

COUNTY BOARDS OF COMMISSIONERS (EXCERPT)
Act 156 of 1851

46.28 Construction, alteration or discontinuance of roads; aggrieved landowner, petition, jury trial, proceedings; verdict, notice; apportionment of damages; bond, costs; resubmission.

Sec. 28.

Any person feeling himself aggrieved by the action of the board of supervisors by the laying out, altering or discontinuing any road designated by this act, may have his damage assessed by a jury composed of 12 freeholders residing in the township where the land through which said road has been laid out, altered or discontinued is situated. Such person so complaining as against the action of such board, may, within 30 days after receiving notice in writing from the clerk of such board of supervisors of any county that any road has been laid out, altered or discontinued across lands owned by him, go before any justice of the peace in said township where such land is located and file with such justice a petition setting forth the fact of the laying out, altering or discontinuing of such road running through lands owned by him, whereby he has been, or is likely to be damaged, and further praying the court that a venire be issued summoning a jury of 12 freeholders of said township to determine the necessity of laying out, altering or discontinuing said highway, and the taking of private property therefor, and the amount of such damage he has sustained, or is likely to sustain from the action of such board as aforesaid. On the receipt of such petition the said justice shall at once give notice to the petitioner in writing of the date when said petition will be heard before him, and shall also notify in writing the supervisor of said township of the time and place when the same will be heard, which shall not be less than 6 days from the date of the petition, nor more than 12. And on the date and at the hour mentioned in said notice the justice shall direct any constable of said township then present to write the names of 24 freeholders from which to select a jury of 12 persons. On the compliance with such order by the constable, the supervisor, if he be present, and if not present, then the justice aforesaid, together with the person filing such petition, shall proceed to strike each alternately from such list, the names of 6 persons, and the remaining 12 names on said list shall constitute a jury for the purposes aforesaid. But in case any of such jurors on the original list shall be unable to sit, then the court shall direct the officer present to summon talesmen to take their places until such panel is full. When such panel is completed, the justice shall swear said jurors to well and truly determine as to the matters set forth in the petition of the person making the same. Said justice shall have full power to issue subpoenas and to compel the attendance of witnesses, the same as he would have in matters triable before him; and all proceedings on the hearing of said petition shall be conducted as nearly as may be as are trials before justices of the peace. If the jury, on hearing all of the evidence both for and against the allowance of damages, and the necessity for the taking of said lands for private purposes, shall determine that the person claiming to be grieved is entitled to damages, then they shall determine as to the amount, and the necessity for the taking of said lands, and under their hands certify to the justice such sum, and the necessity aforesaid, and, in case they determine that such person is not so entitled, they shall certify this fact to said justice, who shall, upon the rendition of such verdict, file the same, and within 10 days from the date of its rendition, transmit the same to the clerk of said county, and shall also serve a copy of the verdict and notice of all proceedings, in relation to said application upon all persons whose lands are affected by said application, which notice shall be full and explicit as to any and all proceedings had therein, and shall at the next regular meeting of the board of supervisors of his county, present the same to such board and cause it to be entered upon the minutes of such board. In case damages have been awarded, as aforesaid, then such board of supervisors shall apportion the amount to the several townships in said county, and the same when so raised shall go into and become a part of the general fund of such county, and they shall at the same time issue an order to the person or his representatives or assigns, as the case may be, for such sum on the county treasurer, and payable out of any fund in the county treasury not otherwise appropriated: Provided, That the person thus claiming damage shall file with such justice at the time he files his petition a bond in the penal sum of 50 dollars conditioned to pay all costs of such justice, officer and jury; but in case damages are awarded, then the costs of such proceedings shall be certified by said justice along with the award and become a part and parcel thereof, and payable to said petitioner in addition to the award of the jury: And provided further, That in case the jury first summoned shall not agree, then the said cause or hearing shall stand adjourned to some day fixed by said justice, but not for a longer period than 10 days; and on the day to which the same shall be continued a jury shall be empaneled and the matter submitted as hereinbefore directed.

History: 1851, Act 156, Imd. Eff. Apr. 8, 1851 ;-- CL 1857, 362 ;-- CL 1871, 494 ;-- How. 500 ;-- Am. 1887, Act 179, Eff. Sept. 28, 1887 ;-- Am. 1889, Act 250, Eff. Oct. 2, 1889 ;-- CL 1897, 2501 ;-- CL 1915, 2291 ;-- CL 1929, 1150 ;-- CL 1948, 46.28