

SENATE BILL No. 400

July 11, 1991, Introduced by Senator CHERRY and referred to
to the Committee on Transportation and Tourism.

A bill to amend the title and sections 1, 2, 3, 4, 5, and 6
of Act No. 341 of the Public Acts of 1927, entitled

"An act to prevent the abandonment, discontinuation or alteration
of the course of any public highway which borders upon, or is
adjacent to any lake, or to the general course of any stream, or
the course of any portion of such a highway, or bordering upon a
lake or general course of any stream, by the public authorities
of any township, village or city, until after the approval
thereof by the circuit court of the county in which said highway
is situated; and to provide for a notice of application therefor,
and a method of hearing in such court, and the method for review
of orders made thereon,"

being sections 247.41, 247.42, 247.43, 247.44, 247.45, and 247.46
of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. The title and sections 1, 2, 3, 4, 5, and 6 of
2 Act No. 341 of the Public Acts of 1927, being sections 247.41,
3 247.42, 247.43, 247.44, 247.45, and 247.46 of the Michigan
4 Compiled Laws, are amended to read as follows:

1

TITLE

2

An act to prevent the abandonment, discontinuation,
3 VACATION, or alteration of the course of any public highway which
4 borders upon, or is adjacent to any lake, or to the general
5 course of any stream, or the course of any portion of such a
6 highway, or bordering upon a lake or general course of any
7 stream, by the public authorities of any township, village, ~~or~~
8 city, OR COUNTY, until after the approval thereof by the circuit
9 court of the county in which said highway is situated; and to
10 provide for a notice of application therefor, and a method of
11 hearing in such court, and the method for review of orders made
12 thereon.

13

Sec. 1. ~~No~~ A public highway ~~which~~ THAT borders upon, or
14 THAT is adjacent to ~~any~~ A lake, or the general course of ~~any~~
15 A stream, or THAT crosses ~~any~~ A stream, ~~nor any~~ OR A portion
16 of ~~such~~ A highway ~~so~~ bordering upon a lake or general course
17 of ~~any~~ A stream, shall NOT be ABANDONED, discontinued, VACATED,
18 OR HAVE ITS COURSE ALTERED by the order or action of ~~any~~ AN
19 official or officials of ~~any~~ A township, city, ~~or~~ incorpo-
20 rated village, OR COUNTY in this state, until an order authoriz-
21 ing the ~~same shall have been~~ ABANDONMENT, DISCONTINUATION, OR
22 VACATION IS made by the circuit court ~~of~~ FOR the county in
23 which ~~such~~ THE highway is situated in the manner ~~as~~
24 ~~hereinafter~~ provided IN THIS ACT.

25

Sec. 2. ~~Whenever~~ IF the official or officials having
26 jurisdiction over the highways of ~~any~~ A township, village, ~~or~~
27 city, OR COUNTY in this state ~~shall~~ desire to abandon,

1 discontinue, VACATE, or alter the course of ~~any~~ A public
 2 highway ~~mentioned in the preceding~~ REFERRED TO IN section 1,
 3 before any action ~~shall be~~ IS taken by the ~~said public author-~~
 4 ~~ity or authorities of any~~ PUBLIC OFFICIAL OR OFFICIALS OF A
 5 township, village, ~~or~~ city, OR COUNTY, an application signed by
 6 not less than ~~7 freeholders~~ 21 LANDOWNERS of the township,
 7 village, ~~or~~ city, OR COUNTY in which ~~such~~ THE highway is sit-
 8 uated, shall be made to the circuit court for the county in which
 9 ~~such~~ THE highway is located, setting forth the particular cir-
 10 cumstances of the case, an accurate description of the highway
 11 proposed to be abandoned, discontinued, VACATED, or altered,
 12 together with the reasons ~~therefor, which~~ FOR THE PROPOSED
 13 ABANDONMENT, DISCONTINUATION, VACATION, OR ALTERATION. THE
 14 application shall be ~~verified by 1~~ SUBSTANTIATED BY OATH BY 5
 15 or more of the persons ~~so~~ signing THE APPLICATION.

16 Sec. 3. Upon the filing of ~~such~~ AN application ~~it shall~~
 17 ~~be the duty of~~ REQUIRED BY SECTION 2, the presiding circuit
 18 judge ~~to make an order fixing a day of hearing thereon, which~~
 19 ~~shall not be less~~ SHALL SCHEDULE A HEARING ON THE APPLICATION
 20 NOT LATER than 30 days from the date ~~of filing such~~ THE appli-
 21 cation IS FILED. Notice of the ~~pendency of such~~ application
 22 and the time of hearing ~~thereon shall be given by publishing the~~
 23 ~~same once in~~ ON THE APPLICATION SHALL BE PUBLISHED ONCE each
 24 week for 3 successive weeks, in a newspaper printed and circu-
 25 lated in ~~said~~ THE county, unless ~~it shall be made to appear~~
 26 ~~by~~ AN affidavit IS filed in ~~such~~ THE case that no such
 27 newspaper is published in ~~such~~ THE county. ~~such~~ THE notice

1 ~~to~~ SHALL contain an accurate description of the highway
2 described in the application and a brief recital of the reasons
3 for its abandonment, discontinuance, VACATION, or alteration. A
4 copy of ~~such~~ THE notice shall also be posted ~~up~~ in 3 of the
5 most public places in the township, city, ~~or~~ village, OR COUNTY
6 in which ~~such~~ THE highway is situated, at least 20 days before
7 the date of THE hearing ~~fixed thereon~~ ON THE APPLICATION, and a
8 copy ~~thereof shall be personally served upon~~ OF THE NOTICE
9 SHALL BE SENT BY FIRST-CLASS MAIL TO THE OWNERS OF RECORD TITLE
10 OF EACH PARCEL OF LAND LOCATED WITHIN 300 FEET OF THE HIGHWAY
11 DESCRIBED IN THE APPLICATION AND TO THOSE PERSONS OF RECORD
12 CLAIMING UNDER THOSE OWNERS AT HIS OR HER LOCAL ADDRESS AND THE
13 ADDRESS APPEARING ON THE ASSESSMENT ROLL, IF DIFFERENT, AND TO
14 the supervisor of the township or the mayor, president, or chief
15 executive officer of the township, city, or village, OR TO THE
16 COUNTY BOARD OF COMMISSIONERS OF THE COUNTY in which ~~such~~ THE
17 highway is situated and ~~upon the state highway commissioner~~ TO
18 THE STATE TRANSPORTATION DEPARTMENT at least 20 days before the
19 date fixed for THE hearing ~~thereon~~ ON THE APPLICATION. Proof
20 by affidavit of ~~such~~ THE REQUIRED publication, posting, and
21 ~~service~~ MAILING shall be filed ~~in said cause~~ WITH THE COURT
22 before the date of hearing.

23 Sec. 4. Upon the day of hearing ~~of such~~ THE application
24 or any adjournment ~~thereof~~ OF THE HEARING, testimony shall be
25 taken on the part of the petitioner and any person or persons
26 interested in ~~such~~ THE application, and if it ~~shall~~
27 satisfactorily ~~appear~~ APPEARS to the court that there is no

1 reasonable objection ~~thereto~~ TO THE APPLICATION, and that it is
2 necessary for the best interest and welfare of the public that
3 ~~such~~ THE highway be abandoned, discontinued, VACATED, or
4 altered as to its course, as prayed for in ~~such~~ THE applica-
5 tion, or if it ~~shall appear~~ APPEARS to the court that ~~such~~
6 THE highway or any part ~~thereof~~ OF THE HIGHWAY should remain as
7 then established, an order shall be ~~made and~~ entered in the
8 record of the court in accordance with ~~such~~ THE determination.

9 Sec. 5. The proceedings ~~therein shall be~~ REQUIRED BY
10 SECTION 4 ARE subject to ~~review by certiorari upon application~~
11 ~~of any~~ APPEAL BY A taxpayer of ~~such~~ THE township, village,
12 ~~or~~ city, ~~as the case may be~~ OR COUNTY IN WHICH THE HIGHWAY IS
13 SITUATED. Notice of ~~such application for review~~ A CLAIM FOR
14 APPEAL shall be served upon the ~~persons making such application~~
15 ~~and~~ PARTIES TO THE ACTION INCLUDING the supervisor of the town-
16 ship or the mayor, president, or chief executive officer of the
17 city or village, OR THE COUNTY BOARD OF COMMISSIONERS OF THE
18 COUNTY in which ~~such~~ THE highway is ~~situate~~ SITUATED, within
19 10 days from the date of ~~such~~ THE ENTRY OF THE order. ~~and~~
20 ~~further~~ FURTHER proceedings ~~thereon~~ ON THE APPEAL shall be in
21 the same manner AS provided by law for ~~review by certiorari~~
22 APPEAL of judgments of the circuit court.

23 Sec. 6. ~~The term "adjacent" as used herein, shall be con-~~
24 ~~strued to include~~ AS USED IN THIS ACT:

25 (A) "ADJACENT" INCLUDES any highway, or portion ~~thereof~~ OF
26 A HIGHWAY, lying within 5 rods of the shore of any lake or the
27 general course of any stream.

1 (B) "HIGHWAY" INCLUDES, WHERE APPLICABLE, LOCAL ROADS OR
2 STREETS.