

1970

## c 461 Tile Drainage Act

Ontario

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CHAPTER 461

The Tile Drainage Act

1. In this Act,

Interpretation

- (a) "drainage work" means a drain to be constructed of stone or timber, or of tile, pipe or tubing of any material;
- (b) "municipality" means a city, town, village or township. 1968-69, c. 129, s. 1, *part*.

2.—(1) Subject to sections 64 and 65 of *The Ontario Municipal Board Act*, the council of a municipality may pass by-laws in Form 1 authorizing the borrowing of money for the purposes of the construction of drainage works and the issuance of debentures by the municipality or by a district or regional municipality on its behalf. 1968-69, c. 129, s. 1, *part*; 1970, c. 47, s. 1 (1).

Borrowing powers of municipalities  
R.S.O. 1970, c. 323

(2) Subject to subsections 3 and 4, a municipality or a district or regional municipality on its behalf may borrow in sums of not less than \$2,000 and the total indebtedness of a municipality under this Act shall not exceed \$300,000 at any one time, but if the assessment of the whole rateable property in the municipality according to the last revised assessment roll is not less than \$3,000,000, its total indebtedness under this Act shall not exceed \$750,000 at any one time. 1968-69, c. 129, s. 1, *part*; 1970, c. 47, s. 1 (2).

Idem

(3) Where a municipality is amalgamated with or annexed to another municipality, the total indebtedness under this Act of the new municipality or the annexing municipality shall not exceed at any one time the sum of the amounts of indebtedness that the amalgamated municipalities or the annexing and annexed municipalities, as the case may be, could have outstanding under this Act in the year in which the amalgamation or annexation is effective if such amalgamation or annexation had not taken place.

Maximum indebtedness where amalgamation or annexation

(4) Where a municipality annexes part of another municipality, the total indebtedness under this Act of the annexing municipality shall not exceed at any one time the sum of,

Maximum indebtedness where annexation of part of municipality

- (a) the amount of indebtedness that the annexing municipality could have outstanding under this Act in the year in which the annexation is effective; and
- (b) that proportion of the amount of indebtedness that the municipality from which the part was annexed could have outstanding under this Act in the year in which the

annexation is effective that is equal to the proportion that the assessment of the rateable property annexed is of the rateable property of the whole of the municipality including that part that was annexed therefrom according to the last revised assessment roll,

if such annexation had not taken place.

Terms of debentures

(5) The debentures shall be in Form 2 and shall be payable within ten years from the date of the debentures, shall bear the date in the year in which the money is borrowed from the municipality and shall bear interest at a rate of not less than 3 per cent per annum.

Notice of meeting

(6) It is not necessary to obtain the assent of the electors in the municipality to the passing of a by-law under this Act, but no by-law shall be passed except at a meeting of the municipal council specially called for the purpose of considering it and of which notice has been published in accordance with subsection 7.

Idem

(7) A notice in Form 3 of every such meeting shall be published at least once each week for three successive weeks in such newspaper as the council may by resolution direct, and the first publication of the notice shall be not less than four weeks before the holding of the meeting. 1968-69, c. 129, s. 1, *part*.

Publication of by-law

**3.**—(1) After the passing of the by-law a copy of it shall be published in such public newspaper, published in the municipality or in the county town or in an adjoining or neighbouring municipality, as the council may by resolution designate, and in at least one number of such newspaper each week for three successive weeks.

Notice to be appended

(2) To each copy of the by-law shall be appended a notice in Form 4.

When by-law to be valid

(3) If notice of an application to quash the by-law or any part thereof is not given within twenty days after the last publication under this section, or if such notice is given and the application is not made within one month after the last publication, the by-law shall not be questioned in any court and is valid and binding according to the terms thereof. R.S.O. 1960, c. 399, s. 2.

Application of proceeds

**4.** The debentures may be issued and sold from time to time for the purpose only of lending the proceeds thereof for the construction of drainage works, as provided in this Act, as money is required for the purpose. 1968-69, c. 129, s. 2.

Form of debentures, and coupons

**5.** The debentures shall be made payable to the Treasurer of Ontario and shall have coupons attached thereto that shall be for equal annual amounts of principal and interest. R.S.O. 1960, c. 399, s. 4.

**6.**—(1) The council, after the expiration of one month from the last publication under section 3, shall deposit with the Treasurer of Ontario a copy of the by-law, with affidavits of the head and clerk of the municipality in Forms 5 and 6, and may at any time thereafter apply for the purchase by Ontario of the debentures authorized thereby.

Application for disposal of debentures

(2) The application shall be sealed with the seal of the municipality and signed by the head thereof, and shall specify the names of the persons to whom the money is to be lent. R.S.O. 1960, c. 399, s. 5.

Form of application

**7.**—(1) A person assessed as owner, and being the actual owner of land in the municipality, desiring to borrow money for the purpose of the construction of a drainage work may make application in Form 7 to the council. R.S.O. 1960, c. 399, s. 7 (1); 1968-69, c. 129, s. 3.

Application by owner for loan

(2) The application shall not be acted upon unless it is accompanied by a declaration of the applicant stating that he is the actual owner of the land mentioned in the application, and that the land is free from encumbrance, or if the land or any part of it is mortgaged or otherwise encumbered, stating the name and address of the mortgagee or encumbrancer, and, where it has been assigned, the name of the assignee of the mortgage or encumbrance with his address.

Statutory declaration of applicant

(3) Where it appears that there is a mortgage or encumbrance upon the land or any part of it the application shall not be disposed of until two weeks after the mortgagee, encumbrancer or assignee has been notified of the application by registered mail, sent to him by the clerk at his last known address.

Notice to encumbrancer

(4) If a mortgagee, encumbrancer or assignee notifies the clerk in writing, within the time specified in subsection 3, that he objects to the granting of the application, the council shall hold a hearing of which the clerk shall give at least five days notice in writing by registered mail to the applicant and to the mortgagee, encumbrancer or assignee who gave the notice.

Hearing

(5) The granting or refusal of any application is in the discretion of the council whose decision is final. R.S.O. 1960, c. 399, s. 7 (2-5).

Discretion of council

**8.** If the application is granted, the council may issue debentures for such sum within the amount authorized by this Act and by the by-law of the municipality, as it may consider proper, but not exceeding the sum applied for, nor exceeding 75 per cent of the estimated cost of the drainage. R.S.O. 1960, c. 399, s. 8.

Issuing debentures

Purchase of debentures out of Consolidated Revenue Fund

**9.** The Treasurer of Ontario may purchase, acquire and hold debentures issued under this Act to an extent not exceeding in the whole \$20,000,000 at any time, and pay therefor out of the Consolidated Revenue Fund. 1961-62, c. 138, s. 2; 1967, c. 102, s. 1.

Approval by Treasurer necessary before application granted

**10.** Notwithstanding any other provisions of this Act, no application shall be granted by a council until the Treasurer of Ontario has approved the purchase of such debentures as the council may require to issue to undertake a proposed drainage work. R.S.O. 1960, c. 399, s. 10.

Debentures not to be questioned

**11.** After such investment, the debentures shall not be questioned in any court and are valid and binding according to the terms thereof. R.S.O. 1960, c. 399, s. 11.

Assignment of debentures

**12.** The Treasurer of Ontario may sell, transfer and assign to the Accountant of the Supreme Court of Ontario or to the Workmen's Compensation Board any debentures issued under this Act after the 1st day of June, 1939. R.S.O. 1960, c. 399, s. 12.

Application of proceeds of loans

**13.**—(1) The council shall lend the money so borrowed only for the purpose of the construction of drainage works and for a term of ten years, in sums of \$100 or multiples thereof, subject to section 14, as the council may consider proper, to persons entitled to borrow. R.S.O. 1960, c. 399, s. 13 (1); 1966, c. 155, s. 2; 1968-69, c. 129, s. 4.

Members of council not disqualified by loan

(2) No person by reason of having borrowed money under this Act is disqualified from being elected as a member of council or from sitting or voting therein but no member of council shall vote on any question affecting an application for a loan in which he has an interest. R.S.O. 1960, c. 399, s. 13 (2).

Limit of loan to individual

**14.** The amount loaned to any one person shall not exceed 75 per cent of the total cost of the work. R.S.O. 1960, c. 399, s. 14; 1961-62, c. 138, s. 3.

Order in which loans are to be granted

**15.** The council shall consider the applications in the order in which they are made, and shall lend the money in the same order to the persons whose applications are approved. R.S.O. 1960, c. 399, s. 15.

Appointment of Inspector

**16.** A council borrowing money under this Act shall employ a competent inspector of drainage, the cost of whose services and whose expenses shall be apportioned rateably against the works carried on under his inspection, and shall be paid by the council out of the money borrowed. R.S.O. 1960, c. 399, s. 16.

**17.**—(1) On the completion to his satisfaction of any drainage work under his charge, the inspector shall file with the clerk a report to the council certifying that in his opinion the work has been satisfactorily completed, and showing,

Inspector's report

- (a) the number of rods of drainage constructed on each lot or parcel of land;
- (b) the cost per rod;
- (c) a plan of the work; and
- (d) such other particulars as may be required by the council.

(2) The report shall be entered in a book provided by the council, and the money shall not be advanced by the council until the report of the due completion of the work has been so made. R.S.O. 1960, c. 399, s. 17.

Record

**18.** The council shall impose by by-law in Form 8, and shall levy and collect for the term of ten years, over and above all other rates upon the land in respect of which the money is lent, a special equal annual rate sufficient to discharge the principal and interest of the money lent, and the rate shall be collected in the same manner as other special rates imposed under *The Municipal Act*. R.S.O. 1960, c. 399, s. 18, *amended*.

Collection of special rate

R.S.O. 1970, c. 284

**19.**—(1) Where a part of a parcel of land in respect of which money has been lent is sold, the council of the municipality may apportion the special annual rate between the part sold and the part remaining.

Sale of part of land rated for work

(2) The clerk shall give the owners of the parts into which the parcel is divided and the mortgagees, encumbrancers or assignees at least five days notice in writing by registered mail of the time and place the council will make the apportionment.

Notice

(3) The council in making the apportionment shall have regard to the part of the parcel affected by the drainage work and such other matters as it considers expedient and the decision of the council with respect to the apportionment is final.

Apportionment of rate

(4) The apportionment shall be filed in writing with the clerk and thereafter the special annual rate shall be levied and collected in accordance with the apportionment. R.S.O. 1960, c. 399, s. 19.

Filing of apportionment

**20.** The owner of land in respect of which money has been borrowed may at any time obtain the discharge of the indebtedness by paying to the treasurer of the municipality the amount borrowed, with interest thereon at the rate payable by the municipality or district or regional municipality to the Treasurer of Ontario or his assignee on the debentures of the municipality or

Discharge of indebtedness by owner

district or regional municipality that the Treasurer or his assignee holds in respect of the said indebtedness, less any sum already paid on account of principal and interest, and upon the same being paid to the treasurer, he shall forthwith transmit it to the Treasurer of Ontario or his assignee who shall apply it towards payment of the debentures of the municipality or district or regional municipality. 1970, c. 47, s. 2.

Returns to Minister of Agriculture and Food by municipal council

**21.** A council that has borrowed money shall, on or before the 15th day of January in each year, make a return to the Minister of Agriculture and Food, showing, for the year that ended on the 31st day of December next preceding, the amount expended in drainage, the number of rods or feet of drain constructed, the names of the borrowers, the land upon which the money has been lent, the names of the persons whose applications have been refused and the reasons in each case for the refusal. R.S.O. 1960, c. 399, s. 21; 1961-62, c. 138, s. 4, *amended*.

Repayment by municipality or district or regional municipality to Province

**22.**—(1) The amount payable in each year for principal and interest shall be remitted by the treasurer of the municipality or district or regional municipality to the Treasurer of Ontario or his assignee within one month after it became payable, together with interest at the rate of 7 per cent per annum during the time of any default in payment. R.S.O. 1960, c. 399, s. 22 (1); 1968-69, c. 129, s. 6; 1970, c. 47, s. 3.

Consequence of default in payment

(2) In case of a continuance of such default the council, in the next ensuing year or as the case may require, shall assess and levy on the whole rateable property within its jurisdiction, in the same manner in which taxes are levied for the general purposes of the municipality, a sum over and above the other valid debts of the corporation falling due within the year sufficient to enable the treasurer to pay the amount in arrear, together with interest thereon at the rate of 7 per cent per annum, from the time the same became payable until payment whether or not the same has been previously paid by or recovered from the persons or lands chargeable therewith.

How arrears ranked as a charge

(3) The amount so in arrear and the interest are the first charge upon all the funds of the municipality other than sinking funds, for whatever purpose or under whatever by-law they may have been raised.

Duty of municipal treasurer after default

(4) No treasurer or other officer shall, after such default, pay out of the funds of the municipality any sum except for the ordinary current disbursements, and salaries of clerks and other employees of the municipality or debts due to the Province until the amount so in arrear and the interest has been paid to the Treasurer of Ontario or his assignee.

Liability of municipal officers

(5) If the municipal treasurer or other officer pays any sum contrary to the provisions of subsection 4, in addition to any

criminal liability that he may thereby incur, he is personally liable for every sum paid as for money had and received by him for the Crown.

(6) Any member of the council who wilfully or negligently permits any of the foregoing provisions to be contravened is also personally and individually liable for the full amount so in arrear and the interest, to be recovered as for money had and received by him for the Crown. Penalty for violation

(7) No assessment, levy or payment made under this section exonerates the persons or lands chargeable under the by-law from liability to the municipality. R.S.O. 1960, c. 399, s. 22 (2-7). Liability of lands to municipality not affected

**23.** The Lieutenant Governor in Council may make regulations and prescribe forms for the carrying out of the provisions of this Act, and, subject thereto, the forms in the Schedule hereto shall be used. R.S.O. 1960, c. 399, s. 23. Regulations and forms



SCHEDULE

FORM 1

(Section 2 (1) )

FORM OF BY-LAW

By-law No. ....

A by-law to raise \$..... to aid in the construction of tile, stone or timber drains.

The Council of the.....of....., pursuant to The Tile Drainage Act, enacts as follows:

1. The Reeve (or Mayor) may from time to time, subject to the provisions of this by-law, borrow on the credit of the corporation of the Municipality such sum not exceeding in the whole \$....., as may be determined by the Council, and may in manner hereinafter provided, issue debentures of the corporation in such sums as the Council may deem proper for the amount so borrowed, with coupons attached as provided in section 5 of the Act.

2. Subject to section 10 of The Tile Drainage Act, when the Council is of opinion that the application of any person to borrow money for the purpose of constructing a drainage work should be granted in whole or in part, the Council may, by resolution, direct the Reeve (or Mayor) to issue debentures as aforesaid and to borrow a sum not exceeding the amount applied for, and may lend the same to the applicant on the completion of the drainage works.

3. A special annual rate shall be imposed, levied and collected over and above all other rates upon the land in respect of which the money is borrowed, sufficient for the payment of the principal and interest as provided by the Act.

Passed the.....day of.....19.....

.....
Reeve (or Mayor)
.....
Clerk

(Corporate seal)

FORM 2

(Section 2 (5) )

FORM OF TILE DRAINAGE DEBENTURE

\$..... No.....  
 Drainage Debenture of the..... of.....  
 The Corporation of the..... of....., in the County of  
 ..... hereby promises to pay to the Treasurer  
 of Ontario or order at the Bank of..... in the.....  
 of....., the sum of \$..... of lawful money of Canada, and interest  
 thereon at..... per cent in..... equal annual instalments of \$.....  
 each, the first of such instalments to be paid on the.....  
 day of....., 19....., pursuant to by-law No.....  
 entitled "A by-law to raise \$....., to aid in the construction  
 of drainage works".  
 (Corporate Seal)  
 .....  
 Reeve (or Mayor) .....  
 Treasurer

FORM OF COUPON

Coupon for twentieth Annual  
 Instalment of..... Drainage  
 Debenture No. 1, issued under  
 By-law No..... of the.....  
 of..... \$..... payable at the  
 Bank of..... in the..... of  
 ..... on..... day of.....  
 19.....  
 .....  
 Reeve (or Mayor) .....  
 Treasurer

R.S.O. 1960, c. 399, Form 2; 1968-69, c. 129, s. 8.

FORM 3

(Section 2 (7) )

NOTICE OF MEETING TO CONSIDER BY-LAW

Take notice that a by-law for raising \$..... under the  
 provisions of *The Tile Drainage Act*, will be taken into consideration by the  
 Council of the.....  
 of..... at the..... of..... on the..... day  
 of....., 19....., at the hour of..... o'clock in the  
 ..... noon.

.....  
Clerk

R.S.O. 1960, c. 399, Form 3.

FORM 4

(Section 3 (2) )

NOTICE

Corporation of the ..... of .....

Take notice that the above is a true copy of a By-law passed by the Council of the ..... of ..... on the ..... day of ..... , 19....., and all persons are required to take notice that any one who desires to apply to have the by-law or any part thereof quashed must serve notice of his application upon the Head or Clerk of this municipality within 20 days after the date of the last publication of this notice, and must make his application to the Supreme Court of Ontario within one month after the said date. This notice was first published on the ..... day of ..... , 19....., and the last publication will be on the ..... day of ..... , 19.....

.....  
Clerk

R.S.O. 1960, c. 399, Form 4.

FORM 5

(Section 6)

AFFIDAVIT OF HEAD OF MUNICIPALITY

County of ..... } I, ..... of the  
TO WIT: ..... of ..... in the County of .....

Reeve (or Mayor) of the ..... of ..... make oath and say:

I have not been served with any notice of intention to make application to quash a by-law passed on the ..... day of ..... , 19....., by the Council of the ..... of ..... No..... entitled (insert the title of by-law), nor have I been served with any notice of intention to make application to quash any part of the by-law, nor with any notice to that or the like effect.

Sworn, etc.,

.....  
Reeve (or Mayor)

R.S.O. 1960, c. 399, Form 5.

FORM 6

(Section 6)

AFFIDAVIT OF CLERK

County of..... } I,....., of the.....  
TO WIT: } of..... in the County of.....,

Clerk of the..... of..... make  
oath and say:

1. On the..... day of....., 19.....,  
the Council of the..... of.....  
at a meeting specially called for that purpose passed a by-law for borrowing money  
to be lent for the construction of drainage works, being No.....  
and entitled (*insert title of by-law*), a copy of which certified by me is now shown to  
me marked "A".

2. I have not been served with any notice of intention to make application to  
quash the by-law, or any part thereof, nor with any notice to that or the like effect.  
Sworn, etc.

.....  
Clerk

R.S.O. 1960, c. 399, Form 6; 1968-69, c. 129, s. 9.

FORM 7

(Section 7)

APPLICATION FOR LOAN

To the Council of.....

I, *E. F.*, owner of (*if part state what part*) lot No..... in  
..... Concession of the Township of..... (*or as  
the case may be*) apply for a loan of \$..... to assist in  
the construction of..... rods of.....  
drain on such land. The proposed depth of drain is..... inches,  
the proposed size of tile, pipe or tubing is..... inches (1).

*E. F.*

(1) *If the proposed drain is to be stone or timber for the words "size of tile, pipe or  
tubing" substitute the words "inside size of drain".*

R.S.O. 1960, c. 399, Form 7; 1968-69, c. 129, s. 10.

FORM 8

(Section 18)

BY-LAW IMPOSING A RATE

By-law imposing a Special Drainage rate upon Lot . . . . . in the . . . . . Concession.

Whereas E. F., the owner of (if part state what part) Lot . . . . . in the . . . . . Concession of the Township of . . . . . (or as the case may be), applied to the Council of the Township under The Tile Drainage Act, for a loan for the purpose of draining such land; and whereas the Council has, upon his application, lent E. F., the sum of \$1,000 (or as the case may be), to be repaid with interest by means of the rate hereinafter imposed:

Be it therefore enacted, by the Council, that an annual rate of . . . . . per annum is hereby imposed upon such land for a period of . . . . . years, such rate to be levied and collected at the same time and manner as ordinary taxes are levied and collected.

Passed this . . . . . day of . . . . ., 19 . . . . .

(Corporate seal)

Reeve (or Mayor)

Clerk

R.S.O. 1960, c. 399, Form 8.