

## CHAPTER 1075

### DRAINAGE OR LEVEE DISTRICTS — MERGERS, TRUSTEE LIABILITY, AND BIDDING PROCEDURES

H.F. 2344

**AN ACT** relating to drainage or levee districts by providing for mergers, the liability of trustees, bidding requirements, the annexation of land, and authorizing the imposition of assessments upon affected landowners.

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

#### DIVISION I MERGER

##### Section 1. NEW SECTION. **468.262 Purpose.**

The provisions of this part apply to drainage or levee districts, governed by a board of supervisors, joint boards of supervisors, or board of trustees, as provided in section 468.3, when such districts participate in a merger.

##### Sec. 2. NEW SECTION. **468.263 General.**

1. A merger must involve two or more voluntarily participating drainage or levee districts including all of the following:

a. One participating dominant district whose board would survive the merger to govern the merged district.

b. One or more participating servient districts whose boards would be dissolved by the merger.

2. a. The merger must be proposed by the board of each participating drainage or levee district as provided in this part.

b. The proposed merger must be approved by the board of the participating dominant district and one or more boards of the participating servient districts, as provided in this part.

3. a. The boundary of a participating drainage or levee district must adjoin all or part of the boundary of another participating drainage or levee district.

b. Notwithstanding paragraph “a” two participating drainage or levee districts may be separated by land not part of any drainage or levee district if the proposed merger is contingent upon the annexation of such land pursuant to sections 468.119 through 468.121.

4. A merger may occur notwithstanding that a drainage or levee district participating in a merger is not otherwise eligible for dissolution as provided in part 6 of this subchapter.

##### Sec. 3. NEW SECTION. **468.264 Board participation initiated.**

1. In order to participate in a proposed merger the board of a drainage or levee district must determine that the merger will substantially benefit the owners of land situated in the drainage or levee district.

2. A board making the determination described in subsection 1 shall enter an order to conduct a public hearing regarding a proposed merger as provided in section 468.265. The board shall enter the order with the auditor of each county where the drainage or levee district is situated.

##### Sec. 4. NEW SECTION. **468.265 Public hearing.**

1. A public hearing must be conducted within forty-five days from the last date that the board enters an order with the auditor of each county where the drainage or levee district is situated as provided in section 468.264. The auditor of each county where the participating drainage or levee district is located shall provide notice of a public hearing regarding the proposed merger. However, the board may designate the auditor of the county with the greatest portion of the district’s territory to provide the notice. The notice must include all of the following:

a. A description of the proposed merger.

b. The determination made by the board under section 468.264.

c. Whether land in the participating drainage or levee district may be subject to any special assessment as provided in section 468.269.

d. The date, time, and place of the public hearing.

e. That all written objections to the proposed merger must be filed in the office of the county auditor.

2. The auditor shall deliver the notice provided in subsection 1 to all of the following:

a. Each owner of land situated within the participating drainage or levee district which is part of the county, as shown by the transfer books of the auditor's office, including railway companies having right-of-way in the district.

b. Each lienholder or encumbrancer of land situated or the auditor designated by the board within the participating drainage or levee district which is part of the county.

c. Each actual occupant of land located in the participating drainage or levee district which is part of the county. However, the auditor is not required to name an individual occupant.

d. Any other person in the county affected by the proposed merger as determined by the board.

3. If land is to be annexed as a condition of the merger, as provided in this part, the auditor of the county where the land to be annexed is situated or the auditor designated by the board shall deliver the notice specified in subsection 1 to the owner of such land.

4. a. Except as otherwise provided in this section the auditor shall provide the notice specified in subsection 1 by ordinary mail to the persons described in subsections 2 and 3.

b. The auditor shall cause the notice to be published in a newspaper of general circulation in the county where a participating drainage or levee district is situated or the auditor designated by the board. The publication shall be made not less than twenty days prior to the day set for the public hearing. Proof of service shall be made by affidavit of the publisher.

c. If an agent has been designated, the auditor shall provide the notice to a person's agent in the same manner as provided in section 468.16.

5. The boards of one or more participating drainage or levee districts may conduct the public hearing jointly.

6. This section shall not be construed to prevent the board of a participating drainage or levee district from convening and conducting a public hearing in a manner consistent with section 468.258.

**Sec. 5. NEW SECTION. 468.266 Meeting and vote.**

1. Each board of a participating drainage or levee district shall meet to vote on a resolution which includes the question whether or not to approve the proposed merger. A board must vote on the resolution within forty-five days of the last public hearing conducted pursuant to section 468.265.

2. The board shall only consider written objections to the proposed merger as filed in the office of the county auditor as provided in the notice for a public hearing or comments made at a public hearing conducted pursuant to section 468.265.

3. Two or more boards may approve a joint meeting and vote upon a joint resolution. If the board for the participating dominant district votes at the joint meeting, the dominant board shall pay any costs associated with conducting the joint meeting, regardless of the vote's outcome.

**Sec. 6. NEW SECTION. 468.267 Joint order.**

1. A resolution to merge participating drainage or levee districts approved by their respective boards as provided in section 468.266 shall be effectuated according to the terms and conditions of a joint order for merger entered by those boards.

2. Each board shall file the joint order with the auditors of their respective counties. Upon receipt of a joint order, the auditor shall include the joint order as part of the drainage record.

3. The auditor shall not file an order unless all territory within the merged drainage or levee district is contiguous, and includes any land required to be annexed as a condition of the merger.

4. Upon the filing of the joint order with the county auditor as provided in subsection 2, title to all real estate, other property, improvement, and any right-of-way held by the participating

drainage or levee district is vested in the merged drainage or levee district, subject to any condition which applied immediately prior to the merger.

5. The auditor of a county designated by the board governing the merged drainage or levee district shall prepare and file with the recorder of each county where the merged district is situated all conveyances and other documentation necessary to effect the transfers referenced in the joint order.

6. The merged drainage or levee district assumes all existing obligations of a participating drainage or levee district subject to the joint order.

**Sec. 7. NEW SECTION. 468.268 Effect of the merger.**

1. *a.* Except as provided in this subsection, a legal or equitable proceeding pending against a participating drainage or levee district prior to a merger shall continue as if the merger did not occur.

*b.* The merged drainage or levee district shall be substituted for the participating drainage or levee district standing as a party.

*c.* The board governing the merged drainage or levee district may apportion the costs of a legal or equitable proceeding against the landowners of the participating drainage or levee district based upon the classification of land and assessments applicable to the participating drainage or levee district prior to the merger.

2. Except as provided in section 468.269, the merger does not affect the classification of land or the levy of an assessment.

3. The original cost and the subsequent cost of improvements in a participating drainage or levee district under this part shall be added to and become a part of the original cost and the subsequent cost of improvements in the merged drainage or levee district.

4. The surviving board of a merged drainage or levee district shall pay any remaining costs associated with the merger.

**Sec. 8. NEW SECTION. 468.269 Special assessment — merged land.**

1. In addition to assessments imposed pursuant to sections 468.49 and 468.50, the surviving board of a merged drainage or levee district may impose a special assessment on land situated in the merged district which was a participating servient district prior to the merger.

2. The special assessment shall apply to costs of improvements made within the participating dominant district prior to the merger for not longer than five years prior to the date that the joint order was filed with the county auditor by the surviving board for the participating dominant district pursuant to section 468.267.

3. In order to impose a special assessment under this section all of the following must apply:

*a.* The board must approve a report by an engineer appointed by the board as provided in this part stating those improvements directly benefiting land situated in the participating dominant district were made within the five-year period provided in subsection 2.

*b.* The notice for a public hearing required in section 468.265 must have stated that the board may impose a special assessment under this section.

4. The board shall not impose the special assessment under this section on land that was annexed as part of the merger. However, such land is subject to a special assessment pursuant to sections 468.119 through 468.121.

**Sec. 9. DIRECTIONS TO CODE EDITOR.** The Code editor shall codify the provisions of this division of this Act as chapter 468, subchapter I, part 7.

DIVISION II  
LIABILITY OF TRUSTEES

**Sec. 10. NEW SECTION. 468.526A Liability.**

A trustee is not personally liable for a claim which is exempted under section 670.4, except a claim for punitive damages. A trustee is not liable for punitive damages as a result of acts in the performance of a duty under this chapter, unless actual malice or willful, wanton, and reckless misconduct is proven.

DIVISION III  
BIDDING PROCEDURES

Sec. 11. Section 468.3, Code 2014, is amended by adding the following new subsection:  
NEW SUBSECTION. 9. The term “minor repair” shall mean any repair not in excess of the competitive bid threshold as provided in section 26.3.

Sec. 12. Section 468.34, Code 2014, is amended by striking the section and inserting in lieu thereof the following:

**468.34 Bidding procedures — Iowa construction bidding procedures Act.**

When ordering the construction of an improvement under this part, the board and any bidders shall comply with the competitive bid requirements applicable to a governmental entity ordering the construction of a public improvement in chapter 26.

Sec. 13. Section 468.66, Code 2014, is amended to read as follows:

**468.66 Bids required.**

In case the board shall finally determine determines that any such changes as defined a change described in section 468.62 shall be made involving an expenditure of twenty thousand dollars or more increases the cost of the improvement to more than the competitive bid threshold as provided in section 26.3, the work shall be let by bids in the same manner as is provided for the original construction of such improvements board and any bidders shall comply with the competitive bid requirements applicable to a governing entity ordering the construction of a public improvement in chapter 26.

Sec. 14. Section 468.126, subsection 1, paragraph c, Code 2014, is amended by striking the paragraph and inserting in lieu thereof the following:

c. When ordering a repair under this section, the board and any bidders shall comply with the competitive bid requirements applicable to a governing entity ordering the construction of a public improvement in chapter 26. If the repair is more than fifty thousand dollars but less than the competitive bid threshold in section 26.3, the board shall conduct a hearing on the matter of making the proposed repair. The board shall provide notice of the hearing as provided in sections 468.14 through 468.18.

Sec. 15. Section 468.126, subsection 2, Code 2014, is amended to read as follows:

2. In the case of a minor repairs repair, or in the eradication of brush and weeds along the open ditches, not in excess of twenty thousand dollars, where the board finds that a saving to the district will result, the board may cause the repairs or eradication to be done by secondary road fund equipment, or weed fund equipment, and labor of the county and then reimburse the secondary road fund or the weed fund from the fund of the drainage district thus benefited.

Sec. 16. Section 468.126, subsection 4, Code 2014, is amended to read as follows:

4. For the purpose of this subsection, an “improvement” in a drainage or levee district in which any ditch, tile drain or other facility has previously been constructed is a project intended to expand, enlarge, or otherwise increase the capacity of any existing ditch, drain, or other facility above that for which it was designed.

a. When the board determines that improvements are an improvement is necessary or desirable, the board shall appoint an engineer to make surveys as seem appropriate to determine the nature and extent of the needed improvements improvement, and to file a report showing what improvements are improvement is recommended and their its estimated costs cost, which report may be amended before final action. If the estimated cost of the improvements does not exceed twenty thousand dollars, or twenty five percent of the original cost of the district and subsequent improvements, whichever is the greater amount, the board may order the work done without notice. The board shall not divide proposed improvements into separate programs in order to avoid the limitation for making improvements without notice compliance with paragraph “b”. If the board deems it desirable to make improvements where the estimated cost exceeds the twenty thousand dollar or twenty five percent limit, the board shall set a date for a hearing on the matter of constructing the proposed improvements and also on the matter of whether there shall

~~be a reclassification of benefits for the cost of the proposed improvements and shall give notice as provided in sections 468.14 through 468.18. At the hearing, the board shall hear objections to the feasibility of the proposed improvements and arguments for or against a reclassification presented by or for any taxpayer of the district. Following the a hearing, if required by section 26.12, the board shall order that the improvements it deems desirable and feasible be made and shall also determine whether there should be a reclassification of benefits for the cost of improvements. If it is determined that a reclassification of benefits should be made, the board shall proceed as provided in section 468.38. In lieu of publishing the notice of a hearing as provided by this subsection~~ section 331.305, the board may mail a copy of the notice to each address where a landowner in the district resides by first class mail if the cost of mailing is less than publication of the notice. The mailing shall be made during the time the notice would otherwise be required to be published.

b. When ordering the construction of an improvement under this subsection, the board shall comply with the competitive bid requirements applicable to a governing entity ordering the construction of a public improvement in chapter 26. If the improvement is more than fifty thousand dollars but less than the competitive bid threshold in section 26.3, the board shall conduct a hearing on the matter of making the proposed improvement. The board shall provide notice of the hearing as provided in sections 468.14 through 468.18.

c. If the estimated cost of the improvements as defined in this subsection exceeds twenty-five thousand dollars the competitive bid threshold as provided in section 26.3, or the original cost of the district plus the cost of subsequent improvements in the district, whichever is the greater amount, a majority of the landowners, owning in the aggregate more than seventy percent of the total land in the district, may file a written remonstrance against the proposed improvements, at or before the time fixed for hearing on the proposed improvements, with the county auditor, or auditors in case the district extends into more than one county. If a remonstrance is filed, the board shall discontinue and dismiss all further proceedings on the proposed improvements and charge the costs incurred to date for the proposed improvements to the district. Any interested party may appeal from such orders in the manner provided in this subchapter, parts 1 through 5. However, this section does not affect the procedures of section 468.132 covering the common outlet.

Sec. 17. REPEAL. Sections 468.35 and 468.36, Code 2014, are repealed.

Approved April 3, 2014