

HOUSE BILL No. 4656

May 27, 2015, Introduced by Rep. Johnson and referred to the Committee on Local Government.

A bill to amend 1956 PA 40, entitled
"The drain code of 1956,"
by amending sections 154, 191, and 196 (MCL 280.154, 280.191, and 280.196), section 154 as amended by 2010 PA 339 and section 196 as amended by 2008 PA 509.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 154. (1) The commissioner shall give notice as described
2 in subsection (3) for the receiving of bids for the construction of
3 the drain and for the holding of a public meeting to review the
4 apportionment of benefits. The meeting shall be not less than 5 nor
5 more than 30 days after the date set for receiving bids.

6 (2) The notice under subsection (1) shall be given by
7 publication of at least 2 insertions in a newspaper published and
8 of general circulation in the county. The first publication shall
9 be at least 10 days before the date set for receiving bids.

1 (3) The drain commissioner shall also send the notice under
2 subsection (1) by first-class mail at least 10 days before the date
3 of the meeting to review the apportionment of benefits, to each
4 person whose name appears upon the last city or township tax
5 assessment roll as owning land within the special assessment
6 district, at the address shown on the roll. If an address does not
7 appear on the roll, then notice need not be mailed to the person.
8 The drain commissioner shall make an affidavit of the mailing ~~and~~
9 ~~shall recite in the affidavit~~ **RECITING** that the persons to whom the
10 notice was mailed constitute all of the persons whose names and
11 addresses appear upon the tax rolls as owning land within the
12 particular special assessment district. The affidavit is conclusive
13 proof that notice was mailed to each person to whom notice is
14 required to be mailed. If notice has been sent by first-class mail
15 as provided in this section, the failure to receive notice by mail
16 does not constitute a jurisdictional defect invalidating a drain
17 proceeding or ~~tax~~. **ASSESSMENT**. If the board of determination
18 determines that the drain is necessary for the protection of the
19 public health and that the whole cost of the drain, except that
20 part which may be apportioned for benefits to highways, shall be
21 apportioned to municipalities, then mailing of individual notices
22 to persons owning land within the special assessment district as
23 provided in this subsection is not required. **HOWEVER, IF COSTS OF**
24 **MAINTENANCE WORK UNDER CHAPTER 8 ARE BEING APPORTIONED, THE DRAIN**
25 **COMMISSIONER SHALL SEND AN INDIVIDUAL NOTICE BY FIRST-CLASS MAIL TO**
26 **EACH PERSON WHOSE REAL PROPERTY IS EXPECTED TO BE ENTERED FOR THE**
27 **PURPOSE OF PERFORMING THE MAINTENANCE WORK, INFORMING THE PERSON OF**

1 **THE EXPECTED ENTRY.**

2 (4) The notice under subsection (1) shall be personally served
3 on the county clerk and 1 or more members of the road commission of
4 a county, ~~or road district,~~ the supervisor of a township, the mayor
5 of a city, and the president of a village to be assessed at large.

6 (5) The notice under subsection (1) shall contain all of the
7 following:

8 (a) The date, time, and place of receiving bids.

9 (b) The date, time, and place of the meeting to review the
10 apportionment of benefits.

11 (c) A statement that, at the meeting to review the
12 apportionment of benefits, ~~the drain commissioner will have~~
13 ~~available to review~~ the tentative apportionments against parcels
14 and municipalities within the drainage district **WILL BE AVAILABLE**
15 **TO REVIEW.**

16 (d) A statement that drain assessments against land will be
17 collected in the same manner as property taxes.

18 (e) A statement that if drain assessments against land are
19 collected by installment, the land owner may pay the assessments in
20 full with any interest to date at any time and thereby avoid
21 further interest charges.

22 (f) The name of each county, township, city, or village to be
23 assessed at large.

24 (g) A description of the land constituting the special
25 assessment district for the drain. The description may be stated by
26 designating the boundaries of the special assessment district by
27 streets, highways, parcels, or tracts of land or by describing the

1 tracts or parcels of land constituting the district. A tract or
2 parcel need not be subdivided beyond the point where the whole of
3 the tract or parcel is within the drainage district.

4 (h) The name or number of the drain.

5 (i) The number and length of sections, the average depth and
6 width of each section, and if the drain will be a closed drain, the
7 amount and specifications of all tile or pipe required.

8 (j) The location, number, type, and size of all culverts and
9 bridges.

10 (k) The conditions upon which the contract will be awarded.

11 **(l) FOR AN INDIVIDUAL MAILED NOTICE OF MAINTENANCE WORK UNDER**
12 **CHAPTER 8, A STATEMENT THAT THE RECIPIENT'S REAL PROPERTY IS**
13 **EXPECTED TO BE ENTERED FOR THE PERFORMANCE OF THE MAINTENANCE WORK,**
14 **IF APPLICABLE.**

15 (6) The notice under subsection (1) need not contain **THE**
16 minutes of **A** survey or a table of cuttings. These shall be kept on
17 file in the office of the drain commissioner.

18 (7) Bids shall be received and the total cost of the drain
19 shall be computed before the time set for review of the
20 apportionment. The computation shall be open to inspection. If the
21 computation is not completed before the day of review, the review
22 may be adjourned from time to time, not more than 20 days in ~~all,~~
23 **TOTAL**, for the completion of the computation, or a new hearing may
24 be called with similar notice, by publication and service at least
25 10 days before the hearing. If the contracts on which the
26 computation was based are not executed and new contracts are let at
27 a higher price, the computation shall be corrected and a new review

1 held with a similar notice. At the date, time, and place ~~fixed~~
2 **SPECIFIED** in the notice, or at another date, time, and place to
3 which the county drain commissioner may adjourn the hearing, the
4 apportionment of benefits and the lands constituting the special
5 assessment district shall be subject to review for at least 1 day.
6 The review shall be held open from 9 a.m. until 5 p.m. At the
7 review, the county clerk or the county road commission may appear
8 on behalf of the county or a road district, ~~+~~the supervisor of a
9 township may appear on behalf of a township, ~~+~~the mayor or an
10 officer of the city designated by the mayor may appear for a city,
11 ~~+~~**AND** the president may appear on behalf of a village. At the
12 review, the county drain commissioner shall hear the proofs and
13 allegations, shall carefully reconsider and review the description
14 of land ~~comprised~~ within the special assessment district ~~+~~**AND** the
15 several descriptions and apportionment of benefits, and shall
16 define and equalize the land as is just and equitable.

17 (8) If an apportionment of benefits is made against a state
18 trunk line highway, unless the director of the state transportation
19 department consents in writing to the apportionment, the drain
20 commissioner, at least 20 days before the review on the highway,
21 shall notify by registered mail the director of the state
22 transportation department of the percentage apportioned against the
23 highway and the date, time, and place ~~fixed for~~**OF** a review of
24 apportionment of benefits. If the director of the state
25 transportation department desires to have the apportionment of
26 benefits reviewed by the director of the department of agriculture
27 **AND RURAL DEVELOPMENT**, the director of the state transportation

1 department, within 10 days ~~from~~**AFTER** the receipt of the notice,
 2 shall file with the drain commissioner an objection to the
 3 apportionment. The drain commissioner shall notify the director of
 4 the department of agriculture **AND RURAL DEVELOPMENT** of the date,
 5 time, and place ~~fixed for~~**OF** the review of apportionments, and at
 6 the meeting the director of the department of agriculture, or a
 7 deputy of the director, shall review the apportionment made against
 8 the state trunk line highway and listen to the proofs and
 9 allegations of the parties, and may view the highway benefited. The
 10 action and decision on the apportionment under this subsection,
 11 when reduced to writing, is final.

12 Sec. 191. (1) ~~When~~**IF** a drain or portion thereof, ~~which~~**OF A**
 13 **DRAIN** traverses lands wholly in 1 county, ~~and~~ lands only in 1
 14 county ~~which is~~**ARE** subject to assessment, **AND THE DRAIN OR PORTION**
 15 **OF THE DRAIN** needs cleaning out, relocating, widening, deepening,
 16 straightening, tiling, extending, or relocating along a highway, or
 17 requires structures or mechanical devices that will properly purify
 18 or improve the flow of the drain or pumping equipment necessary to
 19 assist or relieve the flow of the drain, or needs supplementing by
 20 the construction of 1 or more relief drains which may consist of
 21 new drains or extensions, enlargements, or connections to existing
 22 drains, or needs 1 or more branches added, ~~thereto,~~**A WRITTEN**
 23 **PETITION SETTING FORTH THE NECESSITY OF THE PROPOSED WORK MAY BE**
 24 **FILED WITH THE COMMISSIONER. THE PETITION SHALL BE SIGNED BY** any 5
 25 **FREEHOLDERS**, or at least 50% of the freeholders if there are ~~less~~
 26 **FEWER** than 5 freeholders, whose lands ~~shall~~**WILL** be liable to an
 27 assessment for benefits. ~~of such work, may make petition in writing~~

~~to the commissioner setting forth the necessity of the proposed work and~~ **UPON FILING OF THE PETITION**, the commissioner shall proceed in the same manner provided for the location, establishment, and construction of a drain.

(2) If the project includes a tiled relief drain, or the tiling of an existing open drain or any portion thereof, **OF SUCH A DRAIN**, with a conduit a part of which has an inside diameter in excess of 36 inches or the retiling of an existing drain with a conduit, a part of which has an inside diameter in excess of 36 inches, then the petition shall comply with section 71. ~~The preceding sentence shall not be applicable~~ **THIS SUBSECTION DOES NOT APPLY** to the construction of bridges, culverts, and passageways. ~~The word tiling as used in this and other sections of this act, means the laying of a conduit composed of tile, brick, concrete, or other material. When it~~

(3) **IF THE WORK DESCRIBED IN SUBSECTION (1)** is necessary for the public health of 1 or more cities, villages, ~~and~~ **OR** townships, the petition may be signed solely by a city, village, or township when authorized by its governing body or by a combination of the municipalities, if the municipality or municipalities are liable to assessments at large for a percentage of the total amount assessed for the cost of the proposed work. After the board of determination determines the necessity for the work, as provided in section 72, the commissioner shall, as soon as practicable after **HE OR SHE HAS FILED** the final order of determination prescribed in section 151, ~~has been filed by him,~~ proceed as provided in sections 151 to 161, ~~. If the apportionment is the same as the last recorded~~

1 ~~apportionments, no day of review is necessary, but in other cases~~
2 ~~the commissioner shall proceed as provided in sections 151 to 161,~~
3 including the notice of and the holding of a day of review. **NOTICE**
4 **OF THE DAY OF REVIEW MAILED UNDER SECTION 154 TO A PERSON WHOSE**
5 **REAL PROPERTY IS EXPECTED TO BE ENTERED FOR THE PURPOSE OF**
6 **PERFORMING THE MAINTENANCE WORK SHALL INFORM THE PERSON OF THE**
7 **EXPECTED ENTRY.**

8 (4) AS USED IN THIS ACT, "TILING" MEANS THE LAYING OF A
9 CONDUIT COMPOSED OF TILE, BRICK, CONCRETE, OR OTHER MATERIAL.

10 Sec. 196. (1) An annual inspection may be made of a drain
11 established under this act. Inspection shall also be made upon the
12 request of the governing body of a public corporation, as defined
13 in section 461, served in whole or in part by the drain to be
14 inspected. For county drains, the inspection shall be made by the
15 drain commissioner ~~or~~ a competent person appointed by the drain
16 commissioner. For intercounty drains, the inspection shall be
17 ~~caused to be made by~~ **A COMPETENT PERSON APPOINTED BY** the drainage
18 board.

19 (2) Surplus construction ~~funds~~ **MONEY** remaining after
20 completion of construction of a drain, or ~~funds~~ **MONEY** remaining
21 after completion of work performed under a petition for maintenance
22 or improvements under this chapter, shall be deposited in the drain
23 fund of a drainage district and shall be expended for inspection,
24 repair, and maintenance of the drain.

25 (3) If at any time the drain fund of a drainage district
26 contains less than \$5,000.00 per mile or fraction of a mile of a
27 drain, the drain commissioner or drainage board may assess the

1 drainage district for an amount not to exceed \$2,500.00 per mile or
2 fraction of a mile in any 1 year. The amount collected under an
3 assessment shall be deposited in the drain fund of a drainage
4 district for necessary inspection, repair, and maintenance of the
5 drain.

6 (4) If an inspection discloses the necessity of expending
7 money for the maintenance and repair of a drain ~~in order~~ to keep it
8 in working order, the drain commissioner for a county drain, or the
9 drainage board for an intercounty drain, may without petition
10 expend an amount not to exceed in any 1 year \$5,000.00 per mile or
11 fraction of a mile for maintenance and repair of a drain, ~~exclusive~~
12 ~~of~~ **EXCLUDING** inspection and engineering fees and the cost of
13 publication and mailing. The determination of the maximum
14 expenditure allowed without a petition or resolution shall be based
15 on the total number of miles of the drain and not on the actual
16 number of miles or **THE** location of the maintenance or repair.

17 (5) If the drain commissioner or the drainage board finds it
18 necessary to expend ~~funds~~ **MONEY** in excess of the amount established
19 in subsection (4) per mile or fraction of a mile in any 1 year for
20 the maintenance and repair of a drain, the additional amounts shall
21 not be expended until approved by resolution of the governing body
22 of each township, city, and village affected by more than 20% of
23 the cost.

24 (6) If the drain fund of a drainage district does not contain
25 sufficient ~~funds~~ **MONEY** to pay for inspection, repair, and
26 maintenance authorized by this section, the drain commissioner or
27 the drainage board shall reassess the drainage district for the

1 inspection, repair, and maintenance according to benefits received.
 2 A reassessment shall be made and spread upon the city or township
 3 tax assessment roll within 2 years after the completion of the
 4 inspection, repair, and maintenance. ~~If the total expenditure is~~
 5 ~~more than the amount established in subsection (4) per mile or~~
 6 ~~fraction of a mile, all~~

7 **(7) REGARDLESS OF THE AMOUNT OF MONEY TO BE EXPENDED AND**
 8 **WHETHER THE DRAIN FUND CONTAINS SUFFICIENT MONEY TO PAY FOR**
 9 **MAINTENANCE UNDER THIS SECTION, OWNERS OF** real property ~~owners~~
 10 ~~subject to an assessment~~ within the drainage district shall be
 11 notified of the **INSPECTION, REPAIR, AND MAINTENANCE AND ANY**
 12 assessment by publication in a newspaper of general circulation
 13 within the drainage district and by first-class mail to the name
 14 and address that appears on the last city or township assessment
 15 roll. **THE NOTICE BY FIRST-CLASS MAIL TO A PERSON WHOSE REAL**
 16 **PROPERTY IS EXPECTED TO BE ENTERED FOR THE PURPOSE OF PERFORMING**
 17 **THE MAINTENANCE WORK SHALL INFORM THE PERSON OF THE EXPECTED ENTRY.**
 18 An affidavit of mailing shall be made by the drain commissioner.
 19 The affidavit is conclusive proof that the notices required by this
 20 subsection were mailed. The failure to receive the notices by mail
 21 ~~shall~~**DOES** not constitute a jurisdictional defect invalidating a
 22 drain tax if notice by publication was given as required by this
 23 subsection.

24 **(8)** ~~(7)~~An assessment for the actual cost of inspection,
 25 repair, and maintenance performed on a drain, or an assessment to
 26 be deposited in the drain fund of a drainage district, shall be
 27 made according to benefits received. The expenditure limit ~~of the~~

1 ~~amount~~ established in subsection (4) per mile of drain or fraction
2 of a mile shall be used to calculate the maximum amount that the
3 drain commissioner or drainage board may assess in any 1 year
4 without a petition or a request from a public corporation. The
5 property in a drainage district that benefits from the inspection,
6 repair, or maintenance of the drain is subject to assessment for
7 that inspection, repair, or maintenance. Determination of the
8 maximum assessment amount allowed without petition or request, or
9 of the property that is subject to assessment, shall be based on
10 the number of miles of drain and areas of the drainage district
11 receiving benefits and not on the actual number of miles or actual
12 location of the inspection, repair, or maintenance.

13 (9) ~~(8)~~—If an emergency condition exists that endangers the
14 public health, crops, or property within a drainage district, the
15 drain commissioner or the drainage board may expend ~~funds~~ **MONEY** for
16 maintenance and repair to alleviate the emergency condition.

17 (10) ~~(9)~~—Nothing in this section prohibits the drain
18 commissioner or the drainage board from spending ~~funds~~ **MONEY** in
19 excess of the amount established in subsection (4) per mile or
20 fraction of a mile in any 1 year for inspection, maintenance, and
21 repair of a drain when requested by a public corporation, if the
22 public corporation pays the entire cost of the inspection,
23 maintenance, and repair.

24 (11) ~~(10)~~—In computing the amounts that may be expended in
25 accordance with this section, the cost of work to be performed by a
26 federal agency or public corporation that is not chargeable to the
27 county or intercounty drainage district shall not be included. 7

1 ~~nor shall it be necessary for the~~ **THE** drain commissioner or the
2 drainage board **IS NOT REQUIRED** to advertise for bids for that
3 portion of the work to be done by the federal agency or public
4 corporation.

5 (12) ~~(11)~~ For purposes of this section, the costs of
6 maintenance or repair ~~shall~~ include the costs of maintaining the
7 drain in working order to continue a normal flow of water,
8 including the servicing or repair of necessary pumping equipment
9 and utility charges for pumping equipment; the cost of keeping the
10 drain free from rubbish, debris, siltation, or obstructions; the
11 cost of repairing a portion or all of a tile or drain to continue
12 the normal flow of water; and other costs associated with the costs
13 ~~enumerated~~ **LISTED** in this subsection.

14 (13) ~~(12)~~ If the cost of maintenance and repair of a drain
15 includes utility charges or costs to service pumping stations,
16 sewage treatment facilities, or retention basins, the limitation
17 ~~for maintenance and repair~~ **UNDER SUBSECTION (4)** does not apply.
18 ~~except that the~~ **THE** drain commissioner or drainage board may levy
19 sufficient special assessments to pay the charges or costs but not
20 more than the amount sufficient to pay those charges or costs.

21 (14) ~~(13)~~ Except as otherwise provided in this act, that
22 portion of the salaries, expenses, and fringe benefits of
23 administrative and engineering employees under the supervision of
24 the drain commissioner that are directly attributable, but not
25 incidental, to a drain or otherwise not recovered by fees
26 established by resolution or ordinance of the board of
27 commissioners may be ~~chargeable~~ **CHARGED** to the drain fund of a

1 drainage district.