



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

BILL ANALYSIS



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

House Bill 6374 (as passed by the House)
House Bill 6375 (as passed by the House)
House Bill 6376 (Substitute H-1 as passed by the House)
House Bill 6377 (Substitute H-1 as passed by the House)
Sponsor: Representative Roger Victory
House Committee: Local Government
Senate Committee: Local Government

Date Completed: 12-4-18

CONTENT

House Bill 6374 would amend Chapter 20 (Intracounty Drains; Public Corporations) and Chapter 21 (Intercounty Drains; Public Corporations) of the Drain Code to do the following:

- Require that a drainage board secure from a competent engineer a route and course of a proposed drain, in addition to plans, specifications, and a cost estimate.
- Specify that changes in the approved route and course of the drain would have to be approved by resolution of the drainage board.

House Bill 6375 would amend the Code to do the following:

- Allow the county drain commissioner or the intercounty drainage board to relinquish to an authority or to the Michigan Department of Transportation (MDOT) jurisdiction and control of all or part of any county or intercounty drain if certain criteria were met.
- Extend to a county, authority, and MDOT the same responsibilities that a township, city, and village currently have after relinquishing of all or part of a drain.

House Bill 6376 (H-1) would amend the Code to do the following:

- Delete a provision prohibiting the members of a board of determination from receiving more than one per diem for a day no matter how many separate matters are considered on that day.
- Address under Chapter 4 (County Drains) and Chapter 5 (Intercounty Drainage Districts) disqualification of a member of the drainage board from making an apportionment of benefits.
- Require the drainage board to file an order dismissing a petition to construct a drain that it determined was not necessary and conducive to the public health, convenience, or welfare.
- Revise the information a first order of determination would have to contain.

- **Require the drainage board to determine the percentage of the whole cost of the drain to be apportioned to each county after securing the necessary property rights or interests as required by the Code.**
- **Specify that a drainage board could employ an attorney, as is currently specified for a county drain commissioner.**
- **Require attendant expenses and costs to be assessed to the drainage district in the same proportion as costs of the drain were assessed as provided in Chapter 7 (Apportionment and Review) under certain circumstances.**
- **Require the drainage board to apportion certain costs between counties if revolving fund money had been spent or a drainage district was obligated to pay expenses for engineering, legal, or administrative services or to pay principal and interest on notes and if other circumstances applied.**
- **Revise various duties of the chairperson of the drainage board.**

House Bill 6377 (H-1) would amend the Code to do the following:

- **Revise the number of freeholders that would have to sign an application before action may be taken on a petition to locate, establish, and construct an intercounty drain.**
- **Specify that a notice of a drainage board meeting would have to be served on the county clerk of each county and certain local government administrators within the proposed drainage district at least 10 days before the public meeting.**
- **Specify that if a member of the drainage board would be disqualified under the Code from making an apportionment of benefits, that member would be disqualified from participation in the determination of practicability and a special commissioner would have to be appointed to serve as a member of the drainage board to determine practicability.**
- **Remove a requirement that a project that includes a certain tiled relief drain must comply with the provisions regarding the petition to locate, establish, and construct a drain.**
- **Revise the number of freeholders required to make a petition requesting maintenance or improvements of an intercounty drain or portion of a drain.**

Each of the bills would take effect 90 days after its enactment.

House Bill 6374

Chapter 20 and Chapter 21 require the drainage board to secure from a competent engineer, plans, specifications, and an estimate of cost of a proposed drain, which, when approved and adopted by the board, must be filed with the board's chairperson (or, in the case of Chapter 21, the secretary of the board). The bill also would require in Chapter 20 and Chapter 21 that the board secure from a competent engineer a route and a course.

In approving the plans and specifications, Chapter 20 and Chapter 21 specify that the drainage board is not limited to the route of the drain described in the petition or the final order of determination. The bill also specifies in Chapter 20 and Chapter 21 that changes in the approved route and course of the drain would have to be approved by resolution of the drainage board.

House Bill 6375

Under the Code, the county drain commissioner may relinquish jurisdiction and control to a township, city, or village of any county drainage district upon which there is no outstanding indebtedness or contract liability and which is wholly located within the boundaries of a

township, city, or village. Afterwards, the county drain commissioner must be relieved of, and the township, city, or village must assume, the maintenance, jurisdiction, control, and operation of the drain relinquished. Its future operation must be financed in the same manner as is provided for special assessment districts within the township, city, or village, provided that those proceeding have been approved by a majority of the members elect of the county board of supervisors and by the resolution of the governing body of the township, city, or village in which the drain is located. Money in the drain fund for that drainage district at the time jurisdiction over it is transferred must be distributed in the same manner as is provided in the Code in the case of abandoned or vacated drains. The bill would modify these provisions.

Under the bill, the county drain commissioner or the intercounty drainage board, could relinquish to a county, township, city, or village, or authority or to MDOT jurisdiction and control of all or part of any county or intercounty drain if all of the following requirements were met:

- The drainage district had no outstanding indebtedness or contract liability; however, indebtedness or contract liability that would be paid in full when jurisdiction and control was relinquished would not be considered to be outstanding.
- The drain or part of the drain to be relinquished and the area the drain or part of the drain serviced was wholly located within the boundaries of the county, township, city, village, or authority or within the public right-of-way of MDOT that was to accept jurisdiction and control of the drain or part of the drain.
- The relinquishment was approved by the majority of the members of the county board of commissioners for a county drain or of the drainage board for an intercounty drain and the governing body of the county, township, city, village, or authority, or the MDOT Director, that was to accept jurisdiction and control of the drain or part of the drain.

If relinquishment were to a county, the resolution of the governing body of the county would have to specify the county agency, that would have to be responsible for the exercise of jurisdiction and control.

After relinquishment of all or part of a drain, the following would apply:

- The county drain commissioner or drainage board would be relieved of, and the county, township, city, village, or authority of MDOT would assume, the maintenance, jurisdiction, control, and operation of the drain or part of the drain relinquished and its future operation would have to be financed in the same manner as was provided for special assessment districts within the county, township, city, or village or as otherwise provided by law.
- If jurisdiction and control were relinquished over all of a drain, any money in the drain fund of the drain would have to be turned over to the county, township, city, village, authority, or MDOT that accepted jurisdiction and control, to be used solely with respect to that drain.

Under the Code, Chapter 20 and Chapter 21 specify that the drainage board, by resolution, may relinquish jurisdiction and control over all or any part of a drain or drain project if there is not outstanding indebtedness or contract liability of its drainage district, to the county or a township, city, or village in which all or part of the drain or drain project is wholly located if the county, township, city, or village requests or consents to the relinquishment of jurisdiction and control by resolution of its governing board. The bill also would allow the drainage board to relinquish jurisdiction and control over all or part of a drain or drain project to an authority or to MDOT if the authority or the MDOT Director requested or consented to the relinquishment of jurisdiction and control under Chapter 20 and Chapter 21.

House Bill 6376 (H-1)

Board of Determination Per Diem

Under the Code, after a drainage district has been established and the order has been filed with the county drain commissioner, a petition to locate, establish, and construct a drain may be filed with the commissioner having jurisdiction of the lands designated in such order as constituting the drainage district. As soon as practicable after the filing of a petition, the commissioner authorized to act on the petition may appoint a board of determination composed of three disinterested property owners.

The drain commissioner must call a meeting of the board of determination at a convenient place within the drainage district or at a public building within a city, village, or township in which the drain is located. If an individual appointed to the board fails or refuses to serve, the commissioner must appoint a successor. The per diem compensation and the mileage and expense reimbursements of a member of the board must be the same as the county board of commissioners of the county. In counties where commissioners are not paid on a per diem basis, the compensation and the mileage and expense reimbursements must be set by the drain commissioner.

The members of the board may not receive more than one per diem for a day no matter how many separate matters are considered on that day. The bill would delete this provision.

Drainage Board Member Disqualification

Under Chapter 4 and Chapter 5, if a member of the drainage board would be disqualified under the Code from making an apportionment of benefits, both of the following would apply:

- The drainage board member would be disqualified from participation in the determination of tentative apportionments.
- A special commissioner would have to be appointed as described under the Code to serve as a member of the drainage board to determine tentative apportionments.

Public Health, Convenience, and Welfare Consideration

If the drainage board considered a petition to construct a drain and determined that it was not necessary and conducive to the public health, convenience, or welfare, it would have to file an order dismissing the petition, and further petition for the drain could not be filed within one year after the determination.

Not more than 10 days after the drainage board filed an order finding the intercounty drain was necessary and conducive to the public health, convenience, or welfare, the drainage board would have to notify each city, village, and township that was liable to pay a percentage of the cost of the construction of the drain by reason of benefits at large for the public health.

First Order Revisions

Within 20 days after an order determining that the drain was necessary is filed, the Code requires the drainage board to make a further order, known as the first order of determination, which must show the determination of necessity, percentages, and number of installments. The bill would require the first order to contain the name or number of the drainage district and a general description of the route, terminus, and type of construction of the drain.

Percentage Cost Determination

After securing the necessary property rights or interests as required by the Code, the drainage board would have to determine the percentage of the whole cost of the drain to be apportioned to each county and would have to include the determination in the final order of determination.

Attorney and Attendant Expenses

The Code specifies that the county drain commissioner may employ an attorney if he or she considers it necessary. If an attorney is employed, all attendant expenses and costs must be charged to the drainage districts on behalf of which the attorney is employed. All such attendant expenses and costs must be paid out of the drain fund of the drainage district or the revolving drain fund. The bill also would allow a drainage board to employ an attorney, as appropriate.

In addition, if the attendant expenses and costs were paid out of the revolving drain fund or if the drain fund of the drainage district did not have sufficient funds to pay the attendant expenses and costs, the expenses and costs would have to be assessed to the drainage district in the same proportion as costs of the drain were assessed as provided in Chapter 7 and the collections of these assessments would have to be used either to reimburse the revolving drain fund or to pay the attendant 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 spent in connection with litigation or threat of litigation.
- Payments made in satisfaction or partial satisfaction of any orders or judgments entered against a drainage district.
- Money and costs spent to obtain a release, waiver, or other settlement of claims.

County Cost Apportionment

Under the Code, if revolving fund money has been spent or a drainage district is obligated to pay expenses for engineering, legal, or administrative services or pay principal and interest on notes, and if improvement has not been completed within five years after the date of the drainage board's order designating an intercounty drainage district under Chapter 5, the entry of the first order of determination under Chapter 6 (Intercounty Drains), or the filing of a petition, if a petition has been filed and ordered abandoned, the drainage board must apportion the cost between counties. The bill would modify this provision to require the drainage board to apportion the cost between counties if revolving fund money had been spent or a drainage district was obligated to pay expenses for engineering, legal, or administrative services or to pay principal and interest on notes and if any of the following applied:

- An improvement had not been completed within the latest of 1) five years after the date of the drainage board's order designating an intercounty drainage district under Chapter 5, 2) five years after the entry of the first order of determination under Chapter 6, or 3) two years after the filing of a petition, if a petition had been filed and ordered abandoned.

- A petition to locate, establish, and construct an intercounty drain was not filed within two years after the date of the drainage board's order designating an intercounty drainage district.

House Bill 6377 (H-1)

Drain Application

Before any action is taken on a petition to locate, establish, and construct a drain that will traverse lands in more than one county, or affect more than one county, the Code requires an application to be filed with a commissioner having jurisdiction of any of the lands to lay out and designate a drainage district. The application must tentatively describe the location and route of the proposed drain.

The application must be signed by a number of freeholders in the drainage district whose lands would be liable to an assessment for benefits, equal to 50% of any of the freeholders whose lands would be traversed by the drain or drains applied for or that abut on any highway or street along the side of which the drain extends, between a point where the drain enters the highway and the point where it leaves the highway and which lands are within the drainage district. The bill would delete this provision.

Under the bill, the application would have to be signed by not fewer than 10 freeholders of the cities, village, or townships in which the proposed drain or the lands proposed to be drained were located. Five or more of the signers would have to be owners of land that would be liable for an assessment for the construction of the proposed drain. However, if it appeared to the drain commissioner to whom the application was submitted that the district could not include 20 freeholders whose lands would be liable for an assessment, the application would have to be received if at least one of the signers were a freeholder whose land would be liable for an assessment.

Under the Code, an application may be signed by a representative of a city, village, or township who is authorized by its governing body if both of the following apply:

- The proposed drain is necessary for the public health of the city, village, or township.
- The city, village, or township will be liable for an assessment at large for a percentage of the cost of the proposed drain.

The bill specifies that the application only would need to be signed by a representative of a city, village, or township who was authorized by its governing body if both of the criteria above applied.

Drainage Board Meetings

The Code requires the Director of the Department of Agriculture and Rural Development to call a meeting of the drainage board, which must be held at least 15, and not more than 60, days after the Director receives the application described above. The meeting must be held in the immediate locality of the proposed drainage district.

Notices of the meeting must be posted in five public places within the proposed drainage district within each county, and served on the county clerk of each county and the supervisor of each township within the proposed drainage district personally or by certified mail at least 10 days before the public meeting. The bill would revise this provision to state that a notice of the meeting would have to be served by the respective drain commissioner on the county clerk of each county and the mayor of each city, president of each village, and supervisor of

each township within the proposed drainage district personally or by certified mail at least 10 days before the public meeting.

The Code requires the Director of the Department or his or her deputy to act as chairperson at the meeting of the drainage board. The drainage board must consider the application to lay out and designate a drainage district and do all of the following at the meeting:

- Determine the sufficiency of the signatures on the application.
- Consider the route of the proposed drain.
- Take testimony to determine the practicability of the proposed drain.

The bill specifies that no further action would need to be taken if the signatures were insufficient, and that the drainage board also would have to consider the type of construction of the proposed drain.

Drainage Board Member Disqualification

If a member of the drainage board would be disqualified under the Code from making an apportionment of benefits, both of the following would apply:

- The drainage board member would be disqualified from participation in the determination of practicability.
- A special commissioner would have to be appointed as described under the Code to serve as a member of the drainage board to determine practicability.

Drain Maintenance & Improvement Petitions

Under the Code, if a drain or portion of a drain traverses lands wholly in one county, if lands only in one county are subject to assessment, and if the drain needs cleaning out, relocating, widening, deepening, straightening, or other specified maintenance or improvement, any five freeholders or at least 50% of the freeholders if there are fewer than five freeholders whose lands must be liable to an assessment for benefits of the work, may petition the commissioner setting forth the necessity of the proposed work.

If the project includes a tiled relief drain, or the tiling of an existing open drain or any portion thereof, with a conduit a part of which has an inside diameter in excess of 36 inches or the retiling of an existing drain with a conduit, a part of which has an inside diameter in excess of 36 inches, then the petition must comply with Section 71 (which describes the petition to locate, establish, and construct a drain). This provision may not be applicable to the construction of bridges, culverts, and passageways. The bill would delete these provisions.

Under the Code, if a drain or portion of a drain traverses lands in more than one county, if lands in more than one county are subject to assessment, and if the drain needs cleaning out, relocating, widening, deepening, straightening, or other specified maintenance or improvement, freeholders within the drainage district equal to 50% of the number of freeholders whose lands are traversed by the drain or drains in the petition or abut on any highway or street along either side of which such drain extends, between the point where said drain enters such highway or street and which lands are within the drainage district, may make a petition in writing to the commissioner of any county having lands in the district setting forth the necessity of the proposed work. The bill would modify this provision to state that any five freeholders or at least 50% of the freeholders if there were fewer than five whose lands would be liable to an assessment for benefits of the work could make the petition.

After receiving the petition described above, the commissioner must notify the State Director of Agriculture and the commissioners of each county embracing any lands in the drainage district, and the Director must call a meeting of the drainage board within the time and in the manner prescribed under Chapter 6. The bill would delete reference to the State Director of Agriculture and require the commissioner to notify other members of the drainage board as constituted under Chapter 6.

MCL 280.468 & 280.520 (H.B. 6374)
280.395 et al. (H.B. 6375)
280.72 et al. (H.B. 6376)
280.101 et al. (H.B. 6377)

Legislative Analyst: Drew Krogulecki

FISCAL IMPACT

The bills, which would amend certain procedural requirements for the regulation of intracounty and intercounty drains, would have a minimal fiscal impact on State and local government.

Fiscal Analyst: Bruce Baker
Ryan Bergan

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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.