

## CHAPTER 139—S.F.No. 2142

*An act relating to highways; allowing judicial review of public purpose and necessity for taking property for county highway or town road; amending Minnesota Statutes 2000, sections 163.12, subdivision 2, by adding subdivisions; 164.07, subdivisions 1, 2, 7, 10.*

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2000, section 163.12, is amended by adding a subdivision to read:

**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.

Sec. 2. Minnesota Statutes 2000, section 163.12, is amended by adding a subdivision to read:

**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

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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.

Sec. 3. Minnesota Statutes 2000, section 163.12, subdivision 2, is amended to read:

Subd. 2. **TIME AND PLACE FOR HEARING.** Upon passage of the resolution specified in section 163.11, subdivision 2, 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.

Sec. 4. Minnesota Statutes 2000, section 164.07, subdivision 1, is amended to read:

Subdivision 1. **AUTHORIZATION; PETITION.** Any town board may alter or vacate a town road, including those dedicated to the public by plat, or establish a new road in its town upon a petition of not less than eight voters of the town, who own real estate, or occupy real estate under the homestead or preemption laws or under contract with the state, within three miles of the road proposed to be established, altered, or vacated; provided, that in any town not having eight voters who own real estate or occupy real estate under the homestead or preemption laws or under contract with the state, within three miles of any proposed road, the town board of such town may alter or vacate a town road, or establish a new road in the town upon a petition signed by a less number of voters of such town, who own real estate or occupy real estate under the homestead or preemption laws or under contract with the state, in such town. Such petition shall contain a description of the road, and what part thereof is to be altered or vacated, and, if a new road, the names of the owners of the land, if known, over which such road is to pass, its point of beginning, general course, and termination. If the petition is to establish or alter a road, the petition must also contain a statement of the purpose and necessity for establishing or altering the road.

Sec. 5. Minnesota Statutes 2000, section 164.07, subdivision 2, is amended to read:

Subd. 2. **HEARING; NOTICE.** (a) The petition shall be filed with the town clerk, who shall forthwith present it to the town board. The town board within 30 days thereafter shall make an order describing as nearly as practicable the road proposed to be established, altered, or vacated and the several tracts of land through which it passes, and fixing a time and place when and where it will meet and act upon the petition. The order must also contain a notice to affected landowners that a landowner is entitled to judicial review of damages, need, and purpose under subdivision 7 following a determination to establish or alter a road. The petitioners shall cause personal service of such order and a copy of the petition to be made upon each

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occupant of such land at least ten days before such meeting and cause ten days' posted notice thereof to be given.

(b) In addition, the petitioners shall serve notice of the order by certified mail upon the commissioner of natural resources at least 30 days before such meeting if the road to be vacated terminates at or abuts upon any public water. The notice under this ~~subdivision~~ paragraph is for notification purposes only and does not create a right of intervention by the commissioner of natural resources.

Sec. 6. Minnesota Statutes 2000, section 164.07, subdivision 7, is amended to read:

Subd. 7. **APPEAL.** 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 appeal with the court administrator of the district court of the county where the lands lie. However, the owner or occupant must file the notice of appeal within ten days in order to delay the opening, construction, alteration, change, or other improvement in or to the road pursuant to subdivision 10. The notice of appeal shall be accompanied by a bond of not less than \$250, with sufficient surety approved by the judge or the county auditor conditioned to pay all costs arising from the appeal in case the award is sustained. A copy of the notice shall be mailed by registered or certified mail to the town clerk or any member of the town board. 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, which may include a challenge to the public purpose or necessity of the proposed road or condemnation.

Sec. 7. Minnesota Statutes 2000, section 164.07, subdivision 10, is amended to read:

Subd. 10. **APPEAL NOT TO DELAY IMPROVEMENT.** After the award of damages has been filed, the board may proceed to open, construct, alter, or change the highway; provided it does not receive notice of appeal within ten days pursuant to subdivision 7. If the board receives a notice of appeal within ten days that challenges the public purpose or necessity of the proposed road or condemnation, it shall suspend any proposed work on the road until a final judicial determination supporting the condemnation is made. An ~~If the notice of appeal from the award of damages does not challenge the public purpose or necessity, the appeal shall not delay the prosecution of the proposed improvement, and the town board may proceed as if no appeal had been taken.~~

**Sec. 8. EFFECTIVE DATE.**

Sections 1 to 7 are effective the day following final enactment.

Presented to the governor May 17, 2001

Signed by the governor May 21, 2001, 10:41 a.m.

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