

Legislative Analysis



DRAIN CODE AMENDMENTS

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House Bill 5188 (H-2) as reported from committee
Sponsor: Rep. Amos O’Neal

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

House Bill 5189 as reported from committee
Sponsor: Rep. Robert J. Bezotte

House Bill 5190 as reported from committee
Sponsor: Rep. Jenn Hill

Committee: Local Government and Municipal Finance
Complete to 6-18-24

SUMMARY:

House Bills 5188, 5189, and 5190 would amend the Drain Code to increase certain expenditure and assessment limits, clarify certain procedures related to revising drainage district boundaries, and modify the amount that certain drainage board and board of determination members can be compensated for their service, respectively.

House Bill 5188 would amend Chapter 8 (Cleaning, Widening, Deepening, Straightening and Extending Drains) of the Drain Code to increase the amount that a drain commissioner or drainage board can spend on necessary maintenance and repairs without being subject to the Drain Code’s petition requirements and to modify a provision limiting the amount that a drainage district can be assessed when its fund is below a certain threshold.

The Drain Code provides that the maximum amount that a drain commissioner or drainage board can assess in a single year is generally based on the amount that a commissioner or board can spend per mile or fraction of a mile of a drain on necessary maintenance or repairs.¹ (Additional money needed for maintenance or repair must be approved by any substantially affected township, city, or village or must be requested and paid for by a public corporation.)

House Bill 5188 would increase this expenditure limit from \$5,000 per mile or fraction of a mile of the drain to \$10,000 per mile or fraction of a mile,² and beginning January 1, 2025, the state treasurer would have to annually adjust the limit to reflect the cumulative percentage change in the Consumer Price Index³ since January 1, 2024. The Michigan Department of Agriculture and Rural Development (MDARD) would have to post and maintain the adjusted limit, as reported by the state treasurer, on its website.

¹ The maximum assessment is based on the total number of miles of the drain, not the actual number of miles subject to the inspection, repair or maintenance. The property subject to assessment is based on the areas of the district benefited by the inspection, repair, or maintenance, not the actual location of the inspection, repair, or maintenance.

² The maximum expenditure is based on the total length of the drain, not the portion of the drain that was inspected, maintained, or repaired. The maximum expenditure per mile also does not include any inspection, engineering, or legal fees or the cost of publication and mailing.

³ Consumer Price Index would be defined by HB 5188 as the most comprehensive and recently available index of consumer prices for the state of Michigan from the federal Bureau of Labor Statistics.

Additionally, under the code, when a drainage district's drain fund contains less than \$5,000 per mile or fraction of a mile of a drain, the drain commissioner or drainage board, as appropriate, can only assess the district up to \$2,500 per mile or fraction of a mile in a single year for drain inspection, repair, and maintenance.

House Bill 5188 would double these amounts, allowing a drain commissioner or board to assess a district up to \$5,000 per mile or fraction of a mile when the drain fund is below \$10,000 per mile or fraction of a mile of a drain.

MCL 280.196

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 MDARD director 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.⁴

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.⁵ 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.

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.⁶

⁴ 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.

⁵ The bill would require the petition copies and notices to be provided by certified mail.

⁶ 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.

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 review⁷ 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.
- 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.

⁷ 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.

- 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

House Bill 5190 would amend Chapter 4 (County Drains), Chapter 16 (Special County Commissioner), Chapter 19 (Consolidated Districts), Chapter 20 (Intracounty Drains; Public Corporations), and Chapter 21 (Intercounty Drains; Public Corporations) of the Drain Code, primarily to modify compensation-related provisions for public officials serving in various oversight roles.

Consolidated districts

If multiple drainage districts are located in the same county and in the same or adjoining drainage basins, those districts can be consolidated and organized as a single district upon filing a petition for consolidation with the county drain commissioner. Petitions for consolidation generally must be signed by at least 50 property owners within the proposed consolidated district, although a petition can alternatively be signed by a city or township located within the proposed consolidated district when authorized by its governing body. House Bill 5190 would specify that the districts could be consolidated in whole or in part and that a village could also sign a consolidation petition.⁸

After a petition is filed, the drain commissioner must appoint a board of determination (a three-member board of disinterested property owners) to determine whether the proposal is conducive to public health, convenience, or welfare. The compensation of a member of the board of determination is currently \$8 per day with no additional allowance for mileage, subject to increase by the county board of commissioners. Under House Bill 5190, the drain commissioner would determine the reasonable compensation for a board of determination member and approve any necessary expenses for each meeting.

Board of determination members

A board of determination is also convened after a petition is filed to locate, establish, and construct a county drain. The per diem compensation and mileage and expense reimbursements of each member of a board of determination for a county drain is currently the same as the reimbursements for the county board of commissioners, and in counties where commissioners are not paid on a per diem basis, the drain commissioner must set the compensation and mileage and expense reimbursements. Under House Bill 5190, the county drain commissioner would instead determine reasonable compensation for and approve necessary expenses of a board of determination member for each meeting attended.

⁸ Other provisions in this section pertaining to the district consolidation process would also be amended to include villages.

Alternate drain commissioners

Currently, the salary of a county drain commissioner who is appointed to make an apportionment on another commissioner's behalf due to a conflict of interest or other disqualification must be the same as what they receive regularly, in addition to any necessary incurred expenses. House Bill 5190 would instead require the disqualified drain commissioner to determine reasonable compensation for and approve necessary expenses of the appointed commissioner.

Drainage board and augmented drainage board member compensation

The Drain Code provides that if two or more public corporations⁹ file a petition to locate, establish, and construct a *county* drain, then a drainage board (generally comprising the county drain commissioner, the chairperson of the county board of commissioners, and the chairperson of the board of county auditors) is created. The chairperson of a county board of commissioners and any county commissioner serving on the drainage board currently can receive a per diem of up to \$25, excluding mileage and expenses, for attendance at a drainage board meeting.

Similarly, if two or more public corporations petition for an *intercounty* drain, then both a drainage board (generally comprised of the MDARD director and the drain commissioner of each involved county) and an augmented drainage board (generally comprising the drainage board and the chairs of the board of county commissioners and the board of county auditors for each county) are created. The chairperson of a board of county commissioners and any county commissioner serving on an augmented drainage board currently can receive a per diem of up to \$25, excluding mileage and expenses, for attendance at an augmented drainage board meeting.

Under House Bill 5190, drainage boards and augmented drainage boards, as applicable, would determine reasonable compensation for and approve necessary expenses of the chairperson of the county board of commissioners and any county commissioner who serves on the board for each meeting attended. The bill would also remove a provision that currently requires the drain commissioner of a county with a population of less than 500,000 to receive the same compensation as other members of a drainage board.

MCL 280.72 et seq.

BRIEF DISCUSSION:

According to committee testimony, several counties have drains with estimated costs of maintenance that are significantly higher than the maximum amount that can be spent on their annual maintenance. Because going through the petition process under the Drain Code can take multiple years and lead to increased administrative costs, supporters of House Bill 5188 argue that increasing the annual maintenance limit is necessary to allow drain commissioners to address more urgent maintenance needs and to resolve constituent confusion about why some projects cannot be completed. Raising the limit would also account for the increased costs of maintenance activities and could allow drain commissioners to consolidate more maintenance projects, which could save costs and decrease assessments over time.

⁹ "Public corporation" includes the state of Michigan and a county, city, village, township, metropolitan district, or authority created by or pursuant to state law.

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.

Supporters of House Bill 5190 argue that there should be consistency within the Drain Code regarding the compensation and reimbursement of individuals serving on drain-related boards. Supporters suggest that these individuals should be paid appropriately for their time, and local governments should have the authority to set a reasonable compensation rate.

FISCAL IMPACT:

House Bill 5188 would raise the current annual limit on drain maintenance assessments from \$5,000 per mile or fraction of a mile to \$10,000 per mile or fraction of a mile. The bill also provides for the indexing of the annual limit in the future. Projects whose costs exceed this statutory limit would be subject to the Drain Code's petition requirements.

The bill would also amend provisions regarding authority to assess a district when the drain fund is below a threshold amount. Under current law, the drain commissioner or board may assess up to \$2,500 per mile or fraction of a mile when the drain fund is less than \$5,000 per mile or fraction of a mile. The bill would allow a drain commissioner or board to assess a district up to \$5,000 per mile or fraction of a mile if the drain fund is less than \$10,000 per mile or fraction of a mile.

The provisions of House Bill 5188 are intended to account for increases in drain maintenance costs.

These provisions could increase annual maintenance assessments to district property owners, including public corporations, such as county road commissions and the Michigan Department of Transportation (MDOT).

However, proper maintenance of drains could reduce the need for the large-scale projects—projects that have no statutory cost or assessment limitations.

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.

House Bill 5190 modifies provisions of the Drain Code regarding compensation and expense reimbursement of various public offices serving on drainage boards. These provisions could have a minor impact on drainage board administrative costs.

POSITIONS:

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

A representative of the Saginaw County Public Works Commissioner testified in support of House Bill 5188. (5-22-24)

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

The Michigan Farm Bureau indicated support for House Bill 5188. (5-22-24)

The following entities indicated opposition to the bills:

- 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.