

**SUBSTITUTE FOR
HOUSE BILL NO. 5504**

A bill to amend 1956 PA 40, entitled
"The drain code of 1956,"
by amending sections 31, 196, 221, and 434 (MCL 280.31, 280.196,
280.221, and 280.434), section 196 as amended by 2008 PA 509,
section 221 as amended by 2016 PA 27, and section 434 as amended by
2002 PA 406.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 31. (1) A drain commissioner shall prepare a list of
2 drainage districts that are assessed for maintenance work under
3 section 196. The list shall include the name of the drain and the
4 amount being assessed annually to the drainage district. A drainage
5 district shall be included on a list for the duration of the
6 assessment associated with the maintenance work. The commissioner



1 shall update the list annually after the commissioner has filed all
 2 special assessment rolls under section 262(1) but not later than
 3 November 1. The commissioner shall make the list available upon
 4 request. If the commissioner maintains an official internet
 5 presence, the commissioner shall post and maintain the list on a
 6 portion of the website that is fully accessible to the public. If
 7 the drain commissioner does not maintain an official internet
 8 presence, the list shall be posted and maintained on the county
 9 website.

10 (2) ~~(1) Each~~ At the annual October meeting of the county board
 11 of commissioners, a drain commissioner shall make a report to the
 12 county board ~~of commissioners at its annual meeting in October of~~
 13 the drainage districts laid out ~~, and~~ the drains constructed,
 14 finished, or begun under ~~his or her~~ the drain commissioner's
 15 supervision during the year ending ~~October 1,~~ September 30 and the
 16 commissioner shall also submit to the board a full financial
 17 statement of each drainage district. If authorized by resolution of
 18 the county board of commissioners, the report shall be made before
 19 April 2 of each year and shall cover the preceding calendar year.
 20 ~~The~~ A drain commissioner shall also make reports and furnish
 21 information as required by the director of the department of
 22 agriculture and rural development.

23 (3) ~~(2) The reports required by~~ A report under subsection ~~(1)~~
 24 (2) shall include an itemized statement of the orders issued on
 25 account of each drainage district and a debit and credit balance of
 26 the district fund. The commissioner ~~shall be~~ is liable on the
 27 blanket bond or his or her individual bond for gross neglect of
 28 duty or a misapplication of money ~~coming~~ under his or her control
 29 as commissioner.



1 Sec. 196. (1) An annual inspection may be made of a drain
 2 established under this act. ~~Inspection~~ **An inspection** shall ~~also be~~
 3 made upon the request of the governing body of a public
 4 corporation, as ~~defined~~ **described** in section 461, served in whole
 5 or in part by the drain to be inspected. **Any inspection under this**
 6 **subsection shall be conducted by the following:**

7 (a) For ~~a county drains, the inspection shall be made~~ **drain**,
 8 by the drain commissioner ~~, or a competent person appointed by the~~
 9 drain commissioner.

10 (b) For ~~an intercounty drains, the inspection shall be caused~~
 11 ~~to be made~~ **drain**, by the drainage board **or a competent person**
 12 **appointed by the drainage board.**

13 (2) Surplus construction funds remaining after completion of
 14 construction of a drain, or funds remaining after completion of
 15 work performed under a petition for maintenance or improvements
 16 under this chapter, shall be deposited in the drain fund of ~~a~~ **the**
 17 drainage district and shall be expended for inspection, repair, and
 18 maintenance of the drain.

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

27 (4) If an inspection discloses the necessity of expending
 28 money for the maintenance ~~and or~~ repair of a drain ~~in order~~ to keep
 29 it in working order, the drain commissioner for a county drain, or



1 the drainage board for an intercounty drain, may without petition
 2 expend an amount not to exceed in any 1 year \$5,000.00 per mile or
 3 fraction of a mile for maintenance and repair of ~~a-the~~ drain,
 4 ~~exclusive of~~ **not including** inspection and engineering fees, **legal**
 5 **fees**, and the cost of publication and mailing. The determination of
 6 the maximum expenditure allowed ~~without a petition or resolution~~
 7 **under this subsection** shall be based on the total number of miles
 8 of the drain and not on the actual number of miles or location of
 9 the maintenance or repair. **Costs incurred for the inspection,**
 10 **maintenance, and repair of a drain performed under this section may**
 11 **be financed and assessed under this act for not more than 10 years.**

12 (5) If the drain commissioner or the drainage board finds it
 13 necessary to expend funds in ~~excess of~~ **addition to** the amount
 14 established in subsection (4) per mile or fraction of a mile in any
 15 1 year for the maintenance and repair of a drain, the additional
 16 amounts shall not be expended ~~until approved~~ **unless the expenditure**
 17 **is requested** by resolution of the governing body of each township,
 18 city, and village affected by more than 20% of the cost.

19 (6) If the drain fund of a drainage district does not contain
 20 sufficient funds to pay for inspection, repair, and maintenance
 21 authorized by this section, the drain commissioner or the drainage
 22 board **may finance the costs for not more than 10 years and** shall
 23 ~~reassess~~ **assess** the drainage district **for not more than 10 years**
 24 for the inspection, repair, and maintenance according to benefits
 25 received. ~~A reassessment~~ **The first installment of an assessment**
 26 **under this subsection** shall be made and spread upon the city or
 27 township tax assessment roll within 2 years after the completion of
 28 the inspection, repair, and maintenance. If the total expenditure
 29 is more than the amount established in subsection (4) per mile or



fraction of a mile, all real property owners subject to an assessment within the drainage district shall be notified of the assessment by publication in a newspaper of general circulation within the drainage district and by first-class mail to the name and address that appears on the last city or township assessment roll. An affidavit of mailing shall be made by the drain commissioner. The affidavit is conclusive proof that the notices required by this subsection were mailed. The failure **of a person** to receive ~~the notices~~ **a notice** by mail ~~shall is~~ not constitute a jurisdictional defect invalidating a drain ~~tax~~ **assessment** if notice by publication was given as required by this subsection.

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

(8) If an emergency condition exists that endangers the public health, crops, or property within a drainage district, the drain



1 commissioner or the drainage board may expend funds for maintenance
2 and repair to alleviate the emergency condition.

3 ~~(9) Nothing in this section prohibits the~~ **The** drain
4 commissioner or the drainage board ~~from spending~~ **may expend** funds
5 in excess of the amount established in subsection (4) per mile or
6 fraction of a mile in any 1 year for inspection, maintenance, and
7 repair of a drain ~~when~~ **if** requested by a public corporation ~~, and~~
8 if the public corporation pays the entire cost of the inspection,
9 maintenance, and repair.

10 (10) In computing the amounts that may be expended ~~in~~
11 ~~accordance with~~ **under** this section, the cost of work to be
12 performed by a federal agency or public corporation that is not
13 chargeable to the county or intercounty drainage district shall not
14 be included. ~~, nor shall it be necessary for the~~ **The** drain
15 commissioner or the drainage board **is not required** to advertise for
16 bids for that portion of the work to be done by the federal agency
17 or public corporation.

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

20 **(a) The cost** of maintaining the drain in working order to
21 continue a normal flow of water, including the servicing or repair
22 of necessary pumping equipment and utility charges for pumping
23 equipment. ~~, the~~

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

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

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



~~(12) If the cost of maintenance and repair of a drain includes~~
The dollar amount limitations in subsections (4), (6), and (7) do
not apply to expenditures or assessments to the extent the
expenditures or assessments are necessary to pay utility charges or
costs to service pumping stations, sewage treatment facilities, **or**
detention or retention basins. ~~, the limitation for maintenance and~~
~~repair does not apply except that the drain commissioner or~~
~~drainage board may levy sufficient special assessments to pay the~~
~~charges or costs but not more than the amount sufficient to pay~~
~~those charges or costs.~~

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

Sec. 221. (1) ~~At the time and place established in the notice,~~
~~the commissioner shall receive bids for the construction of the~~
~~drain.~~ **The drain commissioner or drainage board shall advertise for**
sealed bids for projects petitioned for under section 71, 121, 191,
or 192. The **drain** commissioner may, ~~and shall for all drains having~~
~~an estimated cost exceeding \$5,000.00, advertise for sealed~~
~~proposals, to be opened on the day of letting.~~ **or drainage board**
shall receive sealed bids. All sealed ~~proposals~~ **bids** received by
the **drain** commissioner **or drainage board** shall be publicly opened
~~by him or her in the~~ **at a meeting held at a time and place**
established by the notice under this act and may be examined at the
meeting by any person interested. As soon as practical after the



opening of bids, ~~for the construction of any drain,~~ the **drain**
 commissioner **or drainage board** shall ~~determine~~ **do the following:**

(a) **Determine** the lowest responsible bidder and award
 contracts, or ~~may reject~~ all proposals and readvertise. ~~, and in~~
~~eases where~~

(b) **If** the **drain commissioner or drainage board** determined
 that the ~~taxes assessed~~ **special assessments** for benefits shall be
 collected in more than 1 installment, ~~the commissioner shall,~~
 subject to section 275, determine the amount, form, maturity,
 mandatory redemption requirements, if any, and rate of interest of
 bonds to be issued. ~~In counties having a board of county auditors,~~
~~drain bonds shall not be sold and drain contracts shall not be let~~
~~without the written consent and approval of the board of county~~
~~auditors. However, the approval of the board of county auditors is~~
~~not required in proceedings relative to intercounty drains.~~

(2) **The drain commissioner or drainage board shall also**
receive sealed bids as provided in subsection (1) for nonpetitioned
maintenance work under section 196, unless the drain commissioner
or drainage board utilizes 1 of the following to perform the work:

(a) **County staff, including staff of the board of county road**
commissioners or road department.

(b) **A prequalified contractor. To proceed under this**
subdivision, the drain commissioner or drainage board must maintain
a list of all prequalified contractors for nonpetitioned
maintenance work under section 196. The determination whether to
list a contractor shall comply with prequalification criteria
adopted by the drain commissioner or drainage board. The drain
commissioner or drainage board shall make the list and criteria
available on request. If a drain commissioner maintains an official



internet presence, the drain commissioner shall post and maintain the drain commissioner's or drainage board's list and criteria on a portion of the website that is fully accessible to the public. If the drain commissioner does not maintain an official internet presence, the list shall be so posted and maintained on the county website.

(3) ~~(2)~~ If a contract is not let within 5 years after the date of filing the petition to locate, establish, and construct, or deepen, widen, straighten, tile, extend or clean out a drain, the drain commissioner **or drainage board** may determine that the petition shall be considered abandoned and no further action shall be taken to construct the drain. ~~Time during which~~ **The running of the 5-year period is suspended during** any litigation ~~is pending to~~ contest the validity of the proceedings. ~~shall not be counted as a part of such 5-year period.~~ **If, after the 5-year period,** the drain commissioner **or drainage board** determines **that** the petition shall be considered abandoned, the **drain commissioner or drainage board** shall issue an order to that effect. ~~However, a determination of abandonment shall not be issued within the 5-year period.~~ Notice of the order shall be ~~given by publishing a notice~~ **published** in a newspaper of general circulation in the ~~county.~~ **drainage district or sent by first-class mail to each person whose name appears on the last city, village, or township tax roll as owning land within the drainage district. The respective drain commissioner shall make an affidavit of the mailing and shall recite in the affidavit that the notice was mailed to all of the persons whose names and addresses appear upon the tax rolls as owning land within the drainage district in that county. The affidavit is conclusive proof that notice was mailed to each person to whom notice is required to**



1 be mailed by that drain commissioner under this subsection. The
 2 failure to receive a notice by mail is not a jurisdictional defect
 3 invalidating the abandonment of a petition if notice was sent by
 4 first-class mail as provided in this subsection. ~~This section~~
 5 ~~applies to all petitions that are in full force and effect on or~~
 6 ~~after January 1, 1973.~~

7 (4) ~~(3)~~ The board of county road commissioners, ~~if authorized~~
 8 ~~by a committee of commissioners appointed by the county board of~~
 9 ~~commissioners, may bid for the construction, cleaning, deepening~~
 10 ~~and widening of drains within the county, or road department may~~
 11 **bid on projects as provided in this section** and, if a bid is
 12 accepted, may perform the work ~~called for~~ **described** in the bid, ~~and~~
 13 and receive payment for the work performed. A bid tendered by a
 14 board of county road commissioners shall not be accepted unless the
 15 bid is at least 15% lower than any other bid tendered. The money
 16 received by the **board of** county road ~~commission~~ **commissioners** shall
 17 be credited to the county road fund. ~~and expenditures~~
 18 **Expenditures** incurred by the **board of** county road ~~commission~~ **shall**
 19 ~~be~~ **commissioners in performing work under this subsection are**
 20 proper disbursements from the county road fund.

21 Sec. 434. (1) A drainage district may borrow money or accept
 22 ~~the~~ **an** advance of work, material, or money from a public or private
 23 corporation, partnership, association, individual, or the federal
 24 government or any agency of the federal government for **any of** the
 25 ~~payment following for any project under this act:~~

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



1 **(b) Payment of or financing costs of** a feasibility,
 2 practicability, environmental assessment, or impact study of a
 3 drain project, ~~which may include the payment for easement or land~~
 4 ~~acquisition or engineering and legal fees, or an engineering,~~
 5 ~~environment impact, or assessment study, and be reimbursed by the~~
 6 **including engineering or legal fees.**

7 **(2) The** drainage district **shall pay or provide reimbursement**
 8 **for the obligations under subsection (1),** with or without interest
 9 as may be agreed, when funds are available. The obligation of the
 10 drainage district to make the repayment or reimbursement may be
 11 evidenced by a contract or note. ~~, which~~ **The** contract or note may
 12 pledge the full faith and credit of the drainage district and may
 13 be made payable out of **any of** the ~~drain~~ **following:**

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

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

18 **(c) Any** other available funds. ~~, and the~~

19 **(3) A** contract or note ~~shall not be described in subsection~~
 20 **(2) is not** subject to the revised municipal finance act, 2001 PA
 21 34, MCL 141.2101 to 141.2821, unless the principal amount of the
 22 obligation ~~shall exceed \$300,000.00.~~ **is more than \$600,000.00.**
 23 However, if the principal amount of the obligation is ~~\$300,000.00~~
 24 **\$600,000.00** or less, then the ~~issuance of the obligation under this~~
 25 ~~section~~ **contract or note** is subject to the agency financing
 26 reporting act, **2002 PA 470, MCL 129.171 to 129.177.**

27 ~~(2) However, any~~ projects in which advances or loans **are** made
 28 by any public corporation, the federal government, or any agency of
 29 the federal government ~~shall not be limited by this section. This~~



1 ~~section shall apply to a drain or other project instituted pursuant~~
2 ~~to any section in this act including a feasibility, practicability,~~
3 ~~environmental assessment, or impact study.~~**are not subject to either**
4 **the revised municipal finance act, 2001 PA 34, MCL 141.2101 to**
5 **141.2821, or the agency financing reporting act, 2002 PA 470, MCL**
6 **129.171 to 129.177.**

7 **(4)** ~~(3)~~A county board of commissioners by a majority vote of
8 2/3 of its members may pledge the full faith and credit of ~~a~~**the**
9 county for the payment of a **contract or** note of the drainage
10 district.