



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bills 715, 716, and 717 (as enrolled)
 Sponsor: Senator Doug Carl (Senate Bill 715)
 Senator John D. Cherry, Jr. (Senate Bills 716 and 717)
 Senate Committee: Transportation and Tourism
 House Committee: Conservation, Environment and Great Lakes

PUBLIC ACTS 217, 218, and 219 of 1996

Date Completed: 7-9-96

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 city or village, is controlled by a county, or is within a recorded plat.

Public Act 341 of 1927 governs the discontinuance of public highways that border on a lake or stream and that are under the jurisdiction of a city or village. The county road law provides for the abandonment of a county road. 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. While these statutes all contain abandonment procedures and provide for judicial hearings, they do not necessarily 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 was 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 points for ingress to and egress from bodies of water.

CONTENT

The bills 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; and provide for the conveyance or relinquishment of control to the State or to a township of such roads. The Department of Natural Resources (DNR) or the township must determine whether the property should be retained as an ingress or egress point. The township will have first priority to obtain the property or control of it, and must give the DNR first priority if the township later proposes to transfer the property. Property relinquished or conveyed to the State is to be under the jurisdiction of the DNR. The State may 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 was purchased by the State from restricted fund revenue, money obtained from the sale of the property must be returned to that restricted fund.

If property is conveyed to a local unit or the State, the local unit or the State must operate and maintain the property in a manner that prevents litter, noise, and congestion. If a person shows substantial noncompliance with this requirement, the court may order the road ending closed for progressively longer periods of time, and ultimately permanently. If a road ending is permanently closed, the State or local unit may petition to have it reopened, and adjacent landowners may petition to have the property conveyed to them.

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

Following is a more detailed description of the bills.

Senate Bill 715

Abandonment Procedure

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

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

The Act also required that a hearing be held on the application not less than 30 days from the date the application was 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 was situated and on the State highway commissioner at least 20 days before the date of the hearing. The bill:

- Requires the hearing to be not later than 60 days, rather than not less than 30 days, after the application is filed.
- Requires 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.

- Deleted the mayor, president, and State highway commissioner from the list of persons to receive a copy of the hearing notice, and added instead the State Transportation Department, the DNR, and, if applicable, the township in which the property is situated.
- Requires the DNR and, if applicable, the township to review the application to determine whether the property should be retained as an ingress and egress point.

The bill also specifies that if a circuit court determines that an official or officials of any city or village in this State may 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 decides to maintain the property as an ingress and egress point, the court must order the official either to relinquish control to the State or to the township, if the interest is nontransferable, or to convey by quitclaim deed to the State or township whatever interest in the property is held by the local unit of government. The township will have first priority to obtain the property or control of it as an ingress and egress point. If the township obtains the property or control of it and later proposes to transfer the property or control, it must give the DNR first priority to obtain the property or control of it.

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

Temporary/Permanent Closure

If interest in the property is conveyed or control relinquished to a local unit or the State, the local unit or the State must operate and maintain the property so as to prevent and eliminate garbage and litter accumulation, unsanitary conditions, undue noise, and congestion. If a person shows substantial noncompliance with these requirements, the circuit court may order the local unit or the State to close the road ending in a manner to prevent ingress to and egress from the body of water for up to 30 days. If a person shows substantial noncompliance and the court has previously closed the road ending for up to 30 days, the court may order the local unit or the State to close the road ending for 90 days. If a person shows substantial noncompliance and the court has previously closed the road ending for 90 days, the court may order the road ending closed

for 180 days. If a person shows substantial noncompliance and the court has previously closed the road ending for 180 days, the court must order the local unit or the State to show cause why the road ending should not be permanently closed in a manner to prevent ingress to and egress from the body of water. The court must permanently close the road ending unless the local unit or the State shows cause why it should not be closed. Proceedings under these provisions must be initiated by application of seven owners of record title of land in the local unit who own land within one mile of the road ending, to the circuit court for the county in which the road ending is located.

After a court has permanently closed the road ending, and unless the property has been conveyed or relinquished to the adjacent landowners under the following provision, the local unit or the State may petition the circuit court to reopen the road ending. The court may order the road ending reopened if the local unit or the State presents a management plan to and posts a performance bond with the circuit court, and the court finds that the plan and bond are adequate to ensure compliance with the bill's operation and maintenance requirements. After a road ending is permanently closed, one or more of the adjacent landowners may petition the circuit court to order the local unit or the State to convey to the adjacent landowners any interest in the property that the local unit or the State holds, or if the interest is nontransferable, to relinquish control over the property to the adjacent landowners.

The applicants in proceedings under all of the preceding provisions must give notice of the application by registered mail to the persons who are to receive notice of an application for abandonment.

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 will cease to be a public highway *unless* the unit of government that acquires or controls the property permits such a use.

Under the bill, the board of county road commissioners may not absolutely abandon and discontinue any highway or part of it, except as provided in the law, on the written petition of seven or more freeholders of the township in which the road to be abandoned is located. (Previously, this applied only if there was "any building of any character" along the highway.) As previously provided, 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. A board's resolution to abandon a road, and a board's decision in cases involving a petition signed by all owners and occupants are subject to the new provisions regarding conveyance to the DNR or the township.

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 30 days before the hearing. The bill requires the board also to notify the township or municipality within which the road is situated, the State Transportation Department, and the DNR if the action concerns any county road or portion of a county road that borders on, crosses, is adjacent to, or ends at a lake or the general course of a stream and the proposed action will result in the loss of public access. If the owner does not reside on the land, or the owner or occupant cannot 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 30 days before the hearing. (Previously, the notice had to be mailed or published at least 10 days before the hearing.)

The DNR and the township or municipality where the road is situated must review the petition and determine within 30 days whether the property should be retained as an ingress and egress point. If the road is located in a township, the township will have first priority and the DNR will have second priority to obtain the property as an ingress and egress point. If the road is not in a township, the DNR will have first priority to retain the property as an ingress and egress point.

The bill also specifies that if the board of county road commissioners determines to relinquish control, discontinue, abandon, or vacate any county road or portion of it that borders on, crosses, is adjacent to, or ends at a lake or the general course of a stream, and the township, if

applicable, or the DNR decides to maintain the road as a public access site, the board must convey by quitclaim deed, or relinquish jurisdiction over the property if the interest is nontransferable, to the township or State. If the township obtains the property or control of it and later proposes to transfer the property or control, it must give the DNR first priority to obtain the property or control of it. The local unit of government must either maintain the property as a site of public access or allow it to revert to the adjoining landowners.

If interest in the property is conveyed or control relinquished to a local unit or the State, the local unit or the State must operate and maintain the property so as to prevent and eliminate garbage and litter accumulation, unsanitary conditions, undue noise, and congestion. The bill contains the same provisions as Senate Bill 715 concerning substantial noncompliance, progressive periods of closure, reopening, and conveyance to adjacent landowners, as described above.

The bill also provides that a determination by the board of county road commissioners under these provisions is 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 includes in the list of parties defendant the Director of the DNR if any of the subdivision includes or borders a State highway or Federal aid road. Further, if the requested action may result in a public highway or a portion of it that borders on, crosses, is adjacent to, or ends 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 must join as parties the DNR Director and, if the subdivision is located in a township, the township. The DNR and, if applicable, the township must review the application and determine within 30 days whether the property should be retained by the State or

township as an ingress and egress point, and must convey that decision to the court.

The bill also provides that if a circuit court determines that a recorded plat, or any part of it, that contains a public highway or portion of highway that borders on, crosses, is adjacent to, or ends at any lake or the general course of any stream, should be vacated or altered in a manner that would result in a loss of public access, the court must allow the State and, if the subdivision is located in a township, the township to decide whether it wants to maintain the property as an ingress and egress point. If the State or township decides to maintain the property, the court must order the official or officials either to relinquish control to the State or township, if the interest is nontransferable, or to convey by quitclaim deed to the State or township whatever interest in the property is held by the local unit of government. The township will have first priority to obtain the property or control of it as an ingress and egress point. If the township obtains the property or control of it and later proposes to transfer the property or control, it must give the DNR first priority to obtain the property or control of it.

If interest in the property is conveyed or control relinquished to a local unit or the State, the local unit or the State must operate and maintain the property so as to prevent and eliminate garbage and litter accumulation, unsanitary conditions, undue noise, and congestion. The bill contains the same provisions as Senate Bill 715 concerning substantial noncompliance, progressive periods of closure, reopening, and conveyance to adjacent landowners, as described above.

The bill also states that title to a public highway or portion of a public highway that borders on, is adjacent to, or ends at a lake or the general course of a stream may 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 protect the public's access to bodies of water and provide the uniformity that has been desperately needed within the laws governing the

abandonment of road endings. Under all of the bills, the DNR or a township must determine whether an abandoned road ending should be retained as an ingress and egress point, and the township (if applicable) must be given first priority to obtain control over the property. The township, in turn, must give the DNR first priority if the township later wishes 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, or fish. The bills also will ensure that the abandonment of a road ending does not lead to such nuisances as litter, noise, and congestion, by providing for periods of closure and potential conveyance to adjacent landowners if a person fails to maintain the property so as to prevent these problems. In addition, by referring to the retention of a road ending as "an ingress and egress point" (rather than "a public access site", as earlier versions of the bills provided), the bills should prevent the use of these sites 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 will protect local economic interests.

Legislative Analyst: S. Margules

FISCAL IMPACT

The bills will 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 decide to retain a parcel as an ingress and egress point, 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.