

February 19, 1951.  
Cities and Towns.

**House File 455**

By NELSON of Woodbury and CROSIER.

Passed House, Date .....

Vote: Ayes..... Nays.....

Passed Senate, Date.....

Vote: Ayes..... Nays.....

Approved .....

**A BILL FOR**

An Act relating to special assessment of public improvements in municipal corporations, and to repeal chapters three hundred ninety-one (391), three hundred ninety-one A (391A), and four hundred seventeen (417), Code 1950, relating thereto, and to enact a substitute in lieu thereof, and to repeal certain other sections of the Code relating thereto, and to amend certain sections of the Code relating thereto.

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

1 That chapters three hundred ninety-one (391) and three  
2 hundred ninety-one A (391A), Code 1950, are hereby repealed  
3 and sections one (1) to forty (40) hereof enacted in lieu there-  
4 of.

1 Section 1. Definitions. The following words or terms, as  
2 used in this chapter, shall have the respective meanings as  
3 stated:

4 1. "Municipality" shall mean any city or town, regardless  
5 of form of government or manner of incorporation.

6 2. "Council" shall mean the governing body of the  
7 municipality.

8 3. "Clerk" shall mean the officer performing the duties  
9 of city or town clerk.

10 4. "Public improvements" shall include the principal  
11 structures, works, component parts, and accessories of any of  
12 the following:

13 a. Sanitary, storm and combined sewers;

14 b. Drainage conduits, channels and levees;

15 c. Street grading, paving, graveling, macadamizing, curbing,  
16 guttering, and surfacing with oil, oil and gravel, and chloride.

17 d. Street lighting fixtures, connections, and facilities;

18 e. Sewage pumping stations and disposal and treatment  
19 plants;

20 f. Underground gas, water, heating, sewer, and electrical  
21 connections located in streets for private property;

22 g. Sidewalks and pedestrian underpasses or overpasses;

23 h. Waterworks, water mains, and extensions.

24 5. "Construction" shall include all materials, labor,  
25 acts, operations, and services necessary to complete a public  
26 improvement.

27 6. "Repair" shall include all materials, labor, acts,  
28 operations, and services necessary for the repair, reconstruc-  
29 tion, or resurfacing of a public improvement.

30 7. "Street" shall mean any public street, highway, boulevard,  
31 avenue, alley, parkway, public place, or publicly owned right of  
32 way or easement within the limits of the municipality.

33 8. "Lot" shall mean any lot, part of lot, tract, or parcel  
34 of land under one ownership including improvements thereon.

35 9. "Total cost" of a public improvement may include the

36 cost of engineering, preliminary reports, property valuations,  
37 estimates, plans, specifications, notices, legal services,  
38 acquisition of land, consequential damages or costs, easements,  
39 rights of way, construction, repair, supervision, inspection,  
40 testing, notices and publication, interest during construction  
41 and for not more than six months thereafter, and printing and  
42 sale of bonds.

43 10. "Gravel" shall include gravel, crushed rock, cinders,  
44 shale, and similar materials suitable for street construction  
45 or repair.

46 11. "Oil" shall mean any asphaltic or bituminous material  
47 suitable for street construction or repair.

48 12. "Sewer" shall mean structures designed, constructed,  
49 and used for the purpose of controlling or carrying off streams,  
50 surface waters, waste, or sanitary sewage.

51 13. "Main sewer" means any sewer which serves as an outlet  
52 for two or more lateral sewers, and which is commonly referred  
53 to as an intercepting sewer, outfall sewer, or trunk sewer.

54 14. "Lateral sewer" means any sewer which contributes  
55 sewage or surface or ground water from a local area to a main  
56 sewer or outlet.

57 15. "Sewer systems" are composed of the main sewers, sewage  
58 pumping stations, treatment and disposal plants, lateral  
59 sewers, drainage conduits or channels, and sewer connections  
60 in public streets for private property within a sewer assessment  
61 district.

62 16. "District" means the lots or parts of lots within  
63 boundaries established by the council for the purpose of the  
64 assessment of the cost of a public improvement.

65 17. "Private property" means all property within the  
66 district except streets, property owned by the United States,  
67 and property owned by the municipality.

68 18. "Abutting lot" means a lot which abuts or joins the  
69 street in which the public improvement is located or which  
70 abuts the right of way of the public improvement.

71 19. "Adjacent lot" means any lot within the district  
72 which does not abut upon the street or right of way of the  
73 public improvement.

74 20. "Street improvement" means the construction, or repair  
75 of any street by grading, paving, curbing, guttering, and  
76 surfacing with oil, oil and gravel, or chloride; and street  
77 lighting fixtures, connections, and facilities.

78 21. "Proposal" means a legal bid on work advertised for  
79 a public improvement.

80 22. "Paving" means any kind of hard street surface includ-  
81 ing, but not limited to, concrete, bituminous concrete, brick,  
82 stabilized gravel, or combinations thereof, together with curb  
83 and gutter.

84 23. "Engineer" means a professional engineer, registered in  
85 the state of Iowa; authorized by the council to render services  
86 in connection with the public improvement.

87 24. "Grade" means the longitudinal reference lines, as

88 established by the council, which designate the elevations at  
89 which a street or sidewalk is to be built.

90 25. "Final grade" means the grade to which the public  
91 improvement is proposed to be constructed or repaired as shown  
92 on the final plans adopted by the council.

93 26. "Railways" shall mean all railways except street  
94 railways.

95 27. "Publication" shall mean public notice given in the  
96 manner provided by section six hundred eighteen point fourteen  
97 (618.14). (391A, C50, revised.)

1 Sec. 2. Grant of power. Municipalities shall have the  
2 power to construct, and repair all public improvements within  
3 their limits, and main sewers, sewage pumping stations, disposal  
4 and treatment plants, and drainage conduits extending outside  
5 their limits, and assess the cost thereof to private property  
6 within the municipality as hereinafter provided. (391A.2, C50,  
7 revised and divided.)

1 Sec. 3. Limitation—paving and sidewalks. The construction  
2 of paving, curbing, guttering, or sidewalks shall not be ordered  
3 unless such improvement, when completed, shall be to grade.  
4 (391A.2, C50, revised and divided.)

1 Sec. 4. Connections to private property. The council may  
2 include underground gas, water, heating, sewer, or electrical  
3 connections to the street or property line for private property  
4 as a part of the public improvement; or, it may order the property  
5 owner to make, repair, or relocate such connections by publica-

6 tion of a notice once each week for two consecutive weeks in the  
7 manner provided by section six hundred eighteen point fourteen  
8 (618.14) and in the event that such order is not complied with at  
9 the end of thirty days after the date of the first publication  
10 cause the work to be done and assess the cost thereof against the  
11 property served by the connection. (391A.2, revised and divided;  
12 391A.16, C50, revised.)

1 Sec. 5. Preliminary Procedure. When the council deems it  
2 necessary to construct or repair any public improvement under  
3 the provisions of this chapter, it shall proceed as follows:

4 1. Arrange for engineering services to prepare the plats,  
5 schedules, estimates of cost, plans, and specifications, as  
6 hereinafter provided, and supervise the construction of the pro-  
7 posed improvement.

8 2. Adopt a preliminary resolution, which shall require  
9 for passage the vote of a majority of all the members of the  
10 council. The preliminary resolution shall contain the following:

11 a. A description of the type or alternate types of improve-  
12 ment proposed.

13 b. The beginning and terminal points or general location  
14 of the proposed improvement.

15 c. An order to the engineer to prepare preliminary plans  
16 and specifications, an estimated total cost of the work, and  
17 a plat and schedule, and to file same with the clerk.

18 d. A general description of the property or a designation  
19 of the lots which the council believes would be specially bene-

20 fitted by the improvement.

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 benefited property.

25 b. A short and convenient designation for the public  
26 improvement by which it shall be sufficient to refer to the  
27 improvement in all subsequent proceedings.

28 4. A preliminary resolution may include more than one  
29 improvement or class thereof only when they are so located or  
30 otherwise related as to make it advisable in the opinion of  
31 the council to carry on the work simultaneously.

32 5. A single improvement may be in more than one locality  
33 or street, and that portion of the street which has been  
34 improved by any railway, or which the municipality is authorized  
35 under franchise or contract with such railway to require it to  
36 improve may be excluded.

1 Sec. 6. Preliminary plans and specifications. Preliminary  
2 plans and specifications need only be in sufficient detail to  
3 advise any person interested of the general nature, character,  
4 and type of the improvement.

1 Sec. 7. Estimated total cost. The estimated total cost  
2 of any public improvement constructed under this chapter shall  
3 include all of the items of cost listed in subsection nine (9)  
4 of section one (1) hereof, which the council proposes to include  
5 as a part of the cost of such public improvement, and in addition

6 thereto may include an item to be known as the default fund  
7 amounting to not more than ten percent of that portion of the  
8 total cost of the improvement which the council proposes to assess  
9 against benefited property.

1 Sec. 8. Requirements of the plat. The plat as prepared  
2 and filed by the engineer shall show the following information:

3 1. The boundaries of the district containing the lots  
4 proposed to be assessed.

5 2. The location of each lot under separate ownership within  
6 the district, including the property of all railways and  
7 utilities subject to assessment.

8 3. The location of the improvement within the district  
9 together with the terminal points of all major parts thereof  
10 proposed to be assessed.

11 4. The type and general details of the improvement.  
12 (391A.5, C50, revised.)

1 Sec. 9. Valuations. Upon completion of the plat, the  
2 council shall proceed to determine the valuation of each lot  
3 within the proposed assessment district and shall report same  
4 to the engineer, who will show such valuation on the schedule  
5 before same is filed with the clerk. Said valuation shall be  
6 its present fair market value with the proposed public improve-  
7 ment completed. As an aid in determining said valuations the  
8 council may appoint a committee of three persons skilled in the  
9 knowledge of real estate values within the municipality to  
10 appraise the present fair market value of each lot within such

11 district and to file a written report of its appraisals with the  
12 council.

1 Sec. 10. Requirements of schedule. The schedule, as  
2 prepared by the engineer, shall show the following information  
3 for each lot within the district:

4 1. A description of each lot and the name of the owners  
5 thereof as shown by the records in the office of the county  
6 auditor of the county in which the lot is located.

7 2. The valuation of each lot as determined by the council.

8 3. The total amount proposed to be assessed each lot,  
9 which shall include the assessment for the default fund, if any.

10 4. The amount of deficiency, if any, between the amount  
11 proposed to be assessed and the proportion of the estimated  
12 total cost of the public improvement allocated to each lot.

1 Sec. 11. Plat, schedule, and estimate adopted. When the  
2 plat, schedule, and estimate of cost have been so filed, the  
3 council may, before adopting a proposed resolution of necessity  
4 as hereinafter provided, cause the estimate, valuation, or assess-  
5 ment of any lot or the boundaries of the district as reported by  
6 the engineer to be amended and adopt the same as amended or may  
7 adopt the same as filed. (391A.8, C50, unchanged.)

1 Sec. 12. Proposed resolution of necessity. If, upon  
2 adoption of the plat, schedule, and estimate, the council  
3 determines to proceed with all or any part of the public  
4 improvement, it shall cause a proposed resolution of necessity  
5 to be prepared and introduced. Said resolution shall describe

6 briefly the proposed public improvement and shall state that there :  
 7 is on file in the office of the clerk an estimated total cost  
 8 of the work, and a preliminary plat and schedule showing the  
 9 amount proposed to be assessed to each lot for the improvement;  
 10 and it shall state the date, time, and place the council will  
 11 hear property owners subject to the assessment and interested  
 12 parties for or against the improvement, its cost, the assessment  
 13 thereof, or the boundaries of the district. (391A.9, C50, re-  
 14 vised.)

1 Sec. 13. Notice of hearing. The clerk shall cause public  
 2 notice of the date, time, and place of the hearing to be given by  
 3 publication once each week for two consecutive weeks in the manner  
 4 provided by section six hundred eighteen point fourteen (618.14),  
 5 the first publication of which shall be not less than fifteen  
 6 nor more than twenty-five days prior to the hearing. The notice  
 7 shall be in the following form:

8 **NOTICE TO PROPERTY OWNERS**

9 Notice is hereby given that there is now on file for public  
 10 inspection in the office of the clerk of ....., Iowa, a  
 11 proposed resolution of necessity, and estimate of cost and a  
 12 plat and schedule showing the amounts proposed to be assessed  
 13 against each lot and the valuation thereof within a district  
 14 as approved by the ..... council of ....., Iowa, for a  
 15 ..... improvement of the type and in the location as  
 16 follows: .....

17 The council (or other governing body) will meet at .....

18 o'clock ..... M. on ....., 19....., at the .....

19 at which time the owners of property subject to assessment for

20 the proposed improvement or any other person having an interest

21 in the matter may appear and be heard for or against the making

22 of the improvement, the boundaries of the district, the cost,

23 the assessment against any lot, or the final adoption of a reso-

24 lution of necessity.

25 .....

26 Clerk.

27 The clerk shall mail a copy of the foregoing notice by

28 ordinary mail to the owners of property, as shown by the records

29 in the office of the county auditor, within the bounds of the

30 proposed improvement. Failure to receive such notice shall not

31 constitute a defense to the special assessment. (391A.10, C50,

32 revised.)

1 Sec. 14. Hearing. The council shall meet as specified in

2 the published notice, and after hearing all objections and

3 indorsements from the owners of property and other persons having

4 an interest in the matter, and after causing all written objec-

5 tions theretofore filed to be read, may adopt or amend and adopt,

6 the proposed resolution of necessity, or may defer action thereon

7 until a subsequent meeting. Such resolution of the council shall

8 require for passage the vote of three fourths of all the members

9 of the council, or, in municipalities having but three members

10 of the council, the vote of two members, and where a remonstrance

11 has been filed with the clerk, signed by the owners subject to

12 seventy-five percent of the amount of the proposed assessment, no  
13 such resolution shall be passed except by unanimous vote of the  
14 council. However, any amendment which extends the boundaries of  
15 a district or increases the amount to be assessed against any lot  
16 shall not be effective until an amended plat, schedule, and esti-  
17 mate have been prepared and adopted and a notice published and  
18 hearing held in the same manner as hereinbefore provided for the  
19 original proceedings; or until all property owners affected  
20 thereby agree in writing to the change. (391A.11, C50, revised.)

1 Sec. 15. Order to engineer and attorney. After adopting  
2 a resolution of necessity, the council may, by resolution, order  
3 the engineer to prepare and file with the clerk detailed plans  
4 and specifications, and order the engineer and city attorney, or  
5 an attorney designated by the council, to prepare and file with  
6 the clerk a notice to bidders and form of contract. (391A.12,  
7 C50, revised.)

1 Sec. 16. Notice to bidders.

2 1. The notice to bidders shall state:

3 a. The time and place for filing sealed proposals;

4 b. The time and place such proposals will be opened and  
5 considered by the council;

6 c. The general nature and approximate extent of the work;

7 d. When the work shall be commenced and when it shall be  
8 completed;

9 e. The terms and method of payment;

10 f. That each bidder shall accompany his bid with a

11 cashier's or certified check on an Iowa bank in an amount fixed  
12 by the council in the manner provided by subsection three (3)  
13 hereof, as security that the bidder will enter into the contract  
14 for the work bid upon and will furnish a corporate surety bond  
15 acceptable to the council for the faithful performance of the  
16 contract.

17 2. The notice for bids may provide that bids will be  
18 received for the furnishing of all labor and materials required  
19 to complete all parts of the proposed work under one contract,  
20 or for parts thereof in separate sections.

21 3. Upon approval by the council of the detailed plans,  
22 specifications, notice to bidders, and form of contract, it  
23 shall by resolution fix the amount of the checks to accompany  
24 each bid, which amount shall equal at least five percent, but  
25 shall not exceed ten percent, of the engineer's estimated  
26 total cost of the work, and shall order the clerk to publish the  
27 notice to bidders.

28 4. Publication of the notice to bidders shall be made once  
29 each week for two consecutive weeks, in the manner provided by  
30 section six hundred eighteen point fourteen (618.14), the first  
31 of which publications shall be not less than twelve days before  
32 the date set for receiving bids. (391A.13, C50, revised.)

1 Sec. 17. Award of contract or rejection of bids. The  
2 council shall open, announce the amount of the bids, and file  
3 all proposals received, at the time and place specified in the  
4 notice to bidders. They may, thereafter by resolution, award

5 the contract to the lowest bidder, or they may reject all re-  
6 ceived proposals and may order the clerk to again publish notice  
7 to bidders, in the manner hereinbefore provided.

8 The check of the successful bidder shall be retained by  
9 the municipality until the approved contract form has been  
10 completed and executed and a bond filed by the bidder and  
11 approved by the council as provided in section nineteen (19)  
12 hereof. If the successful bidder fails to sign the contract  
13 and furnish the required bond within ten days after the award  
14 of the contract to him, the check may be cashed and the amount  
15 thereof retained by the municipality as agreed liquidated  
16 damages. The checks of unsuccessful bidders shall be promptly  
17 returned to such bidders by the clerk and a receipt therefor  
18 obtained and placed on file in his office. (391A.14, C50,  
19 revised.)

1 Sec. 18. Optional court confirmation procedure. After the  
2 receipt and consideration of bids as provided in section seven-  
3 teen (17) but before awarding the contract the council may elect  
4 to proceed as follows:

5 1. The council shall direct the city attorney to file, in  
6 the district court of the county in which the property proposed  
7 to be assessed is located, a petition praying that the acts done  
8 by said council relative to the proposed public improvement be  
9 confirmed by decree.

10 2. There shall be attached to said petition:

11 (a) A copy of the resolution of necessity as adopted by the

12 council.

13 (b) A copy of the proposed schedule of assessments as  
14 adopted by the council under sections eleven (11) and fourteen  
15 (14) hereof, which schedule shows the maximum amount that the  
16 council proposes to assess against any lot.

17 (c) Detailed plans and specifications as prepared by the  
18 engineer.

19 (d) A copy of the proposed contract as prepared by the city  
20 attorney.

21 3. Notice of the filing of such petition shall be given in  
22 the same form and manner as is provided for service of original  
23 notice by publication by the Rules of Civil Procedure.

24 4. Any such petition shall have precedence over any other  
25 business of the court, except in criminal cases, and said court  
26 shall set the said petition for hearing within thirty days from  
27 the date of final publication of notice.

28 5. If no person having an interest in property proposed to  
29 be assessed has entered an appearance or filed an answer within  
30 the time set for hearing on said petition the court shall imme-  
31 diately confirm said assessment and order the clerk to certify  
32 same to the city clerk.

33 6. If any person having an interest in property proposed  
34 to be assessed has entered an appearance or filed an answer to  
35 said petition, the court shall hear the cause. Said cause shall  
36 be triable as in equity.

37 7. Upon the hearing the court shall have power to correct

38 any irregularities or inequalities in valuations or in the  
39 schedule of assessments, and shall consider any objections  
40 because of alleged illegal procedure or fraud.

41 8. The court shall render a decision upon said hearing  
42 within seven days thereafter.

43 9. The clerk of said court shall certify to the city  
44 clerk the final action of the court within three days from the  
45 date of the final order or judgment of said court, upon said  
46 petition, showing assessments as confirmed in the schedule of  
47 assessments.

48 10. An appeal from the decree of the district court shall  
49 be perfected within thirty days from the date of said decree  
50 and the abstract shall be served and filed in the office of  
51 the clerk of the supreme court within ninety days from the date  
52 of said district court decree.

53 11. If the aggregate of all appeals exceeds ten percent  
54 of the total assessment as confirmed by the district court, the  
55 contract may or may not be let, in the discretion of the council,  
56 until said appeals are finally determined, but said appeals shall  
57 not delay the execution of a contract for the work, if council  
58 concludes said appeals were not taken in good faith.

59 12. An appeal shall not, in the discretion of the council,  
60 delay the certification of an assessment or progress of an  
61 improvement, but upon decision of the appeal the assessment  
62 appealed from shall be corrected and collected in the same manner  
63 as provided by section thirty-six (36).

64 13. Corrections of assessments or valuations made by or  
65 upon the order of the district court shall be conclusive and  
66 not subject to review on appeal, or otherwise, except as provided  
67 in subsections ten (10) to twelve (12) of this section. When  
68 court confirmation is obtained as herein provided there shall be  
69 no right of appeal under the provisions of section thirty-one  
70 (31) hereof.

71 14. In the event no contract is entered into within sixty  
72 days from the date of confirmation by the district court the  
73 court shall cancel said assessment, upon application of the city  
74 attorney, if no appeal is pending.

75 15. The cost of all court proceedings shall be a legitimate  
76 item of expense in connection with any public improvement, and  
77 shall be included within the final assessment against any property  
78 proposed to be improved.

79 (1—417.28, C50, revised, 2—417.35, C50, revised.  
80 3—417.12, C50, revised. 4—417.36, C50, revised. 5—417.43,  
81 C50, revised. 6—417.29, C50, revised. 7—417.37, C50,  
82 revised. 8—417.39, C50, unchanged. 9—417.40, C50,  
83 revised. 10—417.31, C50, unchanged. 11—417.32, C50,  
84 unchanged. 12—417.34, C50, revised. 13—417.38, C50,  
85 revised. 14—417.42, C50, revised. 15—417.44, C50, revised.)

1 Sec. 19. Bond of contractor. Each contractor for a public  
2 improvement shall give bond to the municipality, conforming to  
3 the requirements of section five hundred seventy-three point  
4 six (573.6), with corporate sureties approved by the council,

5 for the faithful performance of the contract, in a sum equal to  
6 the contract price, and action upon such bond may be brought  
7 in the county where the council holds its meetings. (391A.15,  
8 C50, resived.)

1 Sec. 20. Underground connections—waterworks trustees.  
2 In municipalities having a board of waterworks trustees and in  
3 which water connections are not installed by such trustees at  
4 public expense, the council shall notify such board, at the time  
5 of the adoption of a preliminary resolution, of any proposed  
6 street paving projects. Thereupon the board shall report to  
7 the council the number of connections from water mains in  
8 such streets to the curb lines of the proposed improvement  
9 necessary to serve private property dependent upon those  
10 particular mains for water supply, and the numbers of the lots  
11 to be served by such connections, and the names of the owners  
12 thereof. Notice shall be given to such property owners, at  
13 the same time and in the same manner as the notice provided in  
14 section thirteen (13) hereof, to install the necessary connec-  
15 tions within thirty days after hearing. For the purposes of  
16 such hearing, property owners who are notified to install  
17 water connections, but whose property is not within the proposed  
18 assessment district, may appear as interested parties. If,  
19 upon hearing, the council determines to proceed with the  
20 improvement, and any property owner fails to make connections  
21 as required, the board of waterworks trustees shall cause them  
22 to be made and certify the cost thereof to the council to be

23 assessed against the property and collected in the same manner  
24 as provided in section four (4) hereof for other underground  
25 connections. (391A.17, C50, revised.)

1     Sec. 21. State property and roads. Municipalities may  
2 assess the cost of a public improvement which extends through  
3 or abuts upon, or is adjacent to lands owned by the state, and  
4 the executive council shall pay such portion of the cost of  
5 making said improvement through or along such lands as provided  
6 hereinafter. Payment of such assessments shall be made by the  
7 executive council from any funds of the state not otherwise  
8 appropriated.

9     When a state park or institutional road abutting on or  
10 adjacent to state lands is improved by paving, the state shall  
11 pay one-half the total assessed cost of that portion of the  
12 improvement abutting, or adjacent to such lands, lots, parts or  
13 portions thereof, but for any other type of improvement so con-  
14 structed and located the state shall pay such portion of the cost  
15 as would be assessable against such lands were they privately  
16 owned.

17     When any portion of the cost of a public improvement is to  
18 be paid by the state under this section, the clerk shall, at  
19 the time of publications of the notice required by section  
20 thirteen (13), cause a copy of such notice to be sent to the  
21 secretary of the executive council by registered mail with return  
22 receipt.

23     Municipalities in which state buildings are located shall

24 permit sewers for such buildings to be constructed through or  
25 under the streets of the municipality, and connections to be  
26 made to the sewer system of the municipality under the same  
27 regulations as for sewer connections to private property.  
28 (391A.18, C50, revised.)

1     Sec. 22. Monthly payments to contractor. When the speci-  
2 fied duration of time for the performance of a public improvement  
3 construction contract exceeds sixty days, the municipality  
4 may contract to pay ninety percent of the engineer's estimated  
5 value of the acceptable work completed during the month to the  
6 contractor at the end of each month. Payment shall be made in  
7 warrants drawn on any fund from which payment for such work may  
8 be made and such warrants, unless paid upon presentation, shall  
9 draw interest at the rate of four percent per annum from and after  
10 the date of presentation for payment. If such fund is depleted,  
11 anticipatory warrants may be issued and if the collection of taxes  
12 or special assessments, or income from the sale of bonds applica-  
13 ble to the public improvement shall be after the end of the  
14 fiscal year in which the warrants are issued, said warrants shall  
15 not constitute a violation of section four hundred four point  
16 seventeen (404.17).

1     Sec. 23. Inspection, acceptance and payment.

2     1. The engineer for the municipality shall inspect all  
3 work done under this chapter, and within fifteen days of the  
4 final completion of the public improvement he shall file a  
5 certificate with the clerk stating:

6 a. That he has inspected the completed work ;

7 b. That such work has or has not been performed in

8 compliance with the terms of the contract, and the particulars,

9 if any, in which the work varies from said terms ;

10 c. The total cost of the completed work.

11 2. Within fifteen days after the filing of the engineer's

12 certificate, the council shall by resolution accept or reject

13 the work.

14 3. Upon accepting the work, or within ten days thereafter,

15 the council shall ascertain the total cost thereof and by

16 resolution determine the proportion or amount of such cost to be

17 assessed against private property within the assessment district.

18 4. upon accepting the work the council shall order payment

19 of any amounts due the contractor to be made by warrants issued

20 in the manner provided by section twenty-two (22) hereof.

21 (391A.20, C50, revised.)

1 Sec. 24. Final Schedule—filing. Within thirty days

2 after the council adopts a resolution fixing the amount to be

3 assessed against private property, the engineer shall file

4 with the clerk an assessment schedule showing:

5 1. A description of each lot to be assessed;

6 2. The valuation of each lot as fixed by the council;

7 3. The amount to be assessed against each lot, which

8 amount shall include the assessment for the default fund, if any.

9 (391A.21, C50, revised.)

1 Sec. 25. Final schedule—adoption and certification. Within

2 ten days after filing by the engineer, the council shall meet,  
3 consider, and adopt or amend and adopt, by resolution, the final  
4 assessment schedule. Said resolution shall:

5 1. Confirm and levy the assessments;

6 2. State the number of installments, not exceeding fifteen,  
7 into which assessments of ten dollars or more are divided;

8 3. Provide for interest on all unpaid installments at five  
9 percent per annum;

10 4. State the time when assessments are payable;

11 5. Direct the clerk to certify such final schedule to  
12 the auditor of the county or counties in which the assessed  
13 property is located and publish notice thereof.

14 Thereupon, the county auditor shall place on the tax list  
15 the amounts to be assessed against each lot within the assessment  
16 district as certified. (391A.22, 417.19, C50, revised.)

1 Sec. 26. Assessment of cost. The total cost of a public  
2 improvement, except for that part for which railways are liable  
3 or which is to be otherwise paid, shall be assessed against all  
4 lots within the assessment district in accordance to the special  
5 benefits conferred upon the property thereby and not in excess  
6 of such benefits. (391A.23, C50, revised.)

7 If any owner of property subject to special assessment shall  
8 divide the same into two or more lots and if such plan of divi-  
9 sion is accepted or approved by the council, he may discharge the  
10 lien upon any one or more of them by payment of the amount unpaid,  
11 calculated as determined by the council. (391.63, C50, revised.)

1     Sec. 27. Limitations on assessment costs. No special  
2 assessment against any lot, for any public improvement as defined  
3 herein, shall be in excess of the amount of such assessment as  
4 shown in the schedule confirmed by the court, or if court confirma-  
5 tion is not utilized then on the original plat and schedule as  
6 adopted by the council and no such assessment shall exceed twenty-  
7 five per cent of the value of the lot as shown by the plat and  
8 schedule theretofore approved by the council.

9     Special assessments for the construction or repair of  
10 underground connections for private property for gas, water,  
11 sewers, or electricity shall be assessed to each lot for the  
12 actual cost of each connection for such lot and twenty-five  
13 percent limitation of the preceding paragraph shall not apply.  
14 (391.24, C50, revised.)

1     Sec. 28. Deficiencies. If the special assessment which  
2 may be levied against any lot be insufficient to pay its  
3 proportion of the cost of the improvement, the deficiency may  
4 be paid from the fund or funds most logically related to the  
5 type of improvement.

6     If there be property against which no special assessment  
7 can be levied or collected, the portion of the cost of the  
8 public improvement which would have been assessed against such  
9 property shall be paid in like manner. (391A.25, C50, revised.)

1     Sec. 29. Assessment against railroad property. The right  
2 of way of any railway company shall be subject to special  
3 assessments for all public improvements provided in this chapter

4 and such assessments shall constitute a debt due the municipality  
5 which shall be a paramount lien upon the track of the railway  
6 company owning or leasing such right of way within the limits of  
7 the municipality. No part of the property of any railway to  
8 which a lien for unpaid special assessments has attached shall  
9 be released from such lien until the whole assessment is paid.  
10 (391A.26, C50, revised and divided.)

1 Sec. 30. Installments—payment—delinquency.

2 1. First installment. The first installment of each  
3 assessment, or total amount thereof if it be less than ten  
4 dollars, with interest on the whole assessment from date of  
5 acceptance of the work by the council, shall become due and  
6 payable on January 1 next succeeding the date of such levy  
7 unless the assessment is filed with the county auditor less  
8 than thirty days prior to such next succeeding January 1 after  
9 the date of levy.

10 2. Annual installments. The succeeding annual install-  
11 ments, with interest on the whole unpaid amount, shall respec-  
12 tively become due on January 1 annually thereafter and shall be  
13 paid at the same time and in the same manner as the March semi-  
14 annual payment of ordinary taxes.

15 3. Outstanding balance—payments. All future installments  
16 of an assessment may be paid on any date by payment of the then  
17 outstanding balance plus interest to the succeeding June 1.

18 4. Delinquency. All such assessments with interest shall  
19 become delinquent after the thirty-first day of March next after

20 their due date, and shall bear the same interest with the same  
21 penalties as ordinary taxes, and when collected the said interest  
22 and penalties shall be credited to the same fund as the said  
23 special assessment.

24 5. Interest period. Upon the payment of any assessment  
25 or installment thereof interest shall be computed and collected  
26 as aforesaid to the first day of June following the date of  
27 such payment.

28 6. Lien of assessment. All assessments shall constitute  
29 liens on the lots assessed from the date they are certified to  
30 the county auditor and such liens shall have the same preference  
31 and priorities as liens for ordinary taxes; provided, that in  
32 no case shall the owner of any lot be liable for an assessment  
33 greater than provided for in sections twenty-six (26) and twenty-  
34 seven (27) hereof. (391A.27, C50, revised.)

1 Sec. 31. Appeals to district court.

2 1. Any person or corporation, having an interest in any  
3 property subject to special assessment under any given exercise  
4 of the powers conferred upon municipalities by this chapter,  
5 shall have the right, within twenty days after the adoption of  
6 a resolution of necessity, to test the regularity of the proceed-  
7 ings under such exercise of power by a petition in equity filed  
8 in the district court of the county wherein such property is  
9 located. Filing such petition shall not operate as a stay of  
10 further proceedings on the improvement by the council unless there  
11 is also filed a bond in an amount and with security approved by

12 the court.

13 2. Any person or corporation, having an interest in any  
14 property specially assessed under any exercise of the powers  
15 conferred upon municipalities by this chapter, shall have the  
16 right to appeal from the amount of such assessment at any stage  
17 of the special assessment procedure up to twenty days after the  
18 publication of notice of adoption of the final assessment schedule  
19 by petition to the district court of the county wherein such  
20 property is located, but such appeal shall go only to the amount  
21 of that assessment and shall in no event operate as a stay of  
22 further proceedings by the council on the improvement.

23 2. Nothing herein set forth shall be construed so as to  
24 deny any person or corporation having an interest in property  
25 subject to special assessment a right of appeal to the district  
26 court on the ground of fraud or to avail himself of such other  
27 remedies as are available by law. (391A.28, C50, revised.)

1 Sec. 32. Payment of assessments. Assessments levied and  
2 certified under the provisions of this chapter and installments  
3 thereof and interest thereon shall be payable at the office of  
4 the county treasurer of the county wherein the property assessed  
5 is located, and assessments may be there paid in full and without  
6 interest within thirty days after the date of certification  
7 thereof to the county auditor. (391A.29, C50, unchanged.)

1 Sec. 33. Special assessment bonds.

2 1. Issuance. At any time and from time to time after the  
3 contract or contracts for a public improvement have been executed,

4 the municipality may by resolution of the council, authorize  
5 and issue bonds of the municipality in anticipation of the collec-  
6 tion of special assessments, provided that the aggregate principal  
7 amount of such bonds issued prior to the certification of the  
8 assessment roll to the county auditor, as hereinbefore provided,  
9 shall not exceed eighty percent of the total amount of such assess-  
10 ments as shown by the original plat and schedule, and provided  
11 also, that the total principal amount of bonds issued for account  
12 of any public improvement shall not exceed the total amount of  
13 special assessments, less the amount assessed for the default  
14 fund.

15 2. Form. All such bonds shall be negotiable and shall  
16 recite on their face that they have been issued under the  
17 provisions of this chapter and are payable as to both principal  
18 and interest from the proceeds of the special assessments levied  
19 for account of the public improvement. Such bonds shall bear  
20 interest at a rate not exceeding five percent and shall mature  
21 serially on June 1 of the years in which any of such principal  
22 is scheduled to become due and shall contain a provision that  
23 the municipality reserves the right and option of calling and  
24 redeeming any or all of the bonds on June 1 of each year prior  
25 to maturity upon such terms as are specified therein.

26 3. Payment. The proceeds of the special assessments and  
27 interest collected thereon shall be used and applied by the  
28 treasurer of the municipality to the payment of the interest on  
29 the bonds and to the retirement of the principal as rapidly as

30 such proceeds are collected.

31 4. Sale—proceeds. Said bonds shall be sold at public  
32 sale in the manner provided for by chapter seventy-five (75),  
33 but shall not be sold for less than par value with accrued inter-  
34 est from date to the time of delivery. In the event that no bid  
35 is received at the public sale, the council may require the  
36 contractor for the public improvement to purchase same at par  
37 value for bonds bearing five per cent interest. The proceeds  
38 shall be used and applied to the payment of the cost of the public  
39 improvement.

40 5. Procedure. The provisions of chapter three hundred  
41 ninety-six (396) shall be applicable to bonds issued under this  
42 chapter.

43 6. Surplus. Any excess of proceeds from special assessment  
44 remaining after all of the bonds for account of a particular  
45 improvement have been paid with interest shall be credited to  
46 the fund from which deficiencies for such improvement were paid.  
47 (391A.30, C50, revised.)

1 Sec. 34. Tax Sale. Property against which a special assess-  
2 ment has been levied for public improvements may be sold for any  
3 sum of principal or interest due and delinquent at any regular  
4 or adjourned tax sale, in the same manner, with the same for-  
5 feitures, penalties, right of redemption, certificates, and deeds  
6 as for the nonpayment of ordinary taxes. The purchaser at such  
7 sale shall take the property charged with the lien of the remain-  
8 ing unpaid installments and interest. At any such sale where

9 bonds have been issued in anticipation of such special assessments  
10 and interest, the municipality may be a purchaser and be entitled  
11 to all the rights of purchasers at tax sales. The proceeds sub-  
12 sequently realized from sales of any property so purchased by  
13 the municipality shall be credited to the funds of the municipal-  
14 ity from which deficiencies on such improvement were paid, or if  
15 there were no deficiencies to the general fund. (391A.31, C50,  
16 revised.)

1 Sec. 35. Payment from other funds. The whole or any part  
2 of the cost of construction or repair of any public improvement  
3 may be paid under the provisions of sections three hundred  
4 ninety-six point twenty-two (396.22) and three hundred ninety-  
5 six point twenty-three (396.23), or they may be paid from the  
6 fund or funds of the municipality authorized to be used for the  
7 particular type of improvement and the council shall provide that  
8 the tax authorized for purposes of such fund or funds shall be  
9 annually levied to the full extent necessary to reimburse said  
10 fund or funds for the amount paid therefrom for the construction  
11 or repair of the improvement. (391A.32, C50, revised.)

1 Sec. 36. Relevy. When by reason of nonconformity to any  
2 law or resolution, or by reason of any omission, informality,  
3 or irregularity, any special tax or assessment levied is  
4 determined by the council to be invalid or is adjudged illegal,  
5 the council shall have power to correct the same by resolution,  
6 and may reassess and relevy the same, with the same force and  
7 effect as if done at the proper time and in the manner provided

8 by law or by the resolution relating thereto. (391A.33, C50,  
9 revised.)

1 Sec. 37. Joint municipal and state improvements. The  
2 provisions of this chapter shall apply to any street improvement  
3 undertaken jointly by the municipality and the highway commission  
4 under the provisions of sections three hundred thirteen point  
5 twenty-one (313.21) to three hundred thirteen point twenty-three  
6 (313.23), inclusive, and any such municipality may assess and pay  
7 its portion of the cost of such street improvement as herein  
8 provided, but any requirement of this chapter in respect to  
9 approval of detailed plans and specifications, calling for con-  
10 struction bids, awarding construction contracts, and acceptance  
11 of the completed improvement shall be carried out by such  
12 municipality with the state highway commission as may be provided  
13 in any agreement entered into as permitted by section three hundred  
14 thirteen point twenty-two (313.22). (391A.34, C50, unchanged.)

1 Sec. 38. Streets with tracks. In the making of assessments  
2 for paving streets, avenues, or public places along or upon which  
3 any track of a railway or street railway company is located, the  
4 engineer shall make an estimate of the cost of building the  
5 improvement, and he shall also make an estimate of what would  
6 be the cost of such improvement if such tracks did not there  
7 exist. The railway or street railway company shall be charged  
8 with the difference between said estimates of cost and shall  
9 make payment in the same manner as other special assessments  
10 are paid. This section applies only to track within the limits

11 of the improvement proper and nothing herein contained shall  
12 be construed as exempting such railway or street railway company  
13 from any special assessment on any other property, adjacent or  
14 abutting, within the assessment district and owned by such company,  
15 nor shall this section be construed as relieving such company  
16 from any of its duties or liabilities set forth in any other  
17 sections of the law concerning repair or construction of the  
18 strip of paving between the rails and one foot outside thereof.  
19 (391.77, C50, revised.)

20 (Assessment of railway property, see sec. 29.)

1 Sec. 39. Interpretation. Any section of the Code which  
2 adopts by reference any part of chapter three hundred ninety-  
3 one (391) relating to special assessments shall be construed to  
4 include amendments to any such part.

5 The provisions of this Act shall not be construed as  
6 invalidating any special assessment proceedings or bonds issued  
7 thereunder which were undertaken under the provisions of any  
8 law which existed at the time such proceedings were initiated.

1 Sec. 40. Number of assessments. When a municipal corporation  
2 has financed the construction of any paving in whole or in part  
3 by special assessments on benefited property, said property shall  
4 thereafter be exempt from further special assessment for the  
5 construction or reconstruction of that type of improvement.

1 Sec. 41. Chapter three hundred eighty-nine (389), Code 1950,  
2 is amended by adding the following section: "Municipal corpora-  
3 tions shall have power to oil, oil and gravel, shale, or chloride

4 the streets without letting a contract therefor, except when such  
5 work is to be specially assessed.” (391.29, C50, revised.)

1 Sec. 42. Chapter three hundred ninety-one (391), Code 1950,  
2 is hereby repealed and sections one (1) to forty (40) hereof en-  
3 acted in lieu thereof.

1 Sec. 43. Chapter three hundred ninety-one A (391A), Code  
2 1950, is hereby repealed.

1 Sec. 44. Section three hundred thirteen point twenty-seven  
2 (313.27), Code 1950, is amended by striking from line four (4)  
3 the words and numerals “and in sections 391.71 to 391.74, inclu-  
4 sive,”.

1 Sec. 45. Section three hundred eighty-nine point four  
2 (389.4), Code 1950, is hereby repealed.

1 Sec. 46. Sections three hundred eighty-nine point six  
2 (389.6) to three hundred eighty-nine point ten (389.10),  
3 inclusive, Code 1950, are hereby repealed. (See sec. 1(9).)

1 Sec. 47. Section three hundred ninety-two point five  
2 (392.5), Code 1950, is amended by striking the words and  
3 numerals “section 391.20” from line two (2) and inserting  
4 “chapter 391” in lieu thereof.

1 Sec. 48. Section three hundred ninety-three point one  
2 (393.1), Code 1950, is amended by striking from lines eight  
3 (8) and nine (9) the words and numerals “in compliance with  
4 section 391.11”.

1 Sec. 49. Section three hundred ninety-five point twelve  
2 (395.12), Code 1950, is amended by striking all of lines seven

3 (7) and eight (8) and inserting in lieu thereof "chapter 391".

1 Sec. 50. Section three hundred ninety-five point twenty-  
2 one (395.21), Code 1950, is amended by striking from line one  
3 (1) the numerals "391.48" and inserting in lieu thereof the  
4 numerals "395.11".

1 Sec. 51. Section three hundred ninety-five point thirty-  
2 two (395.32), Code 1950, is amended by striking all of said  
3 section after the word "thereby" in line six (6) and inserting  
4 in lieu thereof the following "The provisions of chapter 391  
5 shall govern certification and collection of assessments and  
6 tax sales for such assessments."

1 Sec. 52. Sections three hundred ninety-six point one  
2 (396.1) to three hundred ninety-six point five (396.5), inclusive,  
3 Code 1950, are hereby repealed.

1 Sec. 53. Section three hundred ninety-six point fifteen  
2 (396.15), Code 1950, is amended by striking from line two (2)  
3 the words "and of certificates".

1 Sec. 54. Section three hundred ninety-six point sixteen  
2 (396.16), Code 1950, is amended by striking from line three (3)  
3 the words "or certificates".

1 Sec. 55. Section three hundred ninety-six point seventeen  
2 (396.17), Code 1950, is amended as follows:

3 1. Strike from lines three (3) and four (4) the words  
4 "or certificates."

5 2. Strike from lines four (4) and five (5) the words ", nor  
6 shall any certificate be issued to the contractor or sold,"

7 3. Strike from line eight (8) the words “or certificates”.

8 4. Strike from line nine (9) the words “or certificates”.

1 Sec. 56. Section three hundred ninety-six point eighteen  
2 (396.18), Code 1950, is amended by striking from line two (2)  
3 the word “certificates,” and by striking from line three (3) the  
4 comma (,) after the word “bonds”.

1 Sec. 57. Section three hundred ninety-six point nineteen  
2 (396.19), Code 1950, is amended by striking from lines one (1)  
3 and two (2) the words “certificates or”.

1 Sec. 58. Section three hundred ninety-six point twenty  
2 (396.20), Code 1950, is amended by striking from line one (1)  
3 the word “certificates,” and by striking from line two (2) the  
4 comma (,) after the word “bonds”.

1 Sec. 59. Section three hundred ninety-six point twenty-  
2 two (396.22), Code 1950, is amended as follows:

3 1. Strike from line eleven (11) the word “twenty” and insert  
4 in lieu thereof the word “fifteen”.

5 2. Strike from lines thirty-one (31) to thirty-three (33)  
6 the words “its street construction fund as constituted under  
7 the provisions of section 324.63” and insert in lieu thereof  
8 the words “allocations to the city or town of state road use tax  
9 funds under the provisions of chapter 308A”.

1 Sec. 60. Section four hundred one point ten (401.10), Code  
2 1950, is amended by striking from line three (3) the words and  
3 figures “sections 391.48 to 391.61, inclusive” and inserting in  
4 lieu thereof the words and figures “chapter 391”.

1     Sec. 61. Section four hundred sixteen point one hundred  
2 two (416.102), Code 1950, is hereby amended by striking from  
3 lines six (6) to nine (9) the words “the same to be ordered,  
4 done, assessed, and paid for in the manner provided for paving  
5 in sections 391.79 to 391.81, inclusive.”

1     Sec. 62. Chapter four hundred seventeen (417), Code 1950,  
2 is hereby repealed.

1     Sec. 63. Section four hundred forty-six point twenty-one  
2 (446.21), Code 1950, is hereby repealed.

1     Sec. 64. The explanatory material, tables, notes and  
2 historical references incorporated in this bill shall not be  
3 considered any part of the enactment hereof and shall not be  
4 included in the enrolled act.

#### EXPLANATION OF H. F. 455

This bill is designed to provide a single, uniform and workable procedure for the special assessment of public improvements applicable to all municipal corporations by combining the best features of the three existing methods now found in chapters 391, 391A and 417.