

Legislative Analysis



INTERCOUNTY DRAINAGE BOARDS

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House Bill 5281 as enrolled

Public Act 16 of 2006

Sponsor: Rep. Edward Gaffney, Jr.

House Committee: Government Operations

Senate Committee: Local, Urban and State Affairs

Second Analysis (8-22-06)

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 Wayne County.

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, unlike drain commissioners throughout the state, 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 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 an appointed (rather than elected) drain commissioner and a population greater than one million then the intercounty drainage board would also include an individual appointed by the drain commissioner from each county involved in the project. [The bill would apply only to Wayne County.] 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. Once the term ends, the drain commissioner would, if possible, appointed an elected official, or a designee, from a different municipality subject to the assessment. The bill would not apply to projects involving a county with a population of more than one million and organized under Public Act 139 of 1973 [Oakland County].

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 considered 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 the 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.

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. The 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 the best interests of that community, which may mean working to reduce that community's share of the project at the expense of other affected communities. These dual roles are incompatible.

Moreover, critics say 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.

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