

## **Confidential Attorney/Client Memo**

To: MCRCSIP LLR Committee  
From: Bill Henn and Andrea Nester  
Date: November 16, 2017  
Re: HB 5096 Summary

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### **HB 5096 Summary**

HB 5096 would amend the Drain Code (MCL 280.1, et seq.) by permitting (and placing limitations on) fees a drain commissioner could charge for the “authorization of a broadband project.”

Specifically, if any “broadband project” requires authorization from the drain commission, the commissioner would be permitted to charge up to \$100.00 per drain crossing or a fee of \$1,000.00 for the entire project—whichever is less. A “broadband project” is defined under the bill as “the construction, installation, or removal of broadband facilities or equipment in the right-of-way of one or more drains, as described by a broadband service provider in a single application filed with the drain commissioner.” Further, “broadband service provider” is defined as a person that provides broadband service, as defined in the Michigan Telecommunications Act, MCL 484.2102 (i.e., not DAS).

Of note, the fee would be deposited with the county treasurer (not the drain commissioner), who would thereafter be responsible for crediting the fee to the “drain fund” for the “affected drain.” This process is not further defined within the language of the bill as it presently stands.

### **Recommendation**

The passage or failure of HB 4359 is unlikely to have an impact on most county Road Commissions, and does not create any readily apparent direct liability concerns in its present form. However, approximately fourteen drain commissions are organized under Member Road Commissions and, thus, these Members would be affected. As such, to the extent that the Bill limits the fees allowed to be collected in an arbitrary manner (without relation to any actual or potential expenditure by the drain commissions), it is recommended that the Pool oppose the Bill.