

SENATE BILL No. 1090

September 5, 2018, Introduced by Senator STAMAS and referred to the Committee on Local Government.

A bill to amend 1956 PA 40, entitled
"The drain code of 1956,"
by amending sections 191, 192, 196, 201, and 262 (MCL 280.191,
280.192, 280.196, 280.201, and 280.262), section 196 as amended by
2008 PA 509 and section 201 as added by 2016 PA 171.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 191. ~~(1) When a drain or portion thereof, which traverses~~
2 ~~lands wholly in 1 county, and lands only in 1 county which is~~
3 ~~subject to assessment, needs cleaning~~ **A WRITTEN PETITION FOR ANY OF**
4 **THE FOLLOWING WORK ON A COUNTY DRAIN MAY BE FILED WITH THE DRAIN**
5 **COMMISSIONER:**

6 **(A) CLEANING** out, relocating, widening, deepening,
7 straightening, tiling, extending, or relocating **THE DRAIN** along a
8 highway. ~~or requires~~

1 **(B) INSTALLATION OF** structures or mechanical devices that will
 2 properly purify or improve the flow of the drain or pumping
 3 equipment necessary to assist or relieve the flow of the drain. ~~7~~
 4 ~~or needs supplementing~~

5 **(C) SUPPLEMENTING THE DRAIN** by the construction of 1 or more
 6 relief drains, which may consist of new drains or extensions,
 7 enlargements, or connections to existing drains. ~~7 or needs~~

8 **(D) ADDING** 1 or more branches ~~added thereto,~~ **TO THE DRAIN.**

9 **(2) A PETITION UNDER SUBSECTION (1) SHALL SET FORTH THE**
 10 **NECESSITY OF THE PROPOSED WORK. THE PETITION SHALL BE SIGNED BY** any
 11 **5 FREEHOLDERS WHOSE LANDS WILL BE LIABLE TO ASSESSMENTS FOR**
 12 **BENEFITS, or, IF THERE ARE FEWER THAN 5 FREEHOLDERS WHOSE LANDS**
 13 **WILL BE LIABLE FOR ASSESSMENTS, BY** at least 50% of ~~the~~ **THOSE**
 14 ~~freeholders. if there are less than 5 freeholders whose lands shall~~
 15 ~~be liable to an assessment for benefits of such work, may make~~
 16 ~~petition in writing to the commissioner setting forth the necessity~~
 17 ~~of the proposed work and~~ **UPON FILING OF THE PETITION,** the
 18 commissioner shall proceed in the same manner provided **IN THIS ACT**
 19 for the location, establishment, and construction of a drain. If
 20 the project includes a tiled relief drain, or the tiling of an
 21 existing open drain or any portion thereof, with a conduit a part
 22 of which has an inside diameter in excess of 36 inches or the
 23 retiling of an existing drain with a conduit, a part of which has
 24 an inside diameter in excess of 36 inches, then the petition shall
 25 comply with section 71. The preceding sentence ~~shall~~ **IS** not be
 26 applicable to the construction of bridges, culverts, and
 27 passageways. ~~The word tiling~~ **"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 **REPRESENTATIVE OF A** city, village, or township ~~when IF~~ authorized by its governing body or by **AUTHORIZED REPRESENTATIVES OF** 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~~

(4) **SUBJECT TO SUBSECTION (5), AS SOON AS PRACTICABLE AFTER** the board of determination determines the necessity for the work, as provided in section 72, **AND** the commissioner ~~shall, as soon as practicable after FILES~~ the final order of determination prescribed in section 151, ~~has been filed by him,~~ **THE COMMISSIONER SHALL** proceed as provided in ~~sections 151 to 161. If~~ **CHAPTER 7, INCLUDING PROVIDING NOTICE OF AND HOLDING A DAY OF REVIEW. HOWEVER, IF** the apportionment is the same as the last recorded apportionments, ~~no A~~ day of review is necessary, ~~but in other cases the commissioner shall proceed as provided in sections 151 to 161, including the notice of and the holding of a day of review.~~ **NOT REQUIRED.**

(5) **SUBJECT TO SUBSECTION (6), THE DRAIN COMMISSIONER SHALL NOT PERFORM DRAIN MAINTENANCE UNDER THIS SECTION IF AN ASSESSMENT IS NECESSARY FOR THE MAINTENANCE AND ALL OF THE PROPERTY SUBJECT TO THE ASSESSMENT WAS SUBJECT TO ASSESSMENT FOR MAINTENANCE WORK PERFORMED IN THE PAST 3 YEARS AT THE SAME LOCATION.**

(6) **SUBSECTION (5) DOES NOT APPLY IF, AS DETERMINED BY THE**

1 COUNTY BOARD OF COMMISSIONERS, AN EMERGENCY CONDITION EXISTS THAT
 2 ENDANGERS THE PUBLIC HEALTH OR CROPS OR OTHER PROPERTY WITHIN THE
 3 DRAINAGE DISTRICT AND THE MAINTENANCE IS NECESSARY TO ALLEVIATE THE
 4 EMERGENCY CONDITION.

5 Sec. 192. (1) ~~Whenever a drain or portion thereof, which~~
 6 ~~traverses lands in more than 1 county, and lands in more than 1~~
 7 ~~county shall be subject to assessments, needs cleaning~~ A WRITTEN
 8 PETITION FOR ANY OF THE FOLLOWING WORK ON AN INTERCOUNTY DRAIN MAY
 9 BE FILED WITH THE DRAIN COMMISSIONER OF ANY COUNTY THAT HAS LANDS
 10 IN THE DISTRICT:

11 (A) CLEANING out, relocating, widening, deepening,
 12 straightening, tiling, extending, or relocating along a highway. ~~7~~
 13 ~~or requires~~

14 (B) INSTALLATION OF structures or mechanical devices that will
 15 properly purify or improve the flow of the drain or pumping
 16 equipment necessary to assist or relieve the flow of the drain. ~~7~~
 17 ~~or needs supplementing~~

18 (C) SUPPLEMENTING THE DRAIN by the construction of 1 or more
 19 relief drains, which may consist of new drains or extensions,
 20 enlargements or connections to existing drains. ~~7~~ ~~or needs~~

21 (D) ADDING 1 or more branches ~~added thereto,~~ TO THE DRAIN.

22 (2) A PETITION UNDER SUBSECTION (1) SHALL SET FORTH THE
 23 NECESSITY OF THE PROPOSED WORK. THE PETITION SHALL BE SIGNED BY A
 24 NUMBER OF freeholders within the drainage district equal to 50% of
 25 the number of freeholders whose lands are traversed by ~~said~~ THE
 26 drain ~~or drains in said petition~~ or abut on any highway or street
 27 along either side of which ~~such~~ THE drain extends, between the

1 point where ~~said~~ **THE** drain enters ~~such~~ **THE** highway **OR STREET** and
 2 the point where it leaves ~~such~~ **THE** highway or street and which
 3 lands are within the drainage district. ~~, may make a petition in~~
 4 ~~writing to the commissioner of any county having lands in such~~
 5 ~~district setting forth the necessity of such proposed work.~~
 6 ~~Whenever it~~

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

19 **(4)** Upon receipt of ~~such~~ **A** petition **UNDER SUBSECTION (1)**, the
 20 commissioner shall notify the ~~state~~ director of **THE DEPARTMENT OF**
 21 agriculture **AND RURAL DEVELOPMENT** and the commissioners of each
 22 county ~~embracing~~ **THAT INCLUDES** any lands in the drainage district.
 23 ~~, and the~~ **THE** director of **THE DEPARTMENT OF** agriculture **AND RURAL**
 24 **DEVELOPMENT OR THE DIRECTOR'S DESIGNEE** shall call a meeting **OF THE**
 25 **DRAINAGE BOARD AS CONSTITUTED UNDER SECTION 122**, within the time
 26 and in the manner prescribed in section 122. ~~The persons so named~~
 27 ~~shall constitute a drainage board and if such work is then~~

~~determined to be~~ IF THE DRAINAGE BOARD DETERMINES THAT THE WORK IS
practicable, ~~they may thereupon appoint a competent~~ THE DRAINAGE
BOARD SHALL CAUSE A SURVEY OF THE DRAIN TO BE MADE BY A LICENSED
PROFESSIONAL surveyor or engineer. ~~to make a survey of said drain,~~
~~and lay out a drainage district according to section 104.~~ After the
surveyor or engineer has filed all data with the drainage board,
the director of THE DEPARTMENT OF agriculture AND RURAL DEVELOPMENT
shall call a meeting as provided in section 122, and, SUBJECT TO
SUBSECTION (5), ~~thereafter take all steps and perform all acts~~
~~which are required to be done by said board~~ THE DIRECTOR AND
DRAINAGE BOARD SHALL PROCEED AS PROVIDED UNDER CHAPTER 6 upon a
petition for the location, establishment, and construction of
~~drains as provided in sections 121 to 135. Such board and the~~
~~commissioners shall exercise such power and be subject to such~~
~~limitations as are provided in sections 121 to 135.~~ A DRAIN.

(5) SUBJECT TO SUBSECTION (6), THE DRAINAGE BOARD SHALL NOT
PERFORM DRAIN MAINTENANCE UNDER THIS SECTION IF AN ASSESSMENT IS
NECESSARY FOR THE MAINTENANCE AND ALL OF THE PROPERTY SUBJECT TO
THE ASSESSMENT WAS SUBJECT TO ASSESSMENT FOR MAINTENANCE WORK
PERFORMED IN THE PAST 3 YEARS AT THE SAME LOCATION.

(6) SUBSECTION (5) DOES NOT APPLY IF, AS DETERMINED BY THE
DIRECTOR OF THE DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT, AN
EMERGENCY CONDITION EXISTS THAT ENDANGERS THE PUBLIC HEALTH OR
CROPS OR OTHER PROPERTY WITHIN THE DRAINAGE DISTRICT AND THE
MAINTENANCE IS NECESSARY TO ALLEVIATE THE EMERGENCY CONDITION.

Sec. 196. (1) ~~An annual inspection may be made of~~ A DRAIN
COMMISSIONER OR DRAINAGE BOARD MAY INSPECT a drain established

1 under this act. ~~Inspection shall also be made~~ **A DRAIN COMMISSIONER**
2 **OR DRAINAGE BOARD SHALL INSPECT A DRAIN** upon the request of the
3 governing body of a public corporation, as defined in section 461,
4 served in whole or in part by the drain to be inspected. For county
5 drains, the inspection shall be made by the drain commissioner, or
6 a competent person appointed by the drain commissioner. For
7 intercounty drains, the inspection shall be caused to be made by
8 the drainage board.

9 (2) Surplus construction funds remaining after completion of
10 construction of a drain, or funds remaining after completion of
11 work performed under a petition for maintenance or improvements
12 under this chapter, shall be deposited in the drain fund of a
13 drainage district and shall be expended for inspection, repair, and
14 maintenance of the drain.

15 (3) If at any time the drain fund of a drainage district
16 contains less than \$5,000.00 per mile or fraction of a mile of a
17 drain, the drain commissioner or drainage board may assess the
18 drainage district for an amount not to exceed \$2,500.00 per mile or
19 fraction of a mile in any 1 year. The amount collected under an
20 assessment shall be deposited in the drain fund of a drainage
21 district for necessary inspection, repair, and maintenance of the
22 drain.

23 (4) If an inspection discloses the necessity of expending
24 money for the maintenance and repair of a drain ~~in order~~ to keep it
25 in working order, the drain commissioner for a county drain, or the
26 drainage board for an intercounty drain, may without petition
27 expend an amount not to exceed in any 1 year \$5,000.00 per mile or

1 fraction of a mile for maintenance and repair of a drain, exclusive
2 of inspection and engineering fees and the cost of publication and
3 mailing. The determination of the maximum expenditure allowed
4 without a petition or resolution shall be based on the total number
5 of miles of the drain and not on the actual number of miles or
6 location of the maintenance or repair.

7 (5) If the drain commissioner or the drainage board finds it
8 necessary to expend funds in excess of the amount established in
9 subsection (4) per mile or fraction of a mile in any 1 year for the
10 maintenance and repair of a drain, the additional amounts shall not
11 be expended until approved by resolution of the governing body of
12 each township, city, and village affected by more than 20% of the
13 cost.

14 (6) If the drain fund of a drainage district does not contain
15 sufficient funds to pay for inspection, repair, and maintenance
16 authorized by this section, the drain commissioner or the drainage
17 board shall reassess the drainage district for the inspection,
18 repair, and maintenance according to benefits received. A
19 reassessment shall be made and spread upon the city or township tax
20 assessment roll within 2 years after the completion of the
21 inspection, repair, and maintenance. If the total expenditure is
22 more than the amount established in subsection (4) per mile or
23 fraction of a mile, all real property owners subject to an
24 assessment within the drainage district shall be notified of the
25 assessment by publication in a newspaper of general circulation
26 within the drainage district and by first-class mail to the name
27 and address that appears on the last city or township assessment

1 roll. An affidavit of mailing shall be made by the drain
2 commissioner. The affidavit is conclusive proof that the notices
3 required by this subsection were mailed. The failure to receive the
4 notices by mail shall not constitute a jurisdictional defect
5 invalidating a drain tax if notice by publication was given as
6 required by this subsection.

7 (7) An assessment for the actual cost of inspection, repair,
8 and maintenance performed on a drain, or an assessment to be
9 deposited in the drain fund of a drainage district, shall be made
10 according to benefits received. The expenditure limit of the amount
11 established in subsection (4) per mile of drain or fraction of a
12 mile shall be used to calculate the maximum amount that the drain
13 commissioner or drainage board may assess in any 1 year without a
14 petition or a request from a public corporation. The property in a
15 drainage district that benefits from the inspection, repair, or
16 maintenance of the drain is subject to assessment for that
17 inspection, repair, or maintenance. Determination of the maximum
18 assessment amount allowed without petition or request, or of the
19 property that is subject to assessment, shall be based on the
20 number of miles of drain and areas of the drainage district
21 receiving benefits and not on the actual number of miles or actual
22 location of the inspection, repair, or maintenance.

23 (8) **SUBJECT TO SUBSECTION (9), THE DRAIN COMMISSIONER OR**
24 **DRAINAGE BOARD SHALL NOT PERFORM DRAIN MAINTENANCE UNDER THIS**
25 **SECTION IF AN ASSESSMENT IS NECESSARY FOR THE MAINTENANCE AND ALL**
26 **OF THE PROPERTY SUBJECT TO THE ASSESSMENT WAS SUBJECT TO ASSESSMENT**
27 **FOR MAINTENANCE WORK PERFORMED IN THE PAST 3 YEARS AT THE SAME**

1 LOCATION.

2 (9) ~~(8)~~—If, AS DETERMINED BY THE COUNTY BOARD OF COMMISSIONERS
3 FOR A COUNTY DRAIN OR THE DIRECTOR OF THE DEPARTMENT OF AGRICULTURE
4 AND RURAL DEVELOPMENT FOR AN INTERCOUNTY DRAIN, an emergency
5 condition exists that endangers the public health ~~,—OR~~ crops ~~,—or~~
6 OTHER property within a drainage district, **SUBSECTION (8) DOES NOT**
7 **APPLY AND** the drain commissioner or the drainage board,
8 **RESPECTIVELY**, may expend funds for maintenance and repair to
9 alleviate the emergency condition.

10 (10) ~~(9)~~—Nothing in this section prohibits the drain
11 commissioner or the drainage board from spending funds in excess of
12 the amount established in subsection (4) per mile or fraction of a
13 mile in any 1 year for inspection, maintenance, and repair of a
14 drain when requested by a public corporation, if the public
15 corporation pays the entire cost of the inspection, maintenance,
16 and repair.

17 (11) ~~(10)~~—In computing the amounts that may be expended in
18 accordance with this section, the cost of work to be performed by a
19 federal agency or public corporation that is not chargeable to the
20 county or intercounty drainage district shall not be included, nor
21 shall it be necessary for the drain commissioner or the drainage
22 board to advertise for bids for that portion of the work to be done
23 by the federal agency or public corporation.

24 (12) ~~(11)~~—For purposes of this section, the costs of
25 maintenance or repair ~~shall~~ include the costs of maintaining the
26 drain in working order to continue a normal flow of water,
27 including the servicing or repair of necessary pumping equipment

1 and utility charges for pumping equipment; the cost of keeping the
 2 drain free from rubbish, debris, siltation, or obstructions; the
 3 cost of repairing a portion or all of a tile or drain to continue
 4 the normal flow of water; and other costs associated with the costs
 5 enumerated in this subsection.

6 (13) ~~(12)~~—If the cost of maintenance and repair of a drain
 7 includes utility charges or costs to service pumping stations,
 8 sewage treatment facilities, or retention basins, the limitation
 9 for maintenance and repair does not apply except that the drain
 10 commissioner or drainage board may levy sufficient special
 11 assessments to pay the charges or costs but not more than the
 12 amount sufficient to pay those charges or costs.

13 (14) ~~(13)~~—Except as otherwise provided in this act, that
 14 portion of the salaries, expenses, and fringe benefits of
 15 administrative and engineering employees under the supervision of
 16 the drain commissioner that are directly attributable, but not
 17 incidental, to a drain or otherwise not recovered by fees
 18 established by resolution or ordinance of the board of
 19 commissioners may be chargeable to the drain fund of a drainage
 20 district.

21 Sec. 201. (1) At least 7 days before entering property for any
 22 excavation or tree removal to be performed under this chapter, the
 23 drain commissioner or drainage board shall mail notice of the
 24 expected entry by first-class mail to the property owner.

25 (2) Subsection (1) does not apply to work performed under
 26 section ~~196(8)~~ **196(9)** or 196a.

27 Sec. 262. (1) ~~The~~ **UPON COMPUTING THE COST OF THE DRAIN UNDER**

1 **SECTION 261, THE DRAIN** commissioner shall ~~thereupon~~ make a special
2 assessment roll for the drain for each county, township, city, or
3 village and each state trunk line highway affected. ~~thereby, which~~
4 **THE** roll shall be designated, giving name or number **OF THE DRAIN**,
5 "drain special assessment roll". The commissioner shall enter on
6 ~~the~~ **A** roll a ~~correct~~ description of the tracts, parcels, or
7 subdivisions of land benefited by the drain and place opposite each
8 description the ~~amount of the percent heretofore~~ **PERCENTAGE OF**
9 **COSTS APPORTIONED TO THAT LAND AS PREVIOUSLY** determined ~~upon by him~~
10 ~~or by the~~ **COMMISSIONER OR** board of review. The commissioner shall
11 also enter on the roll the ~~amount of the percent~~ **PERCENTAGE OF**
12 **COSTS** apportioned to the county, ~~for~~ benefits to any county road,
13 ~~and to the township, city, or village, and TO the state highway~~
14 commission, ~~for~~ benefits to any state trunk line highway. ~~and in~~
15 ~~ease~~ **IF** the amount ~~be~~ **IS** payable in installments, ~~he~~ **THE**
16 **COMMISSIONER** shall also enter ~~thereon~~ **ON THE ROLL** a memorandum of
17 the installments and, **SUBJECT TO SUBSECTION (4)**, of the year or
18 years when the installments shall be spread. The commissioner shall
19 ~~add a certificate in writing of the determination~~ **CERTIFY IN**
20 **WRITING ON THE ROLL** whether the ~~taxes assessed~~ **ASSESSMENTS** for
21 benefits shall be paid in 1 or more years. The rolls shall be dated
22 and signed by the commissioner and filed on or before the last
23 Wednesday in September in each year, in the office of the county
24 clerk.

25 (2) The commissioner shall prepare a tax assessment roll in
26 each year for the collection of taxes for the current year, and
27 shall certify the ~~same~~ **ROLL** to the county clerk on or before the

1 first day of the annual meeting of the county board of
2 commissioners. In each roll the commissioner shall add to the
3 amount to be collected, interest on all unpaid installments to the
4 date of tax collection, and shall deduct from the amount to be
5 collected by the county, village, city, or township all amounts
6 received from the proceeds or income of property or an interest in
7 property located in the county, village, city, or township and
8 acquired through condemnation or the payment of damages under this
9 act. To the roll for the last year the commissioner shall add a
10 further amount, if any, as may be necessary together with
11 outstanding uncollected taxes, to pay all outstanding bonds and
12 interest thereon to maturity. If the roll is made payable in more
13 than 1 installment, a permanent assessment roll may be maintained
14 in the office of the county treasurer, subject to the direction of
15 the board of county auditors, in counties having such a board, and
16 of the county board of commissioners in other counties, showing the
17 total cost, the number of installments, and the amount of each
18 annual assessment, together with interest charges thereon, which
19 shall be carried in a separate column.

20 (3) If the roll is made payable in more than 1 installment,
21 and the total amount of any assessment is \$10.00 or less, exclusive
22 of interest, then that assessment ~~shall be~~ **IS** payable in 1
23 installment. ~~but~~ **HOWEVER**, if the assessment exceeds the sum of
24 \$10.00 and is made payable in more than 1 installment, then that
25 installment, exclusive of interest, shall not be less than ~~the sum~~
26 ~~of \$10.00, excepting~~ **EXCEPT FOR** the final installment, which ~~shall~~
27 ~~be~~ **IS** payable in the amount of the actual balance.

1 (4) IF THE ASSESSMENT IS NECESSARY FOR DRAIN MAINTENANCE AND
2 ALL OF THE PROPERTY SUBJECT TO THE ASSESSMENT WAS SUBJECT TO
3 ASSESSMENT FOR MAINTENANCE WORK PERFORMED IN THE PAST 3 YEARS AT
4 THE SAME LOCATION, BUT THE MAINTENANCE IS PERFORMED BECAUSE OF AN
5 EMERGENCY CONDITION AS PROVIDED FOR IN SECTION 191, 192, OR 196,
6 THE ASSESSMENTS SHALL NOT BE LEVIED UNTIL THE YEAR AFTER THE YEAR
7 IN WHICH THE ASSESSMENT FOR THE PREVIOUS WORK, OR THE FINAL
8 INSTALLMENT OF THAT ASSESSMENT, IS PAYABLE.

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