

## CHAPTER 61

## (HB 199)

AN ACT relating to roads.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

Section 1. KRS 178.010 is amended to read as follows:

- (1) As used in this chapter, unless the context otherwise requires:
  - (a) "Construction" includes reconstruction and improvement;
  - (b) "County roads" are public roads which have been *formally* accepted by the fiscal court of the county as a part of the county road system~~[after July 1, 1914]~~, or private roads, streets, or highways which have been acquired by the county pursuant to ***subsection (3) of this section or*** KRS 178.405 to 178.425. "County roads" includes necessary bridges, culverts, sluices, drains, ditches, waterways, embankments or retaining walls; and
  - (c) "Hard surface road" means a road the surface of which is asphalt, brick, stone block, macadam, concrete, gravel or other material of equal merit.
- (2) Nothing in this chapter shall be construed to take from the jurisdiction or control of the legislative body of any incorporated city any road, bridge, landing or wharf, or any other thing exclusively under the jurisdiction or control of ~~the~~~~[such]~~ city.
- (3) Nothing in this chapter shall prevent any fiscal court from acquiring *unimproved* land by gift for public purposes. ***However, on and after the effective date of this Act, a fiscal court may only accept a private road, street, or highway by gift if the private road, street, or highway has been constructed to meet minimum construction standards established by the fiscal court.***
- (4) Nothing in this chapter, including the fact that a municipal street has not been accepted into the county road system, shall prevent any county from entering into an agreement, pursuant to the provisions of KRS 65.210 to 65.300, with any city located within the county to perform work upon or to provide personnel, materials or equipment for work to be performed upon any street located within the city. A county may pay one hundred percent (100%), or a lesser percentage, of all or any part of the cost of the joint undertaking, based upon the terms agreed to in the interlocal cooperative agreement required by this subsection.

Section 2. KRS 178.025 is amended to read as follows:

~~{(1)—}~~Any road, street, highway or parcel of ground dedicated and laid off as a public way and used without restrictions ***on a continuous basis*** by the general public for ***fifteen (15)***~~{five (5)}~~ consecutive years, shall conclusively be presumed to be a public road.

~~{(2)—}~~In the absence of any record, the width of a public road right of way shall be presumed to extend to and include that area lying outside the shoulders and ditch lines and within any landmarks such as fences, fence posts, corner stones or other similar monuments indicating the boundary line.

~~{(3)—}~~In the absence of both record or landmark, the right of way of a public road shall be deemed to extend to and include the shoulders and ditch lines adjacent to said road, and to the top of cuts or toe of fills where such exist.

Section 3. KRS 178.040 is amended to read as follows:

- (1) In order to change the width of a county road, the fiscal court, ***an urban-county government***, or a consolidated local government shall make a special order for a different width. The order shall be recorded in the office of the county clerk. In order to change the width of the right-of-way of a portion of a county through road system the fiscal court of a county containing a city of the first class or a consolidated local government may make a special order for a different width. The order shall be recorded in the office of the county road engineer.
- (2) All county roads ***and all public roads that are being adopted into a county road system after the effective date of this Act*** ~~[hereafter established]~~ shall occupy a ***minimum*** right-of-way ***width of*** ~~[not less than]~~ thirty (30) feet, ***fifteen (15) feet in each direction as measured from the centerline of the road, unless the fiscal court finds that a thirty (30) foot minimum cannot be met due to the topography of the road or other extraordinary circumstances. All county roads and all public roads that were in existence prior to the effective date of this Act shall not be required to occupy a minimum right-of-way width of thirty (30) feet under this subsection.*** A ~~[wide, but the]~~ fiscal court, ***an urban-county government***, or a consolidated local government may order ***the minimum right-of-way*** ~~[it]~~ to be a greater width. All roads added to the county through road system in a county containing a city of the first class or a consolidated local government in accordance with KRS 178.333 shall occupy a right-of-way width as ordered by the fiscal court or the consolidated local government.
- (3) In acquiring a right-of-way for a county through road within any city, the fiscal court or the county court of a county containing a city of the first class or the consolidated local government may exercise any powers granted them by statute for the acquisition of property.

Section 4. KRS 178.070 is amended to read as follows:

The fiscal court may direct any county road to be discontinued. Notice must be published, according to the provisions of KRS 178.050, and in addition, notices must be placed at three (3) ***prominent and visible*** public places ***within one (1) mile*** ~~[in the vicinity]~~ of the road. After ~~[the]~~ posting ***the*** ~~[of]~~ notices ~~[as aforesaid]~~, the fiscal court shall appoint two (2) viewers who ***have no vested interest in the discontinuance of the road and who***, together with the county road engineer, shall view the road and report in writing at the hearing what inconvenience would result from the discontinuance. Upon ***presentation of the*** ~~[such]~~ report and other evidences, if any, ***at a public meeting of the fiscal court***, the court may discontinue the road.

Section 5. KRS 178.080 is amended to read as follows:

- (1) When any person desires the establishment or alteration of a public road, bridge or landing, he shall petition the fiscal court setting forth in his petition specifically the nature and location of the proposed work. The court shall thereupon appoint two (2) viewers who, together with the county road engineer, shall view the ground and report in writing the advantages and disadvantages which, in their opinion, will result to the individual and to the public from the proposed work and the grades and bearings of the proposed road, and other facts and circumstances that may enable the fiscal court to determine whether the work ought to be undertaken by the county.
- (2) If the petition is for the establishment or alteration of a public road leading from a main public road, the report shall set out whether such road should be established, stating specifically whether it would be necessary to take any burying ground, garden, yard, orchard, or any part thereof, or to injure or destroy any buildings and the probable cost of

the work, the names of the landowners whose property would have to be taken or injured, which of them would require compensation and the probable amount to which each would be entitled. They shall make careful examination of routes or locations other than that proposed or petitioned for, keeping in view the possible future development of the county and the accommodations of the general traveling public, and shall report *to the fiscal court at a public meeting* in favor of the one they prefer, giving reasons for the preference. A map giving the grades and bearings of the routes or locations shall be returned with the report.

- (3) If it appears to the fiscal court that the interests of the general public may be furthered thereby, the fiscal court shall personally examine the proposed work. If the court decides to undertake the proposed work the county judge/executive shall appoint a day for hearing the parties interested, and cause notices thereof to be given to all interested parties.
- (4) If the county judge/executive at any time has sufficient evidence before him to enable him to ascertain what would be a just compensation to the proprietors and tenants, and if the proprietors and tenants are willing to accept what the county judge/executive deems just, the county judge/executive, upon such acceptance being reduced to writing and signed by the proprietors and tenants, may determine to undertake the work, subject to the consent and approval of the fiscal court.

Section 6. KRS 178.100 is amended to read as follows:

From a decision of the fiscal court ordering a new road to be opened, or ordering an alteration or discontinuance of an existing road, or allowing gates to be erected across a road or abolishing existing gates, or a decision refusing any such order, the party aggrieved may bring an action in the Circuit Court *of the county where the road is located* to contest the decision of the fiscal court.

Section 7. KRS 178.115 is amended to read as follows:

- (1) Whenever the fiscal court of any county deems it to be in the best interest of ~~the~~<sup>such</sup> county to open, establish or alter the location of any public road, street, alley, ditch, culvert, bridge or similar public way or structure in ~~the~~<sup>such</sup> county, ~~the~~<sup>said</sup> fiscal court shall adopt a resolution setting forth the necessity for ~~the~~<sup>such</sup> public road or structure, and thereupon ~~the~~<sup>such</sup> public road or structure shall be deemed opened, established or altered, as the case may be, on behalf of the county. A certified copy of ~~the~~<sup>said</sup> resolution ~~or order~~ shall be posted at the courthouse door of the county within five (5) days after its adoption and a certified copy of ~~the~~<sup>said</sup> resolution shall be posted by the county road engineer of the county along or at the proposed road or structure within five (5) days after its adoption.
- (2) In all cases where ~~such~~ public roads or structures have been established, any person or persons aggrieved thereby may prosecute an appeal from ~~a~~<sup>such order or</sup> resolution of the fiscal court by filing a petition in equity in the Circuit Court of the county *where the road or structure is located* setting forth his grievance, to which petition shall be attached an attested or certified copy of ~~the~~<sup>such order or</sup> resolution. ~~The~~<sup>Such</sup> petition shall be filed within thirty-five (35) days from the date ~~the~~<sup>such order or</sup> resolution was entered. ~~An~~<sup>Such</sup> appeal shall be heard and decided by the court without the intervention of a jury. Any party so appealing shall execute and file a bond for costs at the time such appeal is taken. An appeal to the Court of Appeals may be taken in accordance with the Rules of Civil Procedure.

Section 8. KRS 178.117 is amended to read as follows:

- (1) Any person or corporation, public or private, or any group of such persons or corporations or both, residing in or owning property adjacent to any publicly dedicated road in unincorporated territory in *any*[a] county ~~and~~[containing a city of the first class or consolidated local government] desiring to make any improvements to the publicly dedicated road shall submit to the fiscal court, *the urban-county government*, or the consolidated local government for approval plans and specifications for its improvements at their own expense. Any[~~such~~] request for private improvement shall include all the information required by KRS 184.020 to accompany a request for the creation of a public road district pursuant to that section.
- (2) The sponsors of the private improvement of the publicly dedicated road shall present their request, together with the attached maps and estimates of cost, to the fiscal court, *the urban-county government*, or the consolidated local government, who shall turn over to the county engineer for his *or her* consideration the maps and estimates of cost. In considering whether to permit the requested improvement, the fiscal court, *the urban-county government*, or the consolidated local government, and the county engineer shall follow the same procedures provided for in KRS 184.040 and the same appellate rights provided for in these sections are available to the petitioners. When the county engineer receives from the fiscal court, *the urban-county government*, or the consolidated local government an application for approval of plans or specifications for the private improvement of publicly dedicated roads by some individual or corporation, or a combination thereof, the county engineer shall be authorized and empowered to examine, inspect, and investigate, as seems to be advisable, the sufficiency of the improvements which the application seeks to serve the purposes intended, and to establish and make reasonable charges for *his or her*[~~such~~] services on the basis of a schedule adjusted according to the services required to *conduct the*[~~make such~~] investigation or on any other reasonable method.
- (3) When it appears to the county engineer that the completion of the improvement by or on behalf of any[~~such~~] individual or corporation requires inspection and supervision in order to assure the protection of the public safety and the proper subsequent completion of *the*[~~such~~] work for the purposes intended, the county engineer shall include[~~such~~] findings in his *or her* recommendation to the fiscal court, *the urban-county government*, or the consolidated local government approving, modifying, or disapproving the particular plans and projects, and shall charge *the*[~~such~~] person or corporation for *the*[~~such~~] inspection and supervision on the basis of the actual cost of inspection plus a reasonable additional cost of supervision.

Section 9. KRS 178.405 is amended to read as follows:

When any private road, street, or highway[~~established prior to February 12, 1969,~~] in an unincorporated area in *any*[a] county[~~containing a city of the first class or a consolidated local government, which area is not within the jurisdictional boundaries of a city of the second through sixth classes of cities,~~] has been used by the general public openly, continuously, and notoriously for a period of at least fifteen (15) years, it shall be implied that such road, street, or highway may be dedicated to public use; Provided, that fifty-five percent (55%) of all property owners abutting the private road, street, or highway sign a petition stating that they are willing to dedicate the road, street, or highway to public use.

Section 10. KRS 178.415 is amended to read as follows:

When the fiscal court has made a determination in accordance with the provisions of KRS 178.410 that the road, street, or highway has been dedicated to public use, the county shall have a

fee simple title to the part of the road, street, or highway which the plat, filed in the office of the county clerk, indicates as being for street purposes. However, if the road, street, or highway is dedicated in accordance with the provisions of KRS 178.405, and a plat does not exist, then the fiscal court shall establish a ***thirty (30)***~~thirty (30)~~~~thirty (30)~~ foot minimum width as a condition precedent to dedication to public use, ***unless the fiscal court finds that a thirty (30) foot minimum cannot be met due to the topography of the road or other extraordinary circumstances.***

Section 11. The following KRS section is repealed:

178.155 Effect of lack of maintenance of road by county for fifteen years.

**Approved April 7, 2004**