

# HOUSE BILL NO. 5190

October 24, 2023, Introduced by Reps. Hill, Wilson, O'Neal, Bezotte, Hood and Rheingans and referred to the Committee on Local Government and Municipal Finance.

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~~  
 16 ~~the proceedings,~~ the drain committee of the county board of  
 17 commissioners shall appoint the board of determination. Members of  
 18 ~~boards~~ **the board** of determination shall be residents of the county  
 19 but not of a township, city, or village affected by the drain, and  
 20 shall not be members of the county board of commissioners. ~~of the~~  
 21 ~~county.~~

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

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

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

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

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

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

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

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

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

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

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

27       Sec. 441. (1) Two or more drainage districts located in the  
 28 same county and in the same drainage basin or in adjoining basins,  
 29 may, ~~consolidate and organize~~ **in whole or part, be consolidated and**

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

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

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

22 (3) ~~(2)~~ The drain commissioner shall give notice of the time,  
 23 date, and place of the meeting **of the board of determination** in the  
 24 manner ~~prescribed by Act No. 267 of the Public Acts of 1976 and by~~  
 25 **required by the open meetings act, 1976 PA 267, MCL 15.261 to**  
 26 **15.275. The drain commissioner shall also give the notice as**  
 27 **provided in all of the following:**

28 (a) **By** publication ~~twice~~ in a newspaper of general circulation  
 29 in the county or ~~a newspaper of general circulation in the proposed~~

consolidated drainage district. ~~the~~ **The** first publication of which shall be at least 10 days before the meeting. ~~Notices shall also be served on~~

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

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

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



1           (5) ~~(3)~~ At the time and place ~~fixed~~ **specified** in the notice,  
 2 the board **of determination** shall meet, elect a chairperson and a  
 3 secretary, and, **after considering the evidence offered**, ~~proceed to~~  
 4 determine whether the proposed consolidation is conducive to public  
 5 health, convenience, or welfare. ~~After hearing the evidence, the~~  
 6 ~~board shall make its determination as to whether the proposed~~  
 7 ~~consolidation is conducive to public health, convenience, or~~  
 8 ~~welfare.~~ If the board finds by a majority vote of the members that  
 9 the proposed consolidation is not conducive to public health,  
 10 convenience, or welfare, ~~it~~ **the board of determination** shall file  
 11 with the commissioner an order dismissing the petition, and ~~a~~  
 12 ~~further~~ **another** petition for the drain shall not be ~~entertained~~  
 13 **filed** within 1 year after the determination. If the board by a  
 14 majority vote **of the members** finds that the proposed consolidation  
 15 is conducive to the public health, convenience, or welfare, it  
 16 shall ~~make its~~ **prepare an** order to that effect and file the order  
 17 with the commissioner. Upon receipt of the order of consolidation,  
 18 the commissioner shall enter an order giving the consolidated  
 19 drainage district a name or number.

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

26           (2) If there is no board of county auditors in the county,  
 27 then the chairperson of the finance committee of the county board  
 28 of commissioners shall be a member of the drainage board. If there  
 29 is neither a board of county auditors nor **a** finance committee, then

1 the chairperson of the county board of commissioners shall select  
 2 from time to time 1 member of the county board of commissioners to  
 3 be a member of the drainage board. If a member of the drainage  
 4 board who is a member of the county board of commissioners, as  
 5 provided in this section or section 487, ~~is interested in a project~~  
 6 ~~petitioned for under this chapter, by reason of his or her holding~~  
 7 **holds** an elected or appointed office in a public corporation to be  
 8 assessed for the cost of ~~the~~ **a project** **petitioned for under this**  
 9 **chapter**, he or she is disqualified to act as a member of the  
 10 drainage board with respect to the project. In that case, the vice-  
 11 chairperson or chairperson pro tempore of the county board of  
 12 commissioners or of the finance committee of the county board of  
 13 commissioners, if not also **so** disqualified, shall act as the  
 14 member. If the vice-chairperson or chairperson pro tempore is  
 15 disqualified, the drain commissioner of the county shall designate  
 16 a member of the county board of commissioners who is not **so**  
 17 disqualified to act as a member of the drainage board for the  
 18 project.

19 (3) The **drainage board shall determine reasonable compensation**  
 20 **for and approve necessary expenses of the** chairperson of the county  
 21 board of commissioners and any member of a county board of  
 22 commissioners serving on the drainage board ~~shall receive the~~  
 23 ~~compensation, mileage, and expenses as provided by the drainage~~  
 24 ~~board. However, compensation paid to a member shall not exceed~~  
 25 ~~\$25.00 per diem, exclusive of mileage and expenses, for attendance~~  
 26 ~~at drainage board meetings.~~ **for each meeting attended.** The county  
 27 drain commissioner shall be chairperson of the drainage board. The  
 28 chairperson shall keep minutes of the proceedings of the drainage  
 29 board and **maintain** all records and files of the board ~~shall be kept~~

1 in his or her office. ~~In counties of less than 500,000 population,~~  
2 ~~the commissioner shall be paid the same compensation as other~~  
3 ~~members of the drainage board.~~

4 (4) ~~(2)~~—If a county is organized under a charter adopted under  
5 1966 PA 293, MCL 45.501 to 45.521, and the charter prescribes an  
6 elected county executive, the drainage board shall consist of the  
7 following members:

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

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

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

25 (5) ~~(3)~~—In a county described in subsection ~~(2)~~, ~~(4)~~, the  
26 requirements in this chapter for substantive actions and  
27 determinations shall be followed in administering each project  
28 petitioned for under this chapter, subject to and in accordance  
29 with any applicable provisions of the county charter.

1        Sec. 515. ~~(1) There is created for~~ **For** each project petitioned  
 2        for under ~~the provisions of this chapter,~~ an augmented drainage  
 3        board ~~to consist~~ **is created. Except as provided in subsection (2),**  
 4        **the augmented drainage board consists** of the members of the  
 5        drainage board together with the ~~chairman~~ **chairperson** of the **county**  
 6        board of ~~supervisors~~ **commissioners** and the ~~chairman~~ **chairperson** of  
 7        the board of county auditors of each county involved.

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

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

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