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REVISE DRAIN CODE

House Bill 4803

Sponsor: Rep. Michael Green

**Committee: Agriculture and Resource
Management**

Complete to 7-8-99

A SUMMARY OF HOUSE BILL 4803 AS INTRODUCED 6-17-99

The bill would revise the Drain Code of 1956, in general to update, combine, and consolidate many of the code's current provisions. The bill also would make a number of changes to the current process for initiating, maintaining, and paying for drains, as well as making numerous technical revisions.

In brief, the following are some of the proposed changes to the drain code:

** The bill would impose new requirements on drain commissioners, drainage boards, and the director of the Department of Agriculture regarding protection of water quality, minimizing impacts of drain projects on land, incorporating flow patterns into drain design and storm water management, making on-site storm water retention a priority, and using "best management practices."

** All public meetings and major meetings under the drain code would require that notification be sent by first-class mail and publication in a newspaper of general circulation.

** The number of petitioners for a drain project would be decreased from "10 freeholders" to "5 landowners" or landowners representing 25 percent of the lands potentially liable for assessment.

** Provisions would be added to require payment, by individuals or from the county general fund, for costs of the process involved in petitions for drains that are dismissed or rejected.

** In addition to private landowners, state departments or agencies (including colleges and universities), junior or community colleges, school districts, and municipalities (under a new definition of "public corporations") also would be subject to special assessments for drain projects.

** The decision-making process on requested drain projects would have to include an engineering analysis that would be presented at a public hearing.

** All boards of determination (the 3-member board that determines the "necessity" of a drain project) meetings would have official, verbatim records.

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** The probate court would serve as the court of appeal for public corporations contesting public health findings in an "order of necessity" that subjected the public corporation to special assessments for all or some of the costs of drain projects.

** The circuit court would serve as the court of appeal to review whether a board of determination's "order of necessity" (i.e., decision whether a drain project was necessary for "the public health, convenience, or welfare") or dismissal of a drain petition was lawful and supported by evidence on the record only, and whether a drain commissioner had abused his or her discretion in selecting a drain project (again, by evidence on the record only).

** Drain projects with an estimated cost of less than \$10,000 would not have to be let for bidding (the current ceiling is \$5,000), and drain commissioners or drainage boards could spend up to \$5,000 (instead of the current \$2,500) per mile or fraction of a mile in any single year for drain maintenance or repair without a petition from landowners and without first notifying affected landowners.

** Drain commissioners' powers and duties would be expanded to include, among other things, a requirement to review all requests to discharge into, connect to, or cross an existing drain.

** Further protections to drain commissioners' salaries and fringe benefits would be added.

** Boards of determination would continue to determine the "public health, convenience or welfare" (which would remain undefined in the bill), "necessity" (also undefined) of a petitioned drain, while drain commissioners would continue to determine the "practicability" (also undefined) of proposed drainage projects.

** References to permissible "natural resource" enhancement and improvement would be added to the drain code for the first time.

** "Benefit" (a term which is used in making special assessments for drain work) would be defined for the first time in the drain code.

** State legislators could request the names and addresses of members of boards of determination in the legislator's district from their drain commissioner.

** Chapter 22, "Water Management Districts and Subdistricts," would be rewritten as a watershed management chapter.

Some of the provisions of the bill are described in more detail below.

Definition of "benefit." The bill would define "benefit," a term used to determine how special assessments for drain projects are assigned to landowners, for the first time. "Benefit" (or "benefits") would mean "advantages resulting from a project to public corporations, the residents of this state, and property within this state." "Benefit" would include both positive and negative

impacts of drain projects. Specifically, the bill would say that "benefit(s)" would include "advantages that result from elimination of pollution and elimination of flood damage, or elimination of water conditions that jeopardize the public health or safety; increase or decrease of the value or use of lands and property resulting from the project; and the positive or negative consequences of the project for individual parcels of land including, but not limited to, all of the following: (i) increase or decrease in natural resource values. (ii) increase or decrease in flooding. (iii) the amount and quality of runoff from land entering a drain as determined by factors including, but not limited to, the following: (a) The depth, character, and quality of surface and subsurface soils of the land. (b) The amount of impervious surface on the land. (c) Whether the act or omission of a person increases or decreases the need for the project or improves or degrades the water quality." [Section 12(b)]

Authorization for drains. Currently, the drain code authorizes drain projects whenever they "shall be conducive to the public health, convenience and welfare." More specifically, the current drain code allows all of the following by petition under the provisions of the act "whenever . . . conducive to the public health, convenience and welfare":

** new drains ("including branches") may be "located, established, constructed, and maintained";

** existing drains, creeks, rivers and watercourses ("and their branches, or tributaries") may be "cleaned out, straightened, widened, deepened, extended, consolidated, relocated, tiled, connected and relocated along a highway";

** structures or mechanical devices, and pumping equipment ("necessary to assist or relieve" the drain's flow), may be provided for drains that will properly purify or improve the drain's flow; or

** one or more branches may be added to drains. [Section 2]

The bill would eliminate this language and instead allow drains to be "established, constructed, maintained, and improved consistent with" the bill's provisions. [Section 3(1)] The bill also would replace the language referring to "public health, convenience, and welfare" throughout the drain code with the phrase "public health, convenience, or welfare." The bill would define a number of terms in addition to "benefit": "drain," "project," "county drain," "intercounty drain," "improvement," "maintenance," "drainage district," and "landowner," thereby potentially broadening determinations of "necessity" (which is not defined in the current code or in the bill) by boards of determination.

A "drain" would mean any of the following if established under the drain code: (a) the main stream or trunk and all tributaries or branches of a creek or river; (b) a watercourse or ditch, either open or closed; (c) a covered drain; (d) a sanitary or a combined sanitary and storm sewer or storm sewer or conduit; (e) a structure or mechanical device to purify the flow of a drain; (f) pumping equipment necessary to assist or relieve the flow of a drain; and (g) any levee, dike, or barrier for drainage or to purify the flow of a drain. "Drain" would not include any dam and

connected flowage rights used for the generation of power by a public utility regulated by the Public Service Commission. A "project" would mean "work undertaken as a result of a petition and order of necessity or undertaken as maintenance on a drain" under the bill.

Requirements on drain commissioners, drainage boards, and the director of agriculture. Each drain commissioner, each drainage board, and the director of the Department of Agriculture would be required to do all of the following:

- (1) Protect water quality, headwaters, and tributaries.
- (2) Avoid, minimize, and mitigate impacts of new drains, improvements, and maintenance on land or interests in land, including (but not limited to) easements owned for preservation or conservation purposes by a public corporation or private nonprofit organization.
- (3) Incorporate flow patterns into criteria for drain design and storm water management.
- (4) Make on-site retention of storm water a priority.
- (5) Use applicable "best management practices" drafted and adopted jointly by the Department of Agriculture and the Department of Environmental Quality. [Section 3(2)]

Preservation of existing drains; easements and rights-of-way. The bill would rewrite current language protecting existing drains, easements, and rights-of-way. The bill also would add a new provision specifying that unless the easement or right-of-way provided otherwise, the easement or right-of-way would be considered to include sufficient ground on each side of the center line of the drain for the deposit of excavations from the drain in addition to any land that might be specified in the writing. [Section 6]

A release of right-of-way would have to describe the land to be conveyed and would have to be signed and acknowledged by the person having the right to convey. Such a conveyance would be sufficient under the bill. The bill would specify that all releases for rights-of-way would be considered to include sufficient ground on each side of the center line of the drain for the deposit of the excavations from the drain. If the landowner were married, it would not be necessary for his or her spouse to sign the release of right-of-way unless he or she had an interest in the land other than "an inchoate right of dower." If a portion of a drain was located within a roadway or public place, a resolution (granting leave to construct the drain and designating the place to be crossed by the drain) of the roadway authority or the governing body having jurisdiction over the public place would be a sufficient release of the right-of-way under the bill. A drain could be laid within or across a roadway right-of-way if the drain commissioner or drainage board obtained a permit from the roadway authority.

Statutory authority to acquire land for drains. The bill would specify that for the purposes of the drain code, a drain commissioner or drainage board could acquire property or a property interest -- including, but not limited to, land, easements, and rights of way -- by gift, grant, dedication, purchase, or condemnation under the Uniform Condemnation Procedures Act. [Section

7(1)] If the federal government participated in a drain project, it could acquire property or a property interest for the project under applicable federal law. The cost for the federal government to acquire the property or a property interest would be considered a part of the cost of the project as if it had been acquired by the drain commissioner or drainage board unless the drain commissioner or drainage board had contracted otherwise with the federal government under section 431 of the bill. [Section 7(2)]

Office of drain commissioner. The bill would make a number of changes or additions to the chapter of the code dealing with county drain commissioners (chapter 2). Among other things, the bill would:

** on January 1, 2000, establish or re-establish the elected office of county drain commissioner in any county that does not have such an office [section 21(1)];

** increase the amount of the individual surety bond for a drain commissioner from the current \$5,000 to \$100,000 [section 21(2)], and increase the amount of the individual bond for a deputy drain commissioner from the current maximum of \$5,000 to a maximum of \$100,000 [section 24(2)];

** to the extent authorized by the drain commissioner, allow deputy drain commissioners to execute the powers and duties of a drain commissioner [section 24(2)]

** delete the requirement that the deputy drain commissioner make monthly and annual reports to the drain commissioner of all work performed by the deputy drain commissioner [section 26];

** require that, at the expense of the county and subject to county appropriations, the office of drain commissioner be furnished with a specified list of supplies ("books, blanks, documents, stationery, and office supplies"), equipment ("office equipment necessary to make profiles, blueprints, and specifications in any drainage district, word processing equipment, and mapping and assessing equipment"), and facilities ("space and facilities to file, preserve, and retain field notes, blueprints, profiles, estimates, and all other records") necessary for the drain commissioner to fulfill his or her duties under the drain code and under any other laws or regulations specifying duties to be performed by the drain commissioner (currently, the drain code authorizes and requires county clerks, or the county board of auditors, "to procure, at the expense of their respective counties, the necessary books, blanks, and stationery for the use" of the drain commissioner," requires the county board of supervisors to furnish the office of the drain commissioner at the expense of the county, and requires the county to furnish the drain commissioner with "all necessary books and papers for use in the survey, and such office equipment as shall be necessary in making profiles, blueprints and specifications in any drainage district") [section 27(1)];

** delete the requirement that the drain commissioner remain in his or her office at least one day a week, and paint that day on his or her door and print it on his or her stationery [section 27(1)];

** keep the requirement that the office of the drain commissioner be maintained at the county seat, but add that, alternatively, the office could be maintained "at facilities outside the county seat where other county officers [were] located" [section 27(2)];

** add a requirement that drain commissioners receive fringe benefits, in addition to an annual salary, as determined by the county board of commissioners (unless the county had a county officers compensation commission, in which case the commission would determine the drain commissioner's compensation), and prohibit decreasing a drain commissioner's fringe benefits during his or her term of office to a greater extent than the fringe benefits of elected county officials in general were decreased [section 28(1)];

** prohibit a drain commissioner's salary from being decreased during successive terms of office of that drain commissioner (in addition to the current prohibition against decreasing a drain commissioner's salary during his or her term of office) [section 28(1)];

** require the drain commissioner's office to furnish to any person ("who may so desire") documents as might be required to implement the act's procedures (currently, the drain commissioner is required to "furnish upon request blank applications or petitions to any person who may desire to file the same under this act"), and authorize the drain commissioner to assist in the preparation of such documents "as may be required to implement the procedures of this act" [section 29];

** require drain commissioners to make a report to the county board of commissioners at its annual meeting in October of the drainage districts established and the drains established and constructed under his or her supervision during the year ending October 1, and submit to the board a full financial statement of each drainage district, only if the county board of commissioners requests such a report (currently, the drain commissioner is required to make such a report and submit the financial statement without a request from the county board); the bill would further specify that the reports were intended to be advisory and not a prerequisite to the spread of any special assessments under the act, and that failure to submit a report would not constitute a defect invalidating a drain proceeding or a special assessment [section 31];

** allow drain commissioners to review, inspect, and analyze construction or other activity by a municipality that may have a significant effect on the quantity or quality of water entering a drain or on the hydrology of a drain (the bill also would require municipalities to notify the drain commissioner if the municipality determined that construction or other activity it had the authority to approve might have a significant effect on a drain) [section 34(1)];

** require drain commissioners to review, and allow them to approve, all requests to discharge into, make a connection to, or construct a crossing of any established drain [section 34(2)];

** allow drain commissioners to propose, and the county board of commissioners to adopt, ordinances establishing schedules of fees "attendant" to the review, inspection, or analysis of proposed municipal construction that might significantly affect a drain or fees for the review or

inspection of any discharges, connections, or drain crossings, plus penalties for noncompliance [section 34(1) and (2)];

** allow drain commissioners to establish fees for other reviews and inspections required of them by county boards of commissioners or by other laws (including the Land Division Act, the Mobile Home Commission Act, and the Condominium Act), though such rules and schedules of fees could not take effect unless approved by the county board of commissioners [section 34(3)];

** disqualify drain commissioners who were required to apportion "benefits" (and therefore impose special drain assessments) under certain circumstances and require them instead to file a copy of a petition for drain work with the judge of probate of the county, along with a signed statement showing that the drain commissioner was disqualified to make the apportionment of benefits [section 35(1)];

Proposed process for new drains. The bill would create a new petition process, in place of the current application process, for establishing new drains. The basic process would be similar for both county drains and drain commissioners (Chapter 3) and for intercounty drains and drainage boards (Chapter 5).

1. *Petition for a new drain.* Currently, an application for a new drain must be signed by not less than 10 freeholders of the township(s) where the proposed drain or lands to be drained are located, and at least five of the signers must own land that would be subject to taxes to pay for the drain.

Under the bill, a petition (rather than an application) to establish a new drainage district and to establish and construct a new drain would have to be filed with the drain commissioner, and could be filed either by individual landowners or, if the proposed drain were necessary for public health, by a public corporation (generally defined in the bill to mean a state department or agency, including colleges and universities; an "authority" created by or pursuant to state law; junior colleges or community colleges; school districts; or municipalities). The petition would have to be signed by only five landowners (defined in the bill to mean "a person holding the most recent fee title or a land contract vendee's interest in the land as shown by the records of the county register of deeds") in the proposed drainage district whose lands would be liable to assessment for benefits (or at least 50 percent of the landowners if there were fewer than five landowners whose lands would be liable for assessment) or could be signed by landowners representing 25 percent of the land area liable for assessment. An "order of necessity" (see below) would be considered a determination of the sufficiency of a petition. [Section 51(1) and (2)]

The petition for a county drain, in addition to requesting the establishment of a drainage district and the establishment and construction of a drain, would have to set forth the reasons for the request. [Section 51(3)] In the case of intercounty drains, the petition would have to describe the nature and extent of the water problem to be remedied, in addition to setting forth the reasons for the request. [Section 101(3)] A petition also could request that measures be undertaken that were intended both (a) to enhance or improve the natural resource values (not defined in the bill)

of the proposed drain and (b) to provide benefit (defined in the bill; see above) to the designed function, longevity, or hydraulic capacity of the proposed drain. [Section 51(3)] Finally, the petition also could propose a location and route for the proposed drain (currently, an application for a drain must tentatively describe the location and route of the proposed drain). [Section 51(3)]

2. *Petitions and tax delinquency.* A petition would have to be accompanied by a description or tax parcel number of the land in the proposed district owned by each person signing the petition and by a certificate of the county treasurer regarding payment of taxes and special assessments against the lands. If any petition signer's lands were tax delinquent for the preceding three years, his or her signature would not be counted, and if it appeared that at least a third of the lands in the proposed drainage district were tax delinquent, the drain commissioner would not be allowed to take further action on the petition. [Section 51(4)]

3. *Petitions and cash deposits.* The bill would allow a county board of commissioners, by resolution, to instruct the drain commissioner to refuse a petition unless a cash deposit accompanied the petition. The cash deposit could not exceed the drain commissioner's reasonable estimate of how much it would cost to comply with the appointment of the board of determination process in section 52 and the hearing of necessity process in section 53. If a drain were constructed, the cash deposit would be returned to the depositor(s). If a drain were not constructed because the petition was deemed "impractical" (presumably by the drain commissioner) or "not necessary" (that is, to "the public health, safety, or convenience," as determined by the board of determination), costs incurred, including attorney fees, would be paid from the deposit. If costs exceeded the cash deposit, or no cash deposit had been required, the costs would be paid from the county's general fund. [Section 51(6) and (7)]

4. *Appointment of a board of determination.* The drain commissioner could appoint a "board of determination" (that is, a board to determine whether the drain were "necessary and conducive to the public health, convenience, or welfare," section 53(2)(c)) of three "disinterested" (not defined in the bill) property owners and an alternate "as soon as practicable," but at least no later than 60 days after the petition were filed. [Section 52(1)]

If a drain commissioner were disqualified or chose not to appoint the board of determination, the drain commissioner would have to immediately file a copy of the petition, along with a statement explaining why he or she were disqualified or chose not to appoint a board of determination, with the chairperson of the county board of commissioners. If the county board chairperson were not "privately interested", he or she would be required to appoint the board of determination as soon as practicable after receiving the copy of the petition and the drain commissioner's signed statement, and to notify the drain commissioner of the names and addresses of the people appointed. If the county board chairperson had a private interest in the proceedings, the finance committee of the county board of commissioners would be required to appoint the board of determination. [Section 52(1)]

5. *Boards of determination.* Each member of the three-member board of determination would have to be a landowner in and resident of the county, but could not be a resident of a township, city, or village that would be affected by the proposed drain ("affected by the drain"),

a member of the county board of commissioners, or the spouse, parent, child or sibling of the drain commissioner or of a county board member. If an appointed board of determination member failed or refused to serve or were disqualified, a successor would be appointed by the original appointing authority (i.e., the drain commissioner, the chair of the county board of commissioners, or the county board finance committee). [Section 52(2) and (3)] Board of determination members would receive "per diem" compensation, mileage, and expenses equal to the amount paid members of the county board of commissioners; in counties where county board members were not paid on a per diem basis, the drain commissioner would fix the compensation, mileage, and expenses of members of the board of determination. [Section 52(4)]

6. *Hearing of the board of determination on the public health, convenience, or welfare "necessity" of the proposed drain.* A hearing of the board of determination would be called (presumably by the drain commissioner), either within the (proposed) drainage district (at a "convenient place to be designated by the drain commissioner") or outside the (proposed) drainage district (either at "a suitable public building anywhere within the city, village, or township in which the drain [was] located or, if there [were] no such building, at any suitable public building near the drainage district"). [Section 52(3)]

The drain commissioner would arrange for a certified court reporter, stenomask reporter, or court recorder to attend each hearing of the board of determination and take a verbatim record of the proceedings. [Section 52(7)] (This record would be what was used if a circuit court review of a board of determination order were requested under section 54(5). See 16 below.)

The board of determination would be required to do all of the following:

- ** meet at the time and place specified by the notice (see 7 below) [section 52(8)];
- ** act by a majority vote [section 52(8)];
- ** elect a chairperson (if the drain commissioner or deputy drain commissioner did not choose to serve as nonvoting chairperson) and secretary [section 53(1)(a) and (b)];
- ** receive testimony and evidence (a) on whether the (proposed) drain were necessary and conducive (not defined in the bill) to the public health, convenience, or welfare (not defined in the bill) and (b) as to the extent of the land proposed to be served by the drain [section 51(1)(c) and (d)];
- ** determine whether or not the proposed drain were necessary and conducive to public health, convenience, or welfare (section 51(1)(e));
- ** preliminarily determine whether the drain would serve lands in only one county [section 51(1)(f)]; and
- ** designate a preliminary name for the (proposed) drain and drainage district [section 51(1)(g)].

The bill would specifically prohibit the board of determination from determining the scope of the work to be undertaken, explicitly reserving the scope of the work to the sole authority of the drain commissioner in consultation with his or her engineers or other qualified professionals. (Section 53(6))

7. *Notice of the hearing of the board of determination.* Notice of the hearing of the board of determination would have to be given in accordance with requirements set out in Section 8 of Chapter 1 of the bill. That is, notice would have to be sent at least 14 days before the date of the board of determination hearing by first-class mail to all landowners subject to assessment other than public corporations. Public corporations would have to be notified either personally or by first-class mail (for state departments, the notice would be sent to the head of the department or to the principal executive officer if the state department were headed by a commission). [Section 8(2)] Notice of a board of determination hearing also would have to be posted in the drain commissioner's office and in a newspaper of general circulation in the drainage district. The notice would have to include the time, date, place, and purpose of the meeting, and the name, address, and telephone number of the drain commissioner. [Section 8(4) and (5)] The notice would have to explain the consequence of any of the decision made at the hearing and to specify any appeal period for the action taken. [Section 8(5)]

8. *Board of determination dismissal of a petition restriction on refiling.* If the board of determination found that the drain were not necessary and conducive to the public health, convenience, or welfare, it would be required to file an order dismissing the petition with the drain commissioner. The costs for the proceedings thus far would be paid either from the cash deposit (if one had been required) or the county general fund. A new petition for the (proposed) drain then could not be filed within one year after this determination. [Section 53(2)]

9. *Referral to intercounty drain process.* If the board of determination found that the (proposed) drain would serve lands in more than one county, it would be required to file an order to that effect and to refer the petition to the drain commissioner for the intercounty drain process under Chapter 5. [Section 53(3)]

10. *Adjournment of the board of determination for additional information from the drain commissioner.* If the board of determination determined that additional information were needed to determine either (a) whether the (proposed) drain were necessary and conducive to the public health, convenience, or welfare, or (b) the boundaries of the (proposed) drainage district, the board could adjourn the meeting to allow the drain commissioner to gather "such additional information." When the drain commissioner had gathered the additional information, he or she would call the board of determination to reconvene, and give notice of the reconvening of the board of determination in accordance with the bill's requirements. [Section 53(4) and (5)]

11. *Reconvened hearing of a board of determination.* At the reconvened hearing of the board of determination, the drain commissioner would be required to present the additional information, which the board would consider, along with "testimony offered" (the bill does not specify when), before determining by majority vote whether the (proposed) drain were necessary and conducive to the public health, convenience, or welfare. [Section 53(6)]

12. *Board of determination "order of necessity."* If the board of determination found by majority vote the (proposed) drain to be necessary and conducive to the public health, convenience, or welfare, it would have to make an "order of necessity" to that effect and file the order with the drain commissioner. [Section 54(1)]

13. *Board of determination "finding" that a drain were necessary for the protection of public health.* If the board issued an order of necessity, it also would be required to do all of the following:

** find whether all or part of the costs of construction of the proposed drain or project (defined in the bill to mean "work undertaken as a result of petition and an order of necessity or undertaken as maintenance on a drain") were necessary for the protection of the public health,

** set forth that finding in the order of necessity, and

** identify any public corporations receiving benefits at large for public health.

If the board of determination found that the whole cost, except that to be levied against roadways for highway benefit, were necessary for the public health, the cost would be levied against the public corporations at large. It then would not be necessary, in a subsequent order (presumably by the board of determination) or notice to describe or refer to land in or comprising the (proposed) drainage district. [Section 54(2)] Within 14 days after an order of necessity were filed with the drain commissioner, he or she would be required to notify each public corporation identified in the order as receiving benefits at large (and thus subject to assessment) that the public corporation was liable to pay a percent of the cost of construction of the drain ("by reason of benefits for public health"). [Section 54(4)]

14. *Opportunity for public corporations to appeal order of necessity findings in the probate court.* Within 21 days after the drain commissioner mailed the notice by first-class mail to a public corporation that it was liable to pay a percent of the cost of construction of the (proposed) drain, the governing body of the public corporation could to appeal the finding to the probate court having jurisdiction in the county in which the territory of the public corporation was located. [Section 54(4)]

15. *Informational meeting convened by drain commissioner.* If the board of determination determined that the (proposed) drain were necessary and conducive to the public health, convenience, or welfare, the drain commissioner could convene a meeting to provide information (presumably to the drain commissioner) or to "elicit information and testimony with regards to the route and type of construction and estimate of cost of the the drain to assist the drain commissioner in determining the scope of the drain project to be undertaken by the commissioner." The bill would explicitly state that the meeting was for informational purposes only. [Section 54(3)]

16. *Opportunity for circuit court review of the lawfulness of the board of determination's order.* After the board of determination filed either an order dismissing a petition or and order of necessity, a public corporation or other person aggrieved by the order could ask the circuit court to review the order to determine whether the order were authorized by law and supported by substantial, material, and competent evidence on the whole record. The public corporation or other person asking for the review would have to do so within 14 days after the order were filed. The circuit court review would be made only on the record presented to the board of determination; no new testimony or information could be offered except for purposes of claim of fraud or error of law. [Section 54(5)]

17. *First order of determination.* After receiving the order of necessity from the board of determination, the drain commission would have to execute a "first order of determination" and file it in his or her office. The first order of determination would have to do all of the following ("consistent with the order of necessity"):

** establish the drainage district and give it a name or number;

** describe the drainage district by its boundaries or by a description of all the land that would be benefitted by the construction of the drain and would be subject to drain assessment (including the counties, townships, cities, and villages, roadways, and parcels of land identified by legal description or tax code parcel number); and

** describe the beginning, route, end ("terminus") [presumably of the proposed drain], and type and estimated cost of proposed construction. [Section 55]

If an appeal were filed in probate or circuit court, the drain commissioner would satisfy the requirements of this section of the bill after the appeals process had ended; otherwise, if there were no appeals, the drain commissioner would satisfy the requirements of this section after the appeals periods (of 14 or 21 days) had ended. [Section 55]

18. *Final engineering plans.* After the drain commissioner entered the first order of determination, the engineer would be required to prepare final plans, specifications, and an estimate of costs of the proposed drain. [Section 57(1)]

19. *Description of the lands, rights-of-way needed for the drain.* The drain commissioner would have to secure, from the engineer or a surveyor, a description of the lands or rights-of-way needed for the proposed drain. [Section 57(1)]

20. *Evaluation of the effect of a proposed drain project on natural resources; NREPA permits.* The drain commissioner would have to secure, from an engineer or other qualified professional, an evaluation of the effects of the proposed drain on natural resources that identified appropriate practical measures to minimize adverse effects. The drain commissioner also would have to obtain any permits required under the Natural Resources and Environmental Protections Act (see, e.g., section 34[3]). [Section 57(1) and (2)]

21. *Drain commissioner approval of drain route, determination of alternate route.* Although the drain commissioner would be required to adopt a route for a proposed drain when executing the "first order of determination," the bill would specify that in approving the route of the drain as furnished by the engineer, the drain commissioner would not be limited to the route described in the petition or in the first order of determination, if the new route (presumably adopted by the drain commissioner) were "more efficient and serviceable" (not defined in the bill). [Section 57(1)]

22. *Engineering analysis.* [Section 56] If the board of determination determined that a proposed drain were necessary and conducive to public health, convenience, or welfare (and, presumably, issued the order of necessity), the drain commissioner would be required to ("promptly") secure the services of an engineer (selected on the basis of his or her qualification) and arrange for the preparation of an engineering analysis. The engineering analysis would have to be done by the engineer (except for the description of the drainage district and, apparently, the natural resources impact evaluation) and would have to describe a (proposed) drain and drainage district "to address the reasons for a drain and drainage district set forth in the petition and in the evidence and testimony received at the hearing of the board of determination." The engineering analysis would have to include all of the following:

** [a] hydrologic and hydraulic report that included, but was not limited to, a discussion of the present drainage characteristics and the impacts of the proposed project on flooding characteristics downstream of the drainage district;

** [a] recommended route or course, and an existing and proposed profile (not defined in the bill) of the recommended route and course;

** [a] description of the recommended work, including crossings, structures, and facilities;

** a description of the drainage district (which could be done by a surveyor rather than the engineer) by its boundaries of streets and highways or tracts or parcels of land, or by a description of all tracts or all parcels of land;

- ** an estimate of the cost of construction of the engineer's recommendation;
- ** a description of alternatives considered;
- ** an analysis of the effectiveness of the proposed project to address the conditions it was intended to remedy, create, or enhance;
- ** an evaluation of the impacts of the project on natural resources that identified appropriate practical measures to minimize adverse effects (Note: though the evaluation is in a list of required content for the engineering analysis, the bill also says that "if such an evaluation [were] prepared, it need not be part of the engineering analysis and may instead be prepared by the commissioner or another qualified professional"); and
- ** any other information requested by the commissioner.

23. *Drain commissioner order of rejection (of a petition)*. If, after receiving the plans, specification[s], estimate of cost, and descriptions of the lands or rights-of-way needed for a proposed drain, the drain commissioner determined that the project was not "practical" (not defined in the bill), the drain commissioner would have to notify the landowners in the district by first-class mail of his or her intent to reject the petition. (Note: The bill would not require a drain commissioner to reject a petition at the point he or she found it "not practical.") The notice would have to specify the reasons for the proposed rejection, and a time, date, and place for a public hearing to hear objections to the rejection of the petition.

At the public hearing, the drain commissioner would have to elicit testimony and evidence with regards to the proposed rejection. After receiving testimony, the drain commissioner would have to determine whether or not the petition should be rejected. If the project were determined (by the drain commissioner) not to be practical, he or she would have to enter an "order of rejection" and apportion all costs incurred to the district as if the project had been built. Unlike a board of determination's dismissal of a petition [section 53(2)], a (drain commissioner's) determination to reject a petition would not limit the right to file another petition. (Note: Although the actual language of the bill in this subsection refers to "the rejection" being determined to be "practical," an earlier proposed drain code revision, House Bill 4337 of 1997, suggests this interpretation of the intent of this section.) [57(5)]

24. *Public hearing on the engineering analysis and proposed project*. When the engineering analysis was completed, the drain commissioner would have to file a copy of the analysis in his or her office and convene a public hearing to present the analysis and the proposed project. Notice of the public hearing would have to be given in accord with the bill's notification requirements in section 8, and would have to give all of the following information:

- ** a general description of the drainage district;
- ** the name and number of the drainage district;

** a general map of the drainage district as described in the engineering analysis or a general description of the boundaries of that drainage district by municipal boundaries, roadways, or parcels or tracts of land; and

** a general description of the route and type of construction (of the drain) and the estimated cost of the engineer's recommendation. [Section 58(1)]

25. *Opportunity for circuit court review of drain commissioner's discretion.* A person aggrieved by the project selected by the drain commissioner could seek a review in the circuit court within 14 days of the public hearing called by the drain commissioner to present the engineering analysis and the proposed project. The court would have to review the entire record and the review would be limited to a determination of whether the drain commissioner abused his or her discretion in making a determination of the project selected to be undertaken, based on the whole record. [Section 58(2)]

26. *Acquisition of property by drain commissioner.* Unless the drain commissioner determined to reject the petition, he or she would proceed to acquire property for the (proposed) drain. [Section 59(1)]

27. *Apportionment of special assessments, letting of contracts, levying and collection of special assessments for drain projects.* The apportionment and review of benefits (in effect, the apportionment of who would pay, and what proportion, of the special assessments for the drain project), the letting of contracts, and the levy and collection of drain special assessments for the drain would be carried out under chapters 7 ("Apportionment and Review"), 9 ("Letting of Contracts"), and 11 ("Levy and Collection of Special Assessments") of the bill. [Section 59(2)]

28. *Drain commissioner's final order of determination, amendment by drain commissioner.* After the drain commissioner (or drainage board) acquired rights-of-way or easements for the drain project, he or she would make the "final order of determination" establishing the drain. The drain commissioner could amend the final order of determination to change the boundaries of the drainage district or to change the name or number of the drain, either at his or her own discretion (if it were his or her "opinion that it [was] to the best interest of all concerned") or upon petition by at least 5 landowners whose land would be traversed by the drain.

Repealers. The bill would repeal chapters 4 ("County Drains"), 6 ("Intercounty Drains"), 14 ("Railroads"), 15 ("Dams in Drains"), 16 ("Special County Commissioner"), and 19 ("Consolidated Districts"), as well as 70 other sections of the Drain Code of 1956.

The following chart shows the current chapter headings in the Drain Code of 1956 and the changes proposed by the bill:

Chapter	Drain Code of 1956	House Bill 4803 as introduced
1	Drains.	<i>General Provisions</i>
2	County Drain Commissioner.	County Drain Commissioner
3	County Drainage Districts.	<i>County drainage districts and county drains</i>
4	County Drains.	[repeal]
5	Intercounty Drainage Districts.	<i>Intercounty drainage districts and intercounty drains</i>
6	Intercounty Drains.	[repeal]
7	Apportionment and Review.	Apportionment and Review
8	Cleaning, Widening, Deepening, Straightening and Extending Drains.	<i>Maintaining, improving, and consolidating drains</i>
9	Letting of Contracts.	Letting of contracts
10	Inspection and Approval of Construction and Payment for the Drain.	Inspection and approval of construction and payment for the drain
11	Levy and Collection of Drain Taxes.	<i>Levy and collection of special assessments</i>
12	Revolving Funds for Drains.	Revolving funds for drains
13	Highways.	<i>Roadways, railroads, utilities, and other structures</i>
14	Railroads.	[Repeal]
15	Dams in Drains.	[Repeal]
16	Special County Commissioner.	[Repeal]
17	Abandoned and Vacated Drains -- Disposal of Funds.	Abandoned and vacated drains -- disposal of funds
18	Obstructions in Drains; Sewage; Miscellaneous Provisions.	Obstructions in drains; sewage; miscellaneous provisions
19	Consolidated Districts.	[Repeal]
20	Intracounty Drains; Public Corporations.	<i>County drains; public corporations</i>
21	Intercounty Drains; Public Corporations.	Intercounty drains; public corporations
22	Water Management. Districts and Subdistricts.	<i>Watershed management</i>
23	Penalties.	<i>Sanctions</i>
24	Repeals and Saving Clauses.	Repeals and saving clauses
25	Alternate Procedures	Alternate Procedures

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.