

# HOUSE BILL No. 5279

January 28, 2016, Introduced by Rep. Glardon and referred to the Committee on Local Government.

A bill to amend 1956 PA 40, entitled  
"The drain code of 1956,"  
by amending sections 441, 441a, and 446 (MCL 280.441, 280.441a, and 280.446).

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 441. (1) Two or more drainage districts located in the  
2 same county and in the same drainage basin or in adjoining basins,  
3 may consolidate and organize as a single drainage district upon the  
4 filing of a petition for consolidation with the drain commissioner  
5 of the county setting forth the reason for the proposed  
6 consolidation. The consolidation may include land not within an  
7 existing drainage district if requested in the petition. The  
8 petition shall be signed by at least 50 property owners within the

1 proposed consolidated drainage district. If in the proposed  
2 consolidated drainage district there are less than 100 property  
3 owners, the petition shall be signed by at least 50% of the  
4 property owners in the proposed consolidated drainage district. ~~In~~  
5 ~~place of a petition~~ **INSTEAD OF BEING** signed by property owners, a  
6 petition may be signed solely by a city, **VILLAGE**, or township a  
7 portion of which is located within the proposed consolidated  
8 drainage district, ~~when~~ **IF** authorized by its governing body, or  
9 **SIGNED** by a combination of **SUCH** municipalities.

10 (2) As soon as practicable after the filing of a petition  
11 **UNDER SUBSECTION (1)**, the drain commissioner, if not disqualified  
12 under section 381, may appoint a board of determination composed of  
13 3 disinterested property owners to determine the necessity of the  
14 consolidation. If the commissioner is disqualified or chooses not  
15 to appoint the board of determination, the commissioner shall  
16 immediately file a copy of the petition with the chairperson of the  
17 county board of commissioners, together with a statement signed by  
18 the commissioner showing that he or she is disqualified or chooses  
19 not to act in appointing a board of determination. Upon receiving a  
20 copy of the petition and certificate, the chairperson of the county  
21 board of commissioners, if not privately interested, shall appoint  
22 as soon as practicable a board of determination and shall  
23 immediately notify the drain commissioner of the names and  
24 addresses of those appointed. If the chairperson of the county  
25 board of commissioners has a private interest in the proceedings,  
26 the drain committee of the county board of commissioners shall  
27 appoint the board of determination. Members of a board of

1 determination shall be residents of the county but not of the  
2 proposed consolidated drainage district or of a drainage district a  
3 part of which is to be included in the proposed consolidation. A  
4 meeting of the board of determination shall be called within the  
5 proposed consolidated drainage district at ~~some~~**A** convenient place  
6 to be designated by the drain commissioner. If a person appointed  
7 to the board of determination fails or refuses to serve, a  
8 successor shall be appointed by the official or committee making  
9 the appointment in the first instance. The compensation of a member  
10 of the board of determination shall be \$8.00 per day with no  
11 additional allowance for mileage. The county board of commissioners  
12 of a county may increase the per diem compensation of members of  
13 the board of determination.

14 (3) ~~(2)~~The drain commissioner shall give notice of the time,  
15 date, and place of the meeting in the manner prescribed by ~~Act No.~~  
16 ~~267 of the Public Acts of 1976~~ **THE OPEN MEETINGS ACT, 1976 PA 267,**  
17 **MCL 15.261 TO 15.275,** and by publication twice in a newspaper of  
18 general circulation in the county or a newspaper of general  
19 circulation in the proposed consolidated drainage district. ~~the~~  
20 **THE** first publication ~~of which~~ shall be at least 10 days before the  
21 meeting. Notices shall also be served on the county clerk and the  
22 clerk of each township, **VILLAGE,** ~~or~~ **AND** city in the proposed  
23 consolidated drainage district, personally or by registered mail,  
24 at least 10 days before the meeting. The drain commissioner shall  
25 also send notice by first-class mail of the time, date, and place  
26 of the meeting at least 10 days before the date of the meeting to  
27 each person whose name appears on the last city or township tax

1 assessment roll as owning land within the existing drainage  
2 districts, a portion of which is proposed to be consolidated, or  
3 owning ~~lands~~**LAND** within the proposed consolidated drainage  
4 district ~~whose land is~~**BUT** not within an existing drainage  
5 district, at the address shown on the roll. If ~~an~~**A PERSON'S**  
6 address does not appear on the roll, then a notice need not be  
7 mailed to ~~these persons.~~**THAT PERSON.** The drain commissioner shall  
8 make an affidavit of the mailing and shall recite in the affidavit  
9 that the persons to whom the notice was mailed constitute all of  
10 the persons to whom notice must be sent. The affidavit ~~shall be~~**IS**  
11 conclusive proof that notice was mailed to each person to whom  
12 notice is required to be mailed by this section. The failure to  
13 receive a notice by mail ~~shall not constitute~~**IS NOT** a  
14 jurisdictional defect invalidating a drain proceeding if notice has  
15 been sent by first-class mail as provided in this section. All  
16 expense of notification shall be paid by the drainage district when  
17 created.

18 (4) ~~(3)~~At the time and place ~~fixed~~**SPECIFIED** in the notice  
19 the board shall meet, elect a chairperson and a secretary, and,  
20 ~~proceed to determine whether the proposed consolidation is~~  
21 ~~conducive to public health, convenience, or welfare. After~~**AFTER**  
22 hearing the evidence, ~~the board shall make its determination as to~~  
23 **DETERMINE BY MAJORITY VOTE OF THE MEMBERS** whether the proposed  
24 consolidation is conducive to public health, convenience, or  
25 welfare. If the board finds ~~by a majority vote of the members that~~  
26 the proposed consolidation is not conducive to public health,  
27 convenience, or welfare, it shall file with the commissioner an

1 order dismissing the petition, and a further petition for the drain  
2 shall not be ~~entertained~~ **CONSIDERED** within 1 year after the  
3 determination. If the board ~~by a majority vote~~ finds that the  
4 proposed consolidation is conducive to the public health,  
5 convenience, or welfare, it shall make ~~its~~ **AN** order to that effect  
6 and file the order with the commissioner. Upon receipt of the order  
7 of consolidation, the commissioner shall enter an order giving the  
8 consolidated drainage district a name or number.

9       Sec. 441a. (1) Two or more drainage districts may be  
10 consolidated and organized as a single drainage district under this  
11 section ~~where~~ **IF** the proposed consolidated district lies within  
12 more than 1 county, by filing a petition in writing with the  
13 commissioner of a county having jurisdiction of land in the  
14 proposed consolidated drainage district, setting forth the reason  
15 for the proposed consolidation. The consolidation may include land  
16 not within an existing drainage district if requested in the  
17 petition. The petition shall be signed by at least 50 property  
18 owners within the proposed consolidated drainage district. If in  
19 the proposed consolidated drainage district there are less than 100  
20 property owners, then the petition shall be signed by at least 50%  
21 of the property owners in the proposed consolidated drainage  
22 district. ~~In place of a petition~~ **INSTEAD OF BEING** signed by  
23 property owners, a petition may be signed solely by a city,  
24 **VILLAGE**, or township a portion of which is located within the  
25 proposed consolidated drainage district ~~when~~ **IF** authorized by its  
26 governing body ~~or~~ **SIGNED** by a combination of **SUCH** municipalities.

1           (2) Upon receipt of the petition **UNDER SUBSECTION (1)**, the  
2 commissioner shall notify the director of the department of  
3 agriculture **AND RURAL DEVELOPMENT** and the commissioner of each  
4 county embracing land in the proposed consolidated drainage  
5 district. The drain commissioners of the counties and the director  
6 of the department of agriculture **AND RURAL DEVELOPMENT** or a deputy  
7 designated by the director shall constitute the drainage board.

8           (3) ~~(2)~~The director of the department of agriculture **AND**  
9 **RURAL DEVELOPMENT** shall call a meeting of the drainage board not  
10 less than 15 days or more than 60 days after the receipt of the  
11 notice. The meeting shall be held in the immediate locality of the  
12 proposed consolidated drainage district. Notice of the meeting  
13 shall be served personally or by registered mail ~~at~~ at least 10 days  
14 before the meeting on the clerk of each county, township, **VILLAGE**,  
15 and city within the proposed consolidated drainage district. A  
16 notice of the meeting shall be given in the manner prescribed by  
17 ~~Act No. 267 of the Public Acts of 1976, THE OPEN MEETINGS ACT, 1976~~  
18 **PA 267, MCL 15.261 TO 15.275**, and shall be published twice in each  
19 county affected in a newspaper of general circulation in the county  
20 or in a newspaper of general circulation in the proposed  
21 consolidated drainage district. ~~the~~ **THE** first publication ~~of~~  
22 ~~which~~ shall be at least 10 days before the meeting. The drain  
23 commissioner of each county in which land proposed to be  
24 consolidated into the proposed consolidated district is located  
25 shall also send notice of the time, date, and place of the meeting  
26 by first-class mail, at least 10 days before the date of the  
27 meeting, to each person whose name appears upon the last city or

1 township tax assessment roll as owning land within the existing  
2 drainage districts to be consolidated, or owning land within the  
3 proposed consolidated drainage district ~~which is~~ **BUT** not within an  
4 existing drainage district, at the address shown on the roll. If an  
5 address does not appear on the roll, a notice need not be mailed to  
6 the persons. Each drain commissioner shall make an affidavit of the  
7 mailing and shall recite in the affidavit that the persons to whom  
8 the notice was mailed constitute all of the persons to whom notice  
9 must be sent. The affidavits ~~shall be~~ **ARE** conclusive proof that  
10 notice was mailed to each person to whom notice is required to be  
11 mailed by this section. The failure to receive notice by mail ~~shall~~  
12 ~~not constitute~~ **IS NOT** a jurisdictional defect invalidating a drain  
13 proceeding, ~~if~~ notice has been sent by first-class mail as  
14 provided in this section. All expense of notification shall be paid  
15 by the drainage district when created or consolidated.

16 (4) ~~(3)~~ Upon convening the meeting, the director of the  
17 department of agriculture **AND RURAL DEVELOPMENT** or a deputy  
18 selected by the director shall act as chairperson. The drainage  
19 board shall consider the application for the proposed consolidated  
20 drainage district, ~~and~~ determine the sufficiency of the signatures  
21 to the application. ~~The drainage board shall then proceed to~~  
22 ~~determine whether the proposed consolidation is conducive to public~~  
23 ~~health, convenience, or welfare.~~ After hearing the evidence, the  
24 drainage board shall ~~make its determination as to~~ **DETERMINE BY**  
25 **MAJORITY VOTE OF ITS MEMBERS** whether the proposed consolidation is  
26 conducive to public health, convenience, or welfare. If the board  
27 finds ~~by a majority vote of the members that~~ the proposed

1 consolidation is not conducive to public health, convenience, or  
 2 welfare, it shall file with the chairperson an order dismissing the  
 3 petition, and a further petition for consolidation shall not be  
 4 entertained ~~CONSIDERED~~ within 1 year after the determination. If  
 5 the board ~~by a majority vote~~ finds that the proposed consolidation  
 6 is conducive to the public health, convenience, or welfare, it  
 7 shall make ~~its~~ **AN** order to that effect and file the order with the  
 8 chairperson. Upon receipt of the order of consolidation, the  
 9 chairperson shall enter an order giving the consolidated drainage  
 10 district a name or number. ~~A copy of the order shall be filed~~  
 11 ~~within~~ **WITHIN** 10 days, ~~by~~ the director of the department of  
 12 agriculture **AND RURAL DEVELOPMENT SHALL FILE A COPY OF THE ORDER** in  
 13 the office of the county drain commissioner of each county in which  
 14 land included in the consolidated drainage district is located.

15 Sec. 446. Any drain ~~which~~ **THAT** has been included and merged in  
 16 a consolidated drain and whose outstanding indebtedness has been  
 17 fully paid may be abandoned and vacated in the manner provided ~~for~~  
 18 ~~the abandonment or vacation of drains. In case any such drain has~~  
 19 ~~in its fund any money, after~~ **IN CHAPTER 17. AFTER** all outstanding  
 20 indebtedness has been paid, ~~such~~ **ANY** money **IN THE FUND OF THE DRAIN**  
 21 shall be transferred, ~~AND~~ paid over, or prorated, in the same  
 22 manner as ~~is~~ provided **IN CHAPTER 17. for abandoned or vacated**  
 23 ~~drains: Provided, That~~ **HOWEVER**, if any **MUNICIPALITY OR OTHER** person  
 24 ~~, firm, corporation or township~~ entitled to share in the  
 25 distribution of ~~such money shall be~~ **THE MONEY IS** liable for any  
 26 special assessment of the consolidated drain, its share of ~~such~~ **THE**  
 27 money, or any part thereof ~~which~~ **THAT** is necessary to cover ~~such~~

1 **THE** special assessment, shall be returned to the respective county  
2 treasurer or treasurers. ~~and such~~**THE COUNTY** treasurer or  
3 treasurers shall transfer ~~such~~**THE** money to the fund of the  
4 consolidated drain, and ~~such~~**THE MUNICIPALITY OR OTHER** person ~~or~~  
5 ~~firm, corporation or township~~ shall be credited ~~therefor~~**FOR THE**  
6 **MONEY** against the special assessment of the consolidated drain.

7 Enacting section 1. This amendatory act takes effect 90 days  
8 after the date it is enacted into law.