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Senate Bill 866 (as introduced 2-9-22)  
Sponsor: Senator Rick Outman  
Committee: Local Government

Date Completed: 6-16-22

### **CONTENT**

**The bill would amend the Drain Code to do the following:**

- **Specify that any time after a drain was constructed, a county or counties could be added or removed to and from the drainage district.**
- **Specify that a petition to add or remove a county or counties would have to identify the county or counties and lands proposed to be added or removed from the drainage district.**
- **Require the drain commissioner to provide notice and a copy of a petition by certified mail to the Director of the Department of Agriculture and Rural Development (MDARD) and to the drain commissioner of each county where the existing or proposed revised drainage district was located.**
- **Require notices of an addition or removal petition to identify the county or counties proposed to be added or removed and to include a general description or map of the lands expected to constitute the drainage district.**
- **Modify the procedure for inspecting a drain after receiving a petition.**

#### Modifying a Drainage District

The Code specifies that if at any time after a county or intercounty drain is constructed, it appears that it is necessary to extend the drainage district into a county that was not part of the original drainage district or to remove lands from the original drainage district resulting in the removal of a county from an intercounty drainage district, the lands may be added or removed from the drainage district. Under the bill, instead, at any time after a drain was constructed, a county or counties could be added to the drainage district, or in the case of an intercounty drainage district, removed from the drainage district.

Proceedings to add or remove a drainage district are commenced by presenting a petition for the removal or addition of the county or counties to the drain commissioner of one of the counties affected by the drain. The petition must be signed for the removal or addition of a county or counties in a drain district. After receiving the petition, the drain commissioner is required to provide a copy of the petition to the Director of MDARD and to the drain commissioner of each county where the existing or proposed revised drainage district is located. The bill would require the drain commissioner to provide notice and a copy of the petition by certified mail.

After receiving a notice and petition, the Director of MDARD must call a meeting of the drainage board. Notices of the meeting and all other proceedings must be provided as specified under Section 197 (which prescribes the notice requirements for a meeting of a

drainage board to review revisions to a drainage district). Under the bill, the notice instead would have to be provided as specified under Section 122 (which prescribes the general method of notifying interested parties and the public of a meeting of a drainage board). The notices would have to identify the county or counties proposed to be added or removed and include a general description or map of the lands expected to constitute the drainage district.

The drainage board must consider the petition and any evidence offered. If the drainage board determines that the extension of the drainage district or removal of lands from the drainage district is necessary for the public health, convenience, or welfare it must determine the just percentage of the whole cost of construction each county must bear. If the commissioners cannot agree on the apportionment between counties, the chairperson must determine that apportionment. If, in the opinion of the drainage board, it is necessary to revise the drainage district boundaries, the board must also enter an order to that effect. Copies of the order must be filed with the drain commissioner of each county in the revised drainage district. After an order is filed, the revised drainage board constitutes the drainage board for the revised drainage district and has all the powers and duties of a drainage board. The bill would delete these provisions.

Instead, under the bill the drainage board would consider the petition and evidence offered. If the drainage board determined by majority vote that the addition or removal of a county or counties was necessary for the public health, convenience, or welfare, it would have to issue an order to that effect and proceed as applicable. If a petition under this provision were combined with a petition under Section 192, the drainage board would be required to proceed as provided in Section 192. (Generally, Section 192 prescribes a procedure for petitioning a county board of commissioners to clean or perform maintenance on a drain that is in more than one county.)

### Inspections

After receiving a petition under Chapter 8 (Cleaning, Widening, Deepening, Straightening, and Extending Drains) the drain commissioner or drainage board may retain the services of a licensed professional surveyor or engineer to make a survey of the drain and may review the drainage district boundaries, or a portion of the drain or drainage district. Instead, under the bill, after receiving a petition filed under Sections 191, 327, 423, 441, or 441a or after an inspection under Section 196, the drain commissioner or the drainage board could retain a licensed professional surveyor or engineer to review the drainage district boundaries.

(Generally, Section 191 prescribes the procedure for petitioning a county board of commissioners to perform maintenance and improvements on county drains. Section 327 prescribes provisions pertaining to the construction and maintenance of any highway to take a surplus of water across adjacent lands. Section 423 prohibits discharging certain sewage or waste matter into drains and prescribes penalties for doing so. Section 441 and Section 441a prescribe a procedure for consolidating and organizing two or more drainage districts in the same county and two or more drainage districts within more than one county, respectively. Section 196 prescribes a procedure for inspection of county and intercounty drains.)

Under the Code, if, after a survey of the drain or a review of the drainage district boundaries, or after an inspection under Section 196, it appears that the boundaries of the drainage district should be revised, the drain commissioner for a county drain, or the drainage board for an intercounty drain, must either convene the board of determination and, after notice and review as provided, revise the boundaries of the drainage district to include all lands benefitted by the drain as recommended by a licensed professional surveyor or engineer. The bill would modify these provisions. Instead, under the bill, if, after a review of the drainage district boundaries, it appeared that the boundaries should be revised, the drain commissioner

for a county drain, or the drainage board for an intercounty drain, would have to convene the board of determination or drainage board or hold a day of review of district boundaries.

The Code specifies that if, after an inspection and a review of the drainage district boundaries, a drain commissioner or drainage board determines that the boundaries should be revised and that lands, in a county or counties not part of the original drainage district, should be added to the drainage district or lands in an intercounty drainage district should be removed resulting in the removal of a county drain from the intercounty district among other things, the drainage board must consider any evidence offered and determine whether the addition or removal of the lands is equitable. If the addition or removal is just and equitable the board must file an order to that effect. The order must give a name or number, the route and course of the drain and drainage district boundaries.

Under the bill, the order would have to do all the following:

- Give the drain and drainage district a name or number.
- Describe the route and course of the drain.
- Describe tentative drainage district boundaries.
- Identify each county being added to or removed from the drainage district.

The bill also would allow a drain commissioner to appeal the apportionments between the counties or the addition or removal of a county or counties to or from the drainage district, as set forth in the order described above, to an arbitration board in the manner provided in Section 106. (Generally, Section 106 prescribes the procedure for a drain commissioner of a county to review apportionments.)

MCL 280.135 & 280.197

Legislative Analyst: Eleni Lionas

### **FISCAL IMPACT**

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Chris Semrinec

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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.