

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

**280.441 Consolidating and organizing 2 or more drainage districts in same county as single drainage district; signing and filing petition for consolidation; land included; appointment, qualifications, and compensation of members of board of determination; determination of necessity; notice of meeting; affidavit of mailing; failure to receive notice; expense of notice; election of chairperson or secretary; determination; orders.**

Sec. 441. (1) Two or more drainage districts located in the same county and in the same drainage basin or in adjoining basins, may consolidate and organize as a single drainage district upon the filing of a petition for consolidation with the drain commissioner of the county setting forth the reason for the proposed consolidation. The consolidation may include land not within an existing drainage district if requested in the petition. The petition shall be signed by at least 50 property owners within the proposed consolidated drainage district. If in the proposed consolidated drainage district there are less than 100 property owners, the petition shall be signed by at least 50% of the property owners in the proposed consolidated drainage district. In place of a petition signed by property owners, a petition may be signed solely by a city or township a portion of which is located within the proposed consolidated drainage district, when authorized by its governing body, or by a combination of municipalities. As soon as practicable after the filing of a petition, the drain commissioner, if not disqualified under section 381, may appoint a board of determination composed of 3 disinterested property owners to determine the necessity of the consolidation. 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, shall appoint as soon as practicable a board of determination and shall immediately notify the drain commissioner of the names and addresses of those appointed. If the chairperson of the county 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 a board of determination shall be residents of the county but not of the proposed consolidated drainage district or of a drainage district a part of which is to be included in the proposed consolidation. A meeting of the board of determination shall be called within the proposed consolidated drainage district at some convenient place to be designated by the drain commissioner. If a person appointed to the board of determination fails or refuses to serve, a successor shall be appointed by the official or committee making the appointment in the first instance. The compensation of a member of the board of determination shall be \$8.00 per day with no additional allowance for mileage. The county board of commissioners of a county may increase the per diem compensation of members of the board of determination.

(2) The drain commissioner shall give notice of the time, date, and place of the meeting in the manner prescribed by Act No. 267 of the Public Acts of 1976 and by publication twice in a newspaper of general circulation in the county or a newspaper of general circulation in the proposed consolidated drainage district, the first publication of which shall be at least 10 days before the meeting. Notices shall also be served on the county clerk and the clerk of each township or city in the proposed consolidated drainage district, personally or by registered mail at least 10 days before the meeting. The drain commissioner shall also send notice by first-class mail of the time, date, and place of the meeting at least 10 days before the date of the meeting to each person whose name appears on the last city or township tax assessment roll as owning land within the existing drainage districts, a portion of which is proposed to be consolidated, or owning lands within the proposed consolidated drainage district whose land is not within an existing drainage district, at the address shown on the roll. If an address does not appear on the roll, then a notice need not be mailed to those persons. 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 to whom notice must be sent. The affidavit shall be conclusive proof that notice was mailed to each person to whom notice is required to be mailed by this section. The failure to receive a notice by mail shall not constitute a jurisdictional defect invalidating a drain proceeding if notice has been sent by first-class mail as provided in this section. All expense of notification shall be paid by the drainage district when created.

(3) At the time and place fixed in the notice the board shall meet, elect a chairperson and a secretary, and proceed to determine whether the proposed consolidation is conducive to public health, convenience, or welfare. After hearing the evidence, the board shall make its determination as to whether the proposed consolidation is conducive to public health, convenience, or welfare. If the board finds by a majority vote of the members that the proposed consolidation is not conducive to public health, convenience, or welfare, it

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 by a majority vote finds that the proposed consolidation is conducive to the public health, convenience, or welfare, it shall make its order to that effect and file the order with the commissioner. Upon receipt of the order of consolidation, the commissioner shall enter an order giving the consolidated drainage district a name or number.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1959, Act 261, Imd. Eff. Aug. 21, 1959;—Am. 1963, Act 215, Imd. Eff. May 17, 1963;—Am. 1963, Act 228, Eff. Sept. 6, 1963;—Am. 1965, Act 138, Eff. Mar. 31, 1966;—Am. 1978, Act 235, Imd. Eff. June 15, 1978.

**Popular name:** Act 40