



House Office Building, 9 South  
Lansing, Michigan 48909  
Phone: 517/373-6466

## DRAIN CODE WATERSHED MANAGEMENT

**House Bill 5359**

**Sponsor: Rep. Stephen Ehardt**

**Committee: Agriculture and Resource  
Management**

**Complete to 3-1-00**

### **A SUMMARY OF HOUSE BILL 5359 AS INTRODUCED 2-15-00**

The bill would rewrite the water management chapter (Chapter 22) and the penalties chapter (Chapter 23, which would be renamed “Sanctions” instead of “Penalties”) of the Drain Code of 1956.

Penalties. The bill would rewrite two sections (Sections 601 and 602) currently in the “Penalties” chapter (Chapter 23) of the Drain Code, and renumber them (as Sections 615 and 616). [Note: House Bill 4803, which basically would rewrite the Drain Code and which has passed the House, also rewrote Sections 601 and 601 and renumbered them. It also repealed Section 432, which makes it a misdemeanor to obstruct a drain commissioner, drainage board, or their agents, and rewrote it as Section 617 of the sanctions chapter.]

Repealers. The bill would repeal Sections 551 through 553 of the Drain Code, which currently provide definitions for the watershed management chapter (Section 551) and describe the petition process (Section 552) and the water management commission (Section 553).

Scope of chapter. Chapter 22 of the Drain Code currently deals with the management of water for flood control (that is, the management of the quantity of water), based on whether such management is “necessary for the public health, safety, or welfare.” The bill would change from the management of water to the management of *watersheds*, and basing such management not only on the protection of “public health or welfare” (though not public safety) but also on the protection and “rehabilitation” of “the waters of the district” (though “rehabilitation” is not defined in the bill). The bill would define “watershed” to mean “a geographic area of any size from which water seeks a common outlet, including, but not limited to, a creekshed, catchment area, drainage basin, drainage district, or river basin.”

Currently, the act also exempts “[i]n operating under the terms of this chapter, the several boards and officials” from the provisions of the other chapters of the Drain Code. The bill would rewrite this provision to say that a watershed management commission, its advisory board, or executive committee would not be governed by the procedural or other provisions in the Drain Code except as otherwise specified. However, a watershed management commission could incorporate (“by recital or by references”) any provisions from other chapters of the code into any of its orders or resolutions.

House Bill 5359 (3-1-00)

Petitions. Currently, a Chapter 22 petition is for the establishment of a water management district to undertake a project for the purpose of flood control or drainage. Under the bill, a petition would be to initiate procedures to establish a watershed management district and develop a watershed management plan.

Under the bill, a watershed management commission also could receive a petition to supplement, amend, or expand a watershed management plan. If a commission received such a petition, the commission would proceed as it would immediately following the order designating the water management district.

Petition signatures. Currently, a petition must be signed by three or more public corporations if the watershed management district is for a proposed project in three or more contiguous counties. In a district with eight or more counties, the petition must be signed by three or more counties. (The act defines “public corporation” to include the state, counties, cities, villages, townships, metropolitan districts, and “authorities” created by or under state law.)

The bill would drop the requirement that the counties be contiguous and would reduce the number of signatures required on petitions. Under the bill, if a district lay wholly within one county, the number of petition signatures would be reduced to “at least” one public corporation lying wholly or partly within the county and the district. If a district lay wholly or partly in two or more counties, a petition would have to be signed by at least two public corporations lying wholly or partly in the counties and in the district. The bill would define “public corporation” to mean a county, township, city, or village. It would not include the state, metropolitan districts, or authorities created by or under state law.

Filing petitions. Currently, Chapter 22 petitions are filed with the director of the Department of Agriculture. Under the bill, petitions would be filed with the county board of commissioners in a county in which all or a portion of the proposed watershed management district would be “located and established” (which is language used in the other chapters of the Drain Code with regard to county and intercounty drains).

Determination of petition sufficiency. Currently, the director of the Department of Agriculture reviews petitions for sufficiency (within 30 days of receipt), the watershed management commission “tentatively” determines the sufficiency of a petition, and the watershed management board makes a “preliminary” determination of the sufficiency of a petition. Under the bill, the county board of commissioners would review petitions for sufficiency and would have to do so within 42 days after receipt of a petition.

Cash deposit. Currently, the code does not require any deposit with a petition. The bill would require petition filers to also file a cash deposit with the county board of commissioners great enough to pay the costs, as determined by the county board of commissioners, to cover notification of each affected public corporation and publication both of notification for the first hearing and of the first hearing itself.

Water management commissions. Currently, Chapter 22 says that “[there is created for each water management district petitioned for under the provisions of this chapter, a water management commission.” Under the bill, if a county board of commissioners found that a petition were sufficient, a watershed management commission would be established for the district and would function as the governing body of the district.

Currently, a water management commission is required to meet annually to elect a member of the water management board, approve assessments for operation and maintenance, approve a work plan for the water management district for the next year, and conduct any other business within its power. The commission also can be reconvened at the call of its chair, at the request of any two commission members, or at the request of the water management board.

Under the bill, a water management commission would be required to review and re-evaluate the watershed management plan and its implementation at least every five years, and would have to seek the input and recommendations of the watershed management advisory board in doing this. (See below.)

The bill would add a new provision that would explicitly state that a watershed management commission, its advisory board, or a watershed commission executive committee would not be authorized to perform a duty specifically delegated to a county drain commissioner or to an intercounty drainage board under the Drain Code.

Commission membership. A water management commission currently consists of the director (or a deputy director) of the Department of Agriculture, the drain commissioner and a county representative (appointed by the county board of “supervisors”) from each of the counties involved in the water management district, a representative from each city or village of over 5,000 people in the district (with additional representatives, up to a maximum of 10, for larger cities and villages), and one representative of the soil conservation districts (appointed by the conservation districts) in the district.

Under the bill, the director of the Department of Agriculture would be a watershed management commission member only if the district involved more than one county. Drain commissioners from each of the counties involved in the district would still be members of the commission, but instead of a county representative appointed by the county board of commissioners, the chief elected official (or an elected official designated by the chief elected official) of each county in the district would be a member of the commission. The directors of the Departments of Natural Resources and of Environmental Quality would be added as non-voting members, while city, village, and conservation district representatives would be eliminated.

Currently, the water management board (appointed by the water management commission) appoints one of the county treasurers from a county in the water management district to serve as the water management district treasurer. Under the bill, the watershed management commission would designate one of the drain commissioners in the watershed management district to serve as the district’s treasurer.

Notice of first meeting. Currently, the director of the Department of Agriculture not only reviews the sufficiency of petitions filed with him or her, he or she also makes a preliminary finding of the counties he or she believes should be assessed and mails written notice of the first meeting of the water management commission to a list of specified parties. Notice must be mailed to the county clerk and drain commissioner of each of the counties involved in the water management district, to the highway agencies with jurisdiction over highways, roads, and streets in the district; to the secretary of each soil conservation district in the water management district; and to the city or village clerks of each city or village in the water management district with a population of at least 5,000. The notice also must request that each public corporation appoint a representative to the water management commission, and state the time and place of the first meeting (which must be held not less than 30 days nor more than 45 days after the mailing of the notice).

Under the bill, the county board of commissioners would have 28 days after determining that a petition were sufficient to both make a preliminary finding of the public corporations subject to assessments and to provide notice by first-class mail of the first meeting of the watershed management commission to a different list of parties. Notice would have to go to (1) the county clerk, drain commissioner, and chairperson of the county road commission of each county subject to assessment; the chairperson of each conservation district in the proposed watershed management district; the clerk of each city, village, and township with land in the proposed watershed management district; the directors of the Departments of Agriculture, Environmental Quality, Natural Resources, and Transportation; and the chairperson of any watershed council established under the Natural Resources and Environmental Protection Act. The notice would have to include a copy of the petition as well as request that each notified public corporation designate a representative to the watershed management commission, and give the time and place of the first meeting (which would take place at least 42 days but not more than 63 days after the notice were mailed).

Additionally, under the bill the county board of commissioners also would have to publish notice of the watershed management commission's first meeting in a newspaper of general circulation in the proposed district, and notify anyone who had made a written request to be notified of watershed management district petitions.

First meeting of a watershed management commission, public hearing. At its first meeting, the water management commission makes a "tentative determination" of the petition's sufficiency and "accuracy" and of the "*necessity and practicability*" of the proposed project. If the commission finds the petition not sufficient, it can enter an order amending or supplementing the petition. If the commission finds that the proposed project is not "necessary *or* practicable" (emphasis added), it orders the petition dismissed, and no new petition can be resubmitted for one year.

Under the bill, the watershed management commission would have to "tentatively" determine the "*practicality*" (instead of the sufficiency) of the petition and whether a district (instead of the proposed project) were "warranted to protect the public health or welfare or to protect and rehabilitate the waters of the district." If the commission found that the petition weren't "practical," it could return the petition for supplementation and refinement. If the commission determined ("at any time") that the watershed management district is not "warranted to protect the public health or

welfare or to protect and rehabilitate the waters of the district,” the commission would have to order the petition dismissed, and the same (or substantially the same) petition couldn’t be filed for one year.

Currently, if a water management commission finds that the (proposed) project is “necessary and practicable,” it selects a name for the water management district, elects [or, in other places in the chapter, “appoints”] a water management board, makes a “tentative determination” of the public corporations to be assessed for the cost of the project. In addition, the commission procures “preliminary plans” (that include an estimate of the costs of the [proposed] project, its benefits to the public corporations in the district, and each public corporation’s contribution to the conditions making the proposed project necessary) and, based on these plans, makes a “tentative determination” of the percentage of costs to be assigned to each public corporation in the district.

The commission then transmits, to the water management board, a written copy of its tentative apportionment of costs, the petition, and the preliminary plan, and the board, after notification, holds a meeting to hear objections to (a) the proposed project, (b) the petition for the project, and (c) the commission’s tentative apportionment of costs.

Under the bill, if the watershed management commission “tentatively” found that the petition (not the project) were “practical” and that the watershed management district were “warranted” (instead of that the proposed project were necessary and practicable), it would select a name for the district, make a tentative determination of the public corporations to be assessed, and fix a time, date, and place to hear objections to the establishment of the watershed management district and public corporations subject to assessment. In addition, the bill would add a 42-day deadline for holding the hearing once the commission made its “tentative” determination of the public corporations to be assessed. The commission also would have to give notice of the hearing.

Currently, after the water management board holds its meeting to hear objections, it issues a “*preliminary order of determination*.” Under the bill, after the hearing, the watershed management commission would determine whether the petition were practical and the district warranted, and, if so, the public corporations to be assessed. If the commission decided that the petition were practical and the district warranted, it would issue an “order designating the watershed management district,” and provide notification of the order. The notice would have to give a general description of the common outlet and the location of the district as shown by the order.

Weighted voting authority. The bill also would require a watershed management commission to establish a weighted “voting authority” at its first meeting, based on “a combination of the percentage of total population of the proposed district that resides in the public corporation represented by each member and the percentage of the total acreage in the proposed district that [lay] in the public corporation represented by each member.”

Appeals of orders designating a watershed management district. A public corporation aggrieved by the order designating the watershed management district would have up to 28 days after publication of notice of the order to file an appeal in the circuit court for the county where that public corporation was located.

Watershed management district executive committee. Currently, the water management commission appoints a watershed management board that is responsible for the operation and maintenance of water management district projects. Water management boards must annually prepare and submit to the water management commission a tentative budget, along with the percentage of costs proposed to be assessed against the public corporations in the water management district. Water management boards also can issue bonds for and on behalf of the water management district in anticipation of the collection of assessments and can pledge the full faith and credit of the water management district toward paying the principal and interest on such bonds.

Under the bill, after it issued an order designating a watershed management district, the watershed management commission could appoint a “watershed management district executive committee” to perform administrative and ministerial duties as directed by the commission and outlined in its bylaws.

Tentative scope of the watershed study. After issuing the order designating the watershed management district, the watershed management commission would be required to develop the “tentative scope” of the watershed study which would guide the development of the watershed management plan. (The bill would define “study” or “watershed study” to mean “the process by which the objectives of the petition or objectives identified by the commission [were] investigated and resolved, setting forth the watershed management plan.”)

The watershed study or the watershed plan could include one or more of a list of components, other than construction activities, specified in the bill. These include: (1) Preparation of plans; (2) problem assessment; (3) special studies; (4) water quality, water quality monitoring, or biological monitoring; (5) modeling; (6) data gathering; (7) education and education programs; (8) purchase of lands, acquisition of conservation or other easements or rights-of-way, or purchase of development rights; (9) development of ordinances and regulatory programs recommended for consideration by public corporations; (10) mapping; (11) publications; (12) testing; (13) hydrological engineering, analysis, and modeling; and (14) development and drafting of recommended management practices.

Watershed management advisory board. Currently, a water management commission can appoint any advisory committee it considers necessary. The bill would require the watershed management commission to appoint a “watershed management district advisory board” and specify that “[i]t is intended that the advisory board include members who [would] represent a balance of the interests existing in the district”. The bill specifies a list of agencies and bodies that the commission would be required to “invite” to appoint representatives to the advisory board. The bill also would allow the commission to “consider as members of the advisory board those persons or entities which were specified as part of the petition, and any other person or entity with an interest in the district” (“including, but not limited to, federal, state, county, and municipal agencies, regional planning agencies, property owners, and interest groups”).

The advisory board would further define the scope of the watershed study, conduct public meetings to gather input on the scope of the watershed study, and prepare recommendations for the

scope of the watershed study and forward the recommendations to the watershed management commission. The advisory board also would prepare a draft watershed management plan (see below).

First order of determination. The watershed management commission would have to convene when it received the watershed advisory board's recommendations in order to decide whether or not to "tentatively" adopt the scope of the watershed study. The commission also would have to hold a hearing for any objections to the proposed scope of the watershed study. After giving any objections "due consideration," the commission would be required to convene in order to finalize and adopt the scope of the watershed study, and "tentatively" apportion benefits in a "first order of determination."

Appeals of plan scope or benefit apportionment. "Interested parties" could appeal the scope of the plan or the apportionment of benefits to the circuit court in their county of residence within 21 days after the first order (of determination) had been issued. The watershed management commission could not proceed with the preparation of the watershed study while any appeals were pending.

The draft watershed management plan. After any appeals had been resolved, the watershed management commission would authorize the watershed advisory board to prepare the scope of the watershed study and would establish operating procedures for the advisory board to complete the watershed study and develop the draft (watershed management) plan. After entering the first order of determination, the watershed management commission could contract with "persons" to help the advisory board in preparing the draft watershed management plan and could hire employees.

The advisory board would be required to obtain public input on the draft watershed management plan through a public participation process that could include public information meetings, news releases, and "other activities." At a minimum, the advisory board would have to convene at least one public hearing to solicit comments on the draft watershed management plan, and would have to give "due consideration" to any recommendations submitted by landowners, public corporations, and other interested parties.

Public hearing on the draft plan. After completing the scope of the watershed study and preparing a draft watershed management plan, the advisory board would be required to submit its "report and recommendations" to the watershed management commission. If the commission "tentatively" adopted the draft watershed management plan, it would have to hold a public hearing to hear objections both to the draft plan and to the proposed apportionment of the costs to the public corporations of implementing the plan. At the public hearing, the commission would be required to receive testimony and evidence as to the "practicality" of the proposed draft watershed management plan. If the commission felt that additional information were needed before it could adopt a draft plan, it could adjourn for up to 63 days.

Final order of determination, final order of apportionment. After the public hearing to hear objections to the draft watershed management plan, the watershed management commission, by a majority vote, would be required to make a determination of the "practicality" of the draft plan,

establish the final apportionments to the public corporations to be assessed, and enter the “final order of determination” and the “final order of apportionment.”

County and intercounty drains. Currently, any intercounty drain (or any part of an intercounty drain) can be constructed, cleaned out, relocated, widened, deepened, straightened, tiled or otherwise improved when necessary for the public health as a part of any flood control project under Chapter 22 of the Drain Code.

Under the bill, if the watershed management plan (as set forth in the final order of determination) proposed the establishment, construction, maintenance or improvement of a county or intercounty drain, the proposed activity would be implemented under the appropriate provisions of the Drain Code and be subject to the jurisdiction of the respective county drain commissioner or intercounty drainage board. The watershed management commission could petition for work outlined in the plan, but only under Chapters 20 and 21 of the Drain Code.

Assessments. Currently, any assessments made under Chapter 22 must be based on the benefits to the public corporations in a water management district and on the extent to which the public corporation contributes to the conditions that make a flood control or drainage project necessary. (Though the state and counties can be assessed only on the drainage or prevention of flooding of state or county highways.) The act defines “benefit(s)” to mean “advantages resulting from a project to public corporations, the inhabitants of public corporations, and property within public corporations.” The term is limited to benefits which result from the drainage and control of water, and must include such factors as elimination of flood damage or water conditions which jeopardize the public health or safety, increase of the value or use of lands and property arising from improved drainage and elimination of floods, and the advantageous use to which water may be directed as a result of the project for agricultural, conservation, and recreational purposes. The act also allows water management boards to make any necessary additional assessments if an original assessment isn’t enough to pay the principal and interest on any bonds issued in anticipation of the collection of the original assessments. The act also exempts assessments made for flood control projects under Chapter 22, and taxes levied by public corporations to pay such assessments, from statutory or charter debt limitations.

The bill would say that “apportionment of benefits” under Chapter 22 would be based on benefits to the public corporations to be assessed, the extent to which the public corporation both contributed to the conditions that made a (watershed management) plan necessary and derived special benefit directly related to actions proposed by the (watershed management) plan, and whether a public corporation or owners of land in the public corporation specifically requested a provision of the (watershed management) plan.

Costs. Currently, Chapter 22 specifies a list of costs included in any flood control or drainage project. The costs include (1) the cost of locating, establishing, and constructing the project; (2) the administrative staff, office, and other expenses of the water management board and commission; (3) the cost of construction of all works and appurtenances necessary for the efficient operation and maintenance of the project; (4) the cost of acquiring any lands or rights of way; (5) the cost of serving and publishing all required notices; (6) interest on bonds for the first year, if bonds are



issued; and (7) and an amount of up to 10 percent of the costs assessed against public corporations in order to cover “contingent” expenses.”

The bill lists the costs that would be subject to assessment. These costs would include (1) establishing the watershed management district; (2) development of the scope of the watershed study; (3) administrative staff, office, and other expenses of the watershed management commission and advisory board; (4) implementation of the watershed management plan; (5) acquiring interest in lands; (6) engineering, legal, consultant, and other professional fees; (6) service and publication of all notices; (7) interest on all bonds or notes for the first year they were to be issued and all payments and interest on bonds or notes issued before the assessment; (8) other items identified and allocated in the annual budget; and (9) possible contingent expenses, in an amount no more than 10 percent of the other costs to be assessed against public corporations.

Venue of actions, legal establishment of districts. Currently, the act says that, except for actions brought directly to the supreme court, any legal actions arising from the chapter’s provisions can be brought in the circuit court of any county in which part of the project involved is located. The bill would say that any action arising from Chapter 22 could be brought in the circuit court of any county in which any part of the district involved (instead of the project) was located.

Currently, the act also says that neither a final order of determination nor a final order of apportionment is subject to attack in any court except by proceedings in certiorari brought within 10 days after the order in question was filed. If no such proceeding is brought within the ten days, the project is deemed to have been legally established and the legality of the project and of the assessments for the project cannot be questioned in any suit at law or in equity so long as all notices given under Chapter 22 include the language contained in this section.

The bill would substitute “superintending control proceedings” for “proceedings in certiorari” and would increase the length of time such proceedings could be brought to 28 days instead of 10 days. The bill would further say that, unless successfully challenged in proceedings brought within the 28-day period, the watershed management district would be legally established and the legality of the watershed management plan and the assessments could not be questioned in any suit at law or equity.

MCL 280.585 et al.

Analyst: S. Ekstrom

---

■ 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.