

## A BILL

FOR AN ACT TO REPEAL CHAPTER 188, LAWS OF THE TWENTIETH GENERAL ASSEMBLY, AND TO ENACT A SUBSTITUTE THEREFOR, RELATING TO THE CONSTRUCTION OF TILE AND OTHER UNDERGROUND DRAINS THROUGH THE LANDS OF OTHERS.

*Be it enacted by the General Assembly of the State of Iowa:*

SECTION 1. That chapter 188, laws of the Twentieth General Assembly, be and the same  
2 is hereby repealed and the following enacted in lieu thereof :

SEC. 2. That whenever any owner or owners of lands which would be benefited by drain-  
2 age, which can not be accomplished in the best and cheapest manner without affecting  
3 other lands shall desire such drainage, he, she or they, may file with the clerk of the town-  
4 ship where said land is situated, an application therefor, giving a description of each tract  
5 of land to be affected by such drainage, and the township clerk shall forthwith notify the  
6 township trustees of said township of said application, who shall fix a time and place for  
7 hearing of same, which time shall not be more than twenty days distant, and they shall  
8 cause said clerk to notify the applicant and owner of each tract of land, of time and place  
9 of said hearing at least five days before the time fixed for the hearing of same, which  
10 notice shall be in writing, signed by the clerk, and shall be served on said applicant and  
11 land owners, if within the county, in the same manner as is now provided by law for the  
12 service of original notices, and in case either of said parties are non-residents of the county  
13 they shall be served by posting written notices in two public places in said township, and  
14 also one such notice upon each tract of land to be affected, at least ten days before said  
15 hearing.

SEC. 3. Upon the day fixed for hearing, any person or persons owning land to be affected  
2 by the proposed drainage, may appear and present written objections to the construction  
3 thereof, or make written application for damages in case of construction, and if said  
4 trustees are satisfied that the provisions of section one of this act have been complied with,  
5 they shall proceed to hear and determine the application, objections and claims for dam-  
6 ages, and shall consider the nature and character of the lands affected, and also such evi-  
7 dence as may be offered by the applicant or by any party making written objection or claim  
8 for damages; and said trustees shall have power to adjourn from time to time until said  
9 hearing is completed; *provided*, no adjournment shall be for more than ten days.

SEC. 4. Said trustees shall determine :

2 *First.* Whether the drainage proposed is practicable, and whether, if accomplished,  
3 the benefits to be derived therefrom would be greater than the costs and damages thereof.

4 *Second.* Whether, if accomplished, it will improve public health.

5 *Third.* Whether, if accomplished, it would materially benefit any highway in the  
6 county, or street of a town or city.

7 *Fourth.* Whether; if accomplished, it would render any agricultural lands more pro-  
8 ductive.

9 If said trustees determine the first and either of the other said propositions in the affirm-  
10 ative, they shall establish the drain and order the construction thereof, otherwise they  
11 shall dismiss the application at the cost of the applicant.

SEC. 5. Whenever said trustees order the construction of any drain, they shall determine  
2 the place of commencement and the outlet thereof, and the course, depth and grade of each  
3 section thereof, the size of the tile or boxing to be used therein, how to be kept in repair, what  
4 connections may be made therewith, and any and all other questions arising in connection  
5 therewith, and in case they deem it advisable, may call to their aid any competent surveyor  
6 or engineer. Said trustees shall also make an estimate of the entire cost of said drain, in-  
7 cluding the costs of the proceedings, and of the benefits to be derived and damages sustained  
8 by the owner of each tract of land to be affected thereby, and taking such benefits and  
9 damages into consideration, shall determine what proportion of the entire cost of such  
10 drain should be borne by each land owner affected thereby, and shall divide said drain into  
11 sections proportionate to the cost to be borne by each land owner, and shall assign to each  
12 section to be constructed by him, and fix the time within which it is to be completed, and  
13 shall also determine the amount of damages, if any, to which any person is entitled, when  
14 the same is to be paid, and how much is to be paid by each land owner whose lands are  
15 affected by the drain.

SEC. 6. In case any land owner fails to construct the section of the drain assigned to him  
2 by said trustees within the time or in the manner by them prescribed, or to pay his allotted  
3 share of the damages, any other party to the proceeding may construct the said section in  
4 the manner prescribed and pay said share of damages, and after construction and payment  
5 thereof shall he entitled to a certificate from said trustees, stating the name of the land  
6 owner neglecting to construct his assigned section of the drain or pay his share of damages,  
7 a description of the lands of such person affected by said drain, the estimated costs of such  
8 section, the amount of said damage, the failure of said land owner to construct or pay the  
9 same within the time specified, and the name of the person by whom section was in fact  
10 constructed and damages paid. Upon the filing of said certificate with the clerk of the

11 courts of the county wherein the lands are situated, such clerk shall note the same in due  
12 form upon the incumbrance book, and the person constructing such section of the drain or  
13 paying such damages, shall thereafter have a lien upon the lands of the delinquent affected  
14 by the drain for the estimated costs of the section assigned to said delinquent, and for said  
15 damages, which may be foreclosed in the same manner as mechanics' liens.

SEC. 7. Upon all claims for damages it shall be the duty of the trustees to consider bene-  
2 fits to be derived as well as damages to be sustained by reason of the drain, except that  
3 where land is so appropriated as in any manner to deprive the owner of the full use thereof,  
4 benefits shall not be offset against the actual value of the land so appropriated, and all dam-  
5 ages awarded are to be considered as costs of construction of the drain and are to be appor-  
6 tioned as other costs as hereinbefore provided.

SEC. 8. Whenever any road supervisor shall be of opinion that any public road or high-  
2 way in his district would be benefited by underground drainage, which cannot be accom-  
3 plished without affecting other lands, he shall have the right to make application therefor  
4 in behalf of his district the same as any land owner, and for the purpose of this act road  
5 districts shall be considered as owners of the public roads and highways therein and shall  
6 be subject to the same conditions as other land owners.

SEC. 9. That whenever any railroad crosses the land of any person or persons who desire  
2 to drain their land for any of the purposes set forth in section 1 of this act, the party or par-  
3 ties desiring such drain or drains shall notify the railroad company by leaving a written  
4 notice with the nearest station agent, stating in such notice the starting point, route and  
5 termination of such drain or drains, and if the railroad company refuse or neglect for the  
6 space of thirty days to dig across their right of way a drain of equal depth and size of the  
7 one dug by the party who wishes to drain his land, then the party who desires to drain the  
8 land may proceed to dig such drain and the railroad company shall be liable for the cost of  
9 construction of such drain, to be collected in any court having jurisdiction.

SEC. 10. All findings and orders of the township trustees made under this act shall be re-  
2 duced to writing, filed with the township clerk, and by him recorded in full in the book of  
3 records of said township, and said findings and orders shall be final except as to damages.

SEC. 11. Either party may appeal to the circuit court of the county from so much of said  
2 finding and order as relates to damages, within the same time and in the same manner as  
3 to bond, conditions of bond and notice of appeal as is now provided by law in cases of ap-  
4 peal from assessment of damages on location of highway; *provided however*, that said appeal  
5 shall not delay the construction of said tile or other underground drain of the applicant  
6 shall in case the land owner appeal, deposit with the township clerk for the use of said land  
7 owner the amount of damages awarded by the trustees, and in case the applicant appeals  
8 that he shall first file the appeal bond provided by law.

SEC. 12. In case of appeal the township clerk shall certify to the circuit court a transcript  
2 of the proceedings before said trustees, which shall be filed in said court with the appeal  
3 bond, the party appealing paying for said transcript and the docketing of said appeal as in  
4 other cases, and upon appeal the party claiming damages shall be plaintiff and the appel-  
5 lant defendant, and upon appeal the same shall, in all respects, so far as applicable, be gov-  
6 erned by same rules as appeals from assessments for damages for location of highway on ap-  
7 peal, except that benefits to be derived from the drain are to be considered as offsets against  
8 damages except for lands actually appropriated for the drain and of the use of which the  
9 owner is deprived.

SEC. 13. In case any dispute shall arise as to the repair of any tile or other underground  
2 drain, the same shall be determined by said trustees in same manner as in original con-  
3 struction of same.

SEC. 14. The compensation for services herein required to be performed shall be as fol-  
2 lows, to-wit: The township clerk shall be entitled to the same fees for issuing notices as are  
3 allowed to justices of the peace for like services; and for the service thereof he shall be en-  
4 titled to the same fees as are allowed to constables for like services, and in each case said  
5 clerk shall be entitled to one dollar for recording the findings and orders of trustees. The  
6 township trustees shall each be entitled to two dollars per day for each day actually spent  
7 in performance of the duties required by this act, and shall be entitled to twenty-five cents  
8 each for the certificate provided for in section five of this act. Any surveyor or engineer  
9 called to aid the trustees under section four of this act, shall be entitled to the compensa-  
10 tion allowed to county surveyor for like services.

SEC. 15. For all purposes of this act, the findings, orders, or certificates of any two of the  
2 trustees of any township shall be regarded as the findings, orders or certificates of the  
3 trustees of said township.

SEC. 16. All laws and parts of laws inconsistent herewith are hereby repealed.

SEC. 17. This act being deemed of immediate importance, shall take effect and be in force  
2 from and after its publication in the Iowa State Register and Des Moines Leader, news-  
3 papers published in Des Moines, Iowa.

## A BILL

FOR AN ACT TO REGULATE AND PROVIDE FOR THE CONSTRUCTION OF TILE  
AND OTHER UNDERGROUND DRAINS THROUGH LANDS OF OTHERS.

*Be it enacted by the General Assembly of the State of Iowa :*

SECTION 1. That whenever any owner or owners of lands which would be benefited by  
2 drainage, which can not be accomplished in the best and cheapest manner without affecting  
3 other lands shall desire such drainage, he, she, or they, may file with the clerk of the town-  
4 ship where said land is situated, an application therefor, giving a description of each tract  
5 of land to be affected by such drainage, and the township clerk shall forthwith notify the  
6 township trustees of said township of said application, who shall fix a time and place for the  
7 hearing of same, which time shall not be more than twenty days distant, and they shall  
8 cause said clerk to notify the applicant and owner of each tract of land, of the time and  
9 place of said hearing at least five days before the time fixed for the hearing of same, which  
10 notice shall be in writing, signed by said clerk, and shall be served on said applicant and  
11 land owners, if within the county, in the same manner as is now provided by law for the  
12 service of original notices, and in case either of said parties are non-residents of the county  
13 they shall be served by posting written notices in two public places in said township, and  
14 also one such notice upon each tract of land to be affected, at least ten days before said  
15 hearing.

SEC. 2. Upon the day fixed for hearing, any person or persons owning lands to be affected  
2 by the proposed drainage, may appear and present written objections to the construction  
3 thereof, or make written application for damages in case of construction, and if said  
4 trustees are satisfied that the provisions of section one of this act have been complied with,  
5 they shall proceed to hear and determine the application, objections and claims for dam-  
6 ages, and shall consider the nature and character of the lands affected, and also such evi-  
7 dence as may be offered by the applicant or by any party making written objection or claim  
8 for damages; and said trustees shall have power to adjourn from time to time until said  
9 hearing is completed; provided, no adjournment shall be for more than ten days.

SEC. 3. Said trustees shall determine:

2 *First.* Whether the drainage proposed is practicable, and whether, if accomplished,  
3 the benefits to be derived therefrom would be greater than the costs and damages  
4 thereof.

5     *Second.* Whether, if accomplished, it will improve public health.

6     *Third.* Whether, if accomplished, it would materially benefit any public highway in  
7 the county, or street of a town or city.

8     *Fourth.* Whether, if accomplished, it would render any agricultural lands more pro-  
9 ductive.

10 If said trustees determine the first and either of the other said propositions in the affirm-  
11 ative, they shall establish the drain and order the construction thereof, otherwise they  
12 shall dismiss the application at the cost of the applicant.

SEC. 4. Whenever said trustees order the construction of any drain, they shall determine  
12 the place of commencement and the outlet thereof, and the course, depth and grade of each  
3 section thereof, the size of the tile or boxing to be used therein, how to be kept in repair,  
4 what connections may be made therewith, and any and all other questions arising in con-  
5 nection therewith. and in case they deem it advisable, may call to their aid any competent  
6 surveyor or engineer. Said trustees shall also make an estimate of the entire cost of said  
7 drain, including the costs of the proceedings, and of the benefits to be derived and damages  
8 sustained by the owner of each tract of land to be affected thereby, and taking such bene-  
9 fits and damages into consideration, shall determine what proportion of the entire cost of  
10 such drain should be borne by each land owner affected thereby, and shall divide said  
11 drain into sections, proportionate to the cost to be borne by each land owner, and shall  
12 assign to each the section to be constructed by him, and fix the time within which it is to  
13 be completed. And shall also determine the amount of damages, if any, to which any per-  
14 son is entitled, when the same is to be paid, and how much is to be paid by each land  
15 owner whose lands are affected by the drain.

SEC. 5. In case any land owner fails to construct the section of the drain assigned to him  
2 by said trustees within the time or in the manner by them prescribed, or to pay his allotted  
3 share of the damages, any other party to the proceeding may construct the said section in  
4 the manner prescribed, and pay said share of damages, and after construction and payment  
5 thereof shall be entitled to a certificate from said trustees, stating the name of the land  
6 owner neglecting to construct his assigned section of the drain or pay his share of damages,  
7 a description of the lands of such person affected by said drain, the estimated costs of such  
8 section, the amount of said damage, the failure of said land owner to construct or pay the  
9 same within the time specified, and the name of the person by whom such section was in  
10 fact constructed and damages paid. Upon the filing of said certificate with the clerk of the  
11 courts of the county wherein the lands are situated, such clerk shall note the same in due  
12 form upon the incumbrance book, and the person constructing such section of the drain or  
13 paying said damages, shall thereafter have a lien upon the lands of the delinquent affected  
14 by the drain for the estimated cost of the section assigned to said delinquent, and for  
15 said damages, which may be foreclosed in the same manner as mechanic's liens.

SEC. 6. Upon all claims for damages it shall be the duty of the trustees to consider benefits to be derived as well as damages to be sustained by reason of the drain except that where land is so appropriated as in any manner to deprive the owner of the full use thereof, benefits shall not be offset against the actual value of the land so appropriated. And all damages awarded are to be considered as costs of the construction of the drain and are to be apportioned as other costs as hereinbefore provided.

SEC. 7. Whenever any road supervisor shall be of opinion that any public road or highway in his district would be benefitted by underground drainage which can not be accomplished without affecting other lands, he shall have the right to make application therefor in behalf of his district the same as any land owner, and for the purpose of this act road districts shall be considered as owners of the public roads and highways therein.

SEC. 8. All findings and orders of the township trustees made under this act shall be reduced to writing, filed with the township clerk, and by him recorded in full in the book of records of said township, and said findings and orders shall be final except as to damages.

SEC. 9. Either party may appeal to the Circuit Court of the county from so much of said finding and order as relates to damages, within the same time, and in the same manner as to bond, conditions of bond and notice of appeal as is now provided by law in cases of appeal from assessment of damages on location of highway: *provided, however,* that said appeal shall not delay the construction of said tile or other underground drain if the applicant shall in case the land owner appeal deposit with the township clerk for the use of said land owner the amount of damages awarded by the trustees, and in case the applicant appeals that he shall first file the appeal bond provided by law.

SEC. 10. In case of appeal the township clerk shall certify to the Circuit Court a transcript of the proceedings before said trustees, which shall be filed in said court with the appeal bond, the party appealing paying for said transcript and the docketing of said appeal as in other cases, and upon appeal the party claiming damages shall be plaintiff and the appellant defendant, and upon appeal the same shall, in all respects, as far as applicable, be governed by same rules as appeals from assessments for damages for location of highway on appeal, except that benefits to be derived from the drain are to be considered as offsets against damages except for lands actually appropriated for the drain and of the use of which the owner is deprived.

SEC. 11. In case any dispute shall arise as to the repair of any tile or other underground drain, the same shall be determined by said trustees in same manner as in the original construction of same.

SEC. 12. The compensation for services herein required to be performed shall be as follows. to-wit: The township clerk shall be entitled to the same fees for issuing notices as are allowed to justices of the peace for like services; and for the service thereof he shall be entitled to the same fees as are allowed to constables for like services, and in each case

5 said clerk shall be entitled to one dollar for recording the findings and orders of trustees.  
6 The township trustees shall each be entitled to two dollars per day for each day actually  
7 spent in performance of the duties required by this act, and shall be entitled to twenty-five  
8 cents each for the certificate provided for in section five of this act. Any surveyor or en-  
9 gineer called to aid the trustees under section four of this act, shall be entitled to the com-  
10 pensation allowed to county surveyors for like services.

SEC. 13. For all purposes of this act, the findings, orders, or certificates of any two of the  
2 trustees of any township shall be regarded as the findings, orders or certificates of the trus-  
3 tees of said township.

SEC. 14. All laws and parts of laws inconsistent herewith are hereby repealed.

SEC. 15. This act being deemed of immediate importance shall take effect and be in force  
2 from and after its publication in the Iowa State Register and Iowa State Leader, newspa-  
3 pers published in Des Moines, Iowa.