

## THE DRAIN CODE OF 1956 (EXCERPT)

### Act 40 of 1956

#### CHAPTER 18.

#### OBSTRUCTIONS IN DRAINS; SEWAGE; MISCELLANEOUS PROVISIONS.

##### **280.421 Obstructions; removal; expenses, notice; livestock; criminal complaint.**

Sec. 421. Whenever any person shall obstruct any established drain, it shall be the duty of the commissioner to cause such obstruction to be removed. Any lessening of the area of a drain, which area shall be a cross section of the drain, shall be deemed to be an obstruction. The person causing such obstruction shall be liable for the expense attendant upon the removal thereof, together with the charges of the commissioner, and the same shall be a lien upon the lands of the party causing or permitting such obstruction, and all of the expense shall by the commissioner be reported to the board of supervisors, together with the report of his doings in the premises, and by said board ordered spread upon the land of the offending party, should the same remain unpaid: Provided, That the offending party causing such obstruction shall be given a notice in writing of at least 5 days to remove such obstruction. This provision as to obstruction of any drain shall not apply where the obstruction was caused by natural causes, but the owner of the stock who shall permit his horses, cattle, pigs and other stock to obstruct any drain by tramping in it shall be deemed to be the party causing such obstruction. Nothing contained in this section shall in any way impede or bar the right of any person to make criminal complaint under any existing law for any obstruction of a drain.

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

**Popular name:** Act 40

##### **280.422 Obstructions; public utility companies; removal, mandamus.**

Sec. 422. Railroad or railway companies, telephone, telegraph, or pipeline companies and other utilities shall not obstruct established drains, nor shall they lessen the area of any drain through their track bed or right of way. The area herein referred to is a cross section of the drain. In case any such company or utility, without legal right, has constructed or shall construct any bridge, culvert, pipeline or conduit over any established drain whereby the area aforesaid is decreased, the removal of such bridge, culvert, pipeline or conduit shall not be deemed an element of damage in proceedings to deepen and widen such drain through such track bed or right of way. In case it is proposed to construct a pipeline, sewer or conduit within, over or across any county, such construction shall be of a nature and laid at such a depth at the point of crossing of any established public drain as will not interfere with said established public drain. The consent of the county drain commissioner or board of public works of any municipality shall be obtained before the work of such construction is commenced and such drain commissioner is hereby authorized to grant such consent upon such terms and conditions as may be reasonable and proper under the circumstances then existing. In case any railroad or railway company, telephone, telegraph or pipeline company or other utilities shall obstruct any established drain, or has constructed or shall construct any bridge, culvert, pipeline or conduit, sewer or other structure over, under or through any established drain, leaving less capacity to the drain than such drain is legally entitled to, in accordance with the rights for such drain as established by proper drain proceedings or as established by other legal methods prior to the date of construction of any such obstruction, the county drain commissioner or the board of public works, as the case may be, may, by mandamus proceedings in the circuit court of the county in which such obstruction shall occur, compel the removal of such obstruction. If necessary, issues of fact may be framed in such proceedings. In case the court shall find such drain to have been obstructed, it shall issue a preemptory mandamus compelling such company to remove such obstruction. The court may award costs in its discretion as in other mandamus proceedings. The practice herein shall be the same as in other motions for mandamus.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1959, Act 261, Imd. Eff. Aug. 21, 1959.

**Popular name:** Act 40

##### **280.423 Discharge of certain sewage or waste matter into drains prohibited; construction to purify flow; petitions; order of determination; findings; construction of drain; plans and specifications; contracts; costs; review; acquisition of land; application and fee for sewer connections; powers of drain commissioner or drainage board; failure to comply with section; violation as misdemeanor; fine; “person” defined.**

Sec. 423. (1) A person shall not continue to discharge or permit to be discharged into any county drain or intercounty drain of the state any sewage or waste matter capable of producing in the drain detrimental deposits, objectionable odor nuisance, injury to drainage conduits or structures, or capable of producing such

pollution of the waters of the state receiving the flow from the drains as to injure livestock, destroy fish life, or be injurious to public health. This section does not prohibit the conveyance of sewage or other waste through drains or sewers that will not produce these injuries and that comply with section 3112 of part 31 (water resources protection) of the natural resources and environmental protection act, Act No. 451 of the Public Acts of 1994, being section 324.3112 of the Michigan Compiled Laws.

(2) Disposal plants, filtration beds, and other mechanical devices to properly purify the flow of any drain may be constructed as a part of any established drain, and the cost of construction shall be paid for in the same manner as provided for in this act for other drainage costs. Plants, beds, or devices may be described in the petition for the location, establishment and construction of drains or in the petition for the cleaning, widening, deepening, straightening, or extending of drains, or in the application for the laying out of a drainage district. Petitions for the construction of plants, beds, and devices for use on any established drain may be filed by the same persons and shall be received and all proceedings on the petitions in the same manner as other petitions for any drainage construction under this act.

(3) If the department of environmental quality determines that sewage or wastes carried by any county or intercounty drain constitutes unlawful discharge as prescribed by section 3109 or 3112 of part 31 of Act No. 451 of the Public Acts of 1994, being sections 324.3109 and 324.3112 of the Michigan Compiled Laws, that 1 or more users of the drain are responsible for the discharge of sewage or other wastes into the drain, and that the cleaning out of the drain or the construction of disposal plants, filtration beds, or other mechanical devices to purify the flow of the drain is necessary, the department of environmental quality may issue to the drain commissioner an order of determination identifying such users and pollutants, under section 3112 of Act No. 451 of the Public Acts of 1994, being section 324.3112 of the Michigan Compiled Laws. The order of determination constitutes a petition calling for the construction of disposal facilities or other appropriate measures by which the unlawful discharge may be abated or purified. The order of determination serving as a petition is in lieu of the determination of necessity by a drainage board pursuant to chapter 20 or 21 or section 122 or 192 or a determination of necessity by a board of determination pursuant to section 72 or 191, whichever is applicable. A copy of the findings of the department shall be attached to the order of determination which shall require no other signature than that of the director of the department of environmental quality. Upon receipt of the order of determination, the drain commissioner or the drainage board shall proceed as provided in this act to locate, establish, and construct a drain. If the responsible users of the drain are determined to be public corporations in the drainage district, the drain commissioner or the drainage board shall proceed as provided in chapters 20 and 21, as may be appropriate, using the order of determination as the final order of determination of the drainage board. If the responsible users are determined to be private persons, the drain commissioner shall proceed as provided in chapters 8 and 9, using the order of determination as the first order of determination.

(4) Plans and specifications for the construction as part of a drain of any disposal plant, filtration bed, or other mechanical device to properly purify the flow of the drain shall be prepared by the drain commissioner or the drainage board. Contracts for construction shall be let in the manner provided in this act. To meet the cost of any preliminary engineering studies for the construction of abatement or purification facilities, the drain commissioner or the drainage board shall apportion the cost among the several parcels of land, highways, and municipalities benefited thereby in the same manner as provided in chapter 7 or against the public corporations affected by the order of determination in the same manner as provided in chapters 20 and 21. The costs and charges for maintenance shall be apportioned and assessed each year. If the apportionment is the same as the last recorded apportionment, a day of review or a hearing on apportionments is not necessary, but if the apportionment is changed, notice of a day of review or a hearing on apportionments shall be given to each person whose percentage is raised.

(5) Land may be acquired as a site for the construction of such plants, beds, and devices, and releases of land may be obtained in the same manner as provided in this act for other lands acquired for right of way.

(6) A person shall not connect sewage or other waste to a county or intercounty drain except with the written approval of the appropriate commissioner or the drainage board indorsed upon a written application for such service and the payment of a service fee of not to exceed \$50.00 for each connection to a covered drain. The application shall include information showing that all other local, state, and federal approvals related to the sewage or waste have been obtained.

(7) The fee provided for in subsection (6) shall be set and collected by the drain commissioner, as approved by the county board of commissioners or the drainage board, and deposited with the county treasurer, to be credited to the drain fund set up for the maintenance or construction of the drain. The commissioner or the drainage board shall keep a record of applications made and the action on the applications. The commissioner or the drainage board may reject applications for or require such modification in requested applications for sewer connections to county drains as necessary to attain the objectives set forth

in this section.

(8) Subject to the review and approval of the department of environmental quality, the drain commissioner or drainage board may study the requirements of persons for flood control or drainage projects including sewage disposal systems, storm sewers, sanitary sewers, combined sanitary and storm sewers, sewage treatment plants, and all other plants, works, instrumentalities, and properties useful in connection with the collection, treatment, and disposal of sewage and industrial wastes or agricultural wastes or run-off, to abate pollution or decrease the danger of flooding. The objective of such studies shall be that sewers, drains, and sewage disposal facilities are made available to persons situated within the territorial limits of any drainage district or proposed drainage district as necessary for the protection of public health and the promotion of the general welfare.

(9) The drainage board or drain commissioner may cooperate, negotiate, and enter into contracts with other governmental units and agencies or with any public or private corporation including the United States of America, and to take such steps and perform such acts and execute such documents as may be necessary to take advantage of any act of the congress of the United States which may make available funds for any of the purposes described in this section.

(10) Failure to comply with any of the provisions of this section subjects the offender to the penalties described in section 602. However, for each offense, a person who violates subsection (6) is guilty of a misdemeanor punishable by a fine of not more than \$25,000.00 or imprisonment for not more than 90 days, or both. In addition, the person may be required to pay the costs of prosecution and the costs of any emergency abatement measures taken to protect public health or the environment. Payment of a fine or costs under this subsection does not relieve a person of liability for damage to natural resources or for response activity costs under the natural resources and environmental protection act, Act No. 451 of the Public Acts of 1994, being sections 324.101 to 324.90106 of the Michigan Compiled Laws.

(11) As used in this section, "person" means an individual, partnership, public or private corporation, association, governmental entity, or other legal entity.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1972, Act 298, Imd. Eff. Dec. 14, 1972;—Am. 1996, Act 60, Imd. Eff. Feb. 26, 1996;—Am. 1996, Act 552, Eff. Mar. 31, 1997.

**Popular name:** Act 40

**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.

**Popular name:** Act 40

**280.425 Petition to construct open or closed drain; permission of commissioners or drainage board; consent of landowners; expense; time and manner of construction; protection of drain entrance; signature of applicant or petitioner; tiling source of drain or open drain; permit to tile established drain.**

Sec. 425. A landowner in the drainage district whose land requires additional drainage may petition the commissioner for permission to construct an open or closed drain, or a combination thereof, to a regularly

established drain, and permission shall be granted by the commissioner or drainage board when, in their opinion, the nature of the ground to be crossed will admit thereof and the surface of the land can be restored and for that purpose the drain may traverse the lands of other freeholders in the district. Before permission may be granted by the commissioner, consent in writing by the owner or owners of the lands to be traversed by the proposed drain shall be obtained. If permission is refused by the owner or owners of the lands to be traversed by the proposed drain, the drain may be established by following the provisions of this act governing the location, establishment, and construction of county or intercounty drainage districts and drains therein. The entire expense thereof shall be borne by the petitioner, and the construction of an open or closed drain or combination thereof shall be done at a time and in a manner as the commissioner or drainage board shall prescribe. When drains are constructed, the drain entrance shall be substantially protected from driftwood and debris. An application to lay out and designate a drainage district or petition to locate, establish, and construct a drain under the foregoing provisions of this section shall only require the signature of the petitioning landowner or owners, other provisions of this act notwithstanding. If permission is granted to tile the source of a drain, the commissioner shall further prescribe the amount and part of the drain to be tiled and the manner of tiling. A person through whose land an open drain has been established and constructed may make a written request to the county drain commissioner to be permitted, at his own expense, to tile and cover with earth the whole or a part thereof that may traverse his land, and the commissioner may grant the request, but in doing so he shall prescribe the size of the tile to be used. A permit shall not be issued to tile or crock an established drain that will decrease the area of the drain as established.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1957, Act 119, Imd. Eff. May 24, 1957;—Am. 1976, Act 28, Imd. Eff. Mar. 4, 1976.

**Popular name:** Act 40

#### **280.426 Drain orders received for drain taxes.**

Sec. 426. The drain orders issued for each particular drain shall be received for drain taxes for benefits levied for the construction of such drain by the township treasurer or county treasurer, as the case may be.

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

**Popular name:** Act 40

#### **280.427 Corporation or land contract vendee as freeholder; corporate agent or officer as signer of petition.**

Sec. 427. In any application or petition required to be filed under this act, a freeholder shall be deemed to include a corporation owning land and a vendee under land contract, where such contract is of record in the office of the register of deeds of the county, or where the land is assessed in the name of the vendee on the tax assessment roll of the township or city. The authority of an officer or agent of a corporation to sign an application or petition on behalf of such corporation shall not be questioned, except by such corporation itself, after the application or petition has been accepted and passed on by a board of determination.

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

**Popular name:** Act 40

#### **280.428 Drainage district including state lands; assessment, payment.**

Sec. 428. If any drain commissioner shall receive an application to lay out a drainage district which will include land owned by the state of Michigan, or owned or controlled by any state institution, board or agency, said commissioner shall serve notice of apportionment of benefit on the same officers in like manner as service is required to be made on the state highway commissioner for state highways, and if said director of agriculture and the officer, board or agency having control of such land shall approve, in writing, the amount of such assessment, and shall state whether such assessment shall be paid in full or by installments, the board of state auditors is directed to audit and allow and draw its warrant upon the state treasurer in payment of the amount assessed against said land either in full or by installments as requested. Such sums of moneys as are necessary to carry out the provisions of this section are hereby apportioned from the general fund of the state out of any moneys in said fund not otherwise appropriated.

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

**Popular name:** Act 40

#### **280.429 Flood control projects; easements to United States; approval.**

Sec. 429. Subject to the consent and approval of the several boards of supervisors of this state and the boards of supervisors of the counties comprising intercounty drainage districts, the several county drain commissioners and the drainage boards of intercounty drainage districts are hereby authorized to grant unto



the United States of America the right to use all the easements and rights of way conveyed to their respective drainage districts or to any county or counties lying wholly or in part in such districts, for the construction and maintenance of any county or intercounty drain by the United States in connection with any flood control project undertaken by the United States acting through its war department or any other federal department or agency. In such cases in which the work is to be performed at the expense of the United States, it shall not be necessary for the drain commissioner or drainage board to advertise for bids or to let contracts for the construction or maintenance of any such flood control project.

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

**Popular name:** Act 40

#### **280.430 Sanitary sewage; contracts for use of drains; charges; lien; cost included in charges.**

Sec. 430. (1) Whenever any county or intercounty drain is used for the transportation of sanitary sewage, the county or counties within whose boundaries the drainage district lies may contract under the provisions of Act No. 129 of the Public Acts of 1943, as amended, being sections 123.231 to 123.235 of the Compiled Laws of 1948, or any other applicable act, for the disposal of sewage therefrom, including any storm water necessarily mixed therewith. In such case the drain commissioner or the drainage board may fix and collect charges to cover the cost of the treatment and disposal of sanitary sewage. Such charges shall be approved by the majority vote of the members-elect of the board of supervisors. The charges may be made to each user of the services or may be made to public corporations. Contracts for periods not exceeding 50 years may be made between the county and public corporations to be so served, in respect to sewage disposal services, when approved by the governing bodies of the several parties thereto.

(2) Charges for sewage disposal services furnished to any premises shall be a lien thereon from the date such charges are due and any charges delinquent for 6 months or more shall be certified annually to the proper tax assessing officer or agency who shall enter the same upon the next tax roll against the premises to which such services shall have been rendered, and the charges shall be collected and the lien shall be enforced in the same manner as provided for the collection of taxes assessed upon such roll and the enforcement of the lien therefor. The time and manner of certification and the other details in respect to the collection of such charges and the enforcement of such lien shall be prescribed by the governing body of the public corporation in which the lands are located. The payment of charges for sewage disposal services to any premises may be enforced by discontinuing either the water service or the sewage disposal service to such premises, or both.

(3) The charges for sewage disposal services may also include the cost of the operation and maintenance of any physical structures and any administrative expenses in connection with the transportation, treatment and disposal of sanitary sewage.

**History:** Add. 1959, Act 47, Imd. Eff. June 5, 1959.

**Popular name:** Act 40

#### **280.431 Contracts for drain projects; federal government; public corporations; relief from assessments; flood control projects; conservation and utilization of soil and water; "public corporation" defined.**

Sec. 431. The drain commissioner or drainage board may contract or make agreements with the federal government, including any agency thereof, whereby the federal government will pay the whole or any part of the cost of the project or will perform the whole or any part of the work connected therewith, which contract or agreement may include any specific terms required by act of congress or federal regulation, not in conflict with state law, as a condition for participation on the part of the federal government. The drain commissioner or drainage board may contract or make agreements with any private corporation or with any public corporation, including any agency thereof, in respect to any matter connected with the construction, operation or maintenance of any flood control or drainage project or combination thereof. The contract or agreement may provide that any payments made or work done by the public corporation shall relieve it in whole or in part from assessment for the cost of the project. No construction work shall be undertaken by the drain commissioner or drainage board until bids have been advertised for and received for the performance of such work, but this provision shall not apply to work to be performed solely by the federal government or a public corporation at its expense.

The drain commissioner or drainage board may contract or make agreements with private and public corporations and with the federal government including any agency thereof for the purpose of expanding any flood control or drainage project or combination thereof to include the conservation and utilization of soil and water for recreation and other beneficial purposes. The contracts or agreements shall provide for an equitable sharing of the costs of the expanded flood control or drainage project or combination thereof and the cost

borne by a drainage district shall not be in excess of the amount which can be attributed solely to drainage and flood control. The drain commissioner or drainage board, may acquire by gift or purchase the necessary lands, and rights of way for the purposes of any expanded flood control or drainage project or combination thereof. The drain commissioner or drainage board may acquire by condemnation proceedings similar to those provided in chapter 4 and chapter 6 of this act, the necessary lands and rights of way for any expanded flood control or drainage project or combination thereof which shall be undertaken jointly with a public corporation or the federal government. The drain commissioner or drainage board may pay for the costs of lands taken by condemnation for an expanded flood control or drainage project or combination thereof, undertaken jointly with a public corporation or the federal government, but the public corporation or federal government shall promptly reimburse the drainage district for all costs of acquisition in excess of those costs directly attributable to drainage and flood control.

The term "public corporation" includes the state, counties, cities, villages, townships, metropolitan districts and authorities created by or pursuant to state statutes.

**History:** Add. 1959, Act 153, Imd. Eff. July 16, 1959;—Am. 1962, Act 108, Eff. Mar. 28, 1963.

**Popular name:** Act 40

#### **280.432 Obstruction of drain commissioner; drainage board or agents; misdemeanor.**

Sec. 432. Whoever, after the drain commissioner has given notice by first class mail, that the drain commissioner, drainage board or their agents will go upon lands for any purpose hereinafter set forth, to the owner of the land whose name appears on the last city or township tax assessment roll, at the address shown on the roll, and if no address appears thereon no notice need be mailed to such person, wilfully prohibits, prevents or obstructs the drain commissioner, drainage board or their agents from going upon lands either within or outside of the district for the purpose of examining the same or making surveys in connection with the work of the drain commissioner or drainage board, or wilfully prohibits, prevents or obstructs the drain commissioner or drainage board of a district, their agents, employees or contractors from going upon the right of way of the district with their servants, tools, machinery, instruments and other equipment for the purpose of constructing, reconstructing, repairing or maintaining the work of the drain commissioner or drainage board is guilty of a misdemeanor.

**History:** Add. 1962, Act 191, Eff. Mar. 28, 1963.

**Popular name:** Act 40

#### **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

#### **280.434 Drain project; construction or studies; borrowing money or accepting advances; reimbursement; contract or note as evidence of obligation; full faith and credit; source of payments; applicability of section.**

Sec. 434. (1) A drainage district may borrow money or accept an advance of work, material, or money from a public or private corporation, partnership, association, individual, or the federal government or any agency of the federal government for any of the following for any project under this act:

(a) Payment of costs in connection with the maintenance and repair of a drain or the construction of any part of a drain project, including costs of easement and land acquisition, engineering fees, financing costs, and legal fees.

(b) Payment of or financing costs of a feasibility, practicability, environmental assessment, or impact study



of a drain project, including engineering or legal fees.

(2) The drainage district shall pay or provide reimbursement for the obligations under subsection (1), with or without interest as may be agreed, when funds are available. The obligation of the drainage district to make the repayment or reimbursement may be evidenced by a contract or note. The contract or note may pledge the full faith and credit of the drainage district and may be made payable out of any of the following:

- (a) Drain assessments made against public corporations at large, or against lands in the drainage district.
- (b) The proceeds of drain orders, notes, or bonds issued by the drainage district pursuant to this act.
- (c) Any other available funds.

(3) A contract or note described in subsection (2) is not subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821, unless the principal amount of the obligation is more than \$600,000.00. However, if the principal amount of the obligation is \$600,000.00 or less, then the contract or note is subject to the agency financing reporting act, 2002 PA 470, MCL 129.171 to 129.177. However, projects in which advances or loans are made by any public corporation, the federal government, or any agency of the federal government are not subject to either the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821, or the agency financing reporting act, 2002 PA 470, MCL 129.171 to 129.177.

(4) A county board of commissioners by a majority vote of 2/3 of its members may pledge the full faith and credit of the county for the payment of a contract or note of the drainage district.

**History:** Add. 1970, Act 112, Imd. Eff. July 23, 1970;—Am. 1974, Act 185, Imd. Eff. July 2, 1974;—Am. 1976, Act 71, Imd. Eff. Apr. 7, 1976;—Am. 1980, Act 297, Imd. Eff. Oct. 19, 1980;—Am. 2002, Act 406, Imd. Eff. June 3, 2002;—Am. 2020, Act 291, Eff. Mar. 24, 2021.

**Popular name:** Act 40

#### **280.435 Financing of flood control or drainage projects; contract or agreement with federal government; payments and purposes; determination of necessity; notes or bonds; issuance subject to revised municipal finance act.**

Sec. 435. (1) The drain commissioner or drainage board may contract or make agreements with the federal government, or any agency of the federal government, for the financing of a flood control or drainage project or combination of these including the conservation and utilization of soil and water for recreation and other beneficial purposes.

(2) A contract or agreement may include an advance payment of funds from the federal government or any agency of the federal government for financing a feasibility, practicability, environmental assessment, or impact study of a drain or flood control project, or any combination of these including the conservation and utilization of soil and water for recreation and other beneficial purposes. The contract or agreement may include the payment for easements, rights of way, land acquisition, engineering services, legal fees, and any fees or costs for environmental impact statements or assessments studies for the projects.

(3) After the necessity of a project is determined and the first order of determination is filed, the drain commissioner or drainage board may issue notes of indebtedness to the federal government, or any agency of the federal government, to evidence a preliminary advance and may pay those notes from drain assessments made against public corporations at large and against lands in the drainage district, out of the proceeds of drain orders or bonds issued by the drain commissioner or drainage board under this act or out of any other available funds. Bonds of the drainage district issued for the project may be substituted for notes including the interest on the notes. The bonds may be repaid by special assessments in any number of annual installments not exceeding 30.

(4) The drain commissioner or drainage board shall not be required to offer for public sale any notes issued under a contract with the federal government, or any agency of the federal government, for the financing of any project as set forth in this section.

(5) The notes issued in evidence of advance payments are not subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

(6) All notes or bonds issued under this section shall be considered to be obligations of the drainage district, and the drain commissioner or drainage board may pledge the full faith and credit of the drainage district for the repayment of the notes or bonds.

**History:** Add. 1976, Act 187, Imd. Eff. July 8, 1976;—Am. 2002, Act 406, Imd. Eff. June 3, 2002.

**Popular name:** Act 40