

ENROLLED HOUSE
BILL NO. 2562

By: Taylor and Eddins of the
House

and

Littlefield of the Senate

An Act relating to roads, bridges and ferries; amending 69 O.S. 1991, Section 646, which relates to opening or condemning county roads; providing for reservation of roads; modifying procedure changing county roads; modifying requirements for certain petition; modifying and adding actions by board of county commissioners; setting certain hearing; modifying certain publication requirements; deleting designation of county engineer; requiring certain cost estimate to be prepared; deleting requirement that certain damages be paid out of certain fund; deleting certain notice and right to appeal within time limit; requiring certain expenses to be justified; authorizing certain expenses to be paid by petitioners; setting forth procedure to vacate roads; providing for certain testimony; setting forth penalty and fine for certain action; providing exception; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 69 O.S. 1991, Section 646, is amended to read as follows:

Section 646. A. The board of county commissioners may open, establish, reserve or condemn ~~for~~ roads on section lines and may vacate, alter, widen, change or lay out other new roads according to the following procedure:

~~(a) Action to locate, alter, or~~ 1. A proposal for action to vacate, alter, widen, change or locate a road may shall be upon a petition to the board of county commissioners signed by at least twelve freeholders residing in the vicinity of the road affected. ~~One or more of such petitioners must execute a bond, payable to the county, conditioned to pay the costs of proceedings if the petition be not granted.~~ or by resolution of the board of county commissioners;

2. The petition shall show state the proposed action and clearly show on a map of the area the location and terminals of the road and shall be promptly considered by the board of county commissioners if in proper form. If the petition is in proper form, the board of county commissioners shall promptly investigate the proposal to determine if the petition has merit;

~~But if the~~ 3. The board concludes of county commissioners may conclude, upon investigation, that action concerning the road applied for is unnecessary and impractical, then no further proceedings shall be had, and the bond of the petitioners shall be liable for any costs accrued. Due legal and deny the petition. Should the board determine that the petition has merit, the board shall set the date of the hearing and provide notice as prescribed by this section;

4. At such time it is determined that the petition has merit, the board of county commissioners shall set a hearing date. The county clerk shall then notify those landowners whose property is immediately affected by the road, in such a way that the road may cross their property, abut to their property, or in some manner provide ingress or egress to their property;

5. Legal notice to the public for twenty (20) days by advertisement in the official county paper a newspaper of general circulation in the county shall be given setting forth the facts and the date when the hearing will be held and the petition acted upon. If the newspaper is published weekly, the notice shall be published in three consecutive issues. A record of all such proceedings shall be made by the county clerk. One of the petitioners must give at least six (6) days notice in writing to the owner or his legal representative (if within the county) through whose land the proposed road goes and copies of such notice, duly served, must be filed with the county clerk before the proceedings are complete.

~~(b) Or the county engineer may be designated by either side to represent all of the interests involved and proceed to locate or alter the road to the best advantage, make estimates of the cost of doing the work involved, and shall stake it out. In case~~

B. In a petition proposing that a road be altered, widened, changed or located where the owners of the land to be taken agree in writing to the proposed location or changes by providing an easement to the county for such purpose, or donate the land required, then if the work can be accomplished with reasonable expense the judicial procedure of viewing may be omitted and the board of county commissioners shall then cause to be prepared a cost estimate for the proposed project. The cost estimate shall include the cost to survey the road or the proposed changes. If the estimated cost is reasonable and the road or the proposed changes serve the general public by providing a better route or by eliminating a hazard making the route safer, the board of county commissioners may order and establish the road as a county highway, or order the proposed changes to be made and make the appropriate record thereof. The board shall determine and award the amount of damages to be paid out of the county funds, if there are any such damages sustained by the owner of the land involved, and if such owner actually had notice of the procedure. Failing to give such notice to him, he may claim damages within twelve (12) months after the location and opening of the road, but all claims thereafter shall be barred. Any person aggrieved by the foregoing proceedings shall have the right of appeal to the district court for final review and adjudication. However, no work shall be performed until a survey is completed and easements secured. If the board determines that the expense cannot be justified in whole or in part, the board may order that the petitioners must bear the responsibility to adequately fund the proposed action in whole or in part. If easements are not granted

freely, the easements shall be obtained in the manner provided by law and shall be considered in the cost estimate of the proposed action.

(e) C. In a petition proposing that a road be vacated, the board of county commissioners shall, upon receiving the petition, attest that according to their records the road in question is within their jurisdiction and is considered to be open for use by the general public, through grant or ownership, by easement or dedication, by adverse possession, or by open and notorious use, regardless of the frequency of maintenance or lack thereof. In considering the proposal to vacate the road, the board shall hear testimony provided by the petitioners and others who may testify at the hearing as to whether the road should be vacated. Upon a decision by the board to vacate the road, the board shall issue an order to void any easement pertaining to the road, if such easement exists, and require that the road be closed in such a manner as to prevent the use of the road by the general public. The decision of the board to vacate or not to vacate the road shall be final. Except as provided in Section 649 of this title, no road in use by the general public shall be closed, obstructed or vacated in any manner except as provided by this section. Every person who shall close, obstruct or attempt to vacate a road in a manner other than the manner set forth in this section shall be guilty of a misdemeanor and upon conviction shall be fined not less than Fifty Dollars (\$50.00) nor more than Five Hundred Dollars (\$500.00). In addition, such person shall be liable for the cost incurred by the county to remove, repair or otherwise return the road to open travel by the public. Nothing in this section shall prohibit the temporary closing of any road by law enforcement or emergency personnel in the performance of their official duty, public utilities with regard to routine maintenance and construction, or other such entities as authorized by the board of county commissioners.

D. Wherever in those counties the amount of Indian lands or those exempt from taxation by reason of the operation of any federal law is thirty percent (30%) or more of the total area of the county, then the board of county commissioners may, upon its own initiative, and if the public interests demand it, move to secure roads over, adjacent to, or for the benefit of all such exempted lands ~~in the following manner:~~ as set forth in this subsection. The board shall call upon the Director of the Oklahoma Department of Transportation as a disinterested party to undertake and make such surveys, plans and estimates and obtain all other essential data and records as are required to make a full and complete statement and report upon the interest involved, and to make such recommendations as in the premises may seem proper. When so prepared, the Department of Transportation shall then advance the matter to the Department of the Interior of the United States, or to any other federal department concerned, through its proper local representative, if there be one, with the request that the matter be considered and disposed of as speedily as possible. If the project be so approved and authorized, then the work may proceed under the special supervision and direct administration of the Department of Transportation and subject to such special regulations as the circumstances seem to require.

SECTION 2. This act shall become effective November 1, 2000.

Passed the House of Representatives the 16th day of May, 2000.

Speaker of the House of
Representatives

Passed the Senate the 17th day of May, 2000.

President of the Senate