

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

280.154 Advertisement for receipt of bids and review of apportionment of benefits; publication and mailing of notice; affidavit of mailing; failure to receive notice; contents of notice; posting on internet; computation of cost; adjournment; review; appearances; duty of county drain commissioner; apportionment of benefits against state trunk line highway; notices; review; finality.

Sec. 154.

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

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

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

(4) The drain commissioner shall also send the notice under subsection (2) by first-class mail, at least 10 days before the date of the review of the apportionment of benefits, to each person whose name appears on the last city or township tax roll as owning land within the drainage district, at the address shown on the roll. Notice need not be mailed to a person whose address does not appear on the roll. The drain commissioner shall make an affidavit of the mailing and shall recite in the affidavit that the notice was mailed to all persons whose names and addresses appear on the tax rolls as owning land within the drainage district. The affidavit is conclusive proof that notice was mailed to each person to whom notice is required to be mailed. If notice has been sent by first-class mail as provided in this subsection, the failure to receive notice by mail does not constitute a jurisdictional defect invalidating a drain proceeding or assessment. If the drain commissioner determines that the drain is necessary for the public health and that the whole cost of the drain, except that part which may be apportioned for benefits to highways, shall be apportioned to municipalities, then mailing of individual notices to persons owning land within the drainage district as provided in this subsection is not required.

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

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

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

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

(c) A statement that, at the meeting to review the apportionment of benefits, the drain commissioner will have available to review the tentative apportionments against parcels and municipalities within the drainage district.

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

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

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

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

(h) The name or number of the drain.

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

(i) A description of the land constituting the drainage district for the drain. The description may be given by providing a map of the drainage district, by designating the boundaries of the drainage district by streets, highways, parcels, or tracts of land, or by describing the tracts or parcels of land constituting the district. If a parcel or tract is partially located within the district, for the purposes of the notice description only, the drain commissioner may

consider the entire parcel or tract to be located in the district.

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

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

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

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

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

(a) The estimated apportionment percentage.

(b) The estimated annual project assessment.

(c) The estimated project assessment duration.

(9) Bids for the construction of the drain shall be received and the total cost of the drain shall be computed before the time set for review of the apportionment. The computation shall be open to inspection. If the computation is not completed before the review of the apportionment, the drain commissioner shall adjourn the review from time to time, not more than 20 days in all, for the completion of the computation, or shall call a new meeting to review the apportionment of benefits and give notice as provided in subsections (3) to (7). If the contracts on which the computation was based are not executed and new contracts are let at a higher price, the drain commissioner shall correct the computation and, after giving notice as provided in subsections (3) to (7), hold a new review of the apportionment.

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

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

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

(11) If an apportionment of benefits is made against a state trunk line highway, unless the director of the state transportation department consents in writing to the apportionment, the drain commissioner shall notify by certified mail the director of the state transportation department of the percentage apportioned against the highway and the date, time, and place for a review of apportionment of benefits by the drain commissioner under subsection (2). The notice shall be mailed at least 20 days before the review of the apportionment. If the director of the state transportation department instead desires to have the apportionment of benefits reviewed by the director of the department of agriculture and rural development, the director of the state transportation department, within 10 days after receiving the notice under this subsection, shall file with the drain commissioner an objection to the apportionment. The drain commissioner shall notify the director of the department of agriculture and rural development of the date, time, and place for the review of apportionments. At the meeting, the director of the department of agriculture and rural development, or a deputy of the director, shall review the apportionment made against the state trunk line highway and listen to the proofs and allegations of the parties, and may view the highway benefited. The written decision on the apportionment under this subsection is final.

History: 1956, Act 40, Imd. Eff. Mar. 28, 1956 ;-- Am. 1957, Act 61, Imd. Eff. May 20, 1957 ;-- Am. 1961, Act 212, Imd. Eff. June 6, 1961 ;-- Am. 1963, Act 215, Imd. Eff. May 17, 1963 ;-- Am. 1963, Act 228, Eff. Sept. 6, 1963 ;-- Am. 1965, Act 138, Eff. Mar. 31, 1966 ;-- Am. 1978, Act 235, Imd. Eff. June 15, 1978 ;-- Am. 2010, Act 339, Imd. Eff. Dec. 21, 2010 ;-- Am. 2018, Act 646, Eff. Mar. 28, 2019 ;-- Am. 2020, Act 281, Eff. Mar. 29, 2021

Popular Name: Act 40