

REFERENCES TO PA 40 OF 1956, AS AMENDED (Michigan Drain Code)

MCL 280 et seq

**MCL 280.423**

Addresses sewage and waste matter discharges to county drains, including restrictions and enforcement.

**MCL 280.196**

Provides the authority for a drain commissioner to act immediately to correct an emergency condition on a county drain.

**MCL 280.432**

Provides statutory authority to enter upon private lands for the purpose of investigating drainage concerns (Includes suspected contamination).

Act 40 Rules

Sec. 423 (cont.)

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

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

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

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

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

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

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

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**280.193 Drains; apportionment for cleaning, widening, deepening, straightening, and extending; review; notice; consolidated districts.**

Sec. 193. All apportionments hereunder shall be made according to the benefits received and shall be subject to appeal the same as in the first instance. In case the apportionment shall be the same as the last recorded apportionment, no day of review shall be necessary. In case the apportionment shall be changed, or in case an apportionment is made in a consolidated district which apportions benefits between lands which have not been previously assessed by the consolidated district, the procedure shall be in all respects in accordance with the provisions of chapter 7 of this act, including the notice of and the holding of a day of review.

History: 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1962, Act 103, Imd. Eff. Apr. 30, 1962.

Popular name: Act 40

**280.194 Petitions and proceedings; description of drain, relief drains.**

Sec. 194. In any petition filed under this chapter it shall not be necessary for the petitioners to describe said drain other than by its name or to describe its commencement, general route and terminus. For any work necessary to be done in cleaning out, widening, deepening, straightening, consolidating, extending, relocating, filling or relocating along a highway, or for providing structures or mechanical devices that will properly purify or improve the flow of the drain or pumping equipment necessary to assist or relieve the flow of the drain or needs supplementing by the construction of 1 or more relief drains which may consist of new drains or extensions, enlargements or connections to existing drains, or needs 1 or more branches added thereto, and for any and all such proceedings, only 1 petition and proceeding shall be necessary.

History: 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1956, 1st Ex. Sess., Act 5, Imd. Eff. June 23, 1956;—Am. 1957, Act 119, Imd. Eff. May 24, 1957;—Am. 1967, Act 172, Imd. Eff. June 30, 1967.

Popular name: Act 40

**280.195 Further right of way; damages.**

Sec. 195. In case it shall be necessary to secure further right of way and allow damages therefor, for any work contemplated by this chapter, the commissioner shall take all the necessary steps to obtain such right of way as are prescribed by chapter 4, being sections 71 to 84, inclusive, of this act.

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

Popular name: Act 40

**280.196** Inspection of county and intercounty drains; deposits in drain fund; expenditures for inspection, repair, and maintenance of drain; assessment; resolution approving expenditure of additional amounts; reassessment; notice; affidavit of mailing; failure to receive notice; assessment according to benefits received; determination of maximum assessment; emergency condition; excess expenditures upon request of public corporation; costs and bids where work performed by federal agency or public corporation; costs of maintenance and repair; salaries, expenses, and benefits of certain employees.

Sec. 196. (1) An annual inspection may be made of a drain established under this act. Inspection shall also be made upon the request of the governing body of a public corporation, as defined in section 461, served in whole or in part by the drain to be inspected. For county drains, the inspection shall be made by the drain commissioner, or a competent person appointed by the drain commissioner. For intercounty drains, the inspection shall be caused to be made by the drainage board.

(2) Surplus construction funds remaining after completion of construction of a drain, or funds remaining after completion of work performed under a petition for maintenance or improvements under this chapter, shall be deposited in the drain fund of a drainage district and shall be expended for inspection, repair, and maintenance of the drain.

(3) If at any time the drain fund of a drainage district contains less than \$5,000.00 per mile or fraction of a mile of a drain, the drain commissioner or drainage board may assess the drainage district for an amount not to exceed \$2,500.00 per mile or fraction of a mile in any 1 year. The amount collected under an assessment shall be deposited in the drain fund of a drainage district for necessary inspection, repair, and maintenance of the drain.

(4) If an inspection discloses the necessity of expending money for the maintenance and repair of a drain in order to keep it in working order, the drain commissioner for a county drain, or the drainage board for an intercounty drain, may without petition expend an amount not to exceed in any 1 year \$5,000.00 per mile or

flood control. The drain commissioner or drainage board, may acquire by gift or purchase the necessary lands, and rights of way for the purposes of any expanded flood control or drainage project or combination thereof. The drain commissioner or drainage board may acquire by condemnation proceedings similar to those provided in chapter 4 and chapter 6 of this act, the necessary lands and rights of way for any expanded flood control or drainage project or combination thereof which shall be undertaken jointly with a public corporation or the federal government. The drain commissioner or drainage board may pay for the costs of lands taken by condemnation for an expanded flood control or drainage project or combination thereof, undertaken jointly with a public corporation or the federal government, but the public corporation or federal government shall promptly reimburse the drainage district for all costs of acquisition in excess of those costs directly attributable to drainage and flood control.

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

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

Popular name: Act 40

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

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

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

Popular name: Act 40

**280.433 Enlargement of drainage district; agreement; construction and cost of drainage facilities; certificate of registered professional engineer; payment of excess amount and pro rata equitable share; liability of added lands for assessments; dedication, conveyance, or transfer of drain facilities and property; extension of drain; notice of agreement; procedure for establishment of existing private drain; deposit; special drain fund.**

Sec. 433. (1) An existing intracounty or intercounty drainage district may be enlarged and the drain located in the district may be extended or have branches added to provide drainage service to lands not originally within the boundaries of the drainage district by agreement between the drain commissioner or the drainage board and the owner of the lands; or if there is a developer of the lands who is not the owner, between the drain commissioner or the intercounty drainage board and the owner and the developer of the lands. The agreement shall obligate the owner and the developer, if any, of the lands to be added to the drainage district to construct, in accordance with plans and specifications prepared by or approved by the drain commissioner or drainage board, the necessary and adequate drainage facilities on the lands to be added and in the existing drainage district to connect the lands to the existing drain in the drainage district and to pay the cost of the drainage facilities including right of way, engineering, inspection, administration, and legal expenses incurred by the drain commissioner or the drainage board, or to deposit with the drain commissioner or drainage board, upon execution of the agreement, the estimated cost of the construction and expenses.

(2) Before any agreement is approved and executed on behalf of a drainage district by the drain commissioner or drainage board, there shall be obtained, at the expense of the owner or developer of the lands to be added, a certificate, from a registered professional engineer satisfactory to the drain commissioner or the drainage board, to the effect that the lands to be added naturally drain into the area served by the existing drain or that the existing drain is the only reasonably available outlet for the drainage from the lands to be added and that there is existing capacity in the existing drain to serve the lands to be added without detriment to or diminution of the drainage service provided or to be provided, in the foreseeable future, to the area in the existing drainage district. If the existing drain in the existing drainage district has been financed by the levy of drain special assessments on the lands in the drainage district and if the basis of special assessment as applied to the lands to be added to the drainage district would result in a drain special assessment on the lands to be