

CHAPTER 114  
DRAINAGE AND LEVEE DISTRICTS DISSOLVED

H. F. 11

AN ACT to provide a procedure for dissolution of certain drainage and levee districts and transfer of jurisdiction and control over the improvements of rights-of-way of a district so dissolved to another overlying district without reclassification of the latter district.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Section four hundred fifty-six point one (456.1), Code 1979, is amended to read as follows:

456.1 JURISDICTION TO ABANDON--AND DISSOLVE DISTRICTS AND ABANDON OR TRANSFER IMPROVEMENTS. Drainage or levee districts may be dissolved and abandoned or assimilated by the procedures prescribed by this chapter.

1. When any drainage or levee district is free from indebtedness and it shall appear that the necessity therefor no longer exists or that the expense of the continued maintenance of the ditch or levee is in excess of the benefits to be derived therefrom, the board of supervisors or board of trustees, as the case may be, shall have power and jurisdiction, upon petition of a majority of the landowners, who, in the aggregate, own sixty percent of all land in such district, to abandon the same and dissolve and discontinue such districts in the manner prescribed by sections four hundred fifty-six point two (456.2) through four hundred fifty-six point six (456.6) of the Code. Nothing in this section subsection shall prevent the board from eliminating land from a drainage district as permitted under section 455.201.

2. When one drainage or levee district, either intracounty or intercounty, includes within its territory all of the territory of one or more other drainage or levee districts, and it appears that one assessment and one governing body would be to the benefit of the owners and occupants of the land within the mutual jurisdiction of the overlying and the contained districts, the board of supervisors or board of trustees may effect the dissolution of a contained district and the transfer of jurisdiction and control over that contained district's improvements to the overlying district, in the manner prescribed by sections four (4) through nine (9) of this Act.

Sec. 2. Section four hundred fifty-six point six (456.6), Code 1979, is amended to read as follows:

456.6 ABANDONMENT OF RIGHTS OF WAY. If such a dissolution is effected pursuant to section four hundred fifty-six point one (456.1), subsection one (1), and sections four hundred fifty-six point two (456.2) through four hundred fifty-six point five (456.5) of the Code, the rights of way of the district for all purposes of the district shall be deemed abandoned.

Sec. 3. Chapter four hundred fifty-six (456), Code 1979, is amended by adding sections four (4) through nine (9) of this Act.

Sec. 4. NEW SECTION. INITIATING DISSOLUTION OF CONTAINED DISTRICT. To initiate the dissolution of a contained district under the circumstances described in section four hundred fifty-six point one (456.1), subsection two (2) of the Code:

1. The board of supervisors or board of trustees of the district proposed to be dissolved shall enter an order for the proposed dissolution of that district and the surrender of its improvements and rights-of-way to the overlying district.

2. The board of supervisors or board of trustees of the overlying district shall enter an order approving the proposed acceptance of those improvements and rights-of-way.

Sec. 5. NEW SECTION. PROCEDURE FOR NOTICE OF HEARING.

1. The board of the overlying district shall enter an order fixing a place and a time, not less than forty days after the date of the later of the two orders required by section four (4) of this Act, for a hearing on the proposals described in the two orders.

2. The auditor, or auditors if the overlying district includes land lying in two or more counties, shall cause notice of the proposals and of the hearing to be given immediately upon the entry of an order under subsection one (1) of this section. The notice must:

a. Include the texts of the orders entered pursuant to section four (4) of this Act, the date, time and place of the hearing, and a statement that all objections to the proposals embodied in the orders must be made in writing and filed in the office of the auditor at or before the time set for the hearing.

b. Be directed to all of the following:

(1) The owner of each tract of land or lot within the overlying district, as shown by the transfer books of the auditor's office, including railway companies having right-of-way in the district.

(2) All lienholders or encumbrancers of land within the overlying district, without naming them.

(3) All actual occupants of land in the overlying district, without naming individuals.

(4) All other persons whom it may concern.

3. Except as otherwise required by section four hundred fifty-five point twenty-two (455.22) of the Code, the notice required by this section shall be served by publication once in a newspaper of general circulation in each county in which the overlying district's land is situated. The publication shall be made not less than twenty days prior to the day set for the hearing. Proof of service shall be made by affidavit of the publisher.

Sec. 6. NEW SECTION. PROCEDURE AT HEARING. The hearing shall be convened at the time and place fixed in accordance with section five (5), subsection one (1) of this Act, and the procedure at the hearing shall be as prescribed by this section.

1. The board of the contained district shall first hear all objections filed against the dissolution of the district and the surrender of its

improvements to the overlying district. If, at the conclusion of that portion of the hearing, that board finds that the contained district is free of debt, that the economic benefits of the continued maintenance of that district would not be commensurate with its cost, and that it would be advantageous to dissolve and discontinue the contained district and surrender its improvements and rights-of-way to the overlying district, it shall enter an order dissolving the contained district and directing the surrender of its improvements and rights-of-way, conditioned on acceptance by the overlying district.

2. Immediately thereafter, the board of the overlying district shall hear all objections filed against the acceptance of the contained district's improvements and their maintenance. If it finds that the improvements are conducive to the drainage of surface waters from agricultural lands and all other lands in the overlying district or the protection of the lands from overflow, it shall enter an order accepting the improvements and rights-of-way of the contained district.

3. Orders issued pursuant to subsections one (1) and two (2) of this section shall be filed with the county auditor of the county or counties in which the affected districts are situated and noted on the drainage record.

4. If at or before the time set for the hearing there have been filed with the county auditor or auditors, if either the contained or overlying district extends into more than one county, or with the board of either district, one or more remonstrances or objections to the dissolution of the contained district, or to the acceptance of that district's improvements and rights-of-way by the overlying district, signed by owners of land and land improvements in either district aggregating sixty percent of the total assessed value of the land in that district as shown by the taxing records in the county or counties in which that district is located, the board to which the remonstrances or objections have been made shall abandon its proposed action.

Sec. 7. NEW SECTION. ELECTION IN LIEU OF HEARINGS. In lieu of the hearings provided for in section six (6) of this Act, the board of either district may call an election for the purpose of determining the dissolution of the contained district or the acceptance of that district's improvements and rights-of-way by the overlying district. The questions may be submitted at a regular election of the district or at a special election called for that purpose. It is not mandatory for the county commissioner of elections to conduct the elections, however the provisions of sections forty-nine point forty-three (49.43) through forty-nine point forty-seven (49.47), and of chapter four hundred sixty-two (462) of the Code, as they are applicable, shall govern the elections, and the question to be submitted shall be set forth in the notice of election.

1. If sixty percent or more of the votes cast are in favor of the proposed dissolution of the contained district involved, the board of that district shall enter an order dissolving the contained district and directing the surrender of its improvements and rights-of-way, conditioned on acceptance by the overlying district.

2. If sixty percent or more of the votes cast in the overlying district are in favor of the proposed acceptance by that district of the contained district's improvements and rights-of-way, the board of the overlying district shall enter an order accepting the improvements and rights-of-way of the contained district.

3. Orders issued pursuant to subsections one (1) and two (2) of this section shall be filed with the county auditor of the county or counties in which the affected districts are situated and noted on the drainage record.

Sec. 8. NEW SECTION. EFFECT OF DISSOLUTION, SURRENDER AND ACCEPTANCE. When a contained district dissolves and surrenders its improvements and rights-of-way to the jurisdiction and control of an overlying district, and the overlying district accepts those improvements and rights-of-way, in accordance with sections four (4) through seven (7) of this Act:

1. It is presumed that the classification of the lands which were included in the dissolved district, as previously determined by the commissioners in the classification of those lands as a part of the overlying district, remains equitable and no reclassification of the overlying district or any part of it is necessary.

2. The improvements surrendered and accepted are at all times under the supervision of the board of the overlying district, and it is the duty of that board to keep the improvements in repair as provided in section four hundred fifty-five point one hundred thirty-five (455.135) of the Code as fully and completely as though the improvements were a part of the original construction or improvements in the overlying district.

3. It is presumed that:

a. The improvements surrendered and accepted are an integral part of the overlying district's improvements, and are a public benefit and conducive to the public health, convenience and welfare.

b. No value is taken into consideration for the existing improvements nor is credit given to the parties owning them, and they shall not be considered an asset of the district that is dissolved.

4. The original cost and the subsequent cost of improvements in the district that has been dissolved are added to and become a part of the original cost and the subsequent cost of improvements in the overlying district.

Sec. 9. NEW SECTION. COSTS BORNE BY OVERLYING DISTRICT. The overlying district shall pay all costs of the proceedings held pursuant to sections four (4) through seven (7) of this Act.

Approved April 12, 1979