

CHAPTER 271.

HIGHWAYS.

S. F. 98.

AN ACT to provide for the purchase or condemnation by boards of supervisors of land for highway purposes in order to avoid unnecessarily expensive bridges or grades and to avoid railroad crossings and to straighten any road or to cut off dangerous corners on the highways or to widen any road above statutory width or for the purpose of preventing the encroachment of a stream upon a public highway, to provide for the payment of such changes, to provide for the abandonment of highways already established and to provide for the procedure therefor, and to repeal section one thousand five hundred twenty-seven-a (1527-a) supplement to the code, 1913.

Be it enacted by the General Assembly of the State of Iowa:

1 **SECTION 1. Change in highway—petition, etc.** Ten freeholders
2 of any county by a petition to the board of supervisors of said county
3 or the county engineer may, at any time, recommend the expediency
4 and advisability of changing the course of any part of any road or
5 stream within any county, in order to avoid unnecessarily expensive
6 bridges, grades or railroad crossings, or to straighten any road, or to
7 cut off dangerous corners on the highway or to widen any road above
8 statutory width, or for the purpose of preventing the encroachment of
9 a stream upon a public highway, specifying clearly the change recom-
10 mended, and whether any part of any highway already established
11 should be vacated and abandoned, and what part. The board may,
12 thereupon, order the engineer to make a survey and report on such
13 proposed change, and in order to comply with such order, the engineer
14 shall have a right to enter upon the premises proposed to be taken and
15 make said survey. If, from a consideration of the survey and report
16 on such proposed change, the board deems the change advisable, it
17 shall have power to buy such right of way and take conveyance thereof
18 in the name of the county and to pay for the same out of either the
19 county road or bridge fund or out of both of said funds, as may appear
20 advisable.

1 **SEC. 2. Condemnation—procedure.** If, for any reason, the board
2 is unable to acquire such right of way by agreement with the owner,
3 the county auditor shall appoint three disinterested appraisers who
4 shall appraise the damages sustained by the land owners through
5 whose land said proposed right of way extends and who shall within
6 ten days make return of their appraisal to the county auditor, and
7 the board shall fix a day at such place in the county as it may deter-
8 mine, at which it will hear all objections to said change and at which
9 time it will determine all damages to each claimant by reason of such
10 proposed change. Such hearing shall not be less than ten days after
11 completed service on the owner. All owners of land bordering or
12 abutting upon such proposed change, of road or stream and all owners
13 through whose land such change will extend, as shown by the transfer
14 books in the office of the county auditor, shall be served with notice
15 of such hearing. Such owners who are residents of the county shall
16 be personally served in the manner original notices are required to
17 be served. Such owners who do not reside in the county and such

18 owners who reside in the county, when the officer returns that they
19 cannot be found in the county, shall be served by publishing the notice
20 in some newspaper in the county, once each week, for two weeks, and
21 in addition, notice shall be served personally upon the actual occupant
22 of the land. Personal notice outside the county but within the state,
23 in the manner original notices are required to be served, shall be
24 deemed personal service and shall take the place of publication service.

1 SEC. 3. **Hearing—damages—allowance—appeal, etc.** Service
2 shall be deemed complete on the date when personal service is made,
3 or on the date of the last publication, as the case may be. All ob-
4 jections to said change and all claim for damages by reason thereof,
5 must be filed on or before the expiration of ten days from the date
6 of completed service or the same will be waived. Different dates
7 may be fixed for hearing the objections and claims for damages of
8 different owners. At the time and place fixed for such hearing as to
9 any owner, the board shall meet and proceed to a hearing on the ob-
10 jections or claims for damages of any such owner of whom it has
11 acquired jurisdiction by proper service of notice or, if there be such
12 owners over whom jurisdiction has not been acquired, the board may
13 adjourn such hearing until such date (of which all parties must take
14 notice), when jurisdiction will be complete as to all owners. At such
15 final hearing, the board shall pass upon the objections filed. If the
16 objections or any of them be sustained, the proceeding to effect the
17 change shall be dismissed. If the objections be overruled, the board
18 shall then proceed to a determination of the damages to be awarded
19 to each claimant who has filed such claim. If the amount of damages
20 so awarded are, in the opinion of the board, excessive, the proceedings
21 shall be dismissed. If such damages, in the opinion of the board, be
22 not excessive, the board may, by proper order, establish such proposed
23 change in the road or stream, as the case may be, and pay such
24 damages as in case of right of way secured by agreement. Provided,
25 however, that if by the change of any road herein contemplated, any
26 part of the highway abandoned reverts to the owner of the land con-
27 demned, then and in that case the owner, by reason of the relocation
28 of such highway, shall be entitled to such damages for the locating
29 of such new highway which exceeds the damages sustained by reason
30 of the old highway, taking into consideration the value of the premises
31 immediately before and after such old road is abandoned and the new
32 road established. The board shall order the auditor to issue war-
33 rants in favor of each claimant for the amount of damages awarded,
34 and in such case shall have the right to enter upon such right of way
35 and improve the same. The damages thus awarded shall be paid for
36 out of the county road or bridge fund or out of both of said funds.
37 Claimants for damages may appeal to the district court from the
38 award of damages, in the manner and time for taking appeals from
39 the establishment of highways generally. The acceptance at any
40 time of the amount awarded shall constitute a waiver of the right to
41 appeal. If possession of the right of way is not taken and improved
42 prior to the determination of the amount of damages on appeal, the
43 board may, on the appeal being determined, dismiss the proceeding
44 to effect the change, if, in the opinion of the board, the damages final-
45 ly awarded are excessive. The making of a change in a stream shall
46 be done by the board of supervisors and paid for out of either the

47 county road or bridge fund or out of both of said funds. When the
48 change of a road is made upon or for the benefit of the township road
49 system, the improvement shall be made as now provided for the doing
50 of road work upon the township road system.

1 **SEC. 4. Limitation on change.** No such change shall be estab-
2 lished through any orchard or ornamental grounds contiguous to any
3 dwelling house or so as to cause the removal of buildings, without the
4 consent of the owner, nor through any burying ground.

1 **SEC. 5. Delays.** Should delay occur in the acquisition of such
2 right of way, such delay shall not prevent the board from proceeding
3 with the improvement of any part of the highway, not effected* by
4 the proposed change.

1 **SEC. 6. Notice—form.** The notice herein provided for shall be
2 in substantially the following form:

3 “To Whom It May Concern:

4 The engineer appointed by the board of supervisors of
5 County to make survey and report of the road (describe the same in
6 a general way) has made report and has recommended that the fol-
7 lowing change be made in said road: (Here clearly describe the pro-
8 posed change and the location and course thereof and give the names
9 of the owners of the land through and abutting upon which the pro-
10 posed change will extend.) And the said board of supervisors pro-
11 pose to establish said change as above described, and all objections to
12 said change and all claims for damages by reason of said change
13 must be filed in the office of the county auditor before the expiration
14 of ten days from the service of this notice or the same will be waived.
15 You will take further notice that said board will, on the day
16 of, 19....., at, or as soon thereafter as
17 possible, proceed to determine all objections to said change and all
18 damages caused thereby and will, in case such objections are over-
19 ruled and the damages awarded be not excessive, establish said change.

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21

.....
County Auditor.”

1 **SEC. 7. Abandonment of highway.** The foregoing provision
2 with reference to changes in the highway shall not be con-
3 strued as compelling the board to abandon any part of a highway
4 already established, but if it be proposed to abandon any part of a
5 highway already established, notice shall be served as herein provided,
6 upon the said record owners as aforesaid through which or abutting
7 upon which said highways so proposed to be abandoned, extends.

1 **SEC. 8. Repeal.** That section one thousand five hundred twenty-
2 seven-a (1527-a) supplement to the code, 1913, is hereby repealed.

1 **SEC. 9. Publication clause.** This act being deemed of immediate
2 importance, shall take effect and be in force from and after its pub-
3 lication in the Des Moines News, and The Denison Review, news-
4 papers published in the state of Iowa.

Approved April 17, A. D. 1915.

I hereby certify that the foregoing act was published in the Des Moines News April
29, 1915 and in the Denison Review May 5, 1915.

W. S. ALLEN, *Secretary of State.*

[*Affected evidently intended.]