

House File 2340 - Enrolled

House File 2340

AN ACT

RELATING TO CONTROVERSIES INVOLVING FENCE VIEWERS.

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

Section 1. Section 359.17, subsection 1, Code 2018, is amended to read as follows:

1. The board of township trustees in each township shall consist of three registered voters of the township. However, in townships with a taxable valuation for property tax purposes of two hundred fifty million dollars or more, the board of township trustees shall consist of five registered voters of the township. The trustees shall act as fence viewers as provided in chapter 359A and shall perform other duties assigned them by law. The board of trustees shall meet not less than two times a year. At least one of the meetings shall be scheduled to meet the requirements of [section 359.49](#).

Sec. 2. NEW SECTION. **359A.2A Fence viewers — township trustees — authority — conflict of interest.**

1. The trustees of the township where a controversy arises under this chapter shall serve as fence viewers. The fence viewers shall have authority to hear and decide all questions related to matters that are part of the controversy as provided in this chapter.

2. *a.* A fence viewer who may have a conflict of interest in deciding a question related to a matter that is part of the controversy must disclose the possible conflict of interest to the parties and the other fence viewers prior to the fence

viewers participating in the matter by conducting a hearing or making a decision under section 359A.4.

b. A fence viewer who has a conflict of interest in deciding a question related to a matter that is part of the controversy is disqualified from participating in the matter. The disqualification shall be made by the election of the fence viewer or unanimous vote of the fence viewers who do not have a conflict of interest in the matter. However, if three or more fence viewers do not have a conflict of interest in the matter, the disqualification shall be made by a majority vote of those fence viewers.

3. A conflict of interest exists when a fence viewer is presented with a question to determine any matter affecting a tract of land in which the fence viewer or a person related to the fence viewer has an ownership or leasehold interest in that tract of land. That person is related to the fence viewer by being any of the following:

a. An immediate family member who is limited to any of the following:

(1) A spouse.

(2) A child, stepchild, grandchild, parent, stepparent, grandparent, sibling, stepsibling, half sibling, aunt, uncle, niece, or nephew.

(3) The spouse of any individual described in subparagraph (2).

b. A business associate who is limited to a person holding an interest in the same business entity as the fence viewer, so long as the person and the fence viewer each have a twenty-five percent or greater interest in that business entity. As used in this paragraph, "*business entity*" means a person organized or formed under Iowa statute or a foreign statute, and is authorized under Iowa statute to transact business in this state, either on a profit or nonprofit basis.

4. Upon the disqualification of the fence viewer, the remaining trustees shall appoint a qualified substitute fence viewer to decide each question related to a matter in controversy. If a trustee is not remaining, the township clerk shall appoint three qualified substitute fence viewers to decide each question related to a matter in controversy.

However, this subsection does not apply if the township clerk selects a fence viewer as provided in section 359A.14.

5. Notwithstanding other provisions in the section to the contrary, a fence viewer who may or does have a conflict of interest in a matter that is part of the controversy may participate in the matter, including by hearing and deciding all questions related to the matter, if each party to the controversy signs a waiver. The waiver shall state that the party has been notified of the fence viewer's conflict of interest and agrees to the fence viewer's participation in the matter. The waiver shall be attached to the order issued pursuant to section 359A.4.

Sec. 3. Section 359A.3, Code 2018, is amended to read as follows:

359A.3 ~~Powers of fence viewers~~ Notice and hearing.

The fence viewers shall ~~have power to determine any controversy arising under this chapter,~~ upon giving give five days' notice in writing to the ~~opposite party or all parties,~~ prescribing to the controversy. The notice shall prescribe the time and place of meeting to hear and determine the matter named the hearing to decide any and all matters that are part of the controversy as described in said the notice. Upon request of any landowner, the fence viewers shall give ~~such~~ the notice to all adjoining landowners liable for the erection, maintenance, rebuilding, trimming, or cutting back, or repairing of a partition fence, or to pay for an existing hedge or fence. The notice must include the names of the fence viewers and state whether a fence viewer disclosed a possible conflict of interest or whether a substitute fence viewer was appointed due to a fence viewer's disqualification pursuant to section 359A.2A.

Sec. 4. Section 359A.4, Code 2018, is amended to read as follows:

359A.4 ~~Decision Hearing~~ Decision Hearing — decision — order — deposit.

1. At ~~said the~~ the time and place described in section 359A.3, the fence viewers shall meet to hear and determine by decide any and all matters that are part of the controversy. The fence viewers shall issue a written order that specifies the obligations, rights, and duties of the respective parties in

such matter, and.

2. a. If the fence viewers determine the erection of a fence may be unfeasible in any location which constitutes the adjoining parties' property boundary, the fence viewers shall conduct a site evaluation. The fence viewers may request assistance by the county engineer in the county where the adjoining properties' boundary is situated. The determination may be based on any of the following:

- (1) Topography.
- (2) Terrain.
- (3) Terraces.
- (4) Land slope.
- (5) Unstable ground.
- (6) The presence of surface water, drainage systems, sinkholes, or water wells.
- (7) Easements.
- (8) Utilities.
- (9) Available area.

b. If the fence viewers determine the erection of a fence is unfeasible as provided in the site evaluation, the fence viewers shall assist the parties in reaching an agreement as provided in sections 359A.12 and 359A.13. However, if the parties cannot reach such agreement within sixty days after the site evaluation is completed, the fence viewers shall order the fence's erection. The fence shall be erected as otherwise provided in this section, except for any location identified as unfeasible in the site evaluation. For that location, the fence viewers shall order the fence to be erected at the most feasible location on the property of the owner who initiated the controversy that is closest to the adjoining owner's property boundary.

3. a. The order shall assign to each owner the part which the owner shall erect, maintain, rebuild, trim or cut back, or pay for, and fix the value thereof, and prescribe the time within which the same shall be completed or paid for, and, in case of repair, may specify the kind of repairs to be made.

b. If the fence is not erected, rebuilt, or repaired within the time prescribed in the order, the fence viewers shall require the complaining landowner to deposit with the fence

viewers a ~~sum~~ an amount of money sufficient to pay for the erecting, rebuilding, trimming, cutting back or repairing such fence together with the fees of the fence viewers and costs. Such complaining landowner shall be reimbursed as soon as the costs and fees assessed against the party in default are collected as provided in [section 359A.6](#).

4. The order shall include the names of the fence viewers. The order shall state whether a fence viewer disclosed a possible conflict of interest, and whether a substitute fence viewer was appointed due to a disqualification pursuant to section 359A.2A. Any waiver of a conflict of interest signed by a party shall be attached to the order.

LINDA UPMEYER
Speaker of the House

CHARLES SCHNEIDER
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2340, Eighty-seventh General Assembly.

CARMINE BOAL
Chief Clerk of the House

Approved _____, 2018

KIM REYNOLDS
Governor