

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

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.

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