

THE DRAIN CODE OF 1956 (EXCERPT)

Act 40 of 1956

CHAPTER 20.

INTRACOUNTY DRAINS; PUBLIC CORPORATIONS.

280.461 Definitions.

Sec. 461. Whenever used in this chapter, except when otherwise indicated by the context:

(a) "State" means this state.

(b) "Public corporation" includes this state, counties, cities, villages, townships, metropolitan districts and authorities created by or pursuant to state statutes.

(c) "Agencies" includes those officers, boards, commissions and other bodies created by public corporations or by the federal government, which are authorized to act in their own names.

(d) "County drain" means any drain, irrespective of size, carrying drainage water or sewage or both originating in 1 county, and includes drains located, established and constructed by a county drain commissioner or drainage board, by a city, village or township. The finding of the drainage board that all drain water and sewage does originate in 1 county shall be final. In making such determination, the drainage board may disregard any drainage from another county which it deems to be inconsequential.

History: 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1971, Act 60, Imd. Eff. July 20, 1971.

Popular name: Act 40

280.462 County drains; public health, assessment against public corporations.

Sec. 462. County drains which are necessary for the public health may be located, established and constructed under the provisions of this chapter where the cost thereof is to be assessed wholly against public corporations.

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

Popular name: Act 40

280.463 Petition to locate, establish, and construct county drain; determination; filing and contents of petition; notice; certified copy of resolution; authorizing execution; order of determination.

Sec. 463. (1) Before filing a petition under this section, the legislative body of a public corporation shall first determine whether the drain project contemplated may necessitate the levy of a special assessment, fee, or charge under section 490. If the legislative body determines that a special assessment, fee, or charge may be made under section 490, before filing a petition under this section, the legislative body shall proceed as provided in section 489a.

(2) If it is necessary for the public health to locate, establish, and construct a county drain, a petition for that purpose may be filed with the county drain commissioner signed by 2 or more public corporations which will be subject to assessments to pay the cost of the drain. The petition shall state that it is filed pursuant to this chapter and shall describe the location and route of the proposed drain sufficiently to determine with reasonable certainty the areas to be serviced by the drain.

(3) Not more than 20 days after the petition is filed, the county drain commissioner shall notify each public corporation which may be subject to an assessment or in which is located any of the areas to be drained, as described in the petition, that a petition was filed.

(4) A certified copy of the resolution of the governing body of each signer authorizing the affixing of the signature of the governing body to the petition shall be attached to the petition. The petition may be filed in more than 1 counterpart. For a petition filed by a county, the county board of commissioners shall authorize the execution of the petition, and for a petition filed by the state, the state transportation commission shall authorize the execution of the petition. As provided in section 423, an order of determination of the water resources commission shall also serve as a petition made pursuant to this chapter.

History: 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1968, Act 333, Imd. Eff. July 14, 1968;—Am. 1973, Act 208, Imd. Eff. Jan. 11, 1974;—Am. 1979, Act 135, Eff. Mar. 27, 1980.

Popular name: Act 40

280.464 Drainage board; creation; members; disqualification; compensation, mileage, and expenses; county drain commissioner as chairperson; minutes, records, and files; requirements for substantive actions and determinations.

Sec. 464. (1) A drainage board is created for each project petitioned for under this chapter. Except as

otherwise provided in subsection (2), the drainage board shall consist of the drain commissioner of the county, the chairperson of the county board of commissioners, and the chairperson of the board of county auditors. If there is no board of county auditors in the county, then the chairperson of the finance committee of the county board of commissioners shall be a member of the drainage board. If there is neither a board of county auditors nor finance committee, then the chairperson of the county board of commissioners shall select from time to time 1 member of the county board of commissioners to be a member of the drainage board. If a member of the drainage board who is a member of the county board of commissioners, as provided in this section or section 487, is interested in a project petitioned for under this chapter, by reason of his or her holding an elected or appointed office in a public corporation to be assessed for the cost of the project, he or she is disqualified to act as a member of the drainage board with respect to the project. In that case the vice-chairperson or chairperson pro tempore of the county board of commissioners or of the finance committee of the county board of commissioners, if not also disqualified, shall act as the member. If the vice-chairperson or chairperson pro tempore is disqualified, the drain commissioner of the county shall designate a member of the county board of commissioners who is not disqualified to act as a member of the drainage board for the project. The chairperson of the county board of commissioners and any member of a county board of commissioners serving on the drainage board shall receive the compensation, mileage, and expenses as provided by the drainage board. However, compensation paid to a member shall not exceed \$25.00 per diem, exclusive of mileage and expenses, for attendance at drainage board meetings. The county drain commissioner shall be chairperson of the drainage board. The chairperson shall keep minutes of the proceedings of the drainage board and all records and files of the board shall be kept in his or her office. In counties of less than 500,000 population, the commissioner shall be paid the same compensation as other members of the drainage board.

(2) If a county is organized under a charter adopted under 1966 PA 293, MCL 45.501 to 45.521, and the charter prescribes an elected county executive, the drainage board shall consist of the following members:

(a) The person designated by the charter to carry out the administrative duties of the drain commissioner or that person's designee, who shall also serve as chairperson of the drainage board.

(b) The county commissioner whose district will be assessed for the greatest portion of the cost of the project, or that county commissioner's designee. The determination of which county commissioner is qualified to sit under this subdivision shall initially be made by the chairperson of the drainage board when the petition for the project is filed. After the final order of apportionment is issued under section 469, the county commissioner who qualifies under this section shall become the county commissioner member and serve until another apportionment is established requiring the seating of another commissioner.

(c) A person appointed by the county executive with the advice and consent of a majority of the members of the county board of commissioners elected or appointed and serving.

(3) In a county described in subsection (2), the requirements in this chapter for substantive actions and determinations shall be followed in administering each project petitioned for under this chapter, subject to and in accordance with any applicable provisions of the county charter.

History: 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1965, Act 194, Imd. Eff. July 15, 1965;—Am. 1969, Act 285, Eff. Mar. 20, 1970;—Am. 1989, Act 134, Imd. Eff. June 29, 1989;—Am. 2016, Act 521, Eff. Apr. 9, 2017.

Popular name: Act 40

280.465 Meeting of drainage board; notice; affidavit of mailing; quorum; adjournment; action by board; signing of orders.

Sec. 465. A meeting of the drainage board may be called by the chairperson or 2 members of the board, on notice sent by registered mail to each member, setting forth the time, date, and place of the meeting. The notice shall be mailed not less than 5 days before the time of the meeting. The affidavit of the chairman as to such mailing shall be conclusive proof thereof. A majority of the members of the board shall constitute a quorum for the transaction of business, but a lesser number may adjourn from time to time. A meeting may be adjourned from time to time. Unless otherwise provided in this act, an action shall not be taken by the board except by a majority vote of its members. In the event of the adjournment of a hearing, it shall not be necessary to advertise the adjournment of the hearing. All orders issued by the drainage board shall be signed by the chairperson.

History: 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1978, Act 235, Imd. Eff. June 15, 1978.

Popular name: Act 40

280.466 Drainage board; first meeting, notice.

Sec. 466. Upon receipt of a petition as hereinbefore provided, the county drain commissioner shall call the first meeting of the drainage board. In the event there be no board of county auditors or finance committee in

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the county, then notice to the chairman of the board of supervisors of such county shall be deemed to be notice to the member of the board of supervisors to be selected by him.

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

Popular name: Act 40

280.467 Drainage board; tentative determinations; naming drain and drainage district; composition of district; objections; notice of hearing; final order of determination; eliminating or adding public corporation.

Sec. 467. The drainage board, at its first meeting, shall consider the petition for the project and make a tentative determination as to the sufficiency of the petition and the practicability of the proposed drain, and shall further make a tentative determination of the public corporations to be assessed. The drainage board shall give a name to the drain and to the drainage district. The district shall be composed of the public corporations to be assessed for the cost of the project. After the drainage board has made the determination it shall fix a time, date, and place it will meet to hear objections to the proposed drain and the petition for the drain, and to the matter of assessing the cost of the drain to the designated public corporations. Notice of the hearing shall be published twice in the county by inserting the notice in at least 1 newspaper published in the county, designated by the drainage board, with the first publication to be not less than 20 days before the time of the hearing. The notice shall also be sent by registered mail to the clerk or secretary of each public corporation proposed to be assessed, except that a notice to the state shall be sent to the state highway director and a notice to a county shall be sent to both the county clerk and the county road commission. The mailing shall be made not less than 20 days before the time of the hearing. The notice shall be signed by the chairperson and proof of the publication and mailing of the notice shall be filed in his or her office. The drainage board may provide a form to be substantially followed in the giving of the notice. After the hearing, the drainage board shall make a determination as to the sufficiency of the petition, the practicability of the drain, whether the drain should be constructed, and if so, the public corporations to be assessed, and shall issue its order accordingly. The order shall be known as the final order of determination. A public corporation shall not be eliminated from, or added to, those tentatively determined to be assessed without a rehearing after notice.

History: 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1978, Act 235, Imd. Eff. June 15, 1978.

Popular name: Act 40

280.468 Plans, specifications, and estimate of cost; approval, adoption, and filing; route of drain; apportionment of costs; designation of area to be served; assumption of additional cost; altering and supplementing proceedings.

Sec. 468. The drainage board shall secure from a competent engineer, plans, specifications, a route and course, and an estimate of cost of the proposed drain, which when approved and adopted by the board shall be filed with the chairperson of the board. In approving the plans and specifications, the drainage board is not limited to the route of the drain described in the petition or the final order of determination. Changes in the approved route and course of the drain must be approved by resolution of the drainage board. The drainage board shall tentatively establish the percentage of the cost of the drain or of the several sections or parts of the drain to be paid by each public corporation. In making the apportionments, the drainage board shall consider the benefits to accrue to each public corporation and the extent to which each public corporation contributes to the conditions that make the drain necessary. Apportionments against this state shall be based upon benefits and contributions as related solely to the drainage of state highways. Apportionments against the county shall be based upon benefits and contributions as related solely to the drainage of its county roads. Before a tentative apportionment is made, the drainage board shall designate the area to be served by the drain project, which may include all of the area in a public corporation to be assessed, and may divide the drain into sections or parts for purposes of apportionment or construction. Notwithstanding any other provision of this act, the county may assume any additional cost of the drain if 2/3 of the members elect of the county board of commissioners vote in favor thereof. The apportionment under this section applies only to the proposed drain. The apportionments for any extensions or other work subsequently performed under section 482 shall be reestablished by the board. If chapter 25 is employed in the apportionment of costs, the proceedings under this section shall be altered and supplemented as provided in chapter 25.

History: 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1957, Act 37, Imd. Eff. May 14, 1957;—Am. 1961, Act 45, Imd. Eff. May 20, 1961;—Am. 1963, Act 215, Imd. Eff. May 17, 1963;—Am. 1976, Act 5, Imd. Eff. Feb. 10, 1976;—Am. 2018, Act 644, Eff. Mar. 28, 2019.

Popular name: Act 40

280.469 Objections to apportionments; notice of hearing; confirmation or readjustment of apportionments; notice of rehearing; final order of apportionment.

Sec. 469. After the tentative apportionments of cost have been made, the drainage board shall set a time, date, and place it will meet and hear objections to the apportionments. Notice of the hearing shall be published twice in the county by inserting the notice in at least 1 newspaper published in the county, designated by the drainage board, the first publication to be not less than 20 days before the time of the hearing. The notice shall also be sent by registered mail to the clerk or secretary of each public corporation proposed to be assessed, except that a notice to the state shall be sent to the state highway director and a notice to the county shall be sent both to the county clerk and the county road commission. The mailing shall be made not less than 20 days before the time of hearing. The notice shall be signed by the chairperson and proof of the publication and mailing of the notice shall be filed in his or her office. The drainage board may provide a form to be substantially followed in the giving of the notice. The notice shall include tentative apportionments to the several public corporations. After the hearing, the drainage board may confirm the apportionments as tentatively made, or if it considers the apportionments to be inequitable, it shall readjust the apportionments. If the readjustment involves the increasing of an assessment and an increase shall not be consented to by resolution of the governing body of the public corporation whose assessment was increased, before any readjusted apportionments are confirmed the drainage board shall set a time, date, and place for a rehearing and shall give notice of the hearing as in the first instance. The notice shall also set forth the apportionments as readjusted. After confirmation, the drainage board shall issue its order setting forth the several apportionments as confirmed. The order shall be known as the final order of apportionment.

History: 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1978, Act 235, Imd. Eff. June 15, 1978.

Popular name: Act 40

280.470 Drainage board; lands and rights of way, condemnation; procedure, federal government participation; costs.

Sec. 470. The drainage board shall then proceed to secure the necessary lands or rights of way for the proposed drain. If the same cannot be secured by negotiation, then the drainage board may proceed under the provisions of Act No. 149 of the Public Acts of 1911, as amended, being sections 213.21 to 213.41 of the Compiled Laws of 1948, or under the applicable provisions of sections 75 to 84 of this act, and shall be deemed to be a "state agency" as that term is used in said act, or if the project is one in which the federal government is participating in any manner, then such lands or rights of way may be acquired through proceedings brought by the federal government under any appropriate federal act. In the event lands or rights of way shall be acquired through proceedings under a federal act, then the amount of the awards in such proceeding shall be deemed to be a part of the cost of the drain to the same extent as if the condemnation proceedings had been taken under the laws of this state.

History: 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1961, Act 154, Imd. Eff. June 1, 1961.

Popular name: Act 40

280.471 Drainage board; contracts with federal government or corporations; bids.

Sec. 471. The drainage board may contract with the federal government, which term as used in this section shall include 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 may include any specific terms required by act of congress or federal regulation as a condition for such participation on the part of the federal government. The drainage board may also contract with any private corporation or with any public corporation, which term as used in this section shall include any agency thereof, in respect to any matter connected with the construction, operation, maintenance, use or services of any drain. Such a contract may provide for service or transportation charges and that any payments made or work done by such corporation shall relieve it in whole or in part from assessment for the cost of the drain or of its maintenance and operation. No construction work shall be undertaken until the drainage board has advertised for and received bids for the performance of such work, except for construction work to be performed by the federal government or a public corporation.

History: 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1963, Act 215, Imd. Eff. May 17, 1963.

Popular name: Act 40

280.472 Funds; county treasurer, deputies; bonds; expenditures.

Sec. 472. The county treasurer shall be the custodian of the funds of the drainage district. He may designate 1 or more of his deputies who may act for him in the performance of any of his duties under this

section. The drainage board may require the county treasurer and any deputy county treasurer so designated to furnish a bond payable to the drainage district, in addition to any bond payable to the county, conditioned upon the faithful discharge of his duties in respect to moneys belonging to the drainage district, the premium thereon to be paid by the drainage district. Moneys held by said treasurer shall be paid out only upon order of the drainage board, except that no such order shall be required for the payment of principal and interest on bonds.

History: 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1961, Act 46, Imd. Eff. May 20, 1961.

Popular name: Act 40

280.473 Special assessment roll; preparation; estimated or actual costs; annual installments; interest; advance payment; altering and supplementing proceedings.

Sec. 473. After the confirmation of the apportionments by the drainage board, the chairman of the board shall prepare a special assessment roll assessing the estimated cost of the drain, or if the actual cost has been ascertained, then the actual cost, against the several public corporations in accordance with the confirmed apportionments. The drainage board may provide for the payment of the special assessments in any number of annual installments, not exceeding 30, but an installment shall not be less than 1/4 of any subsequent installment. The drainage board shall fix the commencement date of interest to be paid upon unpaid installments, not to exceed an amount sufficient to pay interest on bonds or other evidences of indebtedness issued or to be issued by the drainage district, which interest shall become due annually on the day and month upon which the annual installments become due but may become due in years before the due date of the first installment. The drainage board may provide for the payment of installments in advance of their respective due dates and may prescribe the terms and conditions thereof. The drainage board shall fix the date, not later than 4 years after confirmation on which the first installment of special assessments shall become due and payable so that each public corporation can make a tax levy for the payment, and subsequent installments shall become due annually on the same day and month of subsequent years. When chapter 25 is employed in the apportionment of costs, the above proceedings shall be altered and supplemented as provided in chapter 25.

History: 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1957, Act 37, Imd. Eff. May 14, 1957;—Am. 1963, Act 215, Imd. Eff. May 17, 1963;—Am. 1973, Act 208, Imd. Eff. Jan. 11, 1974;—Am. 1976, Act 5, Imd. Eff. Feb. 10, 1976.

Popular name: Act 40

280.474 Special assessment roll; contents; approval; statement; certification to assessed public corporation; installments and interest; advances from county funds; notice; deduction; reimbursement; assessments against state; sufficiency of taxes; spreading levy on county tax roll; corrected or supplemental roll; altering and supplementing proceedings.

Sec. 474. The special assessment roll shall contain the name of each public corporation assessed, the total estimated cost of the project, or actual cost if the same has been ascertained at the time of the preparation of the roll, the percentage apportioned to each public corporation, the amount of the assessment against each public corporation based upon the percentage of apportionment, and the amount of each installment if the assessment is divided into annual installments. After the special assessment roll has been prepared, it shall be presented to the drainage board for approval. When the roll has been approved, then a statement to that effect, signed by the chairman of the drainage board, shall be affixed to the roll setting forth the date of approval. The chairman of the drainage board shall then certify to each public corporation assessed the amount of the total assessment against it, the amount of the various installments if the assessment is divided into installments, the due date of each installment, and the rate of interest upon installments from time to time unpaid. The chairman each year, at least 30 days before the time of the levying of taxes by each public corporation, shall notify it of the amount of the installment and interest next becoming due, but the failure to notify a public corporation shall not excuse it from making payment of the installment and interest. On or before the due date of an installment, each public corporation shall pay to the county treasurer the full amount thereof, together with interest accruing to the due date. If a public corporation fails or neglects to account to the county treasurer for the amount of an installment and interest, then the county treasurer shall advance the amount thereof from county funds if bonds or other evidences of indebtedness have been issued to finance the project, in anticipation of the collection of the installment and interest pursuant to this chapter and the county board of commissioners has previously acted, by a resolution adopted by a 2/3 vote of its members elect, to pledge the full faith and credit of the county for the prompt payment of the principal of and interest on the bonds or evidences of indebtedness.

The county treasurer shall immediately notify the public corporation of the amount advanced by the county on account of the default by the public corporation in paying the installment and interest assessed against it. The county treasurer shall also notify the state treasurer, or other appropriate disbursing official, who shall deduct the amount from moneys in his possession belonging to the public corporation which are not pledged to the payment of debts, but the state treasurer or other official shall not withhold in any 1 year a sum greater than 25% of the total amount owed by the delinquent public corporation as stated in the notice from the county treasurer. Nothing in this section shall permit the deduction of moneys in contravention of the state constitution of 1963.

The county board of commissioners of a county which has advanced money for a public corporation and which has not been reimbursed therefor, may order the public corporation and its officers to levy upon its next tax roll an amount sufficient to make the reimbursement on or before the date when its taxes become delinquent; and the public corporation and its tax levying and collecting officials shall levy and collect those taxes and reimburse the county. The foregoing shall not prevent the county from obtaining reimbursement by any other legal method. Assessments against the state shall be certified to the state highway commission and paid from state highway funds. The tax levying officials of each of the other public corporations assessed shall levy sufficient taxes to pay assessment installments and interest as the same become due unless there has been set aside moneys sufficient therefor. A city or village may elect to spread the tax levy upon the county tax roll instead of the city or village tax roll. If a special assessment roll is prepared upon the basis of the estimated cost of the project, then after the actual cost has been ascertained and determined by the drainage board, the special assessments and the installments thereof shall be corrected by adding any deficiency or deducting any excess. The drainage board may order the corrections to be made upon the original roll or may order that a new corrected roll or a supplemental roll be prepared and submitted for approval by the drainage board. When chapter 25 is employed in the apportionment of costs, the above proceedings shall be altered and supplemented as provided in chapter 25.

History: 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1961, Act 212, Imd. Eff. June 6, 1961;—Am. 1963, Act 215, Imd. Eff. May 17, 1963;—Am. 1973, Act 208, Imd. Eff. Jan. 11, 1974;—Am. 1976, Act 5, Imd. Eff. Feb. 10, 1976.

Popular name: Act 40

280.475 Statutory or charter tax limitations inapplicable; rate or amount of taxes.

Sec. 475. Taxes levied by a public corporation for the payment of assessments hereunder shall not be deemed to be within any statutory or charter tax limitation. A public corporation may impose taxes without limitation as to rate or amount for the payment of the assessments in anticipation of which bonds are issued, which taxes shall be in addition to any taxes that the public corporation may otherwise be authorized to levy but not more than the rate or amount sufficient therefor.

History: 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1959, Act 77, Imd. Eff. June 29, 1959;—Am. 1973, Act 208, Imd. Eff. Jan. 11, 1974.

Popular name: Act 40

280.476 Bonds; issuance; maturity; mandatory redemption; signatures; collection of assessments.

Sec. 476. The drainage board may issue 1 or more series of bonds for and on behalf of the drainage district, in anticipation of the collection of any or all installments of assessments or any part thereof, and pledge the full faith and credit of the drainage district for the prompt payment of the principal of and interest on the bonds. The bonds shall mature or be subject to mandatory redemption with the last maturity not later than 2 1/2 years after the due date of the last installment of the assessments and there may be more than 1 principal maturity or mandatory redemption date during any 12-month period. The bonds shall be signed by the chairman and at least 1 other member of the drainage board and the facsimile signature of the chairman shall be affixed to the interest coupons attached thereto. Collections of both principal and interest on all installments of assessments in anticipation of which bonds shall have been issued shall be kept in a separate bank account by the county treasurer and used for no other purpose than the payment of principal and interest on the bonds until the full payment of the principal and interest on the bonds.

History: 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1963, Act 215, Imd. Eff. May 17, 1963;—Am. 2016, Act 27, Imd. Eff. Mar. 1, 2016.

Popular name: Act 40

280.477 Additional assessment; apportionment.

Sec. 477. If, for any reason, the original assessments shall not be sufficient to pay the principal and interest on bonds issued in anticipation of the collection thereof, then the drainage board shall make such additional

assessments therefor as may be necessary, apportioned as in the first instance, it being the intention hereof that the collections on assessments shall, under all circumstances, be sufficient to pay said principal and interest.

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

Popular name: Act 40

280.478 Drainage board; continuation; responsibility; expenses; relinquishment; moneys, disposition, consent.

Sec. 478. (1) The drainage board for each project shall continue in existence with changes in personnel that result from changes in the officers constituting the board membership. The drainage board is responsible for the operation and maintenance of the drain.

(2) Any necessary expenses incurred in administration and in the operation and maintenance of the drain and not covered by contract shall be paid by the several public corporations assessed for the cost of the drain. The assessments shall be in the same proportion as the cost of the drain was assessed unless the drainage board establishes a different proportion for the assessments after notice and hearing as provided in section 469.

(3) The drainage board, by resolution, may relinquish jurisdiction and control over all or part of a drain if there is no outstanding indebtedness or contract liability of its drainage district. Jurisdiction and control may be relinquished to the county or a township, city, village, or authority in which all or the part of the drain and the area the drain or part of the drain services is wholly located or to the board of county road commissioners or the state transportation department if all or part of the drain and the area the drain or part of the drain services is within the public right-of-way. The county, township, city, village, authority, board of county road commissioners, or director of the state transportation department, as applicable, must request or consent to the relinquishment of jurisdiction and control by resolution of its governing body. Indebtedness or contract liability of any drainage district that will be paid in full when jurisdiction and control is relinquished is not considered to be outstanding. If relinquishment of jurisdiction and control is to a county, the resolution of the governing body of the county shall specify the county agency, such as board of public works, road department, or parks and recreation commission, that shall be thereafter responsible for exercise of jurisdiction and control.

(4) If jurisdiction and control is relinquished over all of a drain, any money in the drain fund of the drain shall be used to pay any indebtedness or contract liability of its drainage district, and the balance shall be turned over to the county, township, city, or village, board of county road commissioners, or authority or to the state transportation department to be used solely with respect to the drain over which jurisdiction and control is assumed.

(5) If the relinquishment of jurisdiction and control relates to a part of a drain or drain project, the relinquishment and turnover does not become effective until consented to by resolution of the governing body of each public corporation that has paid a part of the cost of the drain or drain project.

History: 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1963, Act 215, Imd. Eff. May 17, 1963;—Am. 1969, Act 90, Imd. Eff. July 24, 1969;—Am. 2018, Act 645, Eff. Mar. 28, 2019.

Popular name: Act 40

280.479 Advancements by corporations; reimbursement.

Sec. 479. Any public or private corporation, firm, or individual may advance money for the payment of any part of the cost of a project under this act, in which event it shall be reimbursed by the drainage district, with or without interest as may be agreed, when funds are available. The obligation of the drainage district to make the reimbursement may be evidenced by a contract or note, which contract or note may pledge the full faith and credit of the drainage district and may be made payable out of the assessments made against public corporations or out of the proceeds of drain orders or bonds issued by the drainage district pursuant to this act or out of any other available funds, but the contract or note is not subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

History: 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1963, Act 215, Imd. Eff. May 17, 1963;—Am. 2002, Act 406, Imd. Eff. June 3, 2002.

Popular name: Act 40

280.480 Costs; items.

Sec. 480. The cost of any drain project shall include (1) the cost of constructing or acquiring the facilities, structures, devices and equipment required to locate, establish and construct the drain or to improve or supplement the same, including bridges and culverts and any lands or rights of way necessary thereto; (2) the

administrative and other expenses of the drainage board including the cost of service and publication of all notices; (3) all engineering, legal and other professional fees; (4) interest on bonds for the first year, if bonds are to be issued, and interest on moneys advanced pursuant to section 479; and (5) an amount not exceeding 10% of the gross sum to cover contingent expenses.

History: 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1963, Act 215, Imd. Eff. May 17, 1963.

Popular name: Act 40

280.481 Assessments against townships and villages.

Sec. 481. Unless otherwise provided by the drainage board, assessments against a township shall be against the township as a whole, including any incorporated village, but the drainage board may determine to assess separately or exclude a village, in which case the assessment against the township shall be exclusive of the village and the tax levies to be made by the township to pay the assessment shall not include property taxable in the village.

History: 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1976, Act 5, Imd. Eff. Feb. 10, 1976.

Popular name: Act 40

280.482 Improvements or additions to drains for public health.

Sec. 482. Any 1 or more county drains or any portion thereof, now or hereafter existing, may be cleaned out, relocated, widened, deepened, straightened, extended, tiled, interconnected or otherwise improved, or branches added or connected thereto, when necessary for the public health, in the same manner as a county drain may be located, established and constructed under this chapter, with such variations in the proceedings as may be necessary to make the same applicable, and also the cost thereof may be financed in like manner. A project to improve county drains may include backfilling and leveling any portion thereof no longer needed after the improvements.

History: 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1961, Act 46, Imd. Eff. May 20, 1961;—Am. 1963, Act 215, Imd. Eff. May 17, 1963;—Am. 1971, Act 60, Imd. Eff. July 20, 1971.

Popular name: Act 40

280.483 Certiorari; time; legal establishment of drain.

Sec. 483. Neither the final order of determination nor the final order of apportionment shall be subject to attack in any court, except by proceedings in certiorari brought within 20 days after the filing of such order in the office of the chairman of the board issuing the same. If no such proceeding shall be brought within the time above prescribed, the drain shall be deemed to have been legally established and the legality of the drain and the assessments therefor shall not thereafter be questioned in any suit at law or in equity, either on jurisdictional or nonjurisdictional grounds.

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

Popular name: Act 40

280.484 Procedures; incorporation of other chapters in drainage board orders.

Sec. 484. In operating under the terms of this chapter, the several boards and officials shall not be limited by the provisions contained in other chapters of this act and the procedures required under the terms of such other chapter shall not be deemed to be applicable: Provided, That when not contrary to the express provisions of this chapter, any provision or provisions in other chapters of this act may be incorporated by recital or by references into any order or resolution of the drainage board, and when so incorporated shall be deemed applicable to the project under this chapter.

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

Popular name: Act 40

280.485 Relief drains.

Sec. 485. When 2 or more public corporations, constituting as a whole contiguous territory, are served by 1 or more county drains, and it shall become necessary for the public health to supplement such existing drain or drains by constructing 1 or more relief drains, which may consist of new drains and branches and connections thereto or extensions, enlargements, branches, connections or improvements described in section 482 to existing drains, or any combination thereof, then the entire project may be constructed and financed as a whole under the provisions of this chapter and the word "drain" shall be deemed to include such a project.

History: 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1963, Act 215, Imd. Eff. May 17, 1963.

Popular name: Act 40

280.486 Drains to which chapter applicable; sufficiency of petition.

Sec. 486. This chapter shall be applicable (1) to any county drain located, or proposed to be located, entirely within the limits of a single city, village or township; (2) to any county drain located in more than 1 city, village or township but which serves or will serve only an area located entirely within the limits of a single city, village or township so that no other city, village or township will be subject to assessment to pay the cost thereof; or (3) to several drains, including drains located, established and constructed by a county drain commissioner or drainage board, by a city, village or township, whether or not the several drains are interconnected, which several drains serve only areas located entirely within the limits of a single city, village or township, if the city, village or township shall consent thereto by resolution adopted by its governing body. In such case any petition required to be filed hereunder shall be sufficient if signed by such city, village or township only.

History: 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1967, Act 214, Imd. Eff. July 10, 1967;—Am. 1971, Act 60, Imd. Eff. July 20, 1971.

Popular name: Act 40

280.487 Drainage board; absence of members, deputies, vice-chairman.

Sec. 487. Any drain commissioner may act under this chapter or under chapter 21, being sections 511 to 537, inclusive, of this act, by his deputy, under any and all circumstances. The vice-chairman or chairman pro tem of a county board of supervisors, or the vice-chairman of a board of county auditors or of a finance committee of a county board of supervisors, may act in lieu of the chairman of such board or committee, in event of the absence of such chairman from a meeting of the drainage board.

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

Popular name: Act 40

280.488 Additional grant of power; prior projects.

Sec. 488. The provisions of this chapter shall be construed as an additional grant of power to that prescribed by other statutory provisions.

Projects completed prior to November 21, 1951, shall not be financed under this chapter.

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

Popular name: Act 40

280.489 New cities; service of notice on township clerks or de facto city officer.

Sec. 489. Whenever a new city has been or shall be incorporated but such incorporation shall not have been completed by the adoption of a city charter, then any notice required by this chapter to be served upon the city clerk shall be served upon the clerk or clerks of the township or townships from which the city was incorporated: Provided, That if a city charter shall have been submitted, but rejected by the electors, then such notice shall also be served upon the de facto officer of the city, if there be such an officer. Service of any notice made prior to the effective date of this amendment, which was made in the manner provided in this section, is hereby declared to be a valid compliance with the terms of this act in respect to service upon the city clerk.

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

Popular name: Act 40

280.489a 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. 489a. (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 490, the legislative body before filing a petition under section 463, shall do all of the following:

(a) Send to the county drain commissioner by registered mail a notice of intent to file a petition under section 463. The notice shall include a request that the drain commissioner delineate a proposed drainage district.

(b) Prepare or cause to be prepared a proposed plan for financing the project.

(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, being sections 15.261 to 15.275 of the Michigan Compiled Laws, 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 463, 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 490 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 490. 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

280.490 Land especially benefited by drain project; special assessment; resolution; preparation of special assessment roll; conduct of proceedings; objections; hearing in lieu of meeting; use of special assessment collections; reduction of annual levy; charges.

Sec. 490. (1) Subject to the requirements of section 489a, if the legislative body of a public corporation, which has been assessed under this chapter, determines that a part of the lands in the public corporation will be especially benefited by the drain project to the extent of a portion of the amount assessed under this chapter, the legislative body may cause that portion of the assessment under this chapter to be specially assessed, according to benefits, against the especially benefited lands, if the special assessment method of financing is not inconsistent with local financing policy for similar drains and sewers. The special assessment shall be made under the statutory or charter provisions governing special assessments in the public corporation to the extent applicable. However, if there is not another drain assessment in the district on this particular drain, the special assessment proceedings may be initiated by resolution of the legislative body of the public corporation without petition, after compliance with section 489a, and a petition or written objection in opposition to the levying of special assessments shall be advisory only and shall not require a petition for

the project, except as otherwise provided in section 489a.

(2) After determining by resolution to proceed, the legislative body shall cause a special assessment roll to be prepared. After the special assessment roll is prepared, the proceedings with respect to the special assessment roll and the making and collection of the special assessments shall be conducted pursuant to the statute or charter governing special assessments in the public corporation. However, the total assessment may be divided into not more than 30 installments, and a person assessed, at the hearing upon the special assessment roll prepared by the public corporation, may object to the special assessment district previously established by the public corporation. Due consideration shall be given to the objections. A hearing held under this section shall not take the place of a meeting required under section 489a, unless notice is prepared and mailed in the manner prescribed by section 489a.

(3) If a special assessment is levied under this section, all collections from the special assessment shall be used towards the payment of the assessment at large against the public corporation. Each annual levy made for the payment of the assessment at large shall be reduced by the amount of money then on hand from special assessment collections available for this use.

(4) This section shall not be construed to prevent the assessment of public corporations at large under this chapter. In place of or in addition to levying special assessments, the public corporation, under the same conditions and for the same purpose, may exact connection, readiness to serve, availability, or service charges to be paid by owners of land directly or indirectly connected with the drain project, or a combination of projects, subject to section 489a.

History: Add. 1957, Act 37, Imd. Eff. May 14, 1957;—Am. 1965, Act 253, Imd. Eff. July 21, 1965;—Am. 1979, Act 135, Eff. Mar. 27, 1980.

Popular name: Act 40

280.491 River, creek or watercourse; petition for inclusion within jurisdiction.

Sec. 491. A petition meeting the requirements of this chapter as to petitioners, execution and filing may request, for reasons of public health, that jurisdiction be assumed over all or a specified part of the bed, tributaries, banks and flood plains of a river, creek or watercourse, not part of an established drain. The petition shall describe the existing or threatened conditions which cause or increase the danger of flooding, pollution, desecration or obstruction of such river, creek or watercourse, and shall specify, in general terms, the works, property acquisition, actions or procedures deemed necessary to remove or lessen such danger.

History: Add. 1965, Act 194, Imd. Eff. July 15, 1965.

Popular name: Act 40

280.492 Petition; content, deposit to pay cost; drainage board hearing and notice.

Sec. 492. The petitioners named in a petition filed pursuant to section 491, shall include therein an agreement to pay the amount of, or shall accompany the petition with a deposit in the amount of, the estimated cost of the planning and engineering required to describe in recordable form the bed, tributaries, banks and flood plains of the river, creek or watercourse over which jurisdiction is necessary and is to be assumed and the work to be done or property to be acquired according to the petition. Upon the filing of the petition with the agreement or deposit to pay costs, the initial actions and tentative determinations shall be taken and made with respect thereto as described in sections 466 and 467, and such description shall be obtained and approved and adopted by the drainage board. To assume jurisdiction of the bed, tributaries, banks and flood plains of the river, creek or watercourse and to perform the work proposed to be done thereon, if any, as so described, a meeting to hear objections to the assumption of such jurisdiction, to the petition therefor and to the proposed work or property acquisition shall be held as provided for other drain projects pursuant to this chapter. Notice of the hearing shall contain the description as approved and adopted by the drainage board.

History: Add. 1965, Act 194, Imd. Eff. July 15, 1965.

Popular name: Act 40

280.493 Final order of determination; contents, recording, effect.

Sec. 493. After the hearing, the drainage board shall determine whether or not it will assume jurisdiction and perform the work proposed, if any, and shall issue its order accordingly, which order shall be known as the "final order of determination". The final order of determination shall contain the description of the bed, tributaries, banks and flood plains of the river, creek or watercourse over which jurisdiction has been assumed and shall be recorded in the county records in the county in which any part thereof is located. After recording, no constructing, excavating, land filling, removing of structures, trees, plants or shrubs, dumping or discharging of sewers or drains shall be permitted or continued in the bed, tributaries, banks or flood plains of

the river, creek or watercourse within the recorded description thereof, except upon written order or permit issued by the drainage board.

History: Add. 1965, Act 194, Imd. Eff. July 15, 1965.

Popular name: Act 40

280.494 Final order of determination; recording effect on private rights.

Sec. 494. The recording of the description does not appropriate, terminate or lessen any private rights in property, real or personal, except such as shall be voluntarily released by written agreement or conveyance or as shall be condemned as provided in this chapter, or pursuant to applicable law. The recording of the description constitutes a regulation and limitation, for reasons of public health, of the use of the public and private property therein described to remove or lessen the danger of flooding, pollution, desecration or obstruction of the river, creek or watercourse, or part thereof, involved.

History: Add. 1965, Act 194, Imd. Eff. July 15, 1965.

Popular name: Act 40

280.495 Assessment of cost; hearing; powers.

Sec. 495. Before any work, other than preparation of the description and the approval, adoption and recording of the same, is done or rights in or ownership of property is acquired by the drainage board, pursuant to a petition filed under section 491, the drainage board shall make a determination, following notice and a hearing as provided in this chapter, which may be the hearing provided for in section 492, as to the public corporations to be assessed for the cost of the work or acquisition. After the hearing and the determination to proceed with the work, the drainage board shall proceed in the same manner as is provided for other drain projects in this chapter and the drainage board shall have the rights and powers so provided.

History: Add. 1965, Act 194, Imd. Eff. July 15, 1965.

Popular name: Act 40

280.496 Drainage board funds; investment of surplus, interest.

Sec. 496. The drainage board may direct the treasurer of any drainage district to invest any surplus funds belonging to and under the control of the drainage board, in bonds and other direct obligations of the United States or in certificates of deposit or depository receipts of any bank which is a member of the federal deposit insurance corporation in such amounts and issues as shall be directed by the drainage board. The interest earnings from such investments shall be credited by the county treasurer to such drainage district funds.

History: Add. 1970, Act 144, Imd. Eff. Aug. 1, 1970.

Popular name: Act 40

280.497 Use or transfer of surplus construction funds; contract with public corporation; provisions of contract; return of surplus construction funds to state transportation department; application of MCL 280.499; definition.

Sec. 497. (1) The drainage board shall use any surplus construction funds remaining in the construction fund after completion of the project for the inspection, repair, and maintenance of the drain as provided in section 196 or shall authorize the transfer of the funds to the bond and interest account, if bonds were issued, in the amounts the drainage board considers proper.

(2) The drainage board shall contract with any public corporation if that public corporation has been assessed for all or part of the cost of the drain or if land in any city, village, township, or combination thereof has been assessed for all or any part of the cost of a drain. The contract shall provide that after all outstanding drain orders or bonds are paid on a drainage district project, the drainage board shall authorize the county treasurers to pay over any portion of the surplus not needed for more than the cost of inspection, repair, and maintenance of the drain as provided in section 196 to the county, township, city, or village in which the drain is located or in which assessments for benefits have been assessed and collected. The payments shall be on a pro rata basis in direct proportion to the amounts assessed and collected from each county, township, city, or village. The contract shall also provide that upon receipt of the surplus funds the county, city, village, or township shall utilize the surplus funds to alleviate drainage problems in their respective jurisdictions.

(3) If state highway funds are involved in a project, the drain commissioner or drainage board, upon completion of a construction project and after all outstanding drain orders or bonds are paid on the project, shall return, on a pro rata basis, surplus construction funds in excess of the amount necessary to pay for inspection, repair, and maintenance of the drain as provided in section 196 to the state transportation department for the construction, maintenance, and administration of state highways.

(4) A drainage board may apply section 499 to surplus construction funds in place of this section.

(5) As used in this section and section 499, "public corporation" includes a city, village, township, or county, or the state.

History: Add. 1970, Act 144, Imd. Eff. Aug. 1, 1970;—Am. 1984, Act 165, Imd. Eff. June 28, 1984;—Am. 1989, Act 149, Imd. Eff. July 14, 1989.

Popular name: Act 40

280.498 Pollution in county drain; abatement; petition.

Sec. 498. Whenever the water resources commission or successor agency has determined that pollution exists in a county drain which services any city, village or township or any combination thereof and has issued an order of determination or permit to such public corporation for abatement thereof then a petition under this chapter may be filed in accordance with section 463 by any one such city having greater than 500,000 population.

History: Add. 1973, Act 48, Imd. Eff. July 11, 1973.

Popular name: Act 40

280.499 Providing amount from surplus construction funds to inspect, repair, and maintain drain; apportioning balance of surplus construction funds to credit of public corporations; use of funds.

Sec. 499. (1) After the construction of a county drain for which none of the financing is obtained through special assessments under section 490, the drainage board shall provide for an amount from surplus construction funds sufficient to inspect, repair, and maintain the drain as provided in section 196. After providing for inspection, repair, and maintenance, the drainage board may apportion the balance of the surplus construction funds to separate accounts to the credit of the public corporations against which the cost of the drain is assessed. The funds shall be credited in direct proportion to amounts assessed and collected from the public corporations.

(2) Funds in an account apportioned to the credit of a public corporation under this section shall be used only for the following:

- (a) To pay principal and interest on bonds issued to finance the drain for which the assessment is imposed.
- (b) If bonds are not sold, to pay assessments due from the public corporation.
- (c) At the request of the public corporation, to alleviate drainage problems in that public corporation.

History: Add. 1984, Act 165, Imd. Eff. June 28, 1984;—Am. 1989, Act 149, Imd. Eff. July 14, 1989.

Popular name: Act 40