

SUBSTITUTE FOR
HOUSE BILL NO. 4118

A bill to amend 1956 PA 40, entitled
"The drain code of 1956,"
by amending sections 151, 154, 280, 468, and 520 (MCL 280.151,
280.154, 280.280, 280.468, and 280.520), section 154 as amended by
2020 PA 281, section 280 as amended by 2016 PA 27, and sections 468
and 520 as amended by 2018 PA 644.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 151. **(1)** Upon the release of the right of way and
2 damages, or upon the ~~determination and return of the special~~
3 ~~commissioners,~~ **acquisition of right of way by the power of eminent**
4 **domain,** the commissioner shall make ~~his~~ **a** final order of
5 determination establishing the drain. ~~, which~~ **The** drain shall be
6 divided into convenient sections for the letting of contracts. ÷

~~Provided, That~~ **However**, the commissioner may let the drain in sections or as a whole. ~~Said~~ **The drain commissioner shall file the order of determination shall be filed with the county drain commissioner in his or her office** within 5 days after such ~~the~~ order is made. ~~He shall, before~~

(2) Before the day of letting and review ~~, fix under section 154,~~ **the drain commissioner shall do both of the following:**

(a) Determine the number of installments for the collection of drainage taxes. ~~and apportion~~

(b) Apportion, on the following basis, the ~~per cent~~ **percent** of the cost of construction of ~~such drain which any~~ **the drain that each of the following is liable to pay:**

(i) Any township, city, or village traversed or benefited ~~thereby shall be liable to pay by reason of the~~ **by the drain, on the basis of** benefit to the public health, convenience, or welfare. ~~, or as the means of improving any highway under the control of such township, city or village. He shall apportion the per cent of the cost of construction of such drain which any highway then under the control of the county or district road commissioners, shall be liable to pay by reason of benefits therefor, and as the means of improving such highway. He shall also apportion the per cent of the cost of construction of such drain which any state trunk line highway, under the control of the state highway commissioner, shall be liable to pay by reason of benefits therefor and as the means of improving said highway. He shall also apportion the per cent of benefits to accrue to any~~

(ii) Any city or village, the county road commission, or the state transportation department, on the basis of benefits to or the improvement of a city or village street, a county road, or a state

1 **highway, respectively.**

2 **(iii) Any** piece or parcel of land, ~~by reason of the construction~~
 3 ~~of such drain including, but not limited to, state land under the~~
 4 **ownership or control of the department of natural resources, on the**
 5 **basis of benefits to the land** over and above ~~the per cent~~
 6 ~~apportioned to any township, city or village at large or to any~~
 7 ~~highway as above provided. Such per cent so apportioned when~~
 8 ~~finally approved shall be assessed against such townships, cities~~
 9 ~~and villages and against the county at large by reason of the~~
 10 ~~improvement of the highways within the drainage district, and~~
 11 ~~against the state by reason of the improvement of the state trunk~~
 12 ~~line highways within such drainage district, and against all~~
 13 ~~parcels of land therein according to such apportionment of benefits~~
 14 ~~as herein provided.~~**those apportioned under subparagraphs (i) and**
 15 **(ii) .**

16 **(3)** The apportionment of benefits so made shall be subject to
 17 review and correction and may be appealed ~~from~~ as **provided for** in
 18 this act. ~~provided.~~**The benefits shall be assessed as finally**
 19 **apportioned.**

20 **(4)** The **county** board of ~~supervisors~~**commissioners** at its
 21 October meeting each year shall make provision by proper assessment
 22 of the amounts apportioned against ~~any highway under the control of~~
 23 ~~the county and district highway commissioners.~~**county roads.**

24 Sec. 154. (1) The drain commissioner shall advertise for the
 25 receipt of bids for the construction of a drain at a specified
 26 time, date, and location. If the drain commissioner directly or
 27 indirectly maintains an official internet presence, the drain
 28 commissioner shall post the advertisement for the receipt of bids
 29 on a portion of the website that is fully accessible to the public

1 at least 10 days before, and shall maintain the posting through,
2 the date set for the receipt of bids. If the drain commissioner
3 does not maintain an official internet presence, the advertisement
4 shall be so posted and maintained on the county website.

5 (2) The commissioner shall give notice, as described in this
6 section, of a public meeting to review the apportionment of
7 benefits. The meeting shall be **held** not less than 5 or more than 30
8 days after the date set for receiving bids.

9 (3) The notice under subsection (2) shall be given by
10 publication in a newspaper published and of general circulation in
11 the county at least 10 days before the date of the review of the
12 apportionment.

13 (4) The drain commissioner shall also send the notice under
14 subsection (2) by first-class mail, at least 10 days before the
15 date of the review of the apportionment of benefits, to each person
16 whose name appears on the last city or township tax roll as owning
17 land within the drainage district, at the address shown on the
18 roll. Notice need not be mailed to a person whose address does not
19 appear on the roll. The drain commissioner shall make an affidavit
20 of the mailing and shall recite in the affidavit that the notice
21 was mailed to all persons whose names and addresses appear on the
22 tax rolls as owning land within the drainage district. The
23 affidavit is conclusive proof that notice was mailed to each person
24 to whom notice is required to be mailed. If notice has been sent by
25 first-class mail as provided in this subsection, the failure to
26 receive notice by mail does not constitute a jurisdictional defect
27 invalidating a drain proceeding or assessment. If the drain
28 commissioner determines that the drain is necessary for the public
29 health and that the whole cost of the drain, except that part which

1 may be apportioned for benefits to **county roads or state** highways,
2 shall be apportioned to municipalities, then mailing of individual
3 notices to persons owning land within the drainage district as
4 provided in this subsection is not required.

5 (5) At least 10 days before the date of the review of the
6 apportionment, the drain commissioner shall serve the notice under
7 subsection (2) personally or by certified mail on the county clerk
8 and a member of the board of county road commissioners of the
9 county and on the supervisor of each township and clerk of each
10 city or village to be assessed at large.

11 (6) The notice under subsection (2) shall contain all of the
12 following:

13 (a) A statement that comments on the apportionment of benefits
14 may be submitted to the drain commissioner in writing before the
15 date of the meeting to review the apportionment or may be submitted
16 in writing or orally at the ~~review~~-**meeting**. The statement shall
17 specify the drain commissioner's postal mailing address and
18 electronic mail address and indicate that comments submitted in
19 advance must be received by the drain commissioner before the date
20 of the meeting to ensure consideration.

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

23 (c) A statement that, at the meeting to review the
24 apportionment of benefits, the drain commissioner will have
25 available to review the tentative apportionments against parcels
26 and municipalities within the drainage district.

27 (d) For notice mailed to a person under subsection (4), the
28 estimated percentage and **total** dollar amount apportioned to that
29 person's land, the estimated annual dollar amount apportioned to

1 that person's land, and the estimated project assessment duration.

2 (e) A statement that drain assessments against land will be
3 collected in the same manner as property taxes.

4 (f) A statement that if drain assessments against land are
5 collected by installment, the land owner may pay the assessments in
6 full with any interest to date at any time and thereby avoid
7 further interest charges.

8 (g) The name of each county, township, city, or village to be
9 assessed at large.

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

11 (i) The address of a website, as provided for in subsection
12 (7), and a statement that the following additional information can
13 be found at that address:

14 (i) A description of the land constituting the drainage
15 district for the drain. The description may be given by providing a
16 map of the drainage district, by designating the boundaries of the
17 drainage district by streets, highways, parcels, or tracts of land,
18 or by describing the tracts or parcels of land constituting the
19 district. If a parcel or tract is partially located within the
20 district, for the purposes of the notice description only, the
21 drain commissioner may consider the entire parcel or tract to be
22 located in the district.

23 (ii) The number and length of sections, the average depth and
24 width of each section, and if the drain will be a closed drain, the
25 amount and specifications of all tile or pipe required.

26 (iii) The location, number, type, and size of all culverts and
27 bridges.

28 (iv) The conditions upon which the contract will be awarded.

29 (7) If the drain commissioner directly or indirectly maintains

1 an official internet presence, the drain commissioner shall post
2 the information described in subsection (6)(a) to (c), ~~and (e) to~~
3 (h), **and (i) (i) to (iv)** on a portion of the website that is fully
4 accessible to the public and shall maintain the posting through the
5 date of the meeting to review the apportionment of benefits. If the
6 drain commissioner does not maintain an official internet presence,
7 the information shall be so posted and maintained on the county
8 website.

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

15 (a) The estimated apportionment percentage.

16 (b) The estimated annual project assessment.

17 (c) The estimated project assessment duration.

18 (9) Bids for the construction of the drain shall be received
19 and the total cost of the drain shall be computed before the time
20 set for review of the apportionment. The computation shall be open
21 to inspection. If the computation is not completed before the
22 review of the apportionment, the drain commissioner shall adjourn
23 the review from time to time, not more than 20 days in all, for the
24 completion of the computation, or shall call a new meeting to
25 review the apportionment of benefits and give notice as provided in
26 subsections (3) to (7). If the contracts on which the computation
27 was based are not executed and new contracts are let at a higher
28 price, the drain commissioner shall correct the computation and,
29 after giving notice as provided in subsections (3) to (7), hold a

1 new review of the apportionment.

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

14 (a) Carefully reconsider and review the apportionment of
15 benefits.

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

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

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

13 **(12) If an apportionment of benefits is made against state**
14 **lands owned or controlled by the department of natural resources,**
15 **unless the director of the department of natural resources consents**
16 **in writing to the apportionment, the drain commissioner shall**
17 **notify by certified mail the director of the department of natural**
18 **resources of the percentage apportioned against the state lands and**
19 **the date, time, and place for a review of the apportionment of**
20 **benefits by the drain commissioner under subsection (2). The notice**
21 **shall be mailed at least 20 days before the review. If the director**
22 **of the department of natural resources instead desires to have the**
23 **apportionment of benefits reviewed by the director of the**
24 **department of agriculture and rural development, the director of**
25 **the department of natural resources, within 10 days after receiving**
26 **the notice under this subsection, shall file with the drain**
27 **commissioner an objection to the apportionment. The drain**
28 **commissioner shall notify the director of the department of natural**
29 **resources and the director of the department of agriculture and**

1 rural development of the date, time, and place for a review of the
 2 apportionment. At the meeting, the director of the department of
 3 agriculture and rural development, or a deputy of the director,
 4 shall review the apportionment made against the state lands owned
 5 or controlled by the department of natural resources and listen to
 6 the proofs and allegations of the parties, and may view the lands
 7 benefited. The written decision on the apportionment under this
 8 subsection is final.

9 Sec. 280. (1) If there is not sufficient money in the fund ~~in~~
 10 ~~of~~ a particular drain at the time of the maturity of the bonds last
 11 to mature, or any drain orders, to pay all outstanding bonds or
 12 drain orders with interest, or to reimburse the county for money
 13 which it has been obliged to advance pursuant to section ~~275, 276,~~
 14 whether ~~such the~~ insufficiency is due to the anticipation of
 15 installments as provided in section ~~279, 275,~~ or to failure to sell
 16 any lands for delinquent taxes, or to any other cause, the
 17 commissioner shall at once levy an additional assessment as
 18 provided in this act in ~~such an amount as that~~ will make up the
 19 deficiency. ~~which shall be spread in not to exceed 7 annual~~
 20 ~~installments; and if~~ **If** the commissioner determines that the entire
 21 amount, if spread in 1 year, would be an undue burden or create
 22 unnecessary hardship, he or she may order it spread **in installments**
 23 ~~over any number of years up to but not exceeding not more than 7~~
 24 **years**. If bonds or other evidences of indebtedness are issued
 25 pursuant to the revised municipal finance act, 2001 PA 34, MCL
 26 141.2101 to 141.2821, to refund the outstanding indebtedness of a
 27 drain district, the ~~governing body of the drain district~~ **drain**
 28 **commissioner** shall provide, subject to the requirements of the
 29 revised municipal finance act, 2001 PA 34, MCL 141.2101 to

141.2821, for such additional levies of assessments ~~prior to~~ **before** the maturity or mandatory redemption of the refunding obligations as necessary to prevent default in the payment of interest on the obligations, and the maintenance of a sinking fund for their retirement. Every officer charged with the determination of the amount of taxes to be raised, or the levying of the taxes, shall make or cause to be made the additional levies as provided. Any surplus remaining after the payment of the bonds and interest shall remain in the county treasury and be used for the maintenance of the drain.

(2) The additional assessments ~~shall only under subsection (1)~~ apply **only** to drain orders or bonds issued after March 28, 1956 and shall be apportioned, assessed, levied, and collected as provided in the first instance. ~~As to deficiency~~ **Only the following lands are exempt from additional** assessments ~~levied under subsection (1)~~ for drain orders or bonds issued after March 28, 1956: ~~there shall be no lands exempted from the levy, except lands that are 1 or more of the following:~~

(a) ~~Owned~~ **Lands owned** by the United States.

(b) ~~Owned by the state of Michigan.~~ **Lands owned by this state, except for lands owned or controlled by the department of natural resources.**

(c) ~~Owned~~ **Lands owned** by any county, city, village, township, or school district and used for public purposes.

(d) ~~Used~~ **Lands used** exclusively for burial grounds.

(e) ~~Dedicated~~ **Lands dedicated** to the public and actually used as a **state** highway, **county road**, **street**, or alley, and not used for gain.

(3) An additional assessment shall not be levied **under**

1 **subsection (1)** or collected ~~for the purpose of paying to pay~~ the
 2 principal or interest upon any bonds or obligations ~~which~~ **that** have
 3 been held to be invalid. ~~, and any~~ **An** additional assessment shall
 4 not be apportioned, assessed, levied, or collected ~~for the purpose~~
 5 ~~of paying to pay~~ any bonds, interest, or obligations for the
 6 payment of which assessments have been made.

7 Sec. 468. **(1)** The drainage board shall secure from a competent
 8 engineer ~~, and~~ **approve** plans, specifications, a route and course,
 9 and an estimate of cost of the proposed drain. ~~, which when~~
 10 ~~approved and adopted by the board~~ **After approval, these** shall be
 11 filed with the chairperson of the board. In approving the plans and
 12 specifications, the drainage board is not limited to the route of
 13 the drain described in the petition or the final order of
 14 determination. Changes in the approved route and course of the
 15 drain must be approved by resolution of the drainage board.

16 **(2)** The drainage board shall tentatively establish the
 17 percentage of the cost of the drain or of the several sections or
 18 parts of the drain to be paid by each public corporation. In making
 19 the apportionments, the drainage board shall consider the benefits
 20 to accrue to each public corporation and the extent to which each
 21 public corporation contributes to the conditions that make the
 22 drain necessary. Apportionments against this state shall be based
 23 upon benefits and contributions as related solely to the drainage
 24 of state highways **and lands under the ownership or control of the**
 25 **department of natural resources.** Apportionments against the county
 26 shall be based upon benefits and contributions as related solely to
 27 the drainage of its county roads. Before a tentative apportionment
 28 is made, the drainage board shall designate the area to be served
 29 by the drain project, which may include all of the area in a public

corporation to be assessed, and may divide the drain into sections or parts for purposes of apportionment or construction.

(3) Notwithstanding any other provision of this act, the county may assume any additional cost of the drain if 2/3 of the members elect of the county board of commissioners vote in favor thereof.

(4) The apportionment under this section applies only to the proposed drain. The apportionments for any ~~extensions or other work~~ subsequently performed under section 482 shall be reestablished by the board.

(5) If chapter 25 is ~~employed in the apportionment of~~ **used to apportion** costs, the proceedings under this section shall be altered and supplemented as provided in chapter 25.

Sec. 520. (1) The drainage board shall secure from a competent engineer ~~, and~~ **approve** plans, specifications, a route and course, and an estimate of cost of the proposed drain. ~~, which when approved and adopted by the board~~ **After approval, these** shall be filed with the secretary of the board. In approving the plans and specifications, the drainage board is not limited to the route of the drain described in the petition or the final order of determination. Changes in the approved route and course of the drain must be approved by resolution of the drainage board.

(2) The drainage board shall tentatively establish the percentage of the cost of the drain or of the several sections or parts of the drain to be paid by public corporations in each county affected and by this state on account of any state highway, and by the county on account of any county road. The percentage of the cost apportioned to public corporations in each county shall then be apportioned by the drain commissioner among public corporations

1 to be assessed in the county, and that apportionment shall be filed
2 with the secretary of the drainage board. In making the
3 apportionments under this section, ~~there shall be taken into~~
4 ~~consideration~~ **the drainage board shall consider** the benefits to
5 accrue to each public corporation and the extent to which each
6 public corporation contributes to the conditions that make the
7 drain necessary. Apportionments against this state shall be based
8 upon benefits and contributions as related solely to the drainage
9 of state highways **and lands under the ownership or control of the**
10 **department of natural resources**. Apportionments against the county
11 shall be based upon benefits and contributions as related solely to
12 the drainage of its county roads. Before a tentative apportionment
13 is made, the drainage board shall designate the area to be served
14 by the drain project, which may include all of the area in a public
15 corporation to be assessed, and may divide the drain into sections
16 or parts for purposes of apportionment or construction.

17 (3) Notwithstanding any other provision of this act, a county
18 may assume any additional cost of the drain if 2/3 of the members
19 elect of the county board of commissioners vote in favor thereof.
20 The apportionment under this section applies only to the proposed
21 drain.

22 (4) The apportionments for any ~~extensions or other work~~
23 subsequently performed under section 535 shall be reestablished by
24 the board.

25 (5) If chapter 25 is ~~employed in the apportionment of~~ **used to**
26 **apportion** costs, the proceedings under this section shall be
27 altered and supplemented as provided in chapter 25.