

SENATE SUBSTITUTE FOR  
HOUSE BILL NO. 5189

A bill to amend 1956 PA 40, entitled  
"The drain code of 1956,"  
by amending sections 135 and 197 (MCL 280.135 and 280.197), section  
135 as amended by 2020 PA 281 and section 197 as amended by 2017 PA  
62.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 135. (1) ~~If at~~ **At** any time after a ~~county or intercounty~~  
2   drain is constructed, ~~it appears that it is necessary to extend the~~  
3   ~~drainage district into a county that was not a part of the original~~  
4   ~~drainage district or to remove lands from the original drainage~~  
5   ~~district resulting in the removal of a county from an~~ **a county or**  
6   **counties may be added to the drainage district or, in the case of**  
7   **an** intercounty drainage district, ~~the lands may be added to or~~

1 removed from the drainage district pursuant to section 197(3) or  
 2 **this section.**

3 **(2) Proceedings under this section are commenced** by presenting  
 4 a petition **for the removal or addition of the county or counties** to  
 5 the drain commissioner of 1 of the counties ~~traversed or~~ affected  
 6 by the drain. The petition must be signed by ~~either~~ **any** of the  
 7 following:

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

11 (b) ~~By a~~ **A** municipality if authorized by its governing body,  
 12 or by any combination of municipalities ~~, if the petitioning~~  
 13 ~~municipality or municipalities~~ **so authorized, that** are or will be  
 14 liable for an assessment at large for benefits from the drain.

15 **(3)** ~~(2)~~ The petition shall state the name or number of the  
 16 drain and identify the **county or counties and** lands proposed to be  
 17 added to or removed from the drainage district. A petition under  
 18 this section may be combined with a petition under section 192.

19 **(4)** ~~(3)~~ Upon receipt of ~~the~~ **a petition under subsection (2),**  
 20 the drain commissioner shall ~~mail~~ **provide notice and** a copy of the  
 21 petition **by certified mail** to the director of the department of  
 22 agriculture and rural development and to the drain commissioner of  
 23 each county where the ~~original~~ **existing** or proposed revised  
 24 drainage district is located. ~~The~~ **Upon receipt of the notice and**  
 25 **petition, the** director of the department of agriculture and rural  
 26 development shall call a meeting of the drainage board, which shall  
 27 include the commissioner of each county where the ~~original~~ **existing**  
 28 or proposed revised drainage district is located. Notices of the  
 29 meeting ~~and all other proceedings shall be provided pursuant to~~

~~section 197.~~ shall be provided pursuant to section 122, except that the first class mailing pursuant to section 122(4)(c) shall be to each person whose name appears on the last city or township tax assessment roll as owning lands in the original or proposed revised drainage district at the address shown on the roll. The notices shall identify the county or counties proposed to be added or removed and include a general description or map of the lands expected to constitute the drainage district.

(5) ~~(4)~~—At the meeting of the drainage board, all persons owning lands in the **existing** drainage district or proposed revised drainage district liable to assessment for benefits, or any municipality affected, may appear for or against the addition or removal of ~~the lands.~~ **a county or counties.** The drainage board shall consider the petition and any evidence offered. If the drainage board determines **by majority vote** that ~~the extension of the drainage district or the removal of lands from the drainage district~~ **the addition or removal of a county or counties** is necessary for the public health, convenience, or welfare, it shall then determine the just percentage of the whole cost of construction that each county shall bear. If the commissioners cannot agree on the apportionment between counties, the chairperson shall determine that apportionment, subject to review under section 106.

~~(5) If, in the opinion of the drainage board, it is necessary to revise the drainage district boundaries, the board shall also enter an order to that effect. Copies of the order shall be filed with the drain commissioner of each county in the revised drainage district. After the order is filed, the revised drainage board constitutes the drainage board for the revised drainage district~~

1 ~~and has all the powers and duties of drainage boards under this~~  
 2 ~~act.~~ **issue an order to that effect and proceed as provided in**  
 3 **section 197(3)(f) to (7), as applicable. If a petition under this**  
 4 **section is combined with a petition under section 192, the drainage**  
 5 **board shall also proceed as provided in section 192.**

6 Sec. 197. (1) ~~Upon~~ **After** receipt of a petition filed under  
 7 ~~this chapter, section 191, 192, 327, 423, 441, or 441a or after an~~  
 8 **inspection under section 196,** the drain commissioner or the  
 9 drainage board may retain ~~the services of a licensed professional~~  
 10 ~~surveyor or engineer to make a survey of the drain and may review~~  
 11 **do both of the following:**

12 **(a) Review** the drainage district boundaries, or a portion of  
 13 the drain or drainage district. ~~, or if~~

14 **(b) If** necessary, lay out a revised drainage district  
 15 including the land benefited, or make profiles, plans, or estimates  
 16 of the work and file all data concerning the revisions, profiles,  
 17 plans, or estimates with the drain commissioner or the chairperson  
 18 of the drainage board, **respectively.**

19 (2) If, after ~~a survey of the drain or a review of the~~  
 20 ~~drainage district boundaries under subsection (1), or after an~~  
 21 ~~inspection under section 196,~~ it appears that the boundaries ~~of the~~  
 22 ~~drainage district~~ should be revised, the drain commissioner for a  
 23 county drain, or **the chairperson of** the drainage board for an  
 24 intercounty drain, shall ~~either~~ convene the board of determination  
 25 **or drainage board** pursuant to subsection (4) or hold a day of  
 26 review of district boundaries pursuant to subsection (5). ~~and,~~  
 27 ~~after notice and review as provided in this section, revise the~~  
 28 ~~boundaries of the drainage district to include all lands benefited~~  
 29 ~~by the drain as recommended by a licensed professional surveyor or~~

1 ~~engineer.~~

2 (3) If, after ~~an inspection under section 196 and~~ a review of  
3 the drainage district boundaries **under subsection (1)**, a drain  
4 commissioner or drainage board determines that the boundaries  
5 should be revised and that lands, in a county or counties not part  
6 of the original drainage district, should be added to the drainage  
7 district or lands in an intercounty drainage district should be  
8 removed resulting in the removal of a county from the intercounty  
9 drainage district, the **following procedures apply in the following**  
10 **order:**

11 (a) The drain commissioner or drainage board shall serve  
12 notice on the director of **the department of** agriculture and rural  
13 development and the drain commissioner of each county where there  
14 are lands proposed to be added to or removed from the drainage  
15 district.

16 (b) The director of the department of agriculture and rural  
17 development shall call a meeting of the drainage board, which shall  
18 include the commissioner of each county where the drainage district  
19 or proposed revised drainage district is located.

20 (c) At least 10 days before the date of the meeting, the  
21 drainage board shall send notice of the meeting by first-class mail  
22 to each city, village, and township in the original or proposed  
23 revised district and each person whose name appears on the last  
24 city or township tax assessment roll as owning lands in the  
25 original or proposed revised drainage district, at the address  
26 shown on the roll. If ~~an~~ **a person's** address does not appear on the  
27 roll, notice need not be mailed to that person.

28 (d) At the meeting, all persons owning lands in the drainage  
29 district or proposed revised drainage district liable to assessment

for benefits, or any municipality affected, may appear for or against the addition or removal of the lands.

(e) The drainage board shall consider any evidence offered and determine whether the addition or removal of the lands is just and equitable. If the addition or removal of the lands is just and equitable, the board shall file an order to that effect.

(f) The order shall ~~give~~ **do all of the following:**

(i) **Give** the drain **and drainage district** a name or number. ~~7 designate the drainage district, describe~~

(ii) **Describe** the route and course of the drain. ~~and~~

(iii) **Describe tentative** drainage district boundaries. ~~7 and, if~~

(iv) **Identify each county being added to or removed from the drainage district.**

(v) **If** the drainage district as revised is an intercounty drainage district, designate the members constituting the revised drainage board and determine the apportionment between counties.

(g) A copy of the order **under subdivision (f)** shall be filed with the drain commissioner of each county liable for assessments of the drainage district.

(h) **A drain commissioner may appeal the apportionments between the counties or the addition or removal of a county or counties to or from the drainage district, as set forth in an order described in subdivision (f), to an arbitration board in the manner provided in section 106.**

(i) If the drainage district as revised is an intercounty drainage district, after the order **described in subdivision (f)** is filed, **both of the following apply:**

(i) **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. ~~If the drainage district as revised is an intercounty drainage district, the~~

(ii) **The** revised drainage board shall revise the drainage district boundaries during ~~the~~**a** hearing of necessity as provided in subsection (4) or hold a day of review of drainage district boundaries as provided in subsection (5).

(j) If the drainage district as revised is a county drainage district, **both of the following apply:**

(i) **The** original drainage board shall revise the drainage district boundaries during ~~the~~**a** hearing of necessity as provided in subsection (4) or hold a day of review of drainage district boundaries as provided in subsection (5). ~~and, following~~

(ii) **After** the order revising the drainage district boundaries **is filed**, the drain commissioner ~~shall have~~**has** all the powers and duties ~~for~~**with respect to** a county drain established under this act.

(4) If, before the hearing of necessity for a petition, the drain commissioner, **for a county drain**, or drainage board, **for an intercounty drain**, determines that the boundaries of the drainage district should be revised, the drain commissioner ~~for a county drain~~, or the chairperson of the drainage board, **respectively**, ~~for an intercounty drain~~, **may shall** request that the board of determination **or drainage board, respectively**, revise the drainage district boundaries during the hearing of necessity as provided in section 72 or 122, **respectively**. If the board of determination **or drainage board** by a majority vote ~~of members~~ finds that the addition or deletion of lands will more accurately define the boundaries of the land benefited by the drain and it would be just and equitable, the board shall describe the revised drainage

1 district boundaries in the order of necessity for the drain.

2 (5) If the drain commissioner or drainage board determines to  
3 hold a day of review of drainage district boundaries, the lands  
4 comprising the drainage district revised under this section shall  
5 be subject to review for ~~not less than~~ **at least** 1 day from 9 a.m.  
6 until 5 p.m. The review shall be conducted at a location designated  
7 by the drain commissioner or drainage board. At the review, the  
8 drain commissioner or drainage board or its designee shall hear the  
9 proofs and allegations and shall carefully reconsider and review  
10 the description of land ~~comprised within~~ **comprising** the drainage  
11 district. If the drain commissioner or drainage board finds that  
12 the addition or deletion of lands will more accurately define the  
13 boundaries of the land benefited by the drain and it would be just  
14 and equitable, the drain commissioner or drainage board shall issue  
15 an order describing and establishing the revised drainage district  
16 boundaries. ~~supported by substantial, material, and competent~~  
17 ~~evidence.~~

18 (6) A notice for review of revised drainage district  
19 boundaries under subsection (5) shall specify the date, time, and  
20 place at which the review will take place and provide a general  
21 description of the lands proposed in whole or in part to be added  
22 **to** or removed from the drainage district. ~~This~~ **The** notice shall be  
23 sent by first-class **or certified** mail at least 10 days before the  
24 date of the review to each city, village, and township in the  
25 revised district ~~—~~ and each person whose name appears on the last  
26 city or township tax assessment roll as owning lands within the  
27 revised drainage district, at the address shown on the roll. If an  
28 address does not appear on the roll, then notice need not be mailed  
29 to that person. The drain commissioner or drainage board shall make



1 an affidavit of the mailing and shall recite in the affidavit that  
 2 the persons to whom the notice was mailed constitute all of the  
 3 persons whose names and addresses appear on the tax rolls as owning  
 4 lands within the revised drainage district. The affidavit is  
 5 conclusive proof that notice was mailed to each person to whom  
 6 notice is required to be mailed by this section. Failure to receive  
 7 a notice by mail is not a jurisdictional defect invalidating a  
 8 drain proceeding or assessment, if **the** notice was sent by first-  
 9 class mail as provided in this ~~section~~. **subsection**. The drain  
 10 commissioner or chairperson of the drainage board shall also cause  
 11 the notice to be published once in a newspaper of general  
 12 circulation in the county or counties in which the drainage  
 13 district is located at least 10 days before the review. ~~All expense~~  
 14 ~~of~~ **The** notification **expenses** shall be paid by the drainage  
 15 district.

16 (7) The owner of any land in the drainage district, the state  
 17 transportation department, or any city, village, township, or  
 18 county having control of any highway in the drainage district, that  
 19 is aggrieved by a determination to revise, or not to revise,  
 20 drainage district boundaries as provided for in ~~this section~~  
 21 **subsection (4) or (5)** may, within 10 days after the order to revise  
 22 the drainage district boundaries is ~~entered,~~ **filed**, institute an  
 23 action in the circuit court for the county in which the real  
 24 property is located for a determination of whether the decision to  
 25 revise, or not to revise, the drainage district boundaries is  
 26 supported by substantial, material, and competent evidence. ~~The~~  
 27 ~~addition or removal of a county or counties to or from the drainage~~  
 28 ~~district under subsection (3) is subject to review in the manner~~  
 29 ~~provided in section 106.~~