



**House  
Legislative  
Analysis  
Section**

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**WAYNE COUNTY DRAIN OFFICIALS**

**House Bill 4727 with committee amendments**  
**First Analysis (5-8-89)**

**Sponsor: Rep. James A. Kosteva**  
**Committee: Agriculture**

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H.B. 4727 (5-8-89)

***THE APPARENT PROBLEM:***

Before the adoption of the 1963 state constitution, organized county governments existed in only a strict commission form, in which a board of commissioners (board of supervisors) was the sole governing body and there was no chief executive or county administrator. Under authority conferred by the constitution (article 7, section 2), the legislature passed the charter counties act (Public Act 293 of 1966) which allows counties to adopt a form of county government in which an executive assumes some of the functions previously performed by either the board of commissioners or the other county officers. (The act, among other things, requires charters to provide for the continuation or abolition of all county offices, boards, commissions, and departments except for the elected offices of sheriff, prosecuting attorney, county clerk, treasurer, and register of deeds. A 1980 amendment to the act further allowed county charters to provide for the election or appointment of a drain commissioner.)

In the general Wayne County election in 1980, the sheriff, prosecuting attorney, county clerk, treasurer, register of deeds, and drain commissioner were all elected to four-year terms which expired on January 1, 1985. In a special election in November, 1981, Wayne County voters approved a proposal for a home-rule charter which took effect on January 1, 1983, and which provided that in the 1984 general election the elective offices (sheriff, prosecuting attorney, county clerk, treasurer, register of deeds, and drain commissioner) were to be filled for only a two-year term, from January 1, 1985, to December 31, 1986. After that initial two-year term, the charter provided that successors to those offices would be elected for four-year terms, in the same general election during which the governor and the chief executive officer for the county would be elected.

The Wayne County drain commissioner and the county clerk held that the four-year terms of office that were not concurrent with the term of the governor (or the county chief executive officer) were in accord both with the 1963 state constitution and with state statute, and, consequently, that the two-year terms provided for by the charter were not valid. In 1984, the Wayne County executive officer went to the circuit court, requesting a ruling that the two-year term provided for in the charter was binding, but the court found in favor of the county drain commissioner and the county clerk, a judgment which the Michigan Court of Appeals upheld in 1985 (Lucas v. Wayne County Election Commission 381 N.W.2d 806, 146 Mich.App. 742). The appeals court ruled that even though the charter counties act allows a county charter to provide for the election or appointment of a drain commissioner, if a county chooses to provide for an elected drain commissioner, the election must be held in accordance with the Drain Code — which provides for a four-year term of office.

In 1986, the Wayne County charter was amended to eliminate the office of county drain commissioner and to

provide for a "public works commissioner" who would be appointed by the county's board of commissioners to carry out the powers and duties formerly performed by the county's drain commissioner. The Drain Code, however, has no provisions allowing for the selection of a (nonelected) "public works commissioner," nor does it have provisions specifying the composition of a drainage commission in a county with a public works commissioner. Legislation has been introduced which would put into statute authorization for Wayne County to select someone to carry out the duties of drain commissioner and which would specify the composition of a drainage board in the county.

In addition, the code's expenditure limits for drain maintenance and repair work is said to make difficult the adequate maintenance of county drain systems. (For further information see House Legislative Analysis Section analysis of House Bill 4505, dated 5-8-89.)

***THE CONTENT OF THE BILL:***

The bill would amend the Drain Code to exempt Wayne County from the code's provisions governing the selection of a county drain commissioner, and instead require the county to designate, in accordance with its charter, someone to perform the duties of drain commissioner. It also would specify membership on drainage boards for Wayne County.

The bill also would allow surplus drain construction funds to be deposited in a fund established for drain repair, inspection, and maintenance, and would add certain exemptions to the annual expenditure limits for drain maintenance and repair.

Charter counties. A county organized under the charter county act (Public Act 293 of 1966), with an elected executive and a population of more than 2,000,000 when the charter was adopted, would be exempted from the Drain Code's requirements regarding the election of county drain commissioners. (This provision would apply to Wayne County only.) Instead of electing a drain commissioner, Wayne County would be required to designate someone, in accordance with the county's charter, to assume the powers and duties of the drain commissioner.

Wayne County also would be required to have a drainage board consisting of three people: the person designated by the county charter to carry out the administrative duties of the drain commissioner (or his or her designee), the county commissioner whose district would be assessed for the greatest portion of the cost of the project (or his or her designee), and someone appointed by the county executive. Initially, the chairperson of the drainage board (who would be the person designated by the county charter to carry out the drain commissioner's administrative duties) would decide, when the petition for the project was filed, which county commissioner was qualified to sit on the drainage board. After the final order of apportionment had been issued (which sets out the boundaries of the

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drainage district), the county commissioner from the district paying the largest portion of the assessment would become the county commissioner member and serve until another apportionment was established requiring the seating of another commissioner.

Finally, in administering each intracounty drain project initiated by petition, Wayne County would have to follow the requirements in the code's chapter on intracounty drains for "substantive actions and determinations," subject to and in accordance with any applicable provisions of the county's charter. That is, the drainage board (for "Chapter 20" drains) would still run the drainage district (let contracts, execute bonds, etc.) as it does under the Drain Code.

Drain maintenance funds. The Drain Code currently requires that surplus funds from assessments for drain construction or maintenance be used for maintenance of the drain; however, the funds so used cannot exceed the cost of maintaining the drain for one year. The bill would allow a drain commissioner or drainage board to establish a maintenance fund for each drainage district, using surplus funds remaining after completion of the construction of a drain, or of work performed for drain maintenance or improvements.

Exemptions from limitations for maintenance and repair. Under the Drain Code, there is an annual upper limit to the amount a drain commissioner or drainage board can spend for maintenance and repair of drains without first being petitioned by two or more governmental units that would be assessed to pay the costs. (Currently, this annual expenditure limit is \$800 per mile, or fraction of a mile, or two percent of the original cost of the drain and its extensions.) However, if the cost of maintenance and repair of drain includes utility charges, the drain commissioner or drainage board may exceed this annual limitation and levy special assessments sufficient to pay those utility charges without first getting approval from the affected local units of government.

In addition to the current exemption of utility charges from the limitation on the amount that could be spent annually on maintenance and repair, the bill would add exemptions for costs to service pumping stations, sewage treatment facilities, or retention basins.

Note: The bill would amend the same sections of the Drain Code as another bill (House Bill 4505) pending before the House. Although some of the amendments in both bills duplicate each other (basically, those allowing for the establishment of drain maintenance funds), other amendments made in each bill differ. If both bills were to be enacted into law, the bill first enacted would be canceled out by the other (except for the duplicative amendments).

MCL 280.4 et al.

## **FISCAL IMPLICATIONS:**

Fiscal information is not available. (5-3-89)

## **ARGUMENTS:**

### **For:**

The Drain Code of 1956 allows counties to choose to elect or appoint a drain commissioner. Alternatively, a county may, under certain circumstances, elect a public works commissioner. However, the code remains silent about those counties, such as Wayne County, that have abolished

the office of drain commissioner and replaced it with a director of the department of public works appointed by the county executive officer. The bill would clarify the status of the Wayne County director of the department of public works (who performs the duties of the drain commissioner) by explicitly stating in statute that a charter county with an elected county executive and a population of more than 2,000,000 at the time of the charter was adopted (i.e. Wayne County) could designate someone, in accordance with the county's charter, to assume the powers and perform the duties of the drain commissioner.

### **Against:**

While it may be a good idea to put into statute that charter counties may follow their charter provisions for providing for someone with the powers and duties of drain commissioner, the provisions in the bill concerning the composition of drainage boards would override Wayne County's charter provisions for drainage board membership. Currently, Wayne County's charter says that, unless otherwise required by law, each county drainage board shall consist of the director of the department of public works and two members of the county commission. Although Wayne County has 1,100 drainage boards, the same people sit on them all. The bill, however, would allow the Wayne County executive to appoint one commission member and the Director of the Department of Public Works (who is appointed by the Wayne County executive) to appoint the other commissioner (at least until the final order of apportionment was issued). The bill would seem to violate Wayne County's right to home rule by thus overriding the county's charter provisions.

### **For:**

Currently, the Drain Code allows drain commissioners or drainage boards to levy special assessments in excess of \$800 per mile without first notifying property holders if those assessments are to pay utility charges. The bill would add to this exemption from notification assessments for paying cost to service pumping stations, sewage treatment facilities, or retention basins, since the costs of notification in some urban areas for such service work can be triple or even quadruple the amount of money the drain commissioner or drainage board may currently spend on a maintenance project without notification. For example, for service work on a pumping station on a ten mile drain, the drain commissioner may need to spend more than \$8,000 (the maximum of \$800 per mile which is allowable without first notifying property owners). But if, as can be the case in some urban drains, 25,000 property owners would first have to be sent two notices by first class mail and notices placed in general circulation papers (at \$2,000 per published notice), these costs of notification become prohibitive. By exempting costs to service pumping stations, sewage treatment facilities, or retention basins, the bill would eliminate these absurd cases where the costs of notification can far outstrip the actual maintenance costs.

### **POSITIONS:**

The Department of Natural Resources has not yet taken a position on the bill. (5-8-89)

The Department of Transportation has not yet taken a position on the bill. (5-8-89)

The Michigan Association of County Drain Commissioners is neutral on the bill. (5-8-89)

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The Wayne County Board of Commissioners has not yet taken a position on the bill, but staff will recommend that the commission oppose the bill because the bill's provisions concerning the composition of drainage boards would override the county charter. (5-8-89)