

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

**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