

## THE DRAIN CODE OF 1956 (EXCERPT)

### Act 40 of 1956

#### CHAPTER 13.

#### HIGHWAYS.

##### **280.321 Drains in public highways; permit; release of right of way.**

Sec. 321. Drains may be laid within or across the right of way of any highway, provided it shall be necessary for the county drain commissioner to obtain first a permit from the highway authority having jurisdiction. If title in fee simple be not in the highway authority, said commissioner shall also obtain a release of right of way for the purposes of such drain from the owner of the land, as provided in sections 73, 74 and 75 of this act.

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

**Popular name:** Act 40

##### **280.322 Drains in public highways; cost of construction; contract; maintenance, bridges or culverts to farms.**

Sec. 322. 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 road commission having jurisdiction, or by the state highway commissioner if such highway is a state trunk line. 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. The board of county road commissioners or the state highway commissioner shall assume and bear such portion of the cost of construction, based upon benefits, as may be agreed upon with the drain commissioner. In such case, 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. Thereafter such bridge or culvert constructed under the provisions of this act shall be maintained by the county road commission or state highway commissioner. Any such expense charged to the state highway commissioner shall be met out of any funds appropriated for the state highway department that may be available therefor; and any such expense to be borne by the board of county road commissioners shall be paid out of moneys in the county road fund not otherwise appropriated. As part of such drain, there shall be constructed at least 1 bridge or culvert across such drain connecting the highway (except limited access highways established under Act No. 205 of the Public Acts of 1941, as amended, being sections 252.51 to 252.64 of the Compiled Laws of 1948), with each farm entrance, and when a drain crosses a farm or any portion thereof there shall be constructed 1 bridge, culvert or ford across the drain connecting the portions of the farm disconnected by the drain, which bridge, culvert or ford shall also be charged in the first instance as a part of the construction of such drain, after which such bridge, culvert or ford shall be maintained by the owner of the land. If the drain commissioner shall make future improvements such as widening, deepening, straightening or relocating such drain, but not clean out alone, there shall be constructed the necessary bridges, culverts and fords as parts of such improvements.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1965, Act 107, Imd. Eff. June 30, 1965.

**Popular name:** Act 40

##### **280.322b Drains; highways, crossing; expenses.**

Sec. 322b. If any person desires during construction or reconstruction of a highway to install a drain for agricultural benefits in lands adjacent to any highway, and if a satisfactory outlet cannot be secured on the upper side of the highway right of way and the drain must be projected across the right of way to reach an outlet which may be legally utilized as an outlet and is suitable for such purpose, the expense of both material and labor used in installing the drain across the right of way shall be paid from funds available for the highway affected if the highway authority is notified of the necessity of the drain sufficiently in advance of the construction or reconstruction of the highway so that the drain may be installed and the highway constructed or reconstructed in the same operation.

**History:** Add. 1968, Act 283, Imd. Eff. July 1, 1968.

**Popular name:** Act 40

##### **280.323 Drains along public highways; consent; disposition of materials; apportionment against state trunk line highway; payment of assessment; certificate of amount due; drains constructed prior to 1923.**

Sec. 323. Before a drain is constructed along a public highway, the drain commissioner or drainage board

shall consult with and obtain the written consent of the highway authorities having jurisdiction over the highway, as to the proposed location of the drain and the disposition of all material excavated. Whenever an apportionment is made against a state trunk line highway, the amount of the assessment based on the apportionment shall be paid out of any state transportation funds on hand. On or before December 1 of the year when the assessment is made, the drain commissioner or drainage board shall certify to the state treasurer the amount due from the state to the drainage district by reason of the assessment of benefits, and the state treasurer shall, if satisfied of the correctness of such certificate, cause the certificate to be paid within 30 days thereafter.

If a ditch or drain was constructed prior to 1923 primarily for drainage of private lands, and was constructed along a public highway, and if the records including the original survey of the drain are not of public record nor turned over to the county drain commissioner, or have not been entered in the records of the county drain commissioner as a county drain, then the actual location of the drain shall be sufficient to make the drain comply with the provisions of this act with respect to the location thereof, and the drain shall be a county drain upon compliance with the other provisions of this act with respect to county drains. No proceedings shall be instituted for the widening of the drain or the deepening thereof below its original bottom.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1972, Act 150, Imd. Eff. May 26, 1972;—Am. 2002, Act 353, Imd. Eff. May 23, 2002.

**Popular name:** Act 40

#### **280.324 Drainage across lands adjacent to highways; right of way; approval of purchase.**

Sec. 324. 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 county road commission of the county 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 in which said highway is situated, not otherwise appropriated, and such sums as may be voted for that use by the electors of the townships. The county road commission 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 whenever township funds are involved, 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.

Before the township board approves the purchase price of any drain right of way under this section, the county road commission shall submit to the board for its approval details of the proposed drain, with specifications that the drain shall be constructed in accordance with good health and sanitation standards and in such a manner as not to constitute a hazard to health or safety and that in construction of the drain the township board shall approve the use of the land upon which the drain is to be located.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1962, Act 94, Eff. Mar. 28, 1963.

**Popular name:** Act 40

#### **280.325 Cost to township for highway drainage; report by county road commission, drain fund.**

Sec. 325. The county road commission 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. The commission shall also recommend the raising of such sums as it 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:** 1956, Act 40, Imd. Eff. Mar. 28, 1956.

**Popular name:** Act 40

#### **280.326 Construction report; restriction on county road commission.**

Sec. 326. On the completion by the county road commission of any drain constructed under the provisions of this act, it shall be the duty of said county road commission to file in the office of the 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 the county road commission power to lay out and construct drains having any other purpose than the drainage of highways.

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

**Popular name:** Act 40

**280.327 Construction or maintenance of highway; county or intercounty drain; application or petition, procedure, jurisdiction, and authority of county drain commissioner or drainage board; meeting to be held by director of department of agriculture and rural development; determination.**

Sec. 327. (1) If it is necessary for the construction or maintenance of any highway to take the surplus water across adjacent lands, any of the following may submit an application or petition to the drain commissioner of the county or counties in which the highway is situated to lay out and designate a county or intercounty drainage district, locate and establish a county or intercounty drain, or clean out, widen, deepen, straighten, or extend an established county or intercounty drain:

- (a) The director of the state transportation department.
- (b) A board of county road commissioners.

(c) If a resolution is adopted pursuant to section 6 of 1909 PA 283, MCL 224.6, transferring the powers, duties, and functions that are otherwise provided by law for an appointed board of county road commissioners, a county board of commissioners.

(2) An application or petition under subsection (1) shall conform to the law regulating applications or petitions for the laying out and designating a drainage district, locating and establishing of drains, and cleaning out, widening, deepening, straightening, and extending established county or intercounty drains. The application or petition shall have the same force and effect, and be subject in other respects to the same laws and regulations that govern other applications or petitions and shall confer the same jurisdiction and authority on the county drain commissioner or drainage board to lay out and designate a county or intercounty drainage district, locate and establish a county or intercounty drain, or clean out, widen, deepen, straighten, or extend an established county or intercounty drain. However, if the director of the state transportation department submits an application or petition under this section, he or she shall serve a copy of the application or petition on the director of the department of agriculture and rural development, who shall within 60 days hold a meeting at a public place in the vicinity of the proposed or established county or intercounty drainage district for the purpose of determining the practicability or necessity of the drain, and a board of determination is not necessary to pass on those questions. The meeting shall be held, notice given, and all persons interested may be heard in the same manner as provided in section 102 or section 122. The determination of the director of the department of agriculture and rural development shall be filed with the drain commissioner or drainage board.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 2014, Act 552, Imd. Eff. Jan. 15, 2015.

**Popular name:** Act 40

**280.328 Forwarding engineering plans to drain commissioner.**

Sec. 328. Before the department of state highways may commence the construction of a state highway, the engineering plans of the state highway relative to county drains shall be forwarded to the drain commissioner of each county where the state highway is to be constructed.

**History:** Add. 1972, Act 298, Imd. Eff. Dec. 14, 1972.

**Popular name:** Act 40