

**House Bill 4727 as enrolled
Second Analysis (7-17-89)**

**Sponsor: Rep. James A. Kosteva
House Committee: Agriculture
Senate Committee: Local Government and Veterans**

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.

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.

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.

Drainage boards. 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 with the advice and consent of a majority of the county board of commissioners. 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 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.

H.B. 4727 (7-17-89)

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.

MCL 280.4, 2802.1, and 280.464

FISCAL IMPLICATIONS:

The House Fiscal Agency says the bill has no fiscal implications for the state. (7-17-89)

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:

Although the bill specifies that charter counties may follow their charter provisions for providing for someone with the powers and duties of drain commissioner, it does not allow charter counties to follow their charters regarding the composition of drainage boards. The point of allowing local units of government home rule is to recognize the diversity of situations and the desirability of allowing local responses to these situations. The bill would diminish charter counties' autonomy by putting into state statute matters (such as the composition of drainage boards) better left to the individual counties and their charters.