

PUBLIC HIGHWAYS AND PRIVATE ROADS (EXCERPT)

Act 283 of 1909

CHAPTER IX

OPENING OF PRIVATE ROADS AND TEMPORARY HIGHWAYS

229.1 Application for private road; notice.

Sec. 1. When an application is made to the township supervisor for a private road, he shall give notice in writing to the owner or occupant of the land over which the road is proposed to be laid out, to meet on a day and at a place certain, which shall not be more than 10 nor less than 5 days from the time of service of the notice, for the purpose of aiding in the striking of a jury to determine the necessity of the road. If the land over which it is proposed to lay the road is nonresident and the owner thereof does not reside in the county, the notice shall be served in the same manner as is provided in laying out public roads, and proof of service or posting shall be made in like manner.

History: 1909, Act 283, Eff. Sept. 1, 1909;—CL 1915, 4447;—CL 1929, 4062;—CL 1948, 229.1;—Am. 1972, Act 375, Imd. Eff. Jan. 9, 1973.

Constitutionality: The Opening of Private Roads and Temporary Highways Act, MCL 229.1 et seq. is unconstitutional because the act authorizes a taking and the taking primarily benefits a private rather than a public purpose and provides for an unconstitutional taking under Const 1963, art X, § 2. Tolksdorf v Griffith, 464 Mich 1; 626 NW2d 163 (2000).

Former law: See section 1 of Ch. VIII of Act 243 of 1881; How., § 1388; CL 1897, § 4142.

229.2 Jury; formation; citation; conducting business at public meeting; notice.

Sec. 2. At the time and place designated for selecting a jury the township supervisor shall direct a disinterested person to record the names of 12 disinterested property owners, from which the owner or occupant of the land to be crossed by the road and the applicant for the road shall strike out 3 names each. The balance remaining on the list shall form the jury. If the owner or occupant or the applicant is not present, or being present, shall neglect or refuse to strike the names, the supervisor shall strike for the party absent, neglecting, or refusing. The supervisor shall issue a citation to the property owners to appear before him or her to determine the necessity of the road and the damages resulting from the road if the road is considered necessary. The business which the jury may perform shall be conducted at a public meeting of the jury held in compliance with Act No. 267 of the Public Acts of 1976. Public notice of the time, date, and place of the meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976. The hearing of the application shall stand continued until the time when the citation is returnable. When a sufficient number of jurors to form a panel shall not appear at the time given in the notice, the supervisor may direct a disinterested property owner to write down the names of disinterested property owners in an amount equal to twice the number of vacancies to be filled. The supervisor shall strike off 1/2 of the names from the list, and shall issue a citation to the property owners to appear.

History: 1909, Act 283, Eff. Sept. 1, 1909;—Am. 1911, Act 64, Eff. Aug. 1, 1911;—CL 1915, 4448;—CL 1929, 4063;—CL 1948, 229.2;—Am. 1972, Act 375, Imd. Eff. Jan. 9, 1973;—Am. 1978, Act 264, Imd. Eff. June 29, 1978.

Former law: See section 2 of Ch. VIII of Act 243 of 1881, as amended by Act 59 of 1883, being How., § 1389, and CL 1897, § 4143.

229.3 Jury; oath, duty.

Sec. 3. Such freeholders, when met, shall be sworn by the commissioner well and truly to examine in regard to the necessity of such road, and in case they shall decide that such road is necessary, to justly and impartially appraise the damages of the owner or owners, or occupant of the land, by reason of laying out such road.

History: 1909, Act 283, Eff. Sept. 1, 1909;—CL 1915, 4449;—CL 1929, 4064;—CL 1948, 229.3.

Former law: See section 3 of Ch. VIII of Act 243 of 1881, being How., § 1390; CL 1897, § 4144.

229.4 Certificate of determination; appraisal of damages; laying out road; recordation.

Sec. 4. If the jury determines that the road applied for is necessary, they shall make and subscribe a certificate of the determination and their appraisal of the damages, and shall deliver the same to the township supervisor who shall thereupon lay out the road, describing the same particularly by its bounds, courses and distances, and shall cause a record thereof to be made in the clerk's office of the proper township, which shall be recorded in the same manner as is required of public roads.

History: 1909, Act 283, Eff. Sept. 1, 1909;—CL 1915, 4450;—CL 1929, 4065;—CL 1948, 229.4;—Am. 1972, Act 375, Imd. Eff. Jan. 9, 1973.

Former law: See section 4 of Ch. VIII of Act 243 of 1881, being How., § 1391, and CL 1897, § 4145.

229.5 Payment of damages and expenses.

Sec. 5. The damages awarded to the owner or occupant of the land through which the road is laid, together with the expenses of the proceedings, shall be paid to the township supervisor by the person applying for the road, which damages shall be paid or tendered by the supervisor to the owner or occupant, and when paid or tendered the supervisor shall proceed to open the road.

History: 1909, Act 283, Eff. Sept. 1, 1909;—CL 1915, 4451;—CL 1929, 4066;—CL 1948, 229.5;—Am. 1972, Act 375, Imd. Eff. Jan. 9, 1973.

Former law: See section 5 of Ch. VIII of Act 243 of 1881, being How., § 1391, and CL 1897, § 4145.

229.6 Width of road; use, purpose.

Sec. 6. Private roads shall not be less than 1 rod in width, and when laid out as above provided, shall be for the use of the applicant, his heirs and assigns, but not to be converted to any other use or purpose than that of a road; but the owner or occupant of the land through which such road shall be laid out shall not be prevented from making use thereof as a road, if he shall signify his intention of so doing to the jury at the time of laying out such road, and before the appraisal of the damages by them.

History: 1909, Act 283, Eff. Sept. 1, 1909;—CL 1915, 4452;—CL 1929, 4067;—CL 1948, 229.6.

Former law: See section 6 of Ch. VIII of Act 243 of 1881, being How., § 1393; CL 1897, § 4147.

229.7 Temporary highway; application; proceedings.

Sec. 7. Whenever an owner of any timbered land, not less than 40 acres, shall wish to have a temporary highway laid out, over which a logging railroad may be operated on conditions hereinafter stated, he may in writing make application to the township supervisor of the proper township for that purpose, who shall proceed to impanel a jury, or submit the matter to commissioners if the parties in interest so desire, and the proceedings shall be substantially the same as provided in this chapter for opening private roads.

History: 1909, Act 283, Eff. Sept. 1, 1909;—Am. 1911, Act 153, Eff. Aug. 1, 1911;—Am. 1913, Act 335, Eff. Aug. 14, 1913;—CL 1915, 4453;—CL 1929, 4068;—CL 1948, 229.7;—Am. 1972, Act 375, Imd. Eff. Jan. 9, 1973.

Former law: See section 1 of Act 327 of 1907.

229.8 Temporary highway; notice; determinations; duration; logging railroad prohibited.

Sec. 8. When an application shall be made, the township supervisor in which the road is to be located, shall give notice in writing to the owner and occupant of the land in substantially the same manner as provided in section 1 for the purpose of aiding in the striking of a jury to determine the necessity of the road and to appraise the damages, or the parties in interest may agree upon 3 or more persons as commissioners to act in place of a jury to determine the necessity and appraise the damages. If it is determined that the temporary highway is necessary for the purpose of removing the timber from the lands, the jury or commissioners shall certify under their hands the determination, their appraisal of the damages and the length of time that the highway is necessary; and at the expiration of the time the highway shall cease. The supervisor shall lay out the road in accordance with the determination, describing the same particularly, and shall cause a record thereof to be made in the clerk's office. A logging railroad shall not be operated upon or along a temporary highway.

History: 1909, Act 283, Eff. Sept. 1, 1909;—Am. 1911, Act 153, Eff. Aug. 1, 1911;—Am. 1913, Act 335, Eff. Aug. 14, 1913;—CL 1915, 4454;—Am. 1923, Act 187, Eff. Aug. 30, 1923;—CL 1929, 4069;—CL 1948, 229.8;—Am. 1972, Act 375, Imd. Eff. Jan. 9, 1973.

Former law: See section 2 of Act 327 of 1907.

229.9 Owner's consent to highway or logging railroad; temporary highway deemed private highway; payment of expenses and damages; cutting trees.

Sec. 9. A highway or logging railroad shall not be laid out along or upon any road made or caused to be made by the owner of any land or by any person with the consent of the owner and used by the person who made the same, unless the owner consents thereto in writing. Such temporary highways shall be private highways, and the expenses of their laying out, including the compensation due the township supervisor, the jury or commissioners acting as such, for the services, and damages that may be awarded on account of the taking of lands therefor, shall be paid to the supervisor by the persons applying for the same, and upon the payment they may enter upon, open and work the highways at their own and sole expense, but no trees shall be cut therein except as shall be necessary to make a track or tracks.

History: 1909, Act 283, Eff. Sept. 1, 1909;—Am. 1913, Act 335, Eff. Aug. 14, 1913;—CL 1915, 4455;—CL 1929, 4070;—CL 1948, 229.9;—Am. 1972, Act 375, Imd. Eff. Jan. 9, 1973.

Former law: See section 3 of Act 327 of 1907.

229.10 Temporary highways; winter use.

Sec. 10. In case such highway is only to be used in the winter time such facts shall be set up in the application and also in the finding of the jury or commissioners, and this shall be taken into consideration in awarding damages to the owners of the land crossed.

History: 1909, Act 283, Eff. Sept. 1, 1909;—Am. 1913, Act 335, Eff. Aug. 14, 1913;—CL 1915, 4456;—CL 1929, 4071;—CL 1948, 229.10.

Former law: See section 4 of Act 327 of 1907.

229.11 Appeal; affidavit; bond; fees; procedure; certification of judgment; costs; stay of proceedings.

Sec. 11. Any party in interest may appeal from the determination of the jury or commissioners in any proceedings under this chapter to the circuit court for the county, within 30 days, by filing with the township clerk an affidavit made by himself, his agent or attorney, stating that the determination is not in accordance with the just rights of the party, as the person making the affidavit verily believes. The party shall file with the clerk within the time a bond running to the township supervisor for the benefit of all other parties in interest, conditioned that the appellant will prosecute his appeal with all due diligence, and that if a judgment is rendered against him in the circuit court he will pay the judgment, including all costs with interest thereon. The bond shall be in a penalty sufficient to secure the costs and damages and with 1 or more sufficient sureties, who shall justify their responsibility in writing and under oath indorsed on the bond. The appellant shall pay to the township clerk the sum of \$1.00 for making his return on appeal, and a sum of \$3.00 as clerk and entry fee to be paid by the township clerk to the clerk of the circuit court. The appeal shall be heard before the judge of the circuit court, and a jury of 6 freeholders selected by the parties from the regular panel under the direction of the circuit judge, in the manner jurors are selected in civil causes, or if the parties desire, by 3 commissioners to be appointed by the circuit judge. The county clerk shall act as clerk of the court the same as in other causes, and the proceedings as far as applicable shall be according to the ordinary course of civil procedure. The judgment and determination on appeal shall be certified back to the township clerk for any further proceedings that may be required by the statute. In case of more than 1 appeal they shall be heard together as 1 cause. Costs may be awarded by the circuit court and collected the same as on appeals from district court. On perfecting the appeal all proceedings shall be stayed and no further steps taken until the determination or dismissal of the appeal. Costs shall not be awarded against any party, except those who actually appeal or defend the appeal.

History: Add. 1913, Act 335, Eff. Aug. 14, 1913;—CL 1915, 4457;—CL 1929, 4072;—CL 1948, 229.11;—Am. 1972, Act 375, Imd. Eff. Jan. 9, 1973.