

HOUSE BILL NO. 5126

October 17, 2019, Introduced by Reps. Steven Johnson, Sabo, Brann, Howell and Miller and referred to the Committee on Local Government and Municipal Finance.

A bill to amend 1956 PA 40, entitled
"The drain code of 1956,"
by amending sections 135 and 154 (MCL 280.135 and 280.154), section
135 as amended by 2017 PA 62 and section 154 as amended by 2018 PA
646.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 135. **(1)** If at any time after a county or intercounty
2 drain is constructed, it appears that it is necessary to extend the

1 ~~drain or~~ drainage district into a county that was not a part of the
 2 original drainage district or to remove lands from the original
 3 drainage district resulting in the removal of a county from an
 4 intercounty drainage district, the lands may be added to or removed
 5 from the drainage district pursuant to section 197(3) or by
 6 presenting **a petition** to the drain commissioner of 1 of the
 7 counties traversed or affected by the drain. ~~7-a~~ **The petition must**
 8 **be** signed by ~~50% of the landowners whose land is traversed by the~~
 9 ~~drain or proposed extended drain, or abuts on the part of a highway~~
 10 ~~or street along the side of which the drain or proposed extended~~
 11 ~~drain runs, between the point where the drain enters the highway~~
 12 ~~and the point where it leaves the highway. Instead of landowners,~~
 13 ~~the petition may be signed solely by a city, village, or township~~
 14 **either of the following:**

15 **(a) By any 5 freeholders or at least 50% of the freeholders if**
 16 **there are fewer than 5 freeholders whose lands will be liable for**
 17 **an assessment for benefits from the drain.**

18 **(b) By a municipality** if authorized by its governing body or
 19 by any combination of municipalities, if the petitioning
 20 municipality or municipalities are or will be liable ~~to~~ **for an**
 21 **assessment at large for a percentage of the cost of** ~~benefits from~~
 22 **the drain.**

23 **(2)** The petition shall state the name or number of the drain ~~7~~
 24 and identify the lands proposed to be added to or removed from the
 25 drainage district. **A petition under this section may be combined**
 26 **with a petition under section 192.**

27 **(3)** Upon receipt of the petition, the drain commissioner shall
 28 mail a copy of the petition to the director of the department of
 29 agriculture and rural development and ~~also~~ to the drain

1 commissioner of each county where the original or proposed revised
 2 drainage district is located. The director of **the department of**
 3 agriculture and rural development shall call a meeting of the
 4 drainage board, which shall include the commissioner of each county
 5 where the original or proposed revised drainage district is
 6 located. Notices of the meeting and all other proceedings shall be
 7 provided pursuant to section 197.

8 **(4)** At the meeting **of the drainage board**, all persons owning
 9 lands in the drainage district or proposed revised drainage
 10 district liable to assessment for benefits, or any municipality
 11 affected, may appear for or against the addition or removal of the
 12 lands. The **drainage** board shall consider the petition and any
 13 evidence offered. If the **drainage** board determines that the
 14 extension of the ~~drain or~~ drainage district or the removal of lands
 15 from the drainage district is necessary for the public health,
 16 convenience, or welfare, it shall then ~~proceed to~~ determine the
 17 just percentage of the whole cost of construction that each county
 18 shall bear. ~~and the number of installments in which the drain taxes~~
 19 ~~shall be collected.~~ If the commissioners cannot agree on the
 20 apportionment between counties, ~~or the number of installments,~~ the
 21 chairperson shall determine ~~these,~~ **that apportionment**, subject to
 22 ~~appeal~~ **review** under section 106.

23 **(5)** If, in the opinion of the drainage board, it is necessary
 24 to revise the drainage district boundaries, the board shall also
 25 enter an order to that effect. Copies of the order shall be filed
 26 with the drain commissioner of each county in the revised drainage
 27 district. ~~Copies of an order adding the lands to the drainage~~
 28 ~~district shall also be served upon all persons whose lands have~~
 29 ~~been added to the drainage district in the same manner as provided~~

~~in section 154(3).~~ After the order is filed, the revised drainage board constitutes the drainage board for the revised drainage district and has all the powers and duties of drainage boards under this act.

Sec. 154. (1) **The drain commissioner shall advertise for the receipt of bids for the construction of a drain at a specified time, date, and location. If the drain commissioner directly or indirectly maintains an official internet presence, the drain commissioner shall post the advertisement for the receipt of bids on a portion of the website that is fully accessible to the public at least 10 days before, and shall maintain the posting through, the date set for the receipt of bids. If the drain commissioner does not maintain an official internet presence, the advertisement shall be so posted and maintained on the county website.**

(2) 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~~ **this section**, of a public meeting to review the apportionment of benefits. The meeting shall be not less than 5 ~~nor~~ **or** more than 30 days after the date set for receiving bids.

(3) ~~(2)~~ The notice under subsection ~~(1)~~ **(2)** 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.~~ **of the review of the apportionment.**

(4) ~~(3)~~ The drain commissioner shall also send the notice under subsection ~~(1)~~ **(2)** by first-class mail, at least 10 days before the date of the ~~meeting to review~~ **of** the apportionment of benefits, to each person whose name appears ~~upon~~ **on** the last city

1 or township tax ~~assessment~~ roll as owning land within the ~~special~~
2 ~~assessment~~ **drainage** district, at the address shown on the roll. ~~If~~
3 ~~an address does not appear on the roll, then notice~~ **Notice** need not
4 be mailed to ~~the~~ a person **whose address does not appear on the**
5 **roll**. The drain commissioner shall make an affidavit of the mailing
6 and shall recite in the affidavit that ~~the persons to whom the~~
7 notice was mailed ~~constitute to all of the persons whose names and~~
8 addresses appear ~~upon~~ **on** the tax rolls as owning land within the
9 ~~particular special assessment~~ **drainage** district. The affidavit is
10 conclusive proof that notice was mailed to each person to whom
11 notice is required to be mailed. If notice has been sent by first-
12 class mail as provided in this ~~section~~, **subsection**, the failure to
13 receive notice by mail does not constitute a jurisdictional defect
14 invalidating a drain proceeding or ~~tax~~. **assessment**. If the drain
15 commissioner determines that the drain is necessary for ~~the~~
16 ~~protection of~~ the public health and that the whole cost of the
17 drain, except that part which may be apportioned for benefits to
18 highways, shall be apportioned to municipalities, then mailing of
19 individual notices to persons owning land within the ~~special~~
20 ~~assessment~~ **drainage** district as provided in this subsection is not
21 required.

22 (5) ~~(4) The~~ **At least 10 days before the date of the review of**
23 **the apportionment, the drain commissioner shall serve the** notice
24 under subsection ~~(1) shall be~~ **(2) personally served or by certified**
25 **mail** on the county clerk and a member of the board of county road
26 commissioners of the county and on the supervisor of each township
27 and clerk of each city or village to be assessed at large.

28 (6) ~~(5) The~~ notice under subsection ~~(1)~~ **(2)** shall contain all
29 of the following:

1 (a) ~~The date, time, and place of receiving bids.~~ **A statement**
2 **that comments on the apportionment of benefits may be submitted to**
3 **the drain commissioner in writing before the date of the meeting to**
4 **review the apportionment or may be submitted in writing or orally**
5 **at the review. The statement shall specify the drain commissioner's**
6 **postal mailing address and electronic mail address and indicate**
7 **that comments submitted in advance must be received by the drain**
8 **commissioner before the date of the meeting to ensure**
9 **consideration.**

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

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

16 (d) **For notice mailed to a person under subsection (4), the**
17 **estimated percentage and dollar amount apportioned to that person's**
18 **land, the estimated annual dollar amount apportioned to that**
19 **person's land, and the estimated project assessment duration.**

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

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

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

28 (h) **The name or number of the drain.**

29 (i) **The address of a website, as provided for in subsection**

(7), and a statement that the following additional information can be found at that address:

(i) ~~(g)~~—A description of the land constituting the ~~special assessment~~**drainage** district for the drain. The description may be ~~stated~~**given by providing a map of the drainage district**, by designating the boundaries of the ~~special assessment~~**drainage** 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.~~**If a parcel or tract is partially located within the district, for the purposes of the notice description only, the drain commissioner may consider the entire parcel or tract to be located in the district.**

~~(h) The name or number of the drain.~~

(ii) ~~(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.

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

(iv) ~~(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) If the drain commissioner directly or indirectly maintains an official internet presence, the drain commissioner shall post the information described in subsection (6) (a) to (c) and (e) to (h) on a portion of the website that is fully accessible to the public and shall maintain the posting through the date of the

1 meeting to review the apportionment of benefits. If the drain
 2 commissioner does not maintain an official internet presence, the
 3 information shall be so posted and maintained on the county
 4 website.

5 (8) Notwithstanding the information provided in the notice
 6 under subsection (6)(d), the drain commissioner may subsequently
 7 make adjustments to any of the following that the commissioner or
 8 drainage board considers necessary, without further notice or an
 9 additional meeting to review the apportionment of benefits:

10 (a) The estimated apportionment percentage.

11 (b) The estimated annual project assessment.

12 (c) The estimated project assessment duration.

13 (9) ~~(7)~~ Bids for the construction of the drain shall be
 14 received and the total cost of the drain shall be computed before
 15 the time set for review of the apportionment. The computation shall
 16 be open to inspection. If the computation is not completed before
 17 the ~~day of~~ review of the apportionment, the drain commissioner
 18 shall adjourn the review ~~may be adjourned~~ from time to time, not
 19 more than 20 days in all, for the completion of the computation, or
 20 shall call a new hearing ~~may be called with similar notice, by~~
 21 ~~publication and service at least 10 days before the hearing.~~
 22 meeting to review the apportionment of benefits and give notice as
 23 provided in subsections (3) to (7). If the contracts on which the
 24 computation was based are not executed and new contracts are let at
 25 a higher price, the drain commissioner shall correct the
 26 computation ~~shall be corrected and,~~ after giving notice as provided
 27 in subsections (3) to (7), hold a new review ~~held with a similar~~
 28 ~~notice of the apportionment.~~

29 (10) At the date, time, and place ~~fixed~~ specified in the

1 notice, or at another date, time, and place to which the county
 2 drain commissioner may adjourn the ~~hearing, meeting,~~ the
 3 apportionment of benefits ~~and the lands constituting the special~~
 4 ~~assessment district~~ shall be subject to review for at least 1 day.
 5 The review shall be held open from 9 a.m. until 5 p.m. At the
 6 review, the county clerk or the county road commission may appear
 7 on behalf of the county, ~~+~~the supervisor of a township may appear
 8 on behalf of a township, ~~+~~the mayor or an officer of the city
 9 designated by the mayor may appear ~~for~~ **on behalf of** a city, ~~+~~**and**
 10 the president may appear on behalf of a village. At the review the
 11 county drain commissioner shall ~~hear~~ **consider** the proofs and
 12 allegations ~~, and shall carefully do both of the following:~~

13 (a) **Carefully** reconsider and review the ~~description of land~~
 14 ~~comprised within the special assessment district, the several~~
 15 ~~descriptions and apportionment of benefits. , and shall define~~

16 (b) **Define** and equalize the ~~land~~ **apportionment** as is just and
 17 equitable.

18 (11) ~~(8)~~ If an apportionment of benefits is made against a
 19 state trunk line highway, unless the director of the state
 20 transportation department consents in writing to the apportionment,
 21 the drain commissioner ~~, at least 20 days before the review on the~~
 22 ~~highway,~~ shall notify by ~~registered~~ **certified** mail the director of
 23 the state transportation department of the percentage apportioned
 24 against the highway and the date, time, and place ~~fixed~~ for a
 25 review of apportionment of benefits **by the drain commissioner under**
 26 **subsection (2). The notice shall be mailed at least 20 days before**
 27 **the review of the apportionment.** If the director of the state
 28 transportation department **instead** desires to have the apportionment
 29 of benefits reviewed by the director of the department of

1 agriculture **and rural development**, the director of the state
2 transportation department, within 10 days ~~from the receipt of~~ **after**
3 **receiving** the notice **under this subsection**, shall file with the
4 drain commissioner an objection to the apportionment. The drain
5 commissioner shall notify the director of the department of
6 agriculture **and rural development** of the date, time, and place
7 ~~fixed for the review of apportionments. , and at~~ **At** the meeting,
8 the director of the department of agriculture **and rural**
9 **development**, or a deputy of the director, shall review the
10 apportionment made against the state trunk line highway and listen
11 to the proofs and allegations of the parties, and may view the
12 highway benefited. The ~~action and~~ **written** decision on the
13 apportionment under this subsection ~~, when reduced to writing,~~ is
14 final.

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