

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

280.197 Surveying drain and reviewing district boundaries, laying out revised district, or making profiles, plans, or estimates of work; retaining services of surveyor or engineer; filing data; revision of boundaries of drainage district; adding or removing lands; meeting of drainage board; order; findings; notice for review; contents; mailing; affidavit; publication; action by landowner.

Sec. 197. (1) Upon receipt of a petition filed under this chapter, the drain commissioner or the drainage board may retain the services of a licensed professional surveyor or engineer to make a survey of the drain and may review the drainage district boundaries, or a portion of the drain or drainage district, or if necessary, lay out a revised drainage district including the land benefited, or make profiles, plans, or estimates of the work and file all data concerning the revisions, profiles, plans, or estimates with the drain commissioner or the chairperson of the drainage board.

(2) If, after a survey of the drain or a review of the drainage district boundaries under subsection (1) or after an inspection under section 196, it appears that the boundaries of the drainage district should be revised, the drain commissioner for a county drain, or the drainage board for an intercounty drain, shall either convene the board of determination pursuant to subsection (4) or hold a day of review of district boundaries pursuant to subsection (5) and, after notice and review as provided in this section, revise the boundaries of the drainage district to include all lands benefited by the drain as recommended by a licensed professional surveyor or engineer.

(3) If, after an inspection under section 196 and a review of the drainage district boundaries, a drain commissioner or drainage board determines that the boundaries should be revised and that lands, in a county or counties not part of the original drainage district, should be added to the drainage district or lands in an intercounty drainage district should be removed resulting in the removal of a county from the intercounty drainage district, the drain commissioner or drainage board shall serve notice on the director of agriculture and rural development and the drain commissioner of each county where there are lands proposed to be added to or removed from the drainage district. The director of the department of agriculture and rural development shall call a meeting of the drainage board, which shall include the commissioner of each county where the drainage district or proposed revised drainage district is located. At least 10 days before the date of the meeting, the drainage board shall send notice of the meeting by first-class mail to each city, village, and township in the original or proposed revised district and each person whose name appears on the last city or township tax assessment roll as owning lands in the original or proposed revised drainage district, at the address shown on the roll. If an address does not appear on the roll, notice need not be mailed to that person. At the meeting, all persons owning lands in the drainage district or proposed revised drainage district liable to assessment for benefits, or any municipality affected, may appear for or against the addition or removal of the lands. The drainage board shall consider any evidence offered and determine whether the addition or removal of the lands is just and equitable. If the addition or removal of the lands is just and equitable, the board shall file an order to that effect. The order shall give the drain a name or number, designate the drainage district, describe the route and course of the drain and drainage district boundaries, and, if the drainage district as revised is an intercounty drainage district, designate the members constituting the revised drainage board and determine the apportionment between counties. A copy of the order shall be filed with the drain commissioner of each county liable for assessments of the drainage district. If the drainage district as revised is an intercounty drainage district, after the order is filed, the revised drainage board constitutes the drainage board for the revised drainage district and has all the powers and duties of drainage boards under this act. If the drainage district as revised is an intercounty drainage district, the revised drainage board shall revise the drainage district boundaries during the hearing of necessity as provided in subsection (4) or hold a day of review of drainage district boundaries as provided in subsection (5). If the drainage district as revised is a county drainage district, the original drainage board shall revise the drainage district boundaries during the hearing of necessity as provided in subsection (4) or hold a day of review of drainage district boundaries as provided in subsection (5) and, following the order revising the drainage district boundaries, the drain commissioner shall have all the powers and duties for a county drain established under this act.

(4) If, before the hearing of necessity for a petition, the drain commissioner or drainage board determines that the boundaries of the drainage district should be revised, the drain commissioner for a county drain, or the chairperson of the drainage board for an intercounty drain, may request that the board of determination revise the drainage district boundaries during the hearing of necessity as provided in section 72 or 122. If the board of determination by a majority vote of members finds that the addition or deletion of lands will more accurately define the boundaries of the land benefited by the drain and it would be just and equitable, the

board shall describe the revised drainage district boundaries in the order of necessity for the drain.

(5) If the drain commissioner or drainage board determines to hold a day of review of drainage district boundaries, the lands comprising the drainage district revised under this section shall be subject to review for not less than 1 day from 9 a.m. until 5 p.m. The review shall be conducted at a location designated by the drain commissioner or drainage board. At the review, the drain commissioner or drainage board or its designee shall hear the proofs and allegations and shall carefully reconsider and review the description of land comprised within the drainage district. If the drain commissioner or drainage board finds that the addition or deletion of lands will more accurately define the boundaries of the land benefited by the drain and it would be just and equitable, the drain commissioner or drainage board shall issue an order describing and establishing the revised drainage district boundaries supported by substantial, material, and competent evidence.

(6) A notice for review of revised drainage district boundaries under subsection (5) shall specify the date, time, and place at which the review will take place and provide a general description of the lands proposed in whole or in part to be added or removed from the drainage district. This notice shall be sent by first-class mail at least 10 days before the date of the review to each city, village, and township in the revised district, and each person whose name appears on the last city or township tax assessment roll as owning lands within the revised 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 that person. The drain commissioner or drainage board 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 on the tax rolls as owning lands within the revised drainage district. The affidavit is conclusive proof that notice was mailed to each person to whom notice is required to be mailed by this section. Failure to receive a notice by mail is not a jurisdictional defect invalidating a drain proceeding or assessment, if notice was sent by first-class mail as provided in this section. The drain commissioner or chairperson of the drainage board shall also cause the notice to be published once in a newspaper of general circulation in the county or counties in which the drainage district is located at least 10 days before the review. All expense of notification shall be paid by the drainage district.

(7) The owner of any land in the drainage district, the state transportation department, or any city, village, township, or county having control of any highway in the drainage district, that is aggrieved by a determination to revise, or not to revise, drainage district boundaries as provided for in this section may, within 10 days after the order to revise the drainage district boundaries is entered, institute an action in the circuit court for the county in which the real property is located for a determination of whether the decision to revise, or not to revise, the drainage district boundaries is supported by substantial, material, and competent evidence. The addition or removal of a county or counties to or from the drainage district under subsection (3) is subject to review in the manner provided in section 106.

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;—Am. 2013, Act 261, Imd. Eff. Dec. 30, 2013;—Am. 2017, Act 62, Imd. Eff. June 28, 2017.

Popular name: Act 40