

**OTTAWA COUNTY
PLANNING DEPARTMENT**



DRAIN CODE (SB 217, HB 4552)

REVIEW COMMENTS

Environmental Responsibility

Amendment 1

Section 3 Subsection 2-F (Lines 4-5, Page 11)

~~"(F) Evaluate the impacts of the project on natural resources and identify appropriate measures to minimize adverse impacts."~~

Comments: The term "natural resources" is open-ended and subject to broad interpretation. This section, whether broadly interpreted or not, expands and shifts the responsibility of environmental oversight from the MDEQ to county government. As a result, the cost of future drain projects could substantially increase and create a Headlee Amendment violation.

Amendment 2

Section 51 Subsection 3 (Lines 3-10, Page 40)

~~"(3) The petition shall request the establishment of a drainage district and the establishment and construction of a drain and set forth the reasons for the request. The petition may request that measures be undertaken which are intended both to enhance or improve the natural resource values of the proposed drain and which provide direct benefit to the designed function, longevity, or hydraulic capacity of the proposed drain. The petition may propose a location and route for the drain."~~

Comments: See Comments for Amendment 1.

Amendment 3

Section 52 Subsection 1-E (Lines 14-15, Page 44)

~~"(E) A description of the impacts to the natural resources of the proposed drain."~~

Comments: See Comments for Amendment 1.

Amendment 4

Section 60-J (SB 217 - Lines 9-13, Page 57)
(HB 4552 - Lines 10-14, Page 57)

~~"(J) An evaluation of the impacts of the project on natural resources that identifies appropriate practical measures to minimize adverse effects. The evaluation need not be part of the engineering analysis and may instead be prepared by the commissioner or another qualified professional."~~

Comments: See Comments for Amendment 1.

Amendment 5

Section 61 Subsection 3 (SB 217 - Lines 7-10, Page 58)
(HB 4552 - Lines 8-11, Page 58)

~~"(3) All costs associated with evaluating natural resource impacts and implementing the measures to minimize those impacts shall be the responsibility of the drainage district."~~

Comments: See Comments for Amendment 1.

Amendment 6

Section 101 Subsection 3 (SB 217 - Lines 6-13, Page 62)
(HB 4552 - Lines 7-14, Page 62)

~~"(3) The petition shall request the establishment of a drainage district and the establishment and construction of a drain and set forth the reasons for the request. The petition may request that measures be undertaken which are intended both to enhance or improve the natural resource values of the proposed drain and which provide direct benefit to the designed function, longevity, or hydraulic capacity of the proposed drain. The petition may propose a location and route for the drain."~~

Comments: See Comments for Amendment 1.

Amendment 7

Section 110-J (SB 217 - Lines 14-18, Page 82)
(HB 4552 - Lines 16-20, Page 82)

~~"(J) An evaluation of the impacts of the project on natural resources that identifies appropriate practical measures to minimize adverse effects. The evaluation need not be part of the engineering analysis and may instead be prepared by the commissioner or another qualified professional."~~

Comments: See Comments for Amendment 1.

Amendment 8

Section 111 Subsection 3 (SB 217- Lines 11-14, Page 83)
(HB 4552 - Lines 13-16, Page 83)

~~"(3) All costs associated with evaluating natural resource impacts and implementing the measures to minimize those impacts shall be the responsibility of the drainage district."~~

Comments: See Comments for Amendment 1.

Financial Responsibilities and Headlee Amendment Violations

Amendment 9

Section 3 Subsection 2-E (Lines 18-27, Page 10 & Lines 1-3, Page 11)

~~"(E) Utilize applicable management practices adopted by the commission of agriculture in new drains, improvements, and maintenance projects. The commission of agriculture shall adopt management practices on or before the expiration of 2 years after the effective date of the 2003 amendatory act that amended this section. The Commission of Agriculture shall adopt and may revise the management practices after doing both of the following:~~

- ~~(i) Consulting with the Department of Natural Resources, the Department of Environmental Quality, public corporations, and interested drain commissioners.~~
- ~~(ii) Holding at least 1 appropriately noticed public hearing on the proposed management practices or revisions."~~

Comments: Since the adopted management practices are not defined, there is no limitation on what could be required of drain commissioners in the future by the Commission of Agriculture. As a result, the cost of future drain projects could substantially increase and create a Headlee Amendment violation.

Amendment 10

Section 51 Subsection 6 & Section 51 Subsection 7 (Lines 2-27, Page 41 & Lines 1-6, Page 42)

"(6) The County Board of Commissioners, by **A SINGLE** resolution, may instruct the drain commissioner to refuse all **FUTURE** petitions to establish a drainage district and establish and construct a drain unless the petitions are accompanied by cash deposits. A cash deposit shall equal the drain commissioner's reasonable estimate of the costs to be incurred by the office of drain commissioner in proceedings under this chapter until the entry of an order of no necessity or an order of necessity. **IF THE COMMISSIONER CONCLUDES AT ANY TIME THAT THOSE COSTS WILL EXCEED THE AMOUNT OF THE DEPOSIT, THE COMMISSIONER MAY REQUEST AN ADDITIONAL DEPOSIT TO COVER THE EXCESS COSTS AND THERE SHALL BE NO FURTHER PROCEEDINGS ON THE PETITION UNTIL THE ADDITIONAL DEPOSIT IS MADE.** A cash deposit shall be applied to any liability of the petitioners under subsection (7).

(7) Costs incurred by the office of the drain commissioner in proceedings under this chapter, including any attorney fees, shall be paid as follows:

- (A) By the drainage district, if the board of determination enters an order of necessity. Any deposit required under subsection (6) shall be returned to the depositor out of the first special assessment collections of the drainage district or borrowed funds secured by special assessment collection on the drain, whichever is received first.
- (B) By the petitioners, if the board of determination enters an order of no necessity and the county board of commissioners required a deposit under subsection (6). However, if the board of determination first enters an order of practicality, costs incurred after entry of the order of practicality through entry of the order of no necessity shall not be paid by the petitioners but shall be apportioned as provided in chapter 7 and assessed against the drainage district as described in the order of practicability.

~~(C) From the county general fund, if the board of determination enters an order of no necessity under section 55 and the county board of commissioners did not require a deposit under subsection (6)."~~

Comments: It is not clear whether a separate resolution is required for each petition filed or if a single resolution would cover all petitions. Adding the terms "a single" and "future" in Subsection (6) ensures that county boards of commissioners will not have to pass a new resolution for each petition that is filed. Additionally, language has been inserted above to clarify a county's authority to request an additional deposit to cover excess costs. Finally, language has been stricken to remove obligations that have been placed on counties to provide funding for costs that are incurred under a petition that is deemed "unnecessary" under an order of necessity. The use of the general fund in this instance would have the effect of taxing all citizens of the county for the benefit of only the requesting agent and may create a Headlee Amendment violation.

Amendment 11

Section 29 (Lines 11-15, Page 31)

"The drain commissioner's office shall furnish to any person, who may so desire, documents as may be required to implement the procedures of this act, and the drain commissioner may assist in the preparation of such documents as may be required to implement the procedures of this act.
THE DRAIN COMMISSIONER MAY CHARGE A FEE PURSUANT TO ANY REQUIREMENTS THAT ARE PROVIDED UNDER FOIA."

Comments: The amended language shown above would provide a means for collecting a fee and would eliminate potentially burdensome costs.

Amendment 12

Section 51 Subsection 2 (Lines 15-27, Page 39 & Lines 1-2, Page 40)

"(2) Instead of landowners, a public corporation, **WITH THE EXCEPTION OF STATE AGENCIES**, may petition for the establishment of a drainage district and the establishment and construction of a drain if the proposed drain is necessary for public health, safety, or welfare or for agriculture and may be signed solely by any public corporation, when duly authorized by its governing body, if the proposed drain is necessary for public health, safety, or welfare or for agriculture in the public corporation and if the public corporation will be liable for an assessment at large for a percentage of the cost of the proposed drain. The entry of an order of necessity under section 54 shall be considered a determination of the sufficiency of the petition."

Comments: State agencies, such as the MDEQ, should not be afforded the statutory authority to file petitions for drain projects. Historically, petitions have been initiated by landowners or local units of government and that practice should not change.

Amendment 13

Section 52 Subsection 9 (Lines 24-27, Page 46 & Lines 1-5, Page 47)

"(9) The drain commissioner shall arrange for a certified court reporter, stenomask reporter, or court recorder to attend each hearing of the board of determination and take a verbatim record of the proceedings. **THE COST OF THIS REQUIREMENT SHALL BE PAID BY THE DRAINAGE DISTRICT IF AN ORDER OF NECESSITY IS ENTERED, AND BY THE MICHIGAN DEPARTMENT OF AGRICULTURE IF AN ORDER OF NO NECESSITY IS ENTERED.** If the proceedings are initiated in the circuit court under section 56 or 58, the drain commissioner shall promptly request the reporter or recorder to furnish a transcript of the proceedings to the court. The aggrieved party may request and shall be promptly furnished a transcript of the proceedings at cost."

Comments: The costs associated with the hiring of a certified court reporter, stenomask reporter, or court recorder should be paid by the Drainage District if an order of necessity is entered; and should be paid by the MDA if an order of no necessity is entered. Otherwise, counties will ultimately end up paying for these costs.

Amendment 14

Section 54 Subsection 1-C (SB 217 - Lines 17-20, Page 52)
(HB 4552 - Lines 18-21, Page 52)

"(C) Determine whether a portion of the costs of construction of the proposed drain is necessary for the public health, safety, or welfare in 1 or more ~~public corporations~~ **CITIES, VILLAGES, OR TOWNSHIPS** and identify those ~~public corporations~~ **CITIES, VILLAGES, OR TOWNSHIPS.**"

Comments: In this section, "public corporations" are listed as being potentially responsible for a portion of the cost of a drain necessary for "public health, safety, or welfare". The definition of a "public corporation" includes a "municipality". The definition of a "municipality" includes a "county". Therefore, a county would be included as being responsible for a portion of the costs of construction of a proposed drain. However, in Chapter 7 (present statute and proposed revisions) cities, villages, and townships are listed as the organizations which are liable for "at-large" assessments related to "public health, safety, or welfare." In order to ensure these sections are consistent, and to maintain the present limitations on county responsibility, the term "public corporations" should be replaced with "cities, villages, or townships." Any county liability in this section would be a new cost burden and a Headlee Amendment violation.

Amendment 15

Section 55-1C (SB 217 - Lines 14-16, Page 53)
(HB 4552 - Lines 15-17, Page 53)

"(C) The ~~public corporations~~ **CITIES, VILLAGES, OR TOWNSHIPS** determined liable for assessment at-large for a portion of the costs of the drain for public health, safety, or welfare."

Comments: See Comments for Amendment 14.

Amendment 16

Section 56 (SB 217 - Lines 21-27, Page 53 & Lines 1-6, Page 54)
(HB 4552 - Lines 22-27, Page 53 & Lines 1-7, Page 54)

"Within 7 days after the order of necessity is filed, the drain commissioner shall notify by first-class mail each **CITY, VILLAGE, OR TOWNSHIP** ~~public corporation~~ identified in the order of necessity as receiving benefits at large for public health, safety, or welfare that it is liable to pay a percent of the cost of construction of the drain for benefits for public health, safety, or welfare. The governing body of the **CITY, VILLAGE, OR TOWNSHIP** ~~public corporation~~, within ~~24~~ **60** days after mailing of the notification from the drain commissioner, may appeal the order of necessity as to the finding that all or a portion of the costs is necessary for public health, safety, or welfare. The appeal shall be filed with the circuit court in the county in which the territory of the **CITY, VILLAGE OR TOWNSHIP** ~~public corporation~~ is located."

Comments: See Comments for Amendment 14. Additionally, the amount of time provided for appeals in this section is inadequate.

Amendment 17

Section 101 Subsection 2 (SB 217 - Lines 24-27, Page 61 & Lines 1-5, Page 62)
(HB 4552 - Lines 25-27, Page 61 & Lines 1-6, Page 62)

"(2) Instead of landowners, a public corporation, **WITH THE EXCEPTION OF STATE AGENCIES**, may petition for the establishment of a drainage district and the establishment and construction of a drain when duly authorized by its governing body, if the proposed drain is necessary for public health, safety, or welfare in the public corporation and if the public corporation will be liable for an assessment at large for a percentage of the cost of the proposed drain. The entry of an order of necessity under section 104 shall be considered a determination of the sufficiency of the petition."

Comments: See Comments for Amendment 12.

Amendment 18

Section 102 Subsection 10 (SB 217 - Lines 15-23, Page 66)
(HB 4552 - Lines 16-24, Page 66)

"(10) The drainage board shall arrange for a certified court reporter, stenomask reporter, or court recorder to attend each hearing of the drainage board and take a verbatim record of the proceedings. **THE COST OF THIS REQUIREMENT SHALL BE PAID BY THE DRAINAGE DISTRICT IF AN ORDER OF NECESSITY IS ENTERED, AND BY THE MICHIGAN DEPARTMENT OF AGRICULTURE IF AN ORDER OF NO NECESSITY IS ENTERED.** If the proceedings are initiated in the circuit court under section 106 or 108, the drainage board shall promptly request the reporter or recorder to furnish a transcript of the proceedings to the court. Upon request of the drainage board, the reporter or recorder shall promptly furnish the transcript to the court."

Comments: See Comments for Amendment 13.

Amendment 19

Section 104 Subsection 1-C (SB 217 - Lines 16-19, Page 71)
(HB 4552 - Lines 18-21, Page 71)

"(C) Determine whether a portion of the costs of construction of the proposed drain is necessary for the public health, safety, or welfare or for agriculture in 1 or more ~~public corporations~~ **CITIES, VILLAGES, OR TOWNSHIPS** and identify those ~~public corporations~~ **CITIES, VILLAGES, OR TOWNSHIPS.**"

Comments: See Comments for Amendment 14.

Amendment 20

Section 105 Subsection 1-C (SB 217 - Lines 6-8, Page 74)
(HB 4552 - Lines 8-10, Page 74)

"(C) The ~~public corporations~~ **CITIES, VILLAGES, OR TOWNSHIPS** determined liable for assessment at-large for a portion of the costs of the drain for public health, safety, or welfare."

Comments: See Comments for Amendment 14.

Amendment 21

Section 106 (SB 217 - Lines 11-23, Page 76)
(HB 4552 - Lines 13-25, Page 76)

"Within 7 days after the order of necessity is filed, the drainage board shall notify by first-class mail each **CITY, VILLAGE, OR TOWNSHIP** ~~public corporation~~ identified in the order of necessity as receiving benefits at-large for public health, safety, or welfare that it is liable to pay a percent of the cost of construction of the drain for benefits for public health, safety, or welfare. The governing body of the **CITY, VILLAGE, OR TOWNSHIP** ~~public corporation~~, within ~~21~~ **60** days after mailing of the notification from the drainage board, may appeal the order of necessity as to the finding that all or a portion of the costs is necessary for public health, safety, or welfare. The appeal shall be filed with the circuit court in the county in which the territory of the **CITY, VILLAGE OR TOWNSHIP** ~~public corporation~~ is located."

Comments: See Comments for Amendment 14.

Amendment 22

Section 107 (SB 217 - Lines 24-27 Page 76 & Lines 1-6, Page 77)
(HB 4552 - Lines 26-27 Page 76 & Lines 1-8 Page 77)

"If the drainage board finds that the drain is not necessary and conducive to the public health, safety, or welfare or for agriculture, all of the following apply:

(A) The drainage board shall file with the director of agriculture an order of no necessity rejecting the petition.

(B) Costs shall be paid **BY THE MICHIGAN DEPARTMENT OF AGRICULTURE** as apportioned amongst the counties as determined in section 103 and pursuant to chapter 7 as if the drain had been constructed.

(C) A new petition for the drain shall not be filed within 1 year after the filing of the order of no necessity."

Comments: If an intercounty drain is not constructed, the costs incurred prior to the determination can be assessed to public corporations as determined in Section 151 Subsections 3 and 4. Counties should not have to pay the costs of an intercounty drain that is deemed unnecessary.

Amendment 23

Section 109 Subsection 5 (SB 217 - Lines 23-27, Page 80)

(HB 4552 - Lines 25-27, Page 80 & Lines 1-2, Page 81)

"Commissioners so appointed shall be compensated **FOR MILEAGE** in the same amount and manner as members of **AS DETERMINED BY** the county board of commissioners in their respective counties. **ALL** Other costs of the arbitration board shall be borne by the district."

Comments: The County Board of Commissioners should have the authority to determine compensation for mileage. Additionally, "all other costs" should be further defined and paid by the district.

Amendment 24

Sections 151 Subsection 3 & Subsection 4 (SB 217 - Lines 1-27, Page 89 & Lines 1-4, Page 90)

(HB 4552 Page 89, lines 3-27 & Page 90, lines 1-6)

"(3) Before the day of review of apportionments, the drain commissioner or drainage board shall fix the number of installments for the collection of drainage assessments and apportion the percent of the cost of construction of the drain that any city, village, or township is liable to pay by reason of the benefit to the public health, safety, or welfare, or that any municipality or the state transportation department is liable to pay by reason of benefits to or contributions from a roadway. **COSTS ASSESSED TO A COUNTY CANNOT EXCEED 10% OF THE TOTAL COST FOR A COUNTY DRAIN OR AN INTERCOUNTY DRAIN.**

(4) For a county drain, the drain commissioner shall also apportion the percent of benefits to accrue to any piece or parcel of land including lands owned by any **CITY, VILLAGE OR TOWNSHIP** public corporation by reason of the construction, maintenance, or improvement of the drain over and above the percent apportioned to any **CITY, VILLAGE OR TOWNSHIP** public corporation or to any roadway as above provided. For an intercounty drain, the drain commissioner for each county in which lands subject to assessment for the drain are located shall so apportion the percent of benefits to accrue to those lands."

Comments: The total assessed cost to a county by reason of benefit to, or contribution from, a roadway should be capped at 10% since other counties have negotiated this percentage as their maximum liability for drain projects and it is reasonable. This is a fair assessment structure and based on a county's role and benefit in drain

projects. Again, "public corporation" should be replaced with "city, village or township" to eliminate a new cost burden for counties and to avoid a Headlee Amendment violation (See Comments for Amendment 15).

Board of Commissioners Budgetary Authority

Amendment 25

Section 27 Subsections 3 & 4 (Line 27, Page 28 & Lines 1-21, Page 29)

"(3) With the approval of the County Board of Commissioners, a drain commissioner may add to the assessments of land in each drainage district established pursuant to chapter 3 or 20 not more than 1% per year for education and training for the drain commissioner and his or her staff with regard to 1 or more of the following:

- (A) Best management practices
- (B) Environmental protection and planning
- (C) Watershed management and planning
- (D) Assessing for drain projects
- (E) Financing for drain projects
- (F) Drain construction methods and techniques
- (G) Alternatives for on-site management of storm water
- (H) Any other matter related to the operation of the office of drain commissioner or the construction, operation, maintenance, or improvement of drains.

(4) Funds collected pursuant to subsection (3) shall be consolidated and held in a separate account for the purposes set forth in subsection (3). Interest earned on the fund shall be credited to the fund. ~~Subsection (3) is intended to supplement, not replace, appropriations of county general fund money for the purposes set forth in subsection (3)."~~

Comments: The mandate contained in the last sentence interferes with the budgetary authority and discretion of county boards of commissioners.

Amendment 26

Section 34 Subsection 2 (Lines 20-27, Page 35 & Lines 1-5, Page 36)

"(2) The drain commissioner or drainage board may review and may approve all requests to discharge into, make a connection to, or construct a crossing of any established county or intercounty drains. The drain commissioner may propose and the County Board of Commissioners may adopt an ordinance to implement this subsection. The ordinance may include a schedule of fees to be charged for the review and inspection of any discharges, connections, or crossing and penalties for noncompliance. The fees shall be deposited in a revolving fund and used for reviews and inspections as specified in the ordinance. If the revolving fund is not sufficient to cover expenses for the reviews and inspections, the expenses shall be paid ~~from the county general fund~~ **BY THE REQUESTING AGENT.**"

Comments: The mandates contained in the last sentence interfere with the budgetary authority and discretion of county boards of commissioners. Additionally, the use of the general fund, in this instance, would have the effect of taxing all citizens of the county for the benefit of only the requesting agent. The amended language would assess costs to the requesting agent.

Administrative Authority of the County Board of Commissioners

Amendment 27

Section 24 Subsection 2 (Lines 5-8, Page 26)

"(2) A commissioner may appoint a deputy or deputies, **IF THE COUNTY BOARD OF COMMISSIONERS APPROVES**, and may revoke the appointment at pleasure."

Comment: The process for hiring employees is typically standardized among all agencies and departments within a county. In order to maintain that standardization, the language in this section has been amended as shown above. The language will ensure that the County Board's administrative authority over the hiring process will not be circumvented or diminished. Further, the amended language reflects the contents of the present Drain Code.