

HOUSE BILL No. 6376

September 25, 2018, 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 72, 105, 122, 123, 247, and 307 (MCL 280.72,
280.105, 280.122, 280.123, 280.247, and 280.307), section 72 as
amended by 1987 PA 60 and section 307 as amended by 2016 PA 115.

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

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

16 (2) ~~A~~ **THE DRAIN COMMISSIONER SHALL CALL A** meeting of the board
 17 of determination ~~shall be called~~ **AT A CONVENIENT PLACE** within the
 18 drainage district ~~at a convenient place to be designated by the~~
 19 ~~drain commissioner. The board of determination meeting also may be~~
 20 ~~held~~ **OR** at a public building within ~~the~~ **A** city, village, or
 21 township in which the drain is located. If ~~1 of these~~ **AN INDIVIDUAL**
 22 appointed to the board of determination fails or refuses to serve,
 23 the drain commissioner shall appoint a successor. The per diem
 24 compensation ~~,~~ **AND THE** mileage ~~,~~ and expenses ~~EXPENSE~~
 25 **REIMBURSEMENTS** of a member of the board of determination shall be
 26 the same as the county board of commissioners of the county. In
 27 counties where commissioners are not paid on a per diem basis, the

1 compensation ~~AND THE~~ mileage ~~and expenses~~ **EXPENSE**
 2 **REIMBURSEMENTS** shall be ~~fixed~~ **SET** by the drain commissioner. ~~The~~
 3 ~~members of the board of determination shall not receive more than 1~~
 4 ~~per diem for a day no matter how many separate matters are~~
 5 ~~considered on that day.~~ Upon request, the county drain commissioner
 6 shall inform in writing the requesting state legislator who
 7 represents ~~that portion of~~ the area in which the proposed drain
 8 improvement is to be constructed of the names and addresses of the
 9 persons appointed to a board of determination.

10 (3) ~~(2)~~ The drain commissioner shall give public notice of the
 11 time, date, and place of the meeting of the board of determination
 12 in the manner required by the open meetings act, ~~Act No. 267 of the~~
 13 ~~Public Acts of 1976, as amended, being sections 15.261 to 15.275 of~~
 14 ~~the Michigan Compiled Laws, and~~ **1976 PA 267, MCL 15.261 TO 15.275.**

15 **THE COMMISSIONER SHALL ALSO GIVE SUCH NOTICE, NOT LESS THAN 10 DAYS**
 16 **BEFORE THE MEETING,** by ~~publication~~ **ALL OF THE FOLLOWING MEANS:**

17 (A) **PUBLICATION** in a newspaper of general circulation in the
 18 ~~county at least 10 days before the meeting. Notice also shall be~~
 19 ~~served~~ **DRAINAGE DISTRICT.**

20 (B) **SERVICE** on the county clerk and on the clerk of each
 21 township, city, and village in the **DRAINAGE** district, personally or
 22 by ~~registered~~ **CERTIFIED** mail. ~~, at least 10 days before the~~
 23 ~~meeting. The drain commissioner also shall send notice,~~

24 (C) **SERVICE** by ~~first class~~ **FIRST-CLASS** mail ~~, of the time,~~
 25 ~~date, and place of the meeting, to~~ **ON** each person whose name
 26 appears on the last city, village, or township tax assessment roll
 27 as owning land within the ~~special assessment~~ **DRAINAGE** district, at

1 the address shown on the roll. If an address does not appear on the
 2 roll, a notice need not be mailed to the person. The drain
 3 commissioner shall make an affidavit of the mailing and shall
 4 recite in the affidavit that ~~the persons to whom the notice was~~
 5 mailed ~~constitute~~ **TO** all of the persons whose names and addresses
 6 appear upon the tax rolls as owning land within the ~~particular~~
 7 ~~special assessment~~ **DRAINAGE** district. The affidavit ~~shall be~~ **IS**
 8 conclusive proof that notice was mailed to each person to whom
 9 notice is required to be mailed ~~pursuant to~~ **UNDER** this section. The
 10 failure to receive a notice by mail ~~shall~~ **IS** not ~~constitute~~ a
 11 jurisdictional defect invalidating a drain proceeding or ~~tax,~~ **DRAIN**
 12 **ASSESSMENT**, or both, if notice has been sent by first class mail as
 13 provided in this ~~section.~~ **SUBDIVISION.**

14 (4) Expenses of notification shall be paid by the drainage
 15 district when created.

16 (5) ~~(3)~~ At the time and place ~~fixed~~ **SPECIFIED** in the notice,
 17 the board of determination shall meet, elect a chairperson and
 18 secretary, and, ~~proceed to~~ **AFTER CONSIDERING THE EVIDENCE OFFERED**,
 19 determine the necessity of the proposed drain and whether the drain
 20 is conducive to public health, convenience, or welfare. The board
 21 of determination, if it considers it necessary, shall require the
 22 county drain commissioner to obtain from the county treasurer a
 23 statement showing the amount of taxes and special assessments
 24 levied against the land in the proposed drainage district on the
 25 tax rolls for the immediately preceding 3 years and the amount of
 26 the taxes and assessments remaining unpaid. If it appears from the
 27 statement that 25% or more of the taxes are unpaid on the lands,

1 further action shall not be taken. ~~After hearing the evidence~~
2 ~~offered, the board of determination shall make its determination on~~
3 ~~the necessity of the drain and whether the drain is conducive to~~
4 ~~public health, convenience, or welfare.~~ If the board of
5 determination finds, by a majority vote of the members, that the
6 drain is not necessary and conducive to public health, convenience,
7 or welfare, the board of determination shall file with the
8 commissioner an order dismissing the petition, and a further
9 petition for the drain shall not be ~~entertained~~ **FILED** within 1 year
10 after the determination. If the board of determination **FINDS**, by a
11 majority vote, ~~finds THAT~~ the **PROPOSED** drain ~~proposed to be~~ **IS**
12 necessary and conducive to the public health, convenience, or
13 welfare, the board of determination shall make an order to that
14 effect and file the order with the commissioner. ~~If the board of~~
15 ~~determination finds that a portion of the construction of the~~
16 ~~proposed drain is necessary for the protection of the public health~~
17 ~~in 1 or more cities, villages, and townships, the order shall set~~
18 ~~forth the determination giving the names of the municipalities~~
19 ~~receiving benefit for health. If the board of determination~~
20 ~~determines that the whole cost, except that to be levied against~~
21 ~~state or county highways for highway benefits, is necessary for the~~
22 ~~public health, the cost shall be levied against the townships,~~
23 ~~villages, and cities at large, and it shall not be necessary, in a~~
24 ~~subsequent order or notice to describe or refer to land included in~~
25 ~~or comprising the drainage district. Upon filing of the order of~~
26 ~~determination by the board of determination,~~ **NOT MORE THAN 10 DAYS**
27 **AFTER THE BOARD OF DETERMINATION FILES AN ORDER FINDING THE**

1 **PROPOSED DRAIN TO BE NECESSARY AND CONDUCTIVE TO THE PUBLIC HEALTH,**
 2 **CONVENIENCE, OR WELFARE,** the drain commissioner ~~, within 10 days of~~
 3 ~~filing,~~ shall notify each municipality that it is liable to pay a
 4 percent of the cost of construction of the drain by reason of
 5 benefits at large for public health. ~~The governing body of the~~
 6 ~~township, city, or village, within 20 days after receipt of the~~
 7 ~~notification by registered mail from the drain commissioner, may~~
 8 ~~appeal the order of the board of determination to the probate court~~
 9 ~~having jurisdiction in the county in which the township, city, or~~
 10 ~~village is located. Upon~~ **WITHIN 20 DAYS AFTER THE COMMISSIONER'S**
 11 receipt of the order of the board of determination, ~~and if an~~
 12 ~~appeal has not been taken by a municipality to the probate court,~~
 13 ~~the commissioner, after 20 days,~~ **UNDER SECTION 72A, THE DRAIN**
 14 **COMMISSIONER** shall make ~~his or her~~ **A** first order of determination
 15 in writing, giving the name or number of the drainage district -
 16 ~~The commissioner shall establish the commencement,~~ **AND A GENERAL**
 17 **DESCRIPTION OF THE** route, terminus, and type of construction of the
 18 drain. ~~, a copy of which order he or she shall file, within 15~~
 19 ~~days,~~ **THE DRAIN COMMISSIONER SHALL FILE A COPY OF THE ORDER** in his
 20 or her office. ~~If an appeal is taken to the probate court by a~~
 21 ~~municipality, the commissioner shall file his or her first order of~~
 22 ~~determination after the appeal procedures are terminated.~~

23 Sec. 105. (1) ~~The chairman of the~~ **AFTER CONSIDERING THE**
 24 **RECOMMENDATIONS OF THE SURVEYOR OR ENGINEER UNDER SECTION 104, THE**
 25 drainage board shall ~~thereupon prepare an order designating a~~
 26 ~~drainage district, giving it a~~ **DETERMINE ALL OF THE FOLLOWING:**

27 **(A) A DESIGNATION FOR THE DRAINAGE DISTRICT, BY** name or

1 number. ~~and describe therein~~

2 (B) A DESCRIPTION OF the drainage district, WHICH SHALL
3 COMPRISE ALL THE LAND THAT WOULD BE BENEFITED BY AND LIABLE FOR
4 ASSESSMENTS FOR THE CONSTRUCTION OF THE DRAIN. THE DRAINAGE
5 DISTRICT MAY BE DESCRIBED by EITHER OF THE FOLLOWING METHODS:

6 (i) BY its boundaries of streets and highways or tracts or
7 parcels of land. ~~or by~~

8 (ii) BY a description of all LAND INCLUDED IN THE DRAINAGE
9 DISTRICT, BY tracts or parcels of land, ~~included therein and the~~
10 ~~counties, townships, cities, villages and~~ LOCAL UNITS OF
11 GOVERNMENT, OR state trunk line highways ~~including therein all~~
12 ~~highways, townships, counties, cities and villages, which would be~~
13 ~~benefited by the construction of such drain and would be liable to~~
14 ~~an assessment therefor; also a~~ OF WHICH THE DISTRICT IS COMPRISED.

15 (C) A description of the drain ~~according to the plans and~~
16 ~~specifications prepared by the surveyor or engineer and determined~~
17 ~~by the drainage board, showing the beginning, route, terminus, type~~
18 of construction and the estimated cost of the construction.
19 ~~Notice of filing of the order shall be given by the state director~~
20 ~~of agriculture by publishing a notice~~

21 (D) THE PERCENTAGE OF THE COST FOR LAYING OUT A DRAINAGE
22 DISTRICT TENTATIVELY APPORTIONED TO EACH COUNTY IN WHICH ANY PART
23 OF THE DRAINAGE DISTRICT IS LOCATED, SUBJECT TO REDETERMINATION
24 UNDER SECTION 123. IF A MEMBER OF THE DRAINAGE BOARD WOULD BE
25 DISQUALIFIED UNDER SECTIONS 381 AND 383 FROM MAKING AN
26 APPORTIONMENT OF BENEFITS, BOTH OF THE FOLLOWING APPLY:

27 (i) THE DRAINAGE BOARD MEMBER IS DISQUALIFIED FROM

1 PARTICIPATION IN THE DETERMINATION OF TENTATIVE APPORTIONMENTS.

2 (ii) A SPECIAL COMMISSIONER SHALL BE APPOINTED PURSUANT TO
3 SECTION 382 TO SERVE AS A MEMBER OF THE DRAINAGE BOARD TO DETERMINE
4 TENTATIVE APPORTIONMENTS.

5 (2) THE CHAIRPERSON OF THE DRAINAGE BOARD SHALL PREPARE AND
6 EXECUTE AN ORDER DESIGNATING AN INTERCOUNTY DRAINAGE DISTRICT AS
7 DETERMINED BY THE DRAINAGE BOARD UNDER SUBSECTION (1). WITHIN 10
8 DAYS AFTER THE ORDER IS EXECUTED, THE CHAIRPERSON OF THE DRAINAGE
9 BOARD SHALL FILE A COPY OF THE ORDER IN THE OFFICE OF THE COUNTY
10 DRAIN COMMISSIONER OF EACH COUNTY IN WHICH ANY PART OF THE DISTRICT
11 IS LOCATED. THE DRAINAGE BOARD SHALL PUBLISH NOTICE OF THE FILING
12 OF THE ORDER in a newspaper OF GENERAL CIRCULATION in each SUCH
13 county, ~~affected,~~ once in each week for 2 successive weeks. ~~which~~
14 THE notice shall give a general description of the route of the
15 drain and of the drainage district as shown by the order. ~~A copy of~~
16 ~~the order shall within 10 days be filed by the state director of~~
17 ~~agriculture in the office of the county drain commissioner of each~~
18 ~~county in which lie lands included in the district.~~

19 ~~At any time after the order designating an intercounty~~
20 ~~drainage district, giving it a name or number, has been filed in~~
21 ~~the offices of the county drain commissioners of the counties~~
22 ~~within the district, the order may be amended as to the name or~~
23 ~~number of the drain by a written request of a~~

24 (3) THE drain commissioner of ~~1 of the counties~~ A COUNTY
25 traversed by the drain ~~which~~ MAY REQUEST IN WRITING THAT THE NAME
26 OR NUMBER OF A DRAIN AS DESIGNATED IN AN ORDER FILED UNDER
27 SUBSECTION (2) BE CHANGED. THE request shall state the ~~then present~~

1 name or number of the drain and the change to be made in the name
 2 or number. ~~Upon filing of the request, the~~ **THE** drain commissioner
 3 shall **FILE THE REQUEST IN HIS OR HER OFFICE AND** mail a copy of the
 4 request ~~to the state director of~~ **THE DEPARTMENT OF** agriculture
 5 **AND RURAL DEVELOPMENT** and ~~also to the drain commissioner of each~~
 6 county in which ~~lie lands liable for assessments for the drain. The~~
 7 ~~state~~ **ANY PART OF THE DISTRICT IS LOCATED. THE** director of **THE**
 8 **DEPARTMENT OF** agriculture **AND RURAL DEVELOPMENT OR THE DIRECTOR'S**
 9 **DESIGNEE** shall call a meeting of the drainage board. ~~and if, in the~~
 10 ~~opinion of the drainage board, it is found advisable to change~~ **THE**
 11 **DRAINAGE BOARD MAY FILE AN ORDER CHANGING** the name or number of the
 12 drain. ~~they shall file an order designating such change. The~~
 13 drainage board ~~shall also designate the number of signs to be~~
 14 ~~posted~~ **MAY ALSO ORDER THE POSTING OF SIGNS** upon the drain ~~as they~~
 15 ~~may deem advisable for public notice of the new name or number.~~
 16 Copies of the order changing the name or number of the drain shall
 17 be filed with the drain commissioner and the county treasurer of
 18 each county ~~liable for assessments of such drain.~~ **IN WHICH ANY PART**
 19 **OF THE DRAINAGE DISTRICT IS LOCATED.**

20 (4) If the ~~commissioners of the counties affected~~ **DRAINAGE**
 21 **BOARD** cannot agree as to the apportionment of costs for laying out
 22 a drainage district, the ~~director of agriculture or any deputy~~
 23 ~~appointed by him~~ **CHAIRPERSON** shall apportion the costs and the
 24 counties affected shall pay the ~~same~~ **COSTS** as provided in section
 25 302. ~~of this act.~~

26 Sec. 122. (1) ~~Upon filing of~~ **WITHIN 20 DAYS AFTER** a petition
 27 to locate, establish, and construct an intercounty drain ~~the~~

~~commissioner receiving the petition, within 20 days, IS FILED UNDER~~
~~SECTION 121, THE DRAIN COMMISSIONER shall notify by registered~~
~~CERTIFIED mail the drain commissioners interested~~ **COMMISSIONER FOR**
EACH COUNTY IN WHICH ANY PART OF THE DRAINAGE DISTRICT IS LOCATED
and the director of the department of agriculture ~~, who~~ **AND RURAL**
DEVELOPMENT. THE CHAIRPERSON shall call a meeting **OF THE DRAINAGE**
BOARD within the time set forth in section 102.

(2) ~~The commissioners and the director of the department of~~
~~agriculture, or the director's deputy, who constitute the drainage~~
~~board shall jointly take all steps and perform all acts and sign~~
~~all papers as commissioners are required to do singly in the case~~
~~of other drains,~~ **DRAINAGE BOARD HAS THE SAME POWERS AND DUTIES AS A**
DRAIN COMMISSIONER WITH RESPECT TO A COUNTY DRAIN, except as
otherwise provided in this act.

(3) At a meeting of the **DRAINAGE** board, ~~the director of the~~
~~department of agriculture, or the director's deputy,~~ **CHAIRPERSON**
shall not vote, except that ~~the director or the director's deputy~~
CHAIRPERSON may cast the deciding vote in case of a tie. ~~Notice~~
~~shall be given of~~

(4) **NOT LESS THAN 10 DAYS BEFORE THE MEETING, THE DRAINAGE**
BOARD SHALL GIVE NOTICE OF the time, **DATE,** and place of the meeting
~~by publication~~ **ALL OF THE FOLLOWING MEANS:**

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

(B) **SERVICE,** personally or by ~~registered~~ **CERTIFIED** mail, ~~at~~
~~least 10 days before the meeting on the county clerk and on the~~

1 clerk of each township, city, and village in the **DRAINAGE** district.
2 ~~The drain commissioner also shall send notice by first class mail~~
3 ~~of the time, date, and place of the meeting, not less than 10 days~~
4 ~~before the date of the meeting, to~~

5 **(C) SERVICE, BY FIRST-CLASS MAIL ON** each person whose name
6 appears upon the last city or township tax ~~assessment~~ roll as
7 owning land liable to assessment for benefits, at the address shown
8 on the roll. If an address does not appear on the roll, a notice
9 need not be mailed to the person. The drain commissioner shall make
10 an affidavit of the mailing and shall recite in the affidavit that
11 the persons to whom the notice was mailed constitute all of the
12 persons whose names and addresses appear upon the tax rolls as
13 owning land liable to assessment for benefits. The affidavit ~~shall~~
14 ~~be~~ **IS** conclusive proof that notice was mailed to each person to
15 whom notice is required to be mailed by this section. The failure
16 to receive a notice by mail ~~shall~~ **IS** not ~~constitute~~ a
17 jurisdictional defect invalidating a drain proceeding or ~~tax, or~~
18 ~~both,~~ **ASSESSMENT**, if notice ~~has been~~ **WAS** sent by first class mail
19 as provided in this section.

20 **(5)** All expense of notification shall be paid by the drainage
21 district when created.

22 **(6) THE DRAINAGE BOARD SHALL ACT AS THE BOARD OF DETERMINATION**
23 **AND SHALL DETERMINE BY MAJORITY VOTE THE NECESSITY OF DRAINS**
24 **PROPOSED TO BE LOCATED, ESTABLISHED, AND CONSTRUCTED UNDER THIS**
25 **CHAPTER.**

26 **(7)** The **DRAINAGE** board shall consider the petition and
27 evidence offered, and if it is determined that the drain is

1 necessary for ~~the good of the~~ public health, convenience, or
2 welfare, it shall ~~proceed to determine the percentage of the whole~~
3 ~~cost of construction which each county shall bear, and determine~~
4 ~~the number of installments in which the drain taxes shall be~~
5 ~~collected. If commissioners cannot agree on the apportionment~~
6 ~~between counties or the number of installments, the chairperson~~
7 ~~shall determine the apportionment or the number of installments. An~~
8 ~~order shall be prepared,~~ **MAKE AN ORDER TO THAT EFFECT AND FILE THE**
9 **ORDER WITH THE DRAINAGE BOARD. IF THE DRAINAGE BOARD DETERMINES**
10 **THAT THE DRAIN IS NOT NECESSARY AND CONDUCTIVE TO THE PUBLIC HEALTH,**
11 **CONVENIENCE, OR WELFARE, THE DRAINAGE BOARD SHALL FILE AN ORDER**
12 **DISMISSING THE PETITION, AND FURTHER PETITION FOR THE DRAIN SHALL**
13 **NOT BE FILED WITHIN 1 YEAR AFTER THE DETERMINATION. NOT MORE THAN**
14 **10 DAYS AFTER THE DRAINAGE BOARD FILES AN ORDER FINDING THE**
15 **PROPOSED DRAIN IS NECESSARY AND CONDUCTIVE TO THE PUBLIC HEALTH,**
16 **CONVENIENCE, OR WELFARE, THE DRAINAGE BOARD SHALL NOTIFY EACH CITY,**
17 **VILLAGE, AND TOWNSHIP THAT IS LIABLE TO PAY A PERCENTAGE OF THE**
18 **COST OF THE CONSTRUCTION OF THE DRAIN BY REASON OF BENEFITS AT**
19 **LARGE FOR PUBLIC HEALTH. WITHIN 20 DAYS AFTER AN ORDER DETERMINING**
20 **THAT THE DRAIN IS NECESSARY IS FILED, IF AN APPEAL HAS NOT BEEN**
21 **TAKEN UNDER SECTION 122A, THE DRAINAGE BOARD SHALL MAKE A FURTHER**
22 **ORDER,** signed by the chairperson, to be known as the first order of
23 determination. ~~, showing the determination of necessity,~~
24 ~~determination of percentages, and determination of number of~~
25 ~~installments, and a~~ **THE FIRST ORDER OF DETERMINATION SHALL GIVE THE**
26 **NAME OR NUMBER OF THE DRAINAGE DISTRICT AND A GENERAL DESCRIPTION**
27 **OF THE ROUTE, TERMINUS, AND TYPE OF CONSTRUCTION OF THE DRAIN. A**

1 copy of the order shall be filed in the office of the county drain
2 commissioner of each county into which **ANY PART OF** the drainage
3 district extends. ~~The drainage board shall be the board of~~
4 ~~determination and shall determine the question of necessity for~~
5 ~~drains located, established, and constructed under this chapter. If~~
6 ~~the drainage board cannot agree unanimously on the apportionment~~
7 ~~between counties, the matter shall be submitted to the board of~~
8 ~~arbitration in the manner prescribed in section 106 and that~~
9 ~~board's decision shall be final.~~ **IS LOCATED.**

10 **(8) IF A MEMBER OF THE DRAINAGE BOARD WOULD BE DISQUALIFIED**
11 **UNDER SECTIONS 381 AND 383 FROM MAKING AN APPORTIONMENT OF**
12 **BENEFITS, BOTH OF THE FOLLOWING APPLY:**

13 **(A) THE DISQUALIFIED DRAINAGE BOARD MEMBER SHALL NOT**
14 **PARTICIPATE IN THE DETERMINATION OF NECESSITY.**

15 **(B) A SPECIAL COMMISSIONER SHALL BE APPOINTED PURSUANT TO**
16 **SECTION 382 TO SERVE AS A MEMBER OF THE DRAINAGE BOARD TO DETERMINE**
17 **NECESSITY.**

18 **Sec. 123. (1) After securing releases of right of way as**
19 **herein provided, the NECESSARY PROPERTY RIGHTS OR INTERESTS AS**
20 **PROVIDED IN THIS ACT, THE DRAINAGE BOARD SHALL DETERMINE THE**
21 **PERCENTAGE OF THE WHOLE COST OF THE DRAIN TO BE APPORTIONED TO EACH**
22 **COUNTY AND SHALL INCLUDE THE DETERMINATION IN THE FINAL ORDER OF**
23 **DETERMINATION. IF THE DRAIN COMMISSIONERS CANNOT AGREE UNANIMOUSLY**
24 **ON THE APPORTIONMENT BETWEEN COUNTIES, THE CHAIRPERSON SHALL**
25 **PROPOSE THE APPORTIONMENT. IF THE DRAINAGE BOARD CANNOT AGREE**
26 **UNANIMOUSLY ON THE APPORTIONMENT OF BENEFITS PROPOSED BY THE**
27 **CHAIRPERSON, THE MATTER SHALL BE SUBMITTED TO THE BOARD OF**

1 ARBITRATION IN THE MANNER PRESCRIBED IN SECTION 106 AND THAT
2 BOARD'S DECISION IS FINAL.

3 (2) AFTER THE APPORTIONMENT OF BENEFITS IS MADE UNDER
4 SUBSECTION (1), ~~THE~~ commissioner of each ~~county affected~~ IN WHICH
5 ANY PART OF THE DRAINAGE DISTRICT IS LOCATED, UNLESS DISQUALIFIED
6 UNDER SECTION 381, shall apportion the benefits for the
7 construction of ~~such~~ ~~THE~~ drain to each tract or parcel of land, to
8 any county, township, city, or village, and to any state trunk line
9 highway within ~~said~~ ~~THE~~ drainage district, in the manner provided
10 in chapter 7. ~~, being sections 151 to 161, inclusive, of this act.~~
11 ~~Such per cent~~ ~~THE PERCENTAGE~~ so apportioned when finally approved
12 shall be assessed against such townships, cities, **VILLAGES**,
13 highways, and lands according to ~~such~~ ~~THE~~ apportionment of
14 benefits. ~~, as herein provided.~~ The apportionment of benefits so
15 made ~~shall be~~ **IS** subject to review and correction and may be
16 appealed ~~from~~ as provided in ~~said~~ chapter 7.

17 Sec. 247. (1) The county drain commissioner **OR DRAINAGE BOARD**
18 acting under ~~the provisions of this act~~ may employ an attorney ~~when~~
19 ~~he deems the same~~ **IF THE DRAIN COMMISSIONER OR DRAINAGE BOARD, AS**
20 **APPROPRIATE, CONSIDERS IT** necessary. ~~and any legal expense~~ **IF AN**
21 **ATTORNEY IS EMPLOYED, ALL ATTENDANT EXPENSES AND COSTS** shall be
22 charged to the ~~several drain~~ **DRAINAGE** districts ~~in~~ **ON** behalf of
23 which ~~he shall be~~ **THE ATTORNEY IS** employed. All ~~such~~ **ATTENDANT**
24 expenses **AND COSTS** shall be paid out of the **DRAIN FUND OF THE**
25 **DRAINAGE DISTRICT OR THE** revolving drain fund. ~~which shall be~~
26 ~~reimbursed out of the first moneys available: Provided, That the~~ **IF**
27 **THE ATTENDANT EXPENSES AND COSTS ARE PAID OUT OF THE REVOLVING**

1 DRAIN FUND OR IF THE DRAIN FUND OF THE DRAINAGE DISTRICT DOES NOT
 2 HAVE SUFFICIENT FUNDS TO PAY THE ATTENDANT EXPENSES AND COSTS, THE
 3 ATTENDANT EXPENSES AND COSTS SHALL BE ASSESSED TO THE DRAINAGE
 4 DISTRICT IN THE SAME PROPORTION AS COSTS OF THE DRAIN WERE ASSESSED
 5 AS PROVIDED IN CHAPTER 7 AND THE COLLECTIONS OF THESE ASSESSMENTS
 6 SHALL BE USED EITHER TO REIMBURSE THE REVOLVING DRAIN FUND OR TO
 7 PAY THE ATTENDANT EXPENSES AND COSTS, AS APPROPRIATE.

8 (2) THE COUNTY board of ~~supervisors~~ COMMISSIONERS FOR A
 9 COUNTY, by resolution, may ~~cause~~ PROVIDE FOR the prosecuting
 10 attorney to give ~~such~~ legal assistance TO THE COUNTY DRAIN
 11 COMMISSIONER as part of ~~his~~ THE PROSECUTING ATTORNEY'S duties.

12 (3) AS USED IN THIS SECTION, "ATTENDANT EXPENSES AND COSTS"
 13 MEANS THOSE EXPENSES AND COSTS INCURRED FOR A DRAINAGE DISTRICT IN
 14 FURTHERANCE OF THE DUTIES AND RESPONSIBILITIES OF A DRAIN
 15 COMMISSIONER OR DRAINAGE BOARD, INCLUDING, BUT NOT LIMITED TO, 1 OR
 16 MORE OF THE FOLLOWING:

17 (A) ACTUAL ATTORNEY FEES.

18 (B) EXPERT WITNESS AND CONSULTANT FEES.

19 (C) MONEY AND COSTS EXPENDED IN CONNECTION WITH LITIGATION OR
 20 THE THREAT OF LITIGATION.

21 (D) PAYMENTS MADE IN SATISFACTION OR PARTIAL SATISFACTION OF
 22 ANY ORDERS OR JUDGMENTS ENTERED AGAINST A DRAINAGE DISTRICT.

23 (E) MONEY AND COSTS EXPENDED TO OBTAIN A RELEASE, WAIVER, OR
 24 OTHER SETTLEMENT OF CLAIMS.

25 Sec. 307. (1) ~~If~~ THE DRAINAGE BOARD SHALL APPORTION THE COST
 26 BETWEEN COUNTIES IF revolving fund money has been expended or a
 27 drainage district is obligated to pay expenses for engineering,

1 legal, or administrative services or to pay principal and interest
 2 on notes and if ~~an~~ **ANY OF THE FOLLOWING APPLY:**

3 **(A) AN** improvement has not been completed within **THE LATEST OF**
 4 **THE FOLLOWING:**

5 **(i)** 5 years after the date of the drainage board's order
 6 designating an intercounty drainage district under section 105. ~~7~~

7 **(ii) 5 YEARS AFTER** the entry of the first order of
 8 determination under section 122. ~~7 or~~

9 **(iii) 2 YEARS AFTER** the filing of a petition, if a petition
 10 has been filed and ordered abandoned. ~~7, whichever is later, the~~
 11 ~~drainage board shall apportion the cost as between counties.~~

12 **(B) A PETITION TO LOCATE, ESTABLISH, AND CONSTRUCT AN**
 13 **INTERCOUNTY DRAIN IS NOT FILED WITHIN 2 YEARS AFTER THE DATE OF THE**
 14 **DRAINAGE BOARD'S ORDER DESIGNATING AN INTERCOUNTY DRAINAGE**
 15 **DISTRICT.**

16 **(2)** If requested by a drain commissioner feeling aggrieved by
 17 the apportionment, the board of review shall review the
 18 apportionment under section 106. ~~The decisions of the board of~~
 19 ~~review are final. Thereafter the~~ **THE** amount apportioned to each
 20 county **BY THE BOARD OF REVIEW** shall be recovered by the county as
 21 provided in section 306. ~~for the recovery of expended revolving~~
 22 ~~fund money or indebtedness for which a drainage district is~~
 23 ~~obligated.~~

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