

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

CHAPTER 5.

INTERCOUNTY DRAINAGE DISTRICTS.

**280.101 Intercounty drainage districts; application; filing; signatures; eligibility.**

Sec. 101. (1) Before any action is taken on a petition to locate, establish, and construct a drain that will traverse lands in more than 1 county, or affect more than 1 county, an application must be filed with a commissioner having jurisdiction of any of the lands to lay out and designate a drainage district. The application shall tentatively describe the location and route of the proposed drain. Except as provided in subsection (2), the application shall be signed by ten or more freeholders of the cities, villages, or townships in which the proposed drain or the lands proposed to be benefitted by the drain are located. Five or more of the signers shall be the freeholders whose lands will be liable for an assessment for the construction of the proposed drain. However, if it appears to the drain commissioner to whom the application is submitted that the drainage district may not include at least 20 freeholders whose lands will be liable for an assessment, the application shall be received if at least 1 of the signers is a freeholder whose land will be liable for an assessment. The eligibility of the signers to the application shall be determined by their interest of record in the office of the register of deeds, in the probate court, or in the circuit court of the county in which the lands are located at the time the application is filed.

(2) An application under subsection (1) need only be signed by a representative of a city, village, or township who is authorized by its governing body, if both of the following apply:

(a) The proposed drain is necessary for the public health of the city, village, or township.

(b) The city, village, or township will be liable for an assessment at large for a percentage of the cost of the proposed drain.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1957, Act 119, Imd. Eff. May 24, 1957;—Am. 2014, Act 551, Imd. Eff. Jan. 15, 2015;—Am. 2018, Act 647, Eff. Mar. 28, 2019.

**Popular name:** Act 40

**280.102 Intercounty drainage districts; copies; joint drainage board, meeting, time, location, notice.**

Sec. 102. (1) Within 20 days after an application is filed under section 101, the commissioner shall send a copy of the application by certified mail to the director of the department of agriculture and rural development and the drain commissioner of each county in which lands that will benefit from the drain are located. The drain commissioners of the counties and the director of the department of agriculture and rural development or any deputy designated by the director constitute the drainage board.

(2) The director of the department of agriculture and rural development shall call a meeting of the drainage board. The meeting shall be held not less than 15 and not more than 60 days after the director's receipt of the application under subsection (1). The meeting shall be held in the immediate locality of the proposed drainage district. A notice of the meeting shall be served by the respective drain commissioner on the county clerk and a member of the board of county road commissioners of each county and the supervisor of each township and clerk of each city and village within the proposed drainage district personally or by certified mail at least 10 days before the public meeting. A notice of the meeting shall be published in each county in which lands liable for assessments for the drain are located once a week for 2 consecutive weeks before the meeting in a newspaper of general circulation in the county, if there is such a newspaper. The first publication shall be at least 10 days before the meeting.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 2018, Act 647, Eff. Mar. 28, 2019.

**Popular name:** Act 40

**280.103 Chairperson of drainage board; disqualification of member; determination of practicability; survey.**

Sec. 103. (1) The director of the department of agriculture and rural development or a deputy selected by the director shall act as chairperson at the meeting of the drainage board under section 102. The drainage board shall consider the application to lay out and designate a drainage district and do all of the following at the meeting:

(a) Determine the sufficiency of the signatures on the application. If the signatures are insufficient, no further action shall be taken on that application.

(b) Consider the route and type of construction of the proposed drain.

(c) Take testimony to determine the practicability of the proposed drain.

(2) If a member of the drainage board would be disqualified under sections 381 and 383 from making an apportionment of benefits, both of the following apply:

(a) The drainage board member is disqualified from participation in the determination of practicability.

(b) A special commissioner shall be appointed pursuant to section 381 to serve as a member of the drainage board to determine practicability.

(3) The owner of any lands that would be liable to assessment for benefits for the proposed drain or would be crossed by the drain or any city, township, or village affected may appear for or against the drain proceedings. If at the meeting or at any subsequent time before the entry of the order designating a drainage district, the drainage board determines that the drainage of the proposed drain area is not practicable, no further action shall be taken on that application within 1 year. If the proposed drain is determined to be practicable, then the drainage board shall cause a survey to be made by a licensed professional surveyor or engineer to ascertain the area that would be benefited by the proposed drain and the route and type of construction of drain or drains most serviceable for that purpose.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 2018, Act 647, Eff. Mar. 28, 2019.

**Popular name:** Act 40

### **280.104 Surveyor; duties as to intercounty drain, delivery of papers to board; route.**

Sec. 104. The surveyor or engineer authorized to make the survey shall ascertain the size and depth of the drains, and shall preserve all minutes with reference thereto. He shall prepare plans, drawings and profiles thereof, together with a computation of the yards of earth to be excavated, and where practicable the leveling of the spoil banks or the amount of tile or pipe to be used and the necessary bridges and culverts or fords to be built in constructing the proposed drains, and his estimate of the cost of such construction. He shall thereupon lay out a proposed drainage district, which district may be described by its boundaries of streets and highways or tracts or parcels of land or by a description of all tracts or parcels of land, including therein all highways, townships, counties, cities and villages which would be benefited by the construction of the proposed drain, all of which he shall deliver to the drainage board. The surveyor or engineer shall not be limited to the route described in the application, but may recommend a route and type of construction for the drains he considers most serviceable for draining the area involved.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1957, Act 119, Imd. Eff. May 24, 1957;—Am. 1961, Act 212, Imd. Eff. June 6, 1961.

**Popular name:** Act 40

### **280.105 Order designating intercounty drainage district; contents, notice of filing, copies furnished commissioners; amendment of name or number of drain; costs.**

Sec. 105. (1) After considering the recommendations of the surveyor or engineer under section 104, the drainage board shall determine all of the following:

(a) A designation for the drainage district, by name or number.

(b) A description of the drainage district, which shall comprise all the land that would be benefited by and liable for assessments for the construction of the drain. The drainage district may be described by either of the following methods:

(i) By its boundaries of streets and highways or tracts or parcels of land.

(ii) By a description of all land included in the drainage district, by tracts or parcels of land, counties, townships, cities, villages, or state trunk line highways of which the district is comprised.

(c) A description of the drain showing the beginning, route, terminus, type of construction and the estimated cost of the construction.

(d) The percentage of the cost for laying out a drainage district tentatively apportioned to each county in which any part of the drainage district is located, subject to redetermination under section 123. If a member of the drainage board would be disqualified under sections 381 and 383 from making an apportionment of benefits, both of the following apply:

(i) The drainage board member is disqualified from participation in the determination of tentative apportionments.

(ii) A special commissioner shall be appointed pursuant to section 382 to serve as a member of the drainage board to determine tentative apportionments.

(2) The chairperson of the drainage board shall prepare and execute an order designating an intercounty drainage district as determined by the drainage board under subsection (1). Within 10 days after the order is executed, the chairperson of the drainage board shall file a copy of the order in the office of the county drain commissioner of each county in which any part of the district is located. The drainage board shall publish

notice of the filing of the order in a newspaper of general circulation in each such county, once in each week for 2 successive weeks. The notice shall give a general description of the route of the drain and of the drainage district as shown by the order.

(3) The drain commissioner of a county traversed by the drain may request in writing that the name or number of a drain as designated in an order filed under subsection (2) be changed. The request shall state the name or number of the drain and the change to be made in the name or number. The drain commissioner shall file the request in his or her office and mail a copy of the request to the director of the department of agriculture and rural development and to the drain commissioner of each county in which any part of the drainage district is located. The director of the department of agriculture and rural development or the director's designee shall call a meeting of the drainage board. The drainage board may file an order changing the name or number of the drain. The drainage board may also order the posting of signs upon the drain for public notice of the new name or number. Copies of the order changing the name or number of the drain shall be filed with the drain commissioner and the county treasurer of each county in which any part of the drainage district is located.

(4) If the drainage board cannot agree as to the apportionment of costs for laying out a drainage district, the chairperson shall apportion the costs and the counties affected shall pay the costs as provided in section 302.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1961, Act 212, Imd. Eff. June 6, 1961;—Am. 2018, Act 646, Eff. Mar. 28, 2019.

**Popular name:** Act 40

#### **280.106 Review of apportionment by arbitration board; claim for review; nomination and selection of board members; meeting; notice; election of chairperson and secretary; adjournment; findings.**

Sec. 106. If the drain commissioner of a county involved considers the apportionment between the counties to be unfair, the commissioner shall have the right to have the apportionment reviewed by an arbitration board to be composed of drain commissioners from unaffected counties in this state. Within 20 days after the order of apportionment provided in section 105, the commissioner shall file with the department of agriculture a claim for review by arbitration in which the commissioner shall state briefly in what respect he or she considers the apportionment unfair and request, over the commissioner's official signature, a review by arbitration. The commissioner shall nominate a disinterested drain commissioner as his or her choice for the arbitration board. Upon receipt of the claim for review by arbitration, the director of the department of agriculture or the director's deputy shall forward to each county drain commissioner involved, except the claimant, within 10 days, a copy of the claim for review by arbitration. The commissioners, within 10 days, shall notify the department of agriculture of their selection to the arbitration board. The director of the department of agriculture, at the earliest date, consistent with Act No. 267 of the Public Acts of 1976, but not later than 30 days after the notice, shall notify the chosen drain commissioners of a date and time they shall meet in the commissioner's office in Lansing. At the meeting they shall select 1 or 2 more unaffected drain commissioners in the state to complete the board of review. Only 1 shall be selected if the board members selected by the drain commissioners affected constitute an even number and 2 shall be selected if the board members selected by the drain commissioners affected constitute an odd number. Upon selection of the final members of the board of review, those members present shall set a date, time, and place in an affected county for a first full meeting of the board of review. Notice of the meeting shall be posted in 5 public places in each county affected and be served personally or by registered mail at least 10 days before the meeting on the county clerk of the county and the supervisor of a township in each county traversed by the drain. A notice of the meeting shall be published once a week for 2 consecutive weeks before the meeting in a newspaper published and of general circulation in the counties affected. The first publication is to be at least 10 days before the meeting. The director of the department of agriculture shall notify the 1 or 2 drain commissioners selected of their appointment and of the date, time, and place of the next meeting of the full board. The board of arbitration shall convene at the time, date, and place specified, elect a chairperson and secretary, and review the fairness of the apportionment between the counties. The board may adjourn until their review is completed. The findings shall be made and signed by all the members attesting the determination of the majority of the board and the determination by the majority of the board shall be final and conclusive as to the fairness of the apportionment.

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

**Popular name:** Act 40