

SENATE BILL NO. 185

March 07, 2019, Introduced by Senator STAMAS and referred to the Committee on Local Government.

A bill to amend 1956 PA 40, entitled "The drain code of 1956," by amending sections 196 and 201 (MCL 280.196 and 280.201), section 196 as amended by 2008 PA 509 and section 201 as added by 2016 PA 171.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 196. (1) ~~An annual inspection may be made of~~ **A drain**
2 **commissioner or drainage board may inspect** a drain established
3 under this act. ~~Inspection shall also be made~~ **A drain commissioner**
4 **or drainage board shall inspect a drain** upon the request of the

1 governing body of a public corporation, as defined in section 461,
2 served in whole or in part by the drain to be inspected. For county
3 drains, the inspection shall be made by the drain commissioner, or
4 a competent person appointed by the drain commissioner. For
5 intercounty drains, the inspection shall be caused to be made by
6 the drainage board.

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

13 (3) If at any time the drain fund of a drainage district
14 contains less than \$5,000.00 per mile or fraction of a mile of a
15 drain, the drain commissioner or drainage board may assess the
16 drainage district for an amount not to exceed \$2,500.00 per mile or
17 fraction of a mile in any 1 year. The amount collected under an
18 assessment shall be deposited in the drain fund of a drainage
19 district for necessary inspection, repair, and maintenance of the
20 drain.

21 (4) If an inspection discloses the necessity of expending
22 money for the maintenance and repair of a drain ~~in order~~ to keep it
23 in working order, the drain commissioner for a county drain, or the
24 drainage board for an intercounty drain, may without petition
25 expend an amount not to exceed in any 1 year \$5,000.00 per mile or
26 fraction of a mile for maintenance and repair of a drain, exclusive
27 of inspection and engineering fees and the cost of publication and
28 mailing. The determination of the maximum expenditure allowed
29 without a petition or resolution shall be based on the total number

1 of miles of the drain and not on the actual number of miles or
2 location of the maintenance or repair.

3 (5) If the drain commissioner or the drainage board finds it
4 necessary to expend funds in excess of the amount established in
5 subsection (4) per mile or fraction of a mile in any 1 year for the
6 maintenance and repair of a drain, the additional amounts shall not
7 be expended until approved by resolution of the governing body of
8 each township, city, and village affected by more than 20% of the
9 cost.

10 (6) If the drain fund of a drainage district does not contain
11 sufficient funds to pay for inspection, repair, and maintenance
12 authorized by this section, the drain commissioner or the drainage
13 board shall reassess the drainage district for the inspection,
14 repair, and maintenance according to benefits received. A
15 reassessment shall be made and spread upon the city or township tax
16 assessment roll within 2 years after the completion of the
17 inspection, repair, and maintenance. If the total expenditure is
18 more than the amount established in subsection (4) per mile or
19 fraction of a mile, all real property owners subject to an
20 assessment within the drainage district shall be notified of the
21 assessment by publication in a newspaper of general circulation
22 within the drainage district and by first-class mail to the name
23 and address that appears on the last city or township assessment
24 roll. An affidavit of mailing shall be made by the drain
25 commissioner. The affidavit is conclusive proof that the notices
26 required by this subsection were mailed. The failure to receive the
27 notices by mail ~~shall~~**does** not constitute a jurisdictional defect
28 invalidating a drain tax if notice by publication was given as
29 required by this subsection.

1 (7) An assessment **under subsection (6)** for the actual cost of
2 inspection, repair, and maintenance performed on a drain, or an
3 assessment **under subsection (3)** to be deposited in the drain fund
4 of a drainage district, shall be made according to benefits
5 received. The expenditure limit of the amount established in
6 subsection (4) per mile of drain or fraction of a mile shall be
7 used to calculate the maximum amount that the drain commissioner or
8 drainage board may assess in any 1 year without a petition or a
9 request from a public corporation. The property in a drainage
10 district that benefits from the inspection, repair, or maintenance
11 of the drain is subject to assessment for that inspection, repair,
12 or maintenance. Determination of the maximum assessment amount
13 allowed without petition or request, or of the property that is
14 subject to assessment, shall be based on the number of miles of
15 drain and areas of the drainage district receiving benefits and not
16 on the actual number of miles or actual location of the inspection,
17 repair, or maintenance.

18 (8) ~~If~~ **Subject to subsection (9), the drain commissioner or**
19 **drainage board shall not perform drain maintenance under this**
20 **section if an assessment is necessary for the maintenance and 10%**
21 **or more of the freeholders who would be liable for an assessment or**
22 **an installment of an assessment for that maintenance would**
23 **concurrently be liable for an assessment or an installment for**
24 **previous maintenance work on the drain under this section.**

25 (9) **If, as determined by the county board of commissioners for**
26 **a county drain, or the director of the department of agriculture**
27 **and rural development, for an intercounty drain, an emergency**
28 **condition exists that endangers the public health ~~or~~ crops ~~or~~**
29 **other property within a drainage district, subsection (8) does not**

1 **apply and** the drain commissioner or the drainage board,
 2 **respectively**, may expend funds for maintenance and repair to
 3 alleviate the emergency condition.

4 (10) ~~(9) Nothing in this~~ **This** section ~~prohibits~~ **does not**
 5 **prohibit** the drain commissioner or the drainage board from spending
 6 funds in excess of the amount established in subsection (4) per
 7 mile or fraction of a mile in any 1 year for inspection,
 8 maintenance, and repair of a drain when requested by a public
 9 corporation, if the public corporation pays the entire cost of the
 10 inspection, maintenance, and repair.

11 (11) ~~(10) In computing the amounts that may be expended in~~
 12 ~~accordance with~~ **under** this section, the cost of work to be
 13 performed by a federal agency or public corporation that is not
 14 chargeable to the county or intercounty drainage district shall not
 15 be included, ~~nor shall it be necessary for~~ **and** the drain
 16 commissioner or ~~the~~ drainage board **is not required** to advertise for
 17 bids for that portion of the work to be done by the federal agency
 18 or public corporation.

19 (12) ~~(11) For purposes of this section, the costs of~~
 20 maintenance or repair ~~shall~~ include the costs of maintaining the
 21 drain in working order to continue a normal flow of water,
 22 including the servicing or repair of necessary pumping equipment
 23 and utility charges for pumping equipment; the cost of keeping the
 24 drain free from rubbish, debris, siltation, or obstructions; the
 25 cost of repairing a portion or all of a tile or drain to continue
 26 the normal flow of water; and other costs associated with the costs
 27 enumerated in this subsection.

28 (13) ~~(12) If the cost of maintenance and repair of a drain~~
 29 includes utility charges or costs to service pumping stations,

1 sewage treatment facilities, or retention basins, the limitation on
2 **assessments under subsection (7)** for maintenance and repair does
3 not apply except that the drain commissioner or drainage board may
4 levy sufficient special assessments to pay the charges or costs but
5 not more than the amount sufficient to pay those charges or costs.

6 **(14)** ~~(13)~~—Except as otherwise provided in this act, that
7 portion of the salaries, expenses, and fringe benefits of
8 administrative and engineering employees under the supervision of
9 the drain commissioner that are directly attributable, but not
10 incidental, to a drain or otherwise not recovered by fees
11 established by resolution or ordinance of the board of
12 commissioners may be chargeable to the drain fund of a drainage
13 district.

14 Sec. 201. (1) At least 7 days before entering property for any
15 excavation or tree removal to be performed under this chapter, the
16 drain commissioner or drainage board shall mail notice of the
17 expected entry by first-class mail to the property owner.

18 (2) Subsection (1) does not apply to work performed under
19 section ~~196(8)~~**196(9)** or 196a.

20 Enacting section 1. This amendatory act takes effect 90 days
21 after the date it is enacted into law.