

No. 788, A.]

[Published June 27, 1913.

CHAPTER 579.

AN ACT to repeal sections 1359, 1359a, 1360, 1361, 1362, 1362a, 1363, 1363n, 1364, 1365, 1366, 1367, 1368, 1369, 1370, 1371, 1371a, and to create twenty new sections of the statutes to be numbered sections 1359, 1360, 1361, 1362, 1363, 1364, 1365, 1366, 1367, 1367a to 1367k, inclusive, and 1368 of the statutes, relating to town drains, and providing a penalty.

The people of the State of Wisconsin, represented in Senate and Assembly, do enact as follows:

SECTION 1. Sections 1359, 1359a, 1360, 1361, 1362, 1362a, 1363, 1363n, 1364, 1365, 1366, 1367, 1368, 1369, 1370, 1371 and 1371a of the statutes are repealed.

SECTION 2. There are added to the statutes twenty new sections to be numbered and to read: Section 1359. Whenever any six or more landowners in any town, one of whom shall be an owner of land affected by the proposed drainage, wish to have a ditch, or drain or dyke or other work laid out or watercourse enlarged in said town for the purpose of draining any marsh, swamp or overflowed lands lying within said town, or for the purpose of preventing erosion or the depositing of sand, sediment, or debris, they shall make such application in writing to the supervisors of said town, which application shall set forth:

- (1) The necessity of the proposed work, describing the same;
- (2) A map of the boundary of the area proposed to be drained;
- (3) The location of the proposed drain or drains;
- (4) A profile of the proposed drain or drains;
- (5) A name for the proposed drainage;
- (6) The names of the owners of the lands within the proposed drainage area so far as known.
- (7) The names of the person or persons who caused the survey to be made, upon which the plans shall have been based;
- (8) An itemized statement of the cost of said survey;
- (9) A report of the college of agriculture on (a) the quality of the soil, (b) the feasibility of draining the area mapped, (c) the probable benefits from the proposed work, (d) the probable cost of constructing the proposed work, (e) the probable distribution of the benefits among the several parts of the district;
- (10) A prayer for the organization of a town drainage by the name and with the boundaries proposed, and for the construction of said drains under the direction of said board of supervisors.

Section 1360. Whenever any such application is made the said supervisors shall make out a notice and fix therein a time and place at which they will meet to examine and decide upon the same; such notice shall specify, as near as practicable, the route of the proposed drain, ditch or enlargement of watercourse and the several tracts of land through which the same will pass; and the petitioners shall cause the notice to be served upon each of the resident owners of said several tracts of land, personally or by copy left at his usual place of abode, at least five days before the time fixed for such meeting, and copies thereof shall be posted up in three public places in the town in which the drainage is situated at least ten days before such time of hearing. Five days' personal service on all owners of lands affected or the service hereinabove provided shall be sufficient to give the supervisors jurisdiction.

Section 1361. The supervisors shall meet at the time and place fixed in such notice and upon being satisfied by affidavit or other proofs that the notice required in the preceding section has been duly given, shall proceed to examine the location where it is proposed to construct such drain, ditch or enlargement of watercourse, and shall hear any reasons that may be offered for or against the laying out and construction thereof, and shall decide upon the application; but they may in their discretion adjourn such meeting from time to time, not exceeding in all twenty days after the day of hearing fixed in such notice, giving public notice of each such adjournment at the time of making the same.

Section 1362. If the supervisors shall find that the proposed work will promote the public health or will promote the public welfare and that the benefits thereof will exceed the damages and costs of construction they shall within ten days after the final hearing by written order grant the petition or a modification thereof, and they shall award just damage to each piece of land damaged by the proposed work, and the town clerk shall place said order on file in his office with the original petition and record the same. As soon as may be thereafter the supervisors shall let the contract for the construction of the proposed work, in such manner as to them shall seem most expedient. The cost of the preparation of the petition, necessary orders and the awards for damages shall be included in the total cost of construction.

Section 1363. In case any public highway in the town will be benefited by the proposed drainage the supervisors shall determine and assess the amount of such benefits against the town,

which amount shall be paid by the said town. The supervisors shall then assess such benefits against the benefited lands as in their opinion such lands will receive from such constructed ditch, drain or watercourse, whether such land shall be touched by said ditch, drain or watercourse, or not. The remainder of such total cost of construction as shall not be assessed against said town shall, by order, be assessed and apportioned against the benefited lands in proportion to the benefits assessed and such order of assessment shall be filed and recorded by the town clerk in his office. Said assessments shall be made within ten days after the contract is let, if not theretofore made, but failure to make such assessments within that time shall not deprive the supervisors of power to make such assessments.

Section 1364. As soon as the contract is let for the construction of said drain and the assessments for constructions are made, said assessments for the construction against the several tracts of land shall fall due and be paid to the town treasurer, who shall hold the same as a separate fund to the credit of said drainage and pay the same on the order of the supervisors to defray the legitimate expenses of said drainage. Such portion of the money collected for that purpose as shall remain in the treasury after all expenses have been paid, shall be kept as a separate fund for the maintenance of said drain.

Section 1365. Whenever it shall appear to the supervisors of a town in which a drain has been constructed under the provisions of this act that said drain should be cleaned or repaired, or whenever the expenses of an appeal to or other action in the courts shall make it necessary to raise money to defray said additional costs or expenses, the board of supervisors shall levy an additional assessment upon the several tracts of benefited land for said purpose on the basis of the previous assessment of benefits. All unpaid assessments for construction shall be a lien against the property assessed and shall be treated and collected, so far as may be, as delinquent taxes. The treasurer of the town when he collects or returns such assessments shall collect or return in addition interest on said assessments from the date of said assessment at the rate of six per cent per annum.

Section 1366. In case at any time while such proceeding is pending before the supervisors, they find that any landowner entitled to notice has not been notified, they may adjourn the hearing on the petition for sufficient length of time to give such notice. If after the order laying out such drain or drains is made it is found that any landowner entitled to notice has not been given notice, they may notify such landowner that, at a time and

place in said notice fixed, said supervisors will meet and hear any objection that he may have to said order. At the time and place fixed, or an adjournment thereof duly made, they shall meet, consider any objection that such landowner may present and either reaffirm their former order or make such modification of said order as justice may require. The same appeal from said order may be taken by such landowner as might have been taken from the original order. The supervisors may, upon ten days' notice to all landowners within said proposed drainage area who reside in their town, amend their proceedings to conform with the facts and the law. Failure of the town clerk to record said orders or any of them shall not render said order or proceeding void, but said clerk shall at once record any unrecorded order or orders.

Section 1367. Any landowner aggrieved by any order of supervisors laying out any ditch or drain or any order awarding damages or assessing benefits therefor may within twenty days serve upon the supervisors a notice that he appeals therefrom to the county court of the county. Within five days thereafter he shall file with the county judge a certified copy of the entire proceeding leading up to such order. When such proceedings (or such amended proceedings) so certified have been filed, the appellant shall pay to the county judge three dollars, whereupon such county judge shall make an order fixing a time and place when and where he will appoint three competent, disinterested persons commissioners to review the order appealed from. Said time of hearing shall not be less than five nor more than fifteen days after the filing of such proceedings or amended proceedings. Said order shall be served by appellant upon all of said supervisors and petitioners who can be found in the county at least five days before the time fixed for appointing such commissioners. Upon the day fixed, upon proper proof that said notice has been so served, the county judge shall appoint three good, competent, disinterested persons commissioners to review the order appealed from and shall fix a time and place when and where such commissioners will meet and look over the proposed drainage, hear all persons who desire to be heard and shall decide upon such order either affirming the order appealed from or so modifying it as to make it just and right, and shall return their decision to the county judge, who shall transmit the same to the town clerk of said town. The county judge may adjourn the hearing on the appointment of such commissioners not to exceed one week, making public proclamation thereof. Said commissioners may adjourn their hearing not exceeding one week to some convenient place, making public proclamation thereof.

The order of the supervisors assessing for construction shall not be so changed by the commissioners as to cut the sum total of the assessments for construction below the reasonable cost of the drainage and expense of the proceedings therefor.

Said commissioners shall each receive for his services three dollars, to be paid by the appellant. If said commissioners modify the supervisors' order appealed from in appellant's favor the costs of the certified copy and the money advanced by the appellant shall be assessed against the benefited lands in proportion to the assessed benefits and when collected shall be paid to the appellant by the town treasurer on the order of the supervisors.

In case of appeal from the refusal of the supervisors to lay out such drainage when the commissioners appointed by the county judge decide in favor of such drainage the supervisors shall proceed to lay out such drainage and award damages, let contract or contracts for the work, and assess benefits the same as if they had in the first instance decided in favor of the drainage. Failure of the supervisors for ten days to make the requisite order laying out such drainage or refusing to lay it out shall be deemed a refusal to lay it out.

(See c. 773, s. 82.)

Section 1367a. 1. If the lands that the applicants desire to have drained are within a city such application shall be made to the mayor and aldermen thereof and shall be filed with the city clerk.

2. Upon the filing of such application the mayor shall, within five days, call together the aldermen of said city and together they shall appoint a committee of three suitable, competent persons who shall be sworn to honestly, faithfully and impartially discharge their duties and shall thereafter have all of the powers, perform all of the duties and be subject to all of the obligations given to and imposed upon supervisors by sections 1359 to 1367, inclusive, of this chapter.

Section 1367b. If the lands that the applicants desire to have drained are within an incorporated village such application shall be made to the president and trustees of said village and shall be filed with the village clerk. Upon the filing of such application the president shall, within five days, call together said trustees and together they shall appoint a committee of three suitable, competent persons who shall be sworn to honestly and impartially discharge their duties and they shall thereafter have all of the powers, perform all of the duties and be subject to all of the obligations given to and imposed upon supervisors by sections 1359 to 1367, inclusive, of this chapter.

Section 1367c. 1. If the lands to be drained lie partly within two towns or partly within a town and partly within a city or incorporated village, or partly within one city and partly within another city, or partly within a city and partly within an incorporated village, or partly within one incorporated village and partly within another such village the application shall be made in duplicate and one duplicate copy thereof shall be filed with each of the clerks of the towns, cities and villages in which are said lands.

2. The mayor and aldermen of said city and the president and trustees of said village shall meet separately and each said body shall appoint a separate committee of three suitable, competent persons which committees shall be sworn as provided in section 1367 of this chapter, and said supervisors and committee or said committees acting jointly as a single drainage board shall have all of the powers and be subject to all of the obligations and perform all of the duties of town supervisors given and imposed by sections 1359 to 1367, inclusive, of this chapter.

Section 1367d. A majority of any body, committee or board required by sections 1359 to 1367c, inclusive, of this chapter or any one of said sections to perform any act shall constitute a quorum and shall have full power to perform any act therein required or duty therein imposed upon such body.

Section 1367e. The same appeal to the same court may be taken from the orders, determinations, assessments and awards of said mayor and aldermen of any city, president and trustees of any village, committee or drainage board as is provided by section 1367 of this chapter, and in case said area proposed to be drained lies in two counties the county court to which said appeal is first taken shall have and retain jurisdiction of all appeals in said matter provided for in section 1367 of this chapter.

Section 1367f. Sections 1359 to 1367, inclusive, of this chapter shall apply to a drainage partly within any of the corporations or quasi corporations in section 1367c referred to with the same force and effect as they apply to a drainage within one town.

Section 1367g. Cities and villages shall be assessed for and shall pay for benefits to their public highways the same as towns. And city and village clerks and treasurers shall perform the duties by sections 1359 to 1367 imposed upon town treasurers.

Section 1367h. If any officer or body fails or refuses to perform an act or acts required of them, within the time specified in sections 1359 to 1367c, inclusive, of this chapter, the facts being brought before the circuit court of the county or the presid-

ing judge thereof, said court or judge shall order the said officer or body to show cause why he or they should not perform such acts or act, and said officer or body shall by order of the court (unless good cause to the contrary be shown) be required to perform the said act or acts. Failure to perform any act within a specified time shall not divest any officer or body of jurisdiction to perform such acts or act.

Section 1367j. In case the owners of a majority of the assessed lands so desire the supervisors, committee or drainage board in charge of a drainage under sections 1359 to 1367 of this chapter may borrow money to pay the cost of construction of said drainage, said money to be paid in three equal annual instalments, and may issue drainage securities bearing interest at not exceeding six per cent per annum, payable annually. In that event, one-third of the assessments shall become due each year instead of at once. Said drainage securities shall be a lien on said assessments and the money paid thereon and said assessments shall bear six per cent interest from their date, to be added to the tax roll and collected each year with the taxes against the assessed lands and corporations. Any assessment may be paid in full at any time before such drainage securities are sold.

Section 1367k. Whenever upon an appeal from the order of a town board to the county court, or upon any action in circuit court to restrain or set aside the proceedings, or any part thereof in a drainage matter prosecuted under the provisions of sections 1352 to 1367j, inclusive, of the statutes, an error is discovered in any of the proceedings prior to said appeal or action, said court shall exercise equitable jurisdiction therein and correct and cure said error or errors by order and thenceforth progress shall be made in every respect as if there had been no error in the original proceedings.

Section 1368. Whenever one or more landowners desire drainage of undrained lands under any of the public drainage laws of Wisconsin, he or they may apply to the county or circuit court of the county wherein said lands or any part thereof may lie for a permit to the applicant or applicants and his or their employers to go upon such undrained lands and take the levels and make the observations and surveys necessary to determine whether said drainage is practicable and the extent thereof. Said court shall issue such permit, which permit shall authorize the persons therein named and their necessary employees to go upon the lands sought to be included in such drainage scheme and to take all necessary levels and make all necessary surveys and observa-

tions thereon, such permitted person and his employees to do no unnecessary damage thereon.

The permitted persons and their necessary employees shall not be guilty of trespass by doing upon said lands all work necessary to the taking of such levels and the making of such surveys and observations.

Any person to whom such permit is shown who shall thereafter interfere with the taking of such levels and the making of such surveys and observations or shall threaten to interfere with or prevent, the same shall be guilty of a misdemeanor and upon conviction thereof shall be fined therefor not less than five dollars or more than one hundred dollars and cost of suit, and in default of payment of such fine and costs shall be sentenced to be confined in the county jail not more than fifty days.

Whenever any person shall prevent or threaten to prevent any such permitted person or his employees going upon any land to take such levels and make such surveys and observations the facts may by any interested person be brought before the circuit court of the proper county and such court shall upon showing of the facts issue an injunction enjoining and restraining such person, his employees, agents and servants and all other persons from interfering with or preventing the taking of such levels or the making of such observations and surveys.

SECTION 3. This act shall take effect and be in force from and after its passage and publication; and the provisions of this act shall apply to all town drainage heretofore constructed or now in process of construction under sections 1359 to 1371a, inclusive, of the statutes.

Approved June 25, 1913.

No. 821, A.]

[Published June 27, 1913.

CHAPTER 580.

AN ACT to establish a dock line on the shore of Lake Monona, for the improvement of navigation, for the benefit of the public health, for the removal of a public nuisance, and for a public drive and public park purposes.

The people of the State of Wisconsin, represented in Senate and Assembly, do enact as follows:

SECTION 1. A dock line is hereby established on the easterly and northeasterly shore of Lake Monona opposite fractional northeast quarter of section eight, fractional southwest quarter of northwest quarter and fractional southwest quarter of section nine, and fractional southeast quarter of southeast quarter sec-