

Legislative Analysis



DRAIN CODE REVISIONS

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House Bill 5504 (H-2) as reported from committee

Sponsor: Rep. James A. Lower

1st Committee: Local Government and Municipal Finance

2nd Committee: Ways and Means

Complete to 6-18-20

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

SUMMARY:

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. Most notably, the bill would allow certain drain assessments to be spread out over a period of up to 10 years.

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.¹ 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.

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

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.

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 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 bill. (6-17-20)

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