



**House
Legislative
Analysis
Section**

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DRAIN MAINTENANCE FUNDS

House Bill 4382 (Substitute H-1) **RECEIVED**
House Bill 5007 as introduced
First Analysis (11-17-87) **DEC 10 1987**

Sponsor: Rep. Carl Gnodtke Mich. State Law Library
Committee: Towns and Counties

THE APPARENT PROBLEM:

Although the Drain Code provides for the inspection, maintenance, and repair of inter- and intra-county drains, some claim 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, if the drain is a county drain, or the drainage board (composed of drain commissioners), if the drain is an inter-county drain, may spend up to \$800 per mile or fraction of a mile of drain, or 2 percent of the original cost of the drain and 2 percent of the cost of the drain's 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. 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 any outstanding bonds and drain orders associated with construction of the drain have been paid. According to some, inflation, cost overruns and other unexpected expenses make it unusual for there to be surplus drain construction funds. Moreover, they claim 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 contend the commissioner and the board do not have the flexibility to allocate surplus funds in an efficient, cost-effective manner.

Reportedly, the second source of funds available for drain repair—the revolving fund—is also frequently insufficient to meet the funding needs of the commissioners and drainage boards. Since the fund is funded with property taxes and the amount of the fund is determined by the municipality, some contend appropriations for the revolving fund are often insignificant and subject to political pressures.

Although the code provides for a third source of funds—special assessments—for drain repair and maintenance, county drain commissioners, who are themselves elected officials, apparently are often reluctant to levy a special tax assessment, an unpopular action with many taxpayers. As a result, some argue, needed repairs, maintenance work, and drain improvements are regulated or postponed, sometimes until a major drainage problem occurs. One way to ensure that such problems do not arise, they claim, 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.

Another problem involves the location of a large portion of Wayne County's constituency within the city of Detroit. Because many of the county's constituents live within the city, their properties fall under the jurisdiction of Detroit's drain commission. Since most problems dealing with drains are the responsibility of Detroit, the county electorate recently voted to do away with the office of drain commissioner, despite the fact that this position has duties which need continual attention. The county charter was changed to provide for a "public works commissioner" who would be appointed by the county's board of commissioners to carry out the "powers and duties" formerly performed by the county's drain commissioner. Current state law remains silent regarding the process by which a county drain commissioner or public works commissioner must attain the respective office.

THE CONTENT OF THE BILL:

House Bill 4382 would amend the Drain Code to provide for the establishment of maintenance funds for drain repair, increase the limits on annual expenditures by drain commissioners and drainage boards, and expand the power of the boards and commissioners to expend funds for emergencies. Specifically, the bill would allow a drain commissioner or drainage board to establish and fund a maintenance fund for each drainage district with surplus construction funds remaining after completion of the construction of a drain or funds remaining after the completion of work performed for maintenance or improvements. The maximum amount the drain commissioner or drainage board could expend 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 to \$3,000 per mile. 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 a maximum amount of \$1,500 a mile or fraction of a mile in any one year, which

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would be deposited in the maintenance fund for necessary inspection and maintenance of the drain.

An assessment for the actual cost of inspection and maintenance performed on a drain, or an assessment to be deposited in the maintenance fund, would be made according to the benefits received. The \$1,500 and \$3,000 per mile of drain limits would be used to calculate the maximum amount which the drain commissioner or drainage board could assess in any one year without a petition or a request from a public corporation (defined in the act as a city, village, township, or county or the state). The property in a drainage district which would benefit from the inspection or maintenance of the drain would be subject to assessment for that inspection or maintenance. Determination of the maximum assessment amount allowed without petition or request, or of the property subject to the assessment, would be based on the number of miles of drain and the areas of the drainage district receiving the benefits and not on the actual number of miles or actual location of the inspection or maintenance. The bill would delete provisions in the code requiring written notification of property owners subject to a special assessment for drain repair and maintenance.

The bill would expand the power of the drain commissioners and drainage boards to respond to emergencies by allowing them to expend funds for maintenance and repair to alleviate the emergency conditions. Currently, the commissioner or board may expend funds "subject to the limitations" in the code.

The bill would require that the position of drain commissioner or public works commissioner for a charter county with a population of 2 million or more (Wayne County) be appointed by the respective board of commissioners. Current law is not explicit regarding how these positions are to be filled.

MCL 280.4 et al.

House Bill 5007 would amend the charter county act to require the election of a drain commissioner or public works commissioner for a county with a population of more than 12,000 but not more than 2 million. House Bill 5007 is tie-barred to 4382.

MCL 45.514.

FISCAL IMPLICATIONS:

The Department of Transportation reports that although the bill would cause an increase in the cost of using county drains for highway drainage, it could reduce the department's need to request county drain cleaning. (11-16-87)

ARGUMENTS:

For:

By allowing the establishment of drain maintenance funds, increasing spending limits, and expanding the power of the drain commissioners and drainage boards to respond to emergencies, House Bill 4382 would provide the necessary tools and incentives to ensure that the state's drainage systems are well-maintained — an important objective for a state determined to broaden and revitalize its economic base. Without adequate drainage systems, land which could be developed for industrial, commercial, residential or recreational purposes may well be left undeveloped, and roads necessary to accommodate the state's growing transportation needs may be difficult to construct.

Against:

Although the bill would allow a county drain commission to expend more money for maintaining county drains, it would no longer require the county to notify property owners via the media of work to be done or assessments which may be levied should the cost of the work exceed the maximum amount allocated for maintenance. The bill may be giving counties the power to make decisions directly affecting its constituents economically without allowing those constituents a voice in the decision-making process.

For:

Due to its relation to the city of Detroit, Wayne County's drain problems exceed the problems most other counties in the state have to grapple with. House Bill 5007 would set a legal requirement for all other counties within the stipulated population limits to elect a county drain commissioner or public works commissioner while allowing Wayne County's board of commissioners the liberty to appoint the county's drain commissioner or public works commissioner.

POSITIONS:

The Michigan Association of Counties supports the concept of House Bill 4382. (11-12-87)

A representative of the Michigan Association of Drain Commissioners testified in support of the bills. (11-10-87)

The Wayne County Board of Commissioners supports the bills. (11-16-87)

The Department of Transportation supports House Bill 4382. (11-16-87)