

Legislative Analysis



DRAINAGE DISTRICT BOUNDARIES

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5189 (S-1) as passed by the Senate

Sponsor: Rep. Robert J. Bezotte

House Committee: Local Government and Municipal Finance

Senate Committee: Local Government

Complete to 1-27-25

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 5189 would amend Chapter 6 (Intercounty Drains) and Chapter 8 (Cleaning, Widening, Deepening, Straightening and Extending Drains) of the Drain Code to modify the procedures to revise the boundaries of a drainage district to add land from one or more counties not originally a part of the district or to remove all land in one or more counties from the district.

Petition and determination

Currently, after receiving a petition for addition or removal, a drain commissioner must mail a copy of the petition to the director of the Michigan Department of Agriculture and Rural Development (MDARD) and the drain commissioner of each county where the existing or proposed revised drainage district is located. After receiving a petition, the MDARD director must call a meeting of the drainage board.¹

House Bill 5189 would require a petition to specifically identify the county or counties to be removed or added, and the drain commissioner would have to provide a notice to the MDARD director and affected drain commissioners that identifies the proposed county or counties and includes a general description or map of the lands expected to constitute the drainage district.² Notices for a drainage board meeting would also have to identify those counties and include a general description or map.

If the drainage board determines that the addition or removal is necessary for the public health, convenience, or welfare, it currently must enter an order to that effect and file a copy with the drain commissioner of each county in the revised district. The board must also determine the percentage of the construction costs that each county is responsible to pay. Once the order is filed, the board constitutes the drainage board for the new district and has all the powers and duties of a drainage board under the Drain Code.

¹ Notices for a drainage board meeting and all other proceedings are required to be provided in accordance with the Drain Code's procedures for adding or removing one or more counties to or from a drainage district. House Bill 5189 would instead require notices of the meeting to be provided in accordance with the procedures under which a drainage board must call a meeting, with notices sent to each person who owns land in the original or proposed revised drainage district according to the last city or township tax roll.

² The bill would require the petition copies and notices to be provided by certified mail.

Instead, House Bill 5189 would require a drainage board to make its determination by a majority vote. The board would then have to issue an order to that effect and follow all applicable procedures to revise the district's boundaries, as listed below.³

Boundary revision

After the receipt of a petition filed under Chapter 8 (Cleaning, Widening, Deepening, Straightening and Extending Drains), the Drain Code authorizes a drain commissioner or drainage board to retain a licensed surveyor or engineer to survey the drain, review the district boundaries, or, if necessary, lay out a revised drainage district. If the results of a survey, review, or inspection suggest that the boundaries of a drainage district should be revised, the boundaries must be revised to include all lands benefited by the drain as recommended by the surveyor or engineer.

House Bill 5189 would instead provide that after an inspection of a drain or after receiving a petition to take action on a drain, consolidate drainage districts, take action to move surplus water across adjacent land for highway construction or maintenance, or purify the flow of a drain due to illegal pollution, a drain commissioner could hire a licensed surveyor or engineer to review the district's boundaries and lay out a revised drainage district as necessary. If the review suggests that the boundaries should be revised, a drain commissioner or drainage board chairperson would still be required to either hold a day of review⁴ of the district boundaries or convene a board of determination or the drainage board, but the boundaries would no longer have to be revised in accordance with the surveyor or engineer's recommendations.

If a drain commissioner or drainage board determines after an inspection and the review that a drainage district's boundaries should be revised to add or remove a county, then the following procedures currently apply:

- The drain commissioner or drainage board must notify the MDARD director and the drain commissioner of each county where lands are proposed to be added or removed.
- The MDARD director must call a drainage board meeting, which must include the commissioner of each county where the existing or proposed drainage district is located.
- At least 10 days before the meeting, the drainage board must provide notice of the meeting to the appropriate entities and individuals.
- At the meeting, all landowners in the existing or proposed district that would be liable for assessment and any affected municipality can advocate for or against the addition or removal.
- The board must consider all evidence offered and determine whether the addition or removal is just and equitable, and if it determines as such it must file an order to that effect.
- The order must give the drain a name or number, describe the route of the drain, and describe drainage district boundaries, and if the district is an intercounty drain, the order must designate the members constituting the revised drainage board and determine the apportionment between counties.

³ If the petition is combined with a petition to make other improvements to the drain, the drainage board would additionally be required to follow all applicable procedures to determine the practicability of the improvements before taking further action.

⁴ HB 5189 would provide that notice of a day of review must be sent to the required entities by first-class mail, as is current law, or certified mail.

- A copy of the order must be filed with the drain commissioner of each county liable for assessments.
- If the revised district is an intercounty district, the revised drainage board constitutes the drainage board for the district once the order is filed, and it must either revise the district boundaries or hold a day of review.
- If the revised district is a single-county drainage district, then the original drainage board must either revise the district boundaries or hold a day of review, and the drain commissioner retains all powers and duties with respect to the drain.

House Bill 5189 would specify that those procedures apply in the order listed above, and it would provide that a drain commissioner could appeal the apportionments or revised boundaries to an arbitration board after receiving a copy of an order issued by a drainage board. It would also require the order to designate a name or number for the drainage district (in addition to the drain itself) and identify each county added to or removed from the district.

MCL 280.135 and 280.197

BRIEF DISCUSSION:

House Bill 5189 reportedly intends to create consistency within the Drain Code regarding language on adding or removing a county to or from a drainage district.

FISCAL IMPACT:

House Bill 5189 primarily addresses the processes for adding or subtracting lands to an intercounty drainage district. These provisions do not appear to have a material fiscal impact on the state or local units of government.

POSITIONS:

A representative of the Michigan Association of Drain Commissioners testified in support of the bill. (5-22-24)

The Wayne County Drain Commissioner indicated support for the bill. (5-22-24)

The following entities indicated opposition to the bill:

- Home Builders Association of Michigan (5-22-24)
- Michigan Townships Association (6-12-24)
- National Federation of Independent Business (5-22-24)

Legislative Analyst: Holly Kuhn
Fiscal Analyst: William E. Hamilton

■ 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.