

Act No. 291  
Public Acts of 2020  
Approved by the Governor  
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**STATE OF MICHIGAN  
100TH LEGISLATURE  
REGULAR SESSION OF 2020**

Introduced by Rep. Lower

## **ENROLLED HOUSE BILL No. 5504**

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 31, 196, 221, and 434 (MCL 280.31, 280.196, 280.221, and 280.434), section 196 as amended by 2008 PA 509, section 221 as amended by 2016 PA 27, and section 434 as amended by 2002 PA 406.

*The People of the State of Michigan enact:*

Sec. 31. (1) A drain commissioner shall prepare a list of drainage districts that are assessed for maintenance work under section 196. The list shall include the name of the drain and the amount being assessed annually to the drainage district. A drainage district shall be included on a list for the duration of the assessment associated with the maintenance work. The commissioner shall update the list annually after the commissioner has filed all special assessment rolls under section 262(1) but not later than November 1. The commissioner shall make the list available upon request. If the commissioner maintains an official internet presence, the commissioner shall post and maintain the list on a portion of the website that is fully accessible to the public. If the drain commissioner does not maintain an official internet presence, the list shall be posted and maintained on the county website.

(2) At the annual October meeting of the county board of commissioners, a drain commissioner shall make a report to the county board of the drainage districts laid out and the drains constructed, finished, or begun under the drain commissioner’s supervision during the year ending September 30 and shall submit to the board a full financial statement of each drainage district. If authorized by resolution of the county board of commissioners, the report shall be made before April 2 of each year and shall cover the preceding calendar year. A drain commissioner shall also make reports and furnish information as required by the director of the department of agriculture and rural development.

(3) A report under subsection (2) shall include an itemized statement of the orders issued on account of each drainage district and a debit and credit balance of the district fund. The commissioner is liable on the blanket bond or his or her individual bond for gross neglect of duty or a misapplication of money under his or her control as commissioner.

Sec. 196. (1) An annual inspection may be made of a drain established under this act. An inspection shall be made upon the request of the governing body of a public corporation, as described in section 461, served in whole or in part by the drain to be inspected. Any inspection under this subsection shall be conducted by the following:

- (a) For a county drain, by the drain commissioner or a competent person appointed by the drain commissioner.
- (b) For an intercounty drain, by the drainage board or a competent person appointed by the drainage board.

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

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

(4) If an inspection discloses the necessity of expending money for the maintenance or repair of a drain to keep it in working order, the drain commissioner for a county drain, or the drainage board for an intercounty drain, may without petition expend an amount not to exceed in any 1 year \$5,000.00 per mile or fraction of a mile for maintenance and repair of the drain, not including inspection and engineering fees, legal fees, and the cost of publication and mailing. The determination of the maximum expenditure allowed under this subsection shall be based on the total number of miles of the drain and not on the actual number of miles or location of the maintenance or repair. Costs incurred for the inspection, maintenance, and repair of a drain performed under this section may be financed and assessed under this act for not more than 10 years.

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

(6) If the drain fund of a drainage district does not contain sufficient funds to pay for inspection, repair, and maintenance authorized by this section, the drain commissioner or the drainage board may finance the costs for not more than 10 years and shall assess the drainage district for not more than 10 years for the inspection, repair, and maintenance according to benefits received. The first installment of an assessment under this subsection shall be made and spread upon the city or township tax assessment roll within 2 years after the completion of the inspection, repair, and maintenance. If the total expenditure is more than the amount established in subsection (4) per mile or fraction of a mile, all real property owners subject to an assessment within the drainage district shall be notified of the assessment by publication in a newspaper of general circulation within the drainage district and by first-class mail to the name and address that appears on the last city or township assessment roll. An affidavit of mailing shall be made by the drain commissioner. The affidavit is conclusive proof that the notices required by this subsection were mailed. The failure of a person to receive a notice by mail is not a jurisdictional defect invalidating a drain assessment if notice by publication was given as required by this subsection.

(7) An assessment under subsection (6) for the actual cost of inspection, repair, and maintenance performed on a drain, or an assessment under subsection (3) to be deposited in the drain fund of a drainage district, shall be made according to benefits received. The expenditure limit of the amount established in subsection (4) per mile or fraction of a mile of drain shall be used to calculate the maximum amount that the drain commissioner or drainage board may assess in any 1 year without a petition or a request from a public corporation. Determination of the maximum assessment amount allowed without petition or request, or of the property that is subject to assessment, shall be based on the number of miles of drain and areas of the drainage district receiving benefits and not on the actual number of miles or actual location of the inspection, repair, and maintenance.

(8) If an emergency condition exists that endangers the public health, crops, or property within a drainage district, and the drain commissioner or drainage board enters an order declaring and describing the emergency, the commissioner or drainage board may expend funds for maintenance and repair to alleviate the emergency condition.

(9) The drain commissioner or drainage board shall not levy an additional assessment for drain maintenance under this section if there is currently an assessment for previous maintenance work on the drain under this section unless subsection (8) applies or the expenditure for maintenance is approved by the governing body of each township, city, and village affected by more than 20% of the cost.

(10) The drain commissioner or the drainage board may expend funds in excess of the amount established in subsection (4) per mile or fraction of a mile in any 1 year for inspection, maintenance, and repair of a drain if requested by a public corporation and if the public corporation pays the entire cost of the inspection, maintenance, and repair.

(11) In computing the amounts that may be expended under this section, the cost of work to be performed by a federal agency or public corporation that is not chargeable to the county or intercounty drainage district shall not be included. The drain commissioner or the drainage board is not required to advertise for bids for that portion of the work to be done by the federal agency or public corporation.

(12) For purposes of this section, the costs of maintenance and repair include all of the following:

(a) The cost of maintaining the drain in working order to continue a normal flow of water, including the servicing or repair of necessary pumping equipment and utility charges for pumping equipment.

(b) The cost of keeping the drain free from rubbish, debris, siltation, or obstructions.

(c) The cost of repairing a portion or all of a tile or drain to continue the normal flow of water.

(d) Other costs associated with the costs described in subdivisions (a) to (c).

(13) The dollar amount limitations in subsections (4), (6), and (7) do not apply to expenditures or assessments to the extent the expenditures or assessments are necessary to pay utility charges or costs to service pumping stations, sewage treatment facilities, or detention or retention basins.

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

Sec. 221. (1) The drain commissioner or drainage board shall advertise for sealed bids for projects petitioned for under section 71, 121, 191, or 192. The drain commissioner or drainage board shall receive sealed bids. All sealed bids received by the drain commissioner or drainage board shall be publicly opened at a meeting held at a time and place established by the notice under this act and may be examined at the meeting by any person interested. As soon as practical after the opening of bids, the drain commissioner or drainage board shall do the following:

(a) Determine the lowest responsible bidder and award contracts, or reject all proposals and readvertise.

(b) If the drain commissioner or drainage board determined that the special assessments for benefits shall be collected in more than 1 installment, subject to section 275, determine the amount, form, maturity, mandatory redemption requirements, if any, and rate of interest of bonds to be issued.

(2) The drain commissioner or drainage board shall also receive sealed bids as provided in subsection (1) for nonpetitioned maintenance work under section 196, unless the drain commissioner or drainage board utilizes 1 of the following to perform the work:

(a) County staff, including staff of the board of county road commissioners.

(b) A prequalified contractor. To proceed under this subdivision, the drain commissioner or drainage board must maintain a list of all prequalified contractors for nonpetitioned maintenance work under section 196. The determination whether to list a contractor shall comply with prequalification criteria adopted by the drain commissioner or drainage board. The drain commissioner or drainage board shall make the list and criteria available on request. If a drain commissioner maintains an official internet presence, the drain commissioner shall post and maintain the drain commissioner's or drainage board's list and criteria on a portion of the website that is fully accessible to the public. If the drain commissioner does not maintain an official internet presence, the list shall be so posted and maintained on the county website.

(3) If a contract is not let within 5 years after the date of filing the petition to locate, establish, and construct, or deepen, widen, straighten, tile, extend or clean out a drain, the drain commissioner or drainage board may determine that the petition shall be considered abandoned and no further action shall be taken to construct the drain. The running of the 5-year period is suspended during any litigation to contest the validity of the proceedings. If, after the 5-year period, the drain commissioner or drainage board determines that the petition shall be considered abandoned, the drain commissioner or drainage board shall issue an order to that effect. Notice of the order shall be published in a newspaper of general circulation in the drainage district or sent by first-class mail to each person whose name appears on the last city, village, or township tax roll as owning land within the drainage district. The respective 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 in that county. The affidavit is conclusive proof that notice was mailed to each person to whom notice is required to be mailed by that drain commissioner under this subsection. The failure to receive a notice by mail is not a jurisdictional defect invalidating the abandonment of a petition if notice was sent by first-class mail as provided in this subsection.

(4) The board of county road commissioners may bid on projects as provided in this section and, if a bid is accepted, may perform the work described in the bid and receive payment for the work performed. A bid tendered

by a board of county road commissioners shall not be accepted unless the bid is at least 15% lower than any other bid tendered. The money received by the board of county road commissioners shall be credited to the county road fund. Expenditures incurred by the board of county road commissioners in performing work under this subsection are proper disbursements from the county road fund.

Sec. 434. (1) A drainage district may borrow money or accept an advance of work, material, or money from a public or private corporation, partnership, association, individual, or the federal government or any agency of the federal government for any of the following for any project under this act:

(a) Payment of costs in connection with the maintenance and repair of a drain or the construction of any part of a drain project, including costs of easement and land acquisition, engineering fees, financing costs, and legal fees.

(b) Payment of or financing costs of a feasibility, practicability, environmental assessment, or impact study of a drain project, including engineering or legal fees.

(2) The drainage district shall pay or provide reimbursement for the obligations under subsection (1), with or without interest as may be agreed, when funds are available. The obligation of the drainage district to make the repayment or reimbursement may be evidenced by a contract or note. The contract or note may pledge the full faith and credit of the drainage district and may be made payable out of any of the following:

(a) Drain assessments made against public corporations at large, or against lands in the drainage district.


(b) The proceeds of drain orders, notes, or bonds issued by the drainage district pursuant to this act.

(c) Any other available funds.

(3) A contract or note described in subsection (2) is not subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821, unless the principal amount of the obligation is more than \$600,000.00. However, if the principal amount of the obligation is \$600,000.00 or less, then the contract or note is subject to the agency financing reporting act, 2002 PA 470, MCL 129.171 to 129.177.

However, projects in which advances or loans are made by any public corporation, the federal government, or any agency of the federal government are not subject to either the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821, or the agency financing reporting act, 2002 PA 470, MCL 129.171 to 129.177.

(4) A county board of commissioners by a majority vote of 2/3 of its members may pledge the full faith and credit of the county for the payment of a contract or note of the drainage district.



Clerk of the House of Representatives



Secretary of the Senate

Approved \_\_\_\_\_

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Governor