08.04 SPECIAL ASSESSMENTS AND OTHER CHARGES

Overview

Local Governments, when given the authority through statute, have the ability to have projects that provide benefit to properties assessed for a portion or all of a project's cost. Some examples of Local Governments that have the authority to levy special assessments are as follows:

- Cities;
- Townships;
- Counties;
- Met Council;
- Water Management Organizations;
- Minnesota Department of Health;
- Lake Improvement Districts; and
- All others given the authority under Minnesota Statutes.

In many cases, governments realize a partial benefit to an entire community or taxing area and may have some of the costs of the project funded through ad valorem taxes and the rest funded through the imposition of a special assessment against benefited property. Water Law, as indicated further in this Chapter, has funding capabilities in a multitude of ways. Except in the case of the establishment of, improvement to or repair of a County Drainage System, which has project costs entirely funded through ditch assessments, other water districts or organizations have the ability to impose special assessments and ad valorem taxes. Another mechanism for local governments to receive reimbursement is to certify unpaid water & utility bills and/or service charges to the County to be added to the assessment roll for the next year. Each of these, in further detail, will be discussed throughout this chapter. In most cases throughout this chapter and through Minnesota Statutes, the reference to Chapter 429 or Chapter 103E or sections within those chapters are referenced and will be described in greater detail within this chapter of the manual.

Special Assessments – M.S. Chapter 429

Improvements to Property
An improvement to property means any type of improvement made by a municipality, (City or Township), as indicated below, and in the case of a county, is limited to the construction, reconstruction, or improvement of a county state-aid highway or county highway including curbs and gutters and storm sewers, and to the purchase, installation, or maintenance of signs, posts, markers for addressing related to the operation of enhanced 911 telephone service, and in the case of the abatement of nuisances. A County, outside of the metro area, may petition the district court for the authority to acquire, construct, finance, operate and maintain a water or sewer system or combined water and sewer system in any area of the county or judicial district not organized into cities. If granted, the County will follow this chapter in assessing properties for the cost of the project. Special taxing districts as defined in M.S. §§ 275.066 and 275.067 organized on or before July 1 in a calendar year may certify a levy to the county auditor in that same year for property taxes or special assessments to be payable in the following calendar year to the extent that the special taxing district is authorized by statute or special act to levy taxes or special assessments. Special taxing districts organized after July 1 in a calendar year may not certify a levy of
property taxes or special assessments to the county auditor under the powers granted to them by statute or special act until the following calendar year. Most of the laws surrounding improvements to property, as seen in the following paragraph, are found in M.S. Chapter 429.

Law restricts improvements to property and the ability to impose a special assessment. The following is a list of improvements to property that are eligible for assessment reimbursement:

1. To acquire, open, and widen any street, and to improve the same by constructing, reconstructing, and maintaining sidewalks, pavement, gutters, curbs, and vehicle parking strips of any material, or by grading, graveling, oiling, or otherwise improving the same, including the beautification thereof and including storm sewers or other street drainage and connections from sewer, water, or similar mains to curb lines.

2. To acquire, develop, construct, reconstruct, extend, and maintain storm and sanitary sewers and systems, including outlets, holding areas and ponds, treatment plants, pumps, lift stations, service connections, and other appurtenances of a sewer system, within and without the corporate limits.

3. To construct, reconstruct, extend, and maintain steam heating mains.

4. To install, replace, extend, and maintain street lights and street lighting systems and special lighting systems.

5. To acquire, improve, construct, reconstruct, extend, and maintain water works systems, including mains, valves, hydrants, service connections, wells, pumps, reservoirs, tanks, treatment plants, and other appurtenances of a water works system, within and without the corporate limits.

6. To acquire, improve and equip parks, open space areas, playgrounds, and recreational facilities within or without the corporate limits.

7. To plant trees on streets and provide for their trimming, care, and removal.

8. To abate nuisances and to drain swamps, marshes, and ponds on public or private property and to fill the same.

9. To construct, reconstruct, extend, and maintain dikes and other flood control works.

10. To construct, reconstruct, extend, and maintain retaining walls and area walls.

11. To acquire, construct, reconstruct, improve, alter, extend, operate, maintain, and promote a pedestrian skyway system. Such improvement may be made upon a petition pursuant to M.S. § 429.031, subdivision 3.

12. To acquire, construct, reconstruct, extend, operate, maintain, and promote underground pedestrian concourses.

13. To acquire, construct, improve, alter, extend, operate, maintain, and promote public malls, plazas or courtyards.
(14) To construct, reconstruct, extend, and maintain district heating systems.

(15) To construct, reconstruct, alter, extend, operate, maintain, and promote fire protection systems in existing buildings, but only upon a petition pursuant to M.S. § 429.031, subdivision 3.

(16) To acquire, construct, reconstruct, improve, alter, extend, and maintain highway sound barriers.

(17) To improve, construct, reconstruct, extend, and maintain gas and electric distribution facilities owned by a municipal gas or electric utility.

(18) To purchase, install, and maintain signs, posts, and other markers for addressing related to the operation of enhanced 911 telephone service.

(19) To improve, construct, extend, and maintain facilities for Internet access and other communications purposes, if the council finds that:
   (i) the facilities are necessary to make available Internet access or other communications services that are not and will not be available through other providers or the private market in the reasonably foreseeable future; and
   (ii) the service to be provided by the facilities will not compete with service provided by private entities.

(20) To assess affected property owners for all or a portion of the costs agreed to with an electric utility, telecommunications carrier, or cable system operator to bury or alter a new or existing distribution system within the public right-of-way that exceeds the utility's design and construction standards, or those set by law, tariff, or franchise, but only upon petition under M.S. § 429.031, subdivision 3.

(21) To assess affected property owners for repayment of voluntary energy improvement financings under M.S. § 216C.436, subdivision 7.

Authority to Give Notice & Provide Hearings & Property Owners Right to Appeal
Prior to any project taking place, the authority who is initiating the project must hold a public hearing after two publications in the newspaper. The publications must state the date and time of the hearing, the improvement project, an estimate of cost in total and the area to be assessed. In addition, not less than 10 days before the hearing, all owners (owners being those indicated on the records of the County Auditor/Treasurer), must receive a notice of the proposed project, hearing date and time and it must indicate that an estimate of the impact of the assessment. Failure to receive the notification does not invalidate the proceedings.

The Law varies by authority on who all needs to approve the improvement and by how much of a vote is needed in order for the resolution to be adopted. In cases where all the owners petition for an improvement, and agree that 100% of the costs will be paid by them, the authority may pass a resolution, without holding a public hearing, to grant the improvement. Property owners may appeal the amount of their assessment to the court administrator of the district court, but must do so within thirty days after the adoption and publication of the resolution.
An amateur sports facility is exempt from all ad valorem taxes\(^1\), but is subject to special assessments. Assessments are subject to confirmation by the Sports Commission, whose determination of the benefits is subject to court review. Real or personal property acquired, owned, leased, controlled, used, or occupied as a baseball park by a major league professional baseball team is exempt from taxation but the property is subject to special assessments levied by a political subdivision under chapter 429. A use of the property in any manner different from its use as a baseball park must not be considered in determining the special benefit under chapter 429 received by the properties.

All lands and property of any cemetery association are exempt from taxes and assessments.\(^2\) The owners of cemetery lots, their heirs or legal representatives, may continue to have the lots exempt as long as the lots are used for a cemetery. No road or street can be placed through a cemetery without the consent of the trustees.\(^3\) When a cemetery association levies special assessments against lots for the care, upkeep and maintenance of the lots and the assessments are not paid within five years by the owners of the lots to the association, any unused portion of the lots reverts to and becomes the property of the cemetery association.\(^4\)

**Apportionment of Costs**

After the proper bid process, awarding of the bid, and completion of the work has taken place, the costs of the project may be assessed upon the property that has benefited by the improvement. The property does not need to abut the improvement directly in order to have the determination that a benefit is received.

An Authority can pay for the improvement in a couple of ways or combination of ways. They may pay for the improvement through the use of ad valorem taxes, other revenues on hand, from set aside funds and/or by the certification of special assessments. After the authority(s) determine the amount that will be assessed to the benefited properties, a notice is created that informs the public that the council will be meeting to consider the proposed assessment. The notice is both published and mailed to the owner of each property described in the assessment roll and will state the date, time and place of the meeting, the nature of the improvement, the area proposed to be assessed, the total assessment, and that the assessment roll is on file with the clerk of the authority and the owner may object to the authority, prior to the hearing, either in writing or orally. Only those objections made timely will be addressed at the hearing. The owner may still appeal the assessment costs within thirty days of the adoption of the resolution to the court administrator of the district court. The notice must also state the following:

1. the amount to be specially assessed against that particular lot, piece, or parcel of land;
2. adoption by the council of the proposed assessment may be taken at the hearing;
3. the right of the property owner to prepay the entire assessment and the person to whom prepayment must be made;
4. whether partial prepayment of the assessment has been authorized by ordinance;
5. the time within which prepayment may be made without the assessment of interest; and
6. the rate of interest to be accrued if the assessment is not prepaid within the required time period.

\(^1\) Minn. Stat. § 240A.03, subd. 5  
\(^2\) Minn. Stat. § 306.14, subd. 1  
\(^3\) Minn. Stat. § 307.09, subd. 1  
\(^4\) Minn. Stat. § 306.55
If any changes are made to the adopted assessment to comparison to the proposed assessment on the above items, additional notice must be given to the property owner.

**Assessments on Publicly Owned Property Excluding the State**

Any city or any town having authority to levy special assessments may levy special assessments against the property of a governmental unit benefited by an improvement to the same extent as if the property were privately owned, but no assessments, except for storm sewers and drain systems, can be levied against a governmental unit for properties used or to be used for highway rights-of-way. A "governmental unit" means a county, city, town, public corporation, a school district and any other political subdivision, except a city of the first class operating under a home rule charter and the school district, park board or other board or department of such city operating under such charter. If the amount of any assessment, except one against property of the state, is not paid when due, it may be recovered in a civil action brought by the city or such town against the governmental unit owning the property assessed. Assessments against governmental units are not to be certified as tax liens to the County Auditor to be collected with the next year's taxes. The Federal Government is exempt from all forms of special assessments.

**Assessments on State Owned Property**

In cases of property owned by the state or any agencies of the state, the Municipality can determine the benefits if the property had been taxable. A notice of public hearing on the assessment must be given to the appropriate State agency by registered or certified mail at least two weeks before the hearing is held. The agency may pay the assessment if funds are available. If no funds are available and the agency is funded in whole or part by the state's general fund, the amount needed to pay the assessment will be included in the next year's budget. No state agency or department can be bound by the assessment of the Municipality and they may pay or recommend payment of a lesser amount as they determine the benefit on the land of the improvement. Assessments against the state or its agencies are not to be certified as tax liens to the County Auditor to be collected with the next year's taxes.

**The Assessment Roll**

The assessment is a lien upon the property and shall accrue interest from the date of the resolution adopting the assessment. The assessment is to be collected along with property taxes on each parcel of property. MN Statutes state that the assessment should be collected in equal annual installments unless otherwise indicated in the resolution. Some authorities collect the assessment with calculations of equal principal payments. The assessment is to be extended over a period indicated in the resolution, but not to exceed thirty years and is payable on the first Monday in January in each year following the adoption of the resolution. The number of installments need not be uniform for all assessments included in a single assessment roll if a uniform criterion for determining the number of installments is provided by the resolution. Assessments on property located in a targeted neighborhood as defined in Laws 1987, chapter 386, article 6, section 4, may be payable in variable annual installments if the resolution provides for a variable payment.

Examples of the calculation methods, equal annual payment or equal principal, are shown below.

The following information is assumed for both examples:

   Date of Resolution: June 15, 2005
Assessment Amount: 6,000
Years to run: 5
Interest Rate: 5%
Parcel: XX.XXX.XXXX.XX

Example 08.04-1: Equal Annual Payment Method

EQUAL ANNUAL PAYMENT – To the first installment shall be added interest from the date of the resolution adoption

<table>
<thead>
<tr>
<th>Parcel</th>
<th>Year</th>
<th>Principal</th>
<th>Interest</th>
<th>Total</th>
<th>Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>XX.XXX.XXXX.XX</td>
<td>2006</td>
<td>1,085.85</td>
<td>463.56</td>
<td>1,549.41</td>
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<td>1,140.14</td>
<td>245.71</td>
<td>1,385.85</td>
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<td>2008</td>
<td>1,197.15</td>
<td>188.70</td>
<td>1,385.85</td>
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<td>2009</td>
<td>1,257.01</td>
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<td>1,385.85</td>
<td>1,319.85</td>
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<tr>
<td></td>
<td>2010</td>
<td>1,319.85</td>
<td>65.99</td>
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</table>

Example 08.04-2: Equal Principal Payment Method

EQUAL PRINCIPAL PAYMENT – To the first installment shall be added interest from the date of the resolution adoption

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<th>Parcel</th>
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<th>Principal</th>
<th>Interest</th>
<th>Total</th>
<th>Balance</th>
</tr>
</thead>
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<tr>
<td>XX.XXX.XXXX.XX</td>
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<td>1,200.00</td>
<td>463.56</td>
<td>1,663.56</td>
<td>4,800.00</td>
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<td>240.00</td>
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<td>2008</td>
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<td>2009</td>
<td>1,200.00</td>
<td>120.00</td>
<td>1,320.00</td>
<td>1,200.00</td>
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<tr>
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<td>2010</td>
<td>1,200.00</td>
<td>60.00</td>
<td>1,260.00</td>
<td>0</td>
</tr>
</tbody>
</table>

Certification to County Auditor

An assessment roll for all improvements must be certified to the County Auditor no later than November 30th in each year prior to the payment of the first installment. The assessment roll must contain each installment or number of years to run, the interest rate to be extended, each parcel of property to receive an assessment, and the amount of the assessment for each parcel. The assessment roll should be accompanied by the resolution, which should indicate whether additional interest is being added to the first installment from the date of the adoption of the resolution, and whether the equal principal or equal installment method is being used. If the resolution does not indicate the method or the additional interest, statute prevails and the County Auditor is to use the equal installment method and add additional interest to the first installment from the adoption of the resolution by the Council or Board.
Assessment Prepayment or Payoff
The owner of property may pay off the assessment to the treasurer of the authority who adopted the assessment, the total amount of the assessment, without interest, if the Council or Board makes the payment within 30 days from the adoption of the resolution. After the thirty day period and prior to November 15, the assessment may still be paid off but interest shall be added to the payment from the adoption of the resolution until the payment date. After the 15th of November, the interest added to the assessment shall be calculated through December 31. Some Authorities, by ordinance, accept partial payments of assessment balances. Any part of the assessment that is certified to the current payable taxes must be paid to the County Treasurer and the remaining principal balance to the Authority/Municipal Treasurer. Some Counties have made agreements with their Cities and Townships to accept payoff balances of assessments for them. In these cases, the assessment balance payoffs received are then settled to the City or Township at the time of the next tax settlement unless the County and City/Twp agree to something different.

Deferral of Assessment Principal and Interest

Unimproved Property
Authorities have the ability to defer assessments on unimproved property by resolution until sometime in a future year, until the property is platted or until the property has been constructed with an improvement. The authority must record, in the County Recorders office, a certificate indicating the legal description of the property and the amount to be deferred. When the property no longer qualifies for deferment, the assessment shall be divided into the number of years remaining on the assessment roll. The interest, if deferred, can be either forgiven to December 31 of the year before the first installment is payable, or can be added to the principal amount of the assessment. The authority has the ability to not have the interest deferred and instead make it payable annually at the same time the principal installments would have been payable if they were not deferred.

Agricultural Property-Green Acres Property
If the real property qualifies for the green acre status under M.S. § 273.111, subd 3, the payment of special local assessments and interest levied after June 1, 1967 shall be deferred as long as the property meets the qualifications under that section or is transferred to an agricultural preserve program. If special assessments against the property have been deferred, the governmental unit shall file with the county recorder in the county in which the property is located a certificate containing the legal description of the affected property and of the amount deferred. When such property no longer qualifies, all deferred special assessments plus interest shall be payable in equal installments spread over the time remaining until the last maturity date of the bonds issued to finance the improvement for which the assessments were levied. If the bonds have matured, the deferred special assessments plus interest shall be payable within 90 days. The provisions of M.S. § 429.061, subdivision 2, apply to the collection of these installments. Penalty shall not be levied on any such special assessments if timely paid. The deferment shall not apply to any special assessments levied at any time by a county or district court under the provisions of chapter 116A.

Agricultural Property-Agricultural Preserve Program
Notwithstanding chapter 429, construction projects for public sanitary sewer systems and public water systems benefiting land or buildings in agricultural preserves shall be prohibited. New connections between land or buildings in agricultural preserves and sanitary sewers or water systems shall be
prohibited. Public sanitary sewer systems, public storm water sewer systems, public water systems, public roads, and other public improvements built on, adjacent to, or in the vicinity of agricultural preserves after August 1, 1993, are deemed of no benefit to the land and buildings in agricultural preserves.\(^5\)

When land that has been receiving the special agricultural valuation and tax deferment provided in M.S. § 273.111 becomes an agricultural preserve under Chapter 473H, the recapture of deferred tax and special assessments, shall not be made. Special assessments deferred under M.S. § 273.111 shall continue to be deferred for the duration of the preserve. For purposes of this section, "deferred special assessments" shall include the total amount of deferred special assessments, including any portion of the deferred special assessments that have not yet been levied at the time the property transfers to the agricultural preserves program under this chapter. All special assessments deferred shall be payable within 90 days of the date of expiration unless other terms are mutually agreed upon by the authority and the owner. In the event of early termination of a preserve or a portion of it, all special assessments accruing to the terminated portion plus interest shall be payable within 90 days of the date of termination unless otherwise deferred or abated by executive order of the governor. In the event of a taking, all special assessments accruing to the taken portion plus interest shall be payable within 90 days of the date the final certificate is filed with the court administrator of district court.\(^6\)

**Hardship Assessment Deferrals for Seniors, Disabled, or Military Persons**

Any County, City or Town making a special assessment may defer the payment for any homestead property owned by a person 65 years of age or older or retired due to a permanent and total disability or a person who is a member of the Minnesota National Guard or other military reserves who is ordered into active military service, if they determine the payment of the assessment would be a hardship. Each municipality electing to defer the assessment has to have established an ordinance outlining the standards and guidelines for determining the existence of a hardship and existence of a disability, but nothing disallows the municipality from determining the hardship based on exceptional and unusual circumstances not covered by the standards and guidelines as long as the determination does not give the applicant an unreasonable preference or advantage over other applicants.

The County Auditor prescribes the form on which applications for deferment due to hardships are to be submitted. If the deferment is granted, the auditor must record the notice of deferment with the County Recorder. The taxing authority may determine by ordinance or resolution, the amount of interest, if any, on the deferred assessment and the rate shall be recorded by the auditor along with and in the same manner as the assessment.

The option to defer the payment of special assessments shall terminate and all amounts accumulated plus applicable interest, shall become due if any of the following takes place: (a) the death of the owner, provided that the spouse is otherwise not eligible for the benefits; (b) the sale, transfer or subdivision of the property or any part thereof; (c) if the property should for any reason lose its homestead status; or (d) if for any reason the taxing authority deferring the payments determines that there would be no hardship to require immediate or partial payment.

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\(^5\) Minn. Stat. § 473H.11  
\(^6\) Minn. Stat. § 473H.18
Senior Citizen Tax Deferral

A taxpayer meeting the program qualifications under M.S. § 290B.03 may apply to the commissioner of revenue for the deferral of taxes. Upon approval of a senior citizen's initial application, the commissioner of revenue shall pay to the treasurer of the county where the property is located the amount of any delinquent property taxes, penalties, interest, and delinquent special assessments and interest on the property that is the subject of the application. For this purpose, "special assessments" includes any assessment, fee, or other charge that may by law, and which does, appear on the property tax statement for the property for collection under the laws applicable to the enforcement of real estate taxes. Any tax attributable to new improvements made to the property after the initial application has been approved, must be excluded when determining any subsequent deferred property tax amount. The county auditor shall annually, on or before April 15, certify to the commissioner of revenue the property tax deferral amounts determined under this subdivision by property and by owner.7

Collection

The collection of any installment of a special assessment, which is certified to the current year’s tax roll, is made at the same time as the collection of taxes. Counties vary in how they process current year assessment installment payments when they are received in full prior to their due date. Some Counties apply the payment of the assessment against the parcel and let the system allocate it between the total tax & special assessment payment due, and some Counties post the payment specific to the assessment for both the first half and second half. In the second situation, the taxpayer must also make the appropriate first and second half tax payments as well, in order for no penalty to calculate.

The collection of assessments on exempt property differs from that of taxable property. The clerk of the authority levying a special assessment against exempt property needs to send a notice to the County Auditor, for County property, the clerk of any other political subdivision, or the owner of any right-of-way, specifying the amount due for that year's principal and interest installment. After 30 days have elapsed, the authority may charge penalty. If the assessment is not paid in its entirety, the authority must continue to mail notices on an annual basis of that year’s installment amount until the assessment has been paid in full.

Power to Abate; Correction of Errors8

No reduction, abatement, or refundment of any special assessments made or levied by any municipality for local improvements shall be made unless it is also approved by the board of review or similar taxing authority of such municipality. Special Assessment Abatement forms are prescribed by the Minnesota Department of Revenue. Most of the special assessment abatement applications are submitted by the municipality who originally adopted the assessment roll along with the Board resolution.

7 Minn. Stat. § 290B.05, subd. 3
8 Minn. Stat. § 270C.86
Cancellation of Assessments due to Project Incompletion
When a local improvement proposed to be made by any municipality under any procedure is abandoned before it is completed to an extent sufficient to result in benefits equal to special assessments which have been levied for the improvement, the municipality shall notify the municipal treasurer or the county auditor, whichever is acting as collecting agent for the special assessments, of such fact. Upon such notification, all installments of the assessments and interest that are not already collected or in the process of collection shall be canceled. However, nothing shall prevent the municipality from making a reassessment of any amount not exceeding the special benefits that actually accrue from the improvement to part or all of the properties originally assessed, and nothing shall affect the obligations of the municipality to provide funds sufficient to pay any bonds issued to finance the improvement and the interest.9

Cancellation of Assessments due to Tax Forfeiture
When properties forfeit to the State of Minnesota due to non-payment of real estate taxes, all taxes and assessments, both current and delinquent are cancelled. The County Auditor must include in the notice for public sale the amount of any special assessments that may be the subject of a reassessment or new assessment or which may result in the imposition of a fee or charge pursuant to Chapter 429.

If the County receives a request to repurchase any special assessments canceled because of forfeiture of land for nonpayment of taxes shall be reinstated by the county auditor and any special assessments reinstated which are payable in the future shall be paid at the time and in the manner the special assessments would have been payable except for forfeiture, except that special assessments payable in the year in which repurchase is made, shall be paid in full at the time of repurchase. The sum of such special assessments that would, except for forfeiture, have been levied and assessed against such land between the date of forfeiture and the date of repurchase and which would have been payable prior to the year in which repurchase is made shall be computed by the county auditor and included in the purchase price.10

If any public improvement is made by a municipality after any parcel of land has been forfeited to the state, and the improvement is assessed in whole or in part against the property benefited by it, the clerk of the municipality must certify to the county auditor, immediately upon the determination of the assessments for the improvement, the total amount that would have been assessed against the parcel of land if it had been subject to assessment; or if the public improvement is made, petitioned for, ordered in or assessed, whether the improvement is completed in whole or in part, at any time between the appraisal and the sale of the parcel of land, the cost of the improvement is to be included as a separate item and added to the appraised value of the parcel of land at the time it is sold. No sale of a parcel of land shall discharge or free the parcel of land from lien for the special benefit conferred upon it by reason of the public improvement until the cost of it, including penalties, if any, is paid. The county board shall determine the amount, if any, by which the value of the parcel was enhanced by the improvement and include the amount as a separate item in fixing the appraised value for the purpose of sale.11

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9 Minn. Stat. § 435.202, subd. 1
10 Minn. Stat. § 282.251
11 Minn. Stat. § 282.01, subd. 3
CHAPTER 8: TAX COLLECTION – REAL AND PERSONAL PROPERTY

Administrative Expenses
The County has the statutory ability to recoup all administrative expenses incurred when certifying the assessment roll to the tax roll.

Reapportionment of Special Assessments upon Land Subdivisions\textsuperscript{12}
When a plat or other type of document is recorded that will subdivide the property on which a special assessment resides, the Council or Board of the authority who levied the special assessment may reapportion the assessment balance to the tracts remaining after the plat or subdividing document is recorded. The County will need to communicate with the authority to find out whether a reallocation resolution is going to be filed with the County Auditor or whether the authority requires full payment of the assessment balance to them prior to the recording of any instrument that subdivides property.

Reassessment on Tax Forfeited Lands
When a property forfeits to the State of Minnesota due to nonpayment of taxes, all special assessments are cancelled. When the property is returned to private ownership, the authority may, after a notice and hearing has taken place, reassess all or a portion of the unpaid assessment amount back to the parcel.

Unpaid Service Charges\textsuperscript{13}
When an authority has unpaid service charges, they may certify them to the County Auditor, similar to the mechanism by which they certify special assessment improvements. The following are charges that, when go unpaid by the owner, can be certified to the County for collection with the next years property taxes:

1) snow, ice, or rubbish removal from sidewalks;
2) weed elimination from streets or private property;
3) removal or elimination of public health or safety hazards from private property, excluding any structure included under the provisions of \textit{M.S. §§ 463.15 to 463.26};
4) installation or repair of water service lines, street sprinkling or other dust treatment of streets;
5) the trimming and care of trees and the removal of unsound trees from any street;
6) the treatment and removal of insect infested or diseased trees on private property, the repair of sidewalks and alleys;
7) the operation of a street lighting system;
8) the operation and maintenance of a fire protection or a pedestrian skyway system;
9) inspections relating to a municipal housing maintenance code violation;

\textsuperscript{12} Minn. Stat. § 116A.18, subd. 3
\textsuperscript{13} Minn. Stat. § 116A.22
10) the recovery of any disbursements under M.S. § 504B.445, subdivision 4, clause (5), including disbursements for payment of utility bills and other services, even if provided by a third party, necessary to remedy violations as described in section 504B.445, subdivision 4, clause (2); or

11) [Repealed, 2004 c 275 s 5]

12) the recovery of delinquent vacant building registration fees under a municipal program designed to identify and register vacant buildings.

The Council or Board of the authority may give notice to the owner, in some cases where it is reasonable, that gives them the ability to do the work themselves or to pay the amount of the service charge prior to it being certified to the County Auditor as a special assessment.

Service Charge to Dispose of Garbage in Certain Cities
The council of any statutory city or city of the fourth class that provides by contract or otherwise for regular collection and disposal of garbage or refuse from dwellings and places may by ordinance obligate the owners of all property served to pay the proportionate cost of the service to their respective properties, and in default of payment the city council may annually levy an assessment equal to the unpaid cost as of September first of each year, against each lot or parcel of land served for which the service charge is unpaid. The assessment may include a penalty not to exceed ten percent of the amount and shall bear interest at a rate not to exceed six percent per annum. The assessment shall be certified to the auditor of the county in which the land assessed is situated and shall be collected and remitted to the city treasurer in the same manner as assessments for local improvements.14

Service Charge for Sanitary Sewer & Storm Sewers
For the purpose of paying the cost of building, constructing, reconstructing, repairing, enlarging, improving, or in other manner obtaining the facilities or any portion of them, and of obtaining and complying with permits required by law, a municipality or county may issue and sell its general obligations, which may be made payable primarily from taxes or from special assessments to be levied to pay the cost of the facilities or from net revenues derived from facilities service charges or from other nontax revenues pledged for their payment under charter or other statutory authority, or from two or more of the sources; or it may issue special obligations, payable solely from taxes or special assessments or from revenues, or from two or more of the sources. Real estate tax revenues should be used only, and then on a temporary basis, to pay general or special obligations when the other revenues are insufficient to meet the obligations.15

When the facility service charges for the use of sewer and water services to individual properties go unpaid, the governing body may make the charge assessable against the owner, lessee, occupant or all of them and may certify the unpaid charge to the County Auditor for collection on the real estate in the following year with other taxes collected on the property.

14 Minn. Stat. § 443.015
15 Minn. Stat. § 444.075, subd. 2
Payment of Unpaid Service Charge Assessment
Payment of the unpaid service charge will be a single installment payment unless the Council or Board indicates otherwise up to a maximum of ten years.

Water Law

Water Management Organizations, Watershed District, Lake Improvement District, Soil and Water Conservation Districts and County Drainage Systems
Chapters 103A, 103B, 103C, 103D, 103E, 103F, and 103G constitute the water law of this state and may be cited as the Water Law.

Introduction
Counties across the state all deal with water and mechanisms by which to control water through a variety of ways. A state agency, The Board of Water and Soil Resources (BOWSR), composed of 12 members knowledgeable of water and soil problems and conditions within the state and five ex officio members, coordinates and oversees all the water planning activities within the state. The main water planning methods are handled through the establishment of Water Management Organizations, Watershed Districts, Lake Improvement Districts, and the construction, repair, or improvement of County Drainage Systems. Each has varying abilities and serves particular purposes which are better described in detail in the Chapters listed above. A brief definition of each method is as follows:

- **Watershed Management Organization (WMO):** means a watershed district wholly within the metropolitan area or a joint powers entity established wholly or partly within the metropolitan area by special law or by agreement that performs some or all of the functions of a watershed district for a watershed and that has the characteristics and the authority specified under M.S. § 103B.211. Lake improvement or conservation districts are not watershed management organizations.

- **Watershed District:** means a drainage area having boundaries which are substantially coterminous with those of an aggregation of contiguous minor watershed units possessing similar drainage patterns and which cross the borders of two or more local government units. Better described in Chapter 103D.

- **Lake Improvement District (LID):** a district established to preserve the natural character of lakes and their shore land environment where feasible and practical; improve the quality of water in lakes; provide for reasonable assurance of water quantity in lakes, where feasible and practicable; and to assure protection of the lakes from the detrimental effects of human activities and certain natural processes. Described in Chapter 103B.

- **Soil & Water Conservation District:** means a district having established boundaries and whose primary purpose is to encourage land occupiers to conserve soil, water, and the natural resources they support through the implementation of practices that control or prevent erosion, sedimentation, siltation, and related pollution in order to preserve natural resources; ensure continued soil productivity; protect water quality; prevent impairment of dams and reservoirs; reduce damages caused by floods; preserve wildlife; protect the tax base; and protect public lands and waters. Better described in Chapter 103C.
- **County Drainage System**: means a system of ditch or tile, or both, to drain property, including laterals, improvements, and improvements of outlets, established and constructed by a drainage authority. "Drainage system" includes the improvement of a natural waterway used in the construction of a drainage system and any part of a flood control plan proposed by the United States or its agencies in the drainage system. Better described in Chapter 103E.

Each of the various water management methods listed above are entitled to various ways that allow them to pay for administrative expenses and the projects they each undertake. Included are the following:

- A WMO must have established boundaries of its taxing district and has the ability to not only levy special assessments under MS Chapter 429 (Special Assessment Improvements & Service Charges), but can also levy ad valorem taxes.

- A Watershed District must have established boundaries of its taxing district can levy ad valorem taxes and can impose special assessments in a similar manner by which County Ditch Assessments (MS Chapter 103E) are established.

- An LID, similar to a WMO, must have established boundaries of its taxing districts, can levy ad valorem taxes, and can also impose special assessments under Chapter 429, and/or service charges.

- A Soil & Water Conservation District has established boundaries but has no direct levying authority for ad valorem taxes or assessments. They report to the County Board and the Board of Soil & Water Resources.

- A County Drainage System is not an established taxing district. It has no ability to levy an ad valorem tax and has all costs of projects undertaken funded by the imposition of County Ditch Assessments (MS Chapter 103E), determined through a benefit ratio of the project to each property identified to receive a benefit.

**County Drainage System (County Ditches) – MS Chapter 103E**

County Drainage Law and its many laws are found in MS Chapter 103E and are referred to in numerous other areas of the statute when identifying the manner by which a procedure or an assessment is to be implemented.

**General Information**

The drainage authority, which is the board or joint county drainage authority having jurisdiction over a drainage system or project, has the authority to make orders to:

1) construct and maintain drainage systems;
2) deepen, widen, straighten, or change the channel or bed of a natural waterway that is part of the drainage
3) system or is located at the outlet of a drainage system;
4) extend a drainage system into or through a municipality for a suitable outlet; and
5) construct necessary dikes, dams, and control structures and power appliances, pumps, and pumping machinery as provided by law.
They may also construct the necessary dams, structures, and improvements and maintain them to impound and release flood water to prevent damage. Projects may be funded through the use of assessments or funds from other sources for the purposes of wetland preservation or restoration or creation of water quality improvements or flood control. Any questions surrounding drainage projects can be submitted to the director of the Division of Waters in the Department of Natural Resources. Whenever any proceeding is done to establish, construct, improve or do any work affecting a public drainage system under a law that appoints viewers to assess benefits and damages, the ditch authority must order 16½ foot grass spoil banks to be spread on the top edge of the channel of the ditch. The property needed for such spoil banks must be acquired by the authority having jurisdiction. The county drainage inspector establishes the rules for the fee owner and assigns to harvest the grass. If the property owner does not bring the area into compliance with the rules, the work is completed by the drainage authority orders the work done and bills the owner. If the owner does not pay the bill, the drainage authority files a lien with the County Auditor, who will certify the expenses against the property and enter the amount in the same manner as other drainage liens on the tax list for the following year, to be collected with the real estate taxes.

In cases where surveys have been made for a project, but the project is then dismissed, the cost of the surveys may be recouped if the survey is used by an engineer for another drainage proceeding in the same area.

If the County Board determines that drainage system has been obstructed and proper notice, via certified mail, has been given to the party responsible for the obstruction to remove the obstruction and the party fails to comply, the board shall have the obstruction removed and the auditor shall make a statement of the removal cost. The statement must be filed in the County Recorders office as a lien on the property unless the responsible party is not the owner of the property affected. Any non-owner may have a civil action taken against them. If the responsible party is the owner, the lien is to be enforced and collected as liens for drainage repairs and collected with real estate taxes.

All maps, plats, charts, drawings, plans, specifications, and other documents that are filed, received in evidence, or used in connection with a drainage proceeding or construction are public record. The results of inspections and tests must be made public for drainage authorities, engineers, tile manufacturers, and others interested in the use of drain tile.

Projects by Petition

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

Each separate parcel of property counts as one signature but the petition must be signed by all owners of the parcel to count as a signature. The signature of each entity regardless of the number of parcels of property owned counts as one signature on the petition.
The petition must be filed with the County Auditor. If the drainage system crosses County boundaries, the petition is filed in the County with the greatest area of property that the proposed project passes over.

One or more petitioners must file a bond with the petition for at least $10,000 that is payable to the county where the petition is filed, or for a petition for a proposed joint county drainage system or a petition for a drainage project affecting a joint county drainage system, the bond must be payable to all of the counties named in the petition. The bond must have adequate surety and be approved by the county attorney where the petition is filed. The bond must be conditioned to pay the costs incurred if the proceedings are dismissed or a contract is not awarded to construct the drainage system proposed in the petition. No expenses exceeding the amount of the bond are to be paid unless an additional bond is filed.

**A New Drainage Project** - A petition for a new drainage system must be signed by a majority of the owners of the property that the proposed drainage system passes over, or by the property owners of at least 60 percent of the area that the proposed new drainage system passes over. The petition must address the following:

1) describe the 40-acre tracts or government lots and property where the proposed new drainage system passes over, including names and addresses of the property owners from records in the county assessor's office;
2) describe the starting point, the general course, and the terminus of the proposed drainage system;
3) state why the proposed drainage system is necessary;
4) state that the proposed drainage system will benefit and be useful to the public and will promote public health; and
5) state that the petitioners will pay all costs of the proceedings if the proceedings are dismissed or the contract for the construction of the proposed drainage system is not awarded.

**Improvement of a Drainage System** - This procedure is to be used to improve an already established and constructed drainage system and may only extend a drainage system downstream to a more adequate outlet and for a distance not to exceed one mile.

A petition must contain the requirements indicated in M.S. § 103E.215 subd. 4 and be signed by one of the following:

1) at least 26 percent of the owners of the property affected by the proposed improvement;
2) at least 26 percent of the owners of property that the proposed improvement passes over;
3) the owners of at least 26 percent of the property area affected by the proposed improvement;
4) the owners of at least 26 percent of the property area that the proposed improvement passes over.

The petition must be filed with the County Auditor who will present it to the board at its next meeting or within ten days after it is received. An engineer will be appointed and will file an improvement report with the authority. When only portions of a drainage system are in need of repair, the allocation of the costs are as follows: the repair portion is allocated as repairs and assessed against all property benefited by the entire drainage system and the balance of the cost is assessed in addition to the repair assessment against the properties receiving direct benefit from the improvement.
**Improvement of an Outlet** - If a public or private proposed drainage project or existing drainage system has waters draining into an existing drainage system, watercourse, or body of water, and the construction or proposed construction of the drainage project causes an overflow of the existing drainage system, watercourse, or body of water on adjoining property, an affected county or the owners of the overflowed property may start outlet improvement proceedings.

A petition must contain the requirements indicated in M.S. § 103E.221 subd. 2 and be signed by the board of the affected County, or by at least 26 percent of the owners adjoining the overflowed property, or by the owners of at least 26 percent of the area of the overflowed property. The petition must be filed with the County Auditor unless the County Board makes the petition, in which case, it must be addressed to the drainage authority and filed with the Auditor. An engineer will be appointed and if after the engineers report is filed and hearing done and a detailed survey is ordered, viewers will be appointed to determine the benefit amounts to all the properties affected and benefited.

**Construction of a Lateral** - Persons that own property in the vicinity of an existing drainage system may petition for a lateral that connects their property with the drainage system. The petition must be signed by at least 26 percent of the owners of the property or by the owners of at least 26 percent of the area of the property that the lateral passes over. The petition must be filed with the County Auditor. The petition must contain the requirements indicated in M.S. § 103E.225, subd. 1. A lateral cannot be constructed to drain property that does not have assessed benefits given to use the existing drainage system until benefits are obtained.

**Impounding and Diversion of Drainage System Waters** - A person, public or municipal corporation, governmental subdivision, the state or a department or agency of the state, the commissioner of natural resources, and the United States or any of its agencies, may petition for the installation of dams or other control works in drainage ditch systems to impound or divert waters for beneficial use. The petition is filed with the responsible drainage authority and must contain the requirements indicated in M.S. § 103E.227, subd. 1.

The petitioner must file a bond with the County Auditor for the expense of the project unless the petitioner is the state, an agency of the state, the commissioner of Natural Resources, the United States, an agency of the United States, or a City, Township or Water Management Authority to which a drainage system has been transferred. After the filing of the petition, an engineer is appointed and a public hearing held. The cost of the project is paid by the petitioner without assessment.

**Joint County Ditches** - A petition for a proposed drainage project in two or more counties must be designated as a joint county drainage system with a number assigned by the auditor of the county with the largest area of property in the drainage system. The board where a petition for a proposed joint county drainage project is filed shall notify the board of each county where property is affected by the drainage system and request the boards to meet jointly and consider the petition. The boards shall select five of their members at the meeting to be the drainage authority. At least one member must be from each board. The drainage authority shall be known as the joint county drainage authority with a joint county drainage project or system number.


**Project Procedures**

**County Attorney review and Appointment of Engineer** - After petitions are received by the County Auditor or Drainage Authority when necessary, the County Attorney reviews each petition and bond to make sure it meets the requirements for which it is intended. If the petition and bond comply with the law, the petition is forwarded to the ditch authority. The ditch authority appoints an engineer, who is either the County Highway Engineer or a professional engineer. The engineer may employ assistants as needed and must file expense reports with the County Auditor every two weeks until the construction contract is awarded. The engineer is to make a preliminary survey of the proposed drainage project and the areas affected. The engineer can report the proposed plan or recommend a different, more practical plan. The plan is to be filed in duplicate with the County Auditor. A copy of the plan is to be filed with the Director of the Division of Waters in the Department of Natural Resources and if it involves a joint ditch, with the County Auditor of each County affected. The Director shall make a recommendation on the plan to the drainage authority.

The County Auditor must immediately, upon receipt of the preliminary survey and report, more adequately defined in M.S. § 103E.285, notify the drainage authority. A hearing must be set and notice of the time and location of the hearing must be sent to the petitioners, owners of property, and political subdivisions that may be affected by the project. The petition is read at the hearing along with the report of the Director. If the petition does not meet all the requirements of the law, it is referred back to the petitioners. The petitioners must comply with the additional requirements or the proceedings are dismissed and any other action on the proposed drainage project must begin with a new petition.

Once the proposed drainage project is accepted and final, any revisions to the detailed survey report must be made by the engineer and filed with the County Auditor, who shall forward a copy to the director as a permanent record. The Director shall review the final report, make any last recommendations and direct the report to the ditch authority and file a copy with the County Auditor.

**Appoint and Duties of Viewers** - The drainage authority is to appoint viewers consisting of three disinterested residents of the state qualified to assess benefits and damages. Within five days after the appointment, the County Auditor will meet with the viewers to issue a copy of the auditors order and a certified copy of the order appointing the viewers. At the meeting, the viewers must subscribe to an oath to faithfully perform their duties. The duties of the viewers are to establish benefits and damages and file a viewers report with the County Auditor and a detailed statement showing the actual time the viewers were engaged and the costs incurred.

**Assessment of Drainage Benefits and Damages** - State lands, Government property, Owners of Public Roads, and Railway and other utilities along with private owners are all subject to benefits and damages as established by the viewers.

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

1) an increase in the current market value of property as a result of constructing the project;
2) an increase in the potential for agricultural production as a result of constructing the project; or
3) an increased value of the property as a result of a potential different land use.

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

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

Damages that are incurred may include: costs for acquisition of land for the channel of an open ditch and the permanent grass strip or spoil bank; the diminished value of a farm due to the severing of a field by an open ditch; the loss of crop production during the project construction; or the diminished productivity or land value due to increased overflow.

**Benefits on Outlet Projects** - If the proposed drainage project furnishes an outlet to an existing drainage system and benefits the property drained by the existing system, the viewers shall equitably determine and assess:

1) the benefits of the proposed drainage project to each tract or lot drained by the existing drainage system;
2) a single amount as an outlet benefit to the existing drainage system; or
3) benefits on a watershed acre basis.

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

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

1) property that is responsible for increased sedimentation in downstream areas of the watershed; and
2) property that is responsible for increased drainage system maintenance or increased drainage system capacity because the natural drainage on the property has been altered or modified to accelerate the drainage of water from the property.

**Viewers Report** - The viewers' report must show, in tabular form, for each lot, 40-acre tract, and fraction of a lot or tract under separate ownership that is benefited or damaged:

1) a description of the lot or tract, under separate ownership, that is benefited or damaged;
2) the names of the owners as they appear on the current tax records of the county and their addresses;
3) the number of acres in each tract or lot;
4) the number and value of acres added to a tract or lot by the proposed drainage of public waters;
5) the damage, if any, to riparian rights;
6) the damages paid for the permanent grass strip
7) the total number and value of acres added to a tract or lot by the proposed drainage of public waters, wetlands, and other areas not currently being cultivated;
8) the number of acres and amount of benefits being assessed for drainage of areas which before the drainage benefits could be realized would require a public waters work permit to work in public waters to excavate or fill a navigable water body under United States Code, title 33, section 403, or a permit to discharge into waters of the United States under United States Code, title 33, section 1344;

9) the number of acres and amount of benefits being assessed for drainage of areas that would be considered conversion of a wetland under United States Code, title 16, section 3821, if the area was placed in agricultural production;

10) the amount of right-of-way acreage required; and

11) the amount that each tract or lot will be benefited or damaged.

The viewers' report must include a benefits and damages statement that shows for each property owner how the benefits or damages for similar tracts or lots were determined. For similar tracts or lots the report must describe:
1) the existing land use, property value, and economic productivity;
2) the potential land use, property value, and economic productivity after the drainage project is constructed; and
3) the benefits or damages from the proposed drainage project.

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

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

The auditor shall mail a copy of the report to each owner of property affected by the project and may file an affidavit of the mailing.
Final Hearing - After the filing of the viewers report and the director’s final advisory report, the drainage authority, in conjunction with the County Auditor shall set a public hearing date. The final hearing notice must include the following information:
1) that the petition is pending;
2) that the detailed survey report is filed;
3) that the viewers’ report is filed;
4) the time and place set for the final hearing;
5) a brief description of the proposed drainage project and affected drainage system, giving in general terms the starting point, terminus, and general course of the main ditch and branches;
6) a description of property benefited and damaged, and the names of the owners of the property; and
7) the municipal and other corporations affected by the proposed drainage project as shown by the detailed survey report and viewers' report.

Names may be listed in a narrative form and property affected may be separately listed in narrative form by governmental sections or otherwise. For a joint county proceeding, separate notice may be prepared for each county affected, showing the portion of the proposed drainage project and the names and descriptions of affected property in the county.

At the public hearing, the drainage authority shall hear and consider testimony by all interested parties. They may make changes in the drainage plan and reexamine the project plan and make improvement changes to the detailed survey or the viewers report and resubmit them to the engineer or viewers. The hearing may be continued to allow for the engineer and viewers to examine the changes and file an amended report. If property is included in the amended report that was not included in the original report, the drainage authority may adjourn the hearing and order the County Auditor to serve, publish and mail a final hearing notice with reference to all property not included in the previous notice.

If the costs exceed the benefits or the proposed project will not be of public benefit or is not practicable after consideration of the environmental and land use criteria, the drainage authority may dismiss the proceeding or petition. If all the criteria is met and the drainage authority finds that all reports all complete and correct and that the project is justified, they shall issue an order establishing the project as final.

If more than 50% of the owners of property benefited or damaged petition the authority for correction of an error that was made at the time of the proceedings that established the project, or the drainage authority determines that the benefits or damages do not reflect present day land values, or if the benefited or damaged areas have changed the drainage authority may appoint three viewers to re-determine benefits and damages to the affected properties. Another hearing and notice must take place if this situation occurs.

Appeal Process - A party may appeal the final order to the district court on the amount of benefits or damages listed in the report, the fees or expenses allowed or the environmental or land use requirement criteria listed. They may include benefits or damages affecting properties not owned by them. They must file a notice of appeal with the County Auditor within 30 days after the order is filed. The notice must include the particular benefits or damages appealed and the basis for the appeal. Within 30 days after the notice is filed, the Auditor must file the original notice with the court administrator.
The issues in the appeal are entitled to a trial by jury. The appeal shall take precedence over all other civil court matters. If the party filing the appeal does not prevail, they are responsible for the cost of the trial. The court administrator must file a certified copy of the final determination of the appeal with the auditor of the affected counties.

A party may also appeal an order made by the board that dismisses drainage proceedings or establishes or refuses to establish a drainage project to the district court of the county where the drainage proceedings are pending. The appellant must serve notice of the appeal to the auditor within 30 days after the order is filed. After notice of the appeal is served, the appeal may be brought to trial by the appellant or the drainage authority after notifying the other party at least ten days before the trial date. The appeal must be tried by the court without a jury.

If the court finds that the order appealed is lawful and reasonable, it shall be affirmed. If the court finds that the order appealed is arbitrary, unlawful, or not supported by the evidence, it shall make an order to take the place of the appealed order, or remand the order to the board for further proceedings. After the appeal has been determined by the court, the board shall proceed in conformity with the court order.

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

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

A party aggrieved by a final order or judgment rendered on appeal to the district court may appeal as in other civil cases. The appeal must be made and perfected within 30 days after the filing of the order or entry of judgment.

**Drainage Lien Statement** - When the contract for the construction of a drainage project is awarded, the County Auditor shall make a statement showing the total cost of the drainage project with the estimated cost of all items required to complete the work. The cost must be prorated to each tract of property affected in direct proportion to the benefits. The cost, less any damages, is the amount of liability for each tract for the drainage project. The property liability must be shown in the tabular statement opposite the property owner's name and description of each tract of property. The amount of liability on a tract of property for establishment and construction of a drainage project may not exceed the benefits determined in the proceedings that accrue to the tract.

The lien statement must show the following:

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

2) the description of the property in the viewers' report, and the total number of acres in each tract according to the county tax lists;
3) the number of acres benefited or damaged in each tract shown in the viewers' report;
4) the amount of benefits and damages to each tract of property as stated in the viewers' report
   and confirmed by the final order that established the drainage project unless the order is
   appealed and a different amount is set; and
5) the amount each tract of property will be liable for and must pay to the county for the
   establishment and construction of the drainage project.

The lien against property in the drainage lien statement and supplemental drainage lien statements must
be certified by the auditor and recorded on each tract by the county recorder of the county where the
tract is located.

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

Payment of Drainage Liens and Interest - Drainage liens against property benefited are payable to the
treasurer of the county in 20 or less equal annual installments. The first installment of the principal is
due on or before November 1 after the drainage lien statement is recorded, and each subsequent
installment is due on or before November 1 of each year afterwards until the principal is paid. The
drainage authority may, by order, direct the drainage lien to be paid by 1/15 of the principal on or before
five years from November 1 after the lien statement is recorded, and 1/15 on or before November 1 of
each year afterwards until the principal is paid. The drainage authority may order that the drainage lien
must be paid by one or two installments if the principal amount of a lien against a lot or tract of property
or against a county or municipality is less than $50.

Interest is an additional drainage lien on all property until paid. The interest rate on the drainage lien
principal from the date the drainage lien statement is recorded must be set by the board but may not
exceed the rate determined by the state court administrator for judgments under section 549.09. Before
the tax lists for the year are given to the county treasurer, the auditor shall compute the interest on the
 unpaid balance of the drainage lien at the rate set by the board. The amount of interest must be
computed on the entire unpaid principal from the date the drainage lien was recorded to August 15 of the
next calendar year, and afterwards from August 15 to August 15 of each year.

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

Interest and any installment due must be entered on the tax lists for the year. The installment and interest
must be collected in the same manner as real estate taxes for that year by collecting one-half of the total
of the installment and interest with and as a part of the real estate taxes. Interest may be paid at any
time, computed to the date of payment, except that after the interest is entered on the tax lists for the
year, it is due as entered, without a reduction for prepayment.

Payments of Drainage Liens and Interest on Property owned by the State or Agency of the State,
Municipalities, Roadways owned by the County or State, Railroads or Vacations of Township
Roads - Municipalities: Assessments filed for benefits to a municipality are a liability of the
municipality and are due and payable with interest in installments on November 1 of each year. If the installments and interest are not paid on or before November 1, the amount due with interest added shall be extended by the county auditor against all property in the municipality that is liable to taxation. A levy must be made and the amount due must be paid and collected in the same manner and time as other taxes.

*County or state-aid roads:* If a public road benefited is a county or state-aid road, the assessment filed is against the county and must be paid out of the road and bridge fund of the county.

*State trunk highway:* An assessment against the state for benefits to trunk highways is chargeable to and payable out of the trunk highway fund. The commissioner of transportation shall pay assessments from the trunk highway fund after receipt of a certified copy of the assessment against the state for benefits to a trunk highway.

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

*State property:* State property, including rural credit property, is assessable for benefits received. The assessment must be paid by the state from funds appropriated and available for drainage assessments after the state officer having jurisdiction over the assessed property certifies the assessment to the commissioner of finance.

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

**Satisfaction of Liens** - When a drainage lien with the accumulated interest is fully paid, the auditor shall issue a certificate of payment with the auditor's official seal and record the certificate with the county recorder. The recorded certificate releases and discharges the drainage lien. The auditor may collect 25 cents for each description in the certificate. The auditor's fee and the fee of the county recorder must be paid from the account for the drainage system.

**Reapportionment of Recorded Liens** - A tract of property with a drainage lien that is subdivided by platting is not complete and the plat may not be recorded until the drainage liens against the tracts are apportioned and the apportionment is filed with the county recorder of the county where the tract is located.

A person who has an interest in property that has a drainage lien attached to it may petition the drainage authority to apportion the lien among specified portions of the tract if the payments of principal and
interest on the property are not in default.

When the petition is filed, the drainage authority shall, by order, set a time and location for a hearing on the petition. The drainage authority shall give notice of the hearing by personal service to the auditor, the occupants of the tract, and all parties having an interest in the tract as shown by the records in the county recorder's office. The service must be made at least ten days before the hearing. If personal service cannot be made to all interested persons, notice may be given by publication. The petitioner shall pay the costs for service or publication.

The drainage authority shall hear all related evidence and, by order, apportion the lien. A certified copy of the order must be recorded in the county recorder's office and filed with the auditor.

**Water Management Organization (WMO) - MS Chapter 103B**

A WMO manages and creates plans for the management of surface water in a watershed and can also assume the transfer of responsibilities of the drainage systems within the watershed which include the costs associated with the maintenance, repair, and improvement of existing or construction of new systems. They must establish a budget and determine how much revenue is needed through ad valorem taxes and create, approve and file assessment statements with the County Auditor.

A WMO may assess the costs of projects necessary to implement the local water management plan undertaken upon the property benefited within the county in the manner provided for municipalities by Chapter 429 which deals with Special Assessment Improvements and Service Charges cited earlier in this chapter. They may also charge users for services provided by the WMO or County necessary to implement the local water management plan. Projects necessary to implement the comprehensive water plan that are intended for the purpose of improving drainage must be established, repaired, and improved under Chapter 103E which deals with County Drainage Systems and not Chapter 429.

**Lake Improvement District (LID) – MS Chapter 103B**

An LID is established either through a County Board initiative or through petition of the majority of property owners within the proposed Lake Improvement District.

The county board or joint county authority may undertake projects of improvement consistent with purposes of the district. To finance projects and services of the district, the county board or joint county authority may, only after seeking other sources of funding:

1) assess the costs of the projects upon benefited property within the district in the manner provided under Chapter 429;
2) impose service charges on the users of lake improvement district services within the district;
3) issue obligations as provided in M.S. § 429.091;
4) levy an ad valorem tax solely on property within the lake improvement district, to be appropriated and expended solely on projects of special benefit to the district; or
5) impose or issue any combination of service charges, special assessments, obligations, and taxes.
Soil & Water Conservation District – MS Chapter 103C

Soil and water conservation measures implemented on private lands in this state provide benefits to the general public by reducing erosion, sedimentation, siltation, water pollution, and damages caused by floods. Soil and Water Conservation Districts have boards that do not have levying or assessment authority. They report to the County Board or Joint County Boards and to the Board of Water & Soil Resources (BOWSR). The County Board(s) may take action on a petition for an improvement in the district only if the petition is signed by:

1) at least 25 percent of the owners of the land over which the proposed improvement work passes;
2) at least 25 percent of the owners of land where the proposed improvement is located;
3) the owners of at least 30 percent of the land area over which the proposed improvement work passes; or
4) the owners of at least 30 percent of the land area where the proposed project is located.

If the recommendation report specifies that part of the cost of the project is to be paid from the proceeds of assessments on benefited property the following needs to take place:

1) One or more of the petitioners, upon filing the petition and before action is taken on the petition, must file a bond to the county or counties conditioned as provided by M.S. § 103E.202, for a county drainage system, to be approved by the chair of the board.
2) Viewers must be appointed. Viewers are three disinterested residents of the state who are qualified to assess benefits and damages. Drainage Authorities establish qualifications for viewers.
3) Engineers need to be provided either by the County(s) or contracted for.
4) A public hearing must be held.
5) A determination that the assessments will not exceed the benefits must be substantiated.

If there are multiple funding sources and the viewers determine that the total amount of benefits to be assessed plus the funding from other sources exceed the cost of the project, the funding from other sources must be reduced. The full amount of benefits, less damages, must be extended to each tract of land as shown on the viewers report.

Watersheds – MS Chapter 103D

Introduction
The Board of Soil & Water Resources (BOWSR) is the establishing authority of watershed districts. They appoint the board of managers who will then oversee the watershed district. Watersheds have established legal boundaries and some have statutory levying & assessment capabilities as a special taxing district, while other districts have their boards report to either the City, Township, or County. Levying ability lies with the City, Township or County or combination thereof. Counties need to be cognizant on how the watershed was created and whether, through statute, they have been created as a special taxing district or not.

The general purpose of a watershed is to conserve the natural resources of the state by land use planning, flood control, and other conservation projects by using sound scientific principles for the protection of
the public health and welfare and the provident use of the natural resources. Specific purposes are outlined in M.S. § 103D.201.

Establishment of a Project
The managers may initiate a project by resolution of at least a majority of the managers if:

1) the project is financed by grants totaling at least 50 percent of the estimated project cost; and
2) the engineer's estimate of costs to parties affected by the watershed district, including assessments against benefited properties but excluding state, federal, or other grants, is not more than $750,000 for the project.

A resolution under this subdivision may not be used to establish a project that has drainage as its essential nature and purpose. The managers must set a preliminary public hearing and publish a notice in the legal newspaper, followed the setting and holding of a project hearing.

Appointing of Appraisers
After authorizing the project, the managers shall appoint three disinterested resident owners of the state to act as appraisers. After the appraisers sign an oath to faithfully and impartially perform their duties, they shall, with or without the engineer, determine the benefits and damages to property affected by the proposed project. The appraisers shall make a detailed statement and file the statement with the managers showing:

1) the actual damages that have resulted or will result to individuals, property, or corporations from the construction or implementation of the project; and
2) a list of property, including highways and corporations, receiving actual benefits by way of drainage, control of flood waters, or other means authorized.

Appraisers for watersheds and viewers for county drainage systems carry many of the same duties and are referenced by some Counties as being one of the same.

Drainage Systems in Watershed Districts
The managers shall take over a joint county or county drainage system within the watershed district and the right to repair and maintain the drainage system if directed by a joint county drainage authority or a county board. The transfer may be initiated by:

1) the joint county drainage authority or county board;
2) a petition from a person interested in the drainage system; or
3) the managers

After the transfer is ordered, all proceedings for repair and maintenance must conform to chapter 103E. Construction of new drainage systems or improvements of existing drainage systems in the watershed district must be initiated by filing a petition with the managers. The proceedings for the construction or improvement of drainage systems in the watershed district must also conform to chapter 103E.

Maintenance of Watershed Projects
The managers may assess all the parcels of property and municipal corporations previously assessed for benefits in proceedings for the construction or implementation of the project, to establish a maintenance fund for a project. The assessment must be made pro rata according to benefits determined. An assessment for the benefit of the maintenance fund may not be made when the fund exceeds 20 percent
of the original cost of construction or implementation of the project. The auditors of the affected counties shall file a tabular lien statement covering the assessment in the office of the county recorder for the county when the assessment order from the managers is received.

The assessment shall be collected as provided in the order in the same manner as provided in M.S. § 103E.731. Before ordering the levy of an assessment for the benefit of the maintenance fund, the managers may give notice of a hearing on making the assessment and establishing the maintenance fund.

**Repairs or Improvements to Watershed Projects**
Cases exist when original watershed projects need repair or improvement. Particular situations where this exists are as follows: a project of the watershed district is in such a state of disrepair that the project cannot be restored by normal and routine maintenance to the same condition as when it was originally constructed or subsequently improved; or a ditch or channel must be widened or deepened; or a project of the watershed district must be altered or improved to attain the level of operating efficiency contemplated at the time of the original construction or implementation.

**Determination of Benefits**
Assessments for benefits shall be made based on the benefits to the property because of the project affecting the property. Benefited property must include:

1) all property, including property owned by the state or a political subdivision receiving direct benefits, including assessments for drainage, recreation, commercial navigation, disposal of sewage or waste material, bank stabilization, flood control, land reclamation, prevention of siltation, control of erosion, and maintenance of lake levels;
2) all property that is contributing water or is furnished an improved drainage outlet and all property that contributes waters that are stored, handled, or controlled by the proposed project;
3) all property that is not receiving but needs drainage and that is furnishing waters handled or controlled by the proposed project;
4) benefits to the state by reason of the improvement of lakes, streams, or other bodies of water as a place for propagation, protection, and preservation of fish and other forms of wildlife, that are assessable against the state
5) benefits to municipal corporations that occur to the property in the municipality generally and that may be in addition to special benefits to specific property within the municipality; and
6) benefits that will result to property used for railway or other utility purposes.

**Appeal Rights**
Any party alone or jointly may appeal to the district court or to the board an order of the managers made in a proceeding relating to a project and entered in the watershed district's record that determines:

1) the amount of benefits determined;
2) the amount of damages allowed;
3) the allowance of fees or expenses in any proceedings;
4) a matter in the proceeding that affects a substantial right; or
5) an order of the managers authorizing or refusing to establish a project in whole or in part.
Assessment, Levy & Collection
After the managers file an approved assessment statement listing the property and corporations benefited or damaged or otherwise affected by a project with the auditor of an affected county, the auditor shall assess the amount specified in the assessment statement against the property, municipalities, or other corporations as specified in the pertinent provisions of chapter 103E.

For a watershed district entirely within the metropolitan area, the auditor must mail an assessment notice to property owners and corporations benefited and damaged before the assessment is made. The assessment notice must include:
1) the amount to be specially assessed against the property;
2) the right of the property owner to prepay the entire assessment and to whom prepayment must be made;
3) whether partial prepayment of the assessment is authorized;
4) the time within which prepayment may be made without interest being charged; and
5) the rate of interest to be charged if the assessment is not prepaid within the required time period.

County Auditors and County Treasurers shall levy and collect the amount shown in the tabular statement and lien as provided in M.S. §§ 103E.601 to 103E.631. For a watershed district entirely within the metropolitan area, the auditor must mail an assessment notice to the owners of affected property before the assessment is levied. The assessment may be prepaid as follows: for a watershed district entirely within the metropolitan area, a property owner or corporation may prepay the entire assessment at any time before the first installment of the assessment is entered on the tax lists for the year with the interest that has accrued to the date of payment, except that interest may not be charged on an assessment that is prepaid within 30 days after the assessment notice is mailed. After the first installment of an assessment is entered on the tax list, a property owner or corporation may prepay the entire assessment remaining due before November 15 with interest accrued to December 31 of the year in which the prepayment is made.

The money received by the treasurer of a county from the sale of bonds, assessments, or otherwise, for the benefit of the watershed district shall be accounted for by the auditor and paid to the treasurer of the watershed district.

Assessments Outside of Chapters 103 and 429

Prevention of Local Pest Control
A City Council, Town Board or County Board of Commissioners may, by resolution or ordinance, enforce regulations to control or prevent the spread of plant pests and diseases. The regulations allow for employees to:
1) enter and inspect any public or private place that might harbor plant pests
2) provide for the removal of diseased trees from any public or private place in order to prevent the spread of the disease
3) require the owner to destroy or treat plant pests, diseased or invasive plants or other infested material

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16 Minn. Stat. § 18G.13
4) provide for the work at the expense of the owner

The expense must be a lien upon the property and collected as a special assessment as provided by M.S. § 429.101. “Private place” carries the definition of every place except a private home.

Wild Fire and Forest Fire Prevention & Extinguishment

Owners of property may petition the County Auditor to improve or clear tracts of land. The petition will describe each tract of land that is to be improved or cleared, by 40 acre tracts or government lots; specify the number of acres within each tract that will be improved, not to be less than five or more than twenty (or a proportionate amount in smaller subdivisions); and, list the nature of the title of the petitioners. The County Auditor, after the receipt of the petition along with bond, shall designate the proceeding as “County Land Improvement No. ……….” and all references in subsequent proceedings shall refer to the petition by this title and number.

Upon the filing, the County Auditor must notify the County Board who in turn, within 30 days, must appoint an engineer to examine the land and submit on a tabulated form the following, identified by tract: kind of trees, brush, stumps or other materials and debris that is to be removed; nature of the soil on each tract; estimation of costs; value of any material removed; and the means by which the improvement will be done. The County Board shall also appoint three appraisers who are residents of the state, but are uninterested parties in the land described in the petition, who must, within ten days after the filing of the engineers report, be furnished, by the County Auditor, a copy of the engineers report. They must personally visit each tract of land described in the report, and within 30 days of their appointment or the filing of the engineers report, file with the County Auditor a tabulated statement and report indicating, by 40 acre tract or government lot, the following: the condition of and amount already cleared or under cultivation; the amount proposed to be cleared; the value of the land at the time of the appraisal; the value after the completion of the improvement; and the aggregate benefits of damages that will result to each 40 acre tract or governmental lot in consequence of the improvement; and show the total cost of the improvement and total benefits or damages that will result together with any other facts affecting the value or use of the land.

The County Auditor, after receipt of the appraisers report, must set a date for a final hearing of the petition and give notice, as required by law, calling for a special meeting. The notice shall be given to all interested parties. Specifications of the notice can be found in M.S. § 88.33. At the conclusion of the hearing, the County Board determines that the proposed improvements will be of public benefit and aid in preventing or abating forest fires, it may grant the petition in accordance with the reports of the appraisers and engineer. The County Auditor will establish a time and place for receiving bids for the improvement in accordance with General Statutes 1923, section 6689. After the completion of the work, and certification of work by the engineer, the Auditor must set a hearing and notify the owners of the completion of work and cost of the project. The County Auditor must make a tabular form and statement, provided by General Statues 1923, section 6703, showing the cost of the improvements to each tract and the proportionate share of the total expense of the project to each tract. Where ever the term “ditch” or “drainage ditch” appears in the GS 1923, section 6703, the same for M.S. §§ 88.26 to 88.46 shall be construed as reading ‘improvement’. After completion of the tabular form, the County Auditor shall record the lien statement in the office of the County Recorder.
**Individual Sewage Treatment System or Water Well Programs**

A Township, City or County may, by ordinance, establish a program by which loans can be provided to private owners for the purpose of site evaluation, design, installation, repair, or replacement of individual sewage treatment systems or for the sealing or replacement of wells on privately owned property. Loans cannot be used to facilitate new building construction, which includes increasing the capacity of a sewage system beyond what is required to serve the existing structures.

All amounts that are loaned are to be priority liens against the real property which has received a benefit unless the amount of the loan is prepaid. All owners of property who have taken advantage of the loan program are to receive a notice of assessment. The notice must contain the following information:

1. the amount to be specially assessed against the property;
2. the right of the property owner to prepay the entire assessment;
3. the public official to whom prepayment must be made;
4. the time within which prepayment must be made without the assessment of interest;
5. the rate of interest to be accrued if the assessment is not prepaid within the required time period; and
6. the period of the assessment.

**Solid Waste Management & Household Hazardous Waste**

Solid waste management services includes recycling and waste reduction services, collection, processing, and disposal of solid waste, closure and postclosure care of a solid waste facility, and response to releases from a solid waste facility.

By June 30, 1992, each metropolitan county is to have developed and implemented a permanent program to manage household hazardous waste. Each program must include at least quarterly collection of wastes.

The county board by resolution may establish and determine the boundaries of solid waste management service areas in the county. Before the adoption of the resolution the county board is to hold a public hearing on the question. If a service area is established, the county board may impose service charges for solid waste management services for the area and may levy a tax on all the property in the area, or any combination of charges and taxes.

The county may establish by ordinance and collect just and reasonable rates and charges for solid waste management services provided by the county or by others under contract with the county.

On or before October 15 in each year, the county board may certify to the county auditor all unpaid outstanding charges, and a description of the lands against which the charges arose. It shall be the duty of the county auditor, upon order of the county board, to extend the assessments, with interest not to exceed the interest rate provided for in M.S. § 279.03, subdivision 1, upon the tax rolls of the county for the taxes of the year in which the assessment is filed. For each year ending October 15 the assessment with interest shall be carried into the tax becoming due and payable in January of the following year.

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17 Minn. Stat. § 115.57, subd. 3 to 6
18 Minn. Stat. § 400.08, subd. 1
19 Minn. Stat. § 473.804
20 Minn. Stat. § 400.08, subd. 2
21 Minn. Stat. § 400.08, subd. 3
and shall be enforced and collected in the manner provided for the enforcement and collection of real property taxes in accordance with the provisions of the laws of the state. The charges, if not paid, shall become delinquent and be subject to the same penalties and the same rate of interest as the taxes under the general laws of the state.22

**Contracted Fire Service**

A town board may enter into a contract for fire protection and operation and upkeep of fire apparatus with the town’s county or a nearby home rule charter or statutory city. The town board may also enter into the same kind of contract with a volunteer fire department or association if the volunteer fire department or association is not, by charter or ordinance, an official part of a city government.23

If a tax is not levied or if the tax does not raise enough to pay for a year's contracted fire service the town board may levy an assessment for fire service. The assessment must be levied on each real estate parcel that required fire service during the year. The assessment must not be more than the cost of service. The parcel owners must be given ten days' mailed notice of the time and place of the town board meeting that is called to consider the assessments. The county auditor's records must be used to determine ownership of the parcels.24 The assessment is a lien on the assessed parcel and is due and payable to the town treasurer 30 days after the assessment levy. A parcel’s assessment that is not paid when due must be certified by the town treasurer to the county auditor. The auditor shall add the assessment plus a ten percent penalty to the real estate taxes on the parcel for the next year.25

**Unpaid Governmental Service Charges**

A town may impose a reasonable service charge for emergency services, including fire, rescue, medical and related services provided by the town or contracted for by the town. If the service charge is not paid within 30 days after a notice of delinquency is sent to the recipient of the services,26 and if the recipient owns any real estate in any part of the State of Minnesota, the town board can certify to the County Auditor in the County where the recipient or the recipient’s representative or real estate resides, the amount of the service charge, which is to be collected together with property taxes levied against the property. The charge must be certified to the County on or before October 15th in the year prior to its extension onto the tax rolls. The owner must have been notified of the charge and the Town Boards intent to certify the charge to the property on or before September 15th. The service charge is subject to all penalties and interest provided for the collection of property taxes.27

**Special Service Districts**

"Special service district" means a defined area within the city where special services are rendered and the costs of the special services are paid from revenues collected from service charges imposed within that area.28 Special services may not include a service that is ordinarily provided throughout the city from general fund revenues of the city unless an increased level of the service is provided in the special service district.29 Only property that is classified under M.S. § 273.13 and used for commercial,
industrial, or public utility purposes, or is vacant land zoned or designated on a land use plan for commercial or industrial use and located in the special service district, may be subject to the charges imposed by the city on the special service district. Other properties may be included in the district, but are not subject to the service charges. If parcels have split classifications, of which 50% or more or the parcels market value is one that qualifies for charge as listed above, the entire market value and capacity are used in determining the service charge. In determining the rate by which the service charge is to be enforced, the taxable property’s net tax capacity before TIF and Fiscal Disparities is to be used.

In order to establish this type of district, a petition requesting the district and to hold a public hearing must be signed and filed by at least 25% of the owners of the property and 25% of the net tax capacity of property that would be subject to the service charge. This is true for any other action, such as the adoption of the ordinance to establish the district. There is also a veto authority for the district. This requires the objections of at least 35% of the owners of the property including at least 35% of the net tax capacity of the property within the boundaries of the proposed district.

If the district is approved, service charges may be imposed on the basis of the net tax capacity of the property on which the service charge is imposed but must be spread only upon the net tax capacity of the taxable property located in the geographic area described in the ordinance. Service charges based on net tax capacity may be payable and collected at the same time and in the same manner as provided for payment and collection of ad valorem taxes. When made payable in the same manner as ad valorem taxes, service charges not paid on or before the applicable due date shall be subject to the same penalty and interest as in the case of ad valorem tax amounts not paid by the respective due date. The due date for a service charge payable in the same manner as ad valorem taxes is the due date given in law for the real or personal property tax for the property on which the service charge is imposed. Service charges can be authorized for more than one year, and if the ordinance passes, owners do not have any veto authority for the charges extended, and included in the resolution, for the future years.

A new Special Service District cannot be created after June 30, 2009 without the enactment of a special law.

**Housing Improvement Area**

Housing improvement area means a defined area within the city where housing improvements are made or constructed and the costs of the improvements are paid in whole or in part from fees imposed within the area.

As with a special service district, a petition must be filed to establish this type of district by at least 25% of the owners of the housing units that would be subject to the fee. A public hearing must also be held and the “but for” test for the need of the district and fees must be established. An owner who feels they should be excluded from the district can file an objection with the city clerk prior to the adoption of the ordinance establishing the district or if they failed to file the objection prior to the adoption, they may still file one with the district court within 30 days after the adoption. If residents of 35% or more of the housing units in the area subject or 35% or more of the housing units' tax capacity subject to the fee file an objection to the ordinance adopted by the city with the city clerk before the effective date of the ordinance, the ordinance does not become effective.
The fee can be imposed on the basis of the tax capacity of the housing unit, or the total amount of square footage of the housing unit, or a method determined by the council and specified in the resolution. Before the imposition of the fees, a hearing must be held and notice must be published in the official newspaper at least seven days before the hearing and shall be mailed at least seven days before the hearing to any housing unit owner subject to a fee. For purposes of this section, the notice must also include:

1) a statement that all interested persons will be given an opportunity to be heard at the hearing regarding a proposed housing improvement fee;
2) the estimated cost of improvements including administrative costs to be paid for in whole or in part by the fee imposed under the ordinance;
3) the amount to be charged against the particular property;
4) the right of the property owner to prepay the entire fee;
5) the number of years the fee will be in effect; and
6) a statement that the petition requirements have either been met or do not apply to the proposed fee.

Establishment of a Boundary Commission and Fees Appropriated

By resolution, the City Council of a statutory or home rule charter City, Town Board, or County board may create a boundary commission. Members of the commission shall be residents of the County or Counties in which the City or Town is located who are familiar with real property. Upon initiation by resolution of the governing body or upon petition of an adjoining or affected property owner, the boundary commission is to review property descriptions of the disputed areas in the respective jurisdiction. Upon mailed notice to all known parties having an interest, the commission shall attempt to establish agreements between adjoining landowners as to the location of common boundaries as delineated by a certified land survey. If an agreement cannot be reached, the commission is to make a recommendation as to the location of the common boundaries within the disputed area. The commission shall prepare a plan designating all agreed and recommended boundary lines and report to the City Council, Town Board, or County Board.

Upon receipt of the plan and a report from the Commission, the City Council, Town Board, or County Board shall hold a public hearing. The Council, Town Board, or County Board shall give mailed notice to all known parties in interest and published notice 20 days prior to the hearing. The Council, Town Board, or County Board shall hear all interested parties and may make adjustments to the proposed plan that it deems just and necessary.

Following the public hearing, the Council or Board may petition the district court for judicial approval of the proposed plan. If any affected parcel is land registered under chapter 508, the petition must be referred to the examiner of titles for a report. The Council or Board shall provide sufficient information to identify all parties in interest and shall give notice to parties in interest as the court may order. The court shall determine the location of any contested or disputed boundary and shall determine adverse claims to each parcel as provided in chapter 559. After hearing and determining all disputes, the court shall issue its judgment in the form of a plat complying with chapter 505 and an order designating the

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30 Minn. Stat. § 465.79, subd. 1
31 Minn. Stat. § 465.79, subd. 2
32 Minn. Stat. § 465.79, subd. 3
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owners and encumbrances of each lot. Real property taxes need not be paid or current as a condition of filing the plat.33

The City or Board may assess part or all of the cost incurred by it against the benefited properties on a per parcel basis as provided in Chapter 429.34

Assessments Due by State Agencies and Departments

State Departments and agencies, including State Universities and Colleges, are subject to special assessments for improvements that benefit their property. If a state department or agency feels that the assessment was improper or unfair, they must notify the Committee of Finance in the Senate and the Committee on Ways and Means of the House of Representatives for a review. Prior to the beginning of any improvement projects that would benefit state owned property; agencies or departments of the state should negotiate the costs with the appropriate municipality or county.35

If the MN Dept of Natural Resources acquired an interest in property prior to a cancellation of a certificate of sale, the state must make a provision for the payment of all taxes, interest, costs, penalties and assessments. The Commissioner of Natural Resources must request the vendee to pay the above costs, but if the commissioner determines that the vendee refuses or is unwilling to pay, the state may pay the debt and seek legal action against the vendee. In cases where certificates of sales or state deeds revert back to the state voluntarily, the vendee must pay all real estate taxes, assessments, penalties, interests and costs prior to the reversion. In un-voluntary situations, the commissioner may request the vendor to pay all debt, but if the commissioner determines the vendee either refuses or cannot pay the debt, the state may pay the debt and seek legal action against the vendee.36

In cases of eminent domain proceedings or condemnations where the Minnesota Dept of Transportation is involved, a provision in the taking must include a payment of all taxes, including all assessments and future installments of assessments.37 Taxes and assessments that are levied shall not be abated. If only a portion of a parcel is taken, the Transportation Dept may make provisions for the payment of assessments and taxes for a portion of the amount. If the payment of taxes and assessments is not made to the County, the County Auditor is to notify the Commissioner of Finance and the Commissioner is to divert moneys needed from the highway fund and pay the County Treasurer the amount necessary to cover the unpaid taxes and assessments. One of the areas that cause frustration to the County and the owners of property, who are involved in these proceedings, is the lack of full communication about the taxes and assessments with the Dept. of Transportation. According to the Attorney General’s Office, the issues are discussed when the condemnation is taking place. The County, Municipality and other affected companies such as utility companies are not made aware of the discussions around the taxes and assessments. The State of Minnesota is now naming the County and in many cases, the municipality and utility companies as additional payees to the owners of the real estate on the checks for damages. Counties should call the Attorney Generals Office to verify that the check includes funds necessary to

33 Minn. Stat. § 465.79, subd. 4
34 Minn. Stat. § 465.79, subd. 5
35 Minn. Stat. § 3.754
36 Minn. Stat. § 92.72, subd. 1
37 Minn. Stat. § 117.135, subd. 2
cover all taxes and assessments that are due. If they are included, endorsement on the check is not to take place until payment of those amounts is made.

When the state or a political subdivision of the state, except the state Transportation Department, acquires a fee interest in property before forfeiture, by any means, provision must be made to pay all taxes, including all unpaid special assessments and future installments, unpaid on the property at the date of acquisition. The date of acquisition is the date on which the acquiring authority is entitled under law to take possession of the property except in cases of condemnation, the date of acquisition is the date of the filing of the petition in condemnation. Taxes that become a lien on property after the date of acquisition and before the condemning authority are entitled to actually take possession shall, if paid by the owner, be added to the award, and if not so paid, shall be paid by the condemning authority. Taxes lawfully levied shall not be abated. The state or a subdivision acquiring property may make provisions for the apportionment of the taxes and unpaid assessments if less than a complete parcel is acquired. If accrued taxes and unpaid assessments are not paid as required, then the county auditor of the county shall notify the commissioner of finance. The commissioner of finance is to divert an amount equal to the accrued taxes and unpaid assessments from any funds which are to be distributed by the commissioner of finance to the acquiring authority, and shall pay over such diverted funds to the county treasurer of the county in which the acquired property is located in payment of accrued taxes and unpaid assessments.38

Assessments under Bankruptcy

When a property owner files for bankruptcy, the ability for the County to proceed with delinquency and forfeiture processes is discontinued as is the ability for Cities and Towns for payment of assessments and service charges. The Bankruptcy Court sends out proofs of claims to Counties, Cities and Towns to complete and return to the Court.

38 Minn. Stat. § 272.68, subd. 1