

CHAPTER 88

DRAINAGE OF LANDS

	GENERAL PROVISIONS		
88.01	Definitions.	88.46 Reassessment of benefits	
88.02	Outstanding securities and contracts not affected.	88.47 Apportionment of assessments when assessed parcel is divided.	
88.03	Drainage proceedings equitable in nature.	88.48 Assessment of county and municipal lands.	
88.04	General rules relating to signatures on petitions.	88.49 Assessment of one district by another; judgment against district.	
88.05	General rules applicable to notices of hearings.	88.50 When state lands subject to assessment; right of way across state lands.	
88.06	General procedure for obtaining consent or approval of the court in drainage proceedings.	BORROWING MONEY; REFINANCING; COMPROMISE OF DEBTS	
88.07	General rules; drainage proceedings in court.	88.54 Borrowing money.	
88.08	Costs in drainage proceedings.	88.55 Refunding district obligations.	
88.09	Appeals in drainage proceedings.	88.56 Compromise and discharge of obligations.	
88.10	Guardian ad litem to be appointed.	CONSTRUCTION, MAINTENANCE AND IMPROVEMENT OF DRAINS	
88.12	Proceedings when drainage area is in more than one county.	88.62 Conditions relative to doing of work.	
88.13	Right to enter lands of drainage district.	88.63 Maintenance and repair of drains.	
88.14	Controversies between districts.	88.66 Construction and repair of drains crossing railroad right of way.	
88.15	Application of this chapter.	88.67 Construction and repair of drains crossing utility installations; laying utility installations across drains.	
88.16	Optional procedure for certain drainage districts.	88.68 Construction of drain across public highway; construction of bridges across drains.	
APPOINTMENT, POWERS AND DUTIES OF DRAINAGE BOARD			
88.17	Appointment and organization of drainage board.	88.69 District liable for damage to land outside its boundaries.	
88.18	County treasurer to serve as treasurer of drainage districts.	88.70 Formation of subdistrict to obtain more thorough drainage.	
88.19	Board to keep records.	88.71 Enlarging or supplementing existing drains.	
88.20	Conflict of interest prohibited.	88.72 Removal of dams or other obstructions in drainage outlets.	
88.21	General powers of the drainage board.	88.73 Providing drainage for lands assessed but not adequately drained.	
88.22	Power of board to contract with the federal government and other agencies.	ENLARGEMENT, CONSOLIDATION, DIVISION AND DISSOLUTION OF DRAINAGE DISTRICT	
88.23	Power of board to levy assessments for costs.	88.77 Annexation of lands upon petition of owners.	
88.24	Board to file annual report.	88.78 Annexation of benefited lands.	
ORGANIZATION OF DRAINAGE DISTRICTS			
88.27	Who may petition for organization of a drainage district.	88.79 Consolidation of drainage districts.	
88.28	Contents of petition.	88.80 Withdrawal of lands from drainage district.	
88.29	Referral of petition to board; examination of lands; hearing by board.	88.81 Proceedings to suspend operations of drainage district.	
88.30	Special reports required when proposed drainage district exceeds 200 acres.	88.82 Dissolution of drainage districts.	
88.31	Special procedure in cases affecting navigable waters.	88.83 Transfer of district to city or village jurisdiction.	
88.32	Preliminary report to the court.	RIGHTS OF DRAINAGE; PRIVATE DRAINS; MISCELLANEOUS PROVISIONS	
88.33	Drainage project may be stopped prior to organization of district.	88.87 Road grades not to obstruct natural drainage, landowners not to obstruct highway drainage; remedies.	
88.34	Hearing by the court; organization of drainage district.	88.88 Railroad to construct ditch or sluiceway across right of way.	
88.35	Laying out drains, assessment of benefits and award of damages in newly organized district; final report to the court.	88.89 Roads not to obstruct natural watercourse.	
88.36	Hearing on and confirmation of final report.	88.90 Removal of obstructions from natural watercourses.	
GENERAL RULES APPLICABLE TO ASSESSMENTS			
88.40	Assessments for costs to be certified to register of deeds; assessments are lien on lands.	88.91 Penalty for placing obstruction in ditches.	
88.41	Payment of assessments for costs.	88.92 Private drains not to be connected with district drains.	
88.42	Unpaid drainage assessments to be collected as taxes.	88.93 Right to take water from drainage ditch.	
88.43	Collection of assessments as delinquent taxes.	88.94 Drains for individual landowners.	
88.44	Contesting validity of assessments.		
88.45	Procedure upon discovering omitted assessments.		

GENERAL PROVISIONS

88.01 Definitions. In this chapter, unless the context requires otherwise:

(1) "Benefits" includes all pecuniary advantages accruing to lands from the construction of the drain or proposed drain.

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

(3) "Clerk of court" means the clerk of circuit court.

(4) "Cost of construction" includes damages to lands both within and outside the district, reasonable attorneys' fees for petitioners and the

board, and all other reasonable and necessary expenses incurred in the organization of and in the construction and completion of the works of a drainage district.

(5) "County treasurer" means the treasurer of the county in which is located the circuit court having jurisdiction of the drainage district.

(6) "Court" means the circuit court of the county in which the drainage district is located or the circuit court having jurisdiction of the proceedings in any drainage district located in more than one county.

(7) "Secretary" means the secretary of administration.

(8) "District" means any drainage district subject to this chapter.

(9) "Drain" means any device for the drainage of water from land or the protection of land from water, including open ditches, tiles, pipelines, pumps and levees.

(9m) "Interested person" includes the state or any agency or subdivision thereof.

(10) "Judge" means the judge of the circuit court having jurisdiction of the proceedings of any drainage district, or the person sitting for the judge.

(11) "Land" or "lands" means any real property or interest therein, whether privately or publicly owned, including railroad rights of way, public highways, streets and alleys.

(12) "Mortgage" means every person holding a mortgage or an assignment of a mortgage against lands within a drainage district or proposed drainage district whose name and post-office address is known to the board or whose mortgage or assignment is legally recorded and contains the post-office address of such mortgagee or assignee.

History: 1977 c. 449 ss. 193 to 195, 497.

88.02 Outstanding securities and contracts not affected. Nothing in this chapter shall render more difficult the collection of outstanding bonds or notes of any drainage organization or impair the obligation of any contract made by such organization or defeat any vested property right of such organization. Neither shall any assessment of supplemental benefits nor any reassessment of benefits disturb any assessment for cost of construction previously confirmed by the court while bonds or notes based thereon are unpaid. Confirmed 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 are paid or refunded.

88.03 Drainage proceedings equitable in nature. (1) All 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.

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

History: 1977 c. 449.

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

(2) If any minor or incompetent person owns land in a drainage district or proposed drainage district or proposed annex to a drainage district, the general guardian or next of kin of such minor or incompetent may sign petitions under this chapter for him and on his behalf.

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

(1) The order fixing the time and place of the hearing shall be made by the court.

(2) The notice of hearing is sufficient in form and substance if it recites:

(a) That a particular petition or report has been filed;

(b) The place of filing;

(c) That it is subject to the inspection of all persons interested;

(d) If a petition, the prayer, or the substance of the prayer; and

(e) The time and place of hearing.

(f) That all objections to the jurisdiction of the court or to the sufficiency or legality of any petition, report or assessment or to the equity of any assessment or award of damages must be filed with the clerk of court in writing prior to the hearing and that such objections must be set forth clearly and in detail.

(3) Notice of hearing shall be given by both mailing and publication, as follows:

(a) The notice shall be mailed, at least 20 days before the date set for hearing, to those persons designated by the applicable section as entitled to receive notice. Ordinary mail may be used.

(b) The notice shall be published as a class 3 notice, under ch. 985, in the affected area. The last insertion shall be not more than 20 days before the hearing.

(4) For the purpose of convenience of cross reference, persons commonly designated by specific sections of this chapter as entitled to receive notice are grouped as follows:

(a) The chairman of the county highway committee, the chairman of the county land conservation committee in the county involved, the secretary of natural resources and, where a railroad company is involved, the person specified in sub. (6).

(b) The persons enumerated in par. (a) and all owners of record whose lands may be affected.

(c) The persons enumerated in par. (a) and all owners and mortgagees of lands affected whose names and post-office addresses are known or can with reasonable diligence be ascertained.

(5) 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 service is sufficient to give the court complete jurisdiction of such parties and their lands without any other service.

(6) Railroad companies shall file with the secretary of state a document stating the name and post-office address of the person upon whom any notice required by this chapter may be served.

(7) 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.

(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 failure to give legal notice to any person entitled thereto is discovered before an order is entered, the court shall adjourn the hearing and direct the giving of proper notice. If failure to give such notice is discovered after the order is entered, the court may order the person not served with notice to show cause before such court why he 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.

History: Sup. Ct. Order, 67 W (2d) 774; 1977 c. 449; 1981 c. 346 s. 38.

88.06 General procedure for obtaining consent or approval of the court in drainage proceedings. Whenever any action by the drainage board requires the consent or approval of the court and no other procedure is expressly provided, the procedure in this section applies:

(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 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 time and place of hearing thereon and shall order the board to give notice thereof as provided in s. 88.05 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 changes and conditions as it deems 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 dismissed, is filed within 3 years after such dismissal, the court may refuse to order a hearing thereon or to take any other action with respect to it.

History: 1977 c. 135 s. 19.

88.07 General rules; drainage proceedings in court. (1) All objections made to the jurisdiction of the court or to the sufficiency or legality of any petition, 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 the hearing.

(2) Several petitions may be filed in any proceeding. At any time before the sufficiency of the signers of the petitions has been adjudicated, additional signers may be added to the petitions with like effect as if they had signed the original petition.

(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 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 the petition and will pay into court the expenses incurred on the petition prior to his or her withdrawal.

(4) For satisfactory cause the court may adjourn any hearing for a period of not more than one month at any one adjournment. The adjournment of any meeting or hearing beyond the time, or failure to act within the time, provided in this chapter does not affect the jurisdiction of either the court or the drainage board, but a subsequent hearing shall be had and notice of the time and place thereof shall be given.

(5) Any hearing under this chapter may be adjourned by the court or presiding judge or, in his or her absence, by the clerk of court.

History: 1977 c. 135, 449.

88.08 Costs in drainage proceedings. (1)

In all proceedings under this chapter involving a petition to the court, the court shall by order tax the taxable costs of the proceeding. If costs are taxed against the drainage board, they shall not go against the board members personally but shall be paid out of the district funds or from funds received from the petitioners unless the court orders otherwise.

(2) If a petition for organization of a drainage district is dismissed before the appointment of a drainage board in the county, the order taxing costs shall be entered against the petitioners and in favor of any person who advanced moneys, rendered services or incurred other liabilities in prosecuting or contesting such proceedings, for the amount of such moneys, services and incurred liabilities.

(3) If proceedings are dismissed in any case where a drainage board has been appointed in the county, the order taxing costs shall be entered against the petitioners and in favor of the board for all costs, expenses and liabilities incurred by the board or by any other person in prosecuting or contesting such proceedings and for the benefit of those who have rendered services or advanced or loaned money in prosecuting or contesting such proceedings.

(4) Before any order taxing costs is entered, a petitioner or the board or a person contesting the proceedings shall file with the clerk of the court a duly verified itemized statement of all

costs, attorneys' fees, and other liabilities incurred in prosecuting or contesting such proceedings, upon which an order shall be issued requiring the petitioners to show cause why an order taxing costs should not be entered against them for the amount of costs, attorneys' fees and other liabilities. Notice of hearing of such order to show cause shall be given to the petitioners as provided in s. 88.05 (3). Such order need not contain an itemized statement of such account, but shall state where such account is filed.

(5) The petitioners shall, between themselves, contribute to the payment of such costs in proportion to the number of acres of land owned by them within the boundaries of the district or proposed district at the time of filing the petition.

History: 1977 c. 449.

88.09 Appeals in drainage proceedings.

(1) Any person whose lands have been assessed benefits or who has been awarded damages in a drainage proceeding may, within 30 days after entry of the order assessing benefits or awarding damages, petition the court for a jury trial on the issue of benefits and damages. Thereupon, such issues shall be set for trial. Such petition for trial by jury shall not stay any other proceedings in connection with the organization or operation of the drainage district.

(2) The board or any interested person aggrieved by any final order or judgment entered by the court in a proceeding under this chapter may, within 60 days after the entry of such order or judgment, appeal therefrom to the court of appeals. The time for appeal shall run from the time of the entry of the order without notice.

History: 1977 c. 187 s. 134.

88.10 Guardian ad litem to be appointed.

(1) In all proceedings under this chapter in which a minor or incompetent person is interested, the court shall appoint a guardian ad litem to represent such minor or incompetent.

(2) Failure to make such appointment is not jurisdictional, but when the failure is discovered a guardian ad litem shall be appointed and an order served upon him to show cause why such 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.

88.12 Proceedings when drainage area is in more than one county. (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 county

containing the largest acreage has jurisdiction of the organization and operation of the drainage district.

(2) In cases affecting such a multicounty district, copies of all orders and judgments shall be filed in the court of each of the other counties in which the drainage district is located. All moneys collected on behalf of the drainage district in the other counties shall be transmitted to the treasurer of the county wherein the court has jurisdiction.

History: 1977 c. 449.

88.13 Right to enter lands of drainage district.

Whenever necessary for any purpose connected with the organization of a drainage district or the construction, maintenance or repair of drains and other works, members of the board, the secretary of administration, and persons intending to bid on or to whom contracts have been let for the construction of the works within a drainage district and their respective agents and employees may go upon any lands proposed for inclusion or included within a drainage district or on adjoining lands, and are not guilty of trespass therefor but are liable for unnecessary damage caused to crops or structures.

88.14 Controversies between districts.

(1) Whenever a controversy arises out of the relationship of 2 or more drainage districts, the board shall attempt to settle the controversy and may hold hearings and take whatever other action it deems necessary toward accomplishing that objective.

(2) If the board is unable to settle the controversy to the satisfaction of the persons involved, the board or any person who feels aggrieved may petition the court to settle the controversy. The court shall order a hearing on the petition and may order the giving of such notice of the hearing as it deems necessary. After the hearing, the court shall enter an order disposing of the matter in such manner as it deems just and reasonable.

History: 1977 c. 449.

88.15 Application of this chapter. (1)

On January 1, 1965, all drainage organizations, which immediately prior to such date are farm drainages governed by ch. 88 or drainage districts governed by ch. 89, 1961 stats., become drainage districts under this chapter as a matter of law. Except as provided in s. 88.16, drainage boards established under ch. 88 and boards of drainage commissioners established under ch. 89, 1961 stats., are abolished as of January 1, 1965. The records, assessments, funds and indebtedness of such farm drainages and drain-

age districts become the records, assessments, funds and indebtedness of the drainage districts which take their place. Prior to January 1, 1965, the county court of each county having a farm drainage affected by this subsection or a ch. 89, 1961 stats., drainage district which has not elected to operate under s. 88.16 shall appoint a county drainage board under s. 88.17 to take the place of the prior drainage board and of the boards of drainage commissioners of ch. 89, 1961 stats., districts which have not elected to operate under s. 88.16. Terms of office of the members of the new board shall commence on January 1, 1965.

(2) Any town drain in existence on June 13, 1964, may become a drainage district under this chapter upon the filing of a report with the circuit court of the county in which the town drain or the greater portion thereof is located, and upon approval of the report by the court. The court shall hold a hearing on the report prior to approval thereof and shall order notice to be given as provided in s. 88.05 to the persons specified in s. 88.05 (4) (b). The court may modify the report as the facts warrant and may disapprove it if it is not amended to state facts sufficient to form the basis for the operation of a drainage district under this chapter.

(3) The report required by sub. (2) shall set forth:

- (a) The name or number of the town drain.
- (b) The approximate date on which the town drain was organized and the authority under which it was organized.
- (c) A map showing the boundaries of the town drain and a sketch of the drains thereof.
- (d) The name of the owner and mortgagee of each parcel of land assessed benefits and costs.
- (e) For each parcel of land included within the boundaries of the town drain, a statement of the amount of confirmed benefits currently in effect, the amount already assessed as costs against the parcel of land, and the amount still owing on such assessment of costs, if any.
- (f) The amount of any funds in the hands of or credited to such town drain.
- (g) The amount of the town drain's indebtedness, if any, and to whom owed.
- (h) Such other information as the court or the person making the report deems essential.

(4) Upon entry of the order approving the report specified in sub. (3), the town drain described in such report becomes a drainage district under this chapter, except that no such order shall take effect prior to January 1, 1965. The approved report becomes part of the records of the drainage district and supersedes any prior records in conflict therewith. Upon approval of such report, the court shall appoint a drainage

board under s. 88.17 if none has yet been appointed in the county.

(5) It is the duty of the town board to file the report specified in sub. (3), but any interested person may file the report. If such a report has not been filed by January 1, 1965 or has not been approved by January 1, 1966, the town drain is dissolved as a matter of law, with the same effect as if dissolution had taken place under s. 88.82. Any indebtedness of such town drain which was a lien on lands is unaffected by such dissolution.

(5m) The time for filing and approving the report required by sub. (2) is extended one year from the dates specified in sub. (5) with the following results:

(a) The report specified in sub. (2) may be filed at any time prior to January 1, 1966, and approved prior to January 1, 1967. This extension of time does not affect the validity of any report which has been approved in accordance with the terms of subs. (2) to (5) prior to June 3, 1965.

(b) A town drain for which the report required by sub. (2) has not been filed within the time specified in sub. (5) but for which such report is filed within the time specified in par. (a) is deemed to have continued in existence as a town drain after January 1, 1965, notwithstanding any provision to the contrary in chapter 572, laws of 1963. Any action taken by such town drain between January 1, 1965, and the time its report is approved under this subsection or January 1, 1967, whichever occurs first, is declared to be valid if it would be valid under the law applicable to such town drain as of December 31, 1964.

(6) Any records of an existing drainage organization which becomes a drainage district under this chapter shall be certified to the clerk of court by the person previously in charge of such records, and any funds belonging to such drainage organization shall be transferred to the county treasurer by the person previously having custody thereof.

(7) This chapter does not apply to the organization or operation of existing drainage districts, farm drainages or town drains until January 1, 1965. Prior to that date, such drainage organizations shall continue to be governed by chs. 88 and 89, 1961 stats., including any amendments thereof. Farm drainages in the process of organization on that date may be organized in accordance with the law in effect prior to such date and shall become drainage districts under this chapter upon completion of their organization.

History: 1977 c. 449; 1981 c. 390.

88.16 Optional procedure for certain drainage districts. (1) Any drainage district

operating under ch. 89, 1961 stats., may elect to operate under this section commencing January 1, 1965.

(1m) The time for making an election to operate under this section is extended for 4 years from the dates specified in sub. (1), with the following results:

(a) The petition specified in sub. (1) may be filed at any time prior to September 1, 1968, for an election to start operating under this section on January 1, 1969. This extension of time does not affect the validity of any election which has been made in accordance with the terms of sub. (1) and this subsection prior to February 8, 1968.

(b) A drainage district and its board which make an election to operate under this section by filing its petition as authorized by par. (a) is deemed to have continued in existence as a chapter 89 district and board after January 1, 1965, notwithstanding any provision to the contrary in chapter 572, laws of 1963. Any action taken by such district or board prior to the date on which it begins operating under this subsection, which would be valid under ch. 89, 1963 stats., is declared to be valid. Any action taken by a county drainage board on the supposition that such drainage district came under its jurisdiction on January 1, 1965, also is declared to be valid. Any records or funds which have been transferred to the clerk of court under s. 88.15 (6) shall be returned to the district, except for funds which have been disbursed on behalf of such district during the period between the transfer of the funds and the election to operate under this section.

(2) A district which has been granted permission to operate under this section does not come under the jurisdiction of the county drainage board. Each such district shall have its own 3-member drainage board with all the powers and duties with respect to that district which the county drainage board otherwise would have. Prior drainage commissioners shall serve out their terms, but the county treasurer shall serve as treasurer of the district. After present terms have expired, appointments shall be made by the court for 5-year terms unless the district decides to make appointments under sub. (4).

(3) (a) Each drainage district operating under this section shall hold an annual meeting on the first Monday in December at 9 a.m., but a different day and hour may be fixed by any annual meeting for the next succeeding annual meeting. Every such meeting shall be held in the courthouse of the county wherein is located a majority of the confirmed benefits of the district. The chairman of the drainage board of the district may call a special meeting whenever the

board desires to submit proposals or recommendations on any matters affecting the district. The same action may be taken thereon as at an annual meeting with the same result and with the same right of appeal from the action taken.

(b) The drainage board of the district shall give notice of annual and special district meetings by publishing a notice of the time and place thereof as a class 2 notice, under ch. 985. The board may take such other steps as it deems necessary to convey effective notice to persons who are likely to have an interest in the meeting.

(c) The chairman and secretary of the district's drainage board shall serve as chairman and secretary, respectively, of district meetings. Voting at district meetings shall be on the basis of confirmed benefits, one vote being allowed for each \$500 of confirmed benefits or major fraction thereof, but each owner shall have at least one vote.

(d) No business involving an assessment may be transacted at any district meeting unless a quorum is present. A quorum consists of those members having benefits within the district equal to 20% of the total amount of the confirmed benefits of the district.

(e) At each annual meeting the drainage board of the district shall make a detailed report of work done during the preceding year and of the board's recommendations as to work to be done during the succeeding year. If votes representing a majority of the confirmed benefits disapprove any recommendation made by the board for work in the future, such action is binding on the board.

(f) Any person entitled to vote at a district meeting may appeal to the court from any action taken by the majority. The appeal shall be in writing and shall state in general language the reason for the appeal, and shall be filed with the court within 10 days after the date when the action was taken by the district meeting. A copy of the notice of appeal shall, within the same time, be served personally on the secretary of the board.

(4) Any 10 members of a district may, by giving written notice of the time and purpose thereof, call a special meeting to determine whether or not the district shall fill vacancies on the drainage board and make appointments to fill expired terms by election, or the notice may provide that the determination will be made at a general meeting. The notice shall be mailed to the last-known name and address of each owner of record of land in the district at least 10 days in advance of the meeting. If it is decided to elect the drainage board members, all future vacancies shall be filled and appointments to fill expired terms shall be made by a majority vote of those present at a general or special meeting

called for the purpose of filling the vacancy or making the appointment. Voting shall be done in accordance with sub. (3) (c). The district may, by following the procedure provided in this subsection, provide that vacancies again shall be filled by the court.

(5) A district which has elected to operate under this section subsequently may elect to cease operating under this section by presenting to the court a petition therefor, signed by persons representing the majority of votes in the district as determined by sub. (3) (c). Upon receipt of such a petition, the court shall fix a time and place of hearing thereon and shall cause notice thereof to be given under s. 88.05 to the persons specified in s. 88.05 (4) (b) and also to the secretary of the district's drainage board. If the court finds upon the hearing that the petition has the necessary signatures, it shall issue an order abolishing the district's drainage board. Thereupon, the county drainage board has jurisdiction of the district and this section no longer applies. If there is no county drainage board in the county at the time, the court shall appoint one.

History: 1977 c. 449.

APPOINTMENT, POWERS AND DUTIES OF DRAINAGE BOARD

88.17 Appointment and organization of drainage board. (1) Upon the filing of a petition for organization of a drainage district under this chapter in a county which does not already have a drainage board, the court shall appoint a drainage board. The board shall consist of 3 competent persons, all of whom are resident landowners of the county. At least one of the members preferably shall be an experienced farmer who is familiar with drainage and another of the members shall be familiar to some extent with drainage engineering, if the person is available. The members shall be appointed from among persons recommended by the committee on agriculture created under s. 59.87 (2), which committee shall recommend at least 3 persons for each position to be filled.

(2) 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. A member shall serve until his successor is appointed and qualified.

(3) Each member of the board shall take and file the official oath.

(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

the court may in its discretion appoint a suitable person to act in such member's place when the board is considering matters pertaining to the particular drainage district in which such member is interested.

(5) When all its members have been duly sworn and qualified, the drainage board is a permanent body corporate and is subject to all rules of law applicable to public corporations.

(6) The board shall organize by election one of its members president and another of its members secretary. A majority of the board constitutes a quorum to do business. In the absence of a quorum, any member present may adjourn any meeting and make announcement thereof.

(7) Each board member shall be reimbursed for actual and reasonable expenses incurred by him in the performance of his duties and, in addition, shall receive as compensation for his actual and necessary services \$10 per day for actual time spent in rendition of services, or such larger per diem as the county board of supervisors establishes.

(8) Each board member shall keep an accurate record of services rendered and expenses incurred by him, 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. 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 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 in accordance with the order allowing the bill.

(9) The court may by order abolish the drainage board if there no longer are any drainage districts in the county.

History: 1977 c. 449.

88.18 County treasurer to serve as treasurer of drainage districts.

(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 him only upon the order of the court or upon proper warrants of the drainage board.

(2) The county treasurer shall keep a separate account for each drainage district in which he shall charge such district with all amounts paid out on its behalf pursuant to sub. (1) and shall credit the district with:

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

(b) All sums received by the county as principal on the sale of drainage assessment certificates at the tax sale, except such certificates as are sold to the county.

(c) All sums received by the county for principal and interest on sale or assignment of drainage assessment certificates, after the county has bid them in.

(d) The principal and accrued interest on all drainage assessment certificates up to the date of the drainage assessment deed, in case the county has taken a deed to itself on any drainage assessment certificate.

(e) Any and all other sums received by the county on account of such drainage district.

88.19 Board to keep records. (1) It is the duty of the secretary of the board to keep records of all drainage proceedings. He shall also maintain a minute book in which he shall enter the minutes of the board meetings. He shall be compensated for such services under s. 88.17 (7) and (8).

(2) The secretary of the board shall keep a complete record of the assessed lands in each district under the board's jurisdiction. Such records shall be so arranged that they will readily show, for each parcel of land assessed, the latest confirmed assessment of benefits and the total assessments for costs which have been made against such lands, with adequate space provided for noting all payments of assessments for costs or instalments thereof. The secretary of the board shall periodically check with the county treasurer to determine what drainage assessments or instalments thereof have been paid and shall note such payments in the records required to be kept pursuant to this subsection.

(3) All drainage records shall be kept on file in the office of the clerk of court. Upon request therefor by the county treasurer, the secretary of the board shall furnish the county treasurer with a copy of the records specified in sub. (2).

88.20 Conflict of interest prohibited.

(1) No member of a drainage board shall be interested directly or indirectly:

(a) In any contract with the drainage board; or

(b) In any contract for work or materials in or for a drainage district; or

(c) In any contract for the sale of machinery or materials for or to the drainage board; or

(d) In the wages or supplies of persons employed on work in or for a drainage district.

(2) No board member shall deal in securities of a drainage district.

88.21 General powers of the drainage board. In addition to other powers expressly granted or necessarily implied, the drainage board may:

(1) Adopt and use a corporate seal.

(2) Sue and be sued and compromise suits and controversies.

(3) Bring all necessary actions for the collection of moneys and forfeitures belonging to a district under its jurisdiction and for the protection and preservation of all works and property thereof.

(4) Obtain injunctions to prevent unlawful interference with the performance of its duties or exercise of any of its powers.

(5) Employ engineers and other assistants. Any engineer employed by the board shall be selected from a list of professional engineers approved by the secretary of administration. The secretary of administration shall furnish each drainage board, upon request, a list of professional engineers whom he deems qualified by training and experience to give competent advice in drainage matters.

(6) With the consent of the court, purchase or condemn such lands, whether within or outside a district, as are necessary for the construction, cleaning out, repair and maintenance of the drainage system and its works.

(7) Report to the court on any matters relative to its functions on which it desires advice.

(8) Level or permit the leveling of spoil banks and excavated materials to allow cultivation or use for roadway or other lawful purposes if such use will not interfere with the proper functioning of the drains.

(9) With the consent of the court, 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, 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.

(11) Call district meetings to report on the affairs of the district and to obtain the opinions and suggestions of landowners in the district with regard to the affairs of the district.

The powers of the board are not superseded by the shoreline zoning board or the department; however, drainage ditches

which are navigable are within the jurisdiction of the department under 144.26 (2) (d). The only specific exemption from the jurisdiction of the department regarding navigable waters is that of 30.19 (1) (d), concerning the agricultural uses of land. Although soil conservation districts and drainage districts are created for a different purpose, some activities of both accomplish similar ends; therefore, each district retains control over those activities which it undertakes for the purposes for which it was created. The department determines dam regulations for dams on drainage ditches, regardless of the purpose of the dam. 63 Atty. Gen. 355.

See note to 30.10, citing 63 Atty. Gen. 493, concerning navigable ditches.

88.22 Power of board to contract with the federal government and other agencies. Subject to the approval of the court, the drainage board may:

(1) Enter into agreements with the U.S. government or an officer or agency thereof to permit the drainage of lands owned or occupied by such government or agency, through the use of the drains of which the board has charge. Such agreement may result in adding lands to the drainage district, may provide for apportionment of the assessments for costs of repairs, maintenance and administration with respect to the draining of such lands, and may authorize the U.S. government or its officer or agency to repair, maintain, deepen, widen and change drains located upon lands owned or occupied by such government or agency as long as such change does not impair the drainage rights of other owners through such lands. No such agreement shall permit the draining of raw sewerage in any such drains.

(2) Negotiate and obtain a loan from the federal government or any officer or agency thereof, or from any other public or private loan agency, for the purpose of paying or redeeming outstanding bonds and other obligations of a district under its jurisdiction. Such loan may be negotiated upon such terms and conditions as the board deems to be in the best interest of the district, including without restriction by reason of enumeration provisions for:

(a) Extending the time of payment of delinquent and unmatured instalments of assessments for cost of construction (inclusive of interest accrued thereon) for a period of not to exceed 40 years.

(b) Deferring payment of any portion of the principal of unpaid and unmatured assessments of cost of construction (inclusive of interest already accrued thereon) for a period of not to exceed 10 years and provide for the payment of such delinquent and unpaid assessments of cost of construction in equal annual instalments over a period of years.

(c) Arrange with the holders of bonds and notes and other creditors of the district for surrender of their claims against the district and

for accepting money or bonds in payment thereof.

(3) With the consent of the department of agriculture, trade and consumer protection, 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 contracts may provide that the district on whose behalf the contract is negotiated will:

(a) Provide without cost to the United States all lands necessary for the construction of the project and for the subsequent maintenance and operation of the project.

(b) Contribute such part of the first cost of construction of such project as is agreed upon with the United States, either in cash or in credits, for purchase of material or performance of work forming part of the project.

(c) Hold and save the United States harmless from claims for damages to any property resulting from construction of the works of the project.

(d) Maintain and operate all the works after completion of the project in accordance with regulations prescribed by the U.S. government or any officer or agency thereof.

History: 1971 c. 323 s. 27; 1981 c. 346 s. 38.

88.23 Power of board to levy assessments for costs. (1) In addition to the assessments for cost of construction authorized by s. 88.35, the board may levy assessments for costs of maintenance and repair or for any other lawful expenditures of a drainage district. All such 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.

(2) No assessments for costs under this section are effective until they have been approved by the court. Such approval may be given only after a hearing on the report as provided in s. 88.06.

(2m) Notwithstanding any other provision of law, a board may elect by two-thirds' vote of the members to levy assessments for maintenance or improvement of drainage districts at regular or special meetings, which are held after giving public notice or private notice to all parties affected by an assessment, without obtaining court approval.

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

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

(4) The board may borrow money and issue notes or bonds based upon any assessments levied under this section in the same manner as for original assessments.

History: 1971 c. 67.

88.24 Board to file annual report. On or before December 1 of each year the board shall file with the clerk of court a separate report, for the preceding year ending August 31, on each drainage district under its jurisdiction. Such 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:

(1) An itemized statement of receipts and expenditures for the particular district during the preceding year, showing the balance on hand at the date of the last prior report, the sources and amounts of all receipts, the dates, purposes for which made, and amounts of all expenditures, and the balance on hand, together with the vouchers for such expenditures.

(2) A statement of all bonds paid or issued during the preceding year.

(3) A statement of all work done during the preceding year, specifying where the same was done and the cost thereof.

ORGANIZATION OF DRAINAGE DISTRICTS

88.27 Who may petition for organization of a drainage district. (1) 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 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 proposed to be included within such district.

(2) No petition having as many signers as are required by this section shall be declared void, but the court may at any time permit the petition to be amended in form and substance to conform to the facts, if the facts justify the organization of a district. All petitions for the organization of the same or substantially the same district filed prior to the hearing under s. 88.34 shall be considered by the court as one petition, and all signatures to such petitions shall be counted in determining the jurisdiction of the court.

88.28 Contents of petition. (1) A petition for organization of a drainage district shall be filed with the court and shall set forth:

(a) A description of the lands proposed to be included in the district and that they will be improved by drainage.

(b) That the public health or public welfare will be promoted by the drainage.

(c) A map or sketch of the area sought to be drained, with the proposed drains shown thereon.

(d) That the cost of construction will not exceed 75% of the appraised benefits arising from such drainage.

(e) A proposed name or number for the district.

(f) The names and addresses of the owners and mortgagees of all lands in the district, so far as known to the petitioners.

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

(h) If the purpose of such petition is the enlargement, repair or maintenance of a drain, heretofore constructed under any law of this state, the petition shall give a general description of the drain with such particulars as the petitioners deem important.

(2) In lieu of meeting with the requirements of sub. (1) (d), the petitioners may file with the petition a written agreement that they will pay such portion of the cost of construction as exceeds 75% of the appraised benefits to all lands resulting from the construction of the proposed drainage works.

(3) The petition need not be verified.

History: 1977 c. 449.

88.29 Referral of petition to board; examination of lands; hearing by board. (1) Upon receipt of a petition for organization of a drainage district the court or judge by order shall refer the petition to the drainage board and order the board to report thereon.

(2) When a petition has been so referred to the board, the board, with the aid of an engineer having the qualifications specified in s. 88.21 (5), shall examine the lands described in the petition and all other lands that the board believes will be benefited or damaged by the proposed work and shall consider whether the drains as proposed in the petition are satisfactory.

(3) The board also shall hold a hearing on the petition to ascertain the sufficiency of the signers and to hear all interested persons who desire to be heard for or against the petition.

(4) The board shall fix a time and place of hearing on the petition, on or conveniently near the lands described in the petition, and shall give

notice thereof as provided in s. 88.05 to the persons specified in s. 88.05 (4) (c).

(5) The notice shall describe the lands involved and may be in substantially the following form:

“Notice is hereby given that the drainage board of county will meet on the day of, 19, at o’clock, M. at the (here describe the place of meeting) to consider the petition filed in the circuit court of county to drain lands among which are the following: (here describe the lands described in the petition). All persons interested may appear and be heard on the petition.

Dated

.....

 Drainage Board”.

(6) The board may adjourn the hearing to such time and place as it deems convenient or necessary. The board shall either make public announcement of the time and place of such adjournment or give notice as provided in s. 88.05 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.

History: 1979 c. 175 s. 50.

88.30 Special reports required when proposed drainage district exceeds 200 acres.

(1) If the area recommended by the board for drainage exceeds 200 acres, the board, prior to the court’s hearing on its report, shall procure and file with the court a report of the secretary of administration on:

(a) The location, design, feasibility and cost of the proposed outlet drains;

(b) A general description of the additional drainage necessary to reclaim the land fully for general agricultural purposes, and the probable cost of the same;

(c) A general comparison of the benefits in the different parts of the district on the basis of the location and design of the proposed drains, and the physical features of the land to be drained.

(2) The board, with the aid of an engineer having the qualifications specified in s. 88.21 (5), shall make the necessary survey and evaluation as directed by the secretary of administration for his report.

(3) The report of the secretary of administration also shall include a report of the college of agriculture of the university of Wisconsin on:

(a) The quality and character of soils and subsoils in the proposed district;

(b) A soil map of the proposed district;

(c) The present agricultural value of the lands;

(d) The kind of crops to which such lands will be adapted after drainage.

(4) It is the duty of the secretary of administration and the college of agriculture to furnish such reports as expeditiously as possible upon receipt of a request pursuant to this section. Such reports constitute prima facie evidence of the facts stated therein.

88.31 Special procedure in cases affecting navigable waters. (1) If it appears to the board from its investigation or from the hearing held on the petition that it will be necessary to enter upon any waters that may be navigable, or to acquire and remove any dam or obstruction therefrom, 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 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 the board or the department of natural resources deems necessary. The application shall state that the public health or welfare will be promoted by the removal of such dam or other obstruction or by the straightening, cleaning out, deepening or widening of such waters and that other public rights in and public uses of such waters will not be materially impaired. The application shall be duly verified.

(2) Upon receipt of such application the department of natural resources forthwith shall fix a time and place for hearing thereon, 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 to the persons specified in s. 88.05 (4) (b).

(3) At the hearing on the application, all interested persons may appear and be heard. The department also may make an independent investigation of the situation.

(4) Upon the conclusion of the hearing and investigation, the department of natural resources shall grant the permit if it finds:

(a) That the public health and welfare will be promoted by the proposed removal of the dam or other obstructions or by the proposed straight-

ening, cleaning out, deepening or widening of such waters; and

(b) That the proposed work is necessary to the proper operation of the proposed drainage system; and

(c) That the proposed work will not materially impair the navigability of any such waters and will not materially impair any other public right in or public uses of such waters. The enjoyment of natural scenic beauty is declared to be a public right to be considered along with other public rights.

(5) When granting a permit under this section the department of natural resources also shall establish the minimum level at which the affected waters may be maintained.

(6) The department of natural resources may require the applicant for the permit to submit a plan for the work to be done in the waters in question and may amend or modify such plan before approving it. The department may at any time, on the application of any interested person, further amend such plan when the same can be done without materially impairing the navigability of any such waters and without materially impairing any other public right.

(7) Upon granting a permit under this section, the department forthwith shall transmit to the secretary of the drainage board a copy of the permit and the relevant findings, orders and approved plans.

(8) Subject to other restrictions imposed by this chapter, a drainage board which has obtained a permit under this chapter may:

(a) Do all acts necessary in and about the surveying, laying out, constructing, repairing, altering the course of, enlarging, clearing, deepening, widening, protecting and maintaining any drain in, through, or upon such waters, both within and beyond the limits of the drainage district; and

(b) Procure, purchase or condemn by proceedings had under ch. 32, riparian rights, rights of flowage, dams and waterpowers in such waters, both within and beyond the limits of the drainage district.

(9) In all cases a drainage district is liable to the owner of riparian rights, rights of flowage, dams and waterpowers for all property taken and for all damages which may be occasioned to such property by reason of any work done on it. Such damages shall be determined either by agreement, award of damages or condemnation proceedings and shall be paid by the drainage district before the work is done in the same manner in which payments are made where lands are acquired by railroad companies under condemnation proceedings.

88.32 Preliminary report to the court. (1)

Within 30 days after the final adjournment of the hearing provided for in s. 88.29, the board shall report in writing to the court:

(a) Whether the petition has the required number of signers;

(b) Whether the lands described in the petition will be improved by drainage;

(c) Whether other lands in the vicinity, draining to, from, or through the proposed drains, require drainage and if so a description of the same;

(d) Whether such drainage is feasible;

(e) Whether the public health or public welfare will be promoted by the proposed work;

(f) Whether the drains proposed in the petition will best accomplish the drainage prayed for and the area that should be drained;

(g) Whether the benefits from such work will exceed the cost of construction by the required amount;

(h) Such other facts as in the opinion of the board will aid the court in its decision upon the report.

(2) The board may recommend to the court an increase or decrease in the area proposed in the petition to be drained. If the proposed drains are not satisfactory the board shall recommend other drains.

(3) In determining whether public health and welfare will be promoted, the board shall include in its consideration whether the cumulative effect of such drainage over a period of time will affect the temperature of the water of lakes or streams, or will lower the water levels of lakes or streams or of the subterranean sources that supply farm and city water systems, and whether the general need for the type of land that will be made available for cultivation or other purposes by such drainage is sufficiently great to warrant the possible harmful effects described above.

(4) The board shall attach to its report proof of the service of notice of hearing on the petition together with a copy of its minutes of such hearing.

88.33 Drainage project may be stopped prior to organization of district. (1)

At any time prior to the entry of the order organizing a drainage district, the owners who represent a majority of the lands described in the petition for drainage or who represent a majority of the lands contained in the report of the drainage board may file with the court a petition requesting that no further proceeding be had and that no further expense chargeable to the proposed drainage district be incurred.

(2) Upon receipt of such petition the court or judge shall fix a time and place of hearing thereon and shall cause notice thereof to be given as provided in s. 88.05 to the persons specified in s. 88.05 (4) (b). If on such 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.

(3) As a condition of issuing the order under sub. (2), the court shall require those petitioners under this section who also were petitioners under s. 88.27 to pay the expenses of the hearing under this section and all expenses incurred to date in connection with the proceedings to organize the district.

88.34 Hearing by the court; organization of drainage district. (1)

When the board has filed its report with the court, including any reports required by s. 88.30, the court or judge shall fix a time and place of hearing thereon and shall cause notice to be given under s. 88.05 to the persons specified in s. 88.05 (4) (c).

(2) The order fixing the hearing may be in substantially the following form and a copy of the order may be served as notice of the hearing:

“Circuit court for county,
In the matter of the drainage.

Whereas a report has been filed in this court by the county drainage board recommending the drainage of the following described lands: (here describe the lands reported for drainage).

It is ordered that the report be heard and examined before this court on the day of, 19, at o'clock M. at the (here state the place of hearing) at which time and place all interested persons may appear and be heard. All objections must be in writing and comply with s. 88.07 (1).

Dated

.....
Circuit Judge”

(3) The court shall make an order organizing the drainage district and direct the board to proceed with all convenient speed if on such hearing the court finds each of the following facts:

(a) That the petition or petitions have sufficient signers.

(b) That the lands described in the petitions together with any additional lands recommended by the board for drainage will be improved by the proposed work.

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

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

(e) If navigable waters may be affected, that a permit has been obtained under s. 88.31.

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

(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 excess or deposits and leaves with the court such sum of money as the court determines will cover such excess.

(5) Unless the conditions specified in sub. (3) or (4) are met, the court shall deny the petition and shall tax the taxable costs of the proceedings as provided in s. 88.08.

(6) The court may include in a proposed drainage district any lands requiring drainage and lying adjacent to the lands described in the petition and shall not lose jurisdiction by reason of bringing in lands not described in the petition.

(7) If there are petitions before the court to organize 2 or more drainage districts and the court is of the opinion that the territory in the proposed districts should be included in one district or in a lesser number of districts than the petitions call for, the court may by order organize such territory into such number of districts as it deems will best conform to the purposes of this chapter, or the court may annex any territory asking to be organized as a drainage district to a district already organized.

(8) The territory in a district need not be all in one body if:

(a) It is so situated that the public health or public welfare will be promoted by drainage of each separate body thereof; and

(b) The cost of construction in each separate body thereof will not exceed 75% of the benefits to be derived from the proposed work therein; and

(c) The court is satisfied that the proposed work can be more cheaply done or maintained in a single district than otherwise.

(9) A certified copy of the order organizing a drainage district shall be filed with the register of deeds of each county in which lands of the district are located.

History: 1977 c. 135 s. 19; 1977 c. 449.

88.35 Laying out drains, assessment of benefits and award of damages in newly organized district; final report to the court.

(1) Upon the organization of a drainage district, the board shall with the aid of an engineer having the qualifications specified in s. 88.21 (5):

(a) Lay out drains of sufficient depth to adequately drain the lands proposed to be drained, including the preparation of profiles showing the grades of all drains and a map showing the boundaries of the drainage district and the proposed location of all drains;

(b) Assess the benefits that will accrue to each parcel of land benefited;

(c) Award damages to such lands as will be damaged;

(d) Estimate the cost of construction;

(e) Assess the cost of construction against the benefited lands in proportion to the benefits received by each;

(f) Estimate the annual cost of maintenance and operation of the drainage 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, or the location, plan or extent of any drain as proposed by the petitions, but shall locate, design, lay out and plan the same in such manner as to the board seems best 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 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, 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.

(4) In assessing benefits to farm lands, the board shall ascertain and consider the depth, quality and character of the surface and subsoils, the thoroughness of drainage, the difficulty of drainage, the uses to which the land when drained will be adapted, and all other material elements entering into the increase in the value of such land resulting from the proposed work.

(5) If the damages to any land exceeds the assessment for cost of construction levied against such land the excess shall be paid out of the assessment for cost of construction levied against all lands.

(6) Upon the completion of its duties under subs. (1) to (5), the board shall make a written

report thereon to the court, including a copy of any maps, plans or profiles which 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]

Figure 88.35 (6):

Description of land or name of corporation	Assessed benefits	Assessed for construction	Damages	Net assessment for construction
Section 6, Town Range, SE¼ NE¼	\$ 850.00	\$ 425.00	\$ 10.50	\$414.50
Lot 1	400.00	200.00		200.00
Village of	2,500.00	1,250.00	666.00	584.00
B.G. & Q. Ry. Co.	1,000.00	500.00	600.00	
Town of			150.00	

(7) If the area of the drainage district exceeds 200 acres, the report shall be submitted to the secretary of administration before it is filed with the court. Within 10 days, the secretary of administration shall return it with his approval or disapproval.

History: 1979 c. 110.

88.36 Hearing on and confirmation of final report.

(1) Upon the filing of the report provided for in s. 88.35, the court or judge shall fix a time and place of hearing thereon and shall cause notice thereof to be given under s. 88.05 to the persons specified in s. 88.05 (4) (c).

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

(3) With regard to objections relating to assessment of benefits against or award of damages to specified lands, any evidence may be introduced which tends to establish what assessments or awards would be equitable as compared with other lands in the district.

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

(5) Upon confirmation of the report the court shall direct the board to proceed with the work as provided in s. 88.62.

(6) No order confirming a report and directing the board to proceed with the work shall be entered unless the court finds that the cost of construction of the work necessary under such

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 order.

History: 1977 c. 135 s. 19.

GENERAL RULES APPLICABLE TO ASSESSMENTS

88.40 Assessments for costs to be certified to register of deeds; assessments are lien on lands.

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

(2) From the time of recordation of the order confirming such assessments for costs until they are paid, such assessments and the interest thereon are a first lien upon the lands assessed and take priority over all other liens or mortgages except liens for general taxes, regardless of the priority in time of such other liens or mortgages.

(3) When any assessment which is a lien on land has been fully paid, the board shall execute in writing a satisfaction of such lien. Such satisfaction may be recorded in the office of the register of deeds.

88.41 Payment of assessments for costs.

(1) All assessments for costs are due and pay-

able at once unless the court by order directs that the assessments may be paid in instalments. Assessments shall be paid to the county treasurer as treasurer of the drainage district.

(2) At the time of confirmation of any report making assessments for costs, or at any time thereafter but before the issuance of bonds or notes which are a lien on the assessments, the court may order the assessments for costs to be payable in annual instalments. The court 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 drainage district, subject to the following limitations:

(a) The number of annual instalments may not exceed 15 in the case of assessments for cost of construction or 3 in the case of assessments for cost of repairs.

(b) The first instalment is due and payable on September 1 following the court'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 in its order may direct a delay in the commencement of the payment of instalments for 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.

(3) Any owner of land assessed for costs may, at any time before the board contracts to borrow money upon notes or bonds based upon such assessment, pay to the county treasurer as treasurer of the drainage district the amount of the assessment against his land or any tract thereof, together with any interest due thereon.

(4) The following rules govern interest on assessments for costs:

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

(b) Interest shall run from the date of confirmation of the assessment unless the court 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.

(c) If instalment payments have been authorized pursuant to sub. (2), interest shall be computed as of September 1 and is payable annually on that date.

(e) Interest shall be collected in the same manner as the principal of the assessment.

(f) If it becomes necessary to certify past due assessments to the clerk of the town, village or city for collection, the provisions of s. 88.42 relating to interest also are applicable.

History: 1979 c. 110 s. 60 (13).

88.42 Unpaid drainage assessments to be collected as taxes. (1) The secretary of the drainage board shall, in accordance with s. 88.19, keep a separate record of all assessments in each drainage district under the board's jurisdiction. On or before December 1 of each year, the secretary shall certify all past due assessments for costs (including past due instalments) to the clerk of the town, village or city in which the delinquent lands are located or assessed, specifying the amount due from each tract, parcel or easement. The amount certified shall include interest at the rate of 6% per year computed through December 31 of the current year.

(2) Each town, village and city clerk shall insert in the tax roll for each year, but in a column separate from the general tax, the amounts certified to him by the secretary of the board under sub. (1). Such assessments and interest shall be collected in the same manner as general taxes, except that the personal property of natural persons and private corporations, and all lands except those against which assessments were made, are not liable to seizure and sale therefor.

(3) In case of failure to certify or collect the unpaid assessments in any one year or if mistakes are made in certifying or collecting assessments, the same may be certified, corrected and collected in any subsequent year.

(4) All drainage assessments collected by the local town, village or city treasurer shall be paid over forthwith to the county treasurer of the county whose court has jurisdiction of the district, and such local treasurer shall obtain and file the proper receipt therefor. The county treasurer shall promptly credit the amounts so received to the drainage districts entitled thereto.

History: 1979 c. 110 s. 60 (13).

88.43 Collection of assessments as delinquent taxes. (1) If the amounts certified to the town, village or city clerk under s. 88.42 are not collected by the town, village or city treasurer, such treasurer shall return them to the county treasurer, in the same manner and at the same time as delinquent taxes, but separately therefrom. The county treasurer shall advertise the same in his list of lands to be sold for unpaid taxes, and unless they are paid to him prior to the tax sale, he shall sell such lands for the taxes and drainage assessments against the same, treating such drainage assessments the same as, but keeping them separate from the unpaid taxes on his records. When he issues certificates of sale of land for taxes and drainage assessments, he shall issue a separate certificate for

88.43 DRAINAGE OF LANDS

2254

the amount of drainage assessments and accrued interest thereon.

(2) If the tax on any land is paid but the drainage assessment is not paid, the county treasurer shall proceed to sell the land for drainage assessments in the same manner as he would proceed in case of unpaid taxes. The tax certificate and the drainage assessment certificate on the same land may be assigned separately or together, but at the public sale they shall be offered and sold together.

(3) A county bidding in lands being sold for delinquent drainage assessments, whether under s. 74.42 or 74.44, holds the drainage assessment certificates solely as trustee for the benefit of the drainage district and is not liable thereon or required to pay therefor unless it takes a drainage assessment deed thereon. No credit shall be extended by the county to the treasurer of the town, village or city within which such lands lie, for such unpaid assessments on the lands so bid in, but the county treasurer shall give to such town, village or city treasurer a statement showing the amount of such unpaid assessment on such lands. The county may sell or assign such certificates in trust for the drainage district in which the lands are situated.

(4) Unless in conflict with this chapter, the rules of law in chs. 74 and 75 which are applicable to the collection of general taxes apply to the collection of delinquent drainage assessments.

88.44 Contesting validity of assessments. (1) Whenever the validity of any confirmed assessment of benefits or assessment for costs is questioned and such question is brought to the attention of the court by any interested person, the court shall fix a time and place of hearing and require all interested persons to show cause why such assessment should not be validated. Such order to show cause shall be served in such manner and upon such persons as the court directs.

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

(3) No drainage assessment is void or voidable for irregularity in the proceedings unless it is shown that the assessment is inequitable.

88.45 Procedure upon discovering omitted assessments. (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 assessments or awards as it deems 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 any assessment in such district voidable.

(3) This section is retroactive.

88.46 Reassessment of benefits. (1) At any time after the expiration of 5 years from the confirmation of the report of the board assessing benefits in a drainage district, owners of land in the district may petition the court for a reassessment of benefits on the ground that the original assessment of benefits is inequitable and unjust. Such 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. 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 all benefits in the district so as to correct such inequities and injustices. Upon completion of the reassessment, the board shall report the same to the court.

(3) The court or judge shall fix a time and place of hearing on the board's report and shall cause notice thereof to be given under s. 88.05 to the persons specified in s. 88.05 (4) (b). Thereafter, proceedings shall be had substantially as provided in s. 88.36 (2) to (4).

(4) A reassessment under this section supercedes all prior assessments of benefits, subject in every case to s. 88.02.

History: 1979 c. 110 s. 60 (11).

88.47 Apportionment of assessments when assessed parcel is divided. (1) If any tract of land which has been assessed benefits as a unit subsequently is divided into smaller par-

cels, the board shall apportion such assessment, and any unpaid assessment for costs based thereon, among the several divisions in such manner as is equitable.

(2) If the owner of any of the lands affected is dissatisfied with the manner in which the board apportioned the assessments, the owner may, within 30 days after the board's decision, file with the board a written request that the matter be determined by the court. Thereupon the board shall report the facts to the court. The court shall order a hearing on the report and may order the giving of such notice of the hearing as it deems necessary. After the hearing, the court shall enter an order disposing of the matter in such manner as it deems just and reasonable.

History: 1977 c. 449.

88.48 Assessment of county and municipal lands. (1) Lands owned by a county, town, village or city may be assessed benefits, awarded damages and assessed for costs the same as other lands within the district. Notice of hearing on the report assessing benefits against such lands shall be served on the clerk of the county, town, village or city in the same manner as upon resident landowners.

(2) As assessments for costs levied against any town, village or city become due, the board shall certify such assessments to the clerk of such town, village or city, and the clerk shall place them upon the next tax roll. Whenever such assessments exceed one-fourth of one per cent of the assessed value of the property in such town, village or city for the last previous assessed valuation, such assessments shall be paid in instalments of one-fourth of one per cent of such valuation for each year until paid unless the court orders them paid in smaller amounts.

88.49 Assessment of one district by another; judgment against district. Whenever one district has assessed another district for special benefits and such assessment has been confirmed by the court, or whenever 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 is liable a sum sufficient to pay the assessment or judgment. The court may order that such assessment or judgment be payable in instalments.

88.50 When state lands subject to assessment; right of way across state lands.

(1) Agricultural lands owned by the state are subject to assessment in drainage proceedings. Other lands owned by the state are not subject to such assessment. Whenever the state acquires lands against which drainage assessments have been made and which no longer will be subject to assessment, the state shall pay the district all unpaid assessments against such lands, whether due or not. The secretary of the board then shall remove the lands from the district's assessment roll. Acquisition of such lands by the state shall not be construed as prohibiting maintenance of existing drains.

(2) No drain may be constructed on lands owned by the state or on lands on which the state exercises management control by easement, lease or otherwise, without the written permission of the agency responsible for the lands. The agency shall grant such permission upon application made to it, unless it finds after notice and public hearing thereon that the proposed drain will be injurious to the use of the property for the purposes for which it was acquired by the agency. Any administrative decision on the application, or any findings or order of the agency after public hearing, made hereunder shall be subject to review under ch. 227.

BORROWING MONEY; REFINANCING; COMPROMISE OF DEBTS

88.54 Borrowing money. (1) At any time after the filing of a petition for organization of a 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 indebtedness by notes or bonds of the district, bearing interest at a rate approved by the court 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 notes and bonds constitute a lien upon all confirmed assessments for costs which are unpaid at the time the notes are given or bonds issued. Board members are not personally liable on such notes or bonds.

(3) Whenever 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

88.54 DRAINAGE OF LANDS

2256

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

(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 becomes due, or if any extraordinary emergency requires borrowing, the board shall apply to the court for authority to borrow money to pay the same or meet such 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 \$3,000 and the loan does not run beyond one year, the court may authorize the borrowing without holding a hearing on the question. In other cases, s. 88.06 shall apply. When necessary, additional assessments to pay such loans shall be made under s. 88.23.

(5) If a district borrowing money under sub. (4) has lands covered by drainage assessment certificates which are held in trust by the county treasurer, the board may obtain such certificates from the county treasurer and use them as collateral security for the payment of such loan. Upon request therefor, the county treasurer shall assign the certificates to the board. The board shall give the county treasurer a receipt for the certificates received from him, specifying the dates and numbers of such certificates, and shall spread a copy of such receipt on the minutes of its proceedings together with a memorandum stating by whom such assessment certificates are held as collateral. Such assessment certificates shall not be sold by the pledgee for less than their face and 6% interest from their date. All loans made under sub. (4) may be renewed but in no event shall they exceed the face and interest of the bonds and notes of the district and accrued interest which are paid by the money so borrowed.

(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 approval.

(7) The board shall keep a record of all bonds and notes issued on behalf of a district. Such record shall show with respect to each bond and note the number, series, date, principal, rate of interest and date of maturity thereof, the date when interest is due thereon and any payments

made. If a bond or note is refunded it shall be marked "Refunded by No.".

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 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 district payable in such longer time as the court deems proper. Such new notes and bonds shall not exceed in the aggregate the amount of all notes and bonds of the district then outstanding and the unpaid accrued interest thereon, and shall bear interest at a rate approved by the court.

(2) When the indebtedness of the district has been refunded or is about to be refunded as provided in sub. (1), the court 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 may make all orders and do all other things necessary to carry into effect such extension of time.

88.56 Compromise and discharge of obligations. (1)

Whenever a drainage district is unable to pay its bonds and notes in full, the board may enter into a written compromise agreement with the owners of not less than 70% of its obligations. When such agreement has been signed by members of the board and the owners of 70% of such obligations, all creditors of the district are subject to such agreement to the same extent as those signing the agreement, and their claims shall be treated in all respects as if they had executed such agreement.

(2) Whenever a drainage district is unable to pay its obligations in full, the board may file with the court a petition for an order approving a settlement of claims and directing an equitable distribution of net assets among the creditors of the district. Such petition shall list the available assets of the district, the obligations of the district, the owners of such obligations and their names and addresses or, if unknown, a statement of that fact, and shall state whether a compromise agreement has been executed under

sub. (1). If such agreement has been executed, a copy thereof shall be attached to the petition.

(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 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 to all creditors of the district whose names and addresses are known.

(4) The court shall receive, examine and adjust all claims and demands against the district. At the time set for hearing on claims, any claim may be allowed which is accompanied by a statement of account verified by affidavit and to which no objection is received, except that no claim shall be allowed until the court is satisfied that it is just.

(5) The court shall make a statement embracing a list of the claims presented against the district and those presented as a set-off. Such statement shall show how much was allowed and how much disallowed in each case, together with the final balance, whether in favor of the creditor or the district. Such statement shall be filed by the judge and shall stand as the judgment of the court. The court may make an order directing that the available balance of the funds of the district, after costs are paid, be distributed among the district's creditors as equity requires and discharging the district from further liability on its obligations.

(6) All claims against a district which are not filed within the time limited by this section are barred.

CONSTRUCTION, MAINTENANCE AND IMPROVEMENT OF DRAINS

88.62 Conditions relative to doing of work. (1) The court may authorize the drainage district to do its own work or may require the board to enter into contracts to have the work done. The court may in any case require the board to advertise for bids and shall so require in all cases where the work to be done will, in the court's opinion, cost in excess of \$2,000. 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, 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 all bids.

(2) Before the board or its contractor may enter on lands for the construction of any drain

thereon, any damages awarded to the owners of such lands in excess of assessments against such lands for cost of construction must have been paid or tendered. If the owner is unknown or the board for any other reason cannot safely pay him, it may deposit the net damages with the clerk of the court for the benefit of the owners or parties entitled thereto, to be paid or distributed as the court directs. Such payment has the same effect as a tender to and acceptance of damages by the person entitled thereto.

88.63 Maintenance and repair of drains.

(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 members of the board may themselves make the inspection.

(2) The board shall establish a fund for the payment of costs of maintenance and repair. Whenever the amount of the fund falls below an amount equivalent to 5% of the confirmed benefits currently in effect in the district, the board shall levy an additional assessment under s. 88.23 for maintenance and repair. Assessments for costs of maintenance and repair shall be apportioned on the basis of the confirmed benefits then in effect in the district but may be made notwithstanding the fact that assessments of benefits in the district may have been exhausted by previous assessments for other costs. Assessments for costs of maintenance and repair, including costs incurred and per diems earned by board members under sub. (1), are not limited by the extent of unexhausted assessments of benefits in the district and shall not be counted in determining whether there are unexhausted assessments of benefits against which assessments for costs other than those authorized by this section may be made.

(3) In this section "maintenance and repair" refers to the restoration of a drain or any part thereof as nearly as practicable to the same condition as when originally constructed or subsequently improved, including resloping of open ditches and leveling of spoil banks or excavated materials, and such routine operations as from time to time may be required to remove obstructions and preserve the efficiency of the drains. The terms do not include any substantial or

88.63 DRAINAGE OF LANDS

2258

material alteration, enlargement or extension of the drainage system of the district.

See note to 30.10, citing 63 Atty. Gen. 493, concerning navigable ditches.

88.66 Construction and repair of drains crossing railroad right of way. (1)

If necessary for proper drainage, the board may lay out and construct drains across any railway right of way within a district. As soon as the drain has been constructed up to such right of way, the railway company shall open its right of way and permit such drain to cross the same.

(2) Every district whose drains cross the right of way of a railway company is liable to such company for the reasonable cost of opening its right of way and also for the cost of the culverts and bridges made necessary by such drain. The drainage board shall include such costs in its cost of construction, as set forth in its report of benefits and damages, and shall award them as damages to the railway company. The bridge or culvert shall be designed by the district's engineer and the design submitted to the railway company for approval. If a dispute arises as to the adequacy of the design, either party may submit the dispute to the office of the commissioner of transportation by filing with the office a statement as to the facts involved and the nature of the dispute. The office shall investigate and determine the matter in controversy in accordance with ch. 195, and any order it makes in such proceeding has the same effect as an order in any other proceeding properly brought under ch. 195.

NOTE: Sub. (2) is shown as affected by ch. 347, laws of 1981, eff. 7-1-83, which substitutes "office of the commissioner of transportation" for "transportation commission" and "office" for "commission".

(3) (a) Whenever the cleaning out, deepening or reconstruction of a drain crossing a railway right of way requires the lowering of a culvert through such right of way in order to provide effective drainage, the drainage board shall proceed as provided in subs. (4) to (7). Except as provided in par. (b), the expenses involved in such lowering shall be borne by the drainage district or as provided by mutual agreement between the railway company and the drainage board.

(b) Whenever a railroad is being constructed or reconstructed across a drainage district's drain, or a culvert in such drain is being replaced, the railway company shall consult with the drainage board having jurisdiction of such district for the purpose of determining the depth at which such drain was laid out. If any culvert or similar opening in a railway right of way is installed at a grade higher than the depth at which such drain was laid out, the expenses involved in any future lowering of the culvert

pursuant to par. (a) shall be borne by the railway company unless the company was misled by the drainage board as to the proper grade at which to install the culvert. This paragraph applies only to work done after June 13, 1964.

(4) Whenever it becomes necessary to open a railway right of way in order to permit cleaning out or repairing any district drain, the board shall ascertain the reasonable cost thereof and, except as otherwise provided in sub. (3), shall award such cost as damages to the railway company in the board's report when assessing the cost of repairs.

(5) Upon receiving 30 days' notice in writing, any railway company across whose right of way any drainage district drain is laid out shall open its right of way to permit the board and its contractors, agents or employes to construct, clean out or repair such drain.

(6) If the railway company fails to open its right of way as required by this section, the board may at any time after the expiration of 30 days from the giving of the notice specified in sub. (5) open such right of way along the lines of such drains and construct, clean out or repair the same and may recover from the railway company the reasonable expense of opening the right of way.

(7) The district constructing, cleaning out or repairing a drain across the right of way of a railway company shall so prosecute the work as not to delay traffic upon such railway for longer than is absolutely necessary.

History: 1977 c. 29 s. 1654 (9) (f); 1981 c. 347.

88.67 Construction and repair of drains crossing utility installations; laying utility installations across drains. (1)

Whenever the construction, reconstruction, clean out or repair of a drain makes necessary the removal or raising of a utility installation in order to permit the passage of a dredge or other machinery or whenever the lowering of an underground utility installation is necessary in order to provide effective drainage, the owner of the utility installation, upon being given 30 days' written notice stating the place where such dredge or machinery will pass or that lowering is necessary to provide effective drainage, shall remove, raise or lower the utility installation as requested by the board. Except as provided in sub. (3), the expenses involved in such removal, raising or lowering shall be borne by the drainage district or as provided by mutual agreement between the drainage board and the owner of the utility installation.

(2) If after the 30 days' notice specified in sub. (1) the owner of the utility installation fails to remove, raise or lower the same, the board

may do so and may recover from the owner of the installation the cost of the removal, raising or lowering.

(3) Whenever an underground utility installation is being laid or relaid across a drainage district's drain, the owner of the utility installation shall consult with the drainage board having jurisdiction of such district for the purpose of determining the grade at which such drain was laid out. If an underground utility installation is laid at a grade higher than the grade at which the drain was laid out, the expenses involved in any future lowering of the utility installation shall be borne by the owner of the utility installation unless the owner was misled by the drainage board as to the proper grade at which to lay the utility installation. This subsection applies only to work done after June 13, 1964.

(4) In this section "utility installation" includes any sluice or pipe carrying any gas or liquid, or any wire, conduit or cable used for conducting electricity or for any other purpose, whether or not such installation is owned by a public utility.

88.68 Construction of drain across public highway; construction of bridges across drains. (1) Any drain across a public highway shall be constructed according to like specifications and at the same time as the drain above such highway is constructed.

(2) Whenever 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 method of constructing or reconstructing the bridge. If they are unable to agree, the matter shall be referred to the court for determination. 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. 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 equivalent to the value of the bridge in place at the time of the construction of the drain.

(3) If the unit of government in charge of maintenance of a highway decides to construct a new bridge across a drain, the officers in charge of such construction shall notify the drainage board thereof by registered mail addressed to the secretary of the board. If the board within 10 days after receiving such notice notifies the officers in charge of construction of the bridge that it desires such bridge to be constructed with a certain clear span, the bridge shall be con-

structed in accordance with the board's order. If the board's order requires the bridge to be built of greater span than is necessary for proper drainage of flood waters, any excess cost resulting from such order shall be paid by the drainage district.

(4) Whenever the cleaning out, deepening or reconstruction of a drain crossing a public highway requires the lowering of a culvert through such highway in order to provide effective drainage, the drainage board may proceed to lower such culvert only after obtaining a permit under s. 86.07 (2). In lieu of issuing a permit, the authority in charge of maintenance of the highway may proceed to do the work itself. Except as provided in s. 86.075, the expenses involved in such lowering shall be borne by the drainage district, or as provided by mutual agreement between the highway authority and the drainage board.

88.69 District liable for damage to land outside its boundaries. (1) A drainage district is liable for any damages resulting to lands outside its boundaries because of work done within its boundaries. In this subsection "damages" means only such damages as could be recovered against a natural person for like injury resulting from like work. No action shall be taken to collect damages to outside lands until the damages actually have resulted. In cases of construction of new drains, the state may proceed pursuant to ch. 813 to prevent damage or injury to lands owned by the state.

(2) If through the construction of a drain by a higher district a lower drainage district incurs extra expense in providing means to carry off the waters or remove the sediment flowing from the higher district, the higher district is liable for such increased cost. The amount of such increased cost may be agreed upon between the districts or may be recovered in an action at law.

History: Sup. Ct. Order, 67 W (2d) 774.

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

(2) When the board has filed its report with the court, the court or judge shall fix a time and place of hearing thereon and shall cause notice

88.70 DRAINAGE OF LANDS

2260

to be given under s. 88.05 to the persons specified in s. 88.05 (4) (b).

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

(4) Upon being notified of the order organizing the subdistrict, the board shall prepare a plan and specifications for such more thorough or different drainage, estimate the cost of construction thereof, estimate the cost of all additional bridges thereby made necessary, and assess benefits against and award damages to all lands in such subdistrict benefited or damaged by such 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.

(5) Nothing in this section is intended to relieve owners of lands in the subdistrict of the proportionate share of their obligations to the district in which the subdistrict was formed.

88.71 Enlarging or supplementing existing drains. (1) Whenever the board is petitioned by the owners of one-tenth of the lands in a district to enlarge existing drains or to lay out and construct new drains in such district, or whenever the board is of the opinion that the plan of drainage of the district is or will be insufficient to effect a thorough drainage of such district or any portion thereof, and that enlarged or supplemental drains are required to effect such drainage, the board shall cause to be prepared plans and specifications for the enlargement of existing drains or for the construction of sufficient supplemental drains to complete the drainage of such district.

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

(3) The board then shall file with the court a report stating:

(a) That the drains constructed or authorized are insufficient to effect a thorough drainage of such district or the part thereof specified in the report and the facts relative thereto.

(b) The description of all lands previously assessed for benefits or awarded damages.

(c) The assessed benefits then in force.

(d) All assessments for costs confirmed against such benefited lands.

(e) Whether the assessments for costs already confirmed, together with the cost of construction by them proposed for such supplemental work, will exceed the benefits already confirmed.

(f) An assessment of supplemental benefits warranted by the work done and the proposed work upon all the benefited lands as the facts warrant, whether previously assessed benefits or not, and the assessment for cost of construction provided for in sub. (2).

(g) A prayer for such relief as the facts may justify.

(4) Upon the filing of such report and petition, proceedings shall be had thereon substantially as provided in s. 88.06.

88.72 Removal of dams or other obstructions in drainage outlets. (1) The board or the owners of more than one-tenth of the lands within any district may file with the court a petition setting forth:

(a) That the drains constructed within such district do not afford an adequate outlet for drainage;

(b) That it is necessary in order to give an adequate outlet to remove certain dams or other obstructions from waters or streams or to deepen, straighten or widen the same either within or beyond the boundaries of such district; and

(c) That the public health and the public welfare will be promoted by such work and that the navigability of such waters or streams and other public rights therein will not be materially impaired.

(2) Upon receiving such a petition, the court shall fix a time and place of hearing thereon and shall cause notice thereof to be given under s. 88.05 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.

(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 finds that the petition has the proper number of signers and that to afford an ade-

quate 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 district, the court shall direct the board to file an application with the department of natural resources as provided in s. 88.31. Thereafter, proceedings shall be had as provided in s. 88.31 insofar as the same is applicable.

(4) Within 30 days after the department of natural resources has issued a permit under s. 88.31, the board shall proceed to estimate the cost of such work, including the expenses of the proceeding together with the damages which 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 work and assess the cost of such work against the lands in such district in proportion to the assessment of benefits then in force.

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

(a) The intended result can be effectively achieved by additional work at a reasonable cost;

(b) The public welfare will be promoted by such additional work;

(c) The cost of such additional work, when added to all expenses previously incurred by the district will not exceed the total benefits theretofore assessed; and

(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.

History: 1973 c. 336.

88.73 Providing drainage for lands assessed but not adequately drained. (1)

Any person owning lands which 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 land into a district drain without crossing the lands of others may file with the clerk of court 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 his 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

immediate hearing thereon, upon which the court may enter an order confirming the same as provided in s. 88.34. If no written 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 88.36.

ENLARGEMENT, CONSOLIDATION, DIVISION AND DISSOLUTION OF DRAINAGE DISTRICT

88.77 Annexation of lands upon petition of owners. (1)

Whenever owners of lands adjacent to any drainage district desire such lands annexed to the district, they may file with the clerk of court a petition for annexation. Such petition must be signed either by more than one-half of all the owners of lands in the proposed annex, which signers must 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 lands so far as they are known. The petition shall be accompanied by a plat showing the original district and the proposed annex.

(2) The petitioners and all persons whose lands will be directly affected by the proposed annexation 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 immediate hearing thereon, upon which the court may enter an order confirming the same as provided in s. 88.34. If no written 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 88.36.

88.78 Annexation of benefited lands. (1)

Whenever any lands outside a drainage district are in fact receiving the benefits of any drain of such district but such fact was not evident or was inadvertently overlooked at the time of organization of the district, such benefited lands may be annexed under the procedure prescribed in this section.

(2) The board or any owner of land within the district may file with the court a petition to have such 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 petition the court shall enter an order directing that the owners of such lands be notified of the filing of such petition and of the contents thereof and requiring such owners to show cause at a time

88.78 DRAINAGE OF LANDS

2262

and place therein fixed, not less than 20 days after such 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 is satisfied that such lands or any of them are receiving benefits from any district drain, the court shall so find in writing and shall order 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 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.

88.79 Consolidation of drainage districts.

(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 order of consolidation may be issued only after public hearing as specified in this section.

(2) The consolidation process may be initiated either by the court on its own motion, by recommendation of the board made to the court, or by petition signed by the owners of at least 10% of the lands in each of the districts sought to be consolidated. If such districts are under the jurisdiction of different courts, the proceeding shall be conducted by the court having jurisdiction of the larger area.

(3) The court or judge shall fix a time and place of hearing on the proposed consolidation and shall cause notice thereof to be given under s. 88.05 (3) to the person 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.

(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.

(5) Assessments made against lands in the several districts so consolidated shall remain in full force and the lien thereof is not affected by such consolidation.

(6) After such consolidation, the benefits of the consolidated district may be reassessed to render them just and equitable as a basis for future assessments for costs, subject to s. 88.02.

88.80 Withdrawal of lands from drainage district. (1) Any person owning lands within a drainage district may, with the consent of the court, withdraw such lands from the district if:

(a) All benefits assessed against such lands have been paid; and

(b) The lands to be withdrawn will receive no benefit from the drainage district; and

(c) The drainage district will not be materially injured by the withdrawal of such lands.

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

88.81 Proceedings to suspend operations of drainage district.

(1) If the owners of land representing a majority of the confirmed benefits in a drainage district file with the court a petition requesting that no further proceedings be had and that no further expense be caused against the district, the court shall fix a time and place of hearing thereon and shall cause notice thereof to be given under s. 88.05 to the persons specified in s. 88.05 (4) (b).

(2) If on such 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. (1) have been met, it shall enter an order directing that no more work be done in or expense created against such district. Such 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 of the court 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 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 order.

(4) An order suspending operations of a drainage district remains in effect until a like application upon like notice requesting that work be continued is heard and determined in favor of petitioners.

History: 1977 c. 449.

88.82 Dissolution of drainage districts.

(1) The owners of land representing a majority of the confirmed benefits in a drainage district may file with the court having jurisdiction thereof a petition signed by such owners asking for the dissolution of the district. In any county in which all land has been incorporated in cities or villages the county board of supervisors is authorized to file the petition. Upon the filing of a petition under this section the court or judge shall fix a time and place of hearing thereon and shall cause notice thereof to be given under s. 88.05 to the persons specified in s. 88.05 (4) (b).

(2) No district shall be dissolved until all its debts have been paid unless:

(a) Funds to pay such debts including any interest thereon, have been deposited with the county treasurer; or

(b) The lands of the district have been assessed to the full amount of the confirmed assessed benefits and such assessments either have been paid in full or a sale of all delinquent lands has been had as authorized by s. 88.43.

(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.

(4) If the county treasurer has on hand any funds belonging to such dissolved district, he shall forthwith make distribution thereof among the several landowners in the district in proportion to the last confirmed assessment of benefits in the district. If there is any doubt as to the ownership of such lands, the owners claiming the right to participate in such funds shall make satisfactory proof of ownership to the court.

(5) If the county treasurer has funds on hand belonging to a drainage district which has been inactive for 6 or more years, he or she shall publish in the county, as a class 3 notice, under ch. 985, a notice of intent to file with the court having jurisdiction thereof a petition for dissolution of the drainage district, except that such notice is not required if funds on hand are less than \$100. Ninety days after the last publication provided for in this subsection, the county treasurer shall file such petition together with objections, if any, and if dissolution is ordered,

such funds held by the county treasurer shall revert and pass to the county for the benefit of the county. If the funds on hand are less than \$100, such funds shall automatically revert and pass to the county general fund.

(6) Any drains which have been constructed by a drainage district dissolved under this section or under prior law shall remain common waterways for the use of all landowners in the dissolved district. Any such landowner may make repairs thereto at the landowner's own expense. Any person who in any manner obstructs or injures any such drain is liable for all damages caused to any person thereby and in addition may be fined not more than \$100.

(7) In the alternative in any county in which all land has been incorporated in cities or villages if a drainage board is abolished or if a drainage district passes out of existence, any funds being held by the county treasurer shall revert and pass to the county for the benefit of the county.

History: 1975 c. 324, 421.

88.83 Transfer of district to city or village jurisdiction. (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 having jurisdiction of such 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 having jurisdiction of such 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 town may petition the court having jurisdiction of such 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 transfer under this subsection.

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

(3) If the court 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 district or part thereof, to such city or village. Thereupon, if such order has transferred jurisdiction of the entire district, such 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 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, all proceedings with reference to such drainage district or part thereof, 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 the governing body of any city or village. Such resolution shall state that such city or village is willing to accept such farm drain or part thereof and to administer the same under the laws pertaining to the operation of drains by such city or village, and that the public interest requires that such city or village take over the operation of such drain or part thereof. Such resolution shall be published once in a newspaper having general circulation in such city or village. The city or village may petition the court having jurisdiction of such drain for an order transferring jurisdiction of the district or part thereof to the city or village. No hearing shall be held on the petition until 30 days have elapsed from the date of such publication. A copy of such petition, together with a copy of the resolution, shall be served on the county clerk of the county in which such drain is located, and also upon the board having jurisdiction of such drain. Upon such hearing the court may issue an order transferring jurisdiction of such drain or part thereof to such city or village. Thereupon, if such order has transferred jurisdiction of the entire district, such 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 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, all proceedings with reference to such drainage district or part thereof shall be under the city or village drainage law.

(5) Upon entry of the order transferring jurisdiction of such district to such city or village, the county treasurer shall pay to the city or village treasurer of such city or village all moneys in his hands which belong to such drainage district. Upon entry of an order transferring jurisdiction of a part of a district to the city or village in which it is located, the county treasurer shall pay to the city or village treasurer a proportional share of the moneys in his hands which belong to the drainage district based upon assessed benefits transferred less a proportional share of outstanding indebtedness.

History: 1979 c. 110 s. 60 (11).

RIGHTS OF DRAINAGE; PRIVATE DRAINS; MISCELLANEOUS PROVISIONS

88.87 Road grades not to obstruct natural drainage, landowners not to obstruct highway drainage; remedies. (1) It is recognized that the construction of highways and railroad grades must inevitably result in some interruption of and changes in the preexisting natural flow of surface waters and that changes in the direction or volume of flow of surface waters are frequently caused by the erection of buildings, dikes and other facilities on privately owned lands adjacent to highways and railroad grades. The legislature finds that it is necessary to control and regulate the construction and drainage of all highways and railroad grades so as to protect property owners from damage to lands caused by unreasonable diversion or retention of surface waters due to a highway or railroad grade construction and to impose correlative duties upon owners and users of land for the purpose of protecting highways and railroad grades from flooding or water damage.

(2) (a) Whenever any county, town, city, village, railroad company or the department of transportation has heretofore constructed and now maintains or hereafter constructs and maintains any highway or railroad grade in or across any marsh, lowland, natural depression, natural watercourse, natural or man-made channel or drainage course, it shall not impede the general flow of surface water or stream water in any unreasonable manner so as to cause either an unnecessary accumulation of waters flooding or water-soaking uplands or an unreasonable accumulation and discharge of surface waters flooding or water-soaking lowlands. All such highways and railroad grades shall be constructed with adequate ditches, culverts, and other facilities as may be feasible, consonant with sound engineering practices, to the end of maintaining as far as practicable the original flow lines of drainage. This paragraph does not

apply to highways or railroad grades used to hold and retain water for cranberry or conservation management purposes.

(b) Drainage rights and easements may be purchased or condemned by the public authority or railroad company having control of the highway or railroad grade to aid in the prevention of damage to property owners which might otherwise occur as a result of failure to comply with par. (a).

(c) Whenever any county, town, city, village, 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 may, within 90 days after the alleged damage occurred, file a claim with the appropriate governmental agency or railroad company. Such claim shall consist of a sworn statement of the alleged faulty construction and a legal description of the faults alleged to have been damaged by flooding or water-soaking. Within 90 days after the filing of such 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.

(3) (a) It is the duty of every owner or user of land who constructs any building, structure or dike or otherwise obstructs the flow of stream water through any watercourse or natural or man-made channel or obstructs the flow of surface water through any natural or man-made channel, natural depression or natural draw through which surface waters naturally flow:

1. To provide and at all times maintain a sufficient drainage system to protect a downstream highway or railroad grade from water damage or flooding caused by such obstruction, by directing the flow of surface waters into existing highway or railroad drainage systems; and

2. To protect an upstream highway or railroad grade from water damage or flooding caused by such obstruction, by permitting the flow of such water away from the highway or railroad grade substantially as freely as if the obstruction had not been created.

(b) Whoever fails or neglects to comply with a duty imposed by par. (a) is liable for all damages to the highway or railroad grade caused by such failure or neglect. The authority in charge of maintenance of the highway or the railroad company which constructed or maintains the railroad grade may bring an action to

recover such damages. An action under this paragraph shall be commenced within the time provided by s. 893.59 or be barred.

(c) The authorities in charge of maintenance of highways or railroad companies maintaining railroad grades and their agents and employes may enter any lands for the purpose of removing an obstruction in a watercourse or highway drainage ditch which is in violation of par. (a) and which is flooding or causing damage to a highway under its jurisdiction.

(4) If a railway company fails to comply with sub. (2), any person aggrieved thereby may file a complaint with the office of the commissioner of transportation setting forth the facts. The office shall investigate and determine the matter in controversy in accordance with ch. 195, and any order it makes in such proceeding has the same effect as an order in any other proceeding properly brought under ch. 195.

History: 1977 c. 29 s. 1654 (8) (c), (9) (f); 1979 c. 323; 1981 c. 347.

NOTE: Sub. (4) is shown as affected by ch. 347, laws of 1981, eff. 7-1-83, which substitutes "office of the commissioner of transportation" for "transportation commission" and "office" for "commission".

88.88 Railroad to construct ditch or sluiceway across right of way. (1)

Whenever the owner of land desires to drain the same by a blind or open ditch and, to properly drain such land, a connecting ditch or sluiceway should be constructed across the right of way of a railway company, such owner shall file with the depot agent of such company nearest to such land a written petition stating the kind of ditch proposed to be built and requesting the company to construct a ditch or sluiceway across its right of way which will conform thereto. Within 60 days after the filing of such petition, the railway company shall construct such ditch or sluiceway. The petitioner shall pay the cost of such construction and shall assume all expenses in connection with maintaining such ditch or sluiceway on the railroad's right of way.

(2) If the railway company fails to comply with sub. (1), the person aggrieved thereby may file a complaint with the office of the commissioner of transportation setting forth the facts. The office shall investigate and determine the matter in controversy in accordance with ch. 195, and any order it makes in such proceeding has the same effect as an order in any other proceeding properly brought under ch. 195.

History: 1977 c. 29 s. 1654 (9) (f); 1981 c. 347.

NOTE: Sub. (2) is shown as affected by ch. 347, laws of 1981, eff. 7-1-83, which substitutes "office of the commissioner of transportation" for the "transportation commission" and "office" for "commission".

88.89 Roads not to obstruct natural watercourse. (1)

Whenever any embankment,

88.89 DRAINAGE OF LANDS

2266

grade, culvert or bridge (including the approaches to such culvert or bridge) built or maintained by any person across a natural watercourse or natural draw so obstructs such watercourse or draw that waters therein are set back or diverted upon any lands in a drainage district, such person shall so enlarge the waterway through such embankment, grade, culvert or bridge and the approaches thereto that it will not set back or divert such waters upon lands in the district.

(2) The drainage board or the owner of any land upon which water is set back or diverted by the obstruction mentioned 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 to permit the water to pass without being set back or diverted onto the lands of the district. If the owner of or person maintaining the embankment, grade, culvert or bridge fails to comply with the directive of the notice within 60 days after the service thereof, the drainage board or 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.

(3) Upon receipt of a report and petition under sub. (2), the court or judge shall fix a time and place of hearing thereon and shall order the owner or maintainer of the embankment, grade, culvert or bridge to show cause why an order should not be issued in accordance with the petition. At least 10 days before the time fixed for hearing on the petition, such 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 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 shall order the owner or maintainer of such embankment, grade, bridge or culvert to enlarge the waterway or construct a new waterway through the same, as the facts warrant. The period of time that such 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 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 failure.

History: Sup. Ct. Order, 67 W (2d) 774; 1977 c. 449.

88.90 Removal of obstructions from natural watercourses. (1) Whenever any natural watercourse becomes obstructed so that the natural flow of water along the same is retarded by the negligent action of the owner, occupant or person in charge of the land on which the obstruction is located, the owner or occupant of any lands damaged by such obstruction may request the removal thereof by giving notice in writing to such owner, occupant or person in charge of the land on which the obstruction is located.

(2) If the obstruction is not removed within 6 days after receipt of such notice, the owner or occupant of the damaged lands may make complaint to the supervisors of the town, filing at the same time a copy of the notice. Such supervisors, after viewing the watercourse and upon being satisfied that the complaint is just, shall make recommendations in writing to the owner or occupant of the lands where the obstruction is located, for the removal of such obstruction. If such recommendations are not followed within a reasonable time, the supervisors shall order the obstruction removed. The cost of view and of removal shall be charged and assessed against the lands from which the obstruction was removed and shall be collected as other special assessments are collected.

(3) Whenever any natural watercourse becomes obstructed through natural causes, the owner or occupant of any lands damaged by the effect which the obstruction has upon the flow of the water may go upon the land where the obstruction is located and remove it at his own expense. Such person is not guilty of trespass for entry upon the land but is liable for damage caused to crops or structures. The rights and privileges conferred by this subsection also extend to the agents or employes of the person causing the obstruction to be removed.

(4) This section does not in any manner limit the scope of s. 88.87.

Before proceeding under 88.90 (3), one must obtain permit under 30.20. State v. Dwyer, 91 W (2d) 440, 283 NW (2d) 448 (Ct. App. 1979).

88.91 Penalty for placing obstruction in ditches. (1) Except as authorized by s. 88.93, no person shall place any kind of obstruction to the free flow of water, including any soil wilfully deposited, in any drainage ditch, constructed under any drainage law of this state or lawfully constructed by any other person, without first obtaining the written consent of the drainage board or other person or authority in charge of such ditch.

(2) Any person violating this section may be fined not more than \$100 and in addition is liable to the drainage district and to all persons

whose ditches or lands are injured by such obstruction for all damages caused by the obstruction.

History: 1975 c. 108.

88.92 Private drains not to be connected with district drains. (1) Except as provided in s. 88.93 no person shall connect any drain with a district drain or remove any spoil bank except under written plans and specifications approved by the drainage board.

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

(3) The board shall preserve a copy of any plans and specifications approved under sub. (1).

88.93 Right to take water from drainage ditch. Any owner of lands which are located in or which adjoin a drainage district and which border on a drainage ditch may take water from such ditch for use in flooding lands for cranberry culture or for irrigation, if such water is taken from the ditch in such a manner as not to injure the ditch and the taking thereof does not materially defeat the purposes of such drainage and, in case the water is to be used for irrigation, a permit has been obtained under s. 30.18 (3) to (10).

88.94 Drains for individual landowners.

(1) Whenever any owner of agricultural lands desires to install drainage upon not more than 80 acres of such land owned by him, he may present a petition to the drainage board or, if there is no drainage board in the county, to the town supervisors of the town in which such land is located. Such petition shall set forth that:

(a) He desires to install drainage upon agricultural lands owned by him;

(b) Because of the contour of the land there is no suitable outlet on lands owned by him;

(c) The proposed drain will promote the general welfare and health of the community;

(d) It is impractical for such owner to drain his land without crossing the lands of others; and

(e) It is desired that a drain be laid out to a suitable natural outlet, specifying the course of the drain and location of the proposed outlet and ownership of lands through which such proposed drain would be laid.

(2) After receiving the petition the drainage board or supervisors of such town shall promptly fix a time and place of hearing thereon and shall give notice thereof under s. 88.05 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).

(3) At the time and place fixed for hearing, the drainage board or town supervisors shall meet and hear all interested persons wishing to appear for or against the petition. If the board or supervisors decide that the facts set out in the application are true, that a drain is necessary and that the benefits will exceed the cost of construction, they shall by order lay out a drain through which applicant's lands may be drained as a public drain. Otherwise, they shall deny the application. An order laying out a drain shall specify the benefits and damages to lands of others through which such drain will be laid out and shall provide that the drain may not be constructed until the excess of damages over benefits, if any, has been paid to the landowners entitled thereto. The order also shall contain a description of the location of the drain and specifications therefor. Lands of others shall not be assessed for costs even though benefited by the drain.

(4) Within 10 days after the making of an order laying out a drain, the board or supervisors shall cause a copy of the order to be sent by registered mail to each owner through whose lands the drain will pass, but failure to mail the copy within 10 days does not render the order void. Such order is final unless appealed from to the circuit court within 30 days after the mailing of the copy thereof as provided in this subsection.

(5) Within 30 days after the time for appeal from such order has expired or after such order is confirmed on appeal, the board or supervisors shall cause a copy of the order to be filed with the register of deeds of the county in which the lands are located. Thereupon, the drain becomes a public drain and the applicant may proceed with construction after having paid any excess of damages over benefits as specified in the order.

(6) This section does not authorize entry upon lands of another without the consent of the owner thereof during any time when there is any growing crop on such land, and no order issued under this section is effective to authorize such entry.

(7) This section does not apply to the installation or construction of a drain across the right of way of any railroad company, proceedings for which shall be as provided in s. 88.88.

(8) Expenses incurred by the drainage board under this section shall be paid by the petitioner.