

Legislative Analysis



REVISIONS TO DRAIN CODE

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House Bill 6469

Sponsor: Rep. Fran Amos

House Bills 6470 and 6545

Sponsor: Rep. Shelley Goodman Taub

House Bill 6472

Sponsor: Rep. Jeff Mayes

House Bill 6471 (Substitute H-1)

Sponsor: Rep. John Stakoe

House Bill 6473

Sponsor: Rep. Frank Accavitti, Jr.

Committee: Local Government and Urban Policy
Complete to 12-4-06

A SUMMARY OF HOUSE BILLS 6469-6473 AND HOUSE BILL 6545 AS REPORTED FROM COMMITTEE

The bills would amend various sections of the Drain Code to enhance a drain commissioner's ability to remove obstructions or interferences with drains; clarify the legal expenses of a drainage district; allow drain commissioners to employ engineering employees; define the term "visibly in existence"; authorize county boards of commissioners to change the name of the office of county drain commissioner to the office of the water resources commissioner; and increase the amount a drain commissioner can spend on maintenance of a drain. A more detailed explanation of each bill follows.

House Bill 6469 would amend the Drain Code (MCL 280.421) to prohibit a person from obstructing, permitting an obstruction, or otherwise interfering with or encroaching upon a drain or a drain right-of-way. Under the bill, "obstruction" is any lessening of the cross-section of a drain, including but not limited to that resulting from any railroad, bridge, cable, pipeline, sewer, conduit, roadway, culvert, or other obstruction. Obstruction does not include construction of a structure as approved by the drain commissioner or the drainage board. Further, "interfere" means any action taken that hinders or impedes the intended purpose, design, or operation of the drain or that will increase the cost to the district of performing any of its work on the drain, or that is considered inconsistent with the district's easement. Finally, "encroach" means any action taken to advance beyond the usual or proper limits of the drain.

House Bill 6470 would amend the Drain Code (MCL 280.247) to clarify that the legal expenses charged to the drain districts by a county drain commissioner could include (but would not be limited to) litigation and witness fee expense, judgments or orders and the costs of any judgments or orders entered against a drainage district, and attorney fees. Under the bill, the expenses can be paid out of the drain fund of the drainage district or the revolving drain fund, and assessed to the drainage district to reimburse the revolving drain fund in accord with the code.

House Bill 6471 would amend the Drain Code (MCL 280.33) to allow a drain commissioner, with the approval of a county board of commissioners, to hire engineering employees. Currently, the drain commissioner is authorized to hire only maintenance employees. Further, under the bill the county board of commissioners could waive the reimbursement for emergency work performed on any drain during the course of a year. Currently under the law, the board of commissioners can waive the reimbursement for emergency work if it does not exceed \$800. Finally and under the bill, the general fund of a county *could* be reimbursed by the drain districts in which work was performed by drain maintenance and engineering employees. Currently under the law, the county general fund *must* be reimbursed by drain districts for work performed by maintenance employees.

House Bill 6472 would amend the Drain Code (MCL 280.6) to define the term "visibly in existence" to mean drains that include open or closed drains that can be visibly identified by banks, slopes, manhole covers, or other structures that would identify the existence of a drain.

House Bill 6473 would amend the Drain Code (MCL 280.21) to specify that a county board of commissioners may, by resolution of the majority of its members elected and serving, and with the consent of the drain commissioner, change the name of the Office of County Drain Commissioner to the Office of Water Resources Commissioner. The bill further specifies that the water resources commissioner would be elected in the same manner as the drain commissioner, and would carry out the powers and duties of a drain commissioner, as provided under the code.

Currently under the law, a drain commissioner must be covered by a bond in the sum of \$5,000. Under House Bill 6473, the bond would have to be in the sum of \$100,000.

House Bill 6545 would amend Section 196 of the Drain Code (MCL 280.196) to increase the amount that a drain commissioner can spend on drain maintenance. Currently under the law, if an inspection discloses the need to expend money for drain maintenance and repair, the drain commissioner or the drainage board for an inter-county drain may, without petition, expend an amount not to exceed \$2,500 per mile or fraction of a mile, in any one year. Under the bill, the commissioner or board could spend \$5,000 or an amount up to \$15,000 per mile, as established by resolution of a majority of the county board of commissioners. The determination of the maximum expenditure allowed without a petition or resolution would 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.

In addition, current law specifies that if at any time the drain fund of a drainage district contains less than \$2,500 per mile or fraction of a mile, the drain commissioner or drainage board may assess the drainage district for an amount not to exceed \$1,250 per mile or fraction of a mile in any one year. The amount collected is deposited in the drain fund of a drainage district for necessary inspection, repair, and maintenance of the drain.

In contrast, House Bill 6545 specifies that if at any time the drain fund of a drainage district contains less than \$5,000 or an amount up to \$15,000 per mile or fraction of a mile of

drain, as established by resolution of a majority of the county board of commissioners, then the drain commissioner or drainage board may assess the drainage district an amount not to exceed \$2,500 or an amount established by resolution of a majority of the county board of commissioners, per mile or fraction of a mile in any one year.

Currently under the law, the salaries, expenses, and fringe benefits of clerical, administrative, and engineering employees of the drain commissioner or the drainage board working incidental to the operation, repair or maintenance of a drain, must be charged to and paid as budgeted from the county general fund, and not charged to the drain fund of a drainage district. In contrast, House Bill 6545 specifies that, except as provided under the code, that portion of the salaries, expenses, and fringe benefits of administrative and engineering employees under the supervision of the drain commissioner that are directly attributable, but not incidental, to a drain or otherwise not recovered by fees established by resolution or ordinance of the board of commissioners, must be charged to the drain fund of a drainage district.

The bill would delete the penalty that exists in law for a violation of Section 196 of the Drain Code. The provision deleted specifies that a violation of this section is a misdemeanor punishable by imprisonment for not more than one year, or by a fine of not more than \$1,000, or both.

FISCAL IMPACT:

With the exception of House Bill 6545, the proposed revisions to the Drain Code would have no apparent fiscal impact. To the extent that House Bill 6545 increases the ability of drain commissioners or drainage boards to assess drainage districts, it could increase revenue of drain commissions, which are units of local government. The amount of the potential revenue increase cannot be readily determined.

It is our understanding that the Michigan Department of Transportation (MDOT) is the only state agency subject to drain commission assessments. To the extent that House Bill 6545 increased drain commissioner or drainage board assessments, it could increase MDOT's assessment costs.

Section 14a of Public Act 51 of 1951 (Act 51) effectively limits the Michigan Department of Transportation's liability for drainage assessments by limiting how much State Trunkline Fund revenue may be used for drain assessments. Section 14a of Act 51 limits the State Trunkline Fund's share of drain assessments to a pro-rata share of storm water runoff attributable to the state trunkline highways within a drainage district as determined by an engineering study. These provisions of Act 51 would not be affected by the proposed Drain Code amendments.

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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.