

F I N A L R E P O R T

DRAINAGE LAWS JOINT SUBCOMMITTEE
OF THE
SENATE AND HOUSE COMMITTEES ON AGRICULTURE

January, 1980

Iowa's laws governing agricultural drainage and levee districts--found primarily in Code chapter 455, but also encompassing chapters 456-467--are a fairly complex and detailed set of statutes. Because of variations in topography and soil composition across the state there are many counties where few, if any, drainage or levee districts exist, however in the areas where such districts have been established, the ditches, tile drains and levees they have constructed and are maintaining are often crucial to current farming methods. Thus, adequacy of the laws under which these districts operate is quite important to residents of the areas they serve, particularly those engaged in farming.

Concern about perceived need for changes in and clarification of some aspects of the present drainage laws has been expressed to legislators and others with increasing frequency in the past year or two. These concerns, and the filing of a number of bills proposing to amend various provisions of the drainage laws in the past two legislative sessions, led the Legislative Council to authorize establishment of a Drainage Law Joint Subcommittee of the Senate and House Committees on Agriculture during the 1979 legislative interim. Named to the Joint Subcommittee were:

Senator Dale Tieden,
Co-chairperson
Senator Alvin Miller
Senator Arne Waldstein

Representative Kyle Hummel,
Co-chairperson
Representative Virgil Corey
Representative Richard Sherzan

In response to suggestions of a number of concerned individuals from counties where large areas of land are included within drainage or levee districts, an ad hoc Citizens Drainage Law Study Committee was organized during the summer of 1979 with the assistance of the Iowa Department of Agriculture. Secretary of Agriculture Robert Lounsberry was elected Chairperson and former Governor Robert Blue was elected Vice Chairperson of the Citizens Committee, which met three times during the late summer and fall. The legislative Joint Subcommittee delayed its two authorized meetings in order to receive and consider recommendations of the Citizens Committee.

County Drainage-Levee District Revolving Fund. At the Joint Subcommittee's first meeting, on November 16, 1979, it considered a draft bill based on a recommendation from the Citizens Committee,

intended to facilitate financing of relatively minor drainage and levee district repair projects. Once a drainage or levee district has constructed a ditch, drain, levee or other internal improvement, its board (which is usually the county board of supervisors, but may be a separate board of trustees) is under a statutory mandate to keep those facilities in repair.

The draft bill first considered on November 16 gives county boards of supervisors which manage drainage or levee districts permissive authority to establish a single-county drainage or levee district revolving fund, to be raised by a one-time assessment of not more than one dollar per acre on all land included within any of the drainage or levee districts being managed by the county board. (Districts governed by their own boards of trustees under chapter 462 of the Code would have the option to participate in the revolving fund, but would not be required to do so.) The fund would provide an immediate market for the interest-bearing warrants issued by drainage or levee districts to pay the cost of minor repairs, which in most cases would be those whose total cost is not more than ten percent of the total assets of the revolving fund.

Many drainage and levee districts carry little or no cash on hand, and therefore warrants issued to pay for repairs cannot be paid by the county treasurer until an assessment is spread and collected. Thus contractors who perform the repairs often either have to carry the warrants for several months or sell them at less than face value. The contractors' bids on drainage repairs tend to be priced accordingly. The objective of the revolving fund bill is to reduce the long-run cost of minor repairs in drainage and levee districts by facilitating the financing of those repairs.

After review and some revision of the draft bill to authorize establishment of a county drainage and levee district revolving fund, the Subcommittee voted at its second meeting, on December 14, to recommend this legislation to the standing Senate and House Committees on Agriculture. A copy of the bill appears as Appendix I to this report.

The Citizens Committee also presented to the legislative Subcommittee for consideration a concept which one of the Citizens Committee members reported is presently in use in another state to assist drainage districts in financing major repair and improvement projects. Under this concept, counties can in effect "loan" their credit to drainage districts within the county in order to obtain more favorable terms for financing the drainage district projects. The Subcommittee did not have the opportunity to adequately consider this concept, but has asked the County Home Rule Study Committee to do so. A copy of a letter sent to the Co-chairpersons of that Study Committee appears as Appendix II to this report.

Amendments to Drainage-Levee District Repair and Improvement Section. A second draft bill prepared for and considered by the Drainage Laws Joint Subcommittee makes a number of clarifying and updating changes in Code section 455.135, which applies generally

to repairs and improvements made by drainage and levee districts. The bill seeks to more adequately define what constitutes an improvement (expansion of the designed capacity of a district's facilities) as opposed to a repair (maintenance or restoration of the designed capacity of a district's facilities). It also modifies existing language to make it clear that a drainage or levee district board is not required to obtain an engineer's report before undertaking routine repairs. Finally, the bill is intended to update various cost formulae written into section 455.135 to more adequately take account of the effects of inflation. Flat dollar figures are written into the section as optional alternatives to the present percentages of past construction costs which serve as triggers for certain notice requirements and other procedures. A copy of the bill appears as Appendix III to this report.

Trustee-managed Districts. The Subcommittee spent some time considering matters that relate in particular to those drainage and levee districts in the state which have exercised their option, under chapter 462 of the Code, to have their own elected boards of trustees rather than being managed by the county board of supervisors. Acting in response to recommendations forwarded by the Citizens Drainage Law Study Committee, the Subcommittee reviewed, revised and ultimately voted to recommend to the standing Committees on Agriculture a bill which relaxes to some extent the present requirement that a drainage or levee district trustee be a resident of the county in which the drainage or levee district is located. The bill also increases the authorized pay for drainage or levee district trustees from the present \$17.50 per day to \$40.00 per day, and replaces the existing provision for members of a county board of drainage administrators to be paid \$17.50 per day with authority for the county board of supervisors to set the pay of these officers in the same way as the supervisors may now do with respect to township trustees. (The latter amendment is to a provision of the law enacted a decade ago and intended to permit county boards of supervisors to delegate the administration of drainage districts to a separate board appointed for the purpose-- that authority has not yet been used by any county board so far as is known.) Appendix IV to this report is a copy of this draft bill.

The Subcommittee also devoted some time to consideration of a number of questions concerning the right to vote in elections held to choose drainage or levee district trustees. These elections differ from most other public elections in that only those persons who own agricultural land within the drainage district involved are permitted to vote. A trustee of a drainage district in southeastern Iowa raised a number of specific questions about determination of eligibility to vote in such elections in a letter, a copy of which constitutes Appendix V to this report.

On December 14, a member of the staff of the Farm Division of the Attorney General's office met with the Subcommittee and responded verbally to most of the questions posed in the letter.

After some discussion, it was suggested that an attempt be made to obtain a formal Attorney General's opinion on these questions. Subcommittee members decided against making any specific recommendations on these matters, but agreed that it would be desirable for subcommittees of the Senate and House Agriculture Committees to review any formal Attorney General's opinion that may be issued, in order to determine whether clarifying or substantive amendments to the voter eligibility provisions of chapter 462 are indicated.

Effect of Urbanization on Drainage Districts. Two trustees and the clerk of a Cerro Gordo County drainage district also attended the Subcommittee's December 14 meeting, and described problems which have arisen in their district as a result of conversion of agricultural land in the district to more urbanized uses. In one instance, a commercial building has been constructed so close to the right-of-way of the district's main ditch that it is not feasible to acquire additional right-of-way although the existing right-of-way has become inadequate for use of modern machinery at times when it is necessary to clean out the ditch. The district has the legal right to condemn additional right-of-way, but the cost of doing so would be prohibitive. There are also potential problems with construction that has or will interfere with access to existing subsurface tile lines.

The Subcommittee has formulated no recommendations in response to these concerns, partially because it is not clear that any legislative action at the present time would be effective in resolving the problems that already exist, as described in the previous paragraph. However, the Subcommittee directed the Legislative Service Bureau to try to determine to what extent other drainage districts in the state are likely to be confronted by similar problems in the years ahead. Legislation which would help to protect the interests of drainage and levee districts in such circumstances may well need to be considered in the fairly near future.

"No Action" Recommended on Some Pending Bills. In other action on November 16, the Joint Subcommittee reviewed several drainage law bills currently on file in the Sixty-eighth General Assembly, and voted to recommend no further action on three of them. These are Senate File 24 (a bill passed by the Senate on February 28, 1979 and pending in the House, requiring that each county report to the Auditor of State the number of drainage or levee districts in that county, and thereafter update the report as necessary once each year); Senate File 61 (a bill to require that the cost of drainage and levee district repairs be assessed on a uniform per-acre basis rather than a ratio-of-benefit basis); and House File 58 (a bill having the same general objective as the revolving fund bill reviewed by the Joint Subcommittee on the same date). The Joint Subcommittee also deliberated on Senate File 127, a bill relating to procedures to be followed by drainage districts in which common outlets are located when certain work is necessary upon the common outlets, but noted that litigation closely related

to the subject matter of this bill is presently in progress and therefore took no action except to recommend that the bill be reassigned from the Natural Resources to the Agriculture Committee.

APPENDIX I

PROPOSED SENATE/HOUSE FILE _____

By (PROPOSED COMMITTEE ON
AGRICULTURE BILL BY JOINT
INTERIM SUBCOMMITTEE ON
DRAINAGE LAWS)

Passed Senate, Date _____ Passed House, Date _____

Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act to authorize the establishment of a drainage and levee
2 district revolving fund by the county board of supervisors
3 in any county where one or more such districts are under
4 the management and control of that board, and to authorize
5 a one-time assessment on land in such districts for the
6 purpose of establishing the fund.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section four hundred fifty-five point sixty
2 (455.60), Code 1979, is amended to read as follows:

3 455.60 RECORD OF DRAINAGE TAXES--MATURITY AND COLLECTION.

4 All drainage or levee tax assessments shall be entered in
5 the drainage record of the district or districts to which
6 they apply, and also upon the tax records of each county.

7 Except as otherwise provided by sections four hundred fifty-
8 five point fifty-seven (455.57) and four hundred fifty-five
9 point sixty-three (445.63) of the Code, such assessments shall
10 become due and payable at the same time as other taxes, and
11 shall be collected in the same manner and with the same
12 penalties for delinquency and the same manner of enforcing
13 collection by tax sales.

14

15 COMMENT: Section 1 of this draft simply transfers the
16 substance of present Code section 455.62 into section 455.60.
17 By so doing, the authority for the proposed new drainage or
18 levee district revolving fund can be made a new section 455.62,
19 thus keeping it in conjunction with the other sections to
20 which it will be most closely related.

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22 Sec. 2. Section four hundred fifty-five point sixty-one
23 (455.61), Code 1979, is amended to read as follows:

24 455.61 FUNDS--DISBURSEMENT--INTEREST. ~~Such~~ Except as
25 otherwise provided by section three (3) of this Act, drainage
26 or levee district taxes when collected shall be kept in a
27 separate fund known as the ordinary county drainage or levee
28 fund and shall be paid out only for purposes properly connected
29 with and growing out of the county drainage and levee districts
30 on order of the board. The auditor shall continue to keep
31 a record of each of the drainage and levee district's funds
32 so as to accurately reflect the financial condition of each
33 such district account. The treasurer, on order of the board
34 of supervisors, shall invest ~~such-funds~~ money from the ordinary
35 county drainage or levee fund which is not immediately needed

1 for current operating expenses in United States government
2 bonds, in time certificates of deposit, in savings accounts
3 in such banks as the board shall approve, or as provided by
4 chapter four hundred fifty-three (453) of the Code. If the
5 county does not maintain a drainage and levee district
6 revolving fund under section three (3) of this Act, the board
7 of supervisors may also authorize investment of money from
8 the ordinary drainage or levee fund in the interest bearing
9 obligations of the drainage and levee districts of the county,
10 ~~ex-as-provided-by-chapter-453.~~ Interest collected by the
11 treasurer on the funds so invested shall be deposited in the
12 ordinary county drainage or levee fund, and on July 1 of each
13 year the auditor shall apportion and credit such interest
14 to each drainage or levee district account in the proportion
15 which the average credit balance of each district bears to
16 the average balance of the ordinary county drainage or levee
17 fund. The averages to be ascertained shall be the averages
18 of the balances existing on the first of each month during
19 the fiscal year immediately preceding. Interest and penalties
20 collected on drainage or levee district taxes shall be credited
21 to the district for which the taxes are being collected.
22 ~~This-section-shall-not-be-constructed-so-as-to~~ If the county
23 maintains a drainage and levee district revolving fund pursuant
24 to section three (3) of this Act, the board shall not permit
25 expenditures under this section in behalf of any district
26 in excess of its share of the ordinary county drainage or
27 levee fund. The provisions of this section and of section
28 three (3) of this Act shall not apply to drainage and levee
29 districts under trustee management unless the trustees consent
30 thereto, and in the absence of such consent, section 462.29
31 shall apply.

32

33 COMMENT: This section is intended to allow the county
34 drainage or levee fund to continue to function much as it
35 now does in those counties that do not choose to set up a

1 drainage revolving fund. The restriction on a district bor-
2 rowing from the fund (by selling the fund its interest-bear-
3 ing obligations) is removed for counties which do not choose
4 to have a drainage revolving fund. Where such a fund is es-
5 tablished, it will be the source of loan money for local
6 drainage or levee districts, and the "ordinary" drainage or
7 levee district fund will serve only as a repository for money
8 collected from and expended directly on behalf of individual
9 districts.

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11 Sec. 3. Section four hundred fifty-five point sixty-two
12 (455.62), Code 1979, is amended by striking the section and
13 inserting in lieu thereof the following:

14 455.62 OPTIONAL COUNTY DRAINAGE AND LEVEE DISTRICT REVOLV-
15 ING FUND.

16 1. The board of supervisors of any county in which one
17 or more organized drainage or levee districts are under the
18 management and control of the board may establish a drainage
19 and levee district revolving fund. The revolving fund shall
20 consist of the proceeds of a one-time levy made and collected
21 as provided by subsection two (2) of this section, and all
22 interest subsequently earned thereon. The primary purpose
23 of the revolving fund shall be to purchase, at par value,
24 the interest-bearing obligations issued to pay the cost of
25 minor repairs by the drainage or levee districts of the county
26 which were assessed for the benefit of the fund. For the
27 purpose of this section, a minor repair is one the total cost
28 of which does not exceed ten percent of the total assets of
29 the drainage and levee district revolving fund as of the date
30 the board directs that the repair be made, or a share of such
31 total assets determined by dividing the amount thereof by
32 the number of drainage or levee districts assessed to establish
33 the fund, whichever amount is greater. Except as permitted
34 by subsection three (3) of this section, no more than ten
35 percent of the total assets of the drainage and levee district

1 revolving fund, or a share of such total assets determined
2 by dividing the amount thereof by the number of drainage or
3 levee districts assessed to establish the fund, whichever
4 amount is greater, shall be invested in the obligations of
5 any one drainage or levee district. When any money in the
6 revolving fund is not immediately needed for the primary
7 purpose specified in this subsection, the treasurer shall
8 invest that money in the same manner as prescribed by section
9 four hundred fifty-five point sixty-one (455.61) of the Code
10 for money in the ordinary county drainage or levee fund not
11 immediately needed for current operating expenses.

12 2. When the board of supervisors elects to establish a
13 drainage or levee district revolving fund under subsection
14 one (1) of this section, the board shall make an assessment
15 at a uniform per-acre rate against all land in organized
16 drainage or levee districts in the county, except land which
17 is a part of any district under trustee management whose
18 trustees have not consented to the assessment and which is
19 not a part of any drainage or levee district under the manage-
20 ment of the board of supervisors. The amount of the assessment
21 made under this subsection shall not exceed one dollar per
22 acre, except that any assessment made under this section on
23 any tract, parcel or lot within a drainage or levee district
24 which is computed at less than two dollars shall be fixed
25 at the sum of two dollars. Except as provided by subsection
26 four (4) of this section, no more than one such revolving
27 fund assessment shall ever be made in any one county. When
28 the rate of the assessment has been fixed the board shall
29 immediately transfer to the revolving fund any money deposited
30 in the ordinary county drainage or levee fund to the credit
31 of a drainage or levee district which money is not immediately
32 needed for the current operating expenses of that district,
33 up to but not exceeding the total assessment made under this
34 subsection against all land in that district, and shall either
35 cancel or reduce the per-acre rate of such assessment in that

1 district accordingly. An assessment made under this subsection
2 shall be recorded, shall become due and payable, and shall
3 be collected as provided by section four hundred fifty-five
4 point sixty (455.60) of the Code, but the taxes collected
5 pursuant to the assessment shall be placed only in the drainage
6 or levee district revolving fund.

7 3. When the total assets of the drainage or levee district
8 revolving fund exceed four times the amount of the assessment
9 originally made to establish the fund or five hundred thousand
10 dollars, whichever is less, the board may direct the treasurer
11 to invest money from the fund in interest-bearing obligations
12 issued to pay the cost of a repair other than a minor repair,
13 or of an improvement by any drainage or levee district in
14 the county which was assessed for the benefit of the fund.
15 Under such circumstances, the board may approve the investment
16 of not more than twenty percent of the total assets of the
17 revolving fund in the interest-bearing obligations of any
18 one drainage or levee district. When the total assets of
19 the revolving fund exceed six times the amount of the
20 assessment originally made to establish the fund or seven
21 hundred fifty thousand dollars, whichever is less, the board
22 may elect to refund all or any part of the assets of the
23 revolving fund in excess of that amount, at a uniform per-
24 acre rate, to the current owners of the land against which
25 the assessment to establish the fund was made, or against
26 which an assessment has been made under subsection four (4)
27 of this section.

28 4. If the trustees of a drainage or levee district under
29 trustee management do not consent to assessment of land in
30 the district as part of an assessment to establish a drainage
31 and levee district revolving fund under this section, but
32 at some later time the trustees desire to have that district
33 contribute to and become entitled to borrow from the fund,
34 or the district comes under the management of the board of
35 supervisors pursuant to sections four hundred sixty-two point

1 thirty-six (462.36) through four hundred sixty-two point
2 forty-one (462.41) of the Code and the board of supervisors
3 desires to have the district contribute to and become eligible
4 to borrow from the fund, the board of supervisors shall first
5 determine the average annual rate of interest earned since
6 the establishment of the revolving fund on the money initially
7 deposited in that fund. The board shall then make a one-time
8 assessment at a uniform per-acre rate against all land in
9 the drainage or levee district which is being made eligible
10 to borrow from the revolving fund, in the same manner as
11 prescribed by subsection two (2) of this section for the
12 assessment to establish the fund. The per-acre rate of the
13 assessment made under this subsection shall be that of the
14 original assessment made to establish the revolving fund plus
15 an amount sufficient to raise in the district an additional
16 sum equivalent to the interest which would have been earned
17 on the assessment made under this subsection if it had been
18 made at the time the revolving fund was established and the
19 proceeds had at that time been placed in the fund and had
20 subsequently earned interest at the average annual rate
21 determined by the board of supervisors under this subsection.

22

23 COMMENT: This section authorizes, but does not require,
24 county boards of supervisors in counties where there are one
25 or more drainage or levee districts to establish a drainage
26 or levee district revolving fund. The revolving fund provides
27 a market for drainage or levee district warrants issued by
28 districts that have contributed to the fund to pay for "minor
29 repairs," i.e., those costing less than 10% of the total
30 assets of the revolving fund. The revolving fund is to be
31 established by a one-time assessment against land in all
32 drainage and levee districts under the management of the board
33 of supervisors. That assessment would be reduced by the
34 amount of any current unencumbered balance a district might
35 have in the "ordinary" drainage and levee fund, such balance

1 being transferred to the revolving fund. (The decision to
2 establish a revolving fund and the assessment for it will
3 not affect a district managed by its own trustees under chapter
4 462 of the Code unless the trustees choose to participate;
5 subsection 4 provides a procedure for such districts to pay
6 a proportionate assessment for and become eligible to borrow
7 from such a revolving fund at a time after the fund has been
8 established.) Note that with the retention of the "ordinary"
9 fund under section 455.61, only the one-time assessment for
10 the establishment of the revolving fund and the subsequent
11 payments of interest and repayments of principal would come
12 into the revolving fund--all assessments made for a specific
13 drainage or levee district would continue to be placed
14 initially in the "ordinary" fund and disbursed from that fund.
15 When the total assets of the revolving fund reach \$500,000,
16 the county board may at its option invest revolving fund money
17 in obligations issued to pay the cost of a repair not
18 qualifying as a minor repair, or of an improvement. When
19 such total assets reach \$750,000, the board has the option
20 to refund any money above that amount to the owners of the
21 land assessed to establish the fund.

22

23 Sec. 4. This Act is effective January first following
24 its enactment.

25

EXPLANATION

26 This bill gives county boards of supervisors which manage
27 one or more drainage or levee districts permissive authority
28 to establish a single-county drainage or levee district
29 revolving fund, to be raised by a one-time assessment of not
30 more than \$1 per acre on all land in drainage or levee
31 districts managed by the county board. The fund would provide
32 an immediate market for the interest-bearing warrants issued
33 by drainage or levee districts to pay the cost of minor
34 repairs, which are defined for most situations as those whose
35 total cost is not more than ten percent of the total assets

1 of the revolving fund. (This limit would be less restrictive
2 in counties with fewer than ten supervisor-managed drainage
3 or levee districts.) Many drainage and levee districts carry
4 little or no cash on hand, and therefore warrants issued to
5 pay for repairs cannot be paid by the county treasurer until
6 an assessment is spread and collected. Thus contractors who
7 perform the repairs often either have to carry the warrants
8 for several months or sell them at less than face value.
9 The contractors' bids on drainage repairs tend to be priced
10 accordingly. The objective of this bill is to reduce the
11 long-run cost of minor repairs in drainage and levee districts
12 by facilitating the financing of those repairs.

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APPENDIX II

IOWA LEGISLATIVE COUNCIL
REPRESENTATIVE FLOYD H. MILLEN, CHAIRPERSON
SENATOR CALVIN O. HULTMAN, VICE CHAIRPERSON

IOWA LEGISLATIVE SERVICE BUREAU
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December 26, 1979

The Honorable James Briles
State Senator
Co-chairperson, County Home Rule Study Committee

The Honorable Arlyn Danker
State Representative
Co-chairperson, County Home Rules Study Committee

Gentlemen:

This letter is sent to you on behalf of, and by direction of, the joint interim Drainage Law Study Subcommittee of the standing Committees on Agriculture, which was co-chaired by Senator Dale Tieden and Representative Kyle Hummel. This interim Subcommittee--on which Senators Alvin Miller and Arne Waldstein and Representatives Virgil Corey and Richard Sherzan also served--was established by the Legislative Council as a result of concerns expressed to legislators about various problems being encountered in administration of drainage laws. As you are no doubt aware, county boards of supervisors act as the governing boards for most drainage districts in the state.

At about the same time that establishment of the legislative Drainage Law Subcommittee was authorized, an ad hoc Citizens Drainage Law Study Committee was organized with the assistance of the Iowa Department of Agriculture. Secretary of Agriculture Robert Lounsberry was elected Chairperson and former governor Robert Blue was elected Vice Chairperson of the Citizens Committee.

The ad hoc Citizens Drainage Law Study Committee agreed upon a number of suggestions to the legislative Subcommittee, several of which related to the necessity to raise money to pay the cost of the repairs and improvements which are necessary from time to time in drainage and levee districts. The legislative Subcommittee has given careful consideration to the Citizens Committee's recommendations.

Drainage and levee districts in Iowa, with few exceptions, have almost no continuing governmental or administrative structure. Nearly all of the funds raised by assessment of land within these districts are used to pay the cost of the repairs and improvements which are necessary from time to time on the facilities constructed by the drainage and levee districts. Since these districts frequently have little or no cash on hand, it is necessary to vote and spread an assessment when such repairs or improvements must be undertaken, and because these assessments are spread and collected in substantially the manner as county taxes the delay between the time the assessment is made and the time when the proceeds of the assessment begin to be received can be as much as a year or more. Thus, a recurring problem for drainage and levee districts and the contractors who perform work for these districts is to find someone or some entity willing and able to accept and hold the stamped warrants of drainage and levee districts until the proceeds of assessments are received so that money is available to pay the warrants. Contractors' bids on work to be performed for drainage and levee districts are usually priced accordingly.

There was an apparent concensus among the members of the Citizens Committee that problems relating to financing of drainage repairs and improvements can reasonably be treated as falling into two broad categories, those involving financing of large-scale (i.e., "major") projects, and those relating to less costly (i.e., "minor") projects. With respect to the latter, the Citizens Committee recommended to the legislative Subcommittee that a bill be prepared for introduction which would authorize the establishment, at the option of county boards of supervisors, of a single drainage district revolving fund in each county. Such legislation has been drafted and, after careful review and some revision by the legislative Subcommittee, has been recommended to the standing Committees on Agriculture of the Senate and House for consideration during the 1980 session.

In regard to financing of larger drainage and levee district repair and improvement projects, the Citizens Committee referred to the legislative Subcommittee a suggestion presented by Mr. Carleton D. Beh, a member of a Des Moines bonding firm who served on the Citizens Committee. At that Committee's most recent meeting, on October 31, Mr. Beh discussed at some length means by which counties might be authorized to facilitate the funding of major drainage and levee district repair and improvement projects. The following is a portion of his remarks, as recorded in the minutes of the Citizens Committee:

"In the State of Michigan, the counties of the state are legal issuers of bonds, and the counties are divided into drainage districts, The method of financing improvements in the State of Michigan is for the county to issue its general obligation bonds to take the availability of the senior rated credit and to extend the credit of the county for and on behalf of the underlying political subdivision here in the drainage district and to establish and extend its credit in such a way

that no taxes would ever need to be levied by the county because the actual payment of the bonds would come to the county by the levying and the collecting of the underlying assessments. The thing you have done here is to substitute credit of a county for credit of a district."

While the members of the legislative Subcommittee were favorably impressed with the general concept described by Mr. Beh, the Subcommittee did not have available to it during the last few weeks of the 1979 interim either the time or the staff expertise to adequately explore this concept. Therefore, the Subcommittee has directed that this letter be sent to you as Co-chairpersons of the County Home Rule Study Committee to make you aware of the perceived need for a more adequate method of financing major repair and improvement projects carried out by agricultural drainage and levee districts in Iowa, and of the concept suggested by Mr. Beh for meeting this need. It is hoped that before the County Home Rule Study Committee completes its deliberations, it will be possible for that body to consider the concept described to the Citizens Drainage Law Study Committee by Mr. Beh and, if it appears feasible and desirable, recommend that a similar concept be written into Iowa law.

Sincerely,



PHILIP E. BURKS

Senior Research Analyst

PB:cf

APPENDIX III

PROPOSED SENATE/HOUSE FILE _____

By (PROPOSED COMMITTEE ON
AGRICULTURE BILL BY JOINT
INTERIM SUBCOMMITTEE ON
DRAINAGE LAWS)

Passed Senate, Date _____ Passed House, Date _____

Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act to amend section four hundred fifty-five point one hundred
2 thirty-five (455.135) of the Code, relating to repairs and
3 improvements in drainage and levee districts.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section four hundred fifty-five point one hun-
2 dred thirty-five (455.135), subsections one (1), two (2) and
3 four (4), Code 1979, are amended to read as follows:

4 1. When any levee or drainage district shall-have has
5 been established and the improvement constructed, the same
6 improvement shall be at all times under the supervision of
7 the board of supervisors except as otherwise provided for
8 control and management by a board of trustees and it shall
9 be the duty of the board to keep the same improvement in
10 repair as provided herein.

11 a. The board at any time on its own motion, without notice,
12 may order done whatever is necessary to restore or maintain
13 a drainage or levee improvement in its original efficiency
14 or capacity, and for that purpose may remove silt and debris,
15 repair any damaged structures, remove weeds and other vegetable
16 growth, and whatever else may be needed to restore or maintain
17 such efficiency or capacity or to prolong its useful life.

18 ~~in-the-event~~

19 b. The board may at any time obtain an engineer's report
20 regarding the most feasible means of repairing a drainage
21 or levee improvement and the probable cost of making the
22 repair. If the engineer advises, or the board otherwise
23 concludes that permanent restoration of a damaged structure
24 is not feasible at the time, the board may order such temporary
25 construction as it deems necessary to the continued functioning
26 of the improvement. If in maintaining and repairing tile
27 lines the board finds from ~~the~~ an engineer's report it is
28 more economical to construct a new line than to repair the
29 existing line, ~~such~~ the new line may be considered to be a
30 repair.

31 c. If the estimated cost of any repair exceeds five
32 thousand dollars, or seventy-five percent of the original
33 total cost of the district and subsequent improvements therein,
34 whichever is the greater amount, the board shall set a date
35 for a hearing on the matter of making ~~such~~ the proposed

1 repairs, and shall give notice as provided in sections 455.20
2 to 455.24. At such the hearing the board shall hear objections
3 to the feasibility of such the proposed repairs, and following
4 the hearing the board shall order made such the repairs as
5 it deems desirable and feasible. Any interested party shall
6 have the right of appeal from such orders in the manner
7 provided in this chapter.

8 d. The right of remonstrance shall not apply to repairs
9 as defined in this section.

10 2. In the case of minor repairs, or in the eradication
11 of brush and weeds along the open ditches, not in excess of
12 ~~one~~ five thousand dollars where the board finds that ~~the same~~
13 ~~will result in~~ a saving to the district will result it may
14 cause the same repairs or eradication to be done by secondary
15 road equipment, or weed fund equipment, and labor of the
16 county and then reimburse the secondary road fund or the weed
17 fund from the fund of the drainage district thus benefited.

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

24 a. When the board determines that improvements, ~~which~~
25 ~~differ from the repairs referred to in the preceding~~
26 ~~paragraphs,~~ are necessary or desirable, it shall appoint an
27 engineer to make such surveys as seem appropriate to determine
28 the nature and extent of such the needed improvements, and
29 to file a report showing what improvements are recommended
30 and their estimated costs, which report may be amended before
31 final action. If the estimated cost of the improvements does
32 not exceed five thousand dollars, or twenty-five percent of
33 the original cost of the district and subsequent improvements
34 therein, whichever is the greater amount, the board may order
35 the work done without notice. The board shall not divide

1 proposed improvements into separate programs in order to avoid
2 the ~~twenty-five-percent~~ limitation herein fixed for making
3 improvements without notice. If the board deems it desirable
4 to make improvements where the estimated cost exceeds ~~twenty-~~
5 ~~five-percent-of-the-original-total-cost-of-the-district-and~~
6 ~~subsequent-improvements-therein~~ that limit, it shall set a
7 date for a hearing on the matter of constructing ~~such~~ the
8 proposed improvements and also on the matter of whether there
9 shall be a reclassification of benefits for the cost of ~~such~~
10 the proposed improvements, and shall give notice as provided
11 in sections 455.20 to 455.24. At ~~such~~ the hearing the board
12 shall hear objections to the feasibility of ~~such~~ the proposed
13 improvements and such arguments for or against a
14 reclassification as may be presented by or for any taxpayer
15 of the district. Following the hearing the board shall order
16 made ~~such~~ the improvements as it deems desirable and feasible,
17 and shall also determine whether there should be a
18 reclassification of benefits for the cost of ~~such~~ the
19 improvement. If it is determined that ~~such~~ a reclassification
20 of benefits should be made the board shall proceed as provided
21 in section 455.45.

22 ~~In-the-event-that~~ b. If the estimated cost of the
23 improvements as ~~contemplated-in-this-section~~ defined in this
24 subsection should exceed twenty thousand dollars, or the
25 original cost of the
26 district plus the cost of subsequent improvements in the
27 district, whichever is the greater amount, a majority of the
28 landowners, owning in the aggregate more than seventy percent
29 of the total land in said the district, may file a written
30 remonstrance against said the proposed improvement, at or
31 before the time fixed for hearing on said the proposed
32 improvement, with the county auditor, or auditors in case
33 the district extends into more than one county. If such
34 remonstrance is filed, the board shall discontinue and dismiss
35 all further proceedings on said the proposed improvement and

1 charge the costs incurred to date for said the proposed
2 improvement to the district. Any interested party shall have
3 the right of appeal from such orders in the manner provided
4 in this chapter. Provided, however, that the provisions of
5 this section shall not affect the procedures of section 455.142
6 covering the common outlet.

7 Sec. 3. This Act takes effect January first following
8 its enactment.

9 EXPLANATION

10 This bill revises and clarifies several of the provisions
11 of section 455.135, which relates to repairs and improvements
12 in drainage and levee districts. The description of what
13 constitutes a repair (i.e., maintaining a district's facilities
14 at their designed capacity) is augmented to make clear that
15 work done to prolong the useful life of a district's facilities
16 is legally a repair, and a definition of an improvement (i.e.,
17 increasing the designed capacity of a district's facilities)
18 is added. Various references to dollar amounts which affect
19 the conditions and procedures for making repairs and
20 improvements are updated to reflect inflation, and flat dollar
21 amounts are provided as alternatives to cost levels set by
22 reference to the original cost of the district.

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APPENDIX IV

PROPOSED SENATE/HOUSE FILE _____

By (PROPOSED COMMITTEE ON
AGRICULTURE BILL BY JOINT
INTERIM SUBCOMMITTEE ON
DRAINAGE LAWS)

Passed Senate, Date _____ Passed House, Date _____

Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act relating to the residence qualification for election to
2 the office of drainage district trustee, and to the compensa-
3 tion of drainage district trustees and county drainage
4 administrators.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section four hundred sixty-two point seven
2 (462.7), Code 1979, is amended to read as follows:

3 462.7 ELIGIBILITY OF TRUSTEES. Each trustee shall be
4 a citizen of the United States not less than eighteen years
5 of age, ~~a resident of the county,~~ and the bona fide owner
6 of agricultural land in the election district for which he
7 or she is elected, and a resident of the county in which that
8 district is located or of a county which is contiguous to
9 or corners on that county.

10 Sec. 2. Section four hundred sixty-two point thirty-five
11 (462.35), Code 1979, is amended to read as follows:

12 462.35 COMPENSATION--STATEMENTS REQUIRED. The compensation
13 of the trustees and the clerk of the board is hereby fixed
14 at ~~seventeen dollars and fifty cents~~ forty dollars per day
15 each and necessary expenses, to be paid out of the funds of
16 the drainage or levee district for each day necessarily
17 expended in the transaction of the business of the district,
18 but no one shall draw compensation for services as trustee
19 and as clerk at the same time. They shall file with the
20 auditor or auditors, if more than one county, itemized,
21 verified statements of their time devoted to the business
22 of the district and of the expenses incurred.

23 Sec. 3. Section four hundred fifty-five point two hun-
24 dred twenty-one (455.221), Code 1979, is amended to read as
25 follows:

26 455.221 COMPENSATION. The members of the board of county
27 drainage administrators shall each receive ~~seventeen dollars~~
28 ~~and fifty cents per day for each day~~ compensation at an hourly
29 rate established by the county board of supervisors for time
30 actually devoted to the duties of their office, ten cents
31 for every mile traveled in going and reimbursement at the
32 rate established by section seventy-nine point nine (79.9)
33 of the Code for travel to and from meetings of, or other
34 places of performing the duties of, said the board, and other
35 actual and necessary expenses incurred in the performance

1 of their duties.

2 Sec. 4. This Act takes effect January first following
3 its enactment.

4 EXPLANATION

5 Section 1 of this bill is intended to resolve a difficulty
6 which presently affects at least one levee district in the
7 state. The individual who holds title to the majority of
8 the land in that district is a resident of Iowa, but not of
9 the county in which the district is located. Section 1 makes
10 some landowners in that situation eligible to be elected to
11 boards of trustees of drainage or levee districts which are
12 governed by their own boards, under chapter 462, rather than
13 by the county board of supervisors.

14 Section 2 of the bill increases the prescribed rate of
15 pay for elected drainage district trustees, and their district
16 clerks, from \$17.50 to \$40 per day. The majority of drainage
17 districts in Iowa, however, are governed by county boards
18 of supervisors rather than separate boards of trustees.
19 Section 2 does not affect the pay of county supervisors.

20 Section 3 gives county boards of supervisors the same
21 authority to set the pay of county drainage administrators
22 that the supervisors were given with respect to township
23 trustees by the 1979 Session of the Sixty-eighth General
24 Assembly. Some years ago, each county board of supervisors
25 which administers one or more drainage districts was authorized
26 to establish a board of county drainage administrators and
27 transfer to that board the supervisors' responsibilities with
28 respect to drainage districts. It is believed that this
29 authority has not yet been used by any county board of
30 supervisors.

31 This bill will take effect January first after its passage.

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APPENDIX V

Box 148
Cantril, Iowa 52542
November 9, 1979

Mr. Philip E. Burks
Senior Research Analyst
Iowa Legislative Council
State House
Des Moines, Iowa 50319

Dear Mr. Burks:

Thank you for sending me the report of the Drainage Laws Study Committee of 1965-68, and also the other information from the Soil Conservation Legislative Committee. I am anxious to see what the latter committee will finally recommend.

The question of right to vote in a drainage district trustee election hinges on Sec. 462.11 which indicates each landowner owning land in the district. I do not find an adequate definition of landowner. The same question could be raised about who is eligible to be a trustee as Sec. 462.7 states a trustee must be a bona fide owner of agricultural land.

The problems that have confronted us include what the definition of "landowner owning land" and "bona fide owner of agricultural land". Does the contract purchaser or the record title holder have the right to vote and hold office? By any stretch of the imagination could both vote? Can each vote who hold title as joint tenants with right of survivorship and not as tenants in common? Probably all tenants in common could vote unless the land has been sold by contract, in which case the first question above applies. Who votes for an estate and if it is the fiduciary's vote, how many votes may that estate have in case there is more than one fiduciary? If the estate is testate and if the fiduciary does not vote, do all beneficiaries? If not do just the heirs? In case the will has a specific bequest of land, then who votes? There is a section about proxies, but who votes for a minor? If the natural parent votes, can he or she execute a proxy? If the minor is under guardianship, then does the guardian or conservator vote? How many votes does a partnership have? How is the vote of a corporation handled and how many votes?

Another big related problem is the certificate prepared by the county auditor which shows the lands in the district and the holder thereof. Sec. 462.9 and 462.10 cover this, however the title of Sec. 462.9 is "Assessment to Determine Right to Vote." A certificate is needed so the judges know who is eligible to vote, and, if a contractor purchaser is to vote, this information should be on the certificate. Perhaps it should include some information about estates and just what is needed depends on the answers to some of the raised questions. Also the judges of the election might need the names of partners if not revealed in the partnership name.

Mr. Philip E. Burks

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November 9, 1979

Perhaps some of these questions seem minor, but they have come up and when you are an election judge sitting at the polls on a Saturday afternoon you need to know. The courthouse is closed, attorneys are not available, and arguments and different interpretations come up. Our district with its limited funds cannot afford to hire an attorney to sit there while the polls are open, and even if he were and gave an opinion it could result in a challenged election later.

Our drainage district would appreciate any consideration of a clarification, and we thank you for your interest.

Yours very truly

(Mrs.) Vivian Creswick