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**Date:** June 18, 2014

**To:** IDDA Membership

**From:** John T. Torbert, CAE

**Re:** Legislative Report for 2014

Here is a full reporting and summary of bills that passed the legislature this year that have an impact on drainage. IDDA had a very successful year in terms of issues for which we had advocated. Questions on these bills can be forwarded to the IDDA office.

**SF 2191** – This bill relates to drainage warrants. Currently, in Chapter 468.100 of the Code, there is a \$1,000 limit placed on the size of drainage warrants. Effective July 1<sup>st</sup>, that limit will increase to \$5,000. **IDDA position** – This bill was part of our legislative packet this year and was requested by IDDA. **Status** – The Governor signed the bill on March 26<sup>th</sup> and the bill will take effect on July 1<sup>st</sup>.

**SF 2273** – This bill relates to the qualifications that individuals must meet to be eligible to be an elected trustee of drainage district. The bill expands the eligibility language to include other forms of Ag land ownership. **IDDA position** – This bill was part of our legislative packet and was requested by IDDA. **Status** – The Governor signed the bill on April 3<sup>rd</sup> and the bill will take effect on July 1<sup>st</sup>.

**SF 2363** – This bill was sort of a “catch-all” appropriations bill enacted very late in the session. Two appropriations in the bill are of interest to IDDA – 1) The Ag Drainage Well Closure fund receives an appropriation of \$1.240 million and, 2) The state Water Quality Initiative receives an appropriation of \$3.5 million. **IDDA position** - IDDA supported both these appropriations. **Status** – This bill was vetoed in its entirety on May 30<sup>th</sup>. The Governor in his veto message said that he did not want to use “one-time dollars for special projects and to pay down bonds.” So, at least for the 2014-15 fiscal year, the Ag drainage well closure program is dead.

**HF 2273** – This bill has a number of miscellaneous sections relating to the county treasurer duties. The bill makes two changes relating to drainage.

First of all, it allows county treasurers to destroy levee and drainage assessment records and accompanying documents after 10 years have elapsed from the end of the fiscal year that the assessment was paid off. Secondly, it removes a provision that requires that levee and drainage assessments of \$20 or less be paid in cash. **IDDA position** - This bill was not requested by IDDA and we did not take an official position on it. **Status** - The bill was signed by the Governor on May 23<sup>rd</sup> and will take effect on July 1<sup>st</sup>.

**HF 2458** - This is the Ag appropriations bill. Of interest to IDDA was the following; 1) \$1 million appropriated to the Conservation Reserve Enhancement Program, 2) \$4.4 million appropriated to the state Water Quality Initiative and, 3) \$1.325 million appropriated to the Nutrient Research Center at Iowa State University. **IDDA position** - IDDA supported these appropriations. **Status** - This bill was signed on May 30<sup>th</sup>. The Governor did item veto a portion of this bill but that item veto was in a funding area unrelated to drainage. The approved portions of the bill will take effect on July 1<sup>st</sup>.

**HF 2344** - This is a major drainage bill. It had its origin with a work group from western Iowa that met in the summer of 2012 to decide how to rebuild drainage infrastructure that was damaged or destroyed by the earlier flooding of the Missouri River. The legislation addresses the merger of existing districts, bidding procedures, annexed land and liability. Due to the comprehensive nature of the bill, I am incorporating a section-by-section description that was written by IDDA legal counsel Doug Struyk.

### **Section 1 - Purpose**

**New Section 468.262** - this clarifies that the provisions are only applicable towards drainage or levee districts participating in a merger

### **Section 2 - General**

**New Section 468.263** - this section provides that a merger has to have two or more participating drainage or levee districts and they must be participating voluntarily. Also specifies the one district will survive the merger and one or more other districts will be dissolved by the merger. The proposed merger must be approved by the board of trustees of the participating dominant district and at least one of the boards of the servient districts. In order to be eligible to merge, the districts must adjoin all or part of another participating district. However, they may also be separated by land that is included via an annexation as provided for in existing code sections. The provision also provides the district participating in the merger does not have to be eligible for dissolution under part 6 of this subchapter.

### **Section 3 - Board Participation Initiated**

**New Section 468.264** - this section addresses the action of the board necessary to implement the process. In order to participate in a merger the board of the drainage or levee district must determine that the merger will substantially benefit the owners of the land situated within the district and

after making that determination the board must enter an order to conduct a public hearing on the proposed merger.

#### **Section 4 – Public Hearing**

**New Section 468.265** - this section addresses the public hearing. The hearing must be held within 45 days of the last date the board enters an order with the auditor of the county where the drainage or levee district is situated. The section provides a detailed list of individuals who will receive notice and a description of the proposed merger. Additionally, it clarifies that specific notice needs to be sent to individuals who will have land annexed. It also clarifies that all notice in this section shall be provided by ordinary mail. It also provides for publication in the newspaper of general circulation in a county containing a district participating in the merger. The boards may conduct their hearing jointly.

#### **Section 5 – Meeting and Vote**

**New Section 468.266** - the section clarifies that each board participating shall meet to vote on the resolution and determine whether or not to approve the merger. They must vote within 45 days of the last public hearing. It also clarifies who will bear the fees for conducting any joint meeting and that the board shall only consider written objections to the proposed merger that are filed with the county auditor.

#### **Section 6 – Joint Order**

**New Section 468.267** - if a resolution to merge is approved by participating drainage districts, a joint order for the merger shall be entered by those boards. This order needs to be filed with the auditors of the respective counties involved and the auditor will place the order into the drainage record. The auditor must verify that the land is contiguous and includes any land required to be annexed as a condition of the merger and provides for the transfer of title to real estate involved to the merged district. The order also directs the auditor of the county designated by the board governing the merger to file with the recorder of each county all appropriate conveyances and other documents necessary to effect the transfer. Finally, the merged drainage or levee district assumes all existing obligations of a participating drainage or levee district subject to the joint order.

#### **Section 7 – Effect of the Merger**

**New Section 468.268** - this section clarifies the effect of the merger on any legal or equitable proceeding against a participating drainage district. The proceeding shall continue as if the merger did not occur. However, the merged drainage or levee district shall be substituted for the participating drainage or levee district. The board governing the merged district may apportion the cost of legal or equitable proceedings against the landowners of the participating drainage or levee district based upon the classification and assessments applicable to the participating drainage or levee district

prior to the merger. The section clarifies that subject to 468.269, the merger does not affect the classification of land or the levee of assessment.

### **Section 8 – Special Assessment –Merged Land**

**New Section 468.269** - this section provides the surviving board with the ability to impose a special assessment on land situated in what was a participating servient district prior to the merger. It is only applicable to improvements made within the participating dominant district for not longer than five years prior to the date of the joint order. In order to impose a special assessment the board must approve the report by the engineer appointed by the board stating that the improvements directly benefiting the land situated in the participating dominant district were made in the past five years and that notice was provided during the hearing process of the merger stating that a special assessment may be made. Additionally, the board shall not impose a special assessment under this section on land was annexed.

### **Section 9 – Directions to Code Editor**

#### **Division II**

#### **Section 10 – Liability**

**New Section 468.526A** – Addresses liability of trustees that are not county supervisors (elected trustees). The new section clarifies that the trustees are not personally liable for a claim which is exempt under section 670.4 except for claims for punitive damages. A trustee is not liable for punitive damages as a result of acts in the performance of a duty unless actual malice or willful, wanton and reckless misconduct is proven. Section 670.4(3) addressed claims based upon an act or omission of an officer or employee of the municipality exercising due care, in the execution of a statute, ordinance, or regulation whether the statute, ordinance or regulation is valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of the municipality or an officer or employee of the municipality, whether or not the discretion is abused. **Note:** This change does not require the municipality/drainage district to defend and indemnify the trustees as section 670.8 requires for county supervisor.

#### **Division III**

#### **Section 11 – Bidding Procedures**

**468.3 (9).** Adds the term minor repair into the general definitions section of Iowa Code section 468.3. The definition of “minor repair” is a repair that is not in excess of the competitive bid threshold established in Iowa Code section 26.3. This threshold is \$100,000.

#### **Section 12 - Strikes for 468.34 and inserts new language. – Bidding Procedures –**

The effect of this is to remove the current bidding procedures and tie drainage and levy district construction to the public construction bidding laws in Iowa Code Chapter 26.

**Section 13 - Bids Required 468.66**

This section addresses when bids are required by making changes to Iowa Code section 468.66. Striking the requirement that bids are required for an expenditure of \$20,000 or more. The bill changes this to reflect the thresholds of the competitive bid requirements of Iowa Chapter 26. If a project involves initial construction, reconstruction or improvement to a city or county highway, bridge or culvert the current bid threshold is \$49,000. The bid threshold for repair and maintenance is \$100,000. For construction, reconstruction, or improvement projects, not involving a city or county highway, bridge or culvert, the competitive bid threshold is currently \$130,000 with a competitive quote threshold of \$50,000.

**Section 14 - 468.126, (1), paragraph c**

This section of the bill amends Iowa Code section 468.126(1) c by striking the paragraph and inserting language that addresses when ordering repair work the board and any bidders shall comply with a competitive bid requirements in chapter 26. The language sets out that if a repair is more than \$50,000 but less than the competitive bid threshold the board must have a hearing on the repair and notice as provided in sections 468.14 through 468.18. The competitive bid threshold for repairs is \$100,000.

**Section 15 - Section 468.126, (2)**

Code editor changes related to minor repairs.

**Section 16 - 468.126(4) a - Improvements**

Amends 468.126 allowing "improvements" as necessary intended to expand, enlarge, or increase the capacity of the drainage ditch. When the board determines it is necessary, the board shall appoint an engineer to define the need and file a report with estimated costs. The board shall not divide proposed improvements into separate programs to avoid compliance with paragraph "b". If a hearing is required by section 26.12, such hearing shall be had and the board shall order the improvements made.

**468.126 (4) b** provides that the board when ordering an improvement shall comply with competitive bid requirements under chapter 26. If the improvement is more than \$50,000 but less than the competitive bid threshold in section 26.3 the board shall conduct a hearing. Notice shall be provided as per section 468.14 through 468.18. For construction, reconstruction, or improvement projects, not involving a city or county highway, bridge or culvert, the competitive bid threshold is currently \$130,000 with a competitive quote threshold of \$50,000. If a city or county bridge is involved the threshold is \$49,000.

**468.126(4) c** is amended to reflect the use of Iowa Code chapter 26 for bidding procedures. This significantly changes the rights of remonstrance. In most cases, remonstrance would only be available to improvements that exceed \$130,000.

**Section 17 – Repeal**

Repeals sections 468.35 and 468.36 as they are no longer needed due to the incorporation of Iowa Code chapter 26.

**IDDA position** – IDDA supported the bill. **Status** – The bill was signed by the Governor on April 3<sup>rd</sup> and will take effect on July 1<sup>st</sup>.