

**THE DRAIN CODE OF 1956 (EXCERPT)**  
**Act 40 of 1956**

**280.122 Drainage board; duties generally; voting; notice of meeting; affidavit of mailing; failure to receive notice; expense of notification; drainage board as board of determination; determination of necessity, order; liability for percentage of costs.**

Sec. 122. (1) Within 20 days after a petition to locate, establish, and construct an intercounty drain is filed under section 121, the drain commissioner shall notify by certified mail the drain commissioner for each county in which any part of the drainage district is located and the director of the department of agriculture and rural development. The chairperson shall call a meeting of the drainage board within the time set forth in section 102.

(2) The drainage board has the same powers and duties as a drain commissioner with respect to a county drain, except as otherwise provided in this act.

(3) At a meeting of the drainage board, the chairperson shall not vote, except that the chairperson may cast the deciding vote in case of a tie.

(4) Not less than 10 days before the meeting, the drainage board shall give notice of the time, date, and place of the meeting by all of the following means:

(a) Publication in a newspaper of general circulation in the drainage district.

(b) Service, personally or by certified mail, on the county clerk and a member of the board of county road commissioners of each county and the supervisor of each township and clerk of each city and village in the drainage district.

(c) Service, by first-class mail on each person whose name appears on the last city or township tax roll as owning land in the drainage 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 notice was mailed to all of the persons whose names and addresses appear upon the tax rolls as owning land in the drainage district. The affidavit is conclusive proof that notice was mailed to each person to whom notice is required to be mailed under this subdivision. The failure to receive a notice by mail is not a jurisdictional defect invalidating a drain proceeding or drain assessment if notice was sent by first class mail as provided in this section.

(5) All expenses of notification shall be paid by the drainage district when created.

(6) The drainage board shall act as the board of determination and shall determine by majority vote the necessity of drains proposed to be located, established, and constructed under this chapter.

(7) The drainage board shall consider the petition and evidence offered, and if it is determined that the drain is necessary for the public health, convenience, or welfare, it shall make an order to that effect and file the order with the drainage board. If the drainage board determines that the drain is not necessary and conducive to the public health, convenience, or welfare, the drainage board shall file an order dismissing the petition, and further petition for the drain shall not be filed within 1 year after the determination. Not more than 10 days after the drainage board files an order finding the proposed drain is necessary and conducive to the public health, convenience, or welfare, the drainage board shall determine the cities, townships, and villages within the drainage district benefiting from the drain for public health and shall notify each such city, village, and township that is liable to pay a percentage of the cost of the construction of the drain by reason of benefits at large for public health. Within 20 days after an order determining that the drain is necessary is filed, if an appeal has not been taken under section 122a, the drainage board shall make a further order, signed by the chairperson, to be known as the first order of determination. The first order of determination shall give the name or number of the drainage district and a general description of the route, terminus, and type of construction of the drain. A copy of the order shall be filed in the office of the county drain commissioner of each county into which any part of the drainage district is located.

(8) If a member of the drainage board would be disqualified under sections 381 and 383 from making an apportionment of benefits, both of the following apply:

(a) The disqualified drainage board member shall not participate in the determination of necessity.

(b) A special commissioner shall be appointed pursuant to section 382 to serve as a member of the drainage board to determine necessity.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1976, Act 341, Imd. Eff. Dec. 15, 1976;—Am. 1978, Act 235, Imd. Eff. June 15, 1978;—Am. 2018, Act 646, Eff. Mar. 28, 2019.

**Popular name:** Act 40