

THE DRAIN CODE OF 1956 (EXCERPT)
Act 40 of 1956
Chapter 19.
CONSOLIDATED DISTRICTS.

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

280.441a Consolidating and organizing 2 or more drainage districts as single drainage district within more than 1 county; signing and filing petition; land included; composition of drainage board; notice of meeting; affidavit of mailing; failure to receive notice; expense of notice; chairperson; determination by drainage board; orders.

Sec. 441a.

(1) Two or more drainage districts may be consolidated and organized as a single drainage district under this section where the proposed consolidated district lies within more than 1 county, by filing a petition in writing with the commissioner of a county having jurisdiction of land in the proposed consolidated drainage district, 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, then 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. Upon receipt of the petition, the commissioner shall notify the director of the department of agriculture and the commissioner of each county embracing land in the proposed consolidated drainage district. The drain commissioners of the counties and the director of the department of agriculture or a deputy designated by the director shall constitute the drainage board.

(2) The director of the department of agriculture shall call a meeting of the drainage board not less than 15 days or more than 60 days after the receipt of the notice. The meeting shall be held in the immediate locality of the proposed consolidated drainage district. Notice of the meeting shall be served personally or by registered mail, at least 10 days before the meeting on the clerk of each county, township, and city within the proposed consolidated drainage district. A notice of the meeting shall be given in the manner prescribed by Act No. 267 of the Public Acts of 1976, and shall be published twice in each county affected in a newspaper of general circulation in the county or in 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. The drain commissioner of each county in which land proposed to be consolidated into the proposed consolidated district is located shall also send notice of the time, date, and place of the meeting by first-class mail, at least 10 days before the date of the meeting, to each person whose name appears upon the last city or township tax assessment roll as owning land within the existing drainage districts to be consolidated, or owning land within the proposed consolidated drainage district which is not within an existing 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 persons. Each 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 affidavits 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 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 or consolidated.

(3) Upon convening the meeting, the director of the department of agriculture or a deputy selected by the director shall act as chairperson. The drainage board shall consider the application for the proposed consolidated drainage district, and determine the sufficiency of the signatures to the application. The drainage board shall then proceed to determine whether the proposed consolidation is conducive to public health, convenience, or welfare. After hearing the evidence, the drainage 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 chairperson an order dismissing the petition, and a further petition for consolidation 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 chairperson. Upon receipt of the order of consolidation, the chairperson shall enter an order giving the consolidated drainage district a name or number. A copy of the order shall be filed within 10 days by the director of the department of agriculture in the office of the county drain commissioner of each county in which land included in the consolidated drainage district is located.

History: Add. 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

280.442 Drainage districts; consolidation; surveys.

Sec. 442.

In any proceeding for the consolidation of 2 or more drainage districts, existing surveys shall be used unless the drain commissioner, in the case of a county drain, or the drainage board, in the case of an intercounty drain, shall make a determination that the existing surveys are inadequate.

History: 1956, Act 40, Imd. Eff. Mar. 28, 1956

Popular Name: Act 40

280.443 Drainage districts; consolidation; existing drain, recognition and credit, exemption from special assessment.

Sec. 443.

When in any consolidated district it shall be necessary to construct a new drain on or near the line or any part of the line of an existing, operating drain so as to make the old existing drain in whole or in part unnecessary, recognition and credit shall be given for such existing drain or part thereof as follows:

The assessing authorities shall make a determination of the value of benefits which, except for the construction of the new drain, could reasonably have been anticipated from the continued operation of the existing drain or part thereof.

The property or municipal corporation which paid the assessment for the existing drain or part thereof shall be exempt from any special assessment to pay for the new drain to the extent of the value so determined.

The assessing authorities, in assessing for benefits and apportionment of costs and expenses for any new drain in a consolidated district which has been laid on or near the line or any part of the line of an existing, operating drain so as to make the existing drain in whole or in part unnecessary, shall give effect to this exemption.

History: 1956, Act 40, Imd. Eff. Mar. 28, 1956

Popular Name: Act 40

280.444 Drainage districts; consolidation; indebtedness, retirement; special assessment.

Sec. 444.

In case any drainage district which is included and merged in the consolidated district has any outstanding bonded or other indebtedness, any funds in the treasury of such debtor district shall be used to retire such indebtedness. If said funds are insufficient, the indebtedness shall be paid from any funds derived from any special assessments theretofore levied or extended against the lands in the debtor district, and if further funds are necessary the drain commissioner or drainage board of the consolidated district shall levy a special assessment against the lands in the debtor district sufficient to pay such indebtedness. The proceeds of such special assessment shall be

used only for the purpose of paying such indebtedness, bonded or otherwise, and the interest thereon.

History: 1956, Act 40, Imd. Eff. Mar. 28, 1956

Popular Name: Act 40

280.445 Drainage districts; consolidation; bonds and contracts, assumption by consolidated district.

Sec. 445.

The merging of any drainage district into a consolidated district shall not affect the obligation of any bonds issued or contracts entered into by such district nor invalidate the levy, extension or collection of any taxes or special assessments upon property in the debtor district, but such bonds and contracts shall be taken over and assumed by the consolidated district, and all outstanding special assessments shall be collected and paid over to the consolidated district for the payment of the obligations theretofore issued or contracts entered into by the debtor district.

History: 1956, Act 40, Imd. Eff. Mar. 28, 1956

Popular Name: Act 40

280.446 Drainage districts; consolidation; abandonment or vacation of included drain; proration of moneys.

Sec. 446.

Any drain which has been included and merged in a consolidated drain and whose outstanding indebtedness has been fully paid may be abandoned and vacated in the manner provided for the abandonment or vacation of drains. In case any such drain has in its fund any money, after all outstanding indebtedness has been paid, such money shall be transferred, paid over or prorated in the same manner as is provided for abandoned or vacated drains: Provided, That if any person, firm, corporation or township entitled to share in the distribution of such money shall be liable for any special assessment of the consolidated drain, its share of such money, or any part thereof which is necessary to cover such special assessment, shall be returned to the respective county treasurer or treasurers and such treasurer or treasurers shall transfer such money to the fund of the consolidated drain and such person, firm, corporation or township shall be credited therefor against the special assessment of the consolidated drain.

History: 1956, Act 40, Imd. Eff. Mar. 28, 1956

Popular Name: Act 40

280.447 Drainage districts; consolidation; rights and powers, validation of bonds.

Sec. 447.

After any drainage districts have consolidated as provided for in this chapter, the consolidated district shall, except as otherwise provided in this chapter, have all the rights and powers and be subject to all laws applicable to county or intercounty drainage districts, as the case may be. The provisions of sections 441 through 447 of this act shall not be construed to validate and shall not validate any bonds or other obligations issued prior to May 5, 1954, nor shall said sections be construed to revive or validate any obligations of an old existing or established drain which has heretofore been determined in a court of competent jurisdiction to be invalid.

History: 1956, Act 40, Imd. Eff. Mar. 28, 1956

Popular Name: Act 40

280.448 Drainage districts; consolidation; consent of county auditors or comptroller.

Sec. 448.

In any proceeding to consolidate drainage districts pursuant to the provisions of this chapter, no special assessment district shall be established and no bonded or other indebtedness shall be incurred and no construction or other contracts shall be let in counties having a board of county auditors or a county comptroller without the written consent of the said board of county auditors or the said county comptroller: Provided, however, That the approval of said board of county auditors or said county comptroller shall not be required in proceedings relative to the establishment of an intercounty consolidated drainage district.

History: 1956, Act 40, Imd. Eff. Mar. 28, 1956

Popular Name: Act 40