

House File 2324 - Introduced

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A BILL FOR

1 An Act relating to the management of drainage or levee
2 districts, including by providing for objections by
3 landowners and for procedures to make a repair or construct
4 an improvement within a district.
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 468.28, Code 2020, is amended to read as
2 follows:

3 **468.28 Dismissal on remonstrance objection.**

4 1. If, ~~at~~ At or before the time set for final hearing
5 as to the establishment of a proposed levee, drainage, or
6 improvement district, except subdrainage district, ~~there shall~~
7 ~~have been an objection may be~~ filed with the county auditor,
8 or auditors, in case the district extends into more than one
9 county, ~~a remonstrance signed~~ by a majority of the landowners
10 ~~in the district, and these remonstrants must~~ owning in the
11 aggregate ~~own seventy percent or more than fifty percent~~ of
12 the ~~lands~~ land to be assessed for benefits or taxed for said
13 improvements, ~~remonstrating~~. The landowners may object to the
14 establishment of a proposed levee, drainage, or improvement
15 district, by doing any of the following:

16 a. Filing a remonstrance against the establishment of said
17 levee, drainage, or improvement district, setting forth the
18 reasons ~~therefor, the~~ for the objection. The remonstrance must
19 be signed by all landowners making the objection.

20 b. Conducting a vote on the matter, if authorized by the
21 board or boards. The auditor or auditors must mail a ballot
22 on the question to landowners in the same manner as provided
23 in section 468.14. A landowner shall return the ballot in the
24 same manner as filing a remonstrance as provided in paragraph
25 "a". The auditor or auditors shall only count the votes of
26 landowners who answer the question on the ballots returned to
27 the auditor.

28 2. If a remonstrance is filed or a majority of landowners
29 voting disapprove the proposed district, the board or boards
30 ~~as the case may be,~~ shall assess to the petitioners and
31 their sureties or apportion the costs among them as the board
32 or boards may deem just or as said parties may agree upon.
33 When all such costs have been paid, the board or boards of
34 supervisors shall dismiss said proceedings and cause to be
35 filed with the county auditor all surveys, plats, reports, and

1 records in relation to the proposed district.

2 Sec. 2. Section 468.119, subsection 4, Code 2020, is amended
3 to read as follows:

4 4. The right of ~~remonstrance~~ objection, as provided ~~under~~
5 in section 468.28, does not apply to the owners of lands being
6 involuntarily annexed to an established district.

7 Sec. 3. Section 468.126, subsection 1, Code 2020, is amended
8 to read as follows:

9 1. When any levee or drainage district has been established
10 and the improvement constructed, the improvement shall be at
11 all times under the supervision of the board of supervisors
12 except as otherwise provided for control and management by a
13 board of trustees and the board shall keep the improvement in
14 repair as provided in this section.

15 a. The board at any time on its own motion, ~~without notice,~~
16 may or acting upon a petition of one or more landowners in
17 the district, may order done whatever is necessary to restore
18 or maintain a drainage or levee improvement in its original
19 efficiency or capacity, and for that purpose may remove silt
20 and debris, repair any damaged structures, remove weeds and
21 other vegetable growth, and whatever else may be needed to
22 restore or maintain such efficiency or capacity or to prolong
23 its useful life. The board shall determine whether a proposed
24 project meets the requirements to be classified as a repair or
25 whether it should be classified as an improvement. The board
26 shall determine the difference between a major and minor repair
27 based on a dollar amount for making the repair as determined
28 by the board.

29 b. If the board considers a petition for a major repair,
30 the petition must include the signatures of at least thirty
31 percent of the landowners in the district. There shall be
32 filed with the petition a bond in an amount fixed and with
33 sureties approved by the auditor, conditioned for the payment
34 of all costs and expenses incurred in the proceedings if the
35 petition is not approved.

1 ~~b.~~ c. The board may ~~at any time obtain order~~ an engineer's
2 report be prepared and submitted to the board regarding a
3 repair, only if the board makes an initial determination that
4 the estimated cost of the repair could exceed three hundred
5 thousand dollars. The board may adjust the determination at
6 any time. The board shall not order a report until it approves
7 a preliminary estimate of the scope and cost of the repair
8 prepared by an engineer to be appointed by the board. If
9 an engineer's report is ordered, the report shall describe
10 the most feasible means of repairing a drainage or levee
11 improvement and the probable cost of making the repair. If
12 the engineer advises, or the board otherwise concludes that
13 permanent restoration of a damaged structure is not feasible at
14 the time, the board may order temporary construction it deems
15 necessary to the continued functioning of the improvement. If
16 in maintaining and repairing tile lines the board finds from
17 an engineer's report it is more economical to construct a new
18 line than to repair the existing line, the new line may be
19 considered to be a repair.

20 ~~e.~~ d. ~~If the estimated cost of the repair does not~~
21 ~~exceed~~ The board may order a report from the soil and water
22 conservation district conservationist in lieu of the engineer's
23 report. The board may waive the report requirement if a prior
24 report concerning the repair is less than ten years old.

25 e. (1) The board shall hold a hearing regarding a repair
26 under any of the following circumstances:

27 (a) The scope of the repair exceeds the engineer's
28 preliminary estimate as provided in paragraph "c" by more than
29 fifteen percent. The engineer or soil and water conservation
30 district conservationist preparing the report shall pay all
31 expenses related to conducting the hearing, unless the enlarged
32 scope was ordered by the board.

33 (b) The estimated cost of the repair exceeds fifty thousand
34 dollars, the board may order the work done without conducting a
35 hearing on the matter. Otherwise, the. The estimated cost of

1 the repair shall be based on the board's determination, unless
2 a report is ordered pursuant to paragraph "c". In that case,
3 the estimated cost shall be based on the preliminary estimate
4 or, if available, the report.

5 (2) The board shall set a date and time for a the hearing
6 and provide notice of the hearing to landowners in the district
7 by publication in the same manner as provided in section
8 468.15. However, if the estimated cost of the repair exceeds
9 the adjusted competitive bid threshold, the board shall provide
10 notice to the landowners pursuant to sections 468.14 through
11 468.18. The board shall not divide a proposed repair into
12 separate programs in order to avoid the notice and hearing
13 requirements of this paragraph. At the hearing, the board
14 shall hear objections regarding the feasibility of making the
15 proposed repair.

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

24 ~~e. f.~~ Following a hearing, if required in paragraph "e"
25 "e", the board shall determine whether the repair is necessary
26 or desirable, and feasible.

27 ~~f. g.~~ Any interested party has the right of appeal from
28 such orders in the manner provided in this subchapter, parts 1
29 through 5.

30 ~~g. h.~~ The right of remonstrance objection as provided in
31 subsection 4 does not apply to a minor repair as provided in
32 this section subsection. In the case of a major repair, an
33 objection shall be made in the same manner as provided in that
34 subsection.

35 Sec. 4. Section 468.126, subsection 4, Code 2020, is amended

1 to read as follows:

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

8 ~~b. When the board determines that an improvement is~~
9 ~~necessary or desirable, and feasible, the~~ The board shall
10 determine whether a proposed project meets the requirements
11 to be classified as an improvement or repair. The board,
12 at any time, on its own motion, or upon a petition of one
13 or more landowners in the district, may order an improvement
14 be constructed. The board shall appoint an engineer to
15 make surveys as seem appropriate to determine the nature and
16 extent of the improvement, and to file a report showing what
17 improvement is recommended and its estimated cost, which report
18 may be amended before final action.

19 c. The board shall determine the difference between a major
20 and minor improvement based on a dollar amount for making the
21 improvement as determined by the board.

22 d. If the board considers a petition for a major
23 improvement, the petition must include the signatures of at
24 least thirty percent of the landowners in the district. There
25 shall be filed with the petition a bond in an amount fixed and
26 with sureties approved by the auditor, conditioned for the
27 payment of all costs and expenses incurred in the proceedings
28 if the petition is not approved or the proceeding has been
29 dismissed due to the filing of a remonstrance.

30 e. The board shall order an engineer's report be prepared
31 and submitted to the board regarding the improvement, only if
32 the board makes an initial determination that the estimated
33 cost of the improvement could exceed three hundred thousand
34 dollars. The board may adjust the determination at any
35 time. The board shall not order a report until it approves a

1 preliminary estimate of the scope and cost of the improvement
2 as prepared by the engineer to be appointed by the board.

3 f. The board shall hold a hearing regarding the proposed
4 construction of an improvement under any of the following
5 circumstances:

6 (1) The enlarged scope of the improvement exceeds the
7 engineer's preliminary estimate as provided in paragraph "e".
8 The engineer appointed by the board shall pay all expenses
9 related to conducting the hearing, unless the enlarged scope
10 was ordered by the board.

11 ~~e. (2) If the~~ The estimated cost of the improvement does
12 ~~not exceed~~ exceeds fifty thousand dollars, the board may order
13 ~~the work done without conducting a hearing on the matter.~~
14 ~~Otherwise, the.~~ The estimated cost of the improvement shall be
15 based on the board's determination, unless a report is ordered
16 pursuant to paragraph "e". In that case, the estimated cost
17 shall be based on the preliminary estimate or, if available,
18 the report.

19 g. The board shall set a date and time for a the hearing
20 on whether to construct the proposed improvement and whether
21 there shall be a reclassification of benefits for the cost of
22 the proposed improvement.

23 (1) (a) The board shall provide notice to landowners in
24 the district by publication in the same manner as provided
25 in section 468.15. However, if the estimated cost of the
26 improvement exceeds the adjusted competitive bid threshold,
27 the board shall provide notice to the landowners pursuant to
28 sections 468.14 through 468.18.

29 (b) Notwithstanding subparagraph division (a), and in lieu
30 of publishing the notice, the board may mail a copy of the
31 notice to each address where a landowner within the district
32 resides by first class mail if the cost of mailing is less
33 than publication of the notice. The mailing shall be made
34 during the time the notice would otherwise be required to be
35 published.

1 (2) The board shall not divide proposed improvements into
2 separate programs in order to avoid compliance with this
3 ~~paragraph "e"~~ subsection.

4 ~~d.~~ h. At the a hearing for the approval of the construction
5 of an improvement, if required in paragraph ~~"e"~~ "f", the board
6 shall hear objections to the feasibility of the proposed
7 improvements and arguments for or against a reclassification
8 presented by or for any taxpayer of the district. Following
9 the hearing, the board shall order that the improvement it
10 deems necessary or desirable and feasible be made and shall
11 also determine whether there should be a reclassification of
12 benefits for the cost of the improvement. If it is determined
13 that a reclassification of benefits should be made, the board
14 shall proceed as provided in [section 468.38](#).

15 ~~e.~~ i. (1) If the estimated cost of the improvement exceeds
16 the adjusted competitive bid threshold, or the original cost
17 of the district plus the cost of subsequent improvements in
18 the district, whichever amount is greater, a majority of the
19 landowners, owning in the aggregate more than ~~seventy~~ fifty
20 percent of the total land in the district, may file object to
21 the proposed improvement by doing any of the following:

22 (a) Filing a written remonstrance against the proposed
23 improvement, at or before the date set for hearing on the
24 proposed improvement as provided in paragraph ~~"e"~~ "f", with the
25 county auditor, or auditors in case the district extends into
26 more than one county.

27 (b) Conducting a vote on the matter, if authorized by the
28 board or boards. The auditor or auditors must mail a ballot
29 on the question to landowners in the same manner as provided
30 in section 468.14. A landowner shall return the ballot
31 in the same manner as filing a remonstrance as provided in
32 subparagraph division (a). The auditor or auditors shall only
33 count the votes of landowners who answer the question on the
34 ballots returned to the auditor.

35 (2) If a remonstrance is filed or a majority of landowners

1 voting disapprove the proposed improvement, the board shall
2 discontinue and dismiss all further proceedings on the proposed
3 improvements and charge the costs incurred to date for the
4 proposed improvements to the district.

5 j. Any interested party may appeal from such orders in
6 the manner provided in this subchapter, parts 1 through 5.
7 However, this section does not affect the procedures of section
8 468.132 covering the common outlet.

9 Sec. 5. Section 468.184, subsection 3, Code 2020, is amended
10 by striking the subsection and inserting in lieu thereof the
11 following:

12 3. At or before the time set for said hearing as to such
13 classification or reclassification, an objection may be made by
14 a majority of the landowners owning more than fifty percent of
15 the total assessed value of the lands plus land improvements in
16 said district as shown by the taxing records in said county or
17 counties in which said district is located. The landowners may
18 object to the classification or reclassification by doing any
19 of the following:

20 a. Filing a remonstrance with the auditor, or auditors
21 in case the district extends into more than one county. The
22 remonstrance must be signed by all landowners making the
23 objection.

24 b. Conducting a vote on the matter, if authorized by the
25 board, or boards in case the district extends into more than
26 one county. The auditor or auditors must mail a ballot on
27 the question to landowners in the same manner as provided in
28 section 468.14. A landowner shall return the ballot in the
29 same manner as filing a remonstrance as provided in paragraph
30 "a". The auditor or auditors shall only count the votes of
31 landowners who answer the question on the ballots returned to
32 the auditor.

33 Sec. 6. Section 468.184, Code 2020, is amended by adding the
34 following new subsection:

35 NEW SUBSECTION. 3A. a. If a remonstrance is filed or

1 a majority of landowners voting disapprove the proposed
2 improvement, the board or boards shall abandon the alternative
3 method of classification or reclassification herein authorized.

4 *b.* The board or boards may then proceed to classify the
5 lands in said levee district as authorized under sections
6 468.38 through 468.44 or may proceed to reclassify the same
7 as authorized under section 468.65 unless the remonstrance or
8 vote objects to any reclassification. In that case, the board
9 shall not reclassify the lands within the district under the
10 provision of this section nor shall the same be reclassified
11 under the provisions of section 468.65.

12 *Sec. 7.* Section 468.258, subsection 4, Code 2020, is amended
13 by striking the subsection and inserting in lieu thereof the
14 following:

15 4. At or before the time set for the hearing, an objection
16 may be made to the dissolution of the contained district,
17 or to the acceptance of that district's improvements and
18 rights-of-way by the overlying district, by the owners of land
19 and land improvements in either district aggregating more
20 than fifty percent of the total assessed value of the land in
21 that district as shown by the taxing records in the county or
22 counties in which that district is located. The landowners may
23 object to the classification or reclassification by doing any
24 of the following:

25 *a.* Filing a remonstrance with the county auditor, or
26 auditors if either the contained or overlying district
27 extends into more than one county, or with the board of either
28 district. The remonstrance must be signed by all landowners
29 making the objection.

30 *b.* Conducting a vote on the matter, if authorized by the
31 board, or boards in case the district extends into more than
32 one county. The auditor or auditors must mail a ballot on
33 the question to landowners in the same manner as provided in
34 section 468.14. A landowner shall return the ballot in the
35 same manner as filing a remonstrance as provided in paragraph

1 "a". The auditor or auditors shall only count the votes of
2 landowners who answer the question on the ballots returned to
3 the auditor.

4 Sec. 8. Section 468.258, Code 2020, is amended by adding the
5 following new subsection:

6 NEW SUBSECTION. 5. If a remonstrance is filed or a majority
7 of landowners voting disapprove the proposed improvement, the
8 board to which the objection is made shall abandon its proposed
9 action.

10 Sec. 9. Section 468.534, Code 2020, is amended to read as
11 follows:

12 **468.534 Remonstrance.**

13 ~~Remonstrances signed~~ An objection may be made by the same
14 persons who are qualified to sign the petition may, which
15 objection must be filed in the office of the auditor ~~and if.~~
16 If the same persons petition and ~~remonstrate~~ object they shall
17 be counted ~~on the remonstrance only~~ for the objection. ~~Such~~
18 ~~remonstrances shall~~ The objection shall be made in the same
19 manner as provided in section 468.28. ~~However, the objection~~
20 must be filed with the auditor not less than five days before
21 the time set for hearing.

22 EXPLANATION

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

25 GENERAL. This bill amends Code chapter 468 by providing
26 for repairs made and improvements constructed to a drainage or
27 levee district (district) as ordered by a board managing the
28 district (board). It also provides for remonstrances filed
29 with the board that seek to dismiss an action to be taken by the
30 board.

31 OBJECTION. The bill provides that a landowner may object to
32 a proceeding affecting a landowner's rights in a proposed or
33 established district. First, it provides that a majority of
34 landowners owning more than 50 percent rather than 70 percent
35 of the total land in the district may file a remonstrance.

1 Second, it provides that the board may allow the question to
2 be placed on a ballot mailed to the landowners and filed with
3 the auditor who counts the votes of landowners who answer the
4 question on the ballots returned to the auditor.

5 REPORT REGARDING A REPAIR OR IMPROVEMENT — INCREASE IN
6 THRESHOLD AMOUNT. The bill increases the threshold amount
7 from \$50,000 to \$300,000 before a board may order a report
8 from a civil or drainage engineer (engineer) or soil and
9 water conservation district conservationist (conservationist)
10 regarding a proposed repair (Code section 468.126(1)) or a
11 report from an engineer regarding a proposed improvement (Code
12 section 468.126(4)). The board may determine whether a project
13 meets the requirements for either a repair or improvement.
14 The board must distinguish between major and minor repairs or
15 improvements.

16 PETITIONS REGARDING A REPAIR OR IMPROVEMENT. The bill
17 provides that a board may consider a petition for a repair
18 or improvement submitted by one or more landowners in the
19 district. If a petition seeks a major repair or improvement,
20 the petition must include the signatures of at least 30 percent
21 of the district's landowners. If a remonstrance against a
22 proposed improvement succeeds, the petitioners are liable for
23 costs incurred by the board in taking action on the petition.

24 HEARING REGARDING A REPAIR OR IMPROVEMENT. The board must
25 conduct a hearing regarding the repair or improvement if
26 the scope of the repair exceeds the scope of a preliminary
27 estimate prepared by the engineer or conservationist by more
28 than 15 percent. The costs of the hearing are to be paid by
29 the engineer or conservationist, unless the enlarged scope was
30 ordered by the board. The board must still conduct a hearing
31 if the estimated cost of the repair or improvement exceeds
32 \$50,000 but that amount is based on the expected cost as
33 provided in the board's initial or adjusted determination or as
34 provided in the preliminary or reported estimate.

35 BACKGROUND. Generally, there are two types of projects

1 authorized under Code chapter 468, a repair which refers to
2 restoring a facility to its original design or efficiency
3 and an improvement which enhances or enlarges the district's
4 facility. Before a board managing a drainage district may
5 order an engineer's report or a report from a conservationist
6 regarding a proposed repair or improvement, the estimated
7 cost of the repair or improvement must exceed \$50,000, the
8 board must conduct a hearing of landowners, and the report
9 must be presented at the hearing. There are several types
10 of boards that may have jurisdiction to decide whether or
11 not to order a repair or improvement, including a board of
12 supervisors, a joint board of supervisors, or an elected board
13 of trustees. A landowner is provided a right of remonstrance
14 under a number of circumstances, including when a new drainage
15 district is proposed to be established (Code section 468.28),
16 an improvement is proposed (Code section 468.126), land in
17 the district is classified or reclassified for purposes of
18 determining the benefit received from the board's action and
19 therefore the amount of tax imposed on the land (Code section
20 468.184), and the dissolution of a district (Code section
21 468.258).