

INTERCOUNTY DRAINS

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**House Bills 6374, 6375, 6376, and 6377 as enacted
Public Acts 644, 645, 646, and 647 of 2018**

Sponsor: Rep. Roger Victory

House Committee: Local Government

Senate Committee: Local Government

Complete to 2-13-19

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

BRIEF SUMMARY: House Bills 6374 to 6377 would amend the Drain Code of 1956, by incorporating suggestions made when revising guidelines and recommended procedures, in order to update language and create consistency in the process for county and intercounty drains.

FISCAL IMPACT: The bills do not appear to have a material fiscal impact on the state of Michigan or on local units of government.

THE APPARENT PROBLEM:

Under the Drain Code, the Michigan Department of Agriculture and Rural Development (MDARD) chairs intercounty drain boards. In 2016, MDARD provided the Michigan Association of County Drain Commissioners (MACDC) with a grant to create a manual to provide guidelines and recommended procedures for intercounty drain boards chaired by MDARD. Grant funding totaled \$57,500 from the Intercounty Drain line-item appropriation in the MDARD budget (\$50,000 and \$7,500 in FY 2015-16 and FY 2016-17, respectively).

The bill package is intended to incorporate suggestions made throughout that process and to create parity between county and intercounty drains. According to committee testimony, it is hoped that these changes would result in better service and ease the burden on drain commissioners in dealing with paperwork inconsistencies between the two types of drains.

THE CONTENT OF THE BILLS:

House Bill 6374 would require that a proposed drain's route and course be specified in the plans approved and adopted by county and intercounty drain boards. Currently, only "plans, specifications, and an estimate of cost" are required. Changes in the drain's approved route and course would have to be approved by resolution of the drainage board.

MCL 280.468 and 280.520

House Bill 6375 would allow intercounty drains to be relinquished to a local unit, an authority, the Board of County Road Commissioners, or the Michigan Department of Transportation (MDOT) under the same circumstances as currently apply to relinquishment of county drains. Specifically, an intercounty drainage board could relinquish jurisdiction and control of all or part of an intercounty drain to a county, township, city, village, or authority or to MDOT if all of the following requirements were met:

- The drainage district had no outstanding indebtedness or contract liability.

- The drain or part of the drain and area serviced were wholly within the boundaries of the local unit or authority that would accept jurisdiction and control of the drain or, if applicable, within the public right-of-way of the Board of County Road Commissioners or MDOT.
- The relinquishment was approved by both a majority of the members of the county board of commissioners for a county drain or drainage board and by the governing board of the local unit or authority that would accept jurisdiction and control (or, if applicable, the Board of County Road Commissioners or the director of MDOT).

Then, if all or part of a drain were relinquished, any money in the drain fund would be turned over to the entity that had accepted jurisdiction and control, to be used solely with respect to that drain.

MCL 280.395, 280.478, and 280.530

House Bill 6376 would state that, after considering the recommendation of the surveyor or engineer charged with surveying the proposed drain, the drainage board would determine the percentage of the cost for laying out the district that would be tentatively apportioned to each county composing the district. If a commissioner of a county or intercounty drain commission were disqualified from participating on a drainage project because the commissioner or a close family member owned land affected by the project, the commissioner could not participate in the determination of tentative apportionments and would have to be replaced for determination by an appointed special commissioner. (These provisions would also apply to a commissioner with regard to a determination of necessity.)

Under the bill, if the drainage board considered a petition to construct an intercounty drain and determined it not to be necessary and conducive to the public health, convenience, or welfare, the board would have to file an order dismissing the petition, and any further petition would not be considered for one year.

If the board found the proposed drain to be necessary and conducive to those goals, it would have to determine the local units benefiting and notify those units of the liability to pay for a portion of the drain within 10 days of the determination. The board would also have to issue a “first order of determination” within 20 days of the determination, identifying the name or number of the drainage district and a general description of the route, terminus, and type of construction of the drain.

The bill would also revise the time at which a board of determination must set the cost apportioned to the counties composing the intercounty drain district. Currently, this apportionment is required to be made at the time of the board’s first order of determination (in Section 122). The bill would move the apportionment determination to Section 123 and require that it be included in the board’s final order of determination.

The bill would provide that the *attendant expenses and costs* for employing an attorney would be charged to the drainage districts on behalf of which the attorney was employed. Currently, these expenses are paid out of the revolving drain fund. Under the bill, they could be paid out of the revolving drain fund or the drain fund of the drainage district. If those expenses and costs were paid out of the revolving drain fund, or if the drainage district drain fund did not have sufficient funds, the expenses and costs would be assessed to the drainage district in the same proportions as costs of the drain were assessed in Chapter 7 of the Code, and the collections of

the assessments would be used either to reimburse the revolving drain fund or to pay the expenses and costs, as appropriate.

Attendant expenses and costs would mean those expenses and costs incurred for a drainage district in furtherance of the duties and responsibilities of a drain commissioner or drainage board, including one or more of the following:

- Actual attorney fees.
- Expert witness and consultant fees.
- Money and costs expended in connection with litigation or the threat of litigation.
- Payments made in satisfaction or partial satisfaction of any orders or judgments entered against a drainage district.
- Money and costs expended to obtain a release, waiver, or other settlement of claims.

MCL 280.72 et al.

House Bill 6377 would amend the number of required signers to establish an intercounty drainage district, so that it would be the same as for a county drainage district (in Section 51 of the Code). Instead of the signatures of 50% of the freeholders whose lands would be traversed by the drain or that abut the highway or street along which the drain extended, the bill would require at least 10 freeholders of the cities, villages, or townships to be benefited by the drain, five of whom would be liable for an assessment under the proposed drain (or, if fewer than 20 would be affected, at least one signature of the 10 must come from those affected).

It would also change the number of required signers for a petition to a county commissioner to set forth the necessity of proposed work on a drain (including cleaning, widening, tiling, etc.). This proposed number—five freeholders (or, if fewer than five would be affected, 50% of those affected)—would also mirror the number required for single-county drain districts (in Section 191 of the Code).

As in HB 6376, the bill would provide that, if a commissioner of a county or intercounty drain commission were disqualified from participating on a drainage project because the commissioner or a close family member owned land affected by the project, the commissioner could not participate in the determination of practicability and would have to be replaced for that determination by an appointed special commissioner.

Finally, the Code currently requires that a petition for maintenance of a pipe in excess of 36 inches in diameter must have the signatures of half of the number of freeholders whose lands would be traversed by or would abut the drain. Instead, the bill would lower the number of required signatures to that of all other drains—five freeholders (or, if fewer than five would be affected, 50% of those affected).

MCL 280.101 et al.

The bills will take effect March 28, 2019.

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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.