

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

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; notice; 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, that he or she is disqualified or chooses not to act in appointing a board of determination. As soon as practicable after receiving a copy of the petition and certificate, the chairperson of the county board of commissioners, unless he or she has a conflict of interest, 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 conflict of 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 shall not be members of the county board of commissioners of the county.

(2) The drain commissioner shall call a meeting of the board of determination at a convenient place within the drainage district or at a public building within a city, village, or township in which the drain is located. If an individual appointed to the board of determination fails or refuses to serve, the drain commissioner shall appoint a successor. The per diem compensation and the mileage and expense reimbursements 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 and the mileage and expense reimbursements shall be set by the drain commissioner. Upon request, the county drain commissioner shall inform in writing the requesting state legislator who represents 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.

(3) 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, 1976 PA 267, MCL 15.261 to 15.275. The commissioner shall also give such notice, not less than 10 days before the meeting, by all of the following means:

(a) Publication in a newspaper of general circulation in the county.

(b) Service on the county clerk and a member of the board of county road commissioners of the county and on the supervisor of each township and clerk of each city and village in the drainage district, personally or by certified mail.

(c) Service by first-class mail on each person whose name appears on the last city, village, or township tax roll as owning land within the 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 person. The drain commissioner shall make an affidavit of the mailing and shall recite in the affidavit that the notice was mailed to all of the persons whose names and addresses appear upon the tax rolls as owning land within the drainage district. The affidavit is conclusive proof that notice was mailed to each person to whom notice is required to be mailed under this section. The failure to receive a notice by mail is not a jurisdictional defect invalidating a drain proceeding or drain assessment if notice was sent by first class mail as provided in this subdivision.

(4) All expenses of notification shall be paid by the drainage district when created.

(5) At the time and place specified in the notice, the board of determination shall meet, elect a chairperson and secretary, and, after considering the evidence offered, 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. 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 filed within 1 year after the determination. If the board of determination finds, by a majority vote, that the proposed drain is 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. Not more than 10 days after the board of determination files an order finding the proposed drain to be necessary and conducive to the public health, convenience, or welfare, the drain commissioner shall determine the cities, townships, and villages within the drainage district benefiting from the drain for public health and shall notify each such city, township, and village 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. Within 20 days after the commissioner's receipt of the order of the board of determination, if an appeal has not been taken under section 72a, the drain commissioner shall make a first order of determination in writing, giving the name or number of the drainage district and a general description of the route, terminus, and type of construction of the drain. The drain commissioner shall file a copy of the order in his or her office.

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;—Am. 2018, Act 646, Eff. Mar. 28, 2019.

Popular name: Act 40