

**House File 2340 - Introduced**

HOUSE FILE 2340  
BY COMMITTEE ON AGRICULTURE

(SUCCESSOR TO HF 2111)

**A BILL FOR**

1 An Act relating to controversies involving fence viewers.  
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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

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

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

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

20 2. *a.* A fence viewer who may have a conflict of interest  
21 in deciding a question related to a matter that is part of the  
22 controversy must disclose the possible conflict of interest  
23 to the parties and the other fence viewers prior to the fence  
24 viewers participating in the matter by conducting a hearing or  
25 making a decision under section 359A.4.

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

35 3. A conflict of interest exists when a fence viewer is

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

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

8         (1) A spouse.

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

12         (3) The spouse of any individual described in subparagraph  
13 (2).

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

22     4. Upon the disqualification of the fence viewer, the  
23 remaining trustees shall appoint a qualified substitute  
24 fence viewer to decide each question related to a matter in  
25 controversy. If a trustee is not remaining, the township  
26 clerk shall appoint three qualified substitute fence viewers  
27 to decide each question related to a matter in controversy.  
28 However, this subsection does not apply if the township clerk  
29 selects a fence viewer as provided in section 359A.14.

30     5. Notwithstanding other provisions in the section to  
31 the contrary, a fence viewer who may or does have a conflict  
32 of interest in a matter that is part of the controversy may  
33 participate in the matter, including by hearing and deciding  
34 all questions related to the matter, if each party to the  
35 controversy signs a waiver. The waiver shall state that the

1 party has been notified of the fence viewer's conflict of  
2 interest and agrees to the fence viewer's participation in  
3 the matter. The waiver shall be attached to the order issued  
4 pursuant to section 359A.4.

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

7 **359A.3 ~~Powers of fence viewers~~ Notice and hearing.**

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

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

26 **359A.4 Decision Hearing — decision — order — deposit.**

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

33 2. a. If the fence viewers determine the erection of a  
34 fence may be unfeasible in any location which constitutes the  
35 adjoining parties' property boundary, the fence viewers shall

1 conduct a site evaluation. The fence viewers may request  
2 assistance by the county engineer in the county where the  
3 adjoining properties' boundary is situated. The determination  
4 may be based on any of the following:

5 (1) Topography.

6 (2) Terrain.

7 (3) Terraces.

8 (4) Land slope.

9 (5) Unstable ground.

10 (6) The presence of surface water, drainage systems,  
11 sinkholes, or water wells.

12 (7) Easements.

13 (8) Utilities.

14 (9) Available area.

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

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

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

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

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

13 EXPLANATION

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

16 GENERAL. This bill amends provisions in Iowa's fence law  
17 (Code chapter 359A) that in part governs the construction  
18 (erection) or maintenance of fences existing on the property  
19 boundary between land of adjoining owners (sometimes referred  
20 to as partition fences). A controversy between the owners may  
21 result in an order being issued by the board of trustees of the  
22 township where the property boundary is located, who assume the  
23 title of fence viewers (Code sections 359A.3 through 359A.11  
24 and Code section 359A.22).

25 BILL'S PROVISIONS — CONFLICTS OF INTEREST. The bill  
26 provides for a fence viewer who has a conflict of interest  
27 involving any question related to the controversy: If the  
28 fence viewer may have a conflict of interest, the fence viewer  
29 must make disclosure of the possible conflict of interest to  
30 the parties and other fence viewers. If the fence viewer  
31 has an actual conflict of interest, the fence viewer must be  
32 disqualified either at the fence viewer's election or by vote  
33 of the other trustees. Either action must be described in the  
34 fence viewers' notice to the parties and order. A conflict  
35 of interest occurs when a fence viewer is asked to make a

1 determination that would affect a tract of land in which the  
2 fence viewer or a person related to the fence viewer has an  
3 ownership or leasehold interest. A person is related to a  
4 fence viewer by being an immediate family member or a business  
5 associate (e.g., a partner in the same general partnership).  
6 If the trustee is disqualified, the remaining trustees (e.g., a  
7 spouse) must appoint a substitute (unless the township clerk  
8 selects a fence viewer in cases in which the adjoining property  
9 is located in more than one township). The bill provides that  
10 the fence viewer may participate in the matter if the parties  
11 to the controversy are notified of the conflict and sign a  
12 waiver.

13 BILL'S PROVISIONS — ERECTION OF FENCES BASED ON A  
14 DETERMINATION OF UNFEASIBILITY. The bill provides that the  
15 fence viewers may determine that the erection of a fence on  
16 the property boundary between the adjoining properties is  
17 unfeasible pursuant to a site evaluation conducted by the fence  
18 viewers. The determination may be based on a characteristic  
19 of the land (e.g., land slope), the presence of water (e.g.,  
20 located in a floodplain), some prior right (e.g., an easement),  
21 or a suitable area is unavailable. In that case, the trustees  
22 must assist the parties in reaching an agreement or if that  
23 fails take account of the land's characteristics in the order.  
24 The order shall require the fence be erected at a feasible  
25 location on the property owned by the party who brings the  
26 controversy and that is closest to the adjoining party's  
27 property boundary.

28 BACKGROUND. The owner of property has a right to erect a  
29 fence on the property boundary between the owner's property  
30 and an adjacent owner (Code section 359A.16). A controversy  
31 requiring participation by a township's fence viewers  
32 may be triggered by an owner demanding that the adjoining  
33 owner or adjoining owners share in the costs of erecting,  
34 maintaining, or repairing the fence. The fence viewers must  
35 provide notice to each adjacent owner that they are parties

1 to the controversy. The fence viewers act as adjudicators,  
2 by determining the obligations, rights, and duties of the  
3 respective parties, including contributions (payments) which  
4 must be set forth in an order and be assessed and collected as  
5 ordinary taxes (Code section 359A.6). The order is subject  
6 to appeal in district court (Code sections 359A.23 through  
7 359A.25).