

Legislative Analysis



DRAIN CODE REVISIONS

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House Bills 4641 and 4644
Sponsor: Rep. Frank Accavitti

House Bill 4643
Sponsor: Rep. Marie Donigan

House Bill 4642
Sponsor: Rep. Jeff Mayes

House Bill 4688
Sponsor: Rep. Neal Nitz

Committee: Agriculture
Complete to 5-8-07

A SUMMARY OF HOUSE BILLS 4641-4644 AS INTRODUCED 4-24-07 AND HOUSE BILL 4688 AS INTRODUCED 5-1-07

The bills would amend various sections of the Drain Code to:

- Allow a county to change the name of the "Office of County Drain Commissioner" to the "Office of the Water Resources Commissioner," and increase the amount of a commissioner's individual bond, if not covered by a blanket bond, from \$5,000 to \$100,000. (HB 4641)
- Define the term "visibly in existence," and mandate the release of drain easements no longer needed. (HB 4642)
- Clarify the legal expenses that may be charged to a drainage district. (HB 4643)
- Enhance a drain commissioner's ability to remove obstructions, interference, or encroachment of drains, including taking immediate action in emergencies. (HB 4644)
- Increase the amount a drain commissioner could assess a drainage district annually (from \$1,250 to \$2,500 per mile or fraction thereof) if the district's drain fund balance dipped below a certain threshold (raised to \$5,000 under the bill). (HB 4688)
- Increase the amount a drain commissioner could spend annually on drain maintenance without additional authorization from \$2,500 to \$5,000 per mile or fraction thereof, exclusive of certain expenses and costs. (HB 4688)

A more detailed explanation of each bill follows.

House Bill 4641 would permit a county board of commissioners (other than in Wayne County) to change the name of the "Office of County Drain Commissioner" to the "Office of Water Resources Commissioner" by resolution, and with the consent of the drain commissioner. A "water resources commissioner" would have the same powers and duties and be elected in the same way as a "drain commissioner." The amount of an individual surety bond required of a drain commissioner not covered by a blanket bond would be increased from \$5,000 to \$100,000, although the board of commissioners would have the discretion to require a bond in a different amount. (MCL 280.21)

House Bill 4642 would define the term "visibly in existence" and would mandate the release of drain easements no longer needed. Drain commissioners possess easements—created under law or in a written document and "visibly in existence"--allowing entry on a landowner's property for maintenance of a "public drain." Under the bill, the requirement that a drain be "visibly in existence" would apply only to drains created under law and not those evidenced by written easements or rights of way on file. Drains "visibly in existence" would 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."**

Currently, drain easements no longer needed for drainage purposes may be conveyed back to landowners after 30 days' notice to the general public. The bill would change "may" to "shall" and would require the drain commissioner or board to consider any timely protests or public comments received. (MCL 280.6)

House Bill 4643 would clarify what legal expenses a drain commissioner may charge to a drain district. Under the bill, legal expenses would expressly include, but not be limited to: (1) litigation and witness fee expenses; (2) judgments or orders and associated costs entered against a drainage district; and (3) attorney fees. Under the bill, the expenses could 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. (MCL 280.247)

House Bill 4644 would prohibit a person from obstructing, permitting an obstruction, or otherwise interfering with or encroaching upon a drain or drain right-of way.

- **"Obstruction"** would include "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 structure." Obstruction would *not* include construction of a structure as approved by a drain commissioner or drainage board.
- **"Interfere"** would mean "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."
- **"Encroach"** would mean "any action taken to advance beyond the usual or proper limits of the drain." (MCL 280.421)

The person causing *or* permitting the obstruction, interference, or encroachment would be responsible for the expense of removing it and that expense would be a lien upon the property of the person causing or permitting the problem. A drain commissioner or drainage board could take immediate corrective action without providing the usual 5-day notice to the offender in an emergency endangering the public health, safety, welfare or property in a drainage district.

House Bill 4688 would increase the amount that a drain commissioner (or drainage board in the case of intercounty drains) could assess a drainage district if a district's drain fund

dipped below a specified amount and would raise the amount that a drain commissioner or drainage board could spend on drain maintenance without additional authorization.

Raise maximum amount of allowed assessment to replenish drain fund. Current law specifies that if 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 a drainage district up to \$1,250 per mile or fraction of a mile annually. The amount collected is deposited in the drain fund of a drainage district for necessary inspection, repair, and maintenance of the drain. The bill would increase the allowed maximum assessment from \$1,250 to \$2,500 per mile or fraction thereof and authorize the assessment when the drain fund balance dropped below \$5,000 per mile or fraction thereof (instead of the current \$2,500).

Raising cap on assessments for maintenance and repair without petition. In addition, the Drain Code provides that if an inspection discloses the need for drain maintenance and repair, a drain commissioner or the drainage board may, without petition, expend up to \$2,500 per mile or fraction of a mile in any one year. The bill would raise the amount that could be expended without petition to \$5,000 per mile or fraction thereof, not including inspection and engineering fees and publication and mailing costs. The determination of the maximum expenditure allowed without petition 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.

Non-incidental employee expenses chargeable to drain fund. Under Section 196(13), 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, are chargeable to and paid as budgeted from the county general fund, and are *not* chargeable to the drain fund of a drainage district. Under House Bill 4688, except as provided elsewhere under the code and in counties with a population exceeding 800,000, 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, *may* be chargeable to the drain fund of a drainage district. (Using 2000 census figures, only Wayne and Oakland Counties have populations exceeding 800,000; however, Macomb County has since exceeded that total.)

Delete misdemeanor provision. The bill would also delete a provision that specifies that a violation of Section 196 is a misdemeanor punishable by imprisonment for not more than one year, or by a fine of not more than \$1,000, or both. (MCL 280.196)

FISCAL IMPACT:

With the exception of House Bill 4688, the proposed revisions to the Drain Code would have no apparent fiscal impact. To the extent that House Bill 4688 increases the ability of drain commissioners or drainage boards to assess drainage districts, it could increase

revenue to those entities 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 4688 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.