

Legislative Analysis



DRAIN CODE REVISIONS

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House Bill 5684 as enrolled
Public Act 550 of 2014

Analysis available at
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House Bill 5685 as enrolled
Public Act 551 of 2014

House Bill 5686 as enrolled
Public Act 552 of 2014

Sponsor: Rep. Al Pscholka
House Committee: Local Government
Senate Committee: Local Government and Elections
Complete to (2-11-15)

BRIEF SUMMARY: The bills would authorize acquisitions in real or personal property by a drainage district; modify the application process for inter-county drainage districts; and authorize the creation of a drainage district to address issues caused by highway construction or maintenance.

FISCAL IMPACT: House Bill 5684 would have no fiscal impact. The other bills could reduce local costs through the simplification of the application process for 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 that the territorial land grant comprised thousands of watersheds, all of which drained to the surrounding Great Lakes, were 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 need their boundaries altered, according to county drain commissioner estimates.

Under the Michigan Drain Code, according to testimony offered during the 2013-2014 legislative session, 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.

During the 2013-2014 legislative session, Public Acts 261 and 262 of 2013 (House Bills 4622 and 4793) were passed 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. Now, additional legislation has been introduced to modify the application process for inter-county drainage districts; authorize the creation of highway construction drainage districts; and allow county drain commissioners to acquire property, including through the process of condemnation.

THE CONTENT OF THE BILLS:

The bills would amend sections of the Drain Code of 1956 to (1) authorize acquisitions in real or personal property by a drainage district; (2) modify the application process for inter-county drainage districts; and (3) authorize the creation of a drainage district to address issues caused by highway construction or maintenance. A more detailed description of each bill follows.

House Bill 5684 (H-1) (MCL 280.5) specifies that a drainage district is a body corporate with power to acquire interests in real or personal property by gift, purchase, lease, grant, trade, or any other lawful method, including condemnation under the Uniform Condemnation Procedures Act 1980.

Currently under the law, a drainage district has the power to contract, to sue and to be sued, and to hold, manage, and dispose of real and personal property. House Bill 5684 would retain these provisions.

House Bill 5685 (H-1) (MCL 280.101 and 280.121) specifies that an application to establish and construct a drain on lands located in more than one county, or a drain that affects more than one county, could be signed by a representative of the city, village, or township if so authorized by its governing body. Such authorization would be allowed if the proposed drain was necessary for the public health, and the city, village, or township would be liable for an assessment to cover a percentage of the proposed drain's cost.

Now under the law, an application to establish an inter-county drainage district must be signed by at least 50 percent of the freeholders whose lands would be traversed by the proposed drain. The bill would also define "municipality" to mean a city, village, or township.

House Bill 5686 (MCL 280.327) acknowledges that sometimes it becomes necessary during highway construction to take surplus water across adjacent lands. When that occurs the bill specifies that any of the following leaders could submit an application to the drain commissioner of the county or counties where the highway is situated, asking the drain commissioner to designate a county or inter-county drain: the director of the State Transportation Department; a board of county road commissioners; or a county board of commissioners, if a resolution had been adopted transferring to them the powers and duties of an appointed road commission under Section 6 of 1909 Public Act 283 of 1909.

Now under the law, an application for a single county drainage district may be filed by the state, county or township highway commissioner, or county road commissioners. No provision is made for a county board of commissioners or for an inter-county drain.

House Bill 5686 also specifies that if the director of the State Transportation Department submitted an application for a drain (either a new drain, or for cleaning out or extending an existing drain), the transportation director would have to send a copy to the director of the Department of Agriculture and Rural Development. The director of that department would then have 60 days to hold a public meeting in the vicinity of the drainage district, to hear all interested people speak. Currently the law requires that public hearing be held within 30 days. After the hearing, the director of the Department of Agriculture and Rural Development would be required to offer a determination concerning the proposed drain's practicability and necessity to the local drain commissioner or the drainage board.

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 the legislation say the changes the legislature made to update the Drain Code earlier in the 2013-2014 legislative session were welcome, but that county drain commissioners need even further flexibility to alter county drainage district boundaries. Proponents note, for example, that the law now allows a "municipal option" to initiate a drainage district within a *single* county, but does not permit a "municipal option" to initiate an inter-county drainage district that would cross county boundaries to serve *two or more counties*. House Bill 5685 would allow local officials—those in cities, villages, and townships—to request the creation of an inter-county drainage district.

For:

Proponents of House Bill 5684 say the bill updates the Drain Code to reflect more than two decades of settled case law that enables drain commissioners to acquire real property through the Uniform Condemnation Procedures Act of 1980.

For:

Further, those in favor of House Bill 5686 report that highway construction projects sometimes cause drainage problems at, or adjacent to, a construction site that spans two counties. This bill would allow for the creation of an *inter-county or single county drainage district* near a highway construction or maintenance site. Under the bill, the drainage district petition could be initiated by any one of the following officials: the director of the Michigan Department of Transportation; a board of county road commissioners; or, if it has a road commission's powers and duties, then by a board of county commissioners.

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