

Legislative Analysis



WATER MANAGEMENT PROGRAMS

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4382 as introduced
Sponsor: Rep. Christine Morse

Analysis available at
<http://www.legislature.mi.gov>

House Bill 4383 as introduced
Sponsor: Rep. Curt S. VanderWall

Committee: Local Government and Municipal Finance
Complete to 6-6-23

SUMMARY:

House Bills 4382 and 4383 would rewrite Chapter 22 of the Drain Code, which pertains to water management districts and subdistricts. The bills would establish procedures for the creation of a water management program, which would require the creation of a water management district and plan via a petition process, and for the creation of apportionments between and within counties for assessments to finance the program. The water management board would be responsible for all water management program operations and for maintenance of a water management district. House Bill 4383 would repeal several current sections of the chapter,¹ and the two bills would amend (and in most cases rewrite) all the remaining sections. The two bills are tie-barred together, which means that neither bill can take effect unless both bills are enacted.

House Bill 4382 would provide procedures for the petition process, the creation of a water management board or commission, and the establishment of a water management district.

Petitions

The first step in establishing a water management program would be filing a petition with the appropriate county drain commissioner, which, if successful, would result in the establishment of a ***water management district*** and then a ***water management plan***. If a water management district had already been established via petition but did not include a corresponding water management plan or program, then a plan and program for that district could be established through the petition process as well.

Water management district would mean the area within a single drainage basin that would be subject to a water management plan.

Water management plan would mean recommendations and estimated costs for water management activities. This could include stormwater studies, public stormwater education projects, stormwater ordinance drafting, and the acquisition, ownership,

¹ House Bill 4383 would repeal the section of the Drain Code that currently allows water management districts to create subdistricts when a program will only benefit an area of that district that consists of one or contiguous municipalities. Although no other sections of the current act (except definitions that would be eliminated by HB 4382) and no provisions in either of the bills reference water management subdistricts, the title of the chapter (“Water Management Districts and Subdistricts”) would not be amended.

construction, improvement, maintenance, or conservation of property rights of stormwater control facilities or equipment.

If a water management program already exists in an established water management district, it could be superseded by a new program as long as the petition for the new program is filed in accordance with Chapter 22 and the new program is consistent with the existing water management plan (which could be amended through the petition process to achieve consistency).

If a petition involves a previously proposed or established water management district that only involves land in one county, then the petition would be filed with that county's drain commissioner. Petitions could also be filed with more than one local government authority. Drain commissioners could require petitioners to submit a deposit of any amount to pay for the costs incurred in relation to a dismissed petition. A petition to establish a water management program would have to be signed by any of the following:

- Authorized officials of two or more **public corporations** that will be subject to assessments for proceedings relating to the petition. If only one **municipality** will be subject to assessments at large for benefits of public health, the petition would only have to be signed by that municipality.
- At least 50 property owners whose land would be subject to assessment.
- At least 10% of the property owners whose land would be subject to assessment.

A **public corporation** would mean the state, a county, or a municipality.

A **municipality** would mean a city, village, or township.

If a petition involves a proposed or established water management district regulating multiple counties, then the petition would be filed with the drain commissioner of one of those counties, who would then forward the petition to the director of the Michigan Department of Agriculture and Rural Development (MDARD).

If the MDARD director receives a petition, the director would have to identify the counties included in the water management district and notify each county's drain commissioner. County drain commissioners would be responsible for reviewing the signatures of individuals in their respective counties to ensure that those individuals are eligible to sign the petition and that enough signatures have been acquired. Each drain commissioner would then have to report the review's findings to the water management board (which would be created by the petition).

Petition contents

A petition would have to describe the geographic area for which a water management program is sought in such a way as to determine which public corporations would benefit from the program; state that such a program is necessary for the public health, safety, or welfare; and include a copy of the authorizing resolution of the governing body of each public corporation whose official signed the petition.

Water management boards

If a valid petition is filed, then a water management board would be created. If a water management district would only contain land in one county, then the board would consist of

the county drain commissioner, who would serve as the chairperson, and one member for each municipality that would be subject to assessment at large for benefits to public health as a result of the water management program. These members would be appointed by the governing bodies of the relevant municipalities. If a water management district would contain land in multiple counties, the board would be the MDARD director (or the director's designee), who would serve as the chairperson, and the drain commissioners of each affected county.

If a district would span multiple counties, if one of the drain commissioners for an affected county was appointed rather than elected, if that county has not adopted a unified county government in accordance with 1973 PA 139, and if that county has population of over 1.0 million, then that drain commissioner could appoint an elected official of one of the municipalities that would be subject to assessment at large for the water management program to also serve on the board.² This appointee would serve a two-year term and could not be appointed to multiple terms unless the municipality is the only one in the county that would be subject to the at-large assessment. When possible, the drain commissioner would have to appoint an official from a different municipality after two years. If an appointee fails to serve or is disqualified, then the drain commissioner would have to appoint a successor to serve for the remainder of that two-year term.

Water management commissions

If a water management district contains multiple counties, then a water management commission would also have to be established. The commission would consist of the members of the water management board, the chairperson of the board of county commissioners for each affected county, and the chairpersons of the boards of county commissioners' finance committees. If a county does not have a finance committee, then that county's board of commissioners would have to select an additional member from the board of commissioners.

Water management boards and commissions would be authorized to determine and approve reasonable compensation for each member and approve any necessary expenses. Drain commissioners and the MDARD director could not receive any additional compensation or reimbursement for expenses incurred as a member of a water management board or commission.

The water management commission's only role would be to determine the necessity of a petition. If a petition is found to be sufficient, all future action would be taken by the water management board. If a petition is found to be insufficient, the water management board and commission would be dissolved.

Initial board meeting

The chairperson would be responsible for calling the first meeting of a water management board. If the proposed district would only contain one county, the chairperson (the county drain commissioner) would have to provide at least 45 days notice to the supervisor of each township and the clerk of each city or village that would be subject to assessment at large for benefits for public health. If the proposed water management district would contain multiple counties, then the chairperson (the MDARD director or designee) would have to provide the 45-day notice to each drain commissioner in the affected counties.

² Currently, Wayne County is the only county in Michigan with a population over 1.0 million and an appointed drain commissioner.

The notice would have to request that the governing body of the municipality appoint a member to the board, or two members if there is only one municipality that would be subject to assessment at large for benefits for public health.

If the governing body of a municipality does not have a session scheduled prior to the date of the first meeting of the water management board, or if there is only one municipality subject to assessment, then the chairperson of that governing body and one designee would represent the municipality at the first meeting. That governing body would then appoint one member (or two when it is the only municipality that would be subject to assessment) to the water management board at the governing body's next session. Failure of a governing body to appoint a member to the board would not prevent the lands in that municipality from being included in the water management district or from being subject to assessment or any other obligations imposed by Chapter 22.

Water management district and orders of sufficiency

At its initial meeting, a water management board would have to determine the sufficiency of the petition and make a preliminary determination of the boundaries for the proposed water management district (if such a district had not previously been established).

If the board determines that the petition is insufficient, it would have to enter an order dismissing the petition and end all related proceedings. The costs of the proceedings relating to the petition would be covered by any deposit paid when the petition was filed. If the deposit is insufficient, or no deposit was paid, then the remaining costs would be covered by each affected county's revolving drain fund.

If a petition is sufficient, the water management board would have to issue a district description order stating the name of the district and, if a district has not already been established, the tentative boundaries of the district. If the proposed district would contain multiple counties, the order and petition would be sent to the relevant water management commission.

Meeting procedures

For all future meetings, the chairperson of a water management board or a water management commission would be responsible for calling a board or commission meeting by providing notice to each member. The notice would have to be provided through an email that requests read receipt verification and through first-class mail, and it would have to specify the time, date, and place of the meeting.

Water management boards would have to select a treasurer and secretary. All proceedings and records of the board would have to be kept in the chairperson's office, which would serve as the board's principal office for the purposes of House Bill 4382 and all other applicable laws.

Water management boards and water management commissions would have to conduct meetings in compliance with the Open Meetings Act, and any written materials used or retained by a board or commission to perform an official function would be subject to the Freedom of Information Act (FOIA).

Hearings

After a water management board provides a description of the proposed district and its boundaries, the chairperson of the board would schedule a hearing to receive evidence and hear

objections relating to the petition; evaluate the necessity of a water management program for the public health, safety, or welfare; determine the municipalities that would be subject to assessment at large for benefits to public health and the corporations that would be subject to assessment for benefits to state highways, county roads, or city and village streets; and draw the official boundaries of the water management district if one has not already been established.

If the petition proposes a water management district that contains only one county, the water management board would be responsible for conducting the hearing. Otherwise, the water management commission would be responsible.

Notice of the hearing would have to be provided as follows to each affected county:

- By a newspaper that circulates in the county at least 20 days before the hearing.
- By first-class mail to each person who owns land within the proposed district, as determined by the most recent municipal tax roll, to the address listed on that tax roll at least 10 days before the hearing. If an address does not appear on the tax roll, no notice would have to be mailed.
- By certified mail to the county clerk at least 10 days before the hearing.
- By certified mail to the clerk of each city or village that would be subject to assessment for benefits to city or village streets or assessment at large for benefits to public health at least 10 days before the hearing.
- By certified mail to the supervisor of each township that would be subject to assessment at large for benefits to public health at least 10 days before the hearing.
- If the county would be subject to assessment for benefits to county roads, by certified mail to the *county road agency* at least 10 days before the hearing.
- If the state would be subject to assessment at large for benefits to a state highway, by certified mail to the director of the Michigan Department of Transportation (MDOT), or a designee thereof, at least 10 days before the hearing.

County road agency would mean a county road commission, a body that has holds those same powers in a county chartered under 1966 PA 293 (which provides for the establishment and regulation of charter counties), or a county board of commissioners in instances where the board of county road commissioners has been dissolved.

After receiving evidence and testimony at a hearing, the water management board or commission would determine the following:

- The necessity of a water management program for public health, safety, or welfare.
- If the water program is necessary and no district has already been established, the boundaries of the water management district.
- If the water district is necessary, the public corporations to be subject to assessment.

Orders of necessity

If the water management board or commission considers a petition to establish a water management program and determines it not to be necessary and conducive to the public health, safety, or welfare, the board or commission would file a written no-necessity order dismissing the petition, and any further petition could not be considered for one year. If the petition attempted to establish a water management program in an existing water management district, the cost of the petition proceedings would be assessed to the water management district. Otherwise, the cost would be assessed at large to the involved public corporations, based on

apportionments developed at the discretion of the drain commissioner for each affected county and subject to the approval of the water management board.

If the board or commission finds the proposed drain to be necessary and conducive to those goals, the board or commission would have to determine the local units of government that would benefit from the drain and notify them of the liability to pay for a portion of that drain within 10 days of the determination. The board or commission would then have to file a written order of necessity, which would have to state the above determinations (the necessity of a such a program, its boundaries, and the public corporations that would be subject to assessment). The order of necessity would establish the water management district if one were not already in existence.

Any individuals that own land in the proposed or established water management district, MDOT, or any local unit of government that has control of a street or road in the district that is aggrieved by the determination would have 10 days to bring an action in the relevant county circuit court.

After a water management commission enters a necessity order and the 10-day deadline has passed, the water management board would be responsible for taking all further actions relating to the petition and water management activities.

MCL 280.551 et seq.

House Bill 4383 would provide guidelines for the cost and benefit apportionment process and consequent special assessments, authorize and regulate bond financing for a water management district's activities, provide for board of review processes and the relinquishment of jurisdiction, and add other auxiliary provisions relevant to water management programs and districts.

The bill would repeal sections of the Drain Code that provide current procedures for the administration of a water management board and for the creation of a special assessment roll, that allow for the establishment of water management subdistricts, and that allow improvements to intercounty drains as a means of flood control. House Bills 4382 and 4383 would include replacement provisions for water management boards and special assessment procedures, but not for water management subdistricts. House Bill 4382 would empower water management boards to take a broader range of actions to manage watersheds through the execution of a water management program than the current provision on drain improvement.

Body corporate

A water management district would be a body corporate with the power to enter contracts; acquire real or personal property rights through any legal method, including condemnation; hold, manage, and dispose of real and personal property; and sue and be sued.

Water management plan

After establishing a water management district, the water management board would have to create a proposal for a water management plan that contains recommendations for activities and the estimated costs of those activities. The board could hire any experts necessary to provide analysis and recommendations for the plan and could appoint advisory committees to assist with developing the plan.

If the county drain commissioner maintains an official internet presence, that commissioner would have to post the proposed water management plan to a public website and keep the posting online for at least 30 days. The posting would have to include notice of a 30-day public comment period and provide a mail address and email address at which comments would be received. If a drain commissioner does not have an internet presence, the plan and notice would have to be posted on the county website instead.

After consideration of any public comments, the water management board would then choose to approve the proposed water management plan, modify and approve the plan, or reject the plan if the board finds that the proposed water management plan would not be feasible. If the water management board rejects the water management plan, then the board or commission, as applicable, would have to enter a written order that dismisses the petition. The costs of the proceedings related to the petition would be assessed to the water management district, and another petition for that area could not be filed for one year after rejection.

Water management program order

If a water management plan is approved, the relevant water management board would have to enter a written program order. The order would have to describe the activities the board would perform on behalf of the water management district, which would have to be consistent with the activities described in the water management plan. If the district involves multiple counties, the order also would have to specify the final cost apportionment between all involved counties (as described below).

Cost apportionment between counties

If a water management district is located in multiple counties, the water management board would have to determine the percentage of the costs associated with establishing a water management district and program that would be tentatively apportioned to each county composing the district. The cost of a water management program would include all of the following:

- The cost of establishing a water management district.
- The cost of the activities of the program.
- The administrative expenses of the water management board (and commission when applicable), which would include the cost of mailing, posting, printing, service, and publication of all notices.
- Engineering, legal, and other professional fees.
- Interest on any funds advanced, and, if bonds are issued, interest on those bonds for the first year.
- The estimated cost of an appeal to the board of review, if the apportionment made by the drain commissioner is not sustained on appeal.
- Any compensation and expenses to be paid to special commissioners or to water management board or commission members.
- Up to 15% of the gross sum of the above costs to cover contingent expenses.

Board of review establishment and meeting

If a drain commissioner of one of the affected counties finds the apportionment to be unfair, that drain commissioner could file a request for a board of review. The request would have to be filed with the MDARD director within 20 days, and it would have to include a statement of

why the commissioner finds the apportionment unfair and the name of a drain commissioner from an unaffected county to serve on the board of review.

Within 10 days of receiving the request, the MDARD director would have to forward a copy to each drain commissioner of the affected counties. Within 10 days of receiving a copy of the request, each drain commissioner would have to notify MDARD of the disinterested drain commissioner from an unaffected county that has been selected to join the pool for the board of review.

The board of review meeting would have to be held as soon as possible, but no later than 30 days after the MDARD director forwards copies of the review request to the other drain commissioners. This first meeting would take place at MDARD's Lansing office.

At the board of review meeting, the drain commissioners would select either one or two of the eligible drain commissioners from the selection pool to serve on the board of review alongside the other drain commissioner chosen through the initial review request. (If there are an even number of members in the selection pool, one final board member would be selected. If there are an odd number of members, two final board members would be selected.) After selecting the final members, all members present at the meeting would determine a date, time, and place for a meeting of the full board of review to hear the request. The MDARD director would have to notify the selected drain commissioners of the date, time, and place of the meeting. At least 10 days before the meeting, the drain commissioner of each affected county would have to provide notice of the meeting to that county's clerk personally or by certified mail.

At the full board of review meeting, the board of review would review the fairness of the apportionment and make a decision. A majority vote signed by the board members would constitute a final and conclusive determination.

Benefit apportionment within counties

After a program order is entered and any apportionment between counties has been finalized, the drain commissioner in each affected county would have to apportion the benefits for the water management program within that county. Apportionment would have to be done in accordance with Chapter 7 of the Drain Code (as described below), and the apportionment would be subject to review, corrections, and appeals as provided in that chapter. If a drain commissioner is disqualified from making such apportionments, a special commissioner would be appointed for these duties.

Benefits would be apportioned to the owners of private (generally speaking) land in the district for the benefits derived from the program; to a municipality at large for benefits to public health; and to the state, a county, or a city or village for benefits to state highways, county roads, or city or village streets, respectively.

[Under Chapter 7, approved apportionments under the Drain Code are assessed against local units of government at large for the improvement of the highways within the drainage district. Assessments are also made against all parcels of land located within the district. The drain commissioner determines the number of payment installments to be made and can make adjustments to the estimated apportionment percentage, the estimated annual project assessment, and the estimated project assessment duration as necessary. Any landowner in the drainage district or any local unit of government with control of a highway in the district that

feels aggrieved by the apportionment has 10 days from the day of review to file an action in a county circuit court to appoint a board of review. This board of review, chosen by the probate court, consists of three disinterested and competent freeholders of the county but not residents of the township affected by the drain. The board can add land to the district and adjust any apportionments as it sees just and equitable, and all actions and decisions are final.]

Land acquisition

After a program order is entered and apportionments are determined, the water management board would be responsible for acquiring the necessary land and property rights for the water management program. If a board is unable to acquire such land or property rights through negotiation, it would be authorized to acquire them by condemnation in accordance with the Uniform Condemnation Procedures Act.

If the federal government is involved in any part of the water management program, it could acquire land or property rights by proceedings brought under an appropriate statute. The amount of the awards in the federal proceeding would be considered part of the cost of the water management program in the same way that such actions would be considered costs if the proceedings were conducted under state law.

Boundary changes

Drain commissioners could revise the boundaries of a water management district by providing notice to the MDARD director and drain commissioner of each county where the change would be located and then holding a meeting for public comment. After the consideration of these comments, if the drain commissioner or water management board decides that the addition or removal is just and equitable, the revised boundary would be approved.

If the drain commissioner or water management board decides to revise boundaries before the hearing of necessity for a petition, a board of determination could adopt the change by a majority vote without going through the above procedures.

Interfering construction

A person would be prohibited from constructing or modifying a bridge, road, pipeline, power line, drain, sewer, or any other public or private works that go in, into, or across a property or an easement controlled by a water management district. The relevant water management board could allow exceptions after receiving and approving plans for the alteration or construction. These provisions would not limit or supersede any of the water management district's property rights.

Construction bids

As necessary, a water management board would oversee the bidding process for construction projects. If the drain commissioner has an internet presence, the drain commissioner would have to post an advertisement for the bidding process online at least 10 days before the date the bids would be received. Otherwise, this notice would be posted on the county website. Bids for construction would have to be received before the day of review for the apportionment so that the county drain commissioner can calculate the total cost of a project.

Special assessment roll computations and day of review

Each county drain commissioner would have to create a special assessment roll that reflects the apportioned costs to be assessed to each county. The roll would have to be prepared as provided in Chapter 11 of the Drain Code.

[Chapter 11 provides that within 10 days after the letting of contracts or an appeal decision, the drain commissioner must make a computation of the entire cost of each drain, which would include the 10% to 15% additional percentage of the gross sum to cover contingent expenses. The drain commissioner then must make a special assessment roll for that drain for each local unit of government and each state trunk line highway affected by the drain, which must include a description of each parcel of land benefited by the drain and the apportioned cost percentage for that entity. The commissioner must also include the percentage apportioned to the county for benefits to any county road, and to the township, city, or village, and the state highway commission for benefits to any state trunkline highway. If the amount is to be payable in installments, the commissioner must include a schedule of payments for the installments on the roll. Assessments that are \$10 or less, excluding interest, must be made payable in one installment, but all other assessments must be divided into installment amounts of at least \$10 (excluding interest).]

The water management board's computation of the cost and benefit apportionments for a water management program would be open to public inspection at a day of review. The review would have to be held within 60 days of receiving any construction bids, and the drain commissioner for each affected county would be responsible for providing notice of the day of review meeting.

After completion of the day of review, the drain commissioner would have to file the roll with the appropriate water management board. If a computation of costs is not completed before the day of review, the drain commissioner could adjourn the review for up to 20 days to complete the calculations. A drain commissioner could also provide notice for a new day of review to be held after the computation is completed.

If the contracts on which a computation was based are not executed and new contracts are entered at a higher price, the drain commissioner would have to correct the computation, hold a new meeting to review the apportionment of benefits, and update the roll as necessary.

Construction contracts

For a water management board to authorize the commencement of any construction work, the work would have to be performed by the federal government or a public corporation, or the water management board would have to have advertised for and received bids for construction and have granted a contract to the lowest responsible bidder.

If a water management board contracts with the federal government or any of its agencies, the federal government would have to pay some or all of the costs of the construction and perform all or part of the work for the water management program. Any such contracts could include additional terms as required by federal law to allow federal government participation.

If a water management board contracts with any public corporation in relation to the construction, operation, maintenance, use, or services of a water management program, the contract could include a provision requiring that payments made or work done by the public corporation would relieve it from partial or whole assessments for the costs of the program.

Bonds

A water management board would be authorized to issue bonds to finance the activities of a water management district. The bonds would be issued in anticipation of, and would be payable

from, the special assessments that would be made against private property and public corporations located within the district.

Bonds would have to be sold in accordance with the Revised Municipal Finance Act, and they could not be for an amount greater than the total sum of the installments levied. A county's drain commissioner would be responsible for levying additional special assessments if those in effect cannot raise sufficient money to pay all outstanding bonds when they are due.

The bonds would mature or be subject to a mandatory redemption schedule with the last maturity no more than two and a half years after the due date of the final assessment. There could not be more than one principal maturity or mandatory redemption during any 12-month period, and there could not be more than 30 installments. Any premium received on the bonds would go into the water management district fund.

The water management district would have to pledge its full faith and credit in the bonds. A county in which the district would be located could also pledge its full faith and credit as additional security. If the water management district includes multiple counties, the pledge would only apply to the assessments against the property and public corporations in that county. If a county is required to advance any money because of such a pledge, and if the collections from special assessments are not sufficient to reimburse the county, then that county's drain commissioner would have to reassess the properties in the water management district to reimburse the county for the money advanced within two years.

House Bill 4383 would not validate any bonds or other obligations issued before its effective date.

Additional assessments

If a water management board determines that the water management district does not have sufficient funds to pay the costs of its operation and maintenance, then the board would be able to levy further assessments based on the established apportionments for the water management district or on new apportionments created in a manner that is consistent with the original apportionment process.

Reimbursement

Any person could advance funds for the payment of a water management program. The water management district would have to reimburse that person when funds are available, with or without interest in accordance with an agreement between those parties.

A contract or note would constitute sufficient evidence that a water management district is obliged to make a reimbursement. The contract or note could pledge the full faith and credit of the water management district and could be made payable from assessments levied by the water management district, from the proceeds of drain orders or bonds issued by the water management district, or from any other available funds.

Annual report

A water management board would have to annually prepare and submit a report on the status of the water management program while the program is in operation. If the drain commissioner of the relevant county has an official internet presence, the commissioner would have to post

and maintain the most recent report on a publicly accessible website. Otherwise, the report would have to be posted on the county website.

Relinquishing jurisdiction

A water management board could adopt a resolution that relinquishes jurisdiction and control over all or part of a water management program activity to a county, municipality, or other authority in which the activity is wholly located.

The board could also relinquish jurisdiction and control to a county road agency or MDOT if the activity is within the right-of-way of a county road or state highway and if both of the following conditions are met:

- The water management district has no outstanding debt or contract liability in relation to the activity. Debt or liability that will be paid in full when control is relinquished would not be considered outstanding.
- The governing body of the county, municipality, or authority; the county road agency; or the director of MDOT, as applicable, requests or consents to the relinquishment.

If jurisdiction and control would be relinquished to a county, the resolution of the county board of supervisors would have to specify the county agency that will be responsible for exercising jurisdiction and control over the activity.

Upon relinquishing jurisdiction and control over all or part of an activity, the water management board would be relieved of any property rights directly related to the activity, and these property rights would be acquired by the entity that assumes jurisdiction and control. Money in the water management district fund allocated for the activity would have to be used to pay any remaining debt of contract liability, and the balance would be transferred to the entity that had accepted jurisdiction and control, to be used solely with respect to that activity.

Review action

Proceedings under Chapter 22 and any related assessment levies would be subject to review by an action for an order of superintending control³ in the relevant county circuit court as follows:

- An action for any error that occurred before a water management program order was issued, or an error in the order itself, would have to be filed no more than 20 days after the program order is entered.
- An action for any error that occurred after the water management program order was issued would have to be filed no more than 20 days after the relevant drain commissioner confirms the apportionment with any adjustments resulting from the day of review, or if the apportionment is appealed, no more than 10 days after the board or review has made its determination on the appeal.

A court could not enter a superintending control order questioning the legality of any proceedings under Chapter 22 unless the plaintiff in an action has given notice to the chairperson of the water management board within 10 days of filing the action. If an action is brought, the water management board would have to postpone the letting of contracts and all other proceedings until after the court has made its determination.

³ An order of superintending control enforces the power of a court over lower courts or tribunals, an extraordinary power that may be invoked when the plaintiff demonstrates the defendant's failure to perform a clear legal duty and the absence of an adequate legal remedy.

Bond-related actions would proceed in the same manner as otherwise provided for court actions, except that the action would be heard at least five days after notice is given to the plaintiff.

If issues of fact are raised by the complaint or answer, then testimony would be taken on those issues. If proceedings are sustained, then the party that brought the action for the order for superintending control would be liable for the costs of the water management district incurred in relation to the proceedings. If proceedings are not sustained, then costs would be assessed to public corporations at large and based on the apportionments developed by the drain commissioner (or, for proceedings to initiate a water management program in an established water management district, to the water management district).

If the court finds a material defect in the proceedings, it would have to set them aside. If any other error is found, however, the court would have to direct the water management board to correct the error and otherwise proceed as usual.

If no timely action is brought, the water management district would be legally established, and the legality of its proceedings could not be questioned in any other legal action.

Other provisions

A water management board could enter contracts with other states, state agencies, or other relevant entities, as necessary to address matters connected with the proceedings of a water management district for an interstate watershed.

An action or appeal arising from Chapter 22, except an action or appeal that would be brought directly to the Michigan Supreme Court, could be brought in circuit court in any county where lands in the water management district are located.

The director of MDARD would be authorized to designate a deputy or assistant to act on the director's behalf for all proceedings related to Chapter 22.

If there are any personnel changes to a water management board or a water management commission for a water management district, then that board or commission would continue.

Other chapters' applicability

Provisions in other chapters of the Drain Code would not apply to a water management board, a water management commission, or any official acting under Chapter 22. However, if not contrary to the express provisions of Chapter 22, a provision in another chapter of this act could be incorporated into an order or a resolution made in accordance with the chapter. In such a provision, a reference to a drainage district would apply to a water management district, a reference to a project would apply to a water management program, and a reference to a drainage board would apply to a water management board or a water management commission.

MCL 280.559 et seq.

BACKGROUND:

The bills are reintroductions of House Bills 6317 and 6318 of the 2021-22 legislative session. HBs 6317 and 6318 received a hearing in the House Local Government and Municipal Finance committee but did not advance out of committee.

FISCAL IMPACT:

House Bills 4382 and 4383 would amend Chapter 22 of the Drain Code, a chapter dealing with water management districts. The bills could have a fiscal impact on state government, specifically on MDARD and MDOT. The bills also could affect county road commissions.

MDARD

Chapter 5 of the Drain Code governs intercounty drainage districts, i.e., drains that traverse lands in more than one county or that affect more than one county. Chapter 5 makes the MDARD director, or the director's designee, the chair of intercounty drainage districts. As a practical matter, MDARD intercounty drain functions are performed by a dedicated unit within the Environmental Stewardship Division. Funding to support MDARD's intercounty drain program is provided under a separate appropriation line item in the MDARD budget. This appropriation totals \$862,600 GF/GP in the FY 2022-23 enacted MDARD budget. This line item supports 6.0 budgeted full-time equated positions.

House Bill 4382 would make the MDARD director or director's designee the chair of water management districts with lands in more than one county. MDARD intercounty water management responsibilities would likely be performed by staff in the current MDARD intercounty drain program. Whether these additional responsibilities could be performed with existing resources or would require increased staffing and additional appropriations would depend on the number of intercounty water management districts established under the bills.

MDOT / County Road Commissions

The Drain Code currently provides for the assessment of drain costs based on the apportionment of benefits. MDOT is assessed for drainage benefits related to state trunkline highways. Those assessments have averaged \$18.0 million over the last four years (2019 to 2022). MDOT pays drainage assessments from appropriated State Trunkline Fund revenue.

Under House Bill 4382, MDOT could also be assessed for its proportional share of costs attributable to water management district programs. This could result in additional costs to MDOT, although the amount cannot be readily estimated at this time. The amount of additional costs would depend on the number and scope of districts that might be established, the extent and cost of water management programs, and the amounts apportioned to MDOT.

County road commissions could also be assessed for water management district program costs. Again, the amount of additional costs cannot be readily estimated at this time. The amount of additional costs would depend on the number and scope of districts that might be established, the extent and cost of water management programs, and the amounts apportioned to specific road agencies.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.