

SENATE BILL NO. 864

February 09, 2022, Introduced by Senator DALEY and referred to the Committee on Local Government.

A bill to amend 1956 PA 40, entitled
"The drain code of 1956,"
by amending section 196 (MCL 280.196), as amended by 2020 PA 291.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 196. (1) ~~An annual inspection may be made of a drain~~
2 ~~established under this act. An inspection shall be made~~ **A drain may**
3 **be inspected annually. In addition, a drain shall be inspected** upon
4 the request of the governing body of a public corporation, as
5 described in section 461, served in whole or in part by the drain.
6 ~~to be inspected.~~ Any inspection under this subsection shall be

1 conducted by the following:

2 (a) For a county drain, by the drain commissioner or a
3 competent person appointed by the drain commissioner.

4 (b) For an intercounty drain, by the drainage board or a
5 competent person appointed by the drainage board.

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

12 (3) If at any time the drain fund of a drainage district
13 contains less than ~~\$5,000.00~~ **\$10,000.00** per mile or fraction of a
14 mile of a drain, the drain commissioner or drainage board may
15 assess the drainage district for an amount not to exceed ~~\$2,500.00~~
16 **\$5,000.00** per mile or fraction of a mile in any 1 year. The amount
17 collected under an assessment shall be deposited in the drain fund
18 of the drainage district for inspection, repair, and maintenance of
19 the drain.

20 (4) If an inspection discloses the necessity of expending
21 money for the maintenance or repair of a drain to keep it in
22 working order, the drain commissioner for a county drain, or the
23 drainage board for an intercounty drain, may without petition
24 expend an amount not to exceed in any 1 year ~~\$5,000.00~~ **\$10,000.00**
25 per mile or fraction of a mile for maintenance and repair of the
26 drain, not including inspection and engineering fees, legal fees,
27 and the cost of publication and mailing. The determination of the
28 maximum expenditure allowed under this subsection shall be based on
29 the total number of miles of the drain and not on the actual number

1 of miles or location of the maintenance or repair. Costs incurred
 2 for the inspection, maintenance, and repair of a drain performed
 3 under this section may be financed and assessed under this act for
 4 not more than 10 years.

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

12 (6) If the drain fund of a drainage district does not contain
 13 sufficient funds to pay for inspection, repair, and maintenance
 14 authorized by this section, the drain commissioner or the drainage
 15 board may finance the costs for not more than 10 years and shall
 16 assess the drainage district for not more than 10 years for the
 17 inspection, repair, and maintenance according to benefits received.
 18 The first installment of an assessment under this subsection shall
 19 be made and spread upon the city or township tax assessment roll
 20 within 2 years after the completion of the inspection, repair, and
 21 maintenance. If the total expenditure is more than the amount
 22 established in subsection (4) per mile or fraction of a mile, all
 23 real property owners subject to an assessment within the drainage
 24 district shall be notified of the assessment by publication in a
 25 newspaper of general circulation within the drainage district and
 26 by first-class mail to the name and address that appears on the
 27 last city or township assessment roll. ~~An~~ **The drain commissioner**
 28 **shall make an** affidavit of mailing. ~~shall be made by the drain~~
 29 ~~commissioner.~~ The affidavit is conclusive proof that the notices

1 required by this subsection were mailed. The failure of a person to
2 receive a notice by mail is not a jurisdictional defect
3 invalidating a drain assessment if notice by publication was given
4 as required by this subsection.

5 (7) An assessment under subsection (6) for the actual cost of
6 inspection, repair, and maintenance performed on a drain, or an
7 assessment under subsection (3) to be deposited in the drain fund
8 of a drainage district, shall be made according to benefits
9 received. The expenditure limit ~~of the amount established in~~
10 subsection (4) per mile or fraction of a mile of drain shall be
11 used to calculate the maximum amount that the drain commissioner or
12 drainage board may assess in any 1 year without a petition or a
13 request from a public corporation. ~~Determination of the~~ **The** maximum
14 assessment amount allowed without petition or request, ~~or of the~~
15 ~~property that is subject to assessment,~~ shall be based on the
16 number of miles of **the** drain ~~and areas of the drainage district~~
17 ~~receiving benefits~~ and not on the ~~actual~~ number of miles ~~or actual~~
18 ~~location of the inspection, repair, and maintenance.~~ **actually**
19 **inspected, repaired, or maintained. The property that is subject to**
20 **assessment shall be based on the areas of the drainage district**
21 **receiving benefits and not on the actual location of the**
22 **inspection, repair, and maintenance.**

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

29 (9) The drain commissioner or drainage board shall not levy an

1 additional assessment for drain maintenance under this section if
2 there is currently an assessment for previous maintenance work on
3 the drain under this section unless subsection (8) applies or the
4 expenditure for maintenance is approved by the governing body of
5 each township, city, and village affected by more than 20% of the
6 cost.

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

13 (11) ~~In computing the amounts that may be expended under~~ **For**
14 **purposes of** this section, **the costs of maintenance and repair do**
15 **not include** the cost of work to be performed by a federal agency or
16 public corporation that is not chargeable to the ~~county or~~
17 ~~intercounty drainage district. shall not be included.~~ The drain
18 commissioner or the drainage board is not required to advertise for
19 bids for that portion of the work to be done by the federal agency
20 or public corporation.

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

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

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

29 (c) The cost of repairing a portion or all of a tile or drain

1 to continue the normal flow of water.

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

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

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