

# Legislative Analysis



## REMOVING AND ADDING COUNTIES TO INTERCOUNTY DRAINAGE DISTRICTS

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**House Bill 4286 as enacted**

**Public Act 62 of 2017**

**Sponsor: Rep. Roger Victory**

**House Committee: Local Government**

**Senate Committee: Local Government**

**Complete to 7-8-18**

**BRIEF SUMMARY:** House Bill 4286 would modify an existing process and provide for a new process to add counties to, and remove counties from, intercountry drainage districts when altering the boundaries of a district.

**FISCAL IMPACT:** The bill does not appear to result in additional direct local costs or revenues. See *Fiscal Information*, below, for further discussion.

### **THE APPARENT PROBLEM:**

According to testimony to the House Local Government Committee, the Michigan Department of Agriculture and Rural Development (MDARD) is in the process of reviewing and updating the boundaries of drainage districts in Michigan. Many of these districts were drawn decades ago and do not account for recent development. It is necessary for county drain commissioners and drainage boards to have the ability to revise these drainage districts and to ensure that drain assessments are levied on landowners benefitting from the drain. Public Act 261 of 2013 modified the procedures for changing the boundaries of a drainage district, but did not address the situation when the changing of boundaries would result in the addition or removal of a county from an intercountry drainage district. This bill seeks to codify this process.

### **THE CONTENT OF THE BILL:**

House Bill 4286 would amend the Drain Code of 1956 to change the procedure for adding and removing counties from intercountry drainage districts.

**The Existing Method** (*current statute allows for an addition of county lands to a drainage district. HB 4286 would extend that process to the removal of county lands to a drainage district, and make a modification to the petition requirement.*)

A petition signed by at least 50% of the landowners whose land is traversed by the drain or proposed extended drain must be presented to the drain commissioner in one of the counties affected by the drain (landowners whose land abuts a specific part of a highway or street that also touches a drain would now be eligible to sign).

OR

HB 4286 would allow the petition to be signed solely by a city, village, or township if authorized by its governing body, and if the municipality is or will be liable for assessment for a percentage of the cost of the drain.

- The petition must state the name or number of the drain, and identify the land that would be added or removed from the drainage district.
- Upon receipt of the petition, the drain commissioner must forward the petition to the state director of the Department of Agriculture and Rural Development (MDARD) and the drain commissioner for each county in the original or proposed district.
- The director of MDARD must convene a meeting of the drainage board, consisting of the drain commissioner for each county impacted.
- A notice of the meeting must be provided, and all landowners in the current or proposed drainage district may appear for or against the addition or removal of lands.
- If the board determines the addition or removal of lands from the drainage district is necessary for the public health, convenience, and welfare, it would proceed to determine the costs borne by each county. (The chairperson determines the apportionment if commissioners cannot agree).
- If the drainage board finds it necessary to revise the drainage district boundaries, it must enter an order to that effect, and provide the order to all impacted county drain commissioners and landowners.
- The revised drainage board now constitutes the drainage board for the revised district.

### **The Proposed New Method**

Current statute allows for an annual inspection of an established drain. If after that inspection, a drain commissioner or drainage board determines that lands in a county not part of the original drainage district should be added, or that lands in an intercountry drainage district should be removed resulting in the removal of a county from that district, the following would occur:

- The drain commissioner or drainage board must serve a notice to the MDARD director and the drain commissioner in each county impacted.
- The MDARD director must call a meeting of the drainage board, including the drain commissioner of each county where the current or proposed district exists.
- At least 10 days prior to that meeting, the drainage board must send notice of the meeting to each city, village, and township in the original or proposed drainage district, and to each person whose name appears on the last city or township tax assessment roll as owning land in the original or proposed district.
- All landowners impacted and liable for assessment and any municipality affected may appear for or against the change.
- Using the evidence offered, the drainage board will determine whether the change in land is just and equitable.

If the addition or removal of lands is just and equitable, the following steps are necessary:

- The board must file an order to that effect, giving the drain a name or number, designate the district, describe the route and course of the drain and district boundaries, and, if an intercountry drain, designate the members of the revised drainage board and determine the apportionment between counties.
- The order must be filed with the drain commissioners in each county liable for assessment.
- If the revised drainage district is an intercountry district, the revised drainage board must revise the district boundaries using procedures described in existing statute.
- If the revised drainage district is a county drain, the original drainage board must revise the district boundaries using procedures described in existing statute, and after revising the boundaries, the drain commissioner has the powers and duties for the county drain.

The addition or removal of a county or counties to or from a drainage district under the proposed new method in HB 4286 is subject to review by an arbitration board described in the Drain Code.

MCL 280.135 and 280.197

### ***BACKGROUND INFORMATION:***

To learn more about drain commissioners, visit the website of the Michigan Association of County Drain Commissioners: <http://macdc.us/>

There, an FAQ factsheet describes the commissioners' work.<sup>1</sup> Among the questions asked and answered are:

#### What is a drain commissioner?

Drain commissioners, sometimes called water resources commissioners, are county-level officials responsible for administering laws involving flood protection, stormwater management, and soil erosion. Some specific duties performed by the drain commissioner include: establishing, improving, and maintaining county drains; reviewing stormwater drainage plans for construction that may impact a county drain; and maintaining lake levels, where applicable.

#### What is a drain?

Drains come in various forms, including natural or artificial creeks or ditches, as well as pipes that carry stormwater.

#### What is a drainage district?

Each established county drain has a legally established area of land known as a drainage district. Drainage district boundaries are typically determined by a drain's watershed. A watershed is an area of land that captures rainwater and eventually

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<sup>1</sup> <http://macdc.us/wp-content/uploads/2016/10/03-MACDC-FAQ.pdf>

carries it to the nearest lake, river, stream, or drain. Watershed boundaries are based on topography of the land and, where applicable, storm sewer infrastructure. Within a drainage district, each drop of rainwater soaks in the ground, flows across the land, or enters a storm sewer eventually making it to that district's established drain.

What is a drain special assessment?

Special assessments on property owners and governmental units pay for constructing and maintaining drains. Special assessments are the sole source of funding for drainage districts. Each drainage district has a separate financial account so property owners only pay for costs incurred for the drainage district in which their property is located.

***FISCAL INFORMATION:***

The Director of the Michigan Department of Agriculture and Rural Development (MDARD) has administrative authority over intercountry drainage districts. MDARD representatives indicate that House Bill 4286 would provide an expedient procedure to correctly define drainage district boundaries to include only those properties that contribute drainage flow, that receive benefit from the drain, or that do both.

There is currently an appropriation line item in the MDARD budget for intercountry drain activities. The bill does not appear to materially increase department intercountry drain workload to an extent that would require additional resources to support the program.

The bill does not appear to result in additional direct local costs or revenue.

***ARGUMENTS:***

***For:***

Recent legislative changes to the Drain Code (Public Act 261 of 2013) have given drain commissioners more flexibility to alter drainage district boundaries so that boundaries reflect current drainage patterns and assessments are levied on the benefitting landowners. HB 4286 continues to support the process of "right-sizing" drainage districts and codifies the process for adding and removing lands from a drainage district when a revision results in a county being added to or removed from the district.

***Against:***

No arguments against the bill were presented in committee.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.