

Act No. 646
Public Acts of 2018
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STATE OF MICHIGAN
99TH LEGISLATURE
REGULAR SESSION OF 2018

Introduced by Rep. Victory

ENROLLED HOUSE BILL No. 6376

AN ACT to amend 1956 PA 40, entitled “An act to codify the laws relating to the laying out of drainage districts, the consolidation of drainage districts, the construction and maintenance of drains, sewers, pumping equipment, bridges, culverts, fords, and the structures and mechanical devices to properly purify the flow of drains; to provide for flood control projects; to provide for water management, water management districts, and subdistricts, and for flood control and drainage projects within drainage districts; to provide for the assessment and collection of taxes; to provide for the investment of funds; to provide for the deposit of funds for future maintenance of drains; to authorize public corporations to impose taxes for the payment of assessments in anticipation of which bonds are issued; to provide for the issuance of bonds by drainage districts and for the pledge of the full faith and credit of counties for payment of the bonds; to authorize counties to impose taxes when necessary to pay principal and interest on bonds for which full faith and credit is pledged; to validate certain acts and bonds; and to prescribe penalties,” by amending sections 72, 105, 122, 123, 154, 247, and 307 (MCL 280.72, 280.105, 280.122, 280.123, 280.154, 280.247, and 280.307), section 72 as amended by 1987 PA 60, section 154 as amended by 2010 PA 339, and section 307 as amended by 2016 PA 115.

The People of the State of Michigan enact:

Sec. 72. (1) As soon as practicable after the filing of a petition, the commissioner authorized to act on the petition, if not disqualified under section 381 to make the apportionment of benefits, may appoint a board of determination composed of 3 disinterested property owners. If the commissioner is disqualified or chooses not to appoint the board of determination, the commissioner shall immediately file a copy of the petition with the chairperson of the county board of commissioners, together with a statement, signed by the commissioner, that he or she is disqualified or chooses not to act in appointing a board of determination. As soon as practicable after receiving a copy of the petition and certificate, the chairperson of the county board of commissioners, unless he or she has a conflict of interest, shall appoint a board of determination composed of 3 disinterested property owners and shall immediately notify the drain commissioner of the names and addresses of those appointed. If the chairperson of the board of commissioners has a conflict of interest in the proceedings, the drain committee of the county board of commissioners shall appoint the board of determination. Members of boards of determination shall be residents of the county but not of a township, city, or village affected by the drain, and shall not be members of the county board of commissioners of the county.

(2) The drain commissioner shall call a meeting of the board of determination at a convenient place within the drainage district or at a public building within a city, village, or township in which the drain is located. If an individual appointed to the board of determination fails or refuses to serve, the drain commissioner shall appoint a successor. The per diem compensation and the mileage and expense reimbursements of a member of the board of determination shall be the same as the county board of commissioners of the county. In counties where commissioners are not paid on a per diem basis, the compensation and the mileage and expense reimbursements shall be set by the drain commissioner. Upon request, the county drain commissioner shall inform in writing the requesting state legislator who represents the area in which the proposed drain improvement is to be constructed of the names and addresses of the persons appointed to a board of determination.

(3) The drain commissioner shall give public notice of the time, date, and place of the meeting of the board of determination in the manner required by the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. The commissioner shall also give such notice, not less than 10 days before the meeting, by all of the following means:

(a) Publication in a newspaper of general circulation in the county.

(b) Service on the county clerk and a member of the board of county road commissioners of the county and on the supervisor of each township and clerk of each city and village in the drainage district, personally or by certified mail.

(c) Service by first-class mail on each person whose name appears on the last city, village, or township tax roll as owning land within the drainage district, at the address shown on the roll. If an address does not appear on the roll, a notice need not be mailed to the person. The drain commissioner shall make an affidavit of the mailing and shall recite in the affidavit that the notice was mailed to all of the persons whose names and addresses appear upon the tax rolls as owning land within the drainage district. The affidavit is conclusive proof that notice was mailed to each person to whom notice is required to be mailed under this section. The failure to receive a notice by mail is not a jurisdictional defect invalidating a drain proceeding or drain assessment if notice was sent by first class mail as provided in this subdivision.

(4) All expenses of notification shall be paid by the drainage district when created.

(5) At the time and place specified in the notice, the board of determination shall meet, elect a chairperson and secretary, and, after considering the evidence offered, determine the necessity of the proposed drain and whether the drain is conducive to public health, convenience, or welfare. The board of determination, if it considers it necessary, shall require the county drain commissioner to obtain from the county treasurer a statement showing the amount of taxes and special assessments levied against the land in the proposed drainage district on the tax rolls for the immediately preceding 3 years and the amount of the taxes and assessments remaining unpaid. If it appears from the statement that 25% or more of the taxes are unpaid on the lands, further action shall not be taken. If the board of determination finds, by a majority vote of the members, that the drain is not necessary and conducive to public health, convenience, or welfare, the board of determination shall file with the commissioner an order dismissing the petition, and a further petition for the drain shall not be filed within 1 year after the determination. If the board of determination finds, by a majority vote, that the proposed drain is necessary and conducive to the public health, convenience, or welfare, the board of determination shall make an order to that effect and file the order with the commissioner. Not more than 10 days after the board of determination files an order finding the proposed drain to be necessary and conducive to the public health, convenience, or welfare, the drain commissioner shall determine the cities, townships, and villages within the drainage district benefiting from the drain for public health and shall notify each such city, township, and village that it is liable to pay a percent of the cost of construction of the drain by reason of benefits at large for public health. Within 20 days after the commissioner's receipt of the order of the board of determination, if an appeal has not been taken under section 72a, the drain commissioner shall make a first order of determination in writing, giving the name or number of the drainage district and a general description of the route, terminus, and type of construction of the drain. The drain commissioner shall file a copy of the order in his or her office.

Sec. 105. (1) After considering the recommendations of the surveyor or engineer under section 104, the drainage board shall determine all of the following:

(a) A designation for the drainage district, by name or number.

(b) A description of the drainage district, which shall comprise all the land that would be benefited by and liable for assessments for the construction of the drain. The drainage district may be described by either of the following methods:

(i) By its boundaries of streets and highways or tracts or parcels of land.

(ii) By a description of all land included in the drainage district, by tracts or parcels of land, counties, townships, cities, villages, or state trunk line highways of which the district is comprised.

(c) A description of the drain showing the beginning, route, terminus, type of construction and the estimated cost of the construction.

(d) The percentage of the cost for laying out a drainage district tentatively apportioned to each county in which any part of the drainage district is located, subject to redetermination under section 123. 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:

(i) The drainage board member is disqualified from participation in the determination of tentative apportionments.

(ii) A special commissioner shall be appointed pursuant to section 382 to serve as a member of the drainage board to determine tentative apportionments.

(2) The chairperson of the drainage board shall prepare and execute an order designating an intercounty drainage district as determined by the drainage board under subsection (1). Within 10 days after the order is executed, the chairperson of the drainage board shall file a copy of the order in the office of the county drain commissioner of each county in which any part of the district is located. The drainage board shall publish notice of the filing of the order in a newspaper of general circulation in each such county, once in each week for 2 successive weeks. The notice shall give a general description of the route of the drain and of the drainage district as shown by the order.

(3) The drain commissioner of a county traversed by the drain may request in writing that the name or number of a drain as designated in an order filed under subsection (2) be changed. The request shall state the name or number of the drain and the change to be made in the name or number. The drain commissioner shall file the request in his or her office and mail a copy of the request to the director of the department of agriculture and rural development and to the drain commissioner of each county in which any part of the drainage district is located. The director of the department of agriculture and rural development or the director's designee shall call a meeting of the drainage board. The drainage board may file an order changing the name or number of the drain. The drainage board may also order the posting of signs upon the drain for public notice of the new name or number. Copies of the order changing the name or number of the drain shall be filed with the drain commissioner and the county treasurer of each county in which any part of the drainage district is located.

(4) If the drainage board cannot agree as to the apportionment of costs for laying out a drainage district, the chairperson shall apportion the costs and the counties affected shall pay the costs as provided in section 302.

Sec. 122. (1) Within 20 days after a petition to locate, establish, and construct an intercounty drain is filed under section 121, the drain commissioner shall notify by certified mail the drain commissioner for each county in which any part of the drainage district is located and the director of the department of agriculture and rural development. The chairperson shall call a meeting of the drainage board within the time set forth in section 102.

(2) The 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 chairperson shall not vote, except that the chairperson may cast the deciding vote in case of a tie.

(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 all of the following means:

(a) Publication in a newspaper of general circulation in the drainage district.

(b) Service, personally or by certified mail, on the county clerk and a member of the board of county road commissioners of each county and the supervisor of each township and clerk of each city and village in the drainage district.

(c) Service, by first-class mail on each person whose name appears on the last city or township tax roll as owning land in the drainage district, at the address shown on the roll. If an address does not appear on the roll, a notice need not be mailed to the person. The drain commissioner shall make an affidavit of the mailing and shall recite in the affidavit that the notice was mailed to all of the persons whose names and addresses appear upon the tax rolls as owning land in the drainage district. The affidavit is conclusive proof that notice was mailed to each person to whom notice is required to be mailed under this subdivision. The failure to receive a notice by mail is not a jurisdictional defect invalidating a drain proceeding or drain assessment if notice was sent by first class mail as provided in this section.

(5) All expenses of notification shall be paid by the drainage district when created.

(6) The drainage board shall act as the board of determination and shall determine by majority vote the necessity of drains proposed to be located, established, and constructed under this chapter.

(7) The drainage board shall consider the petition and evidence offered, and if it is determined that the drain is necessary for the public health, convenience, or welfare, it shall make an order to that effect and file the order with the drainage board. If the drainage board determines that the drain is not necessary and conducive to the public health, convenience, or welfare, the drainage board shall file an order dismissing the petition, and further petition for the drain shall not be filed within 1 year after the determination. Not more than 10 days after the drainage board files an order finding the proposed drain is necessary and conducive to the public health, convenience, or welfare, the drainage board shall determine the cities, townships, and villages within the drainage district benefiting from the drain for public health and shall notify each such city, village, and township that is liable to pay a percentage of the cost of the construction of the drain by reason of benefits at large for public health. Within 20 days after an order determining that the drain is necessary is filed, if an appeal has not been taken under section 122a, the drainage board shall make a further order, signed by the chairperson, to be known as the first order of determination. The first order of determination shall give the name or number of the drainage district and a general description of the route, terminus, and type of construction of the drain. A copy of the order shall be filed in the office of the county drain commissioner of each county into which any part of the drainage district is located.

(8) 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 disqualified drainage board member shall not participate in the determination of necessity.

(b) A special commissioner shall be appointed pursuant to section 382 to serve as a member of the drainage board to determine necessity.

Sec. 123. (1) After securing the necessary property rights or interests as provided in this act, the drainage board shall determine the percentage of the whole cost of the drain to be apportioned to each county and shall include the determination in the final order of determination. If the drain commissioners cannot agree unanimously on the apportionment between counties, the chairperson shall propose the apportionment. If the drainage board cannot agree unanimously on the apportionment of benefits proposed by the chairperson, the matter shall be submitted to the board of arbitration in the manner prescribed in section 106 and that board's decision is final.

(2) After the apportionment of benefits is made under subsection (1), the commissioner of each county in which any part of the drainage district is located, unless disqualified under section 381, shall apportion the benefits for the construction of the drain to each tract or parcel of land, to any county, township, city, or village, and to any state trunk line highway within the drainage district, in the manner provided in chapter 7. The percentage so apportioned when finally approved shall be assessed against such counties, townships, cities, villages, highways, and lands according to the apportionment of benefits. The apportionment of benefits so made is subject to review and correction and may be appealed as provided in chapter 7.

Sec. 154. (1) The commissioner shall give notice as described in subsection (3) for the receiving of bids for the construction of the drain and for the holding of a public meeting to review the apportionment of benefits. The meeting shall be not less than 5 nor more than 30 days after the date set for receiving bids.

(2) The notice under subsection (1) shall be given by publication of at least 2 insertions in a newspaper published and of general circulation in the county. The first publication shall be at least 10 days before the date set for receiving bids.

(3) The drain commissioner shall also send the notice under subsection (1) by first-class mail at least 10 days before the date of the meeting to review the apportionment of benefits, to each person whose name appears upon the last city or township tax assessment roll as owning land within the special assessment district, at the address shown on the roll. If an address does not appear on the roll, then notice need not be mailed to the person. The drain commissioner shall make an affidavit of the mailing and shall recite in the affidavit that the persons to whom the notice was mailed constitute all of the persons whose names and addresses appear upon the tax rolls as owning land within the particular special assessment district. The affidavit is conclusive proof that notice was mailed to each person to whom notice is required to be mailed. If notice has been sent by first-class mail as provided in this section, the failure to receive notice by mail does not constitute a jurisdictional defect invalidating a drain proceeding or tax. If the drain commissioner determines that the drain is necessary for the protection of the public health and that the whole cost of the drain, except that part which may be apportioned for benefits to highways, shall be apportioned to municipalities, then mailing of individual notices to persons owning land within the special assessment district as provided in this subsection is not required.

(4) The notice under subsection (1) shall be personally served on the county clerk and a member of the board of county road commissioners of the county and on the supervisor of each township and clerk of each city or village to be assessed at large.

(5) The notice under subsection (1) shall contain all of the following:

(a) The date, time, and place of receiving bids.

(b) The date, time, and place of the meeting to review the apportionment of benefits.

(c) A statement that, at the meeting to review the apportionment of benefits, the drain commissioner will have available to review the tentative apportionments against parcels and municipalities within the drainage district.

(d) A statement that drain assessments against land will be collected in the same manner as property taxes.

(e) A statement that if drain assessments against land are collected by installment, the land owner may pay the assessments in full with any interest to date at any time and thereby avoid further interest charges.

(f) The name of each county, township, city, or village to be assessed at large.

(g) A description of the land constituting the special assessment district for the drain. The description may be stated by designating the boundaries of the special assessment district by streets, highways, parcels, or tracts of land or by describing the tracts or parcels of land constituting the district. A tract or parcel need not be subdivided beyond the point where the whole of the tract or parcel is within the drainage district.

(h) The name or number of the drain.

(i) The number and length of sections, the average depth and width of each section, and if the drain will be a closed drain, the amount and specifications of all tile or pipe required.

(j) The location, number, type, and size of all culverts and bridges.

(k) The conditions upon which the contract will be awarded.

(6) The notice under subsection (1) need not contain minutes of survey or a table of cuttings. These shall be kept on file in the office of the drain commissioner.

(7) Bids shall be received and the total cost of the drain shall be computed before the time set for review of the apportionment. The computation shall be open to inspection. If the computation is not completed before the day of review, the review may be adjourned from time to time, not more than 20 days in all, for the completion of the computation, or a new hearing may be called with similar notice, by publication and service at least 10 days before the hearing. If the contracts on which the computation was based are not executed and new contracts are let at a higher price, the computation shall be corrected and a new review held with a similar notice. At the date, time, and place fixed in the notice, or at another date, time, and place to which the county drain commissioner may adjourn the hearing, the apportionment of benefits and the lands constituting the special assessment district shall be subject to review for at least 1 day. The review shall be held open from 9 a.m. until 5 p.m. At the review, the county clerk or the county road commission may appear on behalf of the county; the supervisor of a township may appear on behalf of a township; the mayor or an officer of the city designated by the mayor may appear for a city; the president may appear on behalf of a village. At the review the county drain commissioner shall hear the proofs and allegations, shall carefully reconsider and review the description of land comprised within the special assessment district, the several descriptions and apportionment of benefits, and shall define and equalize the land as is just and equitable.

(8) If an apportionment of benefits is made against a state trunk line highway, unless the director of the state transportation department consents in writing to the apportionment, the drain commissioner, at least 20 days before the review on the highway, shall notify by registered mail the director of the state transportation department of the percentage apportioned against the highway and the date, time, and place fixed for a review of apportionment of benefits. If the director of the state transportation department desires to have the apportionment of benefits reviewed by the director of the department of agriculture, the director of the state transportation department, within 10 days from the receipt of the notice, shall file with the drain commissioner an objection to the apportionment. The drain commissioner shall notify the director of the department of agriculture of the date, time, and place fixed for the review of apportionments, and at the meeting the director of the department of agriculture, or a deputy of the director, shall review the apportionment made against the state trunk line highway and listen to the proofs and allegations of the parties, and may view the highway benefited. The action and decision on the apportionment under this subsection, when reduced to writing, is final.

Sec. 247. (1) The county drain commissioner or drainage board acting under this act may employ an attorney if the drain commissioner or drainage board, as appropriate, considers it necessary. If an attorney is employed, all attendant expenses and costs shall be charged to the drainage districts on behalf of which the attorney is employed. All attendant expenses and costs shall be paid out of the drain fund of the drainage district or the revolving drain fund. If the attendant expenses and costs are paid out of the revolving drain fund or if the drain fund of the drainage district does not have sufficient funds to pay the attendant expenses and costs, the attendant expenses and costs shall be assessed to the drainage district in the same proportion as costs of the drain were assessed as provided in chapter 7 and the collections of these assessments shall be used either to reimburse the revolving drain fund or to pay the attendant expenses and costs, as appropriate.

(2) The county board of commissioners for a county, by resolution, may provide for the prosecuting attorney to give legal assistance to the county drain commissioner as part of the prosecuting attorney's duties.

(3) As used in this section, "attendant expenses and costs" means those expenses and costs incurred for a drainage district in furtherance of the duties and responsibilities of a drain commissioner or drainage board, including, but not limited to, 1 or more of the following:

- (a) Actual attorney fees.
- (b) Expert witness and consultant fees.
- (c) Money and costs expended in connection with litigation or the threat of litigation.
- (d) Payments made in satisfaction or partial satisfaction of any orders or judgments entered against a drainage district.
- (e) Money and costs expended to obtain a release, waiver, or other settlement of claims.

Sec. 307. (1) The drainage board shall apportion the cost between counties if revolving fund money has been expended or a drainage district is obligated to pay expenses for engineering, legal, or administrative services or to pay principal and interest on notes and if any of the following apply:

- (a) An improvement has not been completed within the latest of the following:
 - (i) 5 years after the date of the drainage board's order designating an intercounty drainage district under section 105.
 - (ii) 5 years after the entry of the first order of determination under section 122.
 - (iii) 2 years after the filing of a petition, if a petition has been filed and ordered abandoned.
- (b) A petition to locate, establish, and construct an intercounty drain is not filed within 2 years after the date of the drainage board's order designating an intercounty drainage district.

(2) If requested by a drain commissioner feeling aggrieved by the apportionment, the board of review shall review the apportionment under section 106. The amount apportioned to each county by the board of review shall be recovered by the county as provided in section 306.

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

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor