

Act No. 149
Public Act of 1989
July 25, 1989
Filed by the Secretary of State
July 25, 1989

**STATE OF MICHIGAN
85TH LEGISLATURE
REGULAR SESSION OF 1989**

Introduced by Reps. Gnodtke, Hickner, Hart, Niederstadt, Stabenow, Stacey, Middaugh, Allen, Fitzgerald, Randall, Giese, Bender, Muxlow, Ouwinga, London, Camp, Munsell, DeLange, Nye, Walberg and Miller

ENROLLED HOUSE BILL No. 4505

AN ACT to amend sections 196, 283, 497, 499, 547, and 547a of Act No. 40 of the Public Acts of 1956, entitled as amended "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," section 196 as amended by Act No. 523 of the Public Acts of 1982, section 497 as amended and section 499 as added by Act No. 165 of the Public Acts of 1984, and section 547 as amended and section 547a as added by Act No. 34 of the Public Acts of 1988, being sections 280.196, 280.283, 280.497, 280.499, 280.547, and 280.547a of the Michigan Compiled Laws.

The People of the State of Michigan enact:

Section 1. Sections 196, 283, 497, 499, 547, and 547a of Act No. 40 of the Public Acts of 1956, section 196 as amended by Act No. 523 of the Public Acts of 1982, section 497 as amended and section 499 as added by Act No. 165 of the Public Acts of 1984, and section 547 as amended and section 547a as added by Act No. 34 of the Public Acts of 1988, being sections 280.196, 280.283, 280.497, 280.499, 280.547, and 280.547a of the Michigan Compiled Laws, are amended to read as follows:

Sec. 196. (1) An annual inspection may be made of all drains laid out and constructed under this act. Inspection shall also be made upon the request of the governing body of a public corporation, as defined in section 461, served in whole or in part by the drain to be inspected. For county drains, the inspection shall be made by the drain commissioner, or a competent person appointed by the drain commissioner. For intercounty drains, the inspection shall be caused to be made by the drainage board.

(2) Surplus construction funds remaining after completion of construction of a drain, or funds remaining after completion of work performed under a petition for maintenance or improvements under this chapter, shall be deposited in the drain fund of a drainage district and shall be expended for inspection, repair, and maintenance of the drain.

(3) If at any time the drain fund of a drainage district contains less than \$2,500.00 per mile of drain or fraction of a mile, the drain commissioner or drainage board may assess the drainage district for an amount not to exceed \$1,250.00 a mile or fraction of a mile in any 1 year. The amount collected under an assessment shall be deposited in the drain fund of a drainage district for necessary inspection, repair, and maintenance of the drain.

(4) If an inspection discloses the necessity of expending money for the maintenance and repair of a drain in order to keep it in working order, the drain commissioner for a county drain, or the drainage board for an intercounty drain, may without petition expend an amount not to exceed in any 1 year \$2,500.00 per mile or fraction of a mile for maintenance and repair of a drain.

(5) If the drain commissioner or the drainage board finds it necessary to expend funds in excess of \$2,500.00 per mile or fraction of a mile in any 1 year for the maintenance and repair of a drain, the additional amounts shall not be expended until approved by resolution of the governing body of each township, city, and village affected by more than 20% of the cost.

(6) If the drain fund of a drainage district does not contain sufficient funds to pay for inspection, repair, and maintenance authorized by this section, the drain commissioner or the drainage board shall reassess the drainage district for the inspection, repair, and maintenance according to benefits received. A reassessment shall be made and spread upon the city or township tax assessment roll within 2 years after the completion of the inspection, repair, and maintenance. If the total expenditure is more than \$2,500.00 per mile or fraction of a mile, all real property owners subject to an assessment within the drainage district shall be notified of the assessment by publication in a newspaper of general circulation within the drainage district and by first class mail to the name and address that appears on the last city or township assessment roll. An affidavit of mailing shall be made by the drain commissioner that shall be conclusive proof that the notices required by this subsection were mailed. The failure to receive the notices by mail shall not constitute a jurisdictional defect invalidating a drain tax if notice by publication was given as required by this subsection.

(7) An assessment for the actual cost of inspection, repair, and maintenance performed on a drain, or an assessment to be deposited in the drain fund of a drainage district, shall be made according to benefits received. The expenditure limit of \$2,500.00 per mile of drain or fraction of a mile shall be used to calculate the maximum amount that the drain commissioner or drainage board may assess in any 1 year without a petition or a request from a public corporation. The property in a drainage district that benefits from the inspection, repair, or maintenance of the drain is subject to assessment for that inspection, repair, or maintenance. Determination of the maximum assessment amount allowed without petition or request, or of the property that is subject to assessment, shall be based on the number of miles of drain and areas of the drainage district receiving benefits and not on the actual number of miles or actual location of the inspection, repair, or maintenance.

(8) If an emergency condition exists that endangers the public health, crops, or property within a drainage district, the drain commissioner or the drainage board may expend funds for maintenance and repair to alleviate the emergency condition.

(9) Nothing in this section prohibits the drain commissioner or the drainage board from spending funds in excess of \$2,500.00 per mile or fraction of a mile in any 1 year for inspection, maintenance, and repair of a drain when requested by a public corporation, if the public corporation pays the entire cost of the inspection, maintenance, and repair.

(10) In computing the amounts that may be expended in accordance with this section, the cost of work to be performed by a federal agency or public corporation that is not chargeable to the county or intercounty drainage district shall not be included, nor shall it be necessary for the drain commissioner or the drainage board to advertise for bids for that portion of the work to be done by the federal agency or public corporation.

(11) For purposes of this section, the costs of maintenance or repair shall include the costs of maintaining the drain in working order to continue a normal flow of water, including the servicing or repair of necessary pumping equipment and utility charges for pumping equipment; the cost of keeping the drain free from rubbish, debris, siltation, or obstructions; the cost of repairing a portion or all of a tile or drain to continue the normal flow of water; and other costs associated with the costs enumerated in this subsection.

(12) If the cost of maintenance and repair of a drain includes utility charges or costs to service pumping stations, sewage treatment facilities, or retention basins, the limitation for maintenance and repair shall not apply except that the drain commissioner or drainage board may levy sufficient special assessments to pay the charges or costs but not more than the amount sufficient to pay those charges or costs.

(13) The salaries, expenses, and fringe benefits of clerical, administrative, and engineering employees of the drain commissioner or drainage board working incidental to the operation, repair, or maintenance of a drain shall be chargeable to and paid as budgeted from the county general fund and not chargeable to or by the drain fund of a drainage district.

(14) A violation of this section is a misdemeanor punishable by imprisonment for not more than 1 year, or by a fine of not more than \$1,000.00, or both.

Sec. 283. (1) The drain commissioner or drainage board shall use any surplus construction funds remaining in the construction fund after completion of the project for the inspection, repair, and maintenance of the drain as provided in section 196 or shall authorize the transfer of the funds to the bond and interest account, if bonds were issued, in the amounts the drain commissioner or drainage board considers proper.

(2) The drainage board or drain commissioner shall contract with a public corporation if that public corporation has been assessed for all or part of the cost of the drain or if land in a city, village, township, or combination thereof has been assessed for all or any part of the cost of a drain. The contract shall provide that after all outstanding drain orders or bonds are paid on a drainage district project, the drain commissioner or drainage board shall authorize the respective county treasurers to pay over any portion of the surplus not needed for more than the cost of inspection, repair, and maintenance of the drain as provided in section 196 to the county, township, city, or village in which the drain was located or in which assessments for benefits have been assessed and collected. The payments shall be on a pro rata basis in direct proportion to the amounts assessed and collected from each county, city, village, or township. The contract shall also provide that upon receipt of the surplus funds the county, city, village, or township shall utilize those surplus funds to alleviate drainage problems in their respective jurisdictions.

(3) If state highway funds are involved in a project, the drain commissioner or drainage board, upon completion of a construction project, shall return, on a pro rata basis, surplus construction funds in excess of the amount necessary to pay for inspection, repair, and maintenance of the drain as provided in section 196 to the state transportation department for the construction, maintenance, and administration of state highways.

(4) As used in this section, "public corporation" includes a city, village, township, or county, or the state.

Sec. 497. (1) The drainage board shall use any surplus construction funds remaining in the construction fund after completion of the project for the inspection, repair, and maintenance of the drain as provided in section 196 or shall authorize the transfer of the funds to the bond and interest account, if bonds were issued, in the amounts the drainage board considers proper.

(2) The drainage board shall contract with any public corporation if that public corporation has been assessed for all or part of the cost of the drain or if land in any city, village, township, or combination thereof has been assessed for all or any part of the cost of a drain. The contract shall provide that after all outstanding drain orders or bonds are paid on a drainage district project, the drainage board shall authorize the county treasurers to pay over any portion of the surplus not needed for more than the cost of inspection, repair, and maintenance of the drain as provided in section 196 to the county, township, city, or village in which the drain is located or in which assessments for benefits have been assessed and collected. The payments shall be on a pro rata basis in direct proportion to the amounts assessed and collected from each county, township, city, or village. The contract shall also provide that upon receipt of the surplus funds the county, city, village, or township shall utilize the surplus funds to alleviate drainage problems in their respective jurisdictions.

(3) If state highway funds are involved in a project, the drain commissioner or drainage board, upon completion of a construction project and after all outstanding drain orders or bonds are paid on the project, shall return, on a pro rata basis, surplus construction funds in excess of the amount necessary to pay for inspection, repair, and maintenance of the drain as provided in section 196 to the state transportation department for the construction, maintenance, and administration of state highways.

(4) A drainage board may apply section 499 to surplus construction funds in place of this section.

(5) As used in this section and section 499, "public corporation" includes a city, village, township, or county, or the state.

Sec. 499. (1) After the construction of a county drain for which none of the financing is obtained through special assessments under section 490, the drainage board shall provide for an amount from surplus construction funds sufficient to inspect, repair, and maintain the drain as provided in section 196. After providing for inspection, repair, and maintenance, the drainage board may apportion the balance of the surplus construction funds to separate accounts to the credit of the public corporations against which the cost of the drain is assessed. The funds shall be credited in direct proportion to amounts assessed and collected from the public corporations.

(2) Funds in an account apportioned to the credit of a public corporation under this section shall be used only for the following:

- (a) To pay principal and interest on bonds issued to finance the drain for which the assessment is imposed.
- (b) If bonds are not sold, to pay assessments due from the public corporation.
- (c) At the request of the public corporation, to alleviate drainage problems in that public corporation.

Sec. 547. (1) The drainage board shall use any surplus construction funds remaining in the construction fund after completion of the project for the inspection, repair, and maintenance of the drain as provided in section 196 or shall authorize the transfer of the funds to the bond and interest account, if bonds were issued, in the amounts the drainage board considers proper.

(2) The drainage board shall contract with a public corporation if that public corporation has been assessed for all or part of the cost of the drain or if land in a city, village, township, or combination thereof has been assessed for all or any part of the cost of a drain. The contract shall provide that after all outstanding drain orders or bonds are paid on a drainage district project, the drainage board shall authorize the county treasurers to pay over any portion of the surplus not needed for more than the cost of inspection, repair and maintenance of the drain as provided in section 196 to the county, township, city, or village in which the drain was located or in which assessments for benefits have been assessed and collected. The payments shall be on a pro rata basis in direct proportion to the amounts assessed and collected from each county, township, city, or village. The contract shall also provide that upon receipt of the surplus funds the county, city, village, or township shall utilize the surplus funds to alleviate drainage problems in their respective jurisdictions.

(3) If state highway funds are involved in a project, the drain commissioner or the drainage board, upon completion of a construction project, and after all outstanding drain orders or bonds are paid on the project shall return, on a pro rata basis, surplus construction funds in excess of the amount necessary to pay for inspection, repair, and maintenance of the drain as provided in section 196 to the state transportation department for the construction, maintenance, and administration of state highways.

(4) A drainage board may apply section 547a to surplus construction funds in place of this section.

(5) As used in this section and section 547a, "public corporation" includes a city, village, township, or county, or the state.

Sec. 547a. (1) After the construction of a county drain for which none of the financing is obtained through special assessments under section 539, the drainage board shall provide for an amount from surplus construction funds sufficient to inspect, repair, and maintain the drain as provided in section 196. After providing for inspection, repair, and maintenance, the drainage board may apportion the balance of the surplus construction funds to separate accounts to the credit of the public corporations against which the cost of the drain is assessed. The funds shall be credited in direct proportion to amounts assessed and collected from the public corporations.

(2) Funds in an account apportioned to the credit of a public corporation under this section shall be used only for the following:

- (a) To pay principal and interest on bonds issued to finance the drain for which the assessment is imposed.
- (b) If bonds are not sold, to pay assessments due from the public corporation.
- (c) At the request of the public corporation, to alleviate drainage problems in that public corporation.

This act is ordered to take immediate effect.

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Clerk of the House of Representatives.

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Secretary of the Senate.

Approved.....

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Governor.

