Chapter 368

1957 REPLACEMENT PART

County Roads

GENERAL PROVISIONS

368.005 "County court" defined
368.010 "Improvement" and "public road" defined

COUNTY ROAD OFFICERS AND EMPLOYES; POWERS AND DUTIES

368.055 County engineer; employment; qualifications; removal; compensation; bond
368.060 County surveyor as county engineer
368.065 County engineer as roadmaster
368.070 Surveyor to keep county road records when acting as engineer and roadmaster
368.075 Furnishing engineer to counties by State Highway Commission
368.080 County roadmaster; employment; compensation; oath; bond; removal
368.085 Deputies and assistants of roadmaster
368.090 Providing equipment and material for roadmaster
368.095 General powers and duties of roadmaster
368.100 Securing road materials and constructing drains by roadmaster; interference with drains prohibited
368.105 Proceeding to recover for action of roadmaster
368.110 Roadmaster to discover seepage on county road from ditches; notice to ditch owner
368.115 Action by roadmaster when ditch owner fails to act
368.120 Expense of water removal; expense as lien on land
368.125 Paying roadmaster for water removal expenses
368.130 Foreclosure of water removal lien
368.135 Board of county road viewers; duties; vacancies
368.140 Qualification of county road viewers; administering oaths required by this chapter

POWERS AND DUTIES OF COUNTY COURT AS TO COUNTY ROADS

368.205 General authority of county courts over roads
368.210 Authority of county court over streets and alleys in unincorporated towns
368.215 Contract or day work for road projects
368.220 Specifications for road work contracted
368.225 Advertising for road work bids
368.230 Bids for road work; deposit by bidder
368.235 Bond of bidder for road work
368.240 Contracts for road work
368.245 Payments on road work contracts
368.250 Rejection of bids for and performance of road work
368.255 Material and labor for road work
368.260 Temporary railroad tracks on highway for transporting road material
368.265 Temporary closing of road
368.270 Removal of road barricade prohibited
368.275 Agreement with owner of land to be condemned
368.280 Entering upon land to be condemned within highway boundaries
368.285 Carrying condemnation to judgment
368.290 Acquisition of railroad right of way
368.295 Erection of gates and stock guards on roads
368.300 Expense of gates and stock guards
368.305 Improvement of dikes and levees used for road purposes

ESTABLISHING, ALTERING, VACATING AND LEGALIZING COUNTY ROADS

(General Provisions)

368.405 Proceedings to establish and alter roads
368.410 District attorney to advise on legality of proceedings
368.415 Required widths of county roads; acceptance and maintenance of roads as county roads notwithstanding actual or platted widths
368.420 Territorial roads as county roads
368.425 Streets and alleys in unincorporated towns as public highways

(Petition to Establish or Alter)

368.430 Petition to establish or alter roads; signatures
368.435 Contents of petition
368.440 Bond required of petitioners
368.445 Proof of notice to accompany petition; posting and mailing notice
368.450 Waiver of notice
368.455 Contents of notice
368.460 Court order upon presentation of petition
368.465 List of road petitioners to Multnomah County roadmaster

(Resolution to Establish or Alter)

368.470 Establishment and alteration of roads by resolution

(Road Viewers)

368.475 Locating roads by road viewers; deviation from petition or resolution
368.480 Procedure of road viewers
368.485 Report publicly read
368.490 Petitions for damages and remonstrances
368.495 Report adopted by court; court order
368.500 Report rejected by court; court order
368.505 Withdrawal from remonstrance or petition
368.510 Hearing on petition for damages
368.515 Allowing or rejecting petition for damages; when order final
368.520 Payment of damages
368.525 Appeal to circuit court; costs on appeal

(Survey)

368.530 Survey, monuments, records, field notes, plat and profile of proposed road

(Final Order)

368.535 Defects in final court order
368.540 Effect of order where existing road is relocated or altered

(Grants)
368.545 Grant and acceptance of road
368.550 Public ways dedicated in plats; acceptance by county
368.555 Right of way over United States public lands; acceptance by county
368.560 Former acceptances of rights of way ratified
(Vacation)
368.565 Vacation of road or decrease in width; petition or resolution
368.570 Hearing on petition; examination and report on road
368.575 Date for hearing on report; notice
368.580 Hearing on report; action taken thereon
(Legalization)
368.585 Resurvey, or legalizing, of roads; court order
368.590 Filing copy of field notes and plat; date for approval of survey
368.595 Notice of hearing; posting; form; proof
368.600 Hearing; declaration where no claim for damages; procedure where damages claimed
368.605 Final determination of court; evidentiary value of records
368.610 Expenses paid by county
(Miscellaneous Provisions)
368.615 Proceedings to change location of road on land of petitioner
368.620 Right of county in roads exempt from adverse possession; vacation of unopened or unused road

COUNTY ROAD FUNDS
368.705 General road fund; tax levy; use of fund
368.710 Apportionment of general road fund; road taxes to be apportionable
368.720 Using road funds outside of county
368.725 Use of moneys received under Federal Act by Lane County for road purposes

INTERGOVERNMENTAL COOPERATION
368.805 County cooperation with state and United States
368.810 Payments under cooperative agreement with Department of Agriculture
368.815 United States experimental roads
368.820 Repayment of advancement to counties from the State Highway Fund

MISCELLANEOUS PROVISIONS
368.905 "Owner" defined
368.910 Owner to repair sidewalks and curbs along road; county may repair if owner fails
368.915 Payment and reimbursement when county makes repairs
368.920 Expense of repairs as lien on abutting property
368.925 Delinquency in paying assessment for repairs; execution sale
368.930 Damage of road by escaping waters prohibited
368.935 Recovery of damages for injuries from defective highway or bridge

PENALTIES
368.990 Penalties

CROSS REFERENCES

Abandoned vehicles, disposition of, 483.382 to 483.394
Access, control of, to public highways, Ch. 374
Appropriation of county roads and highways by certain corporations, 772.065, 772.105, 772.560
Bridges, Chs. 381, 382
Cattle crossing under public highways, 374.270
Certain cities given control of certain roads and highways declared to be streets, 373.290 to 373.320
Condemnation for roads by counties, 281.310 to 281.380
Coniferous trees, transportation without bill of sale, 164.362 to 164.368
Connecting county road to state highway by road through city, 373.110
Construction of works across public highways:
Cooperative Telephone District works, 262.410(9)
Ditch, flume or pipe crossing county roads, 376.615
Drainage works (west of Cascades), 549.360
People's utility district works, 261.305(11)
County line roads, Ch. 369
County market roads, Ch. 369
County may use city street as bridge approach, 373.130
County road bonding Act, Ch. 370
County roads adopted as state highways, rights of way vested in state, 366.320
Designating location of telegraph and telephone lines and fixtures on county roads, 758.010, 758 020
Destruction of weeds along highways and county roads, 570.540
Destruction or removal of signs, barricades or warning devices, 164.871
Dragging heavy materials on roadbeds, 483.514
Inclusion of county roads in sidewalk improvement districts, 223.880
Intersection of throughways and county roads, 374.065
Joint county road building districts, 371.205 to 371.240
Leasing county roads as toll roads, 383.010
Logs and trees deposited on county roads, removal of, 98.650 to 98.654
Placing offensive refuse on road and near public highway prohibited, 449.105
Railroad crossings, Ch. 763
Removal of structures from public property upon expiration of grant or franchise, 221.470
Rights appurtenant to property abutting on Lane County roads, 374.420 to 374.430
Road districts and road assessment plans, Ch. 371
Selection of county roads for secondary state highway by highway commission, 366.290
Signs and markings for through highways, 483.204
Skid log roads on county roads, 376.145
Surrendering jurisdiction of county roads by county to cities, 373.270
Use of highways, restrictions, 483.502 to 483.544
Ways of necessity or roads of public easement, 376.105 to 376.140
Weights and sizes of vehicles, restrictions on, 483.502 to 483.544

368.055
Inspections and reports by county engineer on bridges and culverts, 369.260

368.060

County surveyors, Ch. 209

368.095

"Improvement" and "public road" defined, 368.010

368.100

"Improvement" and "public road" defined, 368.010

368.110

Damage or interference with county roads by escaping waters prohibited, 368.930

368.205

Authority of county court to improve highways, 280.010
County roads and roads to public cemeteries, power of county court to establish, vacate, alter or maintain, 203.120(3) and (13)
Ferry operation, 384.205, 384.215, 384.305
Improvement of roads and streets in unincorporated areas, 371.605 to 371.660
Paving roads in cities under 2,500 population by county court, 373.120
Truck routes, designation of county roads as, 483.542, 483.544

368.215

Convict labor, use on public highways, 169.120, 169.170, 421.415
Purchasing and bids and bidding in general, 279.008 to 279.054

368.220

Bids and contracts let to be based on specifications, 375.030
Bids and contracts on certain county bridges, 382.210 to 382.240
Bids involving patented materials, 375.060
"Improvement" defined, 368.010
Specifications for interstate bridges, 381.260

368.225

"Improvement" defined, 368.010

368.230

Bids involving patented materials, 375.080, 375.090

368.235

Bonds for bridge work, 381.280
Contractors' bonds and actions on bonds, 279.502 to 279.544, 376.340

368.240

Contracts for clearing right of way through forest land, 477.248

368.250

"Improvement" defined, 368.010

368.275

Condemnation for roads by counties, 281.310 to 281.380

368.280

Condemnation for roads by counties, 281.310 to 281.380

368.285

Condemnation for roads by counties, 281.310 to 281.380

368.295

Cattle crossing under public highways, 374.270
Permit for construction of any facility on right of way, 374.310

ESTABLISHING, RE-ESTABLISHING AND VACATING COUNTY ROADS

County planning, Ch. 215
Plats and subdivisions, Ch. 92
Vacation of roads, 271.010 to 271.230

368.405

Condemnation for roads by counties, 281.310 to 281.380

368.460

Board of county road viewers, appointment and qualifications, 368.135, 368.140

368.470

Board of county road viewers, appointment and qualifications, 368.135, 368.140

368.530

Monuments, 92.060

368.585

Application of ORS 368.585 to 368.610 to state highways, 366.285, 366.520

COUNTY ROAD FUNDS

Expenditure of county funds for:
- Bridges, 382.205
- Public ferry services, 384.205

Levy for road purposes, 280.030
Portion of State Highway Fund allocated to counties, 366.525
Use for roads of moneys received by county from:
- Federal flood control leases fund, 294.065
- Federal forest reserve fund, 294.060
- Federal mineral leases fund, 294.055
- Five Percent United States Land Sales Fund, 271.610
- Surplus of county fair funds in hands of State Treasurer, 565 280
- Taylor Grazing Act, 294.070

COUNTY ROAD INTERGOVERNMENTAL COOPERATION

Agreements between county and city as to right of way acquisition or road improvement, 373.260
Agreements with highway commission for construction or repair of roads, 366.775
Deposit of money with highway commission for road work, 366.425
Throughway cooperation between municipal and county authorities and state, 374.075

368.930

Duty of roadmaster to discover and terminate seepage on roads, 368.110

368.935

Multnomah County liability for negligent operation of certain bridges, 382.320

GENERAL PROVISIONS

368.005 "County court" defined. As used in this chapter, unless the context requires otherwise, "county court" includes board of county commissioners.

368.010 "Improvement" and "public road" defined. As used in ORS 368.095, 368.100, 368.220, 368.225 and 368.250:

(1) "Improvement" means and includes the survey, construction, improvement, reconstruction and repair, as applied to any public road, as defined in subsection (2) of this section.

(2) "Public road" means any road intended for use of the general public, whether designated and known as a state, county, district or any other kind of road.

368.015 to 368.050 [Reserved for expansion]

COUNTY ROAD OFFICERS AND EMPLOYES; POWERS AND DUTIES

368.055 County engineer; employment; qualifications; removal; compensation; bond. The county court of each county having a population of 200,000 or less may employ a competent engineer, who:

(1) Shall be known as the county engineer.

(2) Shall have had not less than two years' experience as a practical road builder.

(3) May be removed for cause by the county court.

(4) Shall receive a compensation for his services to be fixed by the county court, which shall be paid out of the county market road fund or other road funds.

(5) Shall give bond for the faithful performance of his duty in a sum to be fixed by the county court, but not to exceed $5,000.

368.060 County surveyor as county engineer. The county surveyor of any county may be appointed as the county engineer if he has the qualifications for the office of county engineer.

368.065 County engineer as roadmaster. In any county not having a roadmaster, the county engineer shall perform all the duties imposed by law upon the county roadmaster. In counties where no roadmaster has been appointed, a certificate made by the county engineer with respect to any matters concerning road construction work is a sufficient compliance with any statute requiring a certificate by the county roadmaster.

368.070 Surveyor to keep county road records when acting as engineer and roadmaster. (1) The county court of any county in which the county surveyor has been appointed county engineer and county roadmaster may appoint the county surveyor as custodian of all papers and records pertaining to petitions or resolutions for the establishment, alteration or vacation of county roads. When the surveyor is so appointed, he shall file, preserve and keep in his office all such papers and records.

(2) The county court may require the county surveyor, when appointed as market road engineer and county roadmaster, to keep such records and prepare such statistics on expenditures on roads as it may require.

368.075 Furnishing engineer to counties by State Highway Commission. (1) In any county where it may appear to the county court that there is not sufficient road work to warrant the appointment of a county engineer, the county court may request the State Highway Commission to furnish the county with an engineer to supervise and handle market road construction under ORS 369.110 to 369.290. When so requested, it shall be the duty of the commission to furnish such engineer.

(2) Two or more counties may jointly petition the State Highway Commission to consolidate the engineering work for market road construction in the counties and furnish an engineer to supervise and handle such work. The compensation of the engineer shall be fixed by the commission and be apportioned between the several counties jointly petitioning for the engineer.

368.080 County roadmaster; employment; compensation; oath; bond; removal. Each county court may employ, for such length of time not exceeding four years and at such compensation to be paid out of the county road and bridge fund as may be fixed by the county court, a competent engineer or practical road builder, who:

(1) Shall be known as the county roadmaster.

(2) Shall work under the direction and instruction of the county court.

(3) Shall, before entering upon his duties, take the prescribed oath of office and give a good and sufficient bond, to be ap-

proved by the county court and the district attorney, for the faithful performance of his duties, in a sum not less than $1,000 to be fixed in each case by the county court.

(4) May be removed by the county court for inefficiency, neglect of duty or misconduct in office.

368.085 Deputies and assistants of roadmaster. The county court shall employ, define the duties and fix the compensation of such deputy roadmasters, patrolmen and assistants as may in its judgment be necessary to enable the county roadmaster to perform his duties expeditiously and economically.

368.090 Providing equipment and material for roadmaster. The county court shall provide such office conveniences, furniture and fixtures, transportation facilities and road building equipment and material as may, in its judgment, be necessary to enable the county roadmaster, his deputies, patrolmen and other assistants to perform their duties expeditiously and economically.

368.095 General powers and duties of roadmaster. (1) The county roadmaster, his deputies and assistants shall:

(a) Assist the county court in preparing the specifications to cover work to be done on any road or bridge within the county.

(b) Superintend all work done upon the roads and bridges within the county, whether done under contract or otherwise.

(c) Recommend to the county court the method to be adopted for the construction, improvement, repair and maintenance of roads or bridges.

(d) Report in writing to the county court, as often as it requires, progress of the work on roads and bridges in the county.

(e) Investigate petitions for road improvements, report his findings and make recommendations thereon in writing to the county court.

(f) Make progress estimates based upon the amount of work done and value of material in place upon all contracts for bridge or road work within the county, and when any such contract is completed according to specifications, he shall certify such fact to the county court, in writing.

(g) Open or cause to be opened as directed by the county court, all public roads which are laid out and established according to law in any part of the county, and keep them in good repair.

(h) Erect and keep up at the forks of every principal road and every crossing of the principal public roads, a guide or fingerboard, containing an inscription in legible letters, directing the way and specifying the distance to the next town or public place situated on each road, respectively.

(i) Discharge and perform all duties that are imposed upon road supervisors by any law of this state and have the authority of such road supervisors.

(j) Perform such other duties as may be imposed upon him by any law of this state or assigned to him by the county court.

(2) The county roadmaster shall have charge of all county road tools and equipment, and report any shortage to the county court.

368.100 Securing road materials and constructing drains by roadmaster; interference with drains prohibited. (1) The county roadmaster, deputy roadmasters and patrolmen may:

(a) Enter upon any land and gather, dig and carry away any stones, gravel or sand, and cut down and carry away any trees or wood necessary for the improvement, repair and maintenance of any public road.

(b) Purchase any timber, plank or other materials necessary for improvement, repair or maintenance of any public road.

(2) The county roadmaster and his deputies may enter upon the land adjoining or lying near any public road, and cut, open or construct such drain and ditches as they shall deem necessary for the improvement, repair and maintenance of such roads, doing as little injury as may be to the land.

(3) No person shall stop, obstruct or in any manner damage the drains or ditches mentioned in subsection (2) of this section.

368.105 Proceeding to recover for action of roadmaster. Any person feeling aggrieved by the action of the county roadmaster, deputy roadmaster or patrolmen cutting or carrying away materials or cutting, opening or constructing any drain or ditch as provided in ORS 368.100, may make complaint in writing to the county court at any regular meeting within six months after the cause of complaint accrues. The court shall assess and determine the damages, if any, sustained by the complainant and cause them to be paid out of the county or district road and bridge fund. Should the complainant be dissatisfied with the amount of the damages allowed him by the county

court, he may appeal to the circuit court as provided in other causes.

368.110 Roadmaster to discover seepage on county road from ditches; notice to ditch owner. (1) All county roadmasters shall ascertain from time to time and know if there is any water running or flowing in or upon any county road as overflow or seepage from any irrigation or other ditch owned by any person, company or corporation.

(2) If he ascertains that there is any such water seeping or flowing or running upon any county road, the county roadmaster shall notify the owner or occupant of the ditch or the water therein contained, by personally serving on the owner, occupant or user of the ditch, a written or printed notice that the water in the ditch is seeping or overflowing or flowing on the county road at points on the road more particularly described in the notice, with reference to the ditch or any natural or artificial objects. The notice shall notify the owner, occupant or user of the ditch or the water flowing therein, that the seepage, overflowing or flowing of the water must be stopped within six hours of the service of the notice. The notice shall notify the owner, occupant or user of the ditch to have, within six hours from the hour of the service of the notice, the water diverted from the county road and to keep the water from again seeping, flowing or overflowing upon the county road.

368.115 Action by roadmaster when ditch owner fails to act. If the owner, occupant or user mentioned in ORS 368.110 fails to remove or divert the water from any county road within six hours after being notified as provided in ORS 368.110, the county roadmaster shall go upon that part of the land upon which the irrigation or other ditch is situated, through which the water has been or is being conducted, calling to his assistance such help as he deems necessary to cause the water to be diverted and removed from the county road in the manner which to him seems most effective, that will most speedily remove and withdraw the water from the county road and that will prevent the water in the irrigation or other ditch from returning upon or overflowing the county road.

368.120 Expense of water removal; expense as lien on land. Upon the completion of the work mentioned in ORS 368.115, the county roadmaster shall file with the county clerk an itemized statement of the time occupied by him and his assistants and the reasonable compensation for diverting and removing the water from any county road, together with the name of the owner and occupant of the land on which the irrigation or other ditch which brought the water to the county road is situated and the date and hour when the notice mentioned in ORS 368.110 was served, verified by his oath. When the statement is filed the county clerk shall cause it to be entered upon the lien docket prepared for that purpose. The amount of such charges and expenses, when docketed, constitute a first lien, prior and superior to all other liens or charges on the land or premises, excepting taxes.

368.125 Paying roadmaster for water removal expenses. If within 10 days after the statement has been filed and the lien docketed, as provided in ORS 368.120, no objections have been filed thereto, the county court shall pay the county roadmaster out of the county funds the amount of the charges and expenses, to be thereafter recovered to the use of the county as provided in ORS 368.130.

368.130 Foreclosure of water removal lien. If the charges and expenses mentioned in ORS 368.125 are not paid and the lien discharged by the owner or occupant of the lands within 60 days after the same is docketed, the district attorney of the county shall bring a suit in the name of the county for the foreclosure of the lien. The lands affected shall be sold under execution for the payment and satisfaction of the charges and expenses of the lien and all charges touching the same.

368.135 Board of county road viewers; duties; vacancies. The county surveyor or county roadmaster, or a duly qualified deputy, as the county court directs, and two qualified disinterested freeholders of the county appointed by the court, constitute a board of county road viewers, who shall view, survey if necessary, locate, lay out, relocate or change any county road or road of public easement as provided in ORS 368.475 and 368.480. In case of the inability of any of the county road viewers so appointed to qualify or act, the county court shall appoint a competent and qualified person to fill the vacancy.

368.140 Qualification of county road viewers; administering oaths required by this chapter. The county court shall cause the members of the board of county road viewers to be notified of their appointment. If not already a sworn officer, each member shall take an oath or affirmation faithfully and impartially to discharge the duties of his appointment. In this case and in all cases where any oath or affirmation is required to be taken by any person under ORS 368.135, 368.140, 368.205, 368.405 to 368.415, 368.430 to 368.460, 368.470 to 368.610, it may be administered by the surveyor, roadmaster or viewer who has previously been sworn or affirmed. The county surveyor, roadmaster or any duly qualified deputy or assistant of whom an oath of office is required or authorized by law, is considered sworn upon qualifying for the duties of his office.

368.145 to 368.200 [Reserved for expansion]

POWERS AND DUTIES OF COUNTY COURT AS TO COUNTY ROADS

368.205 General authority of county courts over roads. (1) All county roads are under the supervision of the county court of the county wherein the road is located.

(2) Each county court shall:

(a) Supervise, control and direct the laying out, opening, establishment, locating, relocating, changing, alteration, straightening, working, grading, maintenance and keeping in repair, improvement and vacation of all county roads within the county.

(b) Prescribe the methods and manner of working, improving and repairing all county roads within the county.

(c) Legalize old roads and restore monuments thereon.

(d) Supervise the construction and repair of all bridges on the county roads.

(3) The powers given by this section may be exercised directly by the county court or through some one of its members designated for that purpose, with the aid of necessary assistants.

368.210 Authority of county court over streets and alleys in unincorporated towns. The county courts have full power and jurisdiction over all streets and alleys in unincorporated towns in the same manner and to the same extent as the courts have over all public highways.

368.215 Contract or day work for road projects. Except in case of emergency, or determination by the county court to use convict labor, all work estimated by the county roadmaster to cost $2,000 or more for the job or project shall be let to contract. Work so estimated to cost less than $2,000, or in case of emergency, or for maintenance of county roads and bridges, or as provided by ORS 368.250, or the use of convict labor as provided by law, may, in the discretion of the court, be done by day work under the direction of the county court and supervision of the county roadmaster. Any county owning and operating its own road-making plant and equipment is not required to let out any road work by contract where the work is intended to be done by the county court with its own equipment.

368.220 Specifications for road work contracted. Before any contract is let for the improvement of any road or bridge, the county court shall cause complete specifications for the work to be prepared by the county surveyor, engineer, roadmaster or other competent person.

368.225 Advertising for road work bids. (1) Before letting any contract for road improvement work the county court shall cause to be published in at least two newspapers of general circulation within the county at least once each week for two successive weeks, the time and place where bids for the work will be received and briefly the nature of the work to be let.

(2) Proof of such publication shall be made in the same form and manner as proof of the publication of other legal notices are required and made.

368.230 Bids for road work; deposit by bidder. (1) All bids tendered for road work shall be in writing, delivered by the bidder or his agent to the county court at the meeting at which the bids are to be received. All such bids shall be then and there opened and read publicly.

(2) With every bid there shall be deposited with the county court a certified check for five percent of the amount of the bid, which shall be forfeited to the county in case the award is made to the bidder and he fails, for a period of five days after the award is made, to enter into a contract and file his bond as provided in ORS 368.235. The time may be extended in the discretion of the court.

368.235 Bond of bidder for road work. Every person, firm, company or corporation, before entering into a contract mentioned in ORS 368.220, shall execute and deliver to the county court a good and sufficient bond in an amount equal to 50 percent of the contract price, conditioned upon the faithful performance of the contract according to the specifications and containing all other provisions required by law or the county court. The bond shall be approved as to form by the district attorney and as to its efficiency by the county court, and filed with the county clerk.

368.240 Contracts for road work. All contracts for work mentioned in ORS 368.220 shall be in writing, executed by the contractor and the county court in triplicate, one copy filed with the county clerk, one copy retained by the county roadmaster and one copy by the contractor.

368.245 Payments on road work contracts. Final payment on any contract mentioned in ORS 368.240 shall not be made until the county roadmaster has filed his certificate with the county court stating that the work has been fully completed according to specifications and the terms of the contract fully complied with. Partial payments may be made upon any contract, not to exceed 85 percent of the value of work done and material in place, upon filing with the county court a certified progress estimate made by the county roadmaster, but such payment shall not be construed as an acceptance or approval of any part of the work or material.

368.250 Rejection of bids for and performance of road work. The county court may reject any and all bids, and proceed to make the road or bridge improvement, and perform the work in the same manner, as nearly as may be, as provided for bridge construction by ORS 382.210 to 382.240.

368.255 Material and labor for road work. The county court may supply the material for any part thereof and call for bids upon the balance of the material or labor, or both, to complete the job or project.

368.260 Temporary railroad tracks on highway for transporting road material. The county court may temporarily construct a railway track or may grant the right to any person, company or corporation to temporarily construct a railway track upon any public highway within the county and operate cars thereon for the purpose of transporting road material to be used for the improvement of any public road within the county. The track shall be removed from the public highway at the earliest possible date consistent with subserving the interests of the public.

368.265 Temporary closing of road. If it appears to the county court that it would be to the best interests of all parties concerned, the county court may temporarily close to the traveling public any public highway, or any portion thereof, when being improved.

368.270 Removal of road barricade prohibited. No person shall wilfully or maliciously remove any barricade enclosing any public highway or portion thereof that is under process of construction or improvement.

368.275 Agreement with owner of land to be condemned. It is not prerequisite to the exercise of the right of eminent domain, or to the bringing of any condemnation proceedings to acquire title to any land lying within the boundaries of any public highway as adopted by any county court, to attempt first to agree with any owner of any such land or to allege or prove any effort to agree with such owner as to reasonable value where such owner is at the time concealed within the state or, after reasonable effort by the county court, cannot be found within the state.

368.280 Entering upon land to be condemned within highway boundaries. At any time after any county court commences proceedings to acquire title to any land lying within the boundaries of any adopted public highway within the county, the county court may enter into the possession of the land and commence the construction, alteration or repair of the highway.

368.285 Carrying condemnation to judgment. In any case where any county court enters upon the property of any person lying within the boundaries of any adopted or located highway, as provided in ORS 368.280, after having brought proceedings to condemn the property and acquire the title thereto for such highway purposes, the county court shall proceed with all reasonable diligence to carry the condemnation proceedings to a final judgment. When the value of the property is ascertained, judg-

ment therefor shall be entered. When the judgment becomes final the amount thereof shall be paid by the issuance of a county warrant of the county in which the land is located.

368.290 Acquisition of railroad right of way. (1) Whenever in the location, relocation, construction or betterment of any highway within the state, it is deemed necessary to locate, relocate or construct the highway, or any part thereof, upon the right of way of any railroad company, any county in which the highway or proposed highway is or is to be located, relocated or constructed may negotiate and agree with the railroad company for the right to use or occupy the right of way, or so much thereof as is necessary for highway purposes.

(2) In case no satisfactory agreement can be effected, then the county court of any county through which the road or proposed road passes may acquire the right of way by exercise of the power of eminent domain, and for that purpose may commence and prosecute condemnation proceedings to acquire the right to the use and occupancy of sufficient of the railroad right of way for highway purposes.

(3) Nothing in this section authorizes the use or occupancy of the railroad right of way which would interfere with the operation of the railroad or its necessary appurtenances, taking into consideration the use of the railroad right of way by the company for yards, terminals, station grounds and necessary additional trackage, or which would jeopardize the safety of the public.

368.295 Erection of gates and stock guards on roads. The county court may erect and maintain gates and stock guards in the public or county-owned roads, excepting state highways, at such points where they are crossed by drift or stock fences, where such roads intersect state or government-owned highways or other public or county-owned roads and at other places in the roads as they may deem for the best interests of the public. The county court may erect or issue permits for the erection and maintenance of the gates and stock guards. The gates may be maintained or constructed upon the right of way and not upon the traveled portion thereof. The gates or guards shall not be constructed upon state highways. All costs and expense in connection with the construction and maintenance of the gates and stock guards shall be paid by the applicant for the permit. [Amended by 1955 c.247 §1]

368.300 Expense of gates and stock guards. All expenses of erection and maintenance of the gates and guards mentioned in ORS 368.295 on county-owned roads may be paid by the county wherein the roads are located. The gates and cattle guards shall be constructed and maintained under such rules, regulations and conditions and in accordance with such specifications as the county court prescribes.

368.305 Improvement of dikes and levees used for road purposes. When dikes or levees of any drainage district, any flood control district or any company or district organized under the provisions of Chapter 172, Oregon Laws 1911, or Acts amendatory thereof, are used for road and highway purposes and it is provided and authorized that such roads and highways may be used by the general public for purposes of travel, and two or more of the landowners within any such district and the district make application to the county court of the county wherein the dike or levee is situated and so used, for the improvement of the road upon the dike or any part thereof by graveling the same, the county court shall inquire into the matter. If it is determined that the dike or levee, and the part thereof to be improved, is used for public travel and that it is necessary or convenient to the public to have the same graveled for such purpose, the county court may allow the application and cause the road or part thereof to be graveled, furnish gravel therefor to such district or equipment of the county for the graveling as it may determine of public convenience or expend from any moneys available therefor all or any part of the necessary cost as it may agree with the district. There shall be provided in the budget from time to time thereafter as the law may provide such amount as may be deemed necessary for the purpose provided in this section.

368.310 to 368.400 [Reserved for expansion]

ESTABLISHING, ALTERING, VACATING AND LEGALIZING COUNTY ROADS
(General Provisions)

368.405 Proceedings to establish and alter roads. (1) Proceedings for the laying out, opening, establishment, alteration, straightening, locating and relocating of

county roads shall be instituted in the following ways:

(a) By petition of freeholders.

(b) By resolution of the county court.

(c) By grant of owners of necessary rights of way.

(d) By condemnation proceedings.

(2) This section does not preclude acquiring public ways by adverse user.

368.410 District attorney to advise on legality of proceedings. The county court shall, before any proposed county road is finally established and ordered opened, submit all the files and records of the proceedings had therein to the district attorney of that county for his inspection. The district attorney shall advise the county court as to the legality of the proceedings. This section does not imply that the district attorney is the attorney for either the petitioners or the remonstrators of any proposed road or road proceedings, nor shall the district attorney be employed by either the petitioners or remonstrators.

368.415 Required widths of county roads; acceptance and maintenance of roads as county roads notwithstanding actual or platted widths. (1) Subject to subsection (2) of this section, all county roads established after August 2, 1951, shall be of such width as the county court shall determine, which width shall be not less than 50 feet. The proposed width shall be stated in all petitions, notices, orders or resolutions relating to any county road.

(2) The county court, by a majority vote, may accept as a county road any highway, road or street, irrespective of its actual or platted width, if it was dedicated to the public as a highway, road or street before January 1, 1948. After acceptance the county shall maintain such highway, road or street as a county road. [Amended by 1953 c.229 §2]

368.420 Territorial roads as county roads. All territorial roads in this state are declared to be county roads.

368.425 Streets and alleys in unincorporated towns as public highways. All streets and alleys in the unincorporated towns in this state are declared to be public highways.

(Petition to Establish or Alter)

368.430 Petition to establish or alter roads; signatures. (1) Applications for locating, laying out, relocating or changing any county road shall be by petition to the county court of the proper county, signed by 12, or a majority, of the freeholders of the county residing in the road districts where the road is to be located, laid out, relocated or changed. In any county where divisional road districts no longer exist the petition may be signed by any freeholder of the county residing in the vicinity of the proposed road.

(2) "Divisional road districts" means the districts as they last existed when the territory of the counties was actually divided for road purposes into districts suitable and convenient for highway maintenance by the residents therein.

368.435 Contents of petition. The petition mentioned in ORS 368.430 must describe the terminal points of the proposed road, the width and the general course of the road, or the particular manner in which the road is to be altered, widened, straightened or relocated, and the public necessity therefor.

368.440 Bond required of petitioners. The petition mentioned in ORS 368.430 shall be accompanied by a good and sufficient bond, to be executed by one or more of the petitioners, with sufficient surety, to be approved by the court and made payable to the county, in the sum of $200 or such further sum as the court directs, conditioned that if the prayer of the petitioners is not granted and allowed, that the petitioners or persons executing the bond shall, in the discretion of the county court, pay all costs and expenses that may be incurred.

368.445 Proof of notice to accompany petition; posting and mailing notice. (1) When the petition mentioned in ORS 368.430 is presented to the county court for action it shall be accompanied by satisfactory proof by affidavit that:

(a) Notice has been posted at the place of holding county court and at three public places in the vicinity of the proposed road to be located, laid out, relocated or changed, 30 days previous to the presentation of the petition, notifying all persons concerned that the application will be made to the court at its next term.

(b) Notice has been forwarded by mail, postage prepaid, not less than 30 days prior to the date of presentation of the petition, to each record owner of land, on or over

which the proposed road or portion thereof is to be laid out, relocated or changed, at the last known postoffice address of the owner.

(2) If the address of the owner is unknown to the person mailing the notice mentioned in paragraph (b) of subsection (1) of this section, it may be mailed to the address given on the latest tax roll in the office of the tax collector of the county. If the address is unknown to the person mailing the notice, cannot with reasonable diligence be ascertained and cannot be found on the latest tax roll, the notice may be addressed to the owner at the county seat of the county where the land is situated.

368.450 Waiver of notice. Any owner of land affected by the proposed road proceeding who signs the petition mentioned in ORS 368.430 has waived all further notice therein, and mailing notice to such owner is not required.

368.455 Contents of notice. (1) The notice served by mail, as provided in ORS 368.445, may be a copy of the original road notice certified to by one or more of the petitioners. Any other notice is sufficient if it:

(a) Gives the description of the proposed road, change or location, as set forth in the petition.

(b) Gives the date of presentation to the county court.

(c) Is signed by one or more of the petitioners.

(2) The notices to be posted shall consist of true copies of the petition properly certified as such by one of the signers of the petition, or, upon approval of the county court, may be certified and posted in the same manner as provided for the posting of notices for the establishment or change of road by resolution.

(3) The posting and mailing of a copy of the original petition duly certified as a true copy by one or more of the petitioners or by the attorney filing the petition, with a notation thereon as to the time and place for the presentation of the original petition to the county court, is sufficient compliance with the requirements as to the posting and mailing of notices.

368.460 Court order upon presentation of petition. Upon presentation of the petition mentioned in ORS 368.430 with satisfactory proof of posting and mailing notice, the county court shall, by order, direct the board of county road viewers, on a day named in the order, or, on their failure to meet on such day, within 10 days thereafter, but not otherwise unless by order of the court, to view, survey if necessary, lay out, locate, relocate or change the road as set forth in the petition, assess the damages and file its report on or before the day specified in the order of the court, which shall not be more than 90 days from the date of the order.

368.465 List of road petitioners to Multnomah County roadmaster. The county clerk of Multnomah County shall furnish the county roadmaster with a list of the petitioners for any county road.

(Resolution to Establish or Alter)

368.470 Establishment and alteration of roads by resolution. (1) The county court of any county at any regular term may, by resolution, declare its intention to locate, establish, alter, widen, straighten or change the direction of any road. Notice shall thereupon be given as provided for upon the filing of a petition for such purposes, and like proceedings shall be had by the county court as in the case of the filing of a petition before it, asking for the improvement, except as otherwise provided in this section.

(2) The notices posted shall consist of true copies of the resolution of the county court, properly certified to as such by the county clerk. The notices shall be posted by the county roadmaster, county engineer, county surveyor or a duly qualified deputy, as directed by the county court.

(3) No bond is required.

(4) If any objections or remonstrances are presented or filed, the county court shall hear the same, and may, for good and sufficient reasons, overrule and deny the same.

(5) All damages shall be paid for out of the county road fund.

(6) When so ordered by the county court, the county surveyor, county engineer or county roadmaster, if the county roadmaster at such time is a registered engineer under the laws of the state, shall make the necessary survey previous to the posting of notice of resolution, and shall have the right to enter upon, examine or survey the land necessary therefor.

(7) The county court may procure right of way, either by acceptance of donations, purchase or agreement, or a board of road viewers may be appointed whose sole duty it is to determine and assess the damages,

taking into consideration the benefits, of the road as located.

(Road Viewers)

368.475 Locating roads by road viewers; deviation from petition or resolution. (1) The boards of county road viewers in their respective counties shall locate all county roads upon the best and easiest grades obtainable between the termini designated in the petition mentioned in ORS 368.430 or resolution mentioned in ORS 368.470.

(2) Any board may deviate from the proposed line described in the petition or resolution at such points as will, in its judgment, enable it to avoid steep, heavy or dangerous grades, dangerous or difficult curves, or unsafe, unsubstantial or expensive foundations, or to promote utility and convenience, or to obviate inconvenience and expense resulting to individuals as well as the public, or for other reasonable causes. For the accomplishment of such change, the board may enter upon, examine or survey the land necessary therefor. The board may locate the road upon better ground for the road than that described in the petition or resolution, but shall follow, as nearly as practicable, the direction stated in the petition or resolution or the general route of the established or traveled county road in cases of alteration or relocation.

368.480 Procedure of road viewers. The board of county road viewers, when qualified, shall meet at the time and place specified in the notice of the county court, or within 10 days thereafter, take to their assistance such persons as deemed necessary and proceed to view, survey if necessary, lay out, locate, relocate, alter or change the road in the following manner:

(1) Starting at the initial point designated in the petition or resolution, and following the most practicable route, a preliminary line or other lines may be run for the purpose of definitely locating the center line of the road and determining the practicability of and the necessity for the road.

(2) The board shall assess and determine how much less valuable the premises are through which the road is or is to be located, and set forth the same in their report. The report when adopted by the county court shall be considered the true damages suffered by anyone through whose premises the road is located.

(3) The board shall also make out a report in writing, stating its recommendation in favor of or against the establishment or alteration of the road and setting forth the reasons for the same.

(4) If all members of the board fail to agree, separate reports may be filed. The county court may elect which report it will accept and thereafter proceed as though the report accepted were unanimous.

(5) The surveyor member of the board shall make a plat of the preliminary line or other survey, showing the alignment of the proposed road and the general topography adjacent and the ties to government corners along the road where available.

(6) The plat and reports shall be filed in the office of the county clerk on or before the date fixed by the county court in its order for the appointment of the board.

368.485 Report publicly read. At the next regular term of the county court following the expiration of 10 days after the filing of the report of the board of county road viewers mentioned in ORS 368.480, the court shall cause the same to be publicly read on two different days of the term.

368.490 Petitions for damages and remonstrances. At any time prior to the expiration of the day on which the report mentioned in ORS 368.480 is publicly read for the second time, any person whose lands are directly affected by the report may file a petition for damages, and any freeholder, residing in the road district where the road is located, whose name does not appear upon the petition, may file a remonstrance against the proposed establishment. In counties where divisional road districts, as defined in ORS 368.430, no longer exist, any freeholder qualified to file a remonstrance under this section must be a resident within the territorial limits of the last divisional road district which existed where the road is proposed to be located, laid out, relocated or changed. Failure to file a petition for damages within the time allowed by this section is a waiver of all rights thereto by every person interested therein, except minors or other persons under disability.

368.495 Report adopted by court; court order. On the day following the second reading of the report mentioned in ORS 368.480, the county court shall consider the report, and if no petition for damages or remonstrance with a greater number of remonstra-

tors than there is of the petitioners upon the petition, is filed within the time prescribed in ORS 368.490, and if the court is satisfied that the road will be of public utility and the amount of the damages assessed is just and equitable and the report of the viewers is favorable thereto, the court shall adopt the report. The court shall enter an order directing that warrants be issued to the persons and in the amounts designated in the report, that the road be finally surveyed and opened, and that the field notes be recorded in suitable books kept for that purpose in the office of the county surveyor. From the date of the order the road shall be a public highway.

368.500 Report rejected by court; court order. If remonstrance is filed with a greater number of resident freeholder remonstrators than of petitioners upon the petition mentioned in ORS 368.430, if the report of the board of county road viewers is unfavorable, or the county court does not consider the road of sufficient importance to the public, all proceedings shall be terminated by an order of the court denying the petition and fixing the costs of the proceedings, if in the opinion of the county court the petitioners should pay costs.

368.505 Withdrawal from remonstrance or petition. Any remonstrator or petitioner may withdraw from a remonstrance or petition by filing a withdrawal in writing with the county court prior to consideration by the court of the report of the board of county road viewers. Any person appearing on both petition and remonstrance without a withdrawal in writing shall be disregarded in passing on either a petition or remonstrance.

368.510 Hearing on petition for damages. If a petition for damages is filed, the county court shall, on the day following the second reading of the report of the board of county road viewers, proceed to consider such petition, and for such purpose may, from time to time, by an order entered in its journal, continue its hearing to a day certain, but in no event shall the hearing be postponed longer than two consecutive terms.

368.515 Allowing or rejecting petition for damages; when order final. (1) If a petition for damages is allowed wholly, or if a partial award of damages is made which is accepted by the claimant, then the county court shall enter an order adopting the report of the county road viewers as modified and establishing the road.

(2) If the petition for damages is denied, the county court shall enter an order adopting the report and establishing the road. No such order shall be final or operate to establish the road, unless:

(a) The time for taking an appeal to the circuit court, as set forth in ORS 368.525, has expired and no appeal has been taken; or

(b) In the event an appeal has been taken, the county court shall, by an order entered in its journal, find the immediate opening of the road to be of great public necessity and directs that upon the final determination of the appeal the county clerk draw a warrant payable to the appellant for the full amount of all damages determined, together with costs if the appellant recovers a judgment more favorable than the order appealed from, and that the county treasurer set aside and hold sufficient moneys on hand and available for such purpose and not otherwise appropriated, to pay all damages claimed and costs.

368.520 Payment of damages. (1) In the order establishing the highway, the county court shall specify the fund from which all damages shall be paid.

(2) If the proposed road is deemed of sufficient importance to the public to cause the damages so assessed and determined to be paid by the county, the county court shall direct all damages to be paid out of the general county road fund; otherwise, the court may refuse to establish the proposed road as a public highway, unless such part of the expense or damage, as the court may in its order determine, is paid by the petitioners. Until the portion of damages assessed to the petitioners is paid into the county treasury, no county funds shall be expended in payment of damages, but the same may be set aside and reserved for such purpose, and the proposed road shall not be finally established.

368.525 Appeal to circuit court; costs on appeal. Any resident freeholder of the road districts where the road is to be established, altered, relocated or changed, or any person whose lands are directly affected by the proceeding, may within 20 days after the report mentioned in ORS 368.480 is adopted by the county court, appeal therefrom to the circuit court of the county. The appeal shall

be taken to the circuit court in the manner provided by law for appeals from the justice of the peace to the circuit court. If the appellant fails to recover a judgment more favorable than the order appealed from, he shall pay all costs of the appeal.

(Survey)

368.530 Survey, monuments, records, field notes, plat and profile of proposed road. (1) When a proposed road is established, upon the final hearing, the county court shall notify the county surveyor, or the county roadmaster, provided the county roadmaster at such time is a registered engineer under the laws of the state. The officer notified shall proceed to survey and monument the road along the alignment established by the final order of the county court, and prepare and file in the office of the county surveyor the final records thereof.

(2) If the survey is made by the county roadmaster instead of by the county surveyor, the county surveyor shall receive from the county roadmaster and file and keep a record of all such surveys made by the county roadmaster, as provided in ORS 209.070, in all respects the same as if the survey had been made by the county surveyor himself.

(3) In the final survey the termini of the road, and, where practicable, the beginning and ending of each curve or each angle point thereon, shall be designated by permanent monuments or posts, bearing trees or compact earth mounds in such positions that they will not be disturbed by the construction of the road. Where lettered, all monuments shall be marked by the letter "R." Any monuments of iron shall be a rod or pipe at least 30 inches in length and five-eighths inch in diameter. Any monument of stone shall contain at least 1,000 cubic inches and shall be at least 12 inches in one dimension. All monuments shall be fully described in the field notes of the survey and their courses and distances given from the points to which they refer.

(4) The county surveyor or the county roadmaster, in case the survey is made by him, shall make and file with the county clerk a complete set of field notes, together with a plat and a profile. The plat shall show the alignment of the road, the courses and distances, ties to government corners, natural watercourses and any other available and necessary data. The profile shall indicate the grades obtainable and natural topography. The grades shown on the profile shall not be deemed established, but shall be subject to change as circumstances require.

(Final Order)

368.535 Defects in final court order. No final order establishing, altering or relocating any road or highway shall be set aside or annulled upon appeal or review, nor shall any county court refuse to render any such final order, on account of any defect or irregularity in the petition or resolution, or notice thereof, which does not materially affect the substantial rights of an interested party. The following irregularities are immaterial defects:

(1) Errors of description of the intermediate points, courses or distances of the proposed road, when the proposed road can be otherwise definitely located.

(2) Errors in the posting of the notices, where it can be shown that all persons objecting to the proceedings for the proposed road had actual notice thereof prior to the time of the first reading of the petition or resolution.

(3) Errors in or omissions of the names of the petitioners appearing on the notice, where no remonstrance is filed.

368.540 Effect of order where existing road is relocated or altered. Whenever any proceeding is instituted in any county court, by petition, resolution or otherwise as provided by law, having for its object the relocation or alteration of any existing county road or highway within the county, the proceedings are carried to a conclusion and a final order entered establishing a new road following the general alignment of the old road, the final order shall vacate all parts of the old road or highway not included within the limits of the new road, without any other proceedings, but the county court may expressly provide that any portion of the old road shall not be vacated. Whenever the whole or any part of a road so vacated shall be supplied by another, the same shall not be shut up or obstructed until the road laid out to supply the place thereof is actually opened to travel.

(Grants)

368.545 Grant and acceptance of road. Whenever one or more persons owning deeded lands over which it is desired to

establish a county road, present to the county court a good and sufficient deed, properly executed, forever dedicating to the use of the public a strip of land to be used as a public road, the county court may, if it deems proper, accept the dedicated road as a county road or road of public easement, by an order to be entered in its journal. Thereafter the road is subject to the same provisions as apply to other county roads or roads of public easement, and shall be surveyed and platted in the same manner as other county roads.

368.550 Public ways dedicated in plats; acceptance by county. Whenever any person owning lands in any county and not within the limits of any incorporated city or town presents to the county court or files as provided by law any map or plat of any town or addition therein dedicating to the public as highways, roads, streets or alleys, any of the lands, and the map or plat is accepted or approved by the county court or other public officer of the county, such highways, roads, streets or alleys shall be public highways and be open to public use and travel. The county court has the same power, authority and jurisdiction over such road as it has over county roads, but unless the road, highway, street or alley is expressly accepted by the county court as a county road, no funds of the county shall be expended in its improvement or repair, nor shall the county, or any of its officers, be liable for the failure to improve or keep it in repair.

368.555 Right of way over United States public lands; acceptance by county. The county courts in their respective counties may accept the grant of rights of way for the construction of highways over public lands of the United States. Such rights of way shall not be less than 30 feet nor more than 80 feet in width as the court shall determine. Acceptance shall be by resolution of the court spread upon the records of its proceedings. This section does not invalidate the acceptance of such grant by general public use and enjoyment.

368.560 Former acceptances of rights of way ratified. The action prior to May 21, 1917, of county courts in their respective counties purporting to accept the grant of rights of way mentioned in ORS 368.555, is approved, ratified and confirmed, and all such highways are deemed open to public travel, and when accepted by the county court, as such, by an appropriate resolution entered in its journal, shall be considered county roads.

(Vacation)

368.565 Vacation of road or decrease in width; petition or resolution. (1) When a county road or part thereof is considered wider than necessary or useless, dangerous or burdensome to maintain, 12, or a majority of the freeholders residing in the district in which the road is located, may petition the county court to decrease the width of or vacate the road. In any county where divisional road districts, as defined in ORS 368.430, no longer exist, signatures to such petitions shall be secured within the territorial limits of the last divisional road district which existed where the road or part thereof is located. The petition shall show the land owned by each petitioner within the road district, the termini of the road or part thereof proposed to be reduced in width or vacated. The petition shall set forth the necessity or reasons for the road to be reduced in width, or if its vacation is petitioned for, that the road is useless as a part of the general road system, dangerous or burdensome to maintain, and that the public will be benefited by its vacation.

(2) In lieu of such petition the county court may of its own motion for satisfactory reasons adopt a resolution to be entered in its journal declaring that proceedings to reduce the width of or vacate the road will be undertaken. The resolution shall show the legal description of the land adjacent to the road or part thereof, the names of the owners of such land, the termini of the road or part thereof proposed to be reduced in width or vacated. The resolution shall set forth that the road or part thereof shall be reduced in width and that the public will be benefited by such reduction in width, or if vacated that the road is useless as a part of the general road system, dangerous or burdensome to maintain, and that the public will be benefited by its vacation.

368.570 Hearing on petition; examination and report on road. The county court in session shall consider the petition mentioned in ORS 368.565 and may reject the same. If the petition is not rejected, or if the proceedings have been instituted by the resolution of the county court, the court shall notify the county surveyor or county

roadmaster thereof and by order direct one of such officers to examine the road and make a report in writing on the road. The surveyor or roadmaster shall include in his report his opinion as to whether the road should be reduced in width or vacated, whether the road is or has been in use, whether it will be advisable to preserve the road for a general road system in the future, reduced in width, or whether the public will be benefited by the vacation, and all other facts, matters and things which are of importance to the county court. The officer preparing the report shall file it, upon completion, with the county clerk.

368.575 Date for hearing on report; notice. The county court in session shall fix a date for hearing the report mentioned in ORS 368.570. The county court shall cause notice of the hearing to be given by advertisement posted at the place of holding county court and at three public places in the vicinity of the road, at least 30 days before the day set for hearing. Proof that notice has been given shall be made by the affidavit of the person directed by the county court to post the notices.

368.580 Hearing on report; action taken thereon. (1) On the day set for hearing the report mentioned in ORS 368.570, the county court shall consider the report, together with the petition or resolution and any objection that is made to reducing the road in width or vacating the road.

(2) If the road may be useful as a part of the general road system not reduced in width, the petition for reduction in width shall be denied, but if the public will be benefited by the reduction in width of the road then the county court may order the reduction in width of the road or any part thereof.

(3) If the road may be useful as a part of the general road system it shall not be vacated, but if the public will be benefited by the vacation then the county court may vacate the road or any portion thereof.

(4) If the county court determines to reduce the width of the road or any part thereof, or to vacate the road or any part thereof, it shall declare the road to be reduced in width or vacated as the case may be and file the order with the county clerk. Thereafter the road shall be reduced in width or vacated as the case may be.

(Legalization)

368.585 Resurvey, or legalizing, of roads; court order. The county court of the proper county may, if it deems it necessary, order a county road or any part thereof used and traveled by the public to be surveyed or resurveyed, platted and recorded as provided in ORS 368.590 to 368.610, where:

(1) By reason of loss or destruction of the field notes of the original survey, defective survey or record or such numerous alterations of any county road since the original location and survey that its location cannot be accurately defined by the papers on file in the proper county clerk's or county surveyor's offices;

(2) Doubts exist as to the legal establishment or evidence of establishment of any county road, through some omission or defect; or

(3) It appears from the petition of five or more freeholders of the county residing in the districts where the road is located, that a county road is now being and has been continuously traveled and used by the public for a period of 10 years or more.

368.590 Filing copy of field notes and plat; date for approval of survey. A copy of the field notes, together with a plat and profile of any highway or county road surveyed by the county surveyor under ORS 368.585, which shall accord with ORS 368.530, shall be filed in the office of the county clerk. Thereupon the county court shall fix a day at its next regular term, not less than 30 days from the posting of notice, upon which the court shall, unless good cause be shown against so doing, approve of the survey, plat and profile and order them to be recorded as in cases of the original establishment of a county road.

368.595 Notice of hearing; posting; form; proof. (1) At least 30 days before the day fixed by the county court under ORS 368.590, a notice to all persons concerned shall be given by posting at the place of holding county court and at three public places in the vicinity of the road proposed to be legalized. If the road is more than two miles in length, there shall be one additional notice posted on each additional mile.

(2) The notice may be in the following form:

NOTICE OF LEGALIZATION OF ———
ROAD FROM ——— TO ———

All persons interested in or concerned with that portion of the county road used and traveled as such for more than ——— years commencing at ——— in ——— County, running thence (naming distance and in general terms points of location), and terminating at ———, are hereby notified that the road has been resurveyed, and the county court (or board of county commissioners) will, at its next term, hear and determine whether the road herein described and included in the survey shall be ordered as a lawful county road and public highway; and objections thereto, or claims for damages, must be filed in the office of the county clerk of this county on or before ————, 19——, or the road hereinabove described will be declared a county road and public highway.

———————

———————

———————

County Court (or Board of County Commissioners) of ——— County, State of Oregon.

(3) The notice shall be posted by the county roadmaster or county surveyor, as designated by the county court. Proof of the posting of the notice shall be by affidavit filed in the office of the county clerk.

368.600 Hearing; declaration where no claim for damages; procedure where damages claimed. If no claims for damages are filed on or before the day fixed under ORS 368.590 for hearing, the county court shall proceed to declare the road included in the survey to be a lawful county road. If any claim for damages is filed a board of county road viewers shall be appointed to appraise the damages as provided in ORS 368.135. Thereafter the proceedings shall be as provided in ORS 368.140, 368.475 to 368.540, except that no remonstrances shall be filed or considered, and no claim for damages shall be allowed to any person who, upon the original location of the road, received damages, or who, or whose grantor, applied for or assented to the road passing over the lands, or who, when making settlements upon the tract by him occupied, found the road in public use and traveled. The board of county road viewers shall report any and all acts of the owners of the land or their grantors which show compensation, dedication or assent to the land being used as a public highway.

368.605 Final determination of court; evidentiary value of records. Upon the final determination of the county court, it shall approve the proceedings under ORS 368.600 and cause the field notes, plat and profile to be recorded as in the case of the establishment and alteration of highways. Thereafter such records shall be received by courts as conclusive proof of the establishment and lawful existence of the county road and public highway, according to the survey, plat and profile.

368.610 Expenses paid by county. The expenses incurred under ORS 368.585 to 368.605 shall be paid out of the county road fund or other county funds available for such purposes and not otherwise appropriated.

(Miscellaneous Provisions)

368.615 Proceeding to change location of road on land of petitioner. (1) If any person through whose lands any public highway is or may be established is desirous of turning such road through any other part of his lands, such person may, by petition, apply to the county court of the proper county to permit him to turn the road through any other part of his lands, on as good ground and without materially increasing the distance to the injury of the public or gradients.

(2) On receipt of the petition, accompanied by a sufficient bond to pay the costs and expenses to be incurred thereby, the court may appoint the board of county road viewers.

(3) The board shall proceed to review the ground over which the road is proposed to be turned, ascertain the distance the road will be increased and the increase in gradients by the proposed alteration and make out a report in writing, stating the several distances and gradients so found, together with their opinion as to the utility of making the alterations.

(4) If the board reports to the court that the prayer of the petitioner is reasonable, upon receiving satisfactory evidence that the proposed new road has been opened a legal width, in all respects made equal to the old road for the convenience of travelers, and that the proposed change will not cut off from a highway or otherwise materially injure or inconvenience any of the residents in the vicinity of the proposed change, the court may declare the new road a public

highway and make a survey and record thereof in the same manner as other county roads are required to be surveyed and recorded by ORS 368.480. At the same time the court may vacate so much of the old road as is not embraced in the new.

(5) The person petitioning for the alteration shall pay all the costs and expenses of the view, survey and return of the alteration. [Amended by 1957 c.12 §1]

368.620 Right of county in roads exempt from adverse possession; vacation of unopened or unused road. The rights of counties to public roads are not extinguished by adverse possession. No title to lands included in such public roads, when the roads are once established, shall be acquired as against the county through operation of the statute of limitations. When a county road has been once established, and is not opened within two years from the date of the order establishing it, or has not been used for vehicular traffic by the public for a period of 16 years, then upon petition of six freeholders of the road district in which the road is located, praying for vacation of the road or unopened or unused portion thereof, the county court shall conduct an investigation and either cause the road or unopened portion thereof to be opened within a reasonable time or make an order declaring the road or unopened or unused portion thereof vacated, except that no road or portion thereof shall be vacated under this section if vacation would deprive the owner of any real property of access to such property by public road or other right of way. [Amended by 1957 c.575 §1]

368.625 to 368.700 [Reserved for expansion]

COUNTY ROAD FUNDS

368.705 General road fund; tax levy; use of fund. (1) The county court of each county may levy a tax of not more than 10 mills on the dollar on all taxable property in the county at the time of making the annual tax levy, which shall be set apart in the county treasury as a general road fund. The tax shall be paid in money. The tax shall be levied and collected in the same manner as other county taxes.

(2) The general road fund mentioned in subsection (1) of this section shall be used:

(a) In establishing, laying out, opening, surveying, altering, improving, constructing, maintaining and repairing county roads and bridges on county roads; or

(b) In like manner alone or in cooperation with the state on roads within the county known as state roads, or such roads or any portion thereof built in cooperation with the United States in accordance with the Act of July 11, 1916, entitled "An act to provide that the United States shall aid the states in the construction of rural post roads and for other purposes," or any other Act of Congress, rule or regulation of any department of the United States.

(3) No county money or county funds derived from any tax levy other than that mentioned in subsection (1) of this section, except taxes levied under ORS 369.290 for market road construction, shall be used or expended by the county court upon any roads or bridges.

368.710 Apportionment of general road fund; road taxes to be apportionable. (1) The tax levied under ORS 368.705 shall be apportioned as follows:

(a) Not less than 50 percent of the tax shall be apportioned to the several road districts, including districts composed of incorporated cities and towns, in such proportion as the amount of taxable property in each district bears to the whole amount of taxable property in the county. The amount apportioned to any incorporated city or town shall be transferred to it to be expended under the management of its officials for the improvement and repair of county roads and for the improvement, repair and maintenance of improved streets within the boundaries of the city or town.

(b) The entire remaining revenue shall be applied to roads in such locality in the county as the county court directs.

(2) No road tax shall be included in any general fund levy or in any other fund in such a manner that it cannot be readily ascertained for apportionment as provided in this section.

368.715 [Reserved for expansion]

368.720 Using road funds outside of county. (1) The board of county commissioners of any county may expend any portion of the funds apportioned to it from its share of funds derived under the Oregon motor vehicle law, or any other county money provided by law to be used in road construction, for the construction, mainte-

nance and repair of highways in the state outside of the county which extend to or connect with highways within the county.

(2) All such work of construction, maintenance or repair shall be done by and under the direction, supervision and management of the State Highway Commission, subject only to the designation by the board of county commissioners of the county providing the funds for the particular road.

368.725 Use of moneys received under Federal Act by Lane County for road purposes. The county court of Lane County, sitting for the transaction of county business, may expend moneys put annually into the county treasury as part of the general fund of the county, in lieu of taxes upon land embraced in the Oregon-California land grant, by an Act of Congress, in oiling the roads of the county and purchasing the necessary machinery and equipment for oiling of roads and for the maintenance and upkeep of roads, after they have been oiled. The county court may expend such fund or any part thereof in maintenance of county roads and market roads and in cooperation with the State Highway Commission in the construction of state highways within Lane County. The county court may designate at the January term the roads in the county to be oiled during the ensuing year under this section.

368.730 [Repealed by 1953 c.158 §4]

368.735 [Repealed by 1953 c.158 §4]

368.740 [Repealed by 1953 c.158 §4]

368.745 to 368.800 [Reserved for expansion]

INTERGOVERNMENTAL COOPERATION

368.805 County cooperation with state and United States. The county court of each county may cooperate with the state, the United States or any department thereof in the improvement of any public road within the county.

368.810 Payments under cooperative agreement with Department of Agriculture. When any county, through its board of county commissioners, has entered into any cooperative agreement with the United States Department of Agriculture for the survey or construction of any road or highway, as contemplated in ORS 366.765, the board of county commissioners shall direct the payment of the county's share of the moneys required to that bureau of the Department of Agriculture having charge of the construction of roads and highways, by an appropriate order spread upon the journal of its proceedings. Payment shall be made by warrant on the county treasurer in the manner provided by law, from such funds as are available for road purposes as directed by the board of county commissioners.

Note: In 1949 the federal aid for highways program was administered by the Bureau of Public Roads of the Department of Commerce, not by the Department of Agriculture as formerly.

368.815 United States experimental roads. County courts may permit the building of experimental roads by the officers and agents of the United States Government upon the public highways within their respective jurisdictions, in the interest of good roads, upon such terms and conditions as the county courts deem just and proper.

368.820 Repayment of advancement to counties from the State Highway Fund. The Secretary of State shall keep a separate record of the amount advanced to each county under chapter 538, Oregon Laws 1949. The State Highway Fund shall be reimbursed for all such moneys advanced in the following manner: At each future time of distribution of moneys to counties subsequent to March 31, 1950, under ORS 366.535 and Acts supplementary thereof, the Secretary of State shall withhold from the amount otherwise to be distributed to any county, an amount of money determined by dividing the total amount so advanced by the number of full calendar quarters between January 1, 1950, and January 1, 1952. The amount so withheld in each instance shall be credited to the State Highway Fund until the full amount advanced has been returned to the fund together with a sum equal to the full amount of interest, if any, paid by the State Highway Commission upon money borrowed by it to make the advancement. Thereafter, no further amounts shall be withheld, by reason of such advancements, from the distributive shares of the county under ORS 366.535.

368.825 to 368.900 [Reserved for expansion]

MISCELLANEOUS PROVISIONS

368.905 "Owner" defined. As used in ORS 368.905 to 368.925, "owner" means a vendee

under a recorded land contract, or if there is no such contract, the holder of the record title, which vendee or holder has a present interest equal to or greater than a life estate.

368.910 Owner to repair sidewalks and curbs along road; county may repair if owner fails. (1) Whenever in an unincorporated area, sidewalks or curbs are constructed along county roads or are existing along roads taken over by the county, the owner of the abutting real property shall maintain and repair the sidewalks or curbs. If any such sidewalk or curb is out of repair, the county court shall send a notice by mail to the owner of the abutting property to repair the sidewalk or curb, setting forth the nature and extent of repairs and the time, not less than 30 days, within which they must be made.

(2) If the owner does not make the repairs within the time allowed, the county court may order the repairs to be made. The county court shall file the order for the repairs with the county clerk, the order describing the abutting property. The recorded order is notice that the described property is subject to a lien for the cost of the repairs, in an amount to be determined later by an order of the county court. The county clerk shall indorse upon the order the date of the filing and record and index the order in special books to be kept by him for such purpose.

368.915 Payment and reimbursement when county makes repairs. (1) After the repairs mentioned in ORS 368.910 have been completed the county court shall compute the cost to which may be added up to 10 percent of the cost for administration. Payment for the repairs shall be made from the general fund of the county.

(2) The fund drawn upon for the repairs shall be reimbursed by an assessment of the total cost against the abutting property. After the owner has been given notice and an opportunity to be heard, the county court shall by order determine the cost to be assessed against the abutting property. Notice of the determination of the assessment shall be mailed to the owner within 10 days after the cost is determined. The county court shall certify the order to the county assessor and shall record the order with the county clerk. The clerk shall indorse on the order the date of filing and record and index it in the special books kept by him for such purpose.

368.920 Expense of repairs as lien on abutting property. The assessment mentioned in ORS 368.915 and interest are a lien upon the abutting property from the date of the filing with the county clerk of the order of the county court for the repairs under ORS 368.910. No transfer, sale or division of the abutting land, or change in its legal description, divests the lien from the whole of the original abutting land. Failure to enter the name of the owner or mistake in the name of the owner in the order for repairs in no way renders void any assessment and in no way affects the lien on the property described. The lien has priority over all other liens and encumbrances, except tax liens. Upon payment in full of the assessment and interest, the county sheriff shall enter satisfaction by a notation in the record kept by the county clerk, and the property is thereby discharged from the lien.

368.925 Delinquency in paying assessment for repairs; execution sale. (1) Thirty days after the notice of the determination of the assessment mentioned in ORS 368.915 is mailed to the owner, the entire amount is due and payable at the office of the county sheriff, and if not so paid shall be delinquent from that date and shall bear interest at the rate of eight percent per year until paid.

(2) One year from the date an assessment is delinquent, the county sheriff shall transmit to the county clerk a written description of the property, the name of the person to whom assessed, the amount of the assessment and the interest due. The county clerk shall issue a writ of execution thereon, directed to the sheriff of the county. The sheriff shall proceed to collect the unpaid assessment by advertising and selling the property in the manner provided by law for the sale of real property on execution, but no property shall be sold for a sum less than the amount of the unpaid assessment plus interest and the cost of advertising and sale.

368.930 Damage of road by escaping waters prohibited. No person or corporation occupying land as owner, proprietor, lessee or otherwise, shall wilfully or negligently permit any water from any irrigation or drainage ditch to waste or flow from the

lands or premises owned, occupied, leased or rented by him, upon any county road or public highway, or upon the right of way of any county road or public highway, and damage the same, or interfere with the public use thereof.

368.935 Recovery of damages for injuries from defective highway or bridge. Whenever any individual, while lawfully traveling upon any highway of this state which is a legal county road or bridge upon such highway, without contributory negligence and without knowledge of the defect or danger, sustains any loss, damage or injury in consequence of the defective and dangerous character of the highway or bridge, either to his person or property, he is entitled to recover of the county in which the loss, damage or injury occurred, compensatory damages, not exceeding $2,000 in any case, by an action in the circuit court of the county, or in a justice's court in the county if the amount of damages sued for does not exceed $250.

368.940 to 368.980 [Reserved for expansion]

PENALTIES

368.990 Penalties. (1) Violation of subsection (3) of ORS 368.100 shall result in forfeiture of $20 for each offense, to be recovered by an action at law brought in the name of the county in any justice's court. All money recovered shall be placed in the general fund of the county. In all such suits that may be decided adversely to the county, the costs thereof shall be paid out of the general fund of the county.

(2) Violation of ORS 368.270 is punishable, upon conviction, by a fine of not less than $10 nor more than $50.

(3) Violation of ORS 368.930 is punishable, upon conviction, by a fine not exceeding $100 or by imprisonment in the county jail not exceeding 60 days, or both. Justices' courts shall have concurrent jurisdiction with the circuit courts of all offenses committed under ORS 368.930.

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Sam R. Haley, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,
on December 2, 1957.

Sam R. Haley
Legislative Counsel