

# 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

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

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

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

~~—— Third, (1) The several descriptions or tracts of land with the names of the owner or owners of every such tract who have refused or neglected to execute a release of right of way and damages in any way arising or incident to the opening or maintaining the said proposed drain (2) the several descriptions or tracts of land owned by any minor, incompetent person, unknown persons or nonresidents of the township or townships, the execution of a release of right of way and damages for which have been neglected or refused; (3) it shall not be necessary to set forth in said application to the probate court the names of the several owners nor the description of the several tracts or parcels of land liable to an assessment for benefits, in case the drain applied for should be located and established, except those who have not released the right of way and through whose lands the drain passes; nor shall the same be 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

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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.