

Legislative Analysis



INTERCOUNTY DRAINAGE BOARDS

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House Bill 5281 as introduced
Sponsor: Rep. Edward Gaffney, Jr.
Committee: Government Operations

First Analysis (10-31-05)

BRIEF SUMMARY: The bill would amend the Drain Code to add a representative of an affected local community to intercounty drainage boards, if the drain project includes a either Oakland or Wayne Counties.

FISCAL IMPACT: The bill would have no fiscal impact on the state or local governmental units.

THE APPARENT PROBLEM:

Chapter 21 of the Drain Code permits a "public corporation" (city, village, township, etc) to petition the Department of Agriculture for the establishment of an intercounty drain when necessary for the public health. The costs for the drain project are set by an intercounty drainage board composed of the drain commissioner of each affected county and the director of the Department of Agriculture, and are apportioned to each public corporation based on the benefits that each public corporation receives from the project and the extent to which the public corporation contributed to the conditions making the drain necessary. Affected public corporations are assessed the costs of the project and may levy taxes for the payment of the assessment irrespective of any statutory or charter taxation limit.

Pursuant to Chapter 21, the Milk River Intercounty Drain was established near Harper Woods and Grosse Pointe Woods in Wayne County for a combined sewer overflow (CSO) project. Nearly all of the cost of the project is assessed to these two communities, with only a small percentage of the cost being assessed to St. Clair Shores and the state. The drainage board includes the director of the Department of Agriculture, the Macomb County Drain (Public Works) Commissioner, and the Wayne County Drain Commissioner. The Wayne County Drain Commissioner is appointed by the county executive as the director of the county's Department of Environment, and is not elected by county voters. Officials from Harper Woods and Grosse Pointe Woods are concerned that their communities provide nearly all of the financial support for the project without representation on the drainage board from an elected official accountable to taxpayers. Legislation has been introduced to include local representation on an intercounty drainage board established under Chapter 21 of the Drain Code for projects affecting Oakland County or Wayne County.

THE CONTENT OF THE BILL:

The bill would amend Chapter 21 (Intercounty Drains; Public Corporations) of the Drain Code to add that if an intercounty drain project involves a county with a population above one million [Oakland and Wayne] the intercounty drainage board would also include an individual appointed by each drain commissioner. The appointed individual would be an elected official (or his or her designee) of a city, village, or township that is subject to an assessment for the project. The appointment would last two years, and could not be extended unless that person represented the only municipality in the county subject to the assessment.

MCL 280.514

ARGUMENTS:

For:

The bill provides communities subject to an assessment for an intercounty drain under Chapter 21 of the Drain Code with direct representation on the drainage board. In the case that gave rise to the bill, the lion's share of taxpayer dollars supporting the Milk River intercounty drain comes from the communities of Harper Woods and Grosse Pointe Woods. This is problematic, because the Wayne County representative on the drainage board is unelected. It is believed that adding locally elected representatives of areas affected by the drainage project and subject to an assessment will result in greater public oversight and accountability over a drainage project. Taxpayers in these communities annually invest more than \$3 million on the project, and it is incumbent upon community leaders to ensure that this money is properly spent.

Response:

As written, the bill only applies to Oakland and Wayne counties. Some believe that if the bill is sound public policy then it should apply to all counties. Additionally, a representative of the Oakland County Drain Commissioner testified in opposition to the bill. So if the bill is to be restricted, perhaps it could be limited to only intercounty drain projects involving Wayne County.

Against:

The bill has the potential to create a conflict of interest for local officials appointed to an intercounty drainage board, as one of the primary responsibilities of the drainage board is to apportion the costs of the project to local communities benefiting from the project. This bill allows a community that petitions the Department of Agriculture for a project to have undue influence over how those costs are apportioned between itself and other communities. As a member of the drainage board, a local official has a responsibility to ensure that costs are apportioned appropriately to all communities. However, as a representative of the local community, that official has a responsibility to look out for best interests of that community, which may mean reducing that community's share of the project at the expense of other affected communities. These dual roles are incompatible.

Moreover, this really appears to be an intergovernmental issue that should be addressed locally by the affected communities and the involved drain commissioners. The Drain Code provides for public meetings of the drainage board, including meetings in which the board apportions the costs of the drainage project among affected communities. This provides local residents and elected officials with a public forum and opportunity to register their positions on the proposed apportionment plan. Further, it would seem that nothing precludes these individuals from independently discussing their concerns regarding the apportionment plan privately with the individual drainage board members. Furthermore, it is not entirely clear why the bill is necessary. The Wayne County Drain Commissioner has testified in support of the bill, along with local officials from Harper Woods and Grosse Pointe Woods. Presumably, everyone agrees that there is a need for local involvement, so why can't that be accomplished without this bill? Local communities are provided opportunities to be involved in the process, without having a representative on the drainage board and without creating a conflict of interest.

POSITIONS:

The City of Harper Woods supports the bill. (10-25-05)

The City of Grosse Pointe Woods supports the bill. (10-25-05)

Wayne County supports the bill. (10-25-05)

The Wayne County Drain Commissioner supports the bill. (10-25-05)

The Department of Agriculture is neutral on the bill. (10-25-05)

The Oakland County Drain Commissioner opposes the bill. (10-25-05)

The Michigan Association of County Drain Commissioners opposes the bill. (10-25-05)

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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.