

HOUSE BILL No. 4622

April 24, 2013, Introduced by Reps. Pscholka, Rendon and Johnson and referred to the Committee on Local Government.

A bill to amend 1956 PA 40, entitled "The drain code of 1956," by amending section 197 (MCL 280.197).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 197. (1) ~~On~~ **UPON** receipt of a petition filed under this
2 chapter, the **DRAIN** commissioner or the drainage board may ~~require~~
3 **RETAIN THE SERVICES OF** a ~~competent~~ **LICENSED PROFESSIONAL** surveyor
4 or engineer to make a survey of the drain or of the **DRAINAGE**
5 district, or a portion of the drain or **DRAINAGE** district, or if
6 necessary, lay out a ~~new~~ **REVISED DRAINAGE** district including the
7 land benefited, or make profiles, plans, or estimates of the work
8 and file all data concerning the **REVISIONS**, profiles, plans, or
9 estimates with the **DRAIN** commissioner or the chairperson of the
10 drainage board. ~~If it appears that land has been added to the~~

~~1 drainage district, the drain commissioner for a county drain, or
2 the chairperson of the drainage board for an intercounty drain,
3 shall notify the board of determination who allowed the petition
4 that the land should be added to the district. The drain
5 commissioner or chairperson of the drainage board shall call a
6 meeting of the board of determination. If a member of the board of
7 determination is disqualified or unable to act, then the member's
8 place shall be filled by appointment as in the first instance. The
9 notice shall specify the time, date, and place within the drainage
10 district at which the board of determination shall reconvene. The
11 drain commissioner or chairperson of the drainage board also shall
12 cause the notice to be published once in a newspaper of general
13 circulation in the county or a newspaper of general circulation in
14 the area where the drain improvement is contemplated at least 10
15 days before the meeting. Notice of the time and place of the
16 meeting, by first class mail, shall be sent at least 10 days before
17 the date of the meeting, to each person whose name appears upon the
18 last city or township tax assessment roll as owning land within the
19 enlarged drainage district, at the address shown on the roll. If an
20 address does not appear on the roll, then notice need not be mailed
21 to the person. The drain commissioner shall make an affidavit of
22 the mailing and shall recite in the affidavit that the persons to
23 whom the notice was mailed constitute all of the persons whose
24 names and addresses appear upon the tax rolls as owning land within
25 the enlarged drainage district. The affidavit shall be conclusive
26 proof that notice was mailed to each person to whom notice is
27 required to be mailed by this section. The failure to receive a~~

~~1 notice by mail shall not constitute a jurisdictional defect
2 invalidating a drain proceeding or tax, if notice was sent by
3 first class mail as provided in this section. All expense of
4 notification shall be paid by the drainage district.~~

~~5 (2) At the time, date, and place designated by the drain
6 commissioner or the chairperson of the drainage board the board of
7 determination shall reconvene. Upon reconvening, if the board of
8 determination by a majority vote of members finds the proposed
9 addition of the land to the drainage district necessary and
10 conducive to the public health, convenience, or welfare, they shall
11 make an order to that effect and file the order with the drain
12 commissioner or drainage board. The drain commissioner or drainage
13 board shall take the steps and perform the acts which are required
14 for the locating, establishing, and constructing of drains as
15 designated in chapter 4 or chapter 6.~~

**16 (2) IF, AFTER A SURVEY IS MADE IN ACCORDANCE WITH SUBSECTION
17 (1) OR AFTER AN INSPECTION PERFORMED IN ACCORDANCE WITH SECTION 196
18 OR UPON RECEIPT OF A PETITION, IT APPEARS THAT THE BOUNDARIES OF
19 THE DRAINAGE DISTRICT SHOULD BE REVISED, THE DRAIN COMMISSIONER FOR
20 A COUNTY DRAIN, OR THE DRAINAGE BOARD FOR AN INTERCOUNTY DRAIN,
21 MAY, AFTER NOTICE AND REVIEW AS PROVIDED IN THIS SECTION, REVISE
22 THE BOUNDARIES OF THE DRAINAGE DISTRICT TO INCLUDE ALL LANDS
23 BENEFITED BY THE DRAIN.**

**24 (3) THE LANDS COMPRISING THE DRAINAGE DISTRICT REVISED IN
25 ACCORDANCE WITH THIS SECTION SHALL BE SUBJECT TO REVIEW FOR NOT
26 LESS THAN 1 DAY FROM 9 A.M. UNTIL 5 P.M. THE REVIEW SHALL BE
27 CONDUCTED AT A LOCATION DESIGNATED BY THE DRAIN COMMISSIONER OR**

1 DRAINAGE BOARD. AT THE REVIEW, THE DRAIN COMMISSIONER OR DRAINAGE
2 BOARD SHALL HEAR THE PROOFS AND ALLEGATIONS AND SHALL CAREFULLY
3 RECONSIDER AND REVIEW THE DESCRIPTION OF LAND COMPRISED WITHIN THE
4 DRAINAGE DISTRICT. IF THE DRAIN COMMISSIONER OR DRAINAGE BOARD
5 FINDS THAT THE ADDITION OR DELETION OF LANDS WILL MORE ACCURATELY
6 DEFINE THE BOUNDARIES OF THE LAND BENEFITED BY THE DRAIN AND IT
7 WOULD BE JUST AND EQUITABLE, THE DRAIN COMMISSIONER OR DRAINAGE
8 BOARD SHALL ISSUE AN ORDER DESCRIBING AND ESTABLISHING THE REVISED
9 DRAINAGE DISTRICT BOUNDARIES.

10 (4) A NOTICE FOR REVIEW OF REVISED DRAINAGE DISTRICT
11 BOUNDARIES UNDER SUBSECTION (3) SHALL SPECIFY THE DATE, TIME, AND
12 PLACE AT WHICH THE REVIEW SHALL TAKE PLACE AND PROVIDE A GENERAL
13 DESCRIPTION OF THE LANDS PROPOSED TO BE ADDED OR DELETED IN WHOLE
14 OR IN PART FROM THE DRAINAGE DISTRICT. THIS NOTICE SHALL BE SENT BY
15 FIRST-CLASS MAIL AT LEAST 10 DAYS BEFORE THE DATE OF THE REVIEW TO
16 EACH PERSON WHOSE NAME APPEARS ON THE LAST CITY OR TOWNSHIP TAX
17 ASSESSMENT ROLL AS OWNING LANDS WITHIN THE REVISED DRAINAGE
18 DISTRICT, AT THE ADDRESS SHOWN ON THE ROLL. IF AN ADDRESS DOES NOT
19 APPEAR ON THE ROLL, THEN NOTICE NEED NOT BE MAILED TO THAT PERSON.
20 THE DRAIN COMMISSIONER OR DRAINAGE BOARD SHALL MAKE AN AFFIDAVIT OF
21 THE MAILING AND SHALL RECITE IN THE AFFIDAVIT THAT THE PERSONS TO
22 WHOM THE NOTICE WAS MAILED CONSTITUTE ALL OF THE PERSONS WHOSE
23 NAMES AND ADDRESSES APPEAR ON THE TAX ROLLS AS OWNING LANDS WITHIN
24 THE REVISED DRAINAGE DISTRICT. THE AFFIDAVIT SHALL BE CONCLUSIVE
25 PROOF THAT NOTICE WAS MAILED TO EACH PERSON TO WHOM NOTICE IS
26 REQUIRED TO BE MAILED BY THIS SECTION. FAILURE TO RECEIVE A NOTICE
27 BY MAIL IS NOT A JURISDICTIONAL DEFECT INVALIDATING A DRAIN

1 PROCEEDING OR ASSESSMENT, IF NOTICE WAS SENT BY FIRST-CLASS MAIL AS
2 PROVIDED IN THIS SECTION. THE DRAIN COMMISSIONER OR CHAIRPERSON OF
3 THE DRAINAGE BOARD SHALL ALSO CAUSE THE NOTICE TO BE PUBLISHED ONCE
4 IN A NEWSPAPER OF GENERAL CIRCULATION IN THE COUNTY OR COUNTIES IN
5 WHICH THE DRAINAGE DISTRICT IS LOCATED AT LEAST 10 DAYS BEFORE THE
6 REVIEW. ALL EXPENSE OF NOTIFICATION SHALL BE PAID BY THE DRAINAGE
7 DISTRICT.

8 (5) IF A REVISION TO A DRAINAGE DISTRICT IS MADE AFFECTING A
9 STATE TRUNK LINE HIGHWAY, UNLESS THE STATE TRANSPORTATION
10 DEPARTMENT CONSENTS IN WRITING TO THE REVISION, THE DRAIN
11 COMMISSIONER OR THE DRAINAGE BOARD SHALL, AT LEAST 20 DAYS BEFORE
12 THE REVIEW UNDER THIS SECTION, NOTIFY BY REGISTERED MAIL THE
13 DIRECTOR OF THE STATE TRANSPORTATION DEPARTMENT OF THE REVISIONS TO
14 THE DRAINAGE DISTRICT AND THE DATE, TIME, AND PLACE ESTABLISHED FOR
15 A REVIEW OF THE REVISED DRAINAGE DISTRICT BOUNDARIES. IF THE
16 DIRECTOR OF THE STATE TRANSPORTATION DEPARTMENT DESIRES TO HAVE THE
17 REVISION TO THE DRAINAGE DISTRICT REVIEWED BY THE DIRECTOR OF THE
18 DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT, HE OR SHE SHALL
19 FILE WITH THE DRAIN COMMISSIONER OR THE DRAINAGE BOARD AN OBJECTION
20 TO THE REVISION OF THE DRAINAGE DISTRICT BOUNDARIES. THE DRAIN
21 COMMISSIONER OR DRAINAGE BOARD SHALL NOTIFY THE DIRECTOR OF THE
22 DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT OF THE DATE, TIME,
23 AND PLACE ESTABLISHED FOR THE REVIEW OF THE DRAINAGE DISTRICT
24 BOUNDARIES, AND AT THE REVIEW, THE DIRECTOR OF THE DEPARTMENT OF
25 AGRICULTURE AND RURAL DEVELOPMENT OR A DEPUTY OF THE DIRECTOR SHALL
26 REVIEW THE REVISIONS MADE TO THE DRAINAGE DISTRICT THAT AFFECT A
27 STATE TRUNK LINE HIGHWAY, SHALL LISTEN TO THE PROOFS AND

1 ALLEGATIONS OF THE PARTIES, AND MAY VIEW THE STATE HIGHWAY
2 INVOLVED. THE WRITTEN DECISION OF THE DIRECTOR OF THE DEPARTMENT OF
3 AGRICULTURE AND RURAL DEVELOPMENT OR A DEPUTY OF THE DIRECTOR ON
4 THE REVISION OF DRAINAGE DISTRICT BOUNDARIES THAT AFFECT 1 STATE
5 HIGHWAY SHALL BE FINAL.

6 (6) THE OWNER OF ANY LAND IN THE DRAINAGE DISTRICT, OR ANY
7 CITY, VILLAGE, TOWNSHIP, DISTRICT, OR COUNTY HAVING CONTROL OF ANY
8 HIGHWAY IN THE DRAINAGE DISTRICT, THAT IS AGGRIEVED BY A
9 DETERMINATION TO REVISE, OR NOT TO REVISE, DRAINAGE DISTRICT
10 BOUNDARIES AS PROVIDED FOR IN THIS SECTION MAY, WITHIN 10 DAYS
11 AFTER THE DAY OF REVIEW OF THE DRAINAGE DISTRICT BOUNDARIES,
12 INSTITUTE AN ACTION IN THE CIRCUIT COURT FOR THE COUNTY IN WHICH
13 THE REAL PROPERTY IS LOCATED FOR A DETERMINATION OF WHETHER THE
14 DECISION TO ADD OR DELETE PROPERTY TO OR FROM THE DRAINAGE DISTRICT
15 IS SUPPORTED BY SUBSTANTIAL, MATERIAL, AND COMPETENT EVIDENCE.