



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 472 (as introduced 5-7-03)
Sponsor: Senator Jud Gilbert, II
Committee: Transportation

Date Completed: 5-27-03

CONTENT

The bill would amend Section 18 of the county road law to specify that the procedure for abandonment of a county road provided in the statute "is the exclusive procedure by which a road under the jurisdiction of a board of county road commissioners may be absolutely abandoned and discontinued". The bill also provides that a board of county road commissioners "has the exclusive authority to decide whether a road under its jurisdiction shall be absolutely abandoned and discontinued".

Under Section 18, by a resolution adopted by a majority vote, the board of county road commissioners of any county that has adopted the county road system may either relinquish jurisdiction of, or absolutely abandon and discontinue, any county road or any part of a county road. In a resolution of abandonment, the board must determine that it is in the best interests of the public that the road or portion of the road be absolutely abandoned and discontinued. A true copy of the resolution must be recorded in the office of the register of deeds for the county where the land is situated.

MCL 224.18

BACKGROUND

The issue of county road abandonment was addressed by a panel of the Michigan Court of Appeals in an opinion issued on March 13, 2003 (*Amb's, et al. v Kalamazoo Co. Road Commission, et al.*, No. 230107). The Court found that a county road commission may abandon a road either through the procedure in Section 18 of the county road law, or through voluntary abandonment by nonuse.

This case involved a road in Comstock Township, Cooks Drive, that had been bisected by I-94 in 1951. The county abandoned the portion of Cooks Drive located north of I-94 through a resolution adopted and recorded pursuant to Section 18 of the county road law (MCL 224.18). The county evidently did not adopt a similar resolution abandoning the portion of Cooks Drive south of I-94, although the county no longer certified that portion of the road for purposes of receiving State maintenance funds and performed little, if any, maintenance along it.

The case arose when the owners of land on Cooks Drive sought to have the road recertified so they could build a house on the property. (Under a township ordinance, they could not do so because the property did not have frontage on a publicly maintained road.) After being informed that they would have to share the cost of bringing the road up to county standards before it would be recertified, unless they could prove that Cooks Drive remained a public road, the landowners brought this lawsuit.

The plaintiffs claimed that Cooks Drive remained a public road because there was no evidence that the portion south of I-94 has been formally abandoned. They argued that MCL 224.18 provided the exclusive means by which a board of county road commissioners may abandon a road and, therefore, the county could not assert abandonment under the common law theory of abandonment by nonuse. The trial court disagreed because the statute does not state that road commissions should follow the statutory procedures to the exclusion of all others, and because no appellate court has said that common law abandonment is no longer a viable option. The court then relied on the common law theory of abandonment by nonuse and held that the county had abandoned Cooks Drive as a public road following its bisection by I-94.

The Court of Appeals affirmed the trial court's decision. According to the Court, "A roadway established for public use may cease to be such by voluntary abandonment and nonuse... We conclude that the statute in effect at the times relevant to this case did not present the exclusive method by which a board of county road commissioners could abandon a county road." The Court further indicated that it was sympathetic to the public-policy argument that "...it would be better if statutory abandonment through board resolution was the only method available, so that landowners may clearly know which roads have and have not been abandoned without the need for a judicial determination". The Court stated that it was rejecting this public-policy argument "as one that must be brought before the Legislature for possible revision of the statute."

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Craig Thiel