

THE DRAIN CODE OF 1956 (EXCERPT)

Act 40 of 1956

CHAPTER 3

COUNTY DRAINAGE DISTRICTS

280.51 County drainage districts; application, signers, eligibility, sufficiency; deposit for costs.

Sec. 51.

Before a commissioner takes any action on any application to locate, establish and construct any drain, there shall first be filed with him an application to lay out and designate a drainage district with reference to a proposed drain therein; such application shall tentatively describe the location and route of such proposed drain. The application shall be signed by not less than 10 freeholders of the township or townships in which such proposed drain or the proposed lands to be drained thereby may be situated: Provided, That 5 or more of said signers shall be the owners of land liable to an assessment for the construction of such proposed drain: Provided further, If it shall appear to the drain commissioner on filing an application to lay out and designate a drainage district that said district might not include 20 freeholders whose lands would be liable for such assessment, in such case such application shall be received if any one of the signers is a freeholder liable to an assessment for the construction of such proposed drain. The eligibility of the signers to such application shall be determined by the drain commissioner according to 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 such lands are situated at the time such application is filed. The board of supervisors, by resolution, may instruct the drain commissioner to refuse any application to lay out a drainage district unless a cash deposit, sufficient to cover the preliminary costs, accompanies the application. If the drain is completed, the cost advanced shall be returned to the depositor or his personal representative out of the first tax collections on the drain. If uncompleted, any excess above costs shall be so returned. In lieu of an application signed by freeholders as aforesaid, such an application may be signed solely by the board of health of the county if the proposed drain is necessary for the public health of any part of the county, or may be signed solely by any city, village or township when duly authorized by its governing body, if the proposed drain is necessary for the public health of such municipality and if such municipality will be liable for an assessment at large against it for a percentage of the cost of the proposed drain. The entry of an order designating a drainage district, as hereinafter provided, shall be deemed a determination of the sufficiency of such application.

280.52 County drainage districts; practicability of drainage; survey, determination; tax delinquency.

Sec. 52.

Upon filing of such application for a new drainage district, the commissioner shall immediately cause a survey to be made by a competent surveyor or engineer to determine the area which would be drained by the proposed drain, and the route and type of construction of the drain or drains most serviceable for that purpose. He shall not be limited in such determination to the route described in the application. In any county having a board of county auditors, no survey shall be ordered without the approval of such board but if the application shows, or it is determined thereafter, that

any such proposed drainage district will affect lands in more than 1 county, the commissioner shall proceed under the portions of chapter 5 of this act relating to intercounty drains, and in such case the approval of the board of county auditors shall not be required. If upon the survey, or if before the survey is made, the commissioner determines that the proposed drain is impractical, he shall take no further action thereon but shall, in writing, notify the persons who delivered the application to him, of that fact, and his reasons for making his determination. If upon the survey the commissioner determines the proposed drain to be practical, he shall lay out a drainage district, prepare and file in the office of the drain commissioner a description of the drainage district, which may be described by its boundaries of highways and streets and tracts and parcels of land including therein all highways and streets, townships, cities and villages or by a description of all tracts or parcels of land, highways, townships, cities and villages which would be benefited by the construction of the proposed drain, and which would be liable to an assessment therefor, should the drain be constructed as hereinafter provided. The commissioner shall obtain from the county treasurer a statement showing as near as may be the amount of taxes and special assessments levied against the lands in the proposed drainage district on the tax rolls for the 3 years next preceding, and the amount of such taxes and assessments remaining unpaid, and if it appears from the statement that 33 1/3% or more of the lands in the proposed drainage district have been returned as tax delinquent and still remain delinquent, no further action shall be taken.

280.53 County drains; surveyor, duties; route.

Sec. 53.

The surveyor or engineer authorized to make the survey shall ascertain the size and depth of the drains and he shall preserve all minutes with reference thereto. He shall prepare preliminary plans, drawings and profiles thereof, together with a computation of the yards of earth to be excavated, the amount of tile or pipe to be used and the necessary bridges and culverts or fords to be built in constructing such proposed drain, and his estimate of the cost of such construction, and where practicable shall recommend the leveling of the spoil banks. He shall thereupon lay out a drainage district, which district may be described by its boundaries of streets or highways or tracts or parcels of land, or by a description of all tracts or all 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 commissioner. 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.

280.54 Order designating county drainage district; contents; notice of filing; amendment of name or number of drain; procedure.

Sec. 54.

The commissioner shall prepare and file in his office his order designating a drainage district and give it a name or number and describe therein the boundaries of the district by streets or highways or parcels of land for each of the several tracts or parcels of land included therein and the counties, townships, cities, villages and state trunk line highways which would be benefited by the construction of the drains and would be liable to assessment therefor, also a description of the drains as determined by him, showing the beginning, route, terminus, type of the proposed construction and the estimated cost of such proposed construction. The commissioner shall give notice of filing the order designating a drainage district by publishing a notice in a newspaper of general circulation in the county, or a newspaper of general circulation in the area where the drainage district boundaries are located, which notice shall give a general

description of the route of the proposed drain or drains and of the drainage district as shown by the order.

At any time after the order designating a drainage district and giving it a name or number has been filed in the office of the drain commissioner, the order may be amended as to the name or number of the drain at any time by presenting to the drain commissioner of the county a petition signed by no less than 5 land owners whose land is traversed by the drain, which petition shall state the then present name or number of the drain and the change or changes to be made in the name or number. Upon receipt of such petition, and if in the drain commissioner's opinion it is to the best interest of all concerned that the name or number be changed, he shall make his order amending the name or number, and thereafter the drainage district shall be known by such name or number. The drain commissioner shall forthwith post such signs upon the drain as he may deem advisable for public notice of the new name or number.

THE DRAIN CODE OF 1956 (EXCERPT)

Act 40 of 1956

CHAPTER 4

COUNTY DRAINS

280.71 Petitions to establish drainage districts; filing, signers, certificate of county treasurer; municipality-signed petition.

Sec. 71.

After a drainage district has been established and the order therefore filed with the county drain commissioner, a petition to locate, establish and construct a drain may be filed with the commissioner having jurisdiction of the lands designated in such order as constituting the drainage district. Such petition shall ask for the location, establishment and construction of the drain or drains, or any part thereof, as described in said order. The petition shall be signed by a number of freeholders in said drainage district whose lands would be liable to an assessment for benefits, equal to 1/2 the number of freeholders whose lands would be traversed by the drain or drains applied for or abut on any highway or street along the side of which such drain extends, between the point where such drain enters such highway and the point where it leaves such highway and which lands are within the drainage district. Such petition shall be accompanied by a description of the land in said district owned by each signer and by a certificate of the county treasurer as to payment of taxes and special assessments against such lands. Such certificate shall be in substantially the following form:

I hereby certify that there are no taxes or special assessments unpaid against any of the lands described in the annexed list according to the records of the county treasurer's office for the past 3 years, except as follows:

Description	Year	Tax or assessment	Amount
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The name of any signer as to whose land such certificate shows taxes or assessments unpaid for 3 years shall not be counted. The eligibility of the signers to such petition shall be determined by the commissioner according to their interest of record in the office of the register of deeds in the probate court or the circuit court of the county in which such lands are situated at the time such petition is filed. In determining the number of owners whose lands are traversed by such drain, or abut thereon as hereinbefore prescribed, the drain commissioner shall investigate the records of the register of deeds, of the probate court and of the circuit court of the county, and shall make diligent inquiry in the community, including inquiry of anyone in possession of all of such lands so traversed or so abutting as to the ownership thereof. In lieu of a petition signed by freeholders as aforesaid, the petition may be signed solely by a city, village or township when duly authorized by its governing body, or by any combination of such municipalities, if such petitioning municipality or municipalities will be liable to assessments at large for at least a percentage of the total amount to be assessed for the cost of the proposed drain. In the event of such a municipally signed petition, then the foregoing provisions of this section, other than the first 2 sentences thereof, shall not be applicable.

280.72 Board of determination; appointment, qualifications, and compensation of members; location of meeting; failure or refusal to serve; informing legislator of persons appointed; notice of meeting; publication; affidavit of mailing; effect of failure to receive notice; expenses of notice; election of chairperson and secretary; determination of necessity of proposed drain; statement; orders of board; cost; notice; appeal; duties of commissioner.

Sec. 72.

(1) As soon as practicable after the filing of a petition, the commissioner authorized to act on the petition, if not disqualified under section 381 to make the apportionment of benefits, may appoint a board of determination composed of 3 disinterested property owners. If the commissioner is disqualified or chooses not to appoint the board of determination, the commissioner shall immediately file a copy of the petition with the chairperson of the county board of commissioners, together with a statement signed by the commissioner, showing that he or she is disqualified or chooses not to act in appointing a board of determination. Upon receiving a copy of the petition and certificate, the chairperson of the county board of commissioners, if not privately interested, as soon as practicable, shall appoint a board of determination composed of 3 disinterested property owners and shall immediately notify the drain commissioner of the names and addresses of those appointed. If the chairperson of the board of commissioners has a private interest in the proceedings, the drain committee of the county board of commissioners shall appoint the board of determination. Members of boards of determination shall be residents of the county but not of a township, city, or village affected by the drain, and may not be members of the county board of commissioners of the county. A meeting of the board of determination shall be called within the drainage district at a convenient place to be designated by the drain commissioner. The board of determination meeting also may be held at a public building within the city, village, or township in which the drain is located. If 1 of those appointed to the board of determination fails or refuses to serve, the drain commissioner shall appoint a successor. The per diem compensation, mileage, and expenses of a member of the board of determination shall be the same as the county board of commissioners of the county. In counties where commissioners are not paid on a per diem basis the compensation, mileage, and expenses shall be fixed by the drain commissioner. The members of the board of determination shall not receive more than 1 per diem for a day no matter how many separate matters are considered on that day. Upon request, the county drain commissioner shall inform in writing the requesting state legislator who represents that portion of the area in which the proposed drain improvement is to be constructed of the names and addresses of the persons appointed to a board of determination.

(2) The drain commissioner shall give public notice of the time, date, and place of the meeting of the board of determination in the manner required by the open meetings act, Act No. 267 of the Public Acts of 1976, as amended, being sections 15.261 to 15.275 of the Michigan Compiled Laws, and by publication in a newspaper of general circulation in the county at least 10 days before the meeting. Notice also shall be served on the county clerk and on the clerk of each township, city, and village in the district, personally or by registered mail, at least 10 days before the meeting. The drain commissioner also shall send notice, by first class mail, of the time, date, and place of the meeting, to each person whose name appears on the last city, village, or township tax assessment roll as owning land within the special assessment district, at the address shown on the roll. If an address does not appear on the roll, a notice need not be mailed to the person. The drain commissioner 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 particular special assessment district. The affidavit shall be

conclusive proof that notice was mailed to each person to whom notice is required to be mailed pursuant to 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. Expenses of notification shall be paid by the drainage district when created.

(3) At the time and place fixed in the notice the board of determination shall meet, elect a chairperson and secretary, and proceed to determine the necessity of the proposed drain and whether the drain is conducive to public health, convenience, or welfare. The board of determination, if it considers it necessary, shall require the county drain commissioner to obtain from the county treasurer a statement showing the amount of taxes and special assessments levied against the land in the proposed drainage district on the tax rolls for the immediately preceding 3 years and the amount of the taxes and assessments remaining unpaid. If it appears from the statement that 25% or more of the taxes are unpaid on the lands, further action shall not be taken. After hearing the evidence offered, the board of determination shall make its determination on the necessity of the drain and whether the drain is conducive to public health, convenience, or welfare. If the board of determination finds, by a majority vote of the members, that the drain is not necessary and conducive to public health, convenience, or welfare, the board of determination shall file with the commissioner an order dismissing the petition, and a further petition for the drain shall not be entertained within 1 year after the determination. If the board of determination, by a majority vote, finds the drain proposed to be necessary and conducive to the public health, convenience, or welfare, the board of determination shall make an order to that effect and file the order with the commissioner. If the board of determination finds that a portion of the construction of the proposed drain is necessary for the protection of the public health in 1 or more cities, villages, and townships, the order shall set forth the determination giving the names of the municipalities receiving benefit for health. If the board of determination determines that the whole cost, except that to be levied against state or county highways for highway benefits, is necessary for the public health, the cost shall be levied against the townships, villages, and cities at large, and it shall not be necessary, in a subsequent order or notice to describe or refer to land included in or comprising the drainage district. Upon filing of the order of determination by the board of determination, the drain commissioner, within 10 days of filing, shall notify each municipality that it is liable to pay a percent of the cost of construction of the drain by reason of benefits at large for public health. The governing body of the township, city, or village, within 20 days after receipt of the notification by registered mail from the drain commissioner, may appeal the order of the board of determination to the probate court having jurisdiction in the county in which the township, city, or village is located. Upon receipt of the order of the board of determination, and if an appeal has not been taken by a municipality to the probate court, the commissioner, after 20 days, shall make his or her first order of determination in writing, giving the name or number of the drainage district. The commissioner shall establish the commencement, route, terminus, and type of construction of the drain, a copy of which order he or she shall file, within 15 days, in his or her office. If an appeal is taken to the probate court by a municipality, the commissioner shall file his or her first order of determination after the appeal procedures are terminated.

280.72a Judicial determination of necessity; filing of action.

Sec. 72a.

Whenever the board of determination finds by majority vote of the whole number of members that the drain is or is not necessary, any person feeling aggrieved by the determination may institute an action in the circuit court for the county in which the real property is located for a determination of necessity. The action shall be filed by

the person aggrieved within 10 days after the determination of necessity or no necessity by the board of determination.

280.73 Proposed drain; plans, specifications and cost estimates; route, approval; easements on rights of way.

Sec. 73.

The commissioner shall secure from a professional engineer, plans, specifications and an estimate of cost of the proposed drain and descriptions of the lands or rights of way needed for the proposed drain. In approving the route of the drain as furnished by the engineers the commissioner shall not be limited to that described in the petition or in the first order of determination, if the new route is more efficient and serviceable. The commissioner shall endeavor to secure from the owners of each parcel or tract of land to be traversed or damaged by the proposed drain or drains an easement or release of right of way and all damages on account thereof.

280.74 Release of right of way; acknowledgments, oaths, form, area, signature of wife, resolution covering street or public place; open drain.

Sec. 74.

Commissioners may take acknowledgments of releases of right of way and administer oaths in all proceedings in any way pertaining to drains under this act. A simple form of release of right of way and damages that shall set forth by reference to the survey of the drain, or by other convenient description, the particular land to be conveyed and signed and acknowledged by the person having the right to convey, shall be deemed a sufficient conveyance under the provisions of this act. All releases for rights of way shall be deemed to include sufficient ground on each side of the center line of such drain for the deposit of the excavations therefrom. It shall not be necessary for the wife to sign the release of right of way unless she has an interest in the land other than her inchoate right of dower. Whenever a portion of a drain shall be located within any street, highway or public place, then a resolution adopted by a majority vote of the governing body having jurisdiction over such street, highway or public place granting leave to construct such drain therein, designating the place to be traversed by said drain, shall be a sufficient release of the right of way, and shall be deemed a sufficient conveyance under this act, and said governing body may permit the construction of an open drain if such consent be set forth in such resolution.

280.75 Condemnation proceedings; special commissioners, application for appointment, contents.

Sec. 75.

If all persons whose lands would be traversed or damaged by the proposed drain or drains shall not have executed a release of the right of way, and all damages on account thereof, within 60 days after the entry of the first order of determination, the commissioner shall, as soon as practicable, make application to the probate court of the county in which such lands are situated, for the appointment of 3 special commissioners, who shall be disinterested resident freeholders of the county, but not of the township or townships affected by such drain, to determine the necessity for the taking of private property for the use and benefit of the public, and the just compensation to be made therefor. Such application shall be in writing, and shall set forth:

First, The fact that a petition for a drain was made and when, filing with said court a certified copy of such petition, also giving the route, survey and specifications of said drain as set forth in the first order of determination;

Second, That an order determining the necessity for such drain was made by the commissioner or drainage board, giving the time when such order was made, in accordance with such route, survey and specification, as above set forth;

Third, (1) The several descriptions or tracts of land with the names of the owner or owners of every such tract who have refused or neglected to execute a release of right of way and damages in any way arising or incident to the opening or maintaining the said proposed drain (2) the several descriptions or tracts of land owned by any minor, incompetent person, unknown persons or nonresidents of the township or townships, the execution of a release of right of way and damages for which have been neglected or refused; (3) it shall not be necessary to set forth in said application to the probate court the names of the several owners nor the description of the several tracts or parcels of land liable to an assessment for benefits, in case the drain applied for should be located and established, except those who have not released the right of way and through whose lands the drain passes; nor shall the same be included in the citation issued from the probate court.

280.76 Condemnation proceedings; hearing, waiver of errors, lands of minors and incompetent persons.

Sec. 76.

The court to whom such application is made shall make an examination at the time of such application of all the proceedings of the commissioner so far as had, and if such proceedings be found to be in accordance with the statute, such court shall at once appoint a time and place of hearing upon the application, which time shall be fixed not less than 15 nor more than 40 days thereafter, and the court shall issue a citation to all persons whose lands are traversed by such drain, who have not released the right of way, and all damages on account thereof, to appear at the time and place designated in said citation, and be heard with respect to such application, if they so desire, and show cause, if any there be, why said application should not be granted, and any error or errors that may have been made in any of the proceedings thus far had shall be raised and taken advantage of at such time and before such court, and if not so raised and taken advantage of at such time and before such court shall be deemed to have been waived by all persons cited to appear under this notice. If any person on whom such service is to be made is a minor, under the age of 14 years, or an incompetent person, and resides in this state, such service shall be made as herein provided on his guardian, or if none, then on the person who may for such purpose be appointed special guardian and also on the person who has the care of, or with whom such minor or incompetent person resides. In case any person whose lands are traversed by said drain is a minor or an incompetent person and has no guardian, the said court or the judge of said court shall appoint a special guardian, to appear for and attend to the interests of such minor or incompetent person, and all notices to be served in the progress of the proceedings shall be served on such special guardian.

280.77 Condemnation proceedings; citation, contents, addressed to owners.

Sec. 77.

The citation shall recite so much of the premises as will show jurisdiction, giving a description of the land traversed by such drain, and in the case of resident owners who reside upon the premises traversed by said drain shall be addressed to such owners by name; in the case of nonresident owner or owners not residing upon the land traversed, it shall be addressed to the nonresident owner or owners, but it shall not be necessary to name such owner or owners. It shall describe the drain by its commencement, terminus and general course, and shall set forth that land owned by the persons to whom it is addressed will be crossed by such drain and may be subject to assessment

for its construction, and that a description and survey of such drain is on file with the court issuing such citation and describe the land to be taken.

280.78 Condemnation citations; notices and orders; methods of service.

Sec. 78.

(1) All citations, notices and orders relative to condemnation proceedings, unless otherwise provided, shall be served as follows:

(a) Personally; or

(b) By leaving a copy at the residence of the person or persons interested; or

(c) By mailing a copy thereof by registered mail at the last known post office address of each person or persons, so far as is known; and

(d) By publication in some newspaper printed or circulated in the county in which such lands are located at least 7 days prior to the date of hearing.

(2) Nonresidents of the county may be served in any of the above methods.

280.79 Condemnation proceedings; hearing; order appointing special commissioners; determination of necessity for using property and compensation; meeting; adjournment of hearing; amendment of application.

Sec. 79.

The court to whom the application is made, at the time and place fixed in the citation, or at a time to which it may adjourn, not exceeding 60 days, and upon proof of service and publication when required, shall proceed to hear persons whose lands are to be traversed by the proposed drain. A person may show cause against the prayer set forth in the application, and may disprove a fact alleged in the complaint, except the necessity of the drain. The person may raise an objection to an error or irregularity made in the proceedings held thus far, and the court shall hear the proofs and allegations of the parties, and the objections made to the proceedings. If sufficient cause is not shown against granting the prayer set forth in the application, the court shall make an order appointing 3 disinterested and competent resident property owners of the county who are not residents of the township or townships to be traversed by the drain, as special commissioners to determine the necessity of using the property and the compensation to be paid for the property. The court, upon the appointment of the commissioners, and with the concurrence of the county drain commissioner, shall appoint a time, date, and place, the time to be not less than 5 days nor more than 15 days after the appointment, at which time the special commissioners shall meet the commissioner and those parties who have not released the right of way, to consider the matters and things with respect to which they have been appointed. The court shall make public announcement of the meeting. If it appears at the hearing that all parties have not been notified, the court may adjourn the hearing for a period not exceeding 30 days to enable the commissioner to notify the parties in the manner provided in this section. The probate court, if necessary, shall allow the commissioner to amend the application before the appointment of special commissioners. If there is shown to be error in the proceedings of the commissioner and the petition to establish the drain is shown to be sufficient under the statute, the probate court shall adjourn the hearing for sufficient time to allow the commissioner to correct the error.

280.80 Special commissioners; notice of appointment; meeting; adjournment; notice; appointment of other special commissioners; oath; election of chairperson and secretary; record of proceedings; view of premises.

Sec. 80.

If the court grants the prayer set forth in the application, the court shall deliver to the commissioner a copy of the order appointing the special commissioners. The

commissioner shall notify the special commissioners of their appointment and the time, date, and place they are required to meet with him or her and the other parties who have not released the right of way for the proposed drain. If a special commissioner neglects or refuses to meet at the time, date, and place with the commissioner, the commissioner shall adjourn the day of meeting for a period not to exceed 30 days. The commissioner shall give public notice of the date, time, and place of the adjourned meeting in the manner required by Act No. 267 of the Public Acts of 1976, and, as soon as practicable, shall make application to the judge of probate, who shall appoint other special commissioners without further notice or citations. Special commissioners shall be sworn by the drain commissioner to faithfully discharge the duties of special commissioners in the matter in which they are called to act, and to determine the necessity of taking private property for the use or benefit of the public for the purpose of a drain, and the compensation to be paid for the property. The special commissioners shall elect 2 members as chairperson and secretary. The secretary shall keep a complete record of their proceedings. The special commissioners, with the commissioner and the other parties in interest who may be present, who have not released the right of way for the proposed drain, shall meet at the time, date, and place ordered by the court and proceed at that time, or at a time to which they may adjourn, to view the premises, and for that purpose may enter upon the land traversed by the route of the proposed drain.

280.81 Default of interested parties for nonappearance; compensation after determination of necessity; court commissioners; meetings; adjournment; witnesses; appraisal of damages; property descriptions; powers.

Sec. 81.

(1) On the day fixed, the court shall enter the default of all persons interested in the property described who have not appeared, and shall direct the payment to such persons of the sums stated in the determination, as compensation for the taking the pieces or parcels of property in which they are interested only after necessity is determined under the provisions of section 81.

(2) The court commissioners shall meet at the time and place ordered by the court and shall be sworn faithfully to discharge their duties. If all do not then appear, a less number may adjourn to a time certain, but no adjournment shall be made to a day later than the time allowed by the court. All adjournments shall be publicly announced. The court may issue subpoenas to compel the attendance of witnesses before the court or before the court commissioners. Either of the court commissioners may administer oaths to witnesses.

(3) The court commissioners shall appraise the damages to be paid as compensation for each such piece or parcel of property, and shall report such decision in writing, signed by them or a majority of them, at or before the time fixed for that purpose, but it shall not be necessary for the court commissioners to report on all of the property at one time.

(4) It shall not be necessary for the board or commissioner to include in 1 determination the descriptions of all of the property necessary to be taken for any single project, or to include in 1 petition, the descriptions of all of the property described in the determination upon which the petition is based.

(5) At the time of the filing of the report or at such other time to which it may adjourn the proceedings, on cause shown, the court may set aside the report and refer it back to the court commissioners or appoint other commissioners to re-try the questions involved, whereupon such proceedings shall be had as are hereinbefore provided for. The court may permit the amendment of any determination, petition, affidavit, order, report or proceeding filed or had in the premises in such manner as shall be just and proper; it may fill any vacancy that shall occur among the court commissioners, by

reason of death, resignation, removal or inability to act; at any time, it may remove any or all of the commissioners and fill the vacancies thereby created; it may permit a defective proceeding to be set aside and other proceedings in compliance with law to be had in place thereof; it may determine the division of any award among the several claimants thereto; it may adjourn the proceedings or any part thereof from time to time, and may make all orders in the premises as may be just and proper to further and accomplish the purpose thereof.

280.82 Condemnation proceedings; drains, special commissioners; return, examination, correction, filing, conveyance of easements, vesting of fee, damages.

Sec. 82.

The special commissioners shall within 60 days from the date of their first meeting make a return in writing of their hearing, determination and of their several awards. To assist the special commissioners in arriving at their verdict, the probate court may allow the special commissioners, when they retire, to take with them the petition filed in the case and a map showing the location of the proposed improvement and each and all of the parcels of property to be taken and may also submit to them a blank return which may be as follows: "We, the undersigned, having been appointed by the probate court of the county of, state of Michigan, as special commissioners, to ascertain and to appraise and determine the damages or compensation to be allowed to the owners or parties interested in the real estate proposed to be taken for the right of way for a certain drain, known as the '..... drain' to be located in the of in said county, and we find that it is necessary to take the private property described in the petition in this cause, for the use or benefit of the public, for the proposed public improvement. The just compensation to be paid for such private property we have ascertained and determined, and hereby award as follows:

Parcel No.	Description of Property	Right of Way Required or Easement Taken			Owners-Occupants Compensation To Others Interested	Whom Payable
		Center Line of Drain	Private Property Taken			
"						

The different descriptions of the property and the names of the occupants, owners and others interested therein, may be inserted in said blank verdict, under the direction of the court, before it is submitted to the special commissioners, or it may be done by the special commissioners. The special commissioners shall file said return with the probate court, it shall examine the same, and if it shall find such return not to be in substantial conformity with the statute, it shall return the same to the special commissioners for correction, with its objections in writing. The special commissioners shall thereupon proceed to correct their return, and file the same with the probate court within 5 days. When the probate court shall find such return to be without material error, it shall enter an order confirming the awards and an order dismissing any lis pendens filed with the register of deeds by the drain commissioner. A certified copy of said return shall be immediately recorded by the drain commissioner in the office of the register of deeds, and a copy filed in the office of the drain commissioner. A return by special commissioners with respect to any easement taken shall be deemed a sufficient conveyance to vest in the drainage district an easement in the land for the uses and

purposes within the scope of its powers, together with such rights of entry upon, passage over, deposit of excavated earth and storage of material and equipment on such lands as may be necessary or useful for the construction, maintenance, cleaning out and repair of said drain. A return of special commissioners with respect to private property taken in fee shall vest the fee of the property taken in the drainage district for the use or benefit of the public for the proposed public improvement. The amount of compensation that may have been awarded therefor shall have been paid or tendered, or secured to the persons entitled thereto. The time during which proceedings are pending in the probate court shall not be counted as part of the 5-year period relative to abandonment of a petition as provided in section 221, and the time mentioned in sections 75, 79, 80, 81 and 82 relative to completion of certain procedural steps in condemnation proceedings shall be deemed to be directory and not mandatory and shall not constitute a material defect in such proceedings.

280.83 Release of right of way and damages; proceedings discontinued.

Sec. 83.

If at any time before the appointment of special commissioners provided for in this act or at any time before the filing of their return and award of damages, all of the parties through whose lands the proposed drain is to pass shall execute a release of right of way, and all damages on account thereof, then all proceedings for the appointment of special commissioners, and all actions taken by them after their appointment, shall be discontinued and void, and the county drain commissioner shall proceed as if no application for special commissioners had been made.

280.84 Setting off damages and benefits; drain order for excess, holding by county clerk.

Sec. 84.

The commissioner shall deduct the award of damages from the assessment of benefits, when made, on the tract which includes the right of way of said drain. In case the award of damages shall exceed the assessment of benefits, the commissioner shall draw his orders for the amounts awarded in the return of the special commissioners in excess of assessments for benefits, describing in each order the lands in payment whereof it is drawn, and before such drain shall be constructed such order shall be tendered by the commissioner to the party entitled thereto: Provided, That if the owner of any lands upon which damages have been awarded in excess of apportionment of benefits be a nonresident of the township or townships traversed by said drain, or be unknown, or in case of a minor or otherwise incompetent person, such order shall be deposited with the county clerk, payable to the owner of such description of land upon which such damages were awarded. Such order shall be held by such clerk and be delivered by him to the owner of such lands when called for or otherwise legally demanded, and the same shall thereby be deemed to have been lawfully tendered to the owner of such lands. It shall be the duty of such county treasurer at any time upon presentation to him of any such drain order drawn for the payment of such right of way or damages to pay the same out of any moneys in his hands belonging to the general fund of such county and refund such amount out of the first moneys collected by him on account of such drain. If the owner of any lands upon which such damages have been awarded in excess of the apportionment for benefits shall, upon the tender of such order to him, refuse to accept the same, the commissioner shall deliver such order to the county clerk and give notice to such owner of that fact. Such order shall be held by such clerk and be delivered by him to the owner of such lands when called for or otherwise legally demanded.

280.85 Owner's use of land of right of way.

Sec. 85.

The owner of any land over, through or across which a district has acquired a right of way for the construction and maintenance of an open or covered drain by grant, dedication, condemnation or otherwise, may use the land occupied by such right of way in any manner not inconsistent with the easement of the district. Any use of the right of way which will interfere with the operation of the drain or will increase the cost to the district of performing any of its work thereon is deemed to be inconsistent with the district's easement. Any landowner who violates any of the above provisions shall be subject to the penalties provided in section 421 of this act.

280.86 Special commissioners; compensation.

Sec. 86.

The court shall fix the compensation of the special commissioners, not to exceed \$50.00 per day, and determine the amount of necessary expenses incurred in connection with such proceedings, and the whole cost thereof.

280.87 Certificates, reports and determinations as prima facie evidence.

Sec. 87.

Any certificate, report or determination authorized or required by this chapter, or the record thereof, or a certified copy of any certificate, report, determination or record, shall be prima facie evidence of the facts recited therein and of the title to the property therein described or referred to, and of the right of the drainage board or commissioner to take the same for drain purposes.

280.88 Review upon superintending control; procedure.

Sec. 88.

Any proceeding taken under the provisions of this chapter shall be subject to review upon superintending control. The procedure therefore shall be the same as is required in case of certiorari to review judgments rendered by judges of the circuit courts. The application for superintending control must be filed within 20 days after the report of the special commissioners shall have been confirmed. The determination of necessity provided in this act may be reviewed by superintending control only within 10 days after such determination of necessity, by the court of appeals.