

## PUBLIC HIGHWAYS AND PRIVATE ROADS (EXCERPT)

### Act 283 of 1909

#### CHAPTER XV

#### DRAINS

##### **235.1 Drain in public highway; release of right-of-way, damages.**

Sec. 1. Drains may be laid along and within the limits of or across any public highway: Provided, That when it is proposed to construct a drain in whole or in part along a public highway, the owners of the land abutting on the side of the highway along which such drain is proposed to be laid, shall be considered as still owning the fee of such land, and it shall be necessary for the county drain commissioner to obtain from them severally a release of their rights to so much of said highway as is necessary and proposed to be taken for the right of way of said drain, and for all damages on account thereof. In case such release is not executed within the time (a) prescribed in section 4 of chapter 3, such release (b) shall be obtained in the same manner as is provided in this act for obtaining private lands.

**History:** 1909, Act 283, Eff. Sept. 1, 1909;—CL 1915, 4510;—CL 1929, 4139;—CL 1948, 235.1.

**Compiler's note:** Section 4 of Chapter 3, referred to in this section, evidently derives from Act 254 of 1897, the provisions of which were superseded by Act 316 of 1923, which in turn was repealed by Act 247 of 1949, Act 40 of 1953, and Act 40 of 1956.

##### **235.2 Drain in public highways; bridges and culverts; construction strength, apportionment and payment of cost, maintenance by property owner.**

Sec. 2. When any drain crosses a highway, the necessary bridge or culvert shall be constructed on the center line of the highway as located by survey, and in accordance with plans and specifications which shall be approved by the county, township or district highway commissioner having jurisdiction, or by the state highway commissioner if such road is a trunk line road, and such bridge or culvert shall be of a permanent nature and of sufficient strength to safely carry a 15 ton moving load. The cost of constructing the necessary bridge or culvert shall be charged in the first instance as part of the cost of construction of such drain after which such bridge or culvert shall be maintained as a part of the highway: Provided, however, That if such highway is a trunk line road, or is a county road, the state highway commissioner, or the board of county road commissioners, as the case may be, may assume and bear such proportion of the cost as may be agreed on between the drain commissioner and state highway commissioner or board. In such case however the contract for the construction of the bridge shall not be let by the drain commissioner without the written consent of the state highway commissioner or the board of county road commissioners. Any such expense assumed by the state shall be met out of any funds appropriated for the state highway department that may be available therefor; and the proportion of the cost of any bridge to be borne by the board of county road commissioners shall be paid out of moneys in the county road fund not otherwise appropriated. When a drain passes along a highway, there shall be constructed at least 1 bridge or passageway across such drain connecting the highway with each enclosed field and with each farm entrance, which bridge or passageway shall also be charged in the first instance as a part of the construction of such drain, after which such bridge or passageway shall be maintained by the owner of the land.

**History:** 1909, Act 283, Eff. Sept. 1, 1909;—Am. 1915, Act 75, Eff. Aug. 24, 1915;—CL 1915, 4511;—Am. 1921, Act 367, Eff. Aug. 18, 1921;—CL 1929, 4140;—CL 1948, 235.2.

##### **235.3 Open drain in highways; consent of commissioner, location, disposition of earth.**

Sec. 3. Before an open drain shall be laid along a public highway, the highway commissioner of the township in which the drain is located shall be consulted and his consent as to the proposed location of the drain shall be obtained in writing, stipulating that no excavation may be made nearer than 1 rod to the center line of the highway and stating what disposition shall be made of all material excavated. It shall be the duty of the drain commissioner to level down all materials placed in the roadway.

**History:** 1909, Act 283, Eff. Sept. 1, 1909;—Am. 1915, Act 75, Eff. Aug. 24, 1915;—CL 1915, 4512;—Am. 1917, Act 121, Eff. Aug. 10, 1917;—CL 1929, 4141;—CL 1948, 235.3.

##### **235.4 Open drain in highway; drain commissioner to apportion costs.**

Sec. 4. The county drain commissioner shall apportion the per centum of the cost of construction of such drain which any township traversed or benefited thereby shall be liable to pay by reason of the benefit to the public health, convenience or welfare, or as the means of improving any highway, and he shall also apportion the per centum of benefits to accrue to any piece or parcel of land by reason of the construction of such drain, over and above the per centum assessed against such township as aforesaid, which per centum of benefits

shall be apportioned upon and assessed against the lands benefited according to such assessment of benefits and which apportionments he shall announce at the time and place of letting, as provided in chapter 4. Such assessment of per centum for benefits shall thereupon be subject to review and correction, and may be appealed from in the manner hereinafter provided.

**History:** 1909, Act 283, Eff. Sept. 1, 1909;—CL 1915, 4513;—CL 1929, 4142;—CL 1948, 235.4.

**Compiler's note:** The provisions of chapter 4, referred to in this section, evidently derive from Act 254 of 1897, which was superseded by Act 316 of 1923. Act 316 of 1923 was in turn repealed by Act 247 of 1949, Act 40 of 1953, and Act 40 of 1956. See now MCL 280.1 et seq.

### **235.5 Drain across adjacent land; acquisition of right-of-way, approval of board, deed.**

Sec. 5. Whenever it is necessary or more convenient for the proper drainage of any highway in this state that the surplus water be taken onto or across the land adjacent thereto, the highway commissioner of the township in which said highway is situated, may secure the right of way and may open such drain or outlet for the water, and for these purposes may use any highway moneys of the township not otherwise appropriated, and such sums as may be voted for that use by the electors of the township. The highway commissioner shall secure the right of way for any such drain by gift or purchase from the owners of the land to be crossed by such drain; but in case of purchase the purchase price must be approved by the township board before any money be paid thereon. Such right of way shall be acquired by deed duly executed by the owner or owners of the lands sought to be crossed by the said drain, and shall be taken in the name of the township wherein the same is located, and filed in the office of the register of deeds of the county before any highway money shall be expended in opening such drain outside the highway limits.

**History:** 1909, Act 283, Eff. Sept. 1, 1909;—CL 1915, 4514;—CL 1929, 4143;—CL 1948, 235.5.

**Former law:** See section 1 of Act 56 of 1903; and Act 23 of 1905.

### **235.6 Report to township electors; contents; highway drain fund, use of surplus.**

Sec. 6. The highway commissioner shall report to the electors of the township at their annual meeting the amount of money expended by him during the year for such highway drainage, specifying the amount expended on each drain. He shall also recommend the raising of such sums as he may deem necessary for opening drains from the highway during the coming year, specifying each proposed drain and the probable amount needed for securing the right of way and opening the same. The money voted for this purpose by the electors of the township shall constitute a special highway drain fund, and shall be used for no other purpose. In case any money be left in the fund, after opening the drain for which it was raised, it may be used in opening any other highway drain in the township, or in cleaning out, when necessary, those already opened.

**History:** 1909, Act 283, Eff. Sept. 1, 1909;—CL 1915, 4515;—CL 1929, 4144;—CL 1948, 235.6.

**Former law:** See section 2 of Act 56 of 1903.

### **235.7 Report on construction; contents, filing; powers limited to highway drainage.**

Sec. 7. On the completion by the highway commissioner of any drain constructed under the provisions of this act, it shall be the duty of said highway commissioner to file in the office of the county drain commissioner a detailed report of the construction of such drain, giving the date of construction, the termini and general course thereof, together with a copy of the deed by which the right of way therefor was secured. Nothing in the provisions of the preceding sections shall be construed as giving to highway commissioners power to lay out and construct drains having any other purpose than the drainage of highways.

**History:** 1909, Act 283, Eff. Sept. 1, 1909;—CL 1915, 4516;—CL 1929, 4145;—CL 1948, 235.7.

**Former law:** See section 3 of Act 56 of 1903.

### **235.8 Failure to secure right-of-way; application to drain commissioner, procedure; jurisdiction.**

Sec. 8. In case the highway commissioner cannot secure the right of way across adjacent lands for the construction of any drain by agreement with the owner or owners of the land through which it will pass, he may make under his name of office an application to the drain commissioner of the county in which the proposed drain is situated, to lay out and establish the said drain. Such application shall conform to the law regulating applications for the construction of drains, and shall require no other signature than his own as highway commissioner. Such application shall have the same force and effect and be subject in other respects to the same laws and regulations that govern other applications for the establishment of drains, and shall confer jurisdiction and authority on the county drain commissioner to lay out and establish such drain under and by virtue and in pursuance of the law governing the location and establishment of other drains. It shall not be necessary to submit to the township board or boards of the township or townships crossed or affected by

such drain the question of the necessity thereof or whether the same shall be conducive to health, convenience and welfare.

**History:** 1909, Act 283, Eff. Sept. 1, 1909;—CL 1915, 4517;—Am. 1921, Act 354, Eff. Aug. 18, 1921;—CL 1929, 4146;—CL 1948, 235.8.

**Former law:** See section 4 of Act 56 of 1903.

#### **235.8a Detour roads; expense.**

Sec. 8a. In case it shall be deemed necessary by the state highway commissioner or by the county road commissioners of any county where such drain or other public improvement is under construction to lay out and maintain a detour road for the safety and convenience of public travel, it shall be lawful, except in cities, that the full cost therefor shall be borne as part of the main project whether it be a drain, a road or a highway project.

**History:** Add. 1921, Act 354, Eff. Aug. 18, 1921;—CL 1929, 4147;—CL 1948, 235.8a.