

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

280.342 Drains across public utility right of way; mandamus to compel opening; costs.

Sec. 342.

Whenever it is necessary to lay out and establish, deepen or widen, or both, or extend or straighten a drain across the right of way or roadbed of any railroad, railway, telephone, telegraph, dam, electric, water, oil, gas or other power company, the same proceedings shall be had throughout in all respects as cases provided in this act for obtaining private lands, except as herein provided. The damages and compensation to be awarded by the special commissioners shall include the legal damages for the making of the opening required in the drain proceedings. After damages as aforesaid shall have been determined, it shall be the duty of the railroad, railway, telephone, telegraph, dam, electric, water, oil, gas or other power company, when notified by the commissioner so to do, to make and maintain the necessary opening through its roadbed or right of way and to build and maintain a suitable culvert or crossing for such drain. Notice in writing to make such opening and to construct such culvert shall be served upon such company by leaving a copy thereof with the ticket or freight agent or general officer of such railroad, railway, telephone, telegraph, dam, electric, water, oil, gas or other power company at least 30 days before such railroad, railway, telephone, telegraph, dam, electric, water, oil, gas or other power company shall become liable. In case such railroad, railway, telephone, telegraph, dam, electric, water, oil, gas or other power company shall neglect for 30 days after service of such notice as aforesaid, the commissioner shall have the right to petition the circuit court, in addition to any other remedies which may exist, of the county in which such crossing is located, to compel such company to make such opening forthwith; and such circuit court shall, if it finds there is legal right to such opening, order the same to be forthwith constructed by said company, and issue its writ of mandamus therefor. At least 10 days' notice shall be given such company of such application, and thereafter such proceedings shall follow the practice of circuit courts in mandamus proceedings. Said matter shall be heard and determined as speedily as practicable, and take precedence over all other cases which may be pending in such court. Such costs may be awarded the prevailing party as are awarded in other motions for mandamus.

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

Popular Name: Act 40