

HOUSE BILL No. 4688

May 1, 2007, Introduced by Reps. Nitz, Meekhof, Garfield, Hansen, Mayes, Walker, Accavitti, Donigan, Espinoza, Kathleen Law, Sheltroun, Shaffer, Green and Hammel and referred to the Committee on Agriculture.

A bill to amend 1956 PA 40, entitled "The drain code of 1956," by amending section 196 (MCL 280.196), as amended by 1989 PA 149.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 196. (1) An annual inspection may be made of ~~all drains~~
2 ~~laid out and constructed~~ **A DRAIN ESTABLISHED** under this act.
3 Inspection shall also be made upon the request of the governing
4 body of a public corporation, as defined in section 461, served in
5 whole or in part by the drain to be inspected. For county drains,
6 the inspection shall be made by the drain commissioner, or a
7 competent person appointed by the drain commissioner. For
8 intercounty drains, the inspection shall be caused to be made by
9 the drainage board.

1 (2) Surplus construction funds remaining after completion of
 2 construction of a drain, or funds remaining after completion of
 3 work performed under a petition for maintenance or improvements
 4 under this chapter, shall be deposited in the drain fund of a
 5 drainage district and shall be expended for inspection, repair, and
 6 maintenance of the drain.

7 (3) If at any time the drain fund of a drainage district
 8 contains less than ~~\$2,500.00~~ **\$5,000.00** per mile ~~of drain or~~
 9 fraction of a mile **OF A DRAIN**, the drain commissioner or drainage
 10 board may assess the drainage district for an amount not to exceed
 11 ~~\$1,250.00~~ **a \$2,500.00 PER** mile or fraction of a mile in any 1 year.
 12 The amount collected under an assessment shall be deposited in the
 13 drain fund of a drainage district for necessary inspection, repair,
 14 and maintenance of the drain.

15 (4) If an inspection discloses the necessity of expending
 16 money for the maintenance and repair of a drain in order to keep it
 17 in working order, the drain commissioner for a county drain, or the
 18 drainage board for an intercounty drain, may without petition
 19 expend an amount not to exceed in any 1 year ~~\$2,500.00~~ **\$5,000.00**
 20 per mile or fraction of a mile for maintenance and repair of a
 21 drain, **EXCLUSIVE OF INSPECTION AND ENGINEERING FEES AND THE COST OF**
 22 **PUBLICATION AND MAILING. THE DETERMINATION OF THE MAXIMUM**
 23 **EXPENDITURE ALLOWED WITHOUT A PETITION OR RESOLUTION SHALL BE BASED**
 24 **ON THE TOTAL NUMBER OF MILES OF THE DRAIN AND NOT ON THE ACTUAL**
 25 **NUMBER OF MILES OR LOCATION OF THE MAINTENANCE OR REPAIR.**

26 (5) If the drain commissioner or the drainage board finds it
 27 necessary to expend funds in excess of ~~\$2,500.00~~ **THE AMOUNT**

1 **ESTABLISHED IN SUBSECTION (4)** per mile or fraction of a mile in any
2 1 year for the maintenance and repair of a drain, the additional
3 amounts shall not be expended until approved by resolution of the
4 governing body of each township, city, and village affected by more
5 than 20% of the cost.

6 (6) If the drain fund of a drainage district does not contain
7 sufficient funds to pay for inspection, repair, and maintenance
8 authorized by this section, the drain commissioner or the drainage
9 board shall reassess the drainage district for the inspection,
10 repair, and maintenance according to benefits received. A
11 reassessment shall be made and spread upon the city or township tax
12 assessment roll within 2 years after the completion of the
13 inspection, repair, and maintenance. If the total expenditure is
14 more than ~~\$2,500.00~~ **THE AMOUNT ESTABLISHED IN SUBSECTION (4)** per
15 mile or fraction of a mile, all real property owners subject to an
16 assessment within the drainage district shall be notified of the
17 assessment by publication in a newspaper of general circulation
18 within the drainage district ~~and~~ **OR** by ~~first~~ **FIRST**-class mail to
19 the name and address that appears on the last city or township
20 assessment roll. An affidavit of mailing shall be made by the drain
21 commissioner. ~~that shall be~~ **THE AFFIDAVIT IS** conclusive proof that
22 the notices required by this subsection were mailed. The failure to
23 receive the notices by mail shall not constitute a jurisdictional
24 defect invalidating a drain tax if notice by publication was given
25 as required by this subsection.

26 (7) An assessment for the actual cost of inspection, repair,
27 and maintenance performed on a drain, or an assessment to be

1 deposited in the drain fund of a drainage district, shall be made
2 according to benefits received. The expenditure limit of ~~\$2,500.00~~
3 **THE AMOUNT ESTABLISHED IN SUBSECTION (4)** per mile of drain or
4 fraction of a mile shall be used to calculate the maximum amount
5 that the drain commissioner or drainage board may assess in any 1
6 year without a petition or a request from a public corporation. The
7 property in a drainage district that benefits from the inspection,
8 repair, or maintenance of the drain is subject to assessment for
9 that inspection, repair, or maintenance. Determination of the
10 maximum assessment amount allowed without petition or request, or
11 of the property that is subject to assessment, shall be based on
12 the number of miles of drain and areas of the drainage district
13 receiving benefits and not on the actual number of miles or actual
14 location of the inspection, repair, or maintenance.

15 (8) If an emergency condition exists that endangers the public
16 health, crops, or property within a drainage district, the drain
17 commissioner or the drainage board may expend funds for maintenance
18 and repair to alleviate the emergency condition.

19 (9) Nothing in this section prohibits the drain commissioner
20 or the drainage board from spending funds in excess of ~~\$2,500.00~~
21 **THE AMOUNT ESTABLISHED IN SUBSECTION (4)** per mile or fraction of a
22 mile in any 1 year for inspection, maintenance, and repair of a
23 drain when requested by a public corporation, if the public
24 corporation pays the entire cost of the inspection, maintenance,
25 and repair.

26 (10) In computing the amounts that may be expended in
27 accordance with this section, the cost of work to be performed by a

1 federal agency or public corporation that is not chargeable to the
 2 county or intercounty drainage district shall not be included, nor
 3 shall it be necessary for the drain commissioner or the drainage
 4 board to advertise for bids for that portion of the work to be done
 5 by the federal agency or public corporation.

6 (11) For purposes of this section, the costs of maintenance or
 7 repair shall include the costs of maintaining the drain in working
 8 order to continue a normal flow of water, including the servicing
 9 or repair of necessary pumping equipment and utility charges for
 10 pumping equipment; the cost of keeping the drain free from rubbish,
 11 debris, siltation, or obstructions; the cost of repairing a portion
 12 or all of a tile or drain to continue the normal flow of water; and
 13 other costs associated with the costs enumerated in this
 14 subsection.

15 (12) If the cost of maintenance and repair of a drain includes
 16 utility charges or costs to service pumping stations, sewage
 17 treatment facilities, or retention basins, the limitation for
 18 maintenance and repair ~~shall~~ **DOES** not apply except that the drain
 19 commissioner or drainage board may levy sufficient special
 20 assessments to pay the charges or costs but not more than the
 21 amount sufficient to pay those charges or costs.

22 (13) ~~The~~ **EXCEPT AS OTHERWISE PROVIDED IN THIS ACT AND IN**
 23 **COUNTIES WITH A POPULATION EXCEEDING 800,000, THAT PORTION OF THE**
 24 salaries, expenses, and fringe benefits of ~~clerical,~~ administrative
 25 ~~and engineering employees~~ **UNDER THE SUPERVISION** of the drain
 26 ~~commissioner or drainage board working incidental to the operation,~~
 27 ~~repair, or maintenance of a drain shall~~ **THAT ARE DIRECTLY**

1 ATTRIBUTABLE, BUT NOT INCIDENTAL, TO A DRAIN OR OTHERWISE NOT
2 RECOVERED BY FEES ESTABLISHED BY RESOLUTION OR ORDINANCE OF THE
3 BOARD OF COMMISSIONERS MAY be chargeable to and ~~paid as budgeted~~
4 ~~from the county general fund and not chargeable to or by the drain~~
5 fund of a drainage district.

6 ~~—— (14) A violation of this section is a misdemeanor punishable~~
7 ~~by imprisonment for not more than 1 year, or by a fine of not more~~
8 ~~than \$1,000.00, or both.~~