



**House
Legislative
Analysis
Section**

Washington Square Building, Suite 1025
Lansing, Michigan 48909
Phone: 517/373-6466

THE APPARENT PROBLEM:

Although the Drain Code provides for the inspection, maintenance, and repair of inter- and intra-county drains, some people claim that the code's expenditure limits for maintenance and repair work, its restrictions on use of individual drain funds, and ambiguous language make it difficult for drain commissioners and drainage boards to maintain their counties' drain systems adequately.

Currently, in order to repair or maintain a drain, the drain commissioner or the drainage board may spend up to \$800 per mile (or fraction of a mile) of drain, or up to two percent of the original cost of the drain and its extensions, without being requested by, or having to obtain approval of, the village, city, or township affected by the expenditure. Further expenditures require the approval of any municipality affected by more than 20 percent of the expenditure. Since the code does not specify whether "per mile of drain" refers to that portion of the drain that was repaired or that portion which benefits the community, there is some confusion over how much the commissioners and the boards may spend.

Another problem concerns the three primary sources of funds available for drain maintenance and repair work: surplus drain construction funds, revolving funds established with appropriations by the counties' boards of commissioners specifically for drain maintenance, and special assessments. Reportedly, none of these sources is sufficient, singly or altogether, to provide adequate funds for proper drain maintenance.

Under the code, drain commissioners and drainage boards may keep a sufficient amount of surplus drain construction funds to pay for maintenance of the drain for one year, provided that any outstanding bonds and drain orders associated with construction of the drain have been paid. However, there reportedly rarely are surplus drain construction funds due to inflation, cost overruns and other unexpected expenses. Moreover, many people believe that the one-year limit essentially means that the drain commissioner or drainage board may retain from the surplus funds only \$800 per mile, the maximum amount the commissioner and the board are allowed to expend without obtaining approval of the municipality. Finally, since the commissioner or drainage board may use surplus construction funds to maintain only the drain for which the construction funds were originally allocated, some people argue that the commissioner and the board do not have the flexibility to allocate surplus funds in an efficient, cost-effective manner.

The second source of funds available for drain repair (the revolving fund) also is said frequently to be insufficient to meet the funding needs of the drain commissioners and drainage boards. Since the money in the revolving fund comes from property taxes, and since the amount of the fund is determined by the municipality, some people say that appropriations for the revolving fund are often insignificant and subject to political pressures.

DRAIN MAINTENANCE FUNDS

House Bill 4505 (Substitute H-1)
First Analysis (5-8-89)

RECEIVED

Sponsor: Rep. Carl Gnodtke
Committee: Agriculture

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The code provides for a third source of funds (namely, special assessments) for drain repair and maintenance. However, county drain commissioners, who are themselves elected officials, apparently often are reluctant to levy a special tax assessment, an unpopular action with many taxpayers.

Some people say that one result of these problems with funding is that needed repairs, maintenance work, and drain improvements are postponed, sometimes until a major drainage problem occurs. One way to ensure that such problems do not arise would be to provide for the establishment of maintenance funds for each drainage district that could be used by the commissioners or boards at any time for drain repairs and to increase the limits on the annual amount the commissioners and boards could expend or assess for drain repair.

THE CONTENT OF THE BILL:

The bill would amend the Drain Code to provide funding for maintenance work under the code by allowing surplus drain construction funds to be deposited in a fund established for drain repair, inspection, and maintenance. It also would increase the annual amount that drain commissioners and drainage boards could, without petition, spend for maintaining a drain from the present \$800 per mile to \$3,000 per mile.

Drain maintenance funds. The Drain Code currently requires that surplus funds from assessments for drain construction or maintenance be used for maintenance of the drain, but the funds so used cannot exceed the cost of maintaining the drain for one year. The bill would allow a drain commissioner or drainage board to establish a maintenance fund for each drainage district, using surplus funds remaining after completion of the construction of a drain, or of work performed for drain maintenance or improvements.

Drain maintenance costs. The maximum amount that a drain commissioner or drainage board could spend annually for drain maintenance and repair without being requested by (or having to obtain the approval of) the affected municipalities would be increased from \$800 per mile (or fraction of a mile) to \$3,000 per mile.

Assessments. If at any time the maintenance fund of a drainage district contained less than \$3,000 per mile of drain or fraction of a mile of drain, the drain commissioner or drainage board could assess the drainage district up to \$1,500 a mile or fraction of a mile in any one year, with the money from this assessment being deposited in the drain fund for necessary inspection, repair, and maintenance of the drain.

Assessments — whether for the actual cost of inspection and maintenance of a drain or for deposit in the drain maintenance fund — would be made according to the benefits from the drain inspection, repair, or maintenance received by the property in a drainage district.

H.B. 4505 (5-8-89)

Determination of the maximum assessment would be based on the number of miles of drain (and the areas of the drainage district) receiving the benefits, not on the actual number of miles (or the actual location) of inspection, repair or maintenance.

If an assessment were to total more than \$3,000 a mile (or fraction of a mile), all property owners subject to the assessment would have to be notified by first class mail and by notices published in local newspapers. The drain commissioner would make an "affidavit of mailing," which would be conclusive proof that the required notices were mailed. If an owner failed to receive a notice by mail, the assessment would still be valid if notice also had been published in the newspaper as required.

Emergencies. Presently the Drain Code allows drain commissioners or drainage boards to expend funds "subject to the limitations" in the code. The bill would expand the power of drain commissioners and drainage boards to respond to emergencies by allowing them to spend funds to alleviate emergency conditions.

Note: The bill amends the same sections of the Drain Code as another bill (House Bill 4727) pending before the House. Although some of the amendments in both bills duplicate each other (basically, those allowing for the establishment of drain maintenance funds), other amendments made in each bill differ. If both bills were to be enacted into law, the bill first enacted would be canceled out by the other (except for the duplicative amendments).

MCL 280.4 et al.

FISCAL IMPLICATIONS:

The Department of Natural Resources, in its analysis dated 5-3-89, reports that the bill would have no fiscal implications for the state. An analysis by the Department of Transportation (10-1-85) of a similar bill considered in 1985 (Senate Bill 240) reported that the bill would increase its cost of using county drains for highway drainage. However, the department also noted that its outlays for drain cleaning might be reduced because of the increased resources available to drain authorities. (In the past, in many instances MDOT has had to bear the entire cost of maintenance and repair so county drains could accommodate highway drainage).

ARGUMENTS:

For:

The Drain Code presently does not provide an effective mechanism for the proper maintenance of drains. Lack of maintenance results in deterioration of drainage systems and may require the development and funding of costly major drain projects. Improved drain maintenance, if properly done, improves drainage, reduces erosion, and eliminates the necessity for repeating major drain projects on the same watercourse. By allowing the establishment of drain maintenance funds and expanding the power of the drain commissioners and drainage boards to respond to emergencies, the bill would provide the necessary tools to allow drain commissioners and drainage boards to see that the state's drainage system is well-maintained.

For:

The \$800 ceiling on assessments and expenditures for drain maintenance and repair was set in 1972. This figure does not reflect current costs for such services and is no longer adequate for properly maintaining drains today. A higher

ceiling is necessary to give drain commissioners and boards the flexibility they need to adequately fulfill their duties in maintaining and repairing drains.

Against:

The bill would allow drain commissioners and boards to have access to considerable sums of money without having to be accountable to anyone for how they spend it, while at the same time the financial responsibilities of (and burdens to) local governments and to property owners would be considerably increased. What is more, since there is no prior notification to property owners before drain work is done (notification is given only prior to the assessments for such work), an individual property owner (or a municipality) could be in for a nasty shock if the current ceiling on non-petition expenditures is raised so high. At the very least, if this non-petition threshold is to be raised, the bill ought to make some kind of provision for notifying property owners before drain work over a certain amount (perhaps the current \$800 per mile limit) is done.

Response: In the first place, the county drain commissioner, as an elected official, is already accountable to the property owners. And drainage boards must have, as one of their members, a representative from the area that will be bearing the greatest costs of the drain work. But in the second place, the actual cost of doing the drain maintenance and repair will not be increased by the bill — just the ability of the drain commissioners and drainage boards to do the kind of preventative maintenance that in the long run will save money by preventing crisis situations and the costs of major reconstruction projects. Finally, the costs would be spread over the entire drainage district, and based on benefits, rather than actual miles of drain worked on. So there should be no way that an individual property owner would be faced with a \$3,000-per-mile drain bill in a single year.

Against:

The Drain Code is outdated and needs to be comprehensively revised, incorporating provisions requiring that drain work be environmentally acceptable and addressing issues such as erosion control and protection of the drain from misuse. The bill would amend only a small part of this complicated act, and would not address this pressing need for updating and systematically revising the code.

Response: Although the code should be systematically revised (including incorporating current environmentally sound requirements), the need for routine drain maintenance is so great that the bill needs to be passed now. These other issues, though important, could be tackled in other legislation.

POSITIONS:

The Department of Natural Resources does not oppose the bill. (5-8-89)

The Department of Transportation has not yet taken a position on the bill. (5-8-89)

The Michigan Association of County Drain Commissioners supports the bill. (5-8-89)