

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 That chapter 188, laws of the Twentieth General Assembly, be and the same is hereby repealed and the following is substituted in lieu thereof:

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

SEC. 3. Upon the day fixed for hearing, any person or persons owning lands to be affected by the proposed drainage, may appear and present written objections to the construction thereof, or make written application for damages in case of construction, and if said trustees are satisfied that the provisions of section one of this act have been complied with, they shall proceed to hear and determine the application, objections and claims for damages, and shall consider the nature and character of the lands affected, and also such evidence as may be offered by the applicant or by any party making written objection or claim for damages; and said trustees shall have power to adjourn from time to time until said 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
4 thereof.

5 *Second.* Whether if accomplished it will improve the 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 agricultural lands more pro-
9 ductive. If said trustees determine the first and either of the other said propositions in
10 the affirmative, they shall establish the drain and order the construction thereof, other-
11 wise they 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
3 each section thereof, the size of the tile or boxing to be used therein, how to be kept in re-
4 pair, what connection may be made therewith, and any and all other question aris-
5 ing in connection therewith, and in case they deem it advisable, may call to
6 their aid any competent surveyor or engineer; said trustee shall also make an estimate
7 of the entire cost of said drain, including the cost of the proceedings, and of the benefits to
8 be derived and damages sustained by the owner of each tract of land to be affected thereby
9 and taking such benefits and damages into consideration, shall determine what proportion
10 of the entire cost of such drain should be borne by each land owner affected thereby, and
11 shall divide said drain into sections proportionate to the cost to be borne by each land
12 owner, and shall assign to each the section to be constructed by him, and fix the time with-
13 in which it is to be completed. And shall also determine the amount of damages, if any, to
14 which any person is entitled when the same is to be paid, and how much is to be paid by
15 each land owner owner whose lands are 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 pay-
5 ment thereof shall be entitled to a certificate from said trustees, stating the name of the
6 land owner neglecting to construct his assigned section of the drain or pay his share of
7 damages, a description of the lands of said person affected by said drain, the estimated costs
8 of such section, the amount of said damage, the failure of said land owner to construct or
9 pay the same within the time specified, and the name of the person by whom such section
10 was in fact constructed and damages paid, upon the filing of said certificate with the clerk
11 of the courts of the county wherein the lands are situated, such clerk shall note the same in

12 due form upon the incumbrance book, and the person constructing such section of the
13 drain or paying said damages, shall thereafter have a lien upon the lands of the delinquent
14 affected by the drain for the estimated cost of the section assigned to said delinquent, and
15 for said 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 received 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
5 damages awarded are to be considered as costs of the construction of the drain and are
6 to be apportioned as other costs as hereuntobefore provided.

SEC. 8. Whenever any road supervisor shall be of opinion that any public road or high-
2 way in his district would be benefitted 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 purposes of this act road
5 districts shall be considered as owners of the public lands 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 desires
2 to drain their land for any of the purposes set forth in section one of this act, the party or
3 parties desiring such drain or drains shall notify the railroad company by leaving a writ-
4 ten notice with the nearest station agent, stating in such notice the starting point, route
5 and termination of such drain or drains, and if the railroad company refuse or neglect, for
6 the space of thirty days, to dig across their right of way a drain of equal depth and size of
7 the one dug by the party who wishes to drain his land, then the party who desires to drain
8 the land may proceed to dig such drain, and the railroad company shall be liable for the
9 cost of the 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 book of records of
3 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 to
3 bond, conditions of bond and notice of appeal as is now provided by law in cases of appeal
4 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 if applicant shall in
6 case the land owner appeal deposit with the township clerk for the use of said land owner
7 the amount of damages awarded by the trustees, and in case the applicant appeals that he
8 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 appli-
5 cant defendant, and upon appeal the same shall, in all respects, as far as applicable, be gov-
6 erned by the same rules as appeals from assessments of damages for location of highways
7 on appeal, except that benefits to be derived from the drain are to be considered as off-sets
8 against damages, except for lands actually appropriated for the drain, and of the use of
9 which the 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 the 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
3 are allowed to justices of the peace for like services; and for the service thereof he shall be
4 entitled 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 the 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 each for the certificate provided for in section five of this act. Any surveyor
9 or engineer called to aid the trustees under section four of this act, shall be entitled to the
10 compensation allowed to county surveyors 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, order or certificates of the trus-
3 tees 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 at Des Moines, Iowa.