

**HOUSE BILL No. 2239**

By Committee on Local Government

2-9

1 AN ACT concerning roads; relating to the board of county  
2 commissioners; relating to vacating roads; proceedings for damages;  
3 amending K.S.A. 68-102a, 68-106 and 68-107 and K.S.A. 2010 Supp.  
4 68-101 and repealing the existing sections.  
5

6 *Be it enacted by the Legislature of the State of Kansas:*

7 New Section 1. (a) (1) Any owner may file a verified petition in the  
8 district court of the county in which the road that has been determined by  
9 the board of commissioners to be laid out, altered or vacated is situated.  
10 Upon filing the verified petition with the court, the owner shall be  
11 considered a petitioner under this act.

12 (2) The court shall not award damages unless there has been filed  
13 with the court, within 12 months after the entering of the order laying out,  
14 altering or vacating such road, a verified petition giving a description of  
15 the ownership interest in the property affected, the name of the owner or  
16 owners, and a copy of the order by the board of commissioners laying  
17 out, altering or vacating the road. Upon filing of the petition, the court  
18 shall fix the time when the same shall be taken up. The court shall  
19 determine the amount of damage sustained, if any, by such petitioner. All  
20 petitions for damages shall be forever barred unless they are presented as  
21 provided by this act.

22 (b) The petitioner shall cause to be published once in a newspaper of  
23 general circulation in the county where the road is situated a notice of the  
24 proceeding at least 14 days in advance of the date fixed by the court for  
25 consideration of the petition and appointment of appraisers, and shall at  
26 least 14 days before such date mail to each interested party as named in  
27 the petition, and whose address is known or can with reasonable diligence  
28 be ascertained, a copy of such publication notice and petition insofar as it  
29 relates to the petitioner's interest. No defect in any notice or in the service  
30 thereof shall invalidate any proceedings.

31 (c) If the judge to whom the proceeding has been assigned finds that  
32 the order by the board of commissioners is lawful, the judge shall  
33 entertain suggestions from any party in interest relating to the  
34 appointment of appraisers and the judge shall enter an order appointing  
35 three certified and licensed general real estate appraisers to view and  
36 appraise the value of the ownership interest in the property affected, and

1 to determine the damages and compensation to the interested parties  
2 resulting from the laying out, altering or vacating of the road. Such order  
3 shall also fix the time for the filing of the appraisers' report at a time not  
4 later than 20 days after the entry of such order except for good cause  
5 shown, the court may extend the time for filing by a subsequent order.

6 (d) After such appointment, the appraisers shall take an oath to  
7 faithfully discharge their duties as appraisers. The judge shall provide  
8 written instructions to the appraisers on matters including, but not limited  
9 to, the following: (1) That the appraisers are officers of the court and not  
10 representatives of the petitioner or any other party; (2) that the appraisers  
11 are to receive instructions only from the judge; (3) the nature of the  
12 appraisers' duties and authority; (4) the basis, manner and measure of  
13 ascertaining the value of the ownership interest in the property affected  
14 by the laying out, altering or vacating of the road; (5) that, except for  
15 incidental contact for the purpose of verifying factual information relating  
16 to the subject real estate or to discuss scheduling matters, appraisers shall  
17 refrain from any ex parte meetings or discussions with any party or  
18 representatives of any party to the proceeding without first advising the  
19 adverse party and providing such party the opportunity to be present; and  
20 (6) that all written material provided to an appraiser or appraisers by a  
21 party shall be provided forthwith to the adverse party.

22 (e) The appraisers shall, after having been sworn, and instructed by  
23 the judge, make an appraisal and assessment of damages, by actual view  
24 of the property to be affected by the laying out, altering or vacating of the  
25 road, and by hearing of oral or written testimony from the petitioner and  
26 each interested party. Such testimony shall be given at a public hearing  
27 held in the county where the action is pending at a time and place fixed  
28 by the appraisers. Notice of the hearing shall be mailed at least 14 days in  
29 advance thereof to the petitioner and to each party named in the petition if  
30 their address is known or can with reasonable diligence be ascertained.  
31 In case of failure to meet on the day designated in the notice, the  
32 appraisers may meet on the following day without further notice. In case  
33 of failure to meet on either of such days, a new notice shall be required. A  
34 hearing begun pursuant to proper notice may be continued or adjourned  
35 from day to day and from place to place until the hearing with respect to  
36 all properties involved in the action has been concluded.

37 (f) Upon the completion of the appraisers' work, the appraisers shall  
38 file the report in the office of the clerk of the district court and shall  
39 notify the parties of such filing by mailing a written notice of the filing of  
40 such report to the plaintiff and to each party named in the petition, and  
41 shall file in the office of the clerk of the district court an affidavit  
42 showing proof of the mailing of such notice. The fees and expenses of the  
43 appraisers shall be determined and allowed by the court and charged to

1 the county.

2 (g) The county shall, within 30 days from the time the appraisers'  
3 report is filed, pay to the clerk of the district court the amount of the  
4 appraisers' damages award and court costs accrued to date, including  
5 appraisers' fees. Such payment shall be without prejudice to the county's  
6 right to appeal from the appraisers' award.

7 (h) Whenever the county appeals the award of the court-appointed  
8 appraisers and the trier of fact renders a verdict for the owner in an  
9 amount greater than the appraisers' award, the court may also award court  
10 costs and reasonable attorney fees to the owner based on the rate  
11 attorneys in that county charge for such work.

12 (i) If any party is dissatisfied with the award of the appraisers,  
13 within 30 days after the filing of the appraisers' report, such party may  
14 appeal from the award by filing a written notice of appeal with the clerk  
15 of the district court. The appeal shall be deemed perfected upon the filing  
16 of the notice of appeal. In the event any parties shall perfect an appeal,  
17 copies of such notice of appeal shall be mailed to all parties affected by  
18 such appeal, within seven days after the date of the perfection thereof. An  
19 appeal by any party shall bring before the court the issue of damages to  
20 all interests in the property affected by the laying out, altering or vacating  
21 of the road, for a trial de novo. The appeal shall be docketed as a new  
22 civil action, the docket fee of a new court action shall be collected and the  
23 appeal shall be tried as any other civil action. The only issue to be  
24 determined in the action shall be the compensation to be paid for the  
25 laying out, altering or vacating of the road and for any damages allowable  
26 by law.

27 Sec. 2. K.S.A. 2010 Supp. 68-101 is hereby amended to read as  
28 follows: 68-101. Unless the context clearly indicates otherwise, the  
29 following terms shall have the meanings herein ascribed to them  
30 wherever they appear in chapter 68 of the Kansas Statutes Annotated, and  
31 amendments thereto:

32 (a) "Highway commissioners," "township board of highway  
33 commissioners," "township commissioners," "township board," or  
34 "township governing body" means the governing body of the township  
35 composed of the township trustee, the township clerk and the township  
36 treasurer.

37 (b) "Class A roads" means all roads in county unit road counties, not  
38 designated as part of the county primary or county major collector road  
39 systems nor as part of the state or federal road systems. "Class A roads"  
40 shall include the roads formerly under the jurisdiction of the township,  
41 unless otherwise designated and classified by the county engineer and the  
42 board of county commissioners.

43 (c) "County roads" means all roads designated as such by the board

1 of county commissioners, including roads on the county major collector  
2 road system, class A roads in county road unit counties and federal aid  
3 classified routes that extend from major or minor collectors into the area  
4 between urban or urbanized limits and city limits, as defined in title 23 of  
5 the code of federal regulations.

6 (d) "State roads" and "state highways" means all roads designated as  
7 a part of the state highway system by the secretary of transportation.

8 (e) "Township roads" means all roads within a township not within a  
9 county road unit county other than federal, state, and county roads.

10 (f) "Owner" or "landowner" means any person or business entity  
11 who possesses an interest in real property adjoining the road and such  
12 interest is recorded in the office of the register of deeds or filed in the  
13 court records of the county in which the real property is situated. An  
14 interest in real property includes, but is not limited to, fee title, life  
15 estates, remainder interests, leases, rights-of-way, easements, and the  
16 interest of a contract purchaser.

17 Sec. 3. K.S.A. 68-102a is hereby amended to read as follows: 68-  
18 102a. (a) Before any road is laid out, altered or vacated without the  
19 presentation of a petition, the county clerk shall give notice of the  
20 proposed action by publication once in the official county newspaper and  
21 by sending notice by certified mail to each owner, ~~of property adjoining~~  
22 ~~the road~~ if known or reasonably ascertainable, at the address where the  
23 owner's tax statement is sent. The notice shall set forth a description of  
24 the road proposed to be laid out, altered or vacated.

25 (b) In all counties having a population of not less than 30,000  
26 inhabitants, proceedings for the award of damages, if any, to the ~~property~~  
27 owners affected by such action, and any appeal therefrom, shall be made  
28 in the same manner as provided in K.S.A. 68-107, and amendments  
29 thereto. Any ~~person or persons~~ owner may make written application to  
30 the county commissioners for payment for damage to property caused by  
31 such action. The county commissioners shall not award damages unless  
32 there has been filed with the county clerk, within 12 months after the  
33 entering of the order laying out, altering or vacating such road, a written  
34 application giving a description of the premises for which damages or  
35 compensation are claimed. The county commissioners shall determine the  
36 amount of damage sustained, if any, by such claimant. All applications for  
37 damages shall be forever barred unless they are presented as provided by  
38 this act.

39 (c) In all counties having a population of less than 30,000  
40 inhabitants, proceedings for the award of damages, if any, to the owners  
41 affected by such action, and any appeal therefrom, shall be made in the  
42 same manner as provided in section 1, and amendments thereto.

43 Sec. 4. K.S.A. 68-106 is hereby amended to read as follows: 68-106.

1 It shall be the duty of the commissioners or ~~said~~ viewers or a majority of  
2 them, and the county surveyor to meet at the time and place specified in  
3 the notice ~~aforsaid~~, or on the following day thereafter, and they may, if  
4 they deem it necessary, take to their assistance two suitable persons as  
5 chain carriers and one as marker, and then proceed to view, survey, lay  
6 out, alter or vacate the road as prayed for in ~~said~~ the petition, or as nearly  
7 so as a good road can be made at a reasonable expense, taking into  
8 consideration the utility, convenience and inconvenience, and expense  
9 which will result to individuals as well as to the public, if such road, or  
10 any part thereof, shall be established and opened or altered.

11 ~~Said~~The commissioners or viewers shall also assess and determine the  
12 amount of damages sustained by any ~~person or persons~~ owner through  
13 whose premises the ~~said~~ road is proposed to be established. Such  
14 commissioners or viewers shall not assess or award damages or  
15 compensation to any ~~person or persons~~ owner in consequence of the  
16 opening of ~~said~~ the road, unless the owner or owners, or their agents, or  
17 guardians, having been duly notified as provided in this act of the  
18 applications and proceedings by which their property is sought to be  
19 appropriated or damaged, shall have filed a written application with ~~said~~  
20 the commissioners, giving a description of the premises on which  
21 damages or compensation are claimed, at the time of ~~said~~ the view and  
22 hearing, ~~as hereinbefore provided for. Provided, That.~~ In case any ~~person~~  
23 owner has not received the notice of the view of ~~said~~ the road, as  
24 ~~hereinbefore~~ provided for in this section, ~~he~~ the owner may at any time  
25 within ~~twelve~~ 12 months after the location of ~~said~~ the road file an  
26 application for damages with the county commissioners, who shall  
27 determine the amount of damages sustained by such claimant, ~~and.~~ All  
28 applications for damages shall be forever barred unless they are presented  
29 as provided for in this act. If the commissioners or viewers, after viewing  
30 such proposed road, shall so direct, the county surveyor shall survey the  
31 ~~said~~ road under their direction, and cause the same to be conspicuously  
32 marked throughout, noting the courses and distances.

33 ~~He~~The owner shall also make out and deliver to the county clerk,  
34 without delay, a correct and certified return of the survey of the ~~said~~ the  
35 road, and a plat of the same, and the ~~said~~ commissioners or viewers shall  
36 make out and sign a certificate stating their opinion in favor of or against  
37 the establishment, alteration or vacation of said road or any part thereof,  
38 and set forth the reason of the same, which certificate shall be filed with  
39 the county clerk on or before the first day of the session of the  
40 commissioners then next ensuing; and at such session next ensuing the  
41 said commissioners shall, if they conclude that ~~said~~ the road should be  
42 established, altered, or vacated, and no legal objections appear against the  
43 same, and they are satisfied that such road will be of public utility, enter

1 an order upon their records that ~~said~~ the road, survey and plat be recorded  
2 in the office of the county surveyor and from thence forth ~~said~~ the road  
3 shall be considered a public highway, and the county surveyor shall issue  
4 ~~his~~ *such surveyor's* order to the trustees of the respective townships in  
5 which ~~said~~ the road is located, directing them to cause the same to be  
6 opened for the public travel at the time and in the manner indicated by  
7 ~~him~~ *the county surveyor*; but if the commissioners conclude that such  
8 road as applied for is unnecessary or impracticable, then no further  
9 proceedings shall be had thereon and the obligor or obligors on the bond  
10 securing costs shall be liable for the full amount of all costs accrued by  
11 reason of the view of ~~said~~ the road.

12 Sec. 5. K.S.A. 68-107 is hereby amended to read as follows: 68-107.  
13 It shall be the duty of the commissioners or viewers, at the same time that  
14 they make their certificate of the view, if favorable, to make also a  
15 separate certificate, in writing stating the amount of damage, if any, by  
16 them assessed, and to whom, and submit therewith the written application  
17 upon which the assessments have been made.

18 Any ~~person~~ *owner* feeling aggrieved by the award of damages made  
19 by the board of county commissioners may appeal from the decisions of  
20 ~~said~~ the board of county commissioners to the district court pursuant to  
21 K.S.A. 60-2101, *and amendments thereto*.

22 In all counties having a population of not less than ~~thirty thousand~~  
23 (30,000) and not more than ~~ninety thousand~~ (90,000) inhabitants, if the  
24 commissioners or viewers shall find that damages are sustained by  
25 owners of the land through which such road is located or opened, and if  
26 they find that certain special benefits are derived by the land in the  
27 vicinity of the road as well as by the public or the county at large, then  
28 they shall fix the limits of the benefit district embracing such real estate  
29 as they find to be specially benefited and assess a part of the damages  
30 allowed against such benefit district. Such certificate of commissioners or  
31 viewers shall contain the correct description of each piece or parcel of  
32 private property taken, if any, and the value thereof, and of each piece of  
33 property damaged, and the amount of damages thereto for which  
34 compensation is to be paid as ascertained by the viewers or  
35 commissioners as above provided. Such benefit district shall extend back  
36 not less than ~~one hundred~~ 100 feet and not more than ~~twelve hundred~~  
37 1200 feet from either side of the proposed road. If the land on either side  
38 of ~~said~~ the proposed road be platted into lots or blocks, then the benefit  
39 district as to such platted land shall not extend more than ~~one-half~~ (½)  
40 block with a maximum distance of ~~three hundred~~ (300) feet on the side or  
41 sides of the road where such land is so platted. The commissioners or  
42 viewers shall proceed to assess benefits equal to the amount of damages  
43 in the following manner:

1 (1) Such an amount as they find shall be paid by the county.

2 (2) The remainder of the damages shall be assessed against the land  
3 in the benefit district as established, in the manner provided by this  
4 section in such amounts and in such proportions against the various tracts  
5 of land exclusive of improvements as they find such tracts of lands are  
6 benefited by the opening or location of such road. It shall be the duty of  
7 the commissioners or viewers at the same time that they make their  
8 certificate of review, if favorable, to make also a separate certificate in  
9 writing stating the amount of the damages, if any, by them assessed and  
10 to whom, and submit therewith the written application upon which the  
11 assessments have been made and at the same time submit a certificate  
12 showing the manner in which the damages are to be paid by the levying  
13 of benefits against the various tracts of land within the benefit district,  
14 which has been by them established in connection with and as a part of  
15 such proceedings and the manner of payment of such benefits.

16 In case a part of a tract of land is taken from which damages are  
17 allowed and benefits assessed against the remaining portion of such tract,  
18 then such part of the damages as may be necessary shall be applied to pay  
19 off and have discharged of record any taxes or mortgages on such  
20 condemned land and the owner of ~~said~~ the land may have the remainder  
21 of the damages, if any, offset against the benefits assessed against such  
22 owner's remaining land in the benefit district, or so much thereof as may  
23 be required to pay such benefits in full. Benefits assessed may be paid in  
24 full without interest within ~~thirty~~ (30) days from date of final  
25 determination of the amount thereof. If not paid within such period of  
26 time, then they may be paid in the same manner as are general taxes,  
27 except that they shall be due in equal amounts over not to exceed five (5)  
28 years and the unpaid portions thereof shall bear interest at not to exceed  
29 six percent per annum, payable annually, which manner of payment and  
30 rate of interest shall be fixed by the board of county commissioners.

31 The net amount of damage to be paid to acquire such land so  
32 condemned shall be advanced by the county from its general fund and it  
33 shall thereafter receive and collect benefits in the manner provided for  
34 above and place the same with interest thereon to the credit of its general  
35 fund.

36 The county commissioners shall thereupon set a day for a hearing in  
37 connection with the establishment of the benefit district and the fixing of  
38 damages and benefits, which date of hearing shall be not less than three  
39 weeks subsequent to the date of the fixing of such damages and benefits.

40 It shall ~~thereupon~~ be the duty of the county clerk to insert in the  
41 official county paper an appropriate notice of the time, place and purpose  
42 of such hearing, which notice shall appear in such official county paper at  
43 least twice and the date of the last notice shall be at least three days

1 before the date set for the hearing. The county clerk shall also mail to the  
2 owner of each tract of land, for which damages have been allowed, or  
3 against which benefits have been assessed, a copy of the proceedings,  
4 insofar as the fixing of the benefit district and of damages and benefits is  
5 concerned, and which notice shall also set forth the time and place and  
6 purpose of the hearing. This notice shall be mailed at least five days  
7 before the date of the hearing to all owners of the land taken or within the  
8 benefit district, as shown by the records in the office of the county  
9 treasurer, at the last address given at the time of the payment of the taxes.  
10 Failure to receive ~~said~~ *the* notice shall not affect the validity of any of  
11 these proceedings. Copies of ~~said~~ *the* notice with an affidavit or affidavits  
12 of service attached shall be filed in the county clerk's office before the  
13 date of the ~~final~~ hearing. Upon the date provided for above there shall be  
14 a final hearing before the county commissioners or viewers, at which  
15 time ~~said~~ *the* findings contained in ~~said~~ *the* certificate of view shall be  
16 considered and a final order entered in the record of the county  
17 commissioners, which may amend, modify, approve or disapprove the  
18 findings contained in the certificate of the commissioners or viewers.

19 Any ~~person~~ *owner* feeling aggrieved by the orders made by the board  
20 of county commissioners or viewers, may appeal from the decision of  
21 ~~said~~ *the* board of county commissioners or viewers to the district court  
22 pursuant to K.S.A. 60-2101, *and amendments thereto*. If no appeal to the  
23 district court is taken within the time prescribed by K.S.A. 60-2101, *and*  
24 *amendments thereto*, the assessment shall become final.

25 Sec. 6. K.S.A. 68-102a, 68-106 and 68-107 and K.S.A. 2010 Supp.  
26 68-101 are hereby repealed.

27 Sec. 7. This act shall take effect and be in force from and after its  
28 publication in the statute book.

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