

House Research Act Summary

CHAPTER: 139

SESSION: 2001 Regular Session

TOPIC: Judicial Review of Need for Road Takings

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Overview

This act provides for review by the courts on the question of whether a condemnation of land by a county or town for a road is for a public purpose. Prior law allowed for appeal to the courts on the amount of compensation for the taking but not on the need for the taking itself. A recent Court of Appeals decision held that this shortcoming rendered the prior law unconstitutional.

Section

- 1 **Petition to allow taking.** Provides that when a county board passes a resolution to establish, alter, vacate, or revoke a county highway, the county must present a petition to the district court that (1) describes each tract of land the road passes through, (2) states the purpose of the taking, and (3) list all known owners of the land.
Requires notice of the petition to be given to each occupant of land the road passes through.
Requires an owner to be given a right-of-way plat or map on demand.
- 2 **Finding of necessity.** Requires the court to hear evidence on granting the petition when proof of service of the notice required by section 1 is filed with the court. Directs the court to order proceedings to commence with the road action, including takings, when it finds that the proposed taking is necessary and authorized by law.
- 3 **Alternative method of proceeding.** Amends the law that gives counties an alternative method of acquiring land for county roads by making it dependent on obtaining a court order under section 2.
- 4 **Town road actions.** Requires that a petition by landowners to a town board requesting the town to establish or alter a town road to contain a statement of the purpose and necessity for establishing or altering the road.
- 5 **Orders; notice.** Requires town board orders in response to petitions described in section 4 for a hearing on such a petition to contain a notice to affected landowners that they are entitled to

judicial review on damages, need, and public purpose.

- 6 **Appeals.** Requires a landowner who appeals damages awarded for takings relating to a town road to file the notice of appeal within ten days of the filing of the award of damages if the landowner is seeking to delay the opening, construction, alteration, change, or other road improvement. Allows the appeal to challenge the public purpose or necessity of the proposed road or condemnation.
- 7 **Delay of improvement.** Allows a town board to proceed with a road improvement after filing an award of damages only if it does not receive a notice of appeal under section 6. Provides that if the town board receives such a notice of appeal within ten days that challenges the public purpose or necessity of the proposed road or condemnation, it must suspend the work until a final judicial determination is made that supports the condemnation.
- 8 **Effective date.** Makes sections 1 to 7 effective immediately.