



VAN BUREN COUNTY DRAIN COMMISSIONER

JOE PARMAN, Drain Commissioner PETER VANDOP, PE, Engineer/Chief Deputy GEORGIA GENIS, Deputy Drain Commissioner RANDY COUNTERMAN, SESC & Drain Maint. Supervisor

Intercounty Drainage Procedures Petitioned Maintenance and Improvements Chapter 8, Drain Code

BACKGROUND

While non-petitioned maintenance may be performed at the discretion of the drainage board, petitioned maintenance and improvements under Chapter 8 of the Drain Code outlines detailed procedures designed to implement a drainage project in a very structured way. This Chapter will summarize the proper steps that a drainage board must take after it receives a petition for maintenance and improvement of an intercounty drain under Section 192 of the Drain Code.

280.192 Intercounty drain; cleaning out; petition; drainage board; procedure.

Sec. 192.

(1) If a drain or portion of a drain traverses lands in more than 1 county or lands in more than 1 county are subject to assessments and if the drain needs cleaning out, relocating, widening, deepening, straightening, tiling, extending, or relocating along a highway, requires 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, 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 to the drain, any 5 freeholders or at least 50% of the freeholders if there are fewer than 5 freeholders whose lands shall be liable to an assessment for benefits of the work, may make a petition in writing to the commissioner of any county having lands in the drainage district setting forth the necessity of the proposed work.

REQUESTING A PETITION

Upon a request for a petition for maintenance and improvement of any portion of an intercounty drain, a drain commissioner should contact the drainage board to provide the petition. Please note, Public Act 646 of 2018 amended Section 192 of the Drain Code. Accordingly, a petition for a county drain and an intercounty drain now have the same requirements.

Once the Chair provides the petition to the drain commissioner, the Chair should notify all members of the drainage board that a petition has been requested.

FILING OF A PETITION

When a drain commissioner receives a signed petition for maintenance and improvement of an intercounty drain, the drain commissioner (or Chair if the petition is received by the Michigan Department of Agriculture and Rural Development (MDARD)) must send notice to the entire drainage board.

OPTIONAL DRAINAGE BOARD MEETING:

Prior to the hearing of practicability, the drainage board should make a preliminary review of the petition. The Chair may poll the members of the drainage board to determine whether they would like to hold a public meeting *in advance* of the hearing of practicability to discuss the petition. This meeting would be discretionary. If not, the drainage board should proceed as described in the next section. When polling, the drainage board should remain mindful of the Open Meetings Act requirements.



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VERIFYING THE PETITION

A petition under Chapter 8 may be submitted by landowners, one or more municipalities (city, township or village), a county road commission or the Michigan Department of Transportation (MDOT).

LANDOWNER PETITIONS

For Landowner petitions, a sufficient number of freeholders must sign the petition. Circulator instructions are available to be distributed. Please note that “freeholder” does not necessarily have the same meaning as “landowner.”

STEP 1 – NUMBER OF FREEHOLDER SIGNATURES REQUIRED

As a result of the 2018 Amendments, the Drain Code now simply requires an intercounty maintenance and improvement petition be signed by 5 freeholders or at least 50% of the freeholders in the Drainage District.¹

¹ MCL 280.192.

STEP 2 – DETERMINE THE SUFFICIENCY OF SIGNATURES

- Count each signature in the petition. ○ If the number of freeholder signatures on the petition does not meet the number of required signatures, STOP. The petition is insufficient.
- If the number of freeholder signatures on the petition does meet or exceed the number of required signatures, proceed to Step 3.

STEP 3 – DETERMINE THE ELIGIBILITY OF EACH SIGNATURE

- **A freeholder may only be counted once.** Even though the freeholder may own more than one parcel in the drainage district or may own land in two or more counties in the drainage district, the freeholder is counted only once.
- A freeholder signing on behalf of a Corporation/LLC/Partnership/Trust may be counted once for each business entity owning lands in the drainage district. The freeholder should specify which signature represents which entity.
- When a property owned by husband and wife/tenancy in common/joint tenancy, each property owner listed in the deed is considered a freeholder and each count as an eligible signature.
- Freeholder(s) that is/are the buyer(s) (vendee(s)) of a land contract, each may count as an eligible signature.
- A freeholder may not have any unpaid taxes or special assessments against any lands in the drainage district for the preceding three (3) years.

STEP 4 – RECONFIRM THE SUFFICIENCY OF SIGNATURES

- Subtract any ineligible freeholders from the number of original signers. Reconfirm the number of eligible freeholder signatures meets or exceeds the number of required signatures in Step 1.



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STEP 5 – COMPLETE THE REQUIRED CERTIFICATES

- Each drain commissioner must complete a Certificate of Checking.
- Each drain commissioner must have the County Treasurer complete the Treasurer's Certificate as to Taxes and Special Assessments Unpaid.

Importantly, a sufficient number of signatures on a petition is a legal requirement that must be verified before a drainage board may take action on the petition. A drain commissioner or drainage board may wish to engage the services of its legal counsel to help in the review.

HEARING OF PRACTICABILITY

- Meeting should be held no less than 15 days and no more than 60 days from receipt of notification to the Chair of a petition being filed.
 - Notice of the meeting must be provided at least ten (10) days in advance of the meeting date by:
 - Publishing in a newspaper of general circulation in the drainage district.
 - Serving personally or by certified mail to each county clerk, a member of the county road commission in each county, the supervisor of each township, and the clerk of each city and village in the drainage district.
 - Mailing by first-class mail to each person whose name appears upon the last city or township tax assessment roll as owning lands in the drainage district.
 - The form of the notice should be provided by the Chair.

The drainage board shall hear evidence and make a determination as to the sufficiency of the petition.

LANDOWNER PETITIONS

For landowner petitions, the drainage board should review the Certificates of Checking an Intercounty Drain by each county to determine whether the petition is signed by a sufficient number of freeholders.²

The Chair must then complete an Order of Practicability and provide a copy to all members of the drainage board.

If a project is found practicable, the drainage board should appoint a competent surveyor or engineer to make a survey of the drain and lay out a drainage district.

HEARING OF NECESSITY

After the survey of the drain and the drainage district is complete, the Chair will call a meeting of the drainage board for a hearing of necessity. For intercounty drains, the drainage board acts as the board of determination.

- Notice of the meeting must be provided in the same manner as notice for the hearing of practicability (see above).
- The form of the notice should be provided by the Chair.



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The drainage board shall hear evidence and make a determination as to whether the petition for maintenance and improvement of the Drain is necessary and conducive to the public health, convenience or welfare.

The Drainage Board must then determine the cities, villages, and townships within the Drainage District that will receive a benefit to public health, such that they will be liable for an at-large assessment. Such determination should be included in the Order of Necessity.

The Chair should then complete an Order of Necessity and provide a copy to all members of the drainage board.

Within 10 days after the Order of Necessity is executed, notifications must be sent to each city, village, and township that will be liable for an at-large assessment. It is recommended that a notification also be sent to

MDOT or applicable county road commission(s) if any will receive benefit to public roads or highways. Notifications should be personally served or sent via certified mail.

After the notifications are sent and the appeal period is expired, the drainage board will also authorize the Chair to complete a First Order of Determination and provide a copy to all members of the drainage board.

DESIGN, EASEMENTS, & PERMITS

Either at the Hearing of Necessity, or at another public meeting, the drainage board should make determinations for the following:

DESIGN

The drainage board shall retain a competent engineer or surveyor to design the plans and specifications of the project.

EASEMENTS

The drainage board or engineer should determine whether the proposed scope of the project can be completed within existing historical right-of-way. If so, each drain commissioner should certify the same to the Chair for his or her county. If not, the drainage board should authorize a county or consultant to obtain additional easement.

All easements obtained for the project must be recorded locally at the county register of deeds. The drainage board should also consider recording affidavits of historical easements if any easements previously obtained have not been recorded.

PERMITS

The drainage board should determine whether the proposed scope of the project will require any permits.

FINAL DESIGN REVIEW MEETING/ FINAL ORDER OF DETERMINATION

Following completion of design, easement acquisition, and permitting, the chair should call a board meeting to implement the proposed project and to determine the apportionment of percentages between the counties and the number of installments.

This decision should be memorialized in the Final Order.



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Subsequently, the drainage board must prepare and file a Final Order of Determination. The drainage board may authorize the Chair to prepare the Final Order of Determination and circulate to the drainage board for signature. A copy of the completed Final Order of Determination should be provided to all members of the drainage board.

The drainage board must also set dates for the pre-bid meeting, receiving bids for the proposed project, and for the holding of days of review of apportionments in each of the counties. The days of review of apportionments must be held in each county.

- The drainage board should assign a representative(s) to attend the pre-bid meeting. If a quorum of the drainage board will attend, the drainage board must notice the meeting as a public meeting.
- The Day of Review must be held not less than five (5) but not more than thirty (30) days after the date set for receiving bids.⁵
- The Chair must approve the form of the Notice of Letting & Day of Review of Apportionments.
- Each drain commissioner must provide the Notice of Letting & Day of Review of Apportionments to the landowners, municipalities, and road commission/MDOT.⁶
- Each drain commissioner must prepare a tentative assessment roll for their Day of Review of Apportionments.⁷

BID OPENING MEETING

Following the final design review meeting, the Chair should call a board meeting at the date/time set for receiving bids.

The drainage board must select a bid consistent with Chapter 9 of the Drain Code and formalize the selection through a motion. The board may request the engineer to tabulate the bids and provide a recommendation for acceptance. The board may also choose to make a tentative award conditioned on sufficient bonds and insurances and review by the engineer and legal counsel.

Once the board is satisfied and all conditions have been met, the Chair may issue a Notice of Award.

In addition, the drainage board should consider requesting from the project engineer an estimate for the cost of for inspection. Inspection may be performed by the engineer or any other qualified person appointed by the drainage board.

Once the total costs of the project are known, including engineering, inspection, construction, easement acquisition, financial, legal and administrative expenses, the drainage board must prepare a computation of cost. The board treasurer prepares the computation of cost with assistance from the Chair. The computation of cost must be signed by all the drainage board members.

The drainage board must then secure sufficient financing for the project and; should authorize the engineer, with assistance from the Chair, to prepare a construction contract.



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PRE-CONSTRUCTION MEETING & INSPECTION

Following the completion of the days of review of apportionment by the counties, the Chair should call a drainage board meeting at the time/date set for the pre-construction meeting.

The drainage board should authorize the Chair to sign the construction contract and issue a Notice to Proceed once the necessary financing is in place and the funds are received.

The drainage board should set a meeting schedule to receive inspection reports and pay invoices during the term of the project. The frequency of the meetings will vary depending on the scope of the project.

Finally, the drainage board should obtain record drawings or as-builts of the project. If any significant changes occur during construction, the drainage board may need to have a board meeting to issue any addendum to the construction contract or enter an Amended Final Order of Determination.

ABANDONMENT OF PROJECT WITHOUT COMPLETION

Circumstances may arise that cause a petitioned project to be no longer feasible. The drainage board may contact its legal counsel to discuss alternatives to abandon the project prior to completion.