

## THE DRAIN CODE OF 1956 (EXCERPT)

### Act 40 of 1956

#### CHAPTER 10.

#### INSPECTION AND APPROVAL OF CONSTRUCTION AND PAYMENT FOR THE DRAIN.

##### **280.241 Inspection of drain; order of approval, payments on contract.**

Sec. 241. No warrant or drain order for the payment of any part of such drain contract shall be drawn until the work has been inspected and approved as herein provided. The commissioner may inspect and approve any tile or open drain, or he may designate any competent surveyor or engineer to make such inspection, but where the construction exceeds \$3,000.00, the commissioner shall designate a competent surveyor or engineer to make the inspection. Any person making such inspection shall see that the specifications in the contract are fully complied with, and if the work is not in accordance with the contract, the commissioner shall immediately notify the contractor thereof. If the work so inspected shall conform to the contract, the person making the inspection shall certify in writing to that fact and an order of approval shall thereupon be entered by the commissioner in his drain record, and notice of the approval be given the contractor. The commissioner may issue warrants or orders on the fund of any drain not exceeding 90% of the amount earned on any contract after the certificate of inspection and the order of approval is entered as herein provided. The payment of the final 10% or any portion thereof on any contract may be made after the certificate of inspection is made attesting to the completion and is filed in the office of the commissioner.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1965, Act 98, Eff. Mar. 31, 1965.

**Popular name:** Act 40

##### **280.242 Extension of time on contract; forfeiture; reletting unfinished portion; recovery of excess cost.**

Sec. 242. The commissioner shall have power to grant a reasonable extension of time for the completion of any contract. When any contract shall not be finished within the time specified, or to which it may be extended, the commissioner shall declare such contract forfeited and shall, within a reasonable time thereafter, relet the unfinished portion thereof to the lowest responsible bidder, by public letting, after not less than 5 days' notice thereof, by posting only, as provided for the letting in the first instance, or by private letting when such can be done, at a price per rod for the uncompleted portion thereof not exceeding the price per rod at which the job was first let; and he shall make contract and take security in each case as herein provided. The cost of completing such part over and above the contract price, if any, and the expense of notice and reletting shall be collected by the commissioner of the parties first contracting or of their bondsman, which moneys, when so collected, shall be deposited with the county treasurer, and placed to the credit of such drain.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956.

**Popular name:** Act 40

##### **280.243 Deficiency; assessment, collection, review, appeal; embezzlement; payment from county general fund, conditions.**

Sec. 243. Whenever the amount assessed for the construction of any drain shall not be sufficient to complete the same, and to pay all the costs and incidental expenses or to pay the principal and interest on bonds if such are issued, a further assessment shall be made to meet the deficit or additional expense. Such further assessment shall be apportioned, assessed, levied and collected as provided in the first instance, and on the same percentage, and shall be collected in 1 year, but there shall be no review of nor appeal from such further assessment: Provided, That whenever by reason of the embezzlement or other wrongful act of any county official or by reason of the conspiracy of any county official with any other person or persons to defraud any drainage district, township or county, there shall be any deficiency as aforesaid, the board of supervisors of any county traversed by the drain may provide for the payment, out of the general fund of the county, of all or any part of such additional assessment as may be apportioned to that part of the drainage district within such county, or for the refunding to taxpayers of any such assessment which may have been paid.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956.

**Popular name:** Act 40

##### **280.244 Drain orders; drawing and payment, restrictions; payment from county general fund, reimbursement.**

Sec. 244. All orders for the payment for services rendered and work performed shall be drawn by the

commissioner upon the drain fund of each particular drain. In case of taxes assessed for benefits received which are to be paid in 7 annual installments or less, all orders for the payment for lands for right of way shall be paid out of the first year's taxes, and the balance of such first year's taxes, if any, shall be applied pro rata among the several contractors in the payment of the contracts for the construction of such drain. For the balance due upon such contracts the commissioner shall draw orders payable out of each succeeding year's assessment pro rata among the several contractors: Provided, That no commissioner shall draw orders payable in any one year for a larger amount than said year's assessment, except in cases where bonds are issued and sold as provided by law. All drain orders shall be drawn payable not sooner than the fifteenth day of April nor later than the first day of August of the year in which the drain taxes for the payment thereof are required to be paid. If the drain fund is insufficient for such purpose because of delinquency in the payment of drain taxes after the lands on which the said taxes shall have become delinquent have been offered for sale, in any such case where payment is made by the county treasurer out of the general fund and all delinquent drain taxes received by said treasurer thereafter shall be credited to the general fund until the same is reimbursed. In all cases where bonds are issued and sold as herein provided and the proceeds thereof are deposited in the county treasury to the credit of the fund of the particular drain, orders presented on such fund shall be paid out of the proceeds aforesaid, or out of the first annual installment of the taxes. In no case where there are outstanding bonds shall an order be paid out of any installment of taxes collected other than the first.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956.

**Popular name:** Act 40

#### **280.245 Drain orders; contents, recording; payment; insufficient funds, interest; drain order redemption fund; payment of drainage taxes; reports to commissioner by county treasurer.**

Sec. 245. All drain orders made by the commissioner shall state the services rendered in brief form, shall be numbered and recorded and signed by the commissioner. Such order, when due, shall be presented to the county clerk and he shall immediately ascertain from the county treasurer if the particular fund on which said order is drawn is sufficient to pay said order. If such fund is sufficient, the county treasurer shall so certify on the back of said drain order and the county clerk shall thereupon issue the usual county warrant upon the county treasurer for the payment of said order, taking said order so certified as his voucher. If such particular fund is insufficient when such order is presented for payment, the county treasurer shall so certify upon such order and such order shall then draw interest at the rate of 6% per annum from the date of presentation until such particular fund is sufficient to pay the same, said interest to be computed and paid with the principal out of the proper fund on which it was drawn, when there are sufficient funds to pay the same. The county treasurer shall keep a record in which he shall note each drain order presented for payment on a drain account which was insufficient to pay such order on the date of presentation. He shall note in such record the amount, number, drain account and the date of original presentation for payment. When there are sufficient moneys in the particular drain account to pay the order, plus interest, the county treasurer shall note the date of such sufficiency on such record and shall transfer sufficient moneys to pay such order and interest then due from the particular drain account and drain fund to a drain order redemption fund and the drain order shall cease to earn interest as of that date. Transfers to the drain order redemption fund shall be made in the order of priority in which the drain orders were originally presented for payment. Payment of such orders, including interest earned as provided herein, shall thereafter be made by the county treasurer from the drain order redemption fund. Drain orders at any time during the year in which such drain order becomes due and payable and for a period of 30 days prior to such year shall be accepted for the payment of drainage taxes. The county treasurer shall report to the commissioner the amount paid as interest on any and all such drain orders. The county treasurer shall at the first of each month furnish the drain commissioner with a report of all drain orders cashed during the preceding month, including the name of the drain upon which the order was drawn, the amount, the number of the order, and the date of payment.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956.

**Popular name:** Act 40

#### **280.246 Advertising rates; fees of judge of probate and other officers.**

Sec. 246. Newspaper publishers shall receive legal rates for advertising. The judge of probate shall receive 10 cents per folio for making exemplified copies of any proceedings had in the probate court and \$2.00 for the appointment of special commissioners, including certified copy of the order of the appointment. Special commissioners may be appointed to determine the necessity of drains and the necessity of taking property for the use of such improvement and appraise damages therefor. Members of boards of review, boards of determination, surveyors and attorneys employed, shall present their account for services rendered and

expenses under oath to the board of county auditors in a county having a board of auditors or to the judge of probate in other counties, and it shall be the duty of said board or judge to audit and allow the said accounts and direct the same to be paid from the revolving drain fund of the county: Provided, That in case the board of determination or special commissioners determine said proposed drain is not necessary, payment for all such service shall be made from the general fund of the county.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956.

**Popular name:** Act 40

#### **280.247 Attorney; employment; expenses and costs, payment from drain fund; prosecuting attorney; "attendant expenses and costs" defined .**

Sec. 247. (1) The county drain commissioner or drainage board acting under this act may employ an attorney if the drain commissioner or drainage board, as appropriate, considers it necessary. If an attorney is employed, all attendant expenses and costs shall be charged to the drainage districts on behalf of which the attorney is employed. All attendant expenses and costs shall be paid out of the drain fund of the drainage district or the revolving drain fund. If the attendant expenses and costs are paid out of the revolving drain fund or if the drain fund of the drainage district does not have sufficient funds to pay the attendant expenses and costs, the attendant expenses and costs shall be assessed to the drainage district in the same proportion as costs of the drain were assessed as provided in chapter 7 and the collections of these assessments shall be used either to reimburse the revolving drain fund or to pay the attendant expenses and costs, as appropriate.

(2) The county board of commissioners for a county, by resolution, may provide for the prosecuting attorney to give legal assistance to the county drain commissioner as part of the prosecuting attorney's duties.

(3) As used in this section, "attendant expenses and costs" means those expenses and costs incurred for a drainage district in furtherance of the duties and responsibilities of a drain commissioner or drainage board, including, but not limited to, 1 or more of the following:

(a) Actual attorney fees.

(b) Expert witness and consultant fees.

(c) Money and costs expended in connection with litigation or the threat of litigation.

(d) Payments made in satisfaction or partial satisfaction of any orders or judgments entered against a drainage district.

(e) Money and costs expended to obtain a release, waiver, or other settlement of claims.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 2018, Act 646, Eff. Mar. 28, 2019.

**Popular name:** Act 40

#### **280.248 Expenses of state director of agriculture or deputy; payment.**

Sec. 248. The state director of agriculture, or any deputy designated by him, shall be paid all his necessary traveling and subsistence expenses actually and necessarily incurred in the discharge of any duties required by this act.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956.

**Popular name:** Act 40