

HOUSE BILL No. 5937

May 8, 2018, Introduced by Rep. Hughes and referred to the Committee on Local Government.

A bill to amend 1956 PA 40, entitled "The drain code of 1956," by amending section 72 (MCL 280.72), as amended by 1987 PA 60.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 72. (1) As soon as practicable after the filing of a
2 petition, the commissioner authorized to act on the petition, if
3 not disqualified under section 381 to make the apportionment of
4 benefits, may appoint a board of determination. ~~composed of 3~~
5 ~~disinterested property owners.~~ If the commissioner is disqualified
6 or chooses not to appoint the board of determination, the
7 commissioner shall immediately file a copy of the petition with the
8 chairperson of the county board of commissioners, together with a
9 statement, signed by the commissioner, ~~showing~~ that he or she is
10 disqualified or chooses not to act in appointing a board of

1 determination. ~~Upon~~ **AS SOON AS PRACTICABLE AFTER** receiving a copy
2 of the petition and certificate, the chairperson of the county
3 board of commissioners, ~~if not privately interested, as soon as~~
4 ~~practicable,~~ **UNLESS HE OR SHE HAS A CONFLICT OF INTEREST**, shall
5 appoint a board of determination ~~composed of 3 disinterested~~
6 ~~property owners~~ and shall immediately notify the drain commissioner
7 of the names and addresses of those appointed. If the chairperson
8 of the board of commissioners has a ~~private~~ **CONFLICT OF** interest in
9 the proceedings, the drain committee of the county board of
10 commissioners shall appoint the board of determination. ~~Members of~~
11 ~~boards of determination shall be residents of the county but not of~~
12 ~~a township, city, or village affected by the drain, and may not be~~
13 ~~members of the county board of commissioners of the county.~~

14 **(2) A BOARD OF DETERMINATION SHALL CONSIST OF 3 MEMBERS. THE**
15 **OFFICER OR COMMITTEE SPECIFIED IN SUBSECTION (1) SHALL SELECT THE**
16 **MEMBERS BY RANDOM DRAW FROM A PERMANENT POOL. THE POOL SHALL**
17 **CONSIST OF 1 INDIVIDUAL APPOINTED BY THE LEGISLATIVE BODY OF EACH**
18 **CITY, VILLAGE, AND TOWNSHIP IN THE COUNTY. A POOL MEMBER APPOINTED**
19 **BY THE LEGISLATIVE BODY OF A MUNICIPALITY AFFECTED BY A DRAIN**
20 **PROJECT SHALL BE EXCLUDED FROM THE POOL FOR THE PURPOSES OF THE**
21 **RANDOM DRAW FOR A BOARD OF DETERMINATION FOR THAT PROJECT. TO BE**
22 **ELIGIBLE FOR APPOINTMENT TO THE POOL AND SERVICE ON A BOARD OF**
23 **DETERMINATION, AN INDIVIDUAL MUST BE A DISINTERESTED OWNER OF**
24 **PROPERTY IN AND A RESIDENT OF THE APPOINTING MUNICIPALITY AND MUST**
25 **NOT BE A MEMBER OF THE COUNTY BOARD OF COMMISSIONERS. A POOL MEMBER**
26 **SHALL SERVE AT THE PLEASURE OF THE APPOINTING LEGISLATIVE BODY.**
27 **HOWEVER, A NEW POOL MEMBER APPOINTED BY A LEGISLATIVE BODY SHALL**

1 NOT REPLACE A POOL MEMBER ON AN EXISTING BOARD OF DETERMINATION
2 UNLESS THE LEGISLATIVE BODY, AFTER NOTICE AND AN OPPORTUNITY FOR A
3 HEARING, HAS REMOVED THE POOL MEMBER FOR MISFEASANCE, MALFEASANCE,
4 OR NONFEASANCE IN OFFICE.

5 (3) ~~A~~ **THE DRAIN COMMISSIONER SHALL CALL A** meeting of the board
6 of determination shall be called ~~AT A CONVENIENT PLACE~~ within the
7 drainage district at a convenient place to be designated by the
8 ~~drain commissioner. The board of determination meeting also may be~~
9 ~~held~~ **OR** at a public building within the city, village, or township
10 in which the drain is located. If ~~1 of those~~ **AN INDIVIDUAL**
11 appointed to the board of determination fails or refuses to serve,
12 the ~~drain commissioner~~ **OFFICER OR COMMITTEE SPECIFIED IN SUBSECTION**
13 **(1)** shall appoint a successor. The per diem compensation ~~7~~ **AND THE**
14 mileage ~~7~~ **AND EXPENSE REIMBURSEMENTS FOR** a member
15 of the board of determination shall be the same as the county board
16 of commissioners of the county. In counties where commissioners are
17 not paid on a per diem basis, the compensation ~~7~~ **AND THE** mileage ~~7~~
18 and expenses **EXPENSE REIMBURSEMENTS** shall be ~~fixed~~ **SET** by the drain
19 commissioner. The members of the board of determination shall not
20 receive more than 1 per diem for a day no matter how many separate
21 matters are considered on that day. Upon request **OF A STATE**
22 **LEGISLATOR WHO REPRESENTS THE AREA IN WHICH THE PROPOSED DRAIN**
23 **IMPROVEMENT IS TO BE CONSTRUCTED,** the county drain commissioner
24 shall inform **THE LEGISLATOR** in writing ~~the requesting state~~
25 ~~legislator who represents that portion of the area in which the~~
26 ~~proposed drain improvement is to be constructed~~ of the names and
27 addresses of the ~~persons~~ **INDIVIDUALS** appointed to a board of

1 determination.

2 (4) ~~(2)~~—The drain commissioner shall give public notice of the
3 time, date, and place of the meeting of the board of determination
4 in the manner required by the open meetings act, ~~Act No. 267 of the~~
5 ~~Public Acts of 1976, as amended, being sections 15.261 to 15.275 of~~
6 ~~the Michigan Compiled Laws, and 1976 PA 267, MCL 15.261 TO 15.275.~~

7 **THE COMMISSIONER SHALL ALSO GIVE NOTICE, NOT LESS THAN 10 DAYS**
8 **BEFORE THE MEETING, by publication—ALL OF THE FOLLOWING MEANS:**

9 (A) **PUBLICATION** in a newspaper of general circulation in the
10 county. ~~at least 10 days before the meeting. Notice also shall be~~
11 ~~served~~

12 (B) **SERVICE** on the county clerk and on the clerk of each
13 township, city, and village in the district, personally or by
14 registered mail. ~~, at least 10 days before the meeting. The drain~~
15 ~~commissioner also shall send notice, by first class mail, of the~~
16 ~~time, date, and place of the meeting, to~~

17 (C) **SERVICE BY FIRST-CLASS MAIL ON** each person whose name
18 appears on the last city, village, or township tax assessment roll
19 as owning land within the special assessment district, at the
20 address shown on the roll. If an address does not appear on the
21 roll, a notice need not be mailed to the person. The drain
22 commissioner shall make an affidavit of the mailing and shall
23 recite in the affidavit that ~~the persons to whom~~ the notice was
24 mailed ~~constitute~~ **TO** all of the persons whose names and addresses
25 appear upon the tax rolls as owning land within the ~~particular~~
26 special assessment district. The affidavit ~~shall be~~ **IS** conclusive
27 proof that notice was mailed to each person to whom notice is

1 required to be mailed ~~pursuant to~~ **UNDER** this section. The failure
2 to receive a notice by mail ~~shall not constitute~~ **IS NOT** a
3 jurisdictional defect invalidating a drain proceeding or tax, or
4 both, if notice has been sent by first class mail as provided in
5 this ~~section.~~ **SUBDIVISION.**

6 (5) Expenses of notification shall be paid by the drainage
7 district when created.

8 (6) ~~(3)~~ At the time and place ~~fixed~~ **SPECIFIED** in the notice,
9 the board of determination shall meet, elect a chairperson and
10 secretary, and, ~~proceed to~~ **AFTER CONSIDERING THE EVIDENCE OFFERED,**
11 determine the necessity of the proposed drain and whether the drain
12 is conducive to public health, convenience, or welfare. The board
13 of determination, if it considers it necessary, shall require the
14 county drain commissioner to obtain from the county treasurer a
15 statement showing the amount of taxes and special assessments
16 levied against the land in the proposed drainage district on the
17 tax rolls for the immediately preceding 3 years and the amount of
18 the taxes and assessments remaining unpaid. If it appears from the
19 statement that 25% or more of the taxes are unpaid on the lands,
20 further action shall not be taken. ~~After hearing the evidence~~
21 ~~offered, the board of determination shall make its determination on~~
22 ~~the necessity of the drain and whether the drain is conducive to~~
23 ~~public health, convenience, or welfare.~~ If the board of
24 determination finds, by a majority vote of the members, that the
25 drain is not necessary and conducive to public health, convenience,
26 or welfare, the board of determination shall file with the
27 commissioner an order dismissing the petition, and a further

1 petition for the drain shall not be entertained within 1 year after
2 the determination. If the board of determination **FINDS**, by a
3 majority vote, ~~finds THAT~~ the **PROPOSED** drain ~~proposed to be~~ **IS**
4 necessary and conducive to the public health, convenience, or
5 welfare, the board of determination shall make an order to that
6 effect and file the order with the commissioner.

7 **(7)** If the board of determination finds that a portion of the
8 construction of the proposed drain is necessary for the protection
9 of the public health in 1 or more cities, villages, and townships,
10 the order shall set forth the determination ~~giving the names of the~~
11 **AND IDENTIFY THOSE** municipalities. ~~receiving benefit for health.~~ If
12 the board of determination determines that the whole cost, except
13 that to be levied against state or county highways for highway
14 benefits, is necessary for the public health, the cost shall be
15 levied against the townships, villages, and cities at large, and it
16 ~~shall not be~~ **IS NOT** necessary, ~~in a subsequent order or notice to~~
17 describe or refer to land included in or comprising the drainage
18 district. ~~Upon filing of~~ **WITHIN 10 DAYS AFTER THE BOARD OF**
19 **DETERMINATION FILES** the order of determination, ~~by the board of~~
20 ~~determination,~~ the drain commissioner, ~~within 10 days of filing,~~
21 shall notify **THE GOVERNING BODY OF** each municipality **BY REGISTERED**
22 **MAIL** that it is liable to pay a percent of the cost of construction
23 of the drain by reason of benefits at large for public health. ~~The~~
24 ~~governing body of the township, city, or village, within~~ **WITHIN** 20
25 days after receipt of the notification, ~~by registered mail from the~~
26 ~~drain commissioner,~~ **THE GOVERNING BODY** may appeal the order of the
27 board of determination to the probate court having jurisdiction in

1 the county in which the ~~township, city, or village~~ **MUNICIPALITY** is
2 located. ~~Upon~~

3 **(8) NOT LESS THAN 21 DAYS AFTER** receipt of the order of the
4 board of determination **UNDER SUBSECTION (6)**, and if an appeal has
5 not been taken by a municipality to the probate court **UNDER**
6 **SUBSECTION (7)**, the commissioner ~~, after 20 days,~~ shall make his or
7 her ~~A~~ first order of determination, in writing, giving the name or
8 number of the drainage district ~~. The commissioner shall establish~~
9 **AND ESTABLISHING** the commencement, route, terminus, and type of
10 construction of the drain. ~~, a copy of which order he or she shall~~
11 ~~file, within 15 days,~~ **THE DRAIN COMMISSIONER SHALL FILE A COPY OF**
12 **THE ORDER** in his or her office ~~. If~~ **WITHIN 15 DAYS AFTER THE ORDER**
13 **IS MADE OR, IF** an appeal is taken to the probate court by a
14 municipality, ~~the commissioner shall file his or her first order of~~
15 ~~determination~~ **WITHIN 15 DAYS** after the appeal procedures are ~~are~~ **HAVE**
16 terminated.

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