

THE DRAIN CODE OF 1956 (EXCERPT)
Act 40 of 1956
Chapter 6.
INTERCOUNTY DRAINS.

280.121 Intercounty drains; petition to establish; filing, signatures; certificate of county treasurer; eligibility of signers; "municipality" defined.

Sec. 121.

(1) After an intercounty drainage district has been established and the order establishing the intercounty drainage district has been filed as provided in this act, a petition to locate, establish, and construct a drain may be filed with any commissioner having jurisdiction of any of the lands designated in the order as constituting the drainage district. The petition shall ask for the location, establishment, and construction of the drain or drains, or any part of the drain or drains, as described in the order.

(2) Subject to subsection (3), the petition under subsection (1) shall be signed by a number of freeholders in the drainage district, whose lands would be liable to an assessment for benefits, equal to 1/2 of the number of freeholders whose lands would be traversed by the drain or drains applied for, or abut on the part of any highway or street along the side of which the drain extends, between the point where the drain enters the highway and the point where it leaves the highway and which lands are within the drainage district. The petition shall be accompanied by a description of the land in the district owned by each signer and by a certificate of the county treasurer as to payment of taxes and special assessments against the lands. The certificate shall be in substantially the following form:

I hereby certify that there are no taxes or special assessments unpaid against any of the lands described in the annexed list according to the records of the county treasurer's office for the past 3 years, except as follows:

Description	Year	Tax or assessment	Amount
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(3) For purposes of determining the number of freeholders needed for a petition under subsection (2), the name of any signer as to whose land the certificate under subsection (2) shows taxes or special assessments unpaid for 3 years shall not be counted. The eligibility of the signers to the petition 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 counties in which the lands are situated at the time the petition is filed. In determining the number of owners whose lands are traversed by the drain, or abut the drain, the drain commissioner shall investigate the records of the register of deeds, of the probate court, and of the circuit court of the county, and shall make diligent inquiry in the community, including inquiry of anyone in possession of all of the lands traversed by the drain or abutting the drain, as to the ownership of the lands.

(4) In lieu of a petition signed by freeholders under subsection (2), the petition may be signed solely by a municipality, if authorized by its governing body, or by any combination of such municipalities, if each petitioning municipality will be liable to assessment at large for public health for any part of the cost of the proposed drain. A petition signed under this subsection is not subject to subsection (2) or (3).

(5) As used in this section, "municipality" means a city, village, or township.

History: 1956, Act 40, Imd. Eff. Mar. 28, 1956 ;-- Am. 1968, Act 79, Eff. Nov. 15, 1968 ;-- Am. 2014, Act 551, Imd. Eff. Jan. 15, 2015
Popular Name: Act 40

280.122 Drainage board; duties generally; voting; notice of meeting; affidavit of mailing; failure to receive notice; expense of notification; drainage board as board of determination; determination of necessity, order; liability for percentage of costs.

Sec. 122.

(1) Within 20 days after a petition to locate, establish, and construct an intercounty drain is filed under section 121, the drain commissioner shall notify by certified mail the drain commissioner for each county in which any part of the drainage district is located and the director of the department of agriculture and rural development. The chairperson shall call a meeting of the drainage board within the time set forth in section 102.

(2) The drainage board has the same powers and duties as a drain commissioner with respect to a county drain, except as otherwise provided in this act.

(3) At a meeting of the drainage board, the chairperson shall not vote, except that the chairperson may cast the deciding vote in case of a tie.

(4) Not less than 10 days before the meeting, the drainage board shall give notice of the time, date, and place of the meeting by all of the following means:

(a) Publication in a newspaper of general circulation in the drainage district.

(b) Service, personally or by certified mail, on the county clerk and a member of the board of county road commissioners of each county and the supervisor of each township and clerk of each city and village in the drainage district.

(c) Service, by first-class mail on each person whose name appears on the last city or township tax roll as owning land in the drainage district, at the address shown on the roll. If an address does not appear on the roll, a notice need not be mailed to the person. The drain commissioner shall make an affidavit of the mailing and shall recite in the affidavit that the notice was mailed to all of the persons whose names and addresses appear upon the tax rolls as owning land in the drainage district. The affidavit is conclusive proof that notice was mailed to each person to whom notice is required to be mailed under this subdivision. The failure to receive a notice by mail is not a jurisdictional defect invalidating a drain proceeding or drain assessment if notice was sent by first class mail as provided in this section.

(5) All expenses of notification shall be paid by the drainage district when created.

(6) The drainage board shall act as the board of determination and shall determine by majority vote the necessity of drains proposed to be located, established, and constructed under this chapter.

(7) The drainage board shall consider the petition and evidence offered, and if it is determined that the drain is necessary for the public health, convenience, or welfare, it shall make an order to that effect and file the order with the drainage board. If the drainage board determines that the drain is not necessary and conducive to the public health, convenience, or welfare, the drainage board shall file an order dismissing the petition, and further petition for the drain shall not be filed within 1 year after the determination. Not more than 10 days after the drainage board files an order finding the proposed drain is necessary and conducive to the public health, convenience, or welfare, the drainage board shall determine the cities, townships, and villages within the drainage district benefiting from the drain for public health and shall notify each such city, village, and township that is liable to pay a percentage of the cost of the construction of the drain by reason of benefits at large for public health. Within 20 days after an order determining that the drain is necessary is filed, if an appeal has not been taken under section 122a, the drainage board shall make a further order, signed by the chairperson, to be known as the first order of determination. The first order of determination shall give the name or number of the drainage district and a general description of the route, terminus, and type of construction of the drain. A copy of the order shall be filed in the office of the county drain commissioner of each county into which any part of the drainage district is located.

(8) If a member of the drainage board would be disqualified under sections 381 and 383 from making an apportionment of benefits, both of the following apply:

(a) The disqualified drainage board member shall not participate in the determination of necessity.

(b) A special commissioner shall be appointed pursuant to section 382 to serve as a member of the drainage board to determine necessity.

History: 1956, Act 40, Imd. Eff. Mar. 28, 1956 ;-- Am. 1976, Act 341, Imd. Eff. Dec. 15, 1976 ;-- Am. 1978, Act 235, Imd. Eff. June 15, 1978 ;-- Am. 2018, Act 646, Eff. Mar. 28, 2019

Popular Name: Act 40

280.122a Judicial determination of drain necessity; filing of action.

Sec. 122a.

Whenever the drain board finds by majority vote of the whole number of members that the drain is or is not necessary, a person feeling aggrieved by the determination may institute an action in the circuit court for the county in which the real property is located for a determination of necessity. The action shall be filed by the person aggrieved within 10 days after the determination of necessity or no necessity by the drain board.

History: Add. 1970, Act 112, Imd. Eff. July 23, 1970

Popular Name: Act 40

280.123 Apportionment of benefits; assessment, correction, appeal.

Sec. 123.

(1) After securing the necessary property rights or interests as provided in this act, the drainage board shall determine the percentage of the whole cost of the drain to be apportioned to each county and shall include the determination in the final order of determination. If the drain commissioners cannot agree unanimously on the apportionment between counties, the chairperson shall propose the apportionment. If the drainage board cannot agree unanimously on the apportionment of benefits proposed by the chairperson, the matter shall be submitted to the board of arbitration in the manner prescribed in section 106 and that board's decision is final.

(2) After the apportionment of benefits is made under subsection (1), the commissioner of each county in which any part of the drainage district is located, unless disqualified under section 381, shall apportion the benefits for the construction of the drain to each tract or parcel of land, to any county, township, city, or village, and to any state trunk line highway within the drainage district, in the manner provided in chapter 7. The percentage so apportioned when finally approved shall be assessed against such counties, townships, cities, villages, highways, and lands according to the apportionment of benefits. The apportionment of benefits so made is subject to review and correction and may be appealed as provided in chapter 7.

History: 1956, Act 40, Imd. Eff. Mar. 28, 1956 ;-- Am. 2018, Act 646, Eff. Mar. 28, 2019

Popular Name: Act 40

280.124 Meetings of drainage board to receive bids and review apportionment of benefits; notice.

Sec. 124.

After such apportionment shall have been made by each of the commissioners, the chairman of the drainage board shall prepare and have printed notice of a meeting to be held at some convenient place, not less than 20 days from the date of such notice, for the purpose of receiving bids for the construction of such drain, and also for the holding of a public meeting not less than 5 nor more than 30 days after the date set for receiving bids, at which a review will be held of the apportionment of benefits made as aforesaid.

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

Popular Name: Act 40

280.125 Meetings of drainage board; review, appeal, computation of costs.

Sec. 125.

At such meeting the respective commissioners shall hear the proofs and allegations offered and shall reconsider and review the descriptions of land in that county forming a part of the drainage district, the apportionment of benefits, and define and equalize the same as may seem just and equitable. The persons entitled to appear and offer proof may appeal from such review and the manner of taking such appeal shall be as prescribed in chapter 7 of this act, being sections 151 to 161, inclusive.

Bids shall be received and computation of the total cost of the drain shall be made, as hereinafter provided, before the time set for review of the apportionment, and such computation shall be open to inspection at the time of review. If such computation shall not be completed before the day of review, such review may be adjourned from time to time, not more than 20 days in all for the completion of such computation, or a new hearing may be called with like notice by publication, posting and service at least 10 days before such hearing. If for any reason the contracts on which such computation was based shall not be executed and new contracts shall be let at a higher price, a corrected computation shall be made and a new review held with like notice.

History: 1956, Act 40, Imd. Eff. Mar. 28, 1956
Popular Name: Act 40

280.126 Construction of drain; receipt of bids and letting of contracts; abandonment of petition; order; notice.

Sec. 126.

At the time and place fixed in said notice, or at an adjourned date, the drainage board shall receive bids and let contracts for the construction of the drain in the manner prescribed in chapter 9, being sections 221 to 223. If no contract shall be let within 5 years after the date of filing the petition to locate, establish and construct the drain, the drainage board may determine that the petition shall be deemed abandoned and no further action shall be taken to construct the drain. Provided, That time during which any litigation shall be pending to contest the validity of such proceedings shall not be counted as a part of such 5-year period. If the drainage board determines the petition shall be abandoned, it shall issue its order to that effect; provided, that such determination of abandonment shall not be issued within the 5 year period. Notice of the order shall be given by publishing a notice in a newspaper of general circulation in each county affected. The provisions of this section shall apply to all petitions which are in full force and effect on the date of January 1, 1973, or thereafter.

History: 1956, Act 40, Imd. Eff. Mar. 28, 1956 ;-- Am. 1973, Act 16, Imd. Eff. Apr. 30, 1973
Popular Name: Act 40

280.127 Releases of right of way and damages.

Sec. 127.

Within 60 days next succeeding the entry of the first order of determination the said commissioners shall within their respective counties endeavor to secure from the owner of each parcel or tract of land which would be traversed or damaged by said proposed drain a release of the right of way and all damages on account thereof.

History: 1956, Act 40, Imd. Eff. Mar. 28, 1956
Popular Name: Act 40

280.128 Condemnation proceedings; obtaining right-of-way, easement, or other property interest.

Sec. 128.

If any person whose lands would be traversed or damaged by a proposed drain has not executed a release of the right-of-way, the drainage district may institute condemnation proceedings to obtain the necessary right-of-way, an easement, or other property interest pursuant to the uniform condemnation procedures act, 1980 PA 87, MCL 213.51 to 213.75.

History: 1956, Act 40, Imd. Eff. Mar. 28, 1956 ;-- Am. 1965, Act 108, Imd. Eff. June 30, 1965 ;-- Am. 2013, Act 262, Imd. Eff. Dec. 30, 2013
Popular Name: Act 40

280.129 Repealed. 2013, Act 262, Imd. Eff. Dec. 30, 2013.

Compiler's Notes: The repealed section pertained to meetings of special commissioners.
Popular Name: Act 40

280.130 Computation of construction cost; certification of special assessment rolls, filing; levy and collection of taxes.

Sec. 130.

The commissioners of each county affected shall within the time limited in chapter 11, being sections 261 to 280, inclusive, of this act, and in the manner therein prescribed compute the cost of construction of said drain, prepare and certify the special assessment rolls and file the same with the county drain commissioners. Each and everything necessary to be done in the levy and collection of drain taxes under this chapter shall be done within the time limited and in the manner prescribed in said chapter 11 of this act.

History: 1956, Act 40, Imd. Eff. Mar. 28, 1956
Popular Name: Act 40

280.131 Drain record; certified copies furnished other commissioners, filing.

Sec. 131.

A full record of such drain shall be made and entered by the several commissioners in the drain record books of their respective counties, and a certified copy of all the papers relative to the construction of such drain shall be delivered to the other commissioners by the commissioner having the original application or petition, which certified copies shall be filed in the office of the county drain commissioner of their respective counties as original papers are required to be filed and with the same force and effect.

History: 1956, Act 40, Imd. Eff. Mar. 28, 1956
Popular Name: Act 40

280.132 Drainage bonds; issuance; terms; deposit of money; disposition.

Sec. 132.

If it is determined that the assessments shall be collected in more than 2 installments, the drainage board, acting on behalf of the drainage district, may borrow money and may issue bonds in the manner provided for drains lying wholly within 1 county. The bonds shall be signed by the members of the drainage board and shall be countersigned by the clerks of the counties affected. Bonds issued under this chapter shall be payable at the office of the county treasurer of the county to which the larger percentage of the cost of construction is apportioned, and the bonds shall be deposited and safely kept by the treasurer until the bonds are sold and delivered. All installments, including interest, of the special assessments shall be transmitted as collected by the treasurer or treasurers of the other county or counties concerned to the treasurer of the county to which the larger percentage is apportioned, who shall issue his or her receipt and shall deposit the money in the fund of the drain to be disbursed solely for the payment of the bonds at maturity or upon mandatory redemption and the payment of interest on the bonds.

History: 1956, Act 40, Imd. Eff. Mar. 28, 1956 ;-- Am. 2016, Act 27, Imd. Eff. Mar. 1, 2016
Popular Name: Act 40

280.133 Interstate drain; application and petition, drainage district, proceedings; release of right of way, obstruction agreement.

Sec. 133.

Whenever any proposed drain lies wholly or partly in an adjoining state, or the lands to be drained thereby lie partly in an adjoining state, application to lay out a drainage district and a petition for the construction of such drain may be made to any commissioner representing any county in this state in which any portion of such proposed drain or lands to be affected thereby lie, and the same proceedings shall be had touching the portion of such drain or the lands to be drained or affected thereby, lying within this state as are provided in this chapter in the case of drains and lands lying wholly within this state: Provided, That before any expense shall be incurred in relation to any such proposed drain, a voluntary release of the right of way to construct such portion of such drain as may lie without this state and an agreement to keep the same or permit the same to be kept clear from obstruction shall first be obtained from the parties owning lands outside of this state through which such drain or portion thereof is to pass, and such release and agreement shall be filed with the said drain commissioner and shall form a part of the record of his proceedings in the premises.

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

Popular Name: Act 40

280.134 Intercounty drain; venue of actions; appointment of outside circuit judge.

Sec. 134.

Any action involving intercounty drains, except such actions as may be brought directly in the supreme court, may be brought in the circuit court of any county in which any part of the intercounty drain is located: Provided, That on request by any party to said action made prior to the time said action is instituted, or within 30 days after receipt of process, the presiding circuit judge of Michigan shall appoint a circuit judge of any judicial circuit not wholly or partially located within any county in which any part of the intercounty drain is located to hear said action.

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

Popular Name: Act 40

280.135 County or intercounty drain; extension into county not in original drainage district; adding to or removing lands from district; procedure; apportionment of cost; order.

Sec. 135.

(1) If at any time after a county or intercounty drain is constructed, it appears that it is necessary to extend the drainage district into a county that was not a part of the original drainage district or to remove lands from the original drainage district resulting in the removal of a county from an intercounty drainage district, the lands may be added to or removed from the drainage district pursuant to section 197(3) or by presenting a petition to the drain commissioner of 1 of the counties traversed or affected by the drain. The petition must be signed by either of the following:

(a) By any 5 freeholders or at least 50% of the freeholders if there are fewer than 5 freeholders whose lands will be liable for an assessment for benefits from the drain.

(b) By a municipality if authorized by its governing body or by any combination of municipalities, if the petitioning municipality or municipalities are or will be liable for an assessment at large for benefits from the drain.

(2) The petition shall state the name or number of the drain and identify the lands proposed to be added to or removed from the drainage district. A petition under this section may be combined with a petition under section 192.

(3) Upon receipt of the petition, the drain commissioner shall mail a copy of the petition to the director of the department of agriculture and rural development and to the drain commissioner of each county where the original or proposed revised drainage district is located. The director of the department of agriculture and rural development shall call a meeting of the drainage board, which shall include the commissioner of each county where the original or proposed revised drainage district is located. Notices of the meeting and all other proceedings shall be provided pursuant to section 197.

(4) At the meeting of the drainage board, all persons owning lands in the drainage district or proposed revised drainage district liable to assessment for benefits, or any municipality affected, may appear for or against the addition or removal of the lands. The drainage board shall consider the petition and any evidence offered. If the drainage board determines that the extension of the drainage district or the removal of lands from the drainage district is necessary for the public health, convenience, or welfare, it shall then determine the just percentage of the whole cost of construction that each county shall bear. If the commissioners cannot agree on the apportionment between counties, the chairperson shall determine that apportionment, subject to review under section 106.

(5) If, in the opinion of the drainage board, it is necessary to revise the drainage district boundaries, the board shall also enter an order to that effect. Copies of the order shall be filed with the drain commissioner of each county in the revised drainage district. After the order is filed, the revised drainage board constitutes the drainage board for the revised drainage district and has all the powers and duties of drainage boards under this act.

History: Add. 1957, Act 97, Imd. Eff. May 24, 1957 ;-- Am. 2017, Act 62, Imd. Eff. June 28, 2017 ;-- Am. 2020, Act 281, Eff. Mar. 29, 2021

Popular Name: Act 40