

**THE DRAIN CODE OF 1956 (EXCERPT)**  
**Act 40 of 1956**

CHAPTER 5.

INTERCOUNTY DRAINAGE DISTRICTS.

**280.101 Intercounty drainage districts; application; filing; signatures, eligibility.**

Sec. 101. (1) Before any action is taken on a petition to locate, establish, and construct a drain that will traverse lands in more than 1 county, or affect more than 1 county, an application shall be filed with a commissioner having jurisdiction of any of the lands to lay out and designate a drainage district. The application shall tentatively describe the location and route of the proposed drain. Except as provided in subsection (2), the application shall be signed by a number of freeholders in the drainage district whose lands would be liable to an assessment for benefits, equal to 50% of any of the freeholders whose lands would be traversed by the drain or drains applied for or that abut on any highway or street along the side of which the drain extends, between a point where the drain enters the highway and the point where it leaves the highway and which lands are within the drainage district. The eligibility of the signers to the application shall be determined by their interest of record in the office of the register of deeds, in the probate court, or in the circuit court of the county in which the lands are situated at the time the petition is filed.

(2) An application under subsection (1) may be signed by a representative of the city, village, or township if authorized by its governing body, if the proposed drain is necessary for the public health of the city, village, or township, and if the city, village, or township will be liable for an assessment at large against it for a percentage of the cost of the proposed drain.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1957, Act 119, Imd. Eff. May 24, 1957;—Am. 2014, Act 551, Imd. Eff. Jan. 15, 2015.

**Popular name:** Act 40

**280.102 Intercounty drainage districts; copies; joint drainage board, meeting, time, location, notice.**

Sec. 102. Upon filing of such application the commissioner shall within 20 days send a copy of such application by registered mail to the state director of agriculture and also to the drain commissioner of each county in which lie lands liable for assessment for benefits for the construction of such proposed drain. The drain commissioners of such counties and the director of agriculture or any deputy designated by him shall be and constitute the drainage board.

The state director of agriculture shall call a meeting of such drainage board, which meeting shall be held not less than 15 and not more than 60 days from the receipt of such notice. Such meeting shall be held in the immediate locality of the proposed drainage district. Notices of such meeting shall be posted in 5 public places within the proposed drainage district within each county, and served on the county clerk of each county and the supervisor of each township within the proposed drainage district personally or by registered mail at least 10 days before such public meeting. A notice of such meeting shall be published in each county affected once a week for 2 consecutive weeks before such meeting in a newspaper of general circulation in such county, if there is one, the first publication to be at least 10 days before the meeting.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956.

**Popular name:** Act 40

**280.103 Chairman of board; determination of practicability; survey.**

Sec. 103. Upon convening said meeting the state director of agriculture or any deputy selected by him shall act as chairman. The said drainage board shall consider such application, and determine the sufficiency of the signatures thereto, and shall go over the route of said proposed drain and take testimony to determine its practicability. All persons owning lands liable to assessment for benefits or whose lands shall be crossed by said drain or any municipality affected may appear for or against said drain proceedings. If at said meeting or at any subsequent time before the entry of the order designating a drainage district, they shall determine that the drainage of the proposed drain area is not practical, no further action shall be taken thereon within 1 year. If said proposed drain is determined to be practical, then the drainage board shall cause a survey thereof to be made by a competent surveyor or engineer to ascertain the area which would be drained by the proposed drain, and the route and type of construction of drain or drains most serviceable for that purpose.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956.

**Popular name:** Act 40

#### **280.104 Surveyor; duties as to intercounty drain, delivery of papers to board; route.**

Sec. 104. The surveyor or engineer authorized to make the survey shall ascertain the size and depth of the drains, and shall preserve all minutes with reference thereto. He shall prepare plans, drawings and profiles thereof, together with a computation of the yards of earth to be excavated, and where practicable the leveling of the spoil banks or the amount of tile or pipe to be used and the necessary bridges and culverts or fords to be built in constructing the proposed drains, and his estimate of the cost of such construction. He shall thereupon lay out a proposed drainage district, which district may be described by its boundaries of streets and highways or tracts or parcels of land or by a description of all tracts or parcels of land, including therein all highways, townships, counties, cities and villages which would be benefited by the construction of the proposed drain, all of which he shall deliver to the drainage board. The surveyor or engineer shall not be limited to the route described in the application, but may recommend a route and type of construction for the drains he considers most serviceable for draining the area involved.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1957, Act 119, Imd. Eff. May 24, 1957;—Am. 1961, Act 212, Imd. Eff. June 6, 1961.

**Popular name:** Act 40

#### **280.105 Order designating intercounty drainage district; contents, notice of filing, copies furnished commissioners; amendment of name or number of drain; costs.**

Sec. 105. The chairman of the drainage board shall thereupon prepare an order designating a drainage district, giving it a name or number and describe therein the drainage district by its boundaries of streets and highways or tracts or parcels of land or by a description of all tracts or parcels of land included therein and the counties, townships, cities, villages and state trunk line highways including therein all highways, townships, counties, cities and villages, which would be benefited by the construction of such drain and would be liable to an assessment therefor; also a description of the drain according to the plans and specifications prepared by the surveyor or engineer and determined by the drainage board, showing the beginning, route, terminus, type of construction and the estimated cost of the construction. Notice of filing of the order shall be given by the state director of agriculture by publishing a notice in a newspaper in each county affected, once in each week for 2 successive weeks, which notice shall give a general description of the route of the drain and of the drainage district as shown by the order. A copy of the order shall within 10 days be filed by the state director of agriculture in the office of the county drain commissioner of each county in which lie lands included in the district.

At any time after the order designating an intercounty drainage district, giving it a name or number, has been filed in the offices of the county drain commissioners of the counties within the district, the order may be amended as to the name or number of the drain by a written request of a drain commissioner of 1 of the counties traversed by the drain, which request shall state the then present name or number of the drain and the change to be made in the name or number. Upon filing of the request, the drain commissioner shall mail a copy of the request, to the state director of agriculture and also to the drain commissioner of each county in which lie lands liable for assessments for the drain. The state director of agriculture shall call a meeting of the drainage board and if, in the opinion of the drainage board, it is found advisable to change the name or number of the drain, they shall file an order designating such change. The drainage board shall also designate the number of signs to be posted upon the drain as they may deem advisable for public notice of the new name or number. Copies of the order changing the name or number of the drain shall be filed with the drain commissioner and the county treasurer of each county liable for assessments of such drain. If the commissioners of the counties affected cannot agree as to the apportionment of costs for laying out a drainage district, the director of agriculture or any deputy appointed by him shall apportion the costs and the counties affected shall pay the same as provided in section 302 of this act.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1961, Act 212, Imd. Eff. June 6, 1961.

**Popular name:** Act 40

#### **280.106 Review of apportionment by arbitration board; claim for review; nomination and selection of board members; meeting; notice; election of chairperson and secretary; adjournment; findings.**

Sec. 106. If the drain commissioner of a county involved considers the apportionment between the counties to be unfair, the commissioner shall have the right to have the apportionment reviewed by an arbitration board to be composed of drain commissioners from unaffected counties in this state. Within 20 days after the order of apportionment provided in section 105, the commissioner shall file with the department of agriculture a claim for review by arbitration in which the commissioner shall state briefly in what respect he or she considers the apportionment unfair and request, over the commissioner's official signature, a review by

arbitration. The commissioner shall nominate a disinterested drain commissioner as his or her choice for the arbitration board. Upon receipt of the claim for review by arbitration, the director of the department of agriculture or the director's deputy shall forward to each county drain commissioner involved, except the claimant, within 10 days, a copy of the claim for review by arbitration. The commissioners, within 10 days, shall notify the department of agriculture of their selection to the arbitration board. The director of the department of agriculture, at the earliest date, consistent with Act No. 267 of the Public Acts of 1976, but not later than 30 days after the notice, shall notify the chosen drain commissioners of a date and time they shall meet in the commissioner's office in Lansing. At the meeting they shall select 1 or 2 more unaffected drain commissioners in the state to complete the board of review. Only 1 shall be selected if the board members selected by the drain commissioners affected constitute an even number and 2 shall be selected if the board members selected by the drain commissioners affected constitute an odd number. Upon selection of the final members of the board of review, those members present shall set a date, time, and place in an affected county for a first full meeting of the board of review. Notice of the meeting shall be posted in 5 public places in each county affected and be served personally or by registered mail at least 10 days before the meeting on the county clerk of the county and the supervisor of a township in each county traversed by the drain. A notice of the meeting shall be published once a week for 2 consecutive weeks before the meeting in a newspaper published and of general circulation in the counties affected. The first publication is to be at least 10 days before the meeting. The director of the department of agriculture shall notify the 1 or 2 drain commissioners selected of their appointment and of the date, time, and place of the next meeting of the full board. The board of arbitration shall convene at the time, date, and place specified, elect a chairperson and secretary, and review the fairness of the apportionment between the counties. The board may adjourn until their review is completed. The findings shall be made and signed by all the members attesting the determination of the majority of the board and the determination by the majority of the board shall be final and conclusive as to the fairness of the apportionment.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1978, Act 235, Imd. Eff. June 15, 1978.

**Popular name:** Act 40