

DRAIN CODE REVISIONS

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House Bill 5504 as enacted

Public Act 291 of 2020

Sponsor: Rep. James A. Lower

1st House Committee: Local Government and Municipal Finance

2nd House Committee: Ways and Means

Senate Committee: Local Government

Complete to 1-1-21

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

SUMMARY:

House Bill 5504 amends 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. Notably, the bill allows certain drain assessments to be spread out over a period of up to 10 years.

Section 196 of the code allows for annual inspections and requires inspections upon request by the state or the governing body of a 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 spend up to \$5,000 per mile or fraction of a mile in any given year.

The bill provides that costs incurred for this inspection, maintenance, and repair of a drain may be financed and assessed for up to 10 years. It also specifies that the cap of \$5,000 per mile does not include legal fees.

Additionally, the bill allows 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 does not contain sufficient funds to pay for the inspection, repair, and maintenance, and to finance those costs for up to 10 years. (Previously, the commissioner or board could reassess the district, but there was not a specified time period for the assessment.)

The bill prohibits the drain commissioner or drainage board from levying an additional assessment for drain maintenance under section 196 if an assessment under section 196 is ongoing, unless an emergency condition exists within the drainage district and the commissioner or board has entered an order declaring that emergency.

Section 31, as amended by the bill, requires 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 must 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 previously required the drain commissioner or drainage board to advertise for sealed bids for certain projects if their estimated cost exceeded \$5,000.

The bill removes that floor and requires that all specified types of projects be advertised for sealed bids. Additionally, the bill requires the commissioner or board to receive sealed bids for nonpetitioned maintenance work under section 196, unless county staff or a prequalified contractor performs the work. If the commissioner or board uses prequalified contractors, the commissioner or board must 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.

Previously under the code, 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 was not let, the commissioner had to 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 may instead send the notice to each person whose name appears on the tax roll within the drainage district. The commissioner must make an affidavit of the mailing, indicating those to whom notice is sent, and the affidavit is conclusive proof of the mailing.

Section 434 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. Previously, if the principal amount of the obligation was less than \$300,000, it was subject to the Agency Financing Reporting Act, and if more than \$300,000, it was subject to the Revised Municipal Finance Act.

The bill raises the dividing line between the two acts to \$600,000. (Under the bill, as before, projects in which advances or loans are made by a public corporation or the federal government are not subject to either act.)

The bill takes effect March 24, 2021.

MCL 280.31 et seq.

BACKGROUND:

To learn more about drain commissioners, visit the [website](#) of the Michigan Association of County Drain Commissioners. 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

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

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.

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.

BRIEF DISCUSSION:

According to committee testimony, the bill gives drain commissioners and boards the option of spreading assessments over a 10-year time period. Because assessments only occur when work is completed, a homeowner could own a house for years without paying for drain maintenance, and then be hit with a \$1,200 assessment in a single year. Especially when the project is large and in a remote area where only a few properties are assessed, this could result in a large and somewhat unforeseeable expense.

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.

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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.