

THE DRAIN CODE OF 1956 (EXCERPT)

Act 40 of 1956

Chapter 17.

ABANDONED AND VACATED DRAINS”DISPOSAL OF FUNDS.

280.391 Abandoned and vacated drains; procedure; private rights; new drain.

Sec. 391.

Any drain or part thereof which has ceased to be of public utility and is no longer necessary or conducive to the public health, convenience and welfare may be declared to be abandoned and vacated in the manner herein provided. Any 5 freeholders of lands in a drainage district or the governing body of any public corporation in whose limits a drain or part thereof is located may petition for the abandonment and vacation of a drain or part thereof. The petition shall be addressed to and filed with the commissioner or drainage board having jurisdiction of such drain. The commissioner or drainage board shall hold a meeting to hear objections to the petition and to the abandonment and vacation of a drain or part thereof therein requested, and shall give notice of such meeting by posting in 5 public places in the drainage district and by publication in a newspaper of general circulation in the drainage district which posting and publication shall occur at least 10 days before the date of such meeting. Private rights of persons acquired by reason of the establishment and construction of such drain or part thereof shall not be interfered with, or in any way be impaired by such abandonment and vacation. If it is determined at such meeting that the drain or part thereof should be abandoned and vacated, the commissioner or drainage board shall issue an order to that effect and file the same with the commissioner of the county or counties involved. Easements or rights-of-way for the drain or part thereof abandoned and vacated or easements or portions thereof no longer necessary for drainage purposes shall be conveyed or released by the commissioner or drainage board on behalf of the drainage district. If it be contemplated to construct a new drain or part thereof on or near the line of an existing drain or part thereof this may be accomplished without abandonment and vacation of the existing drain or part thereof and the easements or rights-of-way of the existing drain or part thereof may be used for this purpose: Provided, however, That if the contemplated project materially damages the property owner beyond the existing easement, or if it materially burdens the existing easement, then the commissioner or drainage board shall secure an additional easement for the contemplated project. It shall not be necessary to abandon and vacate an existing drain or part thereof made unnecessary by a new drain or part thereof until the new drain is constructed and ready for service.

History: 1956, Act 40, Imd. Eff. Mar. 28, 1956 ;-- Am. 1964, Act 107, Eff. Aug. 28, 1964

Popular Name: Act 40

280.392 Abandoned and vacated drains; notices; disposal of money in drain funds.

Sec. 392.

Whenever any drain shall have been declared vacated and abandoned, as provided in section 391, it shall be the duty of the commissioner to serve notice thereof forthwith upon the county treasurer of the county or counties in which the drainage district, or any portion thereof, is situated. If there be any money credited to or belonging to the fund of such vacated and abandoned drain, it shall be the duty of the county treasurer or treasurers to transfer and pay over the same to the treasurer or treasurers of the township or townships in which the drain was located or in which assessments for benefits to be received from such drain have been assessed and collected: Provided, That in all cases where the amount of such money belonging to the drain fund of such drain, in the hands of the county treasurer, shall be insufficient to permit the refunding and paying over to such township treasurers all of the moneys assessed and collected in such townships, the county treasurer shall prorate the amounts so paid, and each township treasurer shall be entitled to receive such proportion of the moneys remaining in the fund of the vacated or abandoned drain as the total amount of the assessments levied and collected in his township and becoming a part of such drain fund shall bear to all of the moneys assessed and collected and making up such fund. In case it is necessary to prorate in the manner provided, the county treasurer shall furnish to each township treasurer a statement showing the amount of money in the fund at the time such drain was declared vacated and abandoned, and the various amounts assessed and collected for such fund from the different townships entitled to share in the disbursement thereof.

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

280.393 Abandoned and vacated drains; duties of township treasurer in distribution of funds.

Sec. 393.

Upon receiving such money, and the accompanying statement, if required to be furnished hereby, the township treasurer shall give his receipt therefor to the county treasurer. He shall also serve notice upon each person, firm or corporation who, as shown by the records of his office, shall have paid a special tax for benefits received or to be received from the construction of such drain, that such drain has been declared vacated and abandoned and that the payment as aforesaid has been made to him by the county treasurer. Similar notice shall also be served upon the township board and shall be published for 2 successive weeks in some newspaper published and circulating in said county. Thereupon, every such person, firm or corporation shall be entitled to demand and receive from said township treasurer the amount of the special assessment that such person, firm or corporation may have so paid. The amount of the special tax for the construction of such drain that may have been assessed and collected from the township at large shall be credited to and paid into the contingency fund in the township treasury: Provided, however, That if the amount of money paid over to the township treasurer by the county treasurer in the manner aforesaid is less than the aggregate amount of special assessments levied and collected in such township for the construction of such drain and the tax levied and collected upon and from the township at large, then the township treasurer shall prorate the payments to each such person, firm or corporation and the amount to be paid into the general fund in the township treasury; and each such person, firm or corporation and the contingency fund in the township treasury shall be entitled to receive such proportion of the amount of the special assessment or tax paid thereby as the amount of money paid to the township treasurer by the county treasurer shall bear to the total amount of special assessments and taxes levied and collected in said township and paid into the fund for the construction of said drain.

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

280.394 Abandoned and vacated drains; disposal of funds, payments by township treasurer.

Sec. 394.

In case any person who might be entitled to be paid any sum of money in accordance with this act because of a special assessment or tax paid by him for the construction of such drain shall have died, payment as aforesaid shall be made to his personal representatives or to those entitled under the law to take and receive any personal property of which such person so dying may have been possessed at the time of his death. In case of any payment made by a firm that shall have been dissolved, payment to any member of said firm shall be deemed a compliance herewith on the part of the township treasurer: Provided, however, That if no person who was a member of such firm is surviving or can be found, payment may be made to the distributees of any member: Provided further, That when any person claiming an interest in the amount to which any firm would, if still in existence, be entitled shall notify the township treasurer to withhold payment pending a determination of the rights of various claimants, it shall be the duty of the township treasurer to retain the amount involved for such a reasonable time as will permit such determination to be made. In all cases where a corporation that would, if existing, be entitled to receive a payment of money under the provisions of this act has been dissolved and its affairs wholly wound up, and in all cases where it is impossible to find the person or persons entitled to any sum of money herein, such amount or amounts shall, after a lapse of 2 years from and after the publication of notice provided for in section 393 hereof, be paid over by the township treasurer into the general fund of the township.

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

280.395 County or intercounty drain; transfer of jurisdiction and control; conditions; approval; transfer of drain fund.

Sec. 395.

(1) The county drain commissioner or the intercounty drainage board may relinquish to a county, township, city, village, authority, or board of county road commissioners or to the state transportation department jurisdiction and control of all or part of any county or intercounty drain if all of the following requirements are met:

(a) The drainage district has no outstanding indebtedness or contract liability. Indebtedness or contract liability that will be paid in full when jurisdiction and control is relinquished is not considered to be outstanding.

(b) The drain or part of the drain to be relinquished and the area the drain or part of the drain services is wholly located within the boundaries of the county, township, city, village, or authority or within the public right-of-way of the board of county road commissioners or the state transportation department that is to accept jurisdiction and control of the drain or part of the drain.

(c) The relinquishment is approved by both of the following:

(i) A majority of the members of the county board of commissioners for a county drain or of the drainage board for an intercounty drain.

(ii) The governing body of the county, township, city, village, or authority, the board of county road commissioners, or the director of the state transportation department, that is to accept jurisdiction and control of the drain or part of the drain. 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 the exercise of jurisdiction and control.

(2) Upon relinquishment of all or part of a drain under subsection (1), the following apply:

(a) The county drain commissioner or drainage board is relieved of, and the county, township, city, village, board of county road commissioners, or authority or the state transportation department shall assume, the maintenance, jurisdiction, control, and operation of the drain or part of the drain relinquished and its future operation shall be financed in the same manner as is provided for special assessment districts within the county, township, city, or village or as otherwise provided by law.

(b) If jurisdiction and control is relinquished over all of a drain, any money in the drain fund of the drain shall be turned over to the county, township, city, village, authority, or board of county road commissioners or to the state transportation department that accepted jurisdiction and control, to be used solely with respect to that drain.

History: 1956, Act 40, Imd. Eff. Mar. 28, 1956 ;-- Am. 1957, Act 120, Imd. Eff. May 24, 1957 ;-- Am. 2018, Act 645, Eff. Mar. 28, 2019
Popular Name: Act 40

280.396 Transfer of drain project to county department of public works.

Sec. 396.

In any county which has established a department of public works under the provisions of Act No. 185 of the Public Acts of 1957, being sections 123.731 to 123.786 of the Compiled Laws of 1948, the drain commissioner, if in his judgment any project in process of completion or which has been completed can more adequately or feasibly be handled by the department of public works, may file a written report to that effect with the county clerk. The report shall be filed in duplicate, and immediately upon receipt, a copy shall be forwarded to the department of public works and the clerk shall present the drain commissioner's recommendation to the board of supervisors at the next meeting. If the board of supervisors approves the drain commissioner's recommendation it shall, by resolution, so indicate and direct transfer of jurisdiction over the project to the department of public works. Any money which is in the drain fund of any district or belonging to such project at the time jurisdiction over it is transferred shall be promptly transferred and used by the department of public works for the purpose for which it was accumulated. All assets, files, maps, drawings, specifications, records of procedure, assessment rolls or other data pertinent to the project shall be transferred to the department of public works. Thereafter, the department of public works shall be responsible for further proceedings and the drain commissioner relieved therefrom.

History: Add. 1958, Act 64, Imd. Eff. Apr. 9, 1958
Popular Name: Act 40

