

## CHAPTER 163

### COUNTY HIGHWAYS

163.01	DEFINITIONS.	163.11	POWERS RELATING TO HIGHWAYS.
163.02	GENERAL POWERS OF COUNTY BOARD.	163.111	DRAINAGE FACILITY, VACATION.
163.03	COUNTY ROAD AND BRIDGE FUND.	163.12	ALTERNATIVE PROCEDURE FOR ACQUISITION.
163.035	BICYCLE PATHS.	163.13	PETITION FOR HIGHWAY OR PORTAGE.
163.04	EXPENDITURES.	163.14	JOINT COUNTY AGREEMENT ON COSTS OF SHARED HIGHWAY.
163.05	TAXATION.	163.15	BRIDGE ACROSS DIVERSION CHANNEL.
163.051	COUNTY WHEELAGE TAX.	163.16	IMPASSABLE ROAD.
163.06	TAXATION IN UNORGANIZED TOWNSHIPS.	163.161	IMPASSABLE CITY THOROUGHFARE.
163.07	COUNTY HIGHWAY ENGINEER.	163.17	DRAINAGE SYSTEM AFFECTING HIGHWAY; ALTERATION.
163.08	CONSULTING ENGINEER.		
163.09	PAYMENT FOR LABOR AND EQUIPMENT.		

**163.01** MS 1957 [Repealed, 1959 c 500 art 6 s 13]

#### **163.01 DEFINITIONS.**

For the purposes of this chapter, the terms defined in section 160.02 shall have the same meanings.

**History:** 1959 c 500 art 4 s 1

**163.02** MS 1957 [Repealed, 1959 c 500 art 6 s 13]

#### **163.02 GENERAL POWERS OF COUNTY BOARD.**

Subdivision 1. **Establishment and supervision.** County highways shall be established, located, relocated, constructed, reconstructed, improved, maintained, revoked, or vacated by the several counties. The several county boards shall have general supervision over county highways, including those highways other than cartways within their respective counties established by judicial authority, and they may appropriate and expend sums of money from their respective county road and bridge funds as they deem necessary for the establishment, location, construction, reconstruction, improvement and maintenance, or vacation of such highways.

Subd. 2. **Acquisition.** They may acquire by purchase, gift, or eminent domain proceedings as provided by law, all necessary right-of-way for such highways, purchase all necessary road material, machinery, tools, and supplies needed therefor; and may construct buildings or rent, or acquire by purchase, gift, or eminent domain proceedings, grounds and buildings necessary for the storing and housing of such material, machinery, tools, and supplies.

Subd. 3. **Weight and load restrictions.** The county board, or the county engineer if so authorized by the board, may impose weight and load restrictions on any highway under its jurisdiction.

**History:** 1959 c 500 art 4 s 2

**163.03** MS 1957 [Repealed, 1959 c 500 art 6 s 13]

#### **163.03 COUNTY ROAD AND BRIDGE FUND.**

The county board shall provide and set apart a fund to be known as the county road and bridge fund. Any money remaining in the county-aid road fund of any county may be transferred by the county board to

the county road and bridge fund. All warrants for the establishment, location, vacation, construction, reconstruction, improvement, and maintenance of county state-aid highways and county highways and bridges shall be drawn on the county road and bridge fund.

**History:** 1959 c 500 art 4 s 3

#### **163.035 BICYCLE PATHS.**

The county board may in the interests of public safety expend road and bridge funds for the construction and maintenance of bicycle paths on road rights-of-way under county jurisdiction.

**History:** 1974 c 491 s 1

**163.04 MS 1957** [Repealed, 1959 c 500 art 6 s 13]

#### **163.04 EXPENDITURES.**

Subdivision 1. **County highway or county state-aid highway.** The county board may appropriate and expend sums of money from the county road and bridge fund as it deems necessary for establishing, locating, constructing, improving, and maintaining any county highway or county state-aid highway, including those within the corporate limits of any city in the county.

Subd. 2. **Local road or street.** The county board of any county may appropriate from its road and bridge fund to any town, statutory city, or city of the second, third, or fourth class in its county, such sums of money as are available and which it deems advisable to aid such towns, statutory cities, or cities of the second, third, or fourth class in the construction and maintenance of roads, streets, or bridges therein, and the appropriations may be directly expended by the county board, upon the roads, streets, or bridges as shall be designated by the governing bodies of the towns, statutory cities, or cities of the second, third, and fourth classes. In counties having a population of 400,000 or over, the county aid may be expended in accordance with the provisions of Laws 1905, Chapter 164, as amended. No statutory city, or city of the second, third, or fourth class shall receive, except as otherwise authorized by law, an appropriation hereunder exceeding 20 percent of the annual county tax levy for road and bridge purposes paid by the statutory city, or city of second, third, or fourth class.

Subd. 3. **Bridges within certain cities.** When the council of any statutory city or city of the third or fourth class may determine that it is necessary to build or improve any bridge or bridges, including approaches thereto, and any dam or retaining works connected therewith, upon or forming a part of streets or highways either wholly or partly within its limits, the county board shall appropriate one-half of the money as may be necessary therefor from the county road and bridge fund, not exceeding during any year one-half the amount of taxes paid into the county road and bridge fund during the preceding year, on property within the corporate limits of the city. The appropriation shall be made upon the petition of the council, which petition shall be filed by the council with the county board prior to the fixing by the board of the annual county tax levy. The county board shall determine the plans and specifications, shall let all necessary contracts, shall have charge of construction, and upon its request, warrants in payment thereof shall be issued by the county auditor, from time to time, as the construction work proceeds. Any unpaid balance may be paid or advanced by the city. On petition of the council, the appropriations of the county board, during not to exceed three successive years, may be made to apply on the construction of the same items and to repay any money advanced by the city in the construction thereof. None of the provisions of this section shall be construed to be mandatory as applied to any city whose estimated market value exceeds \$2,100 per capita of its population.

**History:** 1959 c 500 art 4 s 4; 1973 c 123 art 5 s 7; 1988 c 719 art 5 s 84; 1989 c 329 art 13 s 20; 1990 c 480 art 9 s 5; 2013 c 143 art 14 s 20

**163.05** MS 1957 [Repealed, 1959 c 500 art 6 s 13]

**163.05 TAXATION.**

Subdivision 1. **Levy.** The county board at its July meeting may include in its annual tax levy an amount for the county road and bridge fund.

Subd. 2. [Repealed, 1973 c 583 s 37]

Subd. 3. [Repealed, 1973 c 583 s 37; 1973 c 588 s 1]

Subd. 4. [Repealed, 1973 c 583 s 37]

Subd. 5. [Repealed, 1973 c 583 s 37]

Subd. 6. **Road and bridge tax is additional.** The taxes provided herein may be additional to the amount permitted by law to be levied for other county purposes.

**History:** 1959 c 500 art 4 s 5; 1967 c 592 s 1-3; 1973 c 583 s 11

**163.051 COUNTY WHEELAGE TAX.**

Subdivision 1. **Tax authorized.** (a) Except as provided in paragraph (c), the board of commissioners of each county is authorized to levy by resolution a wheelage tax at the rate specified in paragraph (b), on each motor vehicle that is kept in such county when not in operation and that is subject to annual registration and taxation under chapter 168. The board may provide by resolution for collection of the wheelage tax by county officials or it may request that the tax be collected by the state registrar of motor vehicles. The state registrar of motor vehicles shall collect such tax on behalf of the county if requested, as provided in subdivision 2.

(b) The wheelage tax under this section is at the rate of:

(1) from January 1, 2014, through December 31, 2017, \$10 per year for each county that authorizes the tax; and

(2) on and after January 1, 2018, up to \$20 per year, in any increment of a whole dollar, as specified by each county that authorizes the tax.

(c) The following vehicles are exempt from the wheelage tax:

(1) motorcycles, as defined in section 169.011, subdivision 44;

(2) motorized bicycles, as defined in section 169.011, subdivision 45; and

(3) motorized foot scooters, as defined in section 169.011, subdivision 46.

(d) For any county that authorized the tax prior to May 24, 2013, the wheelage tax continues at the rate provided under paragraph (b).

Subd. 2. **Collection by registrar of motor vehicles.** The wheelage tax levied by any county, if made collectible by the state registrar of motor vehicles, shall be certified by the county auditor to the registrar not later than August 1 in the year before the calendar year or years for which the tax is levied, and the registrar shall collect such tax with the motor vehicle taxes on the affected vehicles for such year or years. Every owner and every operator of such a motor vehicle shall furnish to the registrar all information requested

by the registrar. No state motor vehicle tax on any such motor vehicle for any such year shall be received or deemed paid unless the applicable wheelage tax is paid therewith.

Subd. 2a. **Tax proceeds deposited; costs of collection; appropriation.** Notwithstanding the provisions of any other law, the state registrar of motor vehicles shall deposit the proceeds of the wheelage tax imposed by subdivision 2, to the credit of the county wheelage tax account of each county. The amount necessary to pay the costs of collection of said tax is appropriated from the county wheelage tax account of each county to the state registrar of motor vehicles.

Subd. 3. **Distribution to county; appropriation.** On a monthly basis, the registrar of motor vehicles shall issue a warrant in favor of the treasurer of each county for which the registrar has collected a wheelage tax in the amount of such tax then on hand in the county wheelage tax account. There is hereby appropriated from the county wheelage tax account each year, to each county entitled to payments authorized by this section, sufficient moneys to make such payments.

Subd. 4. **Use of tax.** The treasurer of each county receiving payments under subdivision 3 shall deposit such payments in the county road and bridge fund. The moneys shall be used for purposes authorized by law which are highway purposes within the meaning of the Minnesota Constitution, article 14.

Subd. 5. [Repealed, 2008 c 154 art 2 s 33]

Subd. 6. [Repealed by amendment, 2013 c 117 art 3 s 4]

Subd. 7. **Offenses; penalties; application of other laws.** (a) Any owner or operator of a motor vehicle who willfully gives any false information relative to the tax authorized by this section to the registrar of motor vehicles or any county, or who willfully fails or refuses to furnish any such information, is guilty of a misdemeanor.

(b) Except as otherwise provided in this section, the collection and payment of a wheelage tax and all matters relating thereto are subject to all provisions of law relating to collection and payment of motor vehicle taxes so far as applicable.

**History:** 1971 c 830 s 11; Ex1971 c 48 s 12; 1973 c 492 s 14; 1973 c 551 s 1,2; 1976 c 2 s 172; 1986 c 444; 2003 c 112 art 2 s 50; 2008 c 350 art 1 s 4; 2008 c 366 art 9 s 1; 2009 c 101 art 2 s 109; 2013 c 117 art 3 s 4

**163.06 MS 1957** [Repealed, 1959 c 500 art 6 s 13]

### **163.06 TAXATION IN UNORGANIZED TOWNSHIPS.**

Subdivision 1. **Levy.** The county board of any county in which there are unorganized townships may levy a tax for road and bridge purposes upon all the real and personal property in such unorganized townships.

Subd. 2. **Tax is additional.** The tax, if levied, is additional to the tax which the counties may levy for the county road and bridge funds and is additional to the amount permitted by law to be levied for other county purposes. The tax may be levied on any or all unorganized townships within a county, provided that no such tax shall be levied on only a part of an unorganized township within a county.

Subd. 3. **Extending tax levy.** If any county deems it desirable to levy such a tax, it may at the time it levies the county taxes, by resolution reciting such fact, determine the amount so to be levied in each unorganized township for the current year. It shall be the duty of the county auditor to extend the tax so levied upon the tax books of the county, at the same time and in the same manner as other taxes for county purposes are extended as to property in such unorganized townships, and the tax shall be collected and

payment thereof enforced at the same time and in the same manner as other county taxes on such property and with like penalties for nonpayment at the time prescribed by law.

Subd. 4. **Separate fund.** The tax collected from each unorganized township shall be set apart in a separate fund in the county treasury, and each shall be designated as the road and bridge fund of the unorganized township from which the tax was collected.

Subd. 5. **Purposes of fund expenditures.** Except as hereinafter provided, each fund shall be expended under the direction of the county board for the construction, improvement, and maintenance of roads and bridges in the unorganized township for which the fund was designated. If so requested by petition signed by a majority of the resident taxpayers of any unorganized township, the county board may expend all or part of the road and bridge fund of the unorganized township upon roads or bridges in an adjoining organized or unorganized township.

Subd. 6. **Expenditure in certain counties.** In any county having not less than 95 nor more than 105 full and fractional townships, and having an estimated market value of not less than \$12,000,000 nor more than \$21,000,000, the county board, by resolution, may expend the funds provided in subdivision 4 in any organized town or unorganized territory or portion thereof in such county.

**History:** 1959 c 500 art 4 s 6; 1973 c 583 s 12; 1988 c 719 art 5 s 84; 1989 c 329 art 13 s 20; 1990 c 426 art 1 s 20; 1990 c 480 art 9 s 6; 2013 c 143 art 14 s 21; 2014 c 308 art 9 s 12

163.07 MS 1957 [Repealed, 1959 c 500 art 6 s 13]

#### 163.07 COUNTY HIGHWAY ENGINEER.

Subdivision 1. **Appointment.** The county board of each county shall appoint and employ, as hereinafter provided, a county highway engineer who may have charge of the highway work of the county and the forces employed thereon, and who shall make and prepare all surveys, estimates, plans, and specifications which are required of the engineer. The county highway engineer may be removed by the county board during the term of office for which appointed only for incompetency or misconduct shown after a hearing upon due notice and upon stated charges. The burden of proving incompetency or misconduct shall rest upon the party alleging the same.

Subd. 2. **Qualifications, salary, and term.** The county highway engineer shall be a registered highway or civil engineer, registered under the laws of the state of Minnesota. The county board may appoint a new county engineer for a term of only one year. All reappointments shall be for a term of four years, and shall be made in May of the year in which the term expires. The county highway engineer shall be a citizen and resident of this state. The county highway engineer's salary shall be fixed by the county board and shall be payable the same as other county officers are paid. The salary shall not be reduced during the county highway engineer's term of office.

Subd. 2a. **Short-term reappointment pending retirement.** Notwithstanding the provisions of subdivision 2 as to the term of office of the county highway engineer, the county board of any county may reappoint a county highway engineer for a term of office less than four years when such county highway engineer to be reappointed will reach the age of mandatory retirement within the normal four-year term provided for in subdivision 2.

Subd. 3. [Repealed, 2014 c 227 art 1 s 23]

Subd. 4. **Civil service classification.** The commissioner of management and budget shall allocate a state civil service classification to any city or county highway engineer, or an engineer of any other governmental

agency as may be from time to time requested by the commissioner of transportation. The allocation shall be made on the same basis and subject to the same provisions of law as pertain to engineering and similar positions in the state classified service. The commissioner of management and budget shall give consideration to the education, professional attainments and experience of the city, county highway engineer, or engineer of any other governmental agency for purposes of transfer to the state service. All city, county highway engineers, or engineers of any other governmental agency who have not less than two years service prior to the transfer may be transferred to the state classification so allocated without examination, but subject to a six months probationary period, in the state classified service. The commissioner of management and budget shall establish procedure for the transfer.

**Subd. 5. Promotional examination.** The commissioner of transportation may certify any city or county highway engineer that the commissioner may deem qualified to the commissioner of management and budget as eligible to take any specific promotional examination held for civil engineer or civil engineering aid as classified by the state civil service commission. The service rating of such engineer shall include past service with the state and as city or county highway engineer, if the engineer had prior service with the state Transportation Department as a supervisory engineer.

**Subd. 6. Duties; bond.** The county highway engineer shall devote the entire time to official duties and, before entering upon the duties of office, give bond to the state in the penal sum of \$25,000, to be approved and filed in the same manner as are the bonds of the other county officers. All premiums for the bond shall be paid by the county. The state, the several governmental subdivisions thereof, or any person damaged by any wrongful act or omission of the county highway engineer in the performance of official duties may maintain an action on the bond for the recovery of the damages so sustained.

**Subd. 7. Report.** The county highway engineer shall prepare and submit to the county board annually a full and complete report covering all county highway work, and shall prepare and submit such other reports relating to the county highway system as the county board directs.

**Subd. 8.** [Repealed, 1969 c 304 s 2]

**Subd. 9. Contract for engineer services with other county.** In lieu of appointing and employing a county highway engineer in accordance with the provisions of this section, a county may contract for the services of a county highway engineer with a county that appoints and employs such an engineer upon such terms as are mutually agreed upon. An engineer acting as a county highway engineer under contract for a county shall exercise every duty and responsibility imposed by law upon a county highway engineer. A copy of each contract executed between counties under this subdivision shall be filed in the office of the commissioner of transportation.

This subdivision shall not apply to any county containing a city of the first class.

**History:** 1959 c 500 art 4 s 7; 1967 c 763 s 1,2; 1969 c 437 s 1; 1971 c 389 s 1; 1973 c 15 s 1; 1973 c 123 art 5 s 7; 1973 c 507 s 45; 1976 c 166 s 7; 1980 c 617 s 47; 1986 c 444; 1992 c 505 s 2; 1Sp2003 c 19 art 2 s 15; 2008 c 204 s 42; 2009 c 101 art 2 s 109

**163.08 MS 1957** [Repealed, 1959 c 500 art 6 s 13]

### **163.08 CONSULTING ENGINEER.**

Upon request of the county highway engineer the county board of any county is authorized to employ and engage the services of registered professional engineers to act as consultants in connection with, and to prepare plans and specifications themselves or by their organization and employees for the construction of

roads and bridges on county and county state-aid highways, and the county board is authorized to negotiate for and agree upon the terms and compensation for such employment and service.

**History:** *1959 c 500 art 4 s 8*

**163.09** MS 1957 [Repealed, 1959 c 500 art 6 s 13]

### **163.09 PAYMENT FOR LABOR AND EQUIPMENT.**

Subdivision 1. **Payroll system.** The county board of any county may adopt a payroll system for the payment of claims for labor, whether skilled or unskilled, employed by the county in any capacity in connection with the construction or maintenance of highways within the county and for the payment of claims of persons who have furnished tractors, trucks, teams, wagons, plows, scrapers, or any other equipment for the performance of work on the highways. The payroll shall be in such forms and supported by such records as the state auditor prescribes. It shall contain the name and rate of pay of each claimant together with the total amount of each claim.

Subd. 2. **Payroll preparation and certification; payment.** The payroll shall be prepared by the county engineer either monthly or semimonthly as directed by the county board. The county highway engineer shall certify it as being true and correct and shall present it to the county auditor for payment. It shall thereupon be lawful for the county auditor and county treasurer to pay the claims as set forth in the payroll without allowance therefor by the county board. Upon presentation to the county auditor of the payroll, the auditor shall forthwith issue to the several claimants whose names appear therein a warrant in payment of their respective claims.

**History:** *1959 c 500 art 4 s 9; 1973 c 492 s 14; 1986 c 444*

**163.10** MS 2002 [Repealed, 1Sp2003 c 1 art 2 s 136]

**163.10** MS 1957 [Repealed, 1959 c 500 art 6 s 13]

**163.11** MS 1957 [Renumbered 441.265]

### **163.11 POWERS RELATING TO HIGHWAYS.**

Subdivision 1. **Resolution.** County highways may be established, altered, vacated, or revoked by resolution of the county board. Any public highway within the county, other than a trunk highway, municipal state-aid street, or county state-aid highway, may be taken over as a county highway by resolution of the county board.

Subd. 2. **Contents of resolution.** The resolution shall contain a description of the highway. In the case of a newly established highway or the alteration of a highway, the resolution shall also contain a description of the several tracts of land through which the highway passes, the names of all persons known by the board to be the owners and occupants of each tract, and a description of the right-of-way, if any, needed therefor from each tract and the interest or estate therein to be acquired.

Subd. 3. **Acquiring necessary property.** All lands or properties needed for the establishment, location, relocation, construction, reconstruction, improvement, and maintenance of a county highway may be acquired by purchase, gift, or eminent domain proceedings as provided in chapter 117 and acts supplemental thereto, or as in section 163.12, subdivisions 1 to 10.

Subd. 4. **Vacation.** When a newly established, relocated, or altered county highway is opened for travel which takes the place of and serves the same purpose as any portion of another county highway, the county

board may vacate any such portion of the other highway by resolution. The board shall cause personal service of the resolution to be made upon each occupant of land through which the vacated portions passed and shall also post notice of the resolution for at least ten days. A copy of the resolution together with proof of service and affidavit of posting shall be filed in the county auditor's office. Within 30 days after the service, any person claiming to be damaged by the vacation may appeal to the district court of the county for a determination of damages by serving notice of the appeal upon the county board and filing same with proof of service in the office of the court administrator of the district court. The appeal shall state the nature and the amount of damages claimed. It shall be tried in the same manner as an appeal from an award in eminent domain proceedings.

**Subd. 4a. Designation as county cartway.** A county board that has vacated a county highway under subdivision 4 may designate, as part of the vacating resolution, the former county highway as a county cartway. A highway designated as a county cartway is a county highway for purposes of this chapter, but the county board may not expend money from its road and bridge fund on the maintenance or improvement of a county cartway unless the county board determines that the expenditure is in the public interest. With the exception of the process provided in subdivision 5a, a county highway right-of-way that has been vacated, extinguished, or otherwise removed from the county highway system may not revert to a town.

**Subd. 5. Revocation and reversion; vacation by city or town.** The county board, by resolution, may revoke any county highway. The highway shall thereupon revert to the town in which it is located; provided that any such revoked highway or portion thereof lying within the corporate limits of any city shall become a street of such city. Roads or streets or any portion thereof so revoked and turned over to the town or city may be vacated by the town or city in the same manner as other town roads or city streets are vacated. If the vacation occurs within one year after the revocation by the county, damages occasioned by the vacation shall be paid by the county out of its road and bridge fund. No award of damages shall be made by the town or city for such vacation without the concurrence of the county board, and no action brought to recover damages for the vacation shall be settled or otherwise disposed of without the consent of the county board. The county board may defend any action brought to recover damages for the vacation in the same manner and to the same extent as in a proceeding to vacate a county highway.

**Subd. 5a. Hearing on reversion to town.** Before adopting a resolution revoking a county highway that would revert in whole or in part to a town, the county board shall fix a date, time and place of hearing in the town where the highway is located to consider the revocation. Not less than 30 days before the hearing, the county board shall serve notice of the hearing by certified mail on each member of the town board of supervisors. At the hearing the town board and all interested persons shall be entitled to be heard and express their views on the proposed reversion of the highway to the town. After the hearing the county board may adopt a resolution revoking the highway. The resolution revoking the highway shall not be effective until the following conditions are met:

(1) the county has completed repairs or improvements on the highway that are necessary to meet the county standards for a comparable road in the county in which the town is located; and

(2) the county has properly recorded with the county recorder all county interest in real estate used for the highway.

**Subd. 5b. Revoked highway; maintenance.** A county highway that is revoked by a county board to a town under this section shall be maintained by the county for a period of two years from the date of revocation.

**Subd. 6. Prior acts confirmed.** Any prior action taken by any county board revoking any county highway and turning over such highway to any township as a town road is hereby recognized and confirmed.



Subd. 7. **Extinguishing interest in abandoned highway.** (a) The county board may by resolution and without other action pursuant to this section or other law disclaim and extinguish a county interest in a county highway if:

- (1) the interest is not a fee interest;
- (2) the interest was established more than 40 years earlier;
- (3) the interest is not recorded with the county recorder;
- (4) no highway improvement has been constructed on a right-of-way affected by the interest; and
- (5) no highway maintenance on a right-of-way affected by the interest has occurred within the last 40 years.

(b) The resolution shall be filed and recorded with the county auditor and recorder, and with the local governing body of any organized township or municipality.

Subd. 8. **Extinguishing interest in highway abutting public water; notice.** Not less than 30 days before the hearing on any resolution to vacate, disclaim, or extinguish a county highway or an interest in a county highway that terminates at or abuts upon any public water, the county board shall serve notice of the hearing by certified mail on the commissioner of natural resources. The notice under this subdivision is for notification purposes only and does not create a right of intervention by the commissioner of natural resources.

Subd. 9. **Transfer of jurisdiction over county highway.** Notwithstanding subdivision 5, the county board may transfer jurisdiction and ownership of a county highway to another road authority, an agency of the United States, an agency of the state, or to an Indian tribe upon agreement between the county and the authority, agency, or tribe to which the transfer is being made. Subdivision 5a provides the exclusive method of county highway reversion to towns.

**History:** 1959 c 500 art 4 s 11; 1973 c 123 art 5 s 7; 1978 c 460 s 1; 1978 c 674 s 60; 1980 c 402 s 1; 1983 c 125 s 1; 1985 c 169 s 3,4; 1986 c 444; 1Sp1986 c 3 art 1 s 82; 1989 c 183 s 2; 1994 c 436 s 1; 1Sp2003 c 19 art 2 s 16,17

### 163.111 DRAINAGE FACILITY, VACATION.

On consideration of a petition for vacation of a county highway, the county board shall determine whether the lateral ditches of said highway are essential for surface drainage of adjacent lands, or for drainage of public highways, in the area. If the board finds that preservation of such drainage facilities is for the general health and welfare of the public, then the board may cause the highway to be vacated with a provision that the county shall retain the right of access for the purpose of maintaining such drainage facilities. An owner of land adjacent to the vacated portion of the highway shall not interfere with the functioning of such drainage facilities.

**History:** 1967 c 723 s 2

163.12 MS 1957 [Repealed, 1959 c 500 art 6 s 13]

### 163.12 ALTERNATIVE PROCEDURE FOR ACQUISITION.

Subdivision 1. **County board may elect.** If the county board so elects, it may adopt the procedure hereinafter set forth for the acquisition of lands or properties needed for the acquisition or alteration of a county highway and county state-aid highways.

Subd. 1a. **Petition, notice, and access to information.** (a) Upon passage of the resolution specified in section 163.11, subdivision 2, a petition must be presented to the district court of the county in which the land is located. The petition must describe each tract of land through which the highway passes, state the purposes for which the land is proposed to be taken, and list the names of all persons appearing of record or known to the county to be the landowners.

(b) Notice of the objects of the petition and of the time and place of presenting the notice must be served, together with a copy of the resolution, upon each occupant of each tract of land through which the highway passes at least 20 days before the hearing under subdivision 1b. If an owner is not a resident of the state, or the owner's place of residence is unknown to the county, service may be made by three weeks' published notice following the filing of an affidavit on behalf of the county by the county's agent or attorney stating that the county:

(1) believes that the owner is not a resident of the state; and

(2) has either mailed a copy of the notice to the owner at the owner's last known residence address or, after diligent inquiry, the owner's place of residence cannot be ascertained by the county.

If the state is an owner, the notice must be served upon the attorney general. An owner not served as provided in this subdivision is not bound by the proceeding, except if the owner voluntarily appears in the proceeding.

(c) Within ten days of an owner's demand, the owner must be furnished a right-of-way map or plat of all that part of the owner's land to be taken. Any applicable plans or profiles that the county possesses must be made available to the owner for inspection.

Subd. 1b. **Finding of necessity.** When proof of service of the notice required in subdivision 1a is filed with the court, the court shall hear all competent evidence offered for or against granting the petition at the time and place fixed in the notice or otherwise set by the court. On finding that the proposed taking is necessary and authorized by law the court shall order the proceedings to commence pursuant to the remaining provisions of this section.

Subd. 2. **Time and place for hearing.** Upon order by the court under subdivision 1b to commence the proceedings the board shall fix the time and place it will meet. Notice of the meeting, together with a copy of the resolution, shall be served upon each occupant of each tract of land through which the highway passes at least ten days before the meeting. Ten days' posted notice of the meeting shall also be given. Proof of service and affidavit of posting shall be filed with the county auditor.

Subd. 3. **Hearing.** The county board shall meet at the time and place designated and shall proceed to view the premises affected. It shall hear all interested parties regarding damages occasioned by the establishment or alteration of the highway.

Subd. 4. **Damages may be determined by written agreement.** The damages may be determined by written agreement. Every such agreement shall be filed with the county auditor and shall be final as to the matters therein contained.

Subd. 5. **County board's determination of damages.** The county board shall determine the damages of those with whom no agreement can be reached or who are unknown. In making the determination the board shall deduct from the damages sustained by each tract the money value of the benefits, if any, accruing thereto, and award the difference as damages.

Subd. 6. **Awards filed; notification.** The award of damages shall be filed with the county auditor. Within seven days after filing the county auditor shall notify, in writing, each known owner and occupant of each

tract of the filing of the awards. The notification shall set forth the date of the filing, the amount of the award of damages and any terms or conditions of the award.

Subd. 7. **Appeal from award.** Within 40 days after the filing of the award of damages, any owner or occupant may appeal from the award by filing a notice of the appeal with the court administrator of the district court of the county where the lands lie. The notice of appeal shall be accompanied by a bond of not less than \$250, with sufficient surety approved by the judge or by the county auditor, conditioned to pay all costs arising from the appeal in case the award is sustained. A copy of the notice together with a copy of the bond shall be served upon the county auditor. The notice of appeal shall specify the award or failure to award appealed from, the land to which it relates, the nature and amount of the claim of appellant, and the grounds of the appeal.

Subd. 8. **Right to jury trial.** The appeal shall be entered upon the calendar for trial at the next general term of court occurring more than 20 days after the appeal is perfected. It shall be tried in the same manner as an appeal in eminent domain proceedings under chapter 117. The prevailing party shall recover costs and disbursements to be fixed and allowed as in other civil cases and judgment shall be entered upon the verdict.

Subd. 9. **Payment.** Upon stipulation in lieu of judgment or upon final judgment, the county board shall promptly pay the amount so stipulated or the amount of the judgment. If no appeal is taken from an award, the county board shall pay the award within 20 days after the time for appeal has expired. The duty of the county board to pay the award or final judgment shall be held and construed to be just compensation or the securing of just compensation within the meaning of the constitution.

Subd. 10. **Appeal not to delay prosecution of improvement.** After the award of damages has been filed, the board may proceed to open, construct, alter, or change the highway. An appeal from the award of damages shall not delay the prosecution of the proposed improvement, and the county board may proceed as if no appeal had been taken.

**History:** 1959 c 500 art 4 s 12; 1Sp1986 c 3 art 1 s 82; 2001 c 139 s 1-3

163.13 MS 1957 [Repealed, 1959 c 500 art 6 s 13]

### 163.13 PETITION FOR HIGHWAY OR PORTAGE.

Subdivision 1. **Contents of petition.** Any person who owns real estate in a county may petition the county board to establish, alter, or vacate a county highway or portage. The petition shall set forth the beginning, course, and termination of the highway or portage with reasonable definiteness. It shall be filed with the county auditor and shall be considered at the next regular county board meeting. The board shall hear all interested persons at that meeting or at such continued meetings as the board deems necessary.

Subd. 2. **Resolution of county board, procedure.** After investigating the matters contained in the petition, and after hearing all interested persons, the board, by resolution, shall make its determination. If it determines to grant the petition it shall proceed as provided in section 163.11 or as provided in section 163.12.

Subd. 3. **Appeal.** If the board denies the petition, any person aggrieved thereby, within 30 days after the denial, may appeal to the district court of the county by filing a notice of appeal with the court administrator of the district court, together with a bond of not less than \$250, with sufficient surety approved by the judge or by the county auditor, conditioned to pay all costs arising from the appeal in case the determination of the board is sustained. A copy of the notice of appeal shall be served on the county auditor.

Subd. 4. **Trial.** The appeal shall be entered upon the calendar for trial at the next general term of the court occurring more than 20 days after the appeal is perfected. The determination of the board shall not be reversed except upon a showing of arbitrary, capricious or fraudulent action. The prevailing party shall be entitled to costs and disbursements to be fixed and allowed as in other civil cases.

Subd. 5. **Board procedure on reversal.** If the determination of the board is reversed, it shall proceed in accordance with the decision of the court.

**History:** 1959 c 500 art 4 s 13; 1Sp1986 c 3 art 1 s 82

**163.131** [Repealed, 1959 c 500 art 6 s 13]

**163.132** [Repealed, 1959 c 500 art 6 s 13]

**163.14** MS 1957 [Repealed, 1959 c 500 art 6 s 13]

#### **163.14 JOINT COUNTY AGREEMENT ON COSTS OF SHARED HIGHWAY.**

Subdivision 1. **Joint resolution.** The county boards of two or more counties by joint resolution, may establish, alter, improve, or vacate a county highway running into or through such counties or running on or along the line between such counties.

Subd. 2. **Agreement for division of costs.** Such county boards, in behalf of their respective counties, may enter into agreements with each other providing for an equitable division of the costs to be borne by each for the right-of-way, construction, improvement, or vacation of the highway. If the agreement provides for the establishment or alteration of a highway, the agreement may provide for the letting of a joint construction contract covering all or part of the work to be performed on the highway.

Subd. 3. **Procedure.** The joint resolution shall contain the same matters required in section 163.11, subdivision 2. Upon passage of the joint resolution the boards shall thereafter proceed in the manner and subject to the same review provided in section 163.11 or as provided in section 163.12.

Subd. 4. **Maintenance.** Each county shall maintain the portion of the highway lying within its boundaries. If the highway runs along the line between the counties, the county boards may enter into an agreement providing for the maintenance by each county of specified portions of the highway. The highway shall thereafter be maintained in accordance with the agreement.

**History:** 1959 c 500 art 4 s 14

**163.15** MS 1957 [Repealed, 1959 c 500 art 6 s 13]

#### **163.15 BRIDGE ACROSS DIVERSION CHANNEL.**

Whenever any county has been authorized by the commissioner of natural resources to divert the channel of a navigable stream for the purpose of improving a county road and the board of commissioners of such county has by resolution ordered diversion of the navigable stream across private property so that the stream and the channel thereof when so diverted deprives the owner of the private property of access to the county road, the owner of the private property may grant to the county a perpetual easement for road purposes across that private property commencing at a point 50 feet distant from the relocated or diversion channel, thence crossing the relocated or diversion channel and intersecting the county road so to be improved; and the road easement shall extend for a distance of two rods on each side of the centerline thereof and be and remain a public road. The county shall forthwith establish and construct a highway upon the strip of land pursuant to law, build a suitable bridge, including approaches thereto, across the channel, and at public

expense thenceforth maintain the road and bridge so established in a safe condition so as to afford the owner of the private property access to the improved county road.

**History:** 1959 c 500 art 4 s 15; 1969 c 1129 art 3 s 1; 1986 c 444

**163.16 MS 1957** [Repealed, 1959 c 500 art 6 s 13]

### **163.16 IMPASSABLE ROAD.**

Subdivision 1. **Complaint.** When a written complaint, signed by five or more landowners of any town is presented to the county board stating that a described town road in or on the line of the town has not been opened and constructed or is not properly maintained, and because of such neglect is not reasonably passable, the county board by resolution, shall fix a time and place for hearing the complaint. The county auditor shall mail a copy of the complaint, together with notice of the time and place of hearing on the complaint, to the town clerk. All persons signing the complaint shall also be notified of the time and place of the hearing by the county auditor.

Subd. 2. **Hearing on complaint.** At the designated time and place the county board shall consider the complaint and hear and consider such testimony as may be offered by the officers of the town and the complainants relative to the matters set forth in the complaint. The chair of the county board, or the presiding officer thereof, may administer oaths to witnesses and require them to testify under oath. The county board may drive over the road and make such further investigations as it deems necessary.

Subd. 3. **Determination, statement of costs, payment.** If upon the hearing and investigation the county board shall be of the opinion that the complaint is well founded, it shall by resolution direct the town board to do such work or to make such improvements as it shall deem necessary to put the road in a passable condition. The resolution shall specify generally the work which is deemed necessary. The county auditor shall cause a copy of the resolution to be mailed to the clerk of the town. If the town for a period of 30 days after the mailing of the notice, fails or neglects to do the work or make the improvements set forth in the resolution, the county board may cause the work to be done or the improvements made, and the cost thereof shall be paid from the county road and bridge fund; provided that no such work shall be performed by the county when the cost thereof exceeds \$3,000 per mile.

Subd. 4. **Statement of cost; tax levy.** When any county board shall have performed any work or made any improvement on any such road, it shall cause to be prepared in duplicate an itemized statement of the cost of the work or improvement. The statement shall be filed with the county auditor and a copy thereof shall be mailed by the county auditor to the clerk of the town. The town clerk shall forthwith notify the several members of the town board that such a statement has been filed and that a meeting of the town board to act thereon will be held at a time to be specified in the notice, not later than ten days after the receipt of the notice from the county auditor. The town board shall meet at the time and place specified in the notice so given by the clerk and levy a special tax upon all the taxable property in the town in an amount sufficient to pay the amount expended by the county in performing the work or making the improvement. The tax so levied shall be certified to the county auditor on or before October 15 next succeeding, and the county auditor shall extend the same with other town taxes upon the tax list of the town. If the town board shall for any reason fail to act as herein provided, the county auditor is hereby authorized and directed to levy the tax and extend the same with other town taxes upon the tax list of the town. The tax shall be collected and the payment thereof enforced in the same manner and subject to the same penalties and interest as other town taxes. When collected the tax shall be paid into the county treasury and credited to the county road and bridge fund.

**History:** 1959 c 500 art 4 s 16; 1986 c 444; 2004 c 228 art 2 s 3

**163.161 IMPASSABLE CITY THOROUGHFARE.**

When a written complaint signed by five or more landowners of a statutory city of not more than 5,000 population is presented to the county board stating that a city thoroughfare located outside an urban area as defined in section 169.011, subdivision 90, has not been properly maintained and because of the improper maintenance is not reasonably passable, the county board shall consider and act upon the complaint in the same manner provided for a complaint under section 163.16.

**History:** *1986 c 454 s 9; 2004 c 228 art 2 s 4*

**163.17 MS 1957** [Repealed, 1959 c 500 art 6 s 13]

**163.17 DRAINAGE SYSTEM AFFECTING HIGHWAY; ALTERATION.**

Upon the filing of a resolution by the county board of any county with the county auditor, in the case of a public ditch system lying wholly within a county, or with the court administrator of the district court having jurisdiction over said ditch in the case of a ditch system affecting two or more counties, therein setting forth that it would be advantageous or desirable in the construction or maintenance of a highway under the jurisdiction of the county to make a minor alteration or change in a public ditch system directly affecting the highway, and that the alteration or change will not affect the functioning or efficiency of the ditch system, it shall be the duty of the auditor, or the clerk with the approval of the judge, to fix a time and place for hearing thereon and to give notice of hearing by publication as defined by section 103E.005, subdivision 24. Upon the filing of the resolution, the board shall also cause to be filed a plan showing in detail the alteration or change therein described. If upon the hearing it shall appear to the county board or district court that the alteration or change in the public ditch system will not affect or impair the efficiency of the ditch system, the board or court shall make its order authorizing the county to cause the alteration or change to be made. Upon the making of the order by the county board or the court, the county board may proceed at the sole cost and expense of the county to make the alterations or changes as may be in the order allowed; damages, if any, occasioned thereby being first duly paid or secured by the county. Upon completion of the alteration or change, the county board shall cause to be filed with the auditor or court administrator a map and profile drawn to scale showing thereon the change or alteration made. If the map and profile be filed with the court administrator, duplicates thereof shall also be filed with the auditor of each county affected. Upon the completion of the alteration or change herein provided for, the ditch shall thereafter include the alteration or change as part thereof with the same force and effect as though it had been originally so constructed and established.

**History:** *1959 c 500 art 4 s 17; 1985 c 172 s 126; 1Sp1986 c 3 art 1 s 82; 1990 c 391 art 8 s 31*

**163.18** [Repealed, 1959 c 500 art 6 s 13]

**163.19** [Repealed, 1959 c 500 art 6 s 13]

**163.191** [Repealed, 1959 c 500 art 6 s 13]

**163.20** [Repealed, 1959 c 500 art 6 s 13]