

468.126 Repairs and improvements.

1. When any levee or drainage district has been established and the improvement constructed, the improvement shall be at all times under the supervision of the board of supervisors except as otherwise provided for control and management by a board of trustees and the board shall keep the improvement in repair as provided in [this section](#).

a. The board at any time on its own motion, without notice, may order done whatever is necessary to restore or maintain a drainage or levee improvement in its original efficiency or capacity, and for that purpose may remove silt and debris, repair any damaged structures, remove weeds and other vegetable growth, and whatever else may be needed to restore or maintain such efficiency or capacity or to prolong its useful life.

b. The board may at any time obtain an engineer's report regarding the most feasible means of repairing a drainage or levee improvement and the probable cost of making the repair. If the engineer advises, or the board otherwise concludes that permanent restoration of a damaged structure is not feasible at the time, the board may order temporary construction it deems necessary to the continued functioning of the improvement. If in maintaining and repairing tile lines the board finds from an engineer's report it is more economical to construct a new line than to repair the existing line, the new line may be considered to be a repair.

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](#).

d. The right of remonstrance does not apply to repairs as defined in [this section](#).

2. In the case of a minor 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.

3. When the board deems it necessary it may repair or reconstruct the outlet of any private tile line which empties into a drainage ditch of any district and assess the costs in each case against the land served by the private tile line.

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 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 improvement, and to file a report showing what improvement is recommended and its estimated cost, which report may be amended before final action. The board shall not divide proposed improvements into separate programs in order to avoid compliance with paragraph "b". Following 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 [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 exceeds 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.

5. Where under the laws in force prior to 1904 drainage ditches and levees were established and constructed without fixing at the time of establishment a definite boundary line for the body of land to be assessed for the cost thereof, the body of land which was last assessed to pay for the repair thereof shall also be considered as the established district for the purpose of [this section](#).

6. The governing body of the district may, by contract or conveyance, acquire, within or without the district, the necessary lands or easements for making repairs or improvements under [this section](#), including easements for borrow and easements for meander, and in addition thereto, the same may be obtained in the manner provided in the original establishment of the district, or by exercise of the power of eminent domain as provided for in [chapter 6B](#). If additional right-of-way is required for any repair or improvement under [this section](#), the same may be acquired in the same manner as provided for the acquisition of right-of-way in the original establishment of a district, except that where notice and hearing are not otherwise required under [this section](#) notice as provided in [this subchapter, parts 1 through 5](#), to owners, lienholder of record, and occupants of the land from which right-of-way is to be acquired shall suffice.

7. In existing districts where the stream has by erosion appropriated lands beyond its original right-of-way and it is more economical and feasible to acquire an easement for such erosion and meander than to undertake containment of the stream in its existing right-of-way, the board may, in the discharge of the duties enjoined upon it by [this section](#), effect such acquisition as to the whole or part of the course. Right-of-way so taken shall be classed an improvement for the purpose of procedure under [this section](#).

8. If the drainage records on file in the auditor's office for a particular district do not define specifically the land taken for right-of-way for drainage purposes, the board may at any time upon its own motion employ a land surveyor to make a survey and report of the district and to actually define the right-of-way taken for drainage purposes. After the land surveyor has filed the survey and report with the board, the board shall fix a date for hearing on the report and shall serve notice of the hearing upon all landowners and lienholder of record and occupants of the lands traversed by the right-of-way in the manner and for the time required for service of original notices in the district court. At the hearing the board shall specifically define the land taken for the right-of-way. Once established, the right-of-way constitutes a permanent easement in favor of the drainage district for drainage purposes including the right of ingress and egress across adjoining land and the right of access for maintenance, repair, improvement and inspection. A person aggrieved by the action or failure to act of the board under [this subsection](#) may appeal only in compliance with [sections 468.83 through 468.98](#).

[S13, §1989-a21; C24, 27, 31, 35, 39, §7556, 7558 – 7561; C46, §455.135, 455.137 – 455.140; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.135; 81 Acts, ch 150, §1]

85 Acts, ch 163, §8, 9; 87 Acts, ch 23, §15; 87 Acts, ch 143, §1; 89 Acts, ch 126, §2
CS89, §468.126

94 Acts, ch 1051, §7, 8; 2004 Acts, ch 1051, §1 – 3; 2008 Acts, ch 1047, §1 – 4; 2014 Acts, ch 1075, §14 – 16

Subsection 1, paragraph c stricken and rewritten
Subsections 2 and 4 amended