

**SENATE SUBSTITUTE FOR
HOUSE BILL NO. 6376**

A bill to amend 1956 PA 40, entitled
"The drain code of 1956,"
by amending sections 72, 105, 122, 123, 154, 247, and 307 (MCL
280.72, 280.105, 280.122, 280.123, 280.154, 280.247, and 280.307),
section 72 as amended by 1987 PA 60, section 154 as amended by 2010
PA 339, and section 307 as amended by 2016 PA 115.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 72. (1) As soon as practicable after the filing of a
2 petition, the commissioner authorized to act on the petition, if
3 not disqualified under section 381 to make the apportionment of
4 benefits, may appoint a board of determination composed of 3
5 disinterested property owners. If the commissioner is disqualified
6 or chooses not to appoint the board of determination, the
7 commissioner shall immediately file a copy of the petition with the

1 chairperson of the county board of commissioners, together with a
 2 statement, signed by the commissioner, ~~showing that he or she is~~
 3 disqualified or chooses not to act in appointing a board of
 4 determination. ~~Upon~~ **AS SOON AS PRACTICABLE AFTER** receiving a copy
 5 of the petition and certificate, the chairperson of the county
 6 board of commissioners, ~~if not privately interested, as soon as~~
 7 ~~practicable,~~ **UNLESS HE OR SHE HAS A CONFLICT OF INTEREST**, shall
 8 appoint a board of determination composed of 3 disinterested
 9 property owners and shall immediately notify the drain commissioner
 10 of the names and addresses of those appointed. If the chairperson
 11 of the board of commissioners has a ~~private~~ **CONFLICT OF** interest in
 12 the proceedings, the drain committee of the county board of
 13 commissioners shall appoint the board of determination. Members of
 14 boards of determination shall be residents of the county but not of
 15 a township, city, or village affected by the drain, and ~~may~~ **SHALL**
 16 not be members of the county board of commissioners of the county.

17 (2) ~~A~~ **THE DRAIN COMMISSIONER SHALL CALL A** meeting of the board
 18 of determination ~~shall be called~~ **AT A CONVENIENT PLACE** within the
 19 drainage district ~~at a convenient place to be designated by the~~
 20 ~~drain commissioner. The board of determination meeting also may be~~
 21 ~~held~~ **OR** at a public building within ~~the~~ **A** city, village, or
 22 township in which the drain is located. If ~~1 of those~~ **AN INDIVIDUAL**
 23 appointed to the board of determination fails or refuses to serve,
 24 the drain commissioner shall appoint a successor. The per diem
 25 compensation ~~,~~ **AND THE** mileage ~~,~~ and expenses **EXPENSE**
 26 **REIMBURSEMENTS** of a member of the board of determination shall be
 27 the same as the county board of commissioners of the county. In

counties where commissioners are not paid on a per diem basis, the compensation ~~AND THE~~ mileage ~~and expenses~~ **EXPENSE REIMBURSEMENTS** shall be ~~fixed~~ **SET** by the drain commissioner. ~~The members of the board of determination shall not receive more than 1 per diem for a day no matter how many separate matters are considered on that day.~~ Upon request, the county drain commissioner shall inform in writing the requesting state legislator who represents ~~that portion of~~ the area in which the proposed drain improvement is to be constructed of the names and addresses of the persons appointed to a board of determination.

(3) ~~(2)~~ The drain commissioner shall give public notice of the time, date, and place of the meeting of the board of determination in the manner required by the open meetings act, ~~Act No. 267 of the Public Acts of 1976, as amended, being sections 15.261 to 15.275 of the Michigan Compiled Laws, and~~ **1976 PA 267, MCL 15.261 TO 15.275.** **THE COMMISSIONER SHALL ALSO GIVE SUCH NOTICE, NOT LESS THAN 10 DAYS BEFORE THE MEETING, by publication ALL OF THE FOLLOWING MEANS:**

(A) **PUBLICATION** in a newspaper of general circulation in the county. ~~at least 10 days before the meeting. Notice also shall be served~~

(B) **SERVICE** on the county clerk and ~~on the clerk of each township, city, and village~~ **A MEMBER OF THE BOARD OF COUNTY ROAD COMMISSIONERS OF THE COUNTY AND ON THE SUPERVISOR OF EACH TOWNSHIP AND CLERK OF EACH CITY AND VILLAGE** in the **DRAINAGE** district, personally or by ~~registered~~ **CERTIFIED** mail. ~~at least 10 days before the meeting. The drain commissioner also shall send notice,~~

(C) **SERVICE** by ~~first class~~ **FIRST-CLASS** mail ~~of the time,~~

1 ~~date, and place of the meeting, to~~ **ON** each person whose name
 2 appears on the last city, village, or township tax ~~assessment~~ roll
 3 as owning land within the ~~special assessment~~ **DRAINAGE** district, at
 4 the address shown on the roll. If an address does not appear on the
 5 roll, a notice need not be mailed to the person. The drain
 6 commissioner shall make an affidavit of the mailing and shall
 7 recite in the affidavit that ~~the persons to whom the notice was~~
 8 mailed ~~constitute~~ **TO** all of the persons whose names and addresses
 9 appear upon the tax rolls as owning land within the ~~particular~~
 10 ~~special assessment~~ **DRAINAGE** district. The affidavit ~~shall be~~ **IS**
 11 conclusive proof that notice was mailed to each person to whom
 12 notice is required to be mailed ~~pursuant to~~ **UNDER** this section. The
 13 failure to receive a notice by mail ~~shall~~ **IS** not ~~constitute a~~
 14 jurisdictional defect invalidating a drain proceeding or ~~tax, or~~
 15 ~~both,~~ **DRAIN ASSESSMENT** if notice ~~has been~~ **WAS** sent by first class
 16 mail as provided in this ~~section.~~ **SUBDIVISION.**

17 (4) ~~Expenses~~ **ALL EXPENSES** of notification shall be paid by the
 18 drainage district when created.

19 (5) ~~(3)~~ At the time and place ~~fixed~~ **SPECIFIED** in the notice,
 20 the board of determination shall meet, elect a chairperson and
 21 secretary, and, ~~proceed to~~ **AFTER CONSIDERING THE EVIDENCE OFFERED,**
 22 determine the necessity of the proposed drain and whether the drain
 23 is conducive to public health, convenience, or welfare. The board
 24 of determination, if it considers it necessary, shall require the
 25 county drain commissioner to obtain from the county treasurer a
 26 statement showing the amount of taxes and special assessments
 27 levied against the land in the proposed drainage district on the

1 tax rolls for the immediately preceding 3 years and the amount of
2 the taxes and assessments remaining unpaid. If it appears from the
3 statement that 25% or more of the taxes are unpaid on the lands,
4 further action shall not be taken. ~~After hearing the evidence~~
5 ~~offered, the board of determination shall make its determination on~~
6 ~~the necessity of the drain and whether the drain is conducive to~~
7 ~~public health, convenience, or welfare.~~ If the board of
8 determination finds, by a majority vote of the members, that the
9 drain is not necessary and conducive to public health, convenience,
10 or welfare, the board of determination shall file with the
11 commissioner an order dismissing the petition, and a further
12 petition for the drain shall not be ~~entertained~~ **FILED** within 1 year
13 after the determination. If the board of determination **FINDS**, by a
14 majority vote, ~~finds THAT~~ the **PROPOSED** drain ~~proposed to be~~ **IS**
15 necessary and conducive to the public health, convenience, or
16 welfare, the board of determination shall make an order to that
17 effect and file the order with the commissioner. ~~If the board of~~
18 ~~determination finds that a portion of the construction of the~~
19 ~~proposed drain is necessary for the protection of the public health~~
20 ~~in 1 or more cities, villages, and townships, the order shall set~~
21 ~~forth the determination giving the names of the municipalities~~
22 ~~receiving benefit for health.~~ If the board of determination
23 ~~determines that the whole cost, except that to be levied against~~
24 ~~state or county highways for highway benefits, is necessary for the~~
25 ~~public health, the cost shall be levied against the townships,~~
26 ~~villages, and cities at large, and it shall not be necessary, in a~~
27 ~~subsequent order or notice to describe or refer to land included in~~

~~1 or comprising the drainage district. Upon filing of the order of~~
~~2 determination by the board of determination, NOT MORE THAN 10 DAYS~~
~~3 AFTER THE BOARD OF DETERMINATION FILES AN ORDER FINDING THE~~
~~4 PROPOSED DRAIN TO BE NECESSARY AND CONDUCTIVE TO THE PUBLIC HEALTH,~~
~~5 CONVENIENCE, OR WELFARE, the drain commissioner , within 10 days of~~
~~6 filing, SHALL DETERMINE THE CITIES, TOWNSHIPS, AND VILLAGES WITHIN~~
~~7 THE DRAINAGE DISTRICT BENEFITING FROM THE DRAIN FOR PUBLIC HEALTH~~
~~8 AND shall notify each municipality SUCH CITY, TOWNSHIP, AND VILLAGE~~
~~9 that it is liable to pay a percent of the cost of construction of~~
~~10 the drain by reason of benefits at large for public health. The~~
~~11 governing body of the township, city, or village, within 20 days~~
~~12 after receipt of the notification by registered mail from the drain~~
~~13 commissioner, may appeal the order of the board of determination to~~
~~14 the probate court having jurisdiction in the county in which the~~
~~15 township, city, or village is located. Upon WITHIN 20 DAYS AFTER~~
~~16 THE COMMISSIONER'S~~ receipt of the order of the board of
~~17 determination, and if an appeal has not been taken by a~~
~~18 municipality to the probate court, the commissioner, after 20 days,~~
~~19 UNDER SECTION 72A, THE DRAIN COMMISSIONER~~ shall make his or her ~~A~~
~~20 first order of determination in writing, giving the name or number~~
~~21 of the drainage district . The commissioner shall establish the~~
~~22 commencement, AND A GENERAL DESCRIPTION OF THE~~ route, terminus, and
~~23 type of construction of the drain. , a copy of which order he or~~
~~24 she shall file, within 15 days, THE DRAIN COMMISSIONER SHALL FILE A~~
~~25 COPY OF THE ORDER~~ in his or her office. ~~If an appeal is taken to~~
~~26 the probate court by a municipality, the commissioner shall file~~
~~27 his or her first order of determination after the appeal procedures~~

1 ~~are terminated.~~

2 Sec. 105. (1) ~~The chairman of the~~ **AFTER CONSIDERING THE**
 3 **RECOMMENDATIONS OF THE SURVEYOR OR ENGINEER UNDER SECTION 104, THE**
 4 drainage board shall ~~thereupon prepare an order designating a~~
 5 ~~drainage district, giving it a~~ **DETERMINE ALL OF THE FOLLOWING:**

6 **(A) A DESIGNATION FOR THE DRAINAGE DISTRICT, BY** name or
 7 number. ~~and describe therein~~

8 **(B) A DESCRIPTION OF** the drainage district, **WHICH SHALL**
 9 **COMPRISE ALL THE LAND THAT WOULD BE BENEFITED BY AND LIABLE FOR**
 10 **ASSESSMENTS FOR THE CONSTRUCTION OF THE DRAIN. THE DRAINAGE**
 11 **DISTRICT MAY BE DESCRIBED BY EITHER OF THE FOLLOWING METHODS:**

12 **(i) BY** its boundaries of streets and highways or tracts or
 13 parcels of land. ~~or by~~

14 **(ii) BY** a description of all **LAND INCLUDED IN THE DRAINAGE**
 15 **DISTRICT, BY** tracts or parcels of land, ~~included therein and the~~
 16 counties, townships, cities, villages, ~~and~~ **OR** state trunk line
 17 highways ~~including therein all highways, townships, counties,~~
 18 ~~cities and villages, which would be benefited by the construction~~
 19 ~~of such drain and would be liable to an assessment therefor; also a~~
 20 **OF WHICH THE DISTRICT IS COMPRISED.**

21 **(C) A** description of the drain ~~according to the plans and~~
 22 ~~specifications prepared by the surveyor or engineer and determined~~
 23 ~~by the drainage board,~~ showing the beginning, route, terminus, type
 24 of construction and the estimated cost of the construction.
 25 ~~Notice of filing of the order shall be given by the state director~~
 26 ~~of agriculture by publishing a notice~~

27 **(D) THE PERCENTAGE OF THE COST FOR LAYING OUT A DRAINAGE**

DISTRICT TENTATIVELY APPORTIONED TO EACH COUNTY IN WHICH ANY PART OF THE DRAINAGE DISTRICT IS LOCATED, SUBJECT TO REDETERMINATION UNDER SECTION 123. IF A MEMBER OF THE DRAINAGE BOARD WOULD BE DISQUALIFIED UNDER SECTIONS 381 AND 383 FROM MAKING AN APPORTIONMENT OF BENEFITS, BOTH OF THE FOLLOWING APPLY:

(i) THE DRAINAGE BOARD MEMBER IS DISQUALIFIED FROM PARTICIPATION IN THE DETERMINATION OF TENTATIVE APPORTIONMENTS.

(ii) A SPECIAL COMMISSIONER SHALL BE APPOINTED PURSUANT TO SECTION 382 TO SERVE AS A MEMBER OF THE DRAINAGE BOARD TO DETERMINE TENTATIVE APPORTIONMENTS.

(2) THE CHAIRPERSON OF THE DRAINAGE BOARD SHALL PREPARE AND EXECUTE AN ORDER DESIGNATING AN INTERCOUNTY DRAINAGE DISTRICT AS DETERMINED BY THE DRAINAGE BOARD UNDER SUBSECTION (1). WITHIN 10 DAYS AFTER THE ORDER IS EXECUTED, THE CHAIRPERSON OF THE DRAINAGE BOARD SHALL FILE A COPY OF THE ORDER IN THE OFFICE OF THE COUNTY DRAIN COMMISSIONER OF EACH COUNTY IN WHICH ANY PART OF THE DISTRICT IS LOCATED. THE DRAINAGE BOARD SHALL PUBLISH NOTICE OF THE FILING OF THE ORDER in a newspaper OF GENERAL CIRCULATION in each SUCH county, ~~affected,~~ once in each week for 2 successive weeks. ~~which~~ THE notice shall give a general description of the route of the drain and of the drainage district as shown by the order. ~~A copy of the order shall within 10 days be filed by the state director of agriculture in the office of the county drain commissioner of each county in which lie lands included in the district.~~

~~At any time after the order designating an intercounty drainage district, giving it a name or number, has been filed in the offices of the county drain commissioners of the counties~~

~~within the district, the order may be amended as to the name or number of the drain by a written request of a~~

(3) THE drain commissioner of ~~1 of the counties~~ **A COUNTY** traversed by the drain ~~, which~~ **MAY REQUEST IN WRITING THAT THE NAME OR NUMBER OF A DRAIN AS DESIGNATED IN AN ORDER FILED UNDER SUBSECTION (2) BE CHANGED. THE** request shall state the ~~then present~~ name or number of the drain and the change to be made in the name or number. ~~Upon filing of the request, the~~ **THE** drain commissioner shall **FILE THE REQUEST IN HIS OR HER OFFICE AND** mail a copy of the request ~~, to the state director of~~ **THE DEPARTMENT OF** agriculture **AND RURAL DEVELOPMENT** and ~~also to the drain commissioner of each county in which lie lands liable for assessments for the drain. The state~~ **ANY PART OF THE DRAINAGE DISTRICT IS LOCATED. THE** director of **THE DEPARTMENT OF** agriculture **AND RURAL DEVELOPMENT OR THE DIRECTOR'S DESIGNEE** shall call a meeting of the drainage board. ~~and if, in the opinion of the drainage board, it is found advisable to change~~ **THE DRAINAGE BOARD MAY FILE AN ORDER CHANGING** the name or number of the drain. ~~, they shall file an order designating such change. The drainage board shall also designate the number of signs to be posted~~ **MAY ALSO ORDER THE POSTING OF SIGNS** upon the drain ~~as they may deem advisable for public notice of the new name or number. Copies of the order changing the name or number of the drain shall be filed with the drain commissioner and the county treasurer of each county liable for assessments of such drain.~~ **IN WHICH ANY PART OF THE DRAINAGE DISTRICT IS LOCATED.**

(4) If the ~~commissioners of the counties affected~~ **DRAINAGE BOARD** cannot agree as to the apportionment of costs for laying out

1 a drainage district, the ~~director of agriculture or any deputy~~
 2 ~~appointed by him~~ **CHAIRPERSON** shall apportion the costs and the
 3 counties affected shall pay the ~~same~~ **COSTS** as provided in section
 4 302. ~~of this act.~~

5 Sec. 122. ~~(1) Upon filing of~~ **WITHIN 20 DAYS AFTER** a petition
 6 to locate, establish, and construct an intercounty drain the
 7 ~~commissioner receiving the petition, within 20 days,~~ **IS FILED UNDER**
 8 **SECTION 121, THE DRAIN COMMISSIONER** shall notify by ~~registered~~
 9 **CERTIFIED** mail the drain ~~commissioners interested~~ **COMMISSIONER FOR**
 10 **EACH COUNTY IN WHICH ANY PART OF THE DRAINAGE DISTRICT IS LOCATED**
 11 and the director of the department of agriculture ~~, who~~ **AND RURAL**
 12 **DEVELOPMENT. THE CHAIRPERSON** shall call a meeting **OF THE DRAINAGE**
 13 **BOARD** within the time set forth in section 102.

14 ~~(2) The commissioners and the director of the department of~~
 15 ~~agriculture, or the director's deputy, who constitute the drainage~~
 16 ~~board shall jointly take all steps and perform all acts and sign~~
 17 ~~all papers as commissioners are required to do singly in the case~~
 18 ~~of other drains,~~ **DRAINAGE BOARD HAS THE SAME POWERS AND DUTIES AS A**
 19 **DRAIN COMMISSIONER WITH RESPECT TO A COUNTY DRAIN,** except as
 20 otherwise provided in this act.

21 ~~(3) At a meeting of the~~ **DRAINAGE** board, the ~~director of the~~
 22 ~~department of agriculture, or the director's deputy,~~ **CHAIRPERSON**
 23 shall not vote, except that the ~~director or the director's deputy~~
 24 **CHAIRPERSON** may cast the deciding vote in case of a tie. ~~Notice~~
 25 ~~shall be given of~~

26 ~~(4) NOT LESS THAN 10 DAYS BEFORE THE MEETING, THE DRAINAGE~~
 27 **BOARD SHALL GIVE NOTICE OF** the time, **DATE,** and place of the meeting

1 by publication ~~ALL OF THE FOLLOWING MEANS:~~

2 (A) PUBLICATION in a newspaper of general circulation in the
3 county ~~at least 10 days before the meeting. Notices shall also be~~
4 ~~served~~ DRAINAGE DISTRICT.

5 (B) SERVICE, personally or by ~~registered~~ CERTIFIED mail, at
6 ~~least 10 days before the meeting on the county clerk AND A MEMBER~~
7 OF THE BOARD OF COUNTY ROAD COMMISSIONERS OF EACH COUNTY and ~~on the~~
8 ~~clerk~~ SUPERVISOR of each township ~~, AND CLERK OF EACH city , and~~
9 village in the DRAINAGE district. ~~The drain commissioner also shall~~
10 ~~send notice by first class mail of the time, date, and place of the~~
11 ~~meeting, not less than 10 days before the date of the meeting, to~~

12 (C) SERVICE, BY FIRST-CLASS MAIL ON each person whose name
13 appears ~~upon~~ ON the last city or township tax ~~assessment~~ roll as
14 owning land ~~liable to assessment for benefits,~~ IN THE DRAINAGE
15 DISTRICT, at the address shown on the roll. If an address does not
16 appear on the roll, a notice need not be mailed to the person. The
17 drain commissioner shall make an affidavit of the mailing and shall
18 recite in the affidavit that ~~the persons to whom the notice was~~
19 mailed ~~constitute~~ TO all of the persons whose names and addresses
20 appear upon the tax rolls as owning land ~~liable to assessment for~~
21 ~~benefits.~~ IN THE DRAINAGE DISTRICT. The affidavit ~~shall be~~ IS
22 conclusive proof that notice was mailed to each person to whom
23 notice is required to be mailed ~~by~~ UNDER this ~~section.~~ SUBDIVISION.
24 The failure to receive a notice by mail ~~shall~~ IS not ~~constitute~~ a
25 jurisdictional defect invalidating a drain proceeding or ~~tax, or~~
26 ~~both,~~ DRAIN ASSESSMENT if notice ~~has been~~ WAS sent by first class
27 mail as provided in this section.

1 (5) All ~~expense~~**EXPENSES** of notification shall be paid by the
2 drainage district when created.

3 (6) **THE DRAINAGE BOARD SHALL ACT AS THE BOARD OF DETERMINATION**
4 **AND SHALL DETERMINE BY MAJORITY VOTE THE NECESSITY OF DRAINS**
5 **PROPOSED TO BE LOCATED, ESTABLISHED, AND CONSTRUCTED UNDER THIS**
6 **CHAPTER.**

7 (7) The **DRAINAGE** board shall consider the petition and
8 evidence offered, and if it is determined that the drain is
9 necessary for ~~the good of the~~ public health, convenience, or
10 welfare, it shall ~~proceed to determine the percentage of the whole~~
11 ~~cost of construction which each county shall bear, and determine~~
12 ~~the number of installments in which the drain taxes shall be~~
13 ~~collected. If commissioners cannot agree on the apportionment~~
14 ~~between counties or the number of installments, the chairperson~~
15 ~~shall determine the apportionment or the number of installments. An~~
16 ~~order shall be prepared,~~ **MAKE AN ORDER TO THAT EFFECT AND FILE THE**
17 **ORDER WITH THE DRAINAGE BOARD. IF THE DRAINAGE BOARD DETERMINES**
18 **THAT THE DRAIN IS NOT NECESSARY AND CONDUCTIVE TO THE PUBLIC HEALTH,**
19 **CONVENIENCE, OR WELFARE, THE DRAINAGE BOARD SHALL FILE AN ORDER**
20 **DISMISSING THE PETITION, AND FURTHER PETITION FOR THE DRAIN SHALL**
21 **NOT BE FILED WITHIN 1 YEAR AFTER THE DETERMINATION. NOT MORE THAN**
22 **10 DAYS AFTER THE DRAINAGE BOARD FILES AN ORDER FINDING THE**
23 **PROPOSED DRAIN IS NECESSARY AND CONDUCTIVE TO THE PUBLIC HEALTH,**
24 **CONVENIENCE, OR WELFARE, THE DRAINAGE BOARD SHALL DETERMINE THE**
25 **CITIES, TOWNSHIPS, AND VILLAGES WITHIN THE DRAINAGE DISTRICT**
26 **BENEFITING FROM THE DRAIN FOR PUBLIC HEALTH AND SHALL NOTIFY EACH**
27 **SUCH CITY, VILLAGE, AND TOWNSHIP THAT IS LIABLE TO PAY A PERCENTAGE**

1 OF THE COST OF THE CONSTRUCTION OF THE DRAIN BY REASON OF BENEFITS
 2 AT LARGE FOR PUBLIC HEALTH. WITHIN 20 DAYS AFTER AN ORDER
 3 DETERMINING THAT THE DRAIN IS NECESSARY IS FILED, IF AN APPEAL HAS
 4 NOT BEEN TAKEN UNDER SECTION 122A, THE DRAINAGE BOARD SHALL MAKE A
 5 FURTHER ORDER, signed by the chairperson, to be known as the first
 6 order of determination. ~~, showing the determination of necessity,~~
 7 ~~determination of percentages, and determination of number of~~
 8 ~~installments, and a~~ THE FIRST ORDER OF DETERMINATION SHALL GIVE THE
 9 NAME OR NUMBER OF THE DRAINAGE DISTRICT AND A GENERAL DESCRIPTION
 10 OF THE ROUTE, TERMINUS, AND TYPE OF CONSTRUCTION OF THE DRAIN. A
 11 copy of the order shall be filed in the office of the county drain
 12 commissioner of each county into which ANY PART OF the drainage
 13 district extends. ~~The drainage board shall be the board of~~
 14 ~~determination and shall determine the question of necessity for~~
 15 ~~drains located, established, and constructed under this chapter. If~~
 16 ~~the drainage board cannot agree unanimously on the apportionment~~
 17 ~~between counties, the matter shall be submitted to the board of~~
 18 ~~arbitration in the manner prescribed in section 106 and that~~
 19 ~~board's decision shall be final.~~ IS LOCATED.

20 (8) IF A MEMBER OF THE DRAINAGE BOARD WOULD BE DISQUALIFIED
 21 UNDER SECTIONS 381 AND 383 FROM MAKING AN APPORTIONMENT OF
 22 BENEFITS, BOTH OF THE FOLLOWING APPLY:

23 (A) THE DISQUALIFIED DRAINAGE BOARD MEMBER SHALL NOT
 24 PARTICIPATE IN THE DETERMINATION OF NECESSITY.

25 (B) A SPECIAL COMMISSIONER SHALL BE APPOINTED PURSUANT TO
 26 SECTION 382 TO SERVE AS A MEMBER OF THE DRAINAGE BOARD TO DETERMINE
 27 NECESSITY.

1 Sec. 123. (1) After securing ~~releases of right of way as~~
2 ~~herein provided,~~ the **NECESSARY PROPERTY RIGHTS OR INTERESTS AS**
3 **PROVIDED IN THIS ACT, THE DRAINAGE BOARD SHALL DETERMINE THE**
4 **PERCENTAGE OF THE WHOLE COST OF THE DRAIN TO BE APPORTIONED TO EACH**
5 **COUNTY AND SHALL INCLUDE THE DETERMINATION IN THE FINAL ORDER OF**
6 **DETERMINATION. IF THE DRAIN COMMISSIONERS CANNOT AGREE UNANIMOUSLY**
7 **ON THE APPORTIONMENT BETWEEN COUNTIES, THE CHAIRPERSON SHALL**
8 **PROPOSE THE APPORTIONMENT. IF THE DRAINAGE BOARD CANNOT AGREE**
9 **UNANIMOUSLY ON THE APPORTIONMENT OF BENEFITS PROPOSED BY THE**
10 **CHAIRPERSON, THE MATTER SHALL BE SUBMITTED TO THE BOARD OF**
11 **ARBITRATION IN THE MANNER PRESCRIBED IN SECTION 106 AND THAT**
12 **BOARD'S DECISION IS FINAL.**

13 (2) AFTER THE APPORTIONMENT OF BENEFITS IS MADE UNDER
14 **SUBSECTION (1), THE** commissioner of each county ~~affected~~ **IN WHICH**
15 **ANY PART OF THE DRAINAGE DISTRICT IS LOCATED, UNLESS DISQUALIFIED**
16 **UNDER SECTION 381,** shall apportion the benefits for the
17 construction of ~~such~~ **THE** drain to each tract or parcel of land, to
18 any county, township, city, or village, and to any state trunk line
19 highway within ~~said~~ **THE** drainage district, in the manner provided
20 in chapter 7. ~~, being sections 151 to 161, inclusive, of this act.~~
21 ~~Such per cent~~ **THE PERCENTAGE** so apportioned when finally approved
22 shall be assessed against such **COUNTIES**, townships, cities,
23 **VILLAGES**, highways, and lands according to ~~such~~ **THE** apportionment
24 of benefits. ~~, as herein provided.~~ The apportionment of benefits so
25 made ~~shall be~~ **IS** subject to review and correction and may be
26 appealed ~~from~~ as provided in ~~said~~ chapter 7.

27 Sec. 154. (1) The commissioner shall give notice as described

1 in subsection (3) for the receiving of bids for the construction of
2 the drain and for the holding of a public meeting to review the
3 apportionment of benefits. The meeting shall be not less than 5 nor
4 more than 30 days after the date set for receiving bids.

5 (2) The notice under subsection (1) shall be given by
6 publication of at least 2 insertions in a newspaper published and
7 of general circulation in the county. The first publication shall
8 be at least 10 days before the date set for receiving bids.

9 (3) The drain commissioner shall also send the notice under
10 subsection (1) by first-class mail at least 10 days before the date
11 of the meeting to review the apportionment of benefits, to each
12 person whose name appears upon the last city or township tax
13 assessment roll as owning land within the special assessment
14 district, at the address shown on the roll. If an address does not
15 appear on the roll, then notice need not be mailed to the person.
16 The drain commissioner shall make an affidavit of the mailing and
17 shall recite in the affidavit that the persons to whom the notice
18 was mailed constitute all of the persons whose names and addresses
19 appear upon the tax rolls as owning land within the particular
20 special assessment district. The affidavit is conclusive proof that
21 notice was mailed to each person to whom notice is required to be
22 mailed. If notice has been sent by first-class mail as provided in
23 this section, the failure to receive notice by mail does not
24 constitute a jurisdictional defect invalidating a drain proceeding
25 or tax. If the ~~board of determination~~ **DRAIN COMMISSIONER** determines
26 that the drain is necessary for the protection of the public health
27 and that the whole cost of the drain, except that part which may be

1 apportioned for benefits to highways, shall be apportioned to
 2 municipalities, then mailing of individual notices to persons
 3 owning land within the special assessment district as provided in
 4 this subsection is not required.

5 (4) The notice under subsection (1) shall be personally served
 6 on the county clerk and ~~1 or more members of the road commission of~~
 7 ~~a county or road district,~~ **A MEMBER OF THE BOARD OF COUNTY ROAD**
 8 **COMMISSIONERS OF THE COUNTY AND ON** the supervisor of ~~a~~ **EACH**
 9 township, ~~the mayor of a city, and the president of a~~ **AND CLERK OF**
 10 **EACH CITY OR** village to be assessed at large.

11 (5) The notice under subsection (1) shall contain all of the
 12 following:

13 (a) The date, time, and place of receiving bids.

14 (b) The date, time, and place of the meeting to review the
 15 apportionment of benefits.

16 (c) A statement that, at the meeting to review the
 17 apportionment of benefits, the drain commissioner will have
 18 available to review the tentative apportionments against parcels
 19 and municipalities within the drainage district.

20 (d) A statement that drain assessments against land will be
 21 collected in the same manner as property taxes.

22 (e) A statement that if drain assessments against land are
 23 collected by installment, the land owner may pay the assessments in
 24 full with any interest to date at any time and thereby avoid
 25 further interest charges.

26 (f) The name of each county, township, city, or village to be
 27 assessed at large.

1 (g) A description of the land constituting the special
2 assessment district for the drain. The description may be stated by
3 designating the boundaries of the special assessment district by
4 streets, highways, parcels, or tracts of land or by describing the
5 tracts or parcels of land constituting the district. A tract or
6 parcel need not be subdivided beyond the point where the whole of
7 the tract or parcel is within the drainage district.

8 (h) The name or number of the drain.

9 (i) The number and length of sections, the average depth and
10 width of each section, and if the drain will be a closed drain, the
11 amount and specifications of all tile or pipe required.

12 (j) The location, number, type, and size of all culverts and
13 bridges.

14 (k) The conditions upon which the contract will be awarded.

15 (6) The notice under subsection (1) need not contain minutes
16 of survey or a table of cuttings. These shall be kept on file in
17 the office of the drain commissioner.

18 (7) Bids shall be received and the total cost of the drain
19 shall be computed before the time set for review of the
20 apportionment. The computation shall be open to inspection. If the
21 computation is not completed before the day of review, the review
22 may be adjourned from time to time, not more than 20 days in all,
23 for the completion of the computation, or a new hearing may be
24 called with similar notice, by publication and service at least 10
25 days before the hearing. If the contracts on which the computation
26 was based are not executed and new contracts are let at a higher
27 price, the computation shall be corrected and a new review held

1 with a similar notice. At the date, time, and place fixed in the
2 notice, or at another date, time, and place to which the county
3 drain commissioner may adjourn the hearing, the apportionment of
4 benefits and the lands constituting the special assessment district
5 shall be subject to review for at least 1 day. The review shall be
6 held open from 9 a.m. until 5 p.m. At the review, the county clerk
7 or the county road commission may appear on behalf of the county;
8 ~~or a road district;~~ the supervisor of a township may appear on
9 behalf of a township; the mayor or an officer of the city
10 designated by the mayor may appear for a city; the president may
11 appear on behalf of a village. At the review the county drain
12 commissioner shall hear the proofs and allegations, shall carefully
13 reconsider and review the description of land comprised within the
14 special assessment district, the several descriptions and
15 apportionment of benefits, and shall define and equalize the land
16 as is just and equitable.

17 (8) If an apportionment of benefits is made against a state
18 trunk line highway, unless the director of the state transportation
19 department consents in writing to the apportionment, the drain
20 commissioner, at least 20 days before the review on the highway,
21 shall notify by registered mail the director of the state
22 transportation department of the percentage apportioned against the
23 highway and the date, time, and place fixed for a review of
24 apportionment of benefits. If the director of the state
25 transportation department desires to have the apportionment of
26 benefits reviewed by the director of the department of agriculture,
27 the director of the state transportation department, within 10 days

1 from the receipt of the notice, shall file with the drain
 2 commissioner an objection to the apportionment. The drain
 3 commissioner shall notify the director of the department of
 4 agriculture of the date, time, and place fixed for the review of
 5 apportionments, and at the meeting the director of the department
 6 of agriculture, or a deputy of the director, shall review the
 7 apportionment made against the state trunk line highway and listen
 8 to the proofs and allegations of the parties, and may view the
 9 highway benefited. The action and decision on the apportionment
 10 under this subsection, when reduced to writing, is final.

11 Sec. 247. **(1)** The county drain commissioner **OR DRAINAGE BOARD**
 12 acting under ~~the provisions of this act~~ may employ an attorney ~~when~~
 13 ~~he deems the same~~ **IF THE DRAIN COMMISSIONER OR DRAINAGE BOARD, AS**
 14 **APPROPRIATE, CONSIDERS IT** necessary. ~~and any legal expense~~ **IF AN**
 15 **ATTORNEY IS EMPLOYED, ALL ATTENDANT EXPENSES AND COSTS** shall be
 16 charged to the ~~several drain~~ **DRAINAGE** districts ~~in~~ **ON** behalf of
 17 which ~~he shall be~~ **THE ATTORNEY IS** employed. All ~~such~~ **ATTENDANT**
 18 expenses **AND COSTS** shall be paid out of the **DRAIN FUND OF THE**
 19 **DRAINAGE DISTRICT OR THE** revolving drain fund. ~~which shall be~~
 20 ~~reimbursed out of the first moneys available: Provided, That the~~ **IF**
 21 **THE ATTENDANT EXPENSES AND COSTS ARE PAID OUT OF THE REVOLVING**
 22 **DRAIN FUND OR IF THE DRAIN FUND OF THE DRAINAGE DISTRICT DOES NOT**
 23 **HAVE SUFFICIENT FUNDS TO PAY THE ATTENDANT EXPENSES AND COSTS, THE**
 24 **ATTENDANT EXPENSES AND COSTS SHALL BE ASSESSED TO THE DRAINAGE**
 25 **DISTRICT IN THE SAME PROPORTION AS COSTS OF THE DRAIN WERE ASSESSED**
 26 **AS PROVIDED IN CHAPTER 7 AND THE COLLECTIONS OF THESE ASSESSMENTS**
 27 **SHALL BE USED EITHER TO REIMBURSE THE REVOLVING DRAIN FUND OR TO**

1 PAY THE ATTENDANT EXPENSES AND COSTS, AS APPROPRIATE.

2 (2) THE COUNTY board of ~~supervisors~~ COMMISSIONERS FOR A
3 COUNTY, by resolution, may ~~cause~~ PROVIDE FOR the prosecuting
4 attorney to give ~~such~~ legal assistance TO THE COUNTY DRAIN
5 COMMISSIONER as part of ~~his~~ THE PROSECUTING ATTORNEY'S duties.

6 (3) AS USED IN THIS SECTION, "ATTENDANT EXPENSES AND COSTS"
7 MEANS THOSE EXPENSES AND COSTS INCURRED FOR A DRAINAGE DISTRICT IN
8 FURTHERANCE OF THE DUTIES AND RESPONSIBILITIES OF A DRAIN
9 COMMISSIONER OR DRAINAGE BOARD, INCLUDING, BUT NOT LIMITED TO, 1 OR
10 MORE OF THE FOLLOWING:

11 (A) ACTUAL ATTORNEY FEES.

12 (B) EXPERT WITNESS AND CONSULTANT FEES.

13 (C) MONEY AND COSTS EXPENDED IN CONNECTION WITH LITIGATION OR
14 THE THREAT OF LITIGATION.

15 (D) PAYMENTS MADE IN SATISFACTION OR PARTIAL SATISFACTION OF
16 ANY ORDERS OR JUDGMENTS ENTERED AGAINST A DRAINAGE DISTRICT.

17 (E) MONEY AND COSTS EXPENDED TO OBTAIN A RELEASE, WAIVER, OR
18 OTHER SETTLEMENT OF CLAIMS.

19 Sec. 307. (1) ~~If~~ THE DRAINAGE BOARD SHALL APPORTION THE COST
20 BETWEEN COUNTIES IF revolving fund money has been expended or a
21 drainage district is obligated to pay expenses for engineering,
22 legal, or administrative services or to pay principal and interest
23 on notes and if ~~an~~ ANY OF THE FOLLOWING APPLY:

24 (A) AN improvement has not been completed within THE LATEST OF
25 THE FOLLOWING:

26 (i) 5 years after the date of the drainage board's order
27 designating an intercounty drainage district under section 105. 7

1 (ii) **5 YEARS AFTER** the entry of the first order of
2 determination under section 122. ~~or~~

3 (iii) **2 YEARS AFTER** the filing of a petition, if a petition
4 has been filed and ordered abandoned. ~~, whichever is later, the~~
5 ~~drainage board shall apportion the cost as between counties.~~

6 **(B) A PETITION TO LOCATE, ESTABLISH, AND CONSTRUCT AN**
7 **INTERCOUNTY DRAIN IS NOT FILED WITHIN 2 YEARS AFTER THE DATE OF THE**
8 **DRAINAGE BOARD'S ORDER DESIGNATING AN INTERCOUNTY DRAINAGE**
9 **DISTRICT.**

10 (2) If requested by a drain commissioner feeling aggrieved by
11 the apportionment, the board of review shall review the
12 apportionment under section 106. ~~The decisions of the board of~~
13 ~~review are final. Thereafter the~~ **THE** amount apportioned to each
14 county **BY THE BOARD OF REVIEW** shall be recovered by the county as
15 provided in section 306. ~~for the recovery of expended revolving~~
16 ~~fund money or indebtedness for which a drainage district is~~
17 ~~obligated.~~

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