



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS



Telephone: (517) 373-5383
Fax: (517) 373-1986

House Bill 4286 (Substitute H-1 as passed by the House)
Sponsor: Representative Roger Victory
House Committee: Local Government
Senate Committee: Local Government

Date Completed: 5-16-17

CONTENT

The bill would amend the Drain Code to revise the process for adding counties to intercounty drainage districts, and establish an alternative process for the revision of drainage district boundaries. With respect to the current process, which is triggered by the filing of a petition, the bill would do the following:

- **Extend the process to a county drainage district.**
- **Extend the process to the removal of land from a drainage district resulting in the removal of a county from the district.**
- **Allow a petition to be signed either by landowners whose land was traversed by the drain (as currently provided) or by landowners whose land abutted on the part of a roadway along the side of which the drain would run.**
- **Allow a petition to be signed solely by a city, village, or township if authorized by its governing body or by any combination of municipalities, if the petitioning municipality or municipalities were or would be liable to assessments at large for a percentage of the cost of the drain.**

The alternative process would apply if a drain commissioner or drainage board, after an inspection and a review of the drainage district boundaries, determined that the boundaries should be revised and that land in a county or counties not part of the original district should be added, or land in an intercounty district should be removed resulting in the removal of a county from the district.

The bill would take effect 90 days after its enactment.

Drainage District Amending Petition

Under the Code, if at any time after an intercounty drainage district has been established and a drain has been located, established, and constructed there, it appears necessary to extend the drain or district into a county that was not a part of the original district, the land in the county may be added to the district by presentation to the drain commissioner of one of the counties traversed or affected by the drain, of a petition signed by 50% of the landowners whose land is traversed by the drain or proposed extended drain. The petition must state the name or number of the drain, and the land proposed to be added to the district. Upon receiving the petition, the drain commissioner must mail a copy of it to the MDARD Director and to the drain commissioner of each county where there is land liable for assessments for the proposed extended drain or drainage district.

The MDARD Director must call a meeting of the drainage board, including the commissioner of any county in which there is land that has been added to the drainage district. Notice of the meeting and all other proceedings must be in accordance with the Code. At the meeting, all people owning land liable to assessment for benefits, or any district or municipality affected, may appear for or against the addition of the land. The board must consider the petition and any evidence offered, and if it is determined that the extension of the drain or district is necessary for the public health, convenience, or welfare, the board must determine the just percentage of the whole cost of construction that each county must bear, and the number of installments in which the drain taxes must be collected. If the commissioners cannot agree on the apportionment between counties or the number of installments, the chairperson must make the determination.

If, in the opinion of the expanded drainage board, it is necessary to add the land to the drainage district, the board also must enter an order adding the land. Copies of the order must be filed with the drain commissioner of each county liable for assessments of the extended drain or district. Copies also must be served upon all people whose land has been added to the district. After the order is filed, the expanded drainage board constitutes the drainage board for the expanded district and has all the powers that are given to drainage boards by the Code.

The bill would amend this process as described below.

Under the bill, if at any time after a county or intercounty drain was constructed, it appeared necessary to extend the drain or drainage district into a county that was not a part of the original district or to remove land from the original district resulting in the removal of a county from an intercounty drainage district, the land could be added to or removed from the district pursuant to Section 197(3) (described below) or by presentation to the drain commissioner of one of the counties traversed or affected by the drain, of a petition signed by 50% of the landowners whose land was traversed by the drain or proposed extended drain, or abutted on the part of a highway or street along the side of which the drain or proposed extended drain ran, between the point where the drain entered the highway and the point where it left the highway. Instead of landowners, the petition could be signed solely by a city, village, or township if authorized by its governing body or by any combination of municipalities, if the petitioning municipality or municipalities were or would be liable to assessment at large for a percentage of the cost of the drain. The petition would have to state the name or number of the drain, and identify the land proposed to be added to or removed from the drainage district. Upon receiving the petition, the drain commissioner would have to mail a copy of it to the MDARD Director and to the drain commissioner of each county where the original or proposed revised district was located.

The Department Director would have to call a meeting of the drainage board, which would have to include the commissioner of each county where the original or proposed revised drainage district was located. Notice of the meeting and all other proceedings would have to be provided pursuant to the Code. At the meeting, all people owning land in the district or proposed revised district liable to assessment for benefits, or any municipality affected, could appear for or against the addition or removal of the land. The board would have to consider the petition and any evidence offered.

If the board determined that the extension of the drain or drainage district or the removal of land from the district was necessary for the public health, convenience, or welfare, the board would have to proceed to determine the just percentage of the whole cost of construction that each county would have to bear and the number of installments in which the drain taxes would have to be collected. If the commissioners could not agree on the apportionment

between counties or the number of installments, the chairperson would have to determine these, subject to appeal.

If, in the opinion of the drainage board, it were necessary to revise the drainage district boundaries, the board also would have to enter an order to that effect. Copies of that order would have to be filed with the drain commissioner of each county in the revised drainage district. Copies of an order adding the land to the district also would have to be served on all people whose land had been added to the district. After the order was filed, the revised drainage board would constitute the board for the expanded district and would have all the powers and duties of drainage boards under the Code.

Alternative Drainage District Revision Process

Section 197(3) of the Code specifies that, if the drain commissioner or drainage board determines that the boundaries of a drainage district should be revised before a hearing of necessity for a petition, the drain commissioner for a county drain, or the chairperson of the drainage board for an intercounty drain, may request the board of determination to revise the district boundaries during the hearing of necessity. If the board of determination finds that the addition or deletion of land will more accurately define the boundaries of the land benefited by the drain and it would be just and equitable, the board must describe the revised district boundaries in the order of necessity for the drain. The bill would designate these provisions as Section 197(4) and create a new Section 197(3).

Under the new subsection, if, after an inspection under the Code and a review of the drainage district boundaries, a drain commissioner or drainage board determined that the boundaries should be revised and that land, in a county or counties not part of the original district, should be added to the district, or land in an intercounty district should be removed resulting in the removal of a county from the intercounty district, the drain commissioner or drainage board would have to serve notice on the MDARD Director and the drain commissioner of each county where there was land proposed to be added to or removed from the district.

The Department Director would have to call a meeting of the drainage board, which would have to include the commissioner of each county where the drainage district or proposed revised district was located. At least 10 days before the date of the meeting, the drainage board would have to send notice of the meeting by first-class mail to each city, village, and township in the original or proposed revised district and each person whose name appeared on the last city or township tax assessment roll as owning land in the original or proposed revised district, at the address shown on the roll. If an address did not appear on the roll, notice would not have to be mailed to that person.

At the meeting, all people owning land in the drainage district or proposed revised district liable to assessment for benefits, or any municipality affected, could appear for or against the addition or removal of the land. The drainage board would have to consider any evidence offered and determine whether the addition or removal of the land was just and equitable. If the addition or removal of the land were just and equitable, the board would have to file an order to that effect. The order would have to give the drain a name or number, designate the district, describe the route and course of the district boundaries, and, if the district as revised were an intercounty district, designate the members constituting the revised drainage board and determine the apportionment between counties. A copy of the order would have to be filed with the drain commissioner of each county liable for assessment of the district. If the district as revised were an intercounty drainage district, after the order was filed, the revised drainage board would constitute the drainage board for the revised district and would have all the powers and duties of drainage boards under the Code. The revised drainage board

would have to revise the district boundaries during the hearing of necessity as currently provided or hold a day of review of district boundaries as provided in the Code.

If the drainage district as revised were a county drainage district, the original drainage board would have to revise the district boundaries during the hearing of necessity or hold a day of review of drainage district boundaries. Following the order revising the district boundaries, the drain commissioner would have all the powers and duties for a county drain established under the Code.

In addition, the bill specifies that the addition or removal of a county or counties to or from a drainage district under Section 197(3) would be subject to review in the manner provided for under the Code.

MCL 280.135 & 280.197

Legislative Analyst: Drew Krogulecki

FISCAL IMPACT

Depending upon the amount of procedural activity generated by the bill and potential changes relating to statewide drainage responsibility, the bill would have an indeterminate fiscal impact on local government. There would be costs for notification in the case of petitions, as there are currently. More significantly, according to MDARD, should a county be added to a drain district, then the parcels and public corporations that have never been assessed for that drain would be specially assessed (taxed) based on their benefit. If circumstances resulted in the removal of a county, then those entities would be relieved of financial liability for maintaining and improving the drain. These actions also could be followed by appeal procedures.

A proposed FY 2017-18 appropriation of \$250,000 GF/GP for MDARD, as recommended by the Governor, House, and Senate, for a statewide intercounty drain mapping project, which would map the drains of the State, would have an impact, but would provide no fiscal support for the provisions of House Bill 4286 (H-1).

Fiscal Analyst: Bruce Baker

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.