other reason it appears expedient, he may shorten or extend the ditch from the outlet named in the petition far enough to reasonably effectuate the purpose for which the work is intended. When, in his opinion, it will not be detrimental to the usefulness of the whole work or to the usefulness of any extensive section of the whole work, he shall, as far as practica-

ble, locate the ditch on division lines between lands owned by different persons; and he shall, as far as practicable, avoid laying the same diagonally across lands, but he shall not sacrifice the general utility of the ditch to avoid diagonal lines.

Where a more feasible outlet will be had the engineer may, with the approval of the board or court first obtained, shorten or extend the ditch from the outlet described in the petition far enough to effectuate the purpose sought, and where more economical or better results will be accomplished, provide for different parts of the drainage to flow in different directions with more than one outlet, and in all such cases the viewers shall assess benefits and damages to such additional lands. It shall not be necessary for such ditches to connect if they embrace the drainage area intended to be affected by the petition instituting the proceedings. Where no practical outlet can be had but through the lands of an adjoining state, he shall procure a description of the necessary right-of-way and probable cost thereof and estimate the cost of constructing an outlet through the same. Provided further, that if in any pending proceedings an engineer has been appointed to make a survey as contemplated by chapter 44, General Statutes 1913, and said engineer has made such survey but has not filed his report, the preliminary survey provided for in this act shall not be required.

In making a survey the engineer shall fix and establish suitable bench marks upon permanent objects not more than one mile apart along the side of the line surveyed, so that the same will not be destroyed in constructing the system and carefully note the location thereof in his field book.

The engineer shall enter all field notes made during the survey and construction into a field book properly ruled, make a complete and accurate map and profile of the drainage system as surveyed by him upon good tracing cloth; such map shall be drawn to a scale, show the number of the section, township and range in which the lands affected are situated, the division of such lands into farms, the number of acres, and the names of the owners thereof, the location of the buildings thereon, each station number in figures, location of the bench marks, the public streets, highways and railroad right-of-way affected, the names of the county, township and municipality in which such lands or any part thereof are situated, and all other matters necessary to the understanding of the board or of the court. The profile shall be drawn on a scale, show the elevation, grade, depth of cut, size of tile, and the elevation in figures of each branch and lateral at its source and outlet. When the work of construction is completed, or when for any cause the engineer ceases to longer act as such he shall cause the original maps, profiles, and field books to be filed, in the office of the clerk or auditor where such proceedings are pending. (Amended '17 c. 441 § 5)

Cited (129-151, 151+897; 123-437, 143+970).

**In general**—The county, recognizing the necessity and value of the extra work; having paid the contractor not only the 10 per cent. permitted by this section, but \$600 in addition, though the county auditor had not consented to any part thereof being ordered by the engineer, the money so paid should be applied upon the extra work performed by the subcontractor, and no part thereof should go to the contractor, though he claimed that the extra work was done without his knowledge and consent, there not being a sufficient amount to pay the subcontractor the stipulated price for the extra work. A subcontract provided that the contractor should pay for "excavation of extra yardage over and above the estimate, required to be done by the engineer, the sum of 9½ cents per cubic yard." Other provisions required the work to be done according to the plans and specifications. Held, that the extra yardage and work must be limited to such as the engineer might lawfully require under this section, which became a part of the subcontract (135-5, 159+1072). Drains, ↪49.

Complaint on engineer's bond held not subject to demurrer on the ground that it does not appear from the statute and complaint that it was the duty of the engineer to supervise the laying of the tile (122-504, 142+899, Ann. Cas. 1914D, 945). Drains, ↪29.

**Bond**—Where the bond contained the statutory conditions, and also other conditions, it will be so construed as to give effect to the statutory condition, unless the language of the bond precludes such construction (122-504, 142+899, Ann. Cas. 1914D, 945). Bonds, ↪50.

**Changing route and extent of ditch**—That the route of the ditch, as finally recommended by the engineer and established by the court, was not the route called for by the petition or the amended petition, did not invalidate the order, the same lands being benefited by the ditch as established (131-43, 154+617). Drains, ↪41.

An engineer, exercising the care, skill, and ability usually shown by the members of his

profession, is not liable in damages for an honest error of judgment in extending a ditch beyond the limits named in the petition. Evidence held to show that the extension was desirable, practicable, and necessary (129-210, 152+406). Drains, [§§ 38, 41](#).

Where a county board refuses to establish the ditch petitioned for, the last paragraph of this section, constituting the proviso, does not authorize the board to establish a ditch wholly within a drainage district other than the one sought to be drained by the ditch petitioned for, though the starting point of the ditch asked for is within such other drainage district (161+378). Drains, [§ 26](#).

**1907 c. 448 §§ 3, 5, 17, cited—122-504, 142+899, Ann. Cas. 1914D, 945.**

**5527. Reports of engineer—Duties of court and county board—**He shall thereupon make a detailed and complete report of his doings, which shall include all maps, profiles, specifications and matters herein provided for, and submit therewith the necessary plans and specifications and a description of the lands over which the ditch or ditches is or are surveyed. Such report shall give the names of assistants and laborers and the time each was employed by or under him, together with his own time on the work, and every other item of expense by him incurred in and about the said work, and he shall forthwith file such report with the auditor after having subscribed and sworn to the same. All reports, except reports as to assistants and expenses incurred, all plans, specifications, maps or profiles herein required to be made by the engineer shall be made by him in triplicate and filed in the office of the county auditor or the clerk of the district court, as the case may be, one for each auditor, one for the state drainage commissioner and one with a copy of the contract shall be delivered to the contractor at his request at any time after the execution of the contract.

Every such engineer shall every two weeks after the beginning of his work and during the time he is engaged in the same, up till letting of contract, make an accurate report of all expenses connected with such drainage project incurred by him or under his direction and file the same with the auditor or clerk, as the case may be, and under no circumstances shall he incur a greater expense on account of such ditch project than the bond provided by the petitioners calls for.

It shall be the duty of the court in the case of all ditches established by it to cause all contracts entered into under the provisions of this section to be carried into effect and to cause all ditches and drains so contracted for to be constructed according to such contracts and the plans and specifications of the engineer; and it shall be the duty of the county board in the case of all ditches established by it, in like manner, to cause all such contracts to be carried out as above provided. (Amended '17 c. 441 § 6)

Cited (129-151, 151+897).

**1907, c. 448 §§ 3, 5, 17, cited—122-504, 142+899.**

**5528. Viewers—Meeting—Duties—**

The viewers and the jury on appeal in assessing benefits on the basis of added land should have in view an apportionment of the land in the manner that would obtain in a partition suit. The jury is required to ascertain the amount and value of the land added to a shore owner by the drainage of a meandered lake, but the jury should not include therein dry and usable land lying between the government meander line and the present ordinary high-water mark of the lake. Jury on appeal held to have adopted a wrong and inequitable basis for assessing the benefits to accrue to appellant from added acreage from the lake bed to be drained (130-176, 153+858). Drains, [§ 79](#).

Objection that the viewers were disqualified because of interest in land that might be affected could not be raised for the first time in an action on a bond to pay expenses (129-151, 151+897). Drains, [§§ 38, 39](#).

In view of the requirement of § 5533, that the county board order the damages paid, the viewers should find the amount of the damages, and not merely deduct the damages from the benefits (122-392, 142+802). Drains, [§ 32](#).

**5530. Report of viewers—Persons interested not to be present, etc.—**Said viewers shall forthwith file with the county auditor a report of all their doings and findings in detail, including expenses and the actual time they were engaged. They shall in every case completely perform every duty by this act imposed upon them (except in case of a re-reference, as hereinafter provided), within thirty days from the date of their first meeting; provided, that if the water be so high, or the weather so inclement, or such unavoidable accidents occur as in the opinion of the board of county commissioners to practically

and reasonably prevent them from so doing, the necessary delay caused thereby may be excused by such board; but the report of said viewers must in such case state the reason for such delay, and if such reason be not deemed sufficient by the board of county commissioners such viewers shall forfeit one-half of the compensation hereinafter provided. No attorney, engineer or any other person interested in the ditch shall be with the viewers while they are considering and determining the assessments of benefits and damages to be fixed by them. (Amended '17 c. 441 § 7)

**5531. Final hearing—Notice—Rehearing—Reassessment—Change of course—**

**In general**—The county board may either establish or refuse to establish a ditch at a special meeting called at a rehearing of petition and report, when the final order has been held void for failure to give proper notice (124-495, 145+380). Drains, ☞34.

On reversal by the district court of an order for the drainage of a meandered lake, because the lake was not subject to drainage, the county board could proceed with the drainage project, under this section, in so far as it did not involve draining the lake (128-69, 150+209). Drains, ☞36(2).

Evidence held to justify the finding of a court as to the amount of preliminary expense (124-495, 145+380). Drains, ☞38.

After the county board has established and ordered constructed a state rural highway, it cannot abandon the project, and the auditor has no discretion with respect to letting the contract, and cannot refuse to consider proper bids on the ground that the enterprise has been abandoned (132-36, 155+1048). Highways, ☞79(1), 113(1).

**Sufficiency of notice**—Posting notices in a township within which a village, connecting its drainage system with the ditch, lies, is sufficient (159+758).

**Changes in ditch**—Under this section, as amended, the elimination by the county commissioners of 4½ miles of branch ditches in a drainage project in which the main ditch was 22 miles long, was not such a departure from the plan petitioned for as to invalidate the proceedings; it appearing that the elimination was advantageous to the project (130-176, 153+858). Drains, ☞41.

**Collateral attack**—Collateral attack on proceedings (129-151, 151+897). Drains, ☞39.

**5532. Report of engineer, etc.—Order establishing ditch—**

125-325, 146+1110; 134-435, 159+965.

The word "establish" need not appear in the order (159+758).

Collateral attack on proceedings (129-151, 151+897). Drains, ☞39.

A petition being a jurisdictional prerequisite to the authority of the county board to establish a ditch, where a petition is denied, the authority of the board terminates, and it cannot order the establishment of a ditch wholly within another drainage district, though the starting point of the ditch asked for in the petition is within such other drainage district (161+378). Drains, ☞26.

Abandonment of projected rural highway established and ordered constructed by the county board (see 132-36, 155+1048). Highways, ☞79(1). See, also, note under § 5531.

**5533. Damages—How paid—**

131-372, 155+626; note under § 5534, post.

In view of the requirement that the county board shall order the damages paid, it is necessary for the viewers, and for the jury on appeal, to make a separate award of damages, and not merely deduct the damages from the benefits, and assess the balance (122-392, 142+802). Drains, ☞32.

Abandonment of project for construction of state rural highway (see 132-36, 155+1048). Highways, ☞79(1). See, also, note under § 5531.

**5534. Appeal to district court—Jury trial**—Any person or corporation aggrieved thereby may appeal from an order of the county board made in any ditch proceeding and entered upon its records, determining either of the following matters:

First: The amount of benefits to any tract of land or owner of any public or corporate road or railroad.

Second: The amount of damages allowed to any person, persons or corporation or assessed to any tract of land.

Third: Refusing to establish such proposed ditch.

Any person so appealing on the first or second ground may include and have considered and determined benefits or damages affecting lands other than his own in such ditch proceeding.

He shall specify in his notice of appeal the particular land and the assessment appealed from, and such notice of appeal shall be served upon the owner or occupant of such land or upon the attorney who represented such owner in the proceedings before the court or board. In case such owner has made

no appearance by attorney or otherwise in such ditch proceeding then said notice of appeal shall be served upon the clerk or auditor where said proceedings are pending.

To render such appeal effectual such appellant shall file with the county auditor within thirty days from the date of such final order a notice of appeal which shall briefly state the grounds upon which such appeal is taken, accompanied by an appeal bond to the county board with sufficient surety in not less than \$250.00 to be approved by the auditor of the county in which such appeal is taken conditioned that said appellant will duly prosecute the appeal and pay all costs and disbursements that may be adjudged against him and to abide the order of court. Within 30 days after such filing the auditor shall make a complete transcript of all the papers and proceedings on file and of record in his office so far as the same pertain to the premises or matter on account of which the appeal is taken together with the notice of appeal and file the same in the office of the clerk of the district court of the county. For such services the auditor shall receive the sum of \$3.00.

Any person deeming himself aggrieved in a county or judicial ditch proceeding by an order of the county board or the court, as the case may be, determining the amount of his benefits or damages, or the benefits or damages assessed upon lands other than his own as hereinbefore provided, may demand a jury trial to determine the amount of such benefits or damages, as the case may be, on account of the construction of such ditch. Such demand shall be in writing, signed by the party making the same, or by his agent or attorney, and with a copy of the proposed bond shall be served upon the attorney for the petitioner, if any, and if not, then upon the county attorney of the county wherein proceedings were instituted and the original bond and notice, with proof of service as herein required, shall be filed in the office of the clerk of the district court within and for the county in which the proceeding is pending within 20 days after the filing therein of the order confirming the report of the viewers. In a judicial ditch proceeding such demand shall be accompanied by a bond in the sum of at least \$250.00 with sufficient sureties to be approved by the clerk of the district court wherein such proceedings were commenced, said bond to be conditioned that demandant will pay all costs and disbursements adjudged against him and further conditioned to abide the order of the court therein. The issues raised by such demand shall stand for trial and shall be fully tried and determined at the next term of the district court held within the county in which such proceedings were commenced, or in such other county in which such trial shall be held as hereinbefore provided, beginning after the filing of such demand, and shall take precedence of all matters of a civil nature in said court. If there be more than one demand triable in one county, they may be consolidated and tried together, but the rights of such demandants shall be separately determined by the jury in its verdict. If the demandant or appellant fails to recover more damages than awarded to him or fails to reduce the amount of benefits assessed against his land, then the costs of such trial shall be paid by the demandant or appellant as the case may be. The construction of any such ditch shall not be hindered, delayed or prevented by the prosecution of any appeal or demand herein mentioned. In case of demand for a jury trial as to assessments of damages or benefits to land situated in a county other than the county wherein such ditch proceedings were instituted and are pending, and in case such demandant for jury trial so requests in such demand, such trial as to the land situated in such other county shall be held at the next term of the district court of the county wherein such lands are situated, and in such case the clerk of the district court where such demand is filed shall make, certify and file in the office of the clerk of the district court of the county where such trial is to be had a transcript of the papers and documents on file in his office in such proceeding so far as pertain to the matter on account of which said appeal is taken. After such trial the clerk of the district court of the county where such action is tried shall make, certify and return the verdict of the district court of the county wherein such proceedings were instituted and such verdict or order

shall be entered and enforced as a part of the proceedings in such last mentioned county. (Amended '17 c. 441 § 8)

128-69, 150+209; notes under §§ 5531, 5539.

**Demand for jury**—Neither § 7746 nor § 7736 gives the court power to extend the time for demanding a review by a jury of the order of the court fixing the benefits and damages (131-372, 155+626). Drains, ⚡82(1).

A demand for jury trial held sufficient, though the appellant by the demand did not connect himself with the title to any property assessed in the proceeding. (134-291, 159+629). Jury, ⚡25(8).

A demand for a jury trial under this section is sufficient, if it recites the statutory conditions upon which the right depends, and from it the assessment and land intended are reasonably ascertainable (133-113, 157+1004). Jury, ⚡25(8).

A demand for a jury trial, though not describing the land assessed, the description appearing in the proceedings in which the appeal was taken, held sufficient (134-290, 159+629, following 133-113, 157+1004). Jury, ⚡25(8).

**Bond on appeal**—When one landowner conveys to another pending the ditch proceeding, and both join in the demand for a jury trial, only one bond is required (133-113, 157+1004). Drains, ⚡29.

**Review**—When judgment is entered, the propriety of the dismissal of a demand for a jury trial is reviewable upon an appeal from the judgment (133-113, 157+1004). Drains, ⚡36(4).

**Collateral attack**—Collateral attack on proceedings (129-151, 151+897). Drains, ⚡39.

**Finding of viewers**—The court should instruct the jury that the findings of the viewers should have no effect on their verdict, a mere statement that they were not bound by the report of the viewers not being sufficient (122-392, 142+802). Drains, ⚡36(4); Trial, ⚡133(1).

Care should be taken that the findings of the viewers upon the subject of damages and benefits do not reach the jury on appeal (130-176, 153+858). Drains, ⚡57.

**Damages and benefits on jury trial**—In view of the requirement of § 5533 that the county board order the damages paid, the jury on appeal should find the amount of the damages, and not merely deduct the damages from the benefits and assess the balance (122-392, 142+802). Drains, ⚡32.

Where land, prior to its drainage, was boggy, the jury on appeal was warranted in finding that the landowner suffered no damage on account of loss of water supply (130-176, 153+858). Drains, ⚡57.

**Abandonment of rural highway**—Abandonment of project for establishment and construction of state rural highway (see 132-36, 155+1048). Highways, ⚡79(1). See, also, note under § 5531.

**5536. Letting of job**—Within ten days after the filing in the office of the auditor or clerk as the case may be, of the order establishing a ditch or drain, the auditor, chairman of the county board and the clerk of court, or a majority of them in the first instance, and in the second instance, the auditors of the respective counties meeting for that purpose at the office of the auditor of the county in which the proceedings are pending with the chairman of the county board and clerk of court of said county, or a majority of them, shall proceed as hereinafter provided, to sell the job of digging and constructing the entire work either as one job or in one or more linear sections of 100 feet each, each of said sections to be known and numbered by the stake or monument set by the engineer at the foot of each such section as shown in the engineer's report, commencing at the one, including the outlet and thence in succession up the stream to the one including the source. The auditor or auditors, as the case may be, together with such chairman of the county board and clerk of court, or a majority of them, may with the approval of the engineer, sell separately from the jobs of excavation, any jobs of building of flumes or other wood or masonry work, fencing or other construction work specified in the engineer's report. The auditor or auditors as the case may be, with such chairman and clerk, or a majority of them, may if deemed for the best interests of all concerned, let a separate contract for the furnishing of material for the construction of such system. The auditor or auditors, as the case may be, with such chairman and clerk, or a majority of them shall contract in the name of the county or in the name of the respective counties as the case may be, each acting by and through its auditor, chairman and clerk, with the party to whom any of such jobs of construction work or any section or sections is or are sold, requiring him to construct the same in the time and manner and according to the specifications, provisions and form of contract upon which the ditch is established, and shall take from him a bond in the penal sum of not less than 75% of the entire contract price with sufficient surety payable

to the county or to the respective counties, or any two or more of them, as the case may be, for the use of such county or counties, as the case may be and also for the use of all persons who may show themselves to be aggrieved or injured by any breach thereof, or of the contract for which such bond is given; to be by said auditor or auditors, and such chairman and clerk, approved, conditioned that such party shall faithfully perform and fulfill his contract; and pay all damages which may accrue by reason of the failure to complete the work in the manner and within the time required in the contract therefor, and otherwise conditioned as in this act provided, which bond shall include a stipulation that no change, extension, alteration or addition to the terms of the contract or specifications shall in any wise affect the obligation of the principal or principals or surety on said bond. The auditor of the county in which the proceedings were taken shall give notice of the letting of such contract by publication for three successive weeks in the official paper of such county of the time when and place where such contracts shall be let to the lowest responsible bidders; and in such notice shall state the approximate amount of work and the estimated cost and shall invite bids for the work as one job, and also for any one or more of such sections or any one or more of such construction jobs, and if a separate contract for the furnishing of material shall be deemed advisable such notice shall contain all matters hereinbefore specified, so far as applicable, and a statement of the kind and size of tile, the number of lineal feet of each size required, and the general specifications of all other materials required, the estimated cost thereof, the time within which the same are to be furnished, with such other matters as he may deem proper for the information of bidders. He shall reserve the right to reject any and all bids and no bid shall be entertained which exceeds more than thirty per cent of the estimated cost of the construction of the part of said work covered by said bid; nor unless accompanied by his certified check payable to the auditor or to the respective auditors, as the case may be, for not less than ten per cent of the bid; and said auditor and auditors, chairman and clerk, may adjourn such letting from time to time until the whole work shall be taken and with the approval of the engineer may let any one or more of such sections or any one or more of such construction jobs. When the estimated cost of the construction is more than \$3,000.00, the auditor may also advertise such letting in a trade paper. If no bids are received which can be entertained, the bondsmen for the petitioners may have the right at any time to pay the costs of the proceedings, and dismiss the same. The engineers shall attend to the letting of the work, and no bid shall be accepted without his approval, as to the compliance with plans and specifications. (Amended '15 c. 300 § 2; '17 c. 441 § 9)

Cited (133-54, 157+901).

A county ditch contractor's bonds held valid statutory obligations only to the extent of the fair import of their conditions. Such bonds construed as to subject-matter thereof (125-211, 146+359, Ann. Cas. 1915C, 688). Drains, [§49](#).

If a third person takes over a construction contract from the original contractor, the surety on the contractor's bond is not liable for the work done by such third person (131-243, 154+1092). Principal and Surety, [§102](#), [162\(3\)](#).

The contract let is subject to the control of the legislature, and hence § 5541, in its retroactive aspect, cannot be held to impair contract or vested rights (123-59, 142+945). Constitutional Law, [§103](#), [121\(2\)](#); Drains, [§2\(2\)](#).

Abandonment of project for the establishment and construction of a state rural highway (see 132-36, 155+1048). Highways, [§79\(1\)](#). See, also, note under § 5531.

The provision requiring the auditor to advertise for bids within ten days after the order has been made for establishment of the highway is directory, and not mandatory (132-36, 155+1048). Highways, [§113\(3\)](#).

**5537. Contract and bond—Extensions—Tile work, etc.**—The bond and contract shall be attached to each other and the contract shall contain the specific description of the work to be done, either expressly or by reference to plans and specifications, and refer to the number of the section or sections, as provided for in the preceding section and shall provide that the work shall be done and completed as provided for in the report of the engineer, and subject to his approval and that of the auditor or auditors, as the case may be.

Such contract shall be drawn to the satisfaction of the engineer and the

county attorney. Every such contract and bond shall embrace all the provisions provided by law for the giving of bond by contractors for public works and improvements and for the better security of the contracting county or counties and of the parties performing labor and furnishing material in and about the performance of such contracts and shall provide that time shall be the essence of the contract, in that if there should be any failure to perform the work according to the terms of said contract, within the time limited therein, originally or by extension, the contractors shall forfeit and pay to the county in which the portion of the work in default shall be located, a certain sum, to be named therein, and which shall be fixed by the county auditor or auditors, as the case may be, for each day that such failure shall continue.

The bond shall expressly provide that the bondsmen shall be liable for all damages resulting from any such failure, whether the work be resold or not, and that any person showing himself injured by such failure may maintain an action upon such bond in his own name and that such actions may be successive in favor of all persons so injured. Such contractor shall be considered a public officer and such bond an official bond within the meaning of the statutory provisions construing such official bonds, of public officers as security to all persons and providing for action on such bonds by any injured party in the district court.

No extension of time shall be granted by the auditor or auditors, as the case may be, unless applied for in writing to the auditor or auditors, as the case may be, stating to his or their satisfaction good and sufficient reasons therefor; nor shall any extension affect the right to enforce such forfeiture, if any, as shall occur after the time originally limited and before such extension, or accruing after the limit of the extension. One such extension may be made for a period of time not exceeding one year without notice.

No extension after the first above provided for, shall be granted until a hearing upon such application shall be held after such notice as hereinafter provided. In such case, the auditor of the county wherein such drainage proceedings were instituted, shall cause to be prepared and published as hereinafter provided, a brief notice setting forth the filing of such application and setting forth the time and place when and where the said application will be heard, considered, and determined by such auditor or auditors, as the case may be. At the time and place so designated the said auditor issuing such notice and if present such other auditors upon whom service of such notice is herein provided for, shall proceed to hear, consider and determine such application and shall make written order in relation thereto.

Such notice of hearing shall be published for two successive weeks prior to such hearing in each county affected by such drainage proceedings in the newspaper therein duly designated to publish the delinquent tax list for such year, and shall be served upon the county auditor of each such county so affected. The expense of such hearing and the publication and service of such notice shall be paid by such contractor applying for such extension.

Provided, that whenever tiling is used in the construction of any ditch or drain or any part thereof and the petition for said drain so requires, or at any time previous to the commencement of advertising for the sale of the job or jobs for the construction of the same upon a request of a majority of the petitioners in writing therefor, filing with the county auditor of the proper county, such contract shall require the contractor of the whole tile work or the contractor of any part thereof, as the case may be, to guarantee all of such tile work done by any such contractor for a period of three years after the completion of any such contract, against any fault or negligence on the part of any such contractor and any failure during said period of any part of said tile work constructed by any such contractor, to accomplish the purpose of drainage for which it was intended, shall be prima facie evidence that the same is due to the fault or negligence of said contractor. Notice of such request shall be given by the county auditor in the advertisement for sale of such job or jobs.

The said contractor shall give a good and sufficient bond for the performance of such undertaking and contract. The acceptance of such tile ditch by the engineer or county board shall not relieve or exempt said contractor or his bondsmen from the liability therein imposed on said contractor for said three-year period.

Provided, further, that at the end of each year of each season's work, after giving such contractor's bond, and prior to the completion and acceptance of such job of construction the contractor may make verified application to the county board in case of a county ditch, or in case of a judicial ditch, to the judge of the district court of the county where the proceedings were instituted, setting forth approximately the total yardage of excavation completed and total amount of other work completed, the contract price thereof and the value of the work theretofore certified as complete by the engineer, and the amount of money received by contractor, and further setting forth the amount then owing or unpaid by said contractor for labor or material already furnished in the matter of the completion of such contract, and asking an order reducing the amount of the contractor's bond.

Upon the receiving such application, the said judge of the district court or the said county board, as the case may be, shall proceed to hear, consider and determine said application upon such notice as shall be directed by such judge or by such county board respectively, and if upon such hearing, it is determined that no loss will result thereby, the said judge or the said county board may by order reduce the penalty of such bond to such a sum as shall be deemed advisable by such judge of such county board, as the case may be, but such reduction shall in no case exceed by more than twenty-five per cent the amount already paid to the contractor and such reduction shall not affect the validity or the enforcement, or in any manner otherwise affect the remaining amount of the penalty of such bond. (Amended '17 c. 441 § 10)

Cited (162+1054).

The provision of this section, declaring a contractor's bond an official bond and a contractor a public officer, places the contractor's bond, in respect to actions thereon, in the same position as other bonds of public officers. Work in dismantling a ditching dredge and reassembling the parts and putting the dredge in condition to perform a drainage contract, performed by an employé of the drainage contractor, is a necessary part of the work and a proper liability against the surety on the contractor's bond. Section 8249 requiring notice to be served before commencement of an action on a building contractor's bond, has no application to a bond given under this section (126-435, 148+454). Drains, 49.

A bondsman, who has undertaken to complete the work after default of the contractor, can not assert as a defense that the work has not been completed and accepted, to defeat an action on the bond by a claimant furnishing labor or materials (133-54, 157+901). Drains, 49.

The provision of this section declaring the contractor's bond an "official bond" held applicable to the bond given under § 5497, and that it is unnecessary to comply with § 8249, requiring notice to the contractor and his surety before action is brought on the bond (133-90, 157+908). Drains, 49.

### 5539. Reinstating and extending contract in certain cases—

Petition and writ in mandamus held not demurrable, as showing that contractors had forfeited their rights under a contract by delay in performance, where it appeared that an extension had been lawfully granted (123-50, 142+945). Drains, 49.

**5541. Duties of engineer—Certificates—Payments, etc.**—It shall be the duty of the engineer on being notified by the contractor that his job is completed, to inspect the same, and if he finds it complete according to the contract, plans and specifications he shall report that back to the county board or court, as the case may be, and give to the contractor a certificate stating that said Section or Sections (by number) or other jobs of construction, are completed according to the contract, plans and specifications as set forth in the report of said engineer.

Provided, that when the work for which such certificate is to be issued, affects more than one county, proportionate certificate shall be issued to each county. Upon the filing of such report of the engineer that any ditch or job has been completed, the board or court shall fix a day when it will meet or hear the same of which meeting ten days notice of mail shall be given by the auditor or clerk of court to all the land owners whose lands are assessed for benefits by the construction thereof, who are residents of the county, or whose

postoffice address is known. Service of such notice shall be sufficient if the same is mailed ten days before the date of such hearing; whereupon, if approved by the county board or court, as the case may be, and upon presentation and surrender of said certificate with such approval endorsed thereon to the auditor or clerk, of the proper county said auditor or clerk shall draw a warrant on the county treasurer of his county, in case of the auditor, and of the separate counties in case of clerk, for the proportionate amount found to be due from such county on said contract, according to such preliminary certificate, as herein provided; and that said warrant shall be paid out of the general ditch fund to be provided by the county board as hereinafter specified. Said warrant shall become due and payable out of said funds at once, and if there shall be no cash in said fund to pay said warrant when the same is presented the county treasurer shall endorse said warrant "Not paid for want of funds" and date and sign such endorsement, and the amount of said warrant shall draw interest at the rate of six (6) per cent per annum until called in by the treasurer or auditor of said county and paid.

At any time during the progress of the work of construction, the engineer may issue preliminary certificates for work done and approved or for material or supplies furnished and delivered along the line of said proposed ditch, or otherwise delivered according to the contract therefor and to be used for the construction or installment of tile or other enclosed drains or for bridges or culverts along the line of and as a part of said proposed ditch system; which preliminary certificates shall contain the station number or numbers of the work covered by such certificate, the actual yardage of the excavation certified, and the total value thereof according to the contract of construction, or in case the same is for material furnished, then an estimate of the total value of such material according to contract. Such certificates shall further show the percentage of such total value of the work or material to be paid by the county or counties, and if the proportion has been fixed by the district court, such certificate shall further show the proportion of such total value to be paid by the respective counties. Such certificate shall be executed in duplicate by the said engineer, or in such number as may be necessary and as many thereof marked "duplicate" shall be delivered to the contractor as there are counties affected, and such engineer shall further file one thereof with the county auditor of each county affected; provided, that except as hereinafter provided no engineer in drainage proceedings shall by preliminary certificate certify or recommend for payment and no county auditor shall cause to be paid a sum exceeding 85% of the total value of work done and approved or exceeding 65% of the total value of bridge and culvert material and not exceeding 50% of the total value of all other material or supplies furnished or delivered as such total value is shown by such preliminary certificate.

And provided further, that when the excavation work thereof on an open ditch or the construction work thereof on a tile system exclusive of the tile furnished shall be 50% or more completed and the contract of construction shall not be in default the engineer shall issue a further preliminary certificate allowing to the contractor  $33\frac{1}{3}\%$  of the retained 15% on excavation or construction and of the retained 35% on material and thereupon the auditor shall issue his warrant therefor payable as herein provided for payment of warrants issued after the full completion of the contract of construction.

In case where the total estimated cost of construction of any such drainage ditch shall exceed the sum of \$30,000.00 and where fifty per cent (50%) of the total amount of said excavation as shown by the engineer's report is complete and where the contract is not in default, the engineer may issue a further preliminary certificate setting forth the total value of previous construction work theretofore certified as complete by the engineer, the total amount of warrants issued to such construction contractors for such work, the total balance of sums retained by the county or counties involved, from preliminary estimates theretofore made, and the total percentage of the yardage of excavation theretofore finished and certified by engineer and the proportion of the cost of construction to be paid by the respective counties if more than one. Such further preliminary certificate shall be executed, deliver-

ed and filed by the engineer as other preliminary certificates provided for in this section and upon presentation thereof to the county auditor, such auditor shall thereupon forthwith issue to the contractors presenting the same his warrants for such county's proportionate share of 75% of the balance of such sums retained by the county or counties involved from preliminary estimates theretofore made as set forth in such further preliminary certificates provided for in this paragraph, provided that in case of ditch proceedings wherein the contract of construction has been entered into prior to the passage of this act, before the issuing and delivering of the said warrant to such contractors there shall be filed with the said county auditor the assent thereto in writing of the surety on such contractor's bond, such assent to provide that such payment upon such preliminary certificates shall not in any manner affect or reduce the liability of such surety upon such contractor's bond.

The provisions of this section shall apply to all public ditch proceedings heretofore or hereafter instituted, under any law of this state, except state and township ditches.

Provided, that no certificate or certificates of partial completion or of furnishing of material shall be furnished or delivered by the engineer unless the said certificate or certificates shall be accompanied by the engineer's written certificate that no loss will result from such partial payment. Provided, further, that the county or counties paying a preliminary estimate of the engineer on material furnished or delivered shall have a lien on the said material to the amount of all payments made thereon by such county or counties.

Provided, that the said certificate or certificates of the engineer in the matter of any county or judicial ditch proceedings of any other estimate or certificate required under any of the drainage laws of this state to be made by him, shall not constitute prima facie or other evidence of the truth of the contents thereof, or of the completion of any ditch or any part thereof by the contractor or otherwise, or of the fulfillment of the contract or part thereof.

It shall also be the duty of the engineer to inspect the laying of tile, excavation and all other work of construction from time to time, as provided for in the specifications and provisions in his report and as provided for in the contract for construction, and every thirty days during the progress of the work to report in writing to the county board or the judge of the district court as the case may be, as to all work completed since the last prior report, and his services for making such inspection shall be paid for at the rate and in the same way as his services in making his original survey and report. (Amended '15 c. 300 § 3; '17 c. 441 § 11)

This act is not unconstitutional as special legislation, in that the classification therein made is arbitrary (123-59, 142+945). Statutes, ☞97(3).

This section, in its retroactive aspect, cannot be held to interfere with a vested right or impair a contract let under § 5536, as the county, in conducting drainage proceedings, is the agency of the state, and the contracts let are subject to the control of the legislature (123-59, 142+945). Constitutional Law, ☞103, 121(2).

This section, in so far as it changes the mode of payment of compensation under drainage contracts existing at the enactment of the statute, held not invalid as the bestowal of a private gratuity out of the public funds without subserving a public purpose (123-59, 142+945). Counties, ☞153½.

Conclusiveness of judgment as to performance of contract for construction of a county ditch (125-461, 147+447). Judgment, ☞744.

1907 c. 448 §§ 3, 5, 17, cited—122-504, 142+899.

[5541—]1. Warrants, when no funds—Interest—That in all cases where a warrant shall be issued by the auditor of any county under and pursuant to the provisions of Section 5541 of the General Statutes of Minnesota for the year 1913, and there shall be no cash in the fund therein mentioned to pay said warrant when the same is presented, and the county treasurer shall endorse said warrant "not paid for want of funds," and shall date and sign said endorsement as in said act provided, then and in that event the interest on said warrant therein provided shall be paid on said warrant annually on the 1st day of July in each year until said warrant is called in and paid by said treasurer, or bonds are issued by the county to care for said warrants. Provided that this act shall not apply to warrants now issued and outstanding. ('15 c. 246 § 1)

**5542. Bonds of county**—The county board of each and every county wherein any drainage ditch is proposed to be wholly or partly located and established, or wherein lands are located which are assessed for benefits by reason of the construction thereof, are hereby authorized after the lien statement prepared by the county auditor has been filed in the office of the register of deeds, to issue the bonds, of their respective counties in such amounts as may be necessary to defray in whole or in part, the expenses incurred or to be incurred in locating, constructing and establishing or repairing so much of any such ditch as may be located within said county; or in such relation to such county as to affect lands therein within the terms of this act. All such bonds shall be sold and negotiated as provided by section 1856 of the General Statutes of Minnesota 1913, and not otherwise. The word "expenses" shall be construed to mean and cover every item of cost of said ditch from its inception to its completion, and all fees and expenses to be incurred in pursuance thereof. Such bonds shall be payable at such time or times not to exceed twenty years from their date, and shall bear such rate of interest not to exceed six per cent per annum, payable annually or semi-annually, all 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 this act, or such bond may be in such form as the state board of investment may prescribe, and shall be signed by the county auditor, who shall keep a record thereof. Said county board shall have power to sell and negotiate said bonds, as hereinbefore provided, but for not less than their par value. The proceeds from the sale of all such bonds shall be placed in a general ditch fund which is hereby created. The county auditor shall keep a separate account with each drainage ditch system, which account shall be credited with all moneys arising from the sale of bonds, all moneys received as interest or penalties or upon liens, charges, assessments and from all other sources on account of such drainage system, and which account shall be debited with every item of expenditure made on account of such drainage system. Such county board shall provide moneys for the payment of the principal and interest of said bonds as they severally mature, which moneys shall be placed in the general 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 be properly used for the purpose of this act, into which fund shall be paid all moneys received from the payment of any liens created under the provisions of this act. And such board is hereby authorized to pay drainage bonds issued under the provisions of this chapter out of any available funds in the county treasury, when the moneys on hand in the general ditch fund of the treasury are insufficient to meet the payment of bonds issued in ditch proceedings when the same mature, but the fund from which such moneys have been 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 hereunder.

Except as herein otherwise stated, the provisions of this act shall not affect the rights or liability of any party to any existing contract or any surety on any existing bond, and existing statutes shall be deemed in force as to all such contracts and bonds. (Amended '15 c. 300 § 4; '17 c. 441 § 12)

123-59, 142+945.

Compensation of county treasurer for making collection of installments of assessments for county ditches (see 135-274, 160+766; note under § 5571).

[5542—]1. **Transfer of moneys from ditch to revenue fund legalized**—Where the board of county commissioners or other officers of any county in this state shall have heretofore, pursuant to orders or resolutions of such county board, borrowed and transferred or caused to be transferred from the general, or any special ditch fund of such county, to the general revenue fund of such county, any sum or sums of money, and at the time of the passage of this act, the same has not been repaid to the fund from which it was taken, and where at the time of the passage hereof, there is not money on hand in such general revenue fund from which it was taken, [and where at the time of

the passage was taken] such transfer or transfers are hereby legalized and validated, and the total amount of such money so transferred from such ditch fund or funds and not re-paid, together with interest thereon from the date of such transfer, at six per cent per annum, is hereby declared to be the valid outstanding indebtedness of such county, and the same or any part thereof may be refunded as hereinafter provided. ('15 c. 301 § 1)

The phrase inclosed in brackets does not appear in enrolled bill in secretary of state's office, but appears in printed session laws.

[5542—]2. **Same—Bonds for repayment to ditch fund—**When the total amount of money so transferred from such ditch fund or funds and not repaid, shall have been ascertained, and a certificate showing such facts, signed by the county auditor and treasurer, shall have been filed in the office of the county auditor, the board of county commissioners of said county is hereby authorized to issue and negotiate the negotiable bonds of said county in such amount as they shall deem advisable, but not exceeding twenty-five thousand dollars (\$25,000.00), and not exceeding the amount of such sums so transferred from the ditch funds and unpaid as aforesaid, with interest thereon from the date of transfer to the time of issuance of the bonds at six per cent per annum, for the purpose of repaying into said ditch fund or funds the amount due thereto as aforesaid; and such bonds shall be a valid charge and obligation against the said county. The proceeds of the sale of such bonds shall be placed in the ditch fund or funds from which the money was originally borrowed or in the general ditch fund of the county if one be maintained; and shall be used to meet the obligation due from such fund or funds. ('15 c. 301 § 2)

[5542—]3. **Same—Terms of bonds—How issued, etc.—How signed—**Such bonds shall bear interest at a rate not to exceed six per cent per annum evidenced by interest coupons, and shall mature not later than twenty (20) years from date of issuance, the term thereof to be fixed by the county board and they may be made to become due serially. They shall be issued only when duly authorized by a resolution adopted by a majority vote of the board of county commissioners, and shall be sold at a time and place fixed by resolution of such board, notice of which sale shall be given as provided by law by at least two weeks publication thereof. Sealed bids may be received, but the county board may at the time set for such sale, reject any or all bids and then and there without further notice, receive and accept one or more oral bids. ('15 c. 301 § 3)

[5542—]4. **Same—Proceedings when instituted—**No county shall be entitled to avail itself of the provisions of this act unless it shall institute proceedings to do so, by the adoption by the county board of the resolution provided for in section 3 [5542—3], within sixty days after the passage of this act. ('15 c. 301 § 4)

#### 5543. Statement and summary—

Compensation of county treasurer for making collection of installments of principal and interest on assessments for county ditches (see 135-274, 160+766; note under § 5571).

#### 5544. Record of statement—Liens—Fees—

Compensation of county treasurer for making collection of assessments on county ditches (see 135-274, 160+766; note under § 5571).

[5546—]1. **Erroneous statement and summary—Corrected statement to be filed, etc.—**That in all cases in this state where a public drainage ditch has been regularly established by order of a county board or by order of the district court or a judge thereof pursuant to the provisions of Chapter 230 of the General Laws of Minnesota for 1905 and acts amendatory thereof or supplementary thereto, and where a county auditor or county auditors, as the case may be, has made a tabular statement and summary as required by Section 19 of Chapter 230 of the General Laws of Minnesota for 1905 [5543] and filed the same for record in the office of the register of deeds in and for the proper county, which said statement and summary is erroneous and which does not conform to the order of the county board or the order of the district court or

the judge thereof, as the case may be, the county auditor or county auditors, as the case may be, shall at the earliest practicable time after the discovery of said error make and prepare in tabular form a correct list and statement of the facts required by said Section 19 of Chapter 230 of the General Laws of Minnesota for 1905 [5543], the said corrected statement to be signed and executed by the county auditor or the county auditors, as the case may be, in the manner required by Section 20 of Chapter 230 of the General Laws of Minnesota for 1905 [5544], which said corrected statement and summary shall then be filed with and recorded by the register of deeds of the proper county. ('15 c. 178 § 1)

**[5546—]2. Same—Corrected statement to take place of erroneous statement—**That when said corrected statement and summary has been prepared and filed for record as hereinbefore provided, then and thereupon the said corrected statement and summary shall take the place of the said erroneous statement and summary and the amounts set forth therein shall be of the same force and effect as liens against the lands described therein as if the erroneous statement and summary had been correctly made and in conformity with the order of the county board or of the district court, as the case may be. ('15 c. 178 § 2)

**[5546—]3. Same—Liens in erroneous statement discharged—Substituted liens—**That in any case where it becomes necessary to make a corrected statement and summary as hereinbefore provided, the county auditor of any county affected is hereby authorized to release and discharge of record the liens set forth in the erroneous statement and summary in the manner following, to-wit: he shall issue under his hand and official seal a certificate stating that the original statement and summary has been found to be incorrect; that a true and correct statement and summary has been filed in his office and for record in the office of the register of deeds, and that the liens set forth in the corrected statement and summary are substitutes for and in lieu of the liens set forth in the erroneous statement and summary, and shall authorize the register of deeds in and for the proper county to release and discharge the liens set forth in said erroneous statement and summary, and shall direct said register of deeds to substitute in lieu thereof as liens against the lands described therein the amounts set forth in the corrected statement and summary; and when said certificate is recorded in the office of the register of deeds the liens evidenced by the erroneous statement and summary shall thereupon be released and discharged and the corrected statement and summary and the liens evidenced thereby shall take the place and be in lieu thereof, and the register of deeds in and for the proper county shall thereupon be authorized to release and discharge the original tabular statement and summary and the liens evidenced thereby of record. ('15 c. 178 § 3)

**[5546—]4. Same—Amount of lien to be corrected in statement—**That in any case where a corrected statement and summary is made and filed as hereinbefore provided after one or more installments of the liens set forth in the erroneous statement and summary have been collected by the treasurer of the proper county, or have been placed on the tax rolls for any year but not collected, then if the amount of the lien set forth in the corrected statement and summary against any particular description is less than the amount set forth in the erroneous statement and summary, the county auditor of the proper county shall make each of the installments unpaid proportionately lesser; so that the total amount collected as a lien against any particular description shall be equal to the amount set forth in the corrected tabular statement and summary with interest thereon; and if the amount of the lien set forth in the corrected statement and summary is more than the amount set forth in the erroneous statement and summary, the county auditor of the proper county shall make each of the installments unpaid proportionately larger so that the total amount collected as a lien against any particular description shall be equal to the amount set forth in the corrected tabular statement and summary with interest thereon. ('15 c. 178 § 4)

[5546—]5. **Same—Corrected statements and summaries legalized**—That in all cases where the county auditor or county auditors, as the case may be, have proceeded in the manner herein provided for correcting erroneous statements and summaries in county or judicial ditches, the same are hereby in all respects legalized and the erroneous statement and summary is hereby declared to be null and void and the corrected statement and summary is hereby given the same force and effect as if an erroneous statement and summary had never been made or filed. ('15 c. 178 § 5)

**5548. Liens, how paid—Interest—Taxes, etc.**—That payment of such liens shall be made to the treasurer of such county, as follows:

One-tenth of such principal on or before November 1st subsequent to the filing of lien in the office of the register of deeds and one-tenth on the first day of November of each year thereafter until the whole thereof is paid.

Provided, that if in the final order establishing said ditch or at any time thereafter the judge of the district court or the county board, in his or its discretion so orders, then payment of such lien shall be made to the said treasurer as follows:

One-fifteenth of said principal on or before five years from November 1st subsequent to date of said filing in the office of the register of deeds and one-fifteenth on the 1st day of November of each year thereafter until the whole amount of said principal is paid.

Except as provided in Section 5545 General Statutes 1913, the said principal lien shall bear interest at a rate not to exceed six per cent (6%) per annum payable annually on November 1st, reckoned from the date of the filing of the lien statement in the office of the register of deeds, and interest on the whole of the principal of such lien remaining from time to time unpaid shall be paid annually on November 1st, except as hereinafter in this section otherwise provided. In case bonds shall be issued by the county then the lien shall bear the same rate of interest as such bonds.

On or before the 15th day of November next following such filing the county auditor shall for the purpose of enforcing payment of such lien, enter on a ditch lien record of said county the whole amount of such lien remaining unpaid against each respective tract of land subject thereto, and shall at the same time or before tax lists for such year are turned over to the county treasurer, compute interest as in this law provided on such unpaid amount to the first day of June following, and shall enter such interest together with the installment, if any then due on the tax lists for such year and each thereof (installment and interest) shall be collected in the same manner as real estate taxes for that year on the tract in question are collected and the county auditor shall, in same manner, each year thereafter, compute interest on amount of such lien remaining unpaid and not previously entered on tax lists of prior year or years, together with interest to the 1st day of June, and enter the same on the tax lists with such portion of the principal of such lien as shall be due, said installment and interest to be collected in the same manner as the first payment, until the whole amount of any such lien and accumulated interest shall have been so entered on the tax lists of such county and all of the provisions of law now or hereafter existing in relation to the collection of real estate taxes so far as applicable hereto are hereby adopted for the purpose of enforcing payment of such liens and installments thereof and of the interest thereon and of each of the same, but no penalty shall be added to any such installment or interest thereon in case of default in the payment thereof.

When payment of the full amount of such liens, with accumulated interest, shall thus, or at any one 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 such payment, and the same when recorded in the office of the register of deeds, shall release and discharge said lien of record.

If any items of the cost of a ditch established under this or any prior drainage law by the terms of which the cost of construction is assessed against the benefited property or corporation, from its inception to its com-

pletion, has been or shall be omitted from the original tabular statement for assessment made and filed by the auditor, with the register of deeds, then a supplementary statement for assessment shall be made by said auditor in the same form and manner as the original statement, so far as practicable, showing such omitted costs, which supplementary statement for assessment shall be filed for record in the office of the register of deeds and shall be due, payable and collectable in the same manner, time and form as if a part of the last annual installment of the original assessment. (Amended '15 c. 300 § 5)

Compensation of county treasurer for making collection of installments of assessments for county ditches (see 135-274, 160+766; note under § 5571).

**5551. Benefits to municipalities, railroads, etc., how assessed**—Any township, village, city, county or other municipality receiving any benefits from the construction of drainage improvement under the provisions of this act shall be assessable therefor for any improvements to any public roads, street or other property owned or controlled by such municipality, and in the case of villages or cities they shall also be assessable for any benefits derived from the construction of such drainage improvement by way of furnishing an outlet for drainage of surface waters from within or in the vicinity of such city or village and for the removal of unhealthful conditions in the vicinity of such village or city by the drainage of stagnant waters from within or in the vicinity of such city or village, or for the furnishing of any other drainage or sewer outlet that may result in any benefit to or improvement of the healthful conditions of said city or village, and it shall be the duty of the viewers appointed under the provisions of this law to assess such benefits to such municipalities. Whenever any public road or street shall have been found to be so benefited the city, village, town or county which is by law chargeable with the duty of keeping such road or street in repair shall be assessed the amount of such benefits accruing to such road or street within the limits of such town, village, city or county, and all benefits that shall result to any such village or city in consequence of being furnished an outlet for drainage of any kind or improvement of the healthful conditions of said city or village as hereinbefore specified, shall be also assessed against such village or city, by reason of the construction of such improvement and the same, being fixed and determined by order of the board or court at any final hearing, or in case of appeal at any subsequent hearing before the court, the amount of the liability of such municipality for such assessed benefits shall be determined in the manner provided in section 5543 of the General Statutes of Minnesota of 1913 and the amount thus ascertained shall thereupon become a liability of such city, village, town or county, and shall be due and payable in ten annual installments beginning on the first day of June next following the date of the entry of the lien against private individuals as herein provided, and if such installments are not paid within thirty days after its maturity the amount thereof shall be extended by the county auditor against all the property in such city, village or town liable to taxation, and a levy thereof made thereon and the same shall become due, to be paid and collected in the same manner and at the same time as other taxes. In the event that for any reason an additional lien statement shall be filed in any drainage improvement the same method shall be pursued to ascertain the actual liability of each municipality or other party, and additional lien statement made and filed with reference to municipalities the same as in the case of lands or individuals. Provided: when any public road found to be benefited is a county or state road, as defined by the laws of this state, the benefits accruing thereto shall not be assessed against any city, village or town chargeable with the duty of keeping such roads in repair, but the same shall be assessed against the county and the amount thereof shall be charged to and paid out of the general road and bridge fund of said county. Whenever the lands of any railroad company shall be determined in any such proceeding to be benefited by any such improvement said lands shall be assessed their just proportion of the benefits as other lands are assessed, and such assessments shall be collected from the owners of such lands and in the same manner as in the case of other lands.

Whenever any railroad or the lands of any railroad company shall be determined in such proceedings to be benefited by any such ditch, such railroad, or the lands of such railroad company shall be assessed their just proportion of such benefits as other lands benefited are assessed, which assessment shall be collected from the owner of such railroad or from such railroad company in the same manner as personal taxes are collected by law. From the date of the filing by the county auditor or in the office of the register of deeds of the statement aforesaid, the amount of such assessment, with interest, shall constitute a lien against all property of such owners and railroad company within such county. Such lien may be foreclosed by action in the same manner as provided by law for the foreclosure of mortgage liens. (Amended '17 c. 441 § 13)

**5552. Repairs—Assessments—Lands in other counties—State ditches, etc.**—After the construction of any public drainage ditch within the State of Minnesota under any law of this state the county board of the county in which the said ditch or any part thereof is located shall keep the same or such part thereof in proper repair and free from obstruction so as to answer its purpose, and in case there is sufficient funds to the credit of the drainage ditch so to be repaired to make such repairs such fund may be expended by the county board for such purpose without further assessment; provided that no part of such original ditch fund shall be used for repairing or cleaning such ditch until such ditch has been completed according to the original plans and specifications therefor. In case there is not sufficient funds to the credit of such drainage ditch so to be repaired, except as hereinafter otherwise provided, the county board shall pay for the same out of the general revenue funds of the county, and to raise the necessary money to reimburse that fund it is hereby authorized to apportion and assess the cost thereof upon all lands originally assessed for benefits by reason of the construction of said ditch, said apportionment and assessment to be in the same proportion as was the original assessment for benefits.

Such county board shall make a written statement of such assessment and deliver the same to the auditor of the county who shall put the same upon the next succeeding tax duplicates of said county and who shall make and file in the office of the register of deeds, the lien statement covering the costs and expenses of such repairs in the manner so far as consistent, as provided by Sections 5543 and 5544, General Statutes, 1913, and such assessments shall be a first and paramount lien upon the lands affected, the same as state and county taxes.

In case such assessment or any part thereof is chargeable against lands in another county then the amount thereof chargeable against such other county shall by the county board of the county which has paid the same, be certified to the county auditor of such other county chargeable therewith and such last mentioned county auditor shall thereupon draw his warrant therefor in favor of and deliver the same to the county treasurer of the county which has paid the same, and such auditor drawing such warrant shall thereupon apportion and assess and file lien for the amount thereof upon all lands in his said county originally assessed for benefits by reason of the construction of said ditch in the same proportion as was the original assessment for benefits.

The provisions of this section shall apply to all works constructed for the purpose of drainage under any law now or heretofore in force in this state including state ditches. In case of repair of state ditches by the county board the cost of the same shall be paid out of the general revenue fund of the county, and to raise the necessary money to reimburse that fund the county board is hereby authorized and empowered and it shall be their duty to apportion viewers to assess and apportion the cost of such repairs and preliminary and other expenses in connection therewith, said assessment and apportionment to be for benefits to all lands which may have been benefited by the construction of said ditch and of any lateral or spur ditch emptying therein in proportion to such benefits.

All laws of this state in regard to county drainage ditches designating the number and qualification and duties and compensation of viewers, prescribing rules and directions governing the making of assessments of benefits and the manner and time of giving notice of meeting, governing and making, filing and the approval, change and adoption of the final report of the viewers, providing for a hearing thereon, and such other provision thereof as is necessary and is as adaptable therefor shall govern proceedings for repair of state ditches, and a statement of the assessment for repairs shall be made and such assessment levied and collected in like manner as hereinbefore in this section provided for the making of a statement of and collecting assessments for repairs of county or judicial ditches.

In case the total cost and expenses of repairing any ditch exceeds a sum equal to twenty-five (25%) per cent of the original cost of construction of such ditch, then the moneys to pay for such repairs may be obtained by the sale of the bonds of such county as provided by Section 5542 General Statutes 1913. The lien for the payment of assessments of benefits shall be payable in the same manner as is provided by law for the payment of assessments for the original construction of ditches and all provisions of law regarding the issuance of drainage bonds and the liens for benefits and the payment thereof and the filing of liens statement so far as applicable thereto shall apply to the repairs referred to in this paragraph.

Provided that if the repair of any county or judicial ditch is made necessary, or if it shall be necessary to widen, deepen or extend the same in consequence of the construction of lateral or private ditches or in consequence of the construction of other ditch or ditches which connect with or empty into said original ditch or into a lake or lakes which are drained, in whole or in part, by such original ditch, and which lateral, private or public ditch or ditches are constructed subsequent to and not included in the assessment for such original ditch, and which increases the volume of water to be taken care of by the original ditch or which deposit sediment in the original ditch and thereby contribute to the necessity for such repair, widening, deepening or extending, or in consequence of such ditch not being constructed in the first instance of sufficient capacity to furnish adequate drainage of the land affected, then the county board shall appoint an engineer who shall make such survey of said ditch and all branches and laterals discharging waters therein, whether a part of said original ditch proceeding or not, as he may deem necessary. He shall make an itemized tabular statement of the cost of repairing said ditch, and deepening, widening and extending the same to a new or different outlet where necessary, together with a description of the lands, roads, railroads and other property if any, that may be benefited or damaged by said deepening, widening and extending. He shall also in tabular form give the depth of cut, width at the bottom and width at the top, of all parts of said ditch that may be deepened or widened, and in case said ditch is extended to a new or different outlet, shall include in relation thereto as far as practicable all requirements of the engineer's report designated in Section 5536 of this law.

He shall make a complete report of his doings and submit therewith the necessary plans and specifications and a description of the lands over which said ditch if extended to a new and different outlet is surveyed.

Such report shall give the names of assistants and laborers and the time each was employed by or under him, together with his own time on the work and every other item of expense by him incurred in and about the work, and he shall forthwith file the same with the auditor of the county wherein he was appointed.

If the county board find from such report that such ditch is in need of such repair, widening, deepening or extending, said board shall at their first or any subsequent meeting thereafter, appoint three viewers whose qualifications shall be as herein provided, and thereupon proceedings shall be as near as practicable in conformity with the provisions of law relating to original ditch proceedings, except that the cost of such repairs, widening, deepening

and extending, including all damages awarded and paid by reason thereof, shall be equitably apportioned between the lands benefited respectively by such original ditch and those benefited by such private, lateral, or other ditches constructed as aforesaid, in proportion to the benefits to such respective ditch systems resulting from the construction of such original ditch and of such lateral, private and subsequent ditch or ditches, the same as if such original ditch and such lateral, private and subsequent ditch or ditches were originally one ditch system, and such viewers shall then equitably apportion and assess the portion of the cost of such repairs and expenses so determined to be borne by such private, lateral or other ditches upon the lands benefited by the construction of such lateral, private or subsequent ditch or ditches, or by branches, thereto, in proportion to the benefits to such lands resulting from such construction, and shall likewise apportion and assess the portion of such cost determined to be borne by such original ditch upon the lands benefited by the establishment and construction thereof in proportion to such benefits. The fact that such portion of such cost of repair, widening, deepening or extending, and such expenses respectively apportioned to such lateral and subsequent ditch system or systems, and to such original ditch system, is respectively apportioned and assessed against the respective lands benefited thereby, in the same proportion as the respective original assessment of benefits therein shall in all cases be prima facie evidence that such assessment and apportionment is made in compliance with the provisions and requirements of law.

Such viewers shall perform like duties and be governed by the same rules and restrictions in acting hereunder as is provided by law for viewers in judicial ditch proceedings, and such viewers shall within sixty days after their appointment file their report in writing with the county auditor of the county and such county auditor shall give notice of the hearing on such report as is provided by law for hearing on engineer's and viewers' report in judicial ditch proceedings. At such hearing the county board shall proceed to consider such viewers' report and adopt or modify the same and the power and authority of such county board in relation thereto shall be the same as is possessed by the judge at a final hearing on the engineer's and viewers' report in judicial ditch proceedings under the laws of this state. The same right of appeal from or review of the assessment of benefits and damages and the same procedure in relation thereto shall exist in regard to orders herein as exist by law in the case of county ditch proceedings.

After final action by the county board in relation to such assessment, the county auditor shall proceed as is in this section provided in case such assessment for repairs were made by the county board. The repairs herein provided for shall be construed to include the taking from said ditch of sediment deposited therein, the removal of obstructions therein, the widening and deepening thereof so as to answer its original purpose or so as to provide for additional flow of waters caused by other ditches or any other reason, the cutting and removal of weeds or grass from the bottom, sides, banks, or right of way of such ditch and such other changes or alteration therein as will enhance its usefulness for the purpose of drainage, and shall further be construed to include the extension of said ditch to a new outlet when and in case the same is found by the county board to be necessary or advisable. (Amended '15 c. 300 § 6)

**5552-A. County ditch inspector—Duties and salary—Duty of county board—**That in all counties where drainage ditches costing in the aggregate not less than \$50,000.00, have been or hereafter shall be constructed under the provisions of the laws of the state of Minnesota, by the district court or county board, there shall be appointed by the county board, a competent man who shall be known as county ditch inspector, whose duty it shall be to travel over the line of all of such county and judicial ditches in said county at least twice in each season and inspect the same, observe their operations and what repairs thereto or improvements may be necessary or proper, and immediately after such inspection he shall make a full report in writing to the county board of his work, together with his estimate of the cost thereof.

He shall also include in such report an itemized statement of the time spent upon each ditch and of his expenses incurred in connection therewith.

Whenever it shall appear by the report and recommendations of such inspector that it is necessary and proper for any drainage ditch in such county to be repaired or improved, the county board shall take such steps as it may deem advisable to determine the necessity for such repairs and improvements and if in its judgment any repairs and improvements are necessary then it shall make an order specifying the same and it shall require said work to be done under the provisions of section 5552 of the General Statutes of Minnesota for the year 1913 as amended by chapter 300 of the General Laws of Minnesota for the year 1915 and all the provisions of said last named section shall apply to the making of such repairs and improvements so far as applicable.

The salary of such county ditch inspector shall be fixed by the county board and shall be paid out of the general revenue funds of the county which shall be reimbursed as provided for in said section 5552 by assessment upon all lands originally assessed for benefits by reason of the construction of the ditches inspected by him. ('17 c. 441 § 14)

1917 c. 441 § 14 amends this chapter by adding a section to be known as § 5552-A.

**5552-B. Tile drainage system—Petition—Powers of county board—Bond**—Whenever one or more parties owning land adjoining or in the vicinity of any outlet or any public ditch or drain, adjoining or in the vicinity of any body of water forming a part of or connected with any such ditch or drain, and having right of way connecting his or their land therewith, shall petition the county board of the county wherein said land is located for the establishment of a tile drainage system draining his or their land and connecting the same with said ditch or drain or body of water, and fully describing said proposed system in general terms, and said petitioners shall in their said petition fully authorize and empower said county board to do and perform all things necessary to establish and construct such tile drainage system and to exercise in so doing all the authority by this act or any other law of this state granted to the board of county commissioners in the establishment of county ditches or county drainage improvements without the giving or service of any notice in connection therewith, and expressly waiving all such notice, and shall in and by said petition fully authorize said county board to order established and constructed said tile drainage system as finally determined upon by them, and to levy and assess the cost thereof against the property drained and benefited, and shall file said petition in the office of the county auditor of such county, then and in that event the county board shall have jurisdiction of all persons and property named, described and referred to in said petition, and are hereby authorized to cause to be surveyed said drainage system as petitioned for, or as may be established, by them, and upon the coming in of the engineer's reports may order said system established and cause the same to be constructed, and shall have and may exercise together with the county auditor all power and authority by this act granted to county board and county auditors in the establishment and construction of county ditches or county drainage improvements, including the letting of contracts, the filing of summary statements and lien statements, the establishment of liens and the time and manner of payment and the issuance and sale of bonds, and all other acts and things by this act authorized, so far as the same may be necessary, as fully and with the same effect as in the case of regular proceedings to establish a drainage improvement under the provisions of this act. Provided: no county board shall incur any expense under the provisions of this section until a proper bond is furnished by said petitioners, in at least the sum of \$1,000.00 with sufficient sureties to be approved by the county auditor and payable to the said county, conditioned to hold the county harmless from any cost in connection with said proceedings, and all costs and expense incurred in connection therewith shall be added to and treated as a part of the costs of said proceedings, and assessed against the property benefited, and if the parties themselves have agreed upon a plan of division of the costs such plan may be adopted, otherwise viewers may be appointed

with like authority and effect as in the case of ordinary county drainage proceedings. Provided, further: that in the event that the land or some part thereof has not been assessed for the construction of said main ditch or drain then such system shall be connected with said ditch or drain only upon condition that all lands not assessed shall be assessed as provided by this act in the case of connecting laterals, and said lateral or tile system when connected shall be and form a part of said ditch for all future purposes. (17 c. 441 § 15)

1917 c. 441 § 15 amends this chapter by adding a section to be known as § 5552-B.

#### 5553. Judicial ditch—Petition—Bond—

The act of 1909 confers jurisdiction on the district court or judge thereof, though the proposed ditch is wholly within one county and does not benefit or damage land in another county (131-43, 154+617). Drains, ☞26.

The act of 1909 is not unconstitutional as conferring nonjudicial powers (131-43, 154+617). Constitutional Law, ☞70(1), 74.

#### 5554. Hearing in district court—

134-435, 159+965.

#### 5555. Appointment of engineer—Survey—Report—

Engineer's report held not subject to the objection that it was void for uncertainty in locating the proposed ditch (131-43, 154+617).

#### 5557. Filing of report—Notice of hearing—

134-435, 159+965.

#### 5558. Hearing—Proceedings—

The order establishing the ditch need not use the word "establish," if the intent is otherwise manifest (159+758).

#### 5562. Abandoned or dismissed proceedings—Use of former survey—Refundment under bond—

After the county board has ordered the establishment and construction of a state rural highway, it has no power to abandon the enterprise, and the auditor has no discretion to decline to receive bids on the ground that the project has been abandoned (132-36, 155+1048). Highways, ☞79(1), 113(1).

#### 5565. Damages arising after construction—Petition—Viewers—Notice—Hearing—

Damages awarded held not excessive (see 135-198, 160+493). Eminent Domain, ☞150.

#### 5567. Appeals—Bond—

The practicability of a drainage plan is for the determination of the trial court, there being nothing in the evidence returned to the supreme court justifying interference by that court (131-43, 154+617). Drains, ☞7.

Where the record does not affirmatively show that the notice of appeal and the bond were not filed within 30 days after the filing of the award, an objection that the appeal was not perfected in time cannot be sustained (135-198, 160+493). Drains, ☞57.

5571. Compensation of engineers and other officers—Referee—Appeal, etc.—The following fees and expenses shall be allowed and paid for services rendered under this act. To engineers a sum not exceeding the sum of \$10.00 per day, to be fixed by the judge or the county board making the appointment, for every day necessarily engaged and actual and necessary expenses including cost of bond. To each viewer the sum of \$4.00 per day for every day necessarily engaged in viewing ditches and traveling therefor and making up the reports and actual and necessary expenses. To each rodman a sum not exceeding \$3.00 per day and actual and necessary expenses. To each chainman, axeman and other like employees not herein mentioned and necessary to the prompt execution of the work of locating or constructing a public ditch, a sum not exceeding \$2.50 and actual and necessary expenses. To each member of the county board the sum of \$5.00 per day for each day actually occupied in proceedings to establish or repair or inspect any ditch after its completion or during the course of the work if appointed as a committee for that purpose and the sum of 10 cents per mile each way for travel necessary in attending any special meeting of the county board called for the purpose of transacting any business pertaining to such ditch and for travel in inspecting ditches or any other necessary travel in said ditch matter. To the county auditor, county attorney, attorney for petitioners, clerk of the district court,

the register of deeds, the sheriff and other officials performing duties thereunder, such reasonable compensation as shall be fixed by the county board or court as the case may be, and the fees and compensation of all such county officials and other officers in ditch proceedings shall be in addition to all sums and fees allowed them by law, provided that the fees of such auditor shall in no case be less than \$20.00 nor more than \$250.00. In all proceedings where any county is directly interested the county attorney thereof shall represent the county unless otherwise provided by the county board. No county attorney or his assistants or any attorney associated with him in business shall otherwise appear in any drainage proceeding for any person or party whatsoever interested therein. All fees, per diem, compensation and expenses provided for in this act and fees for such other legal service, and expenses as may be necessary shall be allowed and paid upon the order of the county board or the judge of the district court, as the case may be.

The said judge or county board, as the case may be, may appoint a referee in any ditch proceedings to perform the duties hereinafter set forth and such referee shall qualify by taking the appropriate oath and giving bond to the county or counties affected by such ditch in such sum as shall be fixed by such judge or board, as the case may be. Said bond shall be conditioned for the faithful performance of his duties as such referee. Said referee shall be a qualified civil engineer. The fees of such referee shall be fixed by said judge or board, as the case may be, and shall be paid out of funds of such ditch as shall be ordered by said judge or board. It shall be the duty of such referee, if appointed, to consider all bills of account or applications for payment in such ditch proceedings and to hear evidence if offered in relation thereto and to report in writing to such judge or county board his approval, rejection or amendment thereof as such referee who shall also keep accurate record and account of all bills of account and all applications for payment acted upon by him and reported to said judge or county board together with copies of all such reports and all proceedings had in relation thereto. It shall further be the duty of said referee by order of said judge or board to inspect and examine and make report upon all work of construction in the matter of such ditch prior to final acceptance thereof and for the purpose of making such examination or inspection and upon application of such referee the said judge or board may appoint and designate a competent and experienced civil engineer, other than the one officially acting as such in such ditch proceedings, to examine such ditch and the plans and specifications thereof and report thereon to said referee and it shall be the duty of such referee and if requested by such referee of said engineer to appear and testify before the judge or county board considering the final acceptance of such ditch. When order of said judge or county board approving a report of such referee and allowing a bill of account or application for payment in such ditch proceedings shall constitute and be construed as an accounting and allowing of such account by such judge or county board within the meaning of this section and the approval by said judge or county board of any order of said referee shall constitute the said report of said referee, the order of said judge or county board (in such proceeding, provided in all cases and said judge or county board) may reject such report and make an independent order in relation thereto covered by or contained in such report. Such referee shall be subject to removal at the pleasure of said judge or county board.

Any land owner, employé or other person aggrieved by any order of court or county board relative to the allowance of fees or fees and expenses may appeal from such order to the district court of any county in which the proceeding is pending and by notice given on or before the first day of the term, demand and obtain a jury trial. All such appeals shall be taken within thirty (30) days after the order allowing such claim and shall be governed as far as applicable by the provisions of section 5534 of the General Statutes of Minnesota for 1913, save that in all appeals taken by parties whose lands are assessed for said improvements, then the expenses thereof shall be paid by the county and assessed against said improvement. (Amended '17 c. 441 § 16)

*A county attorney, who performs services for the county in proceedings to establish a county ditch, is not entitled, under this section, to compensation therefor, unless his services are*

required or requested by the county board, or the services were rendered in protection of some special interest of the county which it is his general duty as county attorney to protect. The county has no such special interest in the question of damages and benefits to be paid by and to the owners of affected property, and no such interest to protect on an appeal to the district court from an award thereof (161+382). District and Prosecuting Attorneys, [§5\(1\)](#).

The county treasurer is not entitled to compensation in addition to his salary for making collection of installments of principal and interest on assessments for the construction of county ditches, by virtue of the provision for compensation to "other officers \* \* \* performing duties hereunder" (135-274, 160+766). Counties, [§74\(3\)](#).

In action on bond given under this section it was held that it is not necessary that the county auditor's compensation be fixed before the auditor does his work, or at any particular time. The bill of the auditor for compensation having been presented to the county board and having been approved, such action amounts to a fixing of the compensation (123-437, 143+970). Drains, [§29](#).

**5576. Stranger to proceedings cannot question same—Liens, assessments and contracts not invalidated, when—**

A landowner, who suffers no damage by the proposed connection of a village drainage system with a judicial ditch, and whose assessment is not affected thereby cannot maintain certiorari to review the judgment authorizing the connection, the village not complaining (159+758). Drains, [§82\(4\)](#).

**5577. Appeal to supreme court—**

Form and requisites of writ of certiorari from supreme court to review ditch proceedings (see 161+714). Certiorari, [§45](#); Drains, [§37](#). See, also, notes under §§ 8313, 8314.

**5589. Order draining meandered lake—Appeal—**

The question of the propriety of diverting the waters of a meandered lake may be determined upon appeal to the district court, but the propriety of the order in any other respect cannot be considered by the court; hence upon reversal of the order of the county board, because it provided for the draining of a meandered lake not properly subject to drainage, it may proceed with the drainage project under § 5531, except in so far as it affects the meandered lake (128-69, 150+209). Drains, [§36\(2\)](#).

[5590—]1. **Omissions—Additional supplementary statement for assessment—**Wherever any items of cost of a ditch established under the provisions of Chapter 230 of the General Laws of 1905, and acts amendatory thereof and supplemental thereto, from its inception to its completion, have heretofore been omitted from the original tabular statement for assessment made and filed by the auditor with the register of deeds and the supplementary statement for assessment made and filed by said auditor under the provisions of Section 5590, General Statutes 1913, and such omitted items have been paid by the county by warrant on the ditch fund thereof, then and in that case an additional supplementary statement for assessment shall be made by said auditor in the same form and manner as the original statement, so far as practicable, showing such omitted items and interest accrued on the warrants issued in payment thereof, which additional supplementary statement for assessment shall be filed for record with the register of deeds in the proper county, and in the discretion of such county auditor, may be made due, payable and collectible either in the same manner, time and form as if a part of the last annual installment of the original assessment, or in installments, the number thereof to be equal to the number of installments remaining unpaid on such original statement for assessment at the time such additional supplementary statement shall be filed; and in either event such additional supplementary statement shall be and operate as a lien on the land affected as fully as though part of such original assessment. ('17 c. 369 § 1)

[5590—]2. **Same—Duty of auditor—**Upon the filing by the auditor of such additional supplementary statement for assessment with the register of deeds, said auditor shall notify each person by mail whose lands are affected thereby of the filing of such statement and the individual assessment due thereon. Such notice shall be sent to the last known address of such persons. ('17 c. 369 § 2)

[5590—]3. **Same—Pending actions—**This act shall not apply to or affect any action or appeals now pending. ('17 c. 369 § 3)

**5591. Reassessment of benefits and damages in certain cases—**

Cited (162+686).

**5593. Appeal to supreme court—**

Form and requisites of writ of certiorari from supreme court to review ditch proceedings (see 161+714). Certiorari, [§ 45](#); Drains, [§ 37](#).

**5601. Change of method of construction—Enlarging, deepening or changing location, etc.**—Whenever proceedings have been or hereafter shall be taken to lay out a drainage ditch according to law and the same has been or hereafter shall be laid out and established, and the contract for the construction thereof let, and it has been or thereafter shall be found to be impossible, by reason of unfavorable weather or other good cause, for the contractor to construct the same, and the engineer in charge of such ditch concludes after examination, that better results can be obtained by a different method of construction, thereupon, upon a petition of not less than seventy-five per centum of the owners of the land affected by the construction of such drainage ditch, as shown by the viewers' report in such proceedings, and upon the filing with the county auditor of the county where such proceedings are pending in case of a county ditch, or with the clerk of the district court where such proceedings are pending in case of a judicial ditch, by said contractor and his bondsmen of an agreement in writing consenting thereto, the said county auditor or county clerk or county auditors, as the case may be, may alter or modify the contract theretofore entered into with such contractor as to the manner, method or time within which such drainage ditch shall be constructed, in accordance with the recommendation of the engineer in charge thereof, upon the filing of such recommendation with such auditor, or auditors, or clerks as the case may be.

Provided further, that if, after the establishment of any county or judicial ditch, and before the completion thereof, it shall become apparent that said ditch or any of the branches thereof should be enlarged, deepened or otherwise changed or that a change or alteration in the location should be made for the better service thereof, the county board in case of a county ditch or the court in case of a judicial ditch may authorize such change or changes as the engineer shall recommend. Provided, however, that before any action shall be taken by the court or the county board, as the case may be, a petition signed by twenty-five per cent of the resident owners of lands affected by said ditch as named in the order establishing said ditch not exceeding in any case more than fifty such resident owners shall be filed with the county auditor if a county ditch, or with the clerk of court if a judicial ditch, setting forth the necessity for the changes or alterations in said ditch, and at the time of filing such petition one or more of such petitioners shall give a bond with good and sufficient freehold sureties payable to the county to be approved, including amount and sureties, by the court or the county auditor, as the case may be, conditioned to pay all expenses in case the county board or the court shall fail to make the alteration or change prayed for in said petition. The same notice shall be given as is given on the filing of an original petition for a new ditch. If upon the hearing of said petition the county board or the court, as the case may be, from the evidence considers it necessary or advisable that changes or alterations be made in said ditch, either in size, location or otherwise, the county board or the court, as the case may be, shall have authority to resubmit the same to the engineer who had charge of said ditch or appoint a new engineer to re-examine said ditch and make report as to changes or alterations he may deem necessary for the betterment of said ditch. Said engineer shall within thirty (30) days make report thereon as to the changes and alterations thereon for the improvement of said ditch. If changes and alterations are recommended by the engineer in said ditch, the viewers shall re-examine said ditch with the proposed changes and alterations and shall within twenty (20) days, after the filing of said engineer's report, file with the auditor or with the clerk of said court, as the case may be, their amended viewers' report.

Upon the filing of the amended viewers' report with the county auditor in the case of a county ditch or with the clerk of the district court in the case of a judicial ditch, the county auditor or clerk of court, as the case may be, shall give the same form of notice as was given on the filing of the original view-

ers' report, and thereupon procedure identical with the proceedings of sections 5531, 5532, 5557 and 5558, General Statutes of Minnesota, for year 1913, and amendments thereto, as the case may be, shall be had and followed, and the court or the county board, as the case may be, shall have the same powers as provided by law as upon the hearing of the original viewers' report thereon. (Amended '17 c. 350 § 1)

**5605. Consolidation of proceedings—Petition and bond—Order and service—**In any case where one or more ditches or drainage improvements whether open or tiled, whether public or private, shall have been or are being constructed or may hereafter be constructed, or for the construction of which proceedings have already been, or may hereafter be, initiated, the waters from which do or may empty into any creek, draw, water course or body of water, whether meandered or not, and the construction of said ditch or drainage improvement shall cause or is likely to cause by reason of the added waters, the overflow of the waters of said creek, draw, water course or body of water, and the inundation of the adjoining land, then, and in that event, upon the filing of a petition by the county board of any county affected, or by not less than four freeholders whose property is affected by such overflow, with the clerk of the district court of any county affected by such proposed improvement, setting forth in general terms the existence of said ditch or ditches and the conditions of said creek, draw or water course or body of water and outlet, and the necessity for the improvement of said outlet, and if need be, the controlling of said waters therein or in said body of water, or both, and that said proposed improvement will be a public benefit and utility and improve the public health and protect said land from overflow, and asking for the consolidation of all said ditches or ditch proceedings, whether public or private, connected with or emptying its waters into said outlet or into said body of water into one system, and the extension of the same so as to furnish a proper outlet for all waters of said basin that naturally drain into or through said outlet, and that the cost of constructing such outlet shall be borne by all of the lands to be benefited, and that in order to equitably apportion the cost of the construction of said improvement on the extension of said outlet to all the lands to be benefited, it is necessary that such proceedings be merged and consolidated, and said petition shall be accompanied by a proper bond as provided in section 4 of this law [5525]; thereupon the clerk of said court shall notify the judge thereof and said judge shall make an order fixing the time and place for hearing upon said petition and ordering all proceedings then pending in any or all of said ditch proceedings to be stayed until the hearing and determination of said petition, which petition and order shall be served upon all persons and parties interested in such ditch proceedings by publication thereof once a week for three successive weeks prior to the date of such hearing, in a legal newspaper in each county in which such proposed ditch or ditches or any part thereof are situate, and if any such proposed ditches are pending before the county board of any county, such petition and order shall be served upon the county auditor and clerk of the district court of such county. (Amended '17 c. 441 § 17)

**5614. Same—Services and compensation of officers—**

A county attorney, who performs services for the county in proceedings to establish a county ditch, is not entitled, under this section, to compensation therefor, unless his services are required or requested by the county board, or the services were rendered in protection of some special interest of the county which it is his general duty as county attorney to protect. The county has no such special interest in the question of damages and benefits to be paid by and to the owners of affected property, and no such interest to protect on an appeal to the district court from an award thereof (161+882). District and Prosecuting Attorneys, c. 5(1).

### TOWN DITCHES

**5634. Words defined—Clerk, etc.—**The following words used in this act shall have the meaning herein given unless another intention clearly appears: The word "ditch" as used in this act shall be held to include any open, covered or tiled ditch or drain or any ditch or drain in part open and in part tiled or covered, and any drain, water course or creek and any side, lateral, spur

or branch ditches and each and all of the constructions referred to in this act. The word "board" as herein used means the board of supervisors of the town in which the lands or roads described in the petition are located or, if said lands or roads are located in more than one town, then the word "board" means all of the supervisors of each one of the towns in which any of said lands or roads are located, acting together as one body at a legally called meeting. The town clerk of the town in which the petition was filed shall act as the clerk of said board and keep a detailed record of its doings. Two or more of said supervisors shall constitute a quorum of said board and a majority of the supervisors present shall have power to act. The words "town clerk" and "town treasurer" as herein used shall always be held to refer to the town clerk and town treasurer of the town in which the petition was filed. The word "engineer" as used in this act shall be held to include any competent surveyor. (Amended '17 c. 293 § 1)

Cited (125-403, 147+273).

If the statutory prerequisites have been complied with, the contract price for constructing the ditch may be recovered from the petitioners. The town officers, in performing the duties imposed on them by the statute, act as agents of the law, and not as representatives of the town (124-78, 144+458). Drains, [§18](#).

Whether the purpose for which private property is to be taken is a public purpose is subject to review by the courts (125-403, 147+273). Eminent Domain, [§66](#).

#### 5635. Petition to town board—Certain meandered lakes—

See note under § 5636.

124-78, 144+458, and notes under §§ 5634, 5643, 5655.

Private property cannot be taken for ditch purposes, unless the ditch will serve some public purpose (125-403, 147+273). Eminent Domain, [§31](#).

5636. Petition to town board—Certain meandered lakes—Before any ditch shall be established under this act there shall be filed with the town clerk of any town in which any part of said ditch is proposed to be located, a petition therefor signed by one or more corporations owning lands which will probably be benefited by the construction of said ditch or by the chief executive officer of any city or village whose streets will probably be benefited by the construction of said ditch or by the town board of supervisors of any town whose highways will probably be benefited by the construction of said ditch, setting forth the necessity thereof, and that it will be of public benefit or promote the public health, with description of the proposed starting points, routes and termini and of the general character, size and depth of said ditch. Said petition shall also contain a legal description of all lands through which said proposed ditch shall run, or to be drained, as near as can be ascertained and shall also contain a description of all public roads and streets likely to be benefited thereby, as nearly as can be ascertained. In such petition the petitioners may, at their option, ask the appointment of an engineer to perform the duties hereinafter in this act specified, and may also at their option ask the appointment of an attorney at law to perform the duties hereinafter in this act specified. Also they may ask for the appointment of three resident freeholders of the town not interested in the construction of the proposed work, and not of kin to any of the parties known to be interested therein, as viewers to meet at a time and place fixed by the board. Such petition may include any side, lateral, spur or branch ditches necessary to secure the object of the improvement and may ask for the different parts of the ditch to flow in different directions with more than one outlet. Provided, that no meandered lake adjoining an incorporated village, or within four miles of any city of the fourth class, or upon which any incorporated village is a riparian owner, shall be drained or lowered under the provisions of this act unless by the approval of a majority vote of the legal voters of such village or city at any annual or special election held for that purpose. Such special election, if any, held for such purpose shall be called in the way and manner provided by law for calling special elections. (Amended '17 c. 380 § 1)

1917 c. 380 ("An act to amend sections 5636, 5639, 5641, 5642 and 5667," etc.) § 1 amends "section 5636," so as to read as above set forth. See § 5635.

#### 5637. Notice of hearing—

124-78, 144+458, and notes under §§ 5634, 5643, 5655.

**5638. Hearing—**

124-78, 144+458, and notes under §§ 5634, 5643, 5655.

**5639. Engineer—Bond and oath—Survey—Report—Duties of clerk and committee, etc.**—If the petition asks for the appointment of an engineer in said matter, said board shall, at said hearing, and before taking final action on said petition, appoint a competent engineer to make plans and specifications for said ditch and to superintend the construction thereof when established. Said engineer before entering upon his duties shall give a bond in the sum fixed by the board, payable to the towns in which any part of the ditch is proposed to be constructed for the use of such towns and also for the use of all persons aggrieved or injured by the negligence or malfeasance of said engineer, to be approved by said town clerk conditioned that he will diligently and honestly and to the best of his skill and ability perform his duties as such engineer, but said engineer shall not be required to continue his bond after the conclusion or abandonment of the work. He shall take an oath to faithfully perform his duties. Said engineer shall forthwith make a survey for said ditch and prepare detailed plans and specifications for the construction thereof and make prompt report in writing of his doings to said board. Upon the appointment of such engineer said board shall adjourn said hearing a sufficient time to enable the said engineer to make and file his report in the office of said town clerk, upon the filing of the engineer's report in the office of the town clerk the board shall immediately fix a time and place in which the viewers, if any one appointed, are to meet for the purpose of viewing the proposed ditch, if no viewers have been appointed then the committee appointed by the board shall immediately proceed with or without the engineer to proceed to assess benefits and damage by the reason of the construction of the proposed ditch in accordance with the rules as mentioned in section 5642 of this act and file their report in the town clerk's office and the town clerk shall forthwith fix a time and place for a hearing on said report and shall again give notice to all parties interested and to all land owners whose lands are liable to be benefited or damaged by the reasons of the construction of the proposed ditch. Said notice shall conform to all requirements as the notice required on the petition as set forth in section 5637 of this act. (Amended '17 c. 380 § 2)

**5641. Hearing—Order establishing ditch—Roads benefited or injured, etc.**—All persons interested may appear and be heard by and before said board. If such board from such evidence as may be adduced before them shall find that all of the proceedings in the matter have been in accordance with the provisions of this act and that the estimated benefits of said work are greater than the total cost, including damages awarded and that said work will be of public utility or promote the public health, they shall establish said ditch by an order to be signed by them and shall include in said order, either expressly or by reference to maps, plats, specifications or papers on file in the office of said town clerk in said matter, an accurate description of said ditch and of the starting points, routes and termini, size and depth of said ditch and whether open, tiles or covered. They shall also fix a time for the completion of said ditch. Said board shall also include in their final order establishing said ditch a tabular statement showing the names of the owners of, the legal descriptions of and the number of acres in each tract of land to be benefited or damaged, the said names to be the same as appear on the tax duplicates of said county, the estimated number of acres in each of said tracts to be benefited or damaged, the number of acres added to any tract by the change of any water course and the location and value of said added land, the damage, if any, to riparian rights pertaining to any tract, the amount that such tract will be benefited or damaged by the construction of said work. When any ditch established under this act benefits either in whole or in part any public road or street within the limits of any town, village or city, charged with the repair thereof, said board shall estimate and report separately in such tabular statement the benefits to each public road or street together with the names of the town, village or city charged with the repair thereof. They shall also report in such tabular statement the damages awarded for injury to any road or roadbed and after the construction and maintenance of any bridges, cul-

verts or other work necessary to the establishment of such ditch they shall make an order setting forth that fact and their reasons therefor. (Amended '17 c. 380 § 3)

124-78, 144+458, and notes under §§ 5634, 5643, 5655.

**5643. Costs and expenses—**

This act requires the petitioners to bear the entire expense of the ditch, and does not impose any liability on the town (124-78, 144+458). Drains, ⇨60.

**5644. Securities required—**

124-78, 144+458, and notes under §§ 5634, 5643, 5655.

**5646. Appeal to district court—Jury—**

A landowner may review proceedings for the establishment of a town ditch by writ of certiorari, but he cannot maintain an action to restrain the construction of the ditch (125-403, 147+273). Injunction, ⇨7.

**5650. Job, how sold—Contract—Bond—**

124-78, 144+458, and notes under §§ 5634, 5643, 5655.

**5651. Bond and contract—**

Cited (162+1054).

**5653. Failure of contractors—**

124-78, 144+458.

**5654. Damages, how paid—**

124-78, 144+458, and notes under §§ 5634, 5643, 5655.

**5655. Supervision—Certificate of completion—**

A complaint for the contract price of a ditch, which does not allege that the certificate of the inspector has been made, or that the inspector should have made the same, and improperly refused, does not state a cause of action (124-78, 144+458). Drains, ⇨49.

**5656. Statement and summary—**

124-78, 144+458, and notes under §§ 5634, 5643, 5655.

**5657. Statement, how executed—Record—Liens—**

124-78, 144+458, and notes under §§ 5634, 5643, 5655.

**5658. Collection of assessments—Interest—Discharge of lien—**

124-78, 144+458, and notes under §§ 5634, 5643, 5655.

**5660. Assessments, how disposed of—**

124-78, 144+458, and notes under §§ 5634, 5643, 5655.

**5667. Compensation of engineer, members of board, etc.—**The engineer, if appointed, shall receive the sum of \$5.00 per day for every day he is necessarily engaged in performing the duties required of him by this act and his actual and necessary expenses incurred in and about the same. The members of the board shall each receive \$3.00 per day for every day they are necessarily employed in acting on said ditch proceeding or in viewing said ditch and making up and filing their orders and their actual and necessary expenses. The viewers shall receive the same compensation as the town board do for their work. Each rodman shall receive the sum of \$2.00 per day and may be allowed in addition thereto his board and lodging for each and every day he is employed and each chainman, axman and other employee necessary to the prompt execution of the work of locating or inspecting said ditch shall be allowed \$1.50 per day and may be allowed in addition thereto his board and lodging for the time such person is thus actively employed. The town clerk, the town treasurer, the register of deeds, constable and other officers shall be paid the same fees as are allowed by law for similar service or if no fees are allowed then they shall receive reasonable compensation for their services. Such compensation shall be in addition to all sums allowed by law at the time of the passage of this act. The attorney at law shall receive reasonable compensation for his services. The fees per diem, compensation and expenses shall be before payment, audited and allowed by the town clerk and shall be paid by the petitioners from time to time. (Amended '17 c. 380 § 4)

## [DRAINAGE IN CONNECTION WITH STATE BOUNDARY WATERS]

[5671—]1. Drainage and flood control districts—Power of district court—Purposes—Whenever it shall become necessary or expedient in order to facilitate or control drainage into or from any lake, pond or other body of water or any river, stream or water course, which forms to any extent the boundary line between this state and any other state or when it shall become necessary in order to control, to any extent, floodwaters into, through or from any such lake, body of water, stream or water course to raise, lower or otherwise affect the stage or depth of water therein or in any stream, river or water course flowing into this state therefrom or from any drainage basin in another state which drainage or flood control shall cause benefit or damage to or otherwise affect property in this state and to some extent in such other state, the district court of any county in this state or any judge thereof in vacation is hereby vested with jurisdiction, power and authority upon the filing of a petition as specified in section 2, of this act [5671—2] and the conditions stated are found to exist, to establish a drainage and flood control district and define and fix the boundaries thereof which districts shall include territory abutting upon such boundary waters or affected by waters flowing into or from such boundary waters and may include territory within or partly within and partly without any county and may include the whole or any part of one or more counties including the county in which said petition is filed but shall include territory forming the whole of a natural river or drainage basin and within which the waters directly or through tributaries find their way into and through one common outlet, and said court is hereby vested with jurisdiction, power and authority under the conditions provided in this act, to make all necessary orders providing for the construction of any and all improvements specified in this act, as may be found necessary for any of the following purposes within any such district so organized, or affecting such boundary waters or any river, stream or water course flowing into or from the same within the limits of this state including rivers or bodies of waters affected by the overflow from such boundary waters.

(a) For regulating streams, channels or water courses by changing, widening, deepening, straightening the same or otherwise improving the use and capacity thereof.

(b) For reclaiming by drainage, or filling, dyking, or otherwise protecting lands subject to overflow.

(c) For providing for irrigation where it may be needed.

(d) For regulating the flow of water in streams or water courses.

(e) For regulation and control of flood waters and the prevention of floods, by deepening, widening, straightening or dyking the channels of any stream or water course, and by the construction of reservoirs or other means to hold and control such waters.

(f) For diverting in whole or in part streams or water course and regulating the use thereof, and as incident to and for the purpose of accomplishing and effectuating all the purposes of this act, may make all such orders as may be necessary to authorize and direct the straightening, widening, deepening or changing of the course or terminus of any natural or artificial water course and to build, construct or maintain all necessary dykes, ditches, canals, levys, wall-embankments, bridges, dams, sluice ways, locks and other structures that may be found necessary and advisable, and to create and establish and maintain the necessary reservoirs or other structures; to hold, control and regulate any and all flood waters within said districts, and acquire title to, in the name of said district of all necessary lands and other property to construct and maintain reservoirs, dykes or other structures to secure the proper control of the flood waters within said district. Provided, nothing in this act contained shall be construed to interfere with the operation and use of any drainage law of this state. ('17 c. 442 § 1)

See § [5671—]34.

[5671—]2. **Petition—Limits of district**—Before any district court shall establish any drainage and flood control district as outlined in section 1 of this act [5671—1], a petition shall be filed in the office of the clerk of the district court in any county containing territory to the extent of five townships included in said proposed district which shall be signed by not less than 25 resident free holders from each county abutting upon the main stream of the district having more than five townships within the proposed district.

Said petition shall set forth:

1. The proposed name of said district.
2. The necessity for the proposed work; and that it will be conducive to the public health, safety and convenience and promote the welfare of the inhabitants of said district; and aid in the control of flood waters in said boundary waters and streams or rivers flowing into or from the same in this state.
3. A general description of the nature and purposes of the contemplated plan of improvement, explaining the necessity therefor, and shall include, in general terms, a description of the territory proposed to be included in said district. Said description need not be given by metes and bounds or by legal sub-division, but shall be a sufficiently definite and accurate description so that the territory affected may be generally understood, and, unless good reason be shown to the contrary, the same shall include all territory within a given watershed or drainage basin or all territory from which the water from natural or artificial channels find their course through one general stream or channel. The territory to be thus included in any district shall be limited to territory within the natural watershed of the particular basin petitioned to be organized.
4. Said petition shall pray for the organization of the district, the appointment of a governing board therefor and that the boundaries thereof may be specifically fixed and defined by order of said court and said district organized.

No petition containing a requisite number of signatures or petitioners shall be void or dismissed on account of any defects therein but the court shall at any time permit the petition to be amended in form and substance to conform to the facts by correcting any errors in the description of the territory or by supplying any of the defects therein. Several similar petitions or duplicate copies of the same petition, for the organization of the same district may be filed and all together be regarded as one petition and any withdrawal of any signatures or petitioners from such petition after the same has been filed, shall in no manner affect the jurisdiction of the court, and all petitions filed prior to the hearing hereinafter provided shall be considered by the court as a part of the original petition. Provided; that no district shall be organized under the provisions of this act in any basin consisting of a stream or river wherein waters are flowing from any lake or body of water constituting the boundary waters where the territory of said district shall extend farther than forty miles in a direct line along said valley from said boundary waters, but may include all tributaries that enter said basin or connect said stream within the limits of said district. ('17 c. 442 § 2)

[5671—]3. **Bond**—At the time of filing the petition provided for in section 2, of this act [5671—2], or before the notice of hearing thereon is given, a bond shall be filed by said petitioners with the clerk, to be approved by said court and in such sum as he shall designate, sufficient to pay all expenses connected with said proceeding, in case the court refuses to organize said district, and, if at any time during the proceeding the court shall be satisfied that an additional bond is needed, he may so order, provided that if the petition is signed by the proper officials of two or more counties, accompanied by a copy of a resolution passed by the board of county commissioners of said counties, that said counties will be responsible for such costs, then, and in that event, no bond shall be necessary. ('17 c. 442 § 3)

[5671—]4. **Order for hearing—Notice**—Upon the filing of said petition with the clerk of the district court, as provided in section 3 of this act [5671—3], he shall immediately notify the judge of said court of the filing

thereof, who shall within ten days thereafter, by order, fix a time and place for hearing on said petition at some point within the limits of said proposed district, notice of which hearing shall be given by a publication in at least one legal newspaper in each county affected by said petition, for three successive weeks, the last of which publication shall be at least ten days prior to the date set for hearing, provided, that if the territory described in said petition shall include more than one county and territory within two or more judicial districts, then the judge of said court, where said petition is filed, shall arrange with the judge or judges of such other districts for a joint hearing upon such petition, which hearing may be at such time and place, within the territory described in said petition, as said judges shall jointly specify, and the finding by the majority of said judges shall be treated as the finding of said court and at said hearing such districts shall be represented by one judge only; but the district court, in which said petition was originally filed, shall for all other purposes, except for the purpose of said joint hearing, and except as herein-after otherwise provided, have and retain original jurisdiction; but the absence from said hearing of the judge of one or more of said districts shall not affect the judgment or decree then entered providing two or more judges are present. ('17 c. 442 § 4)

[5671—]5. **Hearing—Findings and order—District to be body corporate, etc.**—At the time and place set for hearing on said petition, all parties interested may appear and be heard for and against the granting of said petition, but no delay shall be granted at said hearing except when necessary and as the court may order, and if upon said hearing it shall appear that the purpose of this act would be subserved by the creation of a drainage and flood control district, comprising the whole or certain portions of the territory outlined in the petition, and the court shall so determine, then said court shall immediately make and file its findings of all matters involved in said petition, and shall by order, direct and declare said district organized, designating in said order the name by which it shall thereafter be known, and upon the filing of said order with the clerk of the court, where said petition was filed, and a certified copy thereof in the office of secretary of state, said district shall be and become for all purposes of this act, a body corporate endowed with all the rights, privileges and authorities herein designated, with power to sue and be sued, to incur debts and obligations and to do and perform and exercise all the rights and privileges in this act enumerated.

Said order or decree shall designate the place where the office or principal place of business of the district shall be located, which, unless special reasons arise to the contrary, shall be where the petition is filed; shall designate the number of directors or officers who shall constitute the first board of directors of said district, who shall be no less than three or more than five, and, there shall be one director resident of each county having more than 5 townships within said district.

If upon said hearing the court finds that any portion of the territory named in said petition should not be included in said district the same may be excluded, but any territory not included in said petition within the forty mile limit hereinbefore defined may at said hearing or any subsequent hearing ordered by the court upon petition of twenty-five freeholders of said territory to be included be added to said district, and the boundaries thereof fixed accordingly, and if upon full hearing the court determine that the territory described in said petition or some part thereof should not be organized in said district, then said petition may be dismissed and the cost incurred be taxed against the petitioners. After an order is entered, establishing the district, the same shall be deemed final and binding upon all persons and property within said district, and the organization of said district shall not be collaterally questioned in any suit or action in any court in this state. ('17 c. 442 § 5)

[5671—]6. **Directors' meeting—Oath and bond—Officers—Meetings**—Within ten days after the filing of the order organizing said district, in the office of the secretary of state, the parties named therein as the first board of directors shall meet at the office of the clerk of the district court, where said

petition was filed, each take and severally subscribe the oath provided by statute, to be taken by public officials, and shall severally file with the clerk of said court a bond in the sum of five thousand (\$5,000.00) dollars, furnished by a proper surety company, the cost to be paid by the District conditioned for the faithful performance of their duties, and shall thereupon organize, by electing one of their number as President, and one of their number or a third party as secretary or clerk of said board, and shall provide the necessary books and records, and if the place designated in said order, as the general offices for said district, shall be a county seat said board shall have the authority to elect the clerk of the district court of such county as clerk of said board, and thereupon and thereafter all papers filed with said clerk shall be and constitute a filing with said board, and the office of said clerk shall be the general office of said board, and it shall be the duty of said clerk to keep and preserve the record of said board in his office and to do and perform such duties as shall be designated and required by said board, who shall have authority to fix his compensation. If said board shall consist of more than five members they shall elect an executive committee of three of their members consisting of the president and two other members, who shall have active charge of all work and improvements under the direction of the board.

Said board shall meet at least semi-annually and at such other times as they may designate or as occasion may require, and at all such meetings a majority of the members thereof shall constitute a quorum and a legal meeting thereof may at any time be called upon eight (8) days notice by mail, given by the clerk or any member of the board. ('17 c. 442 § 6)

#### AUTHORITIES OF THE BOARD

[5671—]7. **Treasurer—Oath, bond and duties—Chief engineer, attorney, etc.**—Said Board shall have full authority to elect or appoint a treasurer, who shall be a resident of said district and may be one of their members, who, before entering upon his duties as such, shall subscribe the oath required by statute, in the case of public officials, and shall be required to give bonds in such sum as the board shall direct, which shall be not less than the total sum that shall at any time be in his hands or under his control belonging to said district which bond shall be by a surety company, to be approved by said board, and the duties of said treasurer shall be such as the board may from time to time designate, and among other things, it shall be his duty to receive all moneys belonging to said district and deposit the same in such bank or banks as the board shall designate, and it shall be the duty of said treasurer to require such banks to give a proper surety bond for the care and accounting for such moneys, and said treasurer shall pay out said money only on proper orders signed by the president and secretary of said board.

Said board may also employ a chief engineer and an attorney and such other engineers and attorneys or agents or assistants as may from time to time be needful and necessary and provide for their compensation, all of which expense shall be taken and treated as a part of the cost of each particular improvement. The chief engineer shall be superintendent of all the works and improvements and shall have general charge of all work pertaining to flood control within the limits of said district. ('17 c. 442 § 7)

[5671—]8. **Board of directors—Number and terms—Powers**—The members of the board of directors of said district shall hold their office, where their number does not exceed three (3), one for a period of 2 years, two for 4 years, and where their number shall consist of five (5) members, two of said board shall hold their office for the period of two years; three for the period of four years, and in all other cases where the total number is divisible by two then one-half shall be appointed for (and hold their office for two years and the other one-half for four years), and if there is an odd number then the extra member shall hold his office for four years, and thereafter all shall be appointed for four years, and the judge of the district wherein the county is located shall have authority to and shall fill vacancies that occur in said board from any cause in the counties in his district; and each member of said board

shall hold his office until his successor is elected and qualified. And said board when organized shall for all purposes of this act be and constitute a commission for the purpose of carrying into effect any and all orders, judgments, decrees or directions made by the district court relative to any improvement authorized by this act, within the limits of said district. (17 c. 442 § 8)

[5671--]9. **Petition—Bond—Duty of directors—Surveys, maps, etc.—Report of engineer—Statement of benefits and damages, etc.—Contracts with officials of other states—Joint plan**—After the organization of the board of directors of any drainage and flood control district organized under the provisions of this act, said board of directors shall upon the filing with them of a petition signed by not less than 25 freeholders of said district, or by the board of county commissioners of any county or council of any village or city likely to be affected by the proposed improvement therein asking for the construction of any of the improvements authorized by the provisions of this act relative to drainage or flood control of any waters or any lake, pond, marsh or body of water or river, stream or water course within said district, therein describing the nature of the proposed improvement, the extent thereof and describing the bodies of water, stream or water course proposed to be improved or reservoir or other improvement constructed and if the construction of a ditch or drain as a part of the proposed improvement, a description of the starting place, the general course and terminus thereof and setting forth the reasons and necessity for such improvement and that the same will affect the public health and general welfare and said petition is accompanied by a bond signed by said petitioners, or any number of them or other parties in their behalf in such sum as the board of directors of said district may specify conditioned for the payment of all costs and expenses in the event said petition is not granted, it shall be the duty of said board of directors of said district to cause to be made at the earliest date possible by its engineer all necessary surveys, maps, plats, profiles, and plans covering said proposed improvement and said board of directors or not less than 3 of them shall upon receipt of the report of their engineer proceed to personally inspect and examine all lands, highways or other property likely to be affected by such improvement or that may be used or taken for the construction or maintenance thereof and make and file in their office with said plans and specifications a detailed statement showing the benefits and damages that will result to all individuals, property of corporation from the construction of said improvement and a list of the land claimed to be benefited and damaged and the amount thereof and of all land subject to assessment for the construction and maintenance of such improvement and if said improvement relates to any lake, body of water, stream or water course forming the boundary between this state and any other state and bordering on said district and is of such a nature as to call for, or render necessary the deepening, widening, straightening of the channel of any stream or water course forming the boundary line between this state and any other state or the dyking, and raising, lowering, or fixing the stage of water in any lake or body of water forming such boundary line or the deepening, straightening or dyking of any stream or river flowing into or from and materially affecting such boundary waters or the use or control thereof then and in that event the board of directors of said district are hereby authorized to confer with and enter into all necessary contracts and arrangements with the governing board of drainage district or other tribunal in charge of drainage and flood control in such adjoining state or states, affected by said proposed improvement, for the purpose [of] agreeing upon a joint plan for the making of said improvements and the nature and extent thereof, and shall have full authority, together with the representatives of said other state or states to employ one or more engineers to make a joint survey of such boundary waters and water courses and to report to said joint contracting parties all such information as they may require to enable them to determine and agree upon a joint plan for the construction of the proposed improvement and may make all necessary arrangements for all expense that will be incurred in

connection with the making of said survey and report by said engineers and adoption of said joint plan. ('17 c. 442 § 9)

[5671—]10. **Procedure of joint contracting parties—Hearing—Viewers—Report—Benefits and damages—Joint hearing and notice—Division of costs**—Upon the filing of the report of the engineers appointed as provided in section 9 of this act [5671—9], with the commissioners or board of directors of said drainage district in this state and with the commissioners or tribunals representing drainage in such other state, said joint contracting parties shall proceed to consider such report and to adopt such joint plan for the construction of the proposed improvement and said joint contracting parties may give notice of a hearing of the time and place for the consideration of said report and adoption of said joint plan if deemed advisable but upon the adoption of said plan said joint contracting parties shall have authority to and shall appoint three (3) disinterested parties to act as viewers, at least one of each shall be resident of each state and who shall, after taking the oath for the faithful performance of their duties, proceed together with said engineer to examine all the property affected or that is likely to be affected by the construction of the proposed improvement and shall make such report as shall be required and among other things shall give a full description of all property and corporations affected by said improvement together with a statement of benefits and damages that will result thereto; and it shall be their duty to assess the benefits and damages upon the property in the various states upon the same basis so that each will be charged and credited with their proper proportion of the benefits received and damages sustained and shall include in said report a statement of the total cost of the proposed improvement including damages and all costs and expenses and shall make such report in duplicate or triplicate as the case may require and file one copy with the representative of each state and upon the filing of said reports, said board of directors of the drainage district in this state and the representative of such other state or states shall fix a time and place in the vicinity of the proposed improvement or some part thereof convenient of access to all parties interested, for a hearing upon said report of the viewers and engineers of which hearing notice shall be given by publication for two (2) successive weeks in at least one weekly newspaper published in each county containing property affected by said improvement the last of which publication shall be at least eight (8) days prior to the date set for hearing; at which hearing the representatives of the several states shall attend in joint session and all parties interested shall be given a hearing for or against any matters contained in the report of said viewers and engineers including joint plan and benefits and damages and the said representatives of the drainage and flood control district in this state and representatives from such other state or states shall have full authority to consider and modify said report and after full hearing to adopt or reject the same; and if it shall then appear that the amount assessable against the property and corporations benefited shall be greater than the benefits received, then said petition shall be dismissed but if it shall appear that the total benefits are greater than the total sums assessable against the property and corporations benefited and that such improvement will be of great public benefit same shall be adopted; and in that event, it shall be the duty of said joint contracting parties then in session to divide the total cost of said improvement including all expenses in any manner connected therewith, among the several states in proportion to the benefits received as shown by said reports as finally adopted and the joint plans as thus adopted and the division of the total costs so assigned to the several states shall be binding upon all parties to said joint arrangement in all subsequent proceedings relating thereto and the findings and order so made by the parties to said joint arrangement shall be executed in duplicate or in triplicate as the case may require and filed with the proper representatives of the several states. ('17 c. 442 § 10)

[5671—]11. **Petition to district court—Notice of hearing**—The board of directors of such drainage and flood control district in this state upon the filing in their office of the report required to be made by them under the provi-

sions of section 9 [5671—9], where the proposed improvement relates to streams or bodies of water lying wholly within this state, or upon filing in their office where the proposed improvement relates to boundary waters or water courses, of the engineers and viewers report and the report and findings of said joint conference including the findings as to joint plans and division of the total cost of construction among the several states as provided in section 10 [5671—10], of this act, said board shall cause to be made a petition to the district court in the county where the proposed improvement or some part thereof is located, therein petitioning said court for authority to construct said improvement as shown in the original petition filed with said board or as subsequently modified by them and the finding and reports filed in their office relating to said improvement therein setting forth the necessity for such improvement and fully describing the nature and purpose thereof and setting forth the facts required to be alleged in case of petitions to the district court in judicial ditch proceedings required by the laws of this state and the engineers and viewers report where the same relates to boundary waters and in all other cases the engineers report and the report of said board as to the benefits and damages shall be referred to or attached and made a part of said petition and asking that the time and place be fixed by said court for a hearing upon said petition and reports and requiring all parties interested to appear and show cause why the reports accompanying said petition should not be adopted and the rights of all parties interested fixed and determined and said improvement ordered constructed in accordance with said report and said petition. Upon the filing of such petitions and such reports with the clerk of said court, he shall immediately notify the judge thereof who shall within ten days fix a time and place for hearing upon said petition and report which may be in any county most convenient for the parties interested, due notice of which shall be given by publication for two (2) weeks in one newspaper published in each county affected by the proposed improvement, which notice shall contain a description of the property affected and the names of the owners thereof as appears in the office of the county treasurer on the last assessment roll of said county together with the names of all corporations affected by such proceedings, a copy of which notice shall also be mailed by the clerk to each property owner, at least two weeks before the date set for hearing at his last known address or if not known, as shown by the records in the county treasurer's office where the property is located and requiring all parties in any manner interested to appear before said court at the time and place specified in said notice to show cause why the reports accompanying said petition should not be confirmed and the prayer of said petition granted and said improvement ordered constructed in accordance with the plans and specifications and the report of the engineer and viewers or directors accompanying said petition. Upon the filing of said petition and reports and the publication and mailing of said notice, said court shall have full jurisdiction of all parties, corporations, property and matters named and referred to in said petition and said reports and the holders of all mortgages and liens against all lands therein described. ('17 c. 442 § 11)

[5671—]12. **Hearing—Findings and order**—At the time and place specified in the notice of hearing provided for in the last section, the judge of said court or the judge of any other district court upon his request, shall appear and hear all parties for and against the matters set forth in said petition and reports accompanying the same and may amend or modify the same, provided, he shall have no authority to modify the order adopting the joint plan or the order dividing the total cost among the several states and, if upon full hearing it shall appear that the total benefits resulting from said improvement together with the total sum assessable against property not directly benefited as reported by the board of said district shall exceed the total cost of said improvement including the damages and that said improvement will be of great public benefit and utility, then the said court shall make its findings accordingly and shall by order confirm the report of the engineer and viewers or the report of the board of said district as found and fixed by him, and shall order

the construction of said improvement accordingly and such findings and order of said court shall fix and determine the rights of all parties affected in accordance therewith subject only to the right of appeal as provided in this act. ('17 c. 442 § 12)

[5671—]13. **Appeals—Hearing before other judge, etc.**—Any parties or corporations interested or affected by the order of the court directing the construction of any improvement as provided in section 12, of this act [5671—12], may within twenty (20) days from the date of said order appeal therefrom upon the grounds and upon like notice as now provided for appeals in county or judicial ditch proceedings by section 5534 of General Statutes of 1913, and the provisions of said section shall apply to and govern appeals under this act, and the board of directors of said drainage district shall have a like right of appeal and shall also have the right of appeal from the order of the court denying their petition for the construction of said improvement and any appellant in their notice of appeal may demand a hearing before another judge or before a jury and in the event of a demand for hearing before another judge the judge of said court shall provide for the trial of said appeals before another judge but no appeal shall be granted from an order granting the petition of said board and ordering the construction of said improvement, provided further, that no appeal taken on the question of benefits and damages shall delay further proceedings towards the construction of said improvement. ('17 c. 442 § 13)

[5671—]14. **Assessment of lands outside district**—Whenever the board of directors of any district shall ascertain that any improvement will benefit lands outside the district they shall assess such lands for such benefit as though within the district and report such facts to the court; together with their findings and recommendation; and thereupon notice of the filing of such assessment and recommendation shall be served upon the parties interested and they shall be given the same notice of hearing upon said petition and for assessment as provided for in case all parties affected by said proceedings are within the district, and said assessments considered modified or confirmed as in other cases and at any time upon filing with the district court, where the original petition was filed, a petition by the board of directors of any district or any parties in interest outside the district asking for a change of the boundary lines of said district, either adding to or taking from said district any territory, the court shall upon the filing of said petition, cause notice thereof to be given and hearing had thereupon in the same manner, and with like effect as in the original hearing for the formation of the district, except the notice to be published, shall be only in such counties as shall be directly affected by such change. Provided no assessments shall be levied under the provisions of this section upon lands directly benefited in excess of ten miles outside of the boundary of the district as fixed by the forty mile limitation provided for in this act. ('17 c. 442 § 14)

[5671—]15. **Contracts for construction, how let, etc.**—The board of directors of any district organized under the provisions of this act shall have full authority to let contracts for the construction of and cause to be constructed any and all works of improvement, in accordance with the order of the court and the plans and specifications referred to in such order, said contract to be let only on three weeks' published notice calling for bids at such time and place as the board shall designate, and may employ and use men and equipment under the supervision of the chief engineer or other agents, of all portions of said works not let by contract, and may cause to be repaired any and all works of improvement by this act authorized to be constructed and to employ men therefor; said work to be done under the direction of the chief engineer or his assistants and the cost of all such work except those of repair shall be treated and considered as part of the construction. Provided: No money shall be expended in the construction of said work except those in the preparation of the necessary surveys and plans including the work of viewing and estimating the amount of benefits and damages or connected therewith until after a petition for such construction has been filed and the:

same ordered constructed as provided in this act, and in the event that the said improvement relates to boundary waters or water courses then said board of such district shall have full authority to enter into and make all necessary contracts and arrangements with the board, commission or other tribunal of any adjoining state or states interested in such improvement for the letting of the contract for such improvement and the said board together with the representatives of said other states shall have full authority to advertise and call for bids for the construction of such improvements, giving such notice of the time and place of opening bids as said parties may provide and shall have full authority to make all necessary arrangements relative to the making of said contracts, the form of the contracts and the supervision of the work and payment therefor but said contract shall provide for the completion of said work in accordance with the plans and specifications within a given time and shall require sufficient bonds to secure the performance of said contract and shall further provide that the said drainage district or authorities in this state shall not be responsible except for the furnishing of the funds provided to be furnished by this state and the completion of so much of the improvement as lies within the limits of this state and may contain like provisions relative to the rights of the authorities representing such other state or states. The board of directors of such district shall also have authority to enter into such contracts or arrangements as may be deemed advisable with the authorities of such other state or states relative to the cost of repair, improvements and upkeep of all parts of said improvement connected with such boundary waters or water courses and provide the funds therefor and also for a proper division of any income that may be realized from use of such waters. ('17 c. 442 § 15)

[5671—]16. **Entry on lands for surveys and examinations**—The board of directors of any district organized under this act and their agents and employees, including contractors, may enter upon lands within or without the district in order to make surveys and examinations to accomplish all necessary preliminary purposes, the district being liable only for any actual damage done, and any person or corporation preventing such entrance shall be guilty of a misdemeanor. ('17 c. 442 § 16)

[5671—]17. **Eminent domain—Bonds, etc.**—Said board shall also have the authority to condemn, for the use of the district, any land or property within said district when the same shall become necessary to protect the property of the district and to carry out the purpose of this act, and when it shall appear that in any proceedings to establish any improvement including reservoirs or holding basins or other similar improvements, that sufficient land was not acquired in said proceedings to properly handle and control the waters in said reservoir or protect adjoining property from such waters or the waters of any stream, ditch or watercourse, or when the board shall determine that it is necessary and advisable to increase the size of any lake, basin or reservoir previously established and desire further lands to properly create and utilize the same, the said board may acquire title thereto for the benefit of the district, by filing a petition with the district court of any county in said district wherein said reservoir or other improvements or some parts thereof is located, accompanied by proper plats, plans and specifications, as provided in section 11 of this act [5671—11], and thereupon after hearing as therein provided for, the court may by order provide for the appropriation of such land, if it shall be shown that the same is necessary and advisable, and assess the damages resulting therefrom as in other cases providing for the construction of improvements for flood control.

In all cases where a reservoir is created, either in a natural basin or otherwise, and said board shall conclude that the creation of said reservoir will create a waterpower or establish conditions whereby waterpower can profitably be constructed in connection with said reservoir, said board either in the original petition provided for the creation of said reservoir, or at any subsequent time may petition the court, presenting maps and details therewith and ask that such additional land and other rights or privileges as may be deemed necessary be condemned and title acquired in connection with said reservoir

property, to enable said board to improve the same and use the waters of said reservoir and other waters in any manner connected therewith for waterpower purposes, to the end that the waters of said reservoir or holding basins together with all streams connected therewith may be utilized and produce income for the benefit of said district and to aid in the general expense thereof, and in the upkeep of all drainage and flood control improvements within said district.

Said board may also include in said petition a statement giving the reasonable value of said property owned by the district in connection with said reservoir and proposed water power and a detailed estimate of the amount of water power likely to be produced by the proposed improvement and the probable income to be derived therefrom annually; and may in said petition ask the court to fix and determine the amount of bonds that the board may issue against the property of the district in connection with said reservoir together with the income therefrom and the court shall have authority to authorize said board to issue the bonds of said district in such sum as such improvement may require not to exceed 60% of the reasonable value of the proposed water power, and not to exceed such sum as the income from said water power may reasonably be expected to pay the interest on; and upon the making of said order, the board of directors are hereby authorized to issue the bonds of said district not to exceed such sum as specified in the order of the court in such denomination and in such form as the board may determine, payable in not less than 10 or not more than 20 years from date with interest not to exceed 6% per annum payable annually, which bond shall be signed by the clerk and president of said board and registered in the same manner as county bonds under the laws of this state and upon the issuance of said bonds it shall be the duty of said board to create an interest fund and provide for the accumulation of the necessary sum to pay the interest on said bonds promptly when due.

If, at the time of the filing of the petition for the establishment of any reservoir or holding basin or at any time thereafter it shall appear that the waters of such reservoir or holding basin can be utilized for the purpose of irrigation or for any other purpose and the board of such district shall, after examination, so determine, it may cause to be made all necessary plats, plans and specifications and upon filing the same, together with a petition with the clerk of the district court of any county affected and by such proposed improvements or use, a hearing shall be had thereon upon like notice, as provided in section 11 of this act [5671—11], at which hearing the court, after due consideration of the showing made, shall have authority to make such order as may be necessary to authorize said board to acquire title to all necessary rights of way, ditches or property to enable it to utilize waters of any such reservoir for irrigation purposes and to hold, keep and control the same and all property so acquired in any such proceeding shall be and become the property of said district. ('17 c. 442 § 17)

[5671—]18. **Contracts with United States government, state governments, etc.**—The board of directors shall also have the right and authority to enter into contracts or other arrangements with the United States Government or any department thereof, with persons, railroads or other corporations, with public corporations, and state government of this or other states, with drainage, flood control, conservation, conservancy, or other improvement districts, in this or other states, for co-operation or assistance in constructing, maintaining, using and operating the works of the district or the waters thereof, or for making surveys and investigations or reports thereon; and may purchase, lease or acquire land in other property in adjoining states in order to secure outlets to construct and maintain dykes or dams, or for other purposes of this act, and may let contracts or spend money for securing such outlets or other works in adjoining states. Provided, that no board of directors of any drainage district organized under the provisions of this act shall have the right, power, or authority to connect by artificial means boundary waters having different natural outlets so that the waters of one may be discharged into the other. Provided that nothing

herein contained shall interfere with any action by the Congress of the United States. ('17 c. 442 § 18)

[5671—]19. **Rights of various parties to waters—Lease or permission to use—Applications—Preferences—Regulations—Rates—Right of state, etc.—**The rights of land owners, municipalities, corporations, and other users of water to the waters of the district for domestic use, water supply, industrial purposes, for water power, or for any other purposes shall extend only to such rights as were owned by them prior to the organization of the district. Wherever the organization of, or the 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 of such greater, better, or more convenient use of, or benefit from, such waters shall be the property of the district; and such rights may be leased, or assigned by the district in return for reasonable compensation; but the appraisal of benefits made by the board or any appraisers in any proceeding for the establishment of any improvement under the provisions of this act shall not be construed to in any manner include benefits for such greater, better or more convenient use of or benefit from the waters of the district, unless so specified in the petition or report of the board, but the compensation for such benefits shall be made in accordance with the provisions of this section except as hereinafter provided.

Persons, corporations, municipalities, or other parties desiring to secure such use of the waters or water courses of the district or of the district rights therein, may make application to the board of directors for lease or permission for such use. Such application shall state the purpose and character of such use, the period and degree of continuity and of the amount of water desired. In case any party makes greater, better or more convenient use of the waters of the district without formal application the fact of such use shall serve all purposes of an application, and the board may proceed to determine a reasonable rate of compensation the same as though formal application had been made. Where it is not possible nor reasonable to grant all applications, preference shall be given to the greatest need and to the most reasonable use, as may be determined by the board of directors, subject to the approval of the court. Preference shall be given, first to domestic and municipal water supply, and no charge shall be made, for the use of water taken by private persons for home and farm yard use, or for watering stock.

The board of directors shall not permanently sell, lease, assign or grant any permit or otherwise part with permanent control by the district of the use of the waters thereof and the rates for light, power or other services charged by vendees, assignees, lessees or licensees of such district, but such leases, assignments or permits of any kind or other contracts for the use of water shall be entered into only after a report has been made by the board of such district to the court setting forth the terms and conditions of said lease, permit or other contract relative to the use of any property of the district, whereupon, the clerk of said court shall give due notice to all parties interested by mail, and shall cause to be published notice of said application stating therein the purpose of said application and the time and place of hearing thereof, at which time the court may hear all showing made for and against such proposed contract and make its order accordingly; but subject to revision and control by the state law and such conditions and restrictions as may be necessary at all times to protect the interests of said district and of the public; said leases or permits may be made for periods not to exceed ten (10) years but subject to said conditions and subject to the right of renewal for further reasonable period not to exceed ten (10) years on condition that a new determination may be made as to the reasonable charge therefor.

The board of directors may make regulations for the determination and measurement of the increased, or better, or more convenient use of, or benefit from the water supply of the district, for the purpose of determining rates of compensation, and for the purpose of securing to all parties interested the greatest and best use of the water thereof. The board shall have power to determine the rates of compensation for such greater, better, or more convenient use of, or benefit from the water supply of the district, which rates

of compensation shall be reasonable, and may require bond to be given to secure the payment for such use. Upon the determination of any rate, or rates, the board shall make a report of its determination to the court. The court shall thereupon cause personal notice by summons to be given to the parties interested, stating that such determination of rate, has been made, that a hearing before the court will be had thereon on a certain day, and that objection may be made at such time to such determination of rates. A hearing may be made before the court, objections may be made and appeals taken in the same manner as in case of the appraisal of benefits, but the rate as fixed by the court shall control until modified on appeal. In case no appeal is made within the time provided, or upon the final determination of the matter by the court, the determination of such rates of compensation shall be conclusive and binding for the term and under the conditions specified in the lease or other agreement. The right of the district, its successors, assigns and lessees, and of land owners, municipalities, corporations and all other users of the waters of the district to use such water for water power purposes, shall ever be subordinate to the right of the state, to acquire such water powers; and the state may at any time acquire such water power rights by paying to the governing boards of such drainage and flood control district for the use of such district and of persons, firms and corporations claiming under such district, the excess of the cost of improvements made pursuant to this act and damages therefrom, over the benefits to lands affected. ('17 c. 442 § 19)

#### FINANCIAL PROVISIONS

[5671—]20. **Separate funds**—The moneys of any drainage and flood control district organized under the provisions of this act shall consist of three (3) separate funds:

1. A preliminary fund, which shall consist of funds to be provided as hereinafter specified, and can be used for preliminary work and general expenses.

2. A bond fund, which is the proceeds of bonds issued by said district, as herein provided, upon property of the district that is producing or likely to produce a regular income and to be used for the payments of the purchase price of said property of the value thereof, fixed by the court in proceeding, as herein provided, and for the improvement and development of such property.

3. A maintenance fund, which shall be supplied by special assessments to be levied from time to time as occasion may require to supply funds for the upkeep of the property and improvement of the districts including the reservoirs, ditches, dykes, canals and other improvements, together with the expenses incident to, and connected therewith. ('17 c. 442 § 20)

[5671—]21. **Costs, how paid—Preliminary expenses—Preliminary fund**—After the filing of a petition under this act for the formation of a district, and the furnishing and filing of the bond, as provided in section 2 of this act [5671—2], the costs of publication and other official costs of such proceedings shall be paid out of the general funds of the county in which the petition is pending. Such payment shall be made on the warrant of the auditor, on the order of the court. In case the district is organized, such costs shall be repaid to the county out of the first funds received by the district, through the levying of taxes or assessments or selling of bonds, or the borrowing of money. If the district is not organized, then the costs shall be collected from the petitioners or their bondsmen; upon the organization of the district the court shall make an order dividing the preliminary expenses between the counties included in the district in proportion to the interests of the various counties as may be estimated by the court; and the court shall issue an order to the auditor of each county to issue his warrant upon the treasurer, for the proportion of the preliminary expenses assigned to that county by order of the court.

As soon as the district shall have been organized under the provisions of this act, and a board of directors shall have been appointed and qualified;

said board may file a petition with the district court in the county where said original petition was filed, asking that an order be made creating a preliminary fund for said district, which shall be of a size in proportion to the size of said district, and in the event said district shall include a number of counties, said funds shall not exceed the sum of \$10,000 and may be of such less amount as the court may order, and the court, upon said hearing, may designate the amount of said funds and fix the proportionate amount that each county affected by said district shall pay in proportion to the area within said district, and thereupon the court shall order each of said several counties to advance from its general fund, the sum there named to constitute a preliminary fund for said district, and thereupon the auditors of said several counties shall draw their warrant upon the treasury of their county for the payment of the amount specified in the court's order payable to the treasurer of said district, and the sum so advanced by each county shall be charged to said district and shall be repaid to each of said several counties as soon as said district has funds for that purpose, and the funds so provided shall be used by the board of said district for preliminary work, and when said board shall incur expense for surveys or other preliminary work, on any proposed improvement, all expense including time, salaries or otherwise connected with such work shall be kept track of and figured in as the cost of construction in any such proposed improvement, and upon said improvement being ordered by the court and funds being provided for the construction thereof, as hereinafter specified, all sums advanced out of said preliminary funds shall be repaid and said funds replaced for further similar use on other improvements. ('17 c. 442 § 21)

[5671—]22. **Apportionment of total costs between counties—Itemized statement—Duties of county officers—**At the time set for hearing on the report and petition of the board of directors of any district and the report of the engineer asking for the establishment of any improvement under the provisions of this act or at any time subsequent thereto, upon 5 days notice in writing to the auditors of the several counties affected by such improvement, the court shall apportion the amount of the total costs of the construction of said improvements among the several counties affected in proportion to the benefits received and shall fix and determine the amount to be paid by each and upon similar notice to said county auditors, said judge of the district court may at any time modify said order as justice may require, or make additional orders covering additional expense. The word "expense" as used in this section shall be construed to mean every item of cost of said improvement from its inception to its completion and all fees and expenses paid or incurred, including all damages awarded, and upon the filing of said order with the clerk of the court where said proceedings are pending, it shall be the duty of said clerk to make and file certified copies of said order with the auditors of the respective counties affected, together with certified copies of the order confirming the report of the board of viewers and the engineer and directing the construction of said improvement a list of all property affected in said counties and a statement of all benefits and damages affecting the same, and such other information as the court by order may direct, it shall be the duty of the county commissioners of said counties to provide the necessary funds to meet their proportionate share of said improvement in the same manner as now provided in the case of judicial ditch proceedings. That immediately or at the earliest date possible, following the letting of a contract or contracts for the construction of any improvement, by the board of directors of said district, they shall cause to be made and filed with the clerk of said court where said proceedings are pending an itemized statement of all expenses incurred in the construction of said improvement including the amount for which said ditch was sold, the estimated cost of supervision, fees and all other ascertainable expense in connection therewith, and thereupon it shall be the duty of the clerk of said court to make out a statement and summary or tabular statement as required by section 5543, General Statutes 1913, and show all such expense connected with the construction of said improvement and the total estimated benefits to be derived therefrom and shall

ascertain the rate or cost of each dollar of benefits that said improvement will cost as provided in said section and shall include in said statement as provided in said section the amount that each tract of land, municipal, or public or corporate road is chargeable with, and shall file said statement in his office and shall make and file certified copies thereof with the county auditor of each county affected by said improvement and shall have attached hereto a list of all property roads or corporations assessed for benefits or allowed damages within such county with the amounts assessed or allowed to each; and thereupon it shall become the duty of the county auditor of the respective counties to make and file a statement and lien and proceed to levy and assess against the property benefited and the property subject to assessment within his county, the amount to be paid by said county, in accordance with the provisions of section 5544 of the General Statutes of 1913. And it shall be the duty of the county commissioners of said several counties to provide the funds to meet the proportionate share of the total cost of said improvement, as shown by the report of the board in said drainage and flood control district and they are hereby authorized to exercise all rights and authority in so doing, now granting to county boards or boards of county commissioners under the provisions of section 5542, of the General Statutes of 1913, and other provisions of the General Statutes, relating to county and judicial ditch proceedings, and the said board of county commissioners and the said county auditor and county treasurer and register of deeds are hereby authorized and directed to exercise the authority and perform the several duties assigned to such officials or any of them under the provisions of section 5544 and section 5548 of the General Statutes of 1913 relative to the establishment of liens, and the assessment and collection by installments of all sums levied against property within their respective counties for benefits resulting from the construction of said improvement and to exercise such other authority and perform such other duties relative to the establishment of liens, filing of statements or additional statements and liens as now provided by the laws of this state relating to county and judicial ditches, and the county board is authorized to make the necessary order specifying the period and times of payment of said assessment and the rate of interest. And all moneys received by the county treasurer of any county from the sale of bonds, assessment or otherwise for the benefit of the district shall be by the treasurer of each county accounted for and paid over to the treasurer of said district, and it shall be the duty of the board of said district to pay all damages before entering upon the land, except in case of appeal. ('17 c. 442 § 22)

[5671—]23. **Duties of county auditors—Assessment, etc.**—Upon the filing by the board of directors of a drainage and flood control district, with the county auditor of any county, of a statement, as provided in section 22 of this act [5671—22], giving a list of the property and corporations benefited or damaged or otherwise affected by any proposed improvement, it shall be the duty of the county auditor to assess, the amount specified in such list against the municipalities or other corporations, as therein specified, in accordance with the provisions of section 5551 of the General Statutes of 1913; and said county auditors respectively shall proceed to levy and collect the sums specified in said list against the several corporations in accordance with the provisions of said section, and in the event that any improvement reported in said list shall be for improvements or benefits to any county or state road, then, and in that event, the sum so reported shall become a direct charge against said county and may be paid by said county out of its road and bridge fund or otherwise, as its board of county commissioners may direct, and may be paid in whole or in installments, as may be specified by the board of county commissioners of each county. Provided, that no assessment shall be levied against any property or corporation benefited under the provisions of this act in excess of the amount of benefit received, as fixed by the order of court directing the construction of said improvement, or as subsequently determined on appeal. ('17 c. 442 § 23)

[5671—]24. **Orders for payment**—The board of directors of any drainage and flood control district is hereby authorized to issue the orders of said dis-

tract on payment for any contract for the construction of any improvement, and also for all ordinary general expenses, and for all expenses incurred by contract or otherwise in making reports and when sufficient funds are not available to pay the same, said order shall after presentation to the treasurer of the district, draw interest at the rate of 6% per annum until paid or until notice shall be given by the district that such funds are available. ('17 c. 442 § 24)

[5671—]25. **Levy for upkeep and repairs—Apportionment between counties**—The board of directors of any drainage and flood control district, organized under this act, are hereby authorized after the construction of any improvement, to levy from time to time as occasion may require upon the land benefited by such improvement, such sum as the court may order or direct upon application by the board, for the purpose of providing funds for the upkeep and repairs of such improvement, and upon filing a copy of said order and levy with the county auditor of each county affected by said improvement accompanied by a list of the property within the limits of said county affected by said levy it shall be the duty of said county auditor to extend said levy against said property within the limits of his county as provided in other cases for the levy, assessment and collection of taxes ordered, levied and collected by the board of county commissioners in ditch proceedings, and upon like application the board of directors of any drainage and flood control district are hereby authorized to levy upon the property of the district such sum as the court may authorize and direct to cover the general expenses of the board, not to exceed, however, in any one district the sum of five thousand (\$5,000) dollars, and the court shall by such order, apportion the amount of such levy among the several counties, according to the area or valuations of the portion of each county within said district, and upon the filing of a copy of said order, showing the amount to be levied upon the property of said district, within the limits of each county, the auditor of such county shall levy the same upon that portion of the property of said county within the limits of said district in the same manner and with like effect as in the levy of other taxes by municipal corporations in this state; and all sums collected and received by the county treasurer of such county shall be accounted for to the treasurer of said drainage and flood control district; and the same shall be placed in the fund as provided in this act and used for the purposes for which said assessment was made. ('17 c. 442 § 25)

[5671—]26. **Powers of directors**—The board of directors of all drainage and flood control districts shall have charge and control of the public waters of said district and especially all bodies of water used as reservoirs and streams flowing into and from the same, and may cause said reservoirs, when deemed practicable, to be stocked with fish and shall have full charge and control of all fish caught in said waters for sale or other commercial purposes, and shall have the sole right and authority to make all contracts or issue all licenses therefor and in all cases such contracts shall provide for the payment of the reasonable value of such fish into the treasury of said district and said district shall receive all benefits and income therefrom, but said board shall have no authority to authorize the catching of any game fish for commercial purposes or to grant any authority relative to fishing in violation of the laws of this state nor interfere with private individuals fishing with hook and line or in such other manner as the laws of this state shall provide during the seasons when such fishing is permitted. ('17 c. 442 § 26)

[5671—]27. **Definition of terms**—Whenever the term "person" is used in this act and not otherwise specified, it shall be taken to mean and include person, firm, co-partnership, association or corporation, other than public or political subdivision, and whenever the term "public corporation" or "municipal corporation" shall be used, the same shall be taken to mean counties, townships, school districts, road districts, or other political divisions or subdivisions.

Whenever the term "court" is used it shall be taken to mean the district court or the judge thereof, and to apply to the district court wherein the peti-

tion for the organization of the district was filed and granted unless otherwise specified.

Whenever the term "Board" or "Board of Directors" or "Commissioners" is used in this act and not otherwise specified it shall be construed to mean the board of managers of the drainage district in this state in charge of the improvement; and whenever the term "joint contracting parties," is used, it shall be construed to mean the parties representing the board of directors of the drainage district or districts in his state in charge of the improvement and the board, commission or authorities representing such other state or states. ('17 c. 442 § 27)

[5671—]28. **Classification of lands for assessment purposes**—In all proceedings by the board of directors under the provisions of this act to assess benefits to any land resulting from any improvements said board shall as near as practicable divide said lands for the purpose of assessments into three (3) classes;

In Class No. 1, shall include all lands or corporations receiving direct benefits such as drainage or protection from overflow by flood control improvements.

In Class No. 2, shall include all lands or corporations to which are furnished a drainage outlet by the construction or improvement of any artificial or natural drain or water course.

In Class No. 3, shall include all lands that are now receiving or that need drainage and that are furnishing waters that will be handled or controlled by the proposed improvement.

Class 1 and 2 shall be treated as a direct assessment.

Class No. 3, may be treated as a secondary assessment to aid in the control of the waters furnished by said lands and all lands within or without the limits of said district falling within the classes 1 and 2 are hereby declared assessable for the construction of such improvement under the provisions of this act as lands directly benefited and all lands falling within the provisions designated as Class 3, are hereby declared assessable as lands receiving benefits from the general plan of drainage and flood control provided for by this act and assessable. ('17 c. 442 § 28)

[5671—]29. **Powers of directors—Co-operation with boards of adjoining districts**—The board of directors of any drainage and flood control district organized under this act shall have authority to enter into all necessary contracts to enable them to co-operate with the managing board of any adjoining district whether organized under this act or any other act authorized by the laws of this state relative to any matters connected with drainage or flood control or other matters connected with or relating to the management of affairs connected with said district and in the event that the formation of districts should be authorized by any other law of this state, enacted prior or subsequent to this act for the purpose of having charge of drainage and flood control matters and any such district should be formed bordering upon streams or bodies of water forming the boundary of this state, the governing board of such district shall have and may exercise all the authority granted by this act. ('17 c. 442 § 29)

[5671—]30. **Directors' reports**—At least once a year or oftener, if the court shall so order, the board of directors shall make a report to the court of its proceedings and an accounting of its receipts and disbursements to that date, which shall be filed with the clerk of said court, and it shall be the duty of said board from time to time to make such report as may be demanded by the public examiner, and it shall be the duty of the public examiner of this state to check up and report to the court not less than once a year and at such time as the court may direct, the financial condition of said district. ('17 c. 442 § 30)

[5671—]31. **Failure to give notice, when not jurisdictional—Defective notice—Further notice**—In any and every case where a notice is provided for in this act, if the court finds for any reason that due notice was not given, the court shall not thereby lose jurisdiction, and the proceeding in question shall

not thereby be void: but the court shall in that case order due notice to be given, and shall continue the hearing until such time as such notice shall be properly given, and thereupon shall proceed as though notice had been properly given in the first instance.

In case any individual appraisal or appraisals, assessment or assessments, or levy or levies, shall be held void for want of legal notice, or in case the board may determine that any notice with reference to any land or lands may be faulty, then the board may file a motion in the original cause asking that the court order notice to the owner of such land or lands given and set a time for hearing, as provided in this act. And in case the original notice as a whole was sufficient, and was faulty only with reference to publication as to certain tracts, only the owners of and persons interested in those particular tracts need be notified by subsequent notice. And if the publication of any notice in any county was defective or not made in time, republication of the defective notice need be had only in the county in which the defect occurred. ('17 c. 442 § 31)

[5671—]32. **Act liberally construed**—This act being necessary for securing the public health safety, convenience, or welfare, and being necessary for its prevention of great loss of life and for the security of public and private property from floods and other uncontrolled waters, it shall be liberally construed to effect the control and conservation and drainage of the waters of this state. ('17 c. 442 § 32)

[5671—]33. **Partial invalidity of act**—In case any section or sections or parts of any sections of this act shall be found to be unconstitutional, the remainder of the act shall not thereby be invalidated, but shall remain in full force and effect. ('17 c. 442 § 33)

[5671—]34. **Joint action with other states for construction of drainage ditch, etc.—Proceedings**—Whenever it is necessary to construct, widen, deepen, straighten, or change any drainage ditch or water course lying on, along or near the state line between this state and any adjoining state or country, or whenever it is necessary to repair or improve any drainage work provided for in this act, which drainage ditch, water course or other drainage work, cannot be constructed, repaired, or improved in the best manner without extending the same into an adjoining state or country, and thereby affecting lands therein, the county board of the proper county or the judge of the proper district court before whom such ditch proceeding is pending in a county or counties adjoining or near such state line, shall have power to join with the board or tribunal of such adjoining state or country having power to lay out and construct public drainage ditches in such adjoining county or district of another state or country, in the construction, widening, deepening, straightening, repairing or improving of any such drainage ditch, water course or other work of drainage. Such board or tribunal in this state shall have the power to enter into joint contracts or arrangements with such board or tribunal in such adjoining state or country and construct, repair or improve any such drainage work, each to pay such share of the costs and expenses of such work as shall be agreed upon by the contracting bodies. Such work of drainage and the construction thereof, so far as it relates to lands in this state, shall be done on petition of owners of lands as provided for in the drainage laws of this state relating to county or judicial ditch proceedings, and the provisions of such laws so far as applicable shall govern such county board or district judge, as the case may be, in relation to such joint work of drainage. Provided such adjoining county or district in another state or country shall pay its proper share of the necessary costs and expenses of the construction of any such ditch or work including damages. In case the benefits to lands in such adjoining state or country are not sufficient to pay all costs of construction, repair or improvement of such ditch therein, including damages to lands therein, such board or judge, as the case may be, is hereby given the power to contribute sufficient funds to complete the construction, repair or improvement of such ditch in such adjoining state or country, if the same will be of

sufficient benefit to the lands in this state affected by such drainage work, to warrant such contribution. ('15 c. 268 § 1).

See §§ [5671—]1 to [5671—]33.

### CURATIVE AND MISCELLANEOUS PROVISIONS

**5672. Extension of ditches in certain cases—Second assessment—Proceedings—Certain payments confirmed—**Whenever there has heretofore been filed with the county auditor or clerk of court, as the case may be, a petition and bond for the establishment of a public drainage ditch and where the requirements of the drainage laws of this state with reference to the establishment and construction of drainage ditches have been complied with and a ditch has been established by the court or county board in accordance with said petition and the assessments for damages and benefits to the land affected have been made and confirmed or where in addition to the foregoing said ditch has actually been constructed, on the assumption that such ditch should end at the terminus or outlet named in the petition, or in the order establishing the same, and where it is found that in order to make such ditch effectual to drain the land sought to be drained thereby or where it is found that such ditch, as constructed, was not constructed to a proper and adequate outlet, or that such ditch carries and deposits water upon lands lying at, near or below the terminus thereof, without providing adequate facilities for its escape therefrom and where no damage or adequate damages have been awarded on account thereof and it will be necessary to extend such ditch beyond the outlet named in the petition and the order establishing the same to a point beyond such designated outlet which may be within or outside the boundary of such county and state, then the court or county board, as the case may be, may employ an engineer and appoint viewers and proceed to ascertain the cost of the extension of such ditch to the point of outlet necessary to make said ditch effectual to drain the lands sought to be drained, and to extend such ditch so as to provide a proper and adequate outlet thereto and prevent the water carried therein from being deposited on lands lying at, near or below the terminus of said ditch, as fixed in the petition or order establishing the same without having adequate facilities for the escape therefrom, and when such cost is so ascertained said court or board may make a second assessment to cover such cost on the same lands and in the same proportion as the first assessment for such ditch or such equitable assessment upon lands affected thereby as may under all of the circumstances be just and proper and the moneys arising from said second assessment shall be used exclusively to defray the expenses of such extension to such new outlet. The proceedings herein provided for may be initiated by petition signed by one or more land owners whose lands were affected by said original ditch or whose lands are liable to be affected by or assessed for the extension. In the doing of such work by said court or board it shall be governed by all the provisions, so far as applicable, of section 5552 of the General Statutes of Minnesota for the year 1913, as amended by section 300 of the General Laws of Minnesota for 1915 and other provisions of law applicable thereto.

Any employment of an assistant or consulting engineer to assist the drainage engineer in any ditch proceeding and any payment heretofore made to such assistant or consulting engineer by the county board or on the order of any district judge are hereby legalized and confirmed. (Amended '17 c. 441 § 18)

**5672-A. Vacating final order as to assessments in certain cases—New order—Notice and hearing, etc.—**Whenever any ditch or drain has been or shall be ordered by the county board of any county or the district court and thereafter it shall appear that the amount of the assessment of benefits made in the final order of such board or court shall be insufficient to cover the cost of the construction of such ditch or drain and the damages allowed and the other outlay made necessary thereby, but where the costs, damages and outlay are less than the amount originally found by the viewers as benefits, then on petition to such board or court<sup>o</sup> by anyone interested, to have the former

final order vacated as to all assessments of benefits and allowances of damages and a new final order as to such benefits and damages made and entered, such board or court shall make an order directing that such petition be heard at a time and place therein specified. The same notice shall be given as was required to be given upon the final hearing in the proceeding in which said final order was made, excepting that the notice shall also specify that the former final order as to all assessments and damages may be vacated upon such hearing. Upon such hearing the board or court shall hear and consider the matter as to assessments of benefits and damages de novo and may make reference to the same or other viewers and may make such new order as to benefits and damages as shall be proper, with the right of appeal and demand of jury trial as in other cases of final order in such proceedings determining assessments of benefits or damages. Such new order shall have the effect to vacate any appeals or demands for jury trials, taken from such former final order. The board or court may in its discretion allow appellant in any appeal or demandant for a jury trial under the former final order, such sum if any as may be just to compensate for expenses incurred subsequent to the taking of such appeal or making of such demand, and such allowance shall be made in the new final order, but the allowances made to appellants or demandants from the former final order who shall appeal or demand jury trial under the new final order shall become void upon the making of a new appeal or new demand. Provided that in the event more than nine months have elapsed since the order establishing any ditch was made and the contract for the construction thereof has not been let, then upon the written application of not less than seventy-five per cent of the then owners of lands assessed for benefits for the construction of such ditch under this law, such ditch may be vacated by the county board or court on payment by such applicants of all costs and expenses, and thereupon any such ditch proceeding shall be dismissed. ('17 c. 441 § 19)

1917 c. 441 § 19 amends this chapter by adding a section to be known as § 5672-A.

**5703-A. Bridges across ditches along lines between towns or counties—Cost how paid—**That in all cases where a public drainage ditch has been, or shall hereafter be constructed wholly or partly along a boundary line between towns or counties and the excavated material, or a portion thereof, has been, or shall hereafter be deposited on the said boundary line or within two rods on either side thereof, the cost of construction and maintenance of all bridges heretofore or hereafter constructed across any such ditch, along said boundary line shall be paid for and borne equally by the town and county wherein said bridges are or shall be constructed and the town and county adjoining said boundary line. ('17 c. 441 § 20)

1917 c. 441 § 20 amends this chapter by adding a section to be known as § 5703-A. See § [5703—]2.

**[5703—]1. Proceedings commenced prior to Laws 1917 c. 441 to be completed under then existing law—**In all cases where a petition has been filed and proceedings have been instituted thereunder for the establishment of any drainage improvement under any drainage law of this state prior to the passage of this act, said proceedings may be completed under the provisions of law existing prior to the passage of this act, and the provisions of such law shall continue for all purposes of completing such unfinished proceedings notwithstanding the amendments provided for in this act. ('17 c. 441 § 21)

See §§ 5481-A, 5481-B, 5523, 5525-5527, 5530, 5534, 5536, 5537, 5541, 5542, 5551, 5552-A, 5552-B, 5571, 5605, 5672, 5672-A, 5703-A.

**[5703—]2. Bridges across ditches along town lines—Cost, how paid—**That in all cases in this state where a public drainage ditch has been or shall hereafter be constructed wholly or partly along a boundary line between towns and the excavated material or a portion thereof has been or shall hereafter be deposited on the said boundary line or within two rods on either side thereof, the cost of construction and maintenance of all bridges heretofore or hereafter constructed across any such ditch along said boundary line shall be paid for and borne equally by the town wherein said bridges are or shall be

constructed and situated, and the town adjoining said boundary line. ('15 c. 252 § 1)

See § 5703-A.

[5703—]3. **Bridges across certain state ditches on town roads—Cost, how paid**—Whenever the State Drainage Commission shall have heretofore constructed, or partly constructed, an outlet for a state ditch under the provisions of chapter 138 of the General Laws of Minnesota for 1911, and which state ditch was constructed under the provisions of chapter 221 of the General Laws of Minnesota for 1893, which outlet has been constructed across a town road at a point other than where the channel of a stream or river which has been widened and straightened and used for such outlet, crosses such town road, the county board of a county in which such outlet has been so constructed, is hereby authorized, empowered and directed to construct a substantial bridge suitable for public travel across such outlet ditch on such town road, at the place where such outlet ditch is constructed across such town road, and such bridge shall be paid for out of the road and bridge fund of such county. ('15 c. 100 § 1)

[5703—]4. **Lands suitable for irrigation—Constructing dams and dikes across public ditch, etc.**—The owner of any land in this state which is suitable for the culture of wire grass, cranberries, rice or other crops requiring irrigation, may upon being licensed as hereinafter provided, construct upon the lands so owned, and across or upon that portion of any public ditch, drain or water course situated within the boundaries of said land, such dams, dykes or other regulating or controlling works, as may be necessary to secure the use of the water for irrigation. Provided that any dam so constructed shall contain properly constructed gates of sufficient size to carry off the flood water above high water mark within twenty-four hours. ('15 c. 189 § 1)

Section 7 repeals conflicting acts, etc.

[5703—]5. **Same—State drainage engineer to issue license**—Any owner desiring to avail himself of the provisions of this act, shall apply for license so to do, to the state drainage engineer of the State of Minnesota, who shall issue a license to the applicant for the same, under such rules and regulations and guarantees as said engineer may require. ('15 c. 189 § 2)

[5703—]6. **Same—Bond**—Before any license is granted, said licensee shall execute a bond to the State of Minnesota, for the use of all persons who may be injured by said construction, conditioned for the payment of all damages to persons or property by reason of the construction of said dams, dykes or the use of said water. ('15 c. 189 § 3)

[5703—]7. **Same—Supervision of engineer**—All dams, dykes or other works or structures constructed or erected under the provisions of this act shall be under the supervision and direction of said engineer. ('15 c. 189 § 4)

[5703—]8. **Same—Not to interfere with public ditches**—Nothing in this act shall be construed as authorizing any act interfering with the benefit and utility of any public ditch, drain or water course, nor to in any manner authorize the use of the water to the damage or injury of the land of any other person, and if at any time it appears that the structures herein authorized cannot be maintained without impairing the utility of a public drain or water course, nor without depriving other land owners of the benefit thereof, then and in that case such license shall, upon demand of the owner or owners of such other land, be immediately revoked. ('15 c. 189 § 5)

[5703—]9. **Same—Penalty for violation**—Any person violating any of the sections of this act shall be guilty of a misdemeanor. ('15 c. 189 § 6)

[5703—]10. **Reassessment of benefits and damages where meandered lake has been drained**—That whenever any public ditch has been established under the provisions of Chapter 230, General Laws of Minnesota for the year 1905, as amended, which ditch has drained any meandered lake, and where damages and benefits have been assessed to abutting landowners on the basis of added lands to said abutting landowners, resulting from the drainage of said lake; and where thereafter by judgment of a competent court, it shall

be adjudged that the said landowner or landowners own a portion of said meandered lake bed not agreeing in number of acres with the number of acres forming the basis for the assessment of benefits and damages in the ditch proceeding, the said landowners, or any of them, may petition the county board establishing such county ditch, or the judge of the district court establishing said judicial ditch, for a re-assessment of the benefits and damages to such land.

Such petition shall be in writing, signed by the party making the same, or his attorney, and filed with the county auditor in case of a county ditch, and with the clerk of the district court in case of a judicial ditch. ('15 c. 262 § 1)

[5703—]11. **Same—Hearing and notice**—Upon the filing of such petition, the chairman of the county board in the case of a county ditch, or the judge of the district court in the case of a judicial ditch, shall fix a time and place for hearing thereof, and the county auditor or the clerk of the district court, as the case may be, shall cause notice of the filing of such petition, and of the time and place of hearing on the same, to be served on all the owners of any part of the lake bed of said meandered lake, which service of said notice shall be in the same manner as provided for the service of summons in district court, including the service by publication, or personally or persons outside of the state as provided for service of district court summons. ('15 c. 262 § 2)

[5703—]12. **Same—Resolution or order of reassessment, etc.**—At the time and place of the hearing on said petition, the said county board or judge of the district court, as the case may be, shall hear all persons proper to be heard in said matter, and consider and determine said petition agreeable to the facts in such case; and shall make a resolution or order, and file the same in the proper office, correcting and re-assessing the benefits and damages as the facts and justice in the case warrant. The county auditor shall immediately correct his lien statements in such proceedings to conform with said resolution or order. In case of a judicial ditch, the clerk of the district court, immediately upon the filing in his office, of the order of the judge of the district court correcting such assessment, shall make and file with the county auditor a certified copy of said order. ('15 c. 262 § 3)

[5703—]13. **Same—Application, when**—Any person or persons desiring or demanding a re-assessment of damages or benefits as herein provided, shall file his application therefor within ninety days after the passage of this act. ('15 c. 262 § 4)

[5703—]14. **Bonds for expenses in construction of ditches under laws 1907, c. 248**—Where the county board of any county of this state, or the judge of any of the district courts of this state, in pursuance of Chapter 448, General Laws 1907, have located and established, or attempted to locate and establish any ditch, drain or other water course wholly within any county of this state, or partly within one or more counties thereof, and it has been determined by resolution adopted by said board or order made by said judge, that such ditch, drain or water course will be of public utility and promotive of or be conducive to the public health, and that the benefits or estimated benefits to be derived from the construction thereof are greater than the total cost including the damages awarded, and such ditch, drain or water course has been actually constructed, or the county has entered into a contract or contracts for the construction thereof, the county board of any such county is authorized to issue, negotiate and sell the bonds of such county in the manner, to the amount and for the purposes specified in Section 18 of said Chapter 448, General Laws 1907, notwithstanding the repeal of said Chapter 448 and notwithstanding any defects or irregularities in the proceedings for the establishment or construction of said ditch, and any bonds hereafter issued in connection with any ditch so established, authorized or constructed, are hereby declared to be legal and binding obligations of the county issuing the same. ('15 c. 274 § 1)

[5703—]15. **Payment of drainage contracts in certain cases authorized**—In any case in which a contract has heretofore been let for the construction of a drainage ditch in a judicial ditch proceeding in which the entire ditch to

be constructed is an open ditch and in which the cost of construction as provided in the contract exceeds three hundred thousand dollars and the excavation work thereof is forty per cent or more completed and the contract of construction is not in default, upon the written application of the contractor and the consent of the surety on the bond endorsed thereon first filed in the office of the county auditor, the engineer may issue the usual preliminary certificate or certificates and recommend for payment and the auditor shall cause to be paid to the contractor from the twenty-five per cent reserved from all previous estimates and retained under the contract, an additional amount equal to seventy-five per cent of such reserve, any limitation contained in the general drainage laws of the state to the contrary notwithstanding, and the auditor shall forthwith issue to the contractor his warrant for such amount to be so paid by the county, which warrant shall be payable in the usual course provided for the payment of other warrants issued in part payment of such contract. ('17 c. 171 § 1)

[5703—]16. **Payment for extra work in construction of ditches under Laws 1905 c. 230 in certain counties**—Where the county board of any county of this state, having not less than fifty (50), nor more than sixty (60) congressional townships, in pursuance of chapter 230 of the Laws of 1905, and the acts amendatory thereof or supplemental thereto, has heretofore located and established any ditch and let a contract for the construction thereof and said contract has been completed and the engineer in charge of said work, during the progress of said work, has changed and modified his reports, plans and specifications in order to make said ditch feasible for the purpose intended and where such changes and modifications were necessary to make said ditch feasible for the purpose intended and such changes and modifications increased the total amount of work done so that if the whole thereof had been paid for at the rates specified in said contract the total cost of constructing said ditch would increase the total cost by more than ten (10%) per centum of the original contract price for the construction thereof, and the engineer has filed his final estimate showing the amount of work actually done and the county has allowed and paid to said contractor for said extras an amount equal to ten (10%) per centum of the original contract price, the county board of any such county may, within six months after the passage of this act, allow and order paid, on application by the contractor therefor, pay to the contractor from any fund of said county applicable to such purpose an amount in addition to the amount already paid said contractor for constructing said ditch as will cause said contractor to receive pay for all extras performed as ordered by said engineer at the unit prices therefor specified in said contract. On passage of a resolution by the county board of any such county ordering such payment, the county auditor of such county shall draw his warrant on the county treasurer of such county payable out of any fund applicable to such purpose or out of any fund designated by the county board, payable to any such contractor for the amount so allowed by any county board. ('17 c. 269 § 1)

[5703—]17. **Same—Duties of auditor—Assessment—Liens**—As soon thereafter as practicable the auditor of any such county shall make in tabulated form a list and statement in accordance with section 19, chapter 230 of the Laws of 1905 [5443] for the amount so paid to such contractor, assessing such amount to the respective pieces or parcels of land included in the original assessment for such ditch and apportioning the same according to benefits, providing that the amount so charged to any piece or parcel of land when added to the original assessment therefor shall not exceed the amount of benefits accruing to said land as shown by the viewer's report, as the same has been adopted and confirmed by the county board, for the construction of said ditch. Said list and statement shall then be filed in the office of the register of deeds, in accordance with the provisions of said chapter 230 of the Laws of 1905, and the respective amounts chargeable to each piece or parcel of land shall be a lien upon said land, in accordance with said chapter 230 of the Laws of 1905 and the same shall be collected as therein provided. ('17 c. 269 § 2)

[5703—]18. **Same—Pending actions—**This act shall not apply to or affect the right of appeal from such proceedings as now provided by law, or any actions or appeals now pending in which the validity of any of the proceedings relative to such ditch is called in question. ('17 c. 269 § 3)

[5703—]19. **Laws 1905 c. 230, as amended—Proceedings legalized—**Where the county board of any county of this state, or the judge of any of the district courts of this state, in pursuance of Chapter 230 of the Laws of 1905 and the acts amendatory thereof or supplemental thereto, has located and established or attempted to locate and establish any ditch, drain, or water course wholly within any county of this state, or partly within two or more counties thereof, and it has been determined by resolution adopted by said board or order made by said judge, that such ditch, drain or water course will be of public utility and promotive of or be conducive to the public health, and that the benefits or estimated benefits to be derived from the construction thereof are greater than the total cost, including damages awarded, and such ditch, drain or water course has been actually constructed, in accordance with the plans and specifications filed by the engineer therein, or of the contract made in accordance with such plans and specifications, or the county has entered into a contract or contracts for the construction thereof, and the county auditor has, or the county auditors, as the case may be, or any of them, have executed and filed in the office of the register of deeds the tabular statement provided for in said act, making assessments for the cost of the location, establishment and construction of the same within such county against the lands, corporations and roads benefited thereby, and the time for appeals has expired and no appeals have been taken therefrom or from any such proceedings, or if such appeals have been taken that the same have been determined before the passage of this act, then the said proceedings and all assessments or liens so levied or attempted to be assessed or levied for the actual cost of such work, including damages awarded, are hereby legalized and declared to be valid and in full force and effect until paid, in the time and manner set forth in said act and amendments thereto. ('15 c. 6 § 1)

[5703—]20. **Same—Rights, not affected—**This act shall not apply to or affect the right of appeal from such proceedings, as now provided by law, or any actions or appeals now pending in which the validity of said proceedings is called in question. ('15 c. 6 § 2)

[5703—]21. **Laws 1905 c. 230, as amended—Scope of act—**Where a public drainage ditch has been duly established in pursuance of Chapter 230, General Laws of Minnesota, 1905, and act or acts amendatory thereof or supplementary thereto, and first; where such ditch runs into two or more counties of this state, and second; where the total estimated cost of said ditch as shown by the engineer's original estimate of cost exceeds the sum of five hundred thousand dollars, and third; where, in the course of construction of the said public drainage ditch, it has been found, or shall hereafter be found or considered necessary by the engineer in charge thereof to construct bridges over the said ditch or install culverts therein, the cost of which exceeds by more than ten per cent the amount estimated as the cost thereof and set forth as such in the preliminary estimate of cost duly filed by the said engineer, the fourth; where in the course of the construction of such public drainage ditch, it has been found or shall hereafter be found or considered necessary by the engineer in charge thereof to construct and improve roads along the course of said drainage ditch by levelling the waste bank thereof, the cost of which exceeds by more than ten per cent the amount estimated as such cost and set forth as such in the preliminary estimate of cost duly filed by the said engineer, and fifth; where a general contract of construction and excavation of such drainage ditch has been entered into and such excavation contract has been wholly or substantially completed, and said engineer now has so certified or shall hereafter so certify, and where the said engineer has heretofore found or shall hereafter find it necessary to cause the construction of additional branch and lateral ditches to drain lands originally assessed for benefits in such drainage proceedings, which said additional branch and lateral ditches or

any of them were not constructed pursuant to the general construction contract or by the general construction contractor, and sixth; where the said engineer has made and filed or shall hereafter make and file in the office where such original preliminary estimate was filed a supplemental estimate certified by him setting forth the total cost of all bridges and culverts and roads or road improvements already constructed or installed in the said ditch matter, an estimate by said engineer of the proposed cost of construction and installation of all bridges, culverts, roads or road improvements and the location of each thereof, not yet constructed but considered necessary by the said engineer, and an estimate by said engineer of the reasonable or proposed cost per cubic yard of excavation of all such additional branch or lateral ditches already constructed or hereafter to be constructed and certified as necessary by said engineer as hereinbefore provided, the location thereof, the size and dimensions thereof, the amount of yardage of excavation in each one hundred foot station thereof, and the proposed cost of levelling the waste bank thereof, and seventh; where the total cost of construction of such public drainage ditch, including such additional cost of bridges, culverts and roads already built, installed or constructed, and including the additional cost of such bridges, culverts and roads deemed by the said engineer necessary to be hereafter built, installed and constructed, and the additional cost of such additional branch or lateral ditches does not exceed the total amount of assessment of benefits as returned by the viewers in said ditch matter and as fixed or approved by the judge of the District Court, and eighth; where the said engineer in charge of said public drainage ditch has made or shall hereafter make his certificate certifying that the foregoing facts exist and that the foregoing requirements have been complied with, and files such certificate in the office where such original preliminary estimate was filed. ('15 c. 42 § 1)

**[5703—]22. Same—Proceedings legalized—Payments to be made—Order of district court for hearing—**Then and in the foregoing cases, first; all work of construction of bridges and culverts and all road improvement and road construction heretofore made, the cost whereof is in excess of the respective amount of the estimated cost thereof as shown in such original engineer's estimate of cost duly filed, and all contracts or agreements, however made, of construction or installation of the said roads, bridges or culverts are hereby legalized and validated to the same extent as if such excess of expenditures had been within the amount of such respective items of cost shown as such in said original preliminary estimate, and to the same extent as if all said contracts or agreements of construction or installation had been for amounts within such original preliminary estimate, and second; all items of such cost of construction or installation and all cost of construction of such additional branch or lateral ditches, already incurred, but not yet paid, shall be paid by the respective counties in a like manner and with like effect as if such contract or contracts were for bridges, culverts, roads or ditches authorized to be constructed or installed pursuant to the said original engineer's estimate, and third; the clerk of the district court where such supplemental estimate and such engineer's certificate have been filed as aforesaid shall forthwith notify the judge of the District Court of the said county of the fact of such filing, and such judge shall thereupon by order fix a time and place for a hearing thereon before the said court to determine the necessity of such additional branch or lateral ditches and such additional bridges, culverts and roads, already constructed or yet to be constructed, and to determine the reasonable cost thereof and of each of the same, and to determine and decide all other necessary matters in relation thereto within the purview of this act and to change, alter, modify or enlarge the work proposed to be done as said court may deem advisable. ('15 c. 42 § 2)

**[5703—]23. Same—Notice of hearing—Determination and decree—Further proceedings—**It shall thereupon be the duty of the clerk of said district court to give notice of hearing pursuant to the said order by publication of the said order of the said district judge in a legal newspaper in each county affected by the said drainage proceedings for two successive weeks prior to

the date of said hearing. At the time and place fixed for such hearing, the said judge of the district court shall receive evidence of all parties interested in said drainage matter, and from the said engineer, and shall proceed to determine the necessity of such additional branch or lateral ditches, bridges, culverts and road or highway improvements, whether heretofore constructed or hereafter to be constructed, and to determine the reasonable cost thereof and of each of the same, whether done or performed pursuant to contract of construction, or otherwise, and to determine all other necessary matters in relation thereto within the purview of this act, and if the said judge from the evidence shall determine that such additional branch or lateral ditches, bridges, culverts and road improvements or any or either of the same are or will be of public utility, and that the proposed respective cost thereof is reasonable and that the requirements of this act have been complied with, and that the facts required by this act exist said judge shall thereupon decree the necessity of said respective additional branch or lateral ditches, bridges, culverts and road improvements, and shall approve such supplementary estimate of said engineer, as filed or as modified by said judge at said hearing. The reasonable cost of all such additional branch or lateral ditches, bridges, culverts, and road improvements already constructed or installed, and decreed as necessary by said judge, shall be found and determined and fixed as a lawful charge or expense in said drainage proceeding. Such additional branch or lateral ditches, bridges, culverts and roads not yet constructed or installed and so decreed necessary shall be established, constructed and installed. Contract or contracts therefor or for any of said additional work or material of installation, construction or excavation shall be let and entered into in like manner and upon like notice as is provided by law in case of an original contract of construction in such drainage matter, provided no contract shall be entered into involving a price for such additional work or material which exceeds by thirty per cent such respective proposed estimate of cost thereof as set forth and approved in such supplemental estimate, and all the laws of this state relating to the letting of contracts in case of judicial ditch matters and to contractors' bonds and to completing said contracts and making payment thereof and accepting same and the work or material thereunder shall apply to such contracts for such additional work or material the same as if said last mentioned contract or contracts were the original contract of construction. Such additional cost shall become a part of the expense of construction of said ditch, and such additional cost to be so incurred, together with the cost of the said bridges, roads and culverts already constructed in excess of such original estimate, together with all other items of cost or expense of said ditch, however incurred, when approved by said judge, and found or determined by said decree to be necessary and reasonable in cost, shall be included in a supplementary lien statement to be made and filed by the county auditor and recorded in the office of the register of deeds in like manner as in case of the original lien of benefits, and said supplementary lien, when so filed and recorded, shall constitute a valid lien against all lands described therein with like effect as in case of the original lien statement in such drainage proceedings, and the assessment of benefits against the lands described therein shall be collected by the respective county officers as in case of other supplementary liens under the drainage laws of this state. ('15 c. 42 § 3)

[5703—]24. **Same—Appeal**—Any party interested in said drainage matter may appeal from said order and decree herein provided for in like manner as in case of appeals from or review of the final order establishing a judicial ditch, and all the laws of this state appertaining to an appeal from or review of a final order establishing a judicial ditch shall apply to an appeal from the order herein provided for. ('15 c. 42 § 4)

[5703—]25. **Same—Pending actions**—This act shall not be construed to apply to any action or proceeding now pending in any of the courts of this state affecting the validity of any of the foregoing items of cost of construction or the payment thereof. ('15 c. 42 § 5)

[5703—]26. **Location of certain drainage ditches legalized**—Whenever a public drainage ditch has been established in pursuance to the drainage laws of this state and a general contract of construction thereof has been duly entered into, and during the course of construction thereof, the engineer has caused the said ditch or any branch or lateral thereof to be built or constructed at a different point of location or along a different course, or with a different source or outlet than as designated in the original report of the engineer in said ditch matter or as duly established by the judge of the district court or the county board, or where ditches in such system other than or in addition to those duly established have been actually dug and constructed as a part of said drainage system, then and in that case, or either or any of them, such ditch and such branches or laterals thereof, and such additional ditch or ditches so dug and constructed are hereby legalized and made valid at such place of actual construction to the same extent and with like effect as if there established and located and ordered to be constructed by the final order establishing said ditch; provided, that if any person or parties whose lands are affected by any such change of source, course or outlet of any such ditches or by such additional ditches, claim additional damages to such lands than as originally awarded or claim reduction of assessment of benefits thereto then and in any such case such person shall within six months after the passage of this act make application to the district judge or county board which established said ditch to have his claim for such additional damages or reduced benefits considered and determined, and such application shall be heard at a time and place designated by order of the respective district judge or county board which established said ditch. Notice of the time and place of such hearing shall be given in the manner designated in said order, and at such hearing evidence as to such change of assessment of benefits or damages shall be heard and considered and said judge of the district court or county board, as the case may be, shall make such decree or order in reference thereto as is required by said evidence and as may be just and equitable. Appeal or review of such order shall be had in the manner provided by law for appeals from final order establishing a judicial ditch. This act shall only apply to drainage ditches and costs whereof as estimated by the engineer and shown in his report duly filed, exceeds the sum of five hundred thousand (\$500,000.00) dollars. ('15 c. 74 § 1)

[5703—]27. **Same—Pending actions**—The provisions of this act shall not apply to any action now pending in any of the courts of this state wherein additional damages or reduction of benefits is sought. ('15 c. 74 § 2)

[5703—]28. **Laws 1905 c. 230, as amended—Proceedings legalized**—Where the county board of any county of this state, or the Judge of any of the District Courts of this State, in pursuance of Chapter 230 of the Laws of 1905 and the acts amendatory thereof or supplemental thereto, has located and established or attempted to locate and establish any ditch, drain, or water course wholly within any county of this state, or partly within two or more counties thereof, and it has been determined by resolution adopted by said board or order made by said Judge, that such ditch, drain or water course will be of public utility and promotive of or be conducive to the public health, and that the benefits or estimated benefits to be derived from the construction thereof are greater than the total cost, including damages awarded, and such ditch, drain or water course has been actually constructed, in accordance with the plans and specifications filed by the Engineer therein, or of the contract made in accordance with such plans and specifications, or the county has entered into a contract or contracts for the construction thereof, and the County Auditor has, or the County Auditors, as the case may be, or any of them, have executed and filed in the office of the Register of Deeds the tabular statement provided for in said Act, making assessments for the cost of the location, establishment and construction of the same within such county against the lands, corporations and roads benefited thereby, and the time for appeals had expired and no appeals have been taken therefrom or from any such proceedings, or if such appeals have been taken that the same have been determined before the passage of this act, then the said proceedings

and all assessments or liens so levied or attempted to be assessed or levied for the actual cost of such work, including damages awarded, are hereby legalized and declared to be valid and in full force and effect until paid, in the time and manner set forth in said Act and amendments thereto. ('15 c. 216 § 1)

[5703—]29. **Same—Pending appeals and actions, etc.**—This act shall not apply to or affect the right of appeal from such proceedings, as now provided by law, or any action or appeals now pending in which the validity of said proceedings is called in question. ('15 c. 216 § 2)

[5703—]30. **Certain proceedings legalized**—Where the judge of any of the district courts of this state in pursuance of the laws governing the establishment and construction of judicial ditches, has established and ordered constructed in parts of two counties a judicial ditch, drain or other water course, and the proceedings for such establishment and construction are in all respects valid and according to law, except that the petition and notices required by law to be published, were in fact published in only one of the said counties through which said ditch was so established, such ditch, drain or water course, and such published notices as aforesaid, and all other proceedings for its establishment and construction are hereby legalized and made valid, and any assessments or liens levied or created against lands benefited by the establishment of said ditch, drain or water course, by the county auditor, county board, or judge of said court, for the costs of the establishment and construction of said ditch, drain or water course, are hereby legalized and declared valid and of full force and effect, and a lien upon and against said lands so benefited by the establishment and construction of such ditch, drain or water course, until paid at the time and in the manner as provided for in the law under which the said ditch drain or water course was established and constructed.

Provided, however, that if any such ditch has been constructed in whole or in part, the same has been so constructed as provided for in the report of the engineer, and in accordance with the contract for the construction thereof. ('15 c. 224 § 1)

[5703—]31. **Same—Pending appeals and actions, etc.**—This act shall not apply to or affect the right of appeal from such proceedings as now provided by law, or any actions or appeals now pending in which the validity of any such proceedings is called in question. ('15 c. 224 § 2)

[5703—]32. **Certain bonds legalized**—In all cases where a county has heretofore issued its bonds for the purpose in whole or in part, of obtaining money to pay for the repairing of any public ditch or ditches, such bonds are hereby legalized and made valid and binding obligations of the county issuing the same. ('17 c. 64 § 1)

[5703—]33. **Same—Pending actions**—This act shall not apply to or affect any action now pending in which the validity of any such bonds is called in question. ('17 c. 64 § 2)

[5703—]34. **Laws 1905 c. 230, as amended—Proceedings and bonds legalized**—Where the county board of any county of this state or the judge of any of the district courts of this state, in pursuance of chapter 230 of the Laws of 1905 and the acts amendatory thereof or supplemental thereto, has located and established or attempted to locate and establish any ditch, drain or water course, wholly within any county of this state or partly within two or more counties thereof, and it has been determined by resolution adopted by said board or order made by said judge that such ditch, drain or water course will be of public utility and promotive of or be conducive to the public health and that the benefits or estimated benefits to be derived from the construction thereof are greater than the total cost, including damages awarded, and such ditch, drain or water course has been actually constructed in accordance with the plans and specifications filed by the engineer therein or of the contract made in accordance with such plans and specifications, or the county has entered into a contract or contracts for the construction thereof and the county

auditor has or the county auditors as the case may be or any of them have executed and filed in the office of the register of deeds the tabular statement provided for in said act, making assessments for the cost of the location, establishment and construction of the same within such county against the lands, corporations and roads benefited thereby and the time for appeals has expired and no appeals have been taken therefrom or from any such proceedings or if such appeals have been taken that the same have been determined before the passage of this act, then the said proceedings and all assessments or liens so levied or attempted to be assessed or levied for the cost of such work, including damages awarded and the bonds of any county heretofore issued in pursuance thereof, are hereby legalized and declared to be valid and in full force and effect. ('17 c. 163 § 1)

[5703—]35. **Same—Pending actions—**This act shall not apply to or affect any actions or appeals now pending in which the validity of such proceedings or such bonds is called in question. ('17 c. 163 § 2)

[5703—]36. **Establishment of county and judicial ditches where order void for lack of jurisdiction, etc.—Procedure—Bonds legalized—**Whenever a petition has heretofore been filed praying for the establishment of a judicial or county ditch or drainage system and the county board or judge of the district court, as the case may be, has made its final order establishing or attempting to establish a public ditch or drainage system in said proceeding and confirming the report of the engineer and viewers and the assessment of benefits and damages, but where the court or the county board has departed from the line of the ditch set forth in such petition and has by its order established such ditch and drainage system in a different basin or partly in a different basin or direction than that prayed for in the petition, or has decreased the amount of the assessment of benefits to less than seventy-five per cent of the amount found by the viewers, and the contract for the building and construction of such ditch has or has not been sold and let and the contractor has or has not proceeded to construct such ditch and has or has not received estimates and payments on account of such work and the bonds of the county covering such ditch have or have not been sold, and it appears that the establishment of such ditch is practicable and of public utility and benefit, but where such order establishing such ditch and drainage system and confirming the report of the viewers and the assessment of benefits and damages is void for any reason, or the total amount of the final assessment of benefits is less than seventy-five per cent of the amount found by the viewers, the judge of the district court in the proper county shall, upon petition of the county attorney of any county in which said ditch or drainage system is partly or wholly located, or upon petition of any other public officer of said county or of any person interested in said ditch and drainage system, petitioning for a judicial ditch following the course of the said ditch and its laterals as described in such order, proceed with the establishment of said ditch and drainage system the same as if the petition therefor were filed by an interested property owner and as if said ditch had not been partially or wholly established and constructed and jurisdiction shall thereupon be acquired of the entire subject matter and said ditch proceeding and shall cause notices of hearing thereon to be given in the same manner as is now provided by law in the establishment and construction of public ditches under chapter 230, General Laws of 1905 and all acts amendatory thereof and supplemental thereto; and shall appoint an engineer and viewers in such proceeding and shall proceed and cause all steps to be taken and acts to be done which are now provided for by said drainage law for the establishment and construction of any public ditch or drainage system from the time of the filing of the petition for such ditch, except that the work of construction need not be resold, if already sold and no new contract or contracts or bonds need be required, if previously made or issued but the contract and bond or contracts and bonds of the contractor shall stand and be valid the same as if said work were resold and said contract and bond or contracts and bonds were entered into therefor, and if the report of such engineer and viewers shows the improvement to be of public utility and benefit and to be practicable

and that the estimated benefits exceed the estimated cost of construction and damages and said estimated benefits shall exceed the cost of the construction and the damages awarded said ditch shall be ordered and said drainage system shall be established by order of court, and said order shall relate back and take effect as of the date of the entry of the aforesaid order attempting to establish such ditch. Thereafter, upon the making of the order establishing such ditch and drainage system and confirming the assessment of benefits and damages, the county auditor, whose duty it is under said drainage law to make and file the lien statement in the case of the construction of public ditches shall prepare and file the lien statement for said improvement and said ditch comprising the cost of the construction of said ditch and the damages awarded, if any, not, however, exceeding the estimated benefits as the same may be confirmed. All provisions of said chapter 230, General Laws of 1905 and acts amendatory thereof and supplemental thereto, including all rights of appeal and review of damages and benefits as provided in section 12 thereof as amended [5534], except where inconsistent herewith, shall be applicable to such proceeding. Any and all bonds sold and issued by the county or any of the counties affected by said ditch upon such order being made establishing such ditch shall be valid and are hereby legalized the same as if they had been sold and issued after the establishment of said ditch as herein provided. ('17 c. 391 § 1)

[5703—]37. **Laws 1905 c. 230, as amended—Proceedings legalized—**Where the county board of any county of this state, or the judge of any of the district courts of this state, in pursuance of chapter 230 of the laws of 1905 and the acts amendatory thereof or supplemental thereto, has located and established or attempted to locate and establish any ditch, drain, or water course wholly within any county of this state, or partly within two or more counties thereof, and it has been determined by resolution adopted by said board or order made by said judge, that such ditch, drain or water course will be of public utility and promotive of or be conducive to the public health, and that the benefits or estimated benefits to be derived from the construction thereof are greater than the total cost, including damages awarded, and such ditch, drain or water course has been actually constructed, in accordance with the plans and specifications filed by the engineer therein, or of the contract made in accordance with such plans and specifications, or the county has entered into a contract or contracts for the construction thereof, and the county auditor has, or the county auditors, as the case may be, or any of them, have executed and filed in the office of the register of deeds the tabular statement provided for in said act, making assessments for the cost of the location, establishment and construction of the same within such county against the lands, corporations and roads benefited thereby, and the time for appeals has expired and no appeals have been taken therefrom or from any such proceedings, or if such appeals have been taken that the same have been determined before the passage of this act, then the said proceedings and all assessments or liens so levied or attempted to be assessed or levied for the actual cost of such work, including damages awarded, are hereby legalized and declared to be valid and in full force and effect until paid, in the time and manner set forth in said act and amendments thereto. ('17 c. 451 § 1)

[5703—]38. **Same—Pending appeals and actions, etc.—**This act shall not apply to or affect the right of appeal from such proceedings, as now provided by law, or any actions or appeals now pending in which the validity of said proceedings is called in question. ('17 c. 451 § 2)