

# Legislative Analysis



## INCREASE DRAIN ASSESSMENT AND EXPENDITURE LIMITS

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

**House Bill 5060 as referred to second committee**  
**Sponsor: Rep. Alex Garza**

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

**House Bill 5504 (H-2) as referred to second committee**  
**Sponsor: Rep. James A. Lower**

**1st Committee: Local Government and Municipal Finance**  
**2nd Committee: Ways and Means**  
**Complete to 6-9-20**

### SUMMARY:

**House Bill 5060** would amend section 196 in Chapter 8 of the Drain Code, which deals with maintenance and improvements to both county drains and intercounty drains generally.

Section 196 of the Drain Code currently requires “surplus construction funds” (i.e., funds remaining after completion of construction of a drain or funds remaining after completion of work performed under a petition for drain maintenance or improvements) to be deposited in the drain fund of a drainage district. Current law also requires that funds deposited in the drain fund of the drainage district be expended for “inspection, repair, and maintenance of the drain.”

Section 196 of the Drain Code allows the drain commissioner (for county drains) or drainage board (for intercounty drains) to expend up to \$5,000 per mile per year for drain maintenance. This limitation relates to direct costs of drain maintenance and excludes potential additional costs of engineering and inspection and certain administrative costs. Current law also authorizes the drain commissioner (for a county drain) or drainage board (for an intercounty drain) to “pre-assess” a drainage district any time the drain fund of a drainage district contains less than \$5,000 per mile or fraction of a mile of a drain. The allowable pre-assessment is currently limited to \$2,500 per mile or fraction of a mile in any one year.

House Bill 5060 would amend section 196 to increase the amount a drain commissioner or drain board could expend on drain maintenance and repair, without petition, from \$5,000 per mile per year to \$10,000 per mile per year. The bill would also increase the amount a drain commissioner or drainage board could pre-assess from \$2,500 per mile per year to \$5,000 per mile per year.

MCL 280.196

**House Bill 5504** would amend Chapter 2 (County Drain Commissioner), Chapter 8 (Cleaning, Widening, Deepening, Straightening and Extending Drains), Chapter 9 (Letting of Contracts), and Chapter 18 (Obstructions in Drains; Sewage; Miscellaneous Provisions) of the Drain Code.

Section 196 of the code currently allows for annual inspections and requires inspections upon request by the governing body of the state or local unit of government. If an inspection indicates the necessity of repair or maintenance to keep the drain in working order, the drain commissioner (for county drains) or drainage board (for an intercountry drain) may without petition expend up to \$5,000 per mile or fraction of a mile in any given year.

The bill would specify that costs incurred for this inspection, maintenance, and repair of a drain could be financed and assessed for up to 10 years. (It would also state that the cap of \$5,000 per mile would not include legal fees.)

Additionally, the bill would allow the drain commissioner or drainage board to levy an assessment on the drainage district for up to 10 years if the district's drain fund did not contain sufficient funds to pay for the inspection, repair, and maintenance, and to finance those costs for up to 10 years. (Currently, the commissioner or board may reassess the district, but there is not a specified time period for the assessment.)

Section 31 would require the drain commissioner to prepare a list of drainage districts assessed for maintenance work under section 196, including the name of the district and amount assessed annually. The commissioner would have to update the list annually by November 1 and make it available upon request as well as posting it on the commissioner or county website.

Section 221 currently requires the drain commissioner or drainage board to advertise for sealed bids for certain projects as long as their estimated cost exceeds \$5,000.

The bill would remove that floor and require that all specified types of projects be advertised for sealed bids. Additionally, the bill would require the commissioner or board to receive sealed bids for nonpetitioned maintenance work under section 196, unless county staff or a prequalified contractor performed the work. If the commissioner or board utilized prequalified contractors, the commissioner or board would need to maintain a list of those entities, make the list and criteria available upon request, and post the list and criteria on the commissioner or county website.

Currently, if, within five years of a petition to locate, establish, and construct, or deepen, widen, straighten, tile, extend, or clean out a drain, a contract to do so is not let, the commissioner must issue an order that the project is to be considered abandoned and publish notice of the order in a local newspaper.

Under the bill, the commissioner or board could instead send the notice to each person whose name appears on the tax roll within the drainage district. The commissioner would

have to make an affidavit of the mailing, indicating those to whom it was sent, and the affidavit would be conclusive proof of the mailing.

Section 434 of the code states that when a drainage district borrows money or accepts certain advance work as payment for the maintenance and repair of drains or the costs of certain studies, the obligation may be evidenced by a contract or note. Currently, if the principal amount of the obligation is less than \$300,000, it is subject to the Agency Financing Reporting Act, and if it is more than \$300,000 it is subject to the Revised Municipal Finance Act.

The bill would raise the dividing line between the two acts to \$600,000. (Now and under the bill, projects in which advances or loans are made by a public corporation or the federal government are not subject to either act.)

MCL 280.31 et seq.

## **BACKGROUND:**

To learn more about drain commissioners, visit the website of the Michigan Association of County Drain Commissioners: <http://macdc.us/>

There, an FAQ factsheet describes the commissioners' work.<sup>1</sup> Among the questions asked and answered are:

### What is a drain commissioner?

Drain commissioners, sometimes called water resources commissioners, are county-level officials responsible for administering laws involving flood protection, stormwater management, and soil erosion. Some specific duties performed by the drain commissioner include: establishing, improving, and maintaining county drains; reviewing stormwater drainage plans for construction that may impact a county drain; and maintaining lake levels, where applicable.

### What is a drain?

Drains come in various forms, including natural or artificial creeks or ditches, as well as pipes that carry stormwater.

### What is a drainage district?

Each established county drain has a legally established area of land known as a drainage district. Drainage district boundaries are typically determined by a drain's watershed. A watershed is an area of land that captures rainwater and eventually carries it to the nearest lake, river, stream, or drain. Watershed boundaries are based on topography of the land and, where applicable, storm sewer infrastructure. Within a drainage district, each drop of rainwater soaks in the ground, flows across the land, or enters a storm sewer eventually making it to that district's established drain.

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<sup>1</sup> <http://macdc.us/wp-content/uploads/2016/10/03-MACDC-FAQ.pdf>

### What is a drain special assessment?

Special assessments on property owners and governmental units pay for constructing and maintaining drains. Special assessments are the sole source of funding for drainage districts. Each drainage district has a separate financial account so property owners only pay for costs incurred for the drainage district in which their property is located.

### **FISCAL IMPACT:**

House Bill 5060 could increase revenue assessed and collected by county drain commissioners and county drainage boards, which are local units of government. The additional revenue would allow for more frequent and comprehensive maintenance of specific county and intercounty drains; the nature and extent of maintenance work needed as determined by the drain commissioner for county drains and by the drainage board for intercounty drains. To the extent that the bill increases maintenance and repair of intercounty drains, the bill could increase the workload of the Michigan Department of Agriculture and Rural Development (MDARD). Under the Drain Code, MDARD has administrative responsibility over intercounty drains.

House Bill 5504 provides additional authority for financing of non-petitioned drain projects. In this regard, the bill is permissive with respect to financing options—it allows a drain commissioner or drainage board (for intercounty drains) to finance and assess non-petitioned drain inspection, maintenance, and repair costs over a period of up to 10 years. The bill does not appear to have a material fiscal impact on local units of government or on state government.

### **POSITIONS:**

The Michigan Department of Agriculture and Rural Development indicated support for the bills. (6-3-20)

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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.