

SUBSTITUTE FOR
HOUSE BILL NO. 4622

A bill to amend 1956 PA 40, entitled
"The drain code of 1956,"
by amending section 197 (MCL 280.197).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 197. (1) ~~On~~ **UPON** receipt of a petition filed under this
2 chapter, the **DRAIN** commissioner or the drainage board may ~~require~~
3 **RETAIN THE SERVICES OF** a ~~competent~~ **LICENSED PROFESSIONAL** surveyor
4 or engineer to make a survey of the drain ~~or of~~ **AND MAY REVIEW** the
5 **DRAINAGE** district **BOUNDARIES**, or a portion of the drain or **DRAINAGE**
6 district, or if necessary, lay out a ~~new~~ **REVISED DRAINAGE** district
7 including the land benefited, or make profiles, plans, or estimates
8 of the work and file all data concerning the **REVISIONS**, profiles,
9 plans, or estimates with the **DRAIN** commissioner or the chairperson
10 of the drainage board. ~~If it appears that land has been added to~~

~~1 the drainage district, the drain commissioner for a county drain,
2 or the chairperson of the drainage board for an intercounty drain,
3 shall notify the board of determination who allowed the petition
4 that the land should be added to the district. The drain
5 commissioner or chairperson of the drainage board shall call a
6 meeting of the board of determination. If a member of the board of
7 determination is disqualified or unable to act, then the member's
8 place shall be filled by appointment as in the first instance. The
9 notice shall specify the time, date, and place within the drainage
10 district at which the board of determination shall reconvene. The
11 drain commissioner or chairperson of the drainage board also shall
12 cause the notice to be published once in a newspaper of general
13 circulation in the county or a newspaper of general circulation in
14 the area where the drain improvement is contemplated at least 10
15 days before the meeting. Notice of the time and place of the
16 meeting, by first class mail, shall be sent at least 10 days before
17 the date of the meeting, to each person whose name appears upon the
18 last city or township tax assessment roll as owning land within the
19 enlarged drainage district, at the address shown on the roll. If an
20 address does not appear on the roll, then notice need not be mailed
21 to the person. The drain commissioner shall make an affidavit of
22 the mailing and shall recite in the affidavit that the persons to
23 whom the notice was mailed constitute all of the persons whose
24 names and addresses appear upon the tax rolls as owning land within
25 the enlarged drainage district. The affidavit shall be conclusive
26 proof that notice was mailed to each person to whom notice is
27 required to be mailed by this section. The failure to receive a~~

~~notice by mail shall not constitute a jurisdictional defect
invalidating a drain proceeding or tax, if notice was sent by
first class mail as provided in this section. All expense of
notification shall be paid by the drainage district.~~

~~—— (2) At the time, date, and place designated by the drain
commissioner or the chairperson of the drainage board the board of
determination shall reconvene. Upon reconvening, if the board of
determination by a majority vote of members finds the proposed
addition of the land to the drainage district necessary and
conducive to the public health, convenience, or welfare, they shall
make an order to that effect and file the order with the drain
commissioner or drainage board. The drain commissioner or drainage
board shall take the steps and perform the acts which are required
for the locating, establishing, and constructing of drains as
designated in chapter 4 or chapter 6.~~

(2) IF, AFTER A SURVEY OF THE DRAIN OR A REVIEW OF THE
DRAINAGE DISTRICT BOUNDARIES UNDER SUBSECTION (1) OR AFTER AN
INSPECTION UNDER SECTION 196, IT APPEARS THAT THE BOUNDARIES OF THE
DRAINAGE DISTRICT SHOULD BE REVISED, THE DRAIN COMMISSIONER FOR A
COUNTY DRAIN, OR THE DRAINAGE BOARD FOR AN INTERCOUNTY DRAIN, SHALL
EITHER CONVENE THE BOARD OF DETERMINATION PURSUANT TO SUBSECTION
(3) OR HOLD A DAY OF REVIEW OF DISTRICT BOUNDARIES PURSUANT TO
SUBSECTION (4) AND, AFTER NOTICE AND REVIEW AS PROVIDED IN THIS
SECTION, REVISE THE BOUNDARIES OF THE DRAINAGE DISTRICT TO INCLUDE
ALL LANDS BENEFITED BY THE DRAIN AS RECOMMENDED BY A LICENSED
PROFESSIONAL SURVEYOR OR ENGINEER.

(3) IF THE DRAIN COMMISSIONER OR DRAINAGE BOARD DETERMINES

1 THAT THE BOUNDARIES OF THE DRAINAGE DISTRICT SHOULD BE REVISED
2 PRIOR TO THE HEARING OF NECESSITY FOR A PETITION, THE DRAIN
3 COMMISSIONER FOR A COUNTY DRAIN, OR THE CHAIRPERSON OF THE DRAINAGE
4 BOARD FOR AN INTERCOUNTY DRAIN, MAY REQUEST THAT THE BOARD OF
5 DETERMINATION REVISE THE DRAINAGE DISTRICT BOUNDARIES DURING THE
6 HEARING OF NECESSITY AS PROVIDED IN SECTION 72 OR 122. IF THE BOARD
7 OF DETERMINATION BY A MAJORITY VOTE OF MEMBERS FINDS THAT THE
8 ADDITION OR DELETION OF LANDS WILL MORE ACCURATELY DEFINE THE
9 BOUNDARIES OF THE LAND BENEFITED BY THE DRAIN AND IT WOULD BE JUST
10 AND EQUITABLE, THEY SHALL DESCRIBE THE REVISED DRAINAGE DISTRICT
11 BOUNDARIES IN THE ORDER OF NECESSITY FOR THE DRAIN.

12 (4) IF THE DRAIN COMMISSIONER OR DRAINAGE BOARD DETERMINES TO
13 HOLD A DAY OF REVIEW OF DRAINAGE DISTRICT BOUNDARIES, THE LANDS
14 COMPRISING THE DRAINAGE DISTRICT REVISED IN ACCORDANCE WITH THIS
15 SECTION SHALL BE SUBJECT TO REVIEW FOR NOT LESS THAN 1 DAY FROM 9
16 A.M. UNTIL 5 P.M. THE REVIEW SHALL BE CONDUCTED AT A LOCATION
17 DESIGNATED BY THE DRAIN COMMISSIONER OR DRAINAGE BOARD. AT THE
18 REVIEW, THE DRAIN COMMISSIONER OR DRAINAGE BOARD OR ITS DESIGNEE
19 SHALL HEAR THE PROOFS AND ALLEGATIONS AND SHALL CAREFULLY
20 RECONSIDER AND REVIEW THE DESCRIPTION OF LAND COMPRISED WITHIN THE
21 DRAINAGE DISTRICT. IF THE DRAIN COMMISSIONER OR DRAINAGE BOARD
22 FINDS THAT THE ADDITION OR DELETION OF LANDS WILL MORE ACCURATELY
23 DEFINE THE BOUNDARIES OF THE LAND BENEFITED BY THE DRAIN AND IT
24 WOULD BE JUST AND EQUITABLE, THE DRAIN COMMISSIONER OR DRAINAGE
25 BOARD SHALL ISSUE AN ORDER DESCRIBING AND ESTABLISHING THE REVISED
26 DRAINAGE DISTRICT BOUNDARIES SUPPORTED BY SUBSTANTIAL MATERIAL AND
27 COMPETENT EVIDENCE.

(5) A NOTICE FOR REVIEW OF REVISED DRAINAGE DISTRICT BOUNDARIES UNDER SUBSECTION (4) SHALL SPECIFY THE DATE, TIME, AND PLACE AT WHICH THE REVIEW SHALL TAKE PLACE AND PROVIDE A GENERAL DESCRIPTION OF THE LANDS PROPOSED TO BE ADDED OR DELETED IN WHOLE OR IN PART FROM THE DRAINAGE DISTRICT. THIS NOTICE SHALL BE SENT BY FIRST-CLASS MAIL AT LEAST 10 DAYS BEFORE THE DATE OF THE REVIEW TO EACH CITY, VILLAGE, AND TOWNSHIP IN THE REVISED DISTRICT, AND EACH PERSON WHOSE NAME APPEARS ON THE LAST CITY OR TOWNSHIP TAX ASSESSMENT ROLL AS OWNING LANDS WITHIN THE REVISED DRAINAGE DISTRICT, AT THE ADDRESS SHOWN ON THE ROLL. IF AN ADDRESS DOES NOT APPEAR ON THE ROLL, THEN NOTICE NEED NOT BE MAILED TO THAT PERSON. THE DRAIN COMMISSIONER OR DRAINAGE BOARD SHALL MAKE AN AFFIDAVIT OF THE MAILING AND SHALL RECITE IN THE AFFIDAVIT THAT THE PERSONS TO WHOM THE NOTICE WAS MAILED CONSTITUTE ALL OF THE PERSONS WHOSE NAMES AND ADDRESSES APPEAR ON THE TAX ROLLS AS OWNING LANDS WITHIN THE REVISED DRAINAGE DISTRICT. THE AFFIDAVIT SHALL BE CONCLUSIVE PROOF THAT NOTICE WAS MAILED TO EACH PERSON TO WHOM NOTICE IS REQUIRED TO BE MAILED BY THIS SECTION. FAILURE TO RECEIVE A NOTICE BY MAIL IS NOT A JURISDICTIONAL DEFECT INVALIDATING A DRAIN PROCEEDING OR ASSESSMENT, IF NOTICE WAS SENT BY FIRST-CLASS MAIL AS PROVIDED IN THIS SECTION. THE DRAIN COMMISSIONER OR CHAIRPERSON OF THE DRAINAGE BOARD SHALL ALSO CAUSE THE NOTICE TO BE PUBLISHED ONCE IN A NEWSPAPER OF GENERAL CIRCULATION IN THE COUNTY OR COUNTIES IN WHICH THE DRAINAGE DISTRICT IS LOCATED AT LEAST 10 DAYS BEFORE THE REVIEW. ALL EXPENSE OF NOTIFICATION SHALL BE PAID BY THE DRAINAGE DISTRICT.

(6) THE OWNER OF ANY LAND IN THE DRAINAGE DISTRICT, THE STATE

1 TRANSPORTATION DEPARTMENT, OR ANY CITY, VILLAGE, TOWNSHIP,
2 DISTRICT, OR COUNTY HAVING CONTROL OF ANY HIGHWAY IN THE DRAINAGE
3 DISTRICT, THAT IS AGGRIEVED BY A DETERMINATION TO REVISE, OR NOT TO
4 REVISE, DRAINAGE DISTRICT BOUNDARIES AS PROVIDED FOR IN THIS
5 SECTION MAY, WITHIN 10 DAYS AFTER THE ORDER TO REVISE THE DRAINAGE
6 DISTRICT BOUNDARIES HAS BEEN ENTERED, INSTITUTE AN ACTION IN THE
7 CIRCUIT COURT FOR THE COUNTY IN WHICH THE REAL PROPERTY IS LOCATED
8 FOR A DETERMINATION OF WHETHER THE DECISION TO ADD OR DELETE
9 PROPERTY TO OR FROM THE DRAINAGE DISTRICT IS SUPPORTED BY
10 SUBSTANTIAL, MATERIAL, AND COMPETENT EVIDENCE.