

DRAIN LAW  
For  
MICHIGAN LANDOWNERS

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### \* NOTE

References are made throughout this bulletin to the Michigan Drain Code. Numbers in parentheses refer to the relevant sections of the Code which is Act No. 40, Public Acts of 1956, as amended, State of Michigan. In specific cases direct reference to the statute should be made. In many instances competent legal help will be necessary.

# DRAIN LAW for Michigan Landowners

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THIS BULLETIN SUMMARIZES in non-technical language the most relevant parts of the *Michigan Drain Code* and the applicable common law of drainage. It will acquaint the reader with the drain procedures in a general way so he may better understand how the drain law affects him.

PART I discusses *property rights and responsibilities* (common law rules).

PART II discusses *group organization for drainage*. A table is included which summarizes the legal procedures for establishing new drainage districts and improving existing drains. Other sections of the *Michigan Drain Code* are also discussed.

PART III discusses some of the *financial and technical assistance available for drainage districts*.

## I. PROPERTY RIGHTS AND RESPONSIBILITIES

First, what does the law say about property rights and responsibilities as they are affected by drainage? If a conflict arises in the disposal of excess water, what will the courts interpret as a legal and reasonable action and what is illegal. Much of the law in this area has been developed over the years by the courts as they have settled specific disputes. The following summarizations concerning drainage are not written in the statute books and are called common laws.

### NATURAL FLOW RIGHTS

The Michigan courts have accepted the general rule of natural flow. This means that *natural surface waters created by rain or snow must be allowed to flow unrestricted on to lower land holdings over the natural water courses*. As a general rule, *landowners may not artificially concentrate or increase the velocity of surface waters*. Likewise, landowners may not dam up a water course and force natural water flows to back up and to flood other land holdings. A farmer, may however, use normal farming methods which presumably include practices such as terracing, contour farming, and filling in sag holes. Landowners have the responsibility of providing for abnormal flows of water produced by their actions. Cost of providing for the abnormal flows within the lower drainage system must be borne by the individuals who benefit from the drainage improvement.

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The foregoing common law rules and responsibilities generally apply, whether drain improvements are carried on by individuals, private groups, or by landowners organized into public drainage districts.

## **PRESCRIPTIVE RIGHTS**

The natural flow rights may be lost in certain cases. *A prescriptive right to change the natural flow may be recognized by the courts if the artificial drainage has not been protested by the affected landowners for a period of 15 years.* This then becomes a permanent right to continue the artificial drainage in the manner it was made during the last 15 year period.

The above description of property rights indicates some of the general rules governing disputes between landowners over the disposal of excess surface water. For information on a specific case it would be well to consult a lawyer. Most drainage conflicts are settled informally but in the final analysis, right cannot be determined except by court of law.

## **II. GROUP ORGANIZATION FOR DRAINAGE**

The second kind of legal question concerns the rules by which individuals may organize to solve drainage problems. The simplest case arises when a landowner wishes to obtain permission to run his artificial drainage water in ditches or tiles across the property of a neighbor and into a natural outlet. The landowner must negotiate with his neighbor to obtain this right. This may be done (a) by a deed or (b) by granting an easement. Either of which, after being recorded, gives notice to all of the existence of the right. This prevents misunderstanding in the future even if ownership of the property should change.

### **ORGANIZED DRAINAGE DISTRICTS – THE MICHIGAN DRAIN CODE**

Not all drainage problems can be solved by agreement between individual landowners. Some require governmental group action through a drainage organization to decide such questions as:

- What kind of improvements should be made, and where they should be located.
- How the rights of way may be obtained.
- How the cost should be shared.

The *Michigan Drain Code* provides a statutory procedure for making these decisions which result in benefits for the public health, convenience and welfare<sup>1</sup>. The

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<sup>1</sup> Numbers in parentheses throughout this bulletin refer to the relevant Sections of the Michigan Drain Code which is Act. No. 10, Public Acts of 1956 as amended.

establishment of new drains and improvements of existing drains depends largely on the initiative of landowners. The procedural steps are outlined in the *Michigan Drain Code*. Landowners should consult their County Drain Commissioner and other county officials who are familiar with the latest law and can provide detailed local information.

## **PROCEDURES FOR ESTABLISHING NEW DRAINS AND IMPROVING EXISTING DRAINS**

*The legal procedures for establishing new drains and existing drains are set forth in the table beginning on [page 12 and 18](#). The reader may best use the table by first noting whether he is interested in establishing a drain or improving an existing drain<sup>2</sup>, and then whether it is in one county or more than one. If the area of interest is all within one county, and it is an improvement or clean-out of an existing drain, the reader would refer to Step No. 3 on [page 13 or 19](#).*

Drainage areas wholly within one county can be established as County Drainage Districts administered by the County Drain Commissioner. Drainage areas involving more than one county become Inter-County Drainage Districts administered by an Inter-County Drainage Board composed of the Drain Commissioner of each county affected and the Director of the Michigan Department of Agriculture or his deputy who serves as chairman.

Other procedures for consolidation, maintenance, dams, obstructions, tiling, access, public health drains, and water management districts are discussed below.

## **CONSOLIDATION OF DRAINAGE DISTRICTS**

Any two or more drainage districts or parts of districts within or among counties may be consolidated. A petition must be filed with the Drain Commissioner setting forth the reasons for the consolidation. The proposed district may include lands not within any existing district. (441.8)

**SIGNERS:** The petition must be signed by 50 landowners if the number of landowners in the proposed consolidated district is more than 100 or 50 percent of the landowners in the proposed consolidated district if there is less than 100.

In the case of a proposed consolidation within a county the Drain Commissioner appoints a Board of Determination of three disinterested landowners. In the case of an inter-county consolidation proposal, the Inter-County Drainage Board acts as the Board of Determination.

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<sup>2</sup> Improving old drains includes such practices as cleaning, widening, deepening, straightening, extending, tiling and relocating existing drains.

**PUBLIC MEETING:** The Board of Determination conducts a meeting where landowners in the proposed consolidated district may appear for or against the enlarged district. *No vote of the landowners is taken.* After hearing the evidence, the Board then determines by majority vote if the proposed consolidation is conducive to public health, convenience or welfare. If the consolidation is found practical, a new district is established and landowners may then proceed to petition for drain improvements according to procedures outlined on [pages 12 to 22](#).

## **MAINTENANCE AND REPAIR COSTS**

The law affecting drainage districts requires an annual inspection of both county and inter-county drains by the Drain Commissioner or some competent person appointed by him. If maintenance and repair of a drain are needed, the Drain Commissioner may spend in any one year without petition, up to \$5,000 per mile or fraction of a mile of the drain in any one year. If the particular drain budget does not have sufficient funds to pay these expenses, the Drain Commissioner is authorized to reassess the land in the district.

If an expenditure is required which is greater than \$5,000 per mile or fraction of a mile, it must be approved by a resolution of the legislative bodies of the cities and townships involved. Each taxpayer must be notified by first-class mail of his assessment if the costs exceed \$5,000 per mile or a fraction of a mile.

## **DAMS IN DRAINS**

Another part of the *Drain Code* of importance to farmers concerns the landowner's rights in the damming of county or inter-county drains for beneficial purposes. Dams may be established to control the flow, water level and seepage in drains. Dams may also be constructed to provide for drainage by the use of pumps or other mechanical means, for the purposes of irrigation, and for protecting lands. (351-6)

To construct a dam in a drain, a petition to the Drain Commissioner is necessary stating the purpose of the dam, the location of the dam, and the proposed method of operating the dam to provide the benefits desired. The petition must be signed by a number of landholders equal to one half of the landholdings crossed by the drain above the dam site. The Drain Commissioner must pass on the practicality of the dam proposed just as in the case of the application to establish a drainage district. Dams may also be constructed in inter-county drains using similar procedures.

If the proposed dam is determined practical then the regular procedures for acquiring the right of way, letting of contract, apportionment of benefits and costs, and review are pertinent. All landowners who benefit from the dam may, if they desire, contract

with the Drain Commissioner to construct the dam and pay all the expenses of construction and all of the expenses incurred by the Drain Commissioner.

Structures to improve the flow of the drain also may be petitioned for under the proceedings outlined on [pages 12 to 22](#) for improving county and inter-county drains.

## **OBSTRUCTING AND POLLUTING DRAINS**

Except for approved dams, drains cannot be obstructed. Anyone lessening the cross-sectional area or size of a drain is liable for the cost of removing the obstruction. This does not apply to natural obstructions, however. The Drain Commissioner must give the offending party 5 days to remove the obstruction.

If not removed, the Drain Commissioner has authority to have the obstruction removed at the expense of the offending party. Railroad and telegraph companies cannot decrease the size of the drain nor can roads and bridges be built to interfere with the natural drainage pattern or restrict the flow in existing drains. (421.9)

No one can discharge sewage or waste water in a county drain or inter-county drain capable of producing detrimental deposits, objectional odor nuisance, injury to drainage conduits, or pollution that is injurious to the public health or livestock and fish. However, sewage and other wastes may be discharged into the drain if none of the above injuries can be shown to result from their discharge into the drain. The drain law provides for the construction of disposal plats and filtration beds under similar procedures used in the establishment of a drain.

## **TILING EXISTING DRAINS AT INDIVIDUAL EXPENSE**

Individual landowners by written application must obtain a permit from the Drain Commissioner to tile county drains on their land at their own expense. The area of the drain cannot be lessened. See the section on [pages 12 to 22](#) on improving existing drains for tiling procedures not covered here. (425)

## **ACCESS TO DRAIN (BRANCH DRAINS)**

County and inter-county drains are not always constructed so that each parcel of land has direct access to the drain. Several alternatives are available in the event a landowner or group of landowners want a branch drain to serve part or all of their holdings. They may petition for an extension using the procedures outlined in the

previous table for improving existing drains. They may also petition to establish a new drain.

In addition, a landowner who can get access to a county drain only by crossing a neighbor's land may petition the Drain Commissioner for the installation of drain tile or conduit to the county or inter-county drain. (This provision does not apply to open ditches.) The Drain Commissioner may authorize the owners of the traversed land. If written permission is not given, the landowner or landowners benefiting from the drain may follow the procedures outline on [pages 12 to 22](#) concerning the establishment and construction of a drain. The application requires only the signatures of the petitioning landowner or owners. Other provisions concerning the determination of practicality and the obtaining of a right of way by the Drain Commissioner are applicable. (425)

## **PUBLIC HEALTH DRAINS**

The Drain Code provides that when necessary for public health, drains may be petitioned for solely by townships, villages, cities and other local governmental units with taxation powers. The petition must be submitted by two or more of these local governmental units to the County Drain Commissioner if the drain affects a single county or to the Director of the Michigan Department of Agriculture if the drain affects more than one county.

The procedural steps of this type of drain are very similar to those for general drains except that:

- (1) The applications and petitions signed by individual landowners are not required; only one petition is required.
- (2) The purpose of the drain is *public health benefits* rather than specific benefits to individual tracts of land.
- (3) The cost of the public health drain must be apportioned entirely among the local governmental units benefited or causing the drainage problem. (461-538)

## **WATER MANAGEMENT DISTRICTS**

The Water Management District is given a somewhat broader scope than the Drainage District in the use and development of the water resource. The procedure for establishing a district must be initiated by governmental units and not be individuals. Cities, villages, counties and townships may form a Water Management District to eliminate problems of flooding damage and water conditions which jeopardize the health and safety of individuals. The district may undertake drainage and flood control improvements, which will increase the value of land and property and make advantageous use of water for agriculture, conservation or recreation purposes. (551-76)

## **PETITION**

The proposed water management district area must represent or include three or more adjacent counties. The petition, which states the necessity of the project, must be signed by three or more of the governmental units subject to assessment such as townships, villages, counties or cities. If there are more than eight counties involved, the petition must be signed by at least three counties. The petition is submitted to the Director of the Michigan Department of Agriculture.

## **APPROVAL BY WATERSHED MANAGEMENT COMMISSION**

A Watershed Management Commission is formed and composed of:

- (1) The Drain Commissioners of each county involved.
- (2) An additional member from each county appointed by the County Board of Supervisors.
- (3) One director of a Soil Conservation District to represent all of the Soil Conservation Districts involved.
- (4) One representative for each city or village with a population of 5,000 or more. Each city with a population exceeding 10,00 shall have additional representative for each additional 20,000 inhabitants but cannot have more than 10 representatives.
- (5) The Director of the Michigan Department of Agriculture or his deputy who serves as chairman of the Commission.

The Commission considers the petition, makes tentative determination of its sufficiency, necessity and practicality of the project. The Commission approves preliminary plans and cost estimate and makes a tentative apportionment of costs to each public corporation to be benefited.

## **DETERMINATION OF NECESSITY – PUBLIC HEARING**

Preliminary plans and cost estimates are then referred to a 5-member Water Management Board appointed by the Commission. The board must have at least one member from each county which is liable for 25 percent or more of the total assessments. A public hearing is held by the Board to hear objections concerning the preliminary plans and costs. The board then makes a preliminary determination of the necessity and practicality of the project.

The Board asks for the approval of the preliminary plans by the State Water Resources Commission. After approval the Board is authorized to hire qualified personnel as necessary to make detailed plans and specification. The plans along with detailed cost estimates are submitted again to the Water Resource Commission for their approval.

## **FINAL APPROVAL BY WATER MANAGEMENT COMMISSION**

The Water Management Commission must review the final plans and adopt them by a 3/5 vote before construction can commence. The Board is authorized to obtain rights-of-way for the project.

## **APPORTIONMENT**

**THE COMMISSION TENTATIVELY ESTABLISHES THE PERCENTAGE OF THE COST TO BE ASSESSED AGAINST THE VARIOUS GOVERNMENT UNITS. COSTS ARE APPORTIONED IN RELATION TO THE BENEFITS RECEIVED AND ALSO ON THE BASIS THAT THE VARIOUS PARTS OF THE WATERSHED CONTRIBUTE TO CONDITIONS WHICH MAKE THE PROJECT NECESSARY. A HEARING ON APPORTIONMENT IS HELD AND, IF NECESSARY, ADJUSTMENTS ARE MADE. THE COMMISSION APPROVES THE FINAL ORDER OF APPORTIONMENT BY A 3/5 VOTE.**

## **ACTIVITIES**

The Commission may enter into contracts with the federal government whereby the latter may pay all or part of the cost of the project. The Commission may authorize the Board to lease land, to sell water, to operate on erosion control, and to develop recreational facilities. The operation and maintenance of the project is conducted by the Board. The Board must prepare an annual budget and recommend assessments to cover the proposed costs. The Commission holds an annual hearing on the budget and gives final approval to the budget.

## **III. FINANCIAL AND TECHNICAL ASSISTANCE**

Landowners interested in improved drainage have available to them financial and technical assistance programs. Some of these programs are outlined here along with sources of additional information.

### **FARM DRAINAGE IMPROVEMENTS**

The Agricultural Conservation Program of the U.S. Department of Agriculture shares cost with farmers for undertaking certain conservation practices including tile and open ditch drainage of farmland. *Assistance is not available for established legal drains.* Farmers interested in financial assistance should check with personnel in the county office of the Agricultural Stabilization and Conservation Committee to determine eligibility requirements. Technical assistance may be secured from the local office of the U.S. Soil Conservation Service.

### **SOIL CONSERVATION SERVICE SMALL WATERSHED PROGRAM**

Under the Watershed Protection and Flood Prevention Act (Public Law 566), the Secretary of Agriculture is authorized to assist local organizations in planning and

paying for certain watershed improvements which aid drainage, irrigation and flooding control. The improvement may also be made for nonagricultural water management to aid municipal, industrial and recreational facilities. The watershed improvements must be sponsored by a local organization such as a drainage district, Water Management District, or unit of local government. They are usually co-sponsored by the Soil Conservation District.

Applications for assistance must be made to the State Soil Conservation Committee in Lansing. Local farmer groups should check with the local office of the U.S. Soil Conservation Service of the local soil conservation district to determine eligibility and application agreement.

### **CORPS OF ENGINEERS FLOOD CONTROL PROGRAM**

The U.S. Corps of Army Engineers is authorized by Congress to cooperate with states and local communities in planning and paying for certain flood control improvements. Improved drainage of agricultural is an improvement that can be authorized.

Corps of Engineers projects usually are large and may include improvement structures throughout a watershed. The Corps must work with a local organization such as a Drainage District, a Watershed Management District, or a unit of local government.

Action for Corps projects is initiated by local interests by contacting their Congressman with a request that certain improvements be considered by the Federal Government. Local interests may also request advise of the Corps of Engineers concerning possible arrangements and procedures.

## **PROCEDURES for establishing new drains and improving existing drains**

### COUNTY DRAINAGE DISTRICTS (wholly within one county)

## **1. Application to Establish Drainage District**

### **NEW DRAINS:**

LANDOWNERS MUST INITIATE and submit an application to the county drain commissioner. The application must describe the proposed location and route of the drain.

SIGNERS – The application must be signed by at least 10 landowners in the township or townships where the land to be drained is located. Five of these must be liable for assessment if the drain is established. If there are fewer than 20 landowners in the proposed drainage area, then only one of the signers must be liable for assessment. The drain commissioner may require a cash deposit to cover preliminary costs of establishing a drain. The commissioner should be consulted to determine the exact form of the application, the copies required, and the number of eligibility of signers.

VILLAGE, CITY OR TOWNSHIP GOVERNING BODIES may initiate an application if they pay a percentage of the cost of the drain and if it is necessary for the public health. A county board of health may also initiate a petition if the drain is necessary for public health. (51)

**IMPROVING EXISTING DRAINS:** *Not applicable for improving existing drains (cleaning, widening, deepening, straightening, extending, tiling, and enclosing).*

## **2. Determination of Practicality and Designation of District**

### **NEW DRAINS:**

AFTER THE APPLICATION IS MADE by the landowners, the drain commissioner must determine the practicality of the proposed drain. He may do this on his own information or he may have a survey made by a surveyor or engineer to determine the area and route of the drain and type of construction most serviceable. The commissioner is not limited to the route described in the application.

IF A SURVEY IS MADE it includes detailed plans and drawings for the drain and an estimate of the cost of construction. The survey also indicates the boundaries of the drainage district composed of land that would be benefited

by the proposed drain. The expense of preparing these plans and estimates of construction costs become a part of the total cost of the drain which is paid for by the benefited property owners.

IF AFTER THE SURVEY, the commissioner rules that the drain is practical, then he files in his office an *order designating the drainage district* which describes the lands to be benefited and liable for assessment and the location of the drain and its costs.

IF THE COMMISSIONER RULES that the proposed drain is not practical, he must so notify the persons making the application giving his reasons in writing. The factors to be weighed in determining practicality are not specified in the Drain Code.

*Public notice* of the order is given in a county newspaper. (52, 53, 54, 261)

**IMPROVING EXISTING DRAINS:** *Not applicable for improving existing drains (cleaning, widening, deepening, straightening, extending, tiling, and enclosing).*

### **3. Petition to Construct or Improve Drains**

#### **NEW DRAINS:**

THE NEXT STEP is again up to the landowners. They must petition to construct the drain.

SIGNERS – Any landowner in the drainage district may sign the petition to construct. The number of signers needed is two-thirds of the number of landowners whose land would be crossed by the drain applied for or whose lands abut a highway along side of which a drain extends.

VILLAGES, CITIES OR TOWNSHIPS may initiate a petition only if they singly or in combination will pay at least 66 percent of the total drain assessment. (71)

#### **IMPROVE AN EXISTING DRAIN:**

IN THE CASE OF IMPROVEMENT OR EXTENSION of existing county drains, landowners must submit a petition to the county drain commissioner setting forth the necessity of the proposed work.

SIGNERS – The petition for improvement must be signed by five landowners in the township or townships where the drain is located. Two of these signers must be liable for the assessment.

IF TILE IMPROVEMENT INCLUDES TILING with an inside diameter in excess of 12 inches, the number of signers needed is two-thirds of the number of landowners whose lands would be crossed by the drain applied for or whose lands abut a highway along side of which a drain extends.

VILLAGES, CITIES, OR TOWNSHIPS may singly or in combination initiate a petition only if they pay at least 20 percent of the assessment. (191)

#### **4. Determination of Necessity and Order for Construction**

##### **NEW DRAINS:**

WHEN THE DRAIN COMMISSIONER RECEIVES THE PETITION TO CONSTRUCT, he then must appoint a board of determination composed of three disinterested landowners within the county but outside of the townships affected by the drain.

PUBLIC MEETING: A public meeting is held by the board to determine if the drain is necessary and conducive to public health, convenience, or welfare. Public notice of the meeting date and place is given in a county newspaper and each affected property owner is notified by mail. The affected property owners may express their opinion concerning the drain to the board of determination. The decision on necessity rests with this board and the decision on necessity is determined by a majority vote. *No vote of the people at the meeting is taken.* No guidelines on determining necessity are contained in the statute except that the drain must be conducive to public health, convenience, or welfare. If the board finds the drain unnecessary the proceedings stop. A new petition may be filed after 1 year. If found necessary, the drain commissioner then makes the first order of determination which specifies the location and type of construction. (72)

##### **IMPROVING EXISTING DRAINS:**

The procedure for determining the necessity of an improvement to a county drain is identical to the procedure for determining the necessity for constructing a new county drain. (191)

## 5. Acquisition of Right-of-Way

### **NEW DRAIN:**

AFTER THE DRAIN IMPROVEMENT HAS BEEN AUTHORIZED, the drain commissioner shall attempt to secure a right-of-way and release of damage for the drain. A written release of right-of-way and release of damages must be signed and acknowledged by the landowner. If private property loses its usefulness or if crops are destroyed as a result of the construction of the drain, the owner may receive compensation for these damages. Right-of-way must be sufficient to provide for the construction, operation, and maintenance of the drain. The width of right-of-way needed is determined in the plan by the surveyor or engineer.

RIGHT-OF-WAY – If at the end of 60 days rights-of-way have not been released, the drain commissioner may exercise the power given drainage districts to take private property for the use and benefit of the public.

The commissioner applies to the probate court for the appointment of three special commissioners who are disinterested landowners in the county. The court appoints the special commissioners after a hearing is held to hear the affected parties on such items as legality of the proceedings thus far. These special commissioners after hearing the affected parties determine if taking the right-of-way is necessary and the amount of just compensation.

### **IMPROVING EXISTING DRAINS:**

The procedure for acquiring release of right-of-way for drain improvements is identical to the procedure for acquiring right-of-way for new county drains. New right-of-way may not be necessary.

## 6. Letting of Contracts

### **NEW DRAIN:**

WHEN ALL RIGHTS-OF-WAY HAVE BEEN ACQUIRED, the drain commissioner proceeds to let material and construction contracts to the lowest responsible bidders. (221)

### **IMPROVING EXISTING DRAINS:**

THE DRAIN COMMISSIONER MUST SECURE the release of additional right-of-way if needed. He then proceeds to let material and construction contracts to the lowest responsible bidders. (221)

## **7. Apportionment of Costs**

### **NEW DRAIN:**

THE DRAIN COMMISSIONER MUST APPORTION the total costs of construction on the basis of benefits received. The statute does not spell out how benefits are to be calculated. The Michigan Supreme Court however, has said that the following may be considered: the effect that drainage will have on the adaptability of the land for use, the location of the land, the nature of the soil, and other factors pertinent in each instance.

The commissioner must apportion the percentage of the total cost which will be paid by governmental units for general benefits to the public health, convenience, or welfare and for improvements to roads. These costs are paid by assessments spread at large in the governmental unit concerned. The remaining percentage is apportioned to each landholder according to special benefits received.

### **REVIEW**

PUBLIC MEETING – The percentage apportionment of costs is subject to review. At least one day of review must be held for individual landowners or his agent and representative of the various units of government to present testimony concerning the apportionment. Notice of the day of review must be published and each party subject to assessment notified by mail. The estimated total cost of the project based upon the accepted bids must be available at the meeting places for the day of review. In view of the testimony, the drain commissioner may adjust the apportionments as may seem equitable to him.

### **APPEALS**

WITHIN 10 DAYS AFTER THE DAY OF REVIEW an individual dissatisfied with the final apportionment may apply to the probate court for the appointment of a board of review. The judge may require a bond to insure the payments of court costs in the event the apportionment is not changed. The court appoints three disinterested landowners as a board of review to hear the dissatisfied landowners. The board must personally view the land, review all of the apportionments and by majority vote make a final decision concerning the apportionment (152 – 3 – 4 – 5 - 6)

### **IMPROVING EXISTING DRAINS:**

The procedure for apportioning the costs for a drain improvement is identical to this procedure step for constructing new county drains. *In the event the commissioner apportions the cost by the same percentage as the last recorded apportionments, no day of review is scheduled.* (191)

## 8. Levy and Collection of Drain Taxes

### **NEW DRAIN AND IMPROVING EXISTING DRAINS:**

ALL EXPENSES INCURRED IN THE ESTABLISHMENT and construction or cleanout become part of the total costs chargeable to those who benefit from the improvement.

These costs include:

Contract costs and expenses for boards of reviews and special commissioners  
Costs of appeals, probate fees  
Legal fees  
Publishing fees  
Engineering fees

Not all of these costs are incurred on every improvement.

The cost of materials and construction will include a charge for interest. It is not possible to determine the amount of interest and it does not appear as a separate cost item. However, the longer the period of installment payments the larger the interest cost will be.

In addition, a contingency charge is made, not less than 10 nor more than 15 percent of the total costs, to provide for emergencies.

The drain commissioner uses the apportionment percentage discussed in the previous step in making an assessment roll based on the total cost of the drain. The drain tax is a lien on the property. (261, 265)

## **PROCEDURES for establishing new drains and improving existing drains**

INTER-COUNTY DRAINAGE DISTRICTS  
(district involves more than one county)

### **1. Application to Establish Drainage District**

#### **NEW DRAIN:**

LANDOWNERS MUST INITIATE and submit an application to any of the county drain commissioners involved. The application must describe the proposed location and route of the drain.

SIGNERS – The number of signers needed is 50 percent of the number of landowners whose land would be crossed by the proposed drain or abut on a drain which is alongside a road. Only those landowners who would be liable for assessment may sign. The inter-county drainage board may require a cash deposit to cover preliminary costs of establishing a drain. The commissioners should be consulted to determine the exact form of the application, the copies required, and the number and eligibility of signers.  
(101)

**IMPROVING EXISTING DRAINS:** *Not applicable for improving existing drains (cleaning, widening, deepening, straightening, extending, tiling, and enclosing).*

### **2. DETERMINATION OF PRACTICALITY AND DESIGNATION OF DISTRICT**

#### **NEW DRAIN:**

AFTER THE APPLICATION IS MADE by the landowners the inter-county drainage board must determine the practicality of the proposed drainage.

PUBLIC MEETING: The inter-county drainage board holds a public meeting at which the landowners may express their views. *No vote of the landowners is taken.* The drain commissioners on the board determine the practicality of the drain by major vote.

IF THE PROPOSED DRAINAGE IS PRACTICAL, the board orders a survey to be made. The survey includes detailed plans and drawings for the drain and an estimate of the cost of construction. The survey also indicates the boundaries of the drainage district composed of land that would be benefited by the proposed drain. The expense of preparing these plans and estimates of construction costs become a part of the total cost of the drain which is paid for by the benefited property owners.

IF THE BOARD RULES that the proposed drain is not practical, a new application may be filed after 1 year. The factors to be weighed in determining practicality are *not* specified in the Drain Code.

*IF THE BOARD RULES THE DRAIN PRACTICAL*, then the board chairman files in each county office *an order designating the drainage district* which describes the lands to be benefited and liable for assessment, the location of the drain, and its costs. *Public notice* of the order is given in a newspaper in each affected county. (103, 104, 105)

**IMPROVING EXISTING DRAINS:** *Not applicable for improving existing drains (cleaning, widening, deepening, straightening, extending, tiling, and enclosing).*

### **3. PETITION TO CONSTRUCTION OR IMPROVE DRAINS**

#### **NEW DRAIN:**

THE NEXT STEP is again up to the landowners. They must petition to construct the drain.

SIGNERS – Any landowners in the drainage district may sign the petition to construct. The number of signers needed is two-thirds of the number of landowners whose lands would be crossed by the drain or whose lands abut a highway along side of which a drain extends. (121)

#### **IMPROVING EXISTING DRAINS:**

LANDOWNERS WHO DESIRE TO IMPROVE, extend or consolidate existing inter-county drains must submit a petition stating the necessity for such improvement to any of the drain commissioners involved.

SIGNERS – The number of signers needed is 50 percent of the number of landowners whose lands would be crossed by the drain or would abut a highway along side of which a drain extends.

VILLAGES, CITIES, AND TOWNSHIPS may initiate inter-county drain improvements only if these units pay at least 20 percent of the costs.

PUBLIC MEETING: Upon receipt of the petition stating the necessity for improving inter-county drain, the inter-county drain board must hold a *public hearing* to determine practicality. If ruled practical by the board, an engineering survey is then made. (192)

#### **4. DETERMINATION OF NECESSITY AND ORDER FOR CONSTRUCTION**

##### **NEW DRAIN:**

The procedure for determining the necessity of a new inter-county drain is identical to this procedural step for a new county drains *except that the inter-county drain board acts as the board of determination.* (122)

##### **IMPROVING EXISTING DRAINS:**

The procedure for determining the necessity for improving an existing inter-county drain is identical to this step for improving county drains *except that the inter-county drain board acts as the board of determination.* (192)

#### **5. ACQUISITION OF RIGHT-OF-WAY**

##### **NEW DRAIN:**

The procedure for acquiring the release of right-of-way for new inter-county drains is identical to this procedural step in constructing new county drains, *except that when special commissioners are required three are appointed in each of the counties affected who act jointly in performing their services.* (127, 128, 129)

##### **IMPROVING EXISTING DRAINS:**

The procedure for acquiring the release of right-of-way for new inter-county drains is identical to this procedural step in constructing new county drains, *except that when special commissioners are required three are appointed in each of the counties affected who act jointly in performing their services.* (128, 129, 195)

## **6. LETTING OF CONTRACTS**

### **NEW DRAIN:**

WHEN RIGHTS-OF-WAYS HAVE BEEN RELEASED, the inter-county drain board proceeds to let material and construction contract to the lowest responsible bidders. (221)

### **IMPROVING EXISTING DRAINS:**

THE INTER-COUNTY DRAINAGE BOARD must secure the release of additional right-of-way if needed. He then proceeds to let material and construction contracts to the lowest responsible bidders. (221)

## **7. APPORTIONMENT OF COSTS**

### **NEW DRAIN:**

THE INTER-COUNTY DRAINAGE BOARD APPORTIONS THE total costs among the counties involved. In the event that the inter-county drainage board cannot agree on the apportionment among the counties, the Director of the Michigan Department of Agriculture or his deputy who acts as the chairman of the inter-county drainage board apportions the costs. If one or more of the county drain commissioners still is dissatisfied they may request a meeting of a board of arbitration.

THE BOARD OF ARBITRATION IS COMPOSED of unaffected drain commissioners selected by the dissatisfied drain commissioners. These board of arbitration members then select 1 or 2 additional unaffected drain commissioners so that the number is uneven.

DAY OF REVIEW: - The board of arbitration convenes at a time and place where all interested persons may be heard. The findings of the majority of the board of arbitration shall be final and conclusive concerning the apportionment. Each individual drain commissioner apportions his counties' share of the total cost in a manner identical to the procedure for apportioning costs for a new county drain. (106, 122, 125, 130)

### **IMPROVING EXISTING DRAINS:**

The procedure for apportioning the cost for an inter-county drain improvement is identical to this procedural step for constructing new inter-county drains. *In the event the inter-county drainage board apportions the cost by the same percentage as the last recorded apportionments, no day of review is scheduled.* (192)

## 8. Levy and Collection of Drain Taxes

### **NEW DRAIN AND IMPROVING EXISTING DRAINS:**

ALL EXPENSES INCURRED IN THE ESTABLISHMENT and construction or cleanout become part of the total costs chargeable to those who benefit from the improvement.

These costs include:

Contract costs and expenses for boards of reviews and special commissioners

Costs of appeals, probate fees

Legal fees

Publishing fees

Engineering fees

Not all of these costs are incurred on every improvement.

The cost of materials and construction will include a charge for interest. It is not possible to determine the amount of interest and it does not appear as a separate cost item. However, the longer the period of installment payments the larger the interest cost will be.

In addition, a contingency charge is made, not less than 10 nor more than 15 percent of the total costs, to provide for emergencies.

The drain commissioner uses the apportionment percentage discussed in the previous step in making an assessment roll based on the total cost of the drain. The drain tax is a lien on the property. (261, 265)

STEP NO. 8, the procedure for levying and collecting drain taxes, is the same procedure for all types of drains – county, inter-county, new or existing. In the case of an inter-county drain project each county levies and collects its share of inter-county drain assessment. (261-265)

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  - Updated October 2003 by Washtenaw County Drain Commissioner's Office.

## GENERAL QUESTIONS REGARDING RIPARIAN RIGHTS

**Q: Do I have to accept surface water which runs off my neighbor's property?**

A: Generally yes. The owner of a lower (or servient) estate must receive surface waters from the upper (or dominant) estate in its natural flow. The natural flowage of water from an upper estate is a "natural servitude" which a lower estate must bear.

**Q: Can I take measures to obstruct the flow of water once it reaches my property?**

A: The lower estate generally has no right to interrupt the natural flow of water in its natural course from an upper estate to the injury of the owner of the upper estate.

**Q: What if the upper landowner does something to increase the flow of water or amount of water onto my property?**

A: A landowner may improve his land by filling up holes, pools or basins to prevent water from accumulating or remaining on it, even though the result is to cause water to flow on the land of the adjoining owner. A landowner may also increase the size of the culvert or drain where water would have found its way to the lower estate in any event, as long as the change to the drain or culvert does not cause the flow of water to flow faster than before so as to cause damage to the lower property.

Moreover, a landowner may not divert a natural waterway so that the water will be discharged from his land on a neighbor's property. A dominant tenant cannot collect and concentrate surface waters by means of tile drains and pour them in unusual quantities on the adjacent owner's land.

**Q: Can a lower landowner stop an upper landowner from using a diverted waterway which is currently being used?**

A: Maybe. A "prescriptive easement" is created when the owner of a lower estate allows a ditch or drain to exist for 20 years which carries water from the upper estate without express permission from the lower estate. Once this prescriptive easement is established, the upper estate has the right to unobstructed use of the ditch or drain for that purpose. Moreover, once the prescriptive easement is established, the dominant owner of the easement has a right and a duty to repair and maintain the easement.

A prescriptive right of drainage can only be exercised in the manner and to the extent that it has been used during the prescriptive period. For example, if the upper landowner obtains a prescriptive right to a three inch tile drain, he may not replace it with a six inch tile drain.

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