

HOUSE BILL No. 4793

May 30, 2013, Introduced by Rep. Pscholka and referred to the Committee on Local Government.

A bill to amend 1956 PA 40, entitled
"The drain code of 1956,"
by amending sections 75 and 128 (MCL 280.75 and 280.128); and to
repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 75. If ~~all persons~~ **ANY PERSON** whose lands would be
2 traversed or damaged by ~~the~~ **A** proposed drain ~~or drains shall~~ **HAS**
3 not ~~have~~ executed a release of the right-of-way, ~~and all damages on~~
4 account thereof, ~~within 60 days after the entry of the first order~~
5 of determination, the commissioner shall, as soon as practicable,
6 make application to the probate court of the county in which such
7 lands are situated, for the appointment of ~~3~~ special commissioners,
8 who shall be disinterested resident freeholders of the county, but
9 not of the township or townships affected by such drain, to

1 ~~determine the necessity for the taking of private property for the~~
2 ~~use and benefit of the public, and the just compensation to be made~~
3 ~~therefor. Such application shall be in writing, and shall set~~
4 ~~forth.~~

5 ~~—— First, The fact that a petition for a drain was made and when,~~
6 ~~filing with said court a certified copy of such petition, also~~
7 ~~giving the route, survey and specifications of said drain as set~~
8 ~~forth in the first order of determination;~~

9 ~~—— Second, That an order determining the necessity for such drain~~
10 ~~was made by the commissioner or drainage board, giving the time~~
11 ~~when such order was made, in accordance with such route, survey and~~
12 ~~specification, as above set forth;~~

13 ~~—— Third, (1) The several descriptions or tracts of land with the~~
14 ~~names of the owner or owners of every such tract who have refused~~
15 ~~or neglected to execute a release of right of way and damages in~~
16 ~~any way arising or incident to the opening or maintaining the said~~
17 ~~proposed drain (2) the several descriptions or tracts of land owned~~
18 ~~by any minor, incompetent person, unknown persons or nonresidents~~
19 ~~of the township or townships, the execution of a release of right~~
20 ~~of way and damages for which have been neglected or refused; (3) it~~
21 ~~shall not be necessary to set forth in said application to the~~
22 ~~probate court the names of the several owners nor the description~~
23 ~~of the several tracts or parcels of land liable to an assessment~~
24 ~~for benefits, in case the drain applied for should be located and~~
25 ~~established, except those who have not released the right of way~~
26 ~~and through whose lands the drain passes; nor shall the same be~~
27 ~~included in the citation issued from the probate court.~~**THE DRAINAGE**

1 DISTRICT MAY INSTITUTE CONDEMNATION PROCEEDINGS TO OBTAIN THE
2 NECESSARY RIGHT-OF-WAY, AN EASEMENT, OR OTHER PROPERTY INTEREST
3 PURSUANT TO THE UNIFORM CONDEMNATION PROCEDURES ACT, 1980 PA 87,
4 MCL 213.51 TO 213.75.

5 Sec. 128. ~~In case all the persons whose lands are to be~~
6 ~~traversed or damaged by such drain or drains, as proposed in this~~
7 ~~chapter, shall not within 60 days after the issue of the first~~
8 ~~order of determination have voluntarily released the right of way~~
9 ~~therefor, and all damages on account thereof, the drainage board~~
10 ~~shall apply to the judge of probate of the county in which such~~
11 ~~lands are situated for the appointment of 3 special commissioners.~~
12 ~~When such application shall be made and when all papers shall have~~
13 ~~been found to be in conformity with the provisions of this act, the~~
14 ~~court to whom such application has been made shall, within 60 days~~
15 ~~from the filing of said application, appoint such special~~
16 ~~commissioners and shall deliver to each drain commissioner a~~
17 ~~certified copy of the order of the appointment of such special~~
18 ~~commissioners. Such special commissioners shall be resident~~
19 ~~freeholders of the county and not residents of the township or~~
20 ~~townships to be affected by the proposed drain in which they are~~
21 ~~appointed. All proceedings had in the appointment of special~~
22 ~~commissioners, the issuance of service of citations, hearings by~~
23 ~~the probate court and by the special commissioners and the return~~
24 ~~of special commissioners under the provisions of this chapter shall~~
25 ~~be similar to those provided in chapter 4, being sections 71 to 84.~~
26 IF ANY PERSON WHOSE LANDS WOULD BE TRAVERSED OR DAMAGED BY A
27 PROPOSED DRAIN HAS NOT EXECUTED A RELEASE OF THE RIGHT-OF-WAY, THE

1 DRAINAGE DISTRICT MAY INSTITUTE CONDEMNATION PROCEEDINGS TO OBTAIN
2 THE NECESSARY RIGHT-OF-WAY, AN EASEMENT, OR OTHER PROPERTY INTEREST
3 PURSUANT TO THE UNIFORM CONDEMNATION PROCEDURES ACT, 1980 PA 87,
4 MCL 213.51 TO 213.75.

5 Enacting section 1. Sections 76 to 84, 86 to 88, and 129 of
6 the drain code of 1956, 1956 PA 40, MCL 280.76 to 280.84, 280.86 to
7 280.88, and 280.129, are repealed.