

SENATE BILL NO. 865

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

A bill to amend 1956 PA 40, entitled
"The drain code of 1956,"
by amending sections 72, 384, 441, 464, and 515 (MCL 280.72,
280.384, 280.441, 280.464, and 280.515), section 72 as amended by
2018 PA 646 and section 464 as amended by 2016 PA 521.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 72. (1) As soon as practicable after the filing of a
2 petition, the commissioner authorized to act on the petition, if
3 not disqualified under section 381 to make the apportionment of

1 benefits, may appoint a board of determination composed of 3
 2 disinterested property owners. If the commissioner is disqualified
 3 or chooses not to appoint the board of determination, the
 4 commissioner shall immediately file a copy of the petition with the
 5 chairperson of the county board of commissioners, together with a
 6 statement, signed by the commissioner, that he or she is
 7 disqualified or chooses not to ~~act in appointing~~ **appoint** a board of
 8 determination. As soon as practicable after receiving a copy of the
 9 petition and certificate, the chairperson of the county board of
 10 commissioners, unless he or she has a conflict of interest, shall
 11 appoint a board of determination composed of 3 disinterested
 12 property owners. ~~and The chairperson of the county board of~~
 13 **commissioners** shall immediately notify the drain commissioner of
 14 the names and addresses of those appointed. If the chairperson of
 15 the **county** board of commissioners has a conflict of interest in the
 16 proceedings, the drain committee of the county board of
 17 commissioners shall appoint the board of determination. Members of
 18 boards of determination shall be residents of the county but not of
 19 a township, city, or village affected by the drain, and shall not
 20 be members of the county board of commissioners. ~~of the county.~~

21 (2) The drain commissioner shall call a meeting of the board
 22 of determination at a convenient place within the drainage district
 23 or at a public building within a city, village, or township in
 24 which the drain is located. If an individual appointed to the board
 25 of determination fails or refuses to serve, the drain commissioner
 26 shall appoint a successor. The ~~per diem~~ **drain commissioner shall**
 27 **determine reasonable** compensation **for** and ~~the mileage and expense~~
 28 ~~reimbursements~~ **approve necessary expenses** of a member of the board
 29 of determination **for each meeting attended.** ~~shall be the same as~~

1 ~~the county board of commissioners of the county. In counties where~~
2 ~~commissioners are not paid on a per diem basis, the compensation~~
3 ~~and the mileage and expense reimbursements shall be set by the~~
4 ~~drain commissioner.~~ Upon request, the county drain commissioner
5 shall inform in writing the requesting state legislator who
6 represents the area in which the proposed drain improvement is to
7 be constructed of the names and addresses of the persons appointed
8 to a board of determination.

9 (3) The drain commissioner shall give ~~public~~ notice of the
10 time, date, and place of the meeting of the board of determination
11 in the manner required by the open meetings act, 1976 PA 267, MCL
12 15.261 to 15.275. The commissioner shall also give such notice, not
13 less than 10 days before the meeting, by all of the following
14 means:

15 (a) Publication in a newspaper of general circulation in the
16 county.

17 (b) Service on the county clerk and a member of the board of
18 county road commissioners of the county and on the supervisor of
19 each township and clerk of each city and village in the drainage
20 district, personally or by certified mail.

21 (c) Service by first-class mail on each person whose name
22 appears on the last city, village, or township tax roll as owning
23 land within the drainage district, at the address shown on the
24 roll. If an address does not appear on the roll, a notice need not
25 be mailed to the person. The drain commissioner shall make an
26 affidavit of the mailing and shall recite in the affidavit that the
27 notice was mailed to all of the persons whose names and addresses
28 appear upon the tax rolls as owning land within the drainage
29 district. The affidavit is conclusive proof that notice was mailed

1 to each person to whom notice is required to be mailed under this
2 section. The failure to receive a notice by mail is not a
3 jurisdictional defect invalidating a drain proceeding or drain
4 assessment if notice was sent by first class mail as provided in
5 this subdivision.

6 (4) All expenses of notification **under this section** shall be
7 paid by the drainage district when created.

8 (5) At the time and place specified in the notice, the board
9 of determination shall meet, elect a chairperson and secretary,
10 and, after considering the evidence offered, determine the
11 necessity of the proposed drain and whether the drain is conducive
12 to public health, convenience, or welfare. The board of
13 determination, if it considers it necessary, shall require the
14 county drain commissioner to obtain from the county treasurer a
15 statement showing the amount of taxes and special assessments
16 levied against the land in the proposed drainage district on the
17 tax rolls for the immediately preceding 3 years and the amount of
18 the taxes and assessments remaining unpaid. If it appears from the
19 statement that 25% or more of the taxes are unpaid on the lands,
20 further action shall not be taken. If the board of determination
21 finds, by a majority vote of the members, that the drain is not
22 necessary and conducive to public health, convenience, or welfare,
23 the board of determination shall file with the commissioner an
24 order dismissing the petition, and a further petition for the drain
25 shall not be filed within 1 year after the determination. If the
26 board of determination finds, by a majority vote **of the members**,
27 that the proposed drain is necessary and conducive to the public
28 health, convenience, or welfare, the board of determination shall
29 make an order to that effect and file the order with the

1 commissioner. Not more than 10 days after the board of
 2 determination files an order finding the proposed drain to be
 3 necessary and conducive to the public health, convenience, or
 4 welfare, the drain commissioner shall determine the cities,
 5 townships, and villages within the drainage district benefiting **at**
 6 **large** from the drain for public health and shall notify each such
 7 city, township, and village that it is liable to pay a percent of
 8 the cost of construction of the drain by reason of benefits at
 9 large for public health. Within 20 days after the commissioner's
 10 receipt of the order of the board of determination, if an appeal
 11 has not been taken under section 72a, the drain commissioner shall
 12 make a first order of determination in writing, giving the name or
 13 number of the drainage district and a general description of the
 14 route, terminus, and type of construction of the drain. The drain
 15 commissioner shall file a copy of the order in his or her office.

16 Sec. 384. The ~~salary~~ **drain commissioner shall determine**
 17 **reasonable compensation for and approve necessary expenses** of ~~the a~~
 18 commissioner ~~so appointed, which shall be the same as that~~
 19 ~~received by him from the county of which he is commissioner,~~
 20 ~~together with all expenses actually and necessarily incurred by~~
 21 ~~him, shall be~~ **under this chapter for each meeting attended. These**
 22 **amounts shall be** assessed against the drain in connection with
 23 which ~~said the~~ services were performed and ~~shall be paid~~ in the
 24 same manner as other expenses are paid.

25 Sec. 441. (1) Two or more drainage districts located in the
 26 same county and in the same drainage basin or in adjoining basins,
 27 may, ~~consolidate and organize~~ **in whole or part, be consolidated and**
 28 **organized** as a single drainage district upon the filing of a
 29 petition for consolidation with the drain commissioner of the

1 county setting forth the reason for the proposed consolidation. The
 2 consolidation may include land not within an existing drainage
 3 district if requested in the petition. The petition shall be signed
 4 by at least 50 property owners within the proposed consolidated
 5 drainage district. ~~If in~~ **However, if for** the proposed consolidated
 6 drainage district there are less than 100 property owners, the
 7 petition shall be signed by at least 50% of the property owners ~~in~~
 8 **of** the proposed consolidated drainage district. ~~In place of a~~
 9 ~~petition~~ **Instead of being** signed by property owners, a petition may
 10 be signed solely by a city, **village**, or township ~~a portion~~ **all or**
 11 **part** of which is located within the proposed consolidated drainage
 12 district, ~~when~~ **if** authorized by its governing body, or by a
 13 combination of **such** municipalities.

14 (2) As soon as practicable after the filing of a petition, the
 15 drain commissioner, if not disqualified under section 381, may
 16 appoint a board of determination composed of 3 disinterested
 17 property owners to determine the necessity of the consolidation. If
 18 the commissioner is disqualified or chooses not to appoint the
 19 board of determination, the commissioner shall immediately file a
 20 copy of the petition with the chairperson of the county board of
 21 commissioners, together with a statement signed by the commissioner
 22 showing that he or she is disqualified or chooses not to ~~act in~~
 23 ~~appointing~~ **appoint** a board of determination. ~~Upon~~ **As soon as**
 24 **practicable after** receiving a copy of the petition and certificate,
 25 the chairperson of the county board of commissioners, if not
 26 privately interested, shall appoint ~~as soon as practicable~~ a board
 27 of determination. ~~and~~ **The chairperson of the county board of**
 28 **commissioners** shall immediately notify the drain commissioner of
 29 the names and addresses of those appointed. If the chairperson of

1 the county board of commissioners has a private interest in the
 2 proceedings, the drain committee of the county board of
 3 commissioners shall appoint the board of determination. Members of
 4 a board of determination shall be residents of the county but not
 5 of the proposed consolidated drainage district or of a drainage
 6 district ~~a-all or~~ part of which is ~~to be~~ included in the proposed
 7 consolidation. ~~A-The drain commissioner shall call a~~ meeting of the
 8 board of determination ~~shall be called at a convenient place~~ within
 9 the proposed consolidated drainage district. ~~at some convenient~~
 10 ~~place to be designated by the drain commissioner.~~ If a person
 11 appointed to the board of determination fails or refuses to serve,
 12 a successor shall be appointed by the official or committee making
 13 the appointment in the first instance. The **drain commissioner shall**
 14 **determine reasonable compensation for and approve necessary**
 15 **expenses** of a member of the board of determination ~~shall be \$8.00~~
 16 ~~per day with no additional allowance for mileage. The county board~~
 17 ~~of commissioners of a county may increase the per diem compensation~~
 18 ~~of members of the board of determination.~~ **for each meeting attended.**

19 (3) ~~(2)~~ The drain commissioner shall give notice of the time,
 20 date, and place of the meeting **of the board of determination** in the
 21 manner ~~prescribed by Act No. 267 of the Public Acts of 1976 and by~~
 22 **required by the open meetings act, 1976 PA 267, MCL 15.261 to**
 23 **15.275. The drain commissioner shall also give the notice as**
 24 **provided in all of the following:**

25 (a) **By** publication ~~twice~~ in a newspaper of general circulation
 26 in the county or ~~a newspaper of general circulation in the proposed~~
 27 consolidated drainage district. ~~, the~~ **The** first publication ~~of~~
 28 ~~which~~ shall be at least 10 days before the meeting. ~~Notices shall~~
 29 ~~also be served on~~

1 **(b)** To the county clerk and ~~to the clerk~~**supervisor** of each
 2 township **and the clerk of each village** or city in the proposed
 3 consolidated drainage district, personally or by registered mail at
 4 least 10 days before the meeting. ~~The drain commissioner shall also~~
 5 ~~send notice by~~

6 **(c)** By first-class mail ~~of the time, date, and place of the~~
 7 ~~meeting~~ at least 10 days before the date of the meeting to each
 8 person whose name appears on the last city, **village**, or township
 9 tax ~~assessment~~ roll as owning land within **any of** the existing
 10 drainage districts ~~, a portion of which is proposed to be~~
 11 ~~consolidated,~~ or owning ~~lands~~**land** within the proposed consolidated
 12 drainage district ~~whose land is~~**but** not within an existing drainage
 13 district, at the address shown on the roll. If an address does not
 14 appear on the roll, then a notice need not be mailed to ~~these~~
 15 ~~persons.~~**the person.** The drain commissioner shall make an affidavit
 16 of the mailing and shall recite in the affidavit that the persons
 17 to whom the notice was mailed constitute all of the persons to whom
 18 notice must be sent. The affidavit ~~shall be~~**is** conclusive proof
 19 that notice was mailed to each person to whom notice is required to
 20 be mailed by this section. The failure to receive a notice by mail
 21 ~~shall~~**does** not constitute a jurisdictional defect invalidating a
 22 drain proceeding if notice has been sent by first-class mail as
 23 provided in this ~~section.~~**subdivision.**

24 **(4)** All expense of notification **under this section** shall be
 25 paid by the drainage district when created.

26 **(5)** ~~(3)~~ At the time and place ~~fixed~~**specified** in the notice,
 27 the board **of determination** shall meet, elect a chairperson and a
 28 secretary, and, **after considering the evidence offered,** ~~proceed to~~
 29 determine whether the proposed consolidation is conducive to public

1 health, convenience, or welfare. ~~After hearing the evidence, the~~
 2 ~~board shall make its determination as to whether the proposed~~
 3 ~~consolidation is conducive to public health, convenience, or~~
 4 ~~welfare.~~ If the board finds by a majority vote of the members that
 5 the proposed consolidation is not conducive to public health,
 6 convenience, or welfare, ~~it~~ **the board of determination** shall file
 7 with the commissioner an order dismissing the petition, and a
 8 further petition for the drain shall not be entertained within 1
 9 year after the determination. If the board by a majority vote **of**
 10 **the members** finds that the proposed consolidation is conducive to
 11 the public health, convenience, or welfare, it shall ~~make its~~
 12 **prepare an** order to that effect and file the order with the
 13 commissioner. Upon receipt of the order of consolidation, the
 14 commissioner shall enter an order giving the consolidated drainage
 15 district a name or number.

16 Sec. 464. (1) A drainage board is created for each project
 17 petitioned for under this chapter. Except as ~~otherwise~~ provided in
 18 ~~subsection~~ **subsections** (2) **and (4)**, the drainage board shall
 19 consist of the drain commissioner of the county, the chairperson of
 20 the county board of commissioners, and the chairperson of the board
 21 of county auditors.

22 **(2)** If there is no board of county auditors in the county,
 23 then the chairperson of the finance committee of the county board
 24 of commissioners shall be a member of the drainage board. If there
 25 is neither a board of county auditors nor **a** finance committee, then
 26 the chairperson of the county board of commissioners shall select
 27 from time to time 1 member of the county board of commissioners to
 28 be a member of the drainage board. If a member of the drainage
 29 board who is a member of the county board of commissioners, as

provided in this section or section 487, ~~is interested in a project~~
~~petitioned for under this chapter, by reason of his or her holding~~
holds an elected or appointed office in a public corporation to be
 assessed for the cost of ~~the a~~ project, he or she is disqualified
 to act as a member of the drainage board with respect to ~~the a~~
 project **petitioned for under this chapter**. In that case, the vice-
 chairperson or chairperson pro tempore of the county board of
 commissioners or of the finance committee of the county board of
 commissioners, if not also disqualified, shall act as the member.
 If the vice-chairperson or chairperson pro tempore is disqualified,
 the drain commissioner of the county shall designate a member of
 the county board of commissioners who is not disqualified to act as
 a member of the drainage board for the project.

(3) The **drainage board shall determine reasonable compensation**
for and approve necessary expenses of the chairperson of the county
 board of commissioners and any member of a county board of
 commissioners serving on the drainage board ~~shall receive the~~
~~compensation, mileage, and expenses as provided by the drainage~~
~~board. However, compensation paid to a member shall not exceed~~
~~\$25.00 per diem, exclusive of mileage and expenses, for attendance~~
~~at drainage board meetings.~~ **for each meeting attended.** The county
 drain commissioner shall be chairperson of the drainage board. The
 chairperson shall keep minutes of the proceedings of the drainage
 board and **maintain** all records and files of the board ~~shall be kept~~
 in his or her office. ~~In counties of less than 500,000 population,~~
~~the commissioner shall be paid the same compensation as other~~
~~members of the drainage board.~~

(4) ~~(2)~~ If a county is organized under a charter adopted under
 1966 PA 293, MCL 45.501 to 45.521, and the charter prescribes an

1 elected county executive, the drainage board shall consist of the
2 following members:

3 (a) The person designated by the charter to carry out the
4 administrative duties of the drain commissioner or that person's
5 designee, who shall also serve as chairperson of the drainage
6 board.

7 (b) The county commissioner whose district will be assessed
8 for the greatest portion of the cost of the project, or that county
9 commissioner's designee. The determination of which county
10 commissioner is qualified to sit under this subdivision shall
11 initially be made by the chairperson of the drainage board when the
12 petition for the project is filed. After the final order of
13 apportionment is issued under section 469, the county commissioner
14 who qualifies under this section shall become the county
15 commissioner member and serve until another apportionment is
16 established requiring the seating of another commissioner.

17 (c) A person appointed by the county executive with the advice
18 and consent of a majority of the members of the county board of
19 commissioners elected or appointed and serving.

20 (5) ~~(3)~~—In a county described in subsection ~~(2)~~, ~~(4)~~, the
21 requirements in this chapter for substantive actions and
22 determinations shall be followed in administering each project
23 petitioned for under this chapter, subject to and in accordance
24 with any applicable provisions of the county charter.

25 Sec. 515. ~~(1) There is created for~~ **For** each project petitioned
26 for under ~~the provisions of this chapter~~, an augmented drainage
27 board ~~to consist~~ **is created. Except as provided in subsection (2),**
28 **the augmented drainage board consists** of the members of the
29 drainage board together with the ~~chairman~~ **chairperson** of the **county**

board of ~~supervisors~~**commissioners** and the ~~chairman~~**chairperson** of the board of county auditors of each county involved.

(2) If there is no board of county auditors in ~~any~~**a** county, then the ~~chairman~~**chairperson** of the finance committee of the **county** board of ~~supervisors~~**commissioners** shall act as a member of the augmented drainage board, and if there is neither a board of county auditors nor **a** finance committee, then the ~~chairman~~**chairperson** of the **county** board of ~~supervisors~~**commissioners** shall select 1 member of the **county** board of ~~supervisors~~**commissioners** of his county to act as a member of the augmented drainage board.

(3) The ~~chairman~~**chairperson** and secretary of the drainage board shall act as ~~chairman~~**chairperson** and secretary, respectively, of the augmented drainage board.

(4) The ~~chairman~~**augmented drainage board shall determine reasonable compensation for and approve necessary expenses of the chairperson** of the **county** board of ~~supervisors~~**commissioners** and any **other** member of a **county** board of ~~supervisors~~**commissioners** serving on the augmented drainage board, **for each meeting attended.** ~~shall receive such compensation, mileage and expenses as shall be provided by the augmented drainage board except that such compensation shall not exceed \$25.00 per diem exclusive of mileage and expenses for attendance at augmented drainage board meetings.~~