

Sec. 8. NEW SECTION. 455B.468 JUDICIAL REVIEW.

Except as provided in section 455B.467, subsection 5, judicial review of an order or other action of the commission or the executive director may be sought in accordance with chapter 17A. Notwithstanding chapter 17A, the Iowa administrative procedure Act, petitions for judicial review may be filed in the district court of the county in which the alleged offense was committed or the final order was entered.

Sec. 9. Sections 1 through 8 of this Act shall be codified as a new part of chapter 455B, division IV.

Approved May 22, 1985

CHAPTER 163
DRAINAGE AND DRAINAGE DISTRICTS
H.F. 678

AN ACT relating to drainage and drainage districts.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 455.33, Code 1985, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. Following its establishment, the drainage district is deemed to have acquired by permanent easement all right-of-way for drainage district ditches, tile lines, settling basins and other improvements, unless they are acquired by fee simple, in the dimensions shown on the survey and report made in compliance with sections 455.17 and 455.18 or as shown on the permanent survey, plat and profile, if one is made. The permanent easement includes the right of ingress and egress across adjoining land and the right of access for maintenance, repair, improvement and inspection. The owner or lessee shall be reimbursed for any crop damages incurred in the maintenance, repair, improvement and inspection.

Sec. 2. Section 455.64, subsection 2, Code 1985, is amended to read as follows:

2. To pay such assessments in not less than ten nor more than twenty equal installments, the number to be fixed by the board and interest at the rate fixed by the board, not exceeding that permitted by chapter 74A. One such installment shall be payable at the September semiannual taxpaying date in each year; provided, however, that the county treasurer shall, at the September semiannual taxpaying date, require only the payment of a sufficient portion of the assessments to meet the interest and the amount maturing on bonds or certificates prior to the regular time for the payment of the second installment of taxes and the balance shall be collected with such second installment and without penalty. The first installment of each assessment, or the total amount if less than one hundred dollars is due and payable on July 1 next succeeding the date of the levy, unless the assessment is filed with the county treasurer

after May 31 in any year. The first installment shall bear interest on the whole unpaid assessment from the date of acceptance of the work by the board to the first day of December following the due date. The succeeding annual installments, with interest on the whole unpaid amount, to the first day of December following the due date, are respectively due on July 1 annually, and must be paid at the same time and in the same manner as the first semiannual payment of ordinary taxes. All future installments of an assessment may be paid on any date by payment of the then outstanding balance plus interest accrued to the date of payment. Each installment of an assessment with interest on the unpaid balance is delinquent after the thirtieth day of September next after its due date, and bears the same delinquent interest with the same penalties as ordinary taxes. When collected, the interest and penalties must be credited to the same drainage fund as the drainage special assessment.

Sec. 3. Section 455.111, Code 1985, is amended to read as follows:

455.111 COMPLETION OF WORK — REPORT — NOTICE.

When the work to be done under any contract is completed to the satisfaction of the engineer in charge of construction, the engineer shall so report and certify to the board, which shall fix a day to consider said the report and shall give notice of the time and purpose of such the meeting by one publication in a newspaper of general circulation published in said county ordinary mail to the landowners of the district and the date fixed for considering said the report shall be not less than five ten days after the date of such publication mailing.

Sec. 4. NEW SECTION. 455.127A ABANDONED RIGHT-OF-WAY.

If a railroad or other utility has abandoned the use of its right-of-way for the purpose it was originally acquired or has sold its right-of-way to a person who will use it for a purpose other than for which it was originally acquired, the prior right or privilege of the drainage district to pass through the right-of-way of the railroad or utility shall become a permanent easement in favor of the drainage district for drainage purposes including the right of ingress and egress through adjacent property and the right of access for maintenance, repair, improvement and inspection. The permanent easement has the same dimensions as originally specified in the engineer's report and survey, or as acquired by use or as subsequently acquired.

If a railroad or other utility has abandoned the use of its right-of-way for the purpose it was originally acquired or has sold its right-of-way to a person who will use it for a purpose other than for which it was originally acquired in segments, each segment shall be assessed for benefits in the same proportion as the area of the segment bears to the area of the right-of-way through the forty-acre tract.

Sec. 5. Section 455.128, Code 1985, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. The right of remonstrance, as provided under section 455.34, does not apply to the owners of lands being involuntarily annexed to an established district.

Sec. 6. Section 455.129, Code 1985, is amended to read as follows:

455.129 PROCEEDINGS ON REPORT.

If such the report recommends the annexation of such the lands or any portion thereof of them, the board shall consider such the report, plats, and profiles and if satisfied that any of such the lands are materially benefited by the district and that such annexation is feasible, expedient, and for the public good, it shall proceed in all respects as to notice, hearing, appointment of appraisers to fix damages and as to hearing thereon on the annexation; and (if such the annexation is finally made), as to classification and assessment of benefits to the annexed lands only, to the same extent and in the same manner as provided in the establishment of an

original district. However, the annexation and classification of the annexed lands for benefits may be determined at one hearing. Those parties having an interest in the lands proposed to be annexed shall have the right to receive notice, to make objections, to file claims for damages, to have hearing, to take appeals and to do all other things to the same extent and in the same manner as provided in the establishment of an original district.

Sec. 7. Section 455.130, Code 1985, is amended to read as follows:

455.130 LEVY ON ANNEXED LANDS.

After ~~such~~ annexation is made the board ~~shall~~ may levy upon the annexed lands an assessment sufficient to equal the assessments for benefit originally paid by the lands of equal classification if the finding by the board as provided by section 455.128 was that ~~said~~ the lands should have been included in the district when originally established, plus their proportionate share of the costs of any enlargement or extension of drains required to serve the annexed lands. If the finding of the board as provided in section 455.128 was based on the fact that additional lands are now benefited by virtue of the repair, or improvement, or the change of the topographical conditions made to said the district and were not benefited by the district as originally established, then the board shall levy upon said the annexed lands an assessment sufficient to pay their proportionate share of the costs of said the repair or improvement which was the basis for the lands being annexed. If the board finds that the lands are presently receiving benefits from the district but that some were reasonably omitted from the original establishment because of the change of the topographical conditions, the assessments levied upon the annexed lands shall be limited to a proportionate share of the costs of current and future maintenance, repairs and improvements.

Sec. 8. Section 455.135, subsection 1, paragraph c, Code 1985, is amended to read as follows:

c. If the estimated cost of any repair exceeds ten thousand dollars, or seventy-five percent of the original total cost of the district and subsequent improvements, whichever is the greater amount, the board shall set a date for a hearing on the matter of making the proposed repairs, and shall give notice as provided in sections 455.20 to 455.24. If a hearing is required and the estimated cost of the repair exceeds twenty-five thousand dollars, an engineer's report or a report from the soil conservation district conservationist shall be presented at the hearing. The requirement of a report may be waived by the board if a prior report on the repair exists and that report is less than ten years old. The board shall not divide proposed repairs into separate programs in order to avoid the notice and hearing requirements of this paragraph. At the hearing the board shall hear objections to the feasibility of the proposed repairs, and following the hearing the board shall order that the repairs it deems desirable and feasible be made. Any interested party shall have has the right of appeal from such orders in the manner provided in this chapter.

Sec. 9. Section 455.135, subsection 8, Code 1985, is amended to read as follows:

8. If the drainage records on file in the auditor's office for a particular district do not define specifically the land taken for right of way for drainage purposes, the board may at any time upon its own motion employ a land surveyor to make a survey and report of ~~said~~ the district and to actually define the right of way taken for drainage purposes. After the land surveyor has filed the survey and report with the board, the board shall fix a date for hearing on ~~said~~ the report and shall serve notice of ~~said~~ the hearing upon all landowners and lienholders of record and occupants of the lands traversed by ~~said~~ the right of way in the manner and for the time required for service of original notices in the district court. At the hearing the board shall specifically define the land taken for the right-of-way. Once established, the right-of-way constitutes a permanent easement in favor of the drainage district for drainage purposes including the right of ingress and egress across adjoining land and the right of access for maintenance, repair, improvement and inspection. A person aggrieved by the action or failure to act of the board under this subsection may appeal only in compliance with sections 455.92 through 455.108.

Sec. 10. Section 455.147, Code 1985, is amended to read as follows:

455.147 LEVY UNDER RECLASSIFICATION.

If the amount finally charged against a district exceeds twenty-five percent of the original cost of the improvement, the board ~~shall~~ may order a reclassification as provided for the original classification of a district and upon the final adoption of the new classification and apportionment shall proceed to levy ~~said that~~ amount upon all lands, highways, and railway rights of way and property within the district, in accordance with ~~said the~~ new classification and apportionment. ~~Any~~ An assessment made under this section on ~~any a~~ tract, parcel or lot within the district which is computed at less than two dollars shall be fixed at the sum of two dollars.

Sec. 11. Section 462.18, Code 1985, is amended to read as follows:

462.18 CANVASS — CERTIFICATES OF ELECTION.

The canvass of the returns by the board or boards of supervisors shall be on the next Monday following ~~said the election and it~~. If the district is in more than one county, the board of supervisors of the county with the greatest acreage in the district shall canvass the vote. The board of supervisors of the other counties in which the district is located may attend and participate in the canvass of the returns. It or they shall make a return of the results of such the canvass to the auditor, who shall issue certificates to the trustees elected, and when the district extends into more than one county, then the auditor with whom the election returns were filed shall issue such the certificates and certify an abstract of the canvass to each other county in which the district is located.

Sec. 12. Section 462.22, Code 1985, is amended to read as follows:

462.22 ELECTIONS — HOW CONDUCTED.

After the first election of trustees, the trustees shall act as judges of election; ~~the~~ however, a trustee standing for election shall not serve as a judge and shall be replaced as judge by a person not standing for election who is eligible to be elected as a trustee. The clerk of the board shall act as one of the clerks; and some owner of land in the district shall be appointed by the board to act as another clerk. The trustees shall fill all vacancies in the election board. The result of each election shall be certified to the auditor or the several county auditors if the district is located in more than one county.

Sec. 13. Section 467A.4, subsection 4, Code 1985, is amended by adding the following new lettered paragraph:

NEW LETTERED PARAGRAPH. To establish a position of state drainage coordinator for drainage districts and drainage and levee districts which will keep the management of those districts informed of the activities and experience of all other such districts and facilitate an interchange of advice, experience and cooperation among the districts, coordinate by advice and consultation the programs of the districts, secure the cooperation and assistance of the United States and its agencies and of the agencies of this state and other states in the work of the districts, disseminate information throughout the state concerning the activities and programs of the districts and provide other appropriate assistance to the districts.

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