



Senate Fiscal Agency
P.O. Box 30036
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383
Fax: (517) 373-1986

House Bill 5504 (Substitute H-2 as passed by the House)
Sponsor: Representative James Lower
House Committee: Local Government and Municipal Finance
 Ways and Means
Senate Committee: Local Government

Date Completed: 12-8-20

CONTENT

The bill would amend the Drain Code of 1956 to do the following:

- **Require a drain commissioner to prepare a list of drainage districts that were assessed for maintenance work and specify the information the list would have to include.**
- **Require a drain commissioner to update the list of drainage districts annually and make it available on either the commissioner's or the county's website.**
- **Allow an intercounty drain to be inspected by the drainage board or a competent person appointed by the drainage board.**
- **Allow the costs incurred for the inspection, maintenance, and repair of a drain to be financed and assessed for up to 10 years.**
- **Allow a drain commissioner or drainage board to finance the costs of the inspection, repair, and maintenance of a drain for a maximum of 10 years and assess the drainage district for a maximum of 10 years if the drain fund of a drainage district had insufficient funds to pay for the project.**
- **Require a drain commissioner or drainage board to maintain a list of all prequalified contractors for nonpetitioned maintenance work and make it available on the commissioner's, drainage board's, or county's website.**
- **Prescribe notification procedures for a drain commissioner and a drainage board if either entity determines a petition to be abandoned.**
- **Raise the principal amount threshold in which a contract note is subject to either the Revised Municipal Finance Act or the Agency Financing Reporting Act from \$300,000 to \$600,000.**
- **Specify that projects in which advances or loans are made by any corporation, the Federal government, or a Federal agency would not be subject to the Revised Municipal Finance Act or the Agency Financing Reporting Act.**

List of Districts Assessed for Work & Report

Under the bill, a drain commissioner would have to prepare a list of drainage districts that were assessed for maintenance work. The list would have to include the name of the drain and the amount being assessed annually to the drainage district. A drainage district would have to be included on a list for the duration of the assessment associated with the maintenance work. The drain commissioner would be required to update the list annually after the commissioner had filed all special assessment roles, but no later than November 1. The commissioner also would have to make the list available upon request. If the commissioner

maintained an official internet presence, the commissioner would have to post and maintain the list on a portion of the website that was fully accessible to the public. Otherwise, the list would have to be posted and maintained on the county website.

Under the Code, a drain commissioner report to the county board of commissioner at its annual meeting in October of the drainage districts laid out, the drains constructed, finished, or begun under the commissioner's supervision during the year ending October 1. Under the bill, the year would end on September 30.

Drain Inspection; Maintenance & Repair

Currently, an annual inspection may be made of a drain established under the Code. The Code specifies certain requirements that an inspection must meet. The bill would specify that that an intercounty drain could be inspected by the drainage board or a competent person appointed by the drainage board.

If an inspection discloses the necessity of expending money for the maintenance or repair of a drain, the drain commissioner (county drain) or the drainage board (intercounty drain), may, without petition, spend up to \$5,000 per mile or a fraction of a mile for maintenance and repair in one year. Under the bill, costs incurred for the inspection, maintenance, and repair of a drain could be financed and assessed under the Code for up to 10 years.

Currently, if the drain fund of a drainage district does not have sufficient funds to pay for inspection, repair, and maintenance of the drain, the drain commissioner or drainage board must reassess the drainage district for the inspection, repair, and maintenance according to benefits received. A reassessment must be made and spread upon the city or township tax assessment roll within two years after the completion of the project. Under the bill, instead, the drain commissioner or the drainage board could finance the costs for a maximum of 10 years and would have to assess the drainage district for no more than 10 years for the inspection, repair, and maintenance. The first installment of an assessment would be made and spread upon the city or township tax roll within two years after the completion of inspection, repair, and maintenance.

Currently, a property in a drainage district that benefits from the inspection, repair, or maintenance of the drain is subject to assessment for that inspection, repair, or maintenance. The bill would eliminate this language.

The Code specifies that if the cost of maintenance and repair of a drain includes utility charges or costs to service pumping stations, sewage treatment facilities, or retention basins, the limitation for maintenance and repair does not apply except that the drain commissioner or drainage board may levy sufficient special assessments to pay the charges or cost but not more than the amount needed to pay them. Under the bill, the dollar amount limitations prescribed in the Code would not apply to expenditures or assessments to the extent they were needed to pay utility charges of costs to service pumping stations, sewage treatment facilities, or detention or retention basins.

Chapter 9 (Letting of Contracts)

The drain commissioner must receive bids for the construction of a drain. The commissioner may, and must for all drains having an estimated cost exceeding \$5,000, advertise for sealed proposals, to be opened on the day of letting. All sealed proposals must be publicly opened in the meeting and may be examined by interested parties. Under the bill, the drain commissioner or drainage board would have to advertise for sealed bids for petitioned drain projects. The drain commissioner or drainage board would receive sealed bids to be opened

at the meeting held at a time and place established by notice, during which interested parties could examine the bids.

As soon as practical after the opening of bids, the drain commissioner or drainage board must to do the following:

- Determine the lowest responsible bidder and award contracts or reject all proposal and readvertise.
- If the drain commissioner or drainage board determined that the assessments for benefits must be collected in more than one installment, determine the amount, form, maturity, mandatory redemption requirements, if any, and rate of interest of bonds to be issued.

Currently, in counties that have a board of county auditors, drain bonds may not be sold and drain contracts may not be let without the written consent and approval of the board of county auditors. However, the approval of the board of county auditors is not required in proceedings relative to intercounty drains. The bill would delete this provision.

Under the bill, the drain commissioner or drainage board also would have to receive sealed bids for nonpetitioned maintenance work, unless the commissioner or board used one of the following to perform the work:

- County staff, including staff of the board of county road commissioners or road department.
- A prequalified contractor.

To use a prequalified contractor, the drain commissioner or drainage board would have to maintain a list of all prequalified contractors for nonpetitioned maintenance work. The determination whether to list a contractor would have to comply with prequalification criteria adopted by the commissioner or the board. The drain commissioner or drainage board would have to make the list and criteria available upon request. If the commissioner maintained an official internet presence, he or she would have to post and maintain the drain commissioner's or drainage board's list and criteria on a portion of the website that was fully accessible to the public; otherwise, the list would have to be posted and maintained on the county website.

Currently, if a contract is not let within five years after the date of filing the petition to locate, establish, and construct, or deepen, widen, straighten, tile, extend or clean out a drain, the commissioner may determine that the petition is considered abandoned and no further action may be taken to construct the drain. After the five-year period, once the commissioner has determined that the petition to be abandoned, he or she must issue an order to that effect. The bill would allow a drainage board to take the same actions as a drain commissioner under this provision.

Notice of the order must be given by publishing it in a newspaper of general circulation in the county. Under the bill, notice would have to be published in a newspaper of general circulation in the drainage district or sent by first-class mail to each person whose name appeared on the last city, village, or township tax roll as owning land within that district. The respective drain commissioner would have to make an affidavit of the mailing and would have to recite in the affidavit that the notice was mailed to each applicable person. The affidavit would be conclusive proof that notice was mailed to each applicable person to whom notice was required to be mailed. The failure to receive a notice by mail would not be a jurisdictional defect invalidating the abandonment of a petition if notice were sent by first-class mail.

The Code currently allows the board of county road commissioners, if authorized by a committee of commissioners appointed by the county board of commissioners, to bid for the

construction, cleaning, deepening, and widening of drains within the county and, if a bid is accepted, to perform the work. The bill, instead, would allow the board of a county road commissioners or road department to bid for drain projects and, if a bid were accepted, to perform the work.

Chapter 18 (Obstructions in Drains; Sewage; Miscellaneous Provisions)

Under the Code, a drainage district may borrow money or accept an advance of work, material, or money from public or private corporations, partnership, association, individual, or the Federal government, or any agency of the Federal government for any of the following projects or the payment of, or in connection with the construction of, any part of a drain project or for financing a feasibility, practicability, environmental assessment, or impact study of a drain project which may include the payment for easement or land acquisition or engineering and legal fees, or an engineering, environment impact, or assessment study, and be reimbursed by the drainage district, with or without interest as may be agreed, when funds are available.

Under the bill, a drainage district could borrow money or accept an advance of work, material, or money from any of the above entities for any of the following for any project under the Code:

- Payment of costs in connection with the maintenance and repair of a drain or the construction of any part of a drain project, including costs of easement and land acquisition, engineering fees, financing costs, and legal fees.
- Payment of or financing costs of a feasibility, practicability, environmental assessment, or impact study of a drain project, including engineering or legal fees.

The obligations of the district to make the repayment or reimbursement may be evidence by a contract note. A contract note is not subject to the Revised Municipal Finance Act unless the principal amount of the obligation exceeds \$300,000. If the principal amount is less than \$300,000, then the issuance of the contract or note is subject to the Agency Financing Reporting Act. The bill would increase both thresholds to \$600,000.

The bill specifies that projects in which advances, or loans are made by any corporation, the Federal government, or an agency of the Federal government are not limited as specified above. Under the bill, instead, those projects would not be subject to either the Revised Municipal Finance Act or the Agency Financing Reporting Act.

MCL 280.31 et al.

Legislative Analyst: Dana Adams

FISCAL IMPACT

The bill would have a minimal fiscal impact on State or local government.

Fiscal Analyst: Bruce Baker

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.