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(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2011-12

(session year)

Assembly

(Assembly, Senate or Joint)

Committee on Natural Resources...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
(**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
(**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (August 2013)

Assembly

Record of Committee Proceedings

Committee on Natural Resources

Assembly Bill 528

Relating to: appointment of a drainage board.

By Representatives Nygren, Mursau, A. Ott, Rivard and Spanbauer; cosponsored by Senators Cowles and Hansen.

February 03, 2012 Referred to Committee on Natural Resources.

February 22, 2012 **PUBLIC HEARING HELD**

Present: (14) Representatives Mursau, Rivard, Williams, Kleefisch, Nerison, Steineke, Tiffany, Stroebel, Litjens, Molepske Jr, Mason, Danou, Clark and Hulsey.

Absent: (2) Representatives Severson and Milroy.

Excused: (0) None.

Appearances For

- John Nygren, Madison — Representative, 89th Assembly District
- Jon Hochhammer, Madison — Wisconsin Counties Association

Appearances Against

- Rosalie A Murphy, Lena — Wisconsin Association of Drainage Districts
- Richard Gumz, Endeavor — Wisconsin Association of Drainage Districts
- John Piechowski, Red Granite — Waushara County Drainage Board
- Dale O'Brien, Plover — Portage County
- Paul Cieslewicz, Bancroft — Portage County Drainage District
- Donald Hamerski, Plover — Portage County Drainage Board
- Norman Parker, Necedah — Juneau County
- Robert Goetsch, Juneau — Dodge County Drainage Board
- Sheryl Albers, Cottage Grove

Appearances for Information Only

- None.

Registrations For

- Rob Cowles, Madison — Senator, 2nd Senate District

Registrations Against

- Ed Brooks, Madison — Representative, 50th Assembly District
- Joseph Sciascia, Juneau
- James Isherwood, Plover
- John Crescio, Randolph — Columbia County Drainage Board
- Ron Kuehn, Madison — Wisconsin Cranberry Growers Association
- Raymond Niehoff, Randolph — Columbia County Drainage Board
- Matthew Gumz, Baraboo

Registrations for Information Only

- None.

March 15, 2012

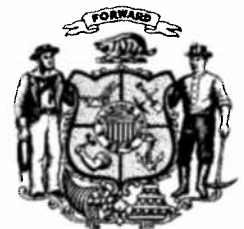
Failed to pass pursuant to Senate Joint Resolution 1.



Tim Gary
Committee Clerk



WISCONSIN STATE LEGISLATURE



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2/20/2012

Wisconsin State Legislature

Re: Farm Drainage law

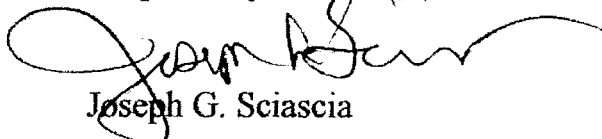
Ladies and Gentlemen,

I have had the pleasure and honor of serving as legal counsel for the Dodge County Drainage Board for twenty years. In that time, the Dodge County judges have appointed several drainage boards under chapter 88 of the Wisconsin Statutes. The judges have done an excellent job of appointing persons dedicated to serving the public and who have the technical knowledge of farming and drainage and the communication skills required to work with people. It has come to my attention that an effort is underway to amend Section 88.17 Wis. Stats. to provide that the drainage board shall be appointed by the county land conservation committee. I see no reason to make this change, and believe that it will result in the erosion of the independence of the Drainage Boards.

No doubt, the Land Conservation Committee is capable of selecting capable people to serve. However, I wish to point out that judges are elected for six year terms in a strictly non-partisan election. The appointment of the Board by the Courts serves to insulate the Board from local politics.

Farm drainage is a matter of statewide concern. Drainage Board operates under the authority of Chapter 88 Wis. Stats. and Chapter 48 ATCP of the Administrative Code. The actions of the Board are subject to review of the Circuit Court by writ of Certiorari under Section 88.09 Wis. Stats. It therefore seems logical that the Board be appointed by the Circuit Court to allow the Board to exercise its judgment independent of local politics. I strongly urge you to retain the current system of having the Drainage Board appointed by the Courts.

Respectfully Submitted,



Joseph G. Sciascia





John Nygren

WISCONSIN STATE REPRESENTATIVE ★ 89TH ASSEMBLY DISTRICT

State Representative John Nygren
Testimony on Drainage District Appointments
Assembly Natural Resources Committee
February 22, 2012

Chairman Mursau and members of the Committee,

Good afternoon, I would first like to thank you for bringing Assembly Bill 528 in front of your committee today.

I introduced this legislation after numerous constituents in my district contacted me about the problems they were experiencing with the drainage district in my area. Among other things, my constituents were concerned about the high cost of the maintenance and repairs and the ability of the drainage district board to make these levies. Many were afraid they would lose their family farms. I was asked to look into what powers these boards have and if there was any type of oversight. I was surprised at what I learned.

For instance, drainage districts were formed prior to Wisconsin statehood and were developed to protect farmland and residential areas from flooding. At the time of formation the only reliable form of government was the Circuit Court and the duties of overseeing this board fell upon them at this time, including appointing members to the board.

Over the years however, we have developed strong county governments and reorganized the judicial system making this law outdated. In today's society county governments have committees specifically designed to address land and water preservation concerns. I believe it is more appropriate for the county boards to determine who should be on these boards.

Drainage district boards are initially made up of 3 members appointed by the Circuit Court Judge. The board is responsible for the repair and maintenance of drainage ditches throughout the specified district and have the power to assess the landowners for the cost of these repairs and maintenance. I have great concerns with an unelected board being granted this much authority without the representation of the people and the reason I have come forward with this legislation.

This is not a new idea, in fact in a 1988 Legislative Audit Bureau study on drainage districts it was suggested that full supervision be transferred from the circuit courts to the land conservation committees which was a position I supported. However, after conversations with both the Counties Association and the Wisconsin Land and Water Conservation Association, we agreed to bring forward the current form of the bill.

Additionally, 1993 Assembly Bill 994 proposed changes to the drainage district to which some changes to the authority was made. At the time, a number of circuit judges responded to a letter urging the Special Committee to discontinue the supervisory role of the circuit courts. I have spoken with my local circuit court justices and they agree that the county land conservation committee would be a more appropriate entity to oversee this board.

This bill is designed to transfer the appointment process only; the authority and duties these boards currently possess will not be altered. This includes the ability to appeal to the Circuit Court.

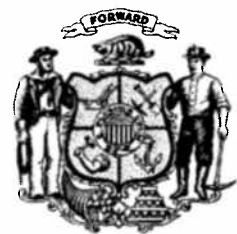
This will provide more accountability for this very powerful board and will alleviate any doubts to a conflict of interest with the appointing authority.

While I understand that many drainage districts work well, we need to have an accountable system in all districts in Wisconsin.

In closing, I thank you for your time today in scheduling this bill for a hearing and for allowing me the opportunity to submit testimony.



WISCONSIN STATE LEGISLATURE



Good afternoon, Chairmen, Committee Members,

I am Robert Goetsch from Dodge County and represent the Dodge County Drainage Board in opposing this bill. I have been chairman of that Board for 10 years since first being appointed by a Circuit Court Judge, after leaving the legislature. I was a member of the Special Legislative Council Committee that studied and completely rewrote the Chapter on Farm Drainage law.

Dodge Co
Dr. R. Goetsch
30 individual
Districts
under 88

I intend to be very brief and to the point in my testimony.

When I look at a proposal for legislation I try to understand what problem it is trying to solve and whether or not there is an alternative that makes sense.

That philosophy is no different now than it was 30 years ago when I first took my seat in the Assembly chambers.

So what is the problem that this legislation seeks to solve? I'm afraid that the proposal's author has not adequately put one forward.

Chapter 88 of our Wisconsin statutes is very directly and specifically designed to assist production agriculture in achieving the highest potential on those acres needing manipulation of the ground water table. This is usually accomplished by the construction and maintenance of

ditches or channels that facilitate drainage from auxiliary channels or underground tile systems

Chapter 88 is NOT in the statutes for cities and villages benefit but does address mutual concerns when those municipalities use those same drainage structures to handle storm water runoff from paved over areas. The existing appointment recommending county committee , (Agriculture) and existing appointing authority (circuit court judge) are appropriate and proper, I believe.

A change of appointing authority would certainly call into question the County Drainage Board's current quasi-judicial status and would probably require extensive remedial legislation after the expected legal challenges I envision should the proposed legislation take effect.

I believe those ^{legal} difficulties may be addressed by other testimony today.

I appreciate this opportunity to share my experience with you and will attempt to answer any questions that you may have.



Swamplands Act of 1850

From Wikipedia, the free encyclopedia

A U.S. federal law, the **Swamplands Act of 1850** essentially provided a mechanism for transferring title to federally owned swampland to private parties agreeing to drain the land and turn it to productive, presumably agricultural, use.^[1] Primarily aimed at the development of Florida's Everglades, and transferring some 20 million acres (31,000 sq mi; 81,000 km²) of land in the Everglades to the State of Florida^[2] for this purpose, the law also had application outside Florida, and spurred drainage and development in many areas of the United States, including areas around Indiana's Kankakee River,^[3] Michigan's Lake St. Clair's shores, and elsewhere, and encouraged settlement by immigrants arriving in the United States after that time. Later considered to have been ecologically problematic, many of its provisions were in time reversed by the Wetland Protection Act of 1972^[4] and later legislation, but its historical effects on U.S. development and settlement patterns remained.

Swamp Land Acts

provided a mechanism for transferring title of federally owned swampland to private parties agreeing to drain the land and turn it to agricultural and other productive uses. The Swamp and Overflowed Lands Act of 1849 Congress granted Louisiana certain swamp lands, ostensibly to help control flooding in the Mississippi River Valley. The swamp lands, or wetlands as they are know today, were defined as:

"those swamp and overflowed lands, which may be or are found unfit for cultivation...."

and the act intended to

"aid the State of Louisiana in constructing the necessary levees and drains to reclaim the swamp and overflowed land therein...."

. Following the ratification of the Swamp and Overflowed Lands Act of 1849, states with large amounts of wetlands, (Illinois, Michigan, and Florida) also desired the Federal Government to cede wetlands to the States for drainage and reclamation.

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
[hide]

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[edit] *Swamp Land Act of 1850*

The states lobbying led Congress to pass the Swamp Land Act of 1850, the intent of which was to enable Arkansas, Alabama, California, Florida, Illinois, Indiana, Iowa, Michigan, Mississippi, Missouri, Ohio, and Wisconsin to claim title to Federal lands in order to reclaim swamplands in their state. Before enacting the Swamp Land Act of 1850, Congress discussed the procedure for selection of swamplands, but the imprecise definition of a swampland and the way they were identified and parceled out to the states raised many questions and lawsuits.



 Trees in Swamp, 1850-Montana

The 1850 act stated that land should be transferred only when the majority of a parcel of land was wet and unfit for cultivation. Due to the confusion over what was considered swampland, advocates tried to assure opponents that the descriptions on surveyors' charts could be reliably used as the basis for selection, sight unseen. The Land Office found many swamplands as described on surveyors charts, as over 64 million acres of land was transferred to the states under the act.

After the lands were ceded to the states, individuals were given parcels at little or no cost if they would drain and develop the land. The act's vague and tenuous definition of a

wetland — "wet and unfit for cultivation" —led to frequent property disputes and lawsuits. By 1890, almost 200 swampland cases had reached the Supreme Court.

[edit] Swamp Land Act of 1855

The Swampland Act of 1850 led to the subsequent Swamp Land Act of 1855, which codified the plan throughout the remaining 12 states of the nation.

Widely considered ecologically problematic, poorly designed and executed, many of the Swamp Land Act's provisions were reversed by the Wetland Protection Act of 1972 and Swampbuster among other laws. The Swamp Land Acts stand as a good example on how popular thinking about wetlands has evolved during the past 150+ years. Of approximately 65 million acres of wetlands turned over to the States, nearly all are now private owned, and in some cases leased back by the Federal Government under the Wetland Reserve Program

[edit] Acreage granted to States for Swamp Reclamation

Excerpted from: A Century of Wetland Exploitation ^[1]

Acres

Alabama 441,289

Arkansas 7,686,575

California 2,192,875

Florida 20,325,013

Illinois 1,460,164

Indiana 1,259,231

Iowa 1,196,392

Louisiana 9,493,456

Michigan 5,680,310

Minnesota 4,706,503

Mississippi 3,347,860

Missouri 3,432,481

Ohio 26,372

Oregon 286,108

Wisconsin 3,360,786

Total 64,895,415 In 30 States where 50,655,190 acres are listed as "land drained," 12,400,059 acres of this total are classed as unfit for cultivation because of poor drainage. Losses to crops occur frequently on an additional 9,176,046 acres classed as having only fair drainage. Thus, there appear to be good opportunities to preserve and develop waterfowl habitat by working in cooperation with active drainage enterprises which still have vast acreages of natural marshes and swamps within their districts.

In connection with the 1930 census of drainage, which listed a countrywide total of about 84 million acres in organized drainage enterprises, the statement is made that of this amount 31,600,000 acres had been fit to raise a normal crop prior to drainage and 19,100,000 acres fit to raise a partial crop [1]. Thus, more than 50 million of the 84 million acres, or about 60 percent of the land then in organized drainage enterprises, could be classed as "fair" to "good" for agriculture before any drainage improvements were undertaken. Obviously, we cannot use drainage-enterprise figures to show the extent of waterfowl-habitat losses unless we take into account these before-and-after conditions.

More than one-fifth of this country's cropland is in drainage enterprises. Farmers in the humid parts, and in some of the semihumid parts, of the United States (including the two Dakotas) drain to take surplus rainfall off some of their lands. Most of this is gravity drainage, although pumps are sometimes used. In the Western States where irrigation is practiced, drainage is mainly for the purpose of taking seepage water off irrigated lands and carrying away alkali salts.

Figure 1 shows the location and relative abundance of agricultural land in drainage enterprises in 1950. In addition to the acreage depicted there, approximately 50 million acres outside organized districts have been improved by farm drainage [15]. There is no indication of how much of this acreage was essentially dry land before drainage improvements.

Table 3 gives drainage-enterprise statistics for certain years when census figures were available. Forty States now have organized drainage enterprises.¹ Because of differences in organization and management, it was necessary in the 1950 census to arbitrarily divide the 40 States into two groups: the 10 "county-drain" States² and the 30 "drainage-district" States.

Table 3.-- Growth and condition of land in drainage enterprises for specified years

All drainage States:

Land in enterprises	65,495,000	84,408,000	86,967,000	102,673,000
Improved land ¹	44,288,000	63,514,000	67,514,000	82,138,000
Land available for settlement	3,120,800	4,204,100	4,569,000	(²)

Thirty drainage-district States:

Land in enterprises	22,281,300	36,688,000	39,872,000	46,546,000
Good Drainage (no loss of cultivated crops)	(²)	26,444,000	30,270,000	24,970,000
Fair drainage (frequent loss of cultivated crops)	(²)	5,903,000	3,430,000	9,176,000
Poor drainage (unfit for cultivation)	(²)	4,341,000	6,172,000	12,400,000
Land improved or reclaimed by drainage	(²)	29,587,000	29,362,000	41,759,000
Land protected against	(²)	3,786,000	6,150,000	3,516,000

overflow

Land improved by removal of alkali or seepage	(²)	3,315,000	4,360,000	1,271,000
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¹Improved lands are regularly tilled or mowed, cleared for pasture, or used for farm sites, ditches, or roads. Much of this land was essentially dry before drainage.

²Not available.

Of the total acreage in the 30 drainage-district States, 31 percent was organized between 1940 and 1949, 7 percent between 1930 and 1939, 14 percent between 1920 and 1929, 33 percent between 1910 and 1919, 10 percent between 1900 and 1909, and 5 percent before 1900.

USGS Home webpage