

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

***** 280.196.amended THIS AMENDED SECTION IS EFFECTIVE MARCH 24, 2021 *****

280.196.amended Inspection of county and intercounty drains; deposits in drain fund; expenditures for inspection, repair, and maintenance of drain; assessment; resolution approving expenditure of additional amounts; reassessment; notice; affidavit of mailing; failure to receive notice; assessment according to benefits received; determination of maximum assessment; emergency condition; excess expenditures upon request of public corporation; costs and bids where work performed by federal agency or public corporation; salaries, expenses, and benefits of certain employees.

Sec. 196. (1) An annual inspection may be made of a drain established under this act. An inspection shall be made upon the request of the governing body of a public corporation, as described in section 461, served in whole or in part by the drain to be inspected. Any inspection under this subsection shall be conducted by the following:

(a) For a county drain, by the drain commissioner or a competent person appointed by the drain commissioner.

(b) For an intercounty drain, by the drainage board or a competent person appointed by the drainage board.

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

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

(4) If an inspection discloses the necessity of expending money for the maintenance or repair of a drain to keep it in working order, the drain commissioner for a county drain, or the drainage board for an intercounty drain, may without petition expend an amount not to exceed in any 1 year \$5,000.00 per mile or fraction of a mile for maintenance and repair of the drain, not including inspection and engineering fees, legal fees, and the cost of publication and mailing. The determination of the maximum expenditure allowed under this subsection shall be based on the total number of miles of the drain and not on the actual number of miles or location of the maintenance or repair. Costs incurred for the inspection, maintenance, and repair of a drain performed under this section may be financed and assessed under this act for not more than 10 years.

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

(6) If the drain fund of a drainage district does not contain sufficient funds to pay for inspection, repair, and maintenance authorized by this section, the drain commissioner or the drainage board may finance the costs for not more than 10 years and shall assess the drainage district for not more than 10 years for the inspection, repair, and maintenance according to benefits received. The first installment of an assessment under this subsection shall be made and spread upon the city or township tax assessment roll within 2 years after the completion of the inspection, repair, and maintenance. If the total expenditure is more than the amount established in subsection (4) per mile or fraction of a mile, all real property owners subject to an assessment within the drainage district shall be notified of the assessment by publication in a newspaper of general circulation within the drainage district and by first-class mail to the name and address that appears on the last city or township assessment roll. An affidavit of mailing shall be made by the drain commissioner. The affidavit is conclusive proof that the notices required by this subsection were mailed. The failure of a person to receive a notice by mail is not a jurisdictional defect invalidating a drain assessment if notice by publication was given as required by this subsection.

(7) An assessment under subsection (6) for the actual cost of inspection, repair, and maintenance performed on a drain, or an assessment under subsection (3) to be deposited in the drain fund of a drainage district, shall be made according to benefits received. The expenditure limit of the amount established in subsection (4) per mile or fraction of a mile of drain shall be used to calculate the maximum amount that the drain commissioner or drainage board may assess in any 1 year without a petition or a request from a public

corporation. Determination of the maximum assessment amount allowed without petition or request, or of the property that is subject to assessment, shall be based on the number of miles of drain and areas of the drainage district receiving benefits and not on the actual number of miles or actual location of the inspection, repair, and maintenance.

(8) If an emergency condition exists that endangers the public health, crops, or property within a drainage district, and the drain commissioner or drainage board enters an order declaring and describing the emergency, the commissioner or drainage board may expend funds for maintenance and repair to alleviate the emergency condition.

(9) The drain commissioner or drainage board shall not levy an additional assessment for drain maintenance under this section if there is currently an assessment for previous maintenance work on the drain under this section unless subsection (8) applies or the expenditure for maintenance is approved by the governing body of each township, city, and village affected by more than 20% of the cost.

(10) The drain commissioner or the drainage board may expend funds in excess of the amount established in subsection (4) per mile or fraction of a mile in any 1 year for inspection, maintenance, and repair of a drain if requested by a public corporation and if the public corporation pays the entire cost of the inspection, maintenance, and repair.

(11) In computing the amounts that may be expended under this section, the cost of work to be performed by a federal agency or public corporation that is not chargeable to the county or intercounty drainage district shall not be included. The drain commissioner or the drainage board is not required to advertise for bids for that portion of the work to be done by the federal agency or public corporation.

(12) For purposes of this section, the costs of maintenance and repair include all of the following:

(a) The cost of maintaining the drain in working order to continue a normal flow of water, including the servicing or repair of necessary pumping equipment and utility charges for pumping equipment.

(b) The cost of keeping the drain free from rubbish, debris, siltation, or obstructions.

(c) The cost of repairing a portion or all of a tile or drain to continue the normal flow of water.

(d) Other costs associated with the costs described in subdivisions (a) to (c).

(13) The dollar amount limitations in subsections (4), (6), and (7) do not apply to expenditures or assessments to the extent the expenditures or assessments are necessary to pay utility charges or costs to service pumping stations, sewage treatment facilities, or detention or retention basins.

(14) Except as otherwise provided in this act, that portion of the salaries, expenses, and fringe benefits of administrative and engineering employees under the supervision of the drain commissioner that are directly attributable, but not incidental, to a drain and not otherwise recovered by fees established by resolution or ordinance of the board of commissioners may be charged to the drain fund of a drainage district.

History: 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1959, Act 70, Imd. Eff. June 12, 1959;—Am. 1960, Act 96, Imd. Eff. Apr. 26, 1960;—Am. 1962, Act 117, Eff. Mar. 28, 1963;—Am. 1968, Act 333, Imd. Eff. July 14, 1968;—Am. 1972, Act 270, Imd. Eff. Oct. 11, 1972;—Am. 1976, Act 344, Imd. Eff. Dec. 19, 1976;—Am. 1982, Act 523, Eff. Mar. 30, 1983;—Am. 1989, Act 149, Imd. Eff. July 14, 1989;—Am. 2008, Act 509, Eff. Mar. 31, 2009;—Am. 2020, Act 291, Eff. Mar. 24, 2021.

Popular name: Act 40