

Legislative Analysis



DRAIN CODE AMENDMENTS

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House Bill 5188 as enacted

Public Act 237 of 2024

Sponsor: Rep. Amos O'Neal

House Committee: Local Government and Municipal Finance

Senate Committee: Local Government

Complete to 1-27-25

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

SUMMARY:

House Bill 5188 amends Chapter 8 (Cleaning, Widening, Deepening, Straightening and Extending Drains) of the Drain Code to increase the amount that a drain commissioner or drainage board can spend on necessary maintenance and repairs without being subject to the Drain Code's petition requirements and to modify a provision limiting the amount that a drainage district can be assessed when its fund is below a certain threshold.

The Drain Code provides that the maximum amount that a drain commissioner or drainage board can assess in a single year is generally based on the amount that a commissioner or board can spend per mile or fraction of a mile of a drain on necessary maintenance or repairs.¹ (Additional money needed for maintenance or repair must be approved by any substantially affected township, city, or village or must be requested and paid for by a public corporation.)

House Bill 5188 increases this expenditure limit from \$5,000 per mile or fraction of a mile of the drain to \$10,000 per mile or fraction of a mile,² and, beginning January 1, 2025, requires the state treasurer to adjust this limit annually to reflect the cumulative percentage change in the Consumer Price Index³ since January 1, 2024. The Michigan Department of Agriculture and Rural Development (MDARD) must post and maintain the adjusted limit, as reported by the state treasurer, on its website.

Additionally, under the bill, when a drainage district's drain fund contains less than \$10,000 per mile or fraction of a mile of a drain, the drain commissioner or drainage board, as appropriate, can assess the district only up to \$5,000 per mile or fraction of a mile in a single year for drain inspection, repair, and maintenance. (The code previously allowed a drain commissioner or board to assess a district up to \$2,500 per mile or fraction of a mile when the drain fund was below \$5,000 per mile or fraction of a mile of a drain.)

MCL 280.196

¹ The maximum assessment is based on the total number of miles of the drain, not the actual number of miles subject to the inspection, repair or maintenance. The property subject to assessment is based on the areas of the district benefited by the inspection, repair, or maintenance, not the actual location of the inspection, repair, or maintenance.

² The maximum expenditure is based on the total length of the drain, not the portion of the drain that was inspected, maintained, or repaired. The maximum expenditure per mile also does not include any inspection, engineering, or legal fees or the cost of publication and mailing.

³ Consumer Price Index is defined by HB 5188 as the most comprehensive and recently available index of consumer prices for the state of Michigan from the federal Bureau of Labor Statistics.

BRIEF DISCUSSION:

According to committee testimony, several counties have drains with estimated costs of maintenance that are significantly higher than the maximum amount that can be spent on their annual maintenance. Because going through the petition process under the Drain Code can take multiple years and lead to increased administrative costs, supporters of House Bill 5188 argue that increasing the annual maintenance limit is necessary to allow drain commissioners to address more urgent maintenance needs and to resolve constituent confusion about why some projects cannot be completed. Raising the limit would also account for the increased costs of maintenance activities and could allow drain commissioners to consolidate more maintenance projects, which could save costs and decrease assessments over time.

FISCAL IMPACT:

House Bill 5188 would raise the current annual limit on drain maintenance assessments from \$5,000 per mile or fraction of a mile to \$10,000 per mile or fraction of a mile. The bill also provides for the indexing of the annual limit in the future. Projects whose costs exceed this statutory limit would be subject to the Drain Code's petition requirements.

The bill would also amend provisions regarding authority to assess a district when the drain fund is below a threshold amount. Under current law, the drain commissioner or board may assess up to \$2,500 per mile or fraction of a mile when the drain fund is less than \$5,000 per mile or fraction of a mile. The bill would allow a drain commissioner or board to assess a district up to \$5,000 per mile or fraction of a mile if the drain fund is less than \$10,000 per mile or fraction of a mile.

The provisions of House Bill 5188 are intended to account for increases in drain maintenance costs.

These provisions could increase annual maintenance assessments to district property owners, including public corporations, such as county road commissions and the Michigan Department of Transportation (MDOT).

However, proper maintenance of drains could reduce the need for the large-scale projects—projects that have no statutory cost or assessment limitations.

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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.