

**§ 156-88. Drainage across public or private ways.**

Where any public ditch, drain or watercourse established under the provisions of this Subchapter crosses or, in the opinion of the board of viewers, should cross a public highway under the supervision of the Department of Transportation the actual cost of constructing the same across the highway shall be paid for from the funds of the drainage district, and it shall be the duty of the Department of Transportation, upon notice from the court, to show cause why it should not be required to repair or remove any old bridge and/or build any new bridge to provide the minimum drainage space determined by the court; whereupon the court shall hear all evidence pertaining thereto and shall determine whether the Department of Transportation shall be required to do such work, and whether at its own expense or whether the cost thereof should be prorated between the Department of Transportation and the drainage district. Either party shall have the right of appeal from the clerk to the superior court and thence to the appellate division, and should the court be of the opinion that the cost should be prorated then the percentage apportioned to each shall be determined by a jury.

Whenever the Department of Transportation is required to repair or remove any old bridge and/or build any new bridge as hereinbefore provided, the same may be done in such manner and according to such specifications as it deems best, and no assessment shall be charged the Department of Transportation for any benefits to the highway affected by the drain under the same, and such bridge shall thereafter be maintained by and at the expense of the Department of Transportation.

Where any public ditch, drain, or watercourse established under the provisions of this Subchapter crosses a public highway or road, not under the supervision of the Department of Transportation, the actual cost of constructing the same across the highway or removing old bridges or building new ones shall be paid for from the funds of the drainage district. Whenever any highway within the levee or drainage district shall be beneficially affected by the construction of any improvement or improvements in such district it shall be the duty of the viewers appointed to classify the land, to give in their report the amount of benefit to such highway, and notice shall be given by the clerk of the superior court to the commissioners of the county where the road is located, of the amount of such assessment, and the county commissioners shall have the right to appear before the court and file objections, the same as any landowner. When it shall become necessary for the drainage commissioners to repair any bridge or construct a new bridge across a public highway or road not under the supervision of the Department of Transportation, by reason of enlarging any watercourse, or of excavating any canal intersecting such highway, such bridge shall thereafter be maintained by and at the expense of the official board or authority which by law is required to maintain such highway so intersected.

Where any public canal established under the provisions of the general drainage law shall intersect any private road or cartway the actual cost of constructing a bridge across such canal at such intersection shall be paid for from the funds of the drainage district and constructed under the supervision of the board of drainage commissioners, but the bridge shall thereafter be maintained by and at the expense of the owners of the land exercising the use and control of the private roads; provided, if the private road shall be converted into a public highway the maintenance of the bridge shall devolve upon the Department of Transportation or such other authority as by law shall be required to maintain public highways and bridges. (1909, c. 442, s. 25; 1911, c. 67, s. 6; 1917, c. 152, s. 6; C.S., s. 5345; 1947, c. 1022; 1953, c. 675, s. 26; 1957, c. 65, s. 11; 1969, c. 44, s. 78; 1973, c. 507, s. 5; 1977, c. 464, s. 34.)