

# FAQs

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Drain Commissioner



## Public Act 222

### **What is Public Act 222?**

In 2001, the Michigan Legislature passed a law to create an exception to governmental immunity for damages caused by the back up or overflow of sewage disposal or storm water systems when certain criteria are met. This law is known as Public Act 222 of 2001 ("PA 222").

### **Does this exception apply to back ups and overflows of county and intercounty drains?**

Yes. PA 222 covers back ups and overflows of storm sewers, sanitary sewers, combined sanitary and storm sewers, sewage treatment plants and county and intercounty storm water drain systems (open and enclosed) that are under the jurisdiction and control of a county drain commissioner or drainage board. These back ups and overflows are referred to as an "event" under PA 222.

### **When is a back up or overflow NOT considered an "event" under PA 222?**

A back up or overflow of one of the systems mentioned above is **not** considered an "event" when any of the following is the substantial proximate cause:

- Obstruction in a service lead not caused by a governmental agency.
- A connection to the system
- An act of way or terrorism.

### **What criteria is required in order to seek compensation for damages under PA 222?**

In order to seek compensation for damages or injuries related to an "event" under PA 222, **all** of the following criteria must be met:

- the governmental agency was an appropriate governmental agency;
- the system had a defect;
- the governmental agency knew, or in the

exercise of reasonable diligence should have known about the defect;

- the governmental agency, having the legal authority to do so, failed to take reasonable steps in a reasonable amount of time to repair, correct, or remedy the defect; and
- the defect was a substantial proximate cause of the event and the property damage or physical injury.

### **Who is the appropriate governmental agency for a county or intercounty drain?**

A claim related to a county drain should be filed with the county drain commissioner. An intercounty drain may be filed with any member of the intercounty drain drainage board.

### **What are the notice requirements under PA 222?**

Anyone experiencing damages to real property or physical injuries from an "event" must file a written claim within **45 days**. The claim must include:

- Name, address and phone number.
- Address of the affected property.
- Date when the damages were discovered.
- Brief description of the claim.

If a written claim is not received in 45 days, the claim is barred for that event.

### **What damages can be obtained under PA 222?**

Recovery is limited to economic damages unless there is a claim for death, serious impairment of body function or permanent serious disfigurement. If compensation is being sought for damages to real property, proof of ownership and value must be provided.

### **How can I file a claim or get more information?**

A notice of claim form can be obtained from our office. Please call (269) 945-1385 for more information.

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