



Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536



## BILL ANALYSIS

Telephone: (517) 373-5383  
Fax: (517) 373-1986  
TDD: (517) 373-0543

House Bill 4644 (Substitute H-3 as passed by the House)  
Sponsor: Representative Frank Accavitti, Jr.  
House Committee: Agriculture  
Senate Committee: Agriculture

Date Completed: 2-6-08

**CONTENT**

**The bill would amend Chapter 18 (Obstructions) of the Drain Code to do the following:**

- Include an interference or encroachment of a drain in current provisions regarding the obstruction of an established drain.**
- Require a drain commissioner to give a party causing an obstruction 10 business days' notice (rather than five days' notice) to remove the obstruction.**
- Permit a drain commissioner to take immediate action to alleviate an emergency condition.**
- Require a drain commissioner to consider any environmental impact before beginning work to remove an obstruction.**

The bill is described in detail below.

Currently, whenever any person obstructs any established drain, the drain commissioner must have that obstruction removed. Any lessening of the area, or cross section, of a drain is considered an obstruction.

The bill would remove those provisions. Instead, a person could not obstruct, permit an obstruction, or otherwise interfere with or encroach upon a drain or drain right-of-way. Obstruction would be any lessening of the cross section of a drain (as currently provided), including that resulting from any bridge, cable, pipeline, sewer, conduit, roadway, culvert, or other structure unless the construction of the structure was approved by the drain commissioner or the drainage board. Obstruction would not include a properly designed and constructed structure that fell under an established road or right-of-way and was under the authority of the State Department of Transportation, a county road agency, or a municipality, and that did not reduce the existing hydraulic capacity of the drain.

"Interfere" would mean any action that was inconsistent with the district's easement and that hindered or impeded the intended purpose, design, operation, maintenance, or improvement of the drain or that would increase the district's cost to perform any of its work on the drain.

Currently, the person causing an obstruction is liable for the expense of removing it, together with the charges of the drain commissioner, and that amount is a lien on the land of the party causing or permitting the obstruction. The commissioner must report all of the expense to the board of commissioners, together with a report of his or her activities in the

premises. If that amount remains unpaid, the board of commissioners must order the amount spread upon the land of the offending party.

Under the bill, the person causing or permitting the obstruction or otherwise interfering with or encroaching upon an established drain or drain right-of-way would be liable for the expense resulting from the removal of the obstruction, interference, or obstruction, together with the charges of the commissioner. As currently provided, the expense would be a lien on the land of that person, and if the expense remained unpaid, the board of commissioners would have to order the expense spread upon the person's land.

The Code requires that the person causing the obstruction be given written notice of at least five days to remove the obstruction. The bill would require 10 business days' notice. If an emergency endangered the public health, safety, or property within a drainage district, the drain commissioner or the drainage board could take immediate action to alleviate the emergency condition and waive the 10-business-day notice.

The Code's provisions regarding obstruction of a drain do not apply where the obstruction is caused by natural causes. The bill would extend that exemption to an obstruction, interference, or encroachment of any drain or drain right-of-way.

The bill would require a drain commissioner to consider any environmental impact before commencing any work to remove an obstruction.

The Code indicates that nothing in the provisions described above in any way impedes or bars the right of any person to make a criminal complaint under any existing law for any obstruction of a drain. The bill would refer to any obstruction, interference, or encroachment of a drain or drain right-of-way.

MCL 280.421

Legislative Analyst: Curtis Walker

### **FISCAL IMPACT**

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: David Zin

S0708\4644sa

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.