

SPECIAL DISTRICT OVERSIGHT DRAFT OPTIONS

BACKGROUND

Two bill drafts were sent out for public comment: PD8 to allow county commissioners to initiate civil proceedings and PD9 to require additional training of certain district boards.

Public comment received offers additional options while this memo is intended to analyze topics discussed previously and offer drafting options for the committee to consider.

PD8 – THE "STICK" APPROACH

PD8, nicknamed "the stick", allows for county commissioners to initiate certain civil procedures against board members of local government entities. PD9 is considered the "carrot" as it allows for additional training. The committee expressed interest connecting the two drafts, either literally as one bill or if other options exist to figuratively tie them together.

Multiple committee members expressed concern if the "stick" passed without a "carrot" option first. Adding a contingent voidness section to PD8, the stick, offers one option. A contingent voidness section is technically a simple "if, then" statement and allows for a bill, or a section of a bill, to be void if certain criteria is met. In this case, the section may be drafted to ensure that PD8 is void unless PD9 is passed and approved.

Another option is to combine both drafts into one bill. This is a streamlined option but carries the risk of tabling the whole package. As with any bill, amendments may be added throughout the legislative process, so a combination bill is more a question of legislative strategy than policy development.

OPTIONS:

A. Leave PD8 as drafted.

B. Include a new section to read:

Contingent voidness. If [PD9 (*the carrot*) is not passed and approved], then [this act (*the stick*)] is void.

C. Combine PD8 & PD9 into one draft – see attached example.

PD9 – THE "CARROT"

COMPLAINT THRESHOLD

PD9 allows for required training if citizens file a claim against the board of a special district. A question posed at the last meeting related to the percentage threshold for the citizen complaint. Currently, the draft allows for claims to be filed if 5% of the citizens living in the district file a claim. A 5% threshold may result in widely different numbers of citizens required to file. For example, in a district with 1,000 citizens, at least 50 would need to join to file a complaint. In a district with 20 citizens, that number would only be 1. The discrepancy is recognized, but a simple solution proves challenging.

First, percentage thresholds are widely used in statute for filing various petitions and requests. Percentage thresholds allow for the representation of a relative *proportion* of citizens to bring action. If a numerical threshold were used, one could easily see how a more populous district may benefit (e.g., if the threshold were 100 citizens, a 1,000-member district would have an easier threshold, proportionally, than a district of 150). Determining a numerical threshold also poses a challenge. If the threshold for all districts were 10 citizens to initiate a claim, for example, what happens in a small district with 8 citizens? Gathering data on the current smallest districts may not help since districts fluctuate over time, making numerical thresholds additionally troublesome.

Second, a "staggered" percentage threshold could be used: allow for different percentage thresholds based on the population of the district. Perhaps a 5% threshold applies to a district over 1,000 citizens and a 10% threshold to those below 1,000. However, this practice may be considered discriminatory as the rights and privileges granted to certain groups may vary simply based on population. This option also carries the challenge of determining the "cut-offs" – what are reasonable population and threshold amounts?

A combined approach offers an additional option. The language could retain the 5% threshold but also offer a baseline: 5% or X citizens, whichever is greater. This option may rectify the perceived issue of one citizen having the ability to file multiple, repeated claims, but still carries a decision point. If the committee chooses this option, it will need to determine the minimum number of citizens required of the smallest district. The committee should keep in mind that this number may be a moving target since the population of districts will most likely change over time.

OPTIONS:

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- A. Leave PD9 as drafted.
 - B. Amend Section 1 to a numerical threshold rather than a percentage threshold. The committee must determine the numerical threshold.

Example: (1)(a) If at least **X citizens** that are served by a local government entity file a claim against the board of the local government entity....

C. Amend Section 1 to include a numerical threshold in addition to a percentage threshold. The committee must determine the thresholds.

Example: (1)(a) If at least 5% or X of the citizens, whichever is greater, that are served by a local government entity file a claim against the board of the local government entity....

MSU LG CENTER FUNDING

PD9 currently requires the MSU LG Center provide mandatory training to district boards. The district is then required to remit payment for the training received. The committee may consider adding an appropriation to PD9 for the LG Center since the bill creates potential that the LG Center must develop new trainings if the topics in the complaint are not currently covered. Additionally, PD9 requires the LG Center collect the fees for mandatory training, a process that may add administrative tasks to the LG Center's workload.

The committee expressed interest in securing additional funding for the LG Center, and adding an appropriation to PD9 presents a method. However, the potential work load increase may not be commensurate with the full funding increase the LG Center currently requests.

OPTIONS:

- A. Leave PD9 as drafted.
- B. Add an appropriation section to increase funding for the LG Center. The committee must determine the appropriation amount (see the current LG Center funding proposal after the memo included in Tab 8 of the binder, "MSU LG Center" topic).