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House Bill 4622 (Substitute H-1 as passed by the House)  
Sponsor: Representative Al Pscholka  
House Committee: Local Government  
Senate Committee: Local Government and Elections

Date Completed: 10-30-13

### **CONTENT**

**The bill would amend provisions of the Drain Code related to the revision of drainage district boundaries. Specifically, the bill would do the following:**

- **Require a county drain commissioner or intercounty drainage board to either convene a board of determination for a hearing of necessity regarding a proposed revision, or hold a day of review of district boundaries.**
- **Require an order of the board of determination, drain commissioner, or drainage board to describe the revised boundaries upon finding that the addition or deletion of land would be just and equitable and would more accurately define the boundaries of the land benefited by the drain.**
- **Require an order of the drain commissioner or drainage board revising boundaries to be supported by substantial, material, and competent evidence.**
- **Authorize the owner of land in a drainage district, the Michigan Department of Transportation, or any city, village, township, or county in control of a highway in the district, that was aggrieved by a determination regarding a proposed revision, to institute an action in the circuit court.**

Under the Code, after a drainage district has been established and the order establishing it has been filed with the county drain commissioner, a petition to locate, establish, and construct a drain may be filed with the commissioner. After a petition is filed, the drain commissioner may appoint a board of determination composed of three disinterested property owners. If the drain commissioner chooses not to appoint the board, the county board of commissioners must do so. The board of determination must meet to determine the necessity of the proposed drain and whether it is conducive to public health, convenience, or welfare.

When a drain needs certain improvements, a petition may be made to the drain commissioner by five of the freeholders whose land is liable to be assessed for the benefits of the work, or by 50% of the freeholders if there are fewer than five. After the board of determination determines the necessity for the work, the drain commissioner must follow procedures prescribed in the Code related to a final order of determination establishing the drain, apportionment of the costs and benefits of the work, and designation of the district to be assessed for benefits.

If it appears that land has been added to the drainage district, the commissioner for a county drain or the chairperson of the drainage board for an intercounty drain must notify the board of determination that the land should be added to the district. The commissioner

or chairperson must call a meeting of the board of determination. Notice of the meeting must be given and publicized as provided in the Code. If the board of determination by a majority vote finds the proposed addition of the land to the district necessary and conducive to the public health, convenience, or welfare, the board must make an order to that effect and file it with the commissioner or drainage board. The commissioner or drainage board must take the steps and perform the acts required by the Code for the locating, establishing, and constructing of drains. The bill would delete all of these provisions related to the addition of land to a drainage district.

Under the bill, if, after a survey or inspection of the drain or a review of the drainage district boundaries, it appears that boundaries should be revised, the drain commissioner for a county drain or the drainage board for an intercounty drain either would have to convene the board of determination or hold a day of review of district boundaries and, after notice and review as provided in the bill, revise the boundaries to include all land benefited by the drain as recommended by a licensed professional surveyor or engineer.

If the commissioner or drainage board determined that the boundaries should be reviewed before the hearing of necessity for a petition, the commissioner or drainage board chairperson could request that the board of determination revise the boundaries during the hearing of necessity. If the board of determination by a majority vote of members found that the addition or deletion of land would more accurately define the boundaries of the land benefited by the drain and it would be just and equitable, the board would have to describe the revised boundaries in the order of necessity for the drain.

If the commissioner or drainage board determined to hold a day of review of drainage district boundaries, the land comprising the revised district would have to be subject to review for at least one day from 9 a.m. until 5 p.m. The review would have to be conducted at a location designated by the commissioner or drainage board. At the review, the commissioner or drainage board, or its designee, would have to hear the proofs and allegations and carefully reconsider and review the description of land within the drainage district. If the commissioner or board found that the addition or deletion of land would more accurately define the boundaries of the land benefited by the drain and it would be just and equitable, the commissioner or board would have to issue an order describing and establishing the revised boundaries supported by substantial, material, and competent evidence.

A notice for the review of revised drainage district boundaries would have to specify the date, time, and place at which the review would take place and provide a general description of the land proposed to be added or deleted. The notice would have to be sent by first-class mail at least 10 days before the date of the review to each city, village, and township in the revised district, and to each person whose name appeared on the last city or township tax assessment roll as owning land within the revised district, at the address shown on the roll. If an address did not appear, the notice would not have to be mailed to that person. The bill would reenact current provisions regarding an affidavit of the mailing and failure to receive the notice, as well as publication of the notice and payment by the drainage district of notification expenses.

The owner of any land in the drainage district, the Michigan Department of Transportation, or any city, village, township, district, or county having control of any highway in the drainage district, that was aggrieved by a determination to revise or not to revise drainage district boundaries could 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 district was supported by substantial, material, and competent evidence. The action would have to be instituted within 10 days after the order to revise the boundaries was entered.

**FISCAL IMPACT**

The bill would to have a negligible fiscal impact on State and local government. Any additional administrative duties required under the bill would most likely be assumed by existing governmental resources.

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