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Senate Bill 217 (Substitute S-3)

Sponsor: Senator Gerald Van Woerkom

Committee: Agriculture, Forestry, and Tourism

Date Completed: 2-25-04

CONTENT

The bill would amend the Drain Code to revise and consolidate certain provisions and do the following:

- -- Replace references to "the public health, convenience and welfare"(in regard to the need for establishing, constructing, or maintaining a drain) with references to "the public health, safety, or welfare".
- -- Reduce the number of petitions and petitioners necessary to establish or construct a county drain.
- -- Increase the number of public hearings conducted before a drain could be established or constructed.
- -- Permit landowners to petition for a drainage project to enhance or improve the drain's natural resources value and its function.
- -- Increase from \$1,500 to \$2,500 per mile the amount that may be spent per year on maintenance of a drain, and provide for replenishment of a drain fund if it fell below \$5,000 per mile; and, for county or intercounty drains, permit these amounts to be increased by up to \$5,000 per mile and \$10,000 in a drain fund.
- -- Revise the method by which the costs and benefits of a county drain project may be apportioned to counties, municipalities, private landowners, and public corporations.
- -- Increase from three to five the number of disinterested individuals who must sit on a board of determination.
- -- Require that members of a board of determination be selected from a pool of eligible candidates chosen by a drain commissioner.

-- Require that a board of determination reconsider a project if a bid were over \$250,000 or exceeded the original cost estimate by more than 25%.

B. 217 (S-3): REVISED COMMITTEE SUMMARY

- -- Require an inspection at least every three years of a drain constructed, restored, or improved after the bill's effective date.
- -- Provide for civil fines up to \$10,000 if a person refused to remove an obstruction in a drain.
- -- Provide for the manner and timing of additional notices required under the

The bill also would repeal specific sections and chapters of the Code.

Drain Commissioners

Currently, a drain commissioner jurisdiction over all established county drains within his or her county, except for drains located entirely within a single city or village, provided that the governing body of a city or village consents to the jurisdiction. The bill instead would exclude from a commissioner's jurisdiction a drainage district located entirely within a single city or village, provided the city or village consented.

If a municipality determined that construction or other activity could have a significant effect on the quantity of water entering a drain or on the hydrology of a drain, the municipality would have to give the commissioner prior notice and opportunity to review the activity before issuing its approval. ("Municipality" would mean a county, city, village, or township, or an authority with power to levy a tax created by any of these.) commissioner's review would be limited to the ability of the drain to transport storm water

Page 1 of 14 sb217/0304 runoff from the proposed activities, and would not be a determination of the propriety of the proposed land use or zoning issues.

The drain commissioner or drainage board could review and approve all requests to discharge into, make a connection to, or construct a crossing of any established county or intercounty drains. The county board of commissioners could adopt, by ordinance or resolution, procedures to implement this provision. The ordinance or resolution would have to include a schedule of fees (based on actual costs) for reviews, permits, and inspections, and could include penalties for noncompliance. Subject to approval by the county board, the drain commissioner could establish rules and a schedule of fees for other reviews and inspections required of the commissioner's office.

Under the Code, as determined by the county board of commissioners, a drain commissioner and a deputy commissioner must be covered by a blanket bond or file a bond in a sum of up to \$5,000 conditioned on the faithful discharge of their duties. The bill would increase the amount of the bond to \$100,000. The cost of the bond would have to be paid from the county general fund.

County Drainage Districts & County Drains

Currently, before a drain may be located, established, and constructed, an application (petition) must be filed to establish a drainage district. The petition must be signed by at least 10 freeholders of the township in which the proposed drain is to be situated, and at least five of the signers must be owners of land liable for an assessment. Alternatively, an application may be signed by the board of health of the county if the proposed drain is necessary for public health. If, after an engineering analysis, the drain commissioner determines that the drain is practical, a second petition must be filed to locate, establish, and construct a drain. This petition must be signed by half the number of freeholders in the district whose land would be liable for an assessment and traversed by the drain.

Under the bill, a single petition would have to request the establishment of a drainage district and the establishment and construction of a drain, and set forth the reasons for the request. The petition for a new district would have to be signed by 10 landowners in the

proposed districts whose land would be liable for assessment for benefits, or at least 50% of the landowners if there were fewer than 10 landowners whose land would be liable for assessment, or could be signed landowners representing 25% of the land area liable for assessment. A petition could request that measures be undertaken both to enhance or improve the natural resource values of the proposed drain and to provide direct benefit to its designed function, longevity, or hydraulic capacity.

Currently, instead of landowners, a county board of health or a municipality may petition for the establishment of a drainage district if it is necessary for the public health. Under the bill, a county board of health no longer could petition for a district, but cities, villages, and townships still could petition for a drainage district and the construction of a drain.

Under the Code, after the first petition is filed, the drain commissioner must immediately have a surveyor make a survey to determine the areas that will be drained by the proposed drain and the route and type of construction of the drain most serviceable for that purpose. Under the bill, if the drain commissioner determined that the petition met the bill's petition requirements, the commissioner would have to arrange promptly for the preparation of a preliminary analysis, which would have to include information specified in the bill.

Under the Code, after the preliminary analysis is filed, the commissioner must appoint a board of determination composed of three disinterested property owners (residents of the county but not residents of a township, city, or village affected by the drain). Under the bill, a board would have to consist of at least five disinterested property owners and an alternate. At least one member of the board would have to be an elected or appointed official of a local unit of government other than that with territory in the proposed drainage district. Also, to serve as a board member, a person would have to meet certain residency and antinepotism criteria, and be part of a pool of people recommended by a drain commissioner and approved by the county board of commissioners. (A person would serve as a member of the pool for a two-year term, and could serve for successive terms.) Before a person served on a board, the drain commissioner would have to give the person a written explanation of the duties of

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his or her duties on the board, prepared by the Michigan Department of Agriculture (MDA).

Currently, the board of determination must meet to determine whether the proposed drain is conducive to public health, convenience, or welfare. Under the bill, the board of determination would have to hold a hearing to consider the preliminary analysis and determine if the proposed drain was or was not practical. If the board determined the proposed drain was impractical, it would have to enter an order of impracticality and reject the petition. If the board determined the proposed drain was practical, it would have to receive and consider testimony on the extent of land to be served by the proposed drain, and whether the drain would be necessary and conducive to the public health, safety or welfare; and determine what additional information the drain commissioner needed to gather (if any). The board would then have to enter an order of practicality.

If, during the gathering of additional information, the drain commissioner determined that the drain was not practical, he or she would have to reconvene the board of determination. The board either would have to find the drain not necessary, and order that the costs be paid by the petitioners; or would have to order the drain commissioner to complete the gathering of additional information.

The board of determination would have to reconvene within three days after adiourned, or three days after commissioner completed the gathering of additional information, whichever was later, to receive testimony on the proposed district's boundaries and necessity. If the board determined that the proposed drain was not necessary, it would have to enter an order of no necessity, and order that the land and municipalities within the drainage district be subject to assessment for costs incurred up to that point. Three years after these liabilities were paid, the drain commissioner would have to dissolve the drainage district. petition for a drainage district could not be filed within one year after an order of no necessity was entered.

If the board of determination found that the drain was necessary and conducive to the public health, safety, or welfare, it would have to enter an order of necessity. The drain

commissioner then would have to execute a first order of determination and file it in his or her office. The drain commissioner would have to secure the services of an engineer, arrange for the preparation of an engineering analysis, and secure from the engineer or a surveyor a description of the land or rights-ofway needed for the proposed drain. The drain commissioner would have to obtain any permits required under NREPA. associated with evaluating natural resource impacts and implementing the measures to minimize these impacts would be the responsibility of the drainage district. If, after receiving the plans, cost estimates, and descriptions of the land or rights-of-way needed, the commissioner determined that the project was not feasible, he or she would have to notify the landowners and public corporations in the district by first-class mail of the intent to reject the petition. ("Project" would be defined as work undertaken as a result of petition and an order of necessity or undertaken as maintenance on a drain, pursuant to Section 199 of the Code, which would require a drainage board and commission to perform maintenance if they found it necessary based on an inspection report.)

Currently, a person feeling aggrieved by a board of determination's decision that a drain is or is not necessary has 10 days to file an action in circuit court. Under the bill, a city, village, township, or other person feeling aggrieved by a board's order to reject a petition would have 21 days to institute an action in the circuit court for a review of the order.

The bill also includes similar provisions that would apply to intercounty drains and intercounty drainage districts. The drain commissioners of the affected counties and the MDA Director would constitute a drainage board, which would act by majority vote. The Director would serve as the chairperson and would vote only if there were a tie. drainage board generally would have the same responsibilities as proposed for a board of determination. Among other things, a drainage board's first order of determination would have to establish the percentages of the whole cost of construction that each county would bear. If a drain commissioner considered the apportionment unfair, he or she would have to request the Director to review it and make a recommendation. If the recommendation were not adopted by

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majority vote, or if it were adopted and a drain commissioner found it unfair, the recommendation could be reviewed by an arbitration board composed of disinterested drain commissioners, whose determination would be conclusive.

Apportionment & Review

The bill provides that the drain commissioner, for a county drain, or the drainage board, for an intercounty drain, could amend a final order of determination by changing the name or number of the drain or the boundaries of the district if a petition, signed by at least five landowners with land in the drainage district or by a municipality with territory in the drainage district, were filed with the drain commissioner or drainage board. If making the change were in the best interest of all concerned, in the drain commissioner's or drainage board's opinion, the commissioner or board would have to make an order amending the name, number, or district boundaries. The commissioner or board would have to give notice to the drainage district and convene a day of review of apportionments.

As currently required, before the day of review of apportionments, the drain commissioner or drainage board would have to fix the number of installments for the collection of drain taxes and apportion the percentage of the cost of construction of the drain that any city, village, or township was liable to pay as a result of the benefit to the public health, safety, or welfare, or that any municipality or the Michigan Department of Transportation (MDOT) was liable to pay due to benefits to or contributions from a roadway. The apportionment of benefits for State trunk line highways would have to be paid pursuant to Section 14a of the Public Act 51 of 1951 (which governs the expenditure of funds for drainage assessments). If existing road ditches were to be relocated at the county road commission's request, the road commission would have to pay for the additional cost.

For a county drain, the drain commissioner also would have to apportion the percentage of benefits to accrue to any parcel of land, including land owned by any private person, county, or public corporation, above the percentage apportioned to any public corporation or to any roadway. For an intercounty drain, the drain commissioner for each county would have to apportion the percentage of benefits to accrue to the land

subject to assessment. ("Public corporation" would mean a State department or agency, including a public college or university; an authority created by, or pursuant to, State law; a junior college or community college; a school district; a municipality, or an authority created by a municipality; a school district; or any combination of school districts or municipalities under State law.)

If a person's act or omission increased or reduced the need for maintenance or improvement of the drain, the drain commissioner could consider the act or omission in making the apportionment.

At least 35 days before the sale of bonds or notes for the project, the drain commissioner would have to notify the MDOT Director by first-class mail of the pending sale. The Director would have to notify the drain commissioner in writing whether MDOT would pay any assessment against the State trunk line highways in a single payment or in installments. If the Director did not specify this before the sale of bonds or notes was advertised, MDOT would be liable for the interest charges incurred as a result of the sale. Drain taxes related to drainage of State trunk line highways would have to be paid from funds appropriated to MDOT.

A commissioner responsible for apportionment of benefits for a county or intercounty drain would have to give notice of the meeting for the review of the apportionments made by that commissioner, as provided in the bill. The meeting would have to be held at least seven but not more than 28 days after the date set for receiving construction bids. (These provisions would replace the current requirements for notice and publication of the meeting.)

A day of review would have to be held for all projects undertaken as a result of a petition and an order of necessity (or as a result of an order of determination regarding unlawful discharge into a drain). Before the review of the apportionment, the drain commissioner (as currently required) or the drainage board would have to prepare a computation of the If the total cost of the drain project. computation were not completed before the day of review, the review could be adjourned from time to time for up to 21 days in all, or a new hearing could be called with similar notice at least 14 days before the hearing. (Currently, a review may be adjourned for up

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to 20 days, and at least 10 days' notice of a new hearing is required. The bill similarly would increase the time periods for notice to MDOT of an apportionment of benefits against a State trunk line highway, and increase to 21 days the time the MDOT Director has to object to the apportionment.) An owner or interested party could appear in person at the day of review to protest the apportionment, or instead could file his or her appearance or protest by letter. The commissioner would have to maintain a record of all parties who appeared at the day of review to protest.

Currently, the owner of any land in a drainage district, or any city, township, village, district, or county in control of a highway, who is aggrieved by the apportionment of benefits may, within 10 days after the day of review, appeal from the apportionment to the probate court. The bill provides, instead, that the owner of land in a drainage district or a public corporation that was aggrieved by the apportionment of benefits or the change in boundaries of the drainage district, within 21 days after the day of review, could file an appeal of the apportionment to the circuit court for the county.

As presently required, the court would have to appoint a board of review and set the time and place for a meeting of the board. The meeting date would have to be at least 14 but not more than 21 days from the date of filing. (Currently, the meeting must be from 10 to 15 days after the filing.) The court would be required to notify each landowner and public corporation liable for an assessment.

If the board of review found that land liable to be assessed for the construction of the drain or project was not included in the commissioner's drainage district, the board of review would have to prepare a proposed decision making the changes in the apportionment that it considered just and equitable and would have to adjourn the review for up to 21 days from the date of the meeting specified in the first notice. The board of review would have to give notice as specified in the bill, but would have to notify only persons whom the board believed could be affected by its final decision.

The board would have to make its final decision, which could not affect any person to whom notice had not been provided. If the board made changes in the apportionment, the drain commissioner would have to make

the changes without the need for a new day of review or notice to the district of the board's changes, and a person aggrieved by the changes would not be entitled to additional judicial review. Following the board's decision, the circuit court could award costs, including engineering expenses, attorney fees, and witness fees, allowed under Michigan court If an appellant's bond were not sufficient to cover the compensation, mileage, and expenses for which the appellant was liable, the drain commissioner could recover the excess amount by any means authorized by law. The bill specifies that this provision would not limit the authority of the drain commissioner to collect a rate or charge by any other means authorized by law for the collection of a debt.

Currently, the proceedings in establishing any drain and levying taxes are subject to review on certiorari (the name of a writ of review or inquiry). Under the bill, the proceedings to establish, maintain, or improve a drain and levy assessments would be subject to review on superintending control.

<u>Maintaining</u>, <u>Improving</u>, <u>& Consolidating</u> <u>Drains</u>

The bill would add definitions of the terms "improvement", "improve", "maintenance", and "maintain".

"Improvement" or "improve" would refer to any of the following with respect to the drain if the drain or a portion of it had actually been constructed or established:

- Relocating, widening, deepening, straightening, tiling, extending, or adding branches to a drain.
- -- Providing dams, levees, dikes, barriers, structures, or mechanical devices that would properly purify, control, or improve the flow of a drain.
- -- Providing pumping equipment or constructing relief drains necessary to assist or relieve the flow of a drain.
- -- Removal and disposal of contaminated material.

"Maintenance" or "maintain" would refer to any of the following, and activities associated with any of the following, if within the capacity of drain as previously established or constructed:

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- -- Maintaining a drain or drains in working order to continue a normal flow of water, including the maintenance, repair, or replacement of, and utility service for, pumping stations, sewage treatment facilities, or mechanical devices.
- -- Cleaning out a drain or drains.
- -- Keeping a drain or drains free from rubbish, debris, siltation, or obstructions.
- -- Repairing a portion or all of a tile, drain, or drains to continue the normal flow of water.
- Restoration of previously established depths, bottom widths, and grade based on records maintained at the office of the drain commissioner.
- -- Erosion repair and control.
- -- Erosion and sedimentation control.
- -- Maintenance, repair, or replacement of levees, dikes, dams, and retention and detention basins.
- -- Maintenance, repair, or replacement of structures, such as bridges, culverts, or fords, that had diminished the capacity of the drain, or that were or could become unstable or unsafe.
- -- Removal of obstructions downstream for the purpose of restoring adequate outlet for lands within an existing drainage district or districts, provided that a drain commissioner or member of a drainage board obtained written permission from a landowner to enter property not in a drainage district.
- -- Removal and disposal of contaminated material.
- -- Activities under Part 91 of NREPA (Soil Erosion and Sedimentation Control).

The bill would delete current provisions on the maintenance and improvement of county drains and intercounty drains, and would establish similar provisions on petitioning for the maintenance and improvement of a county drain and for measures to enhance and improve the natural resource values of the drain and to provide benefit to the designed function, longevity, or hydraulic capacity of the drain. Consistent with Part 315 (Dam Safety) of NREPA, a dam or structure in or adjacent to a drain could be constructed, operated, and maintained to control the rate of flow through or into the drain, the level of water, or the amount of seepage, or to provide for the removal of drainage by pumping and other mechanical operations. As is currently permitted under Chapter 19 of the Drain Code (Consolidated Districts, which the bill would repeal), a drain or drainage district could be consolidated with any established

drain or district, or have land added or deleted. Only one petition and proceeding would be necessary for any of the maintenance and improvement measures.

A drain established under the Code could be inspected annually. Inspection would have to be made upon the request of the governing body of a public corporation served in whole or in part by the drain. For a drain constructed, improved, or restored to the last established depth bottom width and grade after the bill's effective date, an inspection and report would have to be made at least every three years from the date construction was completed.

If a drain commissioner or a drainage board determined that maintenance on the drain was necessary, the commissioner or board would have to perform the maintenance in a timely manner. If the commissioner or board determined that deteriorated structures could have diminished the drain's capacity or it became unstable or unsafe, the commissioner or board would have to retain a qualified engineer to evaluate the deterioration and recommendations concerning make maintenance and replacement of the structures.

Currently, if at any time the drain fund of a drainage district contains less than \$2,500 per mile or fraction of a mile of a drain, the drain commissioner or drainage board may assess the drainage district for an amount of up to \$1,250 per mile or fraction of a mile in any one year. The bill would increase these amounts to a required minimum of \$5,000 per mile in a drain fund at any time and a maximum assessment of \$2,500 per mile or fraction of a mile based on apportionments, as described in the bill. For county or intercounty drains, county boards of commissioners could proportionately increase these amounts, up to a required per-mile minimum of \$10,000 in a drain fund and an assessment of \$5,000 per mile or fraction of a mile. The amount collected under an assessment would have to be deposited in the drain fund for inspection, repair, and maintenance. If an inspection disclosed the need to spend money for the maintenance and repair of a drain to keep it in working order, the drain commissioner or drainage board could without petition spend in any one year up to \$5,000 per mile or fraction of a mile for maintenance or repair of the For county or intercounty drains, county boards of commissioners could spend

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to up to \$10,000 per mile or fraction of a mile for maintenance and repair. The determination of the maximum expenditure allowed without petition or resolution would have to be based on the total number of miles of the drain, and not on the actual number of miles or location of the maintenance or repair.

If the drain commission or drainage board found it necessary to spend funds in excess of the prescribed amount, the additional amounts could not be spent until one of the following was satisfied: 1) the governing board of each public corporation that was affected by more than 20% of the maintenance cost approved the expenditure; 2) if no public corporation were affected by more than 20% of the cost, the commissioner or board gave notice of the maintenance to be performed and the estimated cost to the persons liable for the assessment; or 3) the maintenance or repair was requested by and the entire additional cost was paid for by a public corporation, private corporation, or other person.

If the drain fund did not contain sufficient funds, or the drainage district were obligated to repay outstanding indebtedness to pay for inspection, repair, and maintenance, the drain commissioner or drainage board would have to assess the drainage district according to benefits received. A reassessment would have to be made and spread on the city or township tax assessment rolls within three years after the inspection, repair, and maintenance was completed. If the total estimated expenditure exceeded \$5,000 per mile or fraction of a mile, all landowners and public corporations within the district or abutting the drain would have to be notified of the nature and type of maintenance to be conducted before the work commenced.

If a new district were laid out and included land in a county that was not a part of an original intercounty drainage district, or removed land previously part of an original county or intercounty district, the drain commissioner or drainage board would have to notify the board of determination that the district should be revised. If the board of determination or drainage board by a majority vote of members found the proposed revision to the drainage district necessary or conducive to the public health, safety, or welfare, or if the board found that a portion of the cost of the project was necessary for the public health, safety, or welfare of any additional municipality, the board of determination would have to make an order to that effect and file it with the drain commissioner or drainage board.

The board's decision to revise a drainage district or to add a municipality would have to take place after the day of review of apportionments, and would be subject to appeal. All apportionments made under these provisions would have to be made according to the benefits derived and would be subject to appeal.

Letting of Contracts

The Code requires a drain commissioner to receive bids for the construction of a drain. Under the bill, a drain commissioner or drainage board would have to give notice, as provided in the bill, for the receipt of bids for the construction, maintenance, or improvement of a drain. The notice would have to contain a brief description of the project. Currently, the commissioner may in any case, and must for a drains having an estimated cost exceeding \$5,000, advertise for sealed proposals. The bill would increase the amount that requires sealed bids to \$10,000.

Under the bill, if the commissioner or drainage board did not advertise for proposals, the commissioner or board would have to solicit two or more estimates for the cost of construction, maintenance, or improvement from qualified contractors. If the landowner or developer were paying the entire costs and the contractor chosen by the landowner or developer were acceptable to the drain commissioner or drainage board, commissioner or board would not be required to advertise for sealed proposals or to solicit estimates. If the drain commissioner's office had the available equipment and staff to perform the necessary maintenance, the commissioner could perform maintenance without advertising for sealed bids.

The drain commissioner or drainage board, in consultation with an engineer, could establish prequalifications for a contractor to submit a bid for the construction of a drain.

Currently, if a contract is not let within five years after the filing date of a petition to locate, establish and construct, or deepen, widen, straighten, title, extend or clean out a drain, the drain commissioner may determine that the petition is abandoned and no further

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action will be taken to construct the drain. The bill would reduce this period to two years. If the petition were to establish a drainage district, the commissioner would have to issue an order providing that the district would be dissolved three years after the effective date of the order, or after all liabilities of the district were paid, whichever was later.

Currently, a board of county road commissioners may bid for the construction, cleaning, deepening, and widening of drains within the county. A bid from the board of road commissioners may not be accepted unless it is at least 15% lower than any other bid; the bill would delete this provision.

The bill would add a requirement that, if engineering analysis indicated that the probable cost of a project was at least \$250,000 and the actual bid for a drain project exceeded the original cost estimate by more than 25%, the board of determination or drainage board reconsider the original decision to proceed. The board of determination or drainage board wold have to enter an order of confirmation revoking or confirming its original decision to proceed with the project.

The bill would extend from 40 to 91 days the length of time that the bid letting may be adjourned, and would require that notice be given.

Under the Code, a deposit in the form of a certified check or its equivalent may be required with each bid as evidence of good faith and to reimburse the district if the successful bidder fails to execute the necessary contracts or to furnish the required security or indemnity insurance. Under the bill, a deposit in the form of a cashier's check, certified check, cash, bank money order, or bid bond from an authorized surety could be required. A bid bond of the successful bidder, other than a bid bond from a surety, would have to be deposited with the treasurer of the drainage district. If the bid bonds were held more than 63 days, the treasurer of the drainage district would have to pay to the bidder interest actually earned from the date of deposit on a bid bond, other than a bid from a surety.

The Code also requires the successful bidder to file with the commissioner security guaranteeing that the contract will be completed according to its terms, as well as indemnity insurance. Under the bill, the

commissioner or drainage board also would have to require the successful bidder to furnish workers' compensation insurance.

Construction Approval & Payment

The Code provides that no warrant or drain order for the payment of a drain contract may be drawn until the work has been inspected and approved. The commissioner may inspect and approve any tile or open drain or designate a surveyor or engineer to make the inspection. If the cost of construction exceeds \$3,000, the commissioner must designate a competent surveyor or engineer to make the inspection. Under the bill, the commissioner or drainage board would be required to inspect any tile or open drain, or the commissioner or board could designate a surveyor or engineer. If the construction cost exceeded \$20,000, the commissioner or board would have to designate a surveyor or engineer to make the inspection.

Levy of Special Assessments

Under the Code, a drain commissioner must prepare a special assessment roll for the drain for each county, township, city, village, and State trunk line highway affected. commissioner must enter on the roll a correct description of the tracts, parcels, subdivisions of land benefitted by the drain, and the percentage apportioned to each county, township, etc. The commissioner must add a certificate of the determination whether the taxes assessed for benefits must be paid in one or more years. In addition, the commissioner must prepare a special assessment roll for the collection of taxes for the current year. The bill would generally retain these provisions.

The bill specifies that the collection of a special assessment levied or ordered to be levied for payment of the establishment, construction, maintenance, or improvement of a drain under the Code could not be perpetually enjoined or declared absolutely void for any reason. The court in which an action was brought to recover a special assessment paid, to declare void the proceeding to establish and construct any drain, or to enjoin any special assessment levied or order to be levied for the payment of the labor and expense could, if there were manifest error in the proceedings, allow the plaintiff to show that he or she had been injured.

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Levy of Additional Assessments

Currently, if there is insufficient money in a particular drain fund at the time a bond matures, the commissioner must levy an additional assessment. The Code provides that no land may be exempt from the assessment except the following: Federal land, State land, and lands owned by any county, city, village, township, or school district and used for public purposes; land used exclusively for burial grounds; and land dedicated to the public and actually used as a highway or alley, and not used for gain. The bill would delete that language.

Borrowing Money

A drainage district could borrow money or accept the advance of work, material, or money from a public or private corporation, partnership, association, individual, or the Federal or State government or any agency of the Federal or State government for the payment of, or in connection with the construction, maintenance, or improvement of, any part of a drain project; the financing and engineering or feasibility, practicability, environmental assessment, or impact study of a drain project; the costs of acquiring property; and, engineering and legal fees.

The district's obligation to make repayment or reimbursement could be evidenced by a contract or note, which could pledge the full faith and credit of the district and be payable out of the drain assessments made against public corporations at large or against land in the district, or out of the proceeds of drain orders, notes, or bonds issued by the district or any other available funds. The contract or note would not be considered a security under the Revised Municipal Finance Act unless the principal aggregate amount of the district's note or notes exceeded \$600,000. (Currently, a contract or note is considered a security if it exceeds \$300,000.) Any projects in which advances or loans were made by a public corporation, the Federal government, or any Federal agency could not be included in that aggregate amount.

Currently, if bonds or notes are to be issued for a county drain, the county board of commissioners may, by a resolution adopted by a majority of its members, pledge the county's full faith and credit for the payment of the principal of and interest on any bonds or notes issued under the Code. The bill also

would allow the governing board of a municipality, other than a county, to pledge its full faith and credit for the payment of bonds or drain orders issued in connection with a drainage project, if the project lay entirely within the limits of the municipality.

Consolidated Districts

The bill specifies that, if drainage districts were consolidated as provided for in the Code, the consolidated district would have all the rights and powers and be subject to all laws applicable to county or intercounty drainage districts, as applicable, except as otherwise provided in the Code.

The bill also specifies that the merging of a drainage district into a consolidated district would not affect the obligation of any bonds issued or contracts entered into by the district, or invalidate the levy, extension, or collection of taxes or special assessments upon the property in the debtor district. The bonds and contracts would be assumed by the consolidated district, and all outstanding special assessments would have to be collected and paid to the consolidated district for the payment of obligations previously issued or contracts previously entered into by the debtor district. If additional funds were needed, the drain commissioner or drainage board of the consolidated district would have to continue to levy a special assessment based on the roll created to finance the obligations or contracts.

Construction Across a Drain

Under the bill, before a person constructed or laid a cable, pipeline, sewer, conduit, roadway, culvert, bridge, or other structure across a county or intercounty drain, the person would have to forward relevant engineering plans to the county drain commissioner or drainage board for review and approval upon conditions that were reasonable and proper to prevent interference. The review and approval would have to be made within 35 days of the drain commissioner's receipt of the construction plans.

If the roadway authority requested or ordered that an existing legally established drain within the right-of-way of the roadway be relocated outside the right-of-way, the authority would have to bear the cost of relocating the drain. A bridge or culvert would have to be replaced with one of equal or greater hydraulic

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capacity, unless a permit authorized otherwise.

If it were necessary to establish, construct, maintain, or improve a drain across the rightof-way or roadbed of any railroad or railway company, telephone, or telegraph company, or dam, electric, cable, water, oil, gas, pipeline, or other utility company, the drain commissioner or drainage board would have to notify the commissioner of the need to cross the right-of-way or roadbed. The company would have 42 days to object to the proposed plan. If the company approved or failed to object to the crossing, the commissioner or board could proceed with the crossing. If the company objected, the commissioner or board could give a revised notice, or could petition the circuit court to order the company to allow the crossing to be constructed. The drain commissioner or drainage board and the company could agree to an alternative form of dispute resolution, in lieu of a circuit court proceeding.

If it were necessary to construct, maintain, or improve a drain across the right-of-way, fee property, or roadbed of any railroad or railway company, telephone or telegraph company, or dam, electric cable, water, oil, gas, pipeline, or other utility company, the drain commissioner or drainage board could acquire property or interests in property for that purpose, as provided in the bill, unless the company's ability to provide services would be adversely affected by the acquisition.

A drain commissioner or drainage board could authorize a person to build a bridge or drain crossing within a drain easement on his or her property.

Abandoned & Vacated Drains

The Code contains procedures under which a drain or part of a drain that is no longer necessary or conducive to the public health, convenience, and welfare may be declared abandoned and vacated. Under the bill, a drain could be declared abandoned and vacated if it were no longer necessary or conducive to the public health, safety, or welfare. The bill generally would retain the current procedures, but notice of a petition for abandonment would have to be given as provided in the bill.

The bill specifies that an order of abandonment could not be made, and money

in the abandoned drain's fund could not be disbursed, unless all debts of the drain were satisfied. The drain commissioner or drainage board could levy a special assessment to satisfy the debts before an order was entered or disbursements were made.

Currently, a drain commissioner may relinquish jurisdiction and control to a township, city, or village of any county drainage district upon which there is no outstanding indebtedness or contract liability, if the district is located entirely within the boundaries of the township, city, or village. The bill would delete these provisions.

Under the bill, a county drain commissioner or a drainage board could relinguish jurisdiction over all or part of a drain to a county, township, city, or village, if certain requirements were met. Among other things, the county, township, city, or village would have to request or consent to the relinguishment by resolution of its governing body; the drain or part of the drain would have to be located entirely within the boundaries of the local governmental unit to which it was relinquished; and the drainage district could not have any outstanding indebtedness or contract liability.

Upon relinquishment, the county, township, city, or village would assume jurisdiction over the drain or part of the drain, including responsibility for its maintenance, control, and operation. Easements and rights-of-way would be transferred to that local unit. If jurisdiction over the entire drain were relinquished, the drainage district would be dissolved. Money in the drain fund would have to be relinquished or used as provided in the bill.

Obstructions in Drains

Currently, if a person obstructs a drain, the drain commissioner must have the obstruction removed. The offending party is liable for the expense of removal and must be given written notice that he or she has five days to remove the obstruction. The bill would extend that to 14 days. If the person did not remove or modify the obstruction or make satisfactory arrangements within 14 days, the drain commissioner or board could have the obstruction removed or modified. If the obstruction created an emergency condition that endangered the public health, safety, convenience, or welfare or crops or other

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property, the commissioner or board could, after giving reasonable notice to the person, remove or modify the obstruction. In either case, the person responsible for an obstruction would be liable to the drain commissioner or drainage board for the expense of removal or modification, and would be liable for a civil fine of between \$1,000 and \$10,000 for each day the violation continued after the 14-day period.

The drain commissioner or drainage board could bring an action in the circuit court of the county in which the obstruction was located to compel the person to remove or modify the obstruction. The person causing or permitting the obstruction would be liable to the drain commissioner or drainage board for the expense of removal or modification of the obstruction. If the person did not pay the expense within 30 days of being billed, the county board of commissioners could certify the unpaid amount of the removal cost to the proper tax collecting officer for entry on the tax roll against those parcels of land of the person that were located in the drainage district or traversed by the drain; and there would be a lien upon those parcels for the total unpaid amount of the expense.

The bill would permit a drain commissioner or drainage board to enter upon property not within a drainage district to remove or modify an obstruction in a natural water course that served as an outlet for a county or intercounty drain but that itself was not a drain. The entry would have to be made pursuant to a written agreement with the landowner. If entry were denied, the drain commissioner or drainage board could begin a civil action in the circuit court for an order permitting entry.

The bill specifies that removal or modification of an obstruction would be subject to the expenditure limits and other procedures required for necessary maintenance or repair of a drain.

An order signed by the Director of the Department of Environmental Quality and issued under Part 315 of NREPA to a drain commissioner or drainage board with respect to a dam owned, operated, or maintained by a drainage district would constitute a petition meeting the requirements of an order of necessity.

The bill would delete provisions governing the obstruction of drains, or the lessening of the

area of a drain, by railroad or railway companies, telephone, telegraphic, or pipeline companies, and other utilities.

Additional Drains

Currently, a landowner in a drainage district whose land requires additional drainage may petition the drain commissioner for permission to construct an open or closed drain to a regularly established drain, and permission must be granted if the commissioner or drainage board believes the ground to be crossed is suitable for a drain and the surface of the land can be restored. Under the bill, a landowner granted permission to construct a drain would have to obtain any permits required under NREPA.

The Code requires a person to pay a maximum \$50 fee for each sewage connection to a county or intercounty drain. The bill would change the maximum amount of the fee from \$50 to the actual costs the drain commissioner or drainage board would expect to incur in reviewing an application for a connection.

The bill generally would retain current procedures to establish a drain if the owner of adjoining property refuses permission to construct the drain across the property; and would require the drain commissioner or drainage board to prescribe the nature and type of construction of the drain and the time at which the petitioner would have to construct it.

<u>Public Corporations & Intercounty Drainage</u> Boards

Under the Code, when an intercounty drain will be assessed wholly against one or more public corporations, a drainage board must be created. The Director of the MDA serves as the chairman of the board, but the other members are not specified. Under the bill, if an intercounty drain project would be assessed against one or more public corporations in a county with a population more than 1 million, the drainage board would have to consist of the MDA Director, the drain commissioner of each county involved, and an elected official of each city, village, or township subject to assessment for the as appointed by the drain project, commissioners of each county. (In this case, the bill would define a "public corporation" to mean a municipality or metropolitan district;

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the State, with respect to a State trunk line highway; or the county, with respect to a county road.)

Sanctions

Currently, if a drain commissioner is interested, directly or indirectly, in the profits of a contract, job, work, or services, he or she is guilty of a misdemeanor, the office of drain commissioner is declared vacant, and the convicted commissioner is prohibited from holding that office again. The bill would retain the misdemeanor provision in the event a commissioner held a financial interest in a project, but no longer require that the commissioner relinquish his or her position.

Currently, if any person willfully or maliciously removes any section or grade stake set along the line of any drain, or obstructs or injures any drain, he or she is guilty of a misdemeanor, punishable by a fine of up to \$100 and the costs of prosecution, or in default of payment, by imprisonment for up to 90 days. The bill would increase the maximum term to 93 days.

Under the bill, a person would be guilty of a misdemeanor if he or she willfully prohibited, prevented, or obstructed a drain commissioner or drainage board or the commissioner's or board's agents, employees, or contractors from either going upon land to examine the land or make surveys in connection with the work of the drain commissioner or drainage board; or from going upon a right-of-way of the district with the commissioner's or board's employees, tools, machinery, instruments, other equipment for constructing, reconstructing, repairing, or maintaining the work of the commissioner or the board. This provision would not apply unless the drain commissioner had given notice by first-class mail to the landowner whose name appeared on the last city or township tax roll that the drain commissioner or drainage board or the agents, employees, or contractors would go upon the land or on the right-of-way to which the land was subject, unless the landowner's address did not appear on the tax roll.

Property Acquisition

The bill provides that, for purposes of the Code, a drain commissioner or drainage board could acquire property or an interest in property, including land, easements, and rights-of-way. The property or property

interest could be acquired by gift, grant, dedication, purchase, or condemnation under the Uniform Condemnation Procedures Act. If it were participating in a project under the Code, the Federal government could acquire property or a property interest for the project under applicable Federal law.

If a drain commissioner or drainage board acquired property or a property interest after the bill's effective date in connection with any proposed drain, the commissioner or board would have to record the property or interest in the office of the register of deeds.

The owner of any land over, through, or across which a drainage district had an easement or right-of-way for the maintenance or construction of an open or covered drain could not use the land within the easement or right-of-way in a manner that would interfere with the drain's operation, that would increase the district's cost of performing work on the drain, or that otherwise would be inconsistent with the easement or right-of-way. A landowner who violated this provision would be subject to the section of the Code concerning obstruction in drains.

Savings Clause

The bill specifies that if a petition were filed under the Code before the bill's effective date, steps taken on or after that date in proceedings under the petition would be governed by the law in effect on the date before the bill's effective date.

Applications & Petitions

The bill would require a drain commissioner to furnish to any person who desired them, blank applications, petitions, or other documents required to implement the procedures of the Code. Each petition would have to be printed with the disclaimer that petitioners could not withdraw their signatures after a petition was filed with the office of the drain commissioner, and that petitioner would be liable for part of the costs of a project.

Governmental Immunity

The bill states that nothing contained in it would limit or waive governmental immunity as provided by law.

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Repealers

The bill would repeal sections of the Code pertaining to the following: definition of county drain commissioner (MCL 280.4); drainage district; body corporate (MCL 280.5); easements and rights-of-way (MCL 280.11); powers and duties of drain commissioner in charter counties with populations over 2 million (MCL 280.21a); drain commissioner; election, term, bond; abolition of office (MCL 280.22); apportionment for cleaning, widenina, deepening, straightening, and extending drains (MCL 280.193); petitions and proceedings (MCL 280.194); further right-ofway (MCL: 280.195); inspection of drains (MCL 280.196); survey of drain district (MCL 280.197); drain taxes; subsequent assessment (MCL 280.198); advertising rates; fees of probate judges and other officers (MCL 280.246); perpetual injunction not allowed for informalities; plaintiff allowed to show injury (MCL 280.268); tax collection suits; tax reassessment (MCL 280.271); assumpsit, prima facie evidence, judgment based on benefits; authority to sue (MCL 280.272); special drain assessment; definition of municipal corporation (MCL 280.281); drains in public highways, permit; release of right-ofway (MCL 280.321); cost to township for highway drainage (MCL 280.325); inadequate disposal or filtration plant (MCL 280.424); drain orders received for drain taxes (MCL 280.426); corporation or land contract vendee as freeholder (MCL 280.427); obstruction of drain commissioner, drainage board, or agents, misdemeanor (MCL 280.432); financing drain projects; repayment, reimbursement (MCL 280.434); assessment against townships and villages (MCL 280.481); and, repealers and saving clauses (MCL 280.621).

The bill also would repeal the following chapters of the Code: Chapter 4 (County Drains); Chapter 6 (Intercounty Drains); Chapter 14 (Railroads); Chapter 15 (Dams in Drains); Chapter 16 (Special County Commissioner); and, Chapter 19 (Consolidated Districts).

MCL 280.1 et al.

Legislative Analyst: Claire Layman

FISCAL IMPACT

The bill would increase State expenses and have little to no effect on State revenues, and

would have an indeterminate impact on both local unit revenues and expenses. Without knowing the specific drains that would be affected by the bill, or the costs related to the drains and the properties included in the drain districts, it is impossible to evaluate the fiscal impact of the bill. Generally, the bill would do little to change the total cost of a drain, although the allocation of the costs could be different.

The most significant aspects of the bill that would affect the cost of drains are the provisions relating to the minimum funds that must be present in the drain fund for a drain. Because these minimums would be increased under the bill, the total cost of any given drain would be larger. Costs paid by the fun also could be minimally higher under the bill, given that the bill would require each drain to be inspected at least every three years, while current law allows annual inspection of drains. To the extent that inspections are not occurring at least every three years, some drains would have higher inspection costs. The effect of more frequent inspection on repair and maintenance expenses is unknown. More frequent inspections could possibly lower increase the cost of repairs and maintenance compared with current law. However, to the extent that drain funds would require a higher balance and increased inspections would increase at least inspection costs, entities responsible for paying drain assessments could see more frequent and possibly larger assessments than under current law.

The allocation of costs for a drain could change under the bill. For example, when bonds issued to fund a drain mature, if there are insufficient funds to pay the bonds, an additional assessment may be levied. Current law excludes certain properties from the additional assessment, while the bill would remove those exclusions. As a result, if and when additional assessments are required, some taxpayers could receive a smaller assessment than under current law while other, previously exempt taxpayers, would receive an assessment. On the other hand, if such circumstances are infrequent and/or the deficiencies are generally small, the changes would be minimal. To the extent that the apportionment of benefits and costs would be altered by any provision in the bill from those under current law, some entities would receive smaller assessments while other entities would receive larger assessments.

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State and local expenses could be increased because current law exempts certain properties owned by these entities from additional assessments when the balance in a drain fund is insufficient to pay any outstanding bonds that are due, and the bill would repeal that exemption. Local units also could incur increased expenses because of more frequent inspections of some drains. State and local revenues could increase negligibly under the bill if property values were increased as the result of presumably better maintained drains and/or increasing the number of drains established relative to the number of drains needed.

Local units could also incur greater expenses because of the increased hearing requirements and larger membership requirements for drain boards. Such costs would be offset by increased revenues assessed against entities affected by a drain. In addition, the bill would increase local unit revenues to the extent that individuals would be subjected to penalties for not removing obstructions from drains. No estimate is available for the number of such individuals.

This estimate is preliminary and will be revised as new information becomes available.

Fiscal Analyst: David Zin

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.