

# HOUSE BILL NO. 5335

November 14, 2023, Introduced by Reps. Andrews, Wilson, Arbit, Conlin, Tsernoglou and McFall 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 151, 154, 280, 468, and 520 (MCL 280.151, 280.154, 280.280, 280.468, and 280.520), section 154 as amended by 2020 PA 281, section 280 as amended by 2016 PA 27, and sections 468 and 520 as amended by 2018 PA 644.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

**1**       Sec. 151. **(1)** Upon the release of the right of way and  
**2** damages, or upon the ~~determination and return of the special~~

1 ~~commissioners,~~ **acquisition of right of way by the power of eminent**  
 2 **domain,** the commissioner shall make ~~his a~~ final order of  
 3 determination establishing the drain. ~~which~~ **The** drain shall be  
 4 divided into convenient sections for the letting of contracts. ~~÷~~  
 5 ~~Provided, That~~ **However,** the commissioner may let the drain in  
 6 sections or as a whole. ~~Said~~ **The drain commissioner shall file the**  
 7 order of determination ~~shall be filed with the county drain~~  
 8 ~~commissioner in his or her office~~ within 5 days after such ~~the~~  
 9 order is made. ~~He shall, before~~

10 (2) **Before** the day of letting and review ~~fix~~ **under section**  
 11 **154, the drain commissioner shall do both of the following:**

12 (a) **Determine** the number of installments for the collection of  
 13 drainage taxes. ~~and apportion~~

14 (b) **Apportion, on the following basis,** the ~~per cent~~ **percent** of  
 15 the cost of construction of ~~such drain which any~~ **the drain that**  
 16 **each of the following is liable to pay:**

17 (i) **Any** township, city, or village traversed or benefited  
 18 ~~thereby shall be liable to pay by reason of the~~ **by the drain, on**  
 19 **the basis of** benefit to the public health, convenience, or welfare.  
 20 ~~, or as the means of improving any highway under the control of~~  
 21 ~~such township, city or village. He shall apportion the per cent of~~  
 22 ~~the cost of construction of such drain which any highway then under~~  
 23 ~~the control of the county or district road commissioners, shall be~~  
 24 ~~liable to pay by reason of benefits therefor, and as the means of~~  
 25 ~~improving such highway. He shall also apportion the per cent of the~~  
 26 ~~cost of construction of such drain which any state trunk line~~  
 27 ~~highway, under the control of the state highway commissioner, shall~~  
 28 ~~be liable to pay by reason of benefits therefor and as the means of~~  
 29 ~~improving said highway. He shall also apportion the per cent of~~

1 ~~benefits to accrue to any~~

2       (ii) Any city or village, the country road commission, or the  
3 state transportation department, on the basis of benefits to or the  
4 improvement of a city or village street, a county road, or a state  
5 highway, respectively.

6       (iii) Any piece or parcel of land, ~~by reason of the construction~~  
7 ~~of such drain including, but not limited to, state land under the~~  
8 ~~ownership or control of the department of natural resources, on the~~  
9 ~~basis of benefits to the land over and above the per cent~~  
10 ~~apportioned to any township, city or village at large or to any~~  
11 ~~highway as above provided. Such per cent so apportioned when~~  
12 ~~finally approved shall be assessed against such townships, cities~~  
13 ~~and villages and against the county at large by reason of the~~  
14 ~~improvement of the highways within the drainage district, and~~  
15 ~~against the state by reason of the improvement of the state trunk~~  
16 ~~line highways within such drainage district, and against all~~  
17 ~~parcels of land therein according to such apportionment of benefits~~  
18 ~~as herein provided.~~**those apportioned under subparagraphs (i) and**  
19 **(ii) .**

20       (3) The apportionment of benefits so made shall be subject to  
21 review and correction and may be appealed ~~from~~ as **provided for** in  
22 this act. ~~provided.~~**The benefits shall be assessed as finally**  
23 **apportioned.**

24       (4) The **county** board of ~~supervisors~~**commissioners** at its  
25 October meeting each year shall make provision by proper assessment  
26 of the amounts apportioned against ~~any highway under the control of~~  
27 ~~the county and district highway commissioners.~~**county roads.**

28       Sec. 154. (1) The drain commissioner shall advertise for the  
29 receipt of bids for the construction of a drain at a specified

1 time, date, and location. If the drain commissioner directly or  
2 indirectly maintains an official internet presence, the drain  
3 commissioner shall post the advertisement for the receipt of bids  
4 on a portion of the website that is fully accessible to the public  
5 at least 10 days before, and shall maintain the posting through,  
6 the date set for the receipt of bids. If the drain commissioner  
7 does not maintain an official internet presence, the advertisement  
8 shall be so posted and maintained on the county website.

9 (2) The commissioner shall give notice, as described in this  
10 section, of a public meeting to review the apportionment of  
11 benefits. The meeting shall be **held** not less than 5 or more than 30  
12 days after the date set for receiving bids.

13 (3) The notice under subsection (2) shall be given by  
14 publication in a newspaper published and of general circulation in  
15 the county at least 10 days before the date of the review of the  
16 apportionment.

17 (4) The drain commissioner shall also send the notice under  
18 subsection (2) by first-class mail, at least 10 days before the  
19 date of the review of the apportionment of benefits, to each person  
20 whose name appears on the last city or township tax roll as owning  
21 land within the drainage district, at the address shown on the  
22 roll. Notice need not be mailed to a person whose address does not  
23 appear on the roll. The drain commissioner shall make an affidavit  
24 of the mailing and shall recite in the affidavit that the notice  
25 was mailed to all persons whose names and addresses appear on the  
26 tax rolls as owning land within the drainage district. The  
27 affidavit is conclusive proof that notice was mailed to each person  
28 to whom notice is required to be mailed. If notice has been sent by  
29 first-class mail as provided in this subsection, the failure to

1 receive notice by mail does not constitute a jurisdictional defect  
2 invalidating a drain proceeding or assessment. If the drain  
3 commissioner determines that the drain is necessary for the public  
4 health and that the whole cost of the drain, except that part which  
5 may be apportioned for benefits to highways, shall be apportioned  
6 to municipalities, then mailing of individual notices to persons  
7 owning land within the drainage district as provided in this  
8 subsection is not required.

9 (5) At least 10 days before the date of the review of the  
10 apportionment, the drain commissioner shall serve the notice under  
11 subsection (2) personally or by certified mail on the county clerk  
12 and a member of the board of county road commissioners of the  
13 county and on the supervisor of each township and clerk of each  
14 city or village to be assessed at large.

15 (6) The notice under subsection (2) shall contain all of the  
16 following:

17 (a) A statement that comments on the apportionment of benefits  
18 may be submitted to the drain commissioner in writing before the  
19 date of the meeting to review the apportionment or may be submitted  
20 in writing or orally at the ~~review.~~**meeting**. The statement shall  
21 specify the drain commissioner's postal mailing address and  
22 electronic mail address and indicate that comments submitted in  
23 advance must be received by the drain commissioner before the date  
24 of the meeting to ensure consideration.

25 (b) The date, time, and place of the meeting to review the  
26 apportionment of benefits.

27 (c) A statement that, at the meeting to review the  
28 apportionment of benefits, the drain commissioner will have  
29 available to review the tentative apportionments against parcels

1 and municipalities within the drainage district.

2 (d) For notice mailed to a person under subsection (4), the  
3 estimated percentage and **total** dollar amount apportioned to that  
4 person's land, the estimated annual dollar amount apportioned to  
5 that person's land, and the estimated project assessment duration.

6 (e) A statement that drain assessments against land will be  
7 collected in the same manner as property taxes.

8 (f) A statement that if drain assessments against land are  
9 collected by installment, the land owner may pay the assessments in  
10 full with any interest to date at any time and thereby avoid  
11 further interest charges.

12 (g) The name of each county, township, city, or village to be  
13 assessed at large.

14 (h) The name or number of the drain.

15 (i) The address of a website, as provided for in subsection  
16 (7), and a statement that the following additional information can  
17 be found at that address:

18 (i) A description of the land constituting the drainage  
19 district for the drain. The description may be given by providing a  
20 map of the drainage district, by designating the boundaries of the  
21 drainage district by streets, highways, parcels, or tracts of land,  
22 or by describing the tracts or parcels of land constituting the  
23 district. If a parcel or tract is partially located within the  
24 district, for the purposes of the notice description only, the  
25 drain commissioner may consider the entire parcel or tract to be  
26 located in the district.

27 (ii) The number and length of sections, the average depth and  
28 width of each section, and if the drain will be a closed drain, the  
29 amount and specifications of all tile or pipe required.

1           (iii) The location, number, type, and size of all culverts and  
2 bridges.

3           (iv) The conditions upon which the contract will be awarded.

4           (7) If the drain commissioner directly or indirectly maintains  
5 an official internet presence, the drain commissioner shall post  
6 the information described in subsection (6)(a) to (c), ~~and~~(e) to  
7 (h), **and (i) (i) to (iv)** on a portion of the website that is fully  
8 accessible to the public and shall maintain the posting through the  
9 date of the meeting to review the apportionment of benefits. If the  
10 drain commissioner does not maintain an official internet presence,  
11 the information shall be so posted and maintained on the county  
12 website.

13           (8) Notwithstanding the information provided in the notice  
14 under subsection (6)(d), the drain commissioner may subsequently  
15 make adjustments, to any of the following, that the commissioner or  
16 drainage board considers necessary, without further notice or an  
17 additional meeting to review the apportionment of benefits:

18           (a) The estimated apportionment percentage.

19           (b) The estimated annual project assessment.

20           (c) The estimated project assessment duration.

21           (9) Bids for the construction of the drain shall be received  
22 and the total cost of the drain shall be computed before the time  
23 set for review of the apportionment. The computation shall be open  
24 to inspection. If the computation is not completed before the  
25 review of the apportionment, the drain commissioner shall adjourn  
26 the review from time to time, not more than 20 days in all, for the  
27 completion of the computation, or shall call a new meeting to  
28 review the apportionment of benefits and give notice as provided in  
29 subsections (3) to (7). If the contracts on which the computation

1 was based are not executed and new contracts are let at a higher  
2 price, the drain commissioner shall correct the computation and,  
3 after giving notice as provided in subsections (3) to (7), hold a  
4 new review of the apportionment.

5 (10) At the date, time, and place specified in the notice, or  
6 at another date, time, and place to which the county drain  
7 commissioner may adjourn the meeting, the apportionment of benefits  
8 shall be subject to review for at least 1 day. The review shall be  
9 held open from 9 a.m. until 5 p.m. At the review, the county clerk  
10 or the county road commission may appear on behalf of the county,  
11 the supervisor of a township may appear on behalf of a township,  
12 the mayor or an officer of the city designated by the mayor may  
13 appear on behalf of a city, and the president may appear on behalf  
14 of a village. At the review, the county drain commissioner shall  
15 consider the proofs and allegations and shall do both of the  
16 following:

17 (a) Carefully reconsider and review the apportionment of  
18 benefits.

19 (b) Define and equalize the apportionment as is just and  
20 equitable.

21 (11) If an apportionment of benefits is made against a state  
22 trunk line highway, unless the director of the state transportation  
23 department consents in writing to the apportionment, the drain  
24 commissioner shall notify by certified mail the director of the  
25 state transportation department of the percentage apportioned  
26 against the highway and the date, time, and place for a review of  
27 **the** apportionment of benefits by the drain commissioner under  
28 subsection (2). The notice shall be mailed at least 20 days before  
29 the review. ~~of the apportionment.~~ If the director of the state



1 transportation department instead desires to have the apportionment  
2 of benefits reviewed by the director of the department of  
3 agriculture and rural development, the director of the state  
4 transportation department, within 10 days after receiving the  
5 notice under this subsection, shall file with the drain  
6 commissioner an objection to the apportionment. The drain  
7 commissioner shall notify **the director of the state transportation**  
8 **department and** the director of the department of agriculture and  
9 rural development of the date, time, and place for ~~the a~~ review of  
10 ~~apportionments. the apportionment.~~ At the meeting, the director of  
11 the department of agriculture and rural development, or a deputy of  
12 the director, shall review the apportionment made against the state  
13 trunk line highway and listen to the proofs and allegations of the  
14 parties, and may view the highway benefited. The written decision  
15 on the apportionment under this subsection is final.

16 (12) If an apportionment of benefits is made against state  
17 lands owned or controlled by the department of natural resources,  
18 unless the director of the department of natural resources consents  
19 in writing to the apportionment, the drain commissioner shall  
20 notify by certified mail the director of the department of natural  
21 resources of the percentage apportioned against the state lands and  
22 the date, time, and place for a review of the apportionment of  
23 benefits by the drain commissioner under subsection (2). The notice  
24 shall be mailed at least 20 days before the review. If the director  
25 of the department of natural resources instead desires to have the  
26 apportionment of benefits reviewed by the director of the  
27 department of agriculture and rural development, the director of  
28 the department of natural resources, within 10 days after receiving  
29 the notice under this subsection, shall file with the drain

1 commissioner an objection to the apportionment. The drain  
 2 commissioner shall notify the director of the department of natural  
 3 resources and the director of the department of agriculture and  
 4 rural development of the date, time, and place for a review of the  
 5 apportionment. At the meeting, the director of the department of  
 6 agriculture and rural development, or a deputy of the director,  
 7 shall review the apportionment made against the state lands owned  
 8 or controlled by the department of natural resources and listen to  
 9 the proofs and allegations of the parties, and may view the lands  
 10 benefited. The written decision on the apportionment under this  
 11 subsection is final.

12       Sec. 280. (1) If there is not sufficient money in the fund ~~in~~  
 13 ~~of~~ a particular drain at the time of the maturity of the bonds last  
 14 to mature, or any drain orders, to pay all outstanding bonds or  
 15 drain orders with interest, or to reimburse the county for money  
 16 which it has been obliged to advance pursuant to section ~~275,~~**276,**  
 17 whether ~~such~~**the** insufficiency is due to the anticipation of  
 18 installments as provided in section ~~279,~~**275,** or to failure to sell  
 19 any lands for delinquent taxes, or to any other cause, the  
 20 commissioner shall at once levy an additional assessment as  
 21 provided in this act in ~~such~~ an amount ~~as~~**that** will make up the  
 22 deficiency which shall be spread in not to exceed 7 annual  
 23 installments; and if the commissioner determines that the entire  
 24 amount, if spread in 1 year, would be an undue burden or create  
 25 unnecessary hardship, he or she may order it spread over any number  
 26 of years up to but not exceeding 7. If bonds or other evidences of  
 27 indebtedness are issued pursuant to the revised municipal finance  
 28 act, 2001 PA 34, MCL 141.2101 to 141.2821, to refund the  
 29 outstanding indebtedness of a drain district, the governing body of

1 the drain district shall provide, subject to the requirements of  
 2 the revised municipal finance act, 2001 PA 34, MCL 141.2101 to  
 3 141.2821, for such additional levies of assessments prior to the  
 4 maturity or mandatory redemption of the refunding obligations as  
 5 necessary to prevent default in the payment of interest on the  
 6 obligations, and the maintenance of a sinking fund for their  
 7 retirement. Every officer charged with the determination of the  
 8 amount of taxes to be raised, or the levying of the taxes, shall  
 9 make or cause to be made the additional levies as provided. Any  
 10 surplus remaining after the payment of the bonds and interest shall  
 11 remain in the county treasury and be used for the maintenance of  
 12 the drain.

13 (2) The additional assessments ~~shall only under subsection (1)~~  
 14 apply **only** to drain orders or bonds issued after March 28, 1956 and  
 15 shall be apportioned, assessed, levied, and collected as provided  
 16 in the first instance. ~~As to deficiency~~ **Only the following lands**  
 17 **are exempt from additional** assessments ~~levied under subsection (1)~~  
 18 for drain orders or bonds issued after March 28, 1956: ~~there~~  
 19 ~~shall be no lands exempted from the levy, except lands that are 1~~  
 20 ~~or more of the following:~~

21 (a) ~~Owned~~ **Lands owned** by the United States.

22 (b) ~~Owned by the state of Michigan.~~ **Lands owned by this state,**  
 23 **except for lands owned or controlled by the department of natural**  
 24 **resources.**

25 (c) ~~Owned~~ **Lands owned** by any county, city, village, township,  
 26 or school district and used for public purposes.

27 (d) ~~Used~~ **Lands used** exclusively for burial grounds.

28 (e) ~~Dedicated~~ **Lands dedicated** to the public and actually used  
 29 as a highway, **county road, street,** or alley, and not used for gain.

1           (3) An additional assessment shall not be levied **under**  
 2 **subsection (1)** or collected ~~for the purpose of paying to pay~~ the  
 3 principal or interest upon any bonds or obligations ~~which~~**that** have  
 4 been held to be invalid. ~~and any~~**An** additional assessment shall  
 5 not be apportioned, assessed, levied, or collected ~~for the purpose~~  
 6 ~~of paying to pay~~ any bonds, interest, or obligations for the  
 7 payment of which assessments have been made.

8           Sec. 468. **(1)** The drainage board shall secure from a competent  
 9 engineer ~~plans~~, specifications, a route and course, and an  
 10 estimate of cost of the proposed drain, which when approved and  
 11 adopted by the board shall be filed with the chairperson of the  
 12 board. In approving the plans and specifications, the drainage  
 13 board is not limited to the route of the drain described in the  
 14 petition or the final order of determination. Changes in the  
 15 approved route and course of the drain must be approved by  
 16 resolution of the drainage board.

17           **(2)** The drainage board shall tentatively establish the  
 18 percentage of the cost of the drain or of the several sections or  
 19 parts of the drain to be paid by each public corporation. In making  
 20 the apportionments, the drainage board shall consider the benefits  
 21 to accrue to each public corporation and the extent to which each  
 22 public corporation contributes to the conditions that make the  
 23 drain necessary. Apportionments against this state shall be based  
 24 upon benefits and contributions as related solely to the drainage  
 25 of state highways **and lands under the ownership or control of the**  
 26 **department of natural resources**. Apportionments against the county  
 27 shall be based upon benefits and contributions as related solely to  
 28 the drainage of its county roads. Before a tentative apportionment  
 29 is made, the drainage board shall designate the area to be served

1 by the drain project, which may include all of the area in a public  
 2 corporation to be assessed, and may divide the drain into sections  
 3 or parts for purposes of apportionment or construction.

4 (3) Notwithstanding any other provision of this act, the  
 5 county may assume any additional cost of the drain if 2/3 of the  
 6 members elect of the county board of commissioners vote in favor  
 7 thereof.

8 (4) The apportionment under this section applies only to the  
 9 proposed drain. The apportionments for any ~~extensions or other work~~  
 10 subsequently performed under section 482 shall be reestablished by  
 11 the board.

12 (5) If chapter 25 is ~~employed in the apportionment of~~ **used to**  
 13 **apportion** costs, the proceedings under this section shall be  
 14 altered and supplemented as provided in chapter 25.

15 Sec. 520. (1) The drainage board shall secure from a competent  
 16 engineer ~~plans~~, specifications, a route and course, and an  
 17 estimate of cost of the proposed drain, which when approved and  
 18 adopted by the board shall be filed with the secretary of the  
 19 board. In approving the plans and specifications, the drainage  
 20 board is not limited to the route of the drain described in the  
 21 petition or the final order of determination. Changes in the  
 22 approved route and course of the drain must be approved by  
 23 resolution of the drainage board.

24 (2) The drainage board shall tentatively establish the  
 25 percentage of the cost of the drain or of the several sections or  
 26 parts of the drain to be paid by public corporations in each county  
 27 affected and by this state on account of any state highway, and by  
 28 the county on account of any county road. The percentage of the  
 29 cost apportioned to public corporations in each county shall then

1 be apportioned by the drain commissioner among public corporations  
2 to be assessed in the county, and that apportionment shall be filed  
3 with the secretary of the drainage board. In making the  
4 apportionments under this section, there shall be taken into  
5 consideration the benefits to accrue to each public corporation and  
6 the extent to which each public corporation contributes to the  
7 conditions that make the drain necessary. Apportionments against  
8 this state shall be based upon benefits and contributions as  
9 related solely to the drainage of state highways **and lands under**  
10 **the ownership or control of the department of natural resources.**  
11 Apportionments against the county shall be based upon benefits and  
12 contributions as related solely to the drainage of its county  
13 roads. Before a tentative apportionment is made, the drainage board  
14 shall designate the area to be served by the drain project, which  
15 may include all of the area in a public corporation to be assessed,  
16 and may divide the drain into sections or parts for purposes of  
17 apportionment or construction.

18 (3) Notwithstanding any other provision of this act, a county  
19 may assume any additional cost of the drain if 2/3 of the members  
20 elect of the county board of commissioners vote in favor thereof.  
21 The apportionment under this section applies only to the proposed  
22 drain.

23 (4) The apportionments for any extensions or other work  
24 subsequently performed under section 535 shall be reestablished by  
25 the board.

26 (5) If chapter 25 is ~~employed in the apportionment of~~ **used to**  
27 **apportion** costs, the proceedings under this section shall be  
28 altered and supplemented as provided in chapter 25.