



MICHIGAN COUNTY ROAD COMMISSION SELF-INSURANCE POOL

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LEGISLATIVE LIABILITY REVIEW (LLR) COMMITTEE NOTES

May 9, 2017

MCRCSIP Board Room – Lansing, Michigan

Committee Members Present: A. Cooper, L. Livermore

Committee Members Absent: Doug Fuller

Board Members Present: T. Haagsma, D. Pohl

Staff Present: G. Cummings, D. Schultz

Consultants: Bill Henn, Attorney; Ron DeCook, Consultant, John Daly

Guest: John Daly, Chairman CRA Legislative Review Committee

OLD BUSINESS

The Committee reviewed the notes from the March 29, 2017, committee meeting. There was no further discussion and the Committee Notes were accepted as presented.

John Daly shared input from many sources is very important during the development of CRA's position on any House Bill or Senate Bill. The process path between CRA and MCRCSIP is MCRCSIP's liability concerns should be sent to the Chairperson of the CRA Legislative Review Committee (LRC). The input from MCRCSIP can be then reviewed by the LRC with additional input from CRA staff to determine if further action is warranted. This is an inclusive process that John Daly intends to follow and he is confident the structure will result in more effective communication between the two organizations.

Alan Cooper led the review and discussion of the (7) Bills identified in our previous meeting as needing more information:

1. HB 4100 –It is being recommended this Bill be put on WATCH. Concerns are as follows:
 - Notice to RC is not required as written.
 - Not clear if it transfers RC statutory liability.
 - What about Drain Commission involvement?
 - How does this impact cost to construct?

2. HB 4290- It is being recommended that this Bill be given LLR Committee support, but language needs to include an exemption for roadside ditches.
 - This bill clarifies a Sewage Disposal System Event.
 - Is this bill an effective way to curb liability?
 - Do we want lower limits for exclusions than those proposed in (k)
 - Can we amend this to Re-define SDS Events to exclude Roadside Ditches?

The committee recommended advancing these two to our board to consider forwarding on to CRA.

The other five bills reviewed by the committee did not raise any significant liability concerns at this time.

CONSIDERATIONS

Bill Henn provided the following recommendations for future legislation to advance to our Board for review.

1. Consideration for revising MCL 224.21 (Notice & Provisions);
2. Consideration for revising MCL 691.1402 (Open & Obvious), and
3. Consideration for revising MCL 257.726 (Township Ordinances Prohibiting or Limiting Trucks and Commercial Vehicles) be discussed at an upcoming MCRCSIP Board meeting.

These recommendations will return to the LLR Committee for further discussion after MCRCSIP Board review.

NEW BUSINESS

John Daly shared that CRA has a proactive Legislative list and would appreciate the inclusion of additional considerations as recommended by the LLR Committee.

The committee reviewed the following Bills and recommended our Consultants and/or other experts, as appropriate, prepare a short, written analysis, of the following four (4) Bills, focusing on the concerns noted:

1. SB 0097—Allow Public/Private partnership for certain authorities
 - Not a liability, but an opportunity
2. HB 4435—Vehicle Registration-Revise formula calculation
 - Not a liability, but a revenue issue for the road commission
3. HB 4444—PSC Require collaboration and notice for projects located in the ROW
 - Definition needs to be added to this Bill
 - Not a liability
 - Recommended this be put on WATCH
4. HB 4492—Modify PA 51 distribution formula
 - Not a liability, but a revenue issue for the road commission

The other seven (7) Bills reviewed by the committee did not raise any significant liability concerns at this time.

NEXT MEETING

The next: TBD

The meeting was adjourned at 12:05 pm.

Respectfully Submitted
Deborah Schultz



MICHIGAN COUNTY ROAD COMMISSION SELF-INSURANCE POOL

LEGISLATIVE LIABILITY REVIEW (LLR) COMMITTEE NOTES

March 29, 2017

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MCRC SIP Board Room – Lansing, Michigan

Committee Members Present: A. Cooper, D. Fuller, L. Livermore

Board Members Present: T. O'Rourke, D. Pohl, J. Valente

Staff Present: G. Cummings, D. Schultz

Consultants: Bill Henn, Attorney; Ron DeCook, Consultant

CURRENT BILLS

The committee reviewed and discussed the following Active Bills that were referred to them because they **may** have an impact on Michigan County Road Commissions:

HB 4047	HB 4100	HB 4131	HB 4146	HB 4160
HB 4162	HB 4205	HB 4275	HB 4290	HB 4330
HB 4359	SB 0100	SB 0101	SB 0118	SB 0159
		SB 0239		

Ron DeCook led the committee, Board Members and Bill Henn through a review and discussion of all 16 Bills.

The committee recommended we have our Consultants and/or other experts, as appropriate, prepare a short, written analysis of the following Bills focusing on the concerns as noted:

1. HB 4047 –
 - Is this simply part of broadband's effort to install wireless at lower expense, and is there a bigger, indirect effect on RCs with less township money available as broadband avoids property taxes.
2. HB 4100 –
 - Notice to RC is not required as written.
 - Not clear if it transfers RC statutory liability.
 - What about Drain Commission involvement?
 - How does this impact cost to construct?
3. HB 4162 –
 - How does adding Construction of Broadband Facilities to the projects eligible for bonding impact the RC authority over the structures in the ROW?
 - Is there an upside for the RC?
 - Public/private partnerships where private industry can profit from the coalition.

4. HB 4275-

- Changes the Municipal Finance Act by adding the option of allowing bonding if the municipality has a credit rating of A and the security is insured, instead of requiring AA at all times.
- How will this impact the RCs if they take advantage of bonding through the county?
- How will this impact the RCs if they become eligible to bond on their own?

5. HB 4290-

- This bill clarifies a Sewage Disposal System Event.
- Is this bill an effective way to curb liability?
- Do we want lower limits for exclusions than those proposed in (k)
- Can we amend this to Re-define SDS Events to exclude Roadside Ditches?

6. HB 4359-

- Tiebarred with HB 4370 and HB 437.
- What is a Private Utility?
- Is there and upside?
- What is the downside or risks?

7. SB 0239-

- This bill deals with abandoning Trunkline
- The committee would like more information about the source and reason for this bill.
- The committee would like to better understand the specifics – including risk issues.

The other 9 bills reviewed by the committee did not raise any significant liability concerns at this time.

OTHER ISSUES

Pension Taxation - The 11 bills listed below are included on our board website as a resource for those Board Members that wish review the proposals circulating in the Legislature focused on making changes to the taxation of pension income. The committee did not wish to formally review them at this meeting.

HB 4052	HB4055	HB 4083	HB 4092	HB 4132
HB 4159	HB 4182	HB 4280	HB 4396	SB 041
		SB 266		

PA 452 - The committee discussed the latest information from CRA that indicates Sen Casperson's office has submitted language to effectively repeal this law. CRA has assured us that we will see the proposed language when they have it. The committee was hopeful that this change reinstates application of the Federal Rules.

SB 0194 – The committee discussed the latest information which is that this bill is effectively dead. Hopefully it will not return.

THOUGHTS ABOUT NEW LEGISLATION

MCL224.21/MCL691.1402 (Notice - Streng) – We are currently waiting for the Supreme Court to grant us a review of the Appellate Courts published decision in Streng that has us using the old County Road Law (MCL 224.21) Notice provisions instead of the Governmental Tort Liability Act (GTLA) Notice provisions in MCL

691.1404. There have been more than a few significant court decisions that had us using the GTLA Notice provisions. But this issue keeps coming back, and it is always a difficult process to convince courts to go along with what we want. If the Notice Provision in 224.21 was deleted by the Legislature, we would not have to keep fighting this issue through the courts. There would only be one option, and that would be the 1404 Notice provisions that we prefer.

MCL 691.1402 (Open & Obvious) PA419 quietly amended the statute to incorporate the Open & Obvious concept for sidewalks (2017-01-04 Sidewalk Maintenance). The committee talked about watching for/or advocating for opportunities to incorporate that concept for roads.

MCL 257.726 (Truck Route responsibilities) Limiting truck route designations was discussed on the Engineers' List Serve last month. There are limits on what the RC can do with these designations, depending on local laws and road funding history. This law could benefit from a review and clarification of responsibility. Our Oshtemo Twp. v Kalamazoo CRC lawsuit is a good reference point for improvements needed.

DAS-Policy for Communication Service Provider Facilities Within the ROW and CSP Permit Special Terms and Conditions—MCRCSIP Issued these 2 Strategic Risk Management (SRM) Guidelines to our Members on March 22, 2017. Our recommendations are founded upon experience in actual litigation with a CSP, and reflect our best judgment about how to process ROW applications from these entities in a manner that is (1) firmly rooted in the law, (2) even-handed, and that (3) minimizes exposure to lawsuits and legal liability. We provided sample language to assist Members in achieving these objectives. We recognize that this is a developing area of the law and that there is very likely to be new legislation affecting it. We would like to see legislation requiring municipalities to dedicate a certain percentage of franchise or license fees from CSP's to the improvement of local highways by County Road Commissions.

Dark Signals—There has been a big discussion on Facebook about the common belief that, in a power outage, traffic signals become four-way stops. Apparently the law does not say that. During power outages, Michigan law gives the right-of-way to drivers in the prevailing traffic lanes. Should we look for legislation to change that?

NEXT MEETING

The next meeting is set for Tuesday, May 9, 2017 from
10:00 – 2:00 p.m. in the MCRCSIP Board Room.

The meeting was adjourned at 2:45 pm.

Respectfully Submitted
Deborah Schultz

HOUSE BILL No. 4100

January 26, 2017, Introduced by Reps. McCready, Webber, Lucido and Iden and referred to the Committee on Local Government.

A bill to regulate the creation of stormwater management utilities by local units of government; to regulate the adoption and content of stormwater utility ordinances; to provide for the allocation of the costs of planning, constructing, operating, maintaining, financing, and administering a stormwater system to real property served by the system; to provide for the establishment and collection of stormwater utility fees; to provide for the reduction or elimination of fees; to provide for appeals; and to prescribe the powers and duties of certain local governmental officers and entities.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "stormwater utility act".

3 Sec. 2. As used in this act:

4 (a) "Fund" means a stormwater fund established pursuant to
5 section 8.

6 (b) "Impervious area" means a surface area that is resistant
7 to permeation by surface water.

8 (c) "Local unit of government" or "local unit" means a city,
9 village, township, or county.

10 (d) "Operation and maintenance costs" means all costs, direct
11 and indirect, of materials, labor, professional services,
12 utilities, and other items for the management and uninterrupted
13 operation of a stormwater system in a manner for which the
14 stormwater system was designed and constructed.

15 (e) "Property" means real property or a parcel of real
16 property, as indicated by the context.

17 (f) "Stormwater" means that term as defined in 40 CFR
18 122.26(b)(13).

19 (g) "Stormwater management" means 1 or more of the following:

20 (i) The quantitative regulation through the stormwater system
21 of the volume and rate of stormwater runoff from property.
22 Quantitative regulation includes, but is not limited to, flood
23 control.

24 (ii) The qualitative regulation of stormwater runoff into the
25 stormwater system or of stormwater discharged from the stormwater
26 system. Qualitative regulation includes, but is not limited to,
27 stormwater treatment, pollution prevention activities, and

1 administration and enforcement of ordinances to reduce, eliminate,
2 or treat pollutants carried from property into the stormwater
3 system by stormwater.

4 (iii) Notifying property owners about the stormwater
5 management program, including, but not limited to, how to obtain a
6 reduction or elimination of fees for use of the stormwater system.

7 (h) "Stormwater management plan" or "plan" means a plan
8 described in and adopted pursuant to section 4.

9 (i) "Stormwater management program" means aspects of
10 stormwater management undertaken by a local unit of government.

11 (j) "Stormwater system" means those features that are located
12 or partially located within the geographic limits of a local unit
13 of government and that are designed or actively managed by the
14 local unit for collecting, storing, treating, or conveying
15 stormwater, which may include roads, streets, highways, catch
16 basins, curbs, gutters, ditches, storm and combined sewers and
17 appurtenant features, pipes, interceptors, conduits, lakes, ponds,
18 channels, swales, storm drains, county drains, canals, creeks,
19 streams, gulches, gullies, flumes, culverts, bridges, siphons,
20 retention or detention basins, treatment, screening, or
21 disinfection facilities, dams, floodwalls, levees, pumping
22 stations, and other similar facilities, and natural watercourses.

23 (k) "Stormwater utility fee" or "fee" means a fee provided for
24 under section 5.

25 (l) "Stormwater utility ordinance" means an ordinance
26 described in and adopted pursuant to section 3.

27 Sec. 3. (1) A stormwater management utility shall accomplish 1

1 or more of the following regulatory purposes:

2 (a) Protect against economic loss, property damage, threats to
3 public health and safety, and damage to the environment and natural
4 resources from water pollution or from flooding or other instances
5 of high volumes or rates of stormwater runoff.

6 (b) Enable property owners to fulfill legal obligations
7 pertaining to increases in the quantity or reduction in the quality
8 of stormwater runoff resulting from voluntary choices made in the
9 manner of development of the property, including, but not limited
10 to, obligations under section 3109 of the natural resources and
11 environmental protection act, 1994 PA 451, MCL 324.3109, the
12 natural flow doctrine, and the law of trespass and nuisance.

13 (c) Provide property owners paying stormwater utility fees
14 with proportionate benefits described in subdivision (a). These
15 benefits include reciprocal benefits to a property owner when other
16 property owners pay fees to support the stormwater system and
17 thereby fulfill their legal obligations to that property owner
18 described in subdivision (b).

19 (2) To create a stormwater management utility, the legislative
20 body of a local unit of government shall do both of the following:

21 (a) Adopt a stormwater management plan by resolution.

22 (b) Adopt a stormwater utility ordinance that is consistent
23 with the adopted stormwater management plan.

24 Sec. 4. (1) A stormwater management plan shall include all of
25 the following:

26 (a) The time period covered by the plan.

27 (b) The service area of the stormwater management utility. The

1 service area may consist of all of the territory of the local unit
2 of government, a portion of the territory of the local unit, or all
3 or a portion of the territory of 2 or more local units that jointly
4 develop the plan.

5 (c) The type and level of stormwater management services to be
6 provided by the stormwater management utility, including system
7 reliability, level of flood protection, pollution control, and
8 structural condition of system components.

9 (d) Projected direct and indirect costs to provide services as
10 described in the plan pursuant to subdivision (c) for the
11 stormwater management utility, including cost of planning, capital,
12 operations, maintenance, permit compliance, and asset replacement.

13 (e) Recommendations for efficiencies to minimize costs.

14 (f) Current and projected impervious area and, if applicable
15 under section 7(2), an inventory of impervious surfaces and parcel
16 areas for properties within the stormwater management utility's
17 service area.

18 (g) A determination of which properties will be subject to any
19 stormwater utility fee for voluntary use of a stormwater system
20 owned and operated by the local unit of government, as required
21 under section 10(1), and the process and method that was used to
22 make that determination.

23 (h) The method of calculating any stormwater utility fees
24 proportionate to the cost of providing the locally determined level
25 of service of stormwater management.

26 (i) Provisions to ensure that the cost of those elements of
27 the stormwater management program directly or indirectly related to

1 the amount of stormwater managed will be allocated in proportion to
2 the amount of stormwater runoff from a property conveyed by the
3 stormwater system, employing methods that are relatively accurate
4 considering available technology.

5 (j) A description of the components of the stormwater system
6 owned and operated by the local unit of government.

7 (k) A description of how a stormwater utility fee may be
8 reduced or eliminated as provided under section 9.

9 (2) Before preparing a stormwater management plan, a local
10 unit of government must give notice that it intends to prepare a
11 stormwater management plan. The notice shall be given by all of the
12 following means:

13 (a) If the local unit has a website that is accessible to the
14 public free of charge, by posting on the website.

15 (b) By publication in a newspaper of general circulation
16 within the local unit. If there is no newspaper of general
17 circulation within the local unit, notice shall be given by first-
18 class mail to all persons to whom real property taxes are assessed
19 and to the occupants of all structures within the local unit.

20 (c) By first-class mail to the county drain commissioner or
21 water resources commissioner and to each local unit located
22 adjacent to or located, in whole or in part, within the local unit
23 preparing the plan. The notice under this subdivision shall request
24 the recipient's cooperation in and comment on the preparation of
25 the plan, including comment on jointly managing stormwater.

26 (3) Before adopting a stormwater management plan, a local unit
27 of government must hold at least 1 public hearing on the proposed

1 plan. The local unit shall give notice specifying the time, place,
2 and purpose of the hearing and the place where a copy of the
3 proposed plan is available for public inspection. The notice shall
4 be given by all of the following means:

5 (a) If the local unit has a website that is accessible to the
6 public free of charge, by posting the notice on the website at
7 least 14 days before the hearing and maintaining the posting until
8 the time of the hearing. The posting shall include a copy of the
9 proposed plan.

10 (b) By publication in a newspaper of general circulation
11 within the local unit. If there is no such newspaper, notice shall
12 be given by first-class mail to all persons to whom real property
13 taxes are assessed and to the occupants of all structures within
14 the local unit. If the local unit has a website that is accessible
15 to the public free of charge, the notice under this subdivision
16 shall include the website address at which a copy of the proposed
17 plan is posted under subdivision (a). The notice under this
18 subdivision shall be published or deposited in the United States
19 mail at least 14 days before the date of the hearing.

20 (c) By first-class mail to the county drain commissioner or
21 water resources commissioner and to each local unit located
22 adjacent to or located, in whole or in part, within the local unit
23 preparing the stormwater management plan. If the local unit has a
24 website that is accessible to the public free of charge, the notice
25 under this subdivision shall include the website address at which a
26 copy of the proposed plan is posted under subdivision (a). The
27 notice under this subdivision shall be deposited in the United

1 States mail at least 14 days before the date of the hearing.

2 (4) A stormwater management plan may be extended or otherwise
3 amended by resolution subject to the same procedure set forth in
4 this section for the adoption of the original plan.

5 Sec. 5. (1) A stormwater utility ordinance shall identify the
6 regulatory purposes under section 3(1) served by the ordinance.

7 (2) A stormwater utility ordinance may provide for a
8 stormwater utility fee on property serviced by a stormwater system
9 to pay the proportionate costs of the stormwater management
10 program. A stormwater utility fee shall not include components
11 other than as described in this section and sections 6 and 7.

12 (3) A stormwater utility ordinance shall describe the method
13 or methods used to determine any stormwater utility fee.

14 (4) A local unit of government may develop a corresponding
15 stormwater utility fee, calculation method, or both for each
16 stormwater management utility described in the stormwater
17 management plan.

18 (5) A stormwater utility fee shall be proportionate to the
19 direct and indirect cost to the local unit of government of
20 providing stormwater management to each property in a stormwater
21 management utility that uses the stormwater system that is not
22 financed by revenue received by the local unit of government from
23 any other source.

24 (6) A stormwater utility ordinance may define rate categories
25 for classes of properties for which the proportionate cost of
26 providing service is similar.

27 Sec. 6. (1) A stormwater management utility may assess a 1-

1 time stormwater utility fee for connection to the stormwater system
2 of newly developed or modified property benefited by the stormwater
3 system. The purpose of the fee is to finance the capital costs to
4 the local unit of government of elements of the public stormwater
5 system needed to serve that property and not otherwise financed by
6 the property developer or by revenue received by the local unit of
7 government from any other source.

8 (2) A stormwater utility fee under subsection (1) shall be
9 computed based on the newly developed or modified property's
10 proportionate share of the local unit of government's cost to
11 expand the stormwater system to manage the additional stormwater
12 from that property, including, if appropriate, the newly developed
13 or modified property's proportionate share of the local unit of
14 government's existing capital investment in the stormwater system.
15 This proportionate share shall be calculated consistent with the
16 method used by the local unit of government under section 7
17 considering the available data at the time of the property's
18 development or modification.

19 Sec. 7. (1) A stormwater management utility may assess a
20 stormwater utility fee for the use of a stormwater system.

21 (2) The method for determining a stormwater utility fee under
22 subsection (1) shall be based on the quantity or quality, or both,
23 of stormwater runoff from each property or category of property.

24 (3) A stormwater utility fee or portion thereof charged to a
25 property for those elements of the stormwater management program
26 whose cost is attributable to the quantity of stormwater runoff
27 from each individual property or category of properties shall be

1 calculated, consistent with stormwater management plan provisions
2 under section 4(1)(i), using 1 or more methods generally accepted
3 by licensed professional engineers or regional or national
4 professional groups associated with stormwater experts, including,
5 but not limited to, the following methods:

6 (a) Impervious area, based solely on the impervious area of
7 the property.

8 (b) Equivalent residential unit or equivalent service unit,
9 based on the impervious area of the property in comparison to the
10 typical impervious area associated with single-family residential
11 properties within the service area of the stormwater management
12 utility.

13 (c) Intensity of development, based on the total area of the
14 property multiplied by a rate category. A rate category shall apply
15 to properties with statistically similar stormwater-runoff-
16 generating characteristics. The stormwater utility fee shall be
17 proportionate to the percentage of the property's impervious area
18 to its total area.

19 (d) Equivalent hydraulic area, calculated as follows:

20 (i) Multiply the impervious area of the property by a
21 stormwater runoff factor.

22 (ii) Multiply the pervious area of the property by a
23 stormwater runoff factor.

24 (iii) Add the products under subparagraphs (i) and (ii).

25 (e) Other billing methodologies that can be demonstrated to
26 provide an equitable distribution of costs in proportion to the
27 property's use of the stormwater system.

1 (4) A stormwater utility fee or portion thereof charged to a
2 property for those elements of the stormwater management program
3 whose cost is attributable to the quality of stormwater managed and
4 is not covered by other revenue shall be proportionate to the cost
5 of those elements of the stormwater management program.

6 Sec. 8. (1) A stormwater utility ordinance that establishes a
7 stormwater utility fee shall establish a stormwater fund. All
8 stormwater utility fees collected by the local unit of government
9 shall be deposited into the fund. The treasurer of the local unit
10 of government may receive money or other assets from any other
11 source for deposit into the fund. Money in the fund shall be
12 invested pursuant to 1943 PA 20, MCL 129.91 to 129.97a. The
13 treasurer shall credit to the fund interest and earnings from fund
14 investments. Money in the fund at the close of the fiscal year
15 shall remain in the fund and shall not lapse to the general fund of
16 the local unit.

17 (2) The treasurer of the local unit of government shall expend
18 money from the fund, upon appropriation, only for the regulatory
19 purpose of defraying any of the following stormwater management
20 program costs:

21 (a) Operation, maintenance, planning, engineering,
22 acquisition, construction, installation, improvement, or
23 enlargement of a stormwater system, including financing and debt
24 service costs and indirect and overhead costs that are fairly
25 chargeable to such activities under applicable generally accepted
26 accounting principles and the uniform budgeting and accounting act,
27 1968 PA 2, MCL 141.421 to 141.440a.

1 (b) Administration of the stormwater management program.

2 (c) Development of a stormwater management plan.

3 (d) Providing user education related to the stormwater
4 management plan or required by federal or state regulations or
5 required by permits issued to the local unit of government by
6 federal or state regulatory bodies.

7 (3) If the local unit of government has a website that is
8 accessible to the public free of charge, the local unit shall post
9 on its website the most recent audit report for the fund under the
10 uniform budgeting and accounting act, 1968 PA 2, MCL 141.421 to
11 141.440a.

12 Sec. 9. (1) Subject to subsection (2), a stormwater utility
13 ordinance that imposes a stormwater utility fee shall provide for
14 the reduction or elimination of the stormwater utility fee for a
15 property if modifications or improvements made to the property
16 reduce the rate or volume of or eliminate runoff of or pollutant
17 loadings in excess of natural levels of stormwater entering the
18 stormwater system. The property owner has the burden of
19 demonstrating that the stormwater utility fee reduction or
20 elimination is justified, using methods that are reasonably
21 accurate considering available technology.

22 (2) A reduction in or elimination of the stormwater utility
23 fee under subsection (1) shall be proportionate to the reduction of
24 the cost of service of the stormwater system to the property.

25 Sec. 10. (1) To ensure that stormwater utility fees are
26 voluntary, property is not subject to a fee unless the local unit
27 of government demonstrates both of the following:

1 (a) That the property utilizes the stormwater system.

2 (b) That such utilization imposes a net cost to the stormwater
3 system when offset by any activities or conditions that reduce the
4 cost of service to the stormwater system or are reasonably related
5 to a benefit to the stormwater system provided by that property or
6 its owner, including, but not limited to, modifications or
7 improvements described in section 9(1).

8 (2) The local unit of government shall provide the owner of
9 property initially determined to be subject to a stormwater utility
10 fee under subsection (1) with the opportunity to demonstrate that
11 the property either does not utilize the stormwater system or does
12 not utilize the stormwater system to the extent calculated by the
13 local unit of government in establishing the stormwater utility fee
14 and is therefore entitled to the elimination of or a reduction in
15 the fee. The stormwater utility ordinance shall set forth
16 procedures to implement this subsection.

17 (3) A stormwater utility ordinance that establishes a
18 stormwater utility fee shall provide that, when additional property
19 begins to utilize the stormwater system, a stormwater utility fee,
20 as determined by the local unit of government, accrues.

21 Sec. 11. A stormwater utility ordinance shall designate an
22 entity within the local unit of government to administer the
23 stormwater management utility and shall establish the
24 administrative duties. A stormwater utility ordinance shall
25 establish administrative policies and procedures or authorize the
26 administrator to establish the administrative policies and
27 procedures. The administrative policies and procedures shall

1 include at least the following topics, as applicable:

2 (a) Criteria used to determine whether a stormwater utility
3 fee will be billed to the property owner.

4 (b) Procedures for updating billing data based upon changes in
5 property boundaries, ownership, and stormwater runoff
6 characteristics, and stormwater runoff calculation methods.

7 (c) Billing and payment procedures of the stormwater
8 management utility including the billing period, billing
9 methodology, credit application procedures, and penalties.

10 (d) Policies establishing the type and manner of service that
11 will be provided by the stormwater management utility.

12 (e) Regulations governing the resolution of stormwater
13 management disputes that arise between property owners within the
14 stormwater management utility.

15 (f) Procedures for granting and modifying the reduction or
16 elimination of a fee, as authorized pursuant to section 9.

17 (g) Procedures for appeals as described in section 13.

18 (h) Enforcement policies and procedures.

19 (i) A process by which fees, formulas for calculating fees,
20 and formulas for calculating fee reductions will be reviewed and
21 updated at least every 3 years.

22 Sec. 12. (1) A stormwater utility ordinance shall establish
23 remedies for any unpaid stormwater utility fees as described in
24 this section.

25 (2) A local unit of government may collect a stormwater
26 utility fee by any method authorized by law.

27 (3) A partial payment of delinquent stormwater utility fees

1 shall be applied to the oldest delinquent fees, and remaining fees
2 may continue to accrue interest and penalties.

3 Sec. 13. (1) A stormwater utility ordinance or the
4 administrative policies and procedures adopted under the ordinance
5 shall provide a procedure for appeals, the establishment of an
6 appeals board, and the reduction or elimination of any stormwater
7 utility fee. The procedure shall include at least all of the
8 following:

9 (a) Any property owner liable for a stormwater utility fee may
10 appeal the determination that the property utilizes the stormwater
11 system or the amount of a stormwater utility fee, including a
12 determination on a reduction in or the elimination of the fee under
13 section 9. An appeal may be based on the quantity or quality of
14 stormwater runoff generated, the reductions established, the
15 reductions allocated, or any other matter relating to the
16 determination of the stormwater utility fee.

17 (b) An appeal under subdivision (a) shall be heard by a
18 stormwater utility appeals board appointed by the local unit of
19 government. The appeals board shall consist of 3 members, 2 of whom
20 shall be licensed professional engineers not employed by the local
21 unit of government.

22 (c) An appeal of a stormwater utility fee shall not be brought
23 more than 1 year after the fee was billed.

24 (d) To prevail in an appeal of a stormwater utility fee, the
25 appellant must demonstrate in accordance with the requirements of
26 the stormwater management plan that the property does not use the
27 system to the extent determined by the local unit of government in

1 the calculation of that property's stormwater utility fee or that
2 there was a mathematical error in the calculation.

3 (e) The sole remedy for a property owner who prevails in an
4 appeal of a stormwater utility fee is a prospective correct
5 recalculation of the stormwater utility fee.

6 (f) If in an appeal of a stormwater utility fee a local unit
7 of government finds that the requirements of subdivision (d) have
8 not been met, that finding is conclusive until the property is
9 modified to either increase or decrease the utilization of the
10 system. The property owner remains eligible for a reduction in or
11 elimination of fees under the stormwater utility ordinance.

12 (g) A property owner making an appeal shall provide the
13 appeals board with information necessary to make a determination.

14 (2) A person aggrieved by a decision of the appeals board on
15 an appeal under this section may appeal to the circuit court in
16 which the property is located.

17 Sec. 14. (1) This act does not expand existing authority of
18 local units of government.

19 (2) This act does not limit existing authority of local units
20 of government to cooperate with respect to or jointly create and
21 operate stormwater management utilities, subject to section 3(1).

22 Enacting section 1. This act takes effect 90 days after the
23 date it is enacted into law.



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LEGISLATIVE LIABILITY REVIEW (LLR) COMMITTEE NOTES
March 29, 2017

MCRCSIP Board Room – Lansing, Michigan

Committee Members Present: A. Cooper, D. Fuller, L. Livermore

Board Members Present: T. O'Rourke, D. Pohl, J. Valente

Staff Present: G. Cummings, D. Schultz

Consultants: Bill Henn, Attorney; Ron DeCook, Consultant

The committee recommended we have our Consultants and/or other experts, as appropriate, prepare a short, written analysis of the following Bills focusing on the concerns as noted:

1. HB 4100

Sponsor: Rep Mike McCready(R-Oakland County)

Co-Sponsors: Reps. Michael Webber(R-Oakland County), Peter Lucido(R-Macomb County), Brandt Iden(R-Kalamazoo County)

Bill referred to: House Local Government Committee 1/26/2017

Local Government Committee Members: Chair James Lower(R-Wexford County)

Kathy Crawford(R-Van Buren County) Jim Runestad(R-Oakland County)

Gary Howell(R-Lapeer County) Julie Alexander(R-Jackson County)

Ben Frederick(R-Shiawassee County) Roger Hauck(R-Isabella County)

Patrick Green(D-Macomb County) Jeremy Moss(D-Oakland County)

Jim Ellison(D-Oakland County) Terry Sabo(D-Muskegon County)

House/Senate Fiscal Agency Analysis-Currently not available

Confidential Attorney/Client Memo

To: Gayle Cummings

From: WLH; ASN

Date: 2/14/17

Re: Analysis of HB 4100—"A bill to regulate the creation of stormwater management utilities by local units of government."

Issue

The purpose of this memorandum is to provide a summary of potential issues and concerns relative to House Bill No. 4100, which provides a framework for "local units of government" to create "stormwater management utilities." However, although several types of stormwater management systems (culverts, drainage ditches, etc.) are presently under road commission jurisdiction and control, HB 4100 does not include road commissions in its definition of a "local unit of government." HB 4100 was introduced January 26, 2017 and has been referred to the Committee on Local Government. No further action has been taken on the Bill as of the date of this memorandum.

Summary of the Bill

Distilled to its basic terms (the proposed Bill is 16 pages long), HB 4100 provides authority, procedures, and requirements for the creation of "stormwater management utilities" by "local units of government" which would be able to collect "stormwater utility fees" from owners of real property within the local unit's territory. These fees would be based, generally, on the proportionate cost to the utility to "service" the parcel of real property. As a prerequisite to imposing a "fee," the local unit of government must demonstrate that the property utilizes the system. In other words, the stormwater management utility would provide a service to property owners by allowing them to drain stormwater (either purposefully or inadvertently) from their properties into the system.¹ The collected fees would be (1) placed in a fund under the control of the local unit of government and (2) used by the local unit of government for planning, constructing, operating, maintaining, financing, and administration of a "stormwater system" that services property within the local unit. In conjunction with the process of establishing such a

¹ Conversely, if the property owner can demonstrate that he or she does not utilize the stormwater drainage system, no fee can be charged. The fee can also be reduced if the property owner makes modifications to the property so as to reduce any runoff into the stormwater system.

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Re: Analysis of HB 4100—"A bill to regulate the creation of stormwater management utilities by local units of government."

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utility under the framework of the proposed Bill, the local unit of government would also enact a "stormwater utility ordinance" and a "stormwater management plan." Finally, the HB 4100 provides for the selection of the utility's administration (by the local unit of government) and for property owners to appeal decisions regarding stormwater utility rates. Stormwater systems expressly include streets, highways, ditches and pipes, among other things.

Points of Potential Concern

1. **Road Commissions are not included in the Bill.** First and foremost, HB 4100 defines "local unit of government" as a "city, village, township, or county." Road commissions are not included in the definition, despite that elements of stormwater drainage systems are currently under their control.

2. **Jurisdiction and Control.** Second, the Bill creates the possibility that a city, village, township, or county could establish a stormwater management utility that assumes jurisdiction of an existing system (i.e., roadside ditches and culverts) that is presently under road commission jurisdiction. Specifically, HB 4100 defines "stormwater system" as including "features that are located or partially located within the geographic limits of a local unit of government and that are designed or actively managed by the local unit for collecting, storing, treating, or conveying stormwater, which may include roads, streets, highways, catch basins, curbs, gutters, ditches, storm and combined sewers and appurtenant features, pipes, interceptors, conduits, lakes, ponds, channels, swales, storm drains, county drains, canals, creeks, streams, gulches, gullies, flumes, culverts, bridges, siphons, retention or detention basins, treatment, screening, or disinfection facilities, dams, floodwalls, levees, pumping stations, and other similar facilities, and natural watercourses."

Likewise, the Bill provides that these local units of government shall implement a "stormwater management plan" in conjunction with the formation of a utility. This plan "shall" include the service area, which "may consist of *all of the territory of the local unit of government*, a portion of the territory of the local unit, or all or a portion of the territory of 2 or more local units that jointly develop the plan." On its face, the Bill appears to authorize a city, village, township, or county to create and manage a stormwater system that includes portions of county highways. It creates the specter that a city, village, township or county would control who discharges into roadside ditches, but it imposes no liability on those units of government for highway defects caused by the overflow or other failure of roadside ditches and culverts.

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Re: Analysis of HB 4100—"A bill to regulate the creation of stormwater management utilities by local units of government."

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3. **Funding and Fees.** Because the stormwater management systems would be set up under the control of a "utility," implementation and permitting may be governed by MCL 247.183-184 and MI Const. Art. 7, § 29.

- Road commissions may also have to provide these newly-formed utilities with permits to perform work within the right-of-way, which, as they are creating facilities for the intentional drainage of adjacent property owners, could prove to be large scale projects with overlapping jurisdictional issues.
- At the same time, road commissions would not benefit from any of the utility fees charged or collected, as HB 4100 provides that the fees are to be kept in a separate account held by the local unit of government for operation of the utility.
- Nevertheless, it may be possible for the local unit of government to essentially charge its own stormwater utility a franchise fee, thereby transferring funds from the separate utility account into the local government's general fund. In short, the burden on road commissions might be increased, but they would not share in any of the generated funds.

4. The Bill only requires specific notice of a proposed stormwater management plan to other local units of government located adjacent to or within, in whole or in part, the local unit proposing the plan. Because road commissions are not local units of government under the Bill, they would not receive any notice.

5. The Bill does not address or mention potential liability in connection with these utilities. Nor does it modify the liability that presently exists for road commissions under the sewage disposal system event exception with respect to roadside ditches and culverts. Reading HB 4100 and the GTLA together, it is unclear whether road commissions could be held liable for (or at least be subject to suits involving) overflows that originate because of the utilities. See MCL 691.1416(b). Specifically, it is unclear whether failure to alter the roadside ditches for increased discharge (and all of the maintenance and monitoring associated with the same) could be considered a "defect" in the road commission's system.

6. Even assuming that road commissions would not be held liable under the sewage disposal system event exception, they would nevertheless have an affirmative obligation under that exception to provide notice within 15 days of any claim to the responsible agency. MCL 691.1419. And, since each city, village, township, and county may create its own utility—without any notice to the road commission—this may not be a simple task.

Further Background

February 14, 2017

Re: Analysis of HB 4100—"A bill to regulate the creation of stormwater management utilities by local units of government."

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Based on the specific and detailed guidance in the Bill for the creation, funding, and operation of a stormwater management utility, it appears that the Bill is attempting to provide local units of government with a framework for charging property owners stormwater drainage fees that won't be vulnerable to challenges under the Headlee Amendment, Const 1963, art 9, § 31, i.e., a tax under the guise of a "fee." Previous attempts by local units of government to set up stormwater management utilities and charge residents stormwater "fees" have been struck down by the courts on this basis. See, e.g., *Jackson Co v City of Jackson*, 302 Mich App 90, 110; 836 NW2d 903 (2013) ("A permissible utility service charge is one that " 'reflects the actual costs of use, metered with relative precision in accordance with available technology, including some capital investment component.'"); *Bolt v City of Lansing*, 459 Mich 152, 158–159, 161; 587 NW2d 264 (1998) (Generally, a "fee" is "exchanged for a service rendered or a benefit conferred, and some reasonable relationship exists between the amount of the fee and the value of the service or benefit." A "tax," on the other hand, is designed to raise revenue.)

HB 4100 has four sponsors:

1. Mike McCready (40th District) Bloomfield Hills and Birmingham, Bloomfield Township and a portion of West Bloomfield Township;
2. Michael Webber (45th District) Rochester and Rochester Hills and part of Oakland Township;
3. Peter J. Lucido (36th District) part of Macomb County including Bruce, Washington and part of Shelby townships and the Village of Romeo; and
4. Brandt Iden (61st District) encompasses the city of Portage as well as the townships of Oshtemo, Prairie Ronde, Schoolcraft and Texas.

It is of note that Rep. Lucido published an article on his House website shortly before the Bill was introduced calling for more emphasis on wastewater systems.² According to the article, Rep. Lucido was motivated by the 250-foot long and 100-foot wide sinkhole in Fraser (Macomb County) and his working relationship with the recently elected Macomb County Public Works Commissioner Candice Miller and her concerns regarding the condition of underground infrastructure.

We would be glad to provide any additional research or analysis as requested.

² Former U.S. Rep. Miller, Rep. Lucido call for more emphasis on sewer and water systems, January 18, 2017 <<http://gophouse.org/former-u-s-rep-miller-rep-lucido-call-emphasis-sewer-water-systems/>>.

HOUSE BILL No. 4290

March 1, 2017, Introduced by Rep. Webber and referred to the Committee on Local Government.

A bill to amend 1964 PA 170, entitled

"An act to make uniform the liability of municipal corporations, political subdivisions, and the state, its agencies and departments, officers, employees, and volunteers thereof, and members of certain boards, councils, and task forces when engaged in the exercise or discharge of a governmental function, for injuries to property and persons; to define and limit this liability; to define and limit the liability of the state when engaged in a proprietary function; to authorize the purchase of liability insurance to protect against loss arising out of this liability; to provide for defending certain claims made against public officers, employees, and volunteers and for paying damages sought or awarded against them; to provide for the legal defense of public officers, employees, and volunteers; to provide for reimbursement of public officers and employees for certain legal expenses; and to repeal acts and parts of acts,"

by amending sections 16, 17, and 19 (MCL 691.1416, 691.1417, and 691.1419), as added by 2001 PA 222.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 16. As used in this section and sections 17 to 19:
- 2 (a) "Affected property" means real property affected by a
- 3 sewage disposal system event.

(b) "Appropriate governmental agency" means a governmental agency that, at the time of a sewage disposal system event, owned or operated, or directly or indirectly discharged into, the portion of the sewage disposal system that allegedly caused damage or physical injury.

(c) "Claimant" means a ~~property owner that~~ **PERSON THAT OWNS OR OCCUPIES REAL PROPERTY AND THAT** believes ~~that~~ a sewage disposal system event caused damage to the ~~owner's~~ property, a physically injured individual who believes that a sewage disposal system event caused the physical injury, or a person making a claim on behalf of a property owner or physically injured individual. Claimant includes a person that is subrogated to a claim of a property owner or physically injured individual described in this subdivision.

~~—— (d) "Contacting agency" means any of the following within a governmental agency:~~

~~—— (i) The clerk of the governmental agency.~~

~~—— (ii) If the governmental agency has no clerk, an individual who may lawfully be served with civil process directed against the governmental agency.~~

~~—— (iii) Any other individual, agency, authority, department, district, or office authorized by the governmental agency to receive notice under section 19, including, but not limited to, an agency, authority, department, district, or office responsible for the operation of the sewage disposal system, such as a sewer department, water department, or department of public works.~~

(D) ~~(e)~~ "Defect" means a construction, design, maintenance, operation, or repair defect.

1 (E) "GOVERNMENTAL AGENCY CONTACT" MEANS ANY OF THE FOLLOWING
2 WITHIN A GOVERNMENTAL AGENCY:

3 (i) THE CLERK OF THE GOVERNMENTAL AGENCY.

4 (ii) IF THE GOVERNMENTAL AGENCY HAS NO CLERK, AN INDIVIDUAL
5 WHO MAY LAWFULLY BE SERVED WITH CIVIL PROCESS DIRECTED AGAINST THE
6 GOVERNMENTAL AGENCY.

7 (iii) ANY OTHER INDIVIDUAL, AGENCY, AUTHORITY, DEPARTMENT,
8 DISTRICT, OR OFFICE AUTHORIZED BY THE GOVERNMENTAL AGENCY TO
9 RECEIVE NOTICE UNDER SECTION 19, INCLUDING, BUT NOT LIMITED TO, AN
10 AGENCY, AUTHORITY, DEPARTMENT, DISTRICT, OR OFFICE RESPONSIBLE FOR
11 THE OPERATION OF THE SEWAGE DISPOSAL SYSTEM, SUCH AS A SEWER
12 DEPARTMENT, WATER DEPARTMENT, OR DEPARTMENT OF PUBLIC WORKS.

13 (f) "Noneconomic damages" includes, but is not limited to,
14 pain, suffering, inconvenience, physical impairment, disfigurement,
15 mental anguish, emotional distress, loss of society and
16 companionship, loss of consortium, injury to reputation,
17 humiliation, and other nonpecuniary damages.

18 (g) "Person" means an individual, partnership, association,
19 corporation, other legal entity, or a political subdivision.

20 (h) "Serious impairment of body function" means that term as
21 defined in section 3135 of the insurance code of 1956, 1956 PA 218,
22 MCL 500.3135.

23 (i) "Service lead" means an instrumentality that connects an
24 affected property, including a structure, fixture, or improvement
25 on the property, to the sewage disposal system and that is neither
26 owned nor maintained by a governmental agency.

27 (j) "Sewage disposal system" means all interceptor sewers,

1 storm sewers, sanitary sewers, combined sanitary and storm sewers,
2 sewage treatment plants, and all other plants, works,
3 instrumentalities, and properties used or useful in connection with
4 the collection, treatment, and disposal of sewage and industrial
5 wastes, and includes a ~~storm water~~**STORMWATER** drain system under
6 the jurisdiction and control of a governmental agency.

7 (k) "Sewage disposal system event" or "event" means the
8 overflow or backup of a sewage disposal system onto real property
9 **OWNED OR OCCUPIED BY A CLAIMANT EXCEPT WHEN RAINFALL, AS MEASURED**
10 **BY A GENERALLY RECOGNIZED AND ACCEPTED METHOD, AT OR NEAR THE**
11 **AFFECTED AREA OR WITHIN THE SEWAGE DISPOSAL SYSTEM SERVICE AREA WAS**
12 **1.7 INCHES OR MORE IN ANY 1-HOUR PERIOD OR WAS 3.3 INCHES OR MORE**
13 **IN A CONTINUOUS 24-HOUR PERIOD.** An overflow or backup is not a
14 sewage disposal system event if any of the following was a
15 substantial proximate cause of the overflow or backup:

16 (i) An obstruction in a service lead that was not caused by a
17 governmental agency.

18 (ii) A connection to the sewage disposal system on the
19 affected property, including, but not limited to, a sump system,
20 building drain, surface drain, gutter, or downspout.

21 (iii) An act of war, whether the war is declared or
22 undeclared, or an act of terrorism.

23 (l) "Substantial proximate cause" means a proximate cause that
24 was 50% or more of the cause of the event and the property damage
25 or physical injury.

26 Sec. 17. (1) To afford property owners, individuals, and
27 governmental agencies greater efficiency, certainty, and

1 consistency in the provision of relief for damages or physical
2 injuries caused by a sewage disposal system event, a claimant and a
3 governmental agency subject to a claim shall comply with this
4 section and the procedures in sections 18 and 19.

5 (2) A governmental agency is immune from tort liability for
6 the overflow or backup of a sewage disposal system unless the
7 overflow or backup is a sewage disposal system event, ~~and the~~
8 governmental agency is an appropriate governmental agency, **AND THE**
9 **CLAIMANT MEETS THE REQUIREMENTS OF SUBSECTIONS (3) AND (4) .**

10 Sections 16 to 19 abrogate common law exceptions, if any, to
11 immunity for the overflow or backup of a sewage disposal system and
12 provide the sole remedy for obtaining any form of relief for
13 damages or physical injuries caused by a sewage disposal system
14 event regardless of the legal theory.

15 (3) ~~If a claimant, including a claimant seeking~~ **TO OBTAIN**
16 **COMPENSATION, INCLUDING** noneconomic damages, ~~believes that an event~~
17 ~~caused property damage or physical injury, the claimant may seek~~
18 ~~compensation for the property damage or physical injury from a~~
19 ~~governmental agency, if the claimant shows~~ **A CLAIMANT MUST SHOW**
20 that all of the following ~~existed~~ **APPLIED** at the time of the event:

21 (a) The governmental agency was an appropriate governmental
22 agency.

23 (b) The sewage disposal system had a defect, **SUBJECT TO**
24 **SUBSECTION (5) .**

25 (c) The governmental agency knew, or in the exercise of
26 reasonable diligence should have known, about the defect.

27 (d) The governmental agency, having the legal authority to do

1 so, failed to take reasonable steps in a reasonable amount of time
2 to repair, correct, or remedy the defect.

3 (e) The defect was a substantial proximate cause of the event
4 and the property damage or physical injury.

5 (4) In addition to the requirements of subsection (3), to
6 obtain compensation for property damage or physical injury from a
7 governmental agency, a claimant must show both of the following:

8 (a) If any of the damaged property is personal property,
9 reasonable proof of ownership and the value of the damaged personal
10 property. Reasonable proof may include testimony or records
11 documenting the ownership, purchase price, or value of the
12 property, or photographic or similar evidence showing the value of
13 the property.

14 (b) The claimant complied with section 19.

15 **(5) A PART OF A SEWAGE DISPOSAL SYSTEM DOES NOT HAVE A DESIGN**
16 **DEFECT OR CONSTRUCTION DEFECT IF IT WAS DESIGNED AND CONSTRUCTED**
17 **ACCORDING TO APPLICABLE STATE STANDARDS OR REQUIREMENTS AS SET**
18 **FORTH IN A STATE STATUTE, RULE, OR PERMIT, OR IN ANY COURT ORDER,**
19 **ADMINISTRATIVE ORDER, OR CONSENT ORDER IN EFFECT WHEN THE PART OF**
20 **THE SEWAGE DISPOSAL SYSTEM WAS CONSTRUCTED OR IMPROVED. THE**
21 **DETERMINATION OF WHAT STANDARDS AND REQUIREMENTS MEET THE**
22 **CONDITIONS OF THIS SUBSECTION SHALL BE MADE BY A COURT AS A MATTER**
23 **OF LAW.**

24 Sec. 19. (1) Except as provided in subsections (3) and (7), a
25 claimant is not entitled to compensation under section 17 unless
26 the claimant notifies the governmental agency of a claim of damage
27 or physical injury, in writing, within 45 days after the date the

1 damage or physical injury was discovered, or in the exercise of
2 reasonable diligence should have been discovered. The written
3 notice under this subsection shall contain the content required by
4 subsection (2)(c) and shall be sent to the ~~individual within the~~
5 governmental agency **CONTACT** designated ~~in~~**UNDER** subsection (2)(b).
6 To facilitate compliance with this section, a governmental agency
7 owning or operating a sewage disposal system shall make available
8 public information about the provision of notice under this
9 section.

10 (2) If a person who owns or occupies affected **REAL** property
11 notifies a ~~contacting agency orally or~~ **GOVERNMENTAL AGENCY CONTACT**
12 in writing of an event before providing a notice of a claim that
13 complies with subsection (1), the ~~contacting~~ **GOVERNMENTAL** agency
14 **CONTACT** shall provide the person with all of the following
15 information in writing:

16 (a) A sufficiently detailed explanation of the notice
17 requirements of subsection (1) to allow a claimant to comply with
18 the requirements.

19 (b) The name and address of the ~~individual within the~~
20 governmental agency **CONTACT** to whom a claimant must send written
21 notice under subsection (1).

22 (c) The required content of the written notice under
23 subsection (1), which is limited to the claimant's name, address,
24 and telephone number, the address of the affected property, the
25 date of discovery of any property damages or physical injuries, and
26 a brief description of the claim.

27 (3) A claimant's failure to comply with the notice

1 requirements of subsection (1) does not bar the claimant from
2 bringing a civil action under section 17 against a governmental
3 agency notified under subsection (2) if the claimant can show both
4 of the following:

5 (a) The claimant notified the ~~contacting~~**GOVERNMENTAL** agency
6 **CONTACT** under subsection (2) during the period for giving notice
7 under subsection (1).

8 (b) The claimant's failure to comply with the notice
9 requirements of subsection (1) resulted from the ~~contacting~~
10 ~~agency's~~**GOVERNMENTAL AGENCY CONTACT'S** failure to comply with
11 subsection (2).

12 (4) If a governmental agency that is notified of a claim under
13 subsection (1) believes that a different or additional governmental
14 agency may be responsible for the claimed property damages or
15 physical injuries, the governmental agency shall notify the
16 ~~contacting~~**GOVERNMENTAL** agency **CONTACT** of each additional or
17 different governmental agency of that fact, in writing, within 15
18 business days after the date the governmental agency receives the
19 claimant's notice under subsection (1). This subsection is intended
20 to allow a different or additional governmental agency to inspect a
21 claimant's property or investigate a claimant's physical injury
22 before litigation. Failure by a governmental agency to provide
23 notice under this subsection to a different or additional
24 governmental agency does not bar a civil action by the governmental
25 agency against the different or additional governmental agency.

26 (5) If a governmental agency receives a notice from a claimant
27 or a different or additional governmental agency that complies with

1 this section, the governmental agency receiving notice may inspect
2 the damaged property or investigate the physical injury. A claimant
3 or the owner or occupant of affected property shall not
4 unreasonably refuse to allow a governmental agency subject to a
5 claim to inspect damaged property or investigate a physical injury.
6 This subsection does not prohibit a governmental agency from
7 subsequently inspecting damaged property or investigating a
8 physical injury during a civil action brought under section 17.

9 (6) If a governmental agency notified of a claim under
10 subsection (1) and a claimant do not reach an agreement on the
11 amount of compensation for the property damage or physical injury
12 within 45 days after the receipt of notice under this section, the
13 claimant may institute a civil action. A civil action shall not be
14 commenced under section 17 until after that 45 days.

15 (7) This section does not apply to claims for noneconomic
16 damages made under section 17.

17 Enacting section 1. This amendatory act takes effect 90 days
18 after the date it is enacted into law.



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LEGISLATIVE LIABILITY REVIEW (LLR) COMMITTEE NOTES
March 29, 2017

MCRCSIP Board Room – Lansing, Michigan

Committee Members Present: A. Cooper, D. Fuller, L. Livermore

Board Members Present: T. O'Rourke, D. Pohl, J. Valente

Staff Present: G. Cummings, D. Schultz

Consultants: Bill Henn, Attorney; Ron DeCook, Consultant

The committee recommended we have our Consultants and/or other experts, as appropriate, prepare a short written analysis of the following Bills focusing on the concerns as noted:

1. HB 4290

Sponsor: Rep. Michael Webber(R-Oakland County)

Co-Sponsors: None

Bill referred to: House Local Government Committee 3/1/2017

Local Government Committee Members: Chair James Lower(R-Montcalm/Gratiot Counties)

Kathy Crawford(R-Oakland County)

James Runestad(R-Oakland County)

Gary Howell(R-Lapeer County)

Julie Alexander(R-Jackson County)

Ben Frederick(R-Shiawassee/Saginaw Counties)

Roger Hauk(R-Isabella/Midland Counties)

Patrick Green(D-Wayne County)

Jeremy Moss(D-Oakland County)

Jim Ellison(D-Oakland County)

Terry Sabo(D-Muskegon County)

House/Senate Fiscal Agency Analysis-Currently not available

Confidential Attorney/Client Memo

To: Gayle Cummings/MCRCSIP
From: DJB/WLH
Date: April 12, 2017
Re: MCRCSIP Position on House Bill 4290

Proposed Legislation:

Michigan House Bill 4290 was introduced in the Michigan House of Representatives in March 2017 and was referred to the Committee on Local Government. It is a bill to amend 1964 PA 170, which is the Government Tort Liability Act ("GTLA"), and it makes some changes to the sewage disposal event exception to governmental immunity. Specifically, it adds substantive language to MCL 691.1416(k), creates a new section MCL 691.1417(5), alters MCL 691.1419(2) to require notice in writing and not orally, and makes a variety of cosmetic changes. If the bill becomes law, the first part of MCL 691.1416(k) will read as follows (proposed new language emphasized):

(k) "Sewage disposal system event" or "event" means the overflow or backup of a sewage disposal system onto real property *owned or occupied by a claimant except when rainfall, as measured by a generally recognized and accepted method, at or near the affected area or within the sewage disposal system service area was 1.7 inches or more in any 1-hour period or was 3.3 inches or more in a continuous 24-hour period.*

In addition, if the bill becomes law, the newly created section MCL 691.1417(5) will read as follows:

(5) A part of a sewage disposal system does not have a design defect or construction defect if it was designed and constructed according to applicable state standards or requirements as set forth in a state statute, rule, or permit, or in any court order, administrative order, or consent order in effect when the part of the sewage disposal system was constructed or improved. The determination of what standards and requirements meet the conditions of this subsection shall be made by a court as a matter of law.

MCRCSIP should support the passage of this bill and suggest an addition, as discussed in further detail below.

April 12, 2017
Re: Position on HB 4290

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Statement of Support by MCRCSIP

The GTLA states that County Road Commissions and other government agencies are immune from tort liability if the governmental agency is engaged in the exercise or discharge of a governmental function, subject only to the exceptions provided in the GTLA. One of those exceptions is the sewage disposal system event exception, which allows County Road Commissions to be held liable for damages in certain situations caused by a sewage disposal system event, as defined by the statute. The proposed change to MCL 691.1416(k) and the proposed addition of MCL 691.1417(5) both impose additional limits on the situations in which a County Road Commission can be held liable for damages under the sewage disposal system event exception. MCRCSIP supports these efforts to clarify and limit the circumstances under which a County Road Commission can face tort liability under this exception.

The additional language to MCL 691.1416(k) proposed by this bill represents a sensible effort to recognize the limits of preparation and infrastructure for truly exceptional weather events. It is good to draw a line at a certain amount of rain, here 1.7 inches in an hour or 3.3 inches in 24 hours, to establish a point at which the weather event is so severe that liability for damages should not attach. MCRCSIP approves of this recognition that at a certain point, rainfall can exceed the limits of appropriate drainage and sewage disposal systems without negligence and without a valid reason for a finding of liability.

The new MCL 691.1417(5) proposed by this bill limits potential liability exposure a different way: it explicitly states that a part of a sewage disposal system does not have a design defect or construction defect if it complied with applicable legal requirements at the time it was constructed or improved. In other words, if a County Road Commission complied with the requirements of the legally imposed standards and requirements, there cannot be a finding that the design or construction was defective. This is an excellent addition to MCL 691.1417, because it means that as long as applicable rules, regulations, and standards are followed, County Road Commissions will not have to deal with claims that "following the rules" was not enough. It sets a clear baseline for appropriate construction and improvement, and removes the possibility of liability for a claim that a County Road Commission should have gone above and beyond the applicable standards and requirements. It also expressly clarifies that County Road Commissions do not face liability under this section for failure to reconstruct or update previously completed systems every time there is a change in the applicable standards and requirements.

As far as the alteration to MCL 691.1419(2), the bill proposes to remove the language allowing a person to only orally notify a government agency of a sewage disposal system event in order for that person to receive information about the event. This change is helpful because by requiring notice of a problem in writing instead of accepting oral notice, all parties involved will have a better understanding of if and when notice has been provided.

In addition, MCRCSIP proposes an additional limitation to the sewage disposal event exception to governmental immunity. Specifically, MCL 691.1416(j) defines a "sewage disposal system" as follows:

April 12, 2017

Re: Position on HB 4290

Page 3

“Sewage disposal system” means all interceptor sewers, storm sewers, sanitary sewers, combined sanitary and storm sewers, sewage treatment plants, and all other plants, works, instrumentalities, and properties used or useful in connection with the collection, treatment, and disposal of sewage and industrial wastes, and includes a storm water drain system under the jurisdiction and control of a governmental agency.

This definition does not expressly include county highway roadside ditches. However, in *Linton v Arenac Co Rd Com'n*, 273 Mich App 107; 729 NW2d 883 (2006), the Court of Appeals determined that a roadside drainage ditch was a storm water drain that could be found to be part of a storm water drain system. It is MCRC SIP’s position that a roadside drainage ditch is fundamentally different from the “interceptor sewers, storm sewers, sanitary sewers, combined sanitary and storm sewers, sewage treatment plants, and all other plants, works, instrumentalities, and properties” listed in MCL 691.1416(j) as things that make up a sewage disposal system.

For that reason, MCRC SIP proposes that the following sentence (or a similar one with the same substantive idea) be added to MCL 691.1416(j):

A “sewage disposal system” does not include a roadside ditch immediately adjacent to a highway under the jurisdiction a government agency, where the primary function of the ditch is to provide drainage for the highway.

MCRC SIP believes this additional language would properly clarify the extent of the sewage disposal event exception and limit the reach of the exception to its intended purpose.

Therefore, MCRC SIP supports HB 4162 and the sensible limits it places on the sewage disposal event exception to governmental immunity in the GTLA, and MCRC SIP suggests that the above referenced proposed addition to MCL 691.1416(j) be added to the bill.

Confidential Attorney/Client Memo

To: Gayle Cummings/MCRCSIP
From: ASN; WLH
Date: April 12, 2017
Re: MCRCSIP Suggested Potential Amendments to MCL 224.21 and MCL 691.1402 (notice provisions)

Legal Issue

With the publication of *Streng v Mackinac County Road Commission*, the Court of Appeals essentially overruled decades of Michigan law regarding the notice plaintiffs must provide to road commissions as a condition precedent to asserting a highway defect claim. Specifically, in *Streng*, the Court of Appeals held that the notice provision of the Governmental Tort Liability Act (GTLA), MCL 691.1404, does not apply to highway defect claims brought against county road commissions. Instead, the Court applied the much older notice provision of the County Road Law, MCL 224.21. This was despite the fact that no Michigan court has applied the notice provision of MCL 224.21 to highway defect claims since 1970 and, in fact, MCL 224.21 has been found to be unconstitutional by our Supreme Court since that time.

Accordingly, as a result of *Streng*, the protocol for road commissions regarding notice of a highway defect claim must be reevaluated according to the requirements found in MCL 224.21. For example, unlike the GTLA, MCL 224.21 only gives a plaintiff sixty days to provide his or her notice. However, the content requirements for the notice are relaxed, meaning that a plaintiff must provide less detail to a road commission. Looking ahead, if *Streng* stands, it will necessarily change the litigation strategy for road commissions regarding highway defect claims.

As such, the Pool should consider advocating for the following amendments to MCL 224.21 and MCL 691.1402.

MCL 224.21

To correct the Court's opinion in *Streng*, the Pool should advocate for the following amendments to MCL 224.21 (additions indicated by red text; deletions by strikethrough):

- (1) A board of county road commissioners shall not contract indebtedness for an amount in excess of the money credited to the board and received by the county treasurer. However, the board may incur liability to complete roads under construction and upon contracts, after a tax is voted, to an amount not exceeding 3/4 of the tax.

April 12, 2017

Re: Amendments to MCL 224.21 and 691.1402 Page 2

(2) A county shall keep in reasonable repair, so that they are reasonably safe and convenient for public travel, all county roads, bridges, and culverts that are within the county's jurisdiction, are under its care and control, and are open to public travel. ~~The provisions of law respecting the liability of townships, cities, villages, and corporations for damages for injuries resulting from a failure in the performance of the same duty respecting roads under their control apply to counties adopting the county road system.~~ This subsection is subject to section 82124 of part 821 (snowmobiles) of the natural resources and environmental protection act, Act No. 451 of the Public Acts of 1994, being section 321.82124 1 of the Michigan Compiled Laws, and section 81131 of part 811 (off-road recreation vehicles) of Act No. 451 of the Public Acts of 1994, being section 324.81131 of the Michigan Compiled Laws.

(3) An action arising under subsection (2) shall be brought against the board of county road commissioners of the county and service shall be made upon the clerk of the board and upon the chairperson of the board. **Notice shall be given as provided in MCL 691.1404.** ~~The board shall be named in the process as the "board of county road commissioners of the county of". Any judgment obtained against the board of county road commissioners in the action shall be audited and paid from the county road fund as are other claims against the board of county road commissioners. However, a board of county road commissioners is not liable for damages to person or property sustained by a person upon a county road because of a defective county road, bridge, or culvert under the jurisdiction of the board of county road commissioners, unless the person serves or causes to be served within 60 days after the occurrence of the injury a notice in writing upon the clerk and upon the chairperson of the board of county road commissioners. The notice shall set forth substantially the time when and place where the injury took place, the manner in which it occurred, the known extent of the injury, the names of any witnesses to the accident, and that the person receiving the injury intends to hold the county liable for damages. This section applies to all county roads whether they become county roads under this chapter or under Act No. 59 of the Public Acts of 1915, being sections 247.418 to 247.481 of the Michigan compiled laws.~~

MCL 691.1402

Tied to the amendment of MCL 224.21, MCL 691.1402(1) should likewise be amended as follows:

(1) Each governmental agency having jurisdiction over a highway shall maintain the highway in reasonable repair so that it is reasonably safe and convenient for public travel. A person who sustains bodily injury or damage to his or her property by reason of failure of a governmental agency to keep a highway under its jurisdiction in reasonable repair and in a condition reasonably safe and fit for travel may recover the damages suffered by him or her from the governmental agency. ~~The liability, procedure, and remedy as to county roads under the jurisdiction of a county road commission shall be as provided in section 21 of chapter IV of 1909 PA 283, MCL~~

April 12, 2017

Re: Amendments to MCL 224.21 and 691.1402 Page 3

~~224.21.~~ Except as provided in section 2a,1 the duty of a governmental agency to repair and maintain highways, and the liability for that duty, extends only to the improved portion of the highway designed for vehicular travel and does not include sidewalks, trailways, crosswalks, or any other installation outside of the improved portion of the highway designed for vehicular travel. A judgment against the state based on a claim arising under this section from acts or omissions of the state transportation department is payable only from restricted funds appropriated to the state transportation department or funds provided by its insurer.

Confidential Attorney/Client Memo

To: Gayle Cummings/MCRCSIP
From: BMD/WLH
Date: April 13, 2017
Re: MCRCSIP suggestions for potential amendment to MCL 257.726

Summary

In MCL 257.726(1), the Michigan Legislature has provided that local authorities, including townships and County Road Commissions, may adopt truck route resolutions or ordinances. Where townships pass conflicting resolutions or ordinances, County Road Commissions have the authority under MCL 257.726(3) to “approve or void” those ordinances. However, MCL 257.726(3) should be modified or deleted so that County Road Commissions are not forced to adjudicate disputes between townships. In the current scheme, a Road Commission can only approve or void the ordinance, meaning one township will be always be unsatisfied with the result, placing the Road Commission in the cross-hairs for litigation. Additionally, the statute should contain a provision stating that a County Road Commission truck route resolution preempts any township, city or village truck route resolution or ordinance.

Township Ordinances Prohibiting or Limiting Trucks and Commercial Vehicles

MCL 257.726 allows local authorities, and County Road Commissions, to prohibit the operation of trucks or other commercial vehicles on designated highways or streets, impose weight limitations, and provide that only certain highways or streets may be used by trucks or other commercial vehicles by passing an ordinance or resolution.

If a township establishes a prohibition or limitation for trucks or commercial vehicles, and an adjoining township determines that resulted in increased traffic, the adjoining township may submit a written objection to the County Road Commission under MCL 257.726(3). The objection must explain how the prohibition or limitation diverts traffic onto the border highway or shared street.

The County Road Commission then investigates the objection, and the two townships are required to negotiate in good faith to resolve the objection. If the objection is not resolved within 60 days, the County Road Commission is required to either approve or void the prohibition or limitation.

Proposed Amendment to MCL 257.726

April 13, 2017
Re: MCL 257.726

Page 2

MCL 257.726(3) should be amended or deleted so that Road Commissions are no longer responsible for investigating and resolving disputes between townships. First, Road Commissions should not be required to expend resources to investigate the impact of a township's ordinance. Second, the current system for resolving objections—which may require a Road Commission to either overrule a township's ordinance, or uphold it despite the wishes of another township—puts County Road Commissions in a very difficult situation. Either way, the Road Commission is overruling a township's wishes, likely making the township leadership and local residents unhappy. Moreover, the statute provides no standard by which the Road Commission should come to its decision.

An additional flaw in the statute as written is that it contains no hierarchy for competing truck route ordinances or resolutions. If a County Road Commission passes a truck route resolution, that resolution should preempt any conflicting township, city or village ordinance or resolution. The clearest way to achieve this result is to add specific language to the statute recognizing that hierarchy.

Perhaps the most elegant solution to both of these issues is to redraft subsection (3) so that in the event of a conflict between township resolutions or ordinances, the Road Commission is compelled to draft its own truck route resolution, which preempts the township resolutions or ordinances. In the alternative, subsection (3) could simply be eliminated.

Confidential Attorney/Client Memo

To: Gayle Cummings/MCRCSIP
From: DJB; WLH
Date: April 12, 2017
Re: MCRCSIP Recommendation for Potential Amendment to MCL 691.1402 (Open and Obvious)

Recent Municipal Corporation Legislation on the Open and Obvious Doctrine:

Recently, 2016 PA 419 was enacted by the Michigan Legislature, and it went into effect in January 2017. It created a new MCL 691.1402a(5), which states as follows:

(5) In a civil action, a municipal corporation that has a duty to maintain a sidewalk under subsection (1) may assert, in addition to any other defense available to it, any defense available under the common law with respect to a premises liability claim, including, but not limited to, a defense that the condition was open and obvious.

This provision provides municipal corporations with the ability to employ powerful premises liability defenses in the context of claims that they failed to properly maintain a sidewalk. Most notably, it allows municipal corporations to assert a defense that a condition caused by a defect was open and obvious.

The open and obvious defense in premises liability has been recently summarized as follows by the Michigan Supreme Court:

Perfection is neither practicable nor required by the law, and “[u]nder ordinary circumstances, the overriding public policy of encouraging people to take reasonable care for their own safety precludes imposing a duty on the possessor of land to make ordinary [conditions] ‘foolproof.’ ” Thus, an integral component of the duty owed to an invitee considers whether a defect is “open and obvious.” The possessor of land “owes no duty to protect or warn” of dangers that are open and obvious because such dangers, by their nature, apprise an invitee of the potential hazard, which the invitee may then take reasonable measures to avoid. Whether a danger is open and obvious depends on whether it is reasonable to expect that an average person with ordinary intelligence would have discovered it upon casual inspection. [*Hoffner v Lanctoe*, 492 Mich 450, 460-461; 821 NW2d 88 (2012) (citations omitted)].

This defense sensibly recognizes that people have a baseline duty to provide for their own safety, such that they cannot recover damages caused by conditions that a reasonable person would have seen and avoided. The inclusion of the open and obvious defense in the context of sidewalk maintenance

April 12, 2017

Re: Proposed Change to MCL 691.1402

Page 2

makes sense, and it would be similarly appropriate for such a defense to be available in the context of highway repair and maintenance.

Proposed Similar Statutory Provision

MCRCSIP proposes that this same language now present in MCL 691.1402a(5) be added to MCL 691.1402, so that County Road Commissions (and other governmental agencies) are empowered to use these same defenses, most notably the open and obvious defense. To do so, MCRCSIP recommends inserting a new section 5 to MCL 691.1402 and renumbering the other sections accordingly. The new MCL 691.1402(5) would state as follows:

(5) In a civil action, a government agency that has a duty to maintain a highway under subsection (1) may assert, in addition to any other defense available to it, any defense available under the common law with respect to a premises liability claim, including, but not limited to, a defense that the condition was open and obvious.

MCL 691.1402 and MCL 691.1402(a) are very similar statutory provisions, and they impose similar duties on governmental entities that maintain and repair highways and sidewalks. Now that municipal corporations have the ability to raise these common-law defenses in response to a claim dealing with sidewalk maintenance, governmental agencies should have that same ability in response to a claim dealing with highway maintenance. Adopting a provision along these lines would limit the liability of Road Commissions in situations where a person should have taken reasonable action for their own safety but failed to do so.

For that reason, MCRCSIP supports the creation of a new MCL 691.1402(5) that allows governmental agencies to assert common law defenses, including the defense that a condition was open and obvious, in response to a claim based on a duty to maintain a highway under MCL 691.1402.



DeCook
Governmental Policy & Strategies

216 North Chestnut • Lansing • MI • 48933

p| 517.712.1461 • e| ron.decook@decook-gps.com



DECOOK GOVERNMENTAL POLICY & STRATEGIES CONSULTING CONTRACT

SCOPE OF PRACTICE:

DeCook Governmental Policy & Strategies (DeCook-GPS) agrees to provide consulting services to the Michigan County Road Commission Self-Insurance Pool.

Duties of DeCook-GPS shall include, but not be limited to:

- a. Assist in the analysis and development of policy to achieve the Michigan County Road Commission Self-Insurance Pool's goals and objectives. Provide information as needed to the Michigan County Road Commission Self-Insurance Pool.
- b. Provide consultation, assistance, and research in the development and implementation of government relations, goals, and objectives.
- c. Preparation of and assistance with any reports as required by MCRC SIP or law. DeCook-GPS will provide a copy of each report.

TERMS:

Terms of this agreement shall be from April 1, 2017 - December 31, 2017

FEES AND EXPENSES:

A monthly payment of \$1,500 /month will be paid to DeCook-GPS to cover professional services. Payment is due thirty days after receipt of an invoice. Other expenses, such as extraordinary travel or promotional activities will be billed separately, with prior approval of the Michigan County Road Commission Self-Insurance Pool.

Ronald K. DeCook, President
DeCook Governmental Policy & Strategies

Gayle A. Cummings, Administrator
**Michigan County Road Commission
Self-Insurance Pool**

Date

Date



**MICHIGAN
COUNTY
ROAD
COMMISSION
SELF-INSURANCE
POOL**

Board of Directors

Chairman
Timothy J Haagsma
Kent CRC

Vice Chairman
Dennis J Stanek
Delta CRC

Alan D Cooper
Wexford CRC

Douglas E Fuller
Washtenaw CRC

Brian A Gutowski
Emmet CRC

Lester R Livernore
Mackinac CRC

Timothy L O'Rourke
Roscommon CRC

Dorothy G Pohl
Ionia CRC

Joseph F Valente
Marquette CRC

Administrator
Gayle A Cummings

Assistant Administrator-CFO
Board Treasurer
Kristi Peña

Executive Assistant
Board Secretary
Deborah L Schultz

**Assistant Administrator-
Director of Loss Control**
Michael E Shultz

417 N Seymour Ave
Suite 2
Lansing MI 48933

www.mcrcsip.org
(517) 482-9166
(800) 842-4971
Fax: (517) 485-4809

Date: June 5, 2017
To: MCRC SIP Member Contacts
From: MCRC SIP Board
Subject: 2017 Board of Directors Election

This year, we have two At-Large positions up for election:

1. One At-Large position for a three-year term (2017–2020)
2. One At-Large position for the one-year remaining on a three-year term (2017–2018)

Enclosed is your official blue At-Large ballot, the four letters of candidacy and a blue ballot envelope. Please vote for no more than two persons for the two At-Large positions. The person receiving the most votes will be elected to the three-year term of office ending 2020, and the person receiving the second largest number of votes will be elected to serve the remainder of the three-year term ending 2018.

Once you have voted, please sign the ballot and deliver to the Pool Office via USPS or overnight mail to arrive no later than Friday, July 14. The sealed ballots will be turned over to the Canvassing Committee for opening and tabulation.

Please mail this ballot separately from any other ballots you may be sending out.

The results of the election will be announced during our Annual Membership Meeting on July 20.

You can register for the Annual Membership Meeting on our website, www.mcrcsip.org.

Your Board of Directors thanks you for your continued support and look forward to seeing you in July.

Enclosures: Board of Directors' At-Large Ballot Package



**MICHIGAN COUNTY ROAD COMMISSION SELF-INSURANCE POOL
2017 OFFICIAL VOTING BALLOT**

**BOARD OF DIRECTORS
AT-LARGE REPRESENTATIVE**

Please vote for **one person for the At-Large position for a three-year term (ending 2020) and one person for the one-year term (ending 2018) remaining on a three-year term.** The person receiving the most votes will be elected for a three-year term.

NOMINEE

VOTE

Lester Livermore (I)
Mackinac CRC

☐

Tim O'Rourke (I)
Roscommon CRC

☐

John Rogers
Kalkaska CRC

☐

Russell Williams
Marquette CRC

☐

(I) Denotes Incumbent

Please place ballot in the enclosed blue **BALLOT** envelope and mail so that the ballot arrives by July 3, 2017.

Michigan County Road Commission
Self-Insurance Pool
417 Seymour Avenue, Suite 2
Lansing, Michigan 48933

_____ County Road Commission

Completed By

Signature

Title
MCRCSIP2017At-Large

March 26, 2017

MCRCSIP Board of Directors
417 Seymour Ave. Suite 2
Lansing MI, 48933

Re: Candidacy for MCRCSIP Board of Directors

Dear MCRCSIP Member Road Commissions,

I am pleased to be submitting my name for Reelection to the MCRCSIP 2017 Board of Director's Ballot as an At-Large Candidate.

Since being appointed to the MCRCSIP Board last year, I have learned a lot about our Pool, and Risk Pooling in general. I would like to continue that process and continue to help to oversee the goals and objectives of this organization.

I have been an elected member of the Mackinac County Road Commission since 1999, and am currently its Chairman, a position I have held for 14 years. After 18 years of serving the people of Mackinac County, I am honored to have had the opportunity to participate with MCRCSIP and to serve all of our county road commissions. While my background and training have provided me with many tools and skills to be effective as a Director of this Board, it has only been recently that I have had the time to significantly participate on this Board. My co-commissioners agree that it is our turn to serve this great organization and to give back something to this Pool that has provided support to member road commissions for the past 30+ years.

Participating in the management of our liability pool is an interesting and complex process that I hope to get more familiar with, knowledgeable of and skilled in over the coming years. I want the opportunity to continue to contribute to the success of this Pool as your At-Large Director and your support would be greatly appreciated.

Respectfully Submitted,

Lester Livermore Jr.
Chairman, Mackinac County Road Commissioner
P.O. Box 231
Naubinway MI, 49762
906-235-1016
Llivermore68@gmail.com

Timothy L. O'Rourke
103 Oaklane Drive
Roscommon MI 48653
989-821-3656 (H)
989-942-6160 (C)
989-366-0333 ext#13 (W)
orourket@roscommoncrc.com

Members of the MCRC SIP Insurance Pool, I would be honored to place my name in nomination for the 2017-20 At Large Directors Position. I believe that my 43+ years working in the private and public sector in the road building industry give me a unique skill set for this position. I have learned a lot during the last couple of years serving on the Board.

I have been the Manager of the Roscommon County Road Commission since 2006. I have served in various capacities to the East Central Council over that period, including Sect./Treasurer, Vice Chair and Chairman. I also currently serve as the Councils Engineering Committee Representative. I am currently serving on the CRA Engineering Bituminous, APAM, Weight Limits and Federal Aid P.M. sub-committees. During the last 8 years I have had the privilege to be a presenter at the County Engineers Workshop(s), DEQ Transportation Conference, TAMC Annual Conference, APAM Yearly Conference and MTA Regional Conference(s) among others.

Prior to my employment at the Road Commission I spent 32 years working in the road building industry at various positions for many of the largest Paving Contractors in Michigan. My experiences over the last 43 years have taught me a great deal. I have been given the opportunity to gain knowledge in labor relations, negotiations, arbitration, fund management, personnel issues, public relations, training and safety. I have also been able to establish ongoing relationships with several Michigan Legislators.

I have helped to develop one of the most progressive safety and morale programs in the state. I would humbly ask for your support for re-election to the MCRC SIP Board of Directors At Large Position. If you have any questions about my service on the Board, please feel free to contact me anytime.

Sincerely Yours,

Tim O.

Tim O'Rourke, RCRC Manager

Kalkaska County Road Commission

1049 Island Lake Road
Kalkaska, MI 49646
Telephone: 231.258.2242
Facsimile: 231.258.8205

The Kalkaska County Road Commission is an Equal Opportunity Provider and Employer

Date: March 27, 2017
From: John S. Rogers, Manager, Kalkaska County Road Commission
To: All MCRCSIP Members
Subject: Candidate for MCRCSIP Board of Director Position

It would be with great honor to serve as a member of the MCRCSIP Board of Directors.

I have nearly 22 years of Road Commission experience starting as a truck driver in 1995 and working my way into my current position of Manager. I have always placed special emphasis on employee safety as well as public safety.

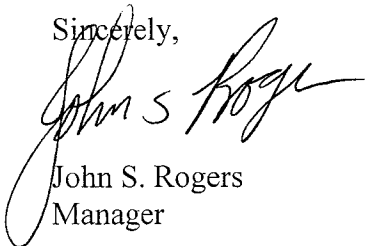
I believe I would be a valuable asset to the MCRCSIP Board of Directors not only because of my experiences with all aspects of Road Commission operations, but because of my other experiences as well which include:

- Retired Michigan Army National Guard (21 years)
- Past Supervisor for Rapid River Township (12 years)
- Past President of the Kalkaska Public School Board (current Vice President)

I would like to thank you for your consideration for an At-Large position on the MCRCSIP Board of Directors and I look forward to serving you.

Should you have any questions, feel free to contact me at the Kalkaska County Road Commission.

Sincerely,

A handwritten signature in black ink, appearing to read "John S. Rogers", is written over the printed name and title.

John S. Rogers
Manager

April 20th. 2017

MCRCSIP

APR 26 2017

To whom it may concern:

RECEIVED

I would like to submit my name as a candidate for MCRSIP board of directors. I have been a Road Commissioner in Marquette county for 11years. I also served on Commissioners committee for 9 years including 2 as chairman of the committee.

Sincerely,

Russell L. Williams

Marquette County Road Commission

A handwritten signature in cursive script that reads "Russell L. Williams".



**MICHIGAN
COUNTY
ROAD
COMMISSION
SELF-INSURANCE
POOL**

Board of Directors

Chairman
Timothy J Haagsma
Kent CRC

Vice Chairman
Dennis J Stanek
Delta CRC

Alan D Cooper
Wexford CRC

Douglas E Fuller
Washtenaw CRC

Brian A Gutowski
Emmet CRC

Lester R Livermore
Mackinac CRC

Timothy L O'Rourke
Roscommon CRC

Dorothy G Pohl
Ionia CRC

Joseph F Valente
Marquette CRC

Administrator
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Kristi Peña

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417 N Seymour Ave
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Lansing MI 48933

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(517) 482-9166
(800) 842-4971
Fax: (517) 485-4809

Date: June 5, 2017

To: MCRC SIP Member Contacts
Northern Michigan

From: MCRC SIP Board

Subject: 2017 Board of Directors Election

This year, we have the following four positions up for election:

1. Two Northern positions for three-year terms (2017–2020)
2. One At-Large position for a three-year term (2017–2020)
3. One At-Large position for the one-year remaining on a three-year term (2017–2018)

Enclosed is your official goldenrod Northern ballot and your official blue At-Large ballot along with the letters of candidacy and ballot envelopes.

Please vote for no more than two Northern candidates who will be elected to a three-year term ending 2020.

Please vote for no more than two At-Large candidates. The person receiving the most votes will be elected to the three-year term of office ending 2020, and the person receiving the second largest number of votes will be elected to serve the remainder of the three-year term ending 2018.

Once you have voted, please sign the ballots and deliver to the Pool Office via the USPS or overnight mail to arrive no later than Friday, July 14. The sealed ballots will be turned over to the Canvassing Committee for opening and tabulation.

Please mail these ballots separately from any other ballots you may be sending out.

The results of the election will be announced during our Annual Membership Meeting on July 20.

You can register for the Annual Membership Meeting on our website,
www.mcrcsip.org.

Your Board of Directors thanks you for your continued support and look forward to seeing you in July.

Enclosures: Board of Directors' Northern Ballot Package
Board of Directors' At-Large Ballot Package



**COUNTY ROAD COMMISSION SELF-INSURANCE POOL
2017 OFFICIAL VOTING BALLOT**

**BOARD OF DIRECTORS
NORTHERN REPRESENTATIVES**

Please vote for **two people to serve the Northern positions three-year term (ending 2020)**. The two people receiving the most votes will be elected to the two three-year terms of office.

NOMINEE

VOTE

Alan Cooper (I)

Wexford CRC

☐

Brian Gutowski (I)

Emmet CRC

☐

(I) Denotes Incumbent

Please place ballot in the enclosed goldenrod **BALLOT** envelope and mail so that the ballot arrives by July 3, 2017.

Michigan County Road Commission
Self-Insurance Pool
417 Seymour Avenue, Suite 2
Lansing, Michigan 48933

_____ County Road Commission

Completed By

Signature

Title

LORNE HAASE, CHAIRMAN
HAROLD FALAN, VICE-CHAIRMAN
HARRY HAGSTROM, MEMBER
ALAN D. COOPER, MANAGER
ANDREA HERMAN, FINANCE & BUSINESS MANAGER
KARL F. HANSON, P.E., COUNTY HIGHWAY ENGINEER
MARK HURLBURT, SUPERINTENDENT
DONALD PATNODE, ASSISTANT SUPERINTENDENT

85 WEST HIGHWAY M-115
BOON, MICHIGAN 49618
PHONE 231-775-9731
FAX 231-775-9732
WWW.WEXFORDCRC.ORG

WEXFORD COUNTY ROAD COMMISSION

OUR MISSION IS TO IMPROVE AND MAINTAIN A SAFE AND EFFICIENT ROAD SYSTEM

March 28, 2017

Mrs. Gayle Cummings
Pool Administrator
Michigan County Road Commission Self-Insurance Pool
Post Office Box 14119
Lansing, MI 48901-4901

Dear Gayle,

In response to your recent letter I would like to submit my name for one of the Northern Director positions for a three year term on the MCRCSIP Board.

I am keenly aware of the safety and liability issues that Road Commissions face every day. Having served on the MCRCSIP Board for 5 ½ years I have an increased appreciation for what a huge asset the Pool is to its members. There have been many tough decisions in that past 5 years that I believe has placed the Pool in a stronger more efficient position to serve its members. I strongly believe that member education and loss control should continue to be a priority in the Pool's effort to minimize liability

I currently serve on the CRA Public Relations and Education committee. I have also served on the Northern Association of County Road Commission Board and the General Policy committee. Locally, I am actively involved with the Cadillac Chamber of Commerce and have been a member of the Chamber's Leadership board for 12 years.

I have been employed by the Wexford County Road Commission since 1988 starting as a plow driver for 7 years, Superintendent for 2 years and Manager for the past 19 years. I was a heavy equipment operator for 9 years before coming to the road commission.

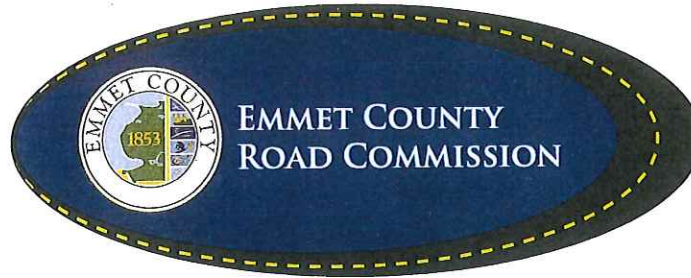
It is an honor to serve on the MCRCSIP Board, and if re-elected, I pledge to work with the other Board members and staff to continue the high quality of coverage and services that MCRCSIP provides for its members.

My Board supports my candidacy for this position and I would consider it a privilege to continue representing the members of this pool.

Sincerely,


Alan D. Cooper

LEROY P. SUMNER
LARRY WILLIAMS
FRANK ZULSKI, JR.
BRIAN A. GUTOWSKI, P.E.
ENGINEER - MGR.
DAWN MARTIN
CLERK



2265 E. HATHAWAY ROAD
HARBOR SPRINGS,
MICHIGAN 49740
OFFICE: (231) 347-8142
FAX: (231) 347-5787
EMMETCRC@EMMETCRC.COM

TO: MCRCSIP Member Road Commissions

FROM: Brian A. Gutowski – Engineer-Manager
Emmet County Road Commission

DATE: March 13, 2017

SUBJECT: MCRCSIP Board of Directors Position

A handwritten signature in blue ink that reads "Brian A. Gutowski".

It has been my pleasure to serve on the MCRCSIP Board of Directors the past 7 years. I have learned much over the few many years including being the Chair in 2015 and 2016. I have a strong desire to continue serving a full term representing the Northern Lower.

I am proud of MCRCSIP and wish to continue serving to bring the best liability coverage protecting our Michigan County Road Commissions.

If re-elected, I will continue to represent all Road Commissions on the MCRCSIP Board with a strong commitment to serve in your best interest.

It would be my honor to continue representing you on the MCRCSIP Board and I ask you for your support.



**MICHIGAN COUNTY ROAD COMMISSION SELF-INSURANCE POOL
2017 OFFICIAL VOTING BALLOT**

**BOARD OF DIRECTORS
AT-LARGE REPRESENTATIVE**

Please vote for **one person for the At-Large position for a three-year term (ending 2020) and one person for the one-year term (ending 2018) remaining on a three-year term.** The person receiving the most votes will be elected for a three-year term.

NOMINEE

VOTE

Lester Livermore (I)
Mackinac CRC

☐

Tim O'Rourke (I)
Roscommon CRC

☐

John Rogers
Kalkaska CRC

☐

Russell Williams
Marquette CRC

☐

(I) Denotes Incumbent

Please place ballot in the enclosed blue **BALLOT** envelope and mail so that the ballot arrives by July 3, 2017.

Michigan County Road Commission
Self-Insurance Pool
417 Seymour Avenue, Suite 2
Lansing, Michigan 48933

_____ County Road Commission

Completed By

Signature

Title
MCRCSIP2017At-Large

March 26, 2017

MCRCSIP Board of Directors
417 Seymour Ave. Suite 2
Lansing MI, 48933

Re: Candidacy for MCRCSIP Board of Directors

Dear MCRCSIP Member Road Commissions,

I am pleased to be submitting my name for Reelection to the MCRCSIP 2017 Board of Director's Ballot as an At-Large Candidate.

Since being appointed to the MCRCSIP Board last year, I have learned a lot about our Pool, and Risk Pooling in general. I would like to continue that process and continue to help to oversee the goals and objectives of this organization.

I have been an elected member of the Mackinac County Road Commission since 1999, and am currently its Chairman, a position I have held for 14 years. After 18 years of serving the people of Mackinac County, I am honored to have had the opportunity to participate with MCRCSIP and to serve all of our county road commissions. While my background and training have provided me with many tools and skills to be effective as a Director of this Board, it has only been recently that I have had the time to significantly participate on this Board. My co-commissioners agree that it is our turn to serve this great organization and to give back something to this Pool that has provided support to member road commissions for the past 30+ years.

Participating in the management of our liability pool is an interesting and complex process that I hope to get more familiar with, knowledgeable of and skilled in over the coming years. I want the opportunity to continue to contribute to the success of this Pool as your At-Large Director and your support would be greatly appreciated.

Respectfully Submitted,

Lester Livermore Jr.
Chairman, Mackinac County Road Commissioner
P.O. Box 231
Naubinway MI, 49762
906-235-1016
Llivermore68@gmail.com

Timothy L. O'Rourke
103 Oaklane Drive
Roscommon MI 48653
989-821-3656 (H)
989-942-6160 (C)
989-366-0333 ext#13 (W)
orourket@roscommoncrc.com

Members of the MCRCSIP Insurance Pool, I would be honored to place my name in nomination for the 2017-20 At Large Directors Position. I believe that my 43+ years working in the private and public sector in the road building industry give me a unique skill set for this position. I have learned a lot during the last couple of years serving on the Board.

I have been the Manager of the Roscommon County Road Commission since 2006. I have served in various capacities to the East Central Council over that period, including Sect./Treasurer, Vice Chair and Chairman. I also currently serve as the Councils Engineering Committee Representative. I am currently serving on the CRA Engineering Bituminous, APAM, Weight Limits and Federal Aid P.M. sub-committees. During the last 8 years I have had the privilege to be a presenter at the County Engineers Workshop(s), DEQ Transportation Conference, TAMC Annual Conference, APAM Yearly Conference and MTA Regional Conference(s) among others.

Prior to my employment at the Road Commission I spent 32 years working in the road building industry at various positions for many of the largest Paving Contractors in Michigan. My experiences over the last 43 years have taught me a great deal. I have been given the opportunity to gain knowledge in labor relations, negotiations, arbitration, fund management, personnel issues, public relations, training and safety. I have also been able to establish ongoing relationships with several Michigan Legislators.

I have helped to develop one of the most progressive safety and morale programs in the state. I would humbly ask for your support for re-election to the MCRCSIP Board of Directors At Large Position. If you have any questions about my service on the Board, please feel free to contact me anytime.

Sincerely Yours,

Tim O.

Tim O'Rourke, RCRC Manager

Kalkaska County Road Commission

1049 Island Lake Road
Kalkaska, MI 49646
Telephone: 231.258.2242
Facsimile: 231.258.8205

The Kalkaska County Road Commission is an Equal Opportunity Provider and Employer

Date: March 27, 2017
From: John S. Rogers, Manager, Kalkaska County Road Commission
To: All MCRCSIP Members
Subject: Candidate for MCRCSIP Board of Director Position

It would be with great honor to serve as a member of the MCRCSIP Board of Directors.

I have nearly 22 years of Road Commission experience starting as a truck driver in 1995 and working my way into my current position of Manager. I have always placed special emphasis on employee safety as well as public safety.

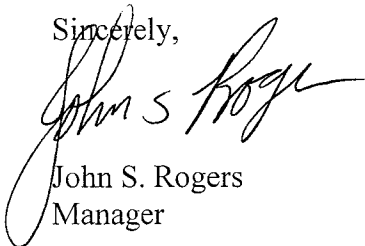
I believe I would be a valuable asset to the MCRCSIP Board of Directors not only because of my experiences with all aspects of Road Commission operations, but because of my other experiences as well which include:

- Retired Michigan Army National Guard (21 years)
- Past Supervisor for Rapid River Township (12 years)
- Past President of the Kalkaska Public School Board (current Vice President)

I would like to thank you for your consideration for an At-Large position on the MCRCSIP Board of Directors and I look forward to serving you.

Should you have any questions, feel free to contact me at the Kalkaska County Road Commission.

Sincerely,

A handwritten signature in black ink, appearing to read "John S. Rogers", is written over the printed name and title.

John S. Rogers
Manager

April 20th. 2017

MCRCSIP

APR 26 2017

To whom it may concern:

RECEIVED

I would like to submit my name as a candidate for MCRSIP board of directors. I have been a Road Commissioner in Marquette county for 11years. I also served on Commissioners committee for 9 years including 2 as chairman of the committee.

Sincerely,

Russell L. Williams

Marquette County Road Commission

A handwritten signature in cursive script that reads "Russell L. Williams".



MCRCSIP - Loss Control Service / Activities



(February 1st – March 31st, 2017)

The following information is a summary of loss control service visits and activities that have occurred during the period referenced above. Any questions regarding this information can be directed toward Mike Shultz – Director of Loss Control / Training.

TOTAL # OF SERVICE VISITS / ACTIVITIES (Since April 1st 2016) = 278

TOTAL # OF SERVICE VISITS / ACTIVITIES (This period) = 61

THIS PERIOD BREAKDOWN:

- ✓ Member Visits with Audits, Training, Workshops, Seminars, Special Meetings (Note: Most training session(s) are in-house and may include more than one subject) = 55
 - Audit Recommendations (i.e. Buildings, Work Sites, Road Surveillance) = 131
 - Road Surveillance (miles driven) = 80 - Vehicle Miles Driven = 11,173
- ✓ Pool Cue Articles / Road Side Chats = 0
- ✓ MCRCSIP Loss Control Activities with related meetings (i.e. Board of Director, Staff, Department, Special Meeting, CRA Show, Council), including conferences and seminar training = 6

2016-2017 POLICY PERIOD TOTALS

Breakdown:

Total: 278

Member Audits, Training: 235

Department Miles: 47,322

Regional Seminar Events: 4

Surveillance Miles: 1,735

Recommendations: 846

Pool Cue Articles: 4

Other Activities: 43

COMMENTS: The policy year included many activities to help meet the needs of our members. From many in-house training sessions, regional workshops “Run Over – Back Over Prevention” to garage and work zone safety audits. Members comment that they appreciate our assistance in establishing and maintaining their safety and loss prevention programs. Mike Phillips and I greatly appreciate the support of our MCRCSIP Board of Directors, Administrator and Staff.



Loss Control Service / Activities



NEW POLICY PERIOD – 2017 to 2018

(April 1st – April 30th, 2017)

TOTAL # OF SERVICE VISITS / ACTIVITIES (Since April 1st 2017) = 19

TOTAL # OF SERVICE VISITS / ACTIVITIES (This period) = 19

THIS PERIOD BREAKDOWN:

- ✓ Member Visits with Audits, Training, Workshops, Seminars, Trade Show, Special Meetings (Note: Most training session(s) are in-house and may include more than one subject) = 14
 - Audit Recommendations (i.e. Buildings, Work Sites, Road Surveillance) = 0
 - Road Surveillance (miles driven) = 0 - Vehicle Miles Driven = 3,367
- ✓ Pool Cue Articles / Road Side Chats = 0
- ✓ MCRCSIP Loss Control Activities with related meetings (i.e. Board of Director, Staff, Department, Special Meeting, Council), including conferences and seminar training = 5