

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

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