



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bills 715, 716, and 717 (as passed by the Senate)
 Sponsor: Senator Doug Carl (Senate Bill 715)
 Senator John D. Cherry, Jr. (Senate Bills 716 and 717)
 Committee: Transportation and Tourism

Date Completed: 2-28-96

RATIONALE

The interests of "front lot" owners, "back lot" owners, and members of the public sometimes compete when a road or street ends at a public body of water. In some cases, individuals who own land on or near a lake might want to close the road ending in order to prevent such problems as traffic, noise, and litter. In other cases, individuals whose property is near but not adjoining a lake (back lot owners) fear that those owning property adjacent to the lake (front lot owners) will try to close the road ending and deny the back lot owners' lake access. Such a conflict is resolved according to one of three separate statutes, depending upon whether the road is under the jurisdiction of a township, city, or village, is controlled by a county, or is within a recorded plat.

Under Public Act 341 of 1927, which governs the discontinuance of public highways that border on a lake or stream, the officials of a township, city, or village may not discontinue a highway unless seven landowners apply to the circuit court. After a hearing, the court may enter an order according to whether it determines that there is no reasonable objection and discontinuance is in the public interest, or that the highway should remain as established. Under the county road law, a county may abandon a county road by a resolution adopted by a majority vote. If there are any buildings upon the road, however, the county may not abandon it except upon the petition of seven or more property owners. If all of the owners of record and occupants of the land sign the petition, the board must determine the advisability of abandonment and either grant or deny the petition without further proceedings. Otherwise, the board must hold a hearing before determining the advisability of abandonment. Finally, the Subdivision Control Act governs circuit court actions by a landowner or the governing body of a municipality to vacate, correct, or revise a

recorded plat. After a hearing, the court may order the plat to be vacated, corrected, or revised, although a State highway or Federal aid road may be vacated only by the Michigan Department of Transportation, a county road may be vacated only by the county road commission, and a street under the jurisdiction of a local unit of government may be vacated only by the local governing body and by court order.

While these statutes contain abandonment procedures, they do not clearly address who is entitled to an abandoned road ending. In addition, there may be conflicts as to which unit of government has jurisdiction over a particular road and who may bring a petition for abandonment. In many cases, however, an overriding concern is retaining public access to a body of water. It has been suggested that one way to establish uniformity within the laws and protect the public's interest, would be to give the State or a township the first option to retain abandoned road endings as public access sites.

CONTENT

The bills would provide for the conveyance or relinquishment of control to the State or to a township of public roads that serve as access sites to lakes and streams and that are proposed for discontinuation, alteration, abandonment, or vacation. The Department of Natural Resources (DNR) or the township would have to determine whether the property should be retained as a public access site. The township would have first priority to obtain the property or control of it, and would have to give the DNR first priority if the township later proposed to transfer the property. Property relinquished or conveyed

to the State would have to be under the jurisdiction of the DNR. The State could retain title to the property, transfer title to a local unit of government, or deed the property to the adjacent property owners. If the property were purchased by the State from restricted fund revenue, money obtained from the sale of the property would have to be returned to that restricted fund.

The bills also would change the application, notification, and hearing requirements concerning public roads that are access sites to lakes and streams and that are proposed for abandonment or alteration.

Senate Bill 715 would amend Public Act 341 of 1927, Senate Bill 716 would amend the county road law, and Senate Bill 717 would amend the Subdivision Control Act.

Following is a more detailed description of the bills.

Senate Bill 715

Public Act 341 of 1927 prohibits the discontinuation of a public highway, or portion of it, that borders on or is adjacent to any lake, or the general course of a stream, or crosses any stream, by the order or action of any township, city, or village official, until an order authorizing the discontinuation is made by the circuit court of the county in which the highway is situated. Before an order is issued, however, an application for the discontinuation must be made to the circuit court. The application must specify the reasons for the proposed discontinuation and must be signed by seven freeholders of the municipality in which the highway is located and verified by one or more of the signatories.

The bill would apply the prohibition to the abandonment, discontinuation, vacation, or alteration of the course of a public highway that would result in a loss of public access, and would refer to a highway that "borders upon, crosses, is adjacent to, or ends at" a lake or stream. The bill also would require 21 landowners to sign the application; would require the application to be substantiated by oath by five or more of the signatories; and would delete reference to a township.

The Act also requires that a hearing be held on the application not less than 30 days from the date the application is filed and that a copy of the notice of the hearing be served personally on the township

supervisor or the mayor, president, or chief executive officer of the township, city, or village in which the highway is situated and on the State highway commissioner at least 20 days before the date of the hearing. The bill would:

- Require the hearing to be not later than 60 days, rather than not less than 30 days, after the application was filed.
- Require a copy of the hearing notice to be sent by first-class mail at least 30 days before the hearing to the owners of record title of each parcel of land located within 300 feet of the highway described in the application and to those persons of record claiming under those owners at their local address and the address appearing on the assessment roll, if different.
- Delete the mayor, president, and State highway commissioner from the list of persons to receive a copy of the hearing notice and add instead the State Transportation Department, the DNR, and, if applicable, the township in which the property was situated.
- Require the DNR and, if applicable, the township to review the application to determine whether the property should be retained as a public access site.

The bill also specifies that if a circuit court determined that an official or officials of any city or village in this State could discontinue, abandon, alter the course of, or vacate a public highway or portion of a public highway, and the DNR or, if applicable, the township decided to maintain the property as a public access site, the court would have to order the official either to relinquish control to the State or to the township, if the interest were nontransferable, or to convey by quitclaim deed to the State or township whatever interest in the property was held by the local unit of government. The township would have first priority to obtain the property or control of it as a public access site. If the township obtained the property or control of it and later proposed to transfer the property or control, it would have to give the DNR first priority to obtain the property or control of it.

If interest in the property were conveyed or control relinquished to a local unit or the State, the local unit or the State would have to operate and maintain the property so as to prevent and eliminate garbage and litter accumulation, unsanitary conditions, undue noise, and congestion. If the local unit or the State failed to do so, the circuit court could order it to close the

road ending in a manner that prevented ingress to and egress from the body of water for up to 30 days. If the local unit or State failed to satisfy the bill's requirements after the road ending was reopened following these proceedings, the court could order it to quitclaim the property or relinquish control to the adjacent landowners. Proceedings under these provisions could be initiated by application to the court of seven landowners in the city or village, and notice would have to be given as required for an application for abandonment.

The bill would define "highway" as including, where applicable, local roads or streets.

Senate Bill 716

The county road law allows the board of county road commissioners of any county that has adopted the county road system to relinquish jurisdiction of, or absolutely abandon and discontinue, any county road. The law specifies that after proceedings to abandon or discontinue the road have been held, the jurisdiction and control of the road revert to the township or municipality where it is situated and the road ceases to exist as a public highway. The bill provides that the road would cease to be a public highway *unless* the unit of government that acquired or controlled the property permitted such a use.

The law also prohibits the board of county road commissioners from absolutely abandoning and discontinuing any highway or part of it upon or along which there is "any building of any character", except as provided in the law and on the written petition of seven or more freeholders of the township in which the road to be abandoned is located. If the petition is signed by all of the owners of record and occupants of land abutting the road, the board must determine the advisability of the abandonment and discontinuance and grant or deny the petition without further proceedings. If the petition is not signed by all of the owners and occupants, a notice concerning the petition and the schedule for hearings on it must be mailed to each owner of record or occupant at his or her last known address at least 10 days before the hearing. If the owner does not reside on the land or neither the owner nor the occupant can be found within the county in which the land is situated, notice concerning the petition and hearing must be published in a newspaper circulated in the county 10 days before the hearing.

Under the bill, a board's resolution to abandon a road, and a board's decision in cases involving a petition signed by all owners and occupants, would be subject to the proposed provisions regarding conveyance to the DNR or the township. In cases involving a hearing, the bill would change the notification deadlines to at least 30 days before the hearing and delete reference to "any building of any character". Further, the bill would require the board to notify the township or municipality within which the road was situated, the State Transportation Department, and the DNR if the action concerned any county road or portion of a county road that bordered on, crossed, was adjacent to, or ended at a lake or the general course of a stream and the proposed action would result in the loss of public access. The DNR and the township or municipality where the road was situated would have to review the petition and determine within 30 days whether the property should be retained as a public access site. If the road were located in a township, the township would have first priority and the DNR would have second priority to obtain the property as a public access site. If the road were not in a township, the DNR would have first priority to retain the property as a public access site.

The bill also specifies that if the board of county road commissioners determined to relinquish control, discontinue, abandon, or vacate any county road or portion of it that bordered on, crossed, was adjacent to, or ended at a lake or the general course of a stream, and the township, if applicable, or the DNR decided to maintain the road as a public access site, the board would have to convey by quitclaim deed, or relinquish jurisdiction over the property if the interest were nontransferable to the township or State. If the township obtained the property or control of it and later proposed to transfer the property or control, it would have to give the DNR first priority to obtain the property or control of it. The local unit of government would be required either to maintain the property as a site of public access or to allow it to revert to the adjoining landowners.

If interest in the property were conveyed or control relinquished to a local unit or the State, the local unit or the State would have to operate and maintain the property so as to prevent and eliminate garbage and litter accumulation, unsanitary conditions, undue noise, and congestion. If the local unit or the State failed to do so, the circuit court could order it to close the road ending in a manner that prevented ingress to

and egress from the body of water for up to 30 days. If the local unit or State failed to satisfy the bill's requirements after the road ending was reopened following these proceedings, the court could order it to quitclaim the property or relinquish control to the adjacent landowners. Proceedings under these provisions could be initiated by application to the court of seven landowners in the township, and notice would have to be given as required for an application for abandonment.

The bill also provides that a determination by the board of county road commissioners under these provisions would be binding for purposes of Public Act 341 of 1927.

Senate Bill 717

The Subdivision Control Act specifies that to vacate, correct, or revise a recorded plat or any part of it, a complaint must be filed in the circuit court by the owner of a lot in the subdivision, a person of record claiming under the owner, or the governing body of the municipality in which the subdivision covered by the plat is located. The complaint must describe the part to be vacated and any other correction or revision of the plat sought by the plaintiff and the reasons for the revision, correction, or vacation. The plaintiff is required to join as parties defendant various entities, including the municipality in which the subdivision covered by the plat is located. The bill would include in the list of parties defendant the Director of the DNR if any of the subdivision included or bordered a State highway or Federal aid road. Further, if the requested action could result in a public highway or a portion of it that bordered on, crossed, was adjacent to, or ended at a lake or the general course of a stream being vacated or altered in a manner that would result in the loss of public access, the plaintiff would have to join as parties the DNR Director and, if the subdivision were located in a township, the township. The DNR and, if applicable, the township would have to review the application and determine within 30 days whether the property should be retained by the State or township as a public access site, and would have to convey that decision to the court.

The bill also provides that if a circuit court determined that a recorded plat, or any part of it, that contained a public highway or portion of highway that bordered on, crossed, was adjacent to, or ended at any lake or the general course of any stream, was vacated or altered in a manner that would result in a loss of public access, the court would have to allow the State and, if the

subdivision were located in a township, the township to decide whether it wanted to maintain the property as a public access site. If the State or township decided to maintain the property, the court would have to order the official or officials either to relinquish control to the State or township, if the interest were nontransferable, or to convey by quitclaim deed to the State or township whatever interest in the property was held by the local unit of government. The township would have first priority to obtain the property or control of it as a public access site. If the township obtained the property or control of it and later proposed to transfer the property or control, it would have to give the DNR first priority to obtain the property or control of it.

If interest in the property were conveyed or control relinquished to a local unit or the State, the local unit or the State would have to operate and maintain the property so as to prevent and eliminate garbage and litter accumulation, unsanitary conditions, undue noise, and congestion. If the local unit or the State failed to do so, the circuit court could order it to close the road ending in a manner that prevented ingress to and egress from the body of water for up to 30 days. If the local unit or State failed to satisfy the bill's requirements after the road ending was reopened following these proceedings, the court could order it to quitclaim the property or relinquish control to the adjacent landowners. Proceedings under these provisions could be initiated by application to the court of seven landowners in the township, city, or village, and notice would have to be given as required for an application for abandonment.

The bill also states that title to a public highway or portion of a public highway that bordered on, was adjacent to, or ended at a lake or the general course of a stream could vest in the State subject to these provisions.

MCL 247.41-247.46 (S.B. 715)
224.18 (S.B. 716)
560.224a et al. (S.B. 717)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The bills would provide the uniformity that is desperately needed within the laws governing the abandonment of road endings, and would protect

the public's access to bodies of water. Under all of the bills, the DNR or a township would have to determine whether an abandoned road ending should be retained as a public access site, and the township (if applicable) would have to be given first priority to obtain control over the property. The township, in turn, would have to give the DNR first priority if the township later wished to transfer the property. In many cases, a road ending might be the public's only access to a body of water, and members of the public who are not fortunate enough to be lakefront property owners should not be denied the opportunity to swim, sail, fish, or sunbathe. The bills also would ensure that the abandonment of a road ending did not lead to such nuisances as litter, noise, and congestion, by providing for relinquishment to adjacent landowners if a local unit or the State failed to maintain the property so as to prevent these problems.

Response: The bills could avert potential confusion and litigation by defining "public access site". For instance, there could be conflicts as to whether property could be used only as a site for swimming, boating, and fishing, or also for boat hoists, overnight mooring, or dry storage.

Supporting Argument

A small business that depends on tourism, such as a bait shop, may be seriously jeopardized by the closure of road endings. By protecting the public's access to lakes and streams, the bills also would protect local economic interests.

Legislative Analyst: S. Margules

FISCAL IMPACT

The bills would have an indeterminate fiscal impact on State and local government dependent upon the amount of land involved, whether the Department of Natural Resources or townships decided to retain a parcel as a public access site, its value, and the potential taxes and maintenance costs to be paid upon it.

Fiscal Analyst: G. Cutler
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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.