

1993 Assembly Bill 994

Date of enactment: April 28, 1994  
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## 1993 Wisconsin Act 456 (Vetoed in Part)

AN ACT to repeal 60.23 (7), 88.10 (1), 88.15, 88.16, 88.21 (7), 88.23 (2) and (2m), 88.34 (3) (e), 88.46 (3), 88.47 (2), 88.54 (5) and 88.71 (3) and (4); to renumber and amend 88.03 (1), 88.03 (2), 88.05 (1) and (2), 88.47 (1), 88.79 (4) to (6) and 88.92 (2); to amend 19.82 (2), 20.115 (7) (ga), 88.01 (2), 88.01 (5), 88.02, 88.04 (1), 88.05 (intro.), 88.05 (4) (a), (5), (7) and (8), 88.06 (1) to (4), 88.07 (1) and (3), 88.10 (title), 88.10 (2), 88.11 (1) (intro.), (2), (3) (intro.) and (5) (intro.), 88.12 (1), 88.12 (2), 88.14 (1), 88.17 (4), (7) and (8), 88.18 (1) and (2) (a) and (e), 88.19 (3), 88.21 (5), 88.21 (6), 88.21 (9) and (10), 88.22 (intro.) and (3) (intro.), 88.23 (1), 88.23 (3), 88.24 (intro.), 88.27 (1), 88.28 (1) (g), 88.29 (4) and (6), 88.31 (1) and (2), 88.32 (title), 88.33 (2), 88.34 (1), 88.34 (4), 88.35 (title), (2) and (3), 88.35 (6) (intro.) and (7), 88.36 (title), (1), (2), (4), (5) and (6), 88.40 (1), 88.41 (1), (2) (intro.) and (b) and (4) (a) and (b), 88.42 (4), 88.44 (1) and (2), 88.45 (1) and (2), 88.46 (1) and (2), 88.48 (2), 88.49, 88.54 (1) to (4), 88.54 (6), 88.55, 88.56 (3), 88.62, 88.63 (1), 88.68 (2), 88.70 (1) to (4), 88.71 (2), 88.72 (1) (intro.), (2) to (4) and (5) (intro.) and (d), 88.73, 88.77 (1), 88.78 (2) to (4), 88.79 (title), (1) and (3), 88.80 (1) (intro.), (2) and (3), 88.81 (1), 88.81 (2) and (3), 88.82 (1) (a) and (b), 88.82 (1) (d), 88.82 (3), 88.83 (1) to (4), 88.87 (2) (c), 88.89 (2) to (5), 88.92 (1) and 88.94 (2); to repeal and recreate 88.09, 88.14 (2), 88.17 (1) and (2), 88.24 (1) and 88.77 (2); and to create 31.045, 88.01 (2m), 88.032 (title) and (1), 88.05 (1) (intro.), 88.05 (2), 88.065, 88.12 (3), 88.145, 88.17 (2d), (2h), (2p) and (2t), 88.172, 88.18 (3), 88.19 (4) to (7), 88.21 (12), 88.21 (13), 88.215, 88.23 (2r), 88.27 (1m), 88.31 (4m), 88.32 (3m), 88.35 (5m), 88.405, 88.44 (4), 88.61, 88.62 (3), 88.63 (4), 88.64, 88.71 (1m), 88.77 (3) to (6), 88.791, 88.81 (1) (bm), 88.81 (1) (bs), 88.82 (1) (bm), 88.82 (1) (bs), 88.87 (2) (d), 88.92 (2) (a), 893.93 (4) and 895.46 (8) of the statutes, relating to drainage board and drainage district procedures, granting rule-making authority and making an appropriation.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

PREFATORY NOTE: This bill was prepared for the legislative council's special committee on drainage district laws.

It is commonly estimated that approximately one-third of Wisconsin's 79,000 farms use some form of constructed drainage system to remove excess water from the land and that the majority of these are small-scale drains affecting only a single farm or a few neighboring farms. It is also estimated that 10% of the agricultural drains are organized as drainage districts under ch. 88.

Most drainage districts organized and operating under ch. 88 are administered by the drainage board of the county in which the district is located. Some drainage districts were subject to the jurisdiction of a separate board under former statutory procedures, but these drainage districts became subject to county drainage board jurisdiction under s. 88.161, on June 1, 1993. The drainage board consists of 3 persons, all resident landowners of the county, appointed by the circuit court. The drainage board exercises day-to-day administration and management of the drainage districts within the county.

The circuit court of each county within which there is a drainage board exercises extensive supervision over the

actions of the drainage board. Most decisions of the drainage board require the consent or approval of the circuit court, under statutory procedures that require the circuit court to hold a hearing at which interested persons are heard. Following the hearing, the circuit court issues an order that gives effect to the drainage board decision. One consequence of this procedure is that the only way for an aggrieved party to obtain review of the drainage board action, as confirmed by circuit court order, is to appeal the decision to the court of appeals.

In this bill, the special committee on drainage district laws proposes a fundamental change in the procedures for drainage board decision-making. The bill changes current law by deleting the procedures for circuit court approval and authorizing a drainage board to make final decisions regarding most aspects of the management of drainage districts within the board's jurisdiction. A new procedure is created by which a person subject to a drainage board order or rule may seek review of the order or rule by writ of certiorari to the circuit court.

Because the decisions regarding formation and dissolution of a drainage district are sensitive and require a careful and independent review of the potential effect that these decisions may have on landowners, the special committee determined that these decisions should continue to be made by the circuit

court as provided under current law. Also, the court continues to be responsible for appointing drainage board members and has jurisdiction over a procedure to wind up the affairs of an insolvent drainage district.

In addition, this bill makes the following key changes to current law:

1. The applicant for a permit to construct a dam must obtain the approval of the drainage board or an affected individual landowner if a dam approved by the department of natural resources (DNR) will affect a drainage district or individually drained land.

3. The liability limits for governmental units are clearly made applicable to the drainage board, the members and employes of the drainage board, the drainage district and any owner of land within the district who undertakes work approved by the drainage board.

4. Drainage boards are authorized to adopt a rule to change from a 3-member board to a 5-member board.

5. Landowners in drainage districts are authorized to recommend individuals for the court's consideration in appointing drainage board members.

7. Drainage board members are provided with limited liability that is similar to the limited liability of directors and officers of nonstock corporations.

9. Drainage boards are authorized to appoint a treasurer, as an alternative to the current requirement that the county treasurer serve as the drainage board treasurer. The person appointed by the drainage board acts in the capacity of deputy to the county treasurer.

10. A procedure to petition the drainage board for a meeting of the drainage district is created.

11. The department of agriculture, trade and consumer protection (DATCP) is given regulatory authority over the retention of drainage board records, and provisions are made for DATCP, the county zoning administrator and the secretary of the drainage board to retain copies of drainage board records.

12. A drainage board is authorized to assess a reasonable share of past capital costs when a new drain is connected to an existing district drain.

13. The minimum amount of construction work that requires advertisement for bids is raised from \$5,000 to \$10,000.

15. A simpler procedure is created for petitioning to suspend operations of, or dissolve inactive, drainage districts.

16. The time limit for filing a claim for the obstruction of surface drainage by the construction of a highway or railroad grade is changed from 90 days to 3 years.

17. If a judgment is entered against a drainage district landowner who undertakes work on a drain that is approved by the drainage board, the board is required to reimburse the landowner for the amount of the judgment.

For detailed information regarding the provisions of this bill, see the NOTES throughout the bill.

**SECTION 1.** 19.82 (2) of the statutes is amended to read:

19.82 (2) "Meeting" means the convening of members of a governmental body for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body. If one-half or more of the members of a governmental body are present, the meeting is rebuttably presumed to be for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body. The term does not include any social or chance gathering or conference which is not intended to avoid this

subchapter or any gathering of the members of a drainage board created under s. 88.16, 1991 stats., or under s. 88.17, for a purpose specified in s. 88.065 (5) (a).

**SECTION 2.** 20.115 (7) (ga) of the statutes, as affected by 1993 Wisconsin Act 16, is amended to read:

20.115 (7) (ga) *Related services.* All moneys received from publication sales and service fees authorized by law that are related to agricultural resource management and from costs paid by municipalities under s. 88.64 (6), for the publication of informational materials and the conduct of services related to agricultural resource management.

**SECTION 3.** 31.045 of the statutes is created to read:

**31.045 Permits for dams that affect drained lands.**

(1) For the construction, raising or enlarging of a dam that will affect the water level in a drainage district organized under ch. 88, no person who obtains a permit under this chapter may construct, raise or enlarge the dam unless the person obtains the approval of the drainage board with jurisdiction of the drainage district.

(2) For the construction, raising or enlarging of a dam that will affect the water level in a drain, for an individual landowner, that is constructed under an order issued under s. 88.94, no person who obtains a permit under this chapter may construct, raise or enlarge the dam unless the person obtains the approval of the landowner.

NOTE: The bill requires the approval of the drainage board or the individual landowner if a dam approved by DNR will affect a drainage district or individually drained land.

**SECTION 4.** 60.23 (7) of the statutes is repealed.

NOTE: The bill repeals a provision of current law that authorizes town boards to remove obstructions in nonnavigable waters. The repealed statute substantially duplicates the authority granted to the town board by s. 88.90. The only significant difference is that s. 88.90 authorizes a town board to remove obstructions upon receiving a complaint from the owner or occupant of the land that is damaged by the obstruction, while s. 60.23 (7) does not contain such a provision. It is reasonable to assume, however, that a town board would not act under s. 60.23 (7) until the matter was brought to its attention by an affected owner or occupant.

**SECTION 5.** 88.01 (2) of the statutes is amended to read:

88.01 (2) "Board" or "drainage board" means the board created and appointed under s. 88.16, 1991 stats., or under s. 88.17, as the case may be.

**SECTION 6.** 88.01 (2m) of the statutes is created to read:

88.01 (2m) "Bond" means any bond, note or other obligation of a drainage board issued under this chapter, including any refunding bond.

**SECTION 7.** 88.01 (5) of the statutes is amended to read:

88.01 (5) "County treasurer" means the treasurer of the county in which is located the circuit court

drainage board having jurisdiction of the drainage district is located.

SECTION 8. 88.02 of the statutes is amended to read:

**88.02 Outstanding securities and contracts not affected.** Nothing in this chapter ~~shall~~ may render more difficult the collection of outstanding bonds or notes of any drainage organization or impair the obligation of any contract made by ~~such the~~ organization or defeat any vested property right of ~~such the~~ organization. ~~Neither shall any~~ No assessment of supplemental benefits nor any reassessment of benefits may disturb any previous assessment for the cost of construction ~~previously confirmed by the court~~ while bonds or notes based ~~thereon on the construction~~ are unpaid. ~~Confirmed assessments~~ Assessments shall remain liens upon the same lands and claims against the same corporations in the same amounts as when first assessed and recorded, until the bonds and notes based ~~thereon on the construction~~ are paid or refunded.

NOTE: In other provisions, this bill repeals the procedures for the circuit court to confirm assessments made by the drainage board. Accordingly, s. 88.02 is amended to delete language regarding confirmation of assessments. However, the language is made sufficiently broad so that it will continue to apply to both assessments confirmed by a court before the effective date of this bill and to assessments made by a drainage board after the effective date of this bill.

SECTION 9. 88.03 (1) of the statutes is renumbered 88.03 and amended to read:

**88.03 Drainage proceedings equitable in nature.** All court proceedings under this chapter are equitable in nature. ~~The court shall at all times have supervision over the drainage board and may require the board to report on any matter connected with its duties or functions.~~ The court may in any proceeding bring in new parties as if they were original parties to the proceeding.

SECTION 10. 88.03 (2) of the statutes is renumbered 88.032 (2) and amended to read:

88.032 (2) Any document or paper filed or entered in a drainage proceeding before the drainage board may at any time be amended, modified or corrected by the ~~court~~ drainage board as the facts warrant and upon such notice as the ~~court~~ drainage board orders, except that no amendment, modification or correction of any ~~order confirming any~~ assessment shall may be made after the issuance of money obligations based on the assessment if the result of ~~such the~~ amendment, modification or correction would be to render ~~such the~~ the obligations more difficult to collect.

SECTION 11. 88.032 (title) and (1) of the statutes are created to read:

**88.032 (title) Amendment of documents.** (1) Any document or paper filed or entered in a proceeding before the court may at any time be amended, modified or corrected by the court as the facts warrant and upon such notice as the court orders.

SECTION 12. 88.04 (1) of the statutes is amended to read:

88.04 (1) Any person entitled to sign a petition to the court or the drainage board under this chapter may sign through an agent. The authority of ~~such the~~ agent shall be in writing and shall be filed with the ~~court~~ drainage board but need not be acknowledged, sealed or witnessed.

NOTE: This section is amended so that a petition to either the court or the drainage board may be signed by an agent, although the authority of the agent must be filed only with the drainage board, regardless of whether the petition is to the court or to the drainage board.

SECTION 13. 88.05 (intro.) of the statutes is amended to read:

**88.05 General rules applicable to notices of hearings.** (intro.) If a hearing is required on a petition or report filed with the court or a petition filed with the drainage board under this chapter, the following rules apply unless some different procedure is expressly provided under this chapter:

NOTE: This provision limits the reference to "different procedures" only to those procedures under ch. 88 to avoid the inference that the current statute allows the court (or the drainage board, as amended) to adopt its own procedures.

SECTION 14. 88.05 (1) and (2) of the statutes are renumbered 88.05 (1) (a) and (b), and 88.05 (1) (b), as renumbered, is amended to read:

88.05 (1) (b) The notice of hearing is sufficient in form and substance if it recites all of the following:

1. That a particular petition or report has been filed;
2. The place of filing;
3. That it is subject to the inspection of all interested persons interested;
4. If a petition, the ~~prayer~~ request for relief, or the substance of the ~~prayer~~ and request.
5. The time and place of the hearing.
6. That all objections to the jurisdiction of the court or to the sufficiency or legality of any petition, or report ~~or assessment or to the equity of any assessment or award of damages~~ must shall be filed with the clerk of court in writing ~~prior to~~ before the hearing and that ~~such the~~ objections must be set forth clearly and in detail.

SECTION 15. 88.05 (1) (intro.) of the statutes is created to read:

88.05 (1) (intro.) In the case of a court hearing:

SECTION 16. 88.05 (2) of the statutes is created to read:

88.05 (2) In the case of a drainage board hearing:

(a) The order fixing the time and place of the hearing shall be made by the drainage board.

(b) The notice of hearing is sufficient in form and substance if it recites all of the following:

1. That a particular petition or report has been filed.
2. The place of filing.

3. That it is subject to the inspection of all interested persons.

4. If a petition, the request for relief, or the substance of the request.

5. The time and place of the hearing.

6. That all objections to the jurisdiction of the drainage board or to the sufficiency or legality of any petition, report or assessment or to the equity of any assessment or award of damages shall be filed with the drainage board in writing before the hearing and that the objections shall be set forth clearly and in detail.

SECTION 17. 88.05 (4) (a), (5), (7) and (8) of the statutes are amended to read:

88.05 (4) (a) The chairman of the county highway committee except in a county with a highway commissioner appointed under s. 83.01 (1) (c), the highway commissioner; the chairman of the county land conservation committee in the county involved; the secretary of natural resources; the state drainage engineer; and, where a railroad company is involved, the person specified in sub. (6).

(5) ~~In the case of a court hearing, in lieu of the service by mail specified in sub. (3), the notice of hearing may be served as provided in s. 801.11 for the service of a summons, at least 20 days before the time fixed for hearing. Such The service is sufficient to give the court complete jurisdiction ~~of such~~ over the parties and their lands without any other service.~~

(7) ~~The~~ In the case of a court hearing, the board shall file with the court proof of publication and service of the notice required by this section. The certificate or affidavit of the person who made the service, publication or mailing, or who knows the facts, is sufficient proof ~~thereof of service, publication or mailing.~~

(8) Failure to give notice as provided by this section or to announce any adjournment does not defeat the jurisdiction of either the court or the drainage board. ~~If a failure to give legal notice to any person entitled thereto to notice is discovered before an order is entered, the court or drainage board shall adjourn the hearing and direct the giving of proper notice. If a failure to give such the notice is discovered after the order is entered, the court or drainage board may order the person not served with notice to show cause before such court why that person should not be bound by the order already entered. In any case, notice may be waived by appearance or by a written waiver filed with the court or drainage board.~~

SECTION 18. 88.06 (1) to (4) of the statutes are amended to read:

88.06 (1) The board shall file with the clerk of court a petition asking the court's consent to or approval of the particular action ~~which that~~ the board proposes to take. ~~If the board's action will require an additional assessment, the board shall file with the petition a report showing such assessment.~~

(2) Upon receipt of the petition the court ~~or judge~~ shall fix a the time and place of the hearing ~~thereon on~~

the petition and shall order the board to give notice ~~thereof of the hearing~~ as provided in s. 88.05 (1) (b) to the persons specified in s. 88.05 (4) (b).

(3) At the hearing any interested person may appear and testify either for or against the petition ~~or object to the report assessing costs~~, subject to the requirements of s. 88.07 (1). If the court is satisfied that the board's proposed action will be in the best interests of the districts involved, it shall grant the petition and approve the report, subject to ~~such the~~ changes and conditions as it deems that it considers advisable. Otherwise, the court shall dismiss the petition.

(4) If a petition, which is basically the same in substance as a petition which has been decided or dismissed, is filed within 3 years after ~~such the~~ dismissal, the court may refuse to order a hearing ~~thereon on the~~ petition or to take any other action with respect to it.

NOTE: Section 88.06 (4) allows the court to refuse to take action on a petition if the petition is the same in substance as a petition that has been dismissed within the previous 3 years. The bill expands this provision so that the court may also refuse to order a hearing if the petition is the same in substance as a petition that was decided by the court within the previous 3 years.

SECTION 19. 88.065 of the statutes is created to read:

**88.065 General procedure for drainage board hearings.** If this chapter requires the drainage board to conduct a hearing before issuing an order and no other procedure is expressly provided, the following procedure applies:

(1) Upon receipt of the petition, the drainage board shall fix a time and place of hearing on the petition and shall give notice of the hearing as provided in s. 88.05 (2) (b) to the persons specified in s. 88.05 (4) (b).

(2) At the hearing, any interested person may appear and testify either for or against the petition or object to the report assessing costs. If the drainage board is satisfied that the proposed action will be in the best interests of the districts involved, the board shall grant the petition and issue the order, subject to the changes and conditions that the board considers advisable. Otherwise, the drainage board shall dismiss the petition.

(3) If a petition, which is basically the same in substance as a petition which has been decided or dismissed, is filed within 3 years after the dismissal, the drainage board may refuse to order a hearing on the petition or to take any other action with respect to the petition.

(4) Except as provided in sub. (5), all meetings of the drainage board are subject to subch. V of ch. 19.

(5) (a) A gathering of drainage board members solely for one or more of the following purposes is not a meeting, as defined in s. 19.82 (2):

1. Observing, supervising or undertaking the construction, maintenance or improvement of drains.

2. Observing, supervising or undertaking the construction or maintenance of highways, railroads,

bridges, utilities or other similar structures that may affect drains in any drainage district.

3. Collecting information by observation, survey or measurement or by discussions with an affected landowner at the site of a drainage ditch or a proposed drainage ditch.

4. Responding to natural disasters affecting a drain.

(b) Any action taken by a drainage board under par. (a) shall be reported by the board's secretary at the next meeting of the drainage board for inclusion in the board's minutes.

(c) A drainage board may not take any action at a gathering under par. (a) if the action will result in an increase in the assessment against any property in the drainage district.

SECTION 20. 88.07 (1) and (3) of the statutes are amended to read:

88.07 (1) All objections made to the jurisdiction of the court or to the sufficiency or legality of any petition, ~~or report, or assessment or to the equity of any assessment or to any award of damages~~ shall be in writing. The objections shall be set forth clearly and in detail and shall be filed with the clerk of court ~~prior to~~ before the hearing.

(3) At any time before but not after the hearing has begun on any petition filed under this chapter, any petitioner may withdraw his or her name from the petition upon filing in court an undertaking with sufficient sureties to be approved by the court. ~~Such~~ The undertaking shall be conditioned that if the withdrawal of names reduces the number of signers below the number required by the section under which the petition is filed and thereby deprives the court of jurisdiction, the withdrawing petitioner will pay into court the costs of the drainage proceeding incurred prior to and including the making and entry of the order denying the ~~prayer of relief requested in~~ the petition and will pay into court the expenses incurred on the petition ~~prior to~~ before his or her withdrawal.

SECTION 21. 88.09 of the statutes is repealed and recreated to read:

**88.09 Certiorari; drainage board decisions.** Any person subject to an order or rule of the drainage board may, within 30 days after publication of the order or rule, commence an action seeking the remedy available by certiorari. The court may not stay proceedings involving the order or rule when an action is commenced, but may, on application, on notice to the board and for cause, grant a restraining order. The board is not required to return the original papers acted upon by it, but may return certified or sworn copies of the papers. If necessary for the proper disposition of the matter, the court may take evidence, or appoint a referee to take evidence and report findings of fact and conclusions of law as the court directs, which shall constitute a part of the proceedings upon which the determination of the court shall be made.

The court may reverse or affirm, wholly or partly, or may modify, the order or rule brought up for review.

NOTE: Under current law, s. 88.09 contains a provision regarding the appeal of a court order relating to the assessment of benefits or awarding of damages. Appeal of other circuit court orders is not explicitly provided in ch. 88, but is provided under general statutes regarding appeals to the court of appeals in s. 808.04.

The current statute is repealed and recreated to create a provision regarding review of drainage board orders and rules by certiorari. Certiorari is now available as an ordinary action under s. 781.01; and s. 88.09 contains those procedures that depart from ordinary certiorari procedures. The language in the bill is based substantially on the provisions for review of decisions by the county zoning board of adjustment by certiorari under s. 59.99 (10).

The procedure in s. 88.09 for review by certiorari may be used by any person subject to an order or rule of the drainage board. Any person not subject to an order or rule of the drainage board may appeal decisions of the board by filing a claim under s. 893.80 or seeking other appropriate common law or statutory remedies.

A writ of certiorari permits the circuit court to exercise supervisory control over the drainage board. The remedy allows the court to review the full range of issues that might be raised regarding a drainage board decision, including whether the drainage board exceeded its jurisdiction, acted according to due process requirements, acted unreasonably or made a decision that is not supported by substantial evidence.

SECTION 22. 88.10 (title) of the statutes is amended to read:

**88.10 (title) Guardian ad litem; failure to appoint.**

SECTION 23. 88.10 (1) of the statutes is repealed.

NOTE: The repealed provision requires the court to appoint a guardian ad litem to represent minors or incompetents in any court proceeding. This provision is repealed because current procedures regarding the appointment of a guardian ad litem under s. 879.23 are adequate for this purpose.

SECTION 24. 88.10 (2) of the statutes is amended to read:

88.10 (2) Failure to ~~make such appointment~~ appoint a guardian ad litem in a proceeding under this chapter is not jurisdictional, but when the failure is discovered a guardian ad litem shall be appointed and an order served upon the guardian ad litem to show cause why ~~such the~~ minor or incompetent should not be bound by all prior proceedings pertaining to the drainage district. On such hearing the court shall enter such order or judgment as the facts warrant.

SECTION 25. 88.11 (1) (intro.), (2), (3) (intro.) and (5) (intro.) of the statutes are amended to read:

88.11 (1) (intro.) The department of agriculture, trade and consumer protection shall employ an engineer, who shall be the state drainage engineer, to improve district operations. The department shall do all of the following:

(2) The state drainage engineer employed under ~~sub. (1)~~ shall provide technical assistance to improve district operations on the request of the department of natural resources, drainage board, landowners in the district or the judge.

(3) (intro.) If the area proposed for drainage exceeds 200 acres in a single project, the board or the

petitioners, ~~prior to before the court's hearing on its the report under s. 88.34, 88.36 or 88.77, shall procure and file with the court~~ a report of the department of agriculture, trade and consumer protection on all of the following:

(5) (intro.) The report of the department of agriculture, trade and consumer protection under sub. (3) also shall include a report of the college of agriculture and life sciences of the university of Wisconsin-Madison on all of the following:

NOTE: The bill adds cross-references to make it clear that the requirement for DATCP to prepare a report if the area proposed for drainage exceeds 200 acres applies not only to the initial organization of a drainage district, as may be implied from current statutes, but also to any newly drained land within a drainage district and any addition of territory to a drainage district.

SECTION 26. 88.12 (1) of the statutes is amended to read:

88.12 (1) If a proposed drainage district lies in more than one county, the petition for organization of the district shall be filed in the court of the county containing the largest acreage proposed for drainage by the petition, and the court ~~and board of the that county containing the largest acreage~~ has jurisdiction of the organization ~~and operation~~ of the drainage district.

NOTE: The bill limits court jurisdiction to only the organization, but not the operation, of a drainage district that lies in more than one county. A corresponding provision for the jurisdiction of a drainage board over a drainage district that lies in more than one county is created below in s. 88.12 (3).

SECTION 27. 88.12 (2) of the statutes is amended to read:

88.12 (2) In cases affecting ~~such~~ a multicounty drainage district, copies of all court orders and judgments shall be filed in the court of each of the other counties in which the drainage district is located.

(4) All moneys collected on behalf of the drainage district in the other counties shall be transmitted to the treasurer of the county wherein in which the ~~court~~ drainage board has jurisdiction.

SECTION 28. 88.12 (3) of the statutes is created to read:

88.12 (3) If a drainage district lies in more than one county, the drainage board of the county containing the largest acreage that is drained or proposed for drainage has jurisdiction of the operation of the drainage district. The drainage board that initially has jurisdiction of the operation of a drainage district retains that jurisdiction even if the drained acreage is subsequently changed, unless the drainage board that initially has jurisdiction agrees with the drainage board of any other county containing land of the drainage district to transfer jurisdiction.

NOTE: The bill provides that the drainage board of the county containing the largest acreage that is drained or is proposed for drainage has jurisdiction of the operation of the drainage district. In order to maintain stability in drainage board operations, the drainage board with initial jurisdiction will maintain jurisdiction of a drainage district, even though additions

to the drainage district may later result in a greater drained acreage in another county. A procedure is included to allow drainage boards to transfer jurisdiction of a drainage district by mutual agreement.

SECTION 29. 88.14 (1) of the statutes is amended to read:

88.14 (1) ~~Whenever~~ If a controversy arises out of the relationship of 2 or more drainage districts that are subject to the jurisdiction of a single drainage board, the board ~~shall attempt to settle the controversy and~~ may hold hearings and take whatever other action it ~~deems~~ considers necessary toward ~~accomplishing that objective settling the controversy, including the issuance of orders.~~

SECTION 30. 88.14 (2) of the statutes is repealed and recreated to read:

88.14 (2) If a controversy arises out of the relationship of 2 or more drainage districts that are subject to the jurisdiction of 2 or more drainage boards, the boards shall attempt to settle the controversy and may hold hearings and take whatever other action they consider necessary to accomplish that objective. If the drainage boards are unable to settle the controversy, the matter shall be submitted to arbitration under ch. 788.

NOTE: The bill removes a provision that allows a petition requesting the court to settle a controversy between drainage districts if the drainage board is unable to settle the controversy. Under the bill, the drainage board has final authority to settle controversies between any 2 or more drainage districts within its jurisdiction.

The bill also creates a new procedure to settle controversies between 2 or more drainage districts that are subject to the jurisdiction of 2 or more drainage boards. After an attempt to settle the controversy, if the boards are unable to agree, the matter must be submitted to arbitration.

SECTION 31. 88.145 of the statutes is created to read:

**88.145 Limitation of damages and suits.** In any action against a drainage district, ~~drainage board,~~ drainage board member, drainage board employe or an owner of land within the district who undertakes work approved by the drainage board, s. 893.80 is applicable and the limit on the amount recoverable by any person under s. 893.80 (3) applies to the drainage board, the members and employes of the drainage board, the drainage district and any owner of land within the district who undertakes work approved by the drainage board.

NOTE: Under current law, current s. 88.69 provides that a drainage district is liable for damages resulting to lands outside its boundaries because of work done within its boundaries. Although no other statute specifically provides for drainage district liability, a drainage district may also have liability under common law.

Although drainage districts were corporate and public entities under ch. 89, 1961 stats., which was the source of current s. 88.69, drainage districts are not explicitly created as public and corporate entities under ch. 88. Only public and corporate entities are subject to the claims procedure and liability limits of s. 893.80. It can be argued that drainage districts are merely administrative subunits of the drainage board and are therefore subject to s. 893.80 by virtue of that statute's appli-

cability to the drainage board. However, the statutes are silent on this point and are at best ambiguous.

New s. 88.145 provides clearly that s. 893.80 applies collectively to the drainage board, the members and employees of the drainage board, the drainage district and any owner of land within the district who undertakes work approved by the drainage board. As a result, s. 893.80 applies consistently to all drainage activities and a person who is harmed by drainage activities is subject to the same liability limitations and exclusions whether the defendant is the drainage board, its members or employees, the drainage district or landowners in the drainage district.

SECTION 32. 88.15 of the statutes is repealed.

NOTE: The bill repeals an obsolete provision for the transition from former statutes to the organization of drainage boards and drainage districts under current ch. 88.

SECTION 33. 88.16 of the statutes is repealed.

NOTE: The bill repeals an obsolete provision that allows drainage districts to continue operation under former ch. 89, 1961 stats. This statute has been made unnecessary by s. 88.161, which prohibits a drainage district from operation under ch. 89, 1961 stats., as of June 1, 1993.

SECTION 34. 88.17 (1) and (2) of the statutes are repealed and recreated to read:

88.17 (1) The court shall appoint a drainage board either upon the filing of a petition for organization of a drainage district under this chapter in a county that does not already have a drainage board or upon the filing of a petition by a landowner in a drainage district or the state drainage engineer for appointment of a drainage board in a county that already has a drainage district. The board shall consist of 3 persons, ~~all of whom shall be resident landowners of the county, except that if the drainage board represents a drainage district with territory in another county the court shall appoint one member who is a resident landowner of the other county.~~ One member of the original board shall be appointed for a term of one year, one for 2 years and one for 3 years. Upon the expiration of the term of office of a board member, the court shall appoint a successor for a 3-year term in the same manner as the original appointment was made.

(2) A drainage board may by rule, after the original board is appointed, increase the number of members to 5. ~~If the drainage board represents a drainage district with territory in another county, 2 of the 5 members whom the court appoints shall be resident landowners of the other county.~~ In the rule increasing the number of members, the board shall provide for staggered terms, with all members serving terms of 5 years. After increasing the number of board members, the board may, by rule, reduce the number of members to 3, but only if the size of the board is reduced as vacancies occur on the board.

NOTE: The bill allows the drainage board to provide by rule for a 5-member board, rather than 3 members, and to provide for staggered terms of 5 years in length.

The drainage board may also reduce the size of the board to 3 members at any time after increasing it to 5. However, the board may only be reduced in size as vacancies occur. This is intended to avoid the possibility that 3 members of a 5-member board could vote to reduce the size of the board and determine that the other 2 members are required to vacate their

positions. If the size of the board is reduced, it is possible that the board will have 4 members for a period of up to one year until the next vacancy occurs.

SECTION 35. 88.17 (2d), (2h), (2p) and (2t) of the statutes are created to read:

88.17 (2d) The board shall notify the court if any position on the board becomes vacant and the court shall appoint a successor. The board shall notify the court if the size of the board is increased under sub. (2) and the court shall appoint the additional board members. If a position on the board remains vacant for more than 6 months, either the state drainage engineer or any landowner in a drainage district subject to the jurisdiction of the board may petition the court to appoint a successor.

(2h) The court shall appoint drainage board members from among persons recommended by any of the following:

(a) The committee on agriculture and extension education created under s. 59.87 (2), which shall recommend at least 3 persons for each position to be filled.

(b) At least 3 landowners owning property in a drainage district that is subject to the jurisdiction of the drainage board.

(2p) In appointing members, the court shall attempt to assure that at least one of the members serving on the drainage board at any time is an experienced farmer who is familiar with drainage and that another of the members is familiar to some extent with drainage engineering.

(2t) A drainage board member shall serve until a successor is appointed and qualified.

NOTE: The bill creates a procedure to notify the court of the need to appoint new drainage board members and allows the owners of land within drainage districts to recommend individuals for membership on the drainage board.

SECTION 36. 88.17 (4), (7) and (8) of the statutes are amended to read:

88.17 (4) Ownership of or interest in lands sought to be drained does not disqualify a person from acting as a member of the drainage board, but any board member may request the court to, and the court may in its discretion, appoint a suitable person to act in such a member's place when the board is considering matters pertaining to the particular drainage district in which such the member is interested.

(7) Each board member shall be reimbursed for actual and reasonable expenses incurred in the performance of the member's duties and, in addition, shall receive as compensation for actual and necessary services \$10 per day for actual time spent in rendition of services, or such larger a per diem as the county board of supervisors establishes in an amount determined by the drainage board, not to exceed \$40. In addition, the county board may reimburse drainage board members for actual and reasonable expenses incurred in performance of duties on behalf of the county.

Vetoed  
in Part

Vetoed  
in Part



(8) Each board member shall keep an accurate record of services rendered and expenses incurred by the member, together with the date thereof and the district for which services were rendered or in connection with which expenses were incurred. Board members shall file their bills for compensation and expenses with the ~~court~~ county treasurer. Each bill shall indicate the district to which specific items are to be charged or the proportion of the bill to be paid by specified districts. ~~When the bill has been allowed by the court, the~~ The county treasurer, as treasurer of drainage districts, shall pay the bill if funds are available for that purpose and shall charge the accounts of the respective drainage districts ~~liable therefor~~ for the bill in accordance with the order allowing the bill.

NOTE: Current law authorizes the circuit court to appoint a person to act in place of a drainage board member if the board is considering matters pertaining to a drainage district in which the member is interested. However, the current statute does not provide a means to bring this situation to the attention of the court. The amendment to sub. (4) allows any board member to identify either his or her own conflict or the conflict of another board member and to bring it to the attention of the circuit court.

SECTION 37. 88.172 of the statutes is created to read:

**88.172 Limited liability of drainage board members.**

(1) Except as provided in subs. (2) and (3), a drainage board member is not liable to any other person for damages, settlements, fees, fines, penalties or other monetary liabilities arising from a breach of, or failure to perform, any duty resulting solely from his or her status as a drainage board member, unless the person asserting liability proves that the breach or failure to perform constitutes any of the following:

(a) A wilful failure to deal fairly with any person in connection with a matter in which the drainage board member has a material conflict of interest.

(b) A violation of criminal law, unless the drainage board member had reasonable cause to believe that his or her conduct was lawful or no reasonable cause to believe that his or her conduct was unlawful.

(c) A transaction from which the drainage board member derived an improper personal profit.

(d) Wilful misconduct.

(2) Except as provided in sub. (3), this section does not apply to any of the following:

(a) A civil or criminal proceeding brought by or on behalf of any governmental unit, authority or agency.

(b) A proceeding brought by any person for a violation of state or federal law if the proceeding is brought under an express private right of action created by state or federal statute.

(3) Subsection (2) does not apply to a proceeding brought by a governmental unit, authority or agency in its capacity as a private party or contractor.

NOTE: The bill limits the liability of individual drainage board members. In substance, this provision is identical to the limitation on the liability of directors and officers of nonstock corporations under s. 181.287 and under similar statutes for

officers and directors. The current law protecting officers and directors of other types of corporate entities was contained in 1987 Wisconsin Act 13. The current statutes limiting the liability of corporate directors and officers were a response to the problems of obtaining adequate liability insurance and a concern that it would become increasingly difficult to recruit individuals to serve as corporate directors and officers.

The special committee has determined that the same rationale applies to drainage board members, particularly as the state becomes more urbanized and drainage board decisions are more closely scrutinized by landowners outside of drainage districts. Any person adversely affected by a drainage board decision or by the construction and operation of the drainage system would continue to have a cause of action against the drainage board, as distinct from individual members of the board, subject to the \$50,000 liability cap, the limited immunity for legislative and judicial decisions and the other provisions of s. 893.80.

SECTION 38. 88.18 (1) and (2) (a) and (e) of the statutes are amended to read:

88.18 (1) The county treasurer shall serve as treasurer of all drainage districts under the jurisdiction of the drainage board. All moneys collected for or payable to any such drainage district shall be turned over to or paid to the county treasurer and shall be paid out by the treasurer only upon ~~the order of the court or upon~~ proper warrants of the drainage board. The county treasurer may retain for the benefit of the county a portion of the interest received on drainage district funds held by the county treasurer, not to exceed the cost to the county treasurer of providing services to the drainage board under this chapter, the cost to the zoning administrator of maintaining drainage board records under s. 88.19 and the cost to the zoning administrator of providing copies of drainage board records to the drainage board.

(2) (a) All sums received ~~by the county~~ in payment of drainage assessments of that district, including penalties and interest ~~thereon~~ on the sums.

(e) ~~Any and all~~ All other sums received ~~by the county~~ on account of ~~such the~~ drainage district other than interest received on drainage district funds held by the county treasurer.

NOTE: The phrase "by the county" is deleted in s. 88.18 (2) (a) and (e) as a matter of clarification because drainage assessments are paid to or, if delinquent, collected by the county treasurer.

SECTION 39. 88.18 (3) of the statutes is created to read:

88.18 (3) The drainage board may appoint a treasurer who shall act as the deputy of the county treasurer. The drainage board may assign any part or all of the county treasurer's duties under this chapter to the drainage board treasurer. The drainage board treasurer shall be reimbursed for actual and reasonable expenses incurred in the performance of the treasurer's duties in the same manner as provided for drainage board member expenses under s. 88.17 (8). The drainage board shall require a bond from the drainage board treasurer in an amount, set by the board, that is sufficient to exceed the greatest amount of funds expected to be held in his or her custody, and



with the sureties that the drainage board requires. The bond shall be conditioned in substantially the same form as the ordinary bond required from the county treasurer, with the necessary changes.

NOTE: The bill authorizes the drainage board to appoint a treasurer and assign to the treasurer any part or all of the duties of the county treasurer under ch. 88.

SECTION 40. 88.19 (3) of the statutes is amended to read:

88.19 (3) ~~All The secretary of the board is legal custodian of all drainage records shall be kept on file in the office of the clerk of court and the secretary shall comply with subch. II of ch. 19.~~ Upon request ~~therefor~~ for any of the drainage records by the county treasurer, the secretary of the board shall furnish the county treasurer with a copy of the records specified in sub. (2).

NOTE: The laws related to public records apply to any "district" and are therefore currently applicable to drainage districts under s. 19.21 (1). The amendment to s. 88.19 (3) provides an explicit statement that drainage board records are subject to the laws related to public records and makes the secretary of the drainage board the legal custodian of drainage records.

SECTION 41. 88.19 (4) to (7) of the statutes are created to read:

88.19 (4) (a) Subject to pars. (b) and (d), and subject to criteria and standards under rules that the department of agriculture, trade and consumer protection shall promulgate, all of the following shall occur:

1. The drainage board secretary shall distribute drainage board records to the state drainage engineer and to the county zoning administrator.

2. The drainage board and the county zoning administrator shall retain certain records of the drainage board.

(b) The secretary of the drainage board and the county zoning administrator shall maintain in perpetuity any records consisting of an order creating or altering the boundaries of a district, maps or descriptions of the boundaries of a district, profiles and cross sections of any drains and an order levying original or supplemental assessments for costs.

**Vetoed in Part** (but) The state drainage engineer and the county zoning administrator shall make a record of each person who examines or requests copies of drainage board records.

(c) The drainage board and the county administrator may destroy obsolete drainage board records.

(d) Before any records may be destroyed under this subsection, the secretary of the drainage board and the county zoning administrator shall give at least 60 days' prior written notice of the proposed destruction to the state historical society, which may preserve records that it determines to be of historical interest, and shall give at least 60 days' prior written notice to the state drainage engineer, who may preserve records determined to be of interest to the department of agriculture, trade and consumer protection.

(5) The state drainage engineer shall examine the records in the possession of all drainage board secretaries and drainage districts and the records received from clerks of court under 1993 Wisconsin Act ... (this act), section 118, and may examine any other records held by any person relating to drainage in this state. The state drainage engineer shall determine the records that are required to be preserved under sub. (4) and make copies of the records. The state drainage engineer shall retain a copy of the records and deliver a copy to the county zoning administrator.

(6) The secretary of the drainage board, under sub. (4), shall provide a copy of drainage board records created after the effective date of this subsection ... [revisor inserts date], to the state drainage engineer and the county zoning administrator.

(7) The county zoning administrator shall maintain the records delivered under sub. (5) and any records provided under sub. (6) as provided under sub. (4).

NOTE: Under current law, the clerk of court, the county treasurer, the drainage board secretary and the register of deeds each retain records pertaining to the drainage board. This bill, in nonstatutory provisions, requires the clerk of court to deliver all drainage records currently in his or her possession to DATCP. The responsibilities of the register of deeds and the county treasurer to retain drainage board records are not affected by this bill.

In order to provide for a more comprehensive and accessible source of drainage records, this bill requires DATCP to promulgate rules for the retention of drainage board records. The state drainage engineer is required to examine all drainage records delivered by the clerks of court and all drainage records currently in the possession of drainage boards and drainage districts and to create files of those records for DATCP and the county zoning administrator. The drainage board secretary is required to provide copies of records created after the effective date of the bill to the state drainage engineer and the county zoning administrator. The zoning administrator and the drainage board secretary are required to maintain certain designated drainage records in perpetuity and any other records for time periods specified in DATCP rules. The special committee concluded that the county zoning administrator should maintain drainage board records because the office of the zoning administrator is accessible to the public and the zoning administrator keeps similar kinds of records.

SECTION 41m. 88.21 (5) of the statutes is amended to read:

88.21 (5) Employ legal counsel, engineers and other assistants. Any engineer employed by the board shall be selected from a list of professional engineers approved by the department of agriculture, trade and consumer protection. The department of agriculture, trade and consumer protection shall furnish each drainage board, upon request, a list of professional engineers whom it considers qualified by training and experience to give competent advice in drainage matters.

SECTION 42. 88.21 (6) of the statutes is amended to read:

88.21 (6) ~~With the consent of the court, purchase~~ Purchase or condemn such lands, whether within or outside a district, as are necessary for the construc-

tion, cleaning out, repair and maintenance of the drainage system and its works. Condemnation shall be as provided by ch. 32.

NOTE: The bill provides an explicit statement that any condemnation of land by the drainage board is subject to the procedures for condemnation of land under ch. 32 to avoid any ambiguity that may result from the reference to ch. 32 in connection only with the condemnation of riparian or flowage rights under s. 88.31 (8) (b). Section 32.04 states that ch. 32 is applicable to "[a]ll acquisition of property in this state" so it is clear that ch. 32 applies to condemnation by the drainage board.

SECTION 43. 88.21 (7) of the statutes is repealed.

NOTE: In the general powers of the drainage board, the bill repeals a provision allowing the drainage board to "report to the court on any matters relative to its functions on which it desires advice".

SECTION 44. 88.21 (9) and (10) of the statutes are amended to read:

88.21 (9) ~~With the consent of the court, purchase~~ Purchase or lease and maintain and operate the equipment and machinery necessary to construct, maintain or repair the drains within the districts under its jurisdiction, including the control of weeds or brush through use of herbicides.

(10) ~~With the consent of the court, purchase~~ Purchase, construct, maintain and operate all levees, bulkheads, reservoirs, silt basins, holding basins, floodways, floodgates and pumping machinery necessary to the successful drainage or protection of any district or of any considerable area thereof, whether located within or outside the district.

SECTION 45. 88.21 (12) of the statutes is created to read:

88.21 (12) Adopt rules and issue orders, which shall be published as a class 1 notice under ch. 985. In addition, any order that pertains to a specific named person or property shall be served on the person or owner of the property in the manner provided for service of a summons under s. 801.11. The court has jurisdiction to enforce an order of the drainage board by injunction or other appropriate relief.

NOTE: The bill creates a new provision in the general powers of the drainage board allowing the drainage board to adopt rules and issue orders and to enforce the orders. Throughout the bill, where the drainage board is given authority to make final decisions without approval or consent of the court, the drainage board effects its decision by issuing an order. This provision also requires that orders specific to a person or property be served on the individual or landowner in the same manner as is provided for service of a summons.

SECTION 45m. 88.21 (13) of the statutes is created to read:

88.21 (13) Authorize legal counsel for the board to represent an individual owner of land with respect to any matter that arises under this chapter.

SECTION 46. 88.215 of the statutes is created to read:

**88.215 Landowner petitions.** The owners of land in a district may petition the drainage board to hold a district meeting. The petition shall be signed by at

least 10% of the owners of land within the district or by the owners of at least 10% of the lands within the district. The drainage board shall either schedule a district meeting to be held within 60 days after receiving the petition or deny the petition, by issuing a published order, within 60 days after receiving the petition. The drainage board may deny the petition only on the grounds that it is unreasonable.

NOTE: The bill creates a new procedure to allow landowners in drainage districts to petition the drainage board for a meeting of the district. This procedure is necessary only if the drainage board and landowners in a drainage district cannot agree informally on the need for or scheduling of a district meeting. The new procedure does not dictate how the meeting date is to be set following a petition. Thus, the procedure is sufficiently flexible that the petition may request a specific date for the meeting or the board may designate the meeting date.

SECTION 47. 88.22 (intro.) and (3) (intro.) of the statutes are amended to read:

**88.22 Power of board to contract with the federal government and other agencies.** (intro.) ~~Subject to the approval of the court, the~~ The drainage board may:

(3) (intro.) ~~With the consent of the department of agriculture, trade and consumer protection, enter~~ Enter into contracts with the U.S. government or an officer or agency thereof to accept the benefits of any federal law pertaining to flood prevention or the conservation, development, utilization and disposal of water. Without restriction by reason of enumeration, ~~such~~ the contracts may provide that the district on whose behalf the contract is negotiated will:

SECTION 48. 88.23 (1) of the statutes is amended to read:

88.23 (1) In addition to the assessments for cost of construction authorized by s. 88.35, the board may issue orders to levy assessments for costs of maintenance and repair or for any other lawful expenditures of a drainage district. ~~All such of the~~ assessments shall be apportioned on the confirmed benefits then in effect in the district assessed ~~and shall be reported to the court as provided in s. 88.06.~~

SECTION 49. 88.23 (2) and (2m) of the statutes are repealed.

NOTE: The bill repeals 2 subsections that pertain to certain assessments that may be levied either with court approval or by a two-thirds vote of the members of the drainage board.

SECTION 49m. 88.23 (2r) of the statutes is created to read:

88.23 (2r) The board may authorize one or more owners of land in a drainage district to prepare a proposed assessment for cost of construction or maintenance and repair.

SECTION 50. 88.23 (3) of the statutes is amended to read:

88.23 (3) Assessments made under this section, ~~when approved by the court,~~ are subject to ss. 88.40 to 88.43. In no case shall may the total assessments against any land exceed the benefits assessed against ~~the same that land~~ unless an interested person agrees to pay such excess and furnishes the court drainage

board with sufficient security ~~therefor substantially as provided in s. 88.34 (4)~~ for the excess benefits or unless the assessment is for the purpose of covering the cost of repair and maintenance as defined in s. 88.63.

SECTION 51. 88.24 (intro.) of the statutes is amended to read:

**88.24 Board to file annual report.** (intro.) On or before December 1 of each year the board shall file with the ~~clerk of court~~ department of agriculture, trade and consumer protection and the county zoning administrator a separate report, for the preceding year ending August 31, on each drainage district under its the board's jurisdiction. ~~Such~~ The reports shall constitute part of the records of the districts reported on, shall be verified by the oath of one or more of the board members, and shall contain:

SECTION 51m. 88.24 (1) of the statutes is repealed and recreated to read:

88.24 (1) A financial statement.

SECTION 51p. 88.27 (1) of the statutes is amended to read:

88.27 (1) Any Except as provided in sub. (1m), any of the following may petition for the organization of a drainage district under this chapter:

(a) The owners of more than one-half in area of the lands, excluding lands owned by this state, proposed to be included within the drainage district.

(b) The majority of landowners within the proposed drainage district, owning at least one-third in area of the lands, excluding lands owned by this state, proposed to be included within such district.

SECTION 51q. 88.27 (1m) of the statutes is created to read:

88.27 (1m) A state agency, as defined in s. 16.61 (2) (d), may not petition for the organization of a drainage district.

SECTION 52. 88.28 (1) (g) of the statutes is amended to read:

88.28 (1) (g) A prayer request for the organization of the drainage district.

SECTION 53. 88.29 (4) and (6) of the statutes are amended to read:

88.29 (4) The board shall fix a time and place of the hearing on the petition, on or conveniently near the lands described in the petition, and shall give notice ~~thereof of the hearing~~ as provided in s. 88.05 (2) (b) to the persons specified in s. 88.05 (4) (c).

(6) The board may adjourn the hearing to such a time and place as that it deems considers convenient or necessary. The board shall either make a public announcement of the time and place of such the adjournment or give notice as provided in s. 88.05 (2) (b) to the persons specified in s. 88.05 (4) (a) and also by publication of the notice once in the vicinity in a newspaper qualified under ch. 985, such publication to be not more than 20 days nor less than 10 days before the date set for the adjourned hearing.

SECTION 54. 88.31 (1) and (2) of the statutes are amended to read:

88.31 (1) ~~If it appears to the board from its investigation or from the hearing held on the petition that it will be is~~ necessary to enter upon any waters that may be navigable, or to acquire and remove any dam or obstruction ~~therefrom from~~ the waters, or to clean out, widen, deepen or straighten any stream that may be navigable, the board shall file with the department of natural resources an application for a permit to do ~~such~~ the work. The board shall file with the application ~~certified copies of the petition for establishment of the drainage district, the report of the board thereon, and such other papers as~~ any information that the board or the department of natural resources ~~deems considers~~ deems considers necessary. The department shall specify by rule the information to be included in an application. The application shall state that the public health or welfare will be promoted by the removal of ~~such the~~ dam or other obstruction or by the straightening, cleaning out, deepening or widening of ~~such the~~ waters and that other public rights in and public uses of ~~such the~~ waters will not be materially impaired. The application shall be duly verified.

(2) Upon receipt of ~~such the~~ application the department of natural resources ~~forthwith~~ shall fix a time and place for a hearing thereon on the application, not less than 3 nor more than 8 weeks from the date of filing, at a place convenient to the interested parties. If the application is for a permit to remove a dam, notice of the hearing shall be given to all interested persons as provided by s. 31.06. In all other cases, the department shall direct the applicant to give notice under s. 88.05 (2) (b) to the persons specified in s. 88.05 (4) (b).

NOTE: The bill adds a requirement for DNR rules on the contents of a permit application. This is intended to reduce the amount of time necessary to obtain a permit by allowing drainage boards to submit reasonably complete permit applications.

SECTION 54m. 88.31 (4m) of the statutes is created to read:

88.31 (4m) The department of natural resources shall grant or deny the permit within 6 weeks after the conclusion of the hearing on the application.

SECTION 55. 88.32 (title) of the statutes is amended to read:

**88.32 (title) Report to the court.**

SECTION 56. 88.32 (3m) of the statutes is created to read:

88.32 (3m) If the area of the proposed district exceeds 200 acres, the report shall be submitted to the department of agriculture, trade and consumer protection before it is filed with the court. Within 45 days after receipt of the report, the department shall return it with a copy of the report prepared under s. 88.11 (3) and (5) with its recommendation for approval or disapproval for the creation of the district.

NOTE: Makes explicit the procedure that is implied by the current statutes regarding organization of a new drainage district in which the drainage board must obtain the report of DATCP on the proposed drainage district, together with the disapproval or approval of DATCP, and submit the report and recommendation to the court.

SECTION 57. 88.33 (2) of the statutes is amended to read:

88.33 (2) Upon receipt of ~~such~~ the petition the court ~~or judge~~ shall fix a time and place of the hearing thereon on the petition and shall cause notice ~~thereof~~ of the hearing to be given as provided in s. 88.05 (1) (b) to the persons specified in s. 88.05 (4) (b). If on ~~such~~ the hearing the court finds that the petition is signed by the required number of owners, that notice of the hearing was properly given, and that the conditions of sub. (3) have been met, it shall enter an order directing that the proceedings to organize the district cease.

SECTION 58. 88.34 (1) of the statutes is amended to read:

88.34 (1) When the board has filed its report with the court, including any reports required by s. 88.11, the court ~~or judge~~ shall fix a time and place of hearing thereon on the report and shall cause notice to be given under s. 88.05 (1) (b) to the persons specified in s. 88.05 (4) (c).

SECTION 59. 88.34 (3) (e) of the statutes is repealed.

NOTE: The bill repeals a requirement imposed on the court, during the proceedings for organization of a drainage district, to order the drainage board to proceed if it finds, among other things, that the permit required from DNR has been obtained if navigable waters are affected. Because the nature of the proceeding before the court regarding organization of a drainage district is preliminary, it is not appropriate to require that the DNR permit be obtained at that point. Rather, the bill requires that the DNR permit be obtained before the commencement of work in a newly organized drainage district as provided under s. 88.35 in the bill and s. 88.62, regarding construction, maintenance and improvement of drains.

SECTION 60. 88.34 (4) of the statutes is amended to read:

88.34 (4) If the court finds the facts stated in sub. (3) (a), (b), (c), ~~(e)~~ and (f) but finds that the cost of construction will exceed 75% of the benefits to be derived from the proposed work, the court nevertheless shall organize the drainage district if, within 10 days, petitioners file with the court a bond with sufficient sureties to be approved by the court and conditioned for the payment of ~~such~~ the excess or deposits and leaves with the court ~~such~~ a sum of money as that the court determines will cover ~~such~~ the excess.

SECTION 61. 88.35 (title), (2) and (3) of the statutes are amended to read:

**88.35 (title) Laying out drains, assessment of benefits and award of damages in newly organized district.**

(2) In laying out the drains the board shall not be confined to the points of commencement, routes or end points of the drains or the number, extent or size of the ~~same~~ drains, or the location, plan or extent of any drain as proposed by the ~~petitions~~ petition under

s. 88.28, but shall locate, design, lay out and plan the ~~same in such drains in the manner as to the board that seems best to the board~~ to promote the public health or welfare and to drain or to protect the lands of the parties interested with the least damage and greatest benefit to all of the affected lands affected thereby. In determining the sufficiency of the depth and capacity of the drains, the board shall consider whether other lands lie above and drain in the direction of, through and along the general course of the proposed drains.

(3) If the board finds that the drainage district, as described in the ~~filed~~ petition under s. 88.28, will not embrace all the lands that will be benefited by the proposed work or that it will include lands that will not be benefited or do not need to be included in the drainage district for any purpose, it may extend or contract the boundaries of the district so as to include or exclude all such lands ~~as the case may be, except that the board shall not so alter the boundaries of the district as to deprive the court of jurisdiction using the procedures in s. 88.78 or 88.80.~~

NOTE: Current s. 88.35 (3) can be interpreted to give the drainage board authority to unilaterally alter drainage district boundaries after the drainage district has been organized by the court under s. 88.34. The bill requires the drainage board to use the procedures in s. 88.78 or 88.80 to annex territory to or withdraw it from a drainage district.

SECTION 62. 88.35 (5m) of the statutes is created to read:

88.35 (5m) If navigable waters are affected by the proposed drainage, the drainage board shall obtain a permit under s. 88.31.

NOTE: The bill adds a provision in s. 88.35 requiring that the DNR permit for work in navigable waters under s. 88.31 be obtained when drainage is constructed in a newly established drainage district.

SECTION 63. 88.35 (6) (intro.) and (7) of the statutes are amended to read:

88.35 (6) (intro.) Upon the completion of its duties under subs. (1) to ~~(5)~~ (5m), the board shall ~~make~~ prepare a written report ~~thereon to the court~~, including a copy of any maps, plans or profiles ~~which that~~ it has prepared. The assessment of benefits and awards of damages shall be set forth in substantially the following form: [See Figure 88.35 (6) following]

(7) If the area of the district exceeds 200 acres, the report shall be submitted to the department of agriculture, trade and consumer protection ~~before it is filed with the court~~. Within ~~10~~ 45 days after its receipt, the department shall return it with its a copy of the report prepared under s. 88.11 (3) and (5) and the department's approval or disapproval of the report prepared under sub. (6).

SECTION 64. 88.36 (title), (1), (2), (4), (5) and (6) of the statutes are amended to read:

**88.36 (title) Hearing on report.** (1) Upon the filing completion of the report provided for in s. 88.35, the ~~court or judge~~ drainage board shall fix a time and place of the hearing thereon on the report and shall

cause notice ~~thereof of the hearing~~ to be given under s. 88.05 (2) (b) to the persons specified in s. 88.05 (4) (c).

(2) At the hearing on the report the ~~court drainage board~~ shall hear all objections ~~thereto to the report~~ by any person who feels aggrieved, ~~subject to the requirements of s. 88.07 (1).~~

(4) If the ~~court drainage board~~ finds that the report requires modification or amendment, it shall ~~order the same to be modified or amended~~ modify or amend the report as the facts warrant ~~and shall confirm the report as amended and corrected.~~

(5) Upon ~~confirmation of a determination by the board that the report is final,~~ the ~~court board~~ shall ~~direct the board to proceed with the work as provided in s. 88.62.~~

(6) ~~No order confirming a report and directing the~~ The board to may not proceed with the work shall be entered unless the court ~~it finds that the cost of construction of the work necessary under such the order will not exceed 75% of the total assessment of benefits against those lands whose assessments of benefits and awards of damages are sought to be confirmed by such the order.~~

SECTION 65. 88.40 (1) of the statutes is amended to read:

88.40 (1) Immediately after the ~~entry of any court order confirming issuance of a drainage board order levying any assessments for costs, whether original or supplemental, the clerk of the court drainage board shall record in the office of the register of deeds in each county wherein in which the assessed lands are situated a certified copy of such the order, including a true description of each parcel of land in that county which that was so assessed and the amount which that it was assessed.~~

SECTION 66. 88.405 of the statutes is created to read:

**88.405 Assessment for connection to district drain.** When any new drain is connected to an existing district drain, whether or not the area drained by the new drain is within the drainage district, the drainage board by order may assess against the newly drained land a reasonable share of the cost of constructing the existing district drain. If an assessment is made under this section and the area drained by the new drain is not within the drainage district, the drainage board shall proceed under s. 88.78 to annex the land to the drainage district.

NOTE: The bill creates a procedure to assess a portion of the previously incurred costs of constructing an existing district drain to lands newly benefitted by connection to the existing drain and requires annexation of the newly drained land if it is not within the drainage district.

SECTION 67. 88.41 (1), (2) (intro.) and (b) and (4) (a) and (b) of the statutes are amended to read:

88.41 (1) All assessments for costs are due and payable at once unless the ~~court drainage board~~ by order directs that the assessments may be paid in instal-

ments. Assessments shall be paid to the county treasurer as treasurer of the drainage district.

(2) (intro.) At the time of ~~confirmation of any report issuing an order making assessments for costs, or at any time thereafter after issuance of the order~~ but before the issuance of bonds or notes which are a lien on the assessments, the ~~court drainage board~~ may order the assessments for costs to be payable in annual instalments. The ~~court drainage board~~ shall order the instalments to be payable in such amounts and at such times as will be convenient for the accomplishment of the proposed work or for the payment of the principal and interest of the notes or bonds of ~~such the drainage district, subject to the following limitations:~~

(b) The first instalment is due and payable on September 1 following the ~~court's drainage board's~~ order directing payment in instalments and one instalment, together with all accrued interest, is due and payable on September 1 of each succeeding year, except that the ~~court drainage board~~ in its order may direct a delay in the commencement of the payment of instalments for the cost of construction to September 1 of some year not more than 5 years after September 1 of the year in which the first payment otherwise would be due.

(4) (a) All assessments for costs shall draw interest at the rate of 6% per year unless the ~~court drainage board~~ orders a different rate.

(b) Interest shall run from the date of confirmation of the assessment unless the ~~court drainage board~~ orders the interest to commence at a later date, but interest shall be waived if the assessment is paid within 60 days after the date of confirmation.

SECTION 68. 88.42 (4) of the statutes is amended to read:

88.42 (4) All drainage assessments collected by the ~~local town, village or city, village or town~~ treasurer shall be settled under s. 74.23, 74.25 or 74.30 with the county treasurer of the county ~~whose court has in which the drainage board with jurisdiction of the district is located, and such local the city, village or town~~ treasurer shall obtain and file the proper receipt ~~therefor for the assessments.~~ The county treasurer shall promptly credit the amounts ~~so received under this subsection~~ to the drainage districts entitled ~~thereto to the amounts.~~

SECTION 69. 88.44 (1) and (2) of the statutes are amended to read:

88.44 (1) ~~Whenever~~ If an interested person petitions the drainage board for review of the validity of any confirmed assessment of order assessing benefits or assessment for costs is questioned and such question is brought to the attention of the court by any interested person, correcting omitted assessments, reassessing benefits or apportioning benefits upon division of a parcel, the court drainage board shall fix a time and place of hearing and require all interested persons to show cause why such the assessment should not be

~~validated. Such be modified. The order to show cause shall be served in such manner and as provided in s. 801.11 upon such persons as the court directs.~~

(2) Any person objecting to the validation of ~~such the assessment must shall~~, on or before the day fixed for the hearing, file a written statement of the person's objections with the ~~clerk of court drainage board~~. The ~~court drainage board~~ shall hear the objections at the time fixed for the hearing and shall enter an order ~~thereon. Such order shall direct directing~~ all necessary amendments, ~~shall cure and curing~~ all defects in the former proceedings, ~~and or~~ shall render valid and binding the former order of ~~confirmation or such order of confirmation as amended by the court.~~

NOTE: The bill expands the scope of the procedures used to contest the validity of assessments. Under the bill, the procedure applies to all actions of the drainage board regarding assessments, including not only the assessment of benefits or costs, but also correcting omitted assessments, reassessing benefits or apportioning benefits upon division of a parcel.

SECTION 70. 88.44 (4) of the statutes is created to read:

88.44 (4) An interested person shall submit a petition under sub. (1) and obtain either the decision of the drainage board under this section or a denial of the petition for a hearing before seeking judicial review of the drainage board's order levying an assessment.

NOTE: Section 88.44 (1) and (2), as amended, recasts the current statute regarding challenges to the validity of assessments as a rehearing procedure before the drainage board; a hearing would have been previously conducted in connection with the original assessment. This change allows landowners in drainage districts a low-cost procedure to correct errors, avoid inequities or supply additional information regarding assessments. The drainage board is protected from multiple rehearing requests by new s. 88.065 (3), which allows the drainage board to dismiss any petition relating to substantially the same subject matter as another petition decided or dismissed by the board within the previous 3 years. Also, the landowner is required to petition the board for a hearing under s. 88.44 (1) before appealing the drainage board's order to the circuit court.

SECTION 71. 88.45 (1) and (2) of the statutes are amended to read:

88.45 (1) Upon learning of an omission to assess benefits or to assess costs or to award damages to any lands in a district, the board shall ~~make such issue an order making the assessments or awards as it deems that the board considers just and report the facts thereof to the court. If the assessment or award is contested, the court shall fix a time and place of hearing on such report and shall direct what notice is to be given to the owners of the lands affected. Thereafter, proceedings shall be had substantially as provided in s. 88.36 (2) to (4).~~

(2) No omission to assess benefits or to assess for costs or to award damages to any lands in a district ~~affects the jurisdiction of the court to confirm a report relating to that district, nor does such omission render renders~~ any assessment in ~~such the~~ district voidable.

SECTION 72. 88.46 (1) and (2) of the statutes are amended to read:

88.46 (1) At any time after the expiration of 5 years from the ~~confirmation of the report order~~ of the board assessing benefits in a drainage district, owners of land in the district may petition the ~~court drainage board~~ for a reassessment of benefits on the ground that the original assessment of benefits is inequitable and unjust. ~~Such The~~ petition shall be signed by at least one-tenth of the owners of land within the district or by the owners of at least one-tenth of the lands within the district.

(2) Upon receipt of a petition meeting the requirements of sub. (1), the ~~court shall direct the board to proceed with the reassessment shall either schedule a hearing on the matter to be held within 60 days after receiving the petition or issue an order denying the petition within 60 days after receiving the petition.~~ If it appears to the board ~~upon such reassessment~~ that the original assessment of benefits throughout the drainage district was uniformly low or substantially so, by reason of the application of a substandard evaluation or other cause, ~~such reassessment may, on a proportional basis, increase the board shall issue an order adjusting~~ all benefits in the district so as to correct ~~such the~~ inequities and injustices. ~~Upon completion of the reassessment, the board shall report the same to the court.~~

NOTE: The bill adds to the current procedures a requirement for the drainage board to respond to a petition for reassessment of benefits by either scheduling a hearing or denying the petition, and requires the board, if the conditions in the statute are met, to issue the reassessment. The bill also deletes a requirement that the reassessment be proportional, because the adjustments necessary to correct inequitable assessments may not be proportional to the former assessment.

SECTION 73. 88.46 (3) of the statutes is repealed.

NOTE: The bill repeals a provision requiring the court to hold a hearing to confirm a drainage board decision regarding reassessment of benefits.

SECTION 74. 88.47 (1) of the statutes is renumbered 88.47 and amended to read:

**88.47 Apportionment of assessments when assessed parcel is divided.** If any tract of land which has been assessed benefits as a unit subsequently is divided into smaller parcels, the board shall issue an order to apportion such the assessment, and any unpaid assessment for costs based thereon, among the several divisions in such a manner as that is equitable.

SECTION 75. 88.47 (2) of the statutes is repealed.

NOTE: The bill repeals a provision allowing the owner of affected lands to request court review of the drainage board decision regarding apportionment of assessments when an assessed parcel is divided. Review of the drainage board decision is provided under the bill under recreated s. 88.09, regarding review of drainage board decisions by certiorari.

SECTION 76. 88.48 (2) of the statutes is amended to read:

88.48 (2) As assessments for costs levied against any ~~town, village or city, village or town~~ become due, the board shall certify such the assessments to the clerk of ~~such town, village or the city, village or town,~~ and the clerk shall place them upon the next tax roll.

~~Whenever such~~ If the assessments exceed one-fourth of one per cent of the assessed value of the property in ~~such town, village or~~ the city, village or town for the last previous assessed valuation, ~~such~~ the assessments shall be paid in instalments of one-fourth of one per cent of ~~such~~ the valuation for each year until paid unless the ~~court~~ drainage board orders them paid in smaller amounts.

SECTION 77. 88.49 of the statutes is amended to read:

**88.49 Assessment of one district by another; judgment against district.** ~~Whenever~~ If one district, by order of the drainage board, has assessed another district for special benefits ~~and such assessment has been confirmed by the court, or whenever, or if a money judgment has been rendered against any district, the clerk of the court in which such judgment was rendered or assessment confirmed shall certify such assessment or judgment to the board having jurisdiction of such district. Thereupon,~~ the board shall assess upon the lands of the district ~~which that~~ is liable a sum that is sufficient to pay the assessment or judgment. The ~~court~~ drainage board may order that ~~such~~ the assessment ~~or judgment~~ be payable in instalments.

NOTE: The bill deletes a provision for assessing money judgments in instalments because the drainage board, unlike the court, does not have jurisdiction to order the satisfaction of a money judgment in instalments. The drainage board must levy the assessments in whatever manner is necessary to satisfy the judgment.

SECTION 78. 88.54 (1) to (4) of the statutes are amended to read:

88.54 (1) At any time after the filing of a petition for organization of a drainage district ~~but before the court issues an order organizing the drainage district,~~ the drainage board may, with the consent of the court, borrow money in the name of the proposed drainage district to defray the expenses of organization.

(2) The board may ~~with the consent of the court~~ borrow money in an amount not exceeding the then unpaid assessments for costs, for the purpose of paying any or all obligations of a drainage district or for refunding existing notes or bonds. The board may secure ~~such~~ the indebtedness by notes or bonds of the district, bearing interest at a rate approved by the ~~court~~ board and running not beyond one year after the due date of the last instalment of the assessments on account of which the money was borrowed. ~~Such~~ The notes and bonds constitute a lien upon all confirmed assessments for costs ~~which that~~ are unpaid at the time the notes are given or bonds issued. Board members are not personally liable on ~~such~~ the notes or bonds.

(3) ~~Whenever~~ If the board desires to borrow money upon the notes or bonds of a drainage district to be paid during a series of years and after the lapse of a period of not more than 3 years, the board shall first publish a class 2 notice, under ch. 985, to invite proposals to furnish the money desired at the most favorable rate of interest or, if ~~bonds or~~ notes or

bonds are issued at a specific rate of interest approved by the ~~court~~ board, proposals to purchase the ~~same~~ notes or bonds at the best premium. If ~~such~~ the advertisement is made without success and if the board ~~has been~~ is unable to sell ~~such~~ the notes or bonds at par or above, the board may, ~~with the approval of the court,~~ sell the ~~same~~ notes or bonds at private sale at the best price it can obtain ~~therefor~~ for them.

(4) If at any time the board finds that a district does not have or will not have sufficient funds on hand to pay any lawful indebtedness of the district when the ~~same~~ indebtedness becomes due, or if any extraordinary emergency requires borrowing, the board ~~shall apply to the court for authority to~~ may borrow money to pay the ~~same~~ indebtedness or meet ~~such~~ the emergency. ~~The court shall authorize such borrowing upon proof of the facts showing the necessity therefor.~~ If the amount to be borrowed does not exceed \$8,000 and the loan does not run beyond one year, the ~~court~~ board may ~~authorize the borrowing~~ borrow the money without holding a hearing ~~on the question~~. In other cases, s. ~~88.06~~ shall ~~apply~~ 88.065 applies. When necessary, additional assessments to pay ~~such~~ the loans shall be made under s. 88.23.

NOTE: The bill retains a provision regarding obtaining the consent of the court in s. 88.54 (1), because this provision relates to borrowing at any time before the court issues an order organizing the drainage district. Consent of the court is appropriate because the court has jurisdiction of the procedure to organize the drainage district. Upon organization of the drainage district, the remainder of the statute applies and the drainage board may borrow money thereafter without the consent of the court.

SECTION 79. 88.54 (5) of the statutes is repealed.

NOTE: Separate tax certificates were eliminated by 1987 Wisconsin Act 378 and replaced by a single master tax certificate. Section 88.54 (5) contains a procedure, now obsolete, that allows the drainage board to use tax certificates as collateral for borrowing and is therefore repealed.

SECTION 80. 88.54 (6) of the statutes is amended to read:

88.54 (6) Except in the case of refunding bonds ~~approved by the court,~~ no evidence of indebtedness of a district running for more than one year is valid unless approved by the attorney general and unless it bears a statement showing ~~such~~ the approval.

SECTION 81. 88.55 of the statutes is amended to read:

**88.55 Refunding district obligations.** (1) The ~~court~~ may, on petition of the board or of the holder of any bond, interest coupon or other district obligation, authorize the board to refund any lawful indebtedness drainage board may refund bonds of the district by taking up and canceling any or all of its outstanding notes and bonds as fast as they become due (or before they are due if the holders thereof will surrender the same) and issue in lieu thereof new notes or bonds of such the district payable in such longer time as the court deems proper. Such new notes and over a term determined by the board. The aggregate principal amount of the new bonds shall not exceed in the



aggregate ~~the principal~~ amount of all ~~notes and the~~ refunded bonds of the district then outstanding and the unpaid accrued interest ~~thereon, and on them.~~ The new bonds shall bear interest at a rate approved by the court board.

(2) When ~~the indebtedness bonds~~ of the district ~~has~~ have been refunded or ~~is are~~ about to be refunded as ~~provided in~~ under sub. (1), the ~~court board~~ may, on petition of one or more landowners or of the board, extend the time in which to pay assessments for construction to September 1 next preceding the due date of a like portion of the refunding bonds which are liens thereon. In such event, the face of all unpaid past due assessments so extended, together with all interest, penalties and charges, shall be a lien on the lands against which the assessments were originally made. The ~~court board~~ may make all orders and do all other things necessary to carry into effect ~~such the~~ extension of time.

SECTION 82. 88.56 (3) of the statutes is amended to read:

88.56 (3) Upon receiving a petition under sub. (2), the court shall enter an order fixing a time not less than 4 months nor more than 6 months ~~thereafter~~ after receipt of the petition within which creditors shall present their claims for examination and allowance. The order shall also fix a time and place for hearing on claims and publication and notice shall be given under s. 88.05 (1) (b) to all creditors of the district whose names and addresses are known.

SECTION 83. 88.61 of the statutes is created to read:

**88.61 Laying out drains, assessment of benefits and award of damages in existing drainage district.** After the organization of a drainage district and the construction of drains under the procedures in ss. 88.35 and 88.36, if the drainage board proposes to construct additional drains in the existing drainage district, it shall prepare reports, assess benefits and damages, conduct a hearing and determine costs and benefits substantially as provided under ss. 88.35 and 88.36.

NOTE: Provides that the procedures for laying out drains in a newly organized drainage district also apply when additional drains are proposed for construction in an existing drainage district. This appears to be the intent of the current statutes but the statutes do not expressly designate the procedure for laying out drains in existing drainage districts.

SECTION 84. 88.62 of the statutes is amended to read:

**88.62 Conditions relative to doing of work.** (1) The ~~court drainage board~~ may authorize the drainage district to do its own work or ~~the board~~ may require the board to enter into contracts to have the work done. ~~The court may in any case require the board to~~ may advertise for bids and shall ~~do so~~ require in all cases where the work to be done will, ~~in the court's opinion,~~ cost in excess of ~~\$5,000~~ \$10,000. When the board is required to advertise for bids, the board shall publish a class 2 notice, under ch. 985, and ~~such other notice~~ as the court directs notices that the board considers

appropriate, and the work shall be let to the lowest responsible bidder unless in the board's opinion the bid is unreasonably high and a lower bid can be obtained. The board may continue the letting of the work from time to time, and may reject any ~~and or~~ all bids.

(2) Before the board or its contractor may enter on lands for the construction of any drain ~~thereon on the~~ lands, any damages awarded to the owners of ~~such the~~ lands in excess of assessments against ~~such the~~ lands for the cost of construction must have been paid or tendered. If the owner is unknown or the board for any other reason cannot safely pay the owner, it may deposit the net damages ~~with the clerk of the court in~~ an escrow account for the benefit of the ~~owners or parties owner or other party who is entitled thereto to the~~ damages, to be paid or distributed ~~as the court directs.~~ Such when payment can be made to the owner or other party or released after 5 years, whichever occurs first. Notwithstanding ch. 177, any funds not claimed in 5 years may be retained by the drainage board for the benefit of the drainage district for which the funds are held, after the board publishes a class 2 notice under ch. 985 and mails notice to the last-known address of each owner or other party regarding the existence of the unclaimed funds. The payment has the same effect as a tender to and acceptance of damages by the person entitled ~~thereto to the~~ damages.

NOTE: The bill increases the minimum project cost that requires competitive bids from \$5,000 to \$10,000, which is the same minimum project cost that applies to competitive bids by towns under s. 60.47 (2) (b).

NOTE: The bill establishes a requirement that the board place any damages awarded to an unknown owner or for an owner who cannot safely be paid by the board into an escrow account and creates a new procedure for the transfer of unclaimed funds to the drainage board for the benefit of the drainage district.

SECTION 85. 88.62 (3) of the statutes is created to read:

88.62 (3) If drainage work is undertaken in navigable waters, the drainage board shall obtain a permit under s. 30.20 or 88.31 or ch. 31, as directed by the department of natural resources.

SECTION 85m. 88.63 (1) of the statutes is amended to read:

88.63 (1) It is the duty of the drainage board to maintain in good condition the drains in all districts under the board's jurisdiction and to repair such drains when necessary. The board shall have all drains under its jurisdiction inspected annually to determine the need for maintenance and repair work. The board shall apportion the cost of such inspection to the various districts involved and the cost shall be paid out of any funds of the district available for maintenance and repair. The board may hire an inspector or authorize one or more owners of land in the drainage district to make the inspection or members of the board may themselves make the inspection.

SECTION 86. 88.63 (4) of the statutes is created to read:

88.63 (4) The drainage board may use the funds assessed for maintenance and repair to pay for the costs of undertaking or defending a lawsuit involving the board, a board member or a drainage district or for representing an owner of land in a drainage district as provided in s. 88.21 (13). The board shall allocate the costs to individual drainage districts in an equitable manner.

NOTE: The bill creates a new procedure that allows the drainage district to use moneys in the maintenance and repair fund to pay the costs of litigation.

SECTION 87. 88.64 of the statutes is created to read:

**88.64 Assessment against municipalities for enlargement or maintenance of drains.** (1) In this section:

(a) "Enlarge" means to increase the capacity of a drain to convey water, including adding facilities such as pumps or lift stations, by performing any necessary construction.

(b) "Municipality" means a city, village or town.

(2) A drainage board may assess a municipality with territory upstream from any drain for any costs of enlarging or maintaining the drain that are attributable to increased water flow from land within the municipality. If the drainage board assesses a portion of the costs of enlarging or maintaining a drain against a municipality, the drainage board shall use the procedure under this section.

(3) The drainage board shall obtain a report prepared by a professional engineer who is selected from the list specified in s. 88.21 (5). The report shall include all of the following:

(a) The construction and costs that are necessary to restore the drain so that it conveys the same amount of water as when most recently constructed or enlarged.

(b) The construction and costs that are necessary to enlarge the drain to convey the flow of water from any land in the drainage district or upstream from the drainage district that has been newly drained since the drain was most recently constructed or enlarged.

(c) The construction and costs that are necessary to enlarge the drain to convey the flow of surface water from upstream sources that represents an increase in flow since the drain was most recently constructed or enlarged.

(d) Of the increased flow identified in par. (c), the amount of that flow that is attributable to each municipality with territory in the watershed above the drain, based proportionally on all of the following:

1. The increased flow into the drain from impermeable surfaces such as roads, parking lots or roofs since the drain was most recently constructed or enlarged, whether or not the impermeable surfaces are within the watershed.

2. The increased flow into the drain from the discharge of wastewater from a sewage treatment plant since the drain was most recently constructed or

enlarged, whether or not the source of the wastewater is within the watershed.

(e) The maintenance costs that are attributable to the flow of surface water from upstream sources that represents an increase in flow since the drain was most recently constructed or enlarged.

(4) Upon completion of the report under sub. (3), the drainage board shall set a time and place for a hearing on the report and shall give the notice under s. 88.05 (2) (b) to the persons specified in s. 88.05 (4) (c) and to the clerk of each municipality identified in the report as responsible for a portion of the costs of enlarging or maintaining the drain. At the hearing on the report, the drainage board shall hear all objections to the report by any aggrieved person. Representatives of a municipality may introduce evidence that tends to establish a different allocation of costs. If the drainage board finds that the report requires modification or amendment, it shall modify or amend the report as the facts warrant.

(5) At the conclusion of the hearing and after completion of the final report, the drainage board shall issue an order directing each municipality to pay the portion of the cost of enlarging or maintaining the drain as determined in the report. If the drainage board orders or allows landowners in the drainage district to pay for the costs of enlarging or maintaining the drain in instalments, the drainage board shall permit a municipality to pay the assessment in instalments. The drainage board shall mail the order to the clerk of each municipality by certified mail.

(6) Any municipality affected by the order may, within 120 days after receipt of the order under sub. (5), request the state drainage engineer to review the final report and order of the drainage board. The state drainage engineer shall complete the review of the final report and order within 120 days after receiving the request from the municipality. The state drainage engineer shall issue a report on whether the drainage board order complies with the report prepared under sub. (3), including a recommendation that the drainage board affirm, modify and affirm or reverse the order. The state drainage engineer shall mail a copy of the report and recommendation to the drainage board and to each municipality that is subject to an order under sub. (5). Upon receiving the state drainage engineer's report and recommendation, the drainage board shall promptly issue an order to affirm, modify and affirm or reverse its previous order and mail the order by certified mail to the clerk of each municipality affected by the order and the state drainage engineer. The municipalities that request the state drainage engineer to review the report and order shall jointly pay the actual and necessary costs of the review and the payment shall be credited to the appropriation under s. 20.115 (7) (ga).

(7) A municipality affected by a drainage board order issued under sub. (5) or (6) may seek review of the order under s. 88.09, except that a municipality

may commence the action within 120 days after receiving the order.

(8) If a municipality pays the costs assessed by an order issued under sub. (5) or (6), it shall pay the costs or make the first payment of the costs on the February 15 following adoption by the municipality of its next annual budget after the order is issued.

SECTION 88. 88.68 (2) of the statutes is amended to read:

88.68 (2) ~~Whenever~~ If the construction of a drain across a public highway makes necessary the construction or reconstruction of a bridge, the drainage board and the officers in charge of maintenance of the highway shall ~~endeavor to come to an agreement as to the most practicable and desirable~~ try to agree on the best method of constructing or reconstructing the bridge. If they are unable to agree, the matter shall be referred to the court for determination submitted to arbitration under ch. 788. If it is determined to reconstruct or add to the bridge ~~existing at the time of such crossing,~~ the district shall pay the costs incident ~~thereto to the reconstruction or addition.~~ If it is determined to construct a new bridge, the drainage district shall pay to the unit of government responsible for the maintenance of the highway ~~such sum as is deemed a sum that is considered~~ equivalent to the value of the bridge in place at the time of the construction of the drain.

NOTE: The bill requires arbitration using the procedures under ch. 788 to resolve disputes between the drainage board and the highway maintenance authorities regarding drains across public highways.

SECTION 89. 88.70 (1) to (4) of the statutes are amended to read:

88.70 (1) ~~Whenever~~ If the owners of land in a part of a drainage district desire a more thorough or different drainage than the drains of ~~such the~~ the district ~~as then constructed or currently provide or than the planned reconstruction will give provide,~~ a majority of ~~such the~~ the owners may petition the board to have specified lands set aside as a subdistrict of ~~such the~~ the drainage district ~~so as in order to permit such a more thorough or different drainage. Thereupon, the board shall examine such lands and report the facts to the court.~~

(2) ~~When the~~ The board has filed its report with the court, ~~the court or judge~~ shall fix a time and place of a hearing ~~thereon on the petition~~ and shall cause notice to be given under s. 88.05 (2) (b) to the persons specified in s. 88.05 (4) (b).

(3) If the ~~court~~ drainage board is satisfied that the public health or public welfare will be promoted by ~~such~~ more thorough or different drainage and that the benefits ~~therefrom of the drainage~~ will exceed the cost of construction, the court drainage board shall order that a subdistrict of such the drainage district be formed, give it a name or number; and fix its boundaries and order the board to report in accordance with sub. (4).

(4) ~~Upon being notified of the order~~ After organizing the subdistrict, the board shall prepare a plan and

specifications for ~~such the~~ the more thorough or different drainage, estimate the cost of construction ~~thereof of the drainage,~~ estimate the cost of all additional bridges ~~thereby~~ made necessary ~~because of the drainage,~~ and assess benefits against and award damages to all lands in ~~such the~~ the subdistrict ~~that are~~ benefited or damaged by ~~such the~~ the more thorough or different drainage. Assessments and awards shall be made substantially as provided in s. 88.35. ~~The board shall file its report with the court and thereupon proceedings shall be had substantially as provided in s. 88.36.~~

SECTION 90. 88.71 (1m) of the statutes is created to read:

88.71 (1m) If the drainage board is satisfied that the public health or welfare will be promoted by the enlarged or supplemental drains and that the benefits from the drains will exceed the cost of construction, the drainage board shall order the construction of the enlarged or supplemental drains.

SECTION 91. 88.71 (2) of the statutes is amended to read:

88.71 (2) The board shall estimate the cost of construction of ~~such the~~ the enlargements or supplemental drains together with the cost of all additional bridges that ~~such the~~ the district must build and shall assess ~~such the~~ the costs against the lands benefited, as provided in ~~s. 88.35 and 88.36~~ ss. 88.35 and 88.36 and in this subsection. The board shall award to each parcel of land the damages caused to ~~it by such the land by the supplemental work~~ and shall assess benefits against the lands benefited by the supplemental work. ~~Such The~~ Such The benefits shall be so apportioned and assessed so that all assessed lands are required to pay a sum total for the construction of the total drainage proportionate to the actual benefits received by ~~such the~~ the lands from the total drainage.

SECTION 92. 88.71 (3) and (4) of the statutes are repealed.

NOTE: The repealed statutes involve specific procedures for a board report to the court and requiring the court to hold a hearing on the issue of enlarging or supplementing existing drains. Under the current statute, the standard for court approval of enlarged or supplemental drains is the general standard under s. 88.06 that the work would be in the best interests of the district. New s. 88.71 (1m) creates a standard for the drainage board to approve enlarged or supplemental drains which is the same as the standard for approving a subdistrict to obtain more thorough drainage under current s. 88.70 (3).

SECTION 93. 88.72 (1) (intro.), (2) to (4) and (5) (intro.) and (d) of the statutes are amended to read:

88.72 (1) (intro.) ~~The board or the~~ owners of more than one-tenth of the lands within any district may file with the ~~court~~ drainage board a petition setting forth:

(2) Upon receiving ~~such a~~ such a petition under sub. (1), the ~~court~~ drainage board shall fix a time and place of a hearing ~~thereon on the petition~~ and shall cause notice ~~thereof of the hearing~~ to be given under s. 88.05 (2) (b) to the persons specified in s. 88.05 (4) (a), to the owner of any dam sought to be removed and to all riparian owners affected ~~thereby~~ by the removal.

(3) At the hearing on the petition, any interested person may appear and contest its sufficiency and the necessity for the work. If the ~~court~~ drainage board finds that the petition has the proper number of signers and that to afford an adequate outlet it is necessary to remove dams or other obstructions from waters and streams which may be navigable, or to straighten, clean out, deepen or widen any ~~such~~ waters or streams either within or beyond the limits of ~~such the~~ district, ~~the court shall direct the board to~~ shall file an application with the department of natural resources as provided in s. 30.20 or 88.31, as directed by the department of natural resources. Thereafter, proceedings shall be had as provided in s. 30.20 or 88.31 insofar as the same is applicable.

(4) Within 30 days after the department of natural resources has issued a permit under s. 30.20 or 88.31, the board shall proceed to estimate the cost of ~~such the~~ work, including the expenses of the proceeding together with the damages ~~which that~~ will result from the work, and shall ~~file with the court,~~ within a reasonable time, ~~a report in writing in which it shall~~ award damages to all lands damaged by ~~such the~~ work and assess the cost of ~~such the~~ work against the lands in ~~such the~~ district in proportion to the assessment of benefits then in force.

(5) (intro.) ~~Upon the filing of the report with the court, proceedings shall be had thereon as prescribed by s. 88.06, except that the court~~ The drainage board may grant the petition and order the additional work done only if the ~~court~~ drainage board is satisfied that:

(d) A petition, which is the same in substance or effect as the current petition, has not previously been denied by ~~a court having jurisdiction of the matter the~~ drainage board.

SECTION 94. 88.73 of the statutes is amended to read:

**88.73 Providing drainage for lands assessed but not adequately drained.** (1) Any person owning lands ~~which that~~ have been assessed for costs of construction but which are in need of drainage because of being shut off from access to any district drain or because the slope of the land is such that it is impractical to drain ~~such the~~ land into a district drain without crossing the lands of others may file with the ~~clerk of court~~ drainage board a verified petition stating such facts, including a description of the lands sought to be drained and asking that a drain be laid out from the petitioner's lands to the district drain.

(2) The petitioner and all persons whose lands will be directly affected by the proposed drain may, in writing, waive any or all notices of hearings and may consent to ~~the immediate filing of a report as provided in s. 88.32 and to an immediate hearing thereon on the~~ petition, upon which the ~~court~~ drainage board may enter an order ~~confirming the same as provided in s. 88.34 to construct the drain.~~ The board's order shall include all of the provisions of s. 88.35 (1). If no writ-

ten waiver or consent is filed by all persons immediately interested, the procedure on a petition under this section shall be substantially as outlined in ss. ~~88.27 to 88.35 and~~ 88.36.

NOTE: Under current law, a person who owns lands within an existing drainage district that are in need of drainage because the lands are shut off from access to the district drain or because the slope of the land makes it impractical to drain into a district drain may petition for an order to obtain access to the district drain. The current statute treats this petition, unless the consent of all parties is obtained, as a petition for organizing a new drainage district, which includes a court hearing. The bill simplifies the procedure by eliminating the procedures in court and requiring only that the drainage board follow the procedures for construction of drains in a newly organized drainage district.

SECTION 95. 88.77 (1) of the statutes is amended to read:

88.77 (1) ~~Whenever~~ If owners of lands adjacent to any drainage district ~~desire such~~ want the lands to be annexed to the district, they may file with the ~~clerk of court~~ drainage board a petition for annexation. ~~Such~~ The petition must be signed either by more than one-half of all of the owners of lands in the proposed annex, ~~which signers must who shall~~ represent more than one-third of the lands in the proposed annex, or by the owners of more than one-half of the lands in the proposed annex. The petition shall describe the lands sought to be annexed and shall set forth the names of the owners of all ~~such of those~~ lands so far as ~~they the~~ owners are known. The petition shall be accompanied by a plat showing the original district and the proposed annex.

SECTION 96. 88.77 (2) of the statutes is repealed and recreated to read:

88.77 (2) If the undrained portion of the area proposed to be annexed to the district exceeds 200 acres, the drainage board shall request the report described under s. 88.11 (3) and (5) from the department of agriculture, trade and consumer protection on the annexation. Within 60 days after the request, the department shall prepare and return a copy of the report and its approval or disapproval, as provided under s. 88.35 (7).

SECTION 97. 88.77 (3) to (6) of the statutes are created to read:

88.77 (3) When the drainage board receives the reports required by s. 88.11, the board shall fix a time and place of a hearing on the petition under sub. (1) and shall cause notice of the hearing to be given under s. 88.05 (2) (b) to the persons specified in s. 88.05 (4) (c).

(4) The drainage board shall issue an order annexing the territory to the drainage district if at the hearing the board finds all of the following facts:

- (a) That the petition has sufficient signers.
- (b) That the lands described in the petition, together with any additional lands recommended by the board for drainage, will be improved by the proposed annexation.

(c) That the public health or public welfare will be promoted by the annexation.

(d) That the cost of construction will not exceed 75% of the benefits to be derived from the proposed work.

(e) That the proposed work will not materially injure or impair fish or wildlife habitat, scenic beauty, the conservation of natural resources or other public rights or interests.

(5) If the board finds the facts stated in sub. (4) (a) to (c) and (e) but finds that the cost of construction will exceed 75% of the benefits to be derived from the proposed work, the board nevertheless shall annex the territory to the drainage district if, within 10 days of the order being issued under sub. (4), the petitioners file with the board a bond with sufficient sureties to be approved by the board and conditioned for the payment of the excess or the petitioners deposit and leave with the board a sum of money that the board determines will cover the excess.

(6) Upon issuance of the order annexing the territory to the drainage district, the drainage board shall proceed as provided under ss. 88.35 and 88.36.

NOTE: Current law requires the annexation of lands to a drainage district upon petition of the landowners to be implemented using all of the procedures for organization of a new drainage district, including a hearing by the court. The bill eliminates court involvement and allows the drainage board to make a decision approving annexation of the lands using the same decision-making criteria as provided under s. 88.34, regarding organization of a drainage district and, thus, substantially simplifies these procedures.

SECTION 98. 88.78 (2) to (4) of the statutes are amended to read:

88.78 (2) ~~The board or any~~ Any owner of land within the district may file with the ~~court board~~ a petition to have ~~such~~ the benefited lands annexed to the district and assessed benefits and assessed for costs as other lands in the district. The petition shall describe the benefited lands and how they are benefited. Upon the filing of ~~such~~ the petition, the ~~court drainage district~~ shall ~~enter issue~~ an order directing that the owners of ~~such~~ the benefited lands be notified of the filing of ~~such~~ the contents of the petition and of the contents thereof and requiring ~~such~~ the owners to show cause at a fixed time and place ~~therein fixed~~, not less than 20 days after ~~such~~ the petition is filed, why their lands should not be brought into the district and assessed.

(3) Any owner of lands sought to be annexed may object to the petition at the hearing thereon. If the ~~court drainage board~~ is satisfied that ~~such~~ and or all of ~~the lands or any of them~~ are receiving benefits from any district drain, the ~~court drainage board~~ shall so find in writing and shall issue an order requiring that the benefited lands to be made a part of the district.

(4) ~~After the time for appeal from the court's order is past, the~~ The board shall assess benefits and assess for costs and award damages to each tract of the annexed lands and ~~shall make a report thereon to the~~

~~court for its approval. Thereafter, proceedings shall be had substantially as provided in s. 88.06.~~

SECTION 99. 88.79 (title), (1) and (3) of the statutes are amended to read:

**88.79 (title) Consolidation of drainage districts in process of organization.** (1) Two or more drainage districts petitioned for or in the process of organization ~~or fully organized~~ may, upon order of the court, be consolidated to form a single drainage district. ~~Such~~ The order of consolidation may be issued only after a public hearing as specified in this section.

(3) The court ~~or judge~~ shall fix a time and place of a hearing on the proposed consolidation and shall cause notice ~~thereof of the hearing~~ to be given under s. 88.05 ~~(3) (1) (b) to the person persons~~ specified in s. 88.05 (4) (b). If the court after the hearing is of the opinion that the drainage districts would be benefited by the proposed consolidation, it shall so order, giving a name to the consolidated district. ~~Thereafter, such court shall have jurisdiction of the consolidated district.~~

NOTE: Current law contains procedures for the consolidation of drainage districts both in the process of organization and that are already organized. This bill retains s. 88.79 as the procedure for consolidation of drainage districts currently in the process of organization and creates new s. 88.791, establishing procedures for the consolidation of existing drainage districts.

SECTION 100. 88.79 (4) to (6) of the statutes are renumbered 88.791 (4) to (6), and 88.791 (4), as renumbered, is amended to read:

88.791 (4) Upon entry of the order of consolidation, the records of the districts so consolidated shall be ~~certified to the clerk of the court and such records thereafter are~~ the records of the consolidated district.

SECTION 101. 88.791 of the statutes is created to read:

**88.791 Consolidation of existing drainage districts.**

(1) Two or more existing drainage districts may, upon an order issued by the drainage board, be consolidated to form a single drainage district. An order of consolidation may be issued only after a public hearing as specified in this section.

(2) The consolidation process may be initiated by a petition that is signed by the owners of at least 10% of the lands in each of the districts sought to be consolidated.

(3) The drainage board shall fix a time and place of a hearing on the proposed consolidation and shall cause notice of the hearing to be given under s. 88.05 (2) (b) to the persons specified in s. 88.05 (4) (b). If after the hearing the drainage board is of the opinion that the drainage districts would be benefited by the proposed consolidation, it shall so order, giving a name to the consolidated district.

SECTION 102. 88.80 (1) (intro.), (2) and (3) of the statutes are amended to read:

88.80 (1) (intro.) Any person owning lands within a drainage district may, ~~with the consent of the court~~

under an order issued by the drainage board, withdraw ~~such~~ the lands from the district if:

(2) The petition for the withdrawal shall be filed with the board. The board shall determine whether all benefits assessed against the land have been paid ~~and, if it so finds, shall file the petition with the court together with a report containing the board's recommendation as to the disposition of the petition.~~

(3) When the petition ~~and report~~ has been filed, the ~~court or judge~~ drainage board shall fix a the time and place of a hearing ~~thereon~~ on the petition and shall cause notice ~~thereof~~ of the hearing to be given under s. 88.05 (2) (b) to the persons specified in s. 88.05 (4) (b). If ~~on such hearing~~ the court drainage board finds that the conditions of sub. (1) have been met, it shall enter issue an order detaching the lands from the district. The court drainage board may require the petitioner to pay the expenses connected with the hearing.

SECTION 103. 88.81 (1) of the statutes is amended to read:

88.81 (1) (a) The owners of land representing 90% or more of the confirmed benefits in a drainage district, excluding benefits received by land owned by this state, may file with the court drainage board a petition requesting that the board conduct no further proceedings ~~be had and that~~ and incur on behalf of the district no further expense ~~be caused against the district~~ if the petition is filed within 2 years after the order organizing the district is issued under s. 88.34.

(b) The owners of land representing 67% or more of the confirmed benefits in a drainage district, excluding benefits received by land owned by this state, may file with the court drainage board a petition requesting that the board conduct no further proceedings ~~be had and that~~ and incur on behalf of the district no further expense ~~be caused against the district~~ if the petition is filed at least 2 years after the order organizing the district is issued under s. 88.34.

(c) Upon receipt of a petition, the court drainage board shall fix a time and place of a hearing ~~thereon~~ on the petition and shall cause notice ~~thereof~~ of the hearing to be given under s. 88.05 (2) (b) to the persons specified in s. 88.05 (4) (b).

SECTION 104. 88.81 (1) (bm) of the statutes is created to read:

88.81 (1) (bm) Except as provided in par. (bs), the owner of any land in a drainage district may file with the drainage board a petition requesting that the board conduct no further proceedings and incur on behalf of the district no further expense if the petition is filed at least 20 years after the latest assessment for costs against land in the drainage district.

SECTION 104g. 88.81 (1) (bs) of the statutes is created to read:

88.81 (1) (bs) A state agency, as defined in s. 16.61 (2) (d), may not petition for the suspension of operations of a drainage district.

SECTION 105. 88.81 (2) and (3) of the statutes are amended to read:

88.81 (2) If ~~on such~~ after the hearing the court drainage board finds that the petition is signed by the required number of owners, that notice of the hearing was properly given, and that the conditions of sub. (3) have been met, it shall enter issue an order directing that no more work be done in or expense ~~created against such~~ incurred on behalf of the district. Such ~~The~~ order does not dissolve the district or in any way affect existing contracts. The district remains liable for all its debts existing at the time of entry issuance of the court drainage board order suspending operations, and the drainage board shall continue to levy such additional assessments for costs as are necessary to meet existing obligations.

(3) As a condition of issuing the order under sub. (2), the court drainage board shall require the petitioners under this section to pay the expenses of the hearing under this section and all expenses, if any, incurred in connection with specific current projects whose completion would be affected by the court drainage board order.

SECTION 105t. 88.82 (1) (a) and (b) of the statutes are amended to read:

88.82 (1) (a) The owners of land representing 90% or more of the confirmed benefits in a drainage district, excluding benefits received by land owned by this state, may file with a court having jurisdiction on this matter a petition for the dissolution of the district if the petition is signed by those owners and if the petition is filed within 2 years after the order organizing the district is issued under s. 88.34.

(b) The owners of land representing 67% or more of the confirmed benefits in a drainage district, excluding benefits received by land owned by this state, may file with a court having jurisdiction on this matter a petition for the dissolution of the district if the petition is signed by those owners and if the petition is filed at least 2 years after the order organizing the district is issued under s. 88.34.

SECTION 106. 88.82 (1) (bm) of the statutes is created to read:

88.82 (1) (bm) Except as provided in par. (bs), the owner of any land in a drainage district may file with the court a petition for the dissolution of the district if the petition is filed at least 20 years after the latest assessment for costs against land in the drainage district.

SECTION 106g. 88.82 (1) (bs) of the statutes is created to read:

88.82 (1) (bs) A state agency, as defined in s. 16.61 (2) (d), may not petition for the dissolution of a drainage district.

SECTION 107. 88.82 (1) (d) of the statutes is amended to read:

88.82 (1) (d) Upon the filing of a petition for dissolution under this section, the ~~court or judge~~ shall fix a

the time and place of a hearing on this matter the petition and shall cause notice of the hearing to be given under s. 88.05 (1) (b) to the persons specified under s. 88.05 (4) (b).

SECTION 107r. 88.82 (3) of the statutes is amended to read:

88.82 (3) If the court is satisfied upon the hearing that the conditions stated in sub. (2) have been met, that the petition is signed by the required number of owners, and that the public welfare will be promoted by dissolution of the district, it shall enter an order dissolving the drainage district. If the court enters an order dissolving the drainage district, it shall order dissolution of the entire drainage district and may not order dissolution of part of the district.

SECTION 108. 88.83 (1) to (4) of the statutes are amended to read:

88.83 (1) The owners of a majority of the land in any drainage district located entirely within the corporate limits of a city or village may petition the court drainage board having jurisdiction of such the district to transfer jurisdiction thereof to the city or village.

(1m) The owners of a majority of the land lying within the corporate limits of a city or village in any drainage district located partially within the corporate limits of a city or village may petition the court drainage board having jurisdiction of such the district to transfer jurisdiction of that part of the district located within the city or village to the city or village if the district and the city or village are in agreement regarding the terms of transfer.

(1r) The owners of a majority of the land lying within the limits of a town in any drainage district located partially within the limits of such the town may petition the court drainage board having jurisdiction of such the district to transfer jurisdiction of that part of the district located within the town to the town if the district and the town are in agreement regarding the terms of transfer. The provisions of subs. (3), (4) and (5) governing the transfer of a section of a drainage district to a city or village are applicable to a transfer under this subsection.

(2) Upon receiving a petition under this section the court or judge drainage board shall fix a the time and place of the hearing thereon on the petition and shall cause notice thereof of the hearing to be given under s. 88.05 (2) (b) to the persons specified in s. 88.05 (4) (b).

(3) If the court drainage board finds upon the hearing that the petition is signed by the owners of a majority of the land in the district, or by a majority of the owners in that part of the district lying within the corporate limits of a city or village, it shall issue an order transferring jurisdiction of such the district or part thereof, to such of the district to the city or village. Thereupon, if such If the order has transferred transfers jurisdiction of the entire district, such the drainage district shall cease to exist as a district under this chapter and shall automatically come under the jurisdiction of the governing body of the city or village

in which the district is located. If the order ~~has transferred~~ transfers jurisdiction of only a part of the district, the section transferred shall automatically come under the jurisdiction of the governing body of the city or village in which the district is located. ~~Thereafter~~ After a transfer, all proceedings with reference to ~~such the~~ the drainage district or part ~~thereof, of the~~ district shall be under the city or village drainage law.

(4) As an alternative, proceedings covered by this section may be initiated by a resolution ~~by of~~ of the governing body of ~~any a~~ a city or village. ~~Such~~ The resolution shall state that ~~such the~~ the city or village is willing to accept ~~such farm~~ the drain or part ~~thereof of the~~ drain and to administer ~~the same~~ it under the laws pertaining to the operation of drains by ~~such the~~ the city or village, and that the public interest requires that ~~such the~~ the city or village take over the operation of ~~such the~~ the drain or part ~~thereof.~~ Such of the drain. The resolution shall be published ~~once in a newspaper having general circulation in such city or village as a class 1 notice under ch. 985.~~ once in a newspaper having general circulation in such city or village as a class 1 notice under ch. 985. The city or village may petition the court drainage board having jurisdiction of such the drain ~~for to issue~~ to issue an order transferring jurisdiction of the district or part ~~thereof of the~~ district to the city or village. No hearing ~~shall~~ may be held on the petition until 30 days have elapsed from the date of ~~such~~ the publication of the notice. A copy of ~~such the~~ the petition, together with a copy of the resolution, shall be served on the county clerk of the county in which ~~such the~~ the drain is located, and also upon the board having jurisdiction of ~~such the~~ the drain. ~~Upon such~~ After the hearing the court drainage board may issue an order transferring jurisdiction of ~~such the~~ the drain or part ~~thereof to such of the~~ of the drain to the city or village. ~~Thereupon, if such If an order has transferred~~ is issued that transfers jurisdiction of the entire district, ~~such the~~ the drainage district shall cease to exist as a district under this chapter and shall automatically come under the jurisdiction of the governing body of the city or village in which the district is located. If the order ~~has transferred~~ transfers jurisdiction of only a part of the district, the section transferred shall automatically come under the jurisdiction of the governing body of the city or village in which the district is located. ~~Thereafter~~ After a transfer, all proceedings with reference to ~~such the~~ the drainage district or part ~~thereof of the~~ district shall be under the city or village drainage law.

SECTION 109. 88.87 (2) (c) of the statutes is amended to read:

88.87 (2) (c) ~~Whenever any county, town, If a~~ city, village, town, county or railroad company or the department of transportation constructs and maintains a highway or railroad grade not in accordance with par. (a), any property owner damaged ~~thereby by~~ by the highway or railroad grade may, within 90 days 3 years after the alleged damage occurred, file a claim with the appropriate governmental agency or railroad company. ~~Such~~ The claim shall consist of a sworn statement of the alleged faulty construction and a



legal description, sufficient to determine the location of the lands, of the lands alleged to have been damaged by flooding or water-soaking. Within 90 days after the filing of ~~such~~ the claim, the governmental agency or railroad company shall either correct the cause of the water damage, acquire rights to use the land for drainage or overflow purposes, or deny the claim. If the agency or company denies the claim or fails to take any action within 90 days after the filing of the claim, the property owner may bring an action in inverse condemnation under ch. 32 or sue for such other relief, other than damages, as may be just and equitable.

NOTE: This statute provides a claims process for use when land is flooded by the change in grade of a highway or railroad. The current statute requires a claim to be filed within 90 days after the damage occurred and a legal description of the property to be included in the claim. The court of appeals has held that the 90-day time limit and the legal description are mandatory conditions in this procedure. See *Van v. Town of Manitowoc Rapids*, 150 Wis. 2d 929, 442 N.W. 2d 557 (Ct. App. 1989).

The special committee concluded that, if construction occurs in the winter or in a dry season, the property owner may have no way to learn of the damage until after the 90-day period has passed. Therefore, the bill changes the statute to provide a 3-year period for filing a claim, instead of a 90-day period, to allow the property owner sufficient time to discover the damage. Also, the requirement to provide a legal description of the lands is not necessary because property is most commonly located by street address or other similar means.

SECTION 110. 88.87 (2) (d) of the statutes is created to read:

88.87 (2) (d) Failure to give the requisite notice by filing a claim under par. (c) does not bar action on the claim if the city, village, town, county, railroad company or department of transportation had actual notice of the claim within 3 years after the alleged damage occurred and the claimant shows to the satisfaction of the court that the delay or failure to give the requisite notice has not been prejudicial to the defendant city, village, town, county, railroad company or department of transportation.

NOTE: Provides that the failure to give notice of a claim for damages due to a change in a highway or railroad grade does not bar the claim if the defendant had actual notice of damage within the new 3-year period for filing a claim.

SECTION 111. 88.89 (2) to (5) of the statutes are amended to read:

88.89 (2) The drainage board or the owner of any land upon which water is set back or diverted by the obstruction ~~mentioned~~ described in sub. (1) may serve notice upon the owner or maintainer of the embankment, grade, culvert or bridge to enlarge the opening for the waterway or to make new openings ~~so as in order~~ to permit the water to pass without being set back or diverted onto the lands of the district. If the owner or person maintaining the embankment, grade, culvert or bridge fails to comply with the directive of the notice within 60 days after receiving the service thereof notice, the drainage board on its own behalf, or on petition of the injured landowner, may

~~report the facts to the court and petition the court to order the owner or maintainer to enlarge the waterway or to provide new openings through the embankment or grade~~ conduct a hearing under sub. (3).

(3) Upon receipt of a ~~report and~~ petition under sub. (2), the ~~court or judge~~ drainage board shall fix a the time and place of a hearing ~~thereon~~ on the petition and shall issue an order to the owner or maintainer of the embankment, grade, culvert or bridge to show cause why an order directing the work to be done should not be issued in accordance with the petition. At least 10 days before the time fixed for the hearing on the petition, ~~such~~ the order to show cause shall be served on the owner or maintainer, or on both if both are named in the petition, as prescribed in s. 801.11 for the service of a summons.

(4) If the ~~court~~ drainage board is satisfied that the embankment, grade, bridge or culvert so obstructs the watercourse or draw that it causes water to be set back or diverted upon lands in the drainage district, the ~~court~~ drainage board shall issue an order to the owner or maintainer of such the embankment, grade, bridge or culvert to enlarge the waterway or construct a new waterway through the same embankment, grade, bridge or culvert, as the facts warrant. The period of time that ~~such~~ the embankment, grade, bridge or culvert has been in existence is no defense to a proceeding under this section.

(5) Any person who fails to comply with ~~the an~~ order issued ~~by the court~~ under this section ~~may be punished as for contempt and also~~ is liable to the injured party for all damages caused by ~~such~~ the failure.

SECTION 112. 88.92 (1) of the statutes is amended to read:

88.92 (1) Except as provided in s. 88.93 no person ~~shall~~ may connect any drain with a district drain, extend any drain that connects with a district drain or remove any spoil bank except under written plans and specifications approved by the drainage board and under any conditions imposed by the drainage board. The drainage board may issue an order directing the removal or modification of a drain connected or extended in violation of this section or issue an order directing the restoration of any spoil bank removed in violation of this section, including violations that occurred before the effective date of this subsection .... [revisor inserts date].

NOTE: The bill states explicitly that the current prohibition against connecting a drain with a district drain without the approval of the drainage board also applies to the extension of a drain that is connected to a district drain.

The bill also authorizes the drainage board to impose conditions on the connection or extension of a drain, or the removal of spoil banks. For example, the drainage board could impose a condition requiring annexation of the territory to the drainage district if the territory had been drained by connection to a district drain.

The bill authorizes the drainage board to issue an order requiring the correction of a violation of the statute. As provided under s. 88.21 (12), which is created by this bill, a court

may enforce an order of the drainage board by injunctive relief.

SECTION 113. 88.92 (2) of the statutes is renumbered 88.92 (2) (b) and amended to read:

88.92 (2) (b) Any person ~~violating who violates~~ sub. (1) ~~may be fined not more than \$50 and~~ is liable to the district for all damages caused by ~~such the~~ violation.

SECTION 114. 88.92 (2) (a) of the statutes is created to read:

88.92 (2) (a) In this subsection, "damages" includes the payments that the drainage district would have received during the time that the illegal connection or extension existed if the territory drained by the illegal connection or extension had been annexed to the district and an assessment for connection of the drain under s. 88.405 had been levied.

NOTE: The bill deletes a criminal penalty for unapproved connection to a drain or removal of spoils. The bill also provides that the measure of damages for an illegal connection or extension of district drains includes payments that the district would have received if the illegally drained territory had been annexed to the district and an assessment for capital costs of the district drains under new s. 88.405 had been levied.

SECTION 115. 88.94 (2) of the statutes is amended to read:

88.94 (2) After receiving the petition the drainage board or supervisors of ~~such the~~ town shall promptly fix a ~~the~~ time and place of ~~a hearing thereon on the petition~~ and shall give notice ~~thereof of the hearing~~ under s. 88.05 (2) (b) to the owners and occupants of all lands through or along which the drain may pass and to the persons specified in s. 88.05 (4) (a).

SECTION 116. 893.93 (4) of the statutes is created to read:

893.93 (4) An action by a drainage board for damages under s. 88.92 (2) shall be commenced within 3 years after the drainage board discovers the fact, or with the exercise of reasonable diligence should have discovered the fact of the damage, whichever comes first, or be barred.

NOTE: The bill creates a statute of limitations for an action by a drainage board to recover damages for unapproved connections to or extensions of drains in a drainage district, or unapproved removal of spoils. None of the current statutes of limitation clearly applies to this situation.

SECTION 117. 895.46 (8) of the statutes is created to read:

895.46 (8) The protection afforded by this section applies to any owner of land within a drainage district

established under ch. 88 who undertakes work on a drain if the work is approved by the drainage board.

NOTE: Section 895.46 (1) requires a political subdivision of the state to reimburse its officers or employes for any judgments against them for acts within the scope of their duties and for associated attorney fees. This statute is clearly applicable to a member or employe of a drainage board. However, much of the work on individual drainage projects is undertaken by landowners within a drainage district. The landowners may either be paid for the work or may do it as an in-kind contribution to the project. In either case, it is not clear that the landowner in this situation is an "employe" of the drainage board so as to enjoy the protection of s. 895.46 (1). This bill makes s. 895.46 (1) explicitly applicable to landowners doing work on a drainage district project.

SECTION 118. **Nonstatutory provisions; transfer of drainage records.** (1) Not later than the first day of the 7th month beginning after the effective date of this subsection, the clerk of court for each circuit court having jurisdiction of the proceedings in a drainage district under chapter 88, 1991 stats., or chapter 89, 1961 stats., shall transfer to the department of agriculture, trade and consumer protection any records in the possession of the clerk of court that pertain to the drainage board or to any drainage district.

SECTION 119. **Nonstatutory provisions; agriculture, trade and consumer protection.** (1) The authorized FTE positions for the department of agriculture, trade and consumer protection are increased by 1.5 GPR project positions for the purpose of performing the duties under section 88.19 (4) to (6) of the statutes for the period beginning on the effective date of this subsection and ending on December 31, 1997, to be funded from the appropriation under section 20.115 (7) (a) of the statutes.

SECTION 120. **Appropriation changes.** (1) In the schedule under section 20.005 (3) of the statutes for the appropriation to the department of agriculture, trade and consumer protection under section 20.115 (7) (a) of the statutes, as affected by the acts of 1993, the dollar amount is increased by \$44,300 for fiscal year 1994-95 to fund 1.5 FTE GPR project positions authorized under SECTION 119 (1) of this act.

SECTION 121. **Initial applicability.** The treatment of section 88.172 of the statutes first applies to causes of action which accrue on the effective date of this SECTION.