

MAR 23 1978

HOUSE FILE 2365

Place On Calendar

By COMMITTEE ON NATURAL RESOURCES

(Formerly H.F. 2102 & H.F. 2203)

Passed House, Date _____ Passed Senate, Date _____
 Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
 Approved _____

A BILL FOR

1 An Act relating to drainage and levee districts, providing
 2 a procedure for dissolution of certain districts and
 3 transfer of jurisdiction and control over the improve-
 4 ments of a district so dissolved to another overlying
 5 district without reclassification of the latter district,
 6 and changing the residence requirement relating to
 7 eligibility to serve on the board of trustees of a
 8 district managed under chapter four hundred sixty-two
 9 (462) of the Code.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 Section 1. Section four hundred fifty-six point one
2 (456.1), Code 1977, is amended to read as follows:

3 456.1 JURISDICTION TO ABANDON-AND DISSOLVE DISTRICTS AND
4 ABANDON OR TRANSFER IMPROVEMENTS. Drainage or levee districts
5 may be dissolved and abandoned or assimilated by the procedures
6 prescribed by this chapter.

7 1. When any drainage or levee district is free from
8 indebtedness and it shall appear that the necessity therefor
9 no longer exists or that the expense of the continued
10 maintenance of the ditch or levee is in excess of the benefits
11 to be derived therefrom, the board of supervisors or board
12 of trustees, as the case may be, shall have power and
13 jurisdiction, upon petition of a majority of the landowners,
14 who, in the aggregate, own sixty percent of all land in such
15 district, to abandon the same and dissolve and discontinue
16 such districts in the manner prescribed by sections four
17 hundred fifty-six point two (456.2) through four hundred
18 fifty-six point six (456.6) of the Code. Nothing in this
19 ~~section~~ subsection shall prevent the board from eliminating
20 land from a drainage district as permitted under section
21 455.201.

22 2. When one drainage or levee district, either intracounty
23 or intercounty, includes within its territory all of the
24 territory of one or more other drainage or levee districts,
25 and it shall appear that one assessment and one governing
26 body would be to the benefit of the owners and occupants of
27 the land within the mutual jurisdiction of the overlying and
28 the contained districts, the board of supervisors or board
29 of trustees, as the case may be, shall have power to effect
30 the dissolution of any contained district and the transfer
31 of jurisdiction and control over that contained district's
32 improvements to the overlying district, in the manner
33 prescribed by sections four (4) through nine (9) of this Act.

34 Sec. 2. Section four hundred fifty-six point six (456.6),
35 Code 1977, is amended to read as follows:

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

8 Sec. 3. Chapter four hundred fifty-six (456), Code 1977,
9 is amended by adding sections four (4) through nine (9) of
10 this Act.

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

15 1. The board of supervisors or board of trustees of the
16 district proposed to be dissolved shall enter an order for
17 the proposed dissolution of that district and the surrender
18 of its improvements to the overlying district; and

19 2. The board of supervisors or board of trustees of the
20 overlying district shall enter an order approving the proposed
21 acceptance of those improvements.

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

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

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

33 a. Include the texts of the orders entered pursuant to
34 section four (4) of this Act, the date, time and place of
35 the hearing thereon, and a statement that all objections to

1 the proposals embodied in the orders must be made in writing
2 and filed in the office of the auditor at or before the time
3 set for the hearing.

4 b. Be directed to:

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

9 (2) All lienholders or encumbrancers of any land within
10 the overlying district, without naming them; and

11 (3) All actual occupants of land in the overlying district,
12 without naming individuals; and

13 (4) All other persons whom it may concern.

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

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

27 1. The board of the contained district shall first hear
28 all objections filed against the dissolution of the district
29 and the surrender of its improvements to the overlying
30 district. If, at the conclusion of that portion of the
31 hearing, that board finds that the contained district is free
32 of debt, that the economic benefits of the continued
33 maintenance of that district would not be commensurate with
34 the cost thereof, and that it would be advantageous to dissolve
35 and discontinue the contained district and surrender its

1 improvements to the overlying district, it shall enter an
2 order dissolving the contained district and directing the
3 surrender of its improvements, conditioned on acceptance
4 thereof by the overlying district.

5 2. Immediately thereafter, the board of the overlying
6 district shall hear all objections filed against the acceptance
7 of the contained district's improvements and the maintenance
8 thereof. If it finds that those improvements are conducive
9 to the drainage of surface waters from agricultural lands
10 and all other lands or the protection of such lands from
11 overflow in the overlying district, it shall enter an order
12 accepting the improvements and all rights of way of the
13 contained district being dissolved.

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

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

31 Sec. 7. NEW SECTION. ELECTION IN LIEU OF HEARINGS. In
32 lieu of the hearings provided for in section six (6) of this
33 Act, the board of either district may call an election for
34 the purpose of determining the dissolution of the contained
35 district involved or the acceptance of that district's

1 improvements by the overlying district. The questions may
2 be submitted at a regular election of the district or at a
3 special election called for that purpose. It shall not be
4 mandatory for the county commissioner of elections to conduct
5 the elections, however the provisions of sections forty-nine
6 point forty-three (49.43) through forty-nine point forty-seven
7 (49.47), and of chapter four hundred sixty-two (462) of the
8 Code, insofar as they are applicable, shall govern all such
9 elections, and the question to be submitted shall be set forth
10 in the notice of election.

11 1. If sixty percent or more of the votes cast are in favor
12 of the proposed dissolution of the contained district involved,
13 the board of that district shall enter an order dissolving
14 the contained district and directing the surrender of its
15 improvements, conditioned on acceptance thereof by the
16 overlying district.

17 2. If sixty percent or more of the votes cast in the
18 overlying district are in favor of the proposed acceptance
19 by that district of the contained district's improvements,
20 the board of the overlying district shall enter an order
21 accepting the improvements and all rights of way of the
22 contained district being dissolved.

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

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

34 1. It shall be presumed that the classification of the
35 lands which were included in the dissolved district, as

1 previously determined by the commissioners in the
2 classification of those lands as a part of the overlying
3 district, remain equitable and no reclassification of the
4 overlying district or any part of it shall be necessary.

5 2. The improvements so surrendered and accepted shall
6 be at all times under the supervision of the board of the
7 overlying district, and it shall be the duty of that board
8 to keep those improvements in repair as provided in section
9 four hundred fifty-five point one hundred thirty-five (455.135)
10 of the Code and to do all things necessary in the premises
11 as fully and completely as though those improvements were
12 a part of the original construction or improvements in the
13 overlying district.

14 3. It shall be presumed that:

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

19 b. No value shall be taken into consideration for the
20 existing improvement nor shall credit be given to the parties
21 owning it, and it shall not be considered to be an asset of
22 the district that is dissolved.

23 4. The original cost of and the subsequent improvements
24 in the district that has been dissolved shall be added to
25 and become a part of the original cost of and the subsequent
26 improvements in the overlying district.

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

31 Sec. 10. Section four hundred sixty-two point seven
32 (462.7), Code 1977, is amended to read as follows:

33 462.7 ELIGIBILITY OF TRUSTEES. Each trustee shall be
34 a citizen of the United States not less than eighteen years
35 of age, a resident of ~~the county~~ this state, and the bona

1 fide owner of agricultural land in the election district for
2 which he or she is elected.

3 EXPLANATION

4 This bill sets up a procedure by which a drainage or levee
5 district can dissolve and surrender its improvements to a
6 larger drainage or levee district which encompasses all of
7 the smaller district's territory. There are a number of
8 situations in Iowa in which the same land area is a part of
9 two or more drainage or levee districts which have been
10 organized at different times, and now duplicate one another
11 to some degree. Under existing law, dissolution of any
12 drainage district means that its improvements must be
13 abandoned, and there is no means of merging two districts
14 having some concurrent jurisdiction without the heavy expense
15 of reclassification of the larger district. The procedure
16 authorized by this bill avoids both of these difficulties.

17 Section 10 of the bill is intended to resolve a difficulty
18 which presently affects at least one small levee district
19 in the state. The individual who holds title to the majority
20 of land in that district is a resident of Iowa, but not of
21 the county in which the district is located. This bill will
22 make landowners in that situation eligible to be elected to
23 the boards of trustees of drainage or levee districts which
24 are governed directly by their own boards, under chapter 462,
25 rather than by the county board of supervisors.

26
27
28
29
30
31
32
33
34
35

1 Amend House File 2365 as follows:

2 1. Page 6, by inserting after line 30 the follow-
3 ing new section:

4 "Sec. 10. Chapter four hundred fifty-five (455),
5 Code 1977, is amended by adding the following new
6 sections:

7 NEW SECTION. PROCEDURE FOR SEVERANCE OF CERTAIN
8 LAND FROM DRAINAGE DISTRICTS. Land may be severed
9 from an established drainage district, in which the
10 improvement has been constructed, by the procedure
11 established by this section. This procedure shall
12 not be available with respect to a levee district,
13 or a combination levee and drainage district, or a
14 drainage district in a levee district, and shall be
15 available only with respect to land located on the
16 perimeter of a drainage district or served solely
17 by a lateral of the district's main ditch or drain.

18 1. Any person owning land to which this section
19 is applicable may present to the board of supervisors
20 or board of trustees in control of the district a
21 petition alleging that:

22 a. The land or a particular portion of it, which
23 shall be specifically and intelligibly described in
24 the petition, is receiving no material benefit from
25 the district and should therefore be severed from
26 it because:

27 (1) The report of the engineer pursuant to which
28 the district was initially established or expanded
29 to include the specified land was in error, and the
30 specified land has not in fact been benefited by the
31 district; or

32 (2) Circumstances have changed since the district
33 was initially established or expanded to include the
34 specified land, so that the land no longer receives
35 any benefit from the district.

36 b. Severance of the specified land from the
37 district will not damage any other land in the
38 district, except insofar as the benefit previously
39 apportioned to the specified land must be reapportioned
40 to the remaining land in the district.

41 2. When a petition is presented pursuant to
42 subsection one (1) of this section, the allegations
43 made in the petition shall be promptly investigated
44 by the board. Unless the board concludes that the
45 allegations made in the petition are entirely without
46 merit, it shall appoint an engineer with the
47 qualifications specified in this chapter to examine
48 the lands described in the petition and to make a
49 survey and plat thereof showing their relation,
50 elevation and condition of drainage with reference

1 both to the district of which they are a part, and
2 to any other established district by which these lands
3 are being benefited. The engineer shall make and
4 file with the auditor a report as provided in this
5 chapter for the original establishment of a district,
6 which report shall specify the character of any
7 benefits received by those lands, and the district
8 or districts, if any, from which benefits are received.
9 The costs incurred in conducting the survey shall
10 be assessed against the petitioner.

11 3. If the engineer's report confirms the
12 allegations made in the petition, the board shall:

13 a. So notify the petitioning landowner, and shall
14 notify all other landowners in the district in the
15 manner provided by section four hundred fifty-five
16 point twenty-one (455.21) of the Code. The notice
17 shall in each case state that thirty days from the
18 date of the notice the land specified in the petition
19 shall be severed from the district, except that the
20 filing of an appeal under subsection five (5) of this
21 section shall stay the severance of the land until
22 disposition of the appeal.

23 b. Send notice of the fact to the board of any
24 other district from which the engineer's report shows
25 that these lands are receiving benefit. The board
26 of each district which receives such a notice shall
27 initiate proceedings to annex the appropriate lands,
28 in the manner prescribed by law.

29 4. If the finding is that the allegations made
30 in the petition are not valid, the board shall notify
31 the petitioning landowner that the petition is denied.

32 5. Either the petitioning landowner or any other
33 landowner in the district, if aggrieved by the finding
34 on the allegations made in the petition, may appeal
35 to the district court as provided in sections four
36 hundred fifty-five point ninety-two (455.92) through
37 four hundred fifty-five point ninety-nine (455.99),
38 inclusive, of the Code.

39 6. Upon severing land from the district pursuant
40 to this section, the board shall either reapportion
41 the benefit previously apportioned to the severed
42 land among all the remaining lands in the district
43 in proportion to the respective benefits previously
44 apportioned to those lands, or order a reclassification
45 of the remaining lands in the district.

46 Sec. 11. Section four hundred fifty-five point
47 one hundred twenty-eight (455.128), Code 1977, is
48 amended by adding the following new subsection:

49 NEW SUBSECTION. Upon receiving notice from the
50 board of any other district that an engineer's report,

H-6100

Page 3

1 prepared in accordance with section ten (10) of this
2 Act, shows that lands not currently a part of the
3 district are in fact receiving benefits from the
4 district, the board may adopt a resolution of necessity
5 for annexation of those lands without obtaining an
6 engineer's report as otherwise required by this
7 section."

H-6100 FILED
APRIL 17, 1973

BY STROMER of Hancock

HOUSE FILE 2365

H-6099

1 Amend House File 2365 as follows:
2 1. Page 1, by inserting before line 1 the follow-
3 ing new section:
4 "Section 1. Section four hundred fifty-five point
5 one hundred eighteen (455.118), Code 1977, is amended
6 to read as follows:
7 455.118 BRIDGES. When such levee, ditch, drain,
8 or change of any natural watercourse crosses a public
9 highway, necessitating moving or building or rebuilding
10 any secondary road bridge upon, or ditch or drain
11 crossing such road, the board of supervisors shall
12 ~~move, build, or rebuild the same, paying~~ pay the costs
13 and expenses ~~thereof~~ incurred in moving or building
14 or rebuilding the same, including construction,
15 maintenance, repair and improvement costs, from the
16 secondary road fund.
17 If the bridge or crossing be upon or across a
18 primary or interstate road, the ~~work aforesaid shall~~
19 ~~be done by the~~ state department of transportation
20 ~~and said~~ shall pay the cost incurred in performing
21 the aforesaid work out of the primary road fund."
22 2. Renumber sections and correct internal
23 references as are necessary in accordance with this
24 amendment.
25 3. Amend the title, line 5, by inserting after
26 the word "district," the words "relating to the
27 responsibility for paying the cost of moving, building
28 or rebuilding certain facilities at points where a
29 drainage district improvement crosses a public road".

H-6099 FILED
APRIL 17, 1973

BY NORLAND of Worth
WEST of Marshall
HANSEN of O'Brien

HOUSE FILE 2365

H-6081

1 Amend amendment H-5983, to House File 2365, as
2 follows:
3 1. Page 1, line 5, by inserting after the word
4 "district" the words "or a non-resident owner operator
5 of a farm located within the district".

H-6081 FILED
APRIL 17, 1973

BY LINDEEN of Henry

HOUSE FILE 2365

H-5984

1 Amend House File 2365 as follows:

- 2 1. Page 5, by striking lines 3 through 7 and
3 inserting in lieu thereof the words "special election
4 called for that purpose. The provisions of chapters
5 thirty-nine (39), forty-nine (49) through fifty-three
6 (53), fifty-six (56), fifty-seven (57) and four hundred
7 sixty-two (462) of the".
8 2. Page 5, by striking lines 11 through 26.

H-5984 FILED
APRIL 11, 1978

BY MONROE of Des Moines

HOUSE FILE 2365

H-5983

1 Amend House File 2365 as follows:

- 2 1. By striking page 6, line 35 through page 7,
3 line 2 and inserting in lieu thereof the words "of
4 age, and a resident of the county-and-the-bona-fide
5 owner-of-agricultural-land-in-the-election district
6 for-which-he-is-elected."

H-5983 FILED
APRIL 11, 1978

BY MONROE of Des Moines

HOUSE FILE 2365

H-5986

1 Amend House File 2365 as follows:

- 2 1. Page 6, by inserting after line 26 the follow-
3 ing new section:
4 "Sec. ____ . Section four hundred fifty-five point
5 one hundred thirty-six (455.136), Code 1977, is amended
6 by adding the following new unnumbered paragraph:
7 NEW UNNUMBERED PARAGRAPH. In any county where
8 there are unencumbered funds on hand in the sinking
9 fund accounts of one or more drainage or levee
10 districts administered by the board of supervisors,
11 the board may transfer all or a part of such
12 unencumbered funds to form a common revolving fund
13 from which warrants may be drawn in payment for labor
14 and materials used in repair and maintenance of any
15 drainage or levee district in the county administered
16 by the board of supervisors, and in payment of clerical
17 expenses incurred in connection with assessment
18 procedures in any such district. When an expenditure
19 is so made from the common revolving fund, an
20 assessment shall be levied in the usual manner in
21 the district for which the expenditure was made and
22 when the assessment is paid the amount advanced from
23 the common revolving fund shall be repaid thereto
24 from the proceeds of the assessment."

H-5986 FILED
APRIL 11, 1978

BY HANSEN of O'Brien

H-6534

1 Amend House File 2365 as follows:

2 1. Page 1, by inserting before line 1 the follow-
3 ing new section:

4 "Section 1. Section four hundred fifty-five point
5 one hundred eighteen (455.118), Code 1977, is amended
6 to read as follows:

7 455.118 BRIDGES. When such levee, ditch, drain,
8 or change of any natural watercourse crosses a public
9 highway, necessitating moving or building or rebuilding
10 any secondary road bridge upon, or ditch or drain
11 crossing such road, the board of supervisors shall
12 ~~move, build, or rebuild the same, paying~~ furnish
13 specifications for the work and pay the costs and
14 expenses thereof incurred in moving or building or
15 rebuilding the same, including construction,
16 maintenance, repair and improvement costs, from the
17 secondary road fund.

18 If the bridge or crossing be upon or across a
19 primary or interstate road, the ~~work aforesaid shall~~
20 ~~be done by the~~ state department of transportation
21 ~~and paid for~~ shall furnish specifications for the
22 work and pay the cost incurred in performing the
23 aforesaid work out of the primary road fund."

24 2. Renumber sections and correct internal
25 references as are necessary in accordance with this
26 amendment.

27 3. Amend the title, line 5, by inserting after
28 the word "district," the words "relating to the
29 responsibility for paying the cost of moving, building
30 or rebuilding certain facilities at points where a
31 drainage district improvement crosses a public road".

H-6534 FILED
MAY 4, 1978

BY NORLAND of Worth
WEST of Marshall