

# **Handbook for North Dakota County Engineers and Highway Supervisors**

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# IMPORTANT NOTICE

The material and information contained in this Handbook is a source of information for county engineers, highway supervisors, county commissioners, and local officials to assist in carrying out the duties, authorities, and responsibilities for the management of North Dakota's highway system.

**This Handbook is not to be used as a substitution for your own private attorney when legal questions arise. Nor are these materials to be construed as a legal interpretation of the law for specific problems that county highway engineers may encounter. Each specific problem has individual circumstances which must be considered. Therefore, if you need legal advice concerning a particular problem that you may be having, contact your attorney.**

We hope that you will find the materials contained in this Handbook helpful.

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## **INTRODUCTION**

### 1. The State Highway System

The board of commissioners of any county may enter into a written agreement with the director of the state's Department of Transportation for the construction of a roadway or structure of greater width or capacity than would be necessary to accommodate the normal state highway traffic and may appropriate from any funds available, and pay into the state highway fund, such sum or sums of money as may be agreed upon.

### 2. The County Road System

Each board of county commissioners throughout the state is responsible for designating that county's highway system, subject to mileage limitations as charted below. The total county road system of the state may not exceed twenty-two thousand five hundred (22,500) miles. This system must remain substantially unchanged until such system has been improved. The county road system must be the roads designated and selected by the boards of county commissioners. The commissioner must be informed of the system so designated. Any changes of the original designation which can be justified and based on new developments must be made by the board of county commissioners and the state commissioner must be notified of such changes. In designating and selecting roads on the county road system, the boards of county commissioners of the several counties shall take into account such factors as the actual or potential traffic volumes, the conservation and development of the county's natural resources, the general economy of the communities, and the

desirability of integrating such county roads into the general scheme of statewide network of county roads.<sup>1</sup>

The original designation and selection of twenty-two thousand five hundred miles (22,500) of the county road system must be allocated as near as possible to the several counties of the state in the following proportions:

<u>County</u>	<u>Percent of County System</u>	<u>Mileage of County</u>
Adams	1.34	301.50
Barnes	2.56	576.00
Benson	1.97	443.25
Billings	0.62	139.50
Bottineau	2.55	573.75
Bowman	1.42	319.50
Burke	1.39	312.75
Burleigh	2.98	670.50
Cass	3.21	722.25
Cavalier	2.12	477.00
Dickey	1.96	441.00
Divide	1.94	436.50
Dunn	1.98	445.50
Eddy	1.03	231.75
Emmons	2.19	492.75
Foster	1.05	236.25

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<sup>1</sup> N.D.C.C. § 24-05-16. County road system – designation.

Golden Valley	0.80	180.00
Grand Forks	2.25	506.25
Grant	1.94	436.50
Griggs	1.09	245.25
Hettinger	1.63	366.75
Kidder	2.39	537.75
LaMoure	1.77	398.25
Logan	1.26	283.50
McHenry	2.84	639.00
McIntosh	1.65	371.25
McKenzie	1.64	369.00
McLean	3.22	724.50
Mercer	1.74	391.50
Morton	2.98	670.50
Mountrail	1.95	438.75
Nelson	1.37	308.25
Oliver	1.31	294.75
Pembina	1.46	328.50
Pierce	1.58	355.50
Ramsey	1.64	369.00
Ransom	1.81	407.25
Renville	1.37	308.25
Richland	2.39	537.75

Rolette	1.29	290.25
Sargent	1.45	326.25
Sheridan	1.71	384.75
Sioux	0.74	166.50
Slope	1.41	317.25
Stark	1.83	411.75
Steele	1.30	292.50
Stutsman	3.63	816.75
Towner	1.70	382.50
Traill	1.66	373.50
Walsh	2.08	468.00
Ward	3.29	740.25
Wells	1.93	434.25
Williams	3.59	807.75
Total	100.00	22,500.00

When, in the opinion of the board of county commissioners, the finances of the county permit, the county road system of such county may be extended beyond the limits herein fixed.<sup>2</sup>

**Cross-Reference: See Chapter 4 (Funding), Sections 1(A)(2), County Road Tax; (1)(C)(1), Federal Leasing Profits, and (1)(C)(2), Federal Revenue Sharing**

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<sup>2</sup> N.D.C.C. § 24-05-16. County road system – designation.

3. State and County Cooperation

No mileage on the state highway system may be placed on the county road system without the consent of the board of county commissioners of the county in which the road lies. The director may enter into an agreement with the board of county commissioners of any county providing for the transfer of highways from the state highway system to the county road system of such county.<sup>3</sup>

**Cross-Reference: Chapter 3, Section 1- Basic Authority of County Commissioners**

Whenever any board of county commissioners of any county decides that any county road or roads in such county must be improved or constructed in cooperation with the state department of transportation, such board shall make written application to the director for the improvement and construction thereof. If the director approves the application, he, in writing, shall notify the board of such approval, and at the same time shall submit to the board an estimate of the cost of such improvement, including the cost of engineering, the purchase or acquirement of right of way, and all other expenses, and the share or portion thereof which such county shall bear. However, the director may not require any county to pay for the cost or expense of acquiring right of way for the state highway system.

If the board of county commissioners elects to proceed with such improvement, the board shall adopt a resolution signifying the election and, in such resolution, must set aside out of funds which are or may become available

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<sup>3</sup> N.D.C.C. § 24-01-05. Designation of county system – Removal from state highway system.

the amount necessary to pay the county's share of the cost of such improvement. Upon written demand of the director, the board of county commissioners shall instruct and direct the county auditor by resolution to draw a warrant or warrants on the county treasurer in favor of the contractor, or of the department, for the county's share of such amount or amounts as may become due during the progress of such improvement. The county shall also draw additional warrants in favor of the department as may be necessary to reimburse it for the county's share of the cost of engineering and the acquisition of right of way. Such warrants must be drawn by the county treasurer upon the certificate of the director.<sup>4</sup>

The election to proceed with an improvement by the board of county commissioners constitutes an agreement and contract with the state's director, and the board of county commissioners shall provide sufficient funds in accordance with law to defray its share of the cost of such improvement, or shall levy sufficient taxes therefor. Construction on such improvement must be commenced within one (1) year.<sup>5</sup>

#### 4. Highways on State Lines

Whenever the board of county commissioners of any county bordered by a state line deems it for the best interests of the county to open and improve a highway on the state line, it may negotiate with the proper officials of the

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<sup>4</sup> N.D.C.C. § 24-05-18. Counties may cooperate with department – procedure.

<sup>5</sup> N.D.C.C. § 24-05-19. County bound to provide its share of cost.



adjoining county or state, and may make contracts or agreements pertaining to the opening up of such state line and the construction of a highway upon it.

If the board of county commissioners deems it proper, it may agree with the officials of the adjoining county or state for the allotment of the highway on said state line, and may assume the obligation of construction and maintenance of certain parts of the said highway in return for the assumption of like obligations by the officials of the adjoining county or state as to a like portion of the state line forming the boundary of the county.<sup>6</sup>

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<sup>6</sup> N.D.C.C. § 24-05-08. Highways on state lines.

## **CHAPTER 2 – DEFINITIONS**

This chapter contains the North Dakota Century Code definitions of words and phrases commonly used throughout this Handbook. The definitions are intended to be applied in the context of this Handbook.

## **DEFINITIONS**

1. **Abandonment**

Cessation of the use of a right of way or activity thereon with no intention to reclaim or use again for highway purposes.

2. **Acquisition**

The process of obtaining right of way.

Also known as: “taking”

**Cross-Reference: See Chapter 6 – Acquiring Right of Way**

3. **Arterial Highway**

A general term denoting a highway primarily for through traffic, usually on a continuous route.

4. **Belt Highway**

An arterial highway for carrying traffic partially or entirely around an urban area or portion thereof.

5. **Capacity**

The ability of a roadway to accommodate traffic.

6. Commission

The public service commission of the state of North Dakota.

7. Commissioner

The director of the department of transportation of this state, acting directly or through authorized agents.

8. Consequential Damages

The loss in value of a parcel of property, no portion of which is acquired, resulting from a highway improvement.

9. Controlled-Access Facility

A highway or street especially designed for through traffic, and over, from, or to which owners or occupants of abutting land or other persons have no right or easement or only a controlled right or easement of access, light, air, or view by reason of the fact that their property abuts upon such controlled-access facility or for any other reason.

10. County Road System

The system of secondary highways designated by the county officials, the responsibility for which is lodged with the counties.

**Cross-Reference: See Chapter 1, Section 2 – The County Road System**

11. Department

The Department of Transportation of the state of North Dakota.

12. Direct Compensation

Payment for land or interest in land and improvements actually acquired for highway purposes.

**Cross-Reference: See Chapter 6 – Acquiring Right of Way**

13. Director

The director of the Department of Transportation of the state of North Dakota, acting directly or through authorized agents.

14. Divided Highway

A highway with separated roadways for traffic in opposite directions.

15. Easement

A right acquired by public authority to use or control property for a designated highway purpose.

16. Eminent Domain

See “Acquisition” Above

17. Expressway

A divided arterial highway for through traffic with full or partial control of access and generally with grade separations at intersections.

18. Fee simple

An absolute estate or ownership in property including unlimited power of alienation, except as to any and all lands acquired or taken for highway, road, or street purposes. Where lands are taken for such purposes, "fee simple" shall not be deemed to include any oil, gas, or fluid mineral rights.

19. Freeway

An expressway with full control of access.

20. Frontage Street or Road

A local street or road auxiliary to and located on the side of an arterial highway for service to abutting property and adjacent areas and for control of access.

21. Grade crossing

The intersection of a public highway and of the track or tracks of any railroad, however operated, on the same plane or level, other than a street railway within the limits of a city.

22. Highway, Street, or Road

A general term denoting a public way for purposes of vehicular travel, including the entire area within the right of way. A highway in a rural area may be called a "road," while a highway in an urban area may be called a "street".

23. Intersection

A general term denoting the area where two or more highways join or cross.

24. Interstate System (also known as: Interstate Highway System)

That part of the state highway system designated as the North Dakota portion of the national system of interstate and defense highways.

25. Joint Powers Agreement

**See Chapter 3, Section 6 – Joint Powers Agreement**

26. Local Street or Local Road

A street or road primarily for access to residence, business, or other abutting property.

27. Major Street or Major Highway

An arterial highway with intersections at grade and direct access to abutting property, and on which geometric design and traffic control measures are used to expedite the safe movement of through traffic.

28. Market Value

The highest price for which property can be sold in the open market by a willing seller to a willing purchaser, neither acting under compulsion and both exercising reasonable judgment.

29. Median

The portion of a divided highway separating the traveled ways for traffic in opposite directions.

30. Municipal Corporation or Municipality

All cities organized under the laws of North Dakota, but not to include any other political subdivisions.

31. Outer Separation

The portion of an arterial highway between the traveled ways of a roadway for through traffic and a frontage street or road.



32. Partial Taking

The acquisition of a parcel of property.

**Cross-Reference: See Chapter 6 – Acquiring Right of Way**

33. Person

Any person, firm, partnership, association, corporation, limited liability company, organization, or business trust.

34. Radial Highway

An arterial highway leading to or from an urban center.

35. Reasonable Means of Access

In situations where restrictions and regulations have been imposed upon the access of abutting owners, the question becomes one of whether, under the existing facts and circumstances, a reasonable means of access remains. If the abutter has free and convenient access to his property, and his means of ingress and egress are not substantially interfered with, he has no cause of complaint. Loss of traffic, loss of business, and circuitry of travel are factors to be considered in determining the reasonableness of the remaining access to and from an abutting roadway.

36. Remainder

The portion of a parcel retained by the owner after a part of such parcel has been acquired.

37. Remnant

A remainder so small or irregular that it usually has little or no economic value to the owner.

38. Right of Access

The right of ingress to a highway from abutting land and egress from a highway to abutting land. Also, a private right which entitles the abutting landowner just compensation if that right is impaired or destroyed.

39. Right of Survey Entry

The right to enter property temporarily to make surveys and investigations for proposed highway improvements.

40. Right-of-Way

A general term denoting land, property, or interest therein, acquired for or devoted to highway purposes and shall include, but not be limited to publicly owned and controlled rest and recreation areas, sanitary facilities reasonably necessary to accommodate the traveling public, and tracts of

land necessary for the restoration, preservation, and enhancement of scenic beauty adjacent to the state highway system.

**Cross-Reference: See Chapter 6 – Acquiring Right of Way**

41. Right-of-Way Appraisal

A determination of the market value of property including damages, if any, as of a specified date, resulting from an analysis of facts.

42. Right-of-Way Estimate

An approximation of the market value of property including damages, if any, in advance of an appraisal.

43. Road

See "*Highway, Street, or Road*" above.

44. Roadside

A general term denoting the area adjoining the outer edge of the roadway. Extensive areas between the roadways of a divided highway may also be considered roadside.

45. Roadway

In general, the portion of a highway, including shoulders, for vehicular use.

In construction specifications, the portion of a highway within limits of construction.

46. Severance Damages

The loss in value of the remainder of a parcel resulting from an acquisition.

47. Shoulder

The portion of the roadway contiguous with the traveled way for accommodation of stopped vehicles, for emergency use, and for lateral support of base and surface courses.

48. State Highway System

The system of state principal roads designated by the director of the department [of transportation], the responsibility for which is lodged in the department.

**Cross-Reference- See Chapter 1, Section 1 – The State Highway System**

49. Street

See "*Highway, Street, or Road*" above.

50. Taking

See “*Acquisition*” above.

51. Through-Street or Through-Highway

Every highway, or portion thereof, on which vehicular traffic is given preferential right of way, and at the entrances to which vehicular traffic from intersecting highways is required by law to yield right of way to vehicles on such through highways and in obedience to either a stop sign or yield sign, when such signs are erected by law.

52. Township Road

A public road which is an improved road, constructed, maintained, graded, and drained by the township, or by the county in the case of an unorganized township. A township road includes a street in an unincorporated townsite and does not necessarily have to be surfaced. A sodded road is not a township road. In order for a section line to be a township road it must be graded and drained and be an improved maintained road. A township road is a public road which is not designated as part of county, state, or federal-aid road system and is not located in an incorporated city.

53. Traffic Lane

The portion of the traveled way for the movement of a single line of vehicles.

54. Traveled Way

The portion of the roadway for the movement of vehicles, exclusive of shoulders and auxiliary lanes.

55. Width of Public Highways

The definition of "highway, street, or road" and "right of way" indicates that public highways are not limited in width to the actual traveled surface of the roadway.

**CHAPTER 3 - POWERS OF COUNTY ENGINEERS , HIGHWAY  
SUPERVISORS, AND COUNTY COMMISSIONERS**

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**POWERS OF COUNTY ENGINEERS , HIGHWAY SUPERVISORS,  
AND COUNTY COMMISSIONERS**

1. Basic Authority of County Commissioners

In a Letter Opinion dated April 6, 2004, the North Dakota Attorney General states that “a political subdivision possesses only those powers expressly granted to it by the Legislature or those necessarily implied from the powers expressly granted.”

The Attorney General goes on to explain that the North Dakota state legislature intended to place a high degree of trust in the hands of those officials whose duty it is to design the highway systems of North Dakota. These officials, namely county engineers, highway supervisors, county commissioners, and local officials are given much discretion, within the limits of available funds, to plan, develop, operate, maintain, and protect the highway facilities of this state, for present as well as future use.<sup>1</sup>

Thus, the board of county commissioners has broad general power to erect, maintain, and oversee the roads selected and designated as the county road system.

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<sup>1</sup> N.D.C.C. § 24-01-01. Declaration of Legislative Intent;



2. Responsibility for County Road System

The boards of county commissioners in their respective counties have the sole authority and responsibility to acquire land for, construct, maintain, and operate the county road system as designated and selected by them.<sup>2</sup>

3. Supervision by County Commissioner

Whenever the board of county commissioners of any county is required by law to lay out, oversee, and supervise the building or repairing of roads and bridges, including the appointment of a district overseer of highways' duties in unorganized territory, or the building or repairing of any property owned by the county, the board may appoint or designate one or more members of the board personally to lay out, oversee, or supervise the building or repairing of any such roads, bridges, or property. Each commissioner is entitled to receive as compensation for services the sum of five dollars (\$5.00) per day and the mileage provided by law for members of the board of county commissioners.<sup>3</sup>

4. County Highway Engineer

A. Creation of Position

The board of county commissioners of any county in this state may, at its discretion, employ a qualified county highway engineer at any time or the office

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See Also 2004 N.D. Op. Atty. Gen. L-26

<sup>2</sup> N.D.C.C. § 24-05-17. Responsibility for county road system;

See Also 2004 N.D. Op. Atty. Gen. L-21

<sup>3</sup> N.D.C.C. § 11-11-17. Board of county commissioners may supervise the building or repairing of roads, bridges, and property of the county – Compensation.

of county highway engineer may be created in any county in this state by an election duly held.<sup>4</sup>

B. Election for Creation or Termination of Office of County Highway Engineer

Upon the filing with the county auditor of a petition signed by not less than five percent (5%) of the qualified electors of the county, as determined by the total number of votes cast in the last election, and representing not less than seven percent (7%) of the voting precincts of the county, asking that an election be held on the question of the creation of the office of county highway engineer, the board of county commissioners shall submit the question at the next regular primary or general election. Notice of the election shall be given in the manner prescribed by law for the submission of questions to the qualified electors of a county under the general election law. If a majority of the votes cast on the question are in favor thereof, the office of county highway engineer shall be established and the board of county commissioners shall fill such office by appointment. The office so created shall not be terminated except upon the instruction of a majority of the qualified electors voting on the question in an election similarly held but any engineer appointed to fill such office may be removed from office by action of the board.<sup>5</sup>

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<sup>4</sup> N.D.C.C. § 11-31-01. County highway engineer.

<sup>5</sup> N.D.C.C. § 11-31-01.1. Election for creation or termination of office of county highway engineer.

C. Qualification and Employment Basis

The person employed or appointed as county highway engineer must be a duly qualified highway engineer. The compensation and other terms of service of such engineer shall be determined by the board of county commissioners and may be on a monthly or a per diem basis. Several counties may employ or appoint the same engineer.<sup>6</sup>

D. Powers and Duties

Under the direction and supervision of the board of county commissioners, the county engineer shall:

1. Design and make plans for county and township highways.
2. Set up a comprehensive plan of county highways, showed by the use of maps, existing roads, operations in progress, and future plans.
3. Superintend county construction and maintenance operations pertaining to highways and bridges.
4. Keep a complete record of costs and expenditures.
5. Check all accounts, claims, and demands for expenditures in connection with all matters supervised by the county engineer and indicate the county engineer's recommendation prior to the submission of such accounts, claims, and demands to the board of county commissioners.

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<sup>6</sup> N.D.C.C § 11-31-02. Qualification and employment basis.

6. Keep a complete inventory of all equipment, repairs, gasoline and oil, and miscellaneous items.
7. Supervise the use and disposition of all county-owned road equipment and materials.
8. Employ and supervise all other personnel engaged in county road operations, terminating such employment when required in the best interest of the county.
9. Prepare and submit to the board of county commissioners a complete yearly report and such additional reports as may be required by the board of county commissioners at any time.
10. Cooperate with the public roads administration or successors, the state department of transportation, and the townships of the county.
11. Perform such other duties as may be designated by the board of county commissioners.

When so directed by the board of county commissioners, the county engineers shall also, under the direction and supervision of the board of county commissioners or the drainage board, as the case may be, prepare plans and specifications and supervise the construction and repair of drainage ditches.<sup>7</sup>

**Cross-Reference: See Chapter 9, Section 4 – Grading and Drainage - Ditches**

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<sup>7</sup> N.D.C.C § 11-31-03. Powers and duties.

E. Manner of Payment of Compensation

Payment for the work actually performed by the county engineer may be made out of the county road and bridge fund or the general funds of the county upon certified vouchers showing the time actually expended and the contract price agreed upon. Such vouchers shall be filed with the county auditor and approved by the board of county commissioners, in the manner now provided by law for the filing and approval of other claims against the counties.<sup>8</sup>

**Cross-Reference: See Chapter 4, Section 2 – Expenditure of Funds**

5. County Surveyor

The county surveyor of each county shall, upon request by a landowner, district court, board of county commissioners, or board of township supervisors, survey all lands within the county, both public and private. The surveys of the county surveyor are official and are presumed to be correct.<sup>9</sup>

6. Joint Powers Agreements

Any county may enter into an agreement with any other political subdivision in this state for the purpose of jointly administering any function that is authorized by law to at least one of them.

A joint powers agreement does not have to be in writing, but it does have to be approved by the county's board of commissioners.<sup>10</sup>

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<sup>8</sup> N.D.C.C. § 11-31-04. Manner of payment of compensation.

<sup>9</sup> N.D.C.C. § 11-20-01. Duties of county surveyor – Surveys presumptively correct.

<sup>10</sup> 2004 N.D. Op. Atty. Gen. L-26

## CHAPTER 4 – FUNDING

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## FUNDING

### 1. Obtaining Funding

#### A. Taxes

##### 1. State Gasoline, Motor Fuel, License, and Registration Taxes

Revenue from gasoline and other motor fuel excise and license taxation, motor vehicle registration and license taxes (except revenue from aviation gasoline and unclaimed aviation motor fuel refunds and other aviation motor fuel excise and license taxation used by aircraft) after deduction of cost of administration and collection authorized by legislative appropriation only, and statutory refunds, shall be appropriated and used solely for construction, reconstruction, repair and maintenance of public highways, and the payment of obligations incurred in the construction, reconstruction, repair and maintenance of public highways.<sup>1</sup>

The state treasurer is to make allocations to state, counties, and cities from the highway tax distribution fund, which is a special fund in the state treasury into which must be deposited the moneys available by law from collections of motor vehicle registration and related fees, fuels taxes, special fuels taxes, use taxes, and special fuels excise taxes. Any moneys in the highway tax distribution fund must be allocated and transferred monthly by the state treasurer, as follows: Sixty-three percent (63%) of such moneys must be transferred monthly to the state department of transportation and placed in a state highway fund. Thirty-seven (37%) percent of such moneys must be

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<sup>1</sup> ND Constitution, Art. 10, § 11

allocated to the counties of this state in proportion to the number of motor vehicle registrations credited to each county. Each county must be credited with the certificates of title of all motor vehicles registered by residents of such county.

The state treasurer shall compute and distribute the counties' share monthly after deducting the incorporated cities' share. All the moneys received by the counties from the highway tax distribution fund must be set aside in a separate fund called the "highway tax distribution fund" and must be appropriated and applied solely for highway purposes in accordance with Article 10, section 11 of the North Dakota Constitution. The state treasurer shall compute and distribute monthly twenty-seven percent (27%) of the sums allocated to each county to the incorporated cities within such county on the basis of the per capita population of all of the incorporated cities situated within such county as determined by the last official census. However, in each county having a city with a population of ten thousand (10,000) or more, the amount transferred each month into the county highway tax distribution fund must be the difference between the amount allocated to that county and the total amount allocated and distributed to the incorporated cities in that county as computed according to the following formula: Twenty-seven percent (27%) of the amount allocated to all of the counties under this subsection must be the incorporated cities' share and must be divided by the total population of all of the incorporated cities in the state to determine the statewide per capita average. The share to each city in the county having a population of less than one thousand (1,000) must be determined by multiplying the population of that city by the product of 1.50 times the statewide per capita



average. The share to each city in the county having a population of one thousand (1,000) to four thousand nine hundred ninety-nine (4,999), inclusive, must be determined by multiplying the population of that city by the product of 1.25 times the statewide per capita average. The share to each city in the county having a population of five thousand (5,000) or more must be determined by multiplying the population of that city by the statewide per capita average for all such cities.

## 2. County Road Tax

In each county with a population of two thousand (2,000) or more, property taxes must be levied for the improvement of highways within the county. A tax may be levied for county roads if sixty percent (60%) of the electoral voters in the county approve the tax. Likewise, the same tax may be discontinued with a sixty percent (60%) vote. Twenty percent (20%) of any county property tax shall be turned over to the city in which the taxed property is located.<sup>2</sup>

The county road levy may be discontinued at the discretion of the county commissioners or, upon petition of five percent (5%) of the qualified electors of such county, the question of discontinuance of the levy must be submitted to the qualified electors of the county at any regular or special election and, upon a favorable vote of sixty percent (60%) of the qualified electors voting, such levy must be discontinued.

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<sup>2</sup> N.D.C.C. § 57-15-06.7(14). Additional levies – Exception to tax levy limitations in counties.

Of the proceeds of the tax collected on account of property situated within any city, by the county treasurer of the county in which the city is located, twenty percent (20%) must be turned over by the treasurer to the auditor of the city.<sup>3</sup>

B. Loans

When the board of county commissioners of a county deems that all taxes authorized to be levied are insufficient, the county may borrow money to carry on primary governmental functions, including for the construction or maintenance of county highways. The county must repay the loan within five (5) years.

The board of county commissioners shall levy a general tax from year to year upon all of the general taxable property of the county for the purpose of providing funds sufficient to repay the amount of the loan, with interest, at the time of maturity.<sup>4</sup> The board of county commissioners authorizing the levying of such tax shall establish a special fund in the county treasury designated as the county loan fund and all moneys collected from the general tax levied for the purpose of repaying any loans, with interest, must be deposited to the credit of this special fund and may be used only for the purpose of repaying the principal, with accrued interest, due upon loans made by the county as the same matures. The balance, if any, remaining in the special fund, after the amount of the loan,

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<sup>3</sup> Auditor to issue warrants to taxing districts.

Upon application of the treasurer of any local taxing district, the county auditor shall give the treasurer an order on the county treasurer for the amount due such local taxing district, and shall charge the treasurer with the amount of such order, and at the same time shall notify the clerk of each local taxing district of the issuance of such order, but the county auditor shall not issue an order as in this section provided until the bond of the person applying for such order shall have been filed as required by law.

<sup>4</sup> N.D.C.C. § 57-47-04. Levy of tax to repay loan – Limitation.

with accrued interest, has been paid in full, may be transferred by the county commissioners to the general fund of the county.<sup>5</sup>

C. Federal Government Funding

1. Federal Leasing Profits

When the United States acquires land for flood control, the U.S. pays the state and the state shall then pay each county in which the acquired land is located their pro rata share of the compensation. Once a county receives any such money, twenty five percent (25%) of it shall be used for county road purposes, to be expended as the county commissioners shall determine.<sup>6</sup> Furthermore, twenty five percent (25%) must be allocated among the organized townships, if any, which have lost land subject to taxation because of land acquisitions by the United States for which compensation is being provided to the county for road purposes in proportion to the area of these lands in each township as that area bears to the total area of these federal lands in the county. The county must be allocated a similar proportionate share based on the area of these lands in the county not within an organized township.<sup>7</sup>

2. Federal Revenue Sharing

A county may expend federal revenue-sharing moneys for any purpose for which general or special fund moneys of the county may be expended,

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<sup>5</sup> N.D.C.C. § 57-47-05. County loan fund established.

<sup>6</sup> N.D.C.C. § 21-06-10(2). Moneys received through leasing of lands acquired by United States for flood control distributed to counties for schools and roads.

<sup>7</sup> N.D.C.C. § 21-06-10(3). Moneys received through leasing of lands acquired by United States for flood control distributed to counties for schools and roads.

regardless of whether a tax levy by a vote of the political subdivision electorate has been made or is required for such purpose.<sup>8</sup>

2. Expenditure of Funds

The county road fund may be expended only for road machinery and for grading, ditching, and surfacing, in proper form and condition for public travel, such highways or parts of highways, howsoever established, as constitute the principal thoroughfares of the county, communicating with shipping points and marketplaces resorted to by inhabitants of the county, for which the means otherwise provided, in the opinion of the board of county commissioners, are not sufficient.<sup>9</sup>

**Cross-Reference: See Chapter 3, Section 4(E) – Manner of Payment of Compensation of County Highway Engineer; See Chapter 14, Section 3 – Overseer of Highways to Fill Wells on State Land**

The board of county commissioners of a county may NOT transfer money from funds received from the state for road, bridge, and highway purposes into any other county funds.<sup>10</sup>

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<sup>8</sup> N.D.C.C. § 21-06-11. Expenditure of federal revenue – sharing moneys.

<sup>9</sup> N.D.C.C. § 24-05-01. County road tax – Allocation and use of funds.

<sup>10</sup> N.D.C.C. § 11-23-07. Transfer of money from other funds.

## **CHAPTER 5 – CONSTRUCTION CONTRACTS**

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## **CONSTRUCTION CONTRACTS**

### 1. **Advertising Requirements for Highway Improvements and Equipment Rental**

Any purchase or rental for county road machinery or any contract for highway improvement in excess of fifty thousand dollars (\$50,000) must be advertised. A county cannot rent road machinery for a length of time greater than twelve (12) months or for an amount greater than twenty percent (20%) of the purchase value of the machinery. However, a county can contract for a lease-purchase so long as the annual payments do not exceed twenty thousand dollars (\$20,000) and the contract is not for greater than five (5) years.

**Exception: See Section 3 Below**

**Cross-Reference: See Chapter 8, Section 1- Construction of Bridges by Board of County Commissioners**

### 2. **County Not to Lease its Equipment for Less than Current Equipment Rental Rates**

No county may lease, rent, or enter into a contract or agreement for the use of any road construction or maintenance equipment belonging to that or any other county or political subdivision at a rate which is less than the current equipment rental rates adopted by the North Dakota Department of Transportation as shown in its Standard Specifications for Road and Bridge Construction manual.<sup>1</sup>

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<sup>1</sup> N.D.C.C. § 24-05-04.1. County not to lease its equipment for less than cost of operation.

3. Contracting with the Federal Government

A county may enter into any contract with the United States of America or with any agency thereof for the purchase or lease of any equipment, supplies, materials, or other property without regard to provisions of law which require:

- A. The posting of notices or public advertising for bids or of expenditures.
- B. The inviting or receiving of competitive bids.
- C. The delivery of purchases before payment.
- D. The payment of the cost of the contract out of funds included in the budget of appropriations for the year; provided, however, that the county may designate by appropriate resolution or order any official or employee of its own to enter a bid or bids in its behalf at any sale of any equipment, supplies, materials, or other property owned by the United States of America or any agency thereof, and may authorize that person to make any down payment, or payment in full, required in connection with such bidding.<sup>2</sup>

4. Contracting with Other County or State Governments

Whenever the board of county commissioners of any county bordered by a state line deems it for the best interests of the county to open and improve a highway on the state line, it may negotiate with the proper officials of the adjoining county or state, and may make contracts or agreements pertaining to the opening up of such state line and the construction of a highway upon it.

If the board of county commissioners deems it proper, it may agree with the officials of the adjoining county or state for the allotment of the highway on

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<sup>2</sup> N.D.C.C. § 21-06-08. Authority to contract with the federal government – Delegation of authority.

said state line, and may assume the obligation of construction and maintenance of certain parts of the said highway in return for the assumption of like obligations by the officials of the adjoining county or state as to a like portion of the state line forming the boundary of the county.<sup>3</sup>

5. Payment of Construction Contracts

The board of county commissioners, in case of each improvement ordered by it, shall designate the place of beginning and the direction in which the work must proceed, and shall require the same to be completed mile by mile or in parts of miles continuously, as ordered, and no payment may be made except for work so completed.

It also may require the supervision of the work by the county surveyor, so far as deemed necessary, and shall require him to compute and estimate the amount of completed work and to certify the same to the county auditor at the end of each month.<sup>4</sup>

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<sup>3</sup> N.D.C.C. § 24-05-08. Highways on state lines.

<sup>4</sup> N.D.C.C § 24-05-03. Payments made for completed work only.



## CHAPTER 6 – ACQUIRING RIGHT OF WAY

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## **ACQUISITION OF AND COMPENSATION FOR “RIGHT OF WAY” LAND**

### 1. Acquiring Land

#### A. Purchase or Condemnation of Right-of-Way

The board of county commissioners, by resolution or order, as part of the cost of constructing, reconstructing, widening, altering, changing, locating, relocating, aligning, realigning, or maintaining, any highway, may purchase, acquire, take over, or condemn, under the right and power of eminent domain, any and all lands which it deems necessary for the present use, either temporary or permanent, and to provide adequate drainage in the improvement, constructing, reconstructing, widening, altering, changing, locating, relocating, aligning, realigning, or maintaining of any highways.

#### **Cross-Reference: See Chapter 3, Section 2 – Responsibilities of Counties for County Road System**

Whenever the board of county commissioners determines, by resolution or order, that the public necessity requires the taking of land as aforesaid, it shall survey the lands and describe, plat, record the land in the office of the recorder of the county. The board of county commissioners, or its duly authorized agents and employees, may enter upon any land for the purpose of making such survey, examination, or test, but in case of damages to the premises the board of county commissioners shall pay to the owner of said premises the amount of such damages.<sup>1</sup>

#### **Cross-Reference: See Chapter 12, Public Utilities, Sections 3 – Construction of Utility Facility; 4 – Removal of Utility Facility; and 5 –**

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<sup>1</sup> N.D.C.C. § 24-05-09. Purchase or condemnation of right of way.

**Right of Way for Relocation of Utility Facility: See Chapter 13, Billboards and Advertising, Sections 2 – Limitations of Outdoor Advertising Within 660 Feet of Right of Way, 3- Limitations of Outdoor Advertising Beyond 660 Feet of Right of Way, and 4 – Compensation for Removal of Signs**

B. Acquisition of Property and Property Rights

The board of county commissioners may acquire private or public property and property rights for controlled-access facilities and service roads, including rights of access, air, view, lights, and such advertising rights outside of the right of way as may be determined to be in the public interest, by gift, devise, purchase, or condemnation. All property rights acquired must be in fee simple, provided, however, as to any and all lands acquired or taken for highway, road, or street purposes, they may not obtain any rights or interest in or to the oil, gas, or fluid minerals underlying said lands.

In connection with the acquisition of property or property rights for any controlled-access facility or service road, the county may, in its discretion, acquire an entire lot, block, or tract of land, if, by so doing so, the interests of the public will be best served, even though the entire lot, block, or tract is not immediately needed for the right of way proper.<sup>2</sup>

**Cross-References: See Chapter 7, Section 4 – Acquisition of Property and Property Rights for Controlled access Facilities; See Chapter 12, Public Utilities, Sections 3 – Construction of Utility Facility; 4 – Removal of Utility Facility; and 5 – Right of Way for Relocation of Utility Facility**

C. County May Deviate From Section Lines

Whenever the expense of constructing a highway, or any part thereof, is the responsibility of the county, the board of county commissioners has the power to deviate from section and township lines and to condemn and purchase

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<sup>2</sup> N.D.C.C. § 24-01-32. Acquisition of property and property rights.

right of way for such highway, if in its opinion the cost of constructing and maintaining such highway must be decreased materially. The cost of obtaining such right of way is the responsibility of the county.<sup>3</sup>

D. Highways on State Lines

Whenever the board of county commissioners of any county bordered by a state line deems it for the best interests of the county to open and improve a highway on the state line, it may negotiate with the proper officials of the adjoining county or state, and may make contracts or agreements pertaining to the opening up of such state line and the construction of a highway upon it.

If the board of county commissioners deems it proper, it may agree with the officials of the adjoining county or state for the allotment of the highway on said state line, and may assume the obligation of construction and maintenance of certain parts of the said highway in return for the assumption of like obligations by the officials of the adjoining county or state as to a like portion of the state line forming the boundary of the county.<sup>4</sup>

2. Damages for Acquisition of Land

A. Damages for Governmental Taking

If the board of county commissioners is unable to purchase the lands required for a price which such board deems reasonable, the board by order or resolution shall declare the necessity for the taking of such lands and shall direct

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<sup>3</sup> N.D.C.C. § 24-05-07. Counties may deviate from section lines – Condemn or purchase right of way.

<sup>4</sup> N.D.C.C. § 24-05-08. Highways on state lines.

a special board consisting of the county auditor, the county treasurer, and the recorder of such county to fix the damages for such taking.<sup>5</sup> Within fifteen (15) days, the special board shall fix a time and place not later than thirty (30) days from and after the passage of the order or resolution for hearing all persons or parties interested by such taking, and it shall give notice of the hearing to all parties interested either by registered or certified mail or by publication, stating the time and place where the hearing must be held, together with a description of the property to be appraised.<sup>6</sup>

B. Board of County Commissioners May Determine Damages

Upon the taking of lands for highway purposes, the board of county commissioners, on petition of the director, shall proceed to determine the damages and make awards for the lands taken. Within fifteen (15) days after the filing of the petition with the county auditor, the board of county commissioners shall fix a time and place, not later than (60) sixty days from and after the filing of such petition, for a hearing of all persons interested or aggrieved by such taking, and shall cause to be published in the official newspaper of the county, at least once a week, for three (3) successive weeks, prior to such hearing, a notice of the hearing, stating its the time and place, together with a description of the property to be taken. A copy of the published notice must be served personally

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<sup>5</sup> N.D.C.C. § 24-05-10. Damages –How ascertained – Special board.

<sup>6</sup> N.D.C.C. § 24-05-11. Hearing before special board – Notice.

upon all known owners residing or found within the state, and upon the occupant of the land, not less than fifteen (15) days prior to the hearing.<sup>7</sup>

C. Payment of Damages for Acquisition of Land

When damages have been awarded by the special board, the board of county commissioners shall pay to the clerk of the district court, for the benefit of the persons interested, the sum awarded by the board in cash. Every owner entitled to an award, before receiving the award, shall execute a receipt, to be received by the clerk of the district court, containing a description of the premises covered by the award and an acknowledgment of full and complete satisfaction for all damages sustained.

In case the owner fails or refuses to accept such award and execute such receipt within ten (10) days after being notified of the amount awarded to him, the clerk of the court shall execute a receipt reciting a deposit of such award and a description of the premises.<sup>8</sup>

If no appeal is made after thirty (30) days, the receipt of the owner of the premises or of the clerk of the district court must be recorded in the office of the recorder of the county and the title of the land be vested in the county.<sup>9</sup>

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<sup>7</sup> N.D.C.C. § 24-01-19. Board of county commissioners may determine damages.

<sup>8</sup> N.D.C.C. § 24-05-12. Payment or deposit of damages – Receipt.

<sup>9</sup> N.D.C.C. § 24-05-13. Receipt for payment to be recorded if no appeal taken.

3. Appeals Pertaining to Acquisition of Land

A. Appeals from Decision of Board of County Commissioners

Any party aggrieved by the taking of land or materials, or by the estimate of damages and the award of the board of county commissioners, has the remedy of appeal from any determination of a board of county commissioners in the taking of land for highway purposes.

Service of a written or printed notice of such appeal must be made upon the chairman of the board of county commissioners and the director. An appeal from the award by the board of county commissioners, without filing a cost bond, may be taken by the director, by service of notice of appeal upon the chairman of the board of county commissioners and the owner of the property. Upon any appeal, the director, on application to the judge of the district court, must be granted a special term of court.<sup>10</sup>

B. Appeal to Jury for Governmental Taking

Any party aggrieved by the award may appeal from the determination of the board of county commissioners in the taking of lands by a county for highway purposes. The issues involved in the appeal must be tried and determined at the next term of the district court. The damages must be assessed by a jury, unless a trial by jury is waived, and no fees may be collected by the clerk of the district court for the filing of the appeal.<sup>11</sup>

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<sup>10</sup> N.D.C.C. § 24-01-23. Appeals from decision of board of county commissioners – Procedure – Special term of court.

<sup>11</sup> N.D.C.C. § 24-05-14. Appeal – How taken – Jury trial.

C. Appeal Does Not Stay Acquisition of Land

Notwithstanding the taking of an appeal, the board of county commissioners may proceed with the use of the property so condemned and is liable for any additional amount awarded to the appellant upon such appeal.<sup>12</sup>

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<sup>12</sup> N.D.C.C. § 24-05-15. Appeal does not stay proceedings.



## **CHAPTER 7 – CONTROLLED-ACCESS FACILITIES**

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## **CONTROLLED-ACCESS FACILITIES**

### 1. Authority to Establish Controlled-Access Facilities

Each county is authorized to plan, designate, establish, regulate, vacate, alter, improve, maintain, and provide controlled-access facilities for public use wherever traffic conditions, present or future, will justify such special facilities, provided that within municipalities such authority is subject to such municipal consent as may be provided by law. In addition to the specific powers granted by law, counties may regulate, restrict, or prohibit use of controlled-access facilities by the various classes of vehicles or traffic in a manner consistent with the definition of a controlled-access facility.<sup>1</sup>

**Cross-Reference: See Chapter 3, Section 1 – Basic Authority of County Engineers, Highway Supervisors, and County Commissioners**

### 2. Design of Controlled-Access Facilities

County authorities are authorized to design any controlled-access facility and to regulate, restrict, or prohibit access as to best serve the traffic for which such facility is intended. County authorities are authorized to divide and separate any controlled-access facility into separate roadways by the construction of raised curbing, central dividing sections, or other physical separations, or by designating such separate roadways by signs, markers, stripes, and the proper lane for such traffic by appropriate signs, markers, stripes, and other devices. No person has any right of ingress or egress to, from or across controlled-access

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<sup>1</sup> N.D.C.C. § 24-01-30. Authority to establish controlled-access facilities.

facilities to or from abutting lands, except at such designated points at which access may be permitted.<sup>2</sup>

**Cross-Reference: See Chapter 3, Section 1 – Basic Authority of County Engineers, Highway Supervisors, and County Commissioners**

3. Commercial Establishments Prohibited

No automotive service station or other commercial establishment for serving motor vehicle users may be constructed or located within the right of way of, or on publicly owned or publicly leased land acquired or used for or in connection with a controlled-access facility.<sup>3</sup>

4. Acquisition of Property and Property Rights

The board of county commissioners may acquire private or public property and property rights for controlled-access facilities and service roads, including rights of access, air, view, lights, and such advertising rights outside of the right of way, by gift, devise, purchase, or condemnation. All property rights acquired must be in fee simple, provided, however, as to any and all lands acquired or taken for highway, road, or street purposes, they may not obtain any rights or interest in or to the oil, gas, or fluid minerals underlying said lands.

In connection with the acquisition of property or property rights for any controlled-access facility or portion thereof, or service road in connection with a controlled-access facility, the county authority may, in its discretion, acquire an entire lot, block, or tract of land, if, by so doing, the interests of the public will be

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<sup>2</sup> N.D.C.C. § 24-01-31. Design of controlled-access facility.

<sup>3</sup> N.D.C.C. § 24-01-45. Controlled-access facility – Commercial establishments prohibited.

best served, even though the entire lot, block, or tract is not immediately needed for the right of way.<sup>4</sup>

**Cross-Reference: See Chapter 6, Section 1(B) – Acquisition of Property and Property Rights**

5. **Grade Crossing Elimination at New and Existing Facilities**

The highway authorities of any county may designate and establish controlled-access highways as new and additional facilities or may designate and establish an existing street or highway as included within a controlled-access facility. The county has authority to provide for the elimination of intersections at grade of controlled-access facilities with existing state and county roads, and municipal streets, by grade separation or service road, or by closing off such roads and streets at the right of way boundary lines of such controlled-access facility; and after the establishment of any controlled-access facility, no highway or street which is not part of the facility may intersect the same at grade.<sup>5</sup>

**Cross-Reference: See Chapter 9, Section 1 – Grading and Drainage of Roads and Approaches Intersecting with County or township Roads**

6. **Authority of Local Units to Consent**

The highway authorities of the state, or any county, or municipality are authorized to enter into agreements with each other, or with the federal government, respecting the financing, planning, establishment, improvement,

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<sup>4</sup> N.D.C.C. § 24-01-32. Acquisition of property and property rights.

<sup>5</sup> N.D.C.C. § 24-01-33. New and existing facilities – Grade crossing elimination.

maintenance, use, regulation, or vacation of controlled-access facilities or other public ways in their respective jurisdictions.<sup>6</sup>

7. Local Service Roads

In connection with the development of any controlled-access facility the county authorities are authorized to plan, designate, establish, use, regulate, alter, improve, maintain, and vacate local service roads and streets or to designate as local service roads and streets any existing road or street, and to exercise jurisdiction over service roads in the same manner as is authorized over controlled-access facilities, if, in their opinion, such local service roads and streets are necessary or desirable. Such local service roads or streets must be of appropriate design, and must be separated from the controlled-access facility by means of all devices designated as necessary or desirable by the proper authority.<sup>7</sup>

**Cross-Reference: Chapter 1, Sections 3 – State and County Cooperation; and 4 – Highways on State Lines**

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<sup>6</sup> N.D.C.C. § 24-01-34. Authority of local units to consent.

<sup>7</sup> N.D.C.C. § 24-01-35. Local service roads.

## **CHAPTER 8 – BRIDGES**

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## **FINANCING, CONSTRUCTION, AND MAINTENANCE OF BRIDGES**

### 1. **Construction of Bridges by Board of County Commissioners**

Whenever a majority of the freeholders living within a radius of three (3) miles of the proposed location petition the board of county commissioners for a bridge at a specified location, if the cost of the bridge exceeds the sum of five hundred dollars (\$500.00), the board of county commissioners shall view and investigate the necessity of the proposed bridge.

#### **Cross-Reference: See Chapter 9, Section 9 – Grading and Drainage Wetlands and Surface Water – Determinations of Surface Water Flow and Appropriate Highway Construction**

If the board approves the petition, it shall proceed to advertise in the official newspaper of the county, for a period of thirty (30) days, the plans and specifications of the proposed bridge, asking for sealed bids for the building of such bridge to be submitted to it at the next regular or special meeting, at which the board shall proceed to examine all proposals or bids for the building of such bridge. The board shall award the contract to the lowest responsible bidder, requiring the bidder to give a bond in a sum not less than the amount stipulated in the bid or contract, conditioned for the faithful compliance with the terms of the bid, or contract, the bond to be approved by the board and filed in the office of the county auditor but the board may reject all bids.

#### **Cross-Reference: See Chapter 5, Section 1 – Construction Contracts – Advertising Requirements for Highway Improvements and Equipment Rental**

If all bids are rejected, the board shall re-advertise. Provided, however, that in any case where the amount of the lowest responsible bid is less than fifteen thousand dollars (\$15,000.00), the board has the authority to refuse all bids received, and to proceed to construct the bridge under its own supervision, and in the manner deemed by it most expedient, and to enter into contracts for the labor or material to be used in the construction of the bridge.<sup>1</sup>

2. Expense of Bridge

The expense of constructing a bridge must be paid out of the county bridge fund, if such bridge is accepted and approved by the board of county commissioners.<sup>2</sup>

3. Supervision, Repairs, Bids, and Signs

Each bridge built under the direction of the board of county commissioners is under the supervision of the board of county commissioners, and the county shall pay the cost of rebuilding or repairing these bridges.

If the cost of rebuilding or repairing a bridge would exceed thirty thousand dollars (\$30,000.00) on estimate of the county engineer and upon the approval of the estimate by the department, the county commissioners shall advertise for bids and award the contract.

**Cross-Reference: See Chapter 5, Section 1 – Construction Contracts – Advertising Requirements for Highway Improvements and Equipment Rental**

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<sup>1</sup> N.D.C.C. § 24-08-01. Construction of bridges by board of county commissioners – Petition – Bids – Rejection.

<sup>2</sup> N.D.C.C. § 24-08-02. Expenses of bridge – How paid.



If a bridge is destroyed by flood, fire, or other casualty and the public interest would suffer by the delay from advertising for bids and awaiting the contract, the county commissioners may promptly contract for the rebuilding or repair of the bridge without advertising for bids, regardless of the cost.

The board of county commissioners, at least every four (4) years, and so far as time and conditions may permit, shall cause an inspection to be made of all bridges on the county road system in the county. If any bridge on the county road system is deemed unsafe for public use by the board of commissioners, it immediately shall take steps to close the bridge and prevent its use by the public.

If any bridge on the county road system is deemed unsafe for loads in excess of a certain weight, the board of commissioners shall post load limit signs which must comply with the standards for uniform traffic control devices.

The county is not immune from claims or suits for damages arising out of negligent failure to perform these inspection, signing, and repair duties.<sup>3</sup>

**Cross-Reference: See Chapter 11, Section 1(A) – Warning Signs of Road Construction**

4. Petition for Bridges Across Navigable Rivers

Whenever one-third (1/3) of the resident taxpayers of any county, as appears by the last preceding assessment roll of the county, petition the board of county commissioners requesting an appropriation to build a bridge across any navigable river on the line of the county, setting forth therein the location of the bridge as near as may be, its estimated cost, the necessity therefor to accommodate the general traveling public, the manner in which it is proposed to

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<sup>3</sup> N.D.C.C. § 24-08-03. Bridges – Supervisions, repairs, bids, signs – Liability.

pay for the structure, and the time when it will be completed, the petition to be duly verified by the affidavits of at least fifteen (15) of the petitioners therein named, the board of county commissioners shall publish a notice in the official newspaper of the county, once each week for three (3) consecutive weeks, briefly stating the object of the petition and that the same will be heard and considered at the next regular meeting of such board.

At the time appointed for the hearing of the petition, the board of county commissioners shall investigate the need for such bridge, and if it finds the same to be necessary and that the consent of the federal government has been obtained to span such river, it, by resolution duly entered upon the minutes of the board, shall appropriate toward the building of such bridge, from the county treasury, a sum not exceeding one-half (1/2) of the estimated cost of the bridge. The appropriation must be upon condition that a sufficient bond be given, conditioned that the remaining one-half (1/2) or more, as the case may be, of the cost of the bridge will be paid.<sup>4</sup>

5. Board of County Commissioners May Act with Representatives of Other Governmental Agency

If the remaining one-half (1/2) of the cost of any bridge to be constructed is made up by an appropriation from any neighboring state or by any municipality in this state, to be expended under a commission or through any other agency, the board of county commissioners shall appoint a committee from its own number, of three (3) or more, to meet such other municipal agency, confer with

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<sup>4</sup> N.D.C.C. § 24-08-05. Petition for bridges across navigable waters.

its members, and advise and assist in the accomplishment of such improvement in the best possible manner, and when the work is completed and approved jointly by such agency and committee, such approval to be in writing and duly reported to such board and recorded in the minutes thereof, the board shall direct the county auditor to draw his warrant upon the treasurer in favor of the contractor for the amount due him from such county.<sup>5</sup>

6. Bridge Funds to be Turned Over to City

The county treasurer of each county wherein any city has constructed a bridge, or hereafter shall construct a bridge, over any navigable stream, shall pay to the auditor of such city whereby such bridge has been constructed or is about to be constructed, all money in the county treasury or which may come into the county treasury in the bridge fund of such county, which may have been or which shall be levied, assessed, and collected from persons and property, or either, in said city.<sup>6</sup>

7. Cost of Bridge Limited

The total cost to any county of any bridge built across a navigable river in no case may exceed the sum of three hundred thousand dollars (\$300,000.00).<sup>7</sup>

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<sup>5</sup> N.D.C.C. § 24-08-06. Board of county commissioners may act with representatives of other governmental agency.

<sup>6</sup> N.D.C.C. § 24-08-08. Bridge fund to be turned over to city.

<sup>7</sup> N.D.C.C. § 24-08-09. Cost of bridge limited.

8. Counties or Municipalities May Assist in Constructing Bridge

Any county within this state desiring to assist in the construction, maintenance, or repair of a bridge over a navigable river, regardless of whether such county borders the river at the point where the bridge is to be built, by a majority vote of its board:

- A. May enter into an agreement for the construction, maintenance, and repair of such a bridge with other municipalities or counties, whether such municipalities or counties are located within the state of North Dakota or a state bordering North Dakota; and
- B. May appropriate any sum that to the said board may seem reasonable, and shall direct the proper officer to draw a warrant on the general fund for the payment of such appropriation.<sup>8</sup>

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<sup>8</sup> N.D.C.C. § 24-08-10. Counties or municipalities may assist in constructing bridge.

## **CHAPTER 9 – GRADING AND DRAINAGE**

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**GRADING, DITCHES, CULVERTS, DRAINAGE, AND SURFACE WATER:  
CONSTRUCTION AND MAINTANENCE**

1. Roads and Approaches Intersecting with County Roads

All roads and approaches constructed after July 1, 1973, which intersect with county must have a graded inslope at the place of intersection of at least a three-to-one (3:1) ratio, thus permitting vehicles which may accidentally leave any county road and strike the inslope a reasonably safe access over the road or approach.<sup>1</sup>

2. Graded Inslope Requirement – Exceptions

The above requirement (Section 9-1) as to a graded inslope of all roads and approaches does not apply:

- A. Where the governing body having authority over such roads and approaches exempts such roads and approaches due to factors causing an unduly prohibitive cost of compliance.
- B. To roads and approaches of the state highway system which intersect county roads.
- C. To roads and approaches which intersect county roads constructed in compliance with requirements of the federal-aid system.<sup>2</sup>

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<sup>1</sup> N.D.C.C. § 24-05-21. Roads and approaches intersecting with county or township roads – Requirement.

<sup>2</sup> N.D.C.C. § 24-05-22. Graded inslope requirement – Exceptions.

3. Culverts - County to Furnish and Pay for Culverts on Township Roads

The county shall furnish and install, at county expense, such culverts as are necessary to be used along township roads at points of intersection with established drains.<sup>3</sup>

**Cross-Reference: See Chapter 11, Section 1 (A) – Warning Signs of Road Construction**

4. Ditches

All highways constructed or reconstructed by the department, board of county commissioners, board of township supervisors, their contractors, subcontractors, or agents, or by any individual firm, corporation, or limited liability company must be so designed as to permit the waters running into the ditches to drain into coulees, rivers, and lakes according to the surface and terrain where the highway or highways are constructed in accordance with the stream crossing standards prepared by the department and the state engineer so as to avoid the waters flowing into and accumulating in the ditches to overflow adjacent and adjoining lands.

In the construction of highways, the natural flow and drainage of surface waters to the extent required to meet the stream crossing standards prepared by the department and the state engineer may not be obstructed, but the water must be permitted to follow the natural course according to the surface and terrain of the particular terrain.

The department, county, township, their contractors, subcontractors, or agents, or any individual firm, corporation, or limited liability company is not liable

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<sup>3</sup> N.D.C.C. § 24-08-02.1. County to furnish and pay for culverts on township roads.

for any damage caused to any structure or property by water detained by the highway at the crossing if the highway crossing has been constructed in accordance with the stream crossing standards prepared by the department and the state engineer.<sup>4</sup>

**Cross-Reference: See Chapter 6, Section 1(A) – Purchase or Condemnation of Right of Way**

5. County Road Grades and Ditches to be Back Sloped

All county roads shall be constructed with back sloped grades and ditches. Such grades and ditches shall be sloped to a sufficient degree to permit farm implements used for cutting and gathering hay to operate thereon, and such grades and ditches shall be cleared of all stones or other obstructions that would hinder the operation of such implements.<sup>5</sup>

**Cross- Reference: See Chapter 14, Section 1 – Noxious Weeds**

6. County Must Plant Grass on Grades and Ditches

Upon completion of such newly constructed or reconstructed roads, the governing body having authority over such roads shall plant grass upon the back slopes of the grades and ditches. The grass or hay growing upon or within the right of way of such roads may be cut for hay by any owner or tenant of lands adjoining the right of way.<sup>6</sup>

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<sup>4</sup> N.D.C.C. § 24-03-06. Method of construction of highway ditches.

<sup>5</sup> N.D.C.C. § 24-05-20. County and township roads grade and ditches to be back sloped – Planting of grass – Plant pest control.

<sup>6</sup> N.D.C.C. § 24-05-20. County and township roads grade and ditches to be back sloped – Planting of grass – Plant pest control.



**Cross-Reference: See Chapter 14, Section 1 – Noxious Weeds; and Section 4(B) – Haying of No-Mow or Managed-Mow Areas**

7. Pest Control on Road Right of Ways, Including Back Slopes and Ditches

The governing body a county may control, or cause to be controlled, grasshoppers and other plant pests which are infesting vegetation in the road rights of way under their authority. Only pesticides that are labeled for use on forage crops may be used so that the forage may be cut and used for hay. At least three (3) days prior to treatment, the governing body of the county shall provide written notice to all of the landowners or tenants, or both, of all land adjacent to the rights of way to be treated. The notice must include the approximate date of treatment, the name of the pesticide that will be used, and any restrictions on the harvest and use of the treated forage. If a landowner or occupant of land adjacent to the road right of way to be treated gives notice opposing the treatment to the governing body of the county prior to the treatment date that section of the right of way must be excluded from treatment. The landowner or tenant of the land is responsible for clearly marking or flagging the section of the right of way to be excluded from treatment.

The governing body of a county may enter into agreements with the department of transportation for the purpose of controlling grasshoppers and other plant pests in state highway system rights of way. The governing body of a township may enter into agreements with the governing body of a county for controlling grasshoppers and other plant pests in rights of way of the county road system.

The governing body of a county may use the county emergency fund to pay for the cost of control in rights of way of the county road system. The county emergency fund may also be used to cost share with townships for control expenses in township rights of way.<sup>7</sup>

8. Encroachment Upon County Roads, Ditches, and Approaches

A landowner who encroaches upon a county road or its ditches or approaches must be given notice by the board of commissioners for that county that the encroachment has been discovered. If the landowner fails to remedy the encroachment within twenty (20) days after receiving the notice, that landowner is liable to the county for damages resulting from the encroachment. The board of commissioners for that county shall issue to the landowner written notice of the amount of damages determined to be a result of the encroachment. If the landowner fails to pay the county for the damages, the expense of the repair must be charged to the land of the landowner. The expenses charged become a part of the taxes to be levied against the land for the ensuing year and must be collected in the same manner as other real estate taxes are collected, and placed to the credit of the county that incurred the expense of the repair.<sup>8</sup>

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<sup>7</sup> N.D.C.C. § 24-05-20. County and township roads grade and ditches to be back sloped – Planting of grass – Plant pest control.

<sup>8</sup> N.D.C.C. § 24-05-23. Encroachment upon county roads, ditches, approaches – Liability for damages.

9. Wetlands and Surface Water - Determinations of Surface Water Flow and Appropriate Highway Construction

Whenever and wherever a highway under the supervision, control, and jurisdiction of the department or under the supervision, control, and jurisdiction of the board of county commissioners of any county has been or will be constructed over a watercourse or draw into which flow surface waters from farmlands, the state engineer, upon petition of the majority of landowners of the area affected or at the request of the board of county commissioners or a water resource board, shall determine as nearly as practicable the design discharge that the crossing is required to carry to meet the stream crossing standards prepared by the department and the state engineer.

When the determination has been made by the state engineer, the department, or the board of county commissioners, upon notification of the determination, shall install a culvert or bridge of sufficient capacity to permit the water to flow freely and unimpeded through the culvert or under the bridge. The county is not liable for any damage to any structure or property caused by water detained by the highway at the crossing if the highway crossing has been constructed in accordance with the stream crossing standards prepared by the department and the state engineer.<sup>9</sup>

**Cross-Reference: See Chapter 8, Section 1 – Construction of Bridges by Board of County Commissioners**

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<sup>9</sup> N.D.C.C. § 24-03-08. Determinations of surface water flow and appropriate highway construction.

## **CHAPTER 10 - CATTLE GUARDS**

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## CATTLE GUARDS

### 1. Cattle Guards - How Permitted

Whenever the erection of cattle guards is necessary to complete an enclosure which includes land on both sides of any highway in the state, except a highway which has been designated as part of the state highway system, or to cross a section line, the board of county commissioners, if the cattle guard is to be erected across a county road or a section line subject to jurisdiction of the board of county commissioners, may issue permission to any person, firm, or corporation to erect a cattle guard and gateway across the highway or section line upon the conditions prescribed below (Section 10-2).<sup>1</sup>

### 2. Construction and Maintenance of Cattle Guards

Before any cattle guard and gateway may be erected across any highway or section line, the board of county commissioners shall approve written specifications of the cattle guard and gateway. Specifications approved by the board of county commissioners. The specifications must include requirements for warning signs to be placed approximately three hundred (300) feet from and plainly visible to persons approaching the cattle guard upon the highway or section line.

#### **Cross-Reference: See Chapter 11, Section 3 – Cattle Guard Warning Signs**

A cattle guard must be so constructed as to permit the passage of motor vehicles through and over the same. No cattle guard may be erected upon any

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<sup>1</sup> N.D.C.C. § 24-10-01. Cattle guards – How permitted.

highway or section line unless there also is provided adjacent thereto an ample gateway in which must be erected a gate which may be opened easily and closed by the public.

The person who applied for permission to erect the cattle guard shall maintain the cattle guard and gateway, unless application is otherwise assigned. Within the limits of an enclosure so completed by authorized cattle guards erected in accordance with such specifications, livestock must be permitted to run at large without liability for being upon the highway or section line.<sup>2</sup>

### 3. Cattle Guards May be Ordered Removed

The board having authority to permit the erection of a cattle guard and gateway across any highway or section line also has authority to cause the same to be removed, if the same is not kept in repair, or if in the judgment of said board, it becomes necessary to remove the cattle guard and gateway for the purpose of improving the highway or section line.

If the board determines any cattle guard and gateway should be removed under this section, written notice by registered or certified mail must be sent to the occupant of the enclosure, notifying the occupant to effect such removal within thirty (30) days from the date of mailing. Where the notice is not complied with, the board, upon expiration of the period, is authorized to remove or destroy the cattle guard and gateway.<sup>3</sup>

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<sup>2</sup> N.D.C.C. § 24-10-02. Cattle guards –Construction- Maintenance – Effect.

<sup>3</sup> N.D.C.C. § 24-10-04. Cattle guards may be ordered removed.

4. County and Townships Exercise Joint Authority

If the cattle guard and gateway is sought to be erected upon any township or county line, the governing boards of the adjacent territory shall exercise joint authority and jurisdiction and the proceedings required must be taken in both jurisdictions.<sup>4</sup>

5. Cattle Ways Under Highways

Upon application to the board of county commissioners of any county by any person, for permission to construct a cattle way under any public road, such board may grant the same upon condition that the cattle way may not interfere with the public travel, that the grade of the road over the cattle way may not exceed one (1) foot in ten (10) feet, and that it may not obstruct watering at any running stream.

**Cross-References: See Chapter 9, Section 4 – Grading and Drainage of Ditches, and Section 9 – Wetlands and Surface Water – Determinations of Surface Water Flow and Appropriate Highway Construction**

The applicant shall construct the same at his own expense and is responsible for all damages that may arise from its construction or from failure to keep the same in repair.<sup>5</sup>

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<sup>4</sup> N.D.C.C. § 24-10-05. County and townships exercise joint authority.

<sup>5</sup> N.D.C.C. § 24-10-06. Cattle ways under highways.

6. Failure to Keep Cattle Way in Repair

If the person on whose land a cattle way is constructed fails to keep the cattle way in repair, the overseer of highways shall make all necessary repairs, and shall charge the expenses to the person who requested the way be constructed or to that person's assignee. Upon refusal by that person to pay, the county in which the cattle way is situated shall recover the expenses in an action brought in the name of the county and the state's attorney shall prosecute the action. The money, when collected, must be expended in improving or repairing the public roads in the road district where the cattle way is constructed.<sup>6</sup>

7. Board May Prescribe Regulations

The board granting an application to construct a cattle way may prescribe such further regulations and specifications in the construction of such way as it may deem proper.<sup>7</sup>

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<sup>6</sup> N.D.C.C. § 24-10-07. Failure to keep cattle way in repair.

<sup>7</sup> N.D.C.C. § 24-10-08. Board may prescribe regulations.



## CHAPTER 11 – SIGNS AND SAFETY

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## **WARNING SIGNS AND OTHER SAFETY REGULATIONS**

### 1. Construction Warning Signs

#### A. Warning Signs of Road Construction

Whenever any county enters into a contract for the construction and improvement of any road or culvert, or bridge thereon, it, as a condition of such contract, shall provide therein that the contractor shall place warning signs and devices which are in conformity with chapter 39 -13 of the North Dakota Century Code. When a highway is so marked, the traveler shall proceed only with great care and diligence, but nothing contained in this section makes any county liable for the failure of any contractor to erect such warning signs.<sup>1</sup>

#### B. Warning Sign Placement Duty

Whenever a county shall construct, improve, or repair any road, culvert, or bridge, or shall gravel any road, and such work renders travel on such road, culvert, or bridge unsafe or dangerous, the board of county commissioners of any such county, or the director or any foreman or other person in charge of such work, shall place such warning signs.

#### C. Penalty for Failure to Erect Warning Signs

Any person in charge of any work or repairs on any public road, culvert, or bridge who fails or neglects to erect and maintain suitable warning signs is guilty of a class B misdemeanor.<sup>2</sup>

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<sup>1</sup> N.D.C.C. § 24-03-09. Warning signs of road construction.

<sup>2</sup> N.D.C.C. § 24-03-11. Penalty for failure to erect warning signs.

## 2. Railroad Crossings

### A. Standard Railroad Crossing Warning Systems Advance Warning Signs – Exceptions

The sole signing duty of the county road authority at public grade crossings (railroad crossings) in the state is the erection and maintenance of advance warning signs in accordance with the federal manual on Uniform Traffic Control Devices, which North Dakota has adopted in whole. The road authorities have a reasonable length of time, not exceeding two (2) years, in which to fully implement this requirement.<sup>3</sup>

### **Cross-Reference: See Chapter 13, Section 1 – Limitations of Billboards and Other Advertising Signs Within 1,000 Feet of Grade Crossings**

### B. Stop Signs May Be Required

At each grade crossing where, because of the dangers attendant upon its use, the reasonable protection to life and property makes it necessary for all persons approaching the grade crossing to stop before crossing the railroad tracks thereat, stop signs shall be installed. The department, after performing an engineering study of the crossing, may designate any crossing requiring such additional protection as a stop crossing, and shall notify the road authority with jurisdiction over the roadway of such designation and of the location where the stop sign is to be installed. Within thirty (30) days after such notification, the road authority shall erect uniform stop signs on separate posts at the designated location on each side of said crossing.<sup>4</sup>

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<sup>3</sup> N.D.C.C. § 24-09-04. Advanced warning signs – Exceptions.

<sup>4</sup> N.D.C.C. § 24-09-05. Stop signs may be required.

C. Additional Safeguards at Crossings May be Required

The commission, upon written application made to it by the director, the board of county commissioners of any county, the board of supervisors of any township, any municipality, the railroad company, or upon its own motion, shall investigate and determine whether any railroad grade crossing over any state, county, township, or municipal highway in the state is dangerous to life and property and needs protection further than that set out in this chapter, and may order the same protected in any manner it may find reasonable and proper, including a requirement that the railroad company separate the grades.<sup>5</sup>

D. Department of Transportation to Apportion Cost - Exception

In order to promote public safety at intersections of railroad lines and all classes of highways and in the event that the commission orders that any grade crossing must be protected by automatic grade crossing protection devices, the commission shall in its order apportion the cost thereof between the railroad interested, the political subdivision having jurisdiction of the highway involved, and the state of North Dakota. Such cost must be apportioned to such parties or to any one or more of such parties on the basis of the benefit derived respectively by highway users and the railroad from the installation of such crossing protection device. The cost attributable to the benefit of the highway users must be apportioned to the state of North Dakota or to the political subdivision having jurisdiction of the highway involved or to both of such parties.

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<sup>5</sup> N.D.C.C. § 24-09-08. Additional safeguards at crossings may be required.

The cost apportioned to the state of North Dakota must be paid out of the highway fund in the state treasury, provided that not more than one hundred thousand dollars (\$100,000.00) may be expended for this purpose in any one biennium.<sup>6</sup>

E. Changing or Closing Railroad Crossing

It is in the interest of public safety to eliminate unnecessary railroad grade crossings whenever reasonable access can be safely provided at another crossing. Whenever it is desired, either by the public officials having the necessary authority or by the railway company operating the railroad, to establish, vacate, or relocate any crossing of a public highway and a railroad, or to separate grades, and an agreement cannot be reached between the public official and the railway company, either as to the necessity for establishing, vacating, or relocating a crossing or for separating grades, as to place, manner of construction, or a reasonable division of the expense, either party may file a petition with the commission, setting forth the facts and submitting the matter to it for determination.

The commission, after giving notice as it shall deem reasonable, shall conduct a hearing and shall issue its order determining whether there should be an establishment, vacation, or relocation of the crossing in question, or a separation of grades, and dividing the expense of the establishment, relocation, or separation of grades.

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<sup>6</sup> N.D.C.C. § 24-09-08.1. Department of transportation to apportion cost – Exception.

Irrespective of the establishment, relocation, or the consideration of further reasonable protection of a crossing, if the commission finds any railroad crossing to be unnecessary or unsafe, it shall order the crossing closed after reasonable notice and hearing. Whenever a final order is entered vacating or closing a crossing, it must be vacated or closed at the railroad company's expense.<sup>7</sup>

3. Cattle Guard Warning Signs

Cattle Guard warning signs may be required by the board of county commissioners of the county in which the cattle guard is located.

4. Erection and Maintenance of Guardrails

The director has the authority to erect and maintain guardrails, stretch wires, and other devices, on all highways under his jurisdiction, in the interest of public safety.<sup>8</sup>

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<sup>7</sup> N.D.C.C. § 24-09-10. Changing or closing railroad crossing – Power of public service commission – Hearing.

<sup>8</sup> N.D.C.C. § 24-01-16. Erection and maintenance of guardrails.

## CHAPTER 12 - PUBLIC UTILITIES

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## **PUBLIC UTILITIES**

### 1. Use of Right of Way for Utilities Subject to Regulations by Department

Electric transmission, telephone or telegraph lines, pole lines, railways, ditches, sewers, water, heat, or pipelines, gas mains, flumes, or other structures outside of the limits of any municipality which under the laws of this state, may be constructed, placed, or maintained across or along any highway which is a part of the state highway system, by any person, persons, corporation, limited liability company, or subdivision of the state, may be so maintained or constructed only in accordance with such regulations as may be prescribed by the department, which has power to prescribe and enforce reasonable rules and regulations with reference to the placing and maintaining along, across, or on any such state highway any of the utilities hereinbefore set forth. Nothing herein restricts the action of public authorities in extraordinary emergencies.<sup>1</sup>

### 2. Right of Way for Utilities

The director may grant to any person, who is a resident of this state, or to any corporation organized under the law of this state, or licensed to do business within this state, the right of way for the erection of a telephone line or electric line over or upon any state highway or structure constituting part of such highway or to lay pipes, conduits, or tunnels in, through, or over any such state highway or structure, or to erect, construct, and maintain any bridge, conduit, or other

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<sup>1</sup> N.D.C.C. § 24-01-39. Use of right of way for utilities subject to regulations by department.



crossing in, under, or over such state highway or structure and in accordance with the rules and regulations therefor.<sup>2</sup>

3. Construction of Utility Facility

No person, firm, or association may construct any electrical supply or communication line, gas, oil, or water, or other pipeline parallel to and within seventy-five (75) feet of the center line of any county highway right of way without first obtaining the consent of the board of county commissioners.<sup>3</sup>

4. Utility Facility - Removal

Any utility or transmission line hereinafter constructed contrary to the above provisions (sections 12-2 and 12-3) must be removed at the expense of the utility, when such removal is required for purposes of highway expansion.<sup>4</sup>

5. Utility Facility - Right of Way For Relocation

Whenever highway improvements require the relocation of utility facilities, and it is deemed to be in the best interest of the state, the director or the board of county commissioners may acquire such right of way as may be required for such relocation, in the manner they are authorized by law to acquire highway right of way.<sup>5</sup>

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<sup>2</sup> N.D.C.C. § 24-01-40. Right of way for utilities – Granted by director.

<sup>3</sup> N.D.C.C. § 24-01-42. Construction of utility facility – Limitation.

<sup>4</sup> N.D.C.C. § 24-01-43. Utility facility – Removal.

<sup>5</sup> N.D.C.C. § 24-01-44. Utility facility – Right of way for relocation.

## **CHAPTER 13 – BILLBOARDS AND ADVERTISING**

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## **ADVERTISING ALONG HIGHWAYS – REGULATIONS AND MAINTAINENCE**

### 1. Limitations of Billboards And Other Advertising Signs Within 1,000 Feet of Grade Crossings

No person, firm, corporation, or limited liability company may place, put, or maintain any sign, billboard, or advertisement within the limits of a public highway, or in any manner paint, print, place, put, or affix, or cause to be painted, printed, placed, or affixed, any advertisement on or to any stone, tree, fence, stump, pole, mileboard, milestone, danger sign, danger signal, guide sign, guidepost, billboard, building, or other object within the limits of a public highway, or place, put or maintain any sign or billboard upon private property within one thousand (1,000) feet of any highway grade crossing in such place or manner as to obstruct or interfere with a free and clear view of such crossing from any intersecting highway or railroad. Any advertisement in or upon a public highway or private property which, in the judgment of the commissioner, may be deemed to be a hazard to traffic, or in the future may tend to create a hazard to traffic, may be taken down, removed, or destroyed by direction or authority of the board of county commissioners in the case of the county road system.<sup>1</sup>

### 2. Limitations of Outdoor Advertising Within 660 Feet of Right of Way

No sign may be erected or maintained within six hundred sixty (660) feet from the nearest edge of the right of way and visible from the main traveled way

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<sup>1</sup> N.D.C.C. § 24-01-12. Regulation of advertising signs on highways.

of any highway that is a part of the state highway system in this state except the following:

- A. Official signs and notices and directional signs and notices, including signs and notices pertaining to natural wonders, scenic and historic attractions, and outdoor recreational areas subject to the national standards to be promulgated by the secretary of transportation.
- B. Signs advertising the sale or lease of property upon which they are located.
- C. Signs specifically advertising activities conducted, services rendered, goods sold, stored, produced, or mined, or the name of the enterprise that is located on property used for the purpose advertised or on property contiguous to the advertised activity which is under the same ownership, lease, rent, or control as the property with the advertised activity.
- D. Signs in unzoned commercial or industrial area.
- E. Signs relocated by reason of the construction or reconstruction of the state highway system.
- F. Official highway signs within interstate rights of way giving specific information for the traveling public.
- G. Signs calling attention to the location of buried utility lines.<sup>2</sup>

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<sup>2</sup> N.D.C.C. § 24-17-03. Outdoor advertising distance limitations.

3. Limitations of Outdoor Advertising Beyond 660 Feet From Right of Way

No sign may be erected or maintained beyond six hundred sixty (660) feet from the nearest edge of the right of way, located outside of urban areas, visible from the main traveled way of the highway system, and erected with the purpose of their message being read from such main traveled way except the following:

- A. Directional and official signs and notices, which signs and notices shall include, but not be limited to, signs and notices pertaining to natural wonders, scenic, and historical attractions which are required or authorized by law.
- B. Signs, displays, and devices advertising the sale or lease of property upon which they are located.
- C. Signs, displays, and devices advertising activities conducted on the property on which they are located.<sup>3</sup>

4. Compensation for Removal of Signs

No county or political subdivision may remove or cause to be removed any advertising structures, except such structures that encroach upon the right of way, without paying compensation.<sup>4</sup>

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"Erect" means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish. N.D.C.C. § 24-17-02(2).

"Maintain" means to exist. N.D.C.C. § 24-17-02(3).

"Outdoor advertising" means a sign, display, or device of any kind or character including statuary, erected or maintained for outdoor advertising purposes, upon which any poster, bill, printing, painting, or other advertisement of any kind whatsoever may be placed for advertising purposes and shall include but not be limited to any card, cloth, paper, metal, painted, or wooden sign of any character placed for outdoor advertising purposes, on or affixed to the ground or any tree, wall, bush, rock, fence, building, structure, or thing, either privately or publicly owned. The terms "sign, display, or device" comprehend all forms of outdoor advertising and the use of one such term in this chapter includes all forms of outdoor advertising. N.D.C.C. § 24-17-02(4).

<sup>3</sup> N.D.C.C. § 24-17-03.1. Outdoor advertising beyond distance limitations.

<sup>4</sup> N.D.C.C. § 24-17-05. Compensation for removal of signs.

5. Prohibition on Obstructing View of Legally Placed Signs

Neither the director nor any other agency nor political subdivision of this state may, by plantings, obstruct the view or in any other way interfere with the effectiveness of any sign legally in place.<sup>5</sup>

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<sup>5</sup> N.D.C.C. § 24-17-12. Enforcement.

**CHAPTER 14 –**  
**NOXIOUS WEEDS AND OTHER HIGHWAY MAINTAINENCE**

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**NOXIOUS WEED CONTROL, HAY, NO-MOW AREAS,  
AND OTHER HIGHWAY MAINTAINENCE**

1. Noxious Weeds

It is the duty of landowners or operators with land adjoining regularly traveled county highways, as designated by the board of county commissioners, to cut all weeds and grasses along the regularly traveled highways adjoining their lands, including weeds and grasses growing within the public right of way bordering the highways and their lands. The cutting shall be completed not later than September fifteenth (15<sup>th</sup>) or October first (1<sup>st</sup>), as prescribed by the board of county commissioners.<sup>1</sup>

The board of county commissioners of each county shall prescribe the time for cutting of the weeds and grasses, prescribe the height of stubble to be left and the minimum width of the cuts, designate the county highways along which weeds and grasses shall be cut, and request the board of township supervisors to designate township roads along which weeds and grasses shall be cut. The board of township supervisors shall make the designation, and the board of county commissioners shall publish notice of the designated highways, the time for cutting, and the height of stubble to be left and the minimum width of cut in the official county newspaper at least twice, and the last publication must appear not less than two (2) weeks prior to the deadline date. If no official newspaper is published in the county, written notice must be given by posting, in

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<sup>1</sup> N.D.C.C. § 63-05-01. Landowners or operators along county and township highways to cut weeds and grasses.



the same manner as election notices are posted. Expenses incurred in publishing the notice must be paid by the board of county commissioners.<sup>2</sup>

A. Failure to Cut Weeds and Grasses

If the landowner or operator fails to cut the weeds and grasses along the designated highways or roads, the board of county commissioners may cause the weeds and grasses to be cut and the actual expense of cutting shall be certified to the county auditor, and all of the expenses shall be charged against the land of the landowner and shall become a part of the taxes to be levied against the land for the ensuing year and shall be collected in the same manner as other real estate taxes are collected, and placed to the credit of the respective subdivisions entitled thereto.<sup>3</sup>

B. County Weed Board to Control or Eradicate Noxious Weeds and Pests Along County Highways

The county weed board shall eradicate or control noxious weeds or pests along county highways within the county.<sup>4</sup>

2. Publicly Owned Land - Weed and Pest Control

The commissioner shall attempt to arrange a satisfactory noxious weed and pest eradication or control program with all state and federal agencies owning, controlling, or having jurisdiction over land within the state. Weed control

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<sup>2</sup> N.D.C.C. § 63-05-02. Designation of time for cutting – Notice.

<sup>3</sup> N.D.C.C. § 63-05-03. Failure to cut weeds and grasses – Expenses levied as taxes against land.

<sup>4</sup> N.D.C.C. § 63-01.1-09. County weed board to control or eradicate noxious weeds and pests along county and township highways.

officers shall attempt to arrange a satisfactory noxious weed or, if authorized, pest eradication or control program with cities, park boards, cemeteries, school boards, counties, and other local entities owning or controlling public land within the control authority. State agencies controlling or having jurisdiction over lands within the state shall provide for eradication or control of noxious weeds and pests on such lands. Upon failure of a state agency to adequately control noxious weeds or, if authorized, pests on land under its control, the county weed board for the county in which all or a portion of the land is located, upon approval of the commissioner, may enter upon the land to control the noxious weeds and, if authorized, pests. The state agency shall reimburse the county weed board for expenses incurred in the control of noxious weeds or, if authorized, pests within thirty (30) days after the agency receives the bill.

A federal agency shall develop a management program for controlling noxious weeds or, if authorized, pests on land the agency controls or over which the agency has jurisdiction. If a federal agency does not control or set up a management program to the satisfaction of the weed control authority, the weed control office shall notify the agency. The federal agency shall provide a report to the commissioner and the county weed authorities describing the methods used by the federal agency and showing cause why the federal agency is not controlling the noxious weeds or, if authorized, pests. The commissioner may specify the forms on which the federal agency report must be submitted.

Upon being notified by a county of the federal agency's failure to control noxious weeds or, if authorized, pests, the commissioner may hold a public hearing under such conditions and terms as the commissioner determines advisable, to determine the reason for the failure or refusal.<sup>5</sup>

3. Overseer of Highways to Fill Wells on State Land

The overseer of highways shall cause to be filled or covered abandoned or disused wells, shafts, and other excavations situated on any United States lands, state lands, or common school lands within his district. The overseer shall receive such compensation, payable out of the road and bridge fund of the township as the board of township supervisors, on presentation of his account therefor verified by oath, shall deem reasonable.<sup>6</sup>

Any person owning or occupying lands in this state upon which is located any abandoned or disused well or shaft shall cause such well or shaft to be filled with earth or stones so as to obviate any possible menace to the safety of persons or property. Any person violating the provisions of this section is guilty of a class B misdemeanor.<sup>7</sup>

If any individual, firm, corporation, or limited liability company owning or occupying lands neglects or refuses to comply, the overseer of highways of the district in which the land is located shall serve a written notice on such owner or occupant, and if the owner or occupant neglects or refuses to comply with the provisions of such section, the overseer, within thirty (30) days after having given

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<sup>5</sup> N.D.C.C. § 63-01.1-13. Publicly owned land – Weed and pest control.

<sup>6</sup> N.D.C.C. § 23-13-07. Overseer of highways to fill wells on state and school lands – Compensation.

<sup>7</sup> N.D.C.C. § 23-13-06. Owner of land to fill abandoned or disused wells, shafts, and other excavations.

such notice, shall cause such wells or mines to be filled or covered. The owner of such land is liable to the township for the cost of such work and the material furnished and the necessary expense incurred in collecting the same.<sup>8</sup>

4. No-Mow Areas

A. No-Mow Agreements

No state agency or political subdivision of the state may enter into any agreement to increase the no-mow acres contained in the rights of way of the state highway system.<sup>9</sup>

B. Haying of No-Mow or Managed-Mow Areas

Notwithstanding any other provision of law, a person owning land adjacent to an area within the right of way of a highway which is designated as a no-mow or managed-mow area may hay the no-mow or managed-mow area after July fifteenth (15<sup>th</sup>) without any payment or penalty.<sup>10</sup>

5. Removal of Highway Obstructions

The board of county commissioners may develop and implement rules governing the disposal of any stored hay or other obstruction placed on the right of way on a county highway.<sup>11</sup>

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<sup>8</sup> N.D.C.C. § 23-13-08. Failure of owner to protect mine or well – Duty of overseer.

<sup>9</sup> N.D.C.C. § 24-01-12.3. Entry into no-mow agreements.

<sup>10</sup> N.D.C.C. § 24-01-51. Haying of no-mow areas (Effective January 1, 2006)

<sup>11</sup> N.D.C.C. § 24-05-24. County and township right of way – Removal of obstructions.