

Legislative Analysis



DRAIN CODE: ADD REFERENCES TO UNIFORM CONDEMNATION PROCEDURES ACT

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House Bill 4793 (reported from committee without amendment)

Sponsor: Rep. Al Pscholka

Committee: Local Government

(Enacted as Public Act 262 of 2013)

First Analysis (10-10-13)

BRIEF SUMMARY: The bill would eliminate outdated provisions of the Michigan Drain Code concerning the taking of private property, and replace those provisions with the condemnation proceedings described in the Uniform Condemnation Procedures Act of 1980.

FISCAL IMPACT: Because House Bill 4793 codifies common practice pursuant to an Attorney General Opinion, No. 6336 of 1986, regarding procedures for condemnation of rights-of-way for drain purposes, the bill is not anticipated to have any fiscal implications for the Michigan Department of Agriculture and Rural Development related to responsibilities for inter-county drains, or for counties for responsibilities for county drains, or for the judiciary or local courts.

THE APPARENT PROBLEM:

On January 17, 1986, then Attorney General Frank Kelley issued Opinion No. 6336 to answer a question raised by the Michigan Department of Agriculture concerning the proper procedures for condemnation of rights-of-way for drain purposes.

The question posed by the department director was this: *Does the Uniform Condemnation Procedures Act control the procedures for the condemnation of rights-of-way for drain purposes or may such condemnation proceedings be also brought under the Drain Code of 1956?*

In response, the attorney general ruled that despite the failure of the Uniform Condemnation Procedures Act to contain an express provision for repeal of the procedural provisions of the Drain Code, "the Legislature has clearly stated that with certain exceptions...all acquisitions of property by an agency under the power of eminent domain shall be commenced pursuant to and be governed by this act" (emphasis in the original). To support this ruling, the attorney general's written opinion cited the legislative history of the Uniform Condemnation Procedures Act, and in particular the legislative analysis prepared by the House Legislative Analysis Section for House Bill 4652 of 1979. See **Background Information**.

Legislation has now been introduced to amend the Drain Code to incorporate the attorney general's ruling, thereby codifying what has become common practice over the past 27 years.

THE CONTENT OF THE BILL:

House Bill 4793 would amend the Drain Code of 1956 (MCL 280.75 and 280.128) to eliminate outdated provisions concerning the taking of private property, and to replace those provisions with the condemnation proceedings described in the Uniform Condemnation Procedures Act of 1980.

More specifically and under the bill, if any person whose lands would be traversed or damaged by a proposed drain had not executed a release of right-of-way, then the drainage district could institute condemnation proceedings to obtain the necessary right-of-way, an easement, or other property interest, under the Uniform Condemnation Procedures Act (1980 PA 87, MCL 213.31 to 213.75).

In addition, the bill would repeal Sections 76 to 84, 86 to 88, and 129 of the Drain Code of 1956, all of which appear to deal with condemnation and damages.

BACKGROUND INFORMATION:

To read Attorney General Opinion No. 6336 in its entirety, visit the following website: <http://www.ag.state.mi.us/opinion/datafo;es/1980s/op06336.htm>

ARGUMENTS:

For:

This bill updates the Michigan Drain Code so that it complies with the Uniform Condemnation Procedures Act. The bill codifies current condemnation practices followed by drain commissioners—practices that have been in place for 27 years since the issuance of Attorney General Opinion No. 6336.

POSITIONS:

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

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

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

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

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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.