

February 1, 1951.

House File 302

County and Township Affairs. By BURRIS, LOSS and CLARK of Marion.

Passed House, Date

Vote: Ayes..... Nays.....

Passed Senate, Date.....

Vote: Ayes..... Nays.....

Approved.....

A BILL FOR

An Act to provide for the establishment, alteration, vacation and maintenance of private roads; to define terms; to define the powers and duties of boards of supervisors of the counties; and to grant right of appeal.

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

1 Section 1. Private road, as used in this chapter, shall
2 mean any lane or outlet leading to a secondary road or highway,
3 and used by private individuals as a means of ingress or egress.

1 Sec. 2. The board of supervisors has the general
2 supervision of the private roads in the county, with power to
3 establish, vacate, and change them as herein provided, and to
4 see that the laws in relation to them are carried into effect.

1 Sec. 3. All private roads shall be at least forty feet
2 wide; within this limit they may be increased or diminished
3 in width, altered in direction, or vacated, by pursuing the
4 course prescribed in this chapter.

1 Sec. 4. Any person desiring the establishment, vacation,
2 or alteration of a private road shall file in the auditor's
3 office of the proper county a petition, in substance as follows:

4 To the board of supervisors of

5 county :

6 The undersigned asks that a private road commencing at
7 and running thence
8 and terminating at be established, vacated,
9 or altered (as the case may be).

1 Sec. 5. Before filing such petition, the auditor shall
2 require the petitioner to give a bond, with sureties to be
3 approved by him, conditioned that all expenses growing out
4 of the application will be paid by the obligors, in case
5 the contemplated private road is not finally established,
6 altered, or vacated, as asked in the petition.

1 Sec. 6. When the foregoing requirements have been
2 complied with, the auditor shall appoint some suitable and
3 disinterested elector of the county as commissioner, to examine
4 into the expediency of the proposed establishment, alteration,
5 or vacation, and report accordingly.

1 Sec. 7. The commissioner shall not be confined to the
2 precise matter of the petition, but may inquire and determine
3 whether that or any private road in the vicinity, answering
4 the same purpose and in substance the same, be required.

1 Sec. 8. No private road shall be established through
2 any cemetery. No private road shall, without the owner's
3 consent, be established through any orchard, or ornamental
4 grounds contiguous to any dwelling house, or so as to cause
5 the removal of any dwelling house or other substantial,
6 permanent, and valuable building.

1 Sec. 9. In forming his judgment, he must take into
2 account the public and private convenience, and the expense
3 of the proposed private road, and, if he thinks the public
4 convenience requires it, shall proceed at once to lay the
5 same out, if the circumstances are such as to enable him to
6 do so without having the same surveyed; but if, in his
7 judgment, such private road should not be established, or
8 the alteration or vacation made, he shall proceed no further,
9 and in either case shall, within thirty days after the day
10 of his appointment, file his report in the auditor's office.

1 Sec. 10. If the precise location of the private road
2 cannot otherwise be given, he must cause the line thereof
3 to be surveyed and plainly marked out, and, if he is a person
4 other than the county engineer, must be sworn to faithfully
5 and impartially discharge his duty, and, after thus qualifying,
6 he shall have authority to swear any assistants employed to
7 faithfully and impartially perform their duties in aiding him
8 in laying out or altering the private road.

1 Sec. 11. Mileposts must be set up at the end of every
2 mile, and the distance marked thereon, and stakes must be set
3 at each change of direction, on which shall be marked the
4 bearings of the new course. Stakes must also be set at the
5 crossing of fences and streams, and at intervals in the prairie
6 not exceeding a quarter of a mile each; in the timber the course
7 must be indicated by trees suitably blazed.

1 Sec. 12. Bearing trees must, when convenient, be established

2 at each angle and milepost, and the position of the private
3 road relative to the corners of sections, the junction of streams,
4 or any other natural or artificial monument or conspicuous
5 object, must, as far as convenient, be stated in the field
6 notes and shown on the plat.

1 Sec. 13. A correct plat of the private road or alteration,
2 together with a copy of the field notes of the surveyor, if
3 one has been employed, must be filed as a part of the
4 commissioner's report.

1 Sec. 14. If the commissioner's report is in favor of
2 the establishment, alteration, or vacation of the private road,
3 it shall show the number of bridges required, and the probable
4 cost thereof.

1 Sec. 15. The auditor shall appoint a day, not less than
2 sixty nor more than ninety days from such time, when the
3 petition and report will be acted upon, on or before which day
4 all objections to the establishment, alteration, or vacation
5 of the private road, and claims for damages by reason of
6 its establishment or alteration, must be filed in the
7 auditor's office.

1 Sec. 16. The time for the commissioner to commence the
2 examination shall be fixed by the auditor, and if he fails
3 to so commence, or so report as prescribed in sections 14 and
4 15, the auditor may fix another day, or extend the time for
5 making such report, or may appoint another commissioner.

1 Sec. 17. Within twenty days after the day is fixed by

2 the auditor as above provided, a notice shall be served on
 3 each owner of land lying in the proposed private road, or
 4 abutting thereon, as shown by the transfer books in the
 5 auditor's office, who reside in the county, in the manner
 6 provided for the service of original notices. If the owner
 7 of the land as thus shown does not reside in the county,
 8 similar notice shall be served upon any person who is in the
 9 actual occupancy of such land. In any case, notice shall be
 10 published once each week, for four weeks in some newspaper
 11 printed in the county.

1 Sec. 18. The notice may be in the following form:

2 To all whom it may concern: The commissioner appointed
 3 to locate, vacate, or alter (as the case may be) a road
 4 commencing at in
 5 county, running thence (describe in general terms all the
 6 points as in the commissioner's report, giving the names of
 7 the owners of the land through which the proposed private
 8 road passes as they appear upon the transfer books of the
 9 auditor's office) and terminating at,
 10 has reported in favor of the establishment, vacation, or
 11 alteration thereof, and all objections thereto, or claims
 12 for damages, must be filed in the auditor's office on or
 13 before noon of the day of,
 14 A.D., or such private road will be established,
 15 vacated, or altered without reference thereto.

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County Auditor.

1 Sec. 19. If no objections or claims for damages are filed
 2 on or before noon of the day fixed therefor, and the auditor
 3 is satisfied the provisions of sections 17 and 18 have been
 4 complied with, he shall proceed to establish, alter, or vacate
 5 such road as recommended by the commissioner, upon the payment
 6 of costs.

1 Sec. 20. If such costs are not paid within ten days,
 2 the auditor shall report his action in the premises to the
 3 board of supervisors at its next session, who may affirm the
 4 action of the auditor, or establish such private road at the
 5 expense of the petitioner.

1 Sec. 21. If the auditor is satisfied that the notice
 2 has not been given, he shall appoint another day, and cause
 3 such notice to be served or published as required in the first
 4 instance, and thereafter proceed as provided above.

1 Sec. 22. If objections to the establishment of the private
 2 road or claims for damages are filed, the further hearing of
 3 the application shall stand continued to the next session of
 4 the board of supervisors held after the commissioners appointed
 5 to assess the damages have reported. All claims for damages
 6 and objections to the establishment, alteration, or vacation
 7 of the private road must be in writing, and the statements
 8 in the application for damages shall be considered denied in
 9 all subsequent proceedings.

1 Sec. 23. Upon the expiration of the time for filing
2 claims for damages, if any are filed, the auditor shall appoint
3 three disinterested electors of the county as appraisers, to
4 assess the amount of damages any claimants may sustain by
5 reason of the establishment or alteration of such private road,
6 and shall give them notice of their appointment, and fix a
7 day and hour at which they shall meet at his office, or that
8 of some justice of the peace, to qualify; and if they do not
9 all appear at the time and place named, or within one hour
10 thereafter, the auditor or justice, as the case may be, shall
11 fill any vacancies by the appointment of others, and swear
12 such appraisers to faithfully and impartially assess the
13 damages claimed.

1 Sec. 24. Such appraisers shall proceed at once to perform
2 their duties, and, after assessing the damages sustained by
3 the claimants, respectively, shall report the amount sustained
4 by each, in writing, to the auditor, within thirty days from
5 the date of their appointment.

1 Sec. 25. Should the report not be filed in time, or
2 should any good cause for delay exist, the auditor may postpone
3 the time for final action on the subject, and may, if necessary,
4 appoint other appraisers.

1 Sec. 26. Should no damages be awarded the applicants
2 therefor, all the costs growing out of their claims shall be
3 paid by them.

1 Sec. 27. When the time for final action arrives, the

2 board may hear testimony, receive petitions for remonstrances
3 against the establishment, vacation, or alteration, as the
4 case may be, of such private road, and may establish, vacate,
5 or alter, or refuse to do so, as in their judgment, founded on
6 the testimony, the public good may require.

1 Sec. 28. Said board may increase or diminish the damages
2 allowed by the appraisers, and may make such establishment,
3 vacation, or alteration conditioned upon the payment of all
4 damages awarded, or expenses in relation thereto. All damages
5 for such establishment, vacation, or alteration shall be
6 paid by the petitioner and such other persons found by the
7 board to be users of such private road as a means of ingress
8 and egress.

1 Sec. 29. In the latter case, a day shall be fixed for
2 the performance of the condition, which must be before the
3 next session of the board, and, if the same is not performed
4 by that day, it shall at such session make some final and
5 unconditional order in the premises.

1 Sec. 30. Any record made or action taken in the
2 establishment, alteration, or vacation of a private road shall
3 be entered in the private road record, distinguishing between
4 those made or taken by the auditor and those by the board of
5 supervisors.

1 Sec. 31. After a private road has been finally established
2 or altered, the plat and field notes must be recorded by the
3 auditor.

1 Sec. 32. Private roads shall be opened and worked by all
2 persons, firms or corporations using them continuously as a
3 means of ingress and egress.

1 Sec. 33. A reasonable time must be allowed to enable
2 the owners of land to erect the necessary fences adjoining the
3 new private road; and when crops have been planted or sowed
4 before the private road is finally established, the opening
5 thereof shall be delayed until the crop is harvested.

1 Sec. 34. The rights and interests of minors and insane
2 persons in relation to the establishment, vacation, and
3 alteration of private roads, and all matters connected
4 therewith, are under the control of their guardians.

1 Sec. 35. Any applicant for damages caused by the
2 establishment or alteration of any private road may appeal
3 from the final decision of the board to the district court of the
4 county in which the land lies, notice of which appeal must
5 be served on the county auditor within twenty days after
6 the decision is made. If the private road has been established
7 or altered on condition that the petitioners therefor pay
8 the damages, such notice shall be served on the four persons
9 first named in the petition, if there be that many residing
10 in the county, in the manner in which an original notice may
11 be served.

1 Sec. 36. An appeal may be taken by the petitioner as
2 to amount of damages, if the establishment or alteration has
3 been made conditional upon paying the damages, by serving

4 notice thereof on the county auditor and applicant for damages,
5 in the manner in which original notices are served, and
6 within twenty days after the decision of the board, and filing
7 a bond in the office of such auditor, with sureties to be
8 approved by him, conditioned for the payment of all costs
9 occasioned by such appeal, if the appellant fails to recover
10 a more favorable judgment in the district court than was
11 allowed him by such board.

1 Sec. 37. When an appeal has been taken the auditor shall
2 within ten days thereafter make out and file in the office of
3 the clerk of said court a transcript of the papers on file
4 in his office, and proceedings of the board of supervisors in
5 relation to such damages. The claimant for damages shall be
6 plaintiff and the petitioners defendants.

1 Sec. 38. The amount of damages the claimant is entitled
2 to shall be ascertained by the court in the same manner as
3 in actions by ordinary proceedings, and the amount ascertained
4 shall be entered of record, but no judgment rendered therefor.
5 The amount thus ascertained shall be certified by the clerk
6 to the board of supervisors, who shall thereafter proceed as
7 if such amount had been by it allowed the claimant as damages.

1 Sec. 39. If the appeal be taken by the petitioners,
2 they shall pay the costs, unless the claimant recovers a less
3 amount than was allowed him by the board. In all other cases
4 the taxing of the costs shall rest in the discretion of the
5 court.

EXPLANATION OF H. F. 302

Under the present law there is no provision for the establishment, alteration, vacation or maintenance of lanes or outlets to secondary roads and highways in the various counties.

This bill proposes to add a new chapter to the Code authorizing boards of supervisors of the various counties to establish, alter and vacate lanes or outlets and to have the power and authority to condemn land for that purpose, and to further provide that these lanes and outlets will be maintained and kept up by persons, firms or corporations continuously using said lanes or outlets for the purpose of ingress or egress.