

**THE DRAIN CODE OF 1956**  
**Act 40 of 1956**

AN ACT to codify the laws relating to the laying out of drainage districts, the consolidation of drainage districts, the construction and maintenance of drains, sewers, pumping equipment, bridges, culverts, fords, and the structures and mechanical devices to properly purify the flow of drains; to provide for flood control projects; to provide for water management, water management districts, and subdistricts, and for flood control and drainage projects within drainage districts; to provide for the assessment and collection of taxes; to provide for the investment of funds; to provide for the deposit of funds for future maintenance of drains; to authorize public corporations to impose taxes for the payment of assessments in anticipation of which bonds are issued; to provide for the issuance of bonds by drainage districts and for the pledge of the full faith and credit of counties for payment of the bonds; to authorize counties to impose taxes when necessary to pay principal and interest on bonds for which full faith and credit is pledged; to validate certain acts and bonds; and to prescribe penalties.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1970, Act 144, Imd. Eff. Aug. 1, 1970;—Am. 1973, Act 208, Imd. Eff. Jan. 11, 1974;—Am. 1982, Act 449, Eff. Mar. 30, 1983.

**Popular name:** Act 40

*The People of the State of Michigan enact:*

CHAPTER 1.  
DRAINS.

**280.1 Drain code of 1956; short title.**

Sec. 1. This act shall be known and may be cited as “the drain code of 1956”.

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

**Transfer of powers:** See MCL 299.11.

**Popular name:** Act 40

**280.2 Drains; location, establishment, construction, maintenance, and improvements; petition.**

Sec. 2. Drains including branches may be located, established, constructed and maintained, and existing drains, creeks, rivers and watercourses and their branches, or tributaries whether located, established and constructed by a county drain commissioner or drainage board or by a city, village or township, may be cleaned out, straightened, widened, deepened, extended, consolidated, relocated, tiled, connected and relocated along a highway, or there may be provided for the same structures or mechanical devices that will properly purify or improve the flow of the drain or pumping equipment necessary to assist or relieve the flow of the drain, or 1 or more branches may be added thereto, by petition under the provisions of this act, whenever the same shall be conducive to the public health, convenience and welfare.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1956, Ex. Sess., Act 5, Imd. Eff. June 23, 1956;—Am. 1965, Act 194, Imd. Eff. July 15, 1965;—Am. 1969, Act 90, Imd. Eff. July 24, 1969;—Am. 1971, Act 60, Imd. Eff. July 20, 1971.

**Popular name:** Act 40

**280.3 Drain; definition.**

Sec. 3. The word “drain”, whenever used in this act, shall include the main stream or trunk and all tributaries or branches of any creek or river, any watercourse or ditch, either open or closed, any covered drain, any sanitary or any combined sanitary and storm sewer or storm sewer or conduit composed of tile, brick, concrete, or other material, any structures or mechanical devices, that will properly purify the flow of such drains, any pumping equipment necessary to assist or relieve the flow of such drains and any levee, dike, barrier, or a combination of any or all of same constructed, or proposed to be constructed, for the purpose of drainage or for the purification of the flow of such drains, but shall not include any dam and flowage rights used in connection therewith which is used for the generation of power by a public utility subject to regulation by the public service commission.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1958, Act 87, Imd. Eff. Apr. 11, 1958;—Am. 1969, Act 90, Imd. Eff. July 24, 1969.

**Popular name:** Act 40

**280.4 “Commissioner,” “drain commissioner,” or “county drain commissioner” defined.**

Sec. 4. As used in this act, “commissioner”, “drain commissioner”, or “county drain commissioner” means the elected county drain commissioner or the person or persons designated to perform the duties of the elected county drain commissioner as provided in sections 21 and 21a.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1989, Act 134, Imd. Eff. June 29, 1989.

**Popular name:** Act 40

### **280.5 Drainage district; body corporate.**

Sec. 5. Any drainage district heretofore or hereafter established shall be a body corporate with power to contract, to sue and to be sued, and to hold, manage and dispose of real and personal property, in addition to any other powers conferred upon it by law. The foregoing provision shall apply to all drainage districts including those established under chapters 20 and 21 of this act or under chapters 18 and 18a of Act No. 316 of the Public Acts of 1923, as amended.

**History:** Add. 1960, Act 96, Imd. Eff. Apr. 26, 1960.

**Compiler's note:** Act 316 of 1923, referred to in this section, was repealed by Act 247 of 1949, Act 40 of 1953, and Act 40 of 1956.

**Popular name:** Act 40

### **280.6 Drains; public easements and rights of way; use; release, notice, protest.**

Sec. 6. All established drains regularly located and established in pursuance of law existing at the time of location and establishment and visibly in existence, which were established as drains, and all drains visibly in existence in written drain easements or rights of way on file in the office of the commissioner, shall be deemed public drains located in public easements or rights of way which are valid and binding against any owners of any property interest who became or hereafter become such owners after the location and establishment of the drain or the existence of the drain became visible or the written drain easement or right of way was executed, and the commissioner or drainage board may use, enter upon and preserve such easement or right of way for maintenance of the visible drain and any other lawful activity with respect to the same not requiring a larger or different easement or right of way and may exercise any rights granted in the written easement or right of way on file in the office of the commissioner. Easements or rights of way, or portions of easements or rights of way, no longer necessary for drainage purposes may be conveyed or released to the fee owners by the commissioner or drainage board on behalf of the drainage district. The drain commissioner or drainage board shall give at least 30 days' notice of the intention to release the excess easements by publishing a notice in a newspaper of general circulation in the county or a newspaper of general circulation where the drainage district boundaries are located. This notice shall give a general description of the excess easements to be released and the date any taxpayers may appear to protest said release. After said date if no protests are received, the drain commissioner or drainage board may release said excess easements or portions thereof not necessary for drainage purposes.

**History:** Add. 1968, Act 208, Imd. Eff. June 24, 1968.

**Popular name:** Act 40

### **280.8 Conducting business at public meeting; notice; availability of writings to public.**

Sec. 8. (1) The business which a board or commission created pursuant to this act, or a body of special commissioners appointed pursuant to this act, may perform shall be conducted at a public meeting of the board, commission, or body of special commissioners held in compliance with Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of the meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976.

(2) A writing prepared, owned, used, in the possession of, or retained by a board, commission, or advisory committee created pursuant to this act, or a commissioner appointed pursuant to this act, in the performance of an official function shall be made available to the public in compliance with Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

**History:** Add. 1978, Act 235, Imd. Eff. June 15, 1978.

**Popular name:** Act 40

### **280.10 Drains; location; meetings; jurisdiction of commissioner; exception; payment of bonds or drain orders; deficiency.**

Sec. 10. Drains may be laid or extended into or along or from any lake or other body of water surrounded wholly or in part by a swamp, marsh or other low lands for the general purpose of drainage contemplated by this act, but not so as to impair the navigation of any navigable river.

Any meeting called pursuant to the provisions of this act, unless otherwise provided, may be adjourned from time to time by public announcement thereof and no advertisement of the time of said adjournment shall

be required.

The commissioner shall have jurisdiction over all established county drains within his county, heretofore established and now in the process of being established except that in the case of a drain located or to be located entirely within a single city or village, such jurisdiction shall be consented to by resolution of the governing body of such city or village.

If any drainage project lies entirely within the limits of a municipality less than a county, such municipality, by its governing body, shall have the power to pledge the full faith and credit of the municipality for the payment of bonds or drain orders issued in connection with such project, and if a deficiency exists in the drain fund or sinking fund for said drain 1 year after the last installment of the deficiency assessment provided for in section 280 of this act, shall have become delinquent, such municipality shall forthwith advance to the county drain fund the amount of such deficiency and thereafter all receipts of such drain fund from the sale of delinquent tax lands, which had been assessed for said drain, shall be paid to the municipality within 90 days after receipt by the county treasurer.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1963, Act 228, Eff. Sept. 6, 1963.

**Popular name:** Act 40

### **280.11 Easement; right of way; release of damages; recording.**

Sec. 11. Any easement, right of way or release of damages obtained in connection with any proposed drain or drains shall, following the expiration of 30 days after the day of review, be recorded in the office of the register of deeds: Provided, That in any drain proceeding in which an injunction or a writ of certiorari has been issued but not determined within 30 days after the day of review, the recording shall be within 30 days after a determination sustaining the drain.

All easements, rights of way or releases of damages hereafter obtained in connection with any existing drain shall be recorded in the office of the register of deeds when said drain is being cleaned, relocated, deepened, widened, straightened, extended, tiled or consolidated pursuant to law.

The recording required by this section shall be made by the drain commissioner or the drainage board, as the case may be, and the cost of such recording paid by the drainage district.

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

**Popular name:** Act 40

### **280.12 Specification of time; directory or mandatory.**

Sec. 12. Except as provided in section 8, when a time is specified in this act in which the drain commissioner or a drainage board shall take a specified administrative action or a procedural step, the specification of time shall be considered directory and not mandatory and failure to take the action or step within the time specified shall not affect the legality and validity of a drain proceeding. Where the specification of time relates to the giving of notice, the filing of objections, the taking of an appeal, the commencement of an action in a court, the taking of an action or step in the assessment, levy, or collection of drain assessments, taxes or other charges, or to a requirement of due process, the specification of time shall be considered mandatory if so provided in this act.

**History:** Add. 1969, Act 90, Imd. Eff. July 24, 1969;—Am. 1978, Act 235, Imd. Eff. June 15, 1978.

**Popular name:** Act 40

## CHAPTER 2.

### COUNTY DRAIN COMMISSIONER.

### **280.21 County drain commissioner; election; term; temporary replacement; vacancy; bond; abolishment of office in certain counties; transfer of power and duties; effect of establishing department of public works or public improvement agency; election of public works commissioner; public hearing; abolishing office of public works commissioner; referring to office as drain commissioner; county governed by MCL 280.21a; change of name to office of water resources commissioner; criteria.**

Sec. 21. (1) At the general election to be held in November, 1976, and each fourth year after November, 1976, a county drain commissioner shall be elected in each county having a drain commissioner by the qualified electors of the county. The term of office of a commissioner shall begin on the January 1 following the drain commissioner's election and continue for a period of 4 years and until his or her successor is elected and qualified, whichever occurs earlier. If a drain commissioner is unable to execute the duties of his or her office and a deputy commissioner has not been appointed under section 24, the county clerk and prosecuting attorney of that county may appoint a temporary replacement to hold the office until the commissioner is able

to return to his or her duties or until the expiration of the commissioner's term of office. The temporary replacement shall perform the same duties, have the same responsibilities, and receive the same compensation as the drain commissioner. The appointment shall be made in writing and filed with the clerk of the county. If a vacancy in the office of drain commissioner arises while an individual is serving as temporary drain commissioner, the temporary drain commissioner shall have all the powers and duties of a drain commissioner until a drain commissioner is elected or appointed. As determined by the county board of commissioners, a temporary drain commissioner shall be covered by a blanket bond or shall file a bond with the county clerk in a sum not less than \$100,000.00, conditioned upon the faithful discharge of his or her duties.

(2) As determined by the county board of commissioners, the county drain commissioner shall be covered by a blanket bond or before entering upon the duties of office, shall execute and file with the county clerk a bond to the people of the state in the penal sum of \$100,000.00, issued by a surety company licensed to do business in this state, conditioned upon the faithful discharge of the duties of the office. The county board of commissioners may fix the individual bond to be required of the commissioner at a different amount if, in its judgment, that is desirable.

(3) The county board of commissioners of a county having a population of less than 12,000, by resolution of a 2/3 vote of the members elect, may abolish the office of county drain commissioner and transfer the powers and duties of the office to the board of county road commissioners.

(4) If a county establishes a department of public works pursuant to 1957 PA 185, MCL 123.731 to 123.786, or a public improvement agency with the drain commissioner designated as the county agent pursuant to the county public improvement act of 1939, 1939 PA 342, MCL 46.171 to 46.188, the county board of commissioners, by resolution of a 2/3 vote of the members elected and serving, may combine the powers, duties, and functions set forth in 1957 PA 185, MCL 123.731 to 123.786, the county public improvement act of 1939, 1939 PA 342, MCL 46.171 to 46.188, and this act into 1 county department headed by a public works commissioner. The public works commissioner shall be elected in the same manner and for the same term as a drain commissioner and shall carry out the powers and duties of a drain commissioner.

(5) A resolution provided for in subsection (4) may not be adopted unless the county board of commissioners has first held at least 1 generally publicized public hearing on the resolution.

(6) Not less than 3 years after a county establishes the office of public works commissioner pursuant to subsections (4) and (5), or a public improvement agency, the county board of commissioners, by resolution approved by a 2/3 vote of the members elected and serving, may abolish the office of public works commissioner not less than 6 months before the next primary election for that office. The office of public works commissioner shall be abolished in the county effective 180 days after a resolution is adopted pursuant to this subsection. The office shall then be referred to as the drain commissioner and the person in office at the time a resolution of abolishment is passed shall fulfill the remainder of the term of office until the next general election.

(7) A county that is organized under 1966 PA 293, MCL 45.501 to 45.521, whose charter prescribes an elected county executive, and which county has a population of more than 2,000,000 at the time the charter is adopted, shall be governed by section 21a in place of this section.

(8) Except for a county subject to subsection (7), if a drain commissioner performs functions other than acting as a drain commissioner under this act, including, but not limited to, operating sewers, lake level and soil erosion enforcement, and facilitating compliance with federal clean water act mandates, a county may, by resolution of the majority of the members elected and serving on the board of commissioners and with the consent of the drain commissioner, change the name of the office of the drain commissioner to the office of the water resources commissioner. The water resources commissioner shall be elected in the same manner as a drain commissioner and carry out the powers and duties of a drain commissioner as provided in this act.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1963, 2nd Ex. Sess., Act 13, Imd. Eff. Dec. 27, 1963;—Am. 1965, Act 9, Eff. Mar. 31, 1966;—Am. 1968, Act 252, Eff. Nov. 15, 1968;—Am. 1974, Act 170, Eff. Apr. 1, 1975;—Am. 1978, Act 633, Imd. Eff. Jan. 8, 1979;—Am. 1989, Act 134, Imd. Eff. June 29, 1989;—Am. 2007, Act 51, Imd. Eff. Aug. 28, 2007.

**Popular name:** Act 40

## **280.21a Powers and duties of drain commissioner performed by designated persons in certain counties.**

Sec. 21a. In a county organized under a charter adopted under Act No. 293 of the Public Acts of 1966, being sections 45.501 to 45.521 of the Michigan Compiled Laws, whose charter prescribes an elected county executive, and which county has a population of more than 2,000,000 at the time the charter is adopted, the powers and duties of the drain commissioner, under this act, shall be performed by a person or persons designated in accordance with the county's charter.

**History:** Add. 1989, Act 134, Imd. Eff. June 29, 1989.

**Popular name:** Act 40

#### **280.22 Drain commissioner; establishment of office.**

Sec. 22. All commissioners holding such office when this act takes effect shall continue to be such commissioners until their respective successors are elected and qualified in accordance with the provisions of the foregoing section. The majority of the board of county commissioners may establish or reestablish the office of county drain commissioner in counties not having a county drain commissioner by resolution of a majority of members elect.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1970, Act 111, Eff. Apr. 1, 1971.

**Popular name:** Act 40

#### **280.23 Drain commissioner; jurisdiction; drains in more than one county; outlet only in another county.**

Sec. 23. The commissioner shall have jurisdiction over all drains within his county, including those heretofore established and now in process of construction. Drains extending into more than 1 county, or affecting lands in more than 1 county, shall be established and constructed in accordance with the provisions of this act regulating the establishment and construction of drains traversing more than 1 county or affecting lands in more than 1 county. Nothing in this act shall be construed as depriving a drain commissioner of jurisdiction or as making any drain an intercounty drain, merely because a drain extends into another county for the purpose of securing a proper outlet and not for the purpose of draining any lands in the other county: Provided, such extension is approved by the drain commissioners and the board of supervisors of each affected county. The portion of any such drain extending into another county shall not be considered in determining the number of signers required to a petition to locate, establish and construct.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1958, Act 64, Imd. Eff. Apr. 11, 1958.

**Popular name:** Act 40

#### **280.24 Deputy commissioners; appointment; revocation; bond; powers and duties.**

Sec. 24. A commissioner may appoint a deputy or deputies, if the county board of commissioners approves, and may revoke the appointment at pleasure. The appointment shall be made in writing and filed with the clerk of the county. If the commissioner is unable to execute the duties of office, the deputy or deputies shall execute or assist in the execution of the duties of the county drain commissioner assigned by the county drain commissioner. As determined by the county board of commissioners, the deputy or deputies, either shall be covered by a blanket bond or shall file a bond with and to be approved by the commissioner in a sum not to exceed \$5,000.00, conditioned upon the faithful discharge of the deputy's or deputies' duties. If the commissioner dies during his or her term, the deputy commissioner shall have all of the powers and be charged with all of the duties of a commissioner until a commissioner is appointed or elected.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1963, Act 209, Eff. Sept. 6, 1963;—Am. 1978, Act 633, Imd. Eff. Jan. 8, 1979.

**Popular name:** Act 40

#### **280.25 Deputy drain commissioner; liability of commissioner and bondsmen; liability of drainage district; public liability or other insurance.**

Sec. 25. The commissioner and his bondsmen shall be liable for all the acts and defaults of the deputy or deputies when appointed as herein provided. After entry of the order designating drainage districts as provided in section 54 and section 105 of this act, the drainage district as designated shall be responsible for and liable for all acts and defaults of such commissioner and his deputy or deputies, except for acts of malfeasance or misfeasance.

The board of supervisors may adopt resolutions providing that public liability or other insurance may be purchased at the expense of the county to cover such potential liabilities of the various drainage districts under the supervision of the county drain commissioner.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1962, Act 152, Imd. Eff. May 9, 1962.

**Popular name:** Act 40

#### **280.26 Deputy drain commissioner; salary, expenses, reports to drain commissioner.**

Sec. 26. Each deputy commissioner shall receive such salary or compensation as the board of supervisors shall allow and all traveling expenses actually and necessarily spent by him in the discharge of his duties as prescribed in this act; he shall make a report to the commissioner of all work performed by him on or before

the first Saturday of each month and an annual report on or before the second Wednesday in September of each year.

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

**Popular name:** Act 40

### **280.27 Supplies; blank applications, office, location, hours.**

Sec. 27. County clerks, or the board of auditors in counties having such boards, shall be authorized, and it shall be their duty to procure, at the expense of their respective counties, the necessary books, blanks and stationery for the use of said commissioners; and each commissioner shall furnish upon request blank applications or petitions to any person who may desire to file the same under this act. The office of the commissioner shall be furnished at the expense of the county by the board of supervisors, or by the board of auditors in counties having such boards, and shall be maintained at the county seat, in which said office said commissioner shall be and remain at least 1 day per week, such day to be painted on the door of the commissioner's office and printed or stamped on his stationery.

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

**Popular name:** Act 40

### **280.28 County drain commissioner; salary and expenses; itemized and verified expense account.**

Sec. 28. (1) Each commissioner shall receive an annual salary to be paid as other county officers are paid, the amount of the salary to be fixed by the county board of commissioners before November 1 of each year in the same manner as the salaries of other county officers are fixed. The salary may be increased but shall not be decreased during his or her term of office, and in addition, each commissioner shall be allowed his or her actual necessary expenses, including traveling expenses incurred in the discharge of the duties of the office, including all actual and necessary expense for clerk hire and recording by the county board of commissioners or board of county auditors to be paid by the county. The expense account shall be an itemized account and verified by oath taken before a proper officer. The amounts paid to the commissioner for salary and expenses shall be in full for all services rendered by the commissioner and all expenses incurred in the performance of the duties of the office.

(2) Notwithstanding subsection (1), for a county which has a county officers compensation commission, the compensation for each county drain commissioner shall be determined by that commission. A change in compensation for a county drain commissioner of a county which has a county officers compensation commission shall commence at the beginning of the first odd numbered year after the determination is made by the county officers compensation commission and is not rejected.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1965, Act 9, Eff. Mar. 31, 1966;—Am. 1968, Act 78, Imd. Eff. Nov. 15, 1968 ;—Am. 1978, Act 478, Eff. Dec. 1, 1978.

**Popular name:** Act 40

### **280.29 Surveys; use of books, equipment, field notes, profiles, blueprints, specifications, estimates, engineers.**

Sec. 29. The county shall furnish the commissioner with all necessary books and papers for use in the survey, and such office equipment as shall be necessary in making profiles, blueprints and specifications in any drainage district. The surveyor or engineer shall file with the commissioner all field notes, blueprints, profiles, estimates and all other papers in his possession relating to said drain. The board of supervisors of any county may employ an engineer who shall perform under this act the services required to be performed by an engineer or surveyor.

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

**Popular name:** Act 40

### **280.30 Drainage district; financial statement, records, prerequisites to tax spread.**

Sec. 30. It shall be the duty of each commissioner to make and keep a full financial statement of each drainage district. The commissioner shall also make and keep in his office in a book to be provided for that purpose a complete record of each drainage district, which record shall include a copy of the application for laying out and designating such district, of the petition for the drain, of the minutes of the survey, of the releases of the right of way where the same have been released, of the orders of determination of the necessity for and of the establishment of the drain, and of the apportionment and assessment of benefits therefor. Where special commissioners have been called, it shall also contain a copy of the application to the probate court, of the return of the special commissioners and of all other papers in his office necessary to show a complete

history of each drainage district, all of which said original papers shall then be enrolled and filed in the office of the county drain commissioner. No drain tax shall be spread until all the records required have been deposited and filed in the office of the county drain commissioner.

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

**Popular name:** Act 40

### **280.31 Submitting annual report and financial statement to county board of commissioners; reports and information required by director of department of agriculture; liability on bond.**

Sec. 31. (1) Each commissioner shall make a report to the county board of commissioners at its annual meeting in October of the drainage districts laid out, the drains constructed, finished, or begun under his or her supervision during the year ending October 1, and the commissioner shall also submit to the board a full financial statement of each drainage district. If authorized by resolution of the county board of commissioners, the report shall be made before April 2 of each year and shall cover the preceding calendar year. The commissioner shall also make reports and furnish information as required by the director of the department of agriculture.

(2) The reports required by subsection (1) shall include an itemized statement of the orders issued on account of each drainage district and a debit and credit balance of the district fund. The commissioner shall be liable on the blanket bond or his or her individual bond for gross neglect of duty or a misapplication of money coming under his or her control as commissioner.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1978, Act 104, Imd. Eff. Apr. 6, 1978;—Am. 1978, Act 633, Imd. Eff. Jan. 8, 1979.

**Popular name:** Act 40

### **280.32 Drain commissioner; social security; agreement for coverage; appropriation.**

Sec. 32. The board of supervisors of each county having a drain commissioner may adopt a resolution authorizing the county to enter into an agreement with the secretary of health, education and welfare pursuant to the provisions of Act No. 205 of the Public Acts of 1951, as amended, being sections 38.851 to 38.870 of the Compiled Laws of 1948, to allow the drain commissioner and all the employees of the drain commissioner's office to obtain the benefits provided by the federal social security act. The funds necessary for this coverage shall be appropriated from the county general fund or from the revolving drain fund.

**History:** Add. 1966, Act 109, Imd. Eff. June 22, 1966.

**Popular name:** Act 40

### **280.33 Salary of commissioner, deputy commissioners, clerks, and employees; payment from general fund; drain maintenance employees; hiring, status, and compensation; reimbursement of county general fund by drain districts; waiver.**

Sec. 33. (1) The salary of the commissioner, deputy commissioners, and clerks and employees of the drain commissioner's office shall, except as otherwise provided in this act, be paid from the general fund of the county in the same manner and at the same time as other county employees are paid.

(2) The drain commissioner may, with the approval of the county board of commissioners, hire drain maintenance employees. Such drain maintenance employees shall be considered county employees and shall be compensated from the general fund of a county in the same manner and at the same time as other county employees.

(3) The general fund of a county shall be reimbursed by the drain districts in which work is performed by drain maintenance employees hired by the commissioner pursuant to subsection (2) for compensation, including the cost of fringe benefits, paid to the drain maintenance employees by the county from its general fund. The county board of commissioners may waive the reimbursement for emergency work not exceeding \$800.00 performed on any 1 drain during the course of 1 year.

**History:** Add. 1976, Act 337, Imd. Eff. Dec. 15, 1976;—Am. 1980, Act 121, Imd. Eff. May 21, 1980;—Am. 1982, Act 356, Imd. Eff. Dec. 21, 1982.

**Popular name:** Act 40

## CHAPTER 3. COUNTY DRAINAGE DISTRICTS.

### **280.51 County drainage districts; application, signers, eligibility, sufficiency; deposit for costs.**

Sec. 51. Before a commissioner takes any action on any application to locate, establish and construct any

drain, there shall first be filed with him an application to lay out and designate a drainage district with reference to a proposed drain therein; such application shall tentatively describe the location and route of such proposed drain. The application shall be signed by not less than 10 freeholders of the township or townships in which such proposed drain or the proposed lands to be drained thereby may be situated: Provided, That 5 or more of said signers shall be the owners of land liable to an assessment for the construction of such proposed drain: Provided further, If it shall appear to the drain commissioner on filing an application to lay out and designate a drainage district that said district might not include 20 freeholders whose lands would be liable for such assessment, in such case such application shall be received if any one of the signers is a freeholder liable to an assessment for the construction of such proposed drain. The eligibility of the signers to such application shall be determined by the drain commissioner according to 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 such lands are situated at the time such application is filed. The board of supervisors, by resolution, may instruct the drain commissioner to refuse any application to lay out a drainage district unless a cash deposit, sufficient to cover the preliminary costs, accompanies the application. If the drain is completed, the cost advanced shall be returned to the depositor or his personal representative out of the first tax collections on the drain. If uncompleted, any excess above costs shall be so returned. In lieu of an application signed by freeholders as aforesaid, such an application may be signed solely by the board of health of the county if the proposed drain is necessary for the public health of any part of the county, or may be signed solely by any city, village or township when duly authorized by its governing body, if the proposed drain is necessary for the public health of such municipality and if such municipality will be liable for an assessment at large against it for a percentage of the cost of the proposed drain. The entry of an order designating a drainage district, as hereinafter provided, shall be deemed a determination of the sufficiency of such application.

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

**Popular name:** Act 40

#### **280.52 County drainage districts; practicability of drainage; survey, determination; tax delinquency.**

Sec. 52. Upon filing of such application for a new drainage district, the commissioner shall immediately cause a survey to be made by a competent surveyor or engineer to determine the area which would be drained by the proposed drain, and the route and type of construction of the drain or drains most serviceable for that purpose. He shall not be limited in such determination to the route described in the application. In any county having a board of county auditors, no survey shall be ordered without the approval of such board but if the application shows, or it is determined thereafter, that any such proposed drainage district will affect lands in more than 1 county, the commissioner shall proceed under the portions of chapter 5 of this act relating to intercounty drains, and in such case the approval of the board of county auditors shall not be required. If upon the survey, or if before the survey is made, the commissioner determines that the proposed drain is impractical, he shall take no further action thereon but shall, in writing, notify the persons who delivered the application to him, of that fact, and his reasons for making his determination. If upon the survey the commissioner determines the proposed drain to be practical, he shall lay out a drainage district, prepare and file in the office of the drain commissioner a description of the drainage district, which may be described by its boundaries of highways and streets and tracts and parcels of land including therein all highways and streets, townships, cities and villages or by a description of all tracts or parcels of land, highways, townships, cities and villages which would be benefited by the construction of the proposed drain, and which would be liable to an assessment therefor, should the drain be constructed as hereinafter provided. The commissioner shall obtain from the county treasurer a statement showing as near as may be the amount of taxes and special assessments levied against the lands in the proposed drainage district on the tax rolls for the 3 years next preceding, and the amount of such taxes and assessments remaining unpaid, and if it appears from the statement that 33 1/3% or more of the lands in the proposed drainage district have been returned as tax delinquent and still remain delinquent, no further action shall be taken.

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

**Popular name:** Act 40

#### **280.53 County drains; surveyor, duties; route.**

Sec. 53. The surveyor or engineer authorized to make the survey shall ascertain the size and depth of the drains and he shall preserve all minutes with reference thereto. He shall prepare preliminary plans, drawings and profiles thereof, together with a computation of the yards of earth to be excavated, the amount of tile or pipe to be used and the necessary bridges and culverts or fords to be built in constructing such proposed drain, and his estimate of the cost of such construction, and where practicable shall recommend the leveling of the



spoil banks. He shall thereupon lay out a drainage district, which district may be described by its boundaries of streets or highways or tracts or parcels of land, or by a description of all tracts or all 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 commissioner. 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. 1961, Act 212, Imd. Eff. June 6, 1961;—Am. 1968, Act 79, Eff. Nov. 15, 1968.

**Popular name:** Act 40

**280.54 Order designating county drainage district; contents; notice of filing; amendment of name or number of drain; procedure.**

Sec. 54. The commissioner shall prepare and file in his office his order designating a drainage district and give it a name or number and describe therein the boundaries of the district by streets or highways or parcels of land for each of the several tracts or parcels of land included therein and the counties, townships, cities, villages and state trunk line highways which would be benefited by the construction of the drains and would be liable to assessment therefor, also a description of the drains as determined by him, showing the beginning, route, terminus, type of the proposed construction and the estimated cost of such proposed construction. The commissioner shall give notice of filing the order designating a drainage district by publishing a notice in a newspaper of general circulation in the county, or a newspaper of general circulation in the area where the drainage district boundaries are located, which notice shall give a general description of the route of the proposed drain or drains and of the drainage district as shown by the order.

At any time after the order designating a drainage district and giving it a name or number has been filed in the office of the drain commissioner, the order may be amended as to the name or number of the drain at any time by presenting to the drain commissioner of the county a petition signed by no less than 5 land owners whose land is traversed by the drain, which petition shall state the then present name or number of the drain and the change or changes to be made in the name or number. Upon receipt of such petition, and if in the drain commissioner's opinion it is to the best interest of all concerned that the name or number be changed, he shall make his order amending the name or number, and thereafter the drainage district shall be known by such name or number. The drain commissioner shall forthwith post such signs upon the drain as he may deem advisable for public notice of the new name or number.

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

**Popular name:** Act 40

CHAPTER 4.  
COUNTY DRAINS.

**280.71 Petitions to establish drainage districts; filing, signers, certificate of county treasurer; municipality-signed petition.**

Sec. 71. After a drainage district has been established and the order therefor filed with the county drain commissioner, a petition to locate, establish and construct a drain may be filed with the commissioner having jurisdiction of the lands designated in such order as constituting the drainage district. Such petition shall ask for the location, establishment and construction of the drain or drains, or any part thereof, as described in said order. The petition shall be signed by a number of freeholders in said drainage district whose lands would be liable to an assessment for benefits, equal to 1/2 the number of freeholders whose lands would be traversed by the drain or drains applied for or abut on any highway or street along the side of which such drain extends, between the point where such drain enters such highway and the point where it leaves such highway and which lands are within the drainage district. Such petition shall be accompanied by a description of the land in said district owned by each signer and by a certificate of the county treasurer as to payment of taxes and special assessments against such lands. Such 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
.....	.....	.....	.....

The name of any signer as to whose land such certificate shows taxes or assessments unpaid for 3 years shall not be counted. The eligibility of the signers to such petition shall be determined by the commissioner according to their interest of record in the office of the register of deeds in the probate court or the circuit court of the county in which such lands are situated at the time such petition is filed. In determining the

number of owners whose lands are traversed by such drain, or abut thereon as hereinbefore prescribed, 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 such lands so traversed or so abutting as to the ownership thereof. In lieu of a petition signed by freeholders as aforesaid, the petition may be signed solely by a city, village or township when duly authorized by its governing body, or by any combination of such municipalities, if such petitioning municipality or municipalities will be liable to assessments at large for at least a percentage of the total amount to be assessed for the cost of the proposed drain. In the event of such a municipally signed petition, then the foregoing provisions of this section, other than the first 2 sentences thereof, shall not be applicable.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1967, Act 214, Imd. Eff. July 10, 1967.

**Popular name:** Act 40

**280.72 Board of determination; appointment, qualifications, and compensation of members; location of meeting; failure or refusal to serve; informing legislator of persons appointed; notice of meeting; publication; affidavit of mailing; effect of failure to receive notice; expenses of notice; election of chairperson and secretary; determination of necessity of proposed drain; statement; orders of board; cost; notice; appeal; duties of commissioner.**

Sec. 72. (1) As soon as practicable after the filing of a petition, the commissioner authorized to act on the petition, if not disqualified under section 381 to make the apportionment of benefits, may appoint a board of determination composed of 3 disinterested property owners. If the commissioner is disqualified or chooses not to appoint the board of determination, the commissioner shall immediately file a copy of the petition with the chairperson of the county board of commissioners, together with a statement signed by the commissioner, showing that he or she is disqualified or chooses not to act in appointing a board of determination. Upon receiving a copy of the petition and certificate, the chairperson of the county board of commissioners, if not privately interested, as soon as practicable, shall appoint a board of determination composed of 3 disinterested property owners and shall immediately notify the drain commissioner of the names and addresses of those appointed. If the chairperson of the board of commissioners has a private interest in the proceedings, the drain committee of the county board of commissioners shall appoint the board of determination. Members of boards of determination shall be residents of the county but not of a township, city, or village affected by the drain, and may not be members of the county board of commissioners of the county. A meeting of the board of determination shall be called within the drainage district at a convenient place to be designated by the drain commissioner. The board of determination meeting also may be held at a public building within the city, village, or township in which the drain is located. If 1 of those appointed to the board of determination fails or refuses to serve, the drain commissioner shall appoint a successor. The per diem compensation, mileage, and expenses of a member of the board of determination shall be the same as the county board of commissioners of the county. In counties where commissioners are not paid on a per diem basis the compensation, mileage, and expenses shall be fixed by the drain commissioner. The members of the board of determination shall not receive more than 1 per diem for a day no matter how many separate matters are considered on that day. Upon request, the county drain commissioner shall inform in writing the requesting state legislator who represents that portion of the area in which the proposed drain improvement is to be constructed of the names and addresses of the persons appointed to a board of determination.

(2) The drain commissioner shall give public notice of the time, date, and place of the meeting of the board of determination in the manner required by the open meetings act, Act No. 267 of the Public Acts of 1976, as amended, being sections 15.261 to 15.275 of the Michigan Compiled Laws, and by publication in a newspaper of general circulation in the county at least 10 days before the meeting. Notice also shall be served on the county clerk and on the clerk of each township, city, and village in the district, personally or by registered mail, at least 10 days before the meeting. The drain commissioner also shall send notice, by first class mail, of the time, date, and place of the meeting, to each person whose name appears on the last city, village, or township tax assessment roll as owning land within the special assessment 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 persons to whom the notice was mailed constitute all of the persons whose names and addresses appear upon the tax rolls as owning land within the particular special assessment district. The affidavit shall be conclusive proof that notice was mailed to each person to whom notice is required to be mailed pursuant to this section. The failure to receive a notice by mail shall not constitute a jurisdictional defect invalidating a drain proceeding or tax, or both, if notice has been sent by first class mail as provided in this section. Expenses of notification shall be paid by the drainage district when created.

(3) At the time and place fixed in the notice the board of determination shall meet, elect a chairperson and secretary, and proceed to determine the necessity of the proposed drain and whether the drain is conducive to public health, convenience, or welfare. The board of determination, if it considers it necessary, shall require the county drain commissioner to obtain from the county treasurer a statement showing the amount of taxes and special assessments levied against the land in the proposed drainage district on the tax rolls for the immediately preceding 3 years and the amount of the taxes and assessments remaining unpaid. If it appears from the statement that 25% or more of the taxes are unpaid on the lands, further action shall not be taken. After hearing the evidence offered, the board of determination shall make its determination on the necessity of the drain and whether the drain is conducive to public health, convenience, or welfare. If the board of determination finds, by a majority vote of the members, that the drain is not necessary and conducive to public health, convenience, or welfare, the board of determination shall file with the commissioner an order dismissing the petition, and a further petition for the drain shall not be entertained within 1 year after the determination. If the board of determination, by a majority vote, finds the drain proposed to be necessary and conducive to the public health, convenience, or welfare, the board of determination shall make an order to that effect and file the order with the commissioner. If the board of determination finds that a portion of the construction of the proposed drain is necessary for the protection of the public health in 1 or more cities, villages, and townships, the order shall set forth the determination giving the names of the municipalities receiving benefit for health. If the board of determination determines that the whole cost, except that to be levied against state or county highways for highway benefits, is necessary for the public health, the cost shall be levied against the townships, villages, and cities at large, and it shall not be necessary, in a subsequent order or notice to describe or refer to land included in or comprising the drainage district. Upon filing of the order of determination by the board of determination, the drain commissioner, within 10 days of filing, shall notify each municipality that it is liable to pay a percent of the cost of construction of the drain by reason of benefits at large for public health. The governing body of the township, city, or village, within 20 days after receipt of the notification by registered mail from the drain commissioner, may appeal the order of the board of determination to the probate court having jurisdiction in the county in which the township, city, or village is located. Upon receipt of the order of the board of determination, and if an appeal has not been taken by a municipality to the probate court, the commissioner, after 20 days, shall make his or her first order of determination in writing, giving the name or number of the drainage district. The commissioner shall establish the commencement, route, terminus, and type of construction of the drain, a copy of which order he or she shall file, within 15 days, in his or her office. If an appeal is taken to the probate court by a municipality, the commissioner shall file his or her first order of determination after the appeal procedures are terminated.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1957, Act 61, Imd. Eff. May 20, 1957;—Am. 1963, Act 215, Imd. Eff. May 17, 1963;—Am. 1963, Act 228, Imd. Eff. Sept. 6, 1963;—Am. 1965, Act 138, Eff. Mar. 31, 1966;—Am. 1969, Act 285, Eff. Mar. 20, 1970;—Am. 1970, Act 111, Eff. Apr. 1, 1971;—Am. 1972, Act 302, Imd. Eff. Dec. 22, 1972;—Am. 1978, Act 235, Imd. Eff. June 15, 1978;—Am. 1980, Act 120, Imd. Eff. May 21, 1980;—Am. 1987, Act 60, Imd. Eff. June 25, 1987.

**Popular name:** Act 40

#### **280.72a Judicial determination of necessity; filing of action.**

Sec. 72a. Whenever the board of determination finds by majority vote of the whole number of members that the drain is or is not necessary, any 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 board of determination.

**History:** Add. 1968, Act 291, Imd. Eff. July 1, 1968;—Am. 1970, Act 111, Eff. Apr. 1, 1971.

**Popular name:** Act 40

#### **280.73 Proposed drain; plans, specifications and cost estimates; route, approval; easements on rights of way.**

Sec. 73. The commissioner shall secure from a professional engineer, plans, specifications and an estimate of cost of the proposed drain and descriptions of the lands or rights of way needed for the proposed drain. In approving the route of the drain as furnished by the engineers the commissioner shall not be limited to that described in the petition or in the first order of determination, if the new route is more efficient and serviceable. The commissioner shall endeavor to secure from the owners of each parcel or tract of land to be traversed or damaged by the proposed drain or drains an easement or release of right of way and all damages on account thereof.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1968, Act 79, Eff. Nov. 15, 1968.

Popular name: Act 40

#### **280.74 Release of right of way; acknowledgments, oaths, form, area, signature of wife, resolution covering street or public place; open drain.**

Sec. 74. Commissioners may take acknowledgments of releases of right of way and administer oaths in all proceedings in any way pertaining to drains under this act. A simple form of release of right of way and damages that shall set forth by reference to the survey of the drain, or by other convenient description, the particular land to be conveyed and signed and acknowledged by the person having the right to convey, shall be deemed a sufficient conveyance under the provisions of this act. All releases for rights of way shall be deemed to include sufficient ground on each side of the center line of such drain for the deposit of the excavations therefrom. It shall not be necessary for the wife to sign the release of right of way unless she has an interest in the land other than her inchoate right of dower. Whenever a portion of a drain shall be located within any street, highway or public place, then a resolution adopted by a majority vote of the governing body having jurisdiction over such street, highway or public place granting leave to construct such drain therein, designating the place to be traversed by said drain, shall be a sufficient release of the right of way, and shall be deemed a sufficient conveyance under this act, and said governing body may permit the construction of an open drain if such consent be set forth in such resolution.

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

**Popular name:** Act 40

#### **280.75 Condemnation proceedings; special commissioners, application for appointment, contents.**

Sec. 75. If all persons whose lands would be traversed or damaged by the proposed drain or drains shall not have executed a release of the right of way, and all damages on account thereof, within 60 days after the entry of the first order of determination, the commissioner shall, as soon as practicable, make application to the probate court of the county in which such lands are situated, for the appointment of 3 special commissioners, who shall be disinterested resident freeholders of the county, but not of the township or townships affected by such drain, to determine the necessity for the taking of private property for the use and benefit of the public, and the just compensation to be made therefor. Such application shall be in writing, and shall set forth:

First, The fact that a petition for a drain was made and when, filing with said court a certified copy of such petition, also giving the route, survey and specifications of said drain as set forth in the first order of determination;

Second, That an order determining the necessity for such drain was made by the commissioner or drainage board, giving the time when such order was made, in accordance with such route, survey and specification, as above set forth;

Third, (1) The several descriptions or tracts of land with the names of the owner or owners of every such tract who have refused or neglected to execute a release of right of way and damages in any way arising or incident to the opening or maintaining the said proposed drain (2) the several descriptions or tracts of land owned by any minor, incompetent person, unknown persons or nonresidents of the township or townships, the execution of a release of right of way and damages for which have been neglected or refused; (3) it shall not be necessary to set forth in said application to the probate court the names of the several owners nor the description of the several tracts or parcels of land liable to an assessment for benefits, in case the drain applied for should be located and established, except those who have not released the right of way and through whose lands the drain passes; nor shall the same be included in the citation issued from the probate court.

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

**Popular name:** Act 40

#### **280.76 Condemnation proceedings; hearing, waiver of errors, lands of minors and incompetent persons.**

Sec. 76. The court to whom such application is made shall make an examination at the time of such application of all the proceedings of the commissioner so far as had, and if such proceedings be found to be in accordance with the statute, such court shall at once appoint a time and place of hearing upon the application, which time shall be fixed not less than 15 nor more than 40 days thereafter, and the court shall issue a citation to all persons whose lands are traversed by such drain, who have not released the right of way, and all damages on account thereof, to appear at the time and place designated in said citation, and be heard with respect to such application, if they so desire, and show cause, if any there be, why said application should not be granted, and any error or errors that may have been made in any of the proceedings thus far had shall be

raised and taken advantage of at such time and before such court, and if not so raised and taken advantage of at such time and before such court shall be deemed to have been waived by all persons cited to appear under this notice. If any person on whom such service is to be made is a minor, under the age of 14 years, or an incompetent person, and resides in this state, such service shall be made as herein provided on his guardian, or if none, then on the person who may for such purpose be appointed special guardian and also on the person who has the care of, or with whom such minor or incompetent person resides. In case any person whose lands are traversed by said drain is a minor or an incompetent person and has no guardian, the said court or the judge of said court shall appoint a special guardian, to appear for and attend to the interests of such minor or incompetent person, and all notices to be served in the progress of the proceedings shall be served on such special guardian.

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

**Popular name:** Act 40

#### **280.77 Condemnation proceedings; citation, contents, addressed to owners.**

Sec. 77. The citation shall recite so much of the premises as will show jurisdiction, giving a description of the land traversed by such drain, and in the case of resident owners who reside upon the premises traversed by said drain shall be addressed to such owners by name; in the case of nonresident owner or owners not residing upon the land traversed, it shall be addressed to the nonresident owner or owners, but it shall not be necessary to name such owner or owners. It shall describe the drain by its commencement, terminus and general course, and shall set forth that land owned by the persons to whom it is addressed will be crossed by such drain and may be subject to assessment for its construction, and that a description and survey of such drain is on file with the court issuing such citation and describe the land to be taken.

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

**Popular name:** Act 40

#### **280.78 Condemnation citations; notices and orders; methods of service.**

Sec. 78. (1) All citations, notices and orders relative to condemnation proceedings, unless otherwise provided, shall be served as follows:

- (a) Personally; or
- (b) By leaving a copy at the residence of the person or persons interested; or
- (c) By mailing a copy thereof by registered mail at the last known post office address of each person or persons, so far as is known; and
- (d) By publication in some newspaper printed or circulated in the county in which such lands are located at least 7 days prior to the date of hearing.

(2) Nonresidents of the county may be served in any of the above methods.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1967, Act 214, Imd. Eff. July 10, 1967.

**Popular name:** Act 40

#### **280.79 Condemnation proceedings; hearing; order appointing special commissioners; determination of necessity for using property and compensation; meeting; adjournment of hearing; amendment of application.**

Sec. 79. The court to whom the application is made, at the time and place fixed in the citation, or at a time to which it may adjourn, not exceeding 60 days, and upon proof of service and publication when required, shall proceed to hear persons whose lands are to be traversed by the proposed drain. A person may show cause against the prayer set forth in the application, and may disprove a fact alleged in the complaint, except the necessity of the drain. The person may raise an objection to an error or irregularity made in the proceedings held thus far, and the court shall hear the proofs and allegations of the parties, and the objections made to the proceedings. If sufficient cause is not shown against granting the prayer set forth in the application, the court shall make an order appointing 3 disinterested and competent resident property owners of the county who are not residents of the township or townships to be traversed by the drain, as special commissioners to determine the necessity of using the property and the compensation to be paid for the property. The court, upon the appointment of the commissioners, and with the concurrence of the county drain commissioner, shall appoint a time, date, and place, the time to be not less than 5 days nor more than 15 days after the appointment, at which time the special commissioners shall meet the commissioner and those parties who have not released the right of way, to consider the matters and things with respect to which they have been appointed. The court shall make public announcement of the meeting. If it appears at the hearing that all parties have not been notified, the court may adjourn the hearing for a period not exceeding 30 days to enable the commissioner to notify the parties in the manner provided in this section. The probate court, if necessary,

shall allow the commissioner to amend the application before the appointment of special commissioners. If there is shown to be error in the proceedings of the commissioner and the petition to establish the drain is shown to be sufficient under the statute, the probate court shall adjourn the hearing for sufficient time to allow the commissioner to correct the error.

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

**Popular name:** Act 40

**280.80 Special commissioners; notice of appointment; meeting; adjournment; notice; appointment of other special commissioners; oath; election of chairperson and secretary; record of proceedings; view of premises.**

Sec. 80. If the court grants the prayer set forth in the application, the court shall deliver to the commissioner a copy of the order appointing the special commissioners. The commissioner shall notify the special commissioners of their appointment and the time, date, and place they are required to meet with him or her and the other parties who have not released the right of way for the proposed drain. If a special commissioner neglects or refuses to meet at the time, date, and place with the commissioner, the commissioner shall adjourn the day of meeting for a period not to exceed 30 days. The commissioner shall give public notice of the date, time, and place of the adjourned meeting in the manner required by Act No. 267 of the Public Acts of 1976, and, as soon as practicable, shall make application to the judge of probate, who shall appoint other special commissioners without further notice or citations. Special commissioners shall be sworn by the drain commissioner to faithfully discharge the duties of special commissioners in the matter in which they are called to act, and to determine the necessity of taking private property for the use or benefit of the public for the purpose of a drain, and the compensation to be paid for the property. The special commissioners shall elect 2 members as chairperson and secretary. The secretary shall keep a complete record of their proceedings. The special commissioners, with the commissioner and the other parties in interest who may be present, who have not released the right of way for the proposed drain, shall meet at the time, date, and place ordered by the court and proceed at that time, or at a time to which they may adjourn, to view the premises, and for that purpose may enter upon the land traversed by the route of the proposed drain.

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

**Popular name:** Act 40

**280.81 Default of interested parties for nonappearance; compensation after determination of necessity; court commissioners; meetings; adjournment; witnesses; appraisal of damages; property descriptions; powers.**

Sec. 81. (1) On the day fixed, the court shall enter the default of all persons interested in the property described who have not appeared, and shall direct the payment to such persons of the sums stated in the determination, as compensation for the taking the pieces or parcels of property in which they are interested only after necessity is determined under the provisions of section 81.

(2) The court commissioners shall meet at the time and place ordered by the court and shall be sworn faithfully to discharge their duties. If all do not then appear, a less number may adjourn to a time certain, but no adjournment shall be made to a day later than the time allowed by the court. All adjournments shall be publicly announced. The court may issue subpoenas to compel the attendance of witnesses before the court or before the court commissioners. Either of the court commissioners may administer oaths to witnesses.

(3) The court commissioners shall appraise the damages to be paid as compensation for each such piece or parcel of property, and shall report such decision in writing, signed by them or a majority of them, at or before the time fixed for that purpose, but it shall not be necessary for the court commissioners to report on all of the property at one time.

(4) It shall not be necessary for the board or commissioner to include in 1 determination the descriptions of all of the property necessary to be taken for any single project, or to include in 1 petition, the descriptions of all of the property described in the determination upon which the petition is based.

(5) At the time of the filing of the report or at such other time to which it may adjourn the proceedings, on cause shown, the court may set aside the report and refer it back to the court commissioners or appoint other commissioners to re-try the questions involved, whereupon such proceedings shall be had as are hereinbefore provided for. The court may permit the amendment of any determination, petition, affidavit, order, report or proceeding filed or had in the premises in such manner as shall be just and proper; it may fill any vacancy that shall occur among the court commissioners, by reason of death, resignation, removal or inability to act; at any time, it may remove any or all of the commissioners and fill the vacancies thereby created; it may permit a defective proceeding to be set aside and other proceedings in compliance with law to be had in place thereof;

it may determine the division of any award among the several claimants thereto; it may adjourn the proceedings or any part thereof from time to time, and may make all orders in the premises as may be just and proper to further and accomplish the purpose thereof.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1967, Act 214, Imd. Eff. July 10, 1967.

**Popular name:** Act 40

**280.82 Condemnation proceedings; drains, special commissioners; return, examination, correction, filing, conveyance of easements, vesting of fee, damages.**

Sec. 82. The special commissioners shall within 60 days from the date of their first meeting make a return in writing of their hearing, determination and of their several awards. To assist the special commissioners in arriving at their verdict, the probate court may allow the special commissioners, when they retire, to take with them the petition filed in the case and a map showing the location of the proposed improvement and each and all of the parcels of property to be taken and may also submit to them a blank return which may be as follows: "We, the undersigned, having been appointed by the probate court of the county of ....., state of Michigan, as special commissioners, to ascertain and to appraise and determine the damages or compensation to be allowed to the owners or parties interested in the real estate proposed to be taken for the right of way for a certain drain, known as the '..... drain' to be located in the ..... of ..... in said county, and we find that it is ..... necessary to take the private property described in the petition in this cause, for the use or benefit of the public, for the proposed public improvement. The just compensation to be paid for such private property we have ascertained and determined, and hereby award as follows:

		Right of Way Required or Easement Taken				
Parcel No.	Description of Property	Center Line of Drain	Private Property Taken	Owners- Occupants Others Interested	Compen- sation To Whom Payable	
..... "						

The different descriptions of the property and the names of the occupants, owners and others interested therein, may be inserted in said blank verdict, under the direction of the court, before it is submitted to the special commissioners, or it may be done by the special commissioners. The special commissioners shall file said return with the probate court, it shall examine the same, and if it shall find such return not to be in substantial conformity with the statute, it shall return the same to the special commissioners for correction, with its objections in writing. The special commissioners shall thereupon proceed to correct their return, and file the same with the probate court within 5 days. When the probate court shall find such return to be without material error, it shall enter an order confirming the awards and an order dismissing any lis pendens filed with the register of deeds by the drain commissioner. A certified copy of said return shall be immediately recorded by the drain commissioner in the office of the register of deeds, and a copy filed in the office of the drain commissioner. A return by special commissioners with respect to any easement taken shall be deemed a sufficient conveyance to vest in the drainage district an easement in the land for the uses and purposes within the scope of its powers, together with such rights of entry upon, passage over, deposit of excavated earth and storage of material and equipment on such lands as may be necessary or useful for the construction, maintenance, cleaning out and repair of said drain. A return of special commissioners with respect to private property taken in fee shall vest the fee of the property taken in the drainage district for the use or benefit of the public for the proposed public improvement. The

amount of compensation that may have been awarded therefor shall have been paid or tendered, or secured to the persons entitled thereto. The time during which proceedings are pending in the probate court shall not be counted as part of the 5-year period relative to abandonment of a petition as provided in section 221, and the time mentioned in sections 75, 79, 80, 81 and 82 relative to completion of certain procedural steps in condemnation proceedings shall be deemed to be directory and not mandatory and shall not constitute a material defect in such proceedings.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1962, Act 191, Eff. Mar. 28, 1963;—Am. 1965, Act 108, Imd. Eff. June 30, 1965.

**Popular name:** Act 40

### **280.83 Release of right of way and damages; proceedings discontinued.**

Sec. 83. If at any time before the appointment of special commissioners provided for in this act or at any time before the filing of their return and award of damages, all of the parties through whose lands the proposed drain is to pass shall execute a release of right of way, and all damages on account thereof, then all proceedings for the appointment of special commissioners, and all actions taken by them after their appointment, shall be discontinued and void, and the county drain commissioner shall proceed as if no application for special commissioners had been made.

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

**Popular name:** Act 40

### **280.84 Setting off damages and benefits; drain order for excess, holding by county clerk.**

Sec. 84. The commissioner shall deduct the award of damages from the assessment of benefits, when made, on the tract which includes the right of way of said drain. In case the award of damages shall exceed the assessment of benefits, the commissioner shall draw his orders for the amounts awarded in the return of the special commissioners in excess of assessments for benefits, describing in each order the lands in payment whereof it is drawn, and before such drain shall be constructed such order shall be tendered by the commissioner to the party entitled thereto: Provided, That if the owner of any lands upon which damages have been awarded in excess of apportionment of benefits be a nonresident of the township or townships traversed by said drain, or be unknown, or in case of a minor or otherwise incompetent person, such order shall be deposited with the county clerk, payable to the owner of such description of land upon which such damages were awarded. Such order shall be held by such clerk and be delivered by him to the owner of such lands when called for or otherwise legally demanded, and the same shall thereby be deemed to have been lawfully tendered to the owner of such lands. It shall be the duty of such county treasurer at any time upon presentation to him of any such drain order drawn for the payment of such right of way or damages to pay the same out of any moneys in his hands belonging to the general fund of such county and refund such amount out of the first moneys collected by him on account of such drain. If the owner of any lands upon which such damages have been awarded in excess of the apportionment for benefits shall, upon the tender of such order to him, refuse to accept the same, the commissioner shall deliver such order to the county clerk and give notice to such owner of that fact. Such order shall be held by such clerk and be delivered by him to the owner of such lands when called for or otherwise legally demanded.

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

**Popular name:** Act 40

### **280.85 Owner's use of land of right of way.**

Sec. 85. The owner of any land over, through or across which a district has acquired a right of way for the construction and maintenance of an open or covered drain by grant, dedication, condemnation or otherwise, may use the land occupied by such right of way in any manner not inconsistent with the easement of the district. Any use of the right of way which will interfere with the operation of the drain or will increase the cost to the district of performing any of its work thereon is deemed to be inconsistent with the district's easement. Any landowner who violates any of the above provisions shall be subject to the penalties provided in section 421 of this act.

**History:** Add. 1962, Act 191, Eff. Mar. 28, 1963.

**Popular name:** Act 40

### **280.86 Special commissioners; compensation.**

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Sec. 86. The court shall fix the compensation of the special commissioners, not to exceed \$50.00 per day, and determine the amount of necessary expenses incurred in connection with such proceedings, and the whole cost thereof.

**History:** Add. 1965, Act 108, Imd. Eff. June 30, 1965.

**Popular name:** Act 40

#### **280.87 Certificates, reports and determinations as prima facie evidence.**

Sec. 87. Any certificate, report or determination authorized or required by this chapter, or the record thereof, or a certified copy of any certificate, report, determination or record, shall be prima facie evidence of the facts recited therein and of the title to the property therein described or referred to, and of the right of the drainage board or commissioner to take the same for drain purposes.

**History:** Add. 1967, Act 214, Imd. Eff. July 10, 1967.

**Popular name:** Act 40

#### **280.88 Review upon superintending control; procedure.**

Sec. 88. Any proceeding taken under the provisions of this chapter shall be subject to review upon superintending control. The procedure therefor shall be the same as is required in case of certiorari to review judgments rendered by judges of the circuit courts. The application for superintending control must be filed within 20 days after the report of the special commissioners shall have been confirmed. The determination of necessity provided in this act may be reviewed by superintending control only within 10 days after such determination of necessity, by the court of appeals.

**History:** Add. 1967, Act 214, Imd. Eff. July 10, 1967.

**Popular name:** Act 40

### CHAPTER 5.

#### INTERCOUNTY DRAINAGE DISTRICTS.

#### **280.101 Intercounty drainage districts; application; signers, eligibility.**

Sec. 101. Before any action is taken on any petition to locate, establish and construct any drain, which proposed drain will traverse lands in more than 1 county, or affect more than 1 county, there shall first be filed with the commissioner having jurisdiction of any such lands an application to lay out and designate a drainage district with reference to a proposed drain therein; such application shall tentatively describe the location and route of such proposed drain. The application shall be signed by a number of freeholders in said 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 abut on any highway or street along the side of which such drain extends, between a point where such drain enters such highway and the point where it leaves such highway and which lands are within the drainage district. The eligibility of the signers to such 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 such lands are situated at the time such petition is filed.

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

**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

CHAPTER 6.  
INTERCOUNTY DRAINS.

**280.121 Intercounty drains; petition to establish; filing, signers; certificate of county treasurer.**

Sec. 121. After an intercounty drainage district has been established and the order therefor filed as hereinbefore provided, a petition to locate, establish and construct a drain may be filed with any commissioner having jurisdiction of any of the lands designated in such order as constituting the drainage district. Such petition shall ask for the location, establishment and construction of the drain or drains, or any part thereof, as described in said order. The petition shall be signed by a number of freeholders in said 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 such drain extends, between the point where such drain enters such highway and the point where it leaves such highway and which lands are within the drainage district. Such

petition shall be accompanied by a description of the land in said district owned by each signer and by a certificate of the county treasurer as to payment of taxes and special assessments against such lands; such 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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The name of any signer as to whose land such certificate shows taxes or special assessments unpaid for 3 years shall not be counted. The eligibility of the signers to such petition shall be determined by their interest of record in the office of the register of deeds, in the probate court or the circuit court of the counties in which such lands are situated at the time such petition is filed. In determining the number of owners whose lands are traversed by such drain, or abut thereon as hereinbefore prescribed, 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 such lands so traversed or so abutting, as to the ownership thereof. In lieu of a petition signed by freeholders, the petition may be signed solely by a city, village or township in each county involved, when duly 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. In the event of a municipally signed petition, then the foregoing provisions of this section, other than the first 2 sentences and these last 2 sentences thereof, shall not be applicable.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1968, Act 79, Eff. Nov. 15, 1968.

**Popular name:** Act 40

**280.122 Drainage board; duties generally; voting; notice of meeting; affidavit of mailing; failure to receive notice; expense of notification; determination of necessity, percentages, and number of installments; order; drainage board as board of determination; submission of apportionment to board of arbitration; finality.**

Sec. 122. Upon filing of a petition to locate, establish, and construct an intercounty drain the commissioner receiving the petition, within 20 days, shall notify by registered mail the drain commissioners interested and the director of the department of agriculture, who shall call a meeting within the time set forth in section 102. The commissioners and the director of the department of agriculture, or the director's deputy, who constitute the drainage board shall jointly take all steps and perform all acts and sign all papers as commissioners are required to do singly in the case of other drains, except as otherwise provided in this act. At a meeting of the board the director of the department of agriculture, or the director's deputy, shall not vote, except that the director or the director's deputy may cast the deciding vote in case of a tie. Notice shall be given of the time and place of the meeting by publication in a newspaper of general circulation in the county at least 10 days before the meeting. Notices shall also be served personally or by registered mail at least 10 days before the meeting on the county clerk and on the clerk of each township, city, and village in the district. The drain commissioner also shall send notice by first class mail of the time, date, and place of the meeting, not less than 10 days before the date of the meeting, to each person whose name appears upon the last city or township tax assessment roll as owning land liable to assessment for benefits, 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 persons to whom the notice was mailed constitute all of the persons whose names and addresses appear upon the tax rolls as owning land liable to assessment for benefits. The affidavit shall be conclusive proof that notice was mailed to each person to whom notice is required to be mailed by this section. The failure to receive a notice by mail shall not constitute a jurisdictional defect invalidating a drain proceeding or tax, or both, if notice has been sent by first class mail as provided in this section. All expense of notification shall be paid by the drainage district when created. The board shall consider the petition and evidence offered, and if it is determined that the drain is necessary for the good of the public health, convenience, or welfare, it shall proceed to determine the percentage of the whole cost of construction which each county shall bear, and determine the number of installments in which the drain taxes shall be collected. If commissioners cannot agree on the apportionment between counties or the number of installments, the chairperson shall determine the apportionment or the number of installments. An order shall be prepared, signed by the chairperson, to be known as the first order of determination, showing the determination of necessity, determination of percentages, and determination of number of installments, and a copy of the order shall be filed in the office of the county drain commissioner of each county into which the drainage district extends. The drainage board shall be the board of

determination and shall determine the question of necessity for drains located, established, and constructed under this chapter. If the drainage board cannot agree unanimously on the apportionment between counties, the matter shall be submitted to the board of arbitration in the manner prescribed in section 106 and that board's decision shall be final.

**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.

**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. After securing releases of right of way as herein provided, the commissioner of each county affected shall apportion the benefits for the construction of such drain to each tract or parcel of land to any county, township, city or village and to any state trunk line highway within said drainage district, in the manner provided in chapter 7, being sections 151 to 161, inclusive, of this act. Such per cent so apportioned when finally approved shall be assessed against such townships, cities, highways and lands according to such apportionment of benefits, as herein provided. The apportionment of benefits so made shall be subject to review and correction and may be appealed from as provided in said chapter 7.

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

**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; appointment of special commissioners, qualifications.**

Sec. 128. In case all the persons whose lands are to be traversed or damaged by such drain or drains, as proposed in this chapter, shall not within 60 days after the issue of the first order of determination have voluntarily released the right of way therefor, and all damages on account thereof, the drainage board shall apply to the judge of probate of the county in which such lands are situated for the appointment of 3 special commissioners. When such application shall be made and when all papers shall have been found to be in conformity with the provisions of this act, the court to whom such application has been made shall, within 60 days from the filing of said application, appoint such special commissioners and shall deliver to each drain commissioner a certified copy of the order of the appointment of such special commissioners. Such special commissioners shall be resident freeholders of the county and not residents of the township or townships to be affected by the proposed drain in which they are appointed. All proceedings had in the appointment of special commissioners, the issuance of service of citations, hearings by the probate court and by the special commissioners and the return of special commissioners under the provisions of this chapter shall be similar to those provided in chapter 4, being sections 71 to 84.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1965, Act 108, Imd. Eff. June 30, 1965.

**Popular name:** Act 40

#### **280.129 Special commissioners; meeting, view of line of drain.**

Sec. 129. When such special commissioners shall have been notified of their appointment in the manner provided in chapter 4, being sections 71 to 84, they shall meet at the time and place fixed by the probate court and meet with the drainage board and view the whole line of such drain, or such portion thereof as shall be deemed sufficient, and shall under the same oath and condition perform their services in the same manner and with like effect as provided in this act for other special commissioners.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1965, Act 108, Imd. Eff. June 30, 1965.

**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.**

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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; moneys, disposition.**

Sec. 132. In cases where 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 therefor as provided in the case of drains lying wholly within 1 county. Such 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 per cent of the cost of construction is apportioned, and such bonds shall be deposited and safely kept by such treasurer until sold and delivered. All installments, with interest thereon, 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 such county, who shall issue his receipt therefor and shall place the moneys in the fund of the drain to be disbursed solely for the retirement of the bonds at maturity and the payment of interest thereon.

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

**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 Intercounty drain; extension into county not in original district; procedure, apportionment of cost; addition of lands by expanded board.**

Sec. 135. If at any time after an intercounty drainage district has been established and a drain has been located, established and constructed therein, it appears that it is necessary to extend the drain or drainage district into a county which was not a part of the original intercounty drainage district, the lands in the county may be added to the district by presenting to the drain commissioner of one of the counties traversed or affected by the drain, a petition signed by 50% of the land owners whose land is traversed by the drain or proposed extended drain, which petition shall state the name or number of the drain, and the lands which it is desired to have added to the drainage district. Upon receipt of the petition, the drain commissioner shall mail a copy of the petition to the state director of agriculture and also to the drain commissioner of each county in

which lie lands liable for assessments for the proposed extended drain or proposed extended drainage district. The state director of agriculture shall call a meeting of the drainage board including the commissioner of any county in which lie lands that have been added to the drainage district. Notices of such meeting and all other proceedings shall be in accordance with the provisions of section 197 of this act, as amended. At the meeting all persons owning lands liable to assessment for benefits, or any district or municipality affected, may appear for or against the addition of such lands. The board shall consider the petition and any evidence offered, and if it is determined that the extension of the drain or drainage district is necessary for the good of the public health, convenience or welfare, it shall then proceed to determine the just percentage of the whole cost of construction which each county shall bear, and also determine the number of installments in which the drain taxes shall be collected. In case the commissioners cannot agree on the apportionment between counties or the number of installments, the chairman shall determine the same. If, in the opinion of the expanded drainage board, it is found necessary to add the lands to the drainage district, they shall also enter an order adding the lands. Copies of the order adding the lands to the drainage district shall be filed with the drain commissioner of each county liable for assessments of the extended drain or extended drainage district. Copies of the order adding the lands to the drainage district shall also be served upon all persons whose lands have been added to said drainage district according to section 154 of this act, as amended. After the order is filed the expanded drainage board shall constitute the drainage board for the expanded drainage district and shall have all the powers which are given to drainage boards by this act, as amended.

**History:** Add. 1957, Act 97, Imd. Eff. May 24, 1957.

**Popular name:** Act 40

## CHAPTER 7. APPORTIONMENT AND REVIEW.

### **280.151 Final order of determination; filing; contracts for sections or whole; apportionment of costs, benefits; review, appeal.**

Sec. 151. Upon the release of the right of way and damages, or upon the determination and return of the special commissioners, the commissioner shall make his final order of determination establishing the drain, which drain shall be divided into convenient sections for the letting of contracts: Provided, That the commissioner may let the drain in sections or as a whole. Said order of determination shall be filed with the county drain commissioner within 5 days after such order is made. He shall, before the day of letting and review, fix the number of installments for the collection of drainage taxes and apportion the per cent of the cost of construction of such drain which any township, city or village traversed or benefited thereby shall be liable to pay by reason of the benefit to the public health, convenience or welfare, or as the means of improving any highway under the control of such township, city or village. He shall apportion the per cent of the cost of construction of such drain which any highway then under the control of the county or district road commissioners, shall be liable to pay by reason of benefits therefor, and as the means of improving such highway. He shall also apportion the per cent of the cost of construction of such drain which any state trunk line highway, under the control of the state highway commissioner, shall be liable to pay by reason of benefits therefor and as the means of improving said highway. He shall also apportion the per cent of benefits to accrue to any piece or parcel of land by reason of the construction of such drain over and above the per cent apportioned to any township, city or village at large or to any highway as above provided. Such per cent so apportioned when finally approved shall be assessed against such townships, cities and villages and against the county at large by reason of the improvement of the highways within the drainage district, and against the state by reason of the improvement of the state trunk line highways within such drainage district, and against all parcels of land therein according to such apportionment of benefits as herein provided. The apportionment of benefits so made shall be subject to review and correction and may be appealed from as in this act provided. The board of supervisors at its October meeting each year shall make provision by proper assessment of the amounts apportioned against any highway under the control of the county and district highway commissioners.

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

**Popular name:** Act 40

### **280.152 Apportionment of benefits; description of lands.**

Sec. 152. All apportionments of benefits under the provisions of this act shall be upon the principle of benefits derived. All descriptions of land under the provisions of this act shall be made by giving the legal subdivision thereof, whenever practicable, and when the tract of land which is to be benefited or affected by such drain is less than such legal subdivision it may be described by designation of the lot or other



boundaries, or in some way by which it may be known.

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

**Popular name:** Act 40

**280.153 Order to contain description of special assessment district; designation.**

Sec. 153. Such order of determination shall contain a description of the district to be assessed for benefits in the construction of said drain, either by boundaries or by description of the several tracts or parcels of land to be assessed, which said tracts or parcels and the county, townships, cities, villages and highways therein shall constitute the special assessment district, and which district shall in said order be designated by name or number.

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

**Popular name:** Act 40

**280.154 Receipt of bids and review of apportionment of benefits; publication and mailing of notice; affidavit of mailing; failure to receive notice; contents of notice; 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 commissioner shall give notice as described in subsection (3) for the receiving of bids for the construction of the drain and for the holding of a public meeting to review the apportionment of benefits. The meeting shall be not less than 5 nor more than 30 days after the date set for receiving bids.

(2) The notice under subsection (1) shall be given by publication of at least 2 insertions in a newspaper published and of general circulation in the county. The first publication shall be at least 10 days before the date set for receiving bids.

(3) The drain commissioner shall also send the notice under subsection (1) by first-class mail at least 10 days before the date of the meeting to review the apportionment of benefits, to each person whose name appears upon the last city or township tax assessment roll as owning land within the special assessment district, at the address shown on the roll. If an address does not appear on the roll, then 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 persons to whom the notice was mailed constitute all of the persons whose names and addresses appear upon the tax rolls as owning land within the particular special assessment 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 section, the failure to receive notice by mail does not constitute a jurisdictional defect invalidating a drain proceeding or tax. If the board of determination determines that the drain is necessary for the protection of 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 special assessment district as provided in this subsection is not required.

(4) The notice under subsection (1) shall be personally served on the county clerk and 1 or more members of the road commission of a county or road district, the supervisor of a township, the mayor of a city, and the president of a village to be assessed at large.

(5) The notice under subsection (1) shall contain all of the following:

(a) The date, time, and place of receiving bids.

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

(e) 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.

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

(g) A description of the land constituting the special assessment district for the drain. The description may be stated by designating the boundaries of the special assessment district by streets, highways, parcels, or tracts of land or by describing the tracts or parcels of land constituting the district. A tract or parcel need not be subdivided beyond the point where the whole of the tract or parcel is within the drainage district.

(h) The name or number of the drain.

(i) 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.

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

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

(6) The notice under subsection (1) need not contain minutes of survey or a table of cuttings. These shall be kept on file in the office of the drain commissioner.

(7) Bids 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 day of review, the review may be adjourned from time to time, not more than 20 days in all, for the completion of the computation, or a new hearing may be called with similar notice, by publication and service at least 10 days before the hearing. If the contracts on which the computation was based are not executed and new contracts are let at a higher price, the computation shall be corrected and a new review held with a similar notice. At the date, time, and place fixed in the notice, or at another date, time, and place to which the county drain commissioner may adjourn the hearing, the apportionment of benefits and the lands constituting the special assessment district 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 or a road district; 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 for a city; the president may appear on behalf of a village. At the review the county drain commissioner shall hear the proofs and allegations, shall carefully reconsider and review the description of land comprised within the special assessment district, the several descriptions and apportionment of benefits, and shall define and equalize the land as is just and equitable.

(8) 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, at least 20 days before the review on the highway, shall notify by registered mail the director of the state transportation department of the percentage apportioned against the highway and the date, time, and place fixed for a review of apportionment of benefits. If the director of the state transportation department desires to have the apportionment of benefits reviewed by the director of the department of agriculture, the director of the state transportation department, within 10 days from the receipt of the notice, shall file with the drain commissioner an objection to the apportionment. The drain commissioner shall notify the director of the department of agriculture of the date, time, and place fixed for the review of apportionments, and at the meeting the director of the department of agriculture, 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 action and decision on the apportionment under this subsection, when reduced to writing, 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.

**Popular name:** Act 40

### **280.155 Bids; appeal; application for board of review, bond.**

Sec. 155. The owner of any land in the drainage district or any city, township, village, district or county having control of any highway which may feel aggrieved by the apportionment of benefits so made by the commissioner, may, within 10 days after the day of review of such apportionments, appeal therefrom and for such purpose make an application to the probate court of the proper county for the appointment of a board of review, by filing with said probate court a notice of appeal and at the same time filing with said court a bond in such sum as the judge of probate may require, with 1 or more sureties to be approved by the judge of probate, conditioned upon the payment of all costs in case the apportionment made by the commissioner shall be sustained. Such appeal may be taken by the county or district road commissioners in behalf of the county, the mayor of any city in behalf of the city, by the supervisor in behalf of any township, or by the president of any village in behalf of the village when authorized by the village or city council, township board or road commission, respectively. Only 1 board shall be appointed by such probate court.

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

**Popular name:** Act 40

### **280.156 Bids; board of review, appointment, meeting, time, notice, duties.**

Sec. 156. The probate court upon receipt of any such application as hereinbefore provided for shall forthwith notify the commissioner in writing of such appeal, and shall thereupon make an order appointing 3 disinterested and competent freeholders of such county, not residents of the township or townships affected by said drain, as members of a board of review. The persons so appointed shall constitute the board of review. The court shall thereupon, with the concurrence of the commissioner, immediately fix the time and place when and where said board of review shall meet to review said apportionments, which time shall not be less

than 10 nor more than 15 days from the date of filing such appeal. The commissioner shall thereupon give notice to the persons so appointed of their appointment and of the time and place of meeting, and shall give notice of such meeting by posting notices in at least 5 public places in each township forming a part of the drainage district, and shall serve a like notice upon the appellant if he be a resident of any township affected. Such notice shall be made not less than 5 days before the day of hearing and shall be made by personal service. Proof of service of notice of appeal shall be made by the person serving said notice and be filed in the office of the judge of probate. At such hearing the board of review shall have the right, and it shall be their duty, to review all apportionments for benefits made by the commissioner on such drain. The persons so appointed shall be sworn by the commissioner to faithfully discharge the duties of such board of review.

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

**Popular name:** Act 40

#### **280.157 Board of review; duties generally; changes in apportionment; added lands; adjournment; notice; action and decision.**

Sec. 157. The board of review shall proceed at the time, date, and place specified in the notice to hear the proofs and allegations of the parties in respect to an appeal, shall proceed to view the lands benefited by the drain and shall review the apportionments made by the commissioner on the drain. If in their judgment there is a manifest error or inequality in the apportionments they shall order and make the changes in the apportionment as they may consider just and equitable. If the board of review upon personal examination finds that a land liable to be assessed for the construction of the drain is not included in the drainage district made by the commissioner, they shall add the land to the drainage district of the drain and shall adjourn the review to another time or place as they consider proper, but not in all more than 20 days from and after the time of review first advertised. The notice of the adjournment shall contain a description of lands added to the drainage district. The notice shall be given at least 10 days before the adjourned day of review. Should the owners of land liable to an assessment be nonresidents of the county, personal notice shall be served on the owners, or a notice shall be published in a weekly newspaper published in the county, of at least 2 insertions, giving the description of the land added to the assessment district and giving the time, date, and place where the board shall meet. The action and decision of the board shall be final. The action and decision shall be reduced to writing and signed by a majority of the board making the decision, and shall be delivered to the commissioner together with other papers relating to the decision.

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

**Popular name:** Act 40

#### **280.158 Appeal cost and expenses; liability on bond.**

Sec. 158. In case the apportionment of the commissioner shall be sustained by such board of review the appellant shall pay the whole costs and expenses of such appeal. Such costs and expenses shall be ascertained and determined by the judge of probate, and if not paid the appellant shall be liable on his bond for the full amount of such costs in an action at law, to be brought by the commissioner on the bond before any court having competent jurisdiction.

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

**Popular name:** Act 40

#### **280.159 Board of review; vacancies, adjournment.**

Sec. 159. Should any or all of the persons so appointed as a board of review neglect or refuse to serve or be unable to act, the commissioner shall adjourn the hearing for a sufficient length of time, not exceeding in all 10 days, to enable him to apply to the probate court, for the appointment of other persons to act on such board of review and shall make public announcement of the time and place of such adjournment. The review shall thereupon be deemed a continuous proceeding and no further notice shall be required. The probate court shall upon the showing being made, either that any or all the persons appointed as aforesaid have neglected, refused or were unable to act as the case may be and of the adjourned day of meeting, at once by order appoint such other person or persons duly qualified to fill such vacancy. And the commissioner shall notify the person or persons so appointed to fill such vacancy of his appointment and of the adjourned day of meeting. The person so appointed shall have the same power and perform the same duties as are herein provided for the board of review in the first instance.

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

**Popular name:** Act 40

#### **280.160 Liability for costs; only one board of review, adjournment.**

Sec. 160. In case the apportionment made by the commissioner is sustained, the individual, county, township, city or village appealing shall be severally liable for all costs incurred by such appeal and the same proceedings shall be had throughout in all respects in said appeal as to the benefits and liabilities in case of an appeal from an individual apportionment: Provided, That only 1 board of review shall be appointed by such probate court for any one drain. The board of review herein provided for may adjourn any hearing before them from time to time as justice may require, not exceeding in all 20 days from the date of their first meeting.

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

**Popular name:** Act 40

#### **280.161 Certiorari to review drain proceedings and taxes; issues of fact, costs, postponement of proceedings.**

Sec. 161. The proceedings in establishing any drain and levying taxes therefor shall be subject to review on certiorari as herein provided. A writ of certiorari for any error occurring before or in the final order of determination shall be issued within 10 days after a copy of such final order is filed in the office of the drain commissioner as required by section 151 of this act, and for any error occurring after such final order of determination, within 10 days after the day of review, or if an appeal has been taken within 10 days after the filing of the report of the board of review. Notice of such certiorari shall be served upon the commissioner within 10 days after the day of issue in the same manner as notice is required to be given of certiorari for reviewing judgments rendered by justices of the peace, and the writ shall be issued and served, and bond given and approved and the subject matter brought to issue in the same time and manner, as near as may be, as in such cases provided, except that such certiorari may be heard by the court during term, or at chambers, upon 5 days' notice given to the opposite party; and the circuit court of the county shall hear and determine the same without unnecessary delay, and if any material defect be found in the proceedings for establishing the drain, such proceedings shall be set aside. If issues of fact are raised by the petition for such writ and the return thereto, such issues shall, on application of either party, be framed and testimony thereon taken under the direction of the court. If the proceedings be sustained, the party bringing the certiorari shall be liable for the costs thereof, and if they be not sustained, the parties making application for the drain shall be liable for the costs. If no certiorari be brought within the time herein prescribed, the drain shall be deemed to have been legally established, and the taxes therefor legally levied, and the legality of said drain and the taxes therefor shall not thereafter be questioned in any suit at law or equity: Provided, No court shall allow any certiorari questioning the legality of any drain by any person unless notice has been given to the commissioner in accordance with the provisions of this chapter: Provided further, That when such proceedings are brought the commissioner shall postpone the letting of contracts and all other proceedings until after the determination of the court. And if any error be found in the proceedings, the court shall direct the commissioner to correct such error or errors and then proceed the same as though no error had been made.

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

**Popular name:** Act 40

#### **280.162 Village or city; incorporation or annexation; reapportionment of cost of drain.**

Sec. 162. Whenever a village or a city is incorporated out of the territory of a township, or whenever annexations are made to a city or a village from a township, the township, city or village by action of its governing body may petition the drain commissioner in case of a county drain, or the drainage board in case of an intercounty drain, for a reapportionment of the original percent of apportionment at large against the township. Upon receipt of the petition, the drain commissioner or the drainage board, shall reapportion the percent of the original cost to the township between the township, city or village. The reapportionment shall be made in accordance with the provisions of section 152 of this act.

**History:** Add. 1962, Act 191, Eff. Mar. 28, 1963.

**Popular name:** Act 40

### CHAPTER 8.

#### CLEANING, WIDENING, DEEPENING, STRAIGHTENING AND EXTENDING DRAINS.

#### **280.191 County drains; maintenance and improvements; petition; determination of necessity; apportionment; review.**

Sec. 191. When a drain or portion thereof, which traverses lands wholly in 1 county, and lands only in 1 county which is subject to assessment, needs cleaning out, relocating, widening, deepening, straightening, tiling, extending, or relocating along a highway, or requires structures or mechanical devices that will

properly purify or improve the flow of the drain or pumping equipment necessary to assist or relieve the flow of the drain, or needs supplementing by the construction of 1 or more relief drains which may consist of new drains or extensions, enlargements, or connections to existing drains, or needs 1 or more branches added thereto, any 5 or at least 50% of the freeholders if there are less than 5 freeholders whose lands shall be liable to an assessment for benefits of such work, may make petition in writing to the commissioner setting forth the necessity of the proposed work and the commissioner shall proceed in the same manner provided for the location, establishment, and construction of a drain. If the project includes a tiled relief drain, or the tiling of an existing open drain or any portion thereof, with a conduit a part of which has an inside diameter in excess of 36 inches or the retiling of an existing drain with a conduit, a part of which has an inside diameter in excess of 36 inches, then the petition shall comply with section 71. The preceding sentence shall not be applicable to the construction of bridges, culverts, and passageways. The word tiling as used in this and other sections of this act, means the laying of a conduit composed of tile, brick, concrete, or other material. When it is necessary for the public health of 1 or more cities, villages, and townships, the petition may be signed solely by a city, village, or township when authorized by its governing body or by a combination of the municipalities, if the municipality or municipalities are liable to assessments at large for a percentage of the total amount assessed for the cost of the proposed work. After the board of determination determines the necessity for the work, as provided in section 72, the commissioner shall, as soon as practicable after the final order of determination prescribed in section 151 has been filed by him, proceed as provided in sections 151 to 161. If the apportionment is the same as the last recorded apportionments, no day of review is necessary, but in other cases the commissioner shall proceed as provided in sections 151 to 161, including the notice of and the holding of a day of review.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1956, Ex. Sess., Act 5, Imd. Eff. June 23, 1956;—Am. 1957, Act 119, Imd. Eff. May 24, 1957;—Am. 1959, Act 261, Imd. Eff. Aug. 21, 1959;—Am. 1965, Act 194, Imd. Eff. July 15, 1965;—Am. 1968, Act 79, Eff. Nov. 15, 1968;—Am. 1976, Act 196, Imd. Eff. July 15, 1976.

**Popular name:** Act 40

#### **280.192 Intercounty drain; cleaning out, petition; drainage board; survey; procedure.**

Sec. 192. Whenever a drain or portion thereof, which traverses lands in more than 1 county, and lands in more than 1 county shall be subject to assessments, needs cleaning out, relocating, widening, deepening, straightening, tiling, extending or relocating along a highway, or requires structures or mechanical devices that will properly purify or improve the flow of the drain or pumping equipment necessary to assist or relieve the flow of the drain, or needs supplementing by the construction of 1 or more relief drains which may consist of new drains or extensions, enlargements or connections to existing drains, or needs 1 or more branches added thereto, freeholders within the drainage district equal to 50% of the number of freeholders whose lands are traversed by said drain or drains in said petition or abut on any highway or street along either side of which such drain extends, between the point where said drain enters such highway and the point where it leaves such highway or street and which lands are within the drainage district, may make a petition in writing to the commissioner of any county having lands in such district setting forth the necessity of such proposed work. Whenever it is necessary for the public health of 1 or more cities, villages or townships, the petition may be signed solely by a city, village or township when duly authorized by its governing body or by any combination of such municipalities if the municipality or municipalities will be liable to assessments at large for a percentage of the total amount to be assessed for the cost of the proposed work. The percentage of cost apportioned to the municipality or municipalities shall be based upon the benefits to accrue to such municipality or municipalities and also the extent to which they contribute to the conditions which makes the drain necessary. Upon receipt of such petition, the commissioner shall notify the state director of agriculture and the commissioners of each county embracing any lands in the drainage district, and the director of agriculture shall call a meeting within the time and in the manner prescribed in section 122. The persons so named shall constitute a drainage board and if such work is then determined to be practicable, they may thereupon appoint a competent surveyor or engineer to make a survey of said drain, and lay out a drainage district according to section 104. After the surveyor or engineer has filed all data with the drainage board, the director of agriculture shall call a meeting as provided in section 122, and thereafter take all steps and perform all acts which are required to be done by said board upon a petition for the location, establishment and construction of drains as provided in sections 121 to 135. Such board and the commissioners shall exercise such power and be subject to such limitations as are provided in sections 121 to 135.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1957, Act 119, Imd. Eff. May 24, 1957;—Am. 1959, Act 261, Imd. Eff. Aug. 21, 1959;—Am. 1963, Act 36, Eff. Sept. 6, 1963;—Am. 1965, Act 194, Imd. Eff. July 15, 1965;—Am. 1968, Act 79, Eff. Nov. 15, 1968.

**Popular name:** Act 40

**280.193 Drains; apportionment for cleaning, widening, deepening, straightening, and extending; review; notice; consolidated districts.**

Sec. 193. All apportionments hereunder shall be made according to the benefits received and shall be subject to appeal the same as in the first instance. In case the apportionment shall be the same as the last recorded apportionment, no day of review shall be necessary. In case the apportionment shall be changed, or in case an apportionment is made in a consolidated district which apportions benefits between lands which have not been previously assessed by the consolidated district, the procedure shall be in all respects in accordance with the provisions of chapter 7 of this act, including the notice of and the holding of a day of review.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1962, Act 103, Imd. Eff. Apr. 30, 1962.

**Popular name:** Act 40

**280.194 Petitions and proceedings; description of drain, relief drains.**

Sec. 194. In any petition filed under this chapter it shall not be necessary for the petitioners to describe said drain other than by its name or to describe its commencement, general route and terminus. For any work necessary to be done in cleaning out, widening, deepening, straightening, consolidating, extending, relocating, tiling or relocating along a highway, or for providing structures or mechanical devices that will properly purify or improve the flow of the drain or pumping equipment necessary to assist or relieve the flow of the drain or needs supplementing by the construction of 1 or more relief drains which may consist of new drains or extensions, enlargements or connections to existing drains, or needs 1 or more branches added thereto, and for any and all such proceedings, only 1 petition and proceeding shall be necessary.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1956, 1st Ex. Sess., Act 5, Imd. Eff. June 23, 1956;—Am. 1957, Act 119, Imd. Eff. May 24, 1957;—Am. 1967, Act 172, Imd. Eff. June 30, 1967.

**Popular name:** Act 40

**280.195 Further right of way; damages.**

Sec. 195. In case it shall be necessary to secure further right of way and allow damages therefor, for any work contemplated by this chapter, the commissioner shall take all the necessary steps to obtain such right of way as are prescribed by chapter 4, being sections 71 to 84, inclusive, of this act.

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

**Popular name:** Act 40

**280.196 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; costs of maintenance and repair; salaries, expenses, and benefits of certain employees.**

Sec. 196. (1) An annual inspection may be made of a drain established under this act. Inspection shall also be made upon the request of the governing body of a public corporation, as defined in section 461, served in whole or in part by the drain to be inspected. For county drains, the inspection shall be made by the drain commissioner, or a competent person appointed by the drain commissioner. For intercounty drains, the inspection shall be caused to be made 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 a 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 a drainage district for necessary inspection, repair, and maintenance of the drain.

(4) If an inspection discloses the necessity of expending money for the maintenance and repair of a drain in order 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 a drain, exclusive of inspection and engineering fees and the cost of publication and mailing. The determination of the maximum expenditure allowed without a petition or resolution 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.

(5) If the drain commissioner or the drainage board finds it necessary to expend funds in excess of 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 shall reassess the drainage district for the inspection, repair, and maintenance according to benefits received. A reassessment 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 to receive the notices by mail shall not constitute a jurisdictional defect invalidating a drain tax if notice by publication was given as required by this subsection.

(7) An assessment for the actual cost of inspection, repair, and maintenance performed on a drain, or an assessment 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 of drain or fraction of a mile 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. The property in a drainage district that benefits from the inspection, repair, or maintenance of the drain is subject to assessment for that inspection, repair, or maintenance. 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, or maintenance.

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

(9) Nothing in this section prohibits the drain commissioner or the drainage board from spending 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 when requested by a public corporation, if the public corporation pays the entire cost of the inspection, maintenance, and repair.

(10) In computing the amounts that may be expended in accordance with 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, nor shall it be necessary for the drain commissioner or the drainage board to advertise for bids for that portion of the work to be done by the federal agency or public corporation.

(11) For purposes of this section, the costs of maintenance or repair shall include the costs 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; the cost of keeping the drain free from rubbish, debris, siltation, or obstructions; the cost of repairing a portion or all of a tile or drain to continue the normal flow of water; and other costs associated with the costs enumerated in this subsection.

(12) If the cost of maintenance and repair of a drain includes utility charges or costs to service pumping stations, sewage treatment facilities, or retention basins, the limitation for maintenance and repair does not apply except that the drain commissioner or drainage board may levy sufficient special assessments to pay the charges or costs but not more than the amount sufficient to pay those charges or costs.

(13) 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 or otherwise not recovered by fees established by resolution or ordinance of the board of commissioners may be chargeable 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.

Popular name: Act 40

**280.197 Surveying drain or district, laying out new district, or making profiles, plans, or estimates of work; filing data; land added to drainage district; meeting of board of determination; notice; affidavit of mailing; failure to receive notice; expense of notification; reconvening and order of board of determination; locating, establishing, and constructing of drains.**

Sec. 197. (1) On receipt of a petition filed under this chapter, the commissioner or the drainage board may require a competent surveyor or engineer to make a survey of the drain or of the district, or a portion of the drain or district, or if necessary, lay out a new district including the land benefited, or make profiles, plans, or estimates of the work and file all data concerning the profiles, plans, or estimates with the commissioner or the chairperson of the drainage board. If it appears that land has been added to the drainage district, the drain commissioner for a county drain, or the chairperson of the drainage board for an intercounty drain, shall notify the board of determination who allowed the petition that the land should be added to the district. The drain commissioner or chairperson of the drainage board shall call a meeting of the board of determination. If a member of the board of determination is disqualified or unable to act, then the member's place shall be filled by appointment as in the first instance. The notice shall specify the time, date, and place within the drainage district at which the board of determination shall reconvene. The drain commissioner or chairperson of the drainage board also shall cause the notice to be published once in a newspaper of general circulation in the county or a newspaper of general circulation in the area where the drain improvement is contemplated at least 10 days before the meeting. Notice of the time and place of the meeting, by first class mail, shall be sent at least 10 days before the date of the meeting, to each person whose name appears upon the last city or township tax assessment roll as owning land within the enlarged drainage district, at the address shown on the roll. If an address does not appear on the roll, then 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 persons to whom the notice was mailed constitute all of the persons whose names and addresses appear upon the tax rolls as owning land within the enlarged drainage district. The affidavit shall be conclusive proof that notice was mailed to each person to whom notice is required to be mailed by this section. The failure to receive a notice by mail shall not constitute a jurisdictional defect invalidating a drain proceeding or tax, if notice was sent by first-class mail as provided in this section. All expense of notification shall be paid by the drainage district.

(2) At the time, date, and place designated by the drain commissioner or the chairperson of the drainage board the board of determination shall reconvene. Upon reconvening, if the board of determination by a majority vote of members finds the proposed addition of the land to the drainage district necessary and conducive to the public health, convenience, or welfare, they shall make an order to that effect and file the order with the drain commissioner or drainage board. The drain commissioner or drainage board shall take the steps and perform the acts which are required for the locating, establishing, and constructing of drains as designated in chapter 4 or chapter 6.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1958, Act 87, Imd. Eff. Apr. 11, 1958;—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.

Popular name: Act 40

**280.198 Drain taxes; subsequent assessment.**

Sec. 198. The assessment, collection and return of drain taxes for any work done under this chapter shall be made in the same manner and under the same provisions as in this act provided for drain taxes assessed, collected, returned and enforced in the first instance: Provided, That in all proceedings involving subsequent assessments, the drain commissioner shall furnish to the supervisor of each township containing parcels of land subject to such assessment the names of the owners of record of such parcels as of the date of the assessment.

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

Popular name: Act 40

**280.199 Cleaning out drain; apportionment of cost; use of surplus in drain fund.**

Sec. 199. In case the necessity for cleaning out any drain arises from the act or neglect of any land owner, said act or neglect shall be taken into consideration by the commissioner in making the apportionment. In case the cost of cleaning out shall be lessened by the tiling of the source of the drain under section 425 of this act, the commissioner may take that into consideration in making the apportionment of benefits against the land so tiled, but in no case shall said benefits be considered to be less than 50% of the benefits to such land if it were



not tiled. Should there be a surplus in any drain fund, the commissioner or drainage board, as the case may be, may, in their discretion, without application or notice, pay out of such funds a reasonable compensation for cleaning out any obstruction that may accumulate in the particular drain for which the fund was raised.

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

**Popular name:** Act 40

### **280.200 Cleaning out drain; cost of maintenance and repair; public contracts.**

Sec. 200. In lieu of assessing the cost of the maintenance and repair of any drain to parcels of land in the drainage district within any city, village, township, charter township or county, the commissioner or drainage board may contract relative to such cost with any city, village, township, charter township or county in which the drain, or any part thereof, is located, or whose residents use the drain for drainage or for the transportation of sewage. In the contract any city, village, township, charter township or county may agree (1) to pay annually to the commissioner or the drainage board certain sums for the cost of maintenance and repair of any drain and for the creation of a reserve fund therefor, or (2) to provide such sums periodically as needed, or (3) to reimburse the commissioner or drainage board for all sums expended for maintenance and repair, or (4) for any combination of the foregoing. The contract shall be approved and its execution authorized by a resolution adopted by the legislative body of the city, village, township, charter township or county and shall be executed by the commissioner or drainage board on behalf of the drainage district. The city, village, township, charter township or county may fulfill its obligation to pay in accordance with the terms of the contract out of its general funds, service charges to its residents, or any other legally available funds. The contract shall specify the manner in which the obligation to pay shall be fulfilled.

**History:** Add. 1962, Act 103, Imd. Eff. Apr. 30, 1962.

**Popular name:** Act 40

## CHAPTER 9. LETTING OF CONTRACTS.

### **280.221 Construction of drain; receipt of bids; sealed proposals; contracts; bonds; abandonment of petition; order; notice; board of county road commissioners authorized to bid.**

Sec. 221. At the time and place fixed in the notice therefor, the commissioner shall receive bids for the construction of the drain. The commissioner may in any case, and shall for all drains having an estimated cost exceeding \$5,000.00, advertise for sealed proposals, to be opened on the day of letting. All sealed proposals received by the commissioner shall be publicly opened by him in the meeting and may be there examined by any person interested. As soon as practical after the opening of bids for the construction of any drain, the commissioner shall determine the lowest responsible bidder and award contracts, or he may reject all proposals and readvertise as in the first instance, and in cases where the commissioner determined that the taxes assessed for benefits shall be collected in more than 1 installment, he shall, subject to the provisions set forth in section 275 of this act, determine the amount, form, maturity and rate of interest of bonds to be issued. In counties having a board of county auditors no drain bonds shall be sold and no drain contracts let without the written consent and approval of the board of county auditors, but the approval of said board shall not be required in proceedings relative to intercounty drains.

If no contract shall be let within 5 years after the date of filing the petition to locate, establish and construct, or deepen, widen, straighten, tile, extend or clean out a drain, the drain commissioner may determine that the petition shall be deemed abandoned and no further action shall be taken to construct the drain. 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 drain commissioner determines the petition shall be abandoned, he shall issue his 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 the county. 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.

The board of county road commissioners, when authorized by a committee of supervisors appointed by the board of supervisors, is hereby authorized to bid for the construction, cleaning, deepening and widening of drains within the county, and, if such bid is accepted, shall be authorized to perform the work called for therein, and receive payment therefor. A bid tendered by such board of county road commissioners shall not be accepted unless such bid shall be at least 15% lower than any other bid tendered. The moneys received by the county road commission shall be credited to the county road fund, and expenditures incurred by the county road commission shall be proper disbursements therefrom.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1960, Act 4, Imd. Eff. Mar. 8, 1960;—Am. 1973, Act 16, Imd. Eff. Apr. 30, 1973.

**Popular name:** Act 40

### **280.222 Letting contracts; rejection of bids; adjournment.**

Sec. 222. The commissioner shall first let the section at the outlet of the drain and shall let each remaining section in its order up stream: Provided, That the commissioner may let the drain in sections or as a whole, whichever appears to him the most practical: Provided further, That the commissioner shall reserve the right to reject any and all bids or proposals and proceed to let said drain in its entirety, and may adjourn such letting in the whole or in part, from time to time, to such other time or place to be by him at the time of such adjournment publicly announced as shall to him seem proper, but not in all more than 40 days from and after the time of letting as first advertised.

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

**Popular name:** Act 40

### **280.223 Deposit with bid; purpose; retention of deposit; damages for nonexecuted contract; return of deposit; disposition of forfeited money; security; conditions and limitations of personal surety; failure to complete contract; bond or indemnity insurance; contracts to which section applicable; additional kinds of security.**

Sec. 223. (1) A deposit in the form of a certified check or its equivalent in the amount that the commissioner considers reasonable may be required with each bid, whether on opening bidding or sealed proposals, as evidence of good faith and to reimburse the district in the event of failure on the part of the successful bidder to execute the necessary contracts or to furnish the required security or indemnity insurance. If the successful bidder does not execute the proper contracts or furnish the security or indemnity insurance required of him or her within 10 days after the acceptance of his or her bid, then the commissioner may retain the deposit as stipulated damages for the nonexecution of the contract and proceed to advertise for and let the job anew. If the successful bidder furnishes the security or indemnity insurance required and executes the required contracts, then the deposit shall be returned to him or her. All money forfeited to the commissioner under this subsection shall be deposited with the county treasurer to the credit of the drainage district fund.

(2) The successful bidder shall, within the time stated in subsection (1), file with the commissioner security considered necessary by the commissioner guaranteeing that the contract will be completed in accordance with the terms specified in the contract. The security shall be in a sum fixed by the commissioner, but shall not be less than the contract price. At the option of the commissioner, the security shall consist of 1 or more of the following:

- (a) Cash.
- (b) Certified check.
- (c) Performance bond executed by a surety company authorized to do business in this state.
- (d) Escrow agreement acceptable to the commissioner.
- (e) Irrevocable letter of credit issued by a state or federally regulated financial institution.
- (f) Personal surety acceptable to the commissioner.

(3) If a personal surety is used as security, the commissioner shall require all of the following conditions and limitations:

(a) That the personal surety be a contractor with the experience and ability to perform and complete, in a timely manner, the contract in the event of a default by the successful bidder.

(b) That the personal surety not act as the personal surety for more than 1 other principal during the term of the contract upon which he or she is giving security.

(c) That no more than 2 personal sureties be utilized as security on any 1 contract.

(d) That, the personal surety provide financial information requested by the commissioner and that, after a review of this information, the commissioner be satisfied with the surety's ability to perform the contract upon which he or she is giving security.

(e) That the personal surety provide to the commissioner a list of contracts upon which the surety is required to perform, naming the parties to each contract, the amount of each contract, the work to be performed under each contract and the time during which each contract is to be performed, and that the personal surety revise this listing during the term of the contract upon which he or she is giving security, adding or deleting information as contracts are entered or completed.

(f) That the personal surety agree that in the event the successful bidder defaults on the contract, the personal surety shall enter onto the project and complete the project pursuant to the terms of the contract within the time limitations specified by the commissioner or pay to the drainage district the amount of money

specified by the commissioner as necessary to pay another contractor to complete the contract.

(4) If a contract is not completed in accordance with its written terms, the security provided to the commissioner shall be used to complete the contract.

(5) In addition to the security required in subsection (2), the commissioner shall require the successful bidder to furnish a bond or indemnity insurance in the sum required by the commissioner. This bond or indemnity insurance shall run to the people of the state of Michigan and shall be maintained in full force and effect until the contract is terminated to indemnify the commissioner, the drainage district, and the county or other municipality against loss or damage resulting from injury to a worker on the drain, or the negligence or carelessness of the contractor in the construction of the drain. Indemnity insurance that terminates by expiration or cancellation shall be replaced prior to termination in the sum then required by the commissioner.

(6) The provisions of this section apply to contracts in excess of \$100,000.00. For all contracts equal to or less than \$100,000.00, the commissioner may require security that he or she considers adequate and necessary, consistent with the provisions of this section.

(7) The commissioner, at his or her option, may require the provision of additional kinds of security.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1960, Act 96, Imd. Eff. Apr. 26, 1960;—Am. 1989, Act 61, Imd. Eff. June 16, 1989.

**Popular name:** Act 40

## CHAPTER 10.

### INSPECTION AND APPROVAL OF CONSTRUCTION AND PAYMENT FOR THE DRAIN.

#### **280.241 Inspection of drain; order of approval, payments on contract.**

Sec. 241. No warrant or drain order for the payment of any part of such drain contract shall be drawn until the work has been inspected and approved as herein provided. The commissioner may inspect and approve any tile or open drain, or he may designate any competent surveyor or engineer to make such inspection, but where the construction exceeds \$3,000.00, the commissioner shall designate a competent surveyor or engineer to make the inspection. Any person making such inspection shall see that the specifications in the contract are fully complied with, and if the work is not in accordance with the contract, the commissioner shall immediately notify the contractor thereof. If the work so inspected shall conform to the contract, the person making the inspection shall certify in writing to that fact and an order of approval shall thereupon be entered by the commissioner in his drain record, and notice of the approval be given the contractor. The commissioner may issue warrants or orders on the fund of any drain not exceeding 90% of the amount earned on any contract after the certificate of inspection and the order of approval is entered as herein provided. The payment of the final 10% or any portion thereof on any contract may be made after the certificate of inspection is made attesting to the completion and is filed in the office of the commissioner.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1965, Act 98, Eff. Mar. 31, 1965.

**Popular name:** Act 40

#### **280.242 Extension of time on contract; forfeiture; reletting unfinished portion; recovery of excess cost.**

Sec. 242. The commissioner shall have power to grant a reasonable extension of time for the completion of any contract. When any contract shall not be finished within the time specified, or to which it may be extended, the commissioner shall declare such contract forfeited and shall, within a reasonable time thereafter, relet the unfinished portion thereof to the lowest responsible bidder, by public letting, after not less than 5 days' notice thereof, by posting only, as provided for the letting in the first instance, or by private letting when such can be done, at a price per rod for the uncompleted portion thereof not exceeding the price per rod at which the job was first let; and he shall make contract and take security in each case as herein provided. The cost of completing such part over and above the contract price, if any, and the expense of notice and reletting shall be collected by the commissioner of the parties first contracting or of their bondsman, which moneys, when so collected, shall be deposited with the county treasurer, and placed to the credit of such drain.

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

**Popular name:** Act 40

#### **280.243 Deficiency; assessment, collection, review, appeal; embezzlement; payment from county general fund, conditions.**

Sec. 243. Whenever the amount assessed for the construction of any drain shall not be sufficient to complete the same, and to pay all the costs and incidental expenses or to pay the principal and interest on bonds if such are issued, a further assessment shall be made to meet the deficit or additional expense. Such

further assessment shall be apportioned, assessed, levied and collected as provided in the first instance, and on the same percentage, and shall be collected in 1 year, but there shall be no review of nor appeal from such further assessment: Provided, That whenever by reason of the embezzlement or other wrongful act of any county official or by reason of the conspiracy of any county official with any other person or persons to defraud any drainage district, township or county, there shall be any deficiency as aforesaid, the board of supervisors of any county traversed by the drain may provide for the payment, out of the general fund of the county, of all or any part of such additional assessment as may be apportioned to that part of the drainage district within such county, or for the refunding to taxpayers of any such assessment which may have been paid.

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

**Popular name:** Act 40

#### **280.244 Drain orders; drawing and payment, restrictions; payment from county general fund, reimbursement.**

Sec. 244. All orders for the payment for services rendered and work performed shall be drawn by the commissioner upon the drain fund of each particular drain. In case of taxes assessed for benefits received which are to be paid in 7 annual installments or less, all orders for the payment for lands for right of way shall be paid out of the first year's taxes, and the balance of such first year's taxes, if any, shall be applied pro rata among the several contractors in the payment of the contracts for the construction of such drain. For the balance due upon such contracts the commissioner shall draw orders payable out of each succeeding year's assessment pro rata among the several contractors: Provided, That no commissioner shall draw orders payable in any one year for a larger amount than said year's assessment, except in cases where bonds are issued and sold as provided by law. All drain orders shall be drawn payable not sooner than the fifteenth day of April nor later than the first day of August of the year in which the drain taxes for the payment thereof are required to be paid. If the drain fund is insufficient for such purpose because of delinquency in the payment of drain taxes after the lands on which the said taxes shall have become delinquent have been offered for sale, in any such case where payment is made by the county treasurer out of the general fund and all delinquent drain taxes received by said treasurer thereafter shall be credited to the general fund until the same is reimbursed. In all cases where bonds are issued and sold as herein provided and the proceeds thereof are deposited in the county treasury to the credit of the fund of the particular drain, orders presented on such fund shall be paid out of the proceeds aforesaid, or out of the first annual installment of the taxes. In no case where there are outstanding bonds shall an order be paid out of any installment of taxes collected other than the first.

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

**Popular name:** Act 40

#### **280.245 Drain orders; contents, recording; payment; insufficient funds, interest; drain order redemption fund; payment of drainage taxes; reports to commissioner by county treasurer.**

Sec. 245. All drain orders made by the commissioner shall state the services rendered in brief form, shall be numbered and recorded and signed by the commissioner. Such order, when due, shall be presented to the county clerk and he shall immediately ascertain from the county treasurer if the particular fund on which said order is drawn is sufficient to pay said order. If such fund is sufficient, the county treasurer shall so certify on the back of said drain order and the county clerk shall thereupon issue the usual county warrant upon the county treasurer for the payment of said order, taking said order so certified as his voucher. If such particular fund is insufficient when such order is presented for payment, the county treasurer shall so certify upon such order and such order shall then draw interest at the rate of 6% per annum from the date of presentation until such particular fund is sufficient to pay the same, said interest to be computed and paid with the principal out of the proper fund on which it was drawn, when there are sufficient funds to pay the same. The county treasurer shall keep a record in which he shall note each drain order presented for payment on a drain account which was insufficient to pay such order on the date of presentation. He shall note in such record the amount, number, drain account and the date of original presentation for payment. When there are sufficient moneys in the particular drain account to pay the order, plus interest, the county treasurer shall note the date of such sufficiency on such record and shall transfer sufficient moneys to pay such order and interest then due from the particular drain account and drain fund to a drain order redemption fund and the drain order shall cease to earn interest as of that date. Transfers to the drain order redemption fund shall be made in the order of priority in which the drain orders were originally presented for payment. Payment of such orders, including interest earned as provided herein, shall thereafter be made by the county treasurer from the drain order redemption fund. Drain orders at any time during the year in which such drain order becomes due and payable and for a

period of 30 days prior to such year shall be accepted for the payment of drainage taxes. The county treasurer shall report to the commissioner the amount paid as interest on any and all such drain orders. The county treasurer shall at the first of each month furnish the drain commissioner with a report of all drain orders cashed during the preceding month, including the name of the drain upon which the order was drawn, the amount, the number of the order, and the date of payment.

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

**Popular name:** Act 40

#### **280.246 Advertising rates; fees of judge of probate and other officers.**

Sec. 246. Newspaper publishers shall receive legal rates for advertising. The judge of probate shall receive 10 cents per folio for making exemplified copies of any proceedings had in the probate court and \$2.00 for the appointment of special commissioners, including certified copy of the order of the appointment. Special commissioners may be appointed to determine the necessity of drains and the necessity of taking property for the use of such improvement and appraise damages therefor. Members of boards of review, boards of determination, surveyors and attorneys employed, shall present their account for services rendered and expenses under oath to the board of county auditors in a county having a board of auditors or to the judge of probate in other counties, and it shall be the duty of said board or judge to audit and allow the said accounts and direct the same to be paid from the revolving drain fund of the county: Provided, That in case the board of determination or special commissioners determine said proposed drain is not necessary, payment for all such service shall be made from the general fund of the county.

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

**Popular name:** Act 40

#### **280.247 Attorney; employment; legal expenses, payment; prosecuting attorney.**

Sec. 247. The county drain commissioner acting under the provisions of this act may employ an attorney when he deems the same necessary and any legal expense shall be charged to the several drain districts in behalf of which he shall be employed. All such expenses shall be paid out of the revolving drain fund which shall be reimbursed out of the first moneys available: Provided, That the board of supervisors by resolution may cause the prosecuting attorney to give such legal assistance as part of his duties.

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

**Popular name:** Act 40

#### **280.248 Expenses of state director of agriculture or deputy; payment.**

Sec. 248. The state director of agriculture, or any deputy designated by him, shall be paid all his necessary traveling and subsistence expenses actually and necessarily incurred in the discharge of any duties required by this act.

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

**Popular name:** Act 40

### CHAPTER 11.

#### LEVY AND COLLECTION OF DRAIN TAXES.

#### **280.261 Computation of cost; items included; contingent expenses.**

Sec. 261. Within 10 days after the letting of contracts, or in case of an appeal, then forthwith after such appeal shall have been decided, the commissioner shall make a computation of the entire cost of such drain, which shall include (1) all the expense of laying out and designating the drainage district, which item of expense shall include the entire cost of the survey; (2) the expense of locating, establishing and constructing the drain; (3) the fees and expenses of special commissioners; (4) the compensation to be paid the board of review; (5) the cost of construction of bridges and culverts; (6) the contracts for the construction of the drain, or other work to be done on said drain; (7) the estimated cost of an appeal in case the apportionment made by the commissioner shall not be sustained; (8) the estimated cost of inspection; (9) the cost of publishing all notices required; (10) all fees of the probate judge; (11) attorney fees for legal services in connection with the drain; and (12) interest on bonds for the first year, if bonds are to be issued, and he shall add the whole into a gross sum and add thereto not less than 10% nor more than 15%, at the discretion of the drain commissioner, of said gross sum to cover contingent expenses, and the entire sum so ascertained shall be deemed to be the cost of construction of such drain.

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

**Popular name:** Act 40

**280.262 Special assessment roll and tax assessment roll; contents; installment payments.**

Sec. 262. (1) The commissioner shall thereupon make a special assessment roll for the drain for each county, township, city, or village and each state trunk line highway affected thereby, which roll shall be designated, giving name or number, "drain special assessment roll". The commissioner shall enter on the roll a correct description of the tracts, parcels, or subdivisions of land benefited by the drain and place opposite each description the amount of the percent heretofore determined upon by him or by the board of review. The commissioner shall also enter on the roll the amount of the percent apportioned to the county, for benefits to any county road, and to the township, city, or village and the state highway commission, for benefits to any state trunk line highway, and in case the amount be payable in installments he shall also enter thereon a memorandum of the installments and of the year or years when the installments shall be spread. The commissioner shall add a certificate in writing of the determination whether the taxes assessed for benefits shall be paid in 1 or more years. The rolls shall be dated and signed by the commissioner and filed on or before the last Wednesday in September in each year, in the office of the county clerk.

(2) The commissioner shall prepare a tax assessment roll in each year for the collection of taxes for the current year, and shall certify the same to the county clerk on or before the first day of the annual meeting of the county board of commissioners. In each roll the commissioner shall add to the amount to be collected, interest on all unpaid installments to the date of tax collection, and shall deduct from the amount to be collected by the county, village, city, or township all amounts received from the proceeds or income of property or an interest in property located in the county, village, city, or township and acquired through condemnation or the payment of damages under this act. To the roll for the last year the commissioner shall add a further amount, if any, as may be necessary together with outstanding uncollected taxes, to pay all outstanding bonds and interest thereon to maturity. If the roll is made payable in more than 1 installment, a permanent assessment roll may be maintained in the office of the county treasurer, subject to the direction of the board of county auditors, in counties having such a board, and of the county board of commissioners in other counties, showing the total cost, the number of installments and the amount of each annual assessment, together with interest charges thereon, which shall be carried in a separate column.

(3) If the roll is made payable in more than 1 installment, and the total amount of any assessment is \$10.00 or less, exclusive of interest, then that assessment shall be payable in 1 installment; but if the assessment exceeds the sum of \$10.00 and is made payable in more than 1 installment, then that installment, exclusive of interest, shall not be less than the sum of \$10.00, excepting the final installment, which shall be payable in the amount of the actual balance.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1963, Act 82, Eff. Sept. 6, 1963;—Am. 1976, Act 338, Imd. Eff. Dec. 15, 1976.

**Popular name:** Act 40

**280.263 Spread of drain taxes on rolls; time.**

Sec. 263. It shall be the duty of the supervisor, village or city assessor, to spread on his roll the total amount of all drain taxes determined upon by the county drain commissioner to be assessed upon the county, township, city or village at large by adding to the county, township, city or village tax for the year in which the same was assessed and extending said tax in the same column with the general county, township, city or village tax: Provided, That in such villages or cities of this state, where the municipal taxes therefor are assessed and collected prior to the October meeting of the board of supervisors, all taxes ordered to be spread against such municipalities shall be spread during the calendar year following such action by the board of supervisors: Provided further, That in lieu of the addition of such tax to the county, township, city or village tax, the legislative body thereof may in any year provide for the payment thereof from the general or contingent fund of such county, township, city or village. Such supervisor or assessor shall also spread upon said roll, separately, and immediately following the other descriptions, all tracts or parcels of land specified by the commissioner to be assessed for benefits, and shall place opposite each description, in a column marked, "(giving the name or number) ..... drain taxes," the amount of taxes apportioned thereon, as certified to him by the county clerk.

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

**Popular name:** Act 40

**280.264 Statement of assessments upon township at large furnished township treasurer.**

Sec. 264. The supervisor shall, at the time of the delivery of his assessment roll to the township treasurer, also furnish him with an itemized statement of the several amounts assessed upon the township at large for each particular drain, naming the drain.

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

**Popular name:** Act 40

**280.265 Drain taxes; general tax law applicable, payment under protest, action, lien, personal claim.**

Sec. 265. All drain taxes assessed under the provisions of this act shall be subject to the same interest and charges, and shall be collected in the same manner as state and other general taxes are collected, and collecting officers are hereby vested with the same power and authority in the collection of such taxes as are or may be conferred by law for collecting general taxes. Drain taxes, when collected, shall be returned to the county treasurer to be disbursed by him. In all cases where suit is brought against the collector arising out of the collection of any drain tax, the county shall defend such officer in the same manner that he has now the right to be defended in the collection of general taxes. No suit shall be instituted to recover any drain tax or money paid or property sold therefor, or for damages on account thereof, unless brought within 30 days from the time of payment of such money to, or sale of such property by, the collecting officer; and if such tax shall be paid under protest the reasons therefor shall be specified, and the same procedure observed as is or may be required by the general tax law. All taxes levied under the provisions of this act, with all lawful costs, interest and charges, shall be and remain a perpetual lien upon the lands upon which they are assessed, and a personal claim against the owner or owners of such lands until they are paid.

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

**Popular name:** Act 40

**280.266 Return of delinquent drain taxes; general tax law applicable.**

Sec. 266. If the taxes levied for the construction, cleaning out, widening, deepening, straightening or extending of any drain are not collected by the township, city or village treasurer, they shall by him be returned, together with the lands upon which they were levied, to the county treasurer in the same return, at the same time, and in the same manner, in every respect (naming in each case the particular drain), as lands are returned for state, county and township taxes, and such taxes shall follow such lands, the same as all such other taxes, and all the general provisions of law now existing, or that may be hereafter enacted for enforcing the payment of township, county and state taxes, shall apply to such drain taxes, and to the lands returned delinquent therefor, in the same manner and with like effect.

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

**Popular name:** Act 40

**280.267 Injunction after assessment.**

Sec. 267. After any taxes have been assessed for the construction, location or establishment of any drain, no injunction shall issue to restrain the spreading of the same upon the tax roll nor to restrain the collection thereof, nor shall the same be in any manner stayed, unless the amount of such assessment shall first be paid into the township treasury to be applied upon such tax, in case the court in which the suit upon which injunction is tried shall so order.

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

**Popular name:** Act 40

**280.268 Perpetual injunction not allowed for informalities; plaintiff may show injury.**

Sec. 268. The collection of no tax levied or ordered to be levied for the location or construction of any drain laid out under this act shall be perpetually enjoined or declared absolutely void in consequence of any error or informality of any officer in the location and establishment thereof, nor by reason of any error or informality appearing in the record of the proceedings by which any such drain shall have been located and established, nor on account of any irregularity or informality in the condemnation of right of way, nor for want of any record thereof; but the court in which any action may be brought to recover any tax or assessment paid, or to declare void the proceedings to locate and establish any drain, or to enjoin any tax or assessment levied or ordered to be levied for the payment of the labor and expense thereof, shall, if there be manifest error in the proceedings, allow the plaintiff in action to show that he has been injured thereby.

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

**Popular name:** Act 40

**280.269 Invalidation proceedings; proofs, correction of damages or assessment, order, costs.**

Sec. 269. The court in which such proceedings are begun shall allow proof that the drain was necessary

and conducive to the public health, convenience or welfare, and that all the steps required by law have been substantially complied with, notwithstanding the record required to be kept by the commissioner. In case substantial error is found, the court may correct any gross injustice in the award of damages, or assessment of benefits as may appear after hearing the proofs and allegations of both sides and shall make such order in the premises as shall be just and equitable, and may order that such tax or assessment remain on the tax roll for collection, or order the same to be relieved, or may perpetually enjoin the same, or any part thereof, or if the same has been paid under protest, may order the whole, or such part thereof as is just and equitable, to be refunded. In all cases where assessments shall be set aside after contracts have been let or bonds sold, the decree shall make full provision for payment of work done and materials furnished under said contracts before the commencement of suit, and for payment of such bonds and interest thereon, by reassessment according to benefits, or otherwise as equity may require. The cost of such proceedings, if error or injustice be shown, shall be apportioned among the parties, or if no manifest error or injustice be shown, such costs shall be collected of the party bringing the action.

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

**Popular name:** Act 40

### **280.270 Tax lien; proceeding to compel spread of tax; established drains.**

Sec. 270. Whenever any drain has been located and established, and contracts let for its construction, and the work of construction has been completed, or partly completed, and the commissioner has made his order establishing the drain, his apportionment of benefits and special assessment roll and filed the same in the office of the county drain commissioner, as provided by this act, and such taxes remain a perpetual lien upon the lands assessed, and filed all of said papers in the office of the county drain commissioner, and no person or municipality affected by the proceedings has taken any action by virtue of section 161 of this act to test the validity of the proceedings, or to set the same aside, and it shall further appear that the tax has not been spread on the tax roll of the municipalities affected and the lien of said tax still remains against such lands, on the application in writing of any person or corporation who is now or were owners of the land assessed at the time of the apportionment of benefits by the commissioner or any person or corporation who were the owners of land at said time and who were assessed therefor, and who sold such land with covenants of warranty, may make an application in writing to the county drain commissioner setting forth such facts, and upon the filing of such application it shall be the duty of the county drain commissioner to make a certified copy of the assessment roll filed in his office by the commissioner and present to and lay it before the board of supervisors at the first October session thereafter of said board, and thereupon it shall be the duty of said board at said session to order and direct such taxes spread upon the tax roll of the municipalities affected thereby, according to the said assessment filed as aforesaid, and as appears by such special assessment roll, so certified to said board. The provisions of this section shall also apply to drains laid out and established and wholly or partly constructed under the provisions of all drain laws in force prior to the passage of this act, where such laws have made such drain tax a perpetual lien upon the lands upon which they are assessed.

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

**Popular name:** Act 40

### **280.271 Tax collection suits; tax reassessment.**

Sec. 271. Any drain taxes that may have been assessed and returned upon any lands under any drain law enacted before this act and remaining unpaid, may be sued for by the commissioner of the county in which the delinquent lands are situated in any court of competent jurisdiction and collected from the owner of the lands or the taxes, if properly returned to the county treasurer, may be ordered charged back by the county board of commissioners and reassessed upon the lands in the same manner that unpaid or rejected taxes may be charged back by the state treasurer and reassessed under the general provisions of law.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 2002, Act 353, Imd. Eff. May 23, 2002.

**Popular name:** Act 40

### **280.272 Tax collection suits; assumpsit; prima facie evidence, judgment based on benefits; authority to sue.**

Sec. 272. In any suit brought for the collection of any unpaid drain taxes by virtue of section 271, the commissioner bringing such suit may declare in an action of assumpsit against the defendant; proof of the amount of the tax, and that it is unpaid, either oral or by the production of the tax roll, shall be prima facie evidence of the plaintiff's right to recover; but the defendant may plead the general issue and give evidence in reduction of damages, and the plaintiff may offer evidence in rebuttal, and if it shall appear from such evidence that the actual benefits to the land by reason of the construction of the drain were less than the



amount of the tax, judgment shall be only for the amount of the benefits as proven, with interest and costs: Provided, That no such proceedings shall be instituted by the commissioner at the expense of the county unless he shall be authorized to do so by the board of supervisors.

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

**Popular name:** Act 40

**280.273 New proceedings when tax set aside; report of defects to supervisors, reassessment.**

Sec. 273. In case any drain tax heretofore or to be hereafter assessed shall be set aside, except for causes that would deprive the commissioner of jurisdiction to construct the drain, the commissioner may begin proceedings anew at the stage where they shall be correct. In case a drain tax can or may be set aside for error in description or other defect in the commissioner's or township treasurer's roll, the commissioner shall report the same to the board of supervisors at their October session, who shall order the same reassessed upon the proper description. Such report may be made at any time before the sale of the land for such tax.

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

**Popular name:** Act 40

**280.274 Invalidation proceedings; commissioner as party.**

Sec. 274. In any suit brought to set aside any drain tax, or in any way attacking the legality of any drain proceedings, the commissioner shall be made a party to said suit.

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

**Popular name:** Act 40

**280.275 Drainage district bonds; issuance, terms, sale, premium; sale subject to revised municipal finance act; limitation on payment from county general fund.**

Sec. 275. In cases where the issuing of bonds shall have been determined upon, as provided in this act, and subject to the provisions of section 221 of this act, the commissioner may borrow money in anticipation of the collection of the installments and may issue as evidence thereof the bonds of the drainage district as defined in this act. The obligations shall specify on their face that they are payable out of the installments of drain taxes to be collected, and the amount shall not exceed the aggregate of the installments levied. Bonds issued under this act shall be signed by the commissioner on behalf of the drainage district, shall be countersigned by the county clerk and shall be payable in annual installments equal in number to the installments of taxes, shall mature not earlier than March first and not later than June first of the year following the due dates of the respective installments of taxes. The number of installments shall not exceed 20: Provided, however, That in any drainage district containing a closed drain, any part of whose cross-section has an area exceeding 60 square feet, the number of installments may be, but shall not exceed, 30, and the amount of each installment shall be fixed to correspond as near as may be to the drain commissioner's estimate of the amount of taxes actually collectible each year, and in no case shall bonds mature more than 2 1/2 years after the corresponding installment of taxes. The commissioner shall pledge in the bond the credit of the drainage district, including the lands embraced within the district and the townships, cities, villages, counties, and state trunk line highways assessed at large, in the proportion that they are taxed for the benefits received. The bonds shall be sold subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821. If any premium is received on the bonds, the premium shall belong to the fund of the drain. The proceeds derived from the sale of the bonds shall be deposited with the county treasurer to the credit of the drain fund. The county treasurer shall safely keep all the bonds until sold as above provided: Provided, however, That this act shall not be considered to affect any bonds or refunding bonds issued prior to the effective date of this act or any refunding bonds issued to replace the same: Provided further, That no county shall advance or pay out of its general funds any moneys for or on account of principal or interest of any drain bonds issued before the effective date of former Act No. 331 of the Public Acts of 1927, or any refunding bonds issued to replace the same.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 2002, Act 406, Imd. Eff. June 3, 2002.

**Compiler's note:** Act 331 of 1927, referred to in this section, was repealed by Act 247 of 1949, Act 40 of 1953, and Act 40 of 1956.

**Popular name:** Act 40

**280.276 County drainage district bonds or notes; intracounty drains; faith and credit; advancement by county, reassessment.**

Sec. 276. If bonds or notes are to be issued in respect to an intracounty drain, the county board of commissioners may, by resolution adopted by a majority of its total membership, pledge the full faith and

credit of the county for the prompt payment of the principal of and interest on any bonds or notes hereafter issued pursuant to this act. This shall not validate any bonds or notes heretofore issued. In the event the county shall be required to advance any money by reason of such pledge, and if the collections from special assessments shall not be sufficient to reimburse the county therefor, the drain commissioner of such county shall, within a 2-year period from the date of advancement, reassess the drainage district as in the first instance in order to provide for the repayment to the county of the sums so advanced. The provisions of this section shall not permit the advancement or any moneys out of the general funds of any county to meet any deficiency in the collection of drain assessments confirmed prior to May 1, 1953.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1957, Act 37, Imd. Eff. May 14, 1957;—Am. 1959, Act 10, Imd. Eff. May 20, 1959;—Am. 1970, Act 112, Imd. Eff. July 23, 1970.

**Popular name:** Act 40

### **280.277 Drainage district bonds; delinquent assessments, advancements by municipalities, reimbursement, reassessment, validation of drain orders or bonds.**

Sec. 277. Whenever lands in any city, village or township or combination thereof shall be assessed for all or any part of the cost of a drain, the governing body of each such cities, villages or townships by resolution adopted prior to the issuance of drain orders and/or bonds in anticipation of the payment of the assessments for such drain may agree that in the event of any delinquency in the collection of the assessments against lands in such cities, villages or townships, the cities, villages or townships shall advance the amount of such delinquency from unobligated funds in the general fund to the extent necessary to pay principal and interest on such drain orders and/or bonds as the same mature. In the event that moneys are so advanced, then the cities, villages or townships shall be reimbursed from the collection of the said delinquent assessments against lands within its boundaries. If the collections from special assessments shall not be sufficient to reimburse the cities, villages or townships, the drain commissioner of such county shall, within a 5-year period from the date of advancement, reassess the drainage district as in the first instance in order to provide for the repayment of the sums so advanced: Provided, That this act shall not validate any drain orders or bonds issued prior to the effective date of this act.

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

**Popular name:** Act 40

### **280.278 Interest on installments of drain taxes; payment of interest; disposition and use of installments and interest; bank deposits; interest on bonds or notes.**

Sec. 278. If bonds or notes are issued and sold by the commissioner, installments of the drain taxes shall bear interest not to exceed a rate which is not greater than 1% per annum more than the average rate of interest on the bonds or notes from the date of the preparation of the assessment roll until due. The bonds or notes may provide, if the commissioner so determines, for the payment of interest semiannually. The installments and the interest shall, as collected, be paid into the county treasury and placed to the credit of the fund of the drain, to be used solely for the payment of bonds or notes as they mature. Money collected in anticipation of the maturity of the bonds or notes shall be deposited by the county treasurer in a bank or banks to be designated by the board of commissioners of the county and the interest received shall belong to the fund. Bonds or notes issued and sold by the commissioner shall bear interest at not to exceed the rate specified in the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1962, Act 191, Eff. Mar. 28, 1963;—Am. 1965, Act 249, Imd. Eff. July 21, 1965;—Am. 1978, Act 231, Imd. Eff. June 14, 1978;—Am. 2002, Act 406, Imd. Eff. June 3, 2002.

**Popular name:** Act 40

### **280.279 Special assessments; payment in full; notice to commissioner; deficiency assessment.**

Sec. 279. Any person liable to the payment of special assessments for benefits received from the construction of a drain hereunder may pay the same in full with interest to date at any time, subject to the right of reassessment in case of deficiency as herein provided. The foregoing right of prepayment shall extend to the state or any political subdivision thereof, assessed at large for a portion of the cost of a drain. Such payment may be made to the township treasurer, who shall give his receipt therefor and who shall transmit the same to the county treasurer. The latter official shall, on receipt of the same, give notice to the commissioner, who shall make the necessary changes in the rolls covering subsequent installments.

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

**Popular name:** Act 40

### **280.280 Additional assessments; levy; purposes; surplus; exemption of certain lands from deficiency assessments.**

Sec. 280. (1) If there is not sufficient money in the fund in a particular drain at the time of the maturity of the bonds last to mature, or any drain orders, to pay all outstanding bonds or drain orders with interest, or to reimburse the county for money which it has been obliged to advance pursuant to section 275, whether such insufficiency is due to the anticipation of installments as provided in section 279, or to failure to sell any lands for delinquent taxes, or to any other cause, it shall be the duty of the commissioner to at once levy an additional assessment as provided in this act provided in such an amount as will make up the deficiency which shall be spread in not to exceed 7 annual installments; and if the commissioner determines that the entire amount, if spread in 1 year, would be an undue burden or create unnecessary hardship, he or she may order it spread over any number of years up to but not exceeding 7. If bonds or other evidences of indebtedness are issued pursuant to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821, to refund the outstanding indebtedness of a drain district, the governing body of such drain district shall provide, subject to the requirements of the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821, for such additional levies of assessments prior to the maturity of the refunding obligations as necessary to prevent default in payment of interest on the obligations, and the maintenance of a sinking fund for their retirement. Every officer charged with the determination of the amount of taxes to be raised, or the levying of the taxes, shall make or cause to be made the additional levies as provided. Any surplus remaining after the payment of the bonds and interest shall remain in the county treasury and be used for the maintenance of the drain.

(2) The additional assessments shall only apply to drain orders or bonds issued after March 28, 1956 and shall be apportioned, assessed, levied, and collected as provided in the first instance. As to deficiency assessments levied for drain orders or bonds issued after March 28, 1956, there shall be no lands exempted from the levy, except those which at the time of the additional assessments are owned or used as follows:

- (a) Lands owned by the United States.
- (b) Lands owned by the state of Michigan.
- (c) Lands owned by any county, city, village, township, or school district and used for public purposes.
- (d) Lands used exclusively for burial grounds.
- (e) Lands dedicated to the public and actually used as a highway or alley, and not used for gain.

(3) An additional assessment shall not be levied or collected for the purpose of paying the principal or interest upon any bonds or obligations which have heretofore been held to be invalid, and any such additional assessment shall not be apportioned, assessed, levied, or collected for the purpose of paying any bonds, interest, or obligations for the payment of which assessments have been made.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1983, Act 176, Imd. Eff. Oct. 14, 1983;—Am. 2002, Act 406, Imd. Eff. June 3, 2002.

**Popular name:** Act 240

### **280.281 Special drain assessment; definition of municipal corporation.**

Sec. 281. Any municipal corporation may contract to pay all or any part of a special drain assessment for drain improvements made by any county agency or drainage district benefiting property of the municipal corporation, but in no event shall such payment exceed its proportionate share of the expenses of the improvements. For the purposes of this section, “municipal corporation” means any county, township, charter township, city, village, metropolitan district, public authority or a drainage district.

**History:** Add. 1961, Act 41, Imd. Eff. May 18, 1961.

**Popular name:** Act 40

### **280.282 Investment of surplus funds; consolidation of drainage district funds; disposition and use of interest; revolving maintenance fund; consolidation with other funds for investment purposes; disposition of interest earned; accounting for principal balances; expenditures.**

Sec. 282. (1) The drain commissioner or drainage board may direct the treasurer of any drainage district to invest any surplus funds belonging to and under the control of the drain commissioner or drainage board as provided in section 1 of Act No. 20 of the Public Acts of 1943, being section 129.91 of the Michigan Compiled Laws.

(2) If 2 or more drainage district funds which are under control of the drain commissioner or drainage board have balances of less than \$1,000.00, those drainage district funds may be consolidated into 1 account for short term investment as directed by the drain commissioner. A drainage district fund shall not be

consolidated if there is an immediate and apparent need for expending that fund on the specific drain to which the fund belongs.

(3) The interest earned by a fund consolidated under subsection (2) may be deposited in a segregated revolving maintenance fund which the drain commissioner or drainage board may use for temporarily financing necessary maintenance expenses on an intracounty or intercounty drain within that drain commissioner's or drainage board's jurisdiction. The revolving maintenance fund shall be a fund separate from the revolving drain fund provided for in chapter 12. The revolving maintenance fund shall be accounted for, administered, and reimbursed in the same manner as the revolving drain fund under section 303.

(4) If a drainage district fund has a balance of \$1,000.00 or more, the drain commissioner or drainage board may direct that that fund be consolidated with other funds for investment purposes. The interest earned, whether from a consolidated or separate account, shall immediately be deposited in the drainage district fund to which the principal belongs.

(5) The principal balances of each drainage district fund shall be accounted for at all times and may only be spent by order of the drain commissioner or drainage board on expenses necessary for the operation and maintenance of the drain to which the fund belongs.

**History:** Add. 1970, Act 144, Imd. Eff. Aug. 1, 1970;—Am. 1984, Act 80, Imd. Eff. Apr. 18, 1984.

**Popular name:** Act 40

### **280.283 Use or transfer of surplus construction funds; contract with public corporation; provisions of contract; return of surplus construction funds to state transportation department; definitions.**

Sec. 283. (1) The drain commissioner or drainage board shall use any surplus construction funds remaining in the construction fund after completion of the project for the inspection, repair, and maintenance of the drain as provided in section 196 or shall authorize the transfer of the funds to the bond and interest account, if bonds were issued, in the amounts the drain commissioner or drainage board considers proper.

(2) The drainage board or drain commissioner shall contract with a public corporation if that public corporation has been assessed for all or part of the cost of the drain or if land in a city, village, township, or combination thereof has been assessed for all or any part of the cost of a drain. The contract shall provide that after all outstanding drain orders or bonds are paid on a drainage district project, the drain commissioner or drainage board shall authorize the respective county treasurers to pay over any portion of the surplus not needed for more than the cost of inspection, repair, and maintenance of the drain as provided in section 196 to the county, township, city, or village in which the drain was located or in which assessments for benefits have been assessed and collected. The payments shall be on a pro rata basis in direct proportion to the amounts assessed and collected from each county, city, village, or township. The contract shall also provide that upon receipt of the surplus funds the county, city, village, or township shall utilize those surplus funds to alleviate drainage problems in their respective jurisdictions.

(3) If state highway funds are involved in a project, the drain commissioner or drainage board, upon completion of a construction project, shall return, on a pro rata basis, surplus construction funds in excess of the amount necessary to pay for inspection, repair, and maintenance of the drain as provided in section 196 to the state transportation department for the construction, maintenance, and administration of state highways.

(4) As used in this section, "public corporation" includes a city, village, township, or county, or the state.

**History:** Add. 1970, Act 144, Imd. Eff. Aug. 1, 1970;—Am. 1989, Act 149, Imd. Eff. July 14, 1989.

**Popular name:** Act 40

## CHAPTER 12.

### REVOLVING FUNDS FOR DRAINS.

#### **280.301 Revolving drain fund; creation, use.**

Sec. 301. At the October session of the board of supervisors, each board shall appropriate and collect by general taxation from the taxable property within their respective counties for the purpose of creating a revolving drain fund, such sum as said board may deem necessary. Said revolving fund when so created shall be used and disposed of solely as provided in this chapter.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1969, Act 90, Imd. Eff. July 24, 1969.

**Popular name:** Act 40

#### **280.302 Revolving drain fund; use; intercounty drains; expenses after date of letting drain contracts.**

Sec. 302. The revolving fund may be used for paying the engineer or surveyor for his services in laying out

a drainage district, also any necessary assistance therefor and to pay any and all other services to the date of letting the drain contract for paying members of boards of determination for services performed under this act, for necessary repairs on old drains, and also for paying drain orders that are due not in excess of \$2,000.00 if authorized by the board of supervisors. Orders drawn by the commissioner on the revolving fund may be made payable upon the performance of services herein defined. From said revolving fund may be paid the services herein mentioned on any drain or drainage district affecting more than 1 county. Such total expense is prorated among the several counties affected according to the amount apportioned to be paid by and in said counties respectively for said drain. Any and all orders for services rendered or expenses incurred after the date of letting the drain contract shall be paid in the manner prescribed in chapter 10, being sections 241 to 248.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1963, Act 215, Imd. Eff. May 17, 1963;—Am. 1963, Act 228, Eff. Sept. 6, 1963;—Am. 1967, Act 214, Imd. Eff. July 10, 1967.

**Popular name:** Act 40

### **280.303 Revolving drain fund; accounting records; reimbursement.**

Sec. 303. The county treasurers shall carry as a separate account upon the books of their office a revolving fund and all accounts and items pertaining thereto. A record shall be kept of the amount of money paid from the revolving fund for the use and benefit of any particular drainage district and upon payment to the county treasurer of the taxes assessed in the particular drainage district, the county treasurer, out of the moneys received, shall transfer to the revolving fund pro rata according to the number of installments of taxes the sum expended.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1969, Act 66, Imd. Eff. July 21, 1969.

**Popular name:** Act 40

### **280.304 Revolving drain fund; deposit in bank; interest.**

Sec. 304. The said revolving fund shall be deposited in the bank of the county offering the highest rate of interest on daily balances, final determination to be made by the board of supervisors of the particular county, the interest so received to be paid into and become a part of said fund.

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

**Popular name:** Act 40

### **280.305 Revolving drain fund; transfer to particular drain fund of moneys under former law, use.**

Sec. 305. When the moneys for the revolving fund shall have been appropriated, the county treasurer shall immediately transfer back to each particular drain fund any unexpended moneys due in such fund then on hand and carried in any revolving fund by virtue of any pre-existing law, said moneys when so transferred to be used solely for the use and benefit of the particular drain for which they were raised.

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

**Popular name:** Act 40

### **280.306 Revolving drain fund; expenditures or obligation before completion of improvement; apportionment.**

Sec. 306. Whenever revolving fund moneys have been expended or a drainage district has become obligated to pay expenses for engineering, legal and administrative services, by action of the drain commissioner or drainage board and no improvement has been completed subsequent to the commissioner's order designating a drainage district or entry of the first order of determination as prescribed in section 72 where an intracounty drain is involved, the drain commissioner of such county which has expended such revolving fund moneys may report such fact to the board of supervisors. If no improvement has been completed within a period of 5 years subsequent to the commissioner's order designating a drainage district or entry of the first order of determination as prescribed in section 72, the drain commissioner of such county shall report such fact to the board of supervisors. If the sum involved is too small to justify spreading the same over the designated district above referred to, such board of supervisors may order the sum to be spread against the property of the original petitioners according to such percentage as the commissioners shall deem just and equitable, based on the same benefit theory as if the improvement had been completed. If the sum involved is large enough to, in the opinion of the board of supervisors, create undue hardship on the original petitioners, the board of supervisors may order the same spread over such designated district and the commissioner shall apportion the cost thereof to the parties benefited in the district as provided in chapter 7 for the purpose of permitting a review of the roll as to fairness of the apportionment only.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1969, Act 105, Eff. Mar. 20, 1970.

**Popular name:** Act 40

### **280.307 Revolving drain fund; intercounty drain, apportionment, recovery of moneys.**

Sec. 307. Whenever revolving fund moneys have been expended and no improvement has been completed subsequent to the order designating a drainage district as prescribed in section 105 of this act where an intercounty drain is involved, within a period of 5 years, the drainage board created in section 102 of this act shall apportion the cost as between counties. Any drain commissioner feeling aggrieved by such apportionment may request review by the board of review provided in section 106 of this act, and such board shall proceed to review the same as provided in this act. The decisions of the board of review shall be final. Thereafter the amount apportioned to each county shall be recovered by each county as above outlined for the recovery of revolving fund moneys expended for an intracounty drain in section 306 of this act.

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

**Popular name:** Act 40

## CHAPTER 13. HIGHWAYS.

### **280.321 Drains in public highways; permit; release of right of way.**

Sec. 321. Drains may be laid within or across the right of way of any highway, provided it shall be necessary for the county drain commissioner to obtain first a permit from the highway authority having jurisdiction. If title in fee simple be not in the highway authority, said commissioner shall also obtain a release of right of way for the purposes of such drain from the owner of the land, as provided in sections 73, 74 and 75 of this act.

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

**Popular name:** Act 40

### **280.322 Drains in public highways; cost of construction; contract; maintenance, bridges or culverts to farms.**

Sec. 322. When any drain crosses a highway, the necessary bridge or culvert shall be constructed on the center line of the highway as located by survey, and in accordance with plans and specifications which shall be approved by the county road commission having jurisdiction, or by the state highway commissioner if such highway is a state trunk line. The cost of constructing the necessary bridge or culvert shall be charged in the first instance as part of the cost of construction of such drain. The board of county road commissioners or the state highway commissioner shall assume and bear such portion of the cost of construction, based upon benefits, as may be agreed upon with the drain commissioner. In such case, the contract for the construction of the bridge shall not be let by the drain commissioner without the written consent of the state highway commissioner or the board of county road commissioners. Thereafter such bridge or culvert constructed under the provisions of this act shall be maintained by the county road commission or state highway commissioner. Any such expense charged to the state highway commissioner shall be met out of any funds appropriated for the state highway department that may be available therefor; and any such expense to be borne by the board of county road commissioners shall be paid out of moneys in the county road fund not otherwise appropriated. As part of such drain, there shall be constructed at least 1 bridge or culvert across such drain connecting the highway (except limited access highways established under Act No. 205 of the Public Acts of 1941, as amended, being sections 252.51 to 252.64 of the Compiled Laws of 1948), with each farm entrance, and when a drain crosses a farm or any portion thereof there shall be constructed 1 bridge, culvert or ford across the drain connecting the portions of the farm disconnected by the drain, which bridge, culvert or ford shall also be charged in the first instance as a part of the construction of such drain, after which such bridge, culvert or ford shall be maintained by the owner of the land. If the drain commissioner shall make future improvements such as widening, deepening, straightening or relocating such drain, but not clean out alone, there shall be constructed the necessary bridges, culverts and fords as parts of such improvements.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1965, Act 107, Imd. Eff. June 30, 1965.

**Popular name:** Act 40

### **280.322b Drains; highways, crossing; expenses.**

Sec. 322b. If any person desires during construction or reconstruction of a highway to install a drain for agricultural benefits in lands adjacent to any highway, and if a satisfactory outlet cannot be secured on the upper side of the highway right of way and the drain must be projected across the right of way to reach an

outlet which may be legally utilized as an outlet and is suitable for such purpose, the expense of both material and labor used in installing the drain across the right of way shall be paid from funds available for the highway affected if the highway authority is notified of the necessity of the drain sufficiently in advance of the construction or reconstruction of the highway so that the drain may be installed and the highway constructed or reconstructed in the same operation.

**History:** Add. 1968, Act 283, Imd. Eff. July 1, 1968.

**Popular name:** Act 40

**280.323 Drains along public highways; consent; disposition of materials; apportionment against state trunk line highway; payment of assessment; certificate of amount due; drains constructed prior to 1923.**

Sec. 323. Before a drain is constructed along a public highway, the drain commissioner or drainage board shall consult with and obtain the written consent of the highway authorities having jurisdiction over the highway, as to the proposed location of the drain and the disposition of all material excavated. Whenever an apportionment is made against a state trunk line highway, the amount of the assessment based on the apportionment shall be paid out of any state transportation funds on hand. On or before December 1 of the year when the assessment is made, the drain commissioner or drainage board shall certify to the state treasurer the amount due from the state to the drainage district by reason of the assessment of benefits, and the state treasurer shall, if satisfied of the correctness of such certificate, cause the certificate to be paid within 30 days thereafter.

If a ditch or drain was constructed prior to 1923 primarily for drainage of private lands, and was constructed along a public highway, and if the records including the original survey of the drain are not of public record nor turned over to the county drain commissioner, or have not been entered in the records of the county drain commissioner as a county drain, then the actual location of the drain shall be sufficient to make the drain comply with the provisions of this act with respect to the location thereof, and the drain shall be a county drain upon compliance with the other provisions of this act with respect to county drains. No proceedings shall be instituted for the widening of the drain or the deepening thereof below its original bottom.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1972, Act 150, Imd. Eff. May 26, 1972;—Am. 2002, Act 353, Imd. Eff. May 23, 2002.

**Popular name:** Act 40

**280.324 Drainage across lands adjacent to highways; right of way; approval of purchase.**

Sec. 324. Whenever it is necessary or more convenient for the proper drainage of any highway in this state that the surplus water be taken onto or across the land adjacent thereto, the county road commission of the county in which said highway is situated may secure the right of way and may open such drain or outlet for the water, and for these purposes may use any highway moneys of the township in which said highway is situated, not otherwise appropriated, and such sums as may be voted for that use by the electors of the townships. The county road commission shall secure the right of way for any such drain by gift or purchase from the owners of the land to be crossed by such drain; but in case of purchase the purchase price must be approved by the township board whenever township funds are involved, before any money be paid thereon. Such right of way shall be acquired by deed duly executed by the owner or owners of the lands sought to be crossed by the said drain, and shall be taken in the name of the township wherein the same is located, and filed in the office of the register of deeds of the county before any highway money shall be expended in opening such drain outside the highway limits.

Before the township board approves the purchase price of any drain right of way under this section, the county road commission shall submit to the board for its approval details of the proposed drain, with specifications that the drain shall be constructed in accordance with good health and sanitation standards and in such a manner as not to constitute a hazard to health or safety and that in construction of the drain the township board shall approve the use of the land upon which the drain is to be located.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1962, Act 94, Eff. Mar. 28, 1963.

**Popular name:** Act 40

**280.325 Cost to township for highway drainage; report by county road commission, drain fund.**

Sec. 325. The county road commission shall report to the electors of the township at their annual meeting the amount of money expended by him during the year for such highway drainage, specifying the amount expended on each drain. The commission shall also recommend the raising of such sums as it may deem

necessary for opening drains from the highway during the coming year, specifying each proposed drain and the probable amount needed for securing the right of way and opening the same. The money voted for this purpose by the electors of the township shall constitute a special highway drain fund, and shall be used for no other purpose. In case any money be left in the fund, after opening the drain for which it was raised, it may be used in opening any other highway drain in the township, or in cleaning out, when necessary, those already opened.

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

**Popular name:** Act 40

#### **280.326 Construction report; restriction on county road commission.**

Sec. 326. On the completion by the county road commission of any drain constructed under the provisions of this act, it shall be the duty of said county road commission to file in the office of the drain commissioner a detailed report of the construction of such drain, giving the date of construction, the termini and general course thereof, together with a copy of the deed by which the right of way therefor was secured. Nothing in the provisions of the preceding sections shall be construed as giving to the county road commission power to lay out and construct drains having any other purpose than the drainage of highways.

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

**Popular name:** Act 40

#### **280.327 Highway drain; petition, procedure, jurisdiction of commissioner.**

Sec. 327. In case it becomes necessary for the construction or maintenance of any highway to take the surplus water across adjacent lands, the state, county or township highway commissioner or county road commissioners may make under his or their name of office an application or petition to the drain commissioner of the county in which such highway is situated to lay out and designate a drainage district, locate and establish a drain, clean out, widen, deepen, straighten or extend an established drain. Such application or petition shall conform to the law regulating applications or petitions for the laying out and designating a drainage district, locating and establishing of drains, and cleaning out, widening, deepening, straightening and extending established drains, and shall require no other signature than his own as highway commissioner or county road commissioners. Such application or petition shall have the same force and effect, and be subject in other respects to the same laws and regulations that govern other such applications or petitions and shall confer the same jurisdiction and authority on the county drain commissioner to lay out and designate a drainage district, locate and establish a drain, or clean out, widen, deepen, straighten or extend an established drain: Provided, That in cases where the state highway commissioner makes such application or petition he shall serve a copy of such application or petition on the director of agriculture, who shall within 30 days hold a meeting at some place in the drainage district for the purpose of determining the practicability or necessity of such drain, and no board of determination shall be necessary to pass on those questions. Said meeting shall be held, notice given and all persons interested may be heard in the same manner as provided in section 102 or section 122 of this act. The determination of the director of agriculture shall be filed with the drain commissioner.

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

**Popular name:** Act 40

#### **280.328 Forwarding engineering plans to drain commissioner.**

Sec. 328. Before the department of state highways may commence the construction of a state highway, the engineering plans of the state highway relative to county drains shall be forwarded to the drain commissioner of each county where the state highway is to be constructed.

**History:** Add. 1972, Act 298, Imd. Eff. Dec. 14, 1972.

**Popular name:** Act 40

### CHAPTER 14.

### RAILROADS.

#### **280.341 Drains along railroad; release of right of way; consent.**

Sec. 341. Drains may be laid along the line of any railroad within its right of way: Provided, That such drain shall not be to the injury of the roadbed. Whenever it is proposed to construct a drain along the line, and within the right of way of any railroad, and the company owning or operating such road shall refuse or neglect to permit such drain to be constructed, or release the right of way therefor within the time prescribed in section 75 of this act, such release shall be obtained in the same manner as is provided in this act for obtaining



private lands: Provided, That no drain shall be constructed along the line of any railroad without the consent of the company owning or operating such road, if it shall appear to the special commissioners that such drain can equally well be laid on private lands.

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

**Popular name:** Act 40

#### **280.342 Drains across public utility right of way; mandamus to compel opening; costs.**

Sec. 342. Whenever it is necessary to lay out and establish, deepen or widen, or both, or extend or straighten a drain across the right of way or roadbed of any railroad, railway, telephone, telegraph, dam, electric, water, oil, gas or other power company, the same proceedings shall be had throughout in all respects as cases provided in this act for obtaining private lands, except as herein provided. The damages and compensation to be awarded by the special commissioners shall include the legal damages for the making of the opening required in the drain proceedings. After damages as aforesaid shall have been determined, it shall be the duty of the railroad, railway, telephone, telegraph, dam, electric, water, oil, gas or other power company, when notified by the commissioner so to do, to make and maintain the necessary opening through its roadbed or right of way and to build and maintain a suitable culvert or crossing for such drain. Notice in writing to make such opening and to construct such culvert shall be served upon such company by leaving a copy thereof with the ticket or freight agent or general officer of such railroad, railway, telephone, telegraph, dam, electric, water, oil, gas or other power company at least 30 days before such railroad, railway, telephone, telegraph, dam, electric, water, oil, gas or other power company shall become liable. In case such railroad, railway, telephone, telegraph, dam, electric, water, oil, gas or other power company shall neglect for 30 days after service of such notice as aforesaid, the commissioner shall have the right to petition the circuit court, in addition to any other remedies which may exist, of the county in which such crossing is located, to compel such company to make such opening forthwith; and such circuit court shall, if it finds there is legal right to such opening, order the same to be forthwith constructed by said company, and issue its writ of mandamus therefor. At least 10 days' notice shall be given such company of such application, and thereafter such proceedings shall follow the practice of circuit courts in mandamus proceedings. Said matter shall be heard and determined as speedily as practicable, and take precedence over all other cases which may be pending in such court. Such costs may be awarded the prevailing party as are awarded in other motions for mandamus.

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

**Popular name:** Act 40

#### **280.343 Violation of act; penalty.**

Sec. 343. In case such railroad company shall refuse or neglect to comply with the provisions of section 342, it shall be liable to a penalty of \$10.00 for each day's refusal or neglect to make such opening and construct such culvert.

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

**Popular name:** Act 40

### CHAPTER 15. DAMS IN DRAINS.

#### **280.351 Dams in drains to control flow, water levels and seepage; removal of drainage by pumps.**

Sec. 351. Established drains may be improved for the benefit of those whose lands were improved by the original construction of such drain, by the construction, operation and maintenance of dams in drains to control flow, water levels and seepage and to provide for the removal of the drainage when necessary by the use of pumps and other mechanical operations.

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

**Popular name:** Act 40

#### **280.352 Dams in drains; petition, signers, contents, examination, finding.**

Sec. 352. When it appears upon the written petition of a number of freeholders in the drainage district equal to 50% of the number of freeholders whose lands are traversed by said drain from the point where said dam or dams are located to the upper terminus, that such improvement is desired to be made by damming such drain and maintaining and operating such dam or dams to control flow, water levels and seepage or to provide for pumping the drainage where necessary from said drain or watercourse, and that such improvement and the maintenance and operation of such dam or dams is necessary to properly drain said lands and to

protect the lands through which said drain runs, or to protect the rights of freeholders above such dam or dams, or the rights of freeholders of land adjacent or contiguous to the drainage district, or for the purpose of irrigation, said petition stating where it is desired to construct said dam or dams and the proposed method of operation of such dam or dams to control flow, water levels or seepage, or how the drainage is to be removed and where it is to be emptied, the commissioner shall, as soon as practicable after receipt of such petition, proceed to examine said drain and pass upon the necessity of such improvement and whether such improvement is practicable and conducive to the public health, convenience or welfare, or an improvement or necessity to preserve the adjoining lands thereto, or to protect rights in lands, or for the purpose of irrigation.

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

**Popular name:** Act 40

#### **280.353 Dams in drains; first order of determination, contents.**

Sec. 353. If such commissioner determines such improvement, as set forth in the petition, to be practicable and a necessity to properly drain such lands, or to protect rights in lands, or for the purpose of irrigation to be conducive to the public health, convenience or welfare, or to preserve or protect the adjoining lands thereto, he shall within 60 days make an order of determination in writing, thereby stating where such dam is to be constructed and to designate its dimensions and to designate, where necessary, the method by which the drainage is to be carried away and where it is to be emptied.

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

**Popular name:** Act 40

#### **280.354 Dams in drains; construction contract with owners of lands benefited; default, contract for completion, costs and expenses.**

Sec. 354. If at any time after the commissioner has issued his first order of determination declaring such improvement to be necessary, and before the letting of any contract for constructing the same, all of the owners of the land through which or for the benefit of which such drain is located shall by themselves, their agents or attorneys, pay to the commissioner all the costs and expenses thus far incurred by him, and shall severally or jointly enter into a contract, with good and sufficient sureties and in such sum as the commissioner may require, to construct such improvements on such drain and pay all expenses necessary to be incurred in the construction, maintenance and operation of the same, then the commissioner may contract with such owner or owners, and such improvements when accepted shall be certified by the commissioner as a drain constructed in pursuance of the provisions of this act, and shall be recorded in the same manner as other drains. If such contract is not fulfilled in the time limited therein, the commissioner shall contract with other parties for the completion of the work and the parties so in default and their sureties shall be liable for all costs and expenses attending such default.

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

**Popular name:** Act 40

#### **280.355 Dams in drains; supervision of work; governing provisions.**

Sec. 355. All work done under the provisions of this act shall be under the supervision of the commissioner. All the provisions of this act relative to proceedings after the filing of petition for the determination of the necessity, institution of condemnation proceedings and proceedings had thereon and the construction, operation and maintenance of the improvements mentioned in such petition, and the assessment and review and levy and collection of taxes and all other provisions of said act not inconsistent with the provisions of this act shall be applicable in the construction, operation and maintenance of dams and the better maintenance of such drainage work by embanking, pumping or other mechanical operation or other work under the provisions of this act.

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

**Popular name:** Act 40

#### **280.356 Dams in drains; intercounty drains; governing provisions.**

Sec. 356. Each and every act required by the foregoing sections of this chapter to be done and performed by the commissioner shall be done and performed by the drainage board where the petition for the establishment of such dam relates to or affects drains traversing more than 1 county or affecting lands in more than 1 county. On receipt of such petition it shall be the duty of such commissioner to notify the commissioner of each county affected and the state director of agriculture and call a meeting in the manner and at the time provided by section 102 of this act.

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

Popular name: Act 40

CHAPTER 16.  
SPECIAL COUNTY COMMISSIONER.

**280.381 Disqualification of commissioner; petition filed with probate judge.**

Sec. 381. Whenever the commissioner of any county shall receive a petition asking for the laying out, construction, cleaning out, deepening or widening of any drain, or a petition asking proceedings by virtue of which any assessment upon lands for benefits received would result, wherein such commissioner shall be interested by reason of himself, wife or child, owning lands that would be liable to an assessment for benefits upon the work or proceeding proposed to be done or had, and in cases where such commissioner may be otherwise disqualified to act in the making of apportionment of benefits, such commissioner shall file a copy of such petition with the judge of probate of the county, together with a statement signed by him, showing that he is disqualified to act in making such apportionment of benefits.

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

**Popular name:** Act 40

**280.382 Disqualification of commissioner; appointment of disinterested commissioner; duties as to county drain.**

Sec. 382. Upon receiving such petition and certificate aforesaid, the judge of probate shall, within not less than 15 days, appoint a disinterested commissioner of an adjoining or nearby county to make the apportionment of benefits on said drain. It shall be the duty of said disinterested commissioner, so appointed, to make and complete within a period of 30 days, or within such reasonable time thereafter as may be necessary, an apportionment of the benefits of said drain and file the same with the said disqualified commissioner, and said apportionment shall be adopted for said drain, subject to the same rights of appeal as provided in this act. Said disqualified commissioner shall furnish the commissioner so appointed with a copy of his final order of determination on said drain.

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

**Popular name:** Act 40

**280.383 Disqualification of commissioner; appointment in case of intercounty drain.**

Sec. 383. In the case of a drain affecting more than 1 county, and any commissioner shall be disqualified to make the apportionments thereon, a commissioner for the county shall be appointed in the manner herein provided, with powers and duties mentioned in this act.

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

**Popular name:** Act 40

**280.384 Disinterested commissioner; salary and expenses, assessment.**

Sec. 384. The salary of the commissioner so appointed, which shall be the same as that received by him from the county of which he is commissioner, together with all expenses actually and necessarily incurred by him, shall be assessed against the drain in connection with which said services were performed and shall be paid in the same manner as other expenses are paid.

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

**Popular name:** Act 40

CHAPTER 17.  
ABANDONED AND VACATED DRAINS—DISPOSAL OF FUNDS.

**280.391 Abandoned and vacated drains; procedure; private rights; new drain.**

Sec. 391. Any drain or part thereof which has ceased to be of public utility and is no longer necessary or conducive to the public health, convenience and welfare may be declared to be abandoned and vacated in the manner herein provided. Any 5 freeholders of lands in a drainage district or the governing body of any public corporation in whose limits a drain or part thereof is located may petition for the abandonment and vacation of a drain or part thereof. The petition shall be addressed to and filed with the commissioner or drainage board having jurisdiction of such drain. The commissioner or drainage board shall hold a meeting to hear objections to the petition and to the abandonment and vacation of a drain or part thereof therein requested, and shall give notice of such meeting by posting in 5 public places in the drainage district and by publication in a newspaper of general circulation in the drainage district which posting and publication shall occur at least 10 days before the date of such meeting. Private rights of persons acquired by reason of the establishment and construction of

such drain or part thereof shall not be interfered with, or in any way be impaired by such abandonment and vacation. If it is determined at such meeting that the drain or part thereof should be abandoned and vacated, the commissioner or drainage board shall issue an order to that effect and file the same with the commissioner of the county or counties involved. Easements or rights-of-way for the drain or part thereof abandoned and vacated or easements or portions thereof no longer necessary for drainage purposes shall be conveyed or released by the commissioner or drainage board on behalf of the drainage district. If it be contemplated to construct a new drain or part thereof on or near the line of an existing drain or part thereof this may be accomplished without abandonment and vacation of the existing drain or part thereof and the easements or rights-of-way of the existing drain or part thereof may be used for this purpose: Provided, however, That if the contemplated project materially damages the property owner beyond the existing easement, or if it materially burdens the existing easement, then the commissioner or drainage board shall secure an additional easement for the contemplated project. It shall not be necessary to abandon and vacate an existing drain or part thereof made unnecessary by a new drain or part thereof until the new drain is constructed and ready for service.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1964, Act 107, Eff. Aug. 28, 1964.

**Popular name:** Act 40

### **280.392 Abandoned and vacated drains; notices; disposal of money in drain funds.**

Sec. 392. Whenever any drain shall have been declared vacated and abandoned, as provided in section 391, it shall be the duty of the commissioner to serve notice thereof forthwith upon the county treasurer of the county or counties in which the drainage district, or any portion thereof, is situated. If there be any money credited to or belonging to the fund of such vacated and abandoned drain, it shall be the duty of the county treasurer or treasurers to transfer and pay over the same to the treasurer or treasurers of the township or townships in which the drain was located or in which assessments for benefits to be received from such drain have been assessed and collected: Provided, That in all cases where the amount of such money belonging to the drain fund of such drain, in the hands of the county treasurer, shall be insufficient to permit the refunding and paying over to such township treasurers all of the moneys assessed and collected in such townships, the county treasurer shall prorate the amounts so paid, and each township treasurer shall be entitled to receive such proportion of the moneys remaining in the fund of the vacated or abandoned drain as the total amount of the assessments levied and collected in his township and becoming a part of such drain fund shall bear to all of the moneys assessed and collected and making up such fund. In case it is necessary to prorate in the manner provided, the county treasurer shall furnish to each township treasurer a statement showing the amount of money in the fund at the time such drain was declared vacated and abandoned, and the various amounts assessed and collected for such fund from the different townships entitled to share in the disbursement thereof.

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

**Popular name:** Act 40

### **280.393 Abandoned and vacated drains; duties of township treasurer in distribution of funds.**

Sec. 393. Upon receiving such money, and the accompanying statement, if required to be furnished hereby, the township treasurer shall give his receipt therefor to the county treasurer. He shall also serve notice upon each person, firm or corporation who, as shown by the records of his office, shall have paid a special tax for benefits received or to be received from the construction of such drain, that such drain has been declared vacated and abandoned and that the payment as aforesaid has been made to him by the county treasurer. Similar notice shall also be served upon the township board and shall be published for 2 successive weeks in some newspaper published and circulating in said county. Thereupon, every such person, firm or corporation shall be entitled to demand and receive from said township treasurer the amount of the special assessment that such person, firm or corporation may have so paid. The amount of the special tax for the construction of such drain that may have been assessed and collected from the township at large shall be credited to and paid into the contingency fund in the township treasury: Provided, however, That if the amount of money paid over to the township treasurer by the county treasurer in the manner aforesaid is less than the aggregate amount of special assessments levied and collected in such township for the construction of such drain and the tax levied and collected upon and from the township at large, then the township treasurer shall prorate the payments to each such person, firm or corporation and the amount to be paid into the general fund in the township treasury; and each such person, firm or corporation and the contingency fund in the township treasury shall be entitled to receive such proportion of the amount of the special assessment or tax paid thereby as the amount of money paid to the township treasurer by the county treasurer shall bear to the total amount of special

assessments and taxes levied and collected in said township and paid into the fund for the construction of said drain.

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

**Popular name:** Act 40

#### **280.394 Abandoned and vacated drains; disposal of funds, payments by township treasurer.**

Sec. 394. In case any person who might be entitled to be paid any sum of money in accordance with this act because of a special assessment or tax paid by him for the construction of such drain shall have died, payment as aforesaid shall be made to his personal representatives or to those entitled under the law to take and receive any personal property of which such person so dying may have been possessed at the time of his death. In case of any payment made by a firm that shall have been dissolved, payment to any member of said firm shall be deemed a compliance herewith on the part of the township treasurer: Provided, however, That if no person who was a member of such firm is surviving or can be found, payment may be made to the distributees of any member: Provided further, That when any person claiming an interest in the amount to which any firm would, if still in existence, be entitled shall notify the township treasurer to withhold payment pending a determination of the rights of various claimants, it shall be the duty of the township treasurer to retain the amount involved for such a reasonable time as will permit such determination to be made. In all cases where a corporation that would, if existing, be entitled to receive a payment of money under the provisions of this act has been dissolved and its affairs wholly wound up, and in all cases where it is impossible to find the person or persons entitled to any sum of money herein, such amount or amounts shall, after a lapse of 2 years from and after the publication of notice provided for in section 393 hereof, be paid over by the township treasurer into the general fund of the township.

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

**Popular name:** Act 40

#### **280.395 County drainage district wholly within township, city or village; transfer of jurisdiction; approval; distribution of drain fund.**

Sec. 395. The county drain commissioner may relinquish jurisdiction and control to a township, city or village of any county drainage district upon which there is no outstanding indebtedness or contract liability and which is wholly located within the boundaries of a township, city or village, and thereafter the county drain commissioner shall be relieved of, and the township, city or village shall assume, the maintenance, jurisdiction, control and operation thereof and its future operation shall be financed in the same manner as is provided for special assessment districts within such township, city or village: Provided, That such proceeding shall have first been approved by a majority of the members elect of the county board of supervisors and by the resolution of the governing body of the township, city or village in which such drain is located.

Any money which shall be in the drain fund of any such drainage district at the time jurisdiction over it is transferred as provided in this section shall be distributed in the same manner as is provided in sections 391 to 394, inclusive, of this act in the case of abandoned or vacated drains.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1957, Act 120, Imd. Eff. May 24, 1957.

**Popular name:** Act 40

#### **280.396 Transfer of drain project to county department of public works.**

Sec. 396. In any county which has established a department of public works under the provisions of Act No. 185 of the Public Acts of 1957, being sections 123.731 to 123.786 of the Compiled Laws of 1948, the drain commissioner, if in his judgment any project in process of completion or which has been completed can more adequately or feasibly be handled by the department of public works, may file a written report to that effect with the county clerk. The report shall be filed in duplicate, and immediately upon receipt, a copy shall be forwarded to the department of public works and the clerk shall present the drain commissioner's recommendation to the board of supervisors at the next meeting. If the board of supervisors approves the drain commissioner's recommendation it shall, by resolution, so indicate and direct transfer of jurisdiction over the project to the department of public works. Any money which is in the drain fund of any district or belonging to such project at the time jurisdiction over it is transferred shall be promptly transferred and used by the department of public works for the purpose for which it was accumulated. All assets, files, maps, drawings, specifications, records of procedure, assessment rolls or other data pertinent to the project shall be transferred to the department of public works. Thereafter, the department of public works shall be responsible for further proceedings and the drain commissioner relieved therefrom.

**History:** Add. 1958, Act 64, Imd. Eff. Apr. 9, 1958.

CHAPTER 18.  
OBSTRUCTIONS IN DRAINS; SEWAGE; MISCELLANEOUS PROVISIONS.

**280.421 Obstructions; removal; expenses, notice; livestock; criminal complaint.**

Sec. 421. Whenever any person shall obstruct any established drain, it shall be the duty of the commissioner to cause such obstruction to be removed. Any lessening of the area of a drain, which area shall be a cross section of the drain, shall be deemed to be an obstruction. The person causing such obstruction shall be liable for the expense attendant upon the removal thereof, together with the charges of the commissioner, and the same shall be a lien upon the lands of the party causing or permitting such obstruction, and all of the expense shall by the commissioner be reported to the board of supervisors, together with the report of his doings in the premises, and by said board ordered spread upon the land of the offending party, should the same remain unpaid: Provided, That the offending party causing such obstruction shall be given a notice in writing of at least 5 days to remove such obstruction. This provision as to obstruction of any drain shall not apply where the obstruction was caused by natural causes, but the owner of the stock who shall permit his horses, cattle, pigs and other stock to obstruct any drain by tramping in it shall be deemed to be the party causing such obstruction. Nothing contained in this section shall in any way impede or bar the right of any person to make criminal complaint under any existing law for any obstruction of a drain.

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

**Popular name:** Act 40

**280.422 Obstructions; public utility companies; removal, mandamus.**

Sec. 422. Railroad or railway companies, telephone, telegraph, or pipeline companies and other utilities shall not obstruct established drains, nor shall they lessen the area of any drain through their track bed or right of way. The area herein referred to is a cross section of the drain. In case any such company or utility, without legal right, has constructed or shall construct any bridge, culvert, pipeline or conduit over any established drain whereby the area aforesaid is decreased, the removal of such bridge, culvert, pipeline or conduit shall not be deemed an element of damage in proceedings to deepen and widen such drain through such track bed or right of way. In case it is proposed to construct a pipeline, sewer or conduit within, over or across any county, such construction shall be of a nature and laid at such a depth at the point of crossing of any established public drain as will not interfere with said established public drain. The consent of the county drain commissioner or board of public works of any municipality shall be obtained before the work of such construction is commenced and such drain commissioner is hereby authorized to grant such consent upon such terms and conditions as may be reasonable and proper under the circumstances then existing. In case any railroad or railway company, telephone, telegraph or pipeline company or other utilities shall obstruct any established drain, or has constructed or shall construct any bridge, culvert, pipeline or conduit, sewer or other structure over, under or through any established drain, leaving less capacity to the drain than such drain is legally entitled to, in accordance with the rights for such drain as established by proper drain proceedings or as established by other legal methods prior to the date of construction of any such obstruction, the county drain commissioner or the board of public works, as the case may be, may, by mandamus proceedings in the circuit court of the county in which such obstruction shall occur, compel the removal of such obstruction. If necessary, issues of fact may be framed in such proceedings. In case the court shall find such drain to have been obstructed, it shall issue a preemptory mandamus compelling such company to remove such obstruction. The court may award costs in its discretion as in other mandamus proceedings. The practice herein shall be the same as in other motions for mandamus.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1959, Act 261, Imd. Eff. Aug. 21, 1959.

**Popular name:** Act 40

**280.423 Discharge of certain sewage or waste matter into drains prohibited; construction to purify flow; petitions; order of determination; findings; construction of drain; plans and specifications; contracts; costs; review; acquisition of land; application and fee for sewer connections; powers of drain commissioner or drainage board; failure to comply with section; violation as misdemeanor; fine; "person" defined.**

Sec. 423. (1) A person shall not continue to discharge or permit to be discharged into any county drain or intercounty drain of the state any sewage or waste matter capable of producing in the drain detrimental deposits, objectionable odor nuisance, injury to drainage conduits or structures, or capable of producing such pollution of the waters of the state receiving the flow from the drains as to injure livestock, destroy fish life,

or be injurious to public health. This section does not prohibit the conveyance of sewage or other waste through drains or sewers that will not produce these injuries and that comply with section 3112 of part 31 (water resources protection) of the natural resources and environmental protection act, Act No. 451 of the Public Acts of 1994, being section 324.3112 of the Michigan Compiled Laws.

(2) Disposal plants, filtration beds, and other mechanical devices to properly purify the flow of any drain may be constructed as a part of any established drain, and the cost of construction shall be paid for in the same manner as provided for in this act for other drainage costs. Plants, beds, or devices may be described in the petition for the location, establishment and construction of drains or in the petition for the cleaning, widening, deepening, straightening, or extending of drains, or in the application for the laying out of a drainage district. Petitions for the construction of plants, beds, and devices for use on any established drain may be filed by the same persons and shall be received and all proceedings on the petitions in the same manner as other petitions for any drainage construction under this act.

(3) If the department of environmental quality determines that sewage or wastes carried by any county or intercounty drain constitutes unlawful discharge as prescribed by section 3109 or 3112 of part 31 of Act No. 451 of the Public Acts of 1994, being sections 324.3109 and 324.3112 of the Michigan Compiled Laws, that 1 or more users of the drain are responsible for the discharge of sewage or other wastes into the drain, and that the cleaning out of the drain or the construction of disposal plants, filtration beds, or other mechanical devices to purify the flow of the drain is necessary, the department of environmental quality may issue to the drain commissioner an order of determination identifying such users and pollutants, under section 3112 of Act No. 451 of the Public Acts of 1994, being section 324.3112 of the Michigan Compiled Laws. The order of determination constitutes a petition calling for the construction of disposal facilities or other appropriate measures by which the unlawful discharge may be abated or purified. The order of determination serving as a petition is in lieu of the determination of necessity by a drainage board pursuant to chapter 20 or 21 or section 122 or 192 or a determination of necessity by a board of determination pursuant to section 72 or 191, whichever is applicable. A copy of the findings of the department shall be attached to the order of determination which shall require no other signature than that of the director of the department of environmental quality. Upon receipt of the order of determination, the drain commissioner or the drainage board shall proceed as provided in this act to locate, establish, and construct a drain. If the responsible users of the drain are determined to be public corporations in the drainage district, the drain commissioner or the drainage board shall proceed as provided in chapters 20 and 21, as may be appropriate, using the order of determination as the final order of determination of the drainage board. If the responsible users are determined to be private persons, the drain commissioner shall proceed as provided in chapters 8 and 9, using the order of determination as the first order of determination.

(4) Plans and specifications for the construction as part of a drain of any disposal plant, filtration bed, or other mechanical device to properly purify the flow of the drain shall be prepared by the drain commissioner or the drainage board. Contracts for construction shall be let in the manner provided in this act. To meet the cost of any preliminary engineering studies for the construction of abatement or purification facilities, the drain commissioner or the drainage board shall apportion the cost among the several parcels of land, highways, and municipalities benefited thereby in the same manner as provided in chapter 7 or against the public corporations affected by the order of determination in the same manner as provided in chapters 20 and 21. The costs and charges for maintenance shall be apportioned and assessed each year. If the apportionment is the same as the last recorded apportionment, a day of review or a hearing on apportionments is not necessary, but if the apportionment is changed, notice of a day of review or a hearing on apportionments shall be given to each person whose percentage is raised.

(5) Land may be acquired as a site for the construction of such plants, beds, and devices, and releases of land may be obtained in the same manner as provided in this act for other lands acquired for right of way.

(6) A person shall not connect sewage or other waste to a county or intercounty drain except with the written approval of the appropriate commissioner or the drainage board indorsed upon a written application for such service and the payment of a service fee of not to exceed \$50.00 for each connection to a covered drain. The application shall include information showing that all other local, state, and federal approvals related to the sewage or waste have been obtained.

(7) The fee provided for in subsection (6) shall be set and collected by the drain commissioner, as approved by the county board of commissioners or the drainage board, and deposited with the county treasurer, to be credited to the drain fund set up for the maintenance or construction of the drain. The commissioner or the drainage board shall keep a record of applications made and the action on the applications. The commissioner or the drainage board may reject applications for or require such modification in requested applications for sewer connections to county drains as necessary to attain the objectives set forth in this section.

(8) Subject to the review and approval of the department of environmental quality, the drain commissioner or drainage board may study the requirements of persons for flood control or drainage projects including sewage disposal systems, storm sewers, sanitary sewers, combined sanitary and storm sewers, sewage treatment plants, and all other plants, works, instrumentalities, and properties useful in connection with the collection, treatment, and disposal of sewage and industrial wastes or agricultural wastes or run-off, to abate pollution or decrease the danger of flooding. The objective of such studies shall be that sewers, drains, and sewage disposal facilities are made available to persons situated within the territorial limits of any drainage district or proposed drainage district as necessary for the protection of public health and the promotion of the general welfare.

(9) The drainage board or drain commissioner may cooperate, negotiate, and enter into contracts with other governmental units and agencies or with any public or private corporation including the United States of America, and to take such steps and perform such acts and execute such documents as may be necessary to take advantage of any act of the congress of the United States which may make available funds for any of the purposes described in this section.

(10) Failure to comply with any of the provisions of this section subjects the offender to the penalties described in section 602. However, for each offense, a person who violates subsection (6) is guilty of a misdemeanor punishable by a fine of not more than \$25,000.00 or imprisonment for not more than 90 days, or both. In addition, the person may be required to pay the costs of prosecution and the costs of any emergency abatement measures taken to protect public health or the environment. Payment of a fine or costs under this subsection does not relieve a person of liability for damage to natural resources or for response activity costs under the natural resources and environmental protection act, Act No. 451 of the Public Acts of 1994, being sections 324.101 to 324.90106 of the Michigan Compiled Laws.

(11) As used in this section, "person" means an individual, partnership, public or private corporation, association, governmental entity, or other legal entity.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1972, Act 298, Imd. Eff. Dec. 14, 1972;—Am. 1996, Act 60, Imd. Eff. Feb. 26, 1996;—Am. 1996, Act 552, Eff. Mar. 31, 1997.

**Popular name:** Act 40

**280.424 Inadequate disposal or filtration plant; abatement of nuisance; estimate of annual cost; appeal; notice; posting; review of apportionment; board of review; meeting; proceedings; determination; payment; assessment; water rates.**

Sec. 424. Whenever a disposal plant, filtration plant or other mechanical device to purify the flow of such drain or sewer has been heretofore constructed, but is inoperative or improperly operated and, in the opinion of the state commissioner of health, the public health is endangered by reason thereof, said state commissioner of health may file with the judge of probate of the county in which said facilities are located, a petition reciting his findings and recommendations as to how the menace to health may be corrected or the nuisance may best be abated and how the improperly operated or inoperative disposal plant, filtration plant or other mechanical device to purify the flow of a drain or sewer should be operated. Upon satisfying himself as to the reasonableness of said recommendations, it shall be the duty of the judge of probate of said county to direct the drain commissioner of said county to prepare a plan for and estimate the annual cost of executing the recommendations of the state commissioner of health, and/or of rehabilitation, ordinary maintenance and operation of said improperly operated or inoperative facilities, to prepare a map showing the extent of the area contributing to said condition, and to make a determination of the annual expense thereof apportioned according to benefits to the state highways, cities, villages and townships benefited by the same. Upon receipt of the map, tentative assessment district and other information from the county drain commissioner, the judge of probate shall give notice of said facts and of the date of receiving appeals by publication in at least 2 insertions in some newspaper published and of general circulation in the county, if there be one, the first publication to be at least 10 days before the date set for receiving appeals and said notice shall also be posted at least 10 days before the date for receiving appeals in 5 or more conspicuous places in each city, village and township, where any part of the district may be located and within the limits of such district.

The state highway commissioner or any city, township or village which may feel aggrieved by the apportionment of benefits so made by the drain commissioner may make an application to said probate court for review of the apportionment by a board of review by filing with said probate court a notice of appeal. Only 1 board of review shall be appointed by said court. Upon receipt of any such notices of appeal, as hereinbefore provided, the probate court shall forthwith notify the drain commissioner, in writing, of such appeal and thereupon make an order appointing 3 disinterested freeholders of such county, not residents of said district, to constitute such board of review. The court shall thereupon, with the concurrence of the drain commissioner, immediately fix the time and place when and where said board of review shall meet to review



said apportionments, which said time shall be not less than 10 nor more than 15 days from the date of filing such appeal.

The drain commissioner shall thereupon give notice to the persons so appointed of their appointment and of the time and place of meeting and shall give notice of such meeting by posting notices in at least 5 public places in each city, village and township forming a part of the drainage district and shall serve a like notice upon the state highway commissioner and each of said cities, villages and townships. Such service shall be made not less than 5 days before hearing. Return shall be made by the person serving said notice and shall be filed in the office of the judge of probate. At such hearing the board of review shall have the right and it shall be their duty to review all apportionments made by the drain commissioner. Persons appointed on said board of review shall be sworn by the drain commissioner to faithfully discharge their duties as members of said board.

The board of review shall proceed at the time and place specified in the notice to hear the proofs and allegations of all parties in respect to the matter of appeal. A review of apportionments shall be made by the board of review and if, in their judgment, there shall be manifest error or inequality in such apportionments, they shall order and make such changes therein as they shall deem just and equitable. Determination of the drain commissioner, if not appealed from, or of said board, in case of an appeal, shall be final and there shall be no right of appeal from such determination, except by writ of certiorari to the proper court. The determination shall be reduced to writing and signed by the drain commissioner, or in case of appeal a majority of the board making the same, and shall be delivered to the judge of probate together with all other papers relating thereto. Upon the apportionments becoming final, as hereinbefore set forth, the judge of probate shall deliver said approved roll of apportionments of benefits and expense to the drain commissioner, who shall assess the amounts therein set forth to the respective cities, villages and townships involved, and said cities, villages and townships shall thereafter make payment thereof as collected in quarterly installments to the county treasurer to be deposited in a separate fund for the rehabilitation, ordinary maintenance and operation of said facilities, which said fund shall be paid out only on the order of the drain commissioner of the county in which said facilities are located.

Payment for services and providing for substitute membership necessary on the board of review shall be in accordance with sections 158 and 159 of this act. Such necessary costs of the proceeding shall be determined by the judge of probate, said cost to be paid from the revolving fund of the county and same to be returned to the county out of the first assessment against said district. Immediately upon receipt of sufficient funds so to do, the drain commissioner of the county shall proceed with the rehabilitation, ordinary maintenance and operation of said facilities, and shall continue the same as long as funds are available. The costs and charges hereinbefore set forth shall be an annual charge and shall be assessed against the state highways and the several cities, villages and townships by said drain commissioner each year as long as said facility continues to be operated, unless in the opinion of the drain commissioner, the state highway commissioner or of any of said cities, villages or townships, said apportionment should be changed, in which event either said drain commissioner, the state highway commissioner, or any of said cities, villages or townships may petition the judge of probate of the county in which said proceedings were had for the appointment of a board of review to reapportion said expense, and on filing said petition said judge of probate shall proceed to appoint a board of review on notice and in the manner hereinbefore set forth, which said board of review shall review such assessments and make a new apportionment: Provided, however, That no reapportionment shall be made oftener than once in each calendar year.

The several cities, villages and townships against whom an assessment is made, as hereinbefore provided, shall collect for such expense so assessed to them under this act by charges for the use of said facilities, to be added to and collected with the water rates of said cities, villages and townships, in the same manner as other water rates of said cities, villages and townships are collected, or in such other manner as the several governing bodies of said respective cities, villages and townships may determine.

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

**Popular name:** Act 40

**280.425 Petition to construct open or closed drain; permission of commissioners or drainage board; consent of landowners; expense; time and manner of construction; protection of drain entrance; signature of applicant or petitioner; tiling source of drain or open drain; permit to tile established drain.**

Sec. 425. A landowner in the drainage district whose land requires additional drainage may petition the commissioner for permission to construct an open or closed drain, or a combination thereof, to a regularly established drain, and permission shall be granted by the commissioner or drainage board when, in their

opinion, the nature of the ground to be crossed will admit thereof and the surface of the land can be restored and for that purpose the drain may traverse the lands of other freeholders in the district. Before permission may be granted by the commissioner, consent in writing by the owner or owners of the lands to be traversed by the proposed drain shall be obtained. If permission is refused by the owner or owners of the lands to be traversed by the proposed drain, the drain may be established by following the provisions of this act governing the location, establishment, and construction of county or intercounty drainage districts and drains therein. The entire expense thereof shall be borne by the petitioner, and the construction of an open or closed drain or combination thereof shall be done at a time and in a manner as the commissioner or drainage board shall prescribe. When drains are constructed, the drain entrance shall be substantially protected from driftwood and debris. An application to lay out and designate a drainage district or petition to locate, establish, and construct a drain under the foregoing provisions of this section shall only require the signature of the petitioning landowner or owners, other provisions of this act notwithstanding. If permission is granted to tile the source of a drain, the commissioner shall further prescribe the amount and part of the drain to be tiled and the manner of tiling. A person through whose land an open drain has been established and constructed may make a written request to the county drain commissioner to be permitted, at his own expense, to tile and cover with earth the whole or a part thereof that may traverse his land, and the commissioner may grant the request, but in doing so he shall prescribe the size of the tile to be used. A permit shall not be issued to tile or crock an established drain that will decrease the area of the drain as established.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1957, Act 119, Imd. Eff. May 24, 1957;—Am. 1976, Act 28, Imd. Eff. Mar. 4, 1976.

**Popular name:** Act 40

#### **280.426 Drain orders received for drain taxes.**

Sec. 426. The drain orders issued for each particular drain shall be received for drain taxes for benefits levied for the construction of such drain by the township treasurer or county treasurer, as the case may be.

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

**Popular name:** Act 40

#### **280.427 Corporation or land contract vendee as freeholder; corporate agent or officer as signer of petition.**

Sec. 427. In any application or petition required to be filed under this act, a freeholder shall be deemed to include a corporation owning land and a vendee under land contract, where such contract is of record in the office of the register of deeds of the county, or where the land is assessed in the name of the vendee on the tax assessment roll of the township or city. The authority of an officer or agent of a corporation to sign an application or petition on behalf of such corporation shall not be questioned, except by such corporation itself, after the application or petition has been accepted and passed on by a board of determination.

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

**Popular name:** Act 40

#### **280.428 Drainage district including state lands; assessment, payment.**

Sec. 428. If any drain commissioner shall receive an application to lay out a drainage district which will include land owned by the state of Michigan, or owned or controlled by any state institution, board or agency, said commissioner shall serve notice of apportionment of benefit on the same officers in like manner as service is required to be made on the state highway commissioner for state highways, and if said director of agriculture and the officer, board or agency having control of such land shall approve, in writing, the amount of such assessment, and shall state whether such assessment shall be paid in full or by installments, the board of state auditors is directed to audit and allow and draw its warrant upon the state treasurer in payment of the amount assessed against said land either in full or by installments as requested. Such sums of moneys as are necessary to carry out the provisions of this section are hereby apportioned from the general fund of the state out of any moneys in said fund not otherwise appropriated.

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

**Popular name:** Act 40

#### **280.429 Flood control projects; easements to United States; approval.**

Sec. 429. Subject to the consent and approval of the several boards of supervisors of this state and the boards of supervisors of the counties comprising intercounty drainage districts, the several county drain commissioners and the drainage boards of intercounty drainage districts are hereby authorized to grant unto the United States of America the right to use all the easements and rights of way conveyed to their respective

drainage districts or to any county or counties lying wholly or in part in such districts, for the construction and maintenance of any county or intercounty drain by the United States in connection with any flood control project undertaken by the United States acting through its war department or any other federal department or agency. In such cases in which the work is to be performed at the expense of the United States, it shall not be necessary for the drain commissioner or drainage board to advertise for bids or to let contracts for the construction or maintenance of any such flood control project.

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

**Popular name:** Act 40

#### **280.430 Sanitary sewage; contracts for use of drains; charges; lien; cost included in charges.**

Sec. 430. (1) Whenever any county or intercounty drain is used for the transportation of sanitary sewage, the county or counties within whose boundaries the drainage district lies may contract under the provisions of Act No. 129 of the Public Acts of 1943, as amended, being sections 123.231 to 123.235 of the Compiled Laws of 1948, or any other applicable act, for the disposal of sewage therefrom, including any storm water necessarily mixed therewith. In such case the drain commissioner or the drainage board may fix and collect charges to cover the cost of the treatment and disposal of sanitary sewage. Such charges shall be approved by the majority vote of the members-elect of the board of supervisors. The charges may be made to each user of the services or may be made to public corporations. Contracts for periods not exceeding 50 years may be made between the county and public corporations to be so served, in respect to sewage disposal services, when approved by the governing bodies of the several parties thereto.

(2) Charges for sewage disposal services furnished to any premises shall be a lien thereon from the date such charges are due and any charges delinquent for 6 months or more shall be certified annually to the proper tax assessing officer or agency who shall enter the same upon the next tax roll against the premises to which such services shall have been rendered, and the charges shall be collected and the lien shall be enforced in the same manner as provided for the collection of taxes assessed upon such roll and the enforcement of the lien therefor. The time and manner of certification and the other details in respect to the collection of such charges and the enforcement of such lien shall be prescribed by the governing body of the public corporation in which the lands are located. The payment of charges for sewage disposal services to any premises may be enforced by discontinuing either the water service or the sewage disposal service to such premises, or both.

(3) The charges for sewage disposal services may also include the cost of the operation and maintenance of any physical structures and any administrative expenses in connection with the transportation, treatment and disposal of sanitary sewage.

**History:** Add. 1959, Act 47, Imd. Eff. June 5, 1959.

**Popular name:** Act 40

#### **280.431 Contracts for drain projects; federal government; public corporations; relief from assessments; flood control projects; conservation and utilization of soil and water; "public corporation" defined.**

Sec. 431. The drain commissioner or drainage board may contract or make agreements with the federal government, including any agency thereof, whereby the federal government will pay the whole or any part of the cost of the project or will perform the whole or any part of the work connected therewith, which contract or agreement may include any specific terms required by act of congress or federal regulation, not in conflict with state law, as a condition for participation on the part of the federal government. The drain commissioner or drainage board may contract or make agreements with any private corporation or with any public corporation, including any agency thereof, in respect to any matter connected with the construction, operation or maintenance of any flood control or drainage project or combination thereof. The contract or agreement may provide that any payments made or work done by the public corporation shall relieve it in whole or in part from assessment for the cost of the project. No construction work shall be undertaken by the drain commissioner or drainage board until bids have been advertised for and received for the performance of such work, but this provision shall not apply to work to be performed solely by the federal government or a public corporation at its expense.

The drain commissioner or drainage board may contract or make agreements with private and public corporations and with the federal government including any agency thereof for the purpose of expanding any flood control or drainage project or combination thereof to include the conservation and utilization of soil and water for recreation and other beneficial purposes. The contracts or agreements shall provide for an equitable sharing of the costs of the expanded flood control or drainage project or combination thereof and the cost borne by a drainage district shall not be in excess of the amount which can be attributed solely to drainage and

flood control. The drain commissioner or drainage board, may acquire by gift or purchase the necessary lands, and rights of way for the purposes of any expanded flood control or drainage project or combination thereof. The drain commissioner or drainage board may acquire by condemnation proceedings similar to those provided in chapter 4 and chapter 6 of this act, the necessary lands and rights of way for any expanded flood control or drainage project or combination thereof which shall be undertaken jointly with a public corporation or the federal government. The drain commissioner or drainage board may pay for the costs of lands taken by condemnation for an expanded flood control or drainage project or combination thereof, undertaken jointly with a public corporation or the federal government, but the public corporation or federal government shall promptly reimburse the drainage district for all costs of acquisition in excess of those costs directly attributable to drainage and flood control.

The term "public corporation" includes the state, counties, cities, villages, townships, metropolitan districts and authorities created by or pursuant to state statutes.

**History:** Add. 1959, Act 153, Imd. Eff. July 16, 1959;—Am. 1962, Act 108, Eff. Mar. 28, 1963.

**Popular name:** Act 40

#### **280.432 Obstruction of drain commissioner; drainage board or agents; misdemeanor.**

Sec. 432. Whoever, after the drain commissioner has given notice by first class mail, that the drain commissioner, drainage board or their agents will go upon lands for any purpose hereinafter set forth, to the owner of the land whose name appears on the last city or township tax assessment roll, at the address shown on the roll, and if no address appears thereon no notice need be mailed to such person, wilfully prohibits, prevents or obstructs the drain commissioner, drainage board or their agents from going upon lands either within or outside of the district for the purpose of examining the same or making surveys in connection with the work of the drain commissioner or drainage board, or wilfully prohibits, prevents or obstructs the drain commissioner or drainage board of a district, their agents, employees or contractors from going upon the right of way of the district with their servants, tools, machinery, instruments and other equipment for the purpose of constructing, reconstructing, repairing or maintaining the work of the drain commissioner or drainage board is guilty of a misdemeanor.

**History:** Add. 1962, Act 191, Eff. Mar. 28, 1963.

**Popular name:** Act 40

#### **280.433 Enlargement of drainage district; agreement; construction and cost of drainage facilities; certificate of registered professional engineer; payment of excess amount and pro rata equitable share; liability of added lands for assessments; dedication, conveyance, or transfer of drain facilities and property; extension of drain; notice of agreement; procedure for establishment of existing private drain; deposit; special drain fund.**

Sec. 433. (1) An existing intracounty or intercounty drainage district may be enlarged and the drain located in the district may be extended or have branches added to provide drainage service to lands not originally within the boundaries of the drainage district by agreement between the drain commissioner or the drainage board and the owner of the lands; or if there is a developer of the lands who is not the owner, between the drain commissioner or the intercounty drainage board and the owner and the developer of the lands. The agreement shall obligate the owner and the developer, if any, of the lands to be added to the drainage district to construct, in accordance with plans and specifications prepared by or approved by the drain commissioner or drainage board, the necessary and adequate drainage facilities on the lands to be added and in the existing drainage district to connect the lands to the existing drain in the drainage district and to pay the cost of the drainage facilities including right of way, engineering, inspection, administration, and legal expenses incurred by the drain commissioner or the drainage board, or to deposit with the drain commissioner or drainage board, upon execution of the agreement, the estimated cost of the construction and expenses.

(2) Before any agreement is approved and executed on behalf of a drainage district by the drain commissioner or drainage board, there shall be obtained, at the expense of the owner or developer of the lands to be added, a certificate, from a registered professional engineer satisfactory to the drain commissioner or the drainage board, to the effect that the lands to be added naturally drain into the area served by the existing drain or that the existing drain is the only reasonably available outlet for the drainage from the lands to be added and that there is existing capacity in the existing drain to serve the lands to be added without detriment to or diminution of the drainage service provided or to be provided, in the foreseeable future, to the area in the existing drainage district. If the existing drain in the existing drainage district has been financed by the levy of drain special assessments on the lands in the drainage district and if the basis of special assessment as applied to the lands to be added to the drainage district would result in a drain special assessment on the lands to be

added in an aggregate principal amount greater than the costs and expenses to be paid or incurred by the owner and developer, if any, of the lands for the new drain facilities at the time of entering into the agreement, then the owner or developer shall also pay the amount of the excess to the drainage district at the time of execution of the agreement. In addition, the developer or owner of the added lands shall pay a pro rata equitable share of the cost of the original construction of the drain, if any.

(3) Lands added to any drainage district by agreement shall be liable from and after the date of agreement for all assessments levied after the date of the agreement for operation and maintenance of the drain, including the extension of the drain pursuant to the agreement, and the lands shall be a part of the drainage district for all other purposes and procedures set forth in this act. All drain facilities and all rights of way, easements, or property in which the facilities are located, acquired, or constructed pursuant to the agreement to add lands shall be dedicated to public use or conveyed or transferred to the drainage district and the drain facilities shall be a part of the drain the same as if originally located, established, and constructed by procedures set forth in this act as a part of the original drain.

(4) An existing intracounty or intercounty drain may be extended or have branches added to provide additional service to lands within the drainage district by agreement between the drain commissioner or the drainage board and the owner of the lands; or if there is a developer of the lands who is not the owner, between the drain commissioner or the drainage board and the owner and the developer of the lands, pursuant to the procedures and conditions set forth in this section. The affected public corporations or municipalities in which the proposed lands are to be added will be apprised of the agreement by the drain commissioner or drainage board and who shall also publish notice of the agreement in a newspaper of general circulation in the drainage district in question.

(5) By agreement with a landowner and the developer, if any, the drain commissioner or intercounty drainage board may establish an existing private drain which was constructed by the landowner or developer to service an area on his or her own land as a county or intercounty drain.

(6) If a drain established pursuant to subsection (5) adds lands to an existing drainage district, the provisions of subsections (2) and (3) shall apply.

(7) If a drain established pursuant to subsection (5) is independent from an existing drainage district, a certificate shall be obtained, at the expense of the landowner or developer of the lands served by the proposed drain, from a registered professional engineer satisfactory to the drain commissioner or the intercounty drainage board to the effect that the outlet for the existing drain is the only reasonably available outlet for the drain and that there is sufficient capacity in the existing outlet for the proposed drain to serve as an adequate outlet without detriment to or diminution of the drainage service which the outlet presently provides. All drain facilities and all rights of way, easements, or property in which the facilities are located, acquired, or constructed pursuant to the agreement to establish the drain shall be dedicated to public use or conveyed or transferred to the drainage district and the drain facilities and drainage district shall be an established drain and drainage district the same as if originally laid out and designated, located, established, and constructed by procedures set forth in this act. All plans and specifications, including a map and a description of the drainage district, pertaining to the private drain as may be required by the drain commissioner or intercounty drainage board shall be furnished to the drain commissioner or intercounty drainage board.

(8) The landowner or developer who transfers a drain pursuant to subsection (5) shall deposit with the drain commissioner or drainage board 5% of the cost of the drain but not more than \$2,500.00. The money received by the drain commissioner or intercounty drainage board pursuant to this subsection shall be deposited in a special drain fund which shall be used for the future maintenance of the transferred drain.

**History:** Add. 1967, Act 214, Imd. Eff. July 10, 1967;—Am. 1982, Act 449, Eff. Mar. 30, 1983.

**Popular name:** Act 40

### **280.434 Drain project; construction or studies; borrowing money or accepting advances; reimbursement; contract or note as evidence of obligation; full faith and credit; source of payments; applicability of section.**

Sec. 434. (1) A drainage district may borrow money or accept the advance of work, material, or money from a public or private corporation, partnership, association, individual, or the federal government or any agency of the federal government for the payment of, or in connection with the construction of, any part of a drain project or for financing a feasibility, practicability, environmental assessment, or impact study of a drain project which may include the payment for easement or land acquisition or engineering and legal fees, or an engineering, environment impact, or assessment study, and be reimbursed by the drainage district, with or without interest as may be agreed, when funds are available. The obligation of the drainage district to make the repayment or reimbursement may be evidenced by a contract or note, which contract or note may pledge

the full faith and credit of the drainage district and may be made payable out of the drain assessments made against public corporations at large, or against lands in the drainage district, or out of the proceeds of drain orders, notes, or bonds issued by the drainage district pursuant to this act or out of any other available funds, and the contract or note shall not be subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821, unless the principal amount of the obligation shall exceed \$300,000.00. However, if the principal amount of the obligation is \$300,000.00 or less, then the issuance of the obligation under this section is subject to the agency financing reporting act.

(2) However, any projects in which advances or loans made by any public corporation, the federal government, or any agency of the federal government shall not be limited by this section. This section shall apply to a drain or other project instituted pursuant to any section in this act including a feasibility, practicability, environmental assessment, or impact study.

(3) A county board of commissioners by a majority vote of 2/3 of its members may pledge the full faith and credit of a county for the payment of a note of the drainage district.

**History:** Add. 1970, Act 112, Imd. Eff. July 23, 1970;—Am. 1974, Act 185, Imd. Eff. July 2, 1974;—Am. 1976, Act 71, Imd. Eff. Apr. 7, 1976;—Am. 1980, Act 297, Imd. Eff. Oct. 19, 1980;—Am. 2002, Act 406, Imd. Eff. June 3, 2002.

**Popular name:** Act 40

### **280.435 Financing of flood control or drainage projects; contract or agreement with federal government; payments and purposes; determination of necessity; notes or bonds; issuance subject to revised municipal finance act.**

Sec. 435. (1) The drain commissioner or drainage board may contract or make agreements with the federal government, or any agency of the federal government, for the financing of a flood control or drainage project or combination of these including the conservation and utilization of soil and water for recreation and other beneficial purposes.

(2) A contract or agreement may include an advance payment of funds from the federal government or any agency of the federal government for financing a feasibility, practicability, environmental assessment, or impact study of a drain or flood control project, or any combination of these including the conservation and utilization of soil and water for recreation and other beneficial purposes. The contract or agreement may include the payment for easements, rights of way, land acquisition, engineering services, legal fees, and any fees or costs for environmental impact statements or assessments studies for the projects.

(3) After the necessity of a project is determined and the first order of determination is filed, the drain commissioner or drainage board may issue notes of indebtedness to the federal government, or any agency of the federal government, to evidence a preliminary advance and may pay those notes from drain assessments made against public corporations at large and against lands in the drainage district, out of the proceeds of drain orders or bonds issued by the drain commissioner or drainage board under this act or out of any other available funds. Bonds of the drainage district issued for the project may be substituted for notes including the interest on the notes. The bonds may be repaid by special assessments in any number of annual installments not exceeding 30.

(4) The drain commissioner or drainage board shall not be required to offer for public sale any notes issued under a contract with the federal government, or any agency of the federal government, for the financing of any project as set forth in this section.

(5) The notes issued in evidence of advance payments are not subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

(6) All notes or bonds issued under this section shall be considered to be obligations of the drainage district, and the drain commissioner or drainage board may pledge the full faith and credit of the drainage district for the repayment of the notes or bonds.

**History:** Add. 1976, Act 187, Imd. Eff. July 8, 1976;—Am. 2002, Act 406, Imd. Eff. June 3, 2002.

**Popular name:** Act 40

## CHAPTER 19. CONSOLIDATED DISTRICTS.

### **280.441 Consolidating and organizing 2 or more drainage districts in same county as single drainage district; signing and filing petition for consolidation; land included; appointment, qualifications, and compensation of members of board of determination; determination of necessity; notice of meeting; affidavit of mailing; failure to receive notice; expense of notice; election of chairperson or secretary; determination; orders.**

Sec. 441. (1) Two or more drainage districts located in the same county and in the same drainage basin or in adjoining basins, may consolidate and organize as a single drainage district upon the filing of a petition for consolidation with the drain commissioner of the county setting forth the reason for the proposed consolidation. The consolidation may include land not within an existing drainage district if requested in the petition. The petition shall be signed by at least 50 property owners within the proposed consolidated drainage district. If in the proposed consolidated drainage district there are less than 100 property owners, the petition shall be signed by at least 50% of the property owners in the proposed consolidated drainage district. In place of a petition signed by property owners, a petition may be signed solely by a city or township a portion of which is located within the proposed consolidated drainage district, when authorized by its governing body, or by a combination of municipalities. As soon as practicable after the filing of a petition, the drain commissioner, if not disqualified under section 381, may appoint a board of determination composed of 3 disinterested property owners to determine the necessity of the consolidation. If the commissioner is disqualified or chooses not to appoint the board of determination, the commissioner shall immediately file a copy of the petition with the chairperson of the county board of commissioners, together with a statement signed by the commissioner showing that he or she is disqualified or chooses not to act in appointing a board of determination. Upon receiving a copy of the petition and certificate, the chairperson of the county board of commissioners, if not privately interested, shall appoint as soon as practicable a board of determination and shall immediately notify the drain commissioner of the names and addresses of those appointed. If the chairperson of the county board of commissioners has a private interest in the proceedings, the drain committee of the county board of commissioners shall appoint the board of determination. Members of a board of determination shall be residents of the county but not of the proposed consolidated drainage district or of a drainage district a part of which is to be included in the proposed consolidation. A meeting of the board of determination shall be called within the proposed consolidated drainage district at some convenient place to be designated by the drain commissioner. If a person appointed to the board of determination fails or refuses to serve, a successor shall be appointed by the official or committee making the appointment in the first instance. The compensation of a member of the board of determination shall be \$8.00 per day with no additional allowance for mileage. The county board of commissioners of a county may increase the per diem compensation of members of the board of determination.

(2) The drain commissioner shall give notice of the time, date, and place of the meeting in the manner prescribed by Act No. 267 of the Public Acts of 1976 and by publication twice in a newspaper of general circulation in the county or a newspaper of general circulation in the proposed consolidated drainage district, the first publication of which shall be at least 10 days before the meeting. Notices shall also be served on the county clerk and the clerk of each township or city in the proposed consolidated drainage district, personally or by registered mail at least 10 days before the meeting. The drain commissioner shall also send notice by first-class mail of the time, date, and place of the meeting at least 10 days before the date of the meeting to each person whose name appears on the last city or township tax assessment roll as owning land within the existing drainage districts, a portion of which is proposed to be consolidated, or owning lands within the proposed consolidated drainage district whose land is not within an existing drainage district, at the address shown on the roll. If an address does not appear on the roll, then a notice need not be mailed to those persons. The drain commissioner shall make an affidavit of the mailing and shall recite in the affidavit that the persons to whom the notice was mailed constitute all of the persons to whom notice must be sent. The affidavit shall be conclusive proof that notice was mailed to each person to whom notice is required to be mailed by this section. The failure to receive a notice by mail shall not constitute a jurisdictional defect invalidating a drain proceeding if notice has been sent by first-class mail as provided in this section. All expense of notification shall be paid by the drainage district when created.

(3) At the time and place fixed in the notice the board shall meet, elect a chairperson and a secretary, and proceed to determine whether the proposed consolidation is conducive to public health, convenience, or welfare. After hearing the evidence, the board shall make its determination as to whether the proposed consolidation is conducive to public health, convenience, or welfare. If the board finds by a majority vote of the members that the proposed consolidation is not conducive to public health, convenience, or welfare, it shall file with the commissioner an order dismissing the petition, and a further petition for the drain shall not be entertained within 1 year after the determination. If the board by a majority vote finds that the proposed consolidation is conducive to the public health, convenience, or welfare, it shall make its order to that effect and file the order with the commissioner. Upon receipt of the order of consolidation, the commissioner shall enter an order giving the consolidated drainage district a name or number.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1959, Act 261, Imd. Eff. Aug. 21, 1959;—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.

**280.441a Consolidating and organizing 2 or more drainage districts as single drainage district within more than 1 county; signing and filing petition; land included; composition of drainage board; notice of meeting; affidavit of mailing; failure to receive notice; expense of notice; chairperson; determination by drainage board; orders.**

Sec. 441a. (1) Two or more drainage districts may be consolidated and organized as a single drainage district under this section where the proposed consolidated district lies within more than 1 county, by filing a petition in writing with the commissioner of a county having jurisdiction of land in the proposed consolidated drainage district, setting forth the reason for the proposed consolidation. The consolidation may include land not within an existing drainage district if requested in the petition. The petition shall be signed by at least 50 property owners within the proposed consolidated drainage district. If in the proposed consolidated drainage district there are less than 100 property owners, then the petition shall be signed by at least 50% of the property owners in the proposed consolidated drainage district. In place of a petition signed by property owners, a petition may be signed solely by a city or township a portion of which is located within the proposed consolidated drainage district, when authorized by its governing body, or by a combination of municipalities. Upon receipt of the petition, the commissioner shall notify the director of the department of agriculture and the commissioner of each county embracing land in the proposed consolidated drainage district. The drain commissioners of the counties and the director of the department of agriculture or a deputy designated by the director shall constitute the drainage board.

(2) The director of the department of agriculture shall call a meeting of the drainage board not less than 15 days or more than 60 days after the receipt of the notice. The meeting shall be held in the immediate locality of the proposed consolidated drainage district. Notice of the meeting shall be served personally or by registered mail, at least 10 days before the meeting on the clerk of each county, township, and city within the proposed consolidated drainage district. A notice of the meeting shall be given in the manner prescribed by Act No. 267 of the Public Acts of 1976, and shall be published twice in each county affected in a newspaper of general circulation in the county or in a newspaper of general circulation in the proposed consolidated drainage district, the first publication of which shall be at least 10 days before the meeting. The drain commissioner of each county in which land proposed to be consolidated into the proposed consolidated district is located shall also send notice of the time, date, and place of the meeting by first-class mail, at least 10 days before the date of the meeting, to each person whose name appears upon the last city or township tax assessment roll as owning land within the existing drainage districts to be consolidated, or owning land within the proposed consolidated drainage district which is not within an existing 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 persons. Each drain commissioner shall make an affidavit of the mailing and shall recite in the affidavit that the persons to whom the notice was mailed constitute all of the persons to whom notice must be sent. The affidavits shall be conclusive proof that notice was mailed to each person to whom notice is required to be mailed by this section. The failure to receive notice by mail shall not constitute a jurisdictional defect invalidating a drain proceeding, if notice has been sent by first-class mail as provided in this section. All expense of notification shall be paid by the drainage district when created or consolidated.

(3) Upon convening the meeting, the director of the department of agriculture or a deputy selected by the director shall act as chairperson. The drainage board shall consider the application for the proposed consolidated drainage district, and determine the sufficiency of the signatures to the application. The drainage board shall then proceed to determine whether the proposed consolidation is conducive to public health, convenience, or welfare. After hearing the evidence, the drainage board shall make its determination as to whether the proposed consolidation is conducive to public health, convenience, or welfare. If the board finds by a majority vote of the members that the proposed consolidation is not conducive to public health, convenience, or welfare, it shall file with the chairperson an order dismissing the petition, and a further petition for consolidation shall not be entertained within 1 year after the determination. If the board by a majority vote finds that the proposed consolidation is conducive to the public health, convenience, or welfare, it shall make its order to that effect and file the order with the chairperson. Upon receipt of the order of consolidation, the chairperson shall enter an order giving the consolidated drainage district a name or number. A copy of the order shall be filed within 10 days by the director of the department of agriculture in the office of the county drain commissioner of each county in which land included in the consolidated drainage district is located.

**History:** Add. 1959, Act 261, Imd. Eff. Aug. 21, 1959;—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.

**Popular name:** Act 40



#### **280.442 Drainage districts; consolidation; surveys.**

Sec. 442. In any proceeding for the consolidation of 2 or more drainage districts, existing surveys shall be used unless the drain commissioner, in the case of a county drain, or the drainage board, in the case of an intercounty drain, shall make a determination that the existing surveys are inadequate.

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

**Popular name:** Act 40

#### **280.443 Drainage districts; consolidation; existing drain, recognition and credit, exemption from special assessment.**

Sec. 443. When in any consolidated district it shall be necessary to construct a new drain on or near the line or any part of the line of an existing, operating drain so as to make the old existing drain in whole or in part unnecessary, recognition and credit shall be given for such existing drain or part thereof as follows:

The assessing authorities shall make a determination of the value of benefits which, except for the construction of the new drain, could reasonably have been anticipated from the continued operation of the existing drain or part thereof.

The property or municipal corporation which paid the assessment for the existing drain or part thereof shall be exempt from any special assessment to pay for the new drain to the extent of the value so determined.

The assessing authorities, in assessing for benefits and apportionment of costs and expenses for any new drain in a consolidated district which has been laid on or near the line or any part of the line of an existing, operating drain so as to make the existing drain in whole or in part unnecessary, shall give effect to this exemption.

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

**Popular name:** Act 40

#### **280.444 Drainage districts; consolidation; indebtedness, retirement; special assessment.**

Sec. 444. In case any drainage district which is included and merged in the consolidated district has any outstanding bonded or other indebtedness, any funds in the treasury of such debtor district shall be used to retire such indebtedness. If said funds are insufficient, the indebtedness shall be paid from any funds derived from any special assessments theretofore levied or extended against the lands in the debtor district, and if further funds are necessary the drain commissioner or drainage board of the consolidated district shall levy a special assessment against the lands in the debtor district sufficient to pay such indebtedness. The proceeds of such special assessment shall be used only for the purpose of paying such indebtedness, bonded or otherwise, and the interest thereon.

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

**Popular name:** Act 40

#### **280.445 Drainage districts; consolidation; bonds and contracts, assumption by consolidated district.**

Sec. 445. The merging of any drainage district into a consolidated district shall not affect the obligation of any bonds issued or contracts entered into by such district nor invalidate the levy, extension or collection of any taxes or special assessments upon property in the debtor district, but such bonds and contracts shall be taken over and assumed by the consolidated district, and all outstanding special assessments shall be collected and paid over to the consolidated district for the payment of the obligations theretofore issued or contracts entered into by the debtor district.

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

**Popular name:** Act 40

#### **280.446 Drainage districts; consolidation; abandonment or vacation of included drain; proration of moneys.**

Sec. 446. Any drain which has been included and merged in a consolidated drain and whose outstanding indebtedness has been fully paid may be abandoned and vacated in the manner provided for the abandonment or vacation of drains. In case any such drain has in its fund any money, after all outstanding indebtedness has been paid, such money shall be transferred, paid over or prorated in the same manner as is provided for abandoned or vacated drains: Provided, That if any person, firm, corporation or township entitled to share in the distribution of such money shall be liable for any special assessment of the consolidated drain, its share of such money, or any part thereof which is necessary to cover such special assessment, shall be returned to the respective county treasurer or treasurers and such treasurer or treasurers shall transfer such money to the fund

of the consolidated drain and such person, firm, corporation or township shall be credited therefor against the special assessment of the consolidated drain.

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

**Popular name:** Act 40

#### **280.447 Drainage districts; consolidation; rights and powers, validation of bonds.**

Sec. 447. After any drainage districts have consolidated as provided for in this chapter, the consolidated district shall, except as otherwise provided in this chapter, have all the rights and powers and be subject to all laws applicable to county or intercounty drainage districts, as the case may be. The provisions of sections 441 through 447 of this act shall not be construed to validate and shall not validate any bonds or other obligations issued prior to May 5, 1954, nor shall said sections be construed to revive or validate any obligations of an old existing or established drain which has heretofore been determined in a court of competent jurisdiction to be invalid.

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

**Popular name:** Act 40

#### **280.448 Drainage districts; consolidation; consent of county auditors or comptroller.**

Sec. 448. In any proceeding to consolidate drainage districts pursuant to the provisions of this chapter, no special assessment district shall be established and no bonded or other indebtedness shall be incurred and no construction or other contracts shall be let in counties having a board of county auditors or a county comptroller without the written consent of the said board of county auditors or the said county comptroller: Provided, however, That the approval of said board of county auditors or said county comptroller shall not be required in proceedings relative to the establishment of an intercounty consolidated drainage district.

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

**Popular name:** Act 40

### CHAPTER 20.

#### INTRACOUNTY DRAINS; PUBLIC CORPORATIONS.

#### **280.461 Definitions.**

Sec. 461. Whenever used in this chapter, except when otherwise indicated by the context:

(a) "State" means this state.

(b) "Public corporation" includes this state, counties, cities, villages, townships, metropolitan districts and authorities created by or pursuant to state statutes.

(c) "Agencies" includes those officers, boards, commissions and other bodies created by public corporations or by the federal government, which are authorized to act in their own names.

(d) "County drain" means any drain, irrespective of size, carrying drainage water or sewage or both originating in 1 county, and includes drains located, established and constructed by a county drain commissioner or drainage board, by a city, village or township. The finding of the drainage board that all drain water and sewage does originate in 1 county shall be final. In making such determination, the drainage board may disregard any drainage from another county which it deems to be inconsequential.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1971, Act 60, Imd. Eff. July 20, 1971.

**Popular name:** Act 40

#### **280.462 County drains; public health, assessment against public corporations.**

Sec. 462. County drains which are necessary for the public health may be located, established and constructed under the provisions of this chapter where the cost thereof is to be assessed wholly against public corporations.

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

**Popular name:** Act 40

#### **280.463 Petition to locate, establish, and construct county drain; determination; filing and contents of petition; notice; certified copy of resolution; authorizing execution; order of determination.**

Sec. 463. (1) Before filing a petition under this section, the legislative body of a public corporation shall first determine whether the drain project contemplated may necessitate the levy of a special assessment, fee, or charge under section 490. If the legislative body determines that a special assessment, fee, or charge may be made under section 490, before filing a petition under this section, the legislative body shall proceed as

provided in section 489a.

(2) If it is necessary for the public health to locate, establish, and construct a county drain, a petition for that purpose may be filed with the county drain commissioner signed by 2 or more public corporations which will be subject to assessments to pay the cost of the drain. The petition shall state that it is filed pursuant to this chapter and shall describe the location and route of the proposed drain sufficiently to determine with reasonable certainty the areas to be serviced by the drain.

(3) Not more than 20 days after the petition is filed, the county drain commissioner shall notify each public corporation which may be subject to an assessment or in which is located any of the areas to be drained, as described in the petition, that a petition was filed.

(4) A certified copy of the resolution of the governing body of each signer authorizing the affixing of the signature of the governing body to the petition shall be attached to the petition. The petition may be filed in more than 1 counterpart. For a petition filed by a county, the county board of commissioners shall authorize the execution of the petition, and for a petition filed by the state, the state transportation commission shall authorize the execution of the petition. As provided in section 423, an order of determination of the water resources commission shall also serve as a petition made pursuant to this chapter.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1968, Act 333, Imd. Eff. July 14, 1968;—Am. 1973, Act 208, Imd. Eff. Jan. 11, 1974;—Am. 1979, Act 135, Eff. Mar. 27, 1980.

**Popular name:** Act 40

#### **280.464 Drainage board; creation; members; disqualification; compensation, mileage, and expenses; county drain commissioner as chairperson; minutes, records, and files; requirements for substantive actions and determinations.**

Sec. 464. (1) There is created for each project petitioned for under this chapter, a drainage board that, except as otherwise provided in subsection (2), shall consist of the drain commissioner of the county, the chairperson of the county board of commissioners, and the chairperson of the board of county auditors. If there is no board of county auditors in the county, then the chairperson of the finance committee of the county board of commissioners shall act as a member of the drainage board, and if there is neither a board of county auditors nor finance committee, then the chairperson of the county board of commissioners shall select from time to time 1 member of the county board of commissioners to act as a member of the drainage board. If a member of the drainage board who is a commissioner, as provided in this section or section 487, is interested in a project petitioned for under this chapter, by reason of his or her holding an elected or appointed office in a public corporation to be assessed for the cost of the project, he or she is disqualified to act as a member of the drainage board with respect to the project. In such case the vice-chairperson or chairperson pro tempore of the county board of commissioners or of the finance committee of the county board of commissioners, if not also disqualified, shall act as the member. If the vice-chairperson or chairperson pro tempore is disqualified, the drain commissioner of the county shall designate a member of the county board of commissioners who is not disqualified to act as a member of the drainage board for the project. The chairperson of the county board of commissioners and any member of a county board of commissioners serving on the drainage board shall receive the compensation, mileage, and expenses as provided by the drainage board. However, compensation paid to a member shall not exceed \$25.00 per diem, exclusive of mileage and expenses, for attendance at drainage board meetings. The county drain commissioner shall be chairperson of the drainage board. The chairperson shall keep minutes of the proceedings of the drainage board and all records and files of the board shall be kept in his or her office. In counties of less than 500,000 population, the commissioner shall be paid the same compensation as other members of the drainage board.

(2) In a county organized under a charter adopted under Act No. 293 of the Public Acts of 1966, being sections 45.501 to 45.521 of the Michigan Compiled Laws, that has a population of more than 2,000,000 at the time the charter is adopted and whose charter prescribes an elected county executive, the drainage board shall consist of the following members:

(a) The person designated by the charter to carry out the administrative duties of the drain commissioner or that person's designee, who shall also serve as chairperson of the drainage board.

(b) The county commissioner whose district will be assessed for the greatest portion of the cost of the project, or that county commissioner's designee. The determination of which county commissioner is qualified to sit under this subdivision shall initially be made by the chairperson of the drainage board at the time the petition for the project is filed. After the final order of apportionment is issued under section 469, the county commissioner who qualifies under this section shall become the county commissioner member and serve until another apportionment is established requiring the seating of another commissioner.

(c) A person appointed by the county executive with the advice and consent of a majority of the members of the county board of commissioners elected or appointed and serving.

(3) In a county described in subsection (2), the requirements in this chapter for substantive actions and determinations shall be followed in administering each project petitioned for under this chapter, subject to and in accordance with any applicable provisions of the county charter.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1965, Act 194, Imd. Eff. July 15, 1965;—Am. 1969, Act 285, Eff. Mar. 20, 1970;—Am. 1989, Act 134, Imd. Eff. June 29, 1989.

**Popular name:** Act 40

**280.465 Meeting of drainage board; notice; affidavit of mailing; quorum; adjournment; action by board; signing of orders.**

Sec. 465. A meeting of the drainage board may be called by the chairperson or 2 members of the board, on notice sent by registered mail to each member, setting forth the time, date, and place of the meeting. The notice shall be mailed not less than 5 days before the time of the meeting. The affidavit of the chairman as to such mailing shall be conclusive proof thereof. A majority of the members of the board shall constitute a quorum for the transaction of business, but a lesser number may adjourn from time to time. A meeting may be adjourned from time to time. Unless otherwise provided in this act, an action shall not be taken by the board except by a majority vote of its members. In the event of the adjournment of a hearing, it shall not be necessary to advertise the adjournment of the hearing. All orders issued by the drainage board shall be signed by the chairperson.

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

**Popular name:** Act 40

**280.466 Drainage board; first meeting, notice.**

Sec. 466. Upon receipt of a petition as hereinbefore provided, the county drain commissioner shall call the first meeting of the drainage board. In the event there be no board of county auditors or finance committee in the county, then notice to the chairman of the board of supervisors of such county shall be deemed to be notice to the member of the board of supervisors to be selected by him.

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

**Popular name:** Act 40

**280.467 Drainage board; tentative determinations; naming drain and drainage district; composition of district; objections; notice of hearing; final order of determination; eliminating or adding public corporation.**

Sec. 467. The drainage board, at its first meeting, shall consider the petition for the project and make a tentative determination as to the sufficiency of the petition and the practicability of the proposed drain, and shall further make a tentative determination of the public corporations to be assessed. The drainage board shall give a name to the drain and to the drainage district. The district shall be composed of the public corporations to be assessed for the cost of the project. After the drainage board has made the determination it shall fix a time, date, and place it will meet to hear objections to the proposed drain and the petition for the drain, and to the matter of assessing the cost of the drain to the designated public corporations. Notice of the hearing shall be published twice in the county by inserting the notice in at least 1 newspaper published in the county, designated by the drainage board, with the first publication to be not less than 20 days before the time of the hearing. The notice shall also be sent by registered mail to the clerk or secretary of each public corporation proposed to be assessed, except that a notice to the state shall be sent to the state highway director and a notice to a county shall be sent to both the county clerk and the county road commission. The mailing shall be made not less than 20 days before the time of the hearing. The notice shall be signed by the chairperson and proof of the publication and mailing of the notice shall be filed in his or her office. The drainage board may provide a form to be substantially followed in the giving of the notice. After the hearing, the drainage board shall make a determination as to the sufficiency of the petition, the practicability of the drain, whether the drain should be constructed, and if so, the public corporations to be assessed, and shall issue its order accordingly. The order shall be known as the final order of determination. A public corporation shall not be eliminated from, or added to, those tentatively determined to be assessed without a rehearing after notice.

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

**Popular name:** Act 40

**280.468 Plans, specifications, and estimate of cost; approval, adoption, and filing; route of drain; apportionment of costs; designation of area to be served; assumption of additional**

**cost; altering and supplementing proceedings.**

Sec. 468. The drainage board shall secure from a competent engineer, plans, specifications, and an estimate of cost of the proposed drain, which, when approved and adopted by the board, shall be filed with the chairman thereof. In approving the plans and specifications, the drainage board shall not be limited to the route of the drain described in the petition or the final order of determination. The drainage board shall tentatively establish the percentage of the cost of the drain or of the several sections or parts thereof which is to be borne by each public corporation. In making the apportionments hereunder, there shall be taken into consideration the benefits to accrue to each public corporation and also the extent to which each public corporation contributes to the conditions which make the drain necessary. Apportionments against the state shall be based upon the benefits and contributions as related solely to the drainage of state highways, and those against the county shall be based as related solely to the drainage of its county highways. Before a tentative apportionment shall be made, the drainage board shall designate the area to be served by the drain project, which may or may not include all of the area in a public corporation to be assessed and may divide the drain into sections or parts for purposes of apportionment or construction. Nothing herein contained shall prohibit the county from assuming any additional cost of the drain if 2/3 of the members elect of the county board of commissioners vote in favor thereof. The apportionment shall only apply to the proposed drain. The apportionments for any extensions or other work subsequently performed under section 482 shall be reestablished by the board. When chapter 25 is employed in the apportionment of costs, the above proceedings shall be altered and supplemented as provided in chapter 25.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1957, Act 37, Imd. Eff. May 14, 1957;—Am. 1961, Act 45, Imd. Eff. May 20, 1961;—Am. 1963, Act 215, Imd. Eff. May 17, 1963;—Am. 1976, Act 5, Imd. Eff. Feb. 10, 1976.

**Popular name:** Act 40

**280.469 Objections to apportionments; notice of hearing; confirmation or readjustment of apportionments; notice of rehearing; final order of apportionment.**

Sec. 469. After the tentative apportionments of cost have been made, the drainage board shall set a time, date, and place it will meet and hear objections to the apportionments. Notice of the hearing shall be published twice in the county by inserting the notice in at least 1 newspaper published in the county, designated by the drainage board, the first publication to be not less than 20 days before the time of the hearing. The notice shall also be sent by registered mail to the clerk or secretary of each public corporation proposed to be assessed, except that a notice to the state shall be sent to the state highway director and a notice to the county shall be sent both to the county clerk and the county road commission. The mailing shall be made not less than 20 days before the time of hearing. The notice shall be signed by the chairperson and proof of the publication and mailing of the notice shall be filed in his or her office. The drainage board may provide a form to be substantially followed in the giving of the notice. The notice shall include tentative apportionments to the several public corporations. After the hearing, the drainage board may confirm the apportionments as tentatively made, or if it considers the apportionments to be inequitable, it shall readjust the apportionments. If the readjustment involves the increasing of an assessment and an increase shall not be consented to by resolution of the governing body of the public corporation whose assessment was increased, before any readjusted apportionments are confirmed the drainage board shall set a time, date, and place for a rehearing and shall give notice of the hearing as in the first instance. The notice shall also set forth the apportionments as readjusted. After confirmation, the drainage board shall issue its order setting forth the several apportionments as confirmed. The order shall be known as the final order of apportionment.

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

**Popular name:** Act 40

**280.470 Drainage board; lands and rights of way, condemnation; procedure, federal government participation; costs.**

Sec. 470. The drainage board shall then proceed to secure the necessary lands or rights of way for the proposed drain. If the same cannot be secured by negotiation, then the drainage board may proceed under the provisions of Act No. 149 of the Public Acts of 1911, as amended, being sections 213.21 to 213.41 of the Compiled Laws of 1948, or under the applicable provisions of sections 75 to 84 of this act, and shall be deemed to be a "state agency" as that term is used in said act, or if the project is one in which the federal government is participating in any manner, then such lands or rights of way may be acquired through proceedings brought by the federal government under any appropriate federal act. In the event lands or rights of way shall be acquired through proceedings under a federal act, then the amount of the awards in such proceeding shall be deemed to be a part of the cost of the drain to the same extent as if the condemnation

proceedings had been taken under the laws of this state.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1961, Act 154, Imd. Eff. June 1, 1961.

**Popular name:** Act 40

### **280.471 Drainage board; contracts with federal government or corporations; bids.**

Sec. 471. The drainage board may contract with the federal government, which term as used in this section shall include any agency thereof, whereby the federal government will pay the whole or any part of the cost of the project or will perform the whole or any part of the work connected therewith, which contract may include any specific terms required by act of congress or federal regulation as a condition for such participation on the part of the federal government. The drainage board may also contract with any private corporation or with any public corporation, which term as used in this section shall include any agency thereof, in respect to any matter connected with the construction, operation, maintenance, use or services of any drain. Such a contract may provide for service or transportation charges and that any payments made or work done by such corporation shall relieve it in whole or in part from assessment for the cost of the drain or of its maintenance and operation. No construction work shall be undertaken until the drainage board has advertised for and received bids for the performance of such work, except for construction work to be performed by the federal government or a public corporation.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1963, Act 215, Imd. Eff. May 17, 1963.

**Popular name:** Act 40

### **280.472 Funds; county treasurer, deputies; bonds; expenditures.**

Sec. 472. The county treasurer shall be the custodian of the funds of the drainage district. He may designate 1 or more of his deputies who may act for him in the performance of any of his duties under this section. The drainage board may require the county treasurer and any deputy county treasurer so designated to furnish a bond payable to the drainage district, in addition to any bond payable to the county, conditioned upon the faithful discharge of his duties in respect to moneys belonging to the drainage district, the premium thereon to be paid by the drainage district. Moneys held by said treasurer shall be paid out only upon order of the drainage board, except that no such order shall be required for the payment of principal and interest on bonds.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1961, Act 46, Imd. Eff. May 20, 1961.

**Popular name:** Act 40

### **280.473 Special assessment roll; preparation; estimated or actual costs; annual installments; interest; advance payment; altering and supplementing proceedings.**

Sec. 473. After the confirmation of the apportionments by the drainage board, the chairman of the board shall prepare a special assessment roll assessing the estimated cost of the drain, or if the actual cost has been ascertained, then the actual cost, against the several public corporations in accordance with the confirmed apportionments. The drainage board may provide for the payment of the special assessments in any number of annual installments, not exceeding 30, but an installment shall not be less than 1/4 of any subsequent installment. The drainage board shall fix the commencement date of interest to be paid upon unpaid installments, not to exceed an amount sufficient to pay interest on bonds or other evidences of indebtedness issued or to be issued by the drainage district, which interest shall become due annually on the day and month upon which the annual installments become due but may become due in years before the due date of the first installment. The drainage board may provide for the payment of installments in advance of their respective due dates and may prescribe the terms and conditions thereof. The drainage board shall fix the date, not later than 4 years after confirmation on which the first installment of special assessments shall become due and payable so that each public corporation can make a tax levy for the payment, and subsequent installments shall become due annually on the same day and month of subsequent years. When chapter 25 is employed in the apportionment of costs, the above proceedings shall be altered and supplemented as provided in chapter 25.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1957, Act 37, Imd. Eff. May 14, 1957;—Am. 1963, Act 215, Imd. Eff. May 17, 1963;—Am. 1973, Act 208, Imd. Eff. Jan. 11, 1974;—Am. 1976, Act 5, Imd. Eff. Feb. 10, 1976.

**Popular name:** Act 40

### **280.474 Special assessment roll; contents; approval; statement; certification to assessed public corporation; installments and interest; advances from county funds; notice; deduction; reimbursement; assessments against state; sufficiency of taxes; spreading**

### **levy on county tax roll; corrected or supplemental roll; altering and supplementing proceedings.**

Sec. 474. The special assessment roll shall contain the name of each public corporation assessed, the total estimated cost of the project, or actual cost if the same has been ascertained at the time of the preparation of the roll, the percentage apportioned to each public corporation, the amount of the assessment against each public corporation based upon the percentage of apportionment, and the amount of each installment if the assessment is divided into annual installments. After the special assessment roll has been prepared, it shall be presented to the drainage board for approval. When the roll has been approved, then a statement to that effect, signed by the chairman of the drainage board, shall be affixed to the roll setting forth the date of approval. The chairman of the drainage board shall then certify to each public corporation assessed the amount of the total assessment against it, the amount of the various installments if the assessment is divided into installments, the due date of each installment, and the rate of interest upon installments from time to time unpaid. The chairman each year, at least 30 days before the time of the levying of taxes by each public corporation, shall notify it of the amount of the installment and interest next becoming due, but the failure to notify a public corporation shall not excuse it from making payment of the installment and interest. On or before the due date of an installment, each public corporation shall pay to the county treasurer the full amount thereof, together with interest accruing to the due date. If a public corporation fails or neglects to account to the county treasurer for the amount of an installment and interest, then the county treasurer shall advance the amount thereof from county funds if bonds or other evidences of indebtedness have been issued to finance the project, in anticipation of the collection of the installment and interest pursuant to this chapter and the county board of commissioners has previously acted, by a resolution adopted by a 2/3 vote of its members elect, to pledge the full faith and credit of the county for the prompt payment of the principal of and interest on the bonds or evidences of indebtedness.

The county treasurer shall immediately notify the public corporation of the amount advanced by the county on account of the default by the public corporation in paying the installment and interest assessed against it. The county treasurer shall also notify the state treasurer, or other appropriate disbursing official, who shall deduct the amount from moneys in his possession belonging to the public corporation which are not pledged to the payment of debts, but the state treasurer or other official shall not withhold in any 1 year a sum greater than 25% of the total amount owed by the delinquent public corporation as stated in the notice from the county treasurer. Nothing in this section shall permit the deduction of moneys in contravention of the state constitution of 1963.

The county board of commissioners of a county which has advanced money for a public corporation and which has not been reimbursed therefor, may order the public corporation and its officers to levy upon its next tax roll an amount sufficient to make the reimbursement on or before the date when its taxes become delinquent; and the public corporation and its tax levying and collecting officials shall levy and collect those taxes and reimburse the county. The foregoing shall not prevent the county from obtaining reimbursement by any other legal method. Assessments against the state shall be certified to the state highway commission and paid from state highway funds. The tax levying officials of each of the other public corporations assessed shall levy sufficient taxes to pay assessment installments and interest as the same become due unless there has been set aside moneys sufficient therefor. A city or village may elect to spread the tax levy upon the county tax roll instead of the city or village tax roll. If a special assessment roll is prepared upon the basis of the estimated cost of the project, then after the actual cost has been ascertained and determined by the drainage board, the special assessments and the installments thereof shall be corrected by adding any deficiency or deducting any excess. The drainage board may order the corrections to be made upon the original roll or may order that a new corrected roll or a supplemental roll be prepared and submitted for approval by the drainage board. When chapter 25 is employed in the apportionment of costs, the above proceedings shall be altered and supplemented as provided in chapter 25.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1961, Act 212, Imd. Eff. June 6, 1961;—Am. 1963, Act 215, Imd. Eff. May 17, 1963;—Am. 1973, Act 208, Imd. Eff. Jan. 11, 1974;—Am. 1976, Act 5, Imd. Eff. Feb. 10, 1976.

**Popular name:** Act 40

### **280.475 Statutory or charter tax limitations inapplicable; rate or amount of taxes.**

Sec. 475. Taxes levied by a public corporation for the payment of assessments hereunder shall not be deemed to be within any statutory or charter tax limitation. A public corporation may impose taxes without limitation as to rate or amount for the payment of the assessments in anticipation of which bonds are issued, which taxes shall be in addition to any taxes that the public corporation may otherwise be authorized to levy but not more than the rate or amount sufficient therefor.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1959, Act 77, Imd. Eff. June 29, 1959;—Am. 1973, Act 208, Imd. Eff. Jan. 11, 1974.

**Popular name:** Act 40

#### **280.476 Bonds; issuance, maturity, signatures; collection of assessments.**

Sec. 476. The drainage board may issue 1 or more series of bonds for and on behalf of the drainage district, in anticipation of the collection of any or all installments of assessments or any part thereof, and pledge the full faith and credit of the drainage district for the prompt payment of the principal thereof and the interest thereon. The bonds shall mature serially with the last maturity not later than 2 1/2 years after the due date of the last installment of the assessments and there may be more than 1 principal maturity date during any 12-month period. The bonds shall be signed by the chairman and at least 1 other member of the drainage board and the facsimile signature of the chairman shall be affixed to the interest coupons attached thereto. Collections of both principal and interest on all installments of assessments in anticipation of which bonds shall have been issued shall be kept in a separate bank account by the county treasurer and used for no other purpose than the payment of principal and interest on such bonds until the full payment thereof.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1963, Act 215, Imd. Eff. May 17, 1963.

**Popular name:** Act 40

#### **280.477 Additional assessment; apportionment.**

Sec. 477. If, for any reason, the original assessments shall not be sufficient to pay the principal and interest on bonds issued in anticipation of the collection thereof, then the drainage board shall make such additional assessments therefor as may be necessary, apportioned as in the first instance, it being the intention hereof that the collections on assessments shall, under all circumstances, be sufficient to pay said principal and interest.

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

**Popular name:** Act 40

#### **280.478 Drainage board; continuation; responsibility; expenses; relinquishment; moneys, disposition, consent.**

Sec. 478. The drainage board for each project shall continue in existence with such changes in personnel as shall result from changes in the officers constituting the board membership. It shall be responsible for the operation and maintenance of the drain. Any necessary expenses incurred in administration and in the operation and maintenance of the drain and not covered by contract shall be paid by the several public corporations assessed for the cost of the drain. The assessments shall be in the same proportion as the cost of the drain was assessed unless the drainage board establishes a different proportion for the assessments after notice and hearing as provided in section 469. The drainage board, by resolution duly adopted by it, may relinquish jurisdiction and control over all or any part of a drain or drain project at any time when there is no outstanding indebtedness or contract liability of its drainage district, to the county, township, city or village in which all or the part of the drain or drain project is wholly located, if the county, township, city or village requests or consents to the relinquishment of jurisdiction and control by resolution duly adopted by its governing body. Indebtedness or contract liability of any drainage district which will be paid in full at the time of consummation of relinquishment of jurisdiction and control shall not be deemed to be outstanding. If relinquishment of jurisdiction and control is to a county, the resolution of the governing body of the county shall specify the county agency, such as board of public works, drain commissioner, board of county road commissioners, or parks and recreation commission, which shall be thereafter responsible for exercise of such jurisdiction and control. Any moneys in the drain fund of any drain, over all or any part of which jurisdiction and control is relinquished, shall be used to pay any indebtedness or contract liability of its drainage district, and the balance shall be turned over to the county, township, city or village to be used solely with respect to the drain, all or part thereof, over which jurisdiction and control is assumed. If the relinquishment of jurisdiction and control and the turnover of drain fund relates to a part of a drain or drain project, such relinquishment and turnover shall not become effective until consented to by resolution of the governing body of each public corporation which has paid a part of the cost of the drain or drain project, and for this purpose the board of county road commissioners and the state highway commission shall be deemed to be the governing body for the county and the state.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1963, Act 215, Imd. Eff. May 17, 1963;—Am. 1969, Act 90, Imd. Eff. July 24, 1969.

**Popular name:** Act 40



#### **280.479 Advancements by corporations; reimbursement.**

Sec. 479. Any public or private corporation, firm, or individual may advance money for the payment of any part of the cost of a project under this act, in which event it shall be reimbursed by the drainage district, with or without interest as may be agreed, when funds are available. The obligation of the drainage district to make the reimbursement may be evidenced by a contract or note, which contract or note may pledge the full faith and credit of the drainage district and may be made payable out of the assessments made against public corporations or out of the proceeds of drain orders or bonds issued by the drainage district pursuant to this act or out of any other available funds, but the contract or note is not subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1963, Act 215, Imd. Eff. May 17, 1963;—Am. 2002, Act 406, Imd. Eff. June 3, 2002.

**Popular name:** Act 40

#### **280.480 Costs; items.**

Sec. 480. The cost of any drain project shall include (1) the cost of constructing or acquiring the facilities, structures, devices and equipment required to locate, establish and construct the drain or to improve or supplement the same, including bridges and culverts and any lands or rights of way necessary thereto; (2) the administrative and other expenses of the drainage board including the cost of service and publication of all notices; (3) all engineering, legal and other professional fees; (4) interest on bonds for the first year, if bonds are to be issued, and interest on moneys advanced pursuant to section 479; and (5) an amount not exceeding 10% of the gross sum to cover contingent expenses.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1963, Act 215, Imd. Eff. May 17, 1963.

**Popular name:** Act 40

#### **280.481 Assessments against townships and villages.**

Sec. 481. Unless otherwise provided by the drainage board, assessments against a township shall be against the township as a whole, including any incorporated village, but the drainage board may determine to assess separately or exclude a village, in which case the assessment against the township shall be exclusive of the village and the tax levies to be made by the township to pay the assessment shall not include property taxable in the village.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1976, Act 5, Imd. Eff. Feb. 10, 1976.

**Popular name:** Act 40

#### **280.482 Improvements or additions to drains for public health.**

Sec. 482. Any 1 or more county drains or any portion thereof, now or hereafter existing, may be cleaned out, relocated, widened, deepened, straightened, extended, tiled, interconnected or otherwise improved, or branches added or connected thereto, when necessary for the public health, in the same manner as a county drain may be located, established and constructed under this chapter, with such variations in the proceedings as may be necessary to make the same applicable, and also the cost thereof may be financed in like manner. A project to improve county drains may include backfilling and leveling any portion thereof no longer needed after the improvements.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1961, Act 46, Imd. Eff. May 20, 1961;—Am. 1963, Act 215, Imd. Eff. May 17, 1963;—Am. 1971, Act 60, Imd. Eff. July 20, 1971.

**Popular name:** Act 40

#### **280.483 Certiorari; time; legal establishment of drain.**

Sec. 483. Neither the final order of determination nor the final order of apportionment shall be subject to attack in any court, except by proceedings in certiorari brought within 20 days after the filing of such order in the office of the chairman of the board issuing the same. If no such proceeding shall be brought within the time above prescribed, the drain shall be deemed to have been legally established and the legality of the drain and the assessments therefor shall not thereafter be questioned in any suit at law or in equity, either on jurisdictional or nonjurisdictional grounds.

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

**Popular name:** Act 40

#### **280.484 Procedures; incorporation of other chapters in drainage board orders.**

Sec. 484. In operating under the terms of this chapter, the several boards and officials shall not be limited by the provisions contained in other chapters of this act and the procedures required under the terms of such

other chapter shall not be deemed to be applicable: Provided, That when not contrary to the express provisions of this chapter, any provision or provisions in other chapters of this act may be incorporated by recital or by references into any order or resolution of the drainage board, and when so incorporated shall be deemed applicable to the project under this chapter.

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

**Popular name:** Act 40

#### **280.485 Relief drains.**

Sec. 485. When 2 or more public corporations, constituting as a whole contiguous territory, are served by 1 or more county drains, and it shall become necessary for the public health to supplement such existing drain or drains by constructing 1 or more relief drains, which may consist of new drains and branches and connections thereto or extensions, enlargements, branches, connections or improvements described in section 482 to existing drains, or any combination thereof, then the entire project may be constructed and financed as a whole under the provisions of this chapter and the word "drain" shall be deemed to include such a project.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1963, Act 215, Imd. Eff. May 17, 1963.

**Popular name:** Act 40

#### **280.486 Drains to which chapter applicable; sufficiency of petition.**

Sec. 486. This chapter shall be applicable (1) to any county drain located, or proposed to be located, entirely within the limits of a single city, village or township; (2) to any county drain located in more than 1 city, village or township but which serves or will serve only an area located entirely within the limits of a single city, village or township so that no other city, village or township will be subject to assessment to pay the cost thereof; or (3) to several drains, including drains located, established and constructed by a county drain commissioner or drainage board, by a city, village or township, whether or not the several drains are interconnected, which several drains serve only areas located entirely within the limits of a single city, village or township, if the city, village or township shall consent thereto by resolution adopted by its governing body. In such case any petition required to be filed hereunder shall be sufficient if signed by such city, village or township only.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1967, Act 214, Imd. Eff. July 10, 1967;—Am. 1971, Act 60, Imd. Eff. July 20, 1971.

**Popular name:** Act 40

#### **280.487 Drainage board; absence of members, deputies, vice-chairman.**

Sec. 487. Any drain commissioner may act under this chapter or under chapter 21, being sections 511 to 537, inclusive, of this act, by his deputy, under any and all circumstances. The vice-chairman or chairman pro tem of a county board of supervisors, or the vice-chairman of a board of county auditors or of a finance committee of a county board of supervisors, may act in lieu of the chairman of such board or committee, in event of the absence of such chairman from a meeting of the drainage board.

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

**Popular name:** Act 40

#### **280.488 Additional grant of power; prior projects.**

Sec. 488. The provisions of this chapter shall be construed as an additional grant of power to that prescribed by other statutory provisions.

Projects completed prior to November 21, 1951, shall not be financed under this chapter.

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

**Popular name:** Act 40

#### **280.489 New cities; service of notice on township clerks or de facto city officer.**

Sec. 489. Whenever a new city has been or shall be incorporated but such incorporation shall not have been completed by the adoption of a city charter, then any notice required by this chapter to be served upon the city clerk shall be served upon the clerk or clerks of the township or townships from which the city was incorporated: Provided, That if a city charter shall have been submitted, but rejected by the electors, then such notice shall also be served upon the de facto officer of the city, if there be such an officer. Service of any notice made prior to the effective date of this amendment, which was made in the manner provided in this section, is hereby declared to be a valid compliance with the terms of this act in respect to service upon the city clerk.

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

**280.489a Land especially benefited by drain project; duties of legislative body; affidavit as conclusive proof of notice; meeting; powers of legislative body; reimbursement for pro rata share of costs.**

Sec. 489a. (1) If the legislative body of a public corporation, which is subject to assessment under this chapter pursuant to apportionments made under this chapter, determines that a part of the land in the public corporation will be especially benefited by a proposed drain project so that a special assessment, fee, or charge may be levied by the public corporation under section 490, the legislative body before filing a petition under section 463, shall do all of the following:

(a) Send to the county drain commissioner by registered mail a notice of intent to file a petition under section 463. The notice shall include a request that the drain commissioner delineate a proposed drainage district.

(b) Prepare or cause to be prepared a proposed plan for financing the project.

(c) Forward by first-class mail to each person whose name and address appears on the tax rolls as owning land within the proposed district, at the address shown on the last tax assessment roll of the public corporation, a notice which contains all of the following:

(i) A general description of the proposed drain project.

(ii) Expected benefits of the proposed drain project.

(iii) Notice that the proposed project is to be fully or partly financed by special assessment against property owners within the proposed district.

(iv) A statement that alternative plans of financing the proposed project will be on the meeting agenda.

(v) Notice of the time, date, and place of a meeting to be held by the legislative body of the public corporation to hear objections to the proposed drain project or special assessment, fee, or charge to be levied under this section. Notice prescribed in this subparagraph shall be mailed not less than 10 days before the meeting, and in addition, shall be given in the manner prescribed by Act No. 267 of the Public Acts of 1976, as amended, being sections 15.261 to 15.275 of the Michigan Compiled Laws, and shall be published in a newspaper of general circulation in the public corporation.

(2) The legislative body shall make an affidavit of the mailing and shall recite in the affidavit that the persons to whom the notice was mailed constitute all of the persons whose names and addresses appear upon the tax rolls as owning land within the proposed district, which affidavit shall be conclusive proof that notice was mailed to each person to whom notice is required to be mailed by the terms of this section. The failure to receive a notice by mail shall not constitute a jurisdictional defect invalidating a drain proceeding or tax, or both, if notice has been sent by first-class mail as provided in this section.

(3) The legislative body shall hold a meeting as described in subsection (1)(c)(v) to receive information from the public on the advisability of proceeding with the proposed drain project. The meeting shall be held in the manner prescribed by Act No. 267 of the Public Acts of 1976, as amended.

(4) The legislative body, at any time before filing a petition under section 463, may do any of the following:

(a) Determine to proceed with the proposed drain project and levy a special assessment, fee, or charge in substantially the same method as stated under section 490 and in the notices prepared and mailed pursuant to subsection (1)(c). A person whose name and address appears upon the tax rolls as owning land within the proposed district feeling aggrieved by this determination may appeal the decision of the legislative body by instituting an action in the circuit court for the county in which the real property is located. The action shall be filed by the person aggrieved within 45 days after the determination of the legislative body.

(b) Determine to proceed with the proposed drain project without levying a special assessment, fee, or charge under section 490. A person whose name and address appears upon the tax rolls as owning land within the proposed district feeling aggrieved by this determination may appeal the decision of the legislative body by instituting an action in the circuit court for the county in which the real property is located. The action shall be filed by the person aggrieved within 45 days after the determination of the legislative body.

(c) Reject or withdraw from the proposed drain project. A person whose name and address appears upon the tax rolls as owning land within the proposed district feeling aggrieved by this determination may appeal the decision of the legislative body by instituting an action in the circuit court for the county in which the real property is located. The action shall be filed by the person aggrieved within 45 days after the determination of the legislative body.

(5) The public corporation shall reimburse the county and other governmental units involved in the project for the pro rata share of any costs incurred under this section.

**History:** Add. 1979, Act 135, Eff. Mar. 27, 1980.

Popular name: Act 40

**280.490 Land especially benefited by drain project; special assessment; resolution; preparation of special assessment roll; conduct of proceedings; objections; hearing in lieu of meeting; use of special assessment collections; reduction of annual levy; charges.**

Sec. 490. (1) Subject to the requirements of section 489a, if the legislative body of a public corporation, which has been assessed under this chapter, determines that a part of the lands in the public corporation will be especially benefited by the drain project to the extent of a portion of the amount assessed under this chapter, the legislative body may cause that portion of the assessment under this chapter to be specially assessed, according to benefits, against the especially benefited lands, if the special assessment method of financing is not inconsistent with local financing policy for similar drains and sewers. The special assessment shall be made under the statutory or charter provisions governing special assessments in the public corporation to the extent applicable. However, if there is not another drain assessment in the district on this particular drain, the special assessment proceedings may be initiated by resolution of the legislative body of the public corporation without petition, after compliance with section 489a, and a petition or written objection in opposition to the levying of special assessments shall be advisory only and shall not require a petition for the project, except as otherwise provided in section 489a.

(2) After determining by resolution to proceed, the legislative body shall cause a special assessment roll to be prepared. After the special assessment roll is prepared, the proceedings with respect to the special assessment roll and the making and collection of the special assessments shall be conducted pursuant to the statute or charter governing special assessments in the public corporation. However, the total assessment may be divided into not more than 30 installments, and a person assessed, at the hearing upon the special assessment roll prepared by the public corporation, may object to the special assessment district previously established by the public corporation. Due consideration shall be given to the objections. A hearing held under this section shall not take the place of a meeting required under section 489a, unless notice is prepared and mailed in the manner prescribed by section 489a.

(3) If a special assessment is levied under this section, all collections from the special assessment shall be used towards the payment of the assessment at large against the public corporation. Each annual levy made for the payment of the assessment at large shall be reduced by the amount of money then on hand from special assessment collections available for this use.

(4) This section shall not be construed to prevent the assessment of public corporations at large under this chapter. In place of or in addition to levying special assessments, the public corporation, under the same conditions and for the same purpose, may exact connection, readiness to serve, availability, or service charges to be paid by owners of land directly or indirectly connected with the drain project, or a combination of projects, subject to section 489a.

**History:** Add. 1957, Act 37, Imd. Eff. May 14, 1957;—Am. 1965, Act 253, Imd. Eff. July 21, 1965;—Am. 1979, Act 135, Eff. Mar. 27, 1980.

Popular name: Act 40

**280.491 River, creek or watercourse; petition for inclusion within jurisdiction.**

Sec. 491. A petition meeting the requirements of this chapter as to petitioners, execution and filing may request, for reasons of public health, that jurisdiction be assumed over all or a specified part of the bed, tributaries, banks and flood plains of a river, creek or watercourse, not part of an established drain. The petition shall describe the existing or threatened conditions which cause or increase the danger of flooding, pollution, desecration or obstruction of such river, creek or watercourse, and shall specify, in general terms, the works, property acquisition, actions or procedures deemed necessary to remove or lessen such danger.

**History:** Add. 1965, Act 194, Imd. Eff. July 15, 1965.

Popular name: Act 40

**280.492 Petition; content, deposit to pay cost; drainage board hearing and notice.**

Sec. 492. The petitioners named in a petition filed pursuant to section 491, shall include therein an agreement to pay the amount of, or shall accompany the petition with a deposit in the amount of, the estimated cost of the planning and engineering required to describe in recordable form the bed, tributaries, banks and flood plains of the river, creek or watercourse over which jurisdiction is necessary and is to be assumed and the work to be done or property to be acquired according to the petition. Upon the filing of the petition with the agreement or deposit to pay costs, the initial actions and tentative determinations shall be taken and made with respect thereto as described in sections 466 and 467, and such description shall be obtained and approved and adopted by the drainage board. To assume jurisdiction of the bed, tributaries,

banks and flood plains of the river, creek or watercourse and to perform the work proposed to be done thereon, if any, as so described, a meeting to hear objections to the assumption of such jurisdiction, to the petition therefor and to the proposed work or property acquisition shall be held as provided for other drain projects pursuant to this chapter. Notice of the hearing shall contain the description as approved and adopted by the drainage board.

**History:** Add. 1965, Act 194, Imd. Eff. July 15, 1965.

**Popular name:** Act 40

#### **280.493 Final order of determination; contents, recording, effect.**

Sec. 493. After the hearing, the drainage board shall determine whether or not it will assume jurisdiction and perform the work proposed, if any, and shall issue its order accordingly, which order shall be known as the "final order of determination". The final order of determination shall contain the description of the bed, tributaries, banks and flood plains of the river, creek or watercourse over which jurisdiction has been assumed and shall be recorded in the county records in the county in which any part thereof is located. After recording, no constructing, excavating, land filling, removing of structures, trees, plants or shrubs, dumping or discharging of sewers or drains shall be permitted or continued in the bed, tributaries, banks or flood plains of the river, creek or watercourse within the recorded description thereof, except upon written order or permit issued by the drainage board.

**History:** Add. 1965, Act 194, Imd. Eff. July 15, 1965.

**Popular name:** Act 40

#### **280.494 Final order of determination; recording effect on private rights.**

Sec. 494. The recording of the description does not appropriate, terminate or lessen any private rights in property, real or personal, except such as shall be voluntarily released by written agreement or conveyance or as shall be condemned as provided in this chapter, or pursuant to applicable law. The recording of the description constitutes a regulation and limitation, for reasons of public health, of the use of the public and private property therein described to remove or lessen the danger of flooding, pollution, desecration or obstruction of the river, creek or watercourse, or part thereof, involved.

**History:** Add. 1965, Act 194, Imd. Eff. July 15, 1965.

**Popular name:** Act 40

#### **280.495 Assessment of cost; hearing; powers.**

Sec. 495. Before any work, other than preparation of the description and the approval, adoption and recording of the same, is done or rights in or ownership of property is acquired by the drainage board, pursuant to a petition filed under section 491, the drainage board shall make a determination, following notice and a hearing as provided in this chapter, which may be the hearing provided for in section 492, as to the public corporations to be assessed for the cost of the work or acquisition. After the hearing and the determination to proceed with the work, the drainage board shall proceed in the same manner as is provided for other drain projects in this chapter and the drainage board shall have the rights and powers so provided.

**History:** Add. 1965, Act 194, Imd. Eff. July 15, 1965.

**Popular name:** Act 40

#### **280.496 Drainage board funds; investment of surplus, interest.**

Sec. 496. The drainage board may direct the treasurer of any drainage district to invest any surplus funds belonging to and under the control of the drainage board, in bonds and other direct obligations of the United States or in certificates of deposit or depository receipts of any bank which is a member of the federal deposit insurance corporation in such amounts and issues as shall be directed by the drainage board. The interest earnings from such investments shall be credited by the county treasurer to such drainage district funds.

**History:** Add. 1970, Act 144, Imd. Eff. Aug. 1, 1970.

**Popular name:** Act 40

#### **280.497 Use or transfer of surplus construction funds; contract with public corporation; provisions of contract; return of surplus construction funds to state transportation department; application of MCL 280.499; definition.**

Sec. 497. (1) The drainage board shall use any surplus construction funds remaining in the construction fund after completion of the project for the inspection, repair, and maintenance of the drain as provided in section 196 or shall authorize the transfer of the funds to the bond and interest account, if bonds were issued, in the amounts the drainage board considers proper.

(2) The drainage board shall contract with any public corporation if that public corporation has been assessed for all or part of the cost of the drain or if land in any city, village, township, or combination thereof has been assessed for all or any part of the cost of a drain. The contract shall provide that after all outstanding drain orders or bonds are paid on a drainage district project, the drainage board shall authorize the county treasurers to pay over any portion of the surplus not needed for more than the cost of inspection, repair, and maintenance of the drain as provided in section 196 to the county, township, city, or village in which the drain is located or in which assessments for benefits have been assessed and collected. The payments shall be on a pro rata basis in direct proportion to the amounts assessed and collected from each county, township, city, or village. The contract shall also provide that upon receipt of the surplus funds the county, city, village, or township shall utilize the surplus funds to alleviate drainage problems in their respective jurisdictions.

(3) If state highway funds are involved in a project, the drain commissioner or drainage board, upon completion of a construction project and after all outstanding drain orders or bonds are paid on the project, shall return, on a pro rata basis, surplus construction funds in excess of the amount necessary to pay for inspection, repair, and maintenance of the drain as provided in section 196 to the state transportation department for the construction, maintenance, and administration of state highways.

(4) A drainage board may apply section 499 to surplus construction funds in place of this section.

(5) As used in this section and section 499, "public corporation" includes a city, village, township, or county, or the state.

**History:** Add. 1970, Act 144, Imd. Eff. Aug. 1, 1970;—Am. 1984, Act 165, Imd. Eff. June 28, 1984;—Am. 1989, Act 149, Imd. Eff. July 14, 1989.

**Popular name:** Act 40

#### **280.498 Pollution in county drain; abatement; petition.**

Sec. 498. Whenever the water resources commission or successor agency has determined that pollution exists in a county drain which services any city, village or township or any combination thereof and has issued an order of determination or permit to such public corporation for abatement thereof then a petition under this chapter may be filed in accordance with section 463 by any one such city having greater than 500,000 population.

**History:** Add. 1973, Act 48, Imd. Eff. July 11, 1973.

**Popular name:** Act 40

#### **280.499 Providing amount from surplus construction funds to inspect, repair, and maintain drain; apportioning balance of surplus construction funds to credit of public corporations; use of funds.**

Sec. 499. (1) After the construction of a county drain for which none of the financing is obtained through special assessments under section 490, the drainage board shall provide for an amount from surplus construction funds sufficient to inspect, repair, and maintain the drain as provided in section 196. After providing for inspection, repair, and maintenance, the drainage board may apportion the balance of the surplus construction funds to separate accounts to the credit of the public corporations against which the cost of the drain is assessed. The funds shall be credited in direct proportion to amounts assessed and collected from the public corporations.

(2) Funds in an account apportioned to the credit of a public corporation under this section shall be used only for the following:

(a) To pay principal and interest on bonds issued to finance the drain for which the assessment is imposed.

(b) If bonds are not sold, to pay assessments due from the public corporation.

(c) At the request of the public corporation, to alleviate drainage problems in that public corporation.

**History:** Add. 1984, Act 165, Imd. Eff. June 28, 1984;—Am. 1989, Act 149, Imd. Eff. July 14, 1989.

**Popular name:** Act 40

### CHAPTER 21.

#### INTERCOUNTY DRAINS; PUBLIC CORPORATIONS.

#### **280.511 Definitions.**

Sec. 511. Whenever used in this chapter, except when otherwise indicated by the context:

(a) "State" means this state.

(b) "Public corporation" includes this state, counties, cities, villages, townships, metropolitan districts and authorities created by or pursuant to state statutes.

(c) "Agencies" includes those officers, boards, commissions and other bodies created by public

corporations or by the federal government, which are authorized to act in their own names.

(d) "Director of agriculture" means the director of the state department of agriculture.

(e) "Intercounty drain" means any drain, irrespective of size, carrying drainage water or sewage originating in more than 1 county, and includes drains located, established and constructed by a county drain commissioner or drainage board, by a city, village or township.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1971, Act 60, Imd. Eff. July 20, 1971.

**Popular name:** Act 40

### **280.512 Public health; assessment against public corporations.**

Sec. 512. Intercounty drains which are necessary for the public health may be located, established and constructed under the provisions of this chapter where the cost thereof is to be assessed wholly against public corporations.

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

**Popular name:** Act 40

### **280.513 Petition to locate, establish, and construct intercounty drain; determination; filing and contents of petition; notice; certified copy of resolution; authorizing execution; order of determination.**

Sec. 513. (1) Before filing a petition under this section, the legislative body of a public corporation shall first determine whether the drain project contemplated may necessitate the levy of a special assessment, fee, or charge under section 539. If the legislative body determines that a special assessment, fee, or charge may be made under section 539, before filing a petition under this section, the legislative body shall proceed as prescribed in section 538a.

(2) If it is necessary for the public health to locate, establish, and construct an intercounty drain, a petition for that purpose may be filed with the director of the department of agriculture signed by 2 or more public corporations which will be subject to assessments to pay the cost of the drain. The petition shall state that it is filed pursuant to this chapter and shall describe the location and route of the proposed drain sufficiently to determine with reasonable certainty the areas to be serviced by the drain.

(3) Not more than 20 days after the petition is filed, the director of the department of agriculture shall notify all public corporations in which any of the areas to be drained are located, as described in the petition, that a petition has been filed which may affect drainage in the public corporation.

(4) A certified copy of the resolution of the governing body of each signer authorizing the affixing of the signature of the governing body to the petition shall be attached to the petition. The petition may be filed in more than 1 counterpart. For a petition filed by a county, the county board of commissioners shall authorize the execution, and for a petition filed by the state, the state transportation commission shall authorize the execution of the petition. As provided in section 423, an order of determination of the water resources commission shall also serve as a petition made pursuant to this chapter.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1968, Act 333, Imd. Eff. July 14, 1968;—Am. 1973, Act 208, Imd. Eff. Jan. 11, 1974;—Am. 1979, Act 135, Eff. Mar. 27, 1980.

**Popular name:** Act 40

### **280.514 Drainage board; membership; chairperson; appointee; exception.**

Sec. 514. (1) A drainage board is created for each project petitioned for under this chapter. Except as otherwise provided in subsection (3), the drainage board shall consist of the director of the department of agriculture and the drain commissioner of each county involved in the project.

(2) The director of the department of agriculture shall be the chairperson of the drainage board. The drainage board shall select 1 of its members as secretary.

(3) If a project involves a county with an appointed rather than an elected drain commissioner and a population of more than 1,000,000, the drainage board shall consist of the director of the department of agriculture, the drain commissioner of each county involved in the project, and an individual appointed by each drain commissioner of each county involved in the project, including a county with an elected drain commissioner. The appointee shall be an elected official, or his or her designee, of a city, village, or township subject to assessment for the project. The appointee shall serve for a 2-year term and shall not be appointed for successive terms unless the city, village, or township that he or she represents is the only municipality in the county subject to assessment. Following the completion of the 2-year term, the drain commissioner shall, if possible, appoint an elected official, or his or her designee, from a different city, village, or township subject to assessment for the project. If an appointee fails or refuses to serve or is disqualified, the drain commissioner shall appoint a successor to complete the remainder of his or her term.

(4) Subsection (3) does not apply to a project that involves a county with a population of more than 1,000,000 which was organized pursuant to 1973 PA 139, MCL 45.551 to 45.573.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 2006, Act 16, Imd. Eff. Feb. 9, 2006.

**Popular name:** Act 40

#### **280.515 Augmented drainage board; members, compensation; expenses.**

Sec. 515. There is created for each project petitioned for under the provisions of this chapter, an augmented drainage board to consist of the members of the drainage board together with the chairman of the board of supervisors and the chairman of the board of county auditors of each county involved. If there is no board of county auditors in any county, then the chairman of the finance committee of the board of supervisors shall act as a member of the augmented drainage board, and if there is neither a board of county auditors nor finance committee, then the chairman of the board of supervisors shall select 1 member of the board of supervisors of his county to act as a member of the augmented drainage board. The chairman and secretary of the drainage board shall act as chairman and secretary, respectively, of the augmented drainage board. The chairman of the board of supervisors and any member of a board of supervisors serving on the augmented drainage board shall receive such compensation, mileage and expenses as shall be provided by the augmented drainage board except that such compensation shall not exceed \$25.00 per diem exclusive of mileage and expenses for attendance at augmented drainage board meetings.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1969, Act 285, Eff. Mar. 20, 1970.

**Popular name:** Act 40

#### **280.516 Minutes of meetings; secretary's duties, records, filing.**

Sec. 516. The secretary of the drainage board shall prepare and sign duplicate originals of the minutes of all proceedings of the drainage board and the augmented drainage board, one to be retained by him and the other to be filed with the director of agriculture. The originals of all proceedings and records of the drainage board and the augmented drainage board shall be kept on file with the secretary until the completion of the project, at which time they shall be forwarded to the director of agriculture for filing in his office. In the meantime the director of agriculture may require the secretary to furnish him with certified copies of records in the office of the secretary for filing in his office and such certified copies so filed shall have the same force and effect as the originals.

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

**Popular name:** Act 40

#### **280.517 Preliminary finding; first meeting of boards, time and place, notice, selection of secretary.**

Sec. 517. Upon receipt of a petition as hereinbefore provided, the director of agriculture shall make a preliminary finding of the counties which, in his opinion, include public corporations that should be assessed under the provisions of this chapter for the cost of the proposed drain. Upon the making of such preliminary finding, the director of agriculture shall give notice of the time and place of the first meeting of the drainage board and of the first meeting of the augmented drainage board, by sending a copy of such notice and of such preliminary finding by registered mail to each member thereof, and to each highway agency having jurisdiction over any highway, road and street in said district, which notice and finding shall be mailed not less than 10 days prior to the time of the meeting. In the event there be no board of county auditors or finance committee in any county involved, then notice to the chairman of the board of supervisors of such county shall be deemed to be notice to the member of the board of supervisors to be selected by him. The drainage board shall meet first, for the purpose of selecting a secretary. Upon the selection of a secretary, the director of agriculture shall turn over to such secretary the original petition and any other records in his office pertaining to the proposed drain.

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

**Popular name:** Act 40

#### **280.518 Meetings of drainage board or augmented drainage board; notice; quorum; action by board; signing of orders.**

Sec. 518. Meetings of the drainage board, or of the augmented drainage board, may be called by the chairperson or 2 members of the board, on notice sent by registered mail to each member. The notice shall be mailed not less than 10 days before the time of the meeting. A majority of the members of the board shall constitute a quorum for the transaction of business, but a lesser number may adjourn from time to time. A meeting may be adjourned from time to time. Unless otherwise provided herein, an action shall not be taken



by either of the boards except by a majority vote of its members. All orders issued by either the drainage board, or the augmented drainage board, shall be signed by the chairperson and secretary.

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

**Popular name:** Act 40

**280.519 Augmented drainage board; tentative determinations; naming drain and drainage district; composition of district; resolution; new meeting; objections; notice of hearing; final order of determination; eliminating or adding public corporation; further action by drainage board; correction or addition to proceedings.**

Sec. 519. The augmented drainage board, at its first meeting, shall consider the petition for the project and make a tentative determination as to the sufficiency of the petition and the practicability of the proposed drain, and further make a tentative determination of the public corporations to be assessed. The augmented drainage board shall give a name to the drain and to the drainage district. The district shall be composed of the public corporations to be assessed for the cost of the project. If the augmented drainage board, by resolution, tentatively determines that there should be assessed a public corporation in a county other than those contained in the tentative findings of the director of the department of agriculture, further proceedings shall not be taken by the augmented drainage board, but the resolution shall have the effect of amending the preliminary finding of the director of the department of agriculture. The director of the department of agriculture shall proceed, as in the first instance, to call a new meeting of the drainage board and the augmented drainage board as enlarged by reason of the inclusion of the additional public corporations in another county. After the augmented drainage board has made the determination specified in this section, it shall fix a time, date, and place it will meet to hear objections to the proposed drain and the petition for the drain, and the matter of assessing the cost of the drain to the designated public corporations. Notice of the hearing shall be published twice in each county involved by inserting the notice in at least 1 newspaper published in the county, designated by the augmented drainage board. The first publication shall be made not less than 20 days before the time of hearing. The notice shall also be sent by registered mail to the clerk or secretary of each public corporation proposed to be assessed, except that a notice to the state shall be sent to the state highway director and a notice to a county shall be sent to both the county clerk and the county road commission. The mailing shall be made not less than 20 days before the time of hearing. The notice shall be signed by the secretary and proof of the publication and mailing of the notice shall be filed with the secretary. The augmented drainage board may provide a form to be substantially followed in the giving of such notice. After the hearing, the augmented drainage board shall make a determination as to the sufficiency of the petition, the practicability of the drain, whether the drain should be constructed, the public corporations to be assessed, and shall issue its order accordingly. The order shall be known as the final order of determination. A public corporation shall not be eliminated from, or added to, those tentatively determined to be assessed without a rehearing after notice. After the augmented drainage board has made the determinations further action in respect to the drain shall be taken by the drainage board. The augmented drainage board may be reconvened by its chairperson or 2 members of the board, upon notice given for the purpose of making a correction or addition to its proceedings.

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

**Popular name:** Act 40

**280.520 Plans, specifications, and estimate of cost; approval, adoption, and filing; route of drain; apportionment of costs; designation of area to be served; assumption of additional cost; altering or supplementing proceedings.**

Sec. 520. The drainage board shall proceed to secure from a competent engineer, plans, specifications, and an estimate of cost of the proposed drain, which when approved and adopted by the board shall be filed with the secretary thereof. In approving the plans and specifications, the drainage board shall not be limited to the route of the drain described in the petition or the final order of determination. The drainage board shall tentatively establish the percentage of the cost of the drain or of the several sections or parts thereof which is to be borne by public corporations in each county affected and by the state on account of any state highway, and by the county on account of any county highway. The percentage of the cost apportioned to public corporations in each county shall then be apportioned by the drain commissioner among public corporations to be assessed in the county, which determination shall be filed with the secretary of the drainage board. In making the apportionments hereunder, there shall be taken into consideration the benefits to accrue to each public corporation and also the extent to which each public corporation contributes to the conditions which make the drain necessary. Apportionments against the state shall be based upon the benefits and contributions

as related solely to the drainage of state highways, and those against the county shall be based as related solely to the drainage of its county highways. Before a tentative apportionment shall be made, the drainage board shall designate the area to be served by the drain project, which may or may not include all of the area in a public corporation to be assessed and may divide the drain into sections or parts for purposes of apportionment or construction. Nothing herein contained shall prohibit a county from assuming any additional cost of the drain if 2/3 of the members elect of the county board of commissioners vote in favor thereof. The apportionment shall apply only to the proposed drain. The apportionments for extensions or other work subsequently performed under section 535 shall be reestablished by the board. When chapter 25 is employed in the apportionment of costs, the above proceedings shall be altered and supplemented as provided in chapter 25.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1957, Act 37, Imd. Eff. May 14, 1957;—Am. 1963, Act 215, Imd. Eff. May 17, 1963;—Am. 1976, Act 5, Imd. Eff. Feb. 10, 1976.

**Popular name:** Act 40

### **280.521 Objections to apportionments; notice of hearing; confirmation or readjustment of apportionments; notice of rehearing; final order of apportionment.**

Sec. 521. After the tentative apportionments of cost have been made, the drainage board shall set a time, date, and place it will meet and hear objections to the apportionments. Notice of the hearing shall be published twice in each county involved by inserting the notice in at least 1 newspaper published in the county, designated by the drainage board. The first publication is to be not less than 20 days before the time of hearing. The notice shall also be sent by registered mail to the clerk or secretary of each public corporation proposed to be assessed, except that a notice to the state shall be sent to the state highway director and a notice to a county shall be sent both to the county clerk and the county road commission. The mailing shall be made not less than 20 days before the time of hearing. The notice shall be signed by the secretary and proof of the publication and mailing of the notice shall be filed with the secretary. The drainage board may provide a form to be substantially followed in the giving of the notice. The notice shall include tentative apportionments to the several public corporations. After the hearing, the drainage board may confirm the apportionments as tentatively made, or, if it considers the apportionments to be inequitable, it shall readjust the apportionments. Before readjusted apportionments are confirmed, the drainage board shall set a time, date, and place for a rehearing and shall give notice of the hearing. The notice shall also set forth the apportionments as readjusted. It shall then issue its order setting forth the several apportionments as confirmed. The order shall be known as the final order of apportionment.

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

**Popular name:** Act 40

### **280.522 Lands and rights of way; condemnation; procedure, federal government participation; prior agreement as to highways; costs.**

Sec. 522. The drainage board shall then proceed to secure the necessary lands or rights of way for the proposed drain. If the same cannot be secured by negotiation, then the drainage board may proceed under the provisions of Act No. 149 of the Public Acts of 1911, as amended, being sections 213.21 to 213.41 of the Compiled Laws of 1948, or under the applicable provisions of sections 75 to 84 of this act, and shall be deemed to be a “state agency” as that term is used in said act, or if the project is one in which the federal government is participating in any manner, then such lands or rights of way may be acquired through proceedings brought by the federal government under any appropriate federal act. No such condemnation proceedings involving highways shall be effective to take title thereto without a prior agreement with the highway agency involved. In the event that lands or rights of way shall be acquired through proceedings under a federal act, then the amount of the awards in such proceedings shall be deemed to be a part of the cost of the drain to the same extent as if the condemnation proceedings had been taken under the laws of this state.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1961, Act 154, Imd. Eff. June 1, 1961.

**Popular name:** Act 40

### **280.523 Contracts with federal government or corporations; bids.**

Sec. 523. The drainage board may contract with the federal government, which term as used in this section shall include any agency thereof, whereby the federal government will pay the whole or any part of the cost of the project or will perform the whole or any part of the work connected therewith, which contract may include any specific terms required by act of congress or federal regulation as a condition for such participation on the part of the federal government. The drainage board may also contract with any private corporation or with any public corporation, which term as used in this section shall include any agency thereof, in respect to any

matter connected with the construction, operation, maintenance, use or services of any drain. Such a contract may provide for service or transportation charges and that any payments made or work done by such a corporation shall relieve it in whole or in part from assessment for the cost of the drain or of its maintenance and operation. No construction work shall be undertaken until the drainage board has advertised for and received bids for the performance of such work, except for construction work to be performed by the federal government or a public corporation.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1963, Act 215, Imd. Eff. May 17, 1963.

**Popular name:** Act 40

#### **280.524 Designation of a county treasurer; deputies, bonds; expenditures.**

Sec. 524. The drainage board shall designate the treasurer of 1 of the counties involved as the treasurer for said board. He may designate 1 or more of his deputies who may act for him in the performance of any of his duties under this section. Such treasurer and any such deputy shall serve without additional compensation. He and each deputy county treasurer so designated shall furnish a bond in such sum as shall be fixed by the drainage board, conditioned upon the faithful discharge of his duties, the premium thereon to be paid by the drainage board. Moneys held by the treasurer shall be paid out only upon order of the drainage board, except that no such order shall be required for the payment of principal and interest on bonds.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1961, Act 46, Imd. Eff. May 20, 1961.

**Popular name:** Act 40

#### **280.525 Special assessment roll; preparation; estimated or actual costs; annual installments; interest; advance payment; spreading levy on county tax roll; altering or supplementing proceedings.**

Sec. 525. After the confirmation of the apportionments by the drainage board, the secretary of the board shall prepare a special assessment roll assessing the estimated cost of the drain, or if the actual cost has been ascertained, then the actual cost, against the several public corporations in accordance with the confirmed apportionments. The drainage board may provide for the payment of the special assessments in any number of annual installments, not exceeding 30, but an installment shall not be less than 1/4 of any subsequent installment. Installments of assessments against the state and against public corporations which collect their taxes beginning approximately December 1 in each year shall become due and payable on or before April 1 of each year. Installments of assessments against other public corporations shall become due and payable on or before the dates as shall be fixed by the drainage board, depending upon the times of the collection of taxes by the public corporations. The drainage board shall fix the commencement date of interest to be paid upon unpaid installments, not to exceed an amount sufficient to pay interest on bonds or other evidences of indebtedness issued or to be issued by the drainage district, which interest shall become due annually on the day and month upon which the annual installments become due but may become due in years before the due date of the first installment. The drainage board may provide for the payment of installments in advance of their respective due dates and may prescribe the terms and conditions of payment. The drainage board shall fix the date, not later than 4 years after confirmation for the payment of the first installment so that each public corporation can make a tax levy for the payment thereof and subsequent installments shall become due annually on the same day and month of subsequent years. A city or village may elect to spread the tax levy upon the county tax roll instead of the city or village tax roll. When chapter 25 is employed in the apportionment of costs, the above proceedings shall be altered and supplemented as provided in chapter 25.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1957, Act 37, Imd. Eff. May 14, 1957;—Am. 1963, Act 215, Imd. Eff. May 17, 1963;—Am. 1973, Act 208, Imd. Eff. Jan. 11, 1974;—Am. 1976, Act 5, Imd. Eff. Feb. 10, 1976.

**Popular name:** Act 40

#### **280.526 Special assessment roll; contents; approval; statement; certification to assessed public corporation; installments and interest; advances from county funds; notice; deduction; reimbursement; assessments against state; sufficiency of taxes; corrected roll; altering or supplementing proceedings.**

Sec. 526. The special assessment roll shall contain the name of each public corporation assessed, the total estimated cost of the project, or actual cost if the same has been ascertained at the time of the preparation of the roll, the percentage apportioned to each public corporation, the amount of the assessment against each public corporation based upon the percentage of apportionment, and the amount of each installment if the assessment is divided into annual installments. After the special assessment roll has been prepared, it shall be presented to the drainage board for approval. When the roll has been approved, then a statement to that effect

signed by the chairman and secretary of the drainage board shall be affixed to the roll setting forth the date of approval. The chairman of the drainage board shall then certify to each public corporation assessed, the amount of the total assessment against it, the amount of the various installments if the assessment is divided into installments, the due date of each installment, and the rate of interest upon installments from time to time unpaid. The chairman each year, at least 30 days before the time of the levying of taxes by each public corporation, shall notify it of the amount of the installment and interest next becoming due, but the failure to notify a public corporation shall not excuse it from making payment of the installment and interest. On or before the due date of an installment, each public corporation shall pay to its county treasurer the full amount together with interest accruing to the due date, and within 15 days thereafter the county treasurer shall forward the amount paid to the county treasurer acting as treasurer for the drainage board. If a public corporation fails or neglects to account to the county treasurer for the amount of an installment and interest, then the county treasurer shall advance the amount thereof from county funds.

If bonds or other evidences of indebtedness have been issued to finance the project in anticipation of the collection of the installment and interest pursuant to this chapter and the county board of commissioners has previously acted, by a resolution adopted by a 2/3 vote of its members elect to pledge the full faith and credit of the county for the prompt payment of the principal of and interest on the bonds or evidences of indebtedness, the county treasurer shall immediately notify the public corporation of the amount advanced by the county on account of the default by the public corporation in paying the installment and interest assessed against it. The county treasurer shall also notify the state treasurer, or other appropriate disbursing official, who shall deduct the amount from moneys in his possession belonging to the public corporation which are not pledged to the payment of debts, but the state treasurer or other official shall not withhold in any 1 year a sum greater than 25% of the total amount owed by the delinquent public corporation as stated in the notice from the county treasurer. Nothing in this section shall permit the deduction of moneys in contravention of the state constitution of 1963.

The county board of commissioners of a county which has advanced money for a public corporation, and which has not been reimbursed therefor, may order the public corporation and its officers to levy upon its next roll an amount sufficient to make the reimbursement on or before the date when its taxes become delinquent; and the public corporation and its tax levying and collecting officials shall levy and collect those taxes and reimburse the county. The foregoing shall not prevent the county from obtaining reimbursement by any other legal method. Assessments against the state shall be certified to the state highway commission and paid from state highway funds. The tax levying officials of each of the other public corporations assessed shall levy sufficient taxes to pay assessment installments and interest as the same become due unless there has been set aside money sufficient therefor. If a special assessment roll is prepared upon the basis of the estimated cost of the project, then after the actual cost has been ascertained and determined by the drainage board, the special assessments and the installments thereof shall be corrected by adding any deficiency or deducting any excess. The drainage board may order the corrections to be made upon the original roll or may order that a new corrected roll be prepared and submitted for approval by the drainage board. When chapter 25 is employed in the apportionment of costs, the above proceedings shall be altered and supplemented as provided in chapter 25.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1961, Act 212, Imd. Eff. June 6, 1961;—Am. 1963, Act 215, Imd. Eff. May 17, 1963;—Am. 1973, Act 208, Imd. Eff. Jan. 11, 1974;—Am. 1976, Act 5, Imd. Eff. Feb. 10, 1976.

**Popular name:** Act 40

### **280.527 Statutory or charter tax limitation inapplicable; rate or amount of taxes.**

Sec. 527. Taxes levied by a public corporation for the payment of assessments hereunder shall not be deemed to be within any statutory or charter tax limitation. Public corporations may impose taxes without limitation as to rate or amount for the payment of the assessments in anticipation of which bonds are issued, which taxes shall be in addition to any taxes that the public corporation may otherwise be authorized to levy but not more than the rate or amount sufficient therefor.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1959, Act 77, Imd. Eff. June 29, 1959;—Am. 1973, Act 208, Imd. Eff. Jan. 11, 1974.

**Popular name:** Act 40

### **280.528 Bonds; issuance, maturity, signatures; collection of assessments.**

Sec. 528. The drainage board may issue 1 or more series of bonds for and on behalf of the drainage district, in anticipation of the collection of any or all installments of assessments, and pledge the full faith and credit of the drainage district for the prompt payment of the principal thereof and the interest thereon. The bonds shall mature serially with the last maturity not later than 2 1/2 years after the due date of the last installment of

the assessments and there may be more than 1 principal maturity date during any 12-month period. The bonds shall be signed by the chairman and secretary of the drainage board, who shall cause their facsimile signatures to be affixed to the interest coupons attached thereto. Collections of both principal and interest on all installments of assessments in anticipation of which bonds shall have been issued shall be kept in a separate bank account by the treasurer for the drainage board and used for no other purpose than the payment of principal and interest on such bonds until the full payment thereof.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1963, Act 215, Imd. Eff. May 17, 1963.

**Popular name:** Act 40

#### **280.529 Additional assessment; apportionment.**

Sec. 529. If for any reason the original assessments shall not be sufficient to pay the principal and interest on bonds issued in anticipation of the collection thereof, then the drainage board shall make such additional assessments therefor as may be necessary, apportioned as in the first instance, it being the intention hereof that the collections on assessments shall under all circumstances be sufficient to pay said principal and interest.

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

**Popular name:** Act 40

#### **280.530 Drainage board; continuation; responsibility; expenses; relinquishment; moneys, disposition; consent.**

Sec. 530. The drainage board for each project shall continue in existence with such changes in personnel as shall result from changes in the offices of director of agriculture and drain commissioners. It shall be responsible for the operation and maintenance of the drain. Any necessary expenses incurred in administration and in the operation and maintenance of the drain and not covered by contract shall be paid by the several public corporations assessed for the cost of the drain. The assessments shall be in the same proportion as the cost of the drain was assessed unless the drainage board establishes a different proportion for the assessments after notice and hearing as provided in section 521. The drainage board, by resolution duly adopted by it, may relinquish jurisdiction and control over any part of a drain or drain project at any time when there is no outstanding indebtedness or contract liability of its drainage district, to the county, township, city or village in which the part of the drain or drain project is wholly located, if the county, township, city or village requests or consents to the relinquishment of jurisdiction and control by resolution duly adopted by its governing body. Indebtedness or contract liability of any drainage district which will be paid in full at the time of consummation of relinquishment of jurisdiction and control shall not be deemed to be outstanding. If relinquishment of jurisdiction and control is to a county, the resolution of the governing body of the county shall specify the county agency, such as board of public works, drain commissioner, board of county road commissioners, or parks and recreation commission, which shall be thereafter responsible for exercise of such jurisdiction and control. Any moneys in the drain fund of any drain, over any part of which jurisdiction and control is relinquished, shall be used to pay any indebtedness or contract liability of its drainage district, and the balance shall be turned over to the county, township, city or village to be used solely with respect to the drain, all or part thereof, over which jurisdiction and control is assumed. If the relinquishment of jurisdiction and control and the turnover of drain fund relates to a part of a drain or drain project, such relinquishment and turnover shall not become effective until consented to by resolution of the governing body of each public corporation which has paid a part of the cost of the drain or drain project, and for this purpose the board of county road commissioners and the state highway commission shall be deemed to be the governing body for the county and the state.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1963, Act 215, Imd. Eff. May 17, 1963;—Am. 1969, Act 90, Imd. Eff. July 24, 1969.

**Popular name:** Act 40

#### **280.531 Advances by corporations; reimbursement.**

Sec. 531. Any public or private corporation, firm, or individual may advance money for the payment of any part of the cost of a project under this act, in which event it shall be reimbursed by the drainage district, with or without interest as may be agreed, when funds are available. The obligation of the drainage district to make the reimbursement may be evidenced by a contract or note, which contract or note may pledge the full faith and credit of the drainage district and may be made payable out of the assessments made against public corporations or out of the proceeds of drain orders or bonds issued by the drainage district pursuant to this act or out of any other available funds, but the contract or note is not subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1963, Act 215, Imd. Eff. May 17, 1963;—Am. 2002, Act 406, Imd. Eff. June 3, 2002.

**Popular name:** Act 40

### **280.532 Venue of actions; appointment of circuit judge.**

Sec. 532. Any action arising from the provisions of this chapter 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 involved 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 service of process, the presiding circuit judge of Michigan shall appoint a circuit judge to hear said action.

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

**Popular name:** Act 40

### **280.533 Costs; items.**

Sec. 533. The cost of any drain project shall include (1) the cost of constructing or acquiring the facilities, structures, devices and equipment required to locate, establish and construct the drain or to improve or supplement the same, including bridges and culverts and any lands or rights of way necessary thereto; (2) the administrative and other expenses of the drainage board and augmented drainage board including the cost of service and publication of all notices; (3) all engineering, legal and other professional fees; (4) interest on bonds for the first year, if bonds are to be issued, and interest on moneys advanced pursuant to section 531; and (5) an amount not exceeding 10% of the gross sum to cover contingent expenses.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1963, Act 215, Imd. Eff. May 17, 1963.

**Popular name:** Act 40

### **280.534 Deputy for director of agriculture; powers.**

Sec. 534. The director of agriculture may designate a deputy or an assistant to act in his stead in respect to the performance of his duties under this act. Where any deputy or assistant so acts, it shall be conclusively presumed that he was properly designated by the director of agriculture. Any official proceedings may be signed by such deputy or assistant in his own name. The signature of such deputy or assistant shall be followed by his official title. Where a deputy or assistant has been designated by the director of agriculture to act in his stead in connection with all the proceedings as to any project, then any notice required to be served upon or mailed to the director of agriculture may be served upon or mailed to such deputy or assistant. The director of agriculture is hereby empowered to appoint a deputy who shall have power to act in his place under any and all circumstances in respect to matters within the scope of this act, irrespective of whether or not he is authorized to appoint a general deputy.

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

**Popular name:** Act 40

### **280.535 Improvements or additions to drains for public health.**

Sec. 535. Any 1 or more intercounty drains or any portion thereof, now or hereafter existing, may be cleaned out, relocated, widened, deepened, straightened, extended, tiled, interconnected or otherwise improved, or branches added or connected thereto, when necessary for the public health, in the same manner as an intercounty drain may be located, established and constructed under this chapter, with such variations in the proceedings as may be necessary to make the same applicable, and also the cost thereof may be financed in like manner. A project to improve intercounty drains may include backfilling and leveling any portion thereof no longer needed after the improvements.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1961, Act 46, Imd. Eff. May 20, 1961;—Am. 1963, Act 215, Imd. Eff. May 17, 1963;—Am. 1971, Act 60, Imd. Eff. July 20, 1971.

**Popular name:** Act 40

### **280.536 Certiorari; time; legal establishment of drain.**

Sec. 536. Neither the final order of determination nor the final order of apportionment shall be subject to attack in any court except by proceedings in certiorari brought within 20 days after the filing of such order in the office of the secretary of the board issuing the same. If no such proceeding shall be brought within the time above prescribed, the drain shall be deemed to have been legally established and the legality of the drain and the assessments therefor shall not thereafter be questioned in any suit at law or in equity.

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

**Popular name:** Act 40

### **280.537 Procedures; incorporation of other chapters in drainage board orders.**

Sec. 537. In operating under the terms of this chapter, the several boards and officials shall not be limited by the provisions contained in other chapters of this act and the procedures required under the terms of such other chapters shall not be deemed to be applicable: Provided, That when not contrary to the express provisions of this chapter, any provision or provisions in other chapters of this act may be incorporated by recital or by references into any order or resolution of the drainage board or augmented drainage board, and when so incorporated shall be deemed applicable to the project under this chapter.

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

**Popular name:** Act 40

### **280.538 New cities; service of notice on township clerk or de facto city officer.**

Sec. 538. Whenever a new city has been or shall be incorporated but such incorporation shall not have been completed by the adoption of a city charter, then any notice required by this chapter to be served upon the city clerk shall be served upon the clerk or clerks of the township or townships from which the city was incorporated: Provided, That if a city charter shall have been submitted, but rejected by the electors, then such notice shall also be served upon the de facto officer of the city, if there be such an officer. Service of any notice made prior to the effective date of this amendment, which was made in the manner provided in this section, is hereby declared to be a valid compliance with the terms of this act in respect to service upon the city clerk.

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

**Popular name:** Act 40

### **280.538a Land especially benefited by drain project; duties of legislative body; affidavit as conclusive proof of notice; meeting; powers of legislative body; reimbursement for pro rata share of costs.**

Sec. 538a. (1) If the legislative body of a public corporation which is subject to assessment under this chapter pursuant to apportionments made under this chapter, determines that a part of the land in the public corporation will be especially benefited by a proposed drain project so that a special assessment, fee, or charge may be levied by the public corporation under section 539, the legislative body, before filing a petition under section 513, shall do all of the following:

(a) Send to the director of the department of agriculture by registered mail a notice of intent to file a petition under section 513. The notice shall include a request that the intercounty drainage board delineate a proposed drainage district.

(b) Prepare or cause to be prepared a proposed plan for financing the report.

(c) Forward by first-class mail to each person whose name and address appears on the tax rolls as owning land within the proposed district, at the address shown on the last tax assessment roll of the public corporation, a notice which contains all of the following:

(i) A general description of the proposed drain project.

(ii) Expected benefits of the proposed drain project.

(iii) Notice that the proposed project is to be fully or partly financed by special assessment against property owners within the proposed district.

(iv) A statement that alternative plans of financing the proposed project will be on the meeting agenda.

(v) Notice of the time, date, and place of a meeting to be held by the legislative body of the public corporation to hear objections to the proposed drain project or special assessment, fee, or charge to be levied under this section. Notice prescribed in this subparagraph shall be mailed not less than 10 days before the meeting, and in addition, shall be given in the manner prescribed by Act No. 267 of the Public Acts of 1976, as amended, and shall be published in a newspaper of general circulation in the public corporation.

(2) The legislative body shall make an affidavit of the mailing and shall recite in the affidavit that the persons to whom the notice was mailed constitute all of the persons whose names and addresses appear upon the tax rolls as owning land within the proposed district, which affidavit shall be conclusive proof that notice was mailed to each person to whom notice is required to be mailed by the terms of this section. The failure to receive a notice by mail shall not constitute a jurisdictional defect invalidating a drain proceeding or tax, or both, if notice has been sent by first-class mail as provided in this section.

(3) The legislative body shall hold a meeting as described in subsection 1(c)(v) to receive information from the public on the advisability of proceeding with the proposed drain project. The meeting shall be held in the manner prescribed by Act No. 267 of the Public Acts of 1976, as amended.

(4) The legislative body, at any time before filing a petition under section 513, may do any of the

following:

(a) Determine to proceed with the proposed drain project and levy a special assessment, fee, or charge in substantially the same method as stated under section 539 and in the notices prepared and mailed pursuant to subsection (1)(c). A person whose name and address appears upon the tax rolls as owning land within the proposed district feeling aggrieved by this determination may appeal the decision of the legislative body by instituting an action in the circuit court for the county in which the real property is located. The action shall be filed by the person aggrieved within 45 days after the determination of the legislative body.

(b) Determine to proceed with the proposed drain project without levying a special assessment, fee, or charge under section 539. A person whose name and address appears upon the tax rolls as owning land within the proposed district feeling aggrieved by this determination may appeal the decision of the legislative body by instituting an action in the circuit court for the county in which the real property is located. The action shall be filed by the person aggrieved within 45 days after the determination of the legislative body.

(c) Reject or withdraw from the proposed drain project. A person whose name and address appears upon the tax rolls as owning land within the proposed district feeling aggrieved by this determination may appeal the decision of the legislative body by instituting an action in the circuit court for the county in which the real property is located. The action shall be filed by the person aggrieved within 45 days after the determination of the legislative body.

(5) The public corporation shall reimburse the county and other governmental units involved in the project for the pro rata share of any costs incurred under this section.

**History:** Add. 1979, Act 135, Eff. Mar. 27, 1980.

**Popular name:** Act 40

**280.539 Land especially benefited by drain projects; special assessment; resolution; preparation of special assessment roll; conduct of proceedings; objections; hearing in lieu of meeting; use of special assessment collections; reduction of annual levy; charges.**

Sec. 539. (1) Subject to the requirements of section 538a, if the legislative body of a public corporation, which has been assessed under this chapter, determines that a part of the lands in the public corporation will be especially benefited by the drain project to the extent of a portion of the amount assessed under this chapter, the legislative body may cause that portion of the assessment under this chapter to be specially assessed, according to benefits, against the especially benefited lands if the special assessment method of financing is not inconsistent with local financing policy for similar drains and sewers. The special assessment shall be made under the statutory or charter provisions governing special assessments in the public corporation to the extent applicable. The special assessment proceedings may be initiated by resolution of the governing body of the public corporation without petition, after compliance with section 538a, and a petition or written objection in opposition to the levying of special assessments shall be advisory only and shall not require a petition for the project, except as otherwise provided in section 538a.

(2) After determining by resolution to proceed, the legislative body shall cause a special assessment roll to be prepared. After the special assessment roll is prepared, the proceedings with respect to the special assessment roll and the making and collection of the special assessments shall be conducted pursuant to the statute or charter governing special assessments in the public corporation. However, the total assessment may be divided into not more than 30 installments, and a person assessed, at the hearing upon the special assessment roll, may object to the special assessment district previously established by the public corporation. Due consideration shall be given to the objections. A hearing held under this section shall not take the place of a meeting required under section 538a unless notice is prepared and mailed in the manner prescribed by section 538a.

(3) If a special assessment is levied, all collections from the special assessment shall be used towards the payment of the assessment at large against the public corporation. Each annual levy made for the payment of the assessment at large shall be reduced by the amount of money then on hand from special assessment collections available for this use.

(4) This section shall not be construed to prevent the assessing of public corporations at large under this chapter. In place of or in addition to levying special assessments, the public corporation, under the same conditions and for the same purpose, may exact connection, readiness to serve, availability, or service charges to be paid by owners of land directly or indirectly connected with the drain project, or combination of projects, subject to section 489a.

**History:** Add. 1957, Act 37, Imd. Eff. May 14, 1957;—Am. 1965, Act 253, Imd. Eff. July 21, 1965;—Am. 1979, Act 135, Eff. Mar. 27, 1980.

**Popular name:** Act 40



#### **280.540 Relief drains.**

Sec. 540. When 2 or more public corporations, constituting as a whole contiguous territory, are served by 1 or more intercounty drains or by a combination of 1 or more intercounty drains and 1 or more county drains, and it is necessary for the public health to supplement such existing drain or drains by constructing 1 or more relief drains, which may consist of new drains and branches and connections thereto or extensions, enlargements, branches, connections or improvements described in section 535 to existing drains, or any combination thereof, then the entire project may be constructed and financed as a whole under the provisions of this chapter and the word “drain” shall be deemed to include such a project.

**History:** Add. 1959, Act 261, Imd. Eff. Aug. 21, 1959;—Am. 1963, Act 215, Imd. Eff. May 17, 1963.

**Popular name:** Act 40

#### **280.541 River, creek, or watercourse; petition to inclusion in jurisdiction.**

Sec. 541. A petition meeting the requirements of this chapter as to petitioners, execution and filing may request, for reasons of public health, that jurisdiction be assumed over all or a specified part of the bed, tributaries, banks and flood plains of a river, creek or watercourse, not part of an established drain. The petition shall describe the existing or threatened conditions which cause or increase the danger of flooding, pollution, desecration or obstruction of such river, creek or watercourse, and shall specify, in general terms, the works, property acquisition, actions or procedures deemed necessary to remove or lessen such danger.

**History:** Add. 1965, Act 194, Imd. Eff. July 15, 1965.

**Popular name:** Act 40

#### **280.542 River, creek, or watercourse; petition; content, deposit to pay costs, filing; drainage board, hearing and notice.**

Sec. 542. The petitioners named in a petition filed pursuant to section 541, shall include therein an agreement to pay the amount of, or shall accompany the petition with a deposit in the amount of, the estimated cost of the planning and engineering required to describe in recordable form the bed, tributaries, banks and flood plains of the river, creek or watercourse over which jurisdiction is necessary and is to be assumed and the work to be done or property to be acquired according to the petition. Upon filing such petition with the agreement or deposit to pay costs, the initial findings, actions and determinations shall be made and taken with respect thereto as described in sections 517 and 519, and such description shall be obtained and approved and adopted by the augmented drainage board. To assume jurisdiction of the bed, tributaries, banks and flood plains of the river, creek or watercourse and to perform the work proposed to be done thereon, if any, as so described, a meeting to hear objections to the assumption of such jurisdiction, to the petition therefor and to the proposed work or property acquisition shall be held as provided for other drain projects pursuant to this chapter. The notice of such hearing shall contain the description as approved and adopted by the augmented drainage board.

**History:** Add. 1965, Act 194, Imd. Eff. July 15, 1965.

**Popular name:** Act 40

#### **280.543 River, creek, or watercourse; board determination, final order, contents, recording, effect.**

Sec. 543. After the hearing, the augmented drainage board shall determine whether or not it will assume such jurisdiction and perform the work proposed, if any, and shall issue its order accordingly, which order shall be known as the “final order of determination”. The final order of determination shall contain the description of the bed, tributaries, banks and flood plains of the river, creek or watercourse over which jurisdiction has been assumed and shall be recorded in the county records in the county in which any part thereof is located. After such recording, no constructing, excavating, land filling, removing of structures, trees, plants or shrubs, dumping, or discharging of sewers or drains shall be permitted or continued in the bed, tributaries, banks or flood plains of the river, creek or watercourse within the recorded description thereof, except upon written order or permit issued by the drainage board.

**History:** Add. 1965, Act 194, Imd. Eff. July 15, 1965.

**Popular name:** Act 40

#### **280.544 River, creek, or watercourse; final order of determination; recording effect on private rights.**

Sec. 544. The recording of the description does not appropriate, terminate or lessen any private rights in property, real or personal, except such as shall be voluntarily released by written agreement or conveyance or

as shall be condemned as provided in this chapter, or pursuant to applicable law. The recording of the description constitutes a regulation and limitation, for reasons of public health, of the use of the public and private property therein described to remove or lessen the danger of flooding, pollution, desecration or obstruction of the river, creek or watercourse, or parts thereof, involved.

**History:** Add. 1965, Act 194, Imd. Eff. July 15, 1965.

**Popular name:** Act 40

#### **280.545 River, creek, or watercourse; assessment of costs, hearing; powers.**

Sec. 545. Before any work, other than preparation of the description and the approval, adoption and recording of the same, is done or rights in or ownership of property are acquired by the drainage board, pursuant to any petition filed under section 541, the augmented drainage board shall make a determination, following notice and a hearing as provided in this chapter, which may be the hearing provided for in section 542, as to the public corporations to be assessed for the cost of such work or acquisition. After the hearing and the determination to proceed with such work, the drainage board shall proceed in the same manner as is provided for other drain projects in this chapter and the drainage board shall have the rights and powers so provided.

**History:** Add. 1965, Act 194, Imd. Eff. July 15, 1965.

**Popular name:** Act 40

#### **280.546 Drainage board funds; investment of surplus, interest.**

Sec. 546. The drainage board may direct the treasurer of any drainage district to invest any surplus funds belonging to and under the control of the drainage board, in bonds and other direct obligations of the United States or in certificates of deposit or depository receipts of any bank which is a member of the federal deposit insurance corporation in such amounts and issues as directed by the drainage board. The interest earnings from such investments shall be credited by the county treasurer to such drainage district funds.

**History:** Add. 1970, Act 144, Imd. Eff. Aug. 1, 1970.

**Popular name:** Act 40

#### **280.547 Surplus construction funds; use; transfer; provisions of contract with public corporation; return of funds; applicability of MCL 280.547a; definition.**

Sec. 547. (1) The drainage board shall use any surplus construction funds remaining in the construction fund after completion of the project for the inspection, repair, and maintenance of the drain as provided in section 196 or shall authorize the transfer of the funds to the bond and interest account, if bonds were issued, in the amounts the drainage board considers proper.

(2) The drainage board shall contract with a public corporation if that public corporation has been assessed for all or part of the cost of the drain or if land in a city, village, township, or combination thereof has been assessed for all or any part of the cost of a drain. The contract shall provide that after all outstanding drain orders or bonds are paid on a drainage district project, the drainage board shall authorize the county treasurers to pay over any portion of the surplus not needed for more than the cost of inspection, repair and maintenance of the drain as provided in section 196 to the county, township, city, or village in which the drain was located or in which assessments for benefits have been assessed and collected. The payments shall be on a pro rata basis in direct proportion to the amounts assessed and collected from each county, township, city, or village. The contract shall also provide that upon receipt of the surplus funds the county, city, village, or township shall utilize the surplus funds to alleviate drainage problems in their respective jurisdictions.

(3) If state highway funds are involved in a project, the drain commissioner or the drainage board, upon completion of a construction project, and after all outstanding drain orders or bonds are paid on the project shall return, on a pro rata basis, surplus construction funds in excess of the amount necessary to pay for inspection, repair, and maintenance of the drain as provided in section 196 to the state transportation department for the construction, maintenance, and administration of state highways.

(4) A drainage board may apply section 547a to surplus construction funds in place of this section.

(5) As used in this section and section 547a, "public corporation" includes a city, village, township, or county, or the state.

**History:** Add. 1970, Act 144, Imd. Eff. Aug. 1, 1970;—Am. 1988, Act 34, Imd. Eff. Feb. 25, 1988;—Am. 1989, Act 149, Imd. Eff. July 14, 1989.

**Popular name:** Act 40

#### **280.547a Surplus construction funds; disposition; use.**

Sec. 547a. (1) After the construction of a county drain for which none of the financing is obtained through

special assessments under section 539, the drainage board shall provide for an amount from surplus construction funds sufficient to inspect, repair, and maintain the drain as provided in section 196. After providing for inspection, repair, and maintenance, the drainage board may apportion the balance of the surplus construction funds to separate accounts to the credit of the public corporations against which the cost of the drain is assessed. The funds shall be credited in direct proportion to amounts assessed and collected from the public corporations.

(2) Funds in an account apportioned to the credit of a public corporation under this section shall be used only for the following:

- (a) To pay principal and interest on bonds issued to finance the drain for which the assessment is imposed.
- (b) If bonds are not sold, to pay assessments due from the public corporation.
- (c) At the request of the public corporation, to alleviate drainage problems in that public corporation.

**History:** Add. 1988, Act 34, Imd. Eff. Feb. 25, 1988;—Am. 1989, Act 149, Imd. Eff. July 14, 1989.

**Popular name:** Act 40

#### **280.548 Pollution in intercounty drain; abatement; petition.**

Sec. 548. Whenever the water resources commission or successor agency has determined that pollution exists in an inter-county drain which services any city, village or township or any combination thereof and has issued an order of determination or permit to such public corporation for abatement thereof, then a petition under this chapter may be filed in accordance with section 513 by any one such city having greater than 500,000 population.

**History:** Add. 1973, Act 48, Imd. Eff. July 11, 1973.

**Popular name:** Act 40

#### **280.549 Assessments against townships and villages.**

Sec. 549. Unless otherwise provided by the drainage board or the appropriate drain commissioner, assessments against a township shall be against the township as a whole, including any incorporated village, but the drainage board or the appropriate drain commissioner may determine to assess separately or exclude a village, in which case the assessment against the township shall be exclusive of the village and the tax levies to be made by the township to pay the assessment shall not include property taxable in the village.

**History:** Add. 1976, Act 5, Imd. Eff. Feb. 10, 1976.

**Popular name:** Act 40

### CHAPTER 22.

#### WATER MANAGEMENT DISTRICTS AND SUBDISTRICTS

#### **280.551 Water management; definitions.**

Sec. 551. Whenever used in this chapter, except when otherwise indicated by the context:

- (a) The term “state” shall be deemed to mean the state of Michigan.
- (b) The term “public corporation” shall be deemed to include the state of Michigan, counties, cities, villages, townships, metropolitan districts and authorities created by or pursuant to state statutes.
- (c) The term “agencies” shall be deemed to include those officers, boards, commissions and other bodies created by public corporations or by the federal government, which are authorized to act in their own names.
- (d) The term “director of agriculture” shall be deemed to mean the director of agriculture of the state of Michigan.
- (e) The term “project” shall be deemed to mean any flood control or drainage project petitioned for or undertaken under the provisions of this chapter in any water management district or subdistrict. The term shall be deemed to include any alteration of streams, rivers, drains, lakes, reservoirs, ponds, swamps, marshes, or any other waters, and any of the watersheds thereof. The term shall also include any dike, dam, reservoir, pumping station or other works involved in such alteration.
- (f) The term “water management district” shall be deemed to mean the area comprising all or part of 3 or more contiguous counties within a single drainage basin in which a project is petitioned for or undertaken under the provisions of this chapter, and shall include such counties and all public corporations within such area as shall be subject to assessment for the cost of such project.
- (g) The term “subdistrict” shall be deemed to mean the area comprising that portion of a water management district in which a project is petitioned for under the provisions of this chapter, which project benefits only 1 or more public corporations within the water management district. The term shall include only the public corporations or corporations so specially benefited by the project.
- (h) The term “commission” shall be deemed to mean the water management commission of a water

management district.

(i) The term “board” shall be deemed to mean the water management board of a water management district.

(j) The term “benefit” or “benefits” shall be deemed to mean advantages resulting from a project to public corporations, the inhabitants of public corporations, and property within public corporations. The term shall be limited to benefits which result from the drainage and control of water, and shall include such factors as: elimination of flood damage; elimination of water conditions which jeopardize the public health or safety; increase of the value or use of lands and property arising from improved drainage and elimination of floods; and the advantageous use to which water may be directed as a result of the project, and incidental thereto, for agricultural, conservation and recreational purposes.

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

**Popular name:** Act 40

### **280.552 Water management; petition for flood control or drainage project, filing, signatures, contents, map.**

Sec. 552. Whenever it shall be necessary for the public health, safety or welfare to establish a water management district to undertake a project in all or part of 3 or more contiguous counties in this state for purposes of flood control or drainage, a petition therefor may be filed with the director of agriculture, signed by 3 or more public corporations, and, if a district with 8 or more counties, by 3 or more counties, which will be subject to assessments to pay the cost of such project. Such petition shall state that it is filed pursuant to the provisions of this chapter, shall set forth the proposed name of the district and the necessity for the project in the interest of the public health, safety or welfare; and shall contain a general description of the type, purpose and location of the proposed project, which description need be only sufficiently accurate as to determine with reasonable certainty the waters, works and territory involved in the project and the public corporations to be benefited thereby. A map showing the boundaries of the proposed district and a certified copy of the resolution of the governing body of each public corporation, authorizing its signature thereto, shall be attached to the petition. Such petition may be filed in more than 1 counterpart.

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

**Popular name:** Act 40

### **280.553 Water management commission; members, appointment, compensation, expenses, approval of plans, orders and assessments.**

Sec. 553. There is created for each water management district petitioned for under the provisions of this chapter, a water management commission consisting of (a) the drain commissioner of each county within the district; (b) 1 representative of each county within the district, to be appointed by the county board of supervisors in the usual manner employed by such county in appointing members to county boards or commissions; (c) 1 representative of each city or village within the district with a population of 5,000 or more, and 1 additional representative for each 20,000 of population or any major fraction thereof by which the population of such city or village exceeds 10,000, to be appointed by the governing body, but no city or village shall have more than 10 representatives; (d) 1 director of a soil conservation district to be designated by the directors of all such districts within a water management district; and (e) the director of agriculture, who shall serve as chairman of the commission. County soil conservation district and city or village representatives shall be resident property owners of the district and shall serve at the pleasure of the appointing body. Each member of the commission appointed by a county board of supervisors and county soil conservation districts shall receive such compensation, mileage and expenses as shall be provided by the water management commission except that such compensation shall not exceed \$25.00 per diem exclusive of mileage and expenses for attendance at water management commission meetings. Members who are drain commissioners, or who are county or city employees, shall be reimbursed for actual and necessary expenses but shall not receive any other compensation. The director of agriculture or his deputy shall not receive any compensation or reimbursement for expenses incurred as a member of the commission. A vote of 3/5 of all of the members of the commission shall be required to approve any preliminary or final order of determination, official plan, final order of apportionment, or other matter involving any assessment or increase in assessment of costs.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1969, Act 285, Eff. Mar. 20, 1970.

**Popular name:** Act 40

### **280.554 Water management board; members; terms; vacancy; qualifications; chairman; procedures; employees; treasurer; bond; secretary; audit.**

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Sec. 554. (a) For each water management district created under the provisions of this chapter, there is also created a water management board, to consist of 5 members appointed by the water management commission for terms of 5 years each: Provided, That of the members first appointed, 1 shall be appointed for a term of 1 year, 1 for a term of 2 years, 1 for a term of 3 years, 1 for a term of 4 years, and 1 for a term of 5 years: Provided further, That the service of any member of the water management board may be terminated at any time by resolution of the water management commission adopted by a majority of all the members of such commission and his successor appointed in the same manner, and for the remainder of the term, as in the case of an original appointment. Vacancies on the board occurring for any other reason shall be filled in the same manner as an original appointment and for the remainder of the term. Members of the water management board shall be resident property owners of the district. In the event that the total of all assessments within any county included in the water management district is 25% or more of the cost of a project which is to be assessed against all public corporations within the district, the commission shall appoint a resident property owner of such county as 1 of the members of the board. In the event a water management district shall include less than 5 counties, the number of members of the board shall be reduced in number to the number of counties included in the water management district. The board at its first meeting shall elect a chairman and adopt such rules of procedure, not inconsistent with the provisions of this chapter, as it finds advisable.

(b) The board is hereby authorized to hire such employees as it shall deem necessary and determine their compensation. No such employee shall be a member of either the commission or board. The board shall designate the treasurer of 1 of the counties of the district, who shall serve as treasurer of the district and furnish a bond in a sum to be fixed by the board, conditioned on the faithful discharge of his duties, the premium thereon to be paid by the water management district. Moneys held by the treasurer shall be paid out only upon order of the board, except that no such order shall be required for the payment of principal and interest on bonds. The secretary of the board shall also serve as secretary of the commission. The board shall cause the accounts of the treasurer to be audited annually by a certified public accountant, the expense thereof to be paid by the water management district.

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

**Popular name:** Act 40

**280.555 Water management commission or water management board; meetings; notice; quorum; adjournment; action by board; signing of orders; minutes of proceedings; records; meetings and records open to public.**

Sec. 555. This section shall pertain to either the water management commission or the water management board. Meetings may be called by the chairperson or 2 members of either body, upon notice sent by registered mail to each member. The notice shall be mailed not less than 10 days before the time of the meeting. A majority of the members shall constitute a quorum for the transaction of business, but a lesser number may adjourn from time to time. A meeting may be adjourned from time to time. Unless otherwise provided in this act, an action shall not be taken by either body except by a majority vote of the members present and voting. In the event of the adjournment of a hearing, it shall not be necessary to advertise the adjournment of the hearing. Orders issued by either body shall be signed by its chairperson and secretary. The secretary shall prepare and sign duplicate originals of the minutes of the proceedings of the body, one to be retained by the chairperson and the other to be filed with the director of the department of agriculture. The originals of all proceedings and records shall be kept on file with the secretary. The director of the department of agriculture may require the secretary to furnish certified copies of records of either body in the office of the secretary for filing in his or her office, and the certified copies filed shall have the same force and effect as the originals. Meetings shall be open to the public, and records of either body shall be considered public records and available for inspection during regular office hours.

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

**Popular name:** Act 40

**280.556 Water management commission; petitions, review; notice of first meeting.**

Sec. 556. Within 30 days following receipt of a petition as provided in section 552 of this act, the director of agriculture shall review the petition for sufficiency and accuracy, shall make a preliminary finding of the counties which in his opinion include public corporations that should be assessed under the provisions of this chapter, and shall mail written notice of the first meeting of the water management commission to the county clerk and drain commissioner of each such county, to the highway agencies having jurisdiction over all highways, roads and streets in said district, to the secretary of each soil conservation district and to the city or village clerk of each city and village within such counties with a population of 5,000 or more according to the latest or each succeeding federal decennial census, which in his opinion are subject to assessment for the cost

of the project. Such notice shall request the appointment of a representative of each public corporation so notified to the commission and shall state the time and place of the first meeting, which shall be held not less than 30 nor more than 45 days following the mailing thereof. In the event a county board of supervisors of any such county does not meet in a regular or special session prior to the date of the first meeting of the commission, the chairman of the board of supervisors shall represent the county at the first meeting, and the board of supervisors shall appoint a member to the commission at its next regular or special session. Failure of the governing body of any public corporation entitled to representation to appoint a member to the commission shall not prevent the inclusion of such public corporation in the water management district, nor exempt it from assessment or other obligations imposed by this chapter, but such public corporation shall be without representation until it shall appoint a member. The director of agriculture shall also send notice of the first meeting to the director of the department of conservation, the state highway commissioner and the county road commission of each county within the district.

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

**Popular name:** Act 40

**280.557 Water management commission; temporary secretary, by-laws, tentative determination, amendment of petition, notice of adjourned meeting; dismissal of petition; name of district; board; tentative determination; preliminary plans.**

Sec. 557. The commission shall elect a temporary secretary, and may adopt rules of procedure or by-laws, not inconsistent with the provisions of this chapter. The commission shall also consider the petition for the project, and shall make a tentative determination as to the sufficiency of the petition and the necessity and practicability of the proposed project. If the commission shall determine that the petition is insufficient, it may enter an order amending or supplementing such petition, which order shall be deemed to constitute a part of the petition. If such order shall result in the inclusion of any additional public corporation which is entitled to designate a member to the commission, the commission shall adjourn the meeting and shall notify the clerk of such public corporation of the time and place of the adjourned meeting, which notice shall be given in conformity with the requirements of the notice provided for in section 556 of this act. If the commission shall at any time determine that the project is not necessary or practicable, it shall order the petition dismissed, and proceedings under such petition shall be thereby terminated. Where a petition for a project has been dismissed, such project shall not be petitioned for again under this act for a period of 1 year. If the commission shall find the project necessary and practicable and the petition, in original form or as amended by order of the commission, sufficient, it shall proceed forthwith to select a name for the district, elect a water management board, and make a tentative determination of the public corporations to be assessed for the costs of the project. The commission shall procure preliminary plans which include an estimate of costs of the project, benefits which will result therefrom to the various public corporations comprising the district, and the extent to which each public corporation contributes to the conditions which make the project necessary. The commission shall make a tentative determination, based upon such plans, of the percentage of costs to be assessed to each public corporation comprising the district, and shall transmit a written copy of such determination, together with the petition, any orders amendatory and supplementary thereto, and the preliminary plan to the water management board.

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

**Popular name:** Act 40

**280.558 Water management board; hearing of objections; notice of hearing; preliminary order of determination; eliminating or adding public corporation.**

Sec. 558. The water management board shall fix a time, date, and place it will meet to hear objections to the proposed project, the petition for the project, and to the assessments of costs as contained in the tentative determination of the commission. Notice of the hearing shall be published twice in each county involved by inserting the notice in at least 1 newspaper designated by the board and published and circulated in the county. The first publication shall be not less than 20 days before the time of hearing. Notice shall also be sent by registered mail to the clerk or secretary of each public corporation proposed to be assessed, except that a notice to the state shall be sent to the state highway director and the director of the department of natural resources and a notice to a county shall be sent to both the county clerk and the county road commission. The mailing shall be made not less than 20 days before the time of the hearing. The notice shall be signed by the secretary of the board and proof of the publication and mailing of the notice shall be filed with the secretary. The board may provide a form to be substantially followed in the giving of the notice. After the hearing, the board shall make a preliminary determination as to the sufficiency of the petition, the necessity and practicability of the project, whether the project should be undertaken, the public corporations to be assessed,

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and shall issue a preliminary order accordingly. The order shall be known as the preliminary order of determination. A public corporation shall not be eliminated from, or added to, those tentatively determined to be assessed without a rehearing after notice, except as provided in section 559.

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

**Compiler's note:** In the third sentence from the end of this section, “the board shall made” evidently should read “the board shall make.”

**Popular name:** Act 40

### **280.559 Assessment; basis.**

Sec. 559. Any assessment of any nature or kind determined or made under the provisions of this chapter shall be based upon benefits to the public corporation assessed and upon the extent to which such public corporation contributes to the conditions which make a project necessary: Provided, That assessments against the state shall be based solely upon the drainage or prevention of flooding of state highways, and those against the county shall be based solely upon the drainage or prevention of flooding of its county highways. This rule shall govern the director of agriculture, the commission, the board, drain commissioners and any other person in any action relating to determining public corporations to be assessed and in the making of assessments.

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

**Popular name:** Act 40

### **280.560 Preliminary plans; approval; detailed plans, contents, approval; official plans, filing.**

Sec. 560. The board shall secure the approval of the Michigan water resources commission of the preliminary plans for the project, as soon as may be reasonably possible, and before procuring detailed plans. After approval by the water resources commission of the preliminary plans and after the board has made its preliminary order of determination, the board shall secure detailed plans for the project from a competent engineer and such other qualified personnel as are necessary. The detailed plans shall include detailed plans and specifications of the project and an estimate of costs of the project. The detailed plans shall be submitted to the water resources commission for its approval, and no construction shall be undertaken until the detailed plans are approved. The board shall also submit the detailed plans to the water management commission for approval before any construction of the project is undertaken. The commission shall review the plans and either adopt them or recommend revisions. Revisions recommended by the commission shall be submitted by the board to the water resources commission for approval as hereinbefore provided. When the detailed plans have been approved by both the water management commission and water resources commission, they shall be known as the “official plans” and shall be filed with the secretary of the board. In approving the plans, the commission shall not be limited to matters described in the petition.

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

**Popular name:** Act 40

### **280.561 Tentative percentage of cost for assessment; apportionment.**

Sec. 561. After adoption of the official plans, the commission shall proceed to tentatively establish the percentage of cost of the project to be assessed against public corporations within each county within the district, and against the state and counties on account of drainage and prevention of flooding of state and county highways. The percentage of cost so apportioned to public corporations in each county shall then be apportioned by the commission among public corporations to be assessed in such county, which determination shall be filed with the secretary of the board.

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

**Popular name:** Act 40

### **280.562 Hearing of objections to tentative apportionments of costs; notice of hearing; report; confirmation or readjustment of apportionment.**

Sec. 562. After the tentative apportionments of costs have been made, the board shall set a time, date, and place it will meet and hear objections to the apportionments. Notice of the hearing shall be published twice in each county involved by inserting the notice in at least 1 newspaper designated by the board and published in the county. The first publication is to be not less than 20 days before the time of hearing. The notice shall also be sent by registered mail to the clerk or secretary of each public corporation proposed to be assessed, except that a notice to the state shall be sent to the state highway director and the director of the department of natural resources and a notice to a county shall be sent both to the county clerk and the county road commission. The mailing shall be made not less than 20 days before the time of the hearing. The notice shall be signed by the secretary and proof of the publication and mailing of the notice shall be filed with the

secretary. The board may provide a form to be substantially followed in the giving of the notice. The notice shall include tentative apportionments to the several public corporations. After the hearing, the board shall make a written report of its findings on the apportionments to the commission, which may either confirm the apportionments as tentatively made or may recommend readjustments of any apportionments considered inequitable.

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

**Popular name:** Act 40

### **280.563 Water management commission; review of board's apportionment; final order of apportionment; annual meeting; work plan, advisory committees.**

Sec. 563. The commission shall meet for the purpose of considering the apportionments and report made by the board. The commission may readjust the apportionments: Provided, That before any readjusted apportionments shall be confirmed, the commission shall set a time and a place for rehearing and shall give notice thereof and hold a hearing thereon, as provided in section 562, which notice shall also set forth the apportionments as readjusted. The commission shall then issue its order setting forth the several apportionments as confirmed, which order shall be known as the "final order of apportionment". All further action with respect to the project shall be taken by the board: Provided, That the commission may be reconvened at the call of its chairman, any 2 members thereof, or at the request of the board for the purpose of making any correction or addition to its proceedings within the scope of its powers: And provided further, That the commission shall meet at least once annually. At its annual meeting the commission shall elect a member of the board, approve assessments for operation and maintenance, approve a work plan for the district for the ensuing year, and conduct such other business as is within its powers under the provisions of this act. The commission may appoint such advisory committees as it deems necessary.

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

**Popular name:** Act 40

### **280.564 Lands and rights of way; condemnation, procedure, federal governmental participation; costs.**

Sec. 564. The board shall then proceed to secure the necessary lands and/or rights of way for the proposed project. If the same cannot be secured by negotiation, then the board may proceed under the provisions of Act No. 149 of the Public Acts of 1911, as amended, being sections 213.21 to 213.41, inclusive, of the Compiled Laws of 1948, and shall be deemed to be a "state agency" as that term is used in said act, or if the project is one in which the federal government is participating in any manner, then such lands and/or rights of way may be acquired through proceedings brought by the federal government under any appropriate federal act: Provided, That no condemnation proceeding under this act shall be instituted until the board has first given written notice by registered mail to the highway agencies having jurisdiction over any highway, road or street affected by the lands or rights of way to be acquired by such condemnation proceeding. In event that lands and/or rights of way shall be acquired through proceedings under a federal act, then the amount of the awards in such proceeding shall be deemed to be a part of the cost of the project to the same extent as if the condemnation proceedings had been taken under the laws of this state.

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

**Popular name:** Act 40

### **280.565 Contracts with federal government or corporations; bids.**

Sec. 565. The board may contract with the federal government (which term as used in this section shall include any agency thereof) whereby the federal government will pay the whole or any part of the cost of the project and/or will perform the whole or any part of the work connected therewith, which contract may include any specific terms required by act of congress or federal regulation as a condition for such participation on the part of the federal government. The board may also contract with any private corporation or with any public corporation (which term as used in this section shall include any agency thereof) in respect to any matter connected with the construction and/or maintenance of any project. Such a contract may provide that any payments made or work done by such a public corporation shall relieve it in whole or in part from assessment for the cost of the project. No construction work shall be undertaken until the board has advertised for and received bids for the performance of such work and a contract let to the lowest responsible bidder: Provided, That this provision shall not apply to work to be performed by the federal government or a public corporation.

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



Popular name: Act 40

**280.566 Special assessment roll; installments, payment, interest.**

Sec. 566. After the confirmation of the apportionments by the commission, the board shall cause to be prepared by the secretary of said board a special assessment roll assessing the estimated cost of the project (or if the actual cost has been ascertained, then such actual cost) against the several public corporations in accordance with the confirmed apportionments. The board may provide for the payment of such special assessments in any number of approximately equal annual installments, not exceeding 20. Installments of assessments against the state and against public corporations which collect their taxes beginning approximately December first in each year shall become due and payable on or before April first of each year. Installments of assessments against other public corporations shall become due and payable on or before such date or dates as shall be fixed by the board, depending upon the time or times of the collection of taxes by such public corporations. The board shall fix the amount of interest, not exceeding 6%, to be paid upon unpaid installments, which interest shall become due annually on the day and month upon which the annual installments become due. Any installment or installments may be paid in advance of the due date thereof with interest computed to the next installment due date. The board shall fix the time or times for the payment of the first installment so that each public corporation can make a tax levy for the payment thereof.

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

**Popular name:** Act 40

**280.567 Special assessment roll; contents, approval; certification to corporation assessed; annual notice of installment and interest; advancement by county; assessment against state; correction of assessment.**

Sec. 567. The special assessment roll shall contain the name of each public corporation assessed, the total estimated cost of the project (or actual cost if the same has been ascertained at the time of the preparation of the roll), the percentage apportioned to each public corporation, the amount of the assessment against each public corporation based upon the said percentage of apportionment, and the amount of each installment if the assessment is divided into annual installments. After the said special assessment roll has been prepared, it shall be presented to the board for approval. When such roll shall have been approved, then a statement to the effect signed by the chairman and secretary of the board shall be affixed to said roll setting forth the date of such approval. The chairman of the board shall then certify to each public corporation assessed, the amount of the total assessment against it, the amount of the various installments if such assessment is divided into installments, the due date of each installment and the rate of interest upon installments from time to time unpaid. The treasurer shall also each year, at least 30 days prior to the time of the levying of taxes by each public corporation, notify it of the amount of the installment and interest next becoming due: Provided, That the failure to so notify any public corporation shall not excuse it from making payment of such installment and interest. On or before the due date of any installment, each public corporation shall pay to its county treasurer the full amount thereof together with interest accruing to such due date, and within 15 days thereafter such county treasurer shall forward the amount so paid to the treasurer of the board. If any such public corporation shall fail or neglect to so account to the county treasurer for the amount of any such installment and interest, then the county treasurer shall advance the amount thereof to the treasurer of the board from county funds and deduct the same from any moneys (other than those pledged for the payment of debts) then or thereafter payable by him to such public corporation. The board of supervisors of any county which shall have advanced any money for a public corporation, and which shall not have been reimbursed therefor, may order such public corporation and its officers to levy upon its next tax roll an amount sufficient to make such reimbursement on or before the date when its taxes become delinquent; and it shall be the duty of such public corporation and its tax levying and collecting officials to levy and collect such taxes and to reimburse the county: Provided, That the foregoing shall not prevent the county from obtaining reimbursement by any other legal method. Assessments against the state shall be certified to the state highway commissioner and paid from state highway funds. It shall be the duty of the tax levying officials of each of the other public corporations assessed to levy sufficient taxes to pay assessment installments and interest as the same shall become due unless there shall have been set aside moneys sufficient therefor. If a special assessment roll shall be prepared upon the basis of the estimated cost of the project, then after the actual cost has been ascertained and determined by the board, the special assessments and the installments thereof shall be corrected by adding any deficiency or deducting any excess, or refunding the amount of any prepaid assessment in excess of the assessment based upon actual cost. The board may order such corrections to be made upon the original roll or may order that a new corrected roll be prepared and submitted for approval by the board.

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

**Popular name:** Act 40

**280.568 Assessments and taxes not subject to statutory or charter debt or tax limitations.**

Sec. 568. Assessments made under the terms of this chapter shall not constitute an indebtedness of a public corporation within any statutory or charter debt limitation, and taxes levied by a public corporation for the payment of such assessments shall not be deemed to be within any statutory or charter tax limitation.

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

**Popular name:** Act 40

**280.569 Bonds; issuance, maturity, signatures; collection of assessments.**

Sec. 569. The board may issue bonds for and on behalf of the water management district, in anticipation of the collection of any or all installments of assessments, and pledge the full faith and credit of the water management district for the prompt payment of the principal thereof and the interest thereon. Such bonds shall mature serially with the last maturity not later than 2 1/2 years after the due date of the last installment of the assessments: Provided, That there may be more than 1 principal maturity date during any 12-month period. The bonds shall be signed by the chairman and secretary of the board, who shall cause their facsimile signatures to be affixed to the interest coupons attached thereto. Collections of both principal and interest on all installments of assessments in anticipation of which bonds shall have been issued shall be kept in a separate bank account by the treasurer for the board and used for no other purpose than the payment of principal and interest on such bonds until the full payment thereof.

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

**Popular name:** Act 40

**280.570 Additional assessment; apportionment.**

Sec. 570. If for any reason the original assessment shall not be sufficient to pay the principal and interest on bonds issued in anticipation of the collection thereof, then the board shall make such additional assessments therefor as may be necessary, apportioned as in the first instance, it being the intention hereof that the collections on assessments shall under all circumstances be sufficient to pay said principal and interest.

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

**Popular name:** Act 40

**280.571 Water management board; continuation, responsibility; budget, hearing, adoption.**

Sec. 571. The board shall continue in existence with such changes in personnel as shall result from appointment of members by the commission. It shall be responsible for the operation and maintenance of district projects. The board shall prepare annually and submit to the commission a tentative budget for the maintenance and operation of district projects together with the percentage of such costs proposed to be assessed against each of the several public corporations. The commission shall give 10 days' notice by registered mail of the hearing on the budget to each public corporation in the district. After such hearing, a budget shall be adopted and the assessment against each public corporation determined.

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

**Popular name:** Act 40

**280.572 Advancements by corporations; reimbursement.**

Sec. 572. Public corporations may advance funds for the payment of any part of the cost of a project hereunder and shall be repaid by the district when funds are available therefor. The board is hereby authorized to assess preliminary costs in an equitable manner prior to the issuance of bonds, against public corporations within the district, to be assessed and collected as provided in section 567 of this act: Provided, That the percentage of such costs to be assessed against such public corporations shall be approved by the commission.

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

**Popular name:** Act 40

**280.573 Costs; items, contingent expenses.**

Sec. 573. The cost of any project shall include (1) the cost of locating, establishing and constructing the project; (2) the administrative staff, office and other expenses of the board and commission; (3) the cost of construction of all works and appurtenances necessary to efficient operation and maintenance of the project; (4) the cost of acquiring any lands and/or rights of way; (5) all engineering, legal and other professional fees; (6) the cost of the service and publication of all notices; (7) interest on bonds for the first year, if bonds are to

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be issued; and (8) an amount not exceeding 10% of those costs which are to be assessed against public corporations, to cover contingent expenses.

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

**Popular name:** Act 40

#### **280.574 Water management commission; powers.**

Sec. 574. The commission of any water management district created under this act may authorize the board to (a) sell surplus water acquired as a result of construction of projects; (b) lease district-owned lands for agricultural or other purposes; (c) cooperate with soil conservation districts in control of soil erosion; and (d) develop and operate recreational facilities on district-owned property, either in cooperation with the Michigan department of conservation and/or public corporations within the district, or independently when it is not feasible or practical for the department or such public corporations to provide and operate the facilities: Provided, That if any such acts shall result in additional expense, they shall not be authorized until after public hearing as provided in section 558 of this act.

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

**Popular name:** Act 40

#### **280.575 Subdistrict; petition; official plan, final order of apportionment of cost; assessment.**

Sec. 575. In the event it shall be necessary for the public health, safety or welfare to undertake a project within a portion of a water management district which will benefit only 1 or more contiguous public corporations within the water management district, a petition may be filed with the secretary of the commission, signed by 1 or more of the public corporations which will be benefited by the project for the creation of a subdistrict to undertake such project. The petition shall be in conformity with the requirements of petitions for the creation of water management districts insofar as such requirements are applicable thereto. No commission or board shall be created for any subdistrict, but the commission and board of the water management district shall serve in such capacity with respect to the subdistrict. The commission shall determine whether or not it desires to undertake the project before any further action is taken thereon. If the commission shall determine to undertake the project, the commission and board shall proceed to adoption of an official plan and final order of apportionment in the same manner as provided in this chapter in the case of district projects: Provided, That in all actions of the commission involving the subdistrict, other than the determination aforesaid, only members of the commission from public corporations comprising the subdistrict shall be entitled to vote and the vote of a majority of such members shall control. The cost of the project within the subdistrict shall be assessed only against public corporations comprising the subdistrict, but may be financed as a part of the cost of other projects within the water management district. Except as herein otherwise provided all provisions of this chapter pertaining to projects in water management districts shall pertain to projects in subdistricts insofar as applicable thereto.

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

**Popular name:** Act 40

#### **280.576 Water management district in interstate river basin; powers of commission.**

Sec. 576. Whenever it shall be necessary for the public health, safety or welfare to establish a water management district in all or part of 1 or more contiguous Michigan counties lying within an interstate river basin, to undertake a project in cooperation with districts in states adjoining Michigan for purposes of flood control or drainage, such district may be created, and such project shall be authorized, financed and constructed in conformity with the provisions of this chapter, except as otherwise provided in this section. If such district shall consist of less than 3 counties, the commission shall exercise all powers and perform all functions and duties of the board, and the boards of supervisors of said counties may increase the membership of said commission by a majority vote of all of said boards of supervisors. The commission of such district shall also have power to enter into contracts with other states, or its agencies, or water management districts of other states, with respect to apportionment of the costs of such project between the said Michigan district and said other state or its agencies or water management districts of other states, and with respect to any matter connected with the construction and maintenance of the project or any part thereof.

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

**Popular name:** Act 40

#### **280.577 Venue of actions; appointment of circuit judge.**

Sec. 577. Any action arising from the provisions of this chapter 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 project

involved 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 service of process, the presiding circuit judge of Michigan shall appoint a circuit judge to hear said action.

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

**Popular name:** Act 40

#### **280.578 Deputy for director of agriculture; powers.**

Sec. 578. The director of agriculture may designate a deputy to act in his stead in respect to the performance of his duties under this chapter. Where any deputy so acts, it shall be conclusively presumed that he was properly designated by the director of agriculture. Any official proceedings may be signed by such deputy in his own name. The signature of such deputy shall be followed by his official title. Where a deputy has been designated by the director of agriculture to act in his stead in connection with all the proceedings as to any project, then any notice required to be served upon or mailed to the director of agriculture may be served upon or mailed to such deputy. The director of agriculture is hereby empowered to appoint a deputy who shall have power to act in his place under any and all circumstances in respect to matters within the scope of this chapter, irrespective of whether or not he is authorized to appoint a general deputy.

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

**Popular name:** Act 40

#### **280.579 Intercounty drain; construction or improvement for flood control project.**

Sec. 579. Any intercounty drain or any portion thereof now or hereafter existing may be constructed, cleaned out, relocated, widened, deepened, straightened, tiled or otherwise improved when necessary for the public health, as a part of any flood control project under the provisions of this chapter.

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

**Popular name:** Act 40

#### **280.580 Public and private construction in works owned by water management district; plans, approval.**

Sec. 580. Plans for the alteration or construction of any bridge, road, pipe line, power line, drain, sewer or other public and private construction in, into or across any right of way or in, into or across any drain, channel, dike, reservoir or other works owned, constructed and controlled by a water management district shall be submitted to the board prior to construction, and the board is hereby authorized to prescribe the manner in which such public or private works shall cross, be adjusted to or connected with any right of way, channel, dike, reservoir or other construction owned or controlled by the district.

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

**Popular name:** Act 40

#### **280.581 Certiorari; time; legal establishment of project.**

Sec. 581. Neither the final order of determination nor the final order of apportionment shall be subject to attack in any court except by proceedings in certiorari brought within 30 days after the filing of such order in the office of the secretary of the board issuing the same. If no such proceeding shall be brought within the time above prescribed, the project shall be deemed to have been legally established and the legality of the project and the assessments therefor shall not thereafter be questioned in any suit at law or in equity: Provided, That all notices given under this chapter shall include the language contained in this section prior to this provision.

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

**Popular name:** Act 40

#### **280.582 Provisions applicable.**

Sec. 582. In operating under the terms of this chapter, the several boards and officials shall not be limited by the provisions contained in other chapters of this act and the procedures required under the terms of such other chapters shall not be deemed to be applicable.

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

**Popular name:** Act 40

#### **280.583 Validation of prior bonds.**

Sec. 583. The provisions of this chapter shall not be construed to validate and shall not validate any bonds or other obligations issued prior to August 13, 1954.

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

**Popular name:** Act 40

## CHAPTER 23. PENALTIES.

### **280.601 Drain commissioner; interest in contract prohibited; penalty.**

Sec. 601. If any commissioner is interested directly or indirectly in the profits of any contract, job, work or services, other than official services, to be performed for the drainage district, he is deemed to be guilty of a misdemeanor, and the office of such commissioner shall be deemed vacant and the commissioner so convicted shall be incapable of again holding the office of county drain commissioner.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1965, Act 98, Eff. Mar. 31, 1966.

**Popular name:** Act 40

### **280.602 Removal of stakes; injury to drain; penalty.**

Sec. 602. If any person shall wilfully or maliciously remove any section or grade stake set along the line of any drain, or obstruct or injure any drain, he shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding \$100.00 and the costs of prosecution, or in default of the payment thereof, by imprisonment in the county jail not exceeding 90 days.

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

**Popular name:** Act 40

## CHAPTER 24. REPEALS AND SAVING CLAUSES.

### **280.621 Repeal.**

Sec. 621. Act No. 316 of the Public Acts of 1923, as amended, being sections 261.1 to 278B.33, inclusive, of the Compiled Laws of 1948, Act No. 243 of the Public Acts of 1931, being sections 279.1 and 279.2 of the Compiled Laws of 1948, Act No. 38 of the Public Acts of the First Extra Session of 1932, being sections 279.11 to 279.17, inclusive, of the Compiled Laws of 1948, and Act No. 158 of the Public Acts of 1929, as amended, being sections 279.101 to 279.123, inclusive, of the Compiled Laws of 1948, are hereby repealed.

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

**Popular name:** Act 40

### **280.622 Amendment of act during progress of drain proceedings; applicable law.**

Sec. 622. In cases where the law shall have been amended during the progress of any drain proceedings, such proceedings shall not be invalidated by any such amendment, but may be continued to completion, and each step shall be governed by the law in force at the time such step was taken. Any drain proceedings pending when this act takes effect shall be completed in the manner prescribed in this act.

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

**Popular name:** Act 40

### **280.623 Saving clause.**

Sec. 623. This act shall not impair or affect any act done, offense committed or right accruing, accrued or acquired, or liability, penalty, forfeiture or punishment incurred prior to the time this act takes effect, but the same may be enjoyed, asserted, enforced, prosecuted or inflicted, as fully and to the same extent as if this act had not been passed.

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

**Popular name:** Act 40

### **280.624 Prior actions and bonds validated; contest prohibited.**

Sec. 624. Actions heretofore taken by a drainage district or a public corporation and bonds heretofore issued under this act as originally adopted or subsequently amended are hereby validated. A district acting under this act as originally adopted or subsequently amended, or a public corporation shall not contest the validity of any bonds or any assessment which provides the security therefor or any action taken by the district or public corporation after the bonds are sold and delivered and consideration therefor is received.

**History:** Add. 1973, Act 208, Imd. Eff. Jan. 11, 1974.

**Popular name:** Act 40

CHAPTER 25.  
ALTERNATE PROCEDURES

**280.625 Alternate procedures.**

Sec. 625. Drainage boards and officials operating under chapters 20 and 21 may employ the procedures of this chapter as an alternate method instead of the procedures in chapters 20 and 21 for the apportionment of costs and the preparation and collection of a special assessment roll.

**History:** Add. 1976, Act 5, Imd. Eff. Feb. 10, 1976;—Am. 1977, Act 35, Imd. Eff. June 22, 1977.

**Compiler's note:** The chapter heading "Alternate Procedures" was formulated editorially and is not a part of the law as officially enacted.

**Popular name:** Act 40

**280.626 Assessment to public corporations of costs in excess of those apportioned for drainage to state or county highways; apportionment.**

Sec. 626. When 2 or more public corporations other than the state or a county or counties are to be assessed, the drainage board, or if appropriate in chapter 21 proceedings, the drain commissioner, may determine that costs to be assessed to the public corporations, in excess of those apportioned for drainage to state or county highways, shall not be apportioned by the establishment of a fixed percentage of costs to be borne by each public corporation, but that the costs shall be assessed at large to all of the public corporations in the aggregate and apportioned annually between the public corporations on the basis of the relative valuations, as equalized, of each within the area served by the drain, if the drainage board or drain commissioner shall determine that this method of apportionment will more fairly result in the costs of the drain being apportioned in accordance with the benefits to be derived therefrom. Notice of tentative apportionment in the foregoing manner shall include a calculation of the apportionment of costs between public corporations assessed in the aggregate based on the latest available valuations.

**History:** Add. 1976, Act 5, Imd. Eff. Feb. 10, 1976;—Am. 1976, Act 342, Imd. Eff. Dec. 15, 1976.

**Popular name:** Act 40

**280.627 Special assessment roll; preparation; contents; approval; certified copy of roll.**

Sec. 627. When employing this chapter, the chairman of the drainage board in chapter 20 proceedings or the secretary of the drainage board in chapter 21 proceedings shall prepare a special assessment roll which shall contain the name of each public corporation assessed, the total estimated or actual cost of the project, the fixed percentage of the cost, if any, apportioned to public corporations and to the state or counties for drainage of highways, the aggregate amount assessed at large against all other public corporations, and if the assessment is divided into annual installments, the amount of each installment, listed separately for the state and counties and for public corporations assessed a fixed percentage if applicable, and in the aggregate for all other public corporations. After approval of the roll by the drainage board, the chairman shall then send a certified copy of the roll to each public corporation assessed.

**History:** Add. 1976, Act 5, Imd. Eff. Feb. 10, 1976.

**Popular name:** Act 40

**280.628 Notice of due date of installment and interest; determination of amounts due from public corporation assessed in aggregate.**

Sec. 628. On or before June 1 of each year, or, if necessary in connection with notification of the due date of the initial installment only at any appropriate time, the chairman of the drainage board shall notify each public corporation to which costs are apportioned as provided in this chapter of the installment of assessment and interest thereon coming due before the next June 1. On or before the due date of an installment each public corporation shall pay to the county treasurer the full amount, together with interest accruing to the due date. Failure to notify a public corporation shall not excuse it from making payment of the installment and interest. In determining the amounts due from public corporations assessed in the aggregate, the chairman shall calculate the total state equalized valuation of each within the area served by the drain and shall assign to each public corporation as its annual installment the same percentage of the total aggregate installment next falling due as the state equalized valuation of the public corporation within the area served by the drain bears to the total state equalized valuation within the area served by the drain. In making those calculations, the chairman shall use the state equalized valuation for the latest year in which the valuations are finalized for the public corporations so assessed, even though the valuations may no longer be current. If noncurrent valuations are used, the drainage board may determine to adjust later payments when valuations are finalized if the board

in its sole discretion shall determine the adjustment to be necessary to properly apportion costs between public corporations so assessed.

**History:** Add. 1976, Act 5, Imd. Eff. Feb. 10, 1976;—Am. 1976, Act 342, Imd. Eff. Dec. 15, 1976.

**Popular name:** Act 40

### **280.629 Calculating amounts of assessments chargeable against debt limitations of public corporations.**

Sec. 629. In calculating amounts of assessments chargeable against debt limitations of public corporations assessed under this chapter, each public corporation shall be charged with the same percentage of the total aggregate at large assessment as the state equalized valuation of the public corporation within the area served by the drain bears to the total state equalized valuation within the area served by the drain. The state equalized valuations used in those calculations shall be those used in the latest notification of installment sent by the chairman pursuant to section 628, and prior thereto shall be the latest valuations available.

**History:** Add. 1976, Act 5, Imd. Eff. Feb. 10, 1976;—Am. 1976, Act 342, Imd. Eff. Dec. 15, 1976.

**Popular name:** Act 40

### **280.630 Purpose and construction of chapter.**

Sec. 630. It is the purpose and intention of this chapter to provide an additional and alternate method of apportioning drainage costs under chapters 20 and 21 to public corporations other than the state and counties. Therefore, this chapter when employed shall be construed to be integrated with chapters 20 and 21 and all provisions of those chapters inconsistent with this chapter shall not be applicable, but all other provisions of those chapters shall remain in full force and effect.

**History:** Add. 1976, Act 5, Imd. Eff. Feb. 10, 1976.

**Popular name:** Act 40