

DRAINAGE DISTRICT BOUNDARIES

Mary Ann Cleary, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4622 (reported from committee as Substitute H-1)

Sponsor: Rep. Al Pscholka

Committee: Local Government

(Enacted as Public Act 261 of 2013)

Revised First Analysis (10-15-13)

BRIEF SUMMARY: The bill would modify the procedures for changing the boundaries of county drainage districts by allowing a county drain commissioner to alter a district's boundaries either by convening a board of determination or by holding a day of review. This is described more fully later.

FISCAL IMPACT: It is not anticipated that House Bill 4622 (H-1) will create any significant costs or savings for the Michigan Department of Agriculture and Rural Development related to the Department's responsibilities for administration of inter-county drain proceedings and decisions. Four positions and \$468,300 of state general funds currently support Department functions related to inter-county drains. The bill may increase costs of counties to carry out responsibilities, proceedings and decision-making related to county drains.

THE APPARENT PROBLEM:

Michigan is unique among the fifty states in that it has county officials—usually elected—called drain commissioners (or in rare cases, public works commissioners, or water resource commissioners). The office dates to the early years of statehood in the 19th century when surveyors found the territorial land grant comprised thousands of watersheds, all of which drained to the surrounding Great Lakes, much in need of drainage. County drain commissioners are elected on the partisan ballot in presidential election years, and they serve four-year terms. Among elected officials, drain commissioners also are unique, because they can levy taxes and special assessments, as well as borrow money, without a vote of the people who elect them. They are responsible for creating and maintaining surface water drainage systems under Public Act 40 of 1956—customarily called the Michigan Drain Code. See *Background Information*.

How many drains are there statewide, and what condition are they in? There are 1,100 inter-county drainage districts in Michigan, inventoried by the Water Resources Division within the Department of Agriculture and Rural Development. And, there are thousands of intra-county drains within Michigan's 83 counties, overseen by county drain commissioners. Many of these drainage districts are old—their boundaries set before the land within the districts developed as residential subdivisions and shopping malls. Indeed, according to committee testimony, the Michigan Department of Agriculture and Rural Development convenes 250 boards of determination each year to update inter-county drains. And in Berrien County alone, there are 804 drains, 75 percent of which the county drain commissioner estimates need their boundaries altered.

Under the Michigan Drain Code, according to testimony, drain commissioners have little ability to change a drainage district's boundaries. Instead, local governments or citizens must petition for changes in a drainage district. They seldom do so, fearing additional tax assessments. Consequently, county drain commissioners say they cannot levy assessments on the appropriate properties to reflect current drainage patterns. Neither can drain commissioners eliminate properties and halt assessments that are no longer accurate.

Legislation has been introduced to allow county drain commissioners the flexibility to change a drainage district's boundaries, either by convening a board of determination or by designating a day of review.

THE CONTENT OF THE BILL:

House Bill 4622 (H-1) would amend the Drain Code of 1956 (MCL 280.197) to modify the procedures for changing the boundaries of county drainage districts. A detailed description of the bill follows.

Under the bill, if after a survey of a drain or a review of drainage district boundaries made subsequent to a petition or after an inspection under Section 196, it appears the boundaries of the drainage district should be revised, the drain commissioner (for a county drain) or the drainage board (for an inter-county drain) would either convene a board of determination or hold a day of review of district boundaries. Then, after notice and review, the commissioner or board could revise the boundaries of the drainage district to include all lands benefitted by the drain as recommended by a licensed professional surveyor or engineer. [Section 196 provides for an annual inspection of drains by a drain commissioner or drainage board, or at the request of a county, city, village, township or certain authorities.]

Board of Determination; Hearing of Necessity. If the drain commissioner or drainage board determines that the boundaries of the drainage district should be revised prior to the hearing of necessity for a petition, then the commissioner or the chair of the drainage board could request that the board of determination revise the drainage district boundaries during the hearing of necessity (as provided in Section 72 or 122 of the Drain Code). If by majority vote the board of determination finds that the addition or deletion of lands will more accurately define the boundaries of the land benefitted by the drain, and it would be just and equitable, they would describe the revised drainage district boundaries in the order of necessity for the drain.

Day of Review. If the drain commissioner or drainage board decides to hold a day of review of drainage district boundaries, then the lands making up the drainage district would have to be subject to review for not less than one day from 9 a.m. until 5 p.m. The review would be conducted at a location designated by the drain commissioner or the drainage board. At the review, the drain commissioner or drainage board would hear the proofs and allegations and carefully reconsider and review the description of land within the drainage district. If they found that the addition or deletion of lands would more accurately define the boundaries of the land benefitted by the drain, and that it would be just and equitable,

then the drain commissioner or drainage board would issue an order to describe and establish the revised drainage district boundaries supported by substantial material and competent evidence.

Generally, House Bill 4622 (H-1) retains the public review that is now required in the law when drainage district boundaries are revised. The bill describes in detail how and when landowners who live within the proposed drainage district must be notified. Notification must also be sent to each city, village, and township in the revised drainage district.

Finally, the bill specifies that the owner of any land in the drainage district, the state Department of Transportation, or any city, village, township, district, or county having control of any highway in the drainage district that is aggrieved by a determination to revise or not revise drainage district boundaries could, within 10 days after the order to revise the drainage district boundaries has been entered, institute an action in the circuit court for the county in which the real property was located, for a determination of whether the decision to add or delete property to or from the drainage district had been supported by substantial, material, and competent evidence.

BACKGROUND INFORMATION:

To learn more about a county drain commission office, visit the Kalamazoo County website at <http://www.kalcounty.com/drain/faq.htm>

There, a factsheet describes the drain commissioner's work. Among the questions asked and answered are the following:

What is a county drain?

Drains are open channels, ditches, streams, pipes, retention ponds or swales that convey storm water downward to a drainage basin. Drains become county drains when property owners or a local village, city or township petition the Drain Commissioner to establish a county drain and all legal requirements are met. Plat drain basins become county drains through a 433 agreement. Every drain has an associated county drainage district responsible for maintaining the drain.

What is a drainage district?

A drainage district is a legally established area of land draining to a common outlet, sometimes also called a watershed or a drainage basin. Drainage district boundaries rarely correspond to the political boundaries of townships or counties. Instead, they are determined by the natural topography of the land - the natural and built elevations and drainage flow patterns of an area.

What is a drain assessment?

County drainage districts are separate public corporations with their own financial function. Each drainage district is supported by drain assessments that cover the cost of maintaining the drainage system. County drains are not maintained by Kalamazoo County general fund taxes. An assessment has two parts: 1) the total

cost of the current project multiplied by 2), the apportionment, or proportion, assigned to the party based on benefit.

For further information, visit the website of the Michigan Association of Drain Commissioners at <http://macdc.us>

ARGUMENTS:

For:

Proponents of this bill say county drain commissioners need more flexibility to alter county drainage district boundaries so the boundaries reflect current drainage patterns given changes in land use since the districts were established decades ago. They note that the Michigan Drain Code is silent about eliminating land and assessments from outdated drainage districts.

Consequently, proponents note this bill is a matter of basic fairness and equity. As the Genesee County drain commissioner said in written testimony to the Local Government Committee: "House Bill 4622 would allow drain commissioners of each county the ability to make additions and deletions to drainage district boundaries. These revisions are critical since many drainage boundaries were established more than 100 years ago, and no longer accurately reflect current drainage patterns. As a result, drain commissioners are many times legally prevented from levying assessments on the appropriate property owners who benefit from their respective drains."

Finally, proponents observe that current technological advances in surveying techniques and aerial photography allow drain commissioners to undertake the modernization of drain district boundaries in cost-effective ways, enabling them to redraw the drainage district maps to truly reflect water flows in any watershed.

Against:

Opponents of the bill have raised concerns about "double assessments" that may arise when drainage district boundaries are redrawn. They fear those living in an "old" drainage district, and already paying an assessment to maintain their drain, may also be required to pay the cost of redrawing the "new" district if their property continues to be included in the updated drainage district boundaries.

Further, some have raised concerns that the bill may be costly in areas where farms and lake property development are common. Drainage districts in those areas tend to be larger, and the drainage assessment is spread among fewer people since the areas are more sparsely populated. Consequently, the costs of new drain maintenance fall to fewer taxpayers, each of whom pays more.

POSITIONS:

The Michigan Association of Drain Commissioners supports the bill. (6-6-13)

The Ottawa County Water Resources Manager supports the bill. (6-6-13)

The Berrien County Drain Commissioner supports the bill. (6-6-13)

The Kent County Drain Commissioner supports the bill. (6-6-13)

The Genesee County Drain Commissioner supports the bill. (9-30-13)

The Michigan Farm Bureau supports the bill in concept. (6-6-13)

The Michigan Department of Agriculture and Rural Development is neutral on the bill. (6-6-13)

Legislative Analyst: J. Hunault
Fiscal Analyst: Susan Frey

■ 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.