

HOUSE BILL NO. 5504

February 19, 2020, Introduced by Rep. Lower and referred to the Committee on Local Government and Municipal Finance.

A bill to amend 1956 PA 40, entitled
"The drain code of 1956,"
by amending sections 196 and 434 (MCL 280.196 and 280.434), section
196 as amended by 2008 PA 509 and section 434 as amended by 2002 PA
406.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 196. (1) An annual inspection may be made of a drain
- 2 established under this act. ~~Inspection~~**An inspection** shall also be
- 3 made upon the request of the governing body of a public



1 corporation, as ~~defined~~**described** in section 461, served in whole
2 or in part by the drain to be inspected. For county drains, the
3 inspection shall be made by the drain commissioner, or a competent
4 person appointed by the drain commissioner. For intercounty drains,
5 the inspection shall be ~~caused to be made~~ by the drainage board **or**
6 **a competent person appointed by the drainage board.**

7 (2) Surplus construction funds remaining after completion of
8 construction of a drain, or funds remaining after completion of
9 work performed under a petition for maintenance or improvements
10 under this chapter, shall be deposited in the drain fund of ~~a~~**the**
11 drainage district and shall be expended for inspection, repair, and
12 maintenance of the drain.

13 (3) If at any time the drain fund of a drainage district
14 contains less than \$5,000.00 per mile or fraction of a mile of a
15 drain, the drain commissioner or drainage board may assess the
16 drainage district for an amount not to exceed \$2,500.00 per mile or
17 fraction of a mile in any 1 year. The amount collected under an
18 assessment shall be deposited in the drain fund of ~~a~~**the** drainage
19 district for ~~necessary~~ inspection, repair, and maintenance of the
20 drain.

21 (4) If an inspection discloses the necessity of expending
22 money for the maintenance ~~and or~~ repair of a drain ~~in order~~ to keep
23 it in working order, the drain commissioner for a county drain, or
24 the drainage board for an intercounty drain, may without petition
25 expend an amount not to exceed in any 1 year \$5,000.00 per mile or
26 fraction of a mile for maintenance and repair of ~~a~~**the** drain,
27 exclusive of inspection and engineering fees, **legal fees**, and the
28 cost of publication and mailing. The determination of the maximum
29 expenditure allowed without a petition or resolution shall be based



1 on the total number of miles of the drain and not on the actual
 2 number of miles or location of the maintenance or repair. **Costs**
 3 **incurred for the inspection, maintenance, and repair of a drain**
 4 **performed under this section may be financed and assessed under**
 5 **this act for not more than 10 years.**

6 (5) If the drain commissioner or the drainage board finds it
 7 necessary to expend funds in excess of the amount established in
 8 subsection (4) per mile or fraction of a mile in any 1 year for the
 9 maintenance and repair of a drain, the additional amounts shall not
 10 be expended until approved by resolution of the governing body of
 11 each township, city, and village affected by more than 20% of the
 12 cost.

13 (6) If the drain fund of a drainage district does not contain
 14 sufficient funds to pay for inspection, repair, and maintenance
 15 authorized by this section, the drain commissioner or the drainage
 16 board shall ~~reassess~~**assess** the drainage district **for not more than**
 17 **10 years** for the inspection, repair, and maintenance according to
 18 benefits received. ~~A reassessment~~**The first installment of an**
 19 **assessment under this subsection** shall be made and spread upon the
 20 city or township tax assessment roll within 2 years after the
 21 completion of the inspection, repair, and maintenance. If the total
 22 expenditure is more than the amount established in subsection (4)
 23 per mile or fraction of a mile, all real property owners subject to
 24 an assessment within the drainage district shall be notified of the
 25 assessment by publication in a newspaper of general circulation
 26 within the drainage district and by first-class mail to the name
 27 and address that appears on the last city or township assessment
 28 roll. An affidavit of mailing shall be made by the drain
 29 commissioner. The affidavit is conclusive proof that the notices



1 required by this subsection were mailed. The failure to receive the
 2 notices by mail ~~shall is~~ not ~~constitute~~ a jurisdictional defect
 3 invalidating a drain tax if notice by publication was given as
 4 required by this subsection.

5 (7) An assessment for the actual cost of inspection, repair,
 6 and maintenance performed on a drain, or an assessment to be
 7 deposited in the drain fund of a drainage district, shall be made
 8 according to benefits received. The expenditure limit of the amount
 9 established in subsection (4) per mile of drain or fraction of a
 10 mile shall be used to calculate the maximum amount that the drain
 11 commissioner or drainage board may assess in any 1 year without a
 12 petition or a request from a public corporation. ~~The property in a~~
 13 ~~drainage district that benefits from the inspection, repair, or~~
 14 ~~maintenance of the drain is subject to assessment for that~~
 15 ~~inspection, repair, or maintenance.~~ Determination of the maximum
 16 assessment amount allowed without petition or request, or of the
 17 property that is subject to assessment, shall be based on the
 18 number of miles of drain and areas of the drainage district
 19 receiving benefits and not on the actual number of miles or actual
 20 location of the inspection, repair, ~~or~~ **and** maintenance.

21 (8) If an emergency condition exists that endangers the public
 22 health, crops, or property within a drainage district, the drain
 23 commissioner or the drainage board may expend funds for maintenance
 24 and repair to alleviate the emergency condition.

25 (9) ~~Nothing in this section prohibits the~~ **The** drain
 26 commissioner or the drainage board ~~from spending~~ **may spend** funds in
 27 excess of the amount established in subsection (4) per mile or
 28 fraction of a mile in any 1 year for inspection, maintenance, and
 29 repair of a drain ~~when~~ **if** requested by a public corporation ~~,~~ **and**



1 if the public corporation pays the entire cost of the inspection,
2 maintenance, and repair.

3 (10) In computing the amounts that may be expended ~~in~~
4 ~~accordance with~~ **under** this section, the cost of work to be
5 performed by a federal agency or public corporation that is not
6 chargeable to the county or intercounty drainage district shall not
7 be included. ~~, nor shall it be necessary for the~~ **The** drain
8 commissioner or the drainage board **is not required** to advertise for
9 bids for that portion of the work to be done by the federal agency
10 or public corporation.

11 (11) For purposes of this section, the costs of maintenance ~~or~~
12 **and** repair shall include **all of** the ~~costs~~ **following**:

13 (a) **The cost** of maintaining the drain in working order to
14 continue a normal flow of water, including the servicing or repair
15 of necessary pumping equipment and utility charges for pumping
16 equipment. ~~; the~~

17 (b) **The cost** of keeping the drain free from rubbish, debris,
18 siltation, or obstructions. ~~; the~~

19 (c) **The cost** of repairing a portion or all of a tile or drain
20 to continue the normal flow of water. ~~; and other~~

21 (d) **Other** costs associated with the costs ~~enumerated in this~~
22 ~~subsection.~~ **described in subdivisions (a) to (c).**

23 (12) If the cost of maintenance and repair of a drain includes
24 utility charges or costs to service pumping stations, sewage
25 treatment facilities, **or detention** or retention basins, the
26 limitation for maintenance and repair does not apply except that
27 the drain commissioner or drainage board may levy sufficient
28 special assessments to pay the charges or costs but not more than
29 the amount sufficient to pay those charges or costs.



1 (13) Except as otherwise provided in this act, that portion of
 2 the salaries, expenses, and fringe benefits of administrative and
 3 engineering employees under the supervision of the drain
 4 commissioner that are directly attributable, but not incidental, to
 5 a drain ~~or~~ **and not** otherwise ~~not~~ recovered by fees established by
 6 resolution or ordinance of the board of commissioners may be
 7 ~~chargeable~~ **charged** to the drain fund of a drainage district.

8 Sec. 434. (1) A drainage district may borrow money or accept
 9 the advance of work, material, or money from a public or private
 10 corporation, partnership, association, individual, or the federal
 11 government or any agency of the federal government for **any of** the
 12 ~~payment following for any project under this act:~~

13 (a) **Payment of** ~~or~~ **costs** in connection with **the maintenance**
 14 **and repair of a drain or** the construction of ~~any~~ part of a drain
 15 project, ~~or for financing including easement and land acquisition,~~
 16 **engineering fees, financing costs, and legal fees.**

17 (b) **Payment of or financing costs of** a feasibility,
 18 practicability, environmental assessment, or impact study of a
 19 drain project, ~~which may include the payment for easement or land~~
 20 ~~acquisition or engineering and legal fees, or an engineering,~~
 21 ~~environment impact, or assessment study, and be reimbursed by the~~
 22 **including engineering or legal fees.**

23 (2) **The drainage district shall pay or provide reimbursement**
 24 **for the obligations under subsection (1),** with or without interest
 25 as may be agreed, when funds are available. The obligation of the
 26 drainage district to make the repayment or reimbursement may be
 27 evidenced by a contract or note. ~~which~~ **The** contract or note may
 28 pledge the full faith and credit of the drainage district and may
 29 be made payable out of **any of** the ~~drain~~ **following:**



1 (a) Drain assessments made against public corporations at
2 large, or against lands in the drainage district. ~~or out of the~~

3 (b) The proceeds of drain orders, notes, or bonds issued by
4 the drainage district pursuant to this act. ~~or out of any~~

5 (c) Any other available funds. ~~and the~~

6 (3) A contract or note ~~shall not be described in subsection~~
7 (2) is not subject to the revised municipal finance act, 2001 PA
8 34, MCL 141.2101 to 141.2821, unless the principal amount of the
9 obligation ~~shall exceed \$300,000.00. is more than \$600,000.00.~~
10 However, if the principal amount of the obligation is ~~\$300,000.00~~
11 **\$600,000.00** or less, then the ~~issuance of the obligation under this~~
12 ~~section contract or note~~ is subject to the agency financing
13 reporting act, **2002 PA 470, MCL 129.171 to 129.177.**

14 ~~(2) However, any projects in which advances or loans are made~~
15 ~~by any public corporation, the federal government, or any agency of~~
16 ~~the federal government shall not be limited by this section. This~~
17 ~~section shall apply to a drain or other project instituted pursuant~~
18 ~~to any section in this act including a feasibility, practicability,~~
19 ~~environmental assessment, or impact study. are not subject to either~~
20 **the revised municipal finance act, 2001 PA 34, MCL 141.2101 to**
21 **141.2821, or the agency financing reporting act, 2002 PA 470, MCL**
22 **129.171 to 129.177.**

23 (4) ~~(3)~~ A county board of commissioners by a majority vote of
24 2/3 of its members may pledge the full faith and credit of ~~a the~~
25 county for the payment of a **contract or** note of the drainage
26 district.

