

**STATE OF MICHIGAN  
102ND LEGISLATURE  
REGULAR SESSION OF 2024**

Introduced by Reps. Hill, Wilson, O'Neal, Bezotte, Hood and Rheingans

## **ENROLLED HOUSE BILL No. 5190**

AN ACT to amend 1956 PA 40, entitled "An act to codify the laws relating to the laying out of drainage districts, the consolidation of drainage districts, the construction and maintenance of drains, sewers, pumping equipment, bridges, culverts, fords, and the structures and mechanical devices to properly purify the flow of drains; to provide for flood control projects; to provide for water management, water management districts, and subdistricts, and for flood control and drainage projects within drainage districts; to provide for the assessment and collection of taxes; to provide for the investment of funds; to provide for the deposit of funds for future maintenance of drains; to authorize public corporations to impose taxes for the payment of assessments in anticipation of which bonds are issued; to provide for the issuance of bonds by drainage districts and for the pledge of the full faith and credit of counties for payment of the bonds; to authorize counties to impose taxes when necessary to pay principal and interest on bonds for which full faith and credit is pledged; to validate certain acts and bonds; and to prescribe penalties," 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:*

Sec. 72. (1) As soon as practicable after the filing of a petition, the commissioner authorized to act on the petition, if not disqualified under section 381 to make the apportionment of benefits, may appoint a board of determination composed of 3 disinterested property owners. If the commissioner is disqualified or chooses not to appoint the board of determination, the commissioner shall immediately file a copy of the petition with the chairperson of the county board of commissioners, together with a statement, signed by the commissioner, that he or she is disqualified or chooses not to appoint a board of determination. As soon as practicable after receiving a copy of the petition and certificate, the chairperson of the county board of commissioners, unless he or she has a conflict of interest, shall appoint a board of determination composed of 3 disinterested property owners. The chairperson of the county board of commissioners shall immediately notify the drain commissioner of the names and addresses of those appointed. If the chairperson of the county board of commissioners has a conflict of interest, the drain committee of the county board of commissioners shall appoint the board of determination. Members of the board of determination shall be residents of the county but not of a township, city, or village affected by the drain, and shall not be members of the county board of commissioners.

(2) The drain commissioner shall call a meeting of the board of determination at a convenient place within the drainage district or at a public building within a city, village, or township in which the drain is located. If an individual appointed to the board of determination fails or refuses to serve, the drain commissioner shall appoint a successor. The drain commissioner shall determine reasonable compensation for and approve necessary expenses of a member of the board of determination for each meeting attended. Upon request, the county drain commissioner shall inform in writing the requesting state legislator who represents the area in which the proposed drain is to be constructed of the names and addresses of the persons appointed to a board of determination.

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

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

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

(c) Service by first-class mail on each person whose name appears on the last city, village, or township tax roll as owning land within the drainage district, at the address shown on the roll. If a person's address does not appear on the roll, a notice need not be mailed to the person. The drain commissioner shall state in an affidavit of the mailing that the notice was mailed to all of the persons whose names and addresses appear upon the tax rolls as owning land within the drainage district. The affidavit is conclusive proof that notice was mailed to each person to whom notice is required to be mailed under this section. The failure to receive a notice by mail is not a jurisdictional defect invalidating a drain proceeding or drain assessment if notice was sent by first class mail as provided in this subdivision.

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

(5) At the time and place specified in the notice, the board of determination shall meet, elect a chairperson and secretary, and, after considering the evidence offered, determine whether the proposed drain is necessary and conducive to public health, convenience, or welfare. The board of determination may require the county drain commissioner to obtain from the county treasurer a statement showing the amount of taxes and special assessments levied against the land in the proposed drainage district on the tax rolls for the immediately preceding 3 years and the amount of the taxes and assessments remaining unpaid. If the statement indicates that 25% or more of the taxes are unpaid on the lands, further action shall not be taken on the petition. If the board of determination finds, by a majority vote of the members, that the drain is not necessary and conducive to public health, convenience, or welfare, the board of determination shall file with the commissioner an order dismissing the petition, and another petition for the drain shall not be filed within 1 year after the determination. If the board of determination finds, by a majority vote of the members, that the proposed drain is necessary and conducive to the public health, convenience, or welfare, the board of determination shall make an order to that effect and file the order with the commissioner. Not more than 10 days after the board of determination files an order finding the proposed drain to be necessary and conducive to the public health, convenience, or welfare, the drain commissioner shall determine the cities, townships, and villages within the drainage district benefiting at large from the drain for public health and shall notify each such city, township, and village that it is liable to pay a percent of the cost of construction of the drain by reason of benefits at large for public health. Within 20 days after the commissioner's receipt of the order of the board of determination, if an appeal has not been taken under section 72a, the drain commissioner shall make a first order of determination in writing. The order shall set forth the name or number of the drainage district and a general description of the route, terminus, and type of construction of the drain. The drain commissioner shall file a copy of the order in his or her office.

Sec. 384. The drain commissioner shall determine reasonable compensation for and approve necessary expenses of a commissioner appointed under this chapter for each meeting attended. These amounts shall be assessed against the drain in connection with which the services were performed and paid in the same manner as other expenses are paid.

Sec. 441. (1) Two or more drainage districts located in the same county and in the same drainage basin or in adjoining basins, may, in whole or part, be consolidated and organized as a single drainage district upon the filing of a petition for consolidation with the drain commissioner of the county setting forth the reason for the proposed consolidation. The consolidation may include land not within an existing drainage district if requested in the petition. The petition shall be signed by at least 50 property owners within the proposed consolidated drainage district. However, if for the proposed consolidated drainage district there are less than 100 property owners, the petition shall be signed by at least 50% of the property owners of the proposed consolidated drainage district. Instead of being signed by property owners, a petition may be signed solely by a city, village, or township all or part of which is located within the proposed consolidated drainage district, if authorized by its governing body, or by a combination of such municipalities.

(2) As soon as practicable after the filing of a petition, the drain commissioner, if not disqualified under section 381, may appoint a board of determination composed of 3 disinterested property owners to determine the necessity of the consolidation. If the commissioner is disqualified or chooses not to appoint the board of determination, the commissioner shall immediately file a copy of the petition with the chairperson of the county board of commissioners, together with a statement signed by the commissioner showing that he or she is disqualified or chooses not to appoint a board of determination. As soon as practicable after receiving a copy of

the petition and certificate, the chairperson of the county board of commissioners, unless he or she has a conflict of interest, shall appoint a board of determination. The chairperson of the county board of commissioners shall immediately notify the drain commissioner of the names and addresses of those appointed. If the chairperson of the county board of commissioners has a conflict of interest, the drain committee of the county board of commissioners shall appoint the board of determination. Members of a board of determination shall be residents of the county but not of the proposed consolidated drainage district or of a drainage district a part of which is included in the proposed consolidation. The drain commissioner shall call a meeting of the board of determination at a convenient place within the proposed consolidated drainage district. If a person appointed to the board of determination fails or refuses to serve, a successor shall be appointed by the official or committee making the appointment in the first instance. The drain commissioner shall determine reasonable compensation for and approve necessary expenses of a member of the board of determination for each meeting attended.

(3) The drain commissioner shall give notice of the time, date, and place of the meeting of the board of determination in the manner required by the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. The drain commissioner shall also give the notice as provided in all of the following:

(a) By publication in a newspaper of general circulation in the county or the proposed consolidated drainage district. The first publication shall be at least 10 days before the meeting.

(b) To the county clerk and to the 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.

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

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

(5) At the time and place specified in the notice, the board of determination shall meet, elect a chairperson and a secretary, and, after considering the evidence offered, determine whether the proposed consolidation is conducive to public health, convenience, or welfare. If the board finds by a majority vote of the members that the proposed consolidation is not conducive to public health, convenience, or welfare, the board of determination shall file with the commissioner an order dismissing the petition, and another petition for the drain shall not be filed within 1 year after the determination. If the board by a majority vote of the members finds that the proposed consolidation is conducive to the public health, convenience, or welfare, it shall prepare an order to that effect and file the order with the commissioner. Upon receipt of the order of consolidation, the commissioner shall enter an order giving the consolidated drainage district a name or number.

Sec. 464. (1) A drainage board is created for each project petitioned for under this chapter. Except as provided in subsections (2) and (4), the drainage board shall consist of the drain commissioner of the county, the chairperson of the county board of commissioners, and the chairperson of the board of county auditors.

(2) If there is no board of county auditors in the county, then the chairperson of the finance committee of the county board of commissioners shall be a member of the drainage board. If there is neither a board of county auditors nor a finance committee, then the chairperson of the county board of commissioners shall select from time to time 1 member of the county board of commissioners to be a member of the drainage board. If a member of the drainage board who is a member of the county board of commissioners, as provided in this section or section 487, holds an elected or appointed office in a public corporation to be assessed for the cost of a project petitioned for under this chapter, he or she is disqualified to act as a member of the drainage board with respect to the project. 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 so 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 so 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 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 in his or her office.

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

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

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

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

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

Sec. 515. (1) For each project petitioned for under this chapter, an augmented drainage board is created. Except as provided in subsection (2), the augmented drainage board consists of the members of the drainage board together with the chairperson of the county board of commissioners and the chairperson of the board of county auditors of each county involved.

(2) If there is no board of county auditors in a county, then the chairperson of the finance committee of the county board of 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 chairperson of the county board of commissioners shall select 1 member of the county board of commissioners of the county to act as a member of the augmented drainage board.

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

(4) The augmented drainage board shall determine reasonable compensation for and approve necessary expenses of the chairperson of the county board of commissioners and any other member of a county board of commissioners serving on the augmented drainage board, for each meeting attended.

  
Clerk of the House of Representatives

  
Secretary of the Senate

Approved \_\_\_\_\_

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Governor