

HOUSE BILL No. 4286

March 1, 2017, Introduced by Rep. Victory and referred to the Committee on Local Government.

A bill to amend 1956 PA 40, entitled
"The drain code of 1956,"
by amending sections 135 and 197 (MCL 280.135 and 280.197), section
197 as amended by 2013 PA 261.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 135. If at any time after ~~an~~**A COUNTY OR** intercounty
2 ~~drainage district has been established and a drain has been~~
3 ~~located, established and constructed therein,~~**DRAIN IS CONSTRUCTED,**
4 it appears that it is necessary to extend the drain or drainage
5 district into a county ~~which~~**THAT** was not a part of the original
6 ~~intercounty drainage district, the lands in the county may be added~~
7 ~~to the district~~**DRAINAGE DISTRICT OR TO REMOVE LANDS FROM THE**
8 **ORIGINAL DRAINAGE DISTRICT RESULTING IN THE REMOVAL OF A COUNTY**
9 **FROM AN INTERCOUNTY DRAINAGE DISTRICT, THE LANDS MAY BE ADDED TO OR**
10 **REMOVED FROM THE DRAINAGE DISTRICT PURSUANT TO SECTION 197(3) OR by**

1 presenting to the drain commissioner of ~~one~~¹ of the counties
 2 traversed or affected by the drain, a petition signed by 50% of the
 3 ~~land owners~~ **LANDOWNERS** whose land is traversed by the drain or
 4 proposed extended drain, ~~which~~ **OR ABUTS ON THE PART OF A HIGHWAY OR**
 5 **STREET ALONG THE SIDE OF WHICH THE DRAIN OR PROPOSED EXTENDED DRAIN**
 6 **RUNS, BETWEEN THE POINT WHERE THE DRAIN ENTERS THE HIGHWAY AND THE**
 7 **POINT WHERE IT LEAVES THE HIGHWAY. INSTEAD OF LANDOWNERS, THE**
 8 **PETITION MAY BE SIGNED SOLELY BY A CITY, VILLAGE, OR TOWNSHIP IF**
 9 **AUTHORIZED BY ITS GOVERNING BODY OR BY ANY COMBINATION OF**
 10 **MUNICIPALITIES, IF THE PETITIONING MUNICIPALITY OR MUNICIPALITIES**
 11 **ARE OR WILL BE LIABLE TO ASSESSMENT AT LARGE FOR A PERCENTAGE OF**
 12 **THE COST OF THE DRAIN. THE** petition shall state the name or number
 13 of the drain, and **IDENTIFY** the lands ~~which it is desired to have~~
 14 **PROPOSED TO BE** added to **OR REMOVED FROM** the drainage district. Upon
 15 receipt of the petition, the drain commissioner shall mail a copy
 16 of the petition to the ~~state~~ director of **THE DEPARTMENT OF**
 17 **agriculture AND RURAL DEVELOPMENT** and also to the drain
 18 commissioner of each county ~~in which lie lands liable for~~
 19 ~~assessments for the proposed extended drain or proposed extended~~
 20 ~~drainage district. The state~~ **WHERE THE ORIGINAL OR PROPOSED REVISED**
 21 **DRAINAGE DISTRICT IS LOCATED. THE** director of agriculture **AND RURAL**
 22 **DEVELOPMENT** shall call a meeting of the drainage board, ~~including~~
 23 ~~the commissioner of any county in which lie lands that have been~~
 24 ~~added to the~~ **WHICH SHALL INCLUDE THE COMMISSIONER OF EACH COUNTY**
 25 **WHERE THE ORIGINAL OR PROPOSED REVISED** drainage district **IS**
 26 **LOCATED.** Notices of ~~such~~ **THE** meeting and all other proceedings
 27 shall be ~~in accordance with the provisions of section 197 of this~~

1 ~~act, as amended.~~ **PROVIDED PURSUANT TO SECTION 197.** At the meeting,
 2 all persons owning lands **IN THE DRAINAGE DISTRICT OR PROPOSED**
 3 **REVISED DRAINAGE DISTRICT** liable to assessment for benefits, or any
 4 ~~district or municipality affected,~~ may appear for or against the
 5 addition **OR REMOVAL** of ~~such~~ **THE** lands. The board shall consider the
 6 petition and any evidence offered. ~~, and if it is determined~~ **IF THE**
 7 **BOARD DETERMINES** that the extension of the drain or drainage
 8 district **OR THE REMOVAL OF LANDS FROM THE DRAINAGE DISTRICT** is
 9 necessary for ~~the good of~~ the public health, convenience, or
 10 welfare, it shall then proceed to determine the just percentage of
 11 the whole cost of construction ~~which~~ **THAT** each county shall bear,
 12 ~~and also determine~~ **AND** the number of installments in which the
 13 drain taxes shall be collected. ~~In case~~ **IF** the commissioners cannot
 14 agree on the apportionment between counties or the number of
 15 installments, the ~~chairman~~ **CHAIRPERSON** shall determine ~~the same.~~
 16 **THESE, SUBJECT TO APPEAL UNDER SECTION 106.** If, in the opinion of
 17 the ~~expanded~~ drainage board, it is ~~found~~ necessary to ~~add the lands~~
 18 ~~to the drainage district, they~~ **REVISE THE DRAINAGE DISTRICT**
 19 **BOUNDARIES, THE BOARD** shall also enter an order ~~adding the lands.~~
 20 **TO THAT EFFECT.** Copies of the order ~~adding the lands to the~~
 21 ~~drainage district~~ shall be filed with the drain commissioner of
 22 each county ~~liable for assessments of the extended drain or~~
 23 ~~extended~~ **IN THE REVISED** drainage district. Copies of ~~the~~ **AN** order
 24 adding the lands to the drainage district shall also be served upon
 25 all persons whose lands have been added to ~~said~~ **THE** drainage
 26 district ~~according to section 154 of this act, as amended.~~ **IN THE**
 27 **SAME MANNER AS PROVIDED IN SECTION 154(3).** After the order is

1 filed, the ~~expanded~~ **REVISED** drainage board ~~shall constitute~~
2 **CONSTITUTES** the drainage board for the expanded drainage district
3 and ~~shall have~~ **HAS** all the powers ~~which are given to~~ **AND DUTIES OF**
4 drainage boards ~~by this act, as amended.~~ **UNDER THIS ACT.**

5 Sec. 197. (1) Upon receipt of a petition filed under this
6 chapter, the drain commissioner or the drainage board may retain
7 the services of a licensed professional surveyor or engineer to
8 make a survey of the drain and may review the drainage district
9 boundaries, or a portion of the drain or drainage district, or if
10 necessary, lay out a revised drainage district including the land
11 benefited, or make profiles, plans, or estimates of the work and
12 file all data concerning the revisions, profiles, plans, or
13 estimates with the drain commissioner or the chairperson of the
14 drainage board.

15 (2) If, after a survey of the drain or a review of the
16 drainage district boundaries under subsection (1) or after an
17 inspection under section 196, it appears that the boundaries of the
18 drainage district should be revised, the drain commissioner for a
19 county drain, or the drainage board for an intercounty drain, shall
20 either convene the board of determination pursuant to subsection
21 ~~(3)~~ **(4)** or hold a day of review of district boundaries pursuant to
22 subsection ~~(4)~~ **(5)** and, after notice and review as provided in this
23 section, revise the boundaries of the drainage district to include
24 all lands benefited by the drain as recommended by a licensed
25 professional surveyor or engineer.

26 **(3) IF, AFTER AN INSPECTION UNDER SECTION 196 AND A REVIEW OF**
27 **THE DRAINAGE DISTRICT BOUNDARIES, A DRAIN COMMISSIONER OR DRAINAGE**

1 BOARD DETERMINES THAT THE BOUNDARIES SHOULD BE REVISED AND THAT
2 LANDS, IN A COUNTY OR COUNTIES NOT PART OF THE ORIGINAL DRAINAGE
3 DISTRICT, SHOULD BE ADDED TO THE DRAINAGE DISTRICT OR LANDS IN AN
4 INTERCOUNTY DRAINAGE DISTRICT SHOULD BE REMOVED RESULTING IN THE
5 REMOVAL OF A COUNTY FROM THE INTERCOUNTY DRAINAGE DISTRICT, THE
6 DRAIN COMMISSIONER OR DRAINAGE BOARD SHALL SERVE NOTICE ON THE
7 DIRECTOR OF AGRICULTURE AND RURAL DEVELOPMENT AND THE DRAIN
8 COMMISSIONER OF EACH COUNTY WHERE THERE ARE LANDS PROPOSED TO BE
9 ADDED TO OR REMOVED FROM THE DRAINAGE DISTRICT. THE DIRECTOR OF THE
10 DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT SHALL CALL A
11 MEETING OF THE DRAINAGE BOARD, WHICH SHALL INCLUDE THE COMMISSIONER
12 OF EACH COUNTY WHERE THE DRAINAGE DISTRICT OR PROPOSED REVISED
13 DRAINAGE DISTRICT IS LOCATED. AT LEAST 10 DAYS BEFORE THE DATE OF
14 THE MEETING, THE DIRECTOR OF THE DEPARTMENT OF AGRICULTURE AND
15 RURAL DEVELOPMENT SHALL SEND NOTICE OF THE MEETING BY FIRST-CLASS
16 MAIL TO EACH CITY, VILLAGE, AND TOWNSHIP IN THE ORIGINAL OR
17 PROPOSED REVISED DISTRICT AND EACH PERSON WHOSE NAME APPEARS ON THE
18 LAST CITY OR TOWNSHIP TAX ASSESSMENT ROLL AS OWNING LANDS IN THE
19 ORIGINAL OR PROPOSED REVISED DRAINAGE DISTRICT, AT THE ADDRESS
20 SHOWN ON THE ROLL. IF AN ADDRESS DOES NOT APPEAR ON THE ROLL,
21 NOTICE NEED NOT BE MAILED TO THAT PERSON. AT THE MEETING, ALL
22 PERSONS OWNING LANDS IN THE DRAINAGE DISTRICT OR PROPOSED REVISED
23 DRAINAGE DISTRICT LIABLE TO ASSESSMENT FOR BENEFITS, OR ANY
24 MUNICIPALITY AFFECTED, MAY APPEAR FOR OR AGAINST THE ADDITION OR
25 REMOVAL OF THE LANDS. THE DRAINAGE BOARD SHALL CONSIDER ANY
26 EVIDENCE OFFERED AND DETERMINE WHETHER THE ADDITION OR REMOVAL OF
27 THE LANDS IS JUST AND EQUITABLE. IF THE ADDITION OR REMOVAL OF THE

LANDS IS JUST AND EQUITABLE, THE BOARD SHALL FILE AN ORDER TO THAT EFFECT. THE ORDER SHALL GIVE THE DRAIN A NAME OR NUMBER, DESIGNATE THE DRAINAGE DISTRICT, DESCRIBE THE ROUTE AND COURSE OF THE DRAIN AND DRAINAGE DISTRICT BOUNDARIES, AND, IF THE DRAINAGE DISTRICT AS REVISED IS AN INTERCOUNTY DRAINAGE DISTRICT, DESIGNATE THE MEMBERS CONSTITUTING THE REVISED DRAINAGE BOARD AND DETERMINE THE APPORTIONMENT BETWEEN COUNTIES. A COPY OF THE ORDER SHALL BE FILED WITH THE DRAIN COMMISSIONER OF EACH COUNTY LIABLE FOR ASSESSMENTS OF THE DRAINAGE DISTRICT. IF THE DRAINAGE DISTRICT AS REVISED IS AN INTERCOUNTY DRAINAGE DISTRICT, AFTER THE ORDER IS FILED, THE REVISED DRAINAGE BOARD CONSTITUTES THE DRAINAGE BOARD FOR THE REVISED DRAINAGE DISTRICT AND HAS ALL THE POWERS AND DUTIES OF DRAINAGE BOARDS UNDER THIS ACT. IF THE DRAINAGE DISTRICT AS REVISED IS AN INTERCOUNTY DRAINAGE DISTRICT, THE REVISED DRAINAGE BOARD SHALL REVISE THE DRAINAGE DISTRICT BOUNDARIES DURING THE HEARING OF NECESSITY AS PROVIDED IN SUBSECTION (4) OR HOLD A DAY OF REVIEW OF DRAINAGE DISTRICT BOUNDARIES AS PROVIDED IN SUBSECTION (5). IF THE DRAINAGE DISTRICT AS REVISED IS A COUNTY DRAINAGE DISTRICT, THE ORIGINAL DRAINAGE BOARD SHALL REVISE THE DRAINAGE DISTRICT BOUNDARIES DURING THE HEARING OF NECESSITY AS PROVIDED IN SUBSECTION (4) OR HOLD A DAY OF REVIEW OF DRAINAGE DISTRICT BOUNDARIES AS PROVIDED IN SUBSECTION (5) AND, FOLLOWING THE ORDER REVISING THE DRAINAGE DISTRICT BOUNDARIES, THE DRAIN COMMISSIONER SHALL HAVE ALL THE POWERS AND DUTIES FOR A COUNTY DRAIN ESTABLISHED UNDER THIS ACT.

(4) ~~(3)~~—If, BEFORE THE HEARING OF NECESSITY FOR A PETITION, the drain commissioner or drainage board determines that the

1 boundaries of the drainage district should be revised, ~~prior to the~~
2 ~~hearing of necessity for a petition,~~ the drain commissioner for a
3 county drain, or the chairperson of the drainage board for an
4 intercounty drain, may request that the board of determination
5 revise the drainage district boundaries during the hearing of
6 necessity as provided in section 72 or 122. If the board of
7 determination by a majority vote of members finds that the addition
8 or deletion of lands will more accurately define the boundaries of
9 the land benefited by the drain and it would be just and equitable,
10 ~~they~~ **THE BOARD** shall describe the revised drainage district
11 boundaries in the order of necessity for the drain.

12 **(5)** ~~(4)~~—If the drain commissioner or drainage board determines
13 to hold a day of review of drainage district boundaries, the lands
14 comprising the drainage district revised ~~in accordance with~~ **UNDER**
15 this section shall be subject to review for not less than 1 day
16 from 9 a.m. until 5 p.m. The review shall be conducted at a
17 location designated by the drain commissioner or drainage board. At
18 the review, the drain commissioner or drainage board or its
19 designee 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,
27 and competent evidence.

1 **(6)** ~~(5)~~ A notice for review of revised drainage district
2 boundaries under subsection ~~(4)~~ **(5)** shall specify the date, time,
3 and place at which the review ~~shall~~ **WILL** take place and provide a
4 general description of the lands proposed ~~to be added or deleted in~~
5 whole or in part **TO BE ADDED OR REMOVED** from the drainage district.
6 This notice shall be sent by first-class mail at least 10 days
7 before the date of the review to each city, village, and township
8 in the revised district, and each person whose name appears on the
9 last city or township tax assessment roll as owning lands within
10 the revised drainage district, at the address shown on the roll. If
11 an address does not appear on the roll, then notice need not be
12 mailed to that person. The drain commissioner or drainage board
13 shall make an affidavit of the mailing and shall recite in the
14 affidavit that the persons to whom the notice was mailed constitute
15 all of the persons whose names and addresses appear on the tax
16 rolls as owning lands within the revised drainage district. The
17 affidavit ~~shall be~~ **IS** conclusive proof that notice was mailed to
18 each person to whom notice is required to be mailed by this
19 section. Failure to receive a notice by mail is not a
20 jurisdictional defect invalidating a drain proceeding or
21 assessment, if notice was sent by first-class mail as provided in
22 this section. The drain commissioner or chairperson of the drainage
23 board shall also cause the notice to be published once in a
24 newspaper of general circulation in the county or counties in which
25 the drainage district is located at least 10 days before the
26 review. All expense of notification shall be paid by the drainage
27 district.

1 (7) ~~(6)~~The owner of any land in the drainage district, the
2 state transportation department, or any city, village, township,
3 ~~district, or county~~ having control of any highway in the drainage
4 district, that is aggrieved by a determination to revise, or not to
5 revise, drainage district boundaries as provided for in this
6 section may, within 10 days after the order to revise the drainage
7 district boundaries ~~has been~~**IS** entered, institute an action in the
8 circuit court for the county in which the real property is located
9 for a determination of whether the decision to ~~add or delete~~
10 ~~property to or from~~**REVISE, OR NOT TO REVISE**, the drainage district
11 **BOUNDARIES** is supported by substantial, material, and competent
12 evidence. **THE ADDITION OR REMOVAL OF A COUNTY OR COUNTIES TO OR**
13 **FROM THE DRAINAGE DISTRICT UNDER SUBSECTION (3) IS SUBJECT TO**
14 **REVIEW IN THE MANNER PROVIDED IN SECTION 106.**

15 Enacting section 1. This amendatory act takes effect 90 days
16 after the date it is enacted into law.