

HOUSE BILL NO. 5188

October 24, 2023, Introduced by Reps. O'Neal, Hill, Bezotte, Young, Neeley, Farhat, Wilson, Brenda Carter, Hope, Dievendorf, Hood, Tyrone Carter and Coleman 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 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
29 **determined** based on the total number of miles of the drain and not

1 on the ~~actual number of miles or location of the maintenance or~~
 2 ~~repair.~~ **actually inspected, maintained, or repaired.** Costs incurred
 3 for the inspection, maintenance, and repair of a drain performed
 4 under this section may be financed and assessed under this act for
 5 not more than 10 years. **As of January 1, 2024 and each calendar**
 6 **year thereafter, the state treasurer shall adjust the \$10,000.00**
 7 **figure in this subsection by an amount determined by the state**
 8 **treasurer to reflect the cumulative percentage change in the**
 9 **Consumer Price Index since January 1, 2023. As used in this**
 10 **subsection, "Consumer Price Index" means the most comprehensive and**
 11 **recently available index of consumer prices for this state from the**
 12 **Bureau of Labor Statistics of the United States Department of**
 13 **Labor. The state treasurer shall report the adjustment to the**
 14 **department of agriculture, which shall post and maintain the**
 15 **adjustment on its publicly accessible website.**

16 (5) If the drain commissioner or the drainage board finds it
 17 necessary to expend funds in addition to the amount established in
 18 subsection (4) per mile or fraction of a mile in any 1 year for the
 19 maintenance and repair of a drain, **except as provided in subsection**
 20 **(10)**, the additional amounts shall not be expended until approved
 21 by resolution of the governing body of each township, city, and
 22 village affected by more than 20% of the cost.

23 (6) If the drain fund of a drainage district does not contain
 24 sufficient funds to pay for inspection, repair, and maintenance
 25 authorized by this section, the drain commissioner or the drainage
 26 board may finance the costs for not more than 10 years and shall
 27 assess the drainage district for not more than 10 years for the
 28 inspection, repair, and maintenance according to benefits received.
 29 The first installment of an assessment under this subsection shall

1 be made and spread upon the city or township tax assessment roll
2 within 2 years after the completion of the inspection, repair, and
3 maintenance. If the total expenditure is more than the amount
4 established in subsection (4) per mile or fraction of a mile, all
5 real property owners subject to an assessment within the drainage
6 district shall be notified of the assessment by publication in a
7 newspaper of general circulation within the drainage district and
8 by first-class mail to the name and address that appears on the
9 last city or township assessment roll. ~~An~~ **The drain commissioner**
10 **shall make an** affidavit of mailing. ~~shall be made by the drain~~
11 ~~commissioner.~~ The affidavit is conclusive proof that the notices
12 required by this subsection were mailed. The failure of a person to
13 receive a notice by mail is not a jurisdictional defect
14 invalidating a drain assessment if notice by publication was given
15 as required by this subsection.

16 (7) An assessment under subsection (6) for the actual cost of
17 inspection, repair, and maintenance performed on a drain, or an
18 assessment under subsection (3) to be deposited in the drain fund
19 of a drainage district, shall be made according to benefits
20 received. The expenditure limit ~~of the amount established in~~
21 subsection (4) per mile or fraction of a mile of drain shall be
22 used to calculate the maximum amount that the drain commissioner or
23 drainage board may assess in any 1 year without a petition **under**
24 **section 191 or 192** or a request from a public corporation **under**
25 **subsection (5)**. ~~Determination of the~~ **The** maximum assessment amount
26 allowed without petition or request ~~, or of the property that is~~
27 ~~subject to assessment,~~ shall be based on the **total** number of miles
28 of **the** drain and ~~areas of the drainage district receiving benefits~~
29 and not on the ~~actual number of miles or actual location of the~~

1 ~~inspection, repair, and maintenance.~~ **actually inspected, repaired,**
 2 **or maintained. The property that is subject to assessment shall be**
 3 **based on the areas of the drainage district receiving benefits and**
 4 **not on the actual location of the inspection, repair, and**
 5 **maintenance.**

6 (8) If an emergency condition exists that endangers the public
 7 health, crops, or property within a drainage district, and the
 8 drain commissioner or drainage board enters an order declaring and
 9 describing the emergency, the commissioner or drainage board may
 10 expend funds for maintenance and repair to alleviate the emergency.
 11 ~~condition.~~

12 (9) The drain commissioner or drainage board shall not levy an
 13 additional assessment for drain maintenance under this section if
 14 there is currently an assessment for previous maintenance work on
 15 the drain under this section unless subsection (8) applies or the
 16 expenditure for maintenance is approved by the governing body of
 17 each township, city, and village affected by more than 20% of the
 18 cost.

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

25 (11) ~~In computing the amounts that may be expended under~~ **For**
 26 **purposes of** this section, **the costs of maintenance and repair do**
 27 **not include** the cost of work to be performed by a federal agency or
 28 public corporation that is not chargeable to the ~~county or~~
 29 ~~intercounty drainage district. shall not be included.~~ The drain

1 commissioner or the drainage board is not required to advertise for
2 bids for that portion of the work to be done by the federal agency
3 or public corporation.

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

6 (a) The cost of maintaining the drain in working order to
7 continue a normal flow of water, including the servicing or repair
8 of necessary pumping equipment and utility charges for pumping
9 equipment.

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

12 (c) The cost of repairing a portion or all of a tile or drain
13 to continue the normal flow of water.

14 (d) Other costs associated with the costs described in
15 subdivisions (a) to (c).

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

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