

A BILL

FOR AN ACT TO REPEAL CHAPTER 188 OF THE ACTS OF TWENTIETH GENERAL ASSEMBLY IN RELATION TO THE UNDERGROUND TILE DRAINAGE AND TO ENACT A SUBSTITUTE THEREFOR.

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

SECTION 1. That Chapter 188 of the laws of the Twentieth General Assembly be and
2 the same is hereby repealed and the following enacted in lieu thereof.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 drainage,
2 which cannot be accomplished in the best and cheapest manner without affecting other
3 lands shall desire such drainage, he, she or they, may file with the clerk of the township
4 where said land is situated, an application therefor, giving a description of each tract of
5 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 the 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. 3. 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 trus-
4 tees 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 dences as may be offered by the applicant or by any party making written objection or
8 claim for damages; and said trustees shall have power to adjourn from time to time until
9 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 thereof.

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

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

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

9 *Fifth.* Whether, if accomplished, it would afford a beneficial water supply.

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

SEC. 5. Whenever said trustees order the construction of any drain, they shall deter-
2 mine the place of the commencement and the outlet thereof, and the course, depth and
3 grade of each section thereof, the size of the tile or boxing to be used therein, how to be
4 kept in repair, what connections can be made therewith, and any and all other questions
5 arising in connection therewith, and in case they deem it advisable, may call to their aid
6 any competent surveyor or engineer. Said trustees shall also make an estimate of the en-
7 tire cost of said drain, including the costs of the proceedings, and of the benefits to be de-
8 rived 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
13 within which it is to be completed. And shall also determine the amount of damages, if
14 any, to which any person is entitled when the same is to be paid, and how much is to be
15 paid by each land 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 proceedings 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 such person affected by said drain, the estimated
8 costs of such section, the amount of said damage, the failure of said land owner to con-
9 struct or pay the same within the time specified, and the name of the person by whom such
10 section was in fact constructed and damages paid. Upon the filing of said certificate with
11 the clerk of the district court of the county wherein the lands are situated, such clerk
12 shall note the same in due form upon the incumbrance book, and the persons constructing
13 such section of the drain or paying said damages, shall thereafter have a lien upon the

14 lands of the delinquent affected by the drain for the estimated cost of the section assigned
15 to said delinquent, and for said damages, which may be foreclosed in the same manner as
16 mechanic's 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
5 damages awarded are to be considered as costs of the construction of the drain and are to
6 be apportioned 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 can not 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 roads and highways therein.

SEC. 9. 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. 10. 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 ap-
5 peal shall not delay the construction of said tile or other underground drain if the appli-
6 cant shall in case the land owner appeal deposit with the township clerk for the use of said
7 land owner the amount of damages awarded by the trustees, and in case the applicant ap-
8 peals that he shall first file the appeal bond provided by law.

SEC. 11. In case of appeal the township clerk shall certify to the Circuit Court a trans-
2 cript of the proceedings before said trustees, which shall be filed in said court with the ap-
3 peal bond, the party appealing paying for said transcript and the docketing of said appeal
4 as in other cases, and upon appeal the part claiming damages shall be plaintiff and the ap-
5 plicant defendant, and upon appeal the same shall, in all respects, as far as applicable, be
6 governed by same rules as appeals from assessments for damages for location of highway
7 on appeal, except that benefits to be derived from the drain are to be considered as offsets
8 against damages except for lands actually appropriated for the drain and of the use of
9 which the owner is deprived.

SEC. 12. 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. 13. 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 service; 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 said clerk shall be entitled to one dollar for recording the findings and orders of the trustees. The township trustees shall each be entitled to two dollars per day for each day actually spent in performance of the duties required by this act, and shall be entitled to two dollars per day for each day actually spent in performance of the duties required by this act, and shall be entitled to twenty-five cents each for the certificate provided for in section five of this act. Any surveyor or engineer called to aid the trustees under section four of this act, shall be entitled to the compensation 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 trustees of any township shall be regarded as the findings, orders or certificates of the trustees of said township.

SEC. 15. All laws and parts of laws inconsistent herewith are hereby repealed

SEC. 16. This act being deemed of immediate importance shall take effect and be in force from and after its publication in the Iowa State Register and Iowa State Leader, newspapers published at Des Moines, Iowa.