

January 16, 1951.
Passed on File.

House File 59
By BROWN and GOODE.

Passed House, Date
Vote: Ayes..... Nays.....
Passed Senate, Date.....
Vote: Ayes..... Nays.....
Approved

A BILL FOR

An Act to repeal chapter three hundred six (306), Code 1950, to enact a substitute therefor, and to repeal or amend various other sections of the code, all relating to classification, jurisdiction, control, establishment, alteration and vacation of highway.

Be It Enacted by the General Assembly of the State of Iowa:

1 Section 1. Chapter three hundred six (306), Code 1950,
2 except sections three hundred six point forty-eight (306.48),
3 three hundred six point fifty-one (306.51) to three hundred six
4 point fifty-nine (306.59), both inclusive, and three hundred six
5 point sixty-one (306.61), is hereby repealed.

1 Sec. 2. Classification of highways. The highways of the
2 state are hereby classified into three systems, to-wit: the
3 primary road system, the state park and institutional road system,
4 and the secondary road system.

5 The secondary road system is subdivided into farm to market
6 roads and local secondary roads.

1 Sec. 3. Definition of road systems. The following words and
2 phrases when used in this chapter or in any chapter of the code
3 relating to highways shall respectively have the following meaning:

4 1. Primary roads. The term “primary roads” or “primary
5 road system” shall include those main market roads and highway
6 traffic arteries, outside of cities and towns, which have been
7 designated as primary roads under section three hundred thirteen
8 point two (313.2), Code 1950, or which may hereafter be so
9 designated as the law may provide.

10 2. State park and institutional roads. The term “state
11 park and institutional roads” shall include those highways,
12 either inside or outside of cities and towns, upon or adjacent
13 to land belonging to the state at any state park or state
14 institution.

15 3. Secondary roads. The term “secondary roads” or
16 “secondary road system” shall include all public highways,
17 outside of cities and towns, except primary roads and state
18 park and institutional roads.

19 4. Farm to market roads. The term “farm to market roads”
20 or “farm to market road system” shall include those main
21 secondary roads which have been designated as farm to market
22 roads under sections three hundred ten point nine (310.9), as
23 amended, and three hundred ten point ten (310.10), Code 1950,
24 or which may hereafter be so designated as the law may provide.

25 5. Local secondary roads. The term “local secondary roads”
26 or “local secondary road system” shall include all those
27 secondary roads which are not now, or may not hereafter be,
28 included in the farm to market road system.

1 Sec. 4. Jurisdiction—control. Jurisdiction and control

2 over the highways of the state are hereby vested in and imposed
3 on (a) the state highway commission as to primary roads; (b)
4 the county board of supervisors as to secondary roads within
5 their respective counties; and (c) the board or commission in
6 control of any state park or institution as to any state park
7 or institutional road at such state park or state institution.

1 Sec. 5. Power to establish, alter or vacate. In the
2 construction, improvement, operation or maintenance of any
3 highway, or highway system, the board or commission which has
4 control and jurisdiction over such highway or highway system,
5 shall have power, on its own motion, to alter or vacate and close
6 any such highway or railroad crossing thereon, and to establish
7 new highways or railroad crossing thereon, which are or are
8 intended to become a part of the highway system over which said
9 board or commission has jurisdiction and control.

1 Sec. 6. Hearing—place—date. In proceeding to the
2 vacation and closing of any road, part thereof, or railroad
3 crossing, the board or commission in control of said road, or
4 road system, shall fix a date for a hearing thereon in the county
5 where said road, or part thereof, or crossing, is located, and if
6 located in more than one county, then in a county wherein any
7 part of such road or crossing is located. If the road to be
8 vacated or changed is a secondary road located in more than one
9 county, the boards of supervisors of such counties, acting jointly,
10 shall fix a date for a hearing thereon in either or any of the
11 counties where such road, or part thereof, is located.

1 Sec. 7. Notice—service. Notice of such hearing shall be
2 published in some newspaper of general circulation in the county
3 or counties where such road is located, at least twenty (20) days
4 prior to the date of hearing. The board or commission which
5 instituted said proceedings and is holding such hearing, shall
6 notify the state highway commission, the board or boards of
7 supervisors, or board or commission in control of affected state
8 lands, as the case may be, of the time and place of such hearing,
9 by registered mail addressed to the state highway commission, the
10 county auditor, or the board or commission in control of affected
11 state lands, as the case may be.

1 Sec. 8. Notice—requirements. Said notice shall state
2 the time and place of such hearing, the location of the particular
3 road, or part thereof, or crossing, the vacation and closing of
4 which is to be considered, and such other data as may be deemed
5 pertinent.

1 Sec. 9. Objections—claims for damages. At such hearing,
2 the state highway commission, the board of supervisors, or the
3 board or commission in control of affected state lands, as the
4 case may be, and any interested person, may appear and object
5 and be heard. Any person owning land abutting on a road which
6 it is proposed to vacate and close, shall have the right to file,
7 in writing, a claim for damages at any time on or before the date
8 fixed for hearing.

1 Sec. 10. Purchase and sale of property. If as to any one or
2 more properties affected by the proposed vacation and closing of

3 any secondary road, it should appear to the board of supervisors
4 to be in the interest of economy or public welfare, the board may
5 purchase or condemn, by proceeding as this act provides, the said
6 entire property or properties, and make payment therefor out of
7 the secondary road fund. After the road has been vacated and
8 closed the board shall sell such property or properties, at the
9 best attainable price, and credit the proceeds of such sale to
10 the secondary road fund.

1 Sec. 11. Final order. After such hearing, the commission,
2 board or boards which instituted such proceedings and conducted
3 such hearing, shall enter an order. Said commission or board may
4 dismiss the proceedings, or it may vacate and close such road,
5 part thereof, or crossing, in which event it shall determine and
6 state in the order the amount of the damages allowed to each
7 claimant. Said order thus entered shall be final except as to
8 the amount of the damages. A copy of such order shall be filed
9 with the county auditor of the county or counties in which the
10 road, part thereof, or crossing, is located and with the state
11 highway commission and the board or commission in control of any
12 affected state land.

1 Sec. 12. Appeal. Any claimant for damages may be serving,
2 within twenty (20) days after the said final order has been
3 issued, a written notice upon the commission, board or boards
4 which instituted and conducted such proceedings, appeal as to the
5 amount of damages, to the district court of the county in which
6 the land is located, in the manner and form prescribed in chapter

7 four hundred seventy-two (472), Code 1950, with reference to
8 appeals from condemnation, and such proceedings shall thereafter
9 likewise conform to the applicable provisions of said chapter.

1 Sec. 13. Establishment. In the establishment of any road,
2 the board or commission in control of such road or road system
3 need not cause a hearing to be held thereon or notice to be
4 published thereof, but may do so.

1 Sec. 14. Purchase or condemnation of right of way—procedure.
2 Proceedings for the condemnation of land for any highway shall
3 be under the provisions of chapter four hundred seventy-one (471)
4 and chapter four hundred seventy-two (472), Code 1950, or as said
5 chapters may be amended.

6 Provided that, in the condemnation of right of way for
7 secondary roads, the board of supervisors may proceed as provided
8 in sections three hundred six point fifty-one (306.51) to three
9 hundred six point fifty-nine (306.59), both inclusive, and three
10 hundred six point sixty-one (306.61), Code 1950.

1 Sec. 15. No road shall be established through any cemetery
2 or burying ground without the consent of all the parties affected
3 by the same, nor shall any ground be taken for the rounding of a
4 corner where the dwelling house, lawn and ornamental trees
5 connected therewith are located at such corner, except by consent
6 of the owner thereof.

1 Sec. 16. Plat and field notes. After any road has been
2 finally established or altered, a plat and field notes thereon
3 must be filed by the commission or board having control and

4 jurisdiction over said road, with and recorded by the county auditor.

1 Sec. 17. Sale of unused right of way. When title to any
2 tract or parcel of land has been or may hereafter be acquired
3 for the improvement of any highway, and when in the judgment of
4 the board or commission in control of said highway, said tract
5 or parcel of land, or part thereof, is not now and will not
6 hereafter be used in connection with or for the improvement,
7 maintenance, or use of said highway, the board or commission in
8 control of such highway may sell said tract, parcel, or piece of
9 land, or any part thereof, for cash. If such tract, parcel, or
10 piece of land or part thereof is held or used in connection with
11 any primary road, or state park or institutional road, such sale
12 shall be subject to approval of the executive council of the
13 state of Iowa.

14 In the event any such tract or parcel of land is sold, such
15 sale shall be subject to the right of a utility association,
16 company or corporation to continue in possession of a right
17 of way in use at the time of such sale.

1 Sec. 18. Notice—preference of sale. Notice of intention
2 to sell such tract, parcel, or piece of land, or part thereof,
3 must, not less than ten (10) days prior to the sale thereof, be
4 sent by registered mail, by the board or commission in control
5 of such land, to the last known address of the present owner of
6 adjacent land from which said tract, parcel, piece of land or
7 part thereof, was originally bought or condemned for highway
8 purposes, and if located in a city or town, to the mayor thereof.

9 Said notice shall give an opportunity to the present owner of
10 adjacent property to be heard and make offers for the tract,
11 parcel or piece of land to be sold, and if such offer is equal to
12 or exceeds in amount any other offer received, it shall be given
13 preference by the board in control of said land. Neglect or
14 failure for any reason, to comply with the provisions of said
15 notice, shall in no way prevent the giving of a clear title to
16 the purchaser of said tract, parcel or piece of land.

1 Sec. 19. Conditions. Any sale of land as herein authorized
2 shall be upon the conditions that the tract, parcel, or piece of
3 land so sold shall not be used in any manner so as to interfere
4 with the use of the highway by the public, or to endanger public
5 safety in the use of the highway, or to the material damage of the
6 adjacent owner.

1 Sec. 20. Execution of conveyance. Where a sale of land in
2 connection with any primary road or state park or institutional
3 road has been authorized as herein provided, written conveyances
4 containing the conditions as prescribed by the executive council
5 shall be made in the name of the state and signed by the governor
6 and secretary of state, and the great seal of the state of Iowa
7 attached thereto. Where a sale of land in connection with any
8 secondary road has been authorized by the board of supervisors as
9 herein provided, written conveyances containing the provisions
10 prescribed by the board of supervisors shall be made in the name
11 of the county and signed by the chairman of the board of
12 supervisors and the county auditor.

1 Sec. 21. Payment of damages and right of way cost—proceeds
2 of sale. Damages allowed on account of the vacation of any
3 highway and costs incident thereto, right of way or land purchased
4 or condemned for or on account of any highway and costs incident
5 thereto, and the funds received from the sale of any highway right
6 of way or land, shall be paid from or credited to, as the case may
7 be, the road fund or funds applicable to said highway or highway
8 system.

1 Sec. 22. Sections three hundred eight point two (308.2),
2 three hundred nine point one (309.1), three hundred nine point
3 two (309.2), three hundred nine point sixty-four (309.64), three
4 hundred ten point twenty-three (310.23), three hundred ten point
5 twenty-four (310.24), three hundred thirteen point twenty-five
6 (313.25), three hundred thirteen point twenty-six (313.26), three
7 hundred thirteen point forty-two (313.42), three hundred thirteen
8 point forty-six (313.46) to three hundred thirteen point fifty-
9 seven (313.57), both inclusive, four hundred seventy-three point
10 three (473.3) and four hundred seventy-three point four (473.4),
11 Code 1950, are hereby repealed.

1 Sec. 23. Section three hundred ten point one (310.1),
2 Code 1950, is hereby amended by striking subsections one (1)
3 and two (2) of said section and renumbering the remaining
4 subsections of said section, one (1) and two (2), respectively.

1 Sec. 24. Section four hundred seventy-one point four
2 (471.4), Code 1950, is hereby amended by striking the period (.)
3 at the end of subsection one (1) of said section and adding thereto

4 the following: “and the construction, improvement or maintenance
5 of highways.”

1 Sec. 25. Constitutionality. If any part of this Act shall
2 be held to be unconstitutional, such unconstitutionality shall
3 not affect the validity of the remaining parts of this Act. The
4 legislature hereby declares that it would have passed the
5 remainder of this Act if it had known that such part thereof
6 would have been declared unconstitutional.

EXPLANATION OF H. F. 59

Bill is essentially a code revision bill. It repeals all but a few sections of chapter 306, Code 1950, relating to the establishment, alteration, and vacation of highways, and enacts a substitute therefor.

Chapter 306 of the code has grown up by various legislative enactments over the past 100 years or more. Much of the present language of this chapter goes back to pioneer days. It is now obsolete. The highway legislation of the past forty years has rewritten and revised nearly all of the highway code except chapter 306. That chapter has never been overhauled and modernized. This bill is intended to do that job. This bill repeals sixty-nine sections of the present Code and enacts twenty-two new sections to cover much the same subject matter.