

HOUSE BILL No. 6377

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 101, 102, 103, 191, and 192 (MCL 280.101,
280.102, 280.103, 280.191, and 280.192), section 101 as amended by
2014 PA 551.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 101. (1) Before any action is taken on a petition to
2 locate, establish, and construct a drain that will traverse lands
3 in more than 1 county, or affect more than 1 county, an application
4 ~~shall~~**MUST** be filed with a commissioner having jurisdiction of any
5 of the lands to lay out and designate a drainage district. The
6 application shall tentatively describe the location and route of
7 the proposed drain. Except as provided in subsection (2), the
8 application shall be signed by ~~a number of freeholders in the~~
9 ~~drainage district whose lands would be liable to an assessment for~~

~~benefits, equal to 50% of any of the freeholders whose lands would be traversed by the drain or drains applied for or that abut on any highway or street along the side of which the drain extends, between a point where the drain enters the highway and the point where it leaves the highway and which lands are within the drainage district.~~ **NOT FEWER THAN 10 FREEHOLDERS OF THE MUNICIPALITIES IN WHICH THE PROPOSED DRAIN OR THE LANDS PROPOSED TO BE DRAINED ARE LOCATED. FIVE OR MORE OF THE SIGNERS SHALL BE THE OWNERS OF LAND THAT WILL BE LIABLE FOR AN ASSESSMENT FOR THE CONSTRUCTION OF THE PROPOSED DRAIN. HOWEVER, IF IT APPEARS TO THE DRAIN COMMISSIONER TO WHOM THE APPLICATION IS SUBMITTED THAT THE DISTRICT MAY NOT INCLUDE 20 FREEHOLDERS WHOSE LANDS WILL BE LIABLE FOR AN ASSESSMENT, THE APPLICATION SHALL BE RECEIVED IF AT LEAST 1 OF THE SIGNERS IS A FREEHOLDER WHOSE LAND WILL BE LIABLE FOR AN ASSESSMENT.** The eligibility of the signers to the application shall be determined by their interest of record in the office of the register of deeds, in the probate court, or in the circuit court of the county in which the lands are ~~situated~~ **LOCATED** at the time the petition is filed.

(2) An application under subsection (1) ~~may~~ **NEED ONLY** be signed by a representative of ~~the city, village, or township if a~~ **MUNICIPALITY** authorized by its governing body, if ~~the~~ **BOTH OF THE FOLLOWING APPLY:**

(A) THE proposed drain is necessary for the public health of ~~the city, village, or township, and if the city, village, or township~~ **MUNICIPALITY.**

(B) THE MUNICIPALITY will be liable for an assessment at large

1 ~~against it~~ for a percentage of the cost of the proposed drain.

2 Sec. 102. (1) ~~Upon filing of such~~ **WITHIN 20 DAYS AFTER AN**
 3 application **IS FILED UNDER SECTION 101**, the commissioner shall
 4 ~~within 20 days~~ send a copy of ~~such~~ **THE** application by ~~registered~~
 5 **CERTIFIED** mail to the ~~state~~ director of **THE DEPARTMENT OF**
 6 agriculture **AND RURAL DEVELOPMENT** and ~~also to the drain~~
 7 commissioner of each county in which ~~lie lands liable for~~
 8 ~~assessment for benefits for the construction of such proposed~~ **THAT**
 9 **WILL BENEFIT FROM THE drain ARE LOCATED**. The drain commissioners of
 10 ~~such~~ **THE** counties and the director of **THE DEPARTMENT OF** agriculture
 11 **AND RURAL DEVELOPMENT** or any deputy designated by ~~him shall be and~~
 12 **THE DIRECTOR** constitute the drainage board.

13 (2) The ~~state~~ director of **THE DEPARTMENT OF** agriculture **AND**
 14 **RURAL DEVELOPMENT** shall call a meeting of ~~such~~ **THE** drainage board.
 15 ~~, which~~ **THE** meeting shall be held not less than 15 and not more
 16 than 60 days ~~from~~ **AFTER** the **DIRECTOR'S** receipt of ~~such notice~~. Such
 17 **THE APPLICATION UNDER SUBSECTION (1). THE** meeting shall be held in
 18 the immediate locality of the proposed drainage district. ~~Notices~~
 19 ~~of such~~ **A NOTICE OF THE** meeting shall be ~~posted in 5 public places~~
 20 ~~within the proposed drainage district within each county, and~~
 21 served **BY THE RESPECTIVE DRAIN COMMISSIONER** on the county clerk of
 22 each county and the **MAYOR OF EACH CITY, PRESIDENT OF EACH VILLAGE,**
 23 **AND** supervisor of each township within the proposed drainage
 24 district personally or by ~~registered~~ **CERTIFIED** mail at least 10
 25 days before ~~such~~ **THE** public meeting. A notice of ~~such~~ **THE** meeting
 26 shall be published in each county ~~affected~~ **IN WHICH LANDS LIABLE**
 27 **FOR ASSESSMENTS FOR THE DRAIN ARE LOCATED** once a week for 2

consecutive weeks before ~~such~~ **THE** meeting in a newspaper of general circulation in ~~such~~ **THE** county, if there is ~~one, the~~ **SUCH A NEWSPAPER. THE** first publication ~~to~~ **SHALL** be at least 10 days before the meeting.

Sec. 103. (1) ~~Upon convening said meeting the state~~ **THE** director of **THE DEPARTMENT OF** agriculture **AND RURAL DEVELOPMENT** or ~~any~~ **A** deputy selected by ~~him~~ **THE DIRECTOR** shall act as ~~chairman.~~ **CHAIRPERSON AT THE MEETING OF THE DRAINAGE BOARD UNDER SECTION 102.** The ~~said~~ drainage board shall consider ~~such~~ **THE APPLICATION TO LAY OUT AND DESIGNATE A DRAINAGE DISTRICT AND DO ALL OF THE FOLLOWING AT THE MEETING: application, and determine**

(A) **DETERMINE** the sufficiency of the signatures ~~thereto, and shall go over~~ **ON THE APPLICATION. IF THE SIGNATURES ARE INSUFFICIENT, NO FURTHER ACTION SHALL BE TAKEN ON THAT APPLICATION.**

(B) **CONSIDER** the route **AND TYPE OF CONSTRUCTION** of ~~said~~ **THE** proposed drain. ~~and take~~

(C) **TAKE** testimony to determine ~~its~~ **THE** practicability ~~. All persons owning~~ **OF THE PROPOSED DRAIN.**

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

(A) **THE DRAINAGE BOARD MEMBER IS DISQUALIFIED FROM PARTICIPATION IN THE DETERMINATION OF PRACTICABILITY.**

(B) **A SPECIAL COMMISSIONER SHALL BE APPOINTED PURSUANT TO SECTION 381 TO SERVE AS A MEMBER OF THE DRAINAGE BOARD TO DETERMINE PRACTICABILITY.**

(3) **THE OWNER OF ANY** lands **THAT WOULD BE** liable to assessment

1 for benefits **FOR THE PROPOSED DRAIN** or ~~whose lands shall~~ **WOULD** be
 2 crossed by ~~said-**THE**~~ drain or any municipality affected may appear
 3 for or against ~~said-**THE**~~ drain proceedings. If at ~~said-**THE**~~ meeting
 4 or at any subsequent time before the entry of the order designating
 5 a drainage district, ~~they shall determine~~ **THE DRAINAGE BOARD**
 6 **DETERMINES** that the drainage of the proposed drain area is not
 7 ~~practical,~~ **PRACTICABLE**, no further action shall be taken ~~thereon~~ **ON**
 8 **THAT APPLICATION** within 1 year. If ~~said-**THE**~~ proposed drain is
 9 determined to be ~~practical,~~ **PRACTICABLE**, then the drainage board
 10 shall cause a survey ~~thereof~~ to be made by a ~~competent~~ **LICENSED**
 11 **PROFESSIONAL** surveyor or engineer to ascertain the area ~~which~~ **THAT**
 12 would be ~~drained~~ **BENEFITED** by the proposed drain, ~~and~~ the route
 13 and type of construction of drain or drains most serviceable for
 14 that purpose.

15 Sec. 191. (1) ~~When~~ **IF** a drain or portion ~~thereof,~~ ~~which~~ **OF A**
 16 **DRAIN** traverses lands wholly in 1 county, ~~and~~ **IF** lands only in 1
 17 county ~~which is~~ **ARE** subject to assessment, **AND IF THE DRAIN** needs
 18 cleaning out, relocating, widening, deepening, straightening,
 19 tiling, extending, or relocating along a highway, ~~or~~ requires
 20 structures or mechanical devices that will properly purify or
 21 improve the flow of the drain or pumping equipment necessary to
 22 assist or relieve the flow of the drain, ~~or~~ needs supplementing by
 23 the construction of 1 or more relief drains, which may consist of
 24 new drains or extensions, enlargements, or connections to existing
 25 drains, or needs 1 or more branches added ~~thereto,~~ **TO THE DRAIN**,
 26 any 5 **FREEHOLDERS** or at least 50% of the freeholders if there are
 27 ~~less~~ **FEWER** than 5 freeholders whose lands shall be liable to an

1 assessment for benefits of ~~such~~ **THE** work, may make petition in
 2 writing to the commissioner setting forth the necessity of the
 3 proposed work. ~~and~~ **UPON FILING OF THE PETITION**, the commissioner
 4 shall proceed in the same manner provided **IN THIS ACT** for the
 5 location, establishment, and construction of a drain. ~~If the~~
 6 ~~project includes a tiled relief drain, or the tiling of an existing~~
 7 ~~open drain or any portion thereof, with a conduit a part of which~~
 8 ~~has an inside diameter in excess of 36 inches or the retiling of an~~
 9 ~~existing drain with a conduit, a part of which has an inside~~
 10 ~~diameter in excess of 36 inches, then the petition shall comply~~
 11 ~~with section 71. The preceding sentence shall not be applicable to~~
 12 ~~the construction of bridges, culverts, and passageways. The word~~
 13 ~~tiling as used in this and other sections of this act, means the~~
 14 ~~laying of a conduit composed of tile, brick, concrete, or other~~
 15 ~~material. When it~~

16 **(2) IF THE PETITION DESCRIBED IN SUBSECTION (1)** is necessary
 17 for the public health of 1 or more cities, villages, ~~and~~ **OR**
 18 townships, the petition may be signed solely by a **REPRESENTATIVE OF**
 19 **A** city, village, or township ~~when~~ **IF** authorized by its governing
 20 body or by **AUTHORIZED REPRESENTATIVES OF** a combination of the
 21 municipalities, if the municipality or municipalities ~~are~~ **WILL BE**
 22 liable to assessments at large for a percentage of the total amount
 23 assessed for the cost of the proposed work. ~~After~~

24 **(3) AS SOON AS PRACTICABLE AFTER** the board of determination
 25 determines the necessity for the work, as provided in section 72,
 26 **AND** the commissioner ~~shall, as soon as practicable after~~ **FILES** the
 27 final order of determination prescribed in section 151, ~~has been~~

1 ~~filed by him,~~ **THE COMMISSIONER SHALL** proceed as provided in
 2 ~~sections 151 to 161. If~~ **CHAPTER 7. HOWEVER, IF** the apportionment is
 3 the same as the last recorded apportionments, ~~no~~ **A** day of review is
 4 necessary, ~~but in other cases the commissioner shall proceed as~~
 5 ~~provided in sections 151 to 161, including the notice of and the~~
 6 ~~holding of a day of review.~~ **NOT REQUIRED.**

7 Sec. 192. **(1)** ~~Whenever~~ **IF** a drain or portion thereof, ~~which~~ **OF**
 8 **A DRAIN** traverses lands in more than 1 county, ~~and~~ **IF** lands in more
 9 than 1 county ~~shall be~~ **ARE** subject to assessments, **AND IF THE DRAIN**
 10 needs cleaning out, relocating, widening, deepening, straightening,
 11 tiling, extending, or relocating along a highway, ~~or~~ requires
 12 structures or mechanical devices that will properly purify or
 13 improve the flow of the drain or pumping equipment necessary to
 14 assist or relieve the flow of the drain, ~~or~~ needs supplementing by
 15 the construction of 1 or more relief drains, which may consist of
 16 new drains or extensions, enlargements or connections to existing
 17 drains, or needs 1 or more branches added thereto, ~~freeholders~~
 18 ~~within the drainage district equal to 50% of the number of~~
 19 ~~freeholders whose lands are traversed by said drain or drains in~~
 20 ~~said petition or abut on any highway or street along either side of~~
 21 ~~which such drain extends, between the point where said drain enters~~
 22 ~~such highway and the point where it leaves such highway or street~~
 23 ~~and which lands are within the drainage district,~~ **TO THE DRAIN, ANY**
 24 **5 FREEHOLDERS OR AT LEAST 50% OF THE FREEHOLDERS IF THERE ARE FEWER**
 25 **THAN 5 FREEHOLDERS WHOSE LANDS SHALL BE LIABLE TO AN ASSESSMENT FOR**
 26 **BENEFITS OF THE WORK,** may make a petition in writing to the
 27 commissioner of any county having lands in ~~such~~ **THE** district

1 setting forth the necessity of ~~such~~ **THE** proposed work. ~~Whenever it~~

2 **(2) IF THE PETITION DESCRIBED IN SUBSECTION (1)** is necessary
 3 for the public health of 1 or more cities, villages or townships,
 4 the petition may be signed solely by **A REPRESENTATIVE OF** a city,
 5 village, or township ~~when duly~~ **IF** authorized by its governing body
 6 or by **AUTHORIZED REPRESENTATIVES OF** any combination of ~~such~~ **THE**
 7 municipalities if the municipality or municipalities will be liable
 8 to assessments at large for a percentage of the total amount to be
 9 assessed for the cost of the proposed work. The percentage of cost
 10 apportioned to the municipality or municipalities shall be based
 11 upon the benefits to accrue to ~~such~~ **THE** municipality or
 12 municipalities and also the extent to which they contribute to the
 13 conditions ~~which makes~~ **THAT MAKE** the drain necessary.

14 **(3)** Upon receipt of ~~such~~ **A** petition **UNDER SUBSECTION (1)**, the
 15 commissioner shall notify ~~the state director of agriculture and the~~
 16 ~~commissioners of each county embracing any lands in the drainage~~
 17 ~~district, and the director of agriculture~~ **OTHER MEMBERS OF THE**
 18 **DRAINAGE BOARD AS CONSTITUTED UNDER SECTION 122. THE CHAIRPERSON**
 19 shall call a meeting **OF THE DRAINAGE BOARD** within the time and in
 20 the manner prescribed in section 122. ~~The persons so named shall~~
 21 ~~constitute a drainage board and if such work is then determined to~~
 22 ~~be~~ **IF THE DRAINAGE BOARD DETERMINES THAT THE PETITION IS**
 23 practicable, ~~they~~ **THE DRAINAGE BOARD** may ~~thereupon appoint a~~
 24 ~~competent~~ **CAUSE A SURVEY OF THE DRAIN TO BE MADE BY A LICENSED**
 25 **PROFESSIONAL** surveyor or engineer. ~~to make a survey of said drain,~~
 26 ~~and lay out a drainage district according to section 104. After the~~
 27 surveyor or engineer has filed all data with the drainage board,

1 the ~~director of agriculture~~ **CHAIRPERSON** shall call a meeting as
2 provided in section 122, and thereafter ~~take all steps and perform~~
3 ~~all acts which are required to be done by said board~~ **THE DRAINAGE**
4 **BOARD SHALL PROCEED AS PROVIDED UNDER CHAPTER 6** upon a petition for
5 the location, establishment, and construction of ~~drains as provided~~
6 ~~in sections 121 to 135. Such board and the commissioners shall~~
7 ~~exercise such power and be subject to such limitations as are~~
8 ~~provided in sections 121 to 135.~~ **A DRAIN.**

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