

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

CHAPTER 2.

COUNTY DRAIN COMMISSIONER.

280.21 County drain commissioner; election; term; temporary replacement; vacancy; bond; abolishment of office in certain counties; transfer of power and duties; effect of establishing department of public works or public improvement agency; election of public works commissioner; public hearing; abolishing office of public works commissioner; referring to office as drain commissioner; county governed by MCL 280.21a; change of name to office of water resources commissioner; criteria.

Sec. 21. (1) At the general election to be held in November, 1976, and each fourth year after November, 1976, a county drain commissioner shall be elected in each county having a drain commissioner by the qualified electors of the county. The term of office of a commissioner shall begin on the January 1 following the drain commissioner's election and continue for a period of 4 years and until his or her successor is elected and qualified, whichever occurs earlier. If a drain commissioner is unable to execute the duties of his or her office and a deputy commissioner has not been appointed under section 24, the county clerk and prosecuting attorney of that county may appoint a temporary replacement to hold the office until the commissioner is able to return to his or her duties or until the expiration of the commissioner's term of office. The temporary replacement shall perform the same duties, have the same responsibilities, and receive the same compensation as the drain commissioner. The appointment shall be made in writing and filed with the clerk of the county. If a vacancy in the office of drain commissioner arises while an individual is serving as temporary drain commissioner, the temporary drain commissioner shall have all the powers and duties of a drain commissioner until a drain commissioner is elected or appointed. As determined by the county board of commissioners, a temporary drain commissioner shall be covered by a blanket bond or shall file a bond with the county clerk in a sum not less than \$100,000.00, conditioned upon the faithful discharge of his or her duties.

(2) As determined by the county board of commissioners, the county drain commissioner shall be covered by a blanket bond or before entering upon the duties of office, shall execute and file with the county clerk a bond to the people of the state in the penal sum of \$100,000.00, issued by a surety company licensed to do business in this state, conditioned upon the faithful discharge of the duties of the office. The county board of commissioners may fix the individual bond to be required of the commissioner at a different amount if, in its judgment, that is desirable.

(3) The county board of commissioners of a county having a population of less than 12,000, by resolution of a 2/3 vote of the members elect, may abolish the office of county drain commissioner and transfer the powers and duties of the office to the board of county road commissioners.

(4) If a county establishes a department of public works pursuant to 1957 PA 185, MCL 123.731 to 123.786, or a public improvement agency with the drain commissioner designated as the county agent pursuant to the county public improvement act of 1939, 1939 PA 342, MCL 46.171 to 46.188, the county board of commissioners, by resolution of a 2/3 vote of the members elected and serving, may combine the powers, duties, and functions set forth in 1957 PA 185, MCL 123.731 to 123.786, the county public improvement act of 1939, 1939 PA 342, MCL 46.171 to 46.188, and this act into 1 county department headed by a public works commissioner. The public works commissioner shall be elected in the same manner and for the same term as a drain commissioner and shall carry out the powers and duties of a drain commissioner.

(5) A resolution provided for in subsection (4) may not be adopted unless the county board of commissioners has first held at least 1 generally publicized public hearing on the resolution.

(6) Not less than 3 years after a county establishes the office of public works commissioner pursuant to subsections (4) and (5), or a public improvement agency, the county board of commissioners, by resolution approved by a 2/3 vote of the members elected and serving, may abolish the office of public works commissioner not less than 6 months before the next primary election for that office. The office of public works commissioner shall be abolished in the county effective 180 days after a resolution is adopted pursuant to this subsection. The office shall then be referred to as the drain commissioner and the person in office at the time a resolution of abolishment is passed shall fulfill the remainder of the term of office until the next general election.

(7) A county that is organized under 1966 PA 293, MCL 45.501 to 45.521, whose charter prescribes an elected county executive, and which county has a population of more than 2,000,000 at the time the charter is adopted, shall be governed by section 21a in place of this section.

(8) Except for a county subject to subsection (7), if a drain commissioner performs functions other than acting as a drain commissioner under this act, including, but not limited to, operating sewers, lake level and soil erosion enforcement, and facilitating compliance with federal clean water act mandates, a county may, by resolution of the majority of the members elected and serving on the board of commissioners and with the consent of the drain commissioner, change the name of the office of the drain commissioner to the office of the water resources commissioner. The water resources commissioner shall be elected in the same manner as a drain commissioner and carry out the powers and duties of a drain commissioner as provided in this act.

History: 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1963, 2nd Ex. Sess., Act 13, Imd. Eff. Dec. 27, 1963;—Am. 1965, Act 9, Eff. Mar. 31, 1966;—Am. 1968, Act 252, Eff. Nov. 15, 1968;—Am. 1974, Act 170, Eff. Apr. 1, 1975;—Am. 1978, Act 633, Imd. Eff. Jan. 8, 1979;—Am. 1989, Act 134, Imd. Eff. June 29, 1989;—Am. 2007, Act 51, Imd. Eff. Aug. 28, 2007.

Popular name: Act 40

280.21a Powers and duties of drain commissioner performed by designated persons in certain counties.

Sec. 21a. In a county organized under a charter adopted under Act No. 293 of the Public Acts of 1966, being sections 45.501 to 45.521 of the Michigan Compiled Laws, whose charter prescribes an elected county executive, and which county has a population of more than 2,000,000 at the time the charter is adopted, the powers and duties of the drain commissioner, under this act, shall be performed by a person or persons designated in accordance with the county's charter.

History: Add. 1989, Act 134, Imd. Eff. June 29, 1989.

Popular name: Act 40

280.22 Drain commissioner; establishment of office.

Sec. 22. All commissioners holding such office when this act takes effect shall continue to be such commissioners until their respective successors are elected and qualified in accordance with the provisions of the foregoing section. The majority of the board of county commissioners may establish or reestablish the office of county drain commissioner in counties not having a county drain commissioner by resolution of a majority of members elect.

History: 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1970, Act 111, Eff. Apr. 1, 1971.

Popular name: Act 40

280.23 Drain commissioner; jurisdiction; drains in more than one county; outlet only in another county.

Sec. 23. The commissioner shall have jurisdiction over all drains within his county, including those heretofore established and now in process of construction. Drains extending into more than 1 county, or affecting lands in more than 1 county, shall be established and constructed in accordance with the provisions of this act regulating the establishment and construction of drains traversing more than 1 county or affecting lands in more than 1 county. Nothing in this act shall be construed as depriving a drain commissioner of jurisdiction or as making any drain an intercounty drain, merely because a drain extends into another county for the purpose of securing a proper outlet and not for the purpose of draining any lands in the other county: Provided, such extension is approved by the drain commissioners and the board of supervisors of each affected county. The portion of any such drain extending into another county shall not be considered in determining the number of signers required to a petition to locate, establish and construct.

History: 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1958, Act 64, Imd. Eff. Apr. 11, 1958.

Popular name: Act 40

280.24 Deputy commissioners; appointment; revocation; bond; powers and duties.

Sec. 24. A commissioner may appoint a deputy or deputies, if the county board of commissioners approves, and may revoke the appointment at pleasure. The appointment shall be made in writing and filed with the clerk of the county. If the commissioner is unable to execute the duties of office, the deputy or deputies shall execute or assist in the execution of the duties of the county drain commissioner assigned by the county drain commissioner. As determined by the county board of commissioners, the deputy or deputies, either shall be covered by a blanket bond or shall file a bond with and to be approved by the commissioner in a sum not to exceed \$5,000.00, conditioned upon the faithful discharge of the deputy's or deputies' duties. If the commissioner dies during his or her term, the deputy commissioner shall have all of the powers and be charged with all of the duties of a commissioner until a commissioner is appointed or elected.

History: 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1963, Act 209, Eff. Sept. 6, 1963;—Am. 1978, Act 633, Imd. Eff. Jan. 8, 1979.

Popular name: Act 40

280.25 Deputy drain commissioner; liability of commissioner and bondsmen; liability of drainage district; public liability or other insurance.

Sec. 25. The commissioner and his bondsmen shall be liable for all the acts and defaults of the deputy or deputies when appointed as herein provided. After entry of the order designating drainage districts as provided in section 54 and section 105 of this act, the drainage district as designated shall be responsible for and liable for all acts and defaults of such commissioner and his deputy or deputies, except for acts of malfeasance or misfeasance.

The board of supervisors may adopt resolutions providing that public liability or other insurance may be purchased at the expense of the county to cover such potential liabilities of the various drainage districts under the supervision of the county drain commissioner.

History: 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1962, Act 152, Imd. Eff. May 9, 1962.

Popular name: Act 40

280.26 Deputy drain commissioner; salary, expenses, reports to drain commissioner.

Sec. 26. Each deputy commissioner shall receive such salary or compensation as the board of supervisors shall allow and all traveling expenses actually and necessarily spent by him in the discharge of his duties as prescribed in this act; he shall make a report to the commissioner of all work performed by him on or before the first Saturday of each month and an annual report on or before the second Wednesday in September of each year.

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

Popular name: Act 40

280.27 Supplies; blank applications, office, location, hours.

Sec. 27. County clerks, or the board of auditors in counties having such boards, shall be authorized, and it shall be their duty to procure, at the expense of their respective counties, the necessary books, blanks and stationery for the use of said commissioners; and each commissioner shall furnish upon request blank applications or petitions to any person who may desire to file the same under this act. The office of the commissioner shall be furnished at the expense of the county by the board of supervisors, or by the board of auditors in counties having such boards, and shall be maintained at the county seat, in which said office said commissioner shall be and remain at least 1 day per week, such day to be painted on the door of the commissioner's office and printed or stamped on his stationery.

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

Popular name: Act 40

280.28 County drain commissioner; salary and expenses; itemized and verified expense account.

Sec. 28. (1) Each commissioner shall receive an annual salary to be paid as other county officers are paid, the amount of the salary to be fixed by the county board of commissioners before November 1 of each year in the same manner as the salaries of other county officers are fixed. The salary may be increased but shall not be decreased during his or her term of office, and in addition, each commissioner shall be allowed his or her actual necessary expenses, including traveling expenses incurred in the discharge of the duties of the office, including all actual and necessary expense for clerk hire and recording by the county board of commissioners or board of county auditors to be paid by the county. The expense account shall be an itemized account and verified by oath taken before a proper officer. The amounts paid to the commissioner for salary and expenses shall be in full for all services rendered by the commissioner and all expenses incurred in the performance of the duties of the office.

(2) Notwithstanding subsection (1), for a county which has a county officers compensation commission, the compensation for each county drain commissioner shall be determined by that commission. A change in compensation for a county drain commissioner of a county which has a county officers compensation commission shall commence at the beginning of the first odd numbered year after the determination is made by the county officers compensation commission and is not rejected.

History: 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1965, Act 9, Eff. Mar. 31, 1966;—Am. 1968, Act 78, Imd. Eff. Nov. 15, 1968;—Am. 1978, Act 478, Eff. Dec. 1, 1978.

Popular name: Act 40

280.29 Surveys; use of books, equipment, field notes, profiles, blueprints, specifications,

estimates, engineers.

Sec. 29. The county shall furnish the commissioner with all necessary books and papers for use in the survey, and such office equipment as shall be necessary in making profiles, blueprints and specifications in any drainage district. The surveyor or engineer shall file with the commissioner all field notes, blueprints, profiles, estimates and all other papers in his possession relating to said drain. The board of supervisors of any county may employ an engineer who shall perform under this act the services required to be performed by an engineer or surveyor.

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

Popular name: Act 40

280.30 Drainage district; financial statement, records, prerequisites to tax spread.

Sec. 30. It shall be the duty of each commissioner to make and keep a full financial statement of each drainage district. The commissioner shall also make and keep in his office in a book to be provided for that purpose a complete record of each drainage district, which record shall include a copy of the application for laying out and designating such district, of the petition for the drain, of the minutes of the survey, of the releases of the right of way where the same have been released, of the orders of determination of the necessity for and of the establishment of the drain, and of the apportionment and assessment of benefits therefor. Where special commissioners have been called, it shall also contain a copy of the application to the probate court, of the return of the special commissioners and of all other papers in his office necessary to show a complete history of each drainage district, all of which said original papers shall then be enrolled and filed in the office of the county drain commissioner. No drain tax shall be spread until all the records required have been deposited and filed in the office of the county drain commissioner.

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

Popular name: Act 40

280.31 List of drainage districts assessed for maintenance work; annual report and financial statement to county board of commissioners; reports and information required by director of department; liability on bond.

Sec. 31. (1) A drain commissioner shall prepare a list of drainage districts that are assessed for maintenance work under section 196. The list shall include the name of the drain and the amount being assessed annually to the drainage district. A drainage district shall be included on a list for the duration of the assessment associated with the maintenance work. The commissioner shall update the list annually after the commissioner has filed all special assessment rolls under section 262(1) but not later than November 1. The commissioner shall make the list available upon request. If the commissioner maintains an official internet presence, the commissioner shall post and maintain the list on a portion of the website that is fully accessible to the public. If the drain commissioner does not maintain an official internet presence, the list shall be posted and maintained on the county website.

(2) At the annual October meeting of the county board of commissioners, a drain commissioner shall make a report to the county board of the drainage districts laid out and the drains constructed, finished, or begun under the drain commissioner's supervision during the year ending September 30 and shall submit to the board a full financial statement of each drainage district. If authorized by resolution of the county board of commissioners, the report shall be made before April 2 of each year and shall cover the preceding calendar year. A drain commissioner shall also make reports and furnish information as required by the director of the department of agriculture and rural development.

(3) A report under subsection (2) shall include an itemized statement of the orders issued on account of each drainage district and a debit and credit balance of the district fund. The commissioner is liable on the blanket bond or his or her individual bond for gross neglect of duty or a misapplication of money under his or her control as commissioner.

History: 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1978, Act 104, Imd. Eff. Apr. 6, 1978;—Am. 1978, Act 633, Imd. Eff. Jan. 8, 1979;—Am. 2020, Act 291, Eff. Mar. 24, 2021.

Popular name: Act 40

280.32 Drain commissioner; social security; agreement for coverage; appropriation.

Sec. 32. The board of supervisors of each county having a drain commissioner may adopt a resolution authorizing the county to enter into an agreement with the secretary of health, education and welfare pursuant to the provisions of Act No. 205 of the Public Acts of 1951, as amended, being sections 38.851 to 38.870 of the Compiled Laws of 1948, to allow the drain commissioner and all the employees of the drain commissioner's office to obtain the benefits provided by the federal social security act. The funds necessary

for this coverage shall be appropriated from the county general fund or from the revolving drain fund.

History: Add. 1966, Act 109, Imd. Eff. June 22, 1966.

Popular name: Act 40

280.33 Salary of commissioner, deputy commissioners, clerks, and employees; payment from general fund; drain maintenance employees; hiring, status, and compensation; reimbursement of county general fund by drain districts; waiver.

Sec. 33. (1) The salary of the commissioner, deputy commissioners, and clerks and employees of the drain commissioner's office shall, except as otherwise provided in this act, be paid from the general fund of the county in the same manner and at the same time as other county employees are paid.

(2) The drain commissioner may, with the approval of the county board of commissioners, hire drain maintenance employees. Such drain maintenance employees shall be considered county employees and shall be compensated from the general fund of a county in the same manner and at the same time as other county employees.

(3) The general fund of a county shall be reimbursed by the drain districts in which work is performed by drain maintenance employees hired by the commissioner pursuant to subsection (2) for compensation, including the cost of fringe benefits, paid to the drain maintenance employees by the county from its general fund. The county board of commissioners may waive the reimbursement for emergency work not exceeding \$800.00 performed on any 1 drain during the course of 1 year.

History: Add. 1976, Act 337, Imd. Eff. Dec. 15, 1976;—Am. 1980, Act 121, Imd. Eff. May 21, 1980;—Am. 1982, Act 356, Imd. Eff. Dec. 21, 1982.

Popular name: Act 40