

House Study Bill 75 - Introduced

HOUSE FILE _____

BY (PROPOSED COMMITTEE ON
STATE GOVERNMENT BILL BY
CHAIRPERSON VANDER LINDEN)

A BILL FOR

1 An Act relating to special assessments imposed by cities and
2 counties and including applicability provisions.

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

1 Section 1. Section 331.488, subsection 3, Code 2013, is
2 amended to read as follows:

3 3. The method of specially assessing and determining
4 benefits and determining individual benefits, area benefits,
5 and community benefits.

6 Sec. 2. Section 384.37, Code 2013, is amended by adding the
7 following new subsections:

8 NEW SUBSECTION. 2A. "*Area benefit*" means the benefit
9 derived from all or a part of a public improvement that is
10 designated to principally serve a district and be accessible
11 for use by all lots within the district.

12 NEW SUBSECTION. 2B. "*Community benefit*" means that portion
13 of the total benefit derived from a public improvement designed
14 to be used by or serve the general public and community that
15 is in excess of the area benefit or the sum of all individual
16 benefits, if any, including but not limited to those public
17 improvements or parts of a public improvement specified in
18 section 384.61, subsection 4.

19 NEW SUBSECTION. 8A. "*Individual benefit*" means that
20 amount of the total benefit of a public improvement that is
21 proportionate to the lot's use of the public improvement or
22 the amount of a benefit conferred upon the individual lot by a
23 public improvement that is intended to benefit, serve, or be
24 used only by the lot, including but not limited to those items
25 specified in section 384.61, subsection 3.

26 Sec. 3. Section 384.37, subsections 4 and 25, Code 2013, are
27 amended to read as follows:

28 4. "*District*" means the lots or parts of lots within
29 boundaries of a benefited area established by the council
30 for the purpose of the assessment of all or part of the cost
31 of a public improvement that is intended in whole or in part
32 to principally serve the benefited area and to provide an
33 individual benefit to and be accessible for use by such lots
34 or parts of lots.

35 25. "*Street improvement*" means the construction or repair of

1 a street by grading, paving, curbing, guttering, and surfacing
2 with oil, oil and gravel, or chloride, ~~and~~ street lighting
3 fixtures, connections and facilities, storm water management
4 intakes, sewers, and facilities, and traffic-control devices,
5 fixtures, connections, and facilities.

6 Sec. 4. Section 384.38, subsection 1, Code 2013, is amended
7 to read as follows:

8 1. A city may, subject to the limitations of this division,
9 assess to private property within the city the cost of
10 construction and repair of public improvements within the
11 city, and main sewers, sewage pumping stations, disposal and
12 treatment plants, waterworks, water mains, extensions, and
13 drainage conduits extending outside the city. However, such
14 an assessment to private property, as allocated to each lot,
15 shall not exceed that portion of the total assessment that is
16 proportionate to the individual benefit to the lot as compared
17 to the total benefit of the public improvement.

18 Sec. 5. Section 384.42, Code 2013, is amended by adding the
19 following new subsection:

20 NEW SUBSECTION. 01. Prior to arranging for engineering
21 services under subsection 1 and the adoption of a preliminary
22 resolution under subsection 2, the city shall adopt an
23 ordinance after thirty days' notice, published in accordance
24 with section 362.3, and a public hearing, setting forth, in
25 accordance with this division, the methodology and procedure
26 to be used by the city for all future special assessments in
27 determining the amount of individual benefit, area benefit, and
28 community benefit that will result from a public improvement
29 and a description of the manner in which the cost of a public
30 improvement will be allocated to each category of benefit.

31 Sec. 6. Section 384.42, subsections 2 and 3, Code 2013, are
32 amended to read as follows:

33 2. Adopt a preliminary resolution by the vote of a majority
34 of all the members of the council, after forty-five days'
35 notice of the preliminary resolution published in accordance

1 with section 362.3. The preliminary resolution shall contain
2 the following:

3 *a.* A description of the types or alternate types of
4 improvement proposed.

5 *b.* The beginning and terminal points or general location of
6 the proposed improvement.

7 *c.* An order to the engineer to prepare preliminary plans and
8 specifications, estimated total cost of the work, and a plat
9 and schedule, and to file them with the clerk.

10 *d.* A general description of the property or a designation
11 of the lots which the council believes will be ~~specially~~
12 individually benefited by the improvement.

13 *e.* A detailed description of the method used for determining
14 benefits in accordance with the ordinance adopted under
15 subsection 01, an estimate of the amount of individual benefit,
16 area benefit, and community benefit that will be conferred as
17 a result of the public improvement, and a statement of the
18 proportion of the total cost of the public improvement that the
19 council proposes to assess against each lot within the proposed
20 district.

21 3. The preliminary resolution may also contain ~~the~~
22 ~~following:~~

23 ~~*a.* A statement of the proportion of the total cost which~~
24 ~~the council proposes to assess against specially benefited~~
25 ~~property.~~

26 ~~*b.* A a short and convenient designation for the public~~
27 ~~improvement by which it may be referred to in all subsequent~~
28 ~~proceedings.~~

29 Sec. 7. Section 384.44, Code 2013, is amended to read as
30 follows:

31 **384.44 Estimated cost.**

32 The estimated total cost of any public improvement
33 constructed under this part must include all of the items
34 of cost listed in section 384.37, subsection 26, which the
35 council proposes to include as a part of the cost of the public

1 improvement, and may include an item to be known as the default
2 fund amounting to not more than ten percent of the portion of
3 the total cost of the improvement which the council proposes to
4 assess against specialy individually benefited property.

5 Sec. 8. Section 384.47, subsections 3 through 5, Code 2013,
6 are amended to read as follows:

7 3. The total amount proposed to be assessed to each
8 lot according to the method described in the preliminary
9 resolution, including the assessment for the default fund, if
10 any.

11 4. The proportion of the estimated total cost of the public
12 improvement which is allocated to each lot as an individual
13 benefit.

14 5. The amount of deficiency, if any, between the amount
15 proposed to be assessed and the proportion of the estimated
16 total cost of the public improvement allocated to each lot
17 as an individual benefit. The amount of deficiency shall be
18 shown as a conditional deficiency assessment as authorized by
19 sections 384.60, 384.62 and 384.63.

20 Sec. 9. Section 384.51, unnumbered paragraph 2, Code 2013,
21 is amended to read as follows:

22 An amendment which extends the boundaries of a district,
23 increases the amount to be assessed against a lot, or adds
24 additional public improvements, is not effective until an
25 amended ordinance, if necessary, plat, schedule, and estimate
26 have been prepared and adopted, a notice published and
27 mailed to all affected property owners, and hearing held in
28 the same manner as the original proceedings, or until all
29 affected property owners agree in writing to the change.
30 The adoption of a resolution of necessity is a legislative
31 determination that the improvement is expedient and proper and
32 that property assessed will be specialy individually benefited
33 by the improvement and this determination of the council
34 is conclusive. Ownership of property to be assessed by an
35 improvement does not, except for fraud or bad faith, disqualify

1 a council member from voting on any measure.

2 Sec. 10. Section 384.54, subsection 15, Code 2013, is
3 amended to read as follows:

4 15. ~~a. The cost of all court proceedings are a legitimate~~
5 ~~item of expense in connection with a public improvement,~~
6 ~~and may be included within the final assessment against any~~
7 ~~property specially benefited in the assessment district.~~

8 ~~b. Whenever on a hearing by the court, the amount of any~~
9 ~~assessment is reduced or canceled so that there is a deficiency~~
10 ~~in the total amount remaining assessed in the proceeding, the~~
11 ~~court may assess the deficiency to the city or distribute the~~
12 ~~deficiency upon the other property abutting upon or adjacent to~~
13 ~~the improvement or lots benefiting from the improvement in the~~
14 ~~district assessed, in a manner ~~the court finds to be just and~~~~
15 ~~equitable consistent with this chapter, not exceeding, however,~~
16 ~~the amount the property lot would be specially individually~~
17 ~~benefited by the improvement, and not exceeding twenty-five~~
18 ~~percent of the value of the lot as shown by the plat and~~
19 ~~schedule of assessments or as reduced by the court.~~

20 Sec. 11. Section 384.61, Code 2013, is amended to read as
21 follows:

22 **384.61 Assessment of benefits.**

23 1. The total cost of a public improvement, except for
24 paving that portion of a street lying between railroad
25 tracks and one foot outside of the tracks, or which is to
26 be otherwise paid, ~~must~~ may be assessed against all lots
27 within the assessment district in accordance with the ~~special~~
28 individual benefits conferred upon the property, and not in
29 excess of such benefits. That portion of the total cost of
30 a public improvement that is not assessed to individual lots
31 in the district as the result of individual benefits shall be
32 attributable to the community benefit and shall be paid by the
33 city.

34 2. A lot that is subject to a special assessment may be
35 divided into two or more lots for assessment purposes upon the

1 request or consent of the property owner in order to separate
2 existing building sites from those portions of the lot that are
3 used for agricultural purposes or vacant land to be reserved
4 for development purposes. If an owner of property subject to
5 special assessment divides the property into two or more lots,
6 and if the plan of division is approved by the council, the
7 owner may discharge the lien upon any of the lots by payment of
8 the amount unpaid, calculated as determined by the council.

9 3. All of the following public improvements are presumed to
10 confer an individual benefit on a lot within a district:

11 a. A public improvement that benefits, serves, or that
12 is intended for use by only one lot, unless such public
13 improvement is replacing an existing public improvement of
14 acceptable or working quality and is required as a result of
15 work on or repair of another public improvement that does not
16 benefit, serve, or that is not intended for use by only that
17 lot.

18 b. A sidewalk upon a lot that is single-family residential
19 property located along the frontage of the lot not to exceed
20 four feet in width at a standard thickness.

21 c. A sidewalk upon a lot that is commercial property,
22 industrial property, multifamily residential property, or
23 property owned by a business entity as defined in section
24 501A.102, located along the street frontage of the lot not to
25 exceed six feet in width at a standard thickness.

26 d. Underground gas, water, heating, sanitary sewer, storm
27 sewer, and electrical connections and accessories located in a
28 public street right-of-way and that serve only the lot.

29 e. The portion of an area benefit which is proportionate
30 to a lot's forecasted use of the public improvement as a share
31 of the forecasted use of the public improvement by all lots in
32 the district.

33 4. All of the following public improvements are presumed to
34 confer a community benefit:

35 a. A public improvement or part of a public improvement that

1 is designed, constructed, or intended, due to additional size,
2 standards, facilities, or structures, for use by or to serve
3 property outside the district or the general public.

4 b. A sidewalk or recreational trail, or part thereof, that
5 is part of a community-wide public recreational trail system.

6 c. The portion of a sidewalk that exceeds the portion of
7 the sidewalk that provides an area benefit or presumed to be an
8 individual benefit under subsection 3, paragraph "b" or "c".

9 d. Notwithstanding any provision of this division to the
10 contrary, the planning, legal, administrative, engineering, and
11 inspection costs for that portion of the public improvement
12 that is a community benefit and all city employee salary costs
13 associated with the public improvement.

14 5. a. Notwithstanding any other provision in this
15 division to the contrary, each city undertaking the repair
16 or construction of a public improvement that includes a
17 street improvement paid for in whole or in part by a special
18 assessment shall, prior to the preparation of the schedule
19 under section 384.47, complete a vehicle traffic analysis and
20 forecast for the location of the proposed street improvement
21 that includes but is not limited to the following:

22 (1) A determination of the amount of vehicle traffic
23 forecasted to be generated from each lot or part of a lot
24 within the district for use in determining both the individual
25 benefits and area benefits.

26 (2) A determination of both the vehicle traffic forecasted
27 to be generated by existing sources outside of the district
28 after completion of the street improvement and the vehicle
29 traffic forecasted to be generated from land development
30 projects and uses outside of the district that are or will
31 be developed concurrently, in conjunction with, or following
32 completion of the street improvement for use in determining the
33 community benefit.

34 b. Those portions of the vehicle traffic analysis and
35 forecast relating to the amount of vehicle traffic generated

1 by each lot or part of a lot in the district after completion
2 of the street improvement shall be based on the estimated
3 development of such lots or parts of lots within ten years
4 after completion of the street improvement. The estimate of
5 the extent of development shall be made in accordance with
6 development estimates and trends of similar property in the
7 local area, the zoning and use restrictions imposed on or
8 proposed for the property, and the availability of necessary
9 infrastructure to develop the property. In addition to actual
10 vehicle traffic data available to the city, the vehicle traffic
11 analysis and forecast shall be completed using the most current
12 trip generation data from the institute of transportation
13 engineers for planned land uses or another generally recognized
14 organization.

15 c. The individual benefit accruing to each lot within
16 the district as the result of the street improvement shall
17 not exceed the percentage of the area benefit from the
18 street improvement that is proportionate to the lot's
19 forecasted amount of traffic generated as it bears to the
20 total forecasted amount of vehicle traffic generated in the
21 district. Additionally, in no case shall a lot or a part of a
22 lot be assessed for the improvements to a major road, including
23 but not limited to a road classified as an arterial road,
24 classified as a major collector road, or a road previously
25 under the jurisdiction of a county, if such lot or part of a lot
26 was previously assessed for improvements to another such major
27 road.

28 Sec. 12. Section 384.63, subsection 2, Code 2013, is amended
29 to read as follows:

30 2. The council shall, by resolution, provide that the
31 deficiencies for the lots specially individually benefited by a
32 public improvement shall be certified to the county treasurer,
33 who shall record them in the county system as "special
34 assessment deficiencies", and to the appropriate city official
35 charged with the responsibility of issuing building permits,

1 who shall notify the council when a private improvement is
2 subsequently constructed on any lot subject to a deficiency.
3 Certification to the county treasurer shall include a legal
4 description of each lot. The period of amortization for a
5 public improvement for which there are deficiencies shall
6 commence with the adoption of the resolution of necessity
7 and extend for the same period for which installments of
8 assessments for the project are made payable. Deficiencies may
9 be assessed only during the period of amortization, which shall
10 also be certified to the county treasurer and the city official
11 charged with the responsibility of issuing building permits.
12 Certification to the county treasurer shall include a legal
13 description of each lot.

14 Sec. 13. APPLICABILITY. This Act applies to public
15 improvements undertaken on or after July 1, 2013.

16 EXPLANATION

17 This bill relates to special assessments imposed by cities
18 and counties on private property for the cost of a public
19 improvement.

20 The bill establishes definitions of "community benefit",
21 "area benefit", and "individual benefit" under Code chapter
22 384, division IV. The bill also adds storm water management
23 intakes, sewers, and facilities and traffic-control devices,
24 fixtures, connections, and facilities to the definition of
25 "street improvement" under Code section 384.37.

26 The bill amends the definition of "district" in Code section
27 384.37 to mean the lots or parts of lots within boundaries of
28 a benefited area established by the council for the purpose
29 of the assessment of all or part of the cost of a public
30 improvement that is intended in whole or in part to principally
31 serve the benefited area and to provide an individual benefit
32 to and be accessible for use by such lots or parts of lots.

33 The bill provides that assessments to private property,
34 as allocated to each lot, shall not exceed that portion of
35 the total assessment that is proportionate to the individual

1 benefit to the lot as compared to the total benefit of the
2 public improvement.

3 The bill requires that before a city initiates proceedings
4 to construct or repair a public improvement to be paid for
5 in whole or in part by a special assessment and prior to
6 securing the services of an engineer and prior to the adoption
7 of a preliminary resolution related to a public improvement,
8 a city must adopt an ordinance, after specified notices and
9 a hearing, setting forth the methodology and procedure to
10 be used by the city for all future special assessments in
11 determining the amount of individual benefit, area benefit, and
12 community benefit that will result from a public improvement
13 and a description of the manner in which the cost of a public
14 improvement will be allocated to each category of benefit.

15 The bill requires that 45 days' notice of a preliminary
16 resolution be published prior to adoption of the preliminary
17 resolution related to a public improvement. The bill requires
18 the preliminary resolution to contain a detailed description
19 of the method used for determining benefits, in accordance
20 with the ordinance required to be adopted in the bill, an
21 estimate of the amount of individual benefit, area benefit,
22 and community benefit that will be conferred as a result of
23 the public improvement, and a statement of the proportion of
24 the total cost of the public improvement which the council
25 proposes to assess against each lot within the proposed special
26 assessment district.

27 The bill strikes the provision of Code section 384.54 that
28 designated the cost of all court proceedings to be a legitimate
29 item of expense in connection with a public improvement and
30 allowed such costs to be included within the final assessment
31 against any property specially benefited in the assessment
32 district.

33 The bill specifies that the total cost of a public
34 improvement, except for certain paving near railroad tracks
35 or improvements to be otherwise paid, may be assessed against

1 all lots within the assessment district in accordance with the
2 individual benefits conferred upon the property, and not in
3 excess of such benefits. The bill provides that the portion
4 of the total cost of a public improvement that is not assessed
5 to individual lots as the result of individual benefits is
6 attributable to the community benefit and shall be paid by the
7 city.

8 The bill allows a lot that is subject to a special assessment
9 to be divided into two or more lots for assessment purposes
10 upon the request or consent of the property owner in order to
11 separate existing building sites from those portions of the lot
12 that are used for agricultural purposes or vacant land to be
13 reserved for development purposes.

14 The bill designates certain public improvements that are
15 presumed to confer an individual benefit and designates certain
16 public improvements that are presumed to confer a community
17 benefit. Under the bill, the planning, legal, administrative,
18 engineering, and inspection costs for that portion of the
19 public improvement that is a community benefit and all city
20 employee salary costs associated with the public improvement
21 are presumed to confer a community benefit.

22 The bill requires each city undertaking the repair or
23 construction of a public improvement that includes a street
24 improvement, as defined in the bill, and paid for in whole
25 or in part by a special assessment, to complete a vehicle
26 traffic analysis and forecast for the location of the proposed
27 street improvement that includes but is not limited to: (1)
28 a determination of the amount of vehicle traffic forecasted
29 to be generated from each lot or part of a lot within the
30 proposed district for use in determining both the individual
31 benefits and the area benefit; and (2) a determination of both
32 the vehicle traffic forecasted to be generated by existing
33 sources outside of the district after completion of the street
34 improvement and the vehicle traffic forecasted to be generated
35 from land development projects and uses outside of the district

1 that are or will be developed concurrently, in conjunction
2 with, or following completion of the street improvement for use
3 in determining the community benefit.

4 The bill provides that those portions of the vehicle traffic
5 analysis and forecast relating to the amount of vehicle traffic
6 generated by each lot or part of a lot in the district after
7 completion of the street improvement shall be based on the
8 estimated development of such lots or parts of lots within 10
9 years after completion of the street improvement. The estimate
10 of the extent of development shall be made in accordance with
11 development estimates and trends of similar property in the
12 local area, the zoning and use restrictions imposed on or
13 proposed for the property, and the availability of necessary
14 infrastructure to develop the property.

15 In addition to actual vehicle traffic data available
16 to the city, the bill requires that the vehicle traffic
17 analysis and forecast must be completed using the most current
18 trip generation data from the institute of transportation
19 engineers for planned land uses or another generally recognized
20 organization.

21 The bill specifies that the individual benefit accruing
22 to each lot within the district as the result of the street
23 improvement shall not exceed the percentage of the area benefit
24 from the street improvement that is proportionate to the lot's
25 forecasted amount of traffic generated as it bears to the total
26 forecasted amount of vehicle traffic generated in the district.

27 The bill also specifies that in no case shall a lot or a
28 part of a lot be assessed for the improvements to a major road,
29 including but not limited to a road classified as an arterial
30 road or a major collector road, or a road previously under the
31 jurisdiction of a county, if such lot or part of a lot was
32 previously assessed for improvements to another such major
33 road.

34 By operation of law, the bill modifies similar provisions
35 relating to the authority of a county to assess to property the

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1 costs of a public improvement under Code chapter 331 and the
2 authority of a sanitary district under Code chapter 358.

3 This Act applies to public improvements undertaken on or
4 after July 1, 2013.