

HOUSE BILL No. 4283

February 15, 2005, Introduced by Rep. Jones and referred to the Committee on Local Government and Urban Policy.

A bill to amend 1956 PA 40, entitled
"The drain code of 1956,"
by amending section 72 (MCL 280.72), as amended by 1987 PA 60.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 72. (1) As soon as practicable after the filing of a
2 petition **UNDER SECTION 71**, the **DRAIN** commissioner authorized to act
3 on the petition, if not disqualified under section 381 to make the
4 apportionment of benefits, may appoint a board of determination.
5 ~~composed of 3 disinterested property owners.~~ If the **DRAIN**
6 commissioner is disqualified or chooses not to appoint the board of
7 determination, the **DRAIN** commissioner shall immediately file a copy
8 of the petition with the chairperson of the county board of
9 commissioners, together with a statement signed by the **DRAIN**

1 commissioner, showing that he or she is disqualified or chooses not
 2 to act in appointing a board of determination. ~~Upon~~ **AS SOON AS**
 3 **PRACTICABLE AFTER** receiving a copy of the petition and certificate,
 4 the chairperson of the county board of commissioners, if not
 5 privately interested, ~~as soon as practicable,~~ shall appoint a
 6 board of determination ~~composed of 3 disinterested property owners~~
 7 and shall immediately notify the drain commissioner of the names
 8 and addresses of those appointed. If the chairperson of the board
 9 of commissioners has a private interest in the proceedings, the
 10 drain committee of the county board of commissioners shall appoint
 11 the board of determination. ~~Members of boards~~

12 **(2) A BOARD OF DETERMINATION SHALL CONSIST OF 5 INDIVIDUALS.**
 13 **AT LEAST 1 MEMBER OF A BOARD OF DETERMINATION SHALL BE AN ELECTED**
 14 **OR APPOINTED OFFICIAL OF A LOCAL UNIT OF GOVERNMENT, OTHER THAN A**
 15 **CITY, VILLAGE, OR TOWNSHIP ALL OR PART OF WHICH INCLUDED IN THE**
 16 **DRAINAGE DISTRICT. EACH MEMBER OF A BOARD of determination shall**
 17 ~~be residents~~ **MEET ALL OF THE FOLLOWING REQUIREMENTS:**

18 **(A) BE A DISINTERESTED PROPERTY OWNER.**

19 **(B) BE A RESIDENT** of the county but not of a township, city,
 20 or village **TO BE** affected by the drain. ~~, and may not be members~~

21 **(C) NOT BE A MEMBER** of the county board of commissioners of
 22 the county. ~~A meeting of the board of determination shall be~~
 23 ~~called within the drainage district at a convenient place to be~~
 24 ~~designated by the drain commissioner. The board of determination~~
 25 ~~meeting also may be held at a public building within the city,~~
 26 ~~village, or township in which the drain is located.~~

27 **(3) If 1 of those appointed to the board of determination**

1 fails or refuses to serve, ~~the drain commissioner shall appoint~~ a
2 successor **SHALL BE APPOINTED IN THE SAME MANNER AS THE ORIGINAL**
3 **APPOINTEE.**

4 (4) The per diem compensation, mileage, and expenses of a
5 member of the board of determination shall be the same as **FOR** the
6 county board of commissioners of the county. In counties where
7 **COUNTY** commissioners are not paid on a per diem basis, the
8 compensation, mileage, and expenses shall be fixed by the drain
9 commissioner. The members of the board of determination shall not
10 receive more than 1 per diem for a day no matter how many separate
11 matters are considered on that day.

12 (5) Upon request, the ~~county~~ drain commissioner shall inform
13 in writing the requesting state legislator who represents ~~that~~
14 ~~portion of~~ the area in which the proposed drain ~~improvement~~ is
15 to be constructed of the names and addresses of the persons
16 appointed to a board of determination.

17 (6) ~~-(2)-~~ **THE DRAIN COMMISSIONER SHALL CALL A MEETING OF THE**
18 **BOARD OF DETERMINATION. THE MEETING SHALL BE HELD WITHIN THE**
19 **DRAINAGE DISTRICT AT A CONVENIENT PLACE. THE BOARD OF DETERMINATION**
20 **MEETING ALSO MAY BE HELD AT A PUBLIC BUILDING WITHIN A CITY,**
21 **VILLAGE, OR TOWNSHIP IN WHICH THE DRAIN IS TO BE LOCATED.** The drain
22 commissioner shall give public notice of the time, date, and place
23 of ~~the~~ **A** meeting of the board of determination in the manner
24 required by the open meetings act, ~~Act No. 267 of the Public Acts~~
25 ~~of 1976, as amended, being sections 15.261 to 15.275 of the~~
26 ~~Michigan Compiled Laws 1976 PA 267, MCL 15.261 TO 15.275,~~ and by
27 publication in a newspaper of general circulation in the county at

1 least 10 days before the meeting. ~~Notice also shall be served on~~
2 **THE DRAIN COMMISSIONER SHALL GIVE NOTICE OF A MEETING OF THE BOARD**
3 **OF DETERMINATION TO** the county clerk and ~~on~~ the clerk of each
4 township, city, and village in the **DRAINAGE** district, personally or
5 by registered mail, at least 10 days before the meeting. The drain
6 commissioner also shall send notice, by ~~first class~~ **FIRST-CLASS**
7 mail, of the time, date, and place of ~~the~~ **A meeting OF THE BOARD**
8 **OF DETERMINATION**, to each person whose name appears on the last
9 city, village, or township tax assessment roll as owning land
10 within the ~~special assessment~~ **DRAINAGE** district, at the address
11 shown on the roll. If an address does not appear on the roll, a
12 notice need not be mailed to the person. The drain commissioner
13 shall make an affidavit of the mailing and shall recite in the
14 affidavit that the persons to whom the notice was mailed constitute
15 all of the persons whose names and addresses appear upon the tax
16 rolls as owning land within the ~~particular special assessment~~
17 **DRAINAGE** district. The affidavit ~~shall be~~ **IS** conclusive proof
18 that notice was mailed to each **SUCH** person to whom notice is
19 required to be mailed ~~pursuant to~~ **UNDER** this section. The failure
20 **OF A PERSON** to receive a notice by mail ~~shall~~ **DOES** not constitute
21 a jurisdictional defect invalidating a drain proceeding or tax, or
22 both, if notice has been sent by ~~first class~~ **FIRST-CLASS** mail as
23 provided in this section. Expenses of notification shall be paid by
24 the drainage district. ~~when created.~~

25 (7) ~~(3)~~ At the time and place ~~fixed~~ **STATED** in the notice,
26 the board of determination shall meet, elect a chairperson and
27 secretary, and proceed to determine the necessity of the proposed

1 drain and whether, **CONSIDERING ITS COSTS AND BENEFITS**, the drain is
2 conducive to public health, convenience, or welfare. The board of
3 determination, if it considers it necessary, shall require the
4 county drain commissioner to obtain from the county treasurer a
5 statement showing the amount of taxes and special assessments
6 levied against the land in the proposed drainage district on the
7 tax rolls for the immediately preceding 3 years and the amount of
8 the taxes and assessments remaining unpaid. If it appears from the
9 statement that 25% or more of the taxes are unpaid on the lands,
10 further action shall not be taken. After hearing the evidence
11 offered, the board of determination shall make its determination on
12 the necessity of the drain and whether, **CONSIDERING ITS COSTS AND**
13 **BENEFITS**, the drain is conducive to public health, convenience, or
14 welfare. If the board of determination finds, by a majority vote of
15 the members, that the **PROPOSED** drain is not necessary and conducive
16 to public health, convenience, or welfare, the board of
17 determination shall file with the **DRAIN** commissioner an order
18 dismissing the petition, and a further petition for the drain shall
19 not be entertained within 1 year after the determination. If the
20 board of determination, by a majority vote, finds the **PROPOSED**
21 drain ~~proposed~~ to be necessary and conducive to the public
22 health, convenience, or welfare, the board of determination shall
23 make an order to that effect and file the order with the **DRAIN**
24 commissioner.

25 (8) If the board of determination finds that a portion of the
26 construction of the proposed drain is necessary for the protection
27 of the public health in 1 or more cities, villages, ~~and~~ OR

1 townships, the order shall set forth ~~the determination giving the~~
 2 ~~names of the~~ **THAT FINDING AND IDENTIFY THOSE** municipalities.
 3 ~~receiving benefit for health.~~ If the board of determination
 4 ~~determines~~ **FINDS** that the whole cost, except that to be levied
 5 against state or county highways for highway benefits, is necessary
 6 for the public health **IN 1 OR MORE CITIES, VILLAGES, OR TOWNSHIPS,**
 7 the cost shall be levied against ~~the townships, villages, and~~
 8 ~~cities~~ **THOSE MUNICIPALITIES** at large, and it ~~shall~~ **IS** not ~~be~~
 9 necessary, in a subsequent order or notice, to describe or refer to
 10 land included in or comprising the drainage district. ~~Upon filing~~
 11 ~~of the order of determination by the board of determination, the~~
 12 ~~drain commissioner, within 10 days of filing,~~ **IF THE DRAINAGE**
 13 **BOARD FINDS THAT ALL OR A PORTION OF THE COST OF CONSTRUCTION IS**
 14 **NECESSARY FOR THE PROTECTION OF PUBLIC HEALTH IN 1 OR MORE**
 15 **MUNICIPALITIES, WITHIN 10 DAYS AFTER THE DRAINAGE BOARD FILES THE**
 16 **ORDER OF DETERMINATION, THE DRAIN COMMISSIONER** shall notify each
 17 **SUCH** municipality **BY REGISTERED MAIL** that it is liable to pay a
 18 percent of the cost of construction of the drain by reason of
 19 benefits at large for public health. ~~The governing body of the~~
 20 ~~township, city, or village, within~~ **WITHIN** 20 days after receipt of
 21 the **SUCH** notification, ~~by registered mail from the drain~~
 22 ~~commissioner,~~ **THE GOVERNING BODY OF A MUNICIPALITY** may appeal the
 23 order of the board of determination to the ~~probate~~ **CIRCUIT** court
 24 ~~having jurisdiction in~~ **FOR** the county. ~~in which the township,~~
 25 ~~city, or village is located. Upon~~ **WITHIN 20 DAYS AFTER** receipt of
 26 the order of the board of determination, ~~and~~ **OR,** if an appeal has
 27 ~~not~~ been taken by a municipality to the ~~probate~~ **CIRCUIT** court,

1 **UPON TERMINATION OF THE APPEAL PROCEEDINGS,** the **DRAIN** commissioner
2 ~~, after 20 days,~~ shall make his or her first order of
3 determination in writing, giving the name or number of the drainage
4 district ~~. The commissioner shall establish~~ **AND** the commencement,
5 route, terminus, and type of construction of the drain. ~~, a copy of~~
6 ~~which~~ **WITHIN 15 DAYS AFTER MAKING THE** order, ~~he or she~~ **THE DRAIN**
7 **COMMISSIONER** shall file ~~, within 15 days,~~ **A COPY OF THE ORDER** in
8 his or her office. ~~If an appeal is taken to the probate court by a~~
9 ~~municipality, the commissioner shall file his or her first order of~~
10 ~~determination after the appeal procedures are terminated.~~