

Missouri
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Words ▼

1st search term

And ▼

2nd search term



244.010. Drainage for agricultural or sanitary purposes. — The owner or owners of all or any part of any tract or parcel of swamp, wet, flat or overflowed land in this state, situated within or without any drainage or levee district organized under any laws of this state, shall have the right, under the provisions of this chapter, to drain or protect such land for sanitary or agricultural purposes, without forming such land into a district, by constructing an open ditch, laying tile or building a levee, and such ditch, tile or levee may be constructed through or across any tract or parcel of land situate between such land to be drained or protected and any lake, bayou, hollow, creek, artificial drainage ditch, river, depression or other outlet into which the waters from such swamp, wet, flat or overflowed land can be drained, provided the owner or owners of the land through or upon which such ditch, tile or levee must be built be paid a sum equal to the value of land, if any, consumed in constructing such works and the amount of damages, if any, that will be sustained by such land from the construction and maintenance of the improvement.

(RSMo 1939 § 12455)

Prior revisions: 1929 § 10865; 1919 § 4560; 1909 § 5662

CROSS REFERENCE:

County planning commission, class one counties, approval of improvements, 64.010 to 64.205

8/28/1939

244.020. Disagreement on drainage methods — petition circuit court. — 1. When the owner or owners of the land to be drained or protected and the owner or owners of the land through or across which such improvements are to be built or constructed fail to agree as to the location of the ditch, tile or levee or as to the value of land, if any, to be used, or the amount of damages, if any, that will result from constructing the improvements, the owner or owners of the land desired to be drained or protected shall have the right to file with the circuit clerk their petition, which shall state the method of drainage or protection desired, the name or names of the owner or owners of the land to be drained or protected with a description of the land owned by each, and the name or names of the owner or owners of the land through or upon which

such drain or levee must pass, with a description of land owned by each, and that the owners are unable to agree as to the best method to adopt for the drainage or protection of the swamp, wet, flat or overflowed land, the value of the land, if any, to be used for any ditch, tile or levee, or the amount of damages, if any, that should be paid the owner or owners of the land through or upon which the proposed improvements must be constructed. Said petition shall pray the circuit court that commissioners be appointed to consider any and all matters not agreed upon by the landowners and to make a report and recommendations for the adjustment of such disagreements.

2. A rough plat of all land that will in any way be affected by the proposed improvements and indicating the approximate location and course of the ditch, tile or levee, shall be filed with said petition, but such plat need not be made by an engineer; provided, that before any such owner or owners shall have the right to file any such petition he or they shall first tender in writing to the owner or owners of the land through or upon which such ditch, tile or levee is to be constructed, a sum of money equal to the amount of the value of the land, if any, that will be used in constructing the ditch, tile or levee, plus the damages, if any, that will accrue to the land and the cost of the crossings, if any are needed, which said amount, in the estimation of the owner or owners of the land to be drained or protected, seems just compensation for the total cost of such items, and the fact of said tender having been made and the amount of the same shall be stated in the foregoing petition.

(RSMo 1939 § 12456, A.L. 1945 p. 852)

Prior revisions: 1929 § 10866; 1919 § 4561; 1909 § 5665

8/28/1945

244.030. Filing of objections — hearing by court — appointment of commissioners. — 1. Such petition, as soon as so signed, shall be filed in the office of the circuit clerk of the county in which is situate the land that will be affected by the proposed improvements; each person not having signed such petition, owning land that will be either damaged or benefitted by the construction of the ditch, tile or levee shall be named as a party defendant in such action and served with a summons and a copy of the petition, as in ordinary civil actions. If such owner or owners of land be nonresidents of the state, then such service shall be had as provided in the civil code of Missouri.

2. The court shall set a date to hear objections, which such date shall be named in a notice accompanying such petition and given each owner of land and which hearing

shall not be more than twenty days from the return date; such notice shall state the purpose sought as set out in the petition and that the person receiving such notice shall have the right to file objections to the petition. Any person whose land will be affected in any manner by the proposed ditch, tile or levee shall have the right to file his objection on or before the date set for such hearing and before the hour of such hearing. Such objection or objections shall be limited to a denial of the allegations as contained in the petition.

3. The circuit court shall hear such objections without unnecessary delay and if such objections be overruled it shall appoint three disinterested residents of the county, not of kin within the second degree of consanguinity to any person owning land to be affected, as commissioners, who before entering upon their duties shall be sworn to faithfully and impartially perform the duties imposed upon them by this chapter.

(RSMo 1939 § 12457, A.L. 1945 p. 852, A.L. 1990 H.B. 1070)

Prior revisions: 1929 § 10867; 1919 § 4562

(1959) Circuit court of county in which lands sought to be subjected to an easement are located had jurisdiction of proceeding under this chapter notwithstanding such lands were included in district organized under chapter 242 by circuit court of adjoining county. *Dillen v. Remley (A.)*, 327 S.W.2d 931.

8/28/1990



244.040. Duties of commissioners. — Within twenty days after so qualifying, unless prevented by sickness or some other good cause, said commissioners shall proceed to view the premises and perform their duties. They shall be furnished by the clerk of the circuit court a copy of the plat of the land and proposed improvements filed with the petition under the provisions of section [244.020](#). They shall mark out the most practical route and location of the ditch, tile or levee, and they shall assess the benefits and damages, if any, that will accrue to each tract or parcel of land, according to ownership, because of the proposed works; they shall specify the number of crossings, if any, that will be needed for the use and convenience of the public or owners of the land to be affected by the proposed works, and they shall make such recommendations as they may consider necessary for the use of the circuit court in deciding the cause. They shall make out their report in writing and after the same shall have been signed by at least two of said commissioners, it shall be filed in the office of the circuit clerk. Said commissioners may employ an engineer or surveyor to

run levels, make measurements and obtain such other information as said commissioners may deem necessary to assist them in their work.

(RSMo 1939 § 12458, A.L. 1945 p. 852)

Prior revisions: 1929 § 10868; 1919 § 4563

8/28/1945

244.050. Notification of commissioners' report — filing of objections. — Within ten days after the filing of the commissioners' report the clerk of the circuit court shall give notice of such filing to each landowner, and said notice shall state the hour and date at which the circuit court, provided there be not less than five days between the serving of such notice and the date of hearing, will hear objections to said report. Any person whose land will be affected by the improvements as shown by said commissioners' report, shall have the right, on or before the date set for hearing of said report and before the hour set for said hearing, to file his objections to said report.

(RSMo 1939 § 12459, A.L. 1945 p. 852)

Prior revisions: 1929 § 10869; 1919 § 4564

8/28/1945

244.060. Confirmation or rejection of report — payment of costs. — Said circuit court shall hear all such objections in a summary manner and without unnecessary delay, and should it find that no objection should be sustained, the court shall approve and confirm said report, but if the court shall find that any or all of the exceptions or objections should be sustained, it shall render its decree accordingly. All additional costs incurred by hearing and determining such objections shall be apportioned by the circuit court to the landowners in proportion to the objections sustained or overruled. If the report of the commissioners as confirmed, or as modified, shows that the damages and cost of necessary crossings exceed the amount tendered, under the provisions of section [244.020](#), to the owner or owners of the land traversed by the works, the total court cost of the case, including fees and expenses of commissioners, shall be paid by the petitioner or petitioners, but if the amount of such items be not greater than the tendered amount the cost shall be paid by the objectors.

(RSMo 1939 § 12460, A.L. 1945 p. 852)

Prior revisions: 1929 § 10870; 1919 § 4565

8/28/1945



244.070. Limitation on improvements — dismissal of case, when. — 1. The word "tract" and "parcel" of land as used in this chapter shall include town lots or other subdivisions of land according to ownership. Persons desiring to drain or protect land under the provisions of this chapter shall not be limited to a single ditch, tile or levee, but two or more of each or all three may be constructed for the drainage or protection of the same tract of land.

2. If the report of the commissioners, as approved or as amended by the circuit court shows the total cost of the improvements, including value of the land used, the amount of the damages and cost of crossings, exceeds the total benefits accruing to all the land from the proposed improvement, the court shall dismiss the case and tax the court costs against the petitioners. Thereafter any one or more persons owning any portion of the wet, swamp, flat or overflowed land shall have the right to construct the ditch, tile or levee at his or their expense, but if constructed under such conditions the other owners of land that will be improved shall not be taxed for any of the costs.

(RSMo 1939 § 12465, A. 1949 S.B. 1084)

Prior revisions: 1929 § 10875; 1919 § 4570

8/28/1949

244.080. Appeals from circuit court decision. — Any person may appeal from the decision or decree of the circuit court as provided by law in other civil actions. Such appeal shall not act as a supersedeas or delay construction of either the ditch or levee or laying of the tile, but before such work shall be begun the owners of the land to be drained or protected shall pay into the hands of the circuit clerk for the use of the parties whose land is taken or injured, the amount awarded to said party or parties by the circuit court.

(RSMo 1939 § 12461, A.L. 1945 p. 852)

Prior revisions: 1929 § 10871; 1919 § 4566

8/28/1945

244.090. Disagreement on manner of construction — petition circuit court. — 1. The owner or owners of the land benefitted shall have the right, without obtaining permission of the circuit court, to construct the ditch or levee or lay the tile or to arrange to have such constructed or laid, but the damages resulting, if any, from the construction of the same shall be paid in cash to the owner or owners of the land taken or damaged, or the sum awarded for such items shall be placed in the possession of the circuit clerk for the use of such persons, before such construction shall be begun.

2. In case the owners of the land benefitted are unable to agree among themselves as to the manner of constructing the ditch or levee or laying the tile or letting the contract for the same, the circuit court shall have the power, upon being petitioned by a majority of persons interested, after due notice has been given to other interested parties, to let the work of construction out to the lowest or best bidder, and after such costs have been determined, the circuit clerk, upon order of the circuit court, shall apportion the total cost to each tract or parcel of land according to ownership in proportion the benefits derived as ascertained and determined by the court, and such cost shall become a lien upon such land and remain the same until paid.

3. Such lien shall be enforced by suit brought on bills properly made out and certified to by the circuit clerk, such suit to be brought in the name of the state at the relation of the interested party or parties in any court of competent jurisdiction. All sums collected by such suit shall include the court cost incurred in bringing and conducting such suit and a reasonable attorney's fee to be fixed by the court hearing said cause.

(RSMo 1939 § 12462, A.L. 1945 p. 852)

Prior revisions: 1929 § 10872; 1919 § 4567

8/28/1945

244.100. Rights of owners after construction. — The owners of the land benefitted shall have the right at any time after the ditch, tile or levee has been completed, to go upon the land through or upon which such works shall have been built and repair the same, but no right to enlarge or change the location of the ditch, levee or tile is granted under this chapter without first obtaining consent of the owner or owners of land traversed, either by free gift or purchase, but the owner or owners of the land drained or protected shall have the right to petition for privilege from the circuit court to enlarge works already made or to make necessary additional improvements, and such petition shall be proceeded with in the same manner as is provided in sections [244.020](#) and [244.030](#) for original construction.

(RSMo 1939 § 12463, A.L. 1945 p. 852)

Prior revisions: 1929 § 10873; 1919 § 4568

8/28/1945

244.110. Compensation — appointment of special commissioners and surveyor.
— 1. The parties petitioning shall be liable for all costs incurred on account of any proceeding under this chapter. Each commissioner shall receive for his services two

dollars for each day employed and necessary expenses incurred in addition thereto; any surveyor for services rendered while working under the direction of the commissioners shall be paid three dollars per day and all necessary expenses.

2. In case it becomes the duty of the circuit court to have the work constructed, as is provided for in section 244.090, said court shall have the right to appoint a special commissioner, who may or may not be a surveyor, and not owning land that is affected in any way by the works, to take charge of the construction and report to said court from time to time as to the progress of said construction and make a full report when the same has been completed. Such commissioner shall, upon completion of the work, make a final report to the court, and said court shall, if it finds said work performed according to contract, accept and confirm said report.

(RSMo 1939 § 12464, A.L. 1945 p. 852)

Prior revisions: 1929 § 10874; 1919 § 4569

8/28/1945

244.120. Amendment of petition — rights of landowner. — 1. The petition as signed and filed under the provisions of this chapter may be amended at any time as other pleadings in other cases.

2. The owner or owners of land within or without any levee or drainage district organized under the laws of this state shall be permitted to connect a ditch, tile or levee constructed under the provisions of this chapter with any artificial ditch, drain or levee of any drainage or levee district on such terms as the board of supervisors of such drainage or levee district or the court, under which any such district has been organized, may prescribe.

3. A petition filed under the provisions of this chapter and any and all matters pertaining thereto may be heard and determined by the circuit court at any time at a regular, adjourned or special session.

(RSMo 1939 § 12466, A.L. 1945 p. 852)

Prior revisions: 1929 § 10876; 1919 § 4571

8/28/1945

244.130. Penalty for obstructing ditch — inspection of lands without owner's consent. — 1. Any person or persons, copartnership or corporation willfully filling up or obstructing or impairing the usefulness of any ditch, tile or levee constructed under the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction therefor shall be fined in a sum not less than fifty dollars nor more than two

hundred dollars for each and every offense, or such person or persons, or the agent or agents of the copartnership or corporation responsible for such damage or injury having been wrought, may be confined in the county jail not less than thirty days nor more than six months.

2. The owner or owners of the land desired to be drained shall have the right to go upon or send an engineer or surveyor upon the land through or upon which the ditch, tile or levee is to be built, without first obtaining consent from the owner or owners of such land, for the purpose of making measurements, running levels and obtaining other information to be used in forming conclusions pertaining to the slope of the land, length of the improvements and proper location of the same; provided, that notice of the purpose and intention of such act be first given in writing to the owner of the land through or across which the works are to be constructed.

(RSMo 1939 § 12467)

Prior revisions: 1929 § 10877; 1919 § 4572; 1909 § 5670

8/28/1939

In accordance with Section **3.090**, the language of statutory sections enacted during a legislative session are updated and available on this website **on the effective date** of such enacted statutory section.



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258