CHAPTER 24-07
OPENING AND VACATING HIGHWAYS

24-07-01. Public roads by prescription.

All public roads and highways within this state which have been or which shall be open and in use as such, during twenty successive years, hereby are declared to be public roads or highways and confirmed and established as such whether the same have been laid out, established, and opened lawfully or not.

24-07-02. Established roads are public highways.

Every road laid out by the proper authorities, as provided for in this chapter, from the laying out of which no appeal has been taken within the time limited for taking such appeal, hereby is declared a public highway to all intents and purposes, and all persons having refused or neglected to take an appeal, as provided for in this chapter, are debarred forever from any further redress.

24-07-03. Section lines considered public roads open for public travel - Closing same under certain conditions.

In all townships in this state, outside the limits of incorporated cities, and outside platted townsites, additions, or subdivisions recorded pursuant to sections 40-50.1-01 through 40-50.1-17 or recorded prior to July 1, 1987, under former chapter 40-50, the congressional section lines are considered public roads open for public travel to the width of thirty-three feet [10.06 meters] on each side of the section lines.

The board of county commissioners, if petitioned by a person having an interest in the adjoining land or a portion thereof, after public hearing and a finding by the commissioners of public benefit, may close section lines or portions thereof which are not used for ten years, are not traveled due to natural obstacles or difficulty of terrain, are not required due to readily accessible alternate routes of travel, or are intersected by interstate highways causing the section line to be a deadend, providing the closing of the dead-end section line does not deprive adjacent landowners access to the landowners' property. After the section lines are closed, they may be used to the benefit of the adjacent landowners. However, survey or property reference monuments may not be disturbed, removed, or destroyed. If drainage is interfered with due to the farming operations, alternate means of drainage must be provided for by the landowners or tenants farming the lands.

24-07-03.1. Improvement of section line by landowner.

A person having a surface interest in a parcel of land connected by a section line to another parcel of land in which that person has a surface interest or to a highway may petition the board of county commissioners in an unorganized township or the board of township supervisors in an organized township to authorize the petitioner to improve the section line or a portion of the section line for the purpose of travel for agricultural purposes. The petition may be approved if the section line cannot be traveled due to natural obstacles or difficulty of terrain and if the petitioner does not have a readily accessible alternative route of travel to the parcel of land. The petitioner must improve the section line or a portion of the section line at the petitioner's expense.

24-07-04. Jurisdiction of proceedings to open or vacate highway.

Except as otherwise provided in this title, all proceedings for the opening, vacating, or changing of a highway outside of the limits of an incorporated city, including the acquisition of right of way when necessary, must be under the charge and in the name of:

1. The board of county commissioners, if the road is in territory not organized into a civil township.
2. The board of township supervisors of an organized township.
3. The board of county commissioners of each county in case the road is between or in two or more counties.

4. The board of township supervisors of each organized civil township in which any part of the road is situated if the road is situated between two civil townships or in more than one civil township.
5. The board of township supervisors of each organized township and of the board of county commissioners in case the road is situated partly in an organized township and partly in an unorganized township.
6. The board of county commissioners in any case arising under subsection 4 when the boards of township supervisors of the respective civil townships cannot agree or will not take action on petition so to do.

24-07-05. Petition for laying out, altering, or discontinuing roads.

The board having jurisdiction as provided in this chapter may alter or discontinue any road or lay out any new road upon the petition of not less than six qualified electors who have an ownership interest in real estate in the vicinity of the road to be altered, discontinued, or laid out. Said petition must set forth in writing a description of the road and what part thereof is to be altered or discontinued, and if for a new road, the names of the owners of the land, if known, over which the road is to pass, the point at which it is to commence, its general course, and the point where it is to terminate.

24-07-06. Public road may be established to give access to highway.

Whenever any tract of land is surveyed or sold in tracts less than the original subdivision as established by the government survey thereof, so that any part thereof does not touch upon a public road so as to allow the owner of such tract access to a public highway, the board of county commissioners or board of township supervisors, upon petition of such owner, may open a public road to gain access to any such tract or tracts when in the judgment of such board such public road is necessary and that it is of sufficient benefit to the county or township as a whole, but no such public road may exceed two rods [10.06 meters] in width unless in the judgment of such board a roadway of such width is not sufficient to accommodate the travel thereon.

24-07-07. Survey of proposed road - Deviation from petition.

Whenever a petition is received by the board having jurisdiction, requiring a new road to be laid out, said board, when in its judgment circumstances warrant the same, shall employ a competent surveyor to survey and lay out said road, and such survey must include a line of levels to be run over the laid out road and a grade line to be established thereon, such grade line not to be greater than ten percent when completed. In laying out said road the board may deviate or depart, or may direct a deviation or departure, from the road described in the petition when it is practicable and less expensive to do so in order to obtain a grade line not exceeding ten percent. Such surveyor shall prepare a plan and profile of the surveyor's survey and shall file a copy of the same with the township clerk or the county auditor, as the case may be, and the board having jurisdiction shall require that such road, when completed, must conform to the plan and profile of the surveyor as filed with the township clerk or county auditor.

24-07-08. State land subject to chapter.

The provisions of this chapter apply to all lands owned by the state or any institution thereof, or held by virtue of any contract with the state, and notice of the altering, laying out, or discontinuing of any cartway or highway pursuant to this chapter must be served by registered or certified mail upon the board of university and school lands or other state agency having the control of the land affected, not less than thirty days prior to the taking of action by such board in regard to altering, laying out, or discontinuing such cartway or highway.

24-07-09. Copy of petition to be posted.

The petitioners for the alteration or discontinuance of any road, or for laying out any new road, shall cause copies of their petition to be posted in three of the most public places in the county or township having jurisdiction thereof, twenty days before any action is had in relation thereto.

24-07-10. Notice to all parties to be given - What deemed to be notices.

Within thirty days after the board having jurisdiction receives a petition in compliance with provisions of this chapter for laying out, altering, or discontinuing any highway, it shall make out a notice and fix therein a time and place at which it will meet and decide upon such application, and the applicant, ten days previous to the time so fixed, shall cause such notice to be given to all occupants of the land through which such highway may pass. Such notice must be served personally or by copy left at the abode of such occupant. The board also shall cause copies of such notice to be posted in three public places in said county or township at least ten days previous to such meeting. Every such notice must specify, as nearly as practicable, the highway proposed to be laid out, altered, or discontinued, and the tract of land through which the same may pass.

24-07-11. When notice dispensed with.

When at least seventy percent of the qualified electors who are owners or part owners of land bordering on any existing or proposed road or highway have signed the original petition and thereby released all their claims to damages arising from altering, discontinuing, or laying out such road or highway, it is not necessary to post copies of the petition as provided for in section 24-07-09, nor to post notices or serve notices as provided for in section 24-07-10, except that the notices must be served personally or left at the abode of such occupants as may have failed to sign the petition and whose land borders on the road or highway proposed to be opened, altered, or discontinued. The general knowledge, and the fact, that seventy percent of the qualified electors have signed the original petition in compliance with this provision must be deemed sufficient notice to all concerned and for all intents and purposes.

24-07-12. Petition must be filed with county auditor.

If the petition is for the opening, altering, or discontinuing of a road or highway between two or more counties, it must be filed with the auditor of one of the counties affected at least fifteen days before any action is taken, and the auditor immediately shall transmit certified copies of such petition to the auditors of all other counties to be affected by such changing, discontinuing, or laying out of roads or highways. Each county auditor shall lay such petition before the board of county commissioners of the auditor's county at its next meeting for action in the matter as provided in this chapter.

24-07-13. Examination of proposed highway.

The board having jurisdiction, upon being satisfied that copies of the petition have been posted and notices have been served and posted as required, or that at least seventy percent of the qualified electors who are owners of lands affected have signed the original petition and that notices have been served personally or left at the abode of those who may have failed to sign the original petition, proof of which shall be shown by affidavit, shall proceed to examine the proposed highway and shall hear any reasons for or against the laying out, altering, or discontinuing of the same, and shall decide upon the application as it deems proper.

24-07-14. Proceedings when road is laid out, altered, or discontinued.

Whenever the board of county commissioners or the board of township supervisors shall lay out, alter, or discontinue any highway, it shall cause a survey thereof to be made when necessary, and it shall make out an accurate description of the highway so altered, discontinued, or laid out, and shall incorporate the same in an order to be signed by the members of such board, and shall cause such order, together with all the petitions and affidavits of service and posting of notices to be filed in the office of the county auditor, if by the board of county commissioners, and in the office of the township clerk, if by the board of township supervisors. The auditor or clerk shall note the time of filing the same. On the refusal of either board to lay out, alter, or discontinue a road, it shall note the fact on the back of the petition and file the same as aforesaid. All orders, petitions, and affidavits, together with the award of damages, must be made out and filed within five days after the date of the order for laying out, altering, or discontinuing a highway. But the county auditor or township clerk may not record

such order within thirty days, nor until a final decision is had, and not then unless such order is confirmed. When the order, together with the award, has been recorded by the county auditor or township clerk, as the case may require, the same must be filed in the office of the county auditor. In case the board having jurisdiction fails to file such order within twenty days, it must be deemed to have decided against such application.

24-07-15. Order or certified copy - Competent evidence.

The order laying out, altering, or discontinuing any highway, or a copy of the record duly certified by the county auditor or township clerk, as each case may require, must be received in all courts as competent evidence of the facts therein contained and must be prima facie evidence of the regularity of the proceedings prior to the making of such order, except in cases of appeal, when such appeal has been taken within the time limited in this chapter.

24-07-16. Damages - How ascertained.

The damages sustained by reason of laying out, altering, or discontinuing any road may be ascertained by the agreement of the owners and the board of county commissioners or the board of township supervisors, as the case may be, and unless such agreement is made, or the owners in writing shall release all claim to damages, the same must be assessed in the manner herein prescribed before the road is opened, worked, or used. Every agreement and release must be filed in the township clerk's office, when with a township, and in the county auditor's office, when with a county, and precludes such owners of land forever from all further claim for damages. In case the board and the owners of land claiming damages cannot agree, or if the owner of any land through which any highway shall be laid out, altered, or discontinued, is unknown, the board in its award of damages shall specify the amount of damages awarded to each such owner, giving a brief description of such parcel of land in the award. The board having jurisdiction shall assess the damages at what it deems just and right to each individual claimant with whom it cannot agree. The board of township supervisors shall deposit a statement of the amount of damages assessed with the township clerk, and the board of county commissioners shall deposit the same with the county auditor. The auditor or clerk shall note the time of filing the same. The board in assessing damages shall estimate the advantages and benefits the new road or alteration of an old one will confer on the claimant for the same as well as the disadvantages. Any person living on land belonging to the United States who has made that person's declaratory statement for the same in the proper land office, for all the purposes of this chapter, must be considered the owner of such lands.

24-07-17. When damages not allowed.

Except as otherwise provided in this chapter, no damages may be assessed or allowed to any person, corporation, or limited liability company by reason of the laying out of any new road or the altering of any old one, if the title of the land on which such road passes was vested in the state or the United States at the time of the location of such road.

24-07-18. Determination final for one year.

The determination of a board of county commissioners, or a board of township supervisors in refusing to lay out, alter, or discontinue any highway, is final, unless such determination is appealed from as is provided in this chapter, for the term of one year after the filing of such order or determination in the county auditor's or township clerk's office, as the case may be, and no application for laying out, altering, or discontinuing any such highway again may be acted upon by such board within said period of one year, and in case the determination of any such board in laying out, altering, or discontinuing any highway is appealed from, as provided in this chapter, and such determination is reversed on appeal, the said board may not, within one year after the making of the determination so reversed on appeal, act again upon an application to lay out, alter, or discontinue any such highway.

24-07-19. Notice to party to remove fences.

Whenever any public road has been laid out through any enclosed, cultivated, or improved lands, pursuant to this chapter and the decision of the board laying out the road has not been appealed from, the board shall give the owner or occupant of the land through which the road is laid out thirty days' written notice to remove the owner's or occupant's fences. If the owner does not remove the fences within thirty days after the notice, the board shall cause the fences to be removed and shall direct the road to be opened and worked, but no enclosure may be ordered opened between April first and October first.

24-07-20. Notice to overseer of highways.

When any highway is to be changed or laid out, the county auditor or clerk of the township, as the case may be, shall notify the overseer of highways of each district affected and shall furnish the overseer of highways with a certified copy of the proceedings of the board.

24-07-21. Repair of highways across railroads, canals, or ditches.

Whenever highways are laid out across railroads, canals, or ditches on public lands, the owners at their own expense shall so repair their railroads, canals, or ditches that the public highway may cross the same without damage or delay, and when the right of way for a public highway is obtained through the judgment of any court, over any railroad, canal, or ditch, no damages must be awarded for the simple right to cross the same.

24-07-22. Appeals - When and where taken.

Any person who feels aggrieved by any determination or award of damages made by the board having jurisdiction, either in laying out, altering, or discontinuing, or in refusing to lay out, alter, or discontinue, any highway or cartway, within thirty days after the filing of such determination or award of damages, as provided in this chapter, may appeal therefrom to the district court in accordance with the procedure provided in section 28-34-01.

24-07-23. Appeals - How taken - Notice - Bond.

The appeal provided for in section 24-07-22 must be taken by the service and filing of a notice of appeal and an undertaking for costs. The notice of appeal must specify:

1. The court to which the appeal is taken.
2. Whether the appeal is taken in relation to damages assessed or in relation to the laying out, altering, or discontinuing, or to the refusal to lay out, alter, or discontinue any highway.
3. Whether the appeal is taken from the whole of the order of the board or only from a part thereof, and if from a part only, then what part.
4. The grounds upon which the appeal is taken.

The undertaking must be made in favor of the county or township, as the case may be, and must be conditioned for the payment of all costs that may arise upon such appeal if the determination appealed from is affirmed.

24-07-24. Appeals - Filing - Approval of undertaking - Service.

The notice of appeal and undertaking to the district court must be filed with the clerk of the court and the undertaking must be approved by the judge thereof or by the county auditor. The notice of appeal must be served upon some member of the board by which the determination was made.

24-07-25. Trial in county court.

Repealed by S.L. 1991, ch. 326, § 203.

24-07-26. Trial in district court.

Upon an appeal to the district court, the issues must be submitted to a jury unless the parties otherwise agree, and must be tried as other cases are tried in district court upon appeal.

24-07-27. Scope of review upon appeal.

An appeal as provided for in this chapter brings before the appellate court the propriety of the amount of damages allowed and all matters referred to in the notice of appeal. The court or jury, as the case may be, shall reassess the damages. The rules for ascertaining and fixing the damages must be based upon the principles which the board was required to adopt in originally determining the same.

24-07-28. Judgment - Copy filed.

When judgment has been entered upon an appeal taken as provided in this chapter, the clerk of the district court shall file with the county auditor or clerk of the township a certified copy of the judgment.

24-07-29. Costs of appeal.

If the determination of the board appealed from is affirmed, or if the amount of damages allowed is reduced, the party appealing shall pay all costs and disbursements incurred in the appellate court, but if the amount of damages allowed is increased, or if the determination is altered, modified, or reversed, otherwise than as to the amount of damages, such costs and disbursements must be paid by the township or county, as the case may be. Said costs and disbursements must be taxed as in other cases in the appellate court, and judgment entered therefor in like manner.

24-07-30. When appeal sustained - Duty of the board.

When an appeal has been made from the determination of any board of township supervisors or board of county commissioners, and such determination has been reversed or altered, the board from whose determination such appeal was taken shall proceed to lay out, alter, or discontinue such highway, in conformity with the decision of such appeal, and the proceedings thereon must be the same as if the board originally had determined to lay out, alter, or discontinue such highway. The amount of damages finally determined and awarded by the board or by the court or jury, together with all the charges of officers and other persons necessarily employed in laying out, altering, or discontinuing any township or county road, must be audited by the board of county commissioners or board of township supervisors, as the case may be, specifying the amount of charges and damages due each individual, and the respective amounts must be certified by said board and by it deposited with the county auditor or township clerk and paid by the county or township, as the case may be. Before any road may be opened or used, warrants of the county or township, as the case may be, equal to the damages assessed to individuals, must be issued and deposited with the county auditor or township clerk, as the case may be, for the use and benefit of said individuals, and must be delivered to them on demand. The issuing and depositing of said warrants must be deemed to be sufficient security for the payment of said damages. In no case may a township be compelled to pay any damages that may be awarded in laying out, altering, or discontinuing any county road.

24-07-31. Nonuse for ten years will vacate highway.

Any road or part thereof laid out by authority of a board of county commissioners or a board of township supervisors, and not opened to public use within ten years from the time when it was laid out, or which thereafter is abandoned and not used for ten years, hereby is declared vacant.

24-07-32. Highways on county and township lines.

A public highway established on a county or township line, or a public highway laid out parallel and adjacent to a county or township line, where such line is occupied by a railroad or other obstruction, must be opened, established, and repaired by the supervisors of the proper road districts on each side thereof.

24-07-33. Public lands - Damages.

When any person acquires the title to government land over which any road has been or hereafter may be laid out, subsequent to the laying out of such road, the person so acquiring such title, within three months after the receipt of the person's patent therefor, shall assert the person's claim for damages in the manner provided in this chapter in case of locating highways, and such roads must remain and be public highways, but the person's damages, if any, must be paid, and in case of a failure to assert the person's claim for damages within the time aforesaid, the person thereafter is barred from asserting such claim.

24-07-34. Roads on lines between township and city.

Whenever the board of supervisors of any township and the governing body of any incorporated city shall receive a petition praying for the location of a road or for the altering or discontinuing of any road on the line between such township and such city, such road may be laid out, altered, or discontinued by the action of both boards. The provisions of this chapter applicable to the laying out, altering, or discontinuing of a road on the line between two townships are applicable to a road on the line between any township and an incorporated city.

24-07-35. Designation of minimum maintenance road.

A board having jurisdiction as described in this chapter, and the governing body of a city, may designate a road under its jurisdiction as a minimum maintenance road in accordance with sections 24-07-35 through 24-07-37. The designation may be made only if the board or governing body determines that the road to be so designated is used only occasionally or intermittently for passenger and commercial travel. Further, the designation cannot be made if the road is used as a schoolbus route, mail route, or as the only access to any existing residence. In its action designating the minimum maintenance road, the board or governing body shall identify the beginning and end of the road. The board or governing body shall notify each adjoining political subdivision of a designation made under this section. If a road runs along the boundary of political subdivisions, the designation as a minimum maintenance road is not applicable unless the board or governing body of each adjoining political subdivision agrees with the designation.

24-07-36. Required signs on minimum maintenance roads.

The body making a designation of a minimum maintenance road shall post signs at the beginning of the road and at regular intervals along the road. The signs must conform to standards adopted by the director by rule. If the signs are properly posted, that fact is prima facie evidence that adequate notice of the road's status as a minimum maintenance road has been given to the public.

24-07-37. Limitations on designation of minimum maintenance roads.

A road is not eligible for designation as a minimum maintenance road if federal highway aid to this state would be reduced as a result of that designation. A road is not eligible for that designation if additional right of way or easement by eminent domain is required for constructing or designating the road as a minimum maintenance road, unless the consent of the landowner is given or the designation is necessary for drainage or public safety.