

## CHAPTER 24-05 COUNTY ROADS

### **24-05-01. County road system and construction plan - County road and bridge tax levy - Allocation and use of funds.**

The board of county commissioners of any county shall periodically prepare a proposed county construction program of roads on the county road system, setting forth a general description of the roads to be constructed, the location of bridges constituting a part of the program, the approximate total mileage, and the priority of construction.

1. The board of county commissioners may levy a tax not exceeding a tax rate of ten mills per dollar of the taxable valuation of property in the county for the improvement of county roads and bridges.
2. When authorized by a majority of the qualified electors voting upon the question at a regular or special election in the county, the county commissioners may levy and collect an additional tax for county road and bridge purposes not exceeding a tax rate of ten mills per dollar of the taxable valuation of property in the county. The levy pursuant to such an election may be discontinued by the board of county commissioners or, upon petition of five percent 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 to discontinue the levy of a majority of the qualified electors voting, such levy must be discontinued.

Of the proceeds of the tax collected under levy authority under this subsection on account of property situated within any city, by the county treasurer of the county in which the city is located, twenty percent must be turned over by the treasurer to the auditor of the city, in the manner provided in section 11-13-06 to be expended under the direction of the governing body of the city in the improvement of its streets and highways.

3. When a county requires levy authority for county road and bridge purposes in excess of the limitations under subsections 1 and 2 and the county is authorized by a majority of the qualified electors voting upon the question at a regular or special election in the county, the board of county commissioners may levy and collect an additional tax not exceeding a tax rate of ten mills per dollar of the taxable valuation of property in the county. The levy pursuant to an election under this subsection may be discontinued by the board of county commissioners or, upon petition of five percent 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 to discontinue the levy of a majority of the qualified electors voting, such levy must be discontinued.
4. Additional levy authority authorized by electors of a county under this section or section 57-15-06.3 before January 1, 2015, remains in effect under the provisions of law at the time the levy was authorized for the time period authorized by the electors but not exceeding ten taxable years, unless discontinued earlier by the board of county commissioners or the electors of the county. After January 1, 2015, approval or reauthorization by electors of increased levy authority under this section may not be effective for more than ten taxable years.
5. The county treasurer shall retain and deposit in a fund known as the county road and bridge fund the county share of the tax under this section and any proceeds of this tax totaling less than twenty dollars in a taxable year which is collected on account of property situated within any city. Proceeds of the county share of the tax under this section must be expended in the improvement of highways as provided in this chapter under the direction of the board of county commissioners. The provisions of this section in regard to allocation apply to the proceeds of any tax originally levied for other purposes if appropriated or transferred to the county road and bridge fund or for expenditure for road and bridge purposes.

Any unobligated balance in the farm to market and federal aid roads fund and county road fund on or after August 1, 2015, must be transferred to the county road and bridge fund, and the farm to market and federal aid roads fund and county road fund must be closed out.

**24-05-02. Fund - How expended.**

The county road and bridge fund created by section 24-05-01 may be expended only for road machinery and for grading, ditching, and surfacing, and implementation of the proposed county construction program of roads on the county road system.

**24-05-03. Payments made for completed work only.**

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 [1.61 kilometers] by mile [1.61 kilometers] or in parts of miles [kilometers] 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 the county surveyor to compute and estimate the amount of completed work and to certify the same to the county auditor at the end of each month, and all the work contracted for must be completed prior to the first day of November next following. The provisions of this section and the orders and directions of the board made in pursuance thereof must constitute a part of the provisions and conditions of every such contract, whether expressed therein or not.

**24-05-04. Contracts to be advertised - Road construction - Requirements for rental contracts.**

1. If a contract for a highway improvement exceeds one hundred thousand dollars, the board of county commissioners shall seek bids by publishing an advertisement at least once each week for two consecutive weeks in the official newspaper of the county and in other newspapers as the board deems advisable. The first publication must be made at least fifteen days before the day set for the opening of the bids. For any contract for a highway improvement that exceeds fifty thousand dollars but does not exceed one hundred thousand dollars, the county, when possible, shall seek quotes from at least two contractors.
2. Except as provided in section 54-44.4-13, a purchase of county road machinery and any rental contract or agreement for the use of road machinery and other articles, except necessary repairs for road machinery, which exceeds the sum of one hundred thousand dollars must be advertised by publishing an advertisement for bids at least once each week for two consecutive weeks in the official newspaper of the county and in any other newspapers as the board deems advisable. The first publication must be made at least fifteen days before the day set for the opening of the bids. The board of county commissioners may not enter a rental contract or agreement for the use of road machinery and other articles for a longer period than twelve months from the date of the rental contract or agree to pay rental for the use of road machinery and other articles which would result in the lessor receiving rental at a rate in excess of twenty percent per year of the cash sale price of the road machinery or other articles. The cash sale price of the road machinery and other articles must be clearly set forth in any rental contract for road machinery and other articles and failure to include this data in any rental contract for the use of road machinery and other articles renders the rental contract void. A payment made under a void rental contract is recoverable from the county commissioners making the contract, jointly and severally.
3. Notwithstanding the provisions of this section relating to the duration of rental contracts, the board of county commissioners may enter lease-purchase agreements for the road machinery and articles covered by this section if those agreements provide for the complete performance and full payment of the purchase price of the

machinery or articles within seven years from the date of the execution of the lease-purchase agreement according to section 44-08-01.1.

4. Notwithstanding the provisions of this section relating to bidding of road machinery, the board of county commissioners or its designee may purchase used road machinery at public auction or as surplus property from the office of management and budget.
5. Bids received under this section must be opened and awarded under the procedure provided in section 48-01.2-07.

**24-05-04.1. County not to lease its equipment for less than cost of operation.**

No county, city, or township may lease, rent, or enter into a contract or agreement for the use of any road construction or maintenance equipment belonging to any county, city, or township on other than county, city, or township roads or projects 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.

**24-05-04.2. Contracts to be advertised - Road construction.**

Repealed by S.L. 2017, ch. 204, § 3.

**24-05-05. County auditor to issue warrants.**

Upon the filing of the surveyor's certificate as provided in section 24-05-03, the county auditor shall issue warrants accordingly on the county treasurer in favor of the contractor, payable out of the county road and bridge fund appropriated thereto, and the same must be paid by the treasurer.

**24-05-06. Compensation of county surveyor.**

Repealed by S.L. 1953, ch. 115, § 2.

**24-05-07. County may deviate from section lines - Condemn or purchase right of way.**

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

**24-05-08. Highways on state line.**

Whenever the board of county commissioners of any county bordered by a state line deems it for the best interests of such county to open and improve a highway on said 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 thereon. 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 said county.

**24-05-09. Purchase or condemnation of right of way.**

The board of county commissioners of any county of the state, by resolution or order, as part of the cost of constructing, reconstructing, widening, altering, changing, locating, relocating, aligning, realigning, or maintaining, any highway in said county, may purchase, acquire, take over, or, subject to section 32-15-01, condemn, under the right and power of eminent domain, for such county, 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 in said county, and by the same means it may acquire said lands notwithstanding the fact that the title thereto is vested in the state or any of its subdivisions.

Whenever the board of county commissioners determines, by resolution or order, that the public necessity requires the taking of land as aforesaid, it shall cause said lands to be surveyed and described and a plat thereof prepared and recorded in the office of the recorder of the county wherein the same is located. 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 forthwith shall pay to the owner of said premises the amount of such damages.

**24-05-10. Damages - How ascertained - Special board.**

If the board of county commissioners is unable to purchase the lands required for the purposes mentioned in section 24-05-09 at a price that the board determines reasonable, the board by order or resolution shall declare the necessity for the taking of the lands. The board of county commissioners shall appoint a special board consisting of the county auditor or the county official responsible for the duties of the auditor and two other officials of the county to fix the damages for the taking.

**24-05-11. Hearing before special board - Notice.**

Within fifteen days after the making of an order or the passing of a resolution as provided in section 24-05-10, the special board therein specified shall fix a time and place not later than thirty days from and after the passage of said order or resolution for hearing all persons or parties interested or aggrieved by such taking, and it shall cause notice of said hearing to be served upon all parties interested either by registered or certified mail or by publication thereof, once each week for two successive weeks prior to the date of hearing, stating the time and place where the hearing must be held, together with a description of the property to be appraised. Such published notice must be in lieu of all other notices, and if notice is given by registered or certified mail, the same must be served not less than ten days prior to the date of hearing. Personal service by copy of said notice may be made in lieu of publication or service by mail when made at least ten days prior to the date of hearing, such personal service to be made as a summons in district court is served. At the time and place fixed for said hearing, the special board so organized shall proceed to fix the damages to be paid by the county and any person interested may be heard.

**24-05-12. Payment or deposit of damages - Receipt.**

When damages have been awarded by the special board, the board of county commissioners shall pay or cause to be paid to the clerk of the district court, for the benefit of the persons interested, the sum awarded by said board, said amount to be paid in cash. Every owner entitled to such an award, before receiving the same, shall execute a receipt, to be received by the clerk of said district court, containing a description of the premises covered by said 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 days after being notified of the amount awarded to the owner, the clerk of the court to whom said amount has been paid shall execute a receipt reciting a deposit of such award and a description of the premises covered thereby.

**24-05-13. Receipt for payment to be recorded if no appeal taken.**

If no appeal is taken from an award made as provided in section 24-05-11, then at the expiration of thirty days from the date of the deposit of the amount awarded, the receipt of the owner of said premises, or of the clerk of the district court, must be recorded in the office of the recorder of the county in which said real estate is situated, and the title of the land so taken thereupon must be vested in the county so condemning the same.

**24-05-14. Appeal - How taken - Jury trial.**

Any party aggrieved by the award made as provided in section 24-05-11 shall have the remedy now provided by law for an appeal from any determination of the board of county commissioners in the taking of lands by a county for highway purposes. Appeal from such

award must be taken without bond and by the service of a notice of appeal on the board of county commissioners in the manner in which a summons in a civil action is served. The issues involved in the appeal so taken 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 said appeal.

**24-05-15. Appeal does not stay proceedings.**

Notwithstanding the taking of an appeal as provided for in section 24-05-14, 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.

**24-05-16. County road system - Designation.**

The county road system must be the roads designated and selected by the boards of county commissioners. The director 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 director 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 the statewide network of county roads.

**24-05-17. 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.

**24-05-18. Counties may cooperate with department - Procedure.**

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 department, such board shall make written application to the director for the improvement and construction thereof. If the director approves such application, the director, in writing, shall notify the said board of such approval, and at the same time shall submit to the said 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. Whenever the board of county commissioners aforesaid shall elect to proceed with such improvement, the said board shall adopt a resolution signifying such election and in such resolution must set aside out of such funds as are or may become available 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.

**24-05-19. County bound to provide its share of cost.**

The election to proceed with an improvement as provided in section 24-05-18 by the board of county commissioners constitutes an agreement and contract with the 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 year.

**24-05-20. County and township road grades and ditches to be back sloped - Planting of grass - Plant pest control.**

All county and township 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. 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.

1. The governing body of a township or 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 days prior to treatment, the governing body of the township or 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 township or 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.
2. 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, as provided for in section 57-15-28, 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. The electors of an organized township may appropriate funds as provided for in section 57-15-19 for controlling grasshoppers and other plant pests in rights of way controlled by the township.

**24-05-21. Roads and approaches intersecting with county or township roads - Requirement.**

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

**24-05-22. Graded inslope requirement - Exceptions.**

The requirement of section 24-05-21 as to a graded inslope of all roads and approaches does not apply:

1. Where the governing body having authority over such roads and approaches exempts such roads and approaches from the requirement of section 24-05-21 due to factors causing an unduly prohibitive cost of compliance.
2. To roads and approaches of the state highway system which intersect county or township roads.
3. To roads and approaches which intersect county roads constructed in compliance with requirements of the federal-aid system.

**24-05-23. Encroachment upon county roads, ditches, approaches - Liability for damages.**

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 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.

**24-05-24. County and township road rights of way - Removal of obstructions.**

The governing body having authority over the right of way of a county or township road may develop and implement rules governing the disposal of any stored hay or other obstruction placed on the right of way.