



**House
Legislative
Analysis
Section**

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DRAIN MAINTENANCE FUNDS

House Bill 4505 as enrolled
Second Analysis (7-30-89)

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Sponsor: Rep. Carl Gnodtke
House Committee: Agriculture
Senate Committee: Local Government and Veterans

Mich. State Law Library

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.

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 require that surplus drain construction funds be deposited in a drain fund to be used for inspection, repair, and maintenance of drains. The bill also would increase to \$2,500 (from the present \$800) a mile the annual amount that drain commissioners and drainage boards could, without petition, spend for maintaining a drain.

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 require 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 by petition for drain maintenance or improvements). Money from the fund would have to be used for drain inspection, repair, and maintenance.

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 \$2,500 per mile.

Assessments. If at any time the drain fund had less than \$2,500 per mile (or fraction of a mile) of drain, the drain commissioner or drainage board could assess the drainage district up to \$1,250 a mile (or fraction of a mile) in any one year. Money from this assessment would have to be deposited in the drain fund for necessary inspection, repair, and maintenance of the drain.

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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. 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.

Under the code, if total expenditures are more than \$800 per mile (or more than two percent of the original cost of the drain), everyone subject to assessment must be notified, both by first class mail and by notices published in local newspapers, unless the assessment is less than \$5 per parcel of land. The drain commissioner (or chairperson of the drainage board) is required to make an "affidavit of mailing," which serves as conclusive proof that the required notices were mailed. If notice of the assessment has been published as required, the assessment is still valid even if a property owner fails to receive the notice by mail. The bill would delete the \$5 notice exemption and make the other provisions apply to the proposed \$2,500 limit.

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.

Pumping station costs. Under the code, if the cost of maintenance and repair of a drain includes utility charges, the limitation for maintenance and repair does not apply and the drain commissioner (or drainage board) can levy special assessments to cover these charges. The bill would add that if maintenance and repair included servicing pumping stations, sewage treatment facilities, or retention basins, the drain commissioner (or drainage board) could levy special assessments to cover these costs as well.

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 \$2,500-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.