

House File 401 - Introduced

HOUSE FILE 401

BY MAXWELL

A BILL FOR

1 An Act relating to drainage and levee districts, by providing
2 for mergers, repairs and improvements, and elections.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

DIVISION I

MERGERS

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Section 1. Section 468.265, subsection 2, Code 2015, is amended by striking the subsection and inserting in lieu thereof the following:

2. a. The auditor of the county where a participating drainage or levee district is situated or the auditor designated by the board shall deliver the notice required in subsection 1 to all landowners in the district in the same manner as provided in sections 468.14 through 468.18, as the auditor deems appropriate.

b. 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 to the owners of such land by ordinary mail.

Sec. 2. Section 468.265, subsections 3 and 4, Code 2015, are amended by striking the subsections.

DIVISION II

THRESHOLD AMOUNTS FOR PERFORMING WORK

Sec. 3. Section 468.3, Code 2015, is amended by adding the following new subsection:

NEW SUBSECTION. 01. As used in this chapter, unless the context otherwise requires, the term "*adjusted competitive bid threshold*" means the same as the adjusted competitive bid threshold for vertical infrastructure applicable to counties as established by the state department of transportation pursuant to section 314.1B.

Sec. 4. Section 468.3, subsection 9, Code 2015, is amended by striking the subsection.

Sec. 5. Section 468.34, Code 2015, is amended by striking the section and inserting in lieu thereof the following:

468.34 Advertisement for bids.

The board shall publish notice once each week for two consecutive weeks in a newspaper published in the county

1 where the improvement is located, and publish additional
 2 advertisement and publication elsewhere as the board may
 3 direct. The notice shall state the time and place of letting
 4 the work of construction of the improvement, specifying the
 5 approximate amount of work to be done in each numbered section
 6 of the district, the time fixed for the commencement, and the
 7 time of the completion of the work, that bids will be received
 8 on the entire work and in sections or divisions of it, and that
 9 a bidder will be required to deposit a bid security with the
 10 county auditor as provided in section 468.35A. All notices
 11 shall set the date that bids will be received and upon which
 12 the work will be let. However, when the estimated cost of
 13 the improvement is less than the adjusted competitive bid
 14 threshold, the board may let the contract for the construction
 15 without taking bids and without publishing notice.

16 Sec. 6. NEW SECTION. **468.35A Bids — letting of work.**

17 1. The board shall award a contract or contracts for each
 18 section of the work to the lowest responsible bidder or bidders
 19 therefor, bids to be submitted, received, and acted upon
 20 separately as to the main drain and each of the laterals, and
 21 each settling basin, if any, exercising their own discretion as
 22 to letting such work as to the main drain as a whole, or as to
 23 each lateral as a whole, or by sections as to both main drain
 24 and laterals, and reserving the right to reject any and all
 25 bids and readvertise the letting of the work.

26 2. A bid shall be in writing, specifying the portion
 27 of the work upon which the bid is made, and filed with the
 28 auditor. The bid shall be accompanied with a bid security.
 29 The bid security shall be in the form of a deposit of cash, a
 30 certified check on and certified by a bank in Iowa, a certified
 31 share draft drawn on a credit union in Iowa, or a bid bond
 32 with a corporate surety satisfactory to the board as provided
 33 in section 73A.20. The bid security must be payable to the
 34 auditor or the auditor's order at the auditor's office in a
 35 sum equal to five percent of the amount of the bid. However,

1 if the maximum limit on a bid security would cause a denial
2 of funds or services from the federal government which would
3 otherwise be available, or if the maximum limit would otherwise
4 be inconsistent with the requirements of federal law, the
5 maximum limit may be suspended to the extent necessary to
6 prevent denial of federal funds or services or to eliminate
7 the inconsistency with federal requirements. The cash, check,
8 or share draft of an unsuccessful bidder shall be returned,
9 and the bid bond of an unsuccessful bidder shall be canceled.
10 The bid security of a successful bidder shall be maintained
11 as a guarantee that the bidder will enter into contract in
12 accordance with the bids.

13 **Sec. 7. NEW SECTION. 468.36A Performance bond — return of**
14 **deposit.**

15 A successful bidder is required to execute a bond with
16 sureties approved by the auditor in favor of the county for
17 the use and benefit of the levee or drainage district and all
18 persons entitled to liens for labor or material in an amount
19 not less than seventy-five percent of the contract price of the
20 work to be done, conditioned for the timely, efficient, and
21 complete performance of the contract, and the payment, as they
22 become due, of all just claims for labor performed and material
23 used in carrying out the contract. When a contract is executed
24 and bond approved by the board, the cash, certified check, or
25 certified share draft deposited with the bid shall be returned
26 to the bidder.

27 **Sec. 8.** Section 468.66, Code 2015, is amended to read as
28 follows:

29 **468.66 Bids required.**

30 ~~In case~~ If the board determines that a change described
31 in section 468.62 increases the cost of the improvement to
32 ~~more than~~ in excess of the adjusted competitive bid threshold
33 ~~as provided in section 26.3,~~ the board and any bidders shall
34 ~~comply with the competitive bid requirements applicable to~~
35 ~~a governing entity ordering the construction of a public~~

1 ~~improvement in chapter 26~~ work shall be let by bids in the same
2 manner as is provided for the original construction of such
3 improvements.

4 Sec. 9. Section 468.126, subsection 1, paragraphs c and d,
5 Code 2015, are amended by striking the paragraphs and inserting
6 in lieu thereof the following:

7 c. If the estimated cost of the repair does not exceed fifty
8 thousand dollars, the board may order the work done without
9 conducting a hearing on the matter. Otherwise, the board shall
10 set a date for a hearing and provide notice of the hearing to
11 landowners in the district by publication in the same manner
12 as provided in section 468.15. However, if the estimated cost
13 of the repair exceeds the adjusted competitive bid threshold,
14 the board shall provide notice to the landowners pursuant to
15 sections 468.14 through 468.18. The board shall not divide a
16 proposed repair into separate programs in order to avoid the
17 notice and hearing requirements of this paragraph.

18 d. If a hearing is required under paragraph "c", the board
19 shall order an engineer's report or a report from the soil
20 and water conservation district conservationist regarding the
21 matter to be presented at the hearing. The board may waive the
22 report requirement if a prior report on the repair exists and
23 that report is less than ten years old. At the hearing, the
24 board shall hear objections to the feasibility of making the
25 proposed repair.

26 Sec. 10. Section 468.126, subsection 1, Code 2015, is
27 amended by adding the following new paragraphs:

28 NEW PARAGRAPH. e. Following a hearing, if required in
29 paragraph "c", the board shall determine whether the repair is
30 necessary or desirable, and feasible.

31 NEW PARAGRAPH. f. Any interested party has the right
32 of appeal from such orders in the manner provided in this
33 subchapter, parts 1 through 5.

34 NEW PARAGRAPH. g. The right of remonstrance does not apply
35 to a repair as provided in this section.

1 Sec. 11. Section 468.126, subsection 2, Code 2015, is
2 amended to read as follows:

3 2. In the case of a ~~minor~~ repair, or ~~in~~ the eradication of
4 brush ~~and~~ or weeds along the open ditches, not in excess of
5 ~~twenty thousand dollars~~ the adjusted competitive bid threshold,
6 where the board finds that a saving to the district will
7 result, the board may cause the repairs or eradication to be
8 done by secondary road fund equipment, or weed fund equipment,
9 and labor of the county and then reimburse the secondary road
10 fund or the weed fund from the fund of the drainage district
11 thus benefited.

12 Sec. 12. Section 468.126, subsection 4, Code 2015, is
13 amended to read as follows:

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

20 ~~a.~~ b. When the board determines that an improvement is
21 necessary or desirable, and feasible, the board shall appoint
22 an engineer to make surveys as seem appropriate to determine
23 the nature and extent of the ~~needed~~ improvement, and to file
24 a report showing what improvement is recommended and its
25 estimated cost, which report may be amended before final
26 action.

27 c. If the estimated cost of the improvement does not
28 exceed fifty thousand dollars, the board may order the work
29 done without conducting a hearing on the matter. Otherwise,
30 the board shall set a date for a hearing on whether to
31 construct the proposed improvement and whether there shall be
32 a reclassification of benefits for the cost of the proposed
33 improvement.

34 (1) (a) The board shall provide notice to landowners in
35 the district by publication in the same manner as provided

1 in section 468.15. However, if the estimated cost of the
2 improvement exceeds the adjusted competitive bid threshold,
3 the board shall provide notice to the landowners pursuant to
4 sections 468.14 through 468.18.

5 (b) Notwithstanding subparagraph division (a), and in lieu
6 of publishing the notice, the board may mail a copy of the
7 notice to each address where a landowner within the district
8 resides by first class mail if the cost of mailing is less
9 than publication of the notice. The mailing shall be made
10 during the time the notice would otherwise be required to be
11 published.

12 (2) The board shall not divide proposed improvements into
13 separate programs in order to avoid compliance with this
14 paragraph "b" "c".

15 d. At the hearing, if required in paragraph "c", the board
16 shall hear objections to the feasibility of the proposed
17 improvements and arguments for or against a reclassification
18 presented by or for any taxpayer of the district. Following
19 a the hearing, if required by section 26.12, the board shall
20 order that the improvements improvement it deems necessary or
21 desirable and feasible be made and shall also determine whether
22 there should be a reclassification of benefits for the cost
23 of improvements the improvement. If it is determined that a
24 reclassification of benefits should be made, the board shall
25 proceed as provided in section 468.38. In lieu of publishing
26 the notice of a hearing as provided by section 331.305, the
27 board may mail a copy of the notice to each address where
28 a landowner in the district resides by first class mail if
29 the cost of mailing is less than publication of the notice.
30 The mailing shall be made during the time the notice would
31 otherwise be required to be published.

32 b. When ordering the construction of an improvement under
33 this subsection, the board shall comply with the competitive
34 bid requirements applicable to a governing entity ordering
35 the construction of a public improvement in chapter 26. If

1 ~~the improvement is more than fifty thousand dollars but less~~
2 ~~than the competitive bid threshold in section 26.3, the board~~
3 ~~shall conduct a hearing on the matter of making the proposed~~
4 ~~improvement. The board shall provide notice of the hearing as~~
5 ~~provided in sections 468.14 through 468.18.~~

6 ~~e, e.~~ If the estimated cost of the ~~improvements~~ improvement
7 exceeds the adjusted competitive bid threshold ~~as provided in~~
8 ~~section 26.3,~~ or the original cost of the district plus the
9 cost of subsequent improvements in the district, whichever
10 amount is the greater amount, a majority of the landowners,
11 owning in the aggregate more than seventy percent of the
12 total land in the district, may file a written remonstrance
13 against the proposed ~~improvements~~ improvement, at or before the
14 ~~time fixed~~ date set for hearing on the proposed ~~improvements~~
15 improvement as provided in paragraph "c", with the county
16 auditor, or auditors in case the district extends into more
17 than one county. If a remonstrance is filed, the board shall
18 discontinue and dismiss all further proceedings on the proposed
19 improvements and charge the costs incurred to date for the
20 proposed improvements to the district. Any interested party
21 may appeal from such orders in the manner provided in this
22 subchapter, parts 1 through 5. However, this section does not
23 affect the procedures of section 468.132 covering the common
24 outlet.

25 DIVISION III

26 JUDGES OF TRUSTEE ELECTIONS

27 Sec. 13. Section 468.521, Code 2015, is amended to read as
28 follows:

29 **468.521 Elections — how conducted.**

30 1. After the first election of trustees, the board of
31 trustees shall act as judges of election; however, a trustee
32 standing for election shall not serve as a judge ~~and shall be~~
33 ~~replaced as judge by a person not standing for election who is~~
34 ~~eligible to be elected as a trustee.~~

35 2. The clerk of the board shall act as one of the clerks and

1 ~~some~~ an owner of land in the district shall be appointed by the
2 board to act as another clerk.

3 3. The ~~trustees board~~ shall fill ~~all vacancies in the~~
4 ~~election board~~ any vacancy of an acting election judge by
5 appointing a person who resides in the county where all or
6 part of the drainage or levee district is located and who is
7 eligible to vote in a general election in that county.

8 4. The result of each election shall be certified to the
9 auditor or the several county auditors if the district is
10 located in more than one county.

11 EXPLANATION

12 The inclusion of this explanation does not constitute agreement with
13 the explanation's substance by the members of the general assembly.

14 GENERAL. This bill amends provisions relating to the
15 governance of a drainage or levee district (district) governed
16 by a drainage district board.

17 MERGER. The bill amends requirements for providing notice
18 to persons affected by a proposed merger of two or more
19 districts, and persons affected by a proposed annexation of
20 land as part of such merger. The bill eliminates a requirement
21 that the notice be delivered by ordinary mail and publication
22 to specified affected persons who have an interest in a
23 district participating in the merger and, if required, to the
24 owners of land that may be annexed (Code section 468.265).
25 That process is replaced by a requirement that landowners
26 receive notice under the same requirements that apply when a
27 district is established, including by publication, certified
28 mail, or personal service (Code sections 468.14 through
29 468.18). If the proposed merger includes the annexation of
30 land, notice must be provided to landowners by ordinary mail.

31 THRESHOLD AMOUNTS — BIDDING PROCEDURES. The bill amends
32 provisions governing when a board must let out a project
33 (either for a repair or improvement for bid and conduct a
34 hearing regarding the project). The bill eliminates a number
35 of provisions that require the same procedures as used under

1 the "Iowa Construction Bidding Procedures Act" (Code chapter
2 26) and replaces them with procedures that existed prior to
3 July 1, 2014 (2014 Iowa Acts, ch. 1075). However, in lieu
4 of using fixed dollar amounts as existed in the prior law,
5 the bill requires that letting out bids is required when the
6 estimated cost of a project exceeds the "adjusted competitive
7 bid threshold" for vertical infrastructure applicable to
8 counties established by the state department of transportation
9 (Code section 314.1B). The bill also requires a notice to
10 landowners of the district and a hearing on the matter if the
11 estimated cost of the project exceeds \$50,000. The notice must
12 be by publication (Code section 468.15), unless the estimated
13 cost of the project exceeds the competitive bid threshold in
14 which case notice is required in the same manner as when a
15 district is established, including by publication, certified
16 mail, or personal service (Code sections 468.14 through
17 468.18). The bill also provides that in the case of a repair
18 or of eradicating brush or weeds along open ditches, the board
19 may use moneys credited to the county's secondary road fund or
20 weed fund, so long as the project does not exceed the adjusted
21 competitive bid threshold and the fund is repaid.

22 JUDGES OF TRUSTEE ELECTIONS. The bill amends a provision
23 that requires the board of trustees elected to manage a
24 district to also serve as judges canvassing the results of the
25 next district election. The bill provides that when there is
26 a vacancy the board may appoint any individual to serve as a
27 judge, so long as they reside in the county where all or part of
28 the district is located and are eligible to vote in the general
29 election.

30 BACKGROUND. A district is established by a county board
31 of supervisors which manages the district (Iowa Code section
32 468.1). A district may also be established and managed by a
33 joint board of supervisors if the district crosses county lines
34 (Iowa Code chapter 468, subchapter II). A board of supervisors
35 may relinquish control of a district to a board of elected

1 trustees (Iowa Code chapter 468, subchapter III). The two
2 basic types of drainage projects are repairs and improvements.
3 Generally, a repair is work which is necessary to restore the
4 facility to its original design or intended efficiency while
5 an improvement is an improvement that enhances or enlarges the
6 district's capacity or efficiency.