

SENATE BILL No. 472

May 7, 2003, Introduced by Senator GILBERT and referred to the Committee on Transportation.

A bill to amend 1909 PA 283, entitled

"An act to revise, consolidate, and add to the laws relating to the establishment, opening, discontinuing, vacating, closing, altering, improvement, maintenance, and use of the public highways and private roads; the condemnation of property and gravel therefor; the building, repairing and preservation of bridges; maintaining public access to waterways under certain conditions; setting and protecting shade trees, drainage, and cutting weeds and brush within this state; providing for the election or appointment and defining the powers, duties, and compensation of state, county, township, and district highway officials; and to prescribe penalties and provide remedies,"

by amending section 18 (MCL 224.18), as amended by 2000 PA 342.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 18. (1) If state reward is to be applied for, the
2 board of county road commissioners shall file with the state
3 transportation commission, for its approval, a map of the county
4 showing the location of the proposed system of county roads.
5 This proposed system may be changed if approved by the state
6 transportation commission. All state rewarded roads ~~composing~~

1 ~~a- that are~~ part of this system shall be taken over as county
 2 roads by the board of county road commissioners. ~~and any~~ **A** road
 3 or part of a road previously laid out shall become a county road
 4 if the board of county road commissioners shall at any time ~~se~~
 5 ~~determine, and~~ **make a determination,** in passing through or on
 6 the line between townships or villages or cities any streets or
 7 parts of streets may be adopted as a county road, with the
 8 consent of the proper authorities of that city or cities, village
 9 or villages. If a street is taken over and improved as a county
 10 road, city and village authorities may further improve the road
 11 by surfacing it outside the portion constructed by the county,
 12 ~~and~~ by the addition of gutters, curbs, sidewalks, and other
 13 improvements, may provide for the care and maintenance of the
 14 improvements, and may levy and collect taxes for the
 15 improvements. The vote of the county road commissioners in
 16 respect to the determination shall be taken by yeas and nays, and
 17 shall be entered at large on the records of the board of county
 18 road commissioners. Notice of the determination shall be
 19 immediately given by the clerk to the highway authorities of each
 20 city or village in which the road or any part of the road is
 21 situated, and published in a newspaper of general circulation in
 22 the county, once in each week for 3 successive weeks. Proof of
 23 service and publication may be made by affidavit by any person
 24 knowing the facts and filed with the clerk. The affidavit, ~~or~~
 25 the record ~~thereof~~ **of the affidavit,** or a certified copy of the
 26 affidavit or record shall be prima facie evidence of its
 27 contents. After service and publication of the notice, the board

1 of county road commissioners shall have exclusive jurisdiction
2 and control of the road embraced within the determination, and
3 the municipality within which the road is situated shall be
4 relieved from all responsibility for the road. Immediately after
5 laying out or taking control of a road the board shall give the
6 road a name. The board may change the name of the road if it
7 determines that a name change is necessary in order to conform to
8 a general plan or avoid confusion or duplication. The name given
9 by the board to any road under its jurisdiction, either
10 originally or in case of a change as provided for in this
11 section, is the official name by which the road shall be known.

12 (2) The board also may enter into agreements with the board
13 of county road commissioners in any adjoining county with
14 reference to the laying out, maintenance, construction, and
15 improvement of inter-county roads. The decision of each board to
16 become a party to an agreement is limited to the construction,
17 improvement, or maintenance of the portion of the road subject to
18 the jurisdiction of that board.

19 (3) The board of county road commissioners of any county that
20 has adopted the county road system, at any time, may either
21 relinquish jurisdiction of or absolutely abandon and discontinue
22 any county road, or any part of a county road, by a resolution
23 adopted by a majority vote. **The procedure for abandonment of a**
24 **county road provided in this section is the exclusive procedure**
25 **by which a road under the jurisdiction of a board of county road**
26 **commissioners may be absolutely abandoned and discontinued. A**
27 **board of county road commissioners has the exclusive authority to**

1 **decide whether a road under its jurisdiction shall be absolutely**
2 **abandoned and discontinued.** The vote of the county road
3 commissioners in respect to either relinquishment of jurisdiction
4 or absolute abandonment and discontinuance shall be taken and
5 entered, and notice given, in the same manner as required in this
6 section in cases in which county roads are adopted. After
7 proceedings to relinquish jurisdiction have been had, the
8 jurisdiction and control of the road, or part of the road, except
9 as otherwise provided in this section, shall revert to the
10 municipality within which the road is situated, and the county
11 shall be relieved of the responsibility for the road. After
12 proceedings to abandon absolutely and discontinue, the road or
13 part of the road shall cease to exist as a public highway unless
14 the unit of government that acquires the property or control of
15 the property permits use as a public highway. Subject to
16 subsection (8), the board, at the time of the passage of a
17 resolution to abandon absolutely and discontinue any portion of a
18 highway under its jurisdiction, shall determine in the resolution
19 that it is in the best interests of the public that the highway
20 or portion of the highway be absolutely abandoned and
21 discontinued. The board shall cause a true copy of every
22 resolution or other proceeding containing an accurate description
23 of the lands comprising the highway or portion of the highway
24 that has been absolutely abandoned and discontinued to be
25 recorded in the office of the register of deeds for the county
26 where the lands are situated.

27 (4) The board of county road commissioners shall not

1 absolutely abandon and discontinue any highway, or part of a
2 highway, except as provided in this section, upon the written
3 petition of 7 or more freeholders of the township in which the
4 road is sought to be absolutely abandoned and discontinued. The
5 petition for absolutely abandoning and discontinuing a highway
6 shall describe the road in general terms or by any name by which
7 it is known, and if the absolute abandonment and discontinuance
8 of only a portion of a road is asked for, that portion shall be
9 specified. The petition shall be accompanied by a true and
10 correct list of the names and mailing addresses of the occupants
11 of each parcel of land abutting the highway, or portion of the
12 highway, sought to be absolutely abandoned and discontinued,
13 which list shall be certified to under oath by 1 of the persons
14 making or presenting the petition.

15 (5) If a petition for absolute abandonment and discontinuance
16 of a road or portion of a road contains the signatures of all of
17 the owners of record and occupants of land abutting the road, as
18 ascertained from the records in the office of the register of
19 deeds and the certified list provided for in subsection (4), the
20 board of county road commissioners shall, within 20 days after
21 receiving the petition, subject to subsection (8), determine the
22 advisability of the abandonment and discontinuance and either
23 grant or deny the petition without further proceedings. In all
24 other cases the board shall, within 20 days after receiving a
25 petition, issue a written notice stating the object of the
26 petition and appointing a time and place of hearing, which notice
27 shall be served on the township board of the township in which

1 the road is situated and on the owners of record and occupants of
2 lands through or adjoining which it is proposed to absolutely
3 abandon and discontinue the road, by mailing a copy of the notice
4 by first-class mail to the township board of the township in
5 which the road is situated and to the residence of each owner of
6 record or occupant at his or her last known address at least
7 30 days before the time of hearing. The township board of the
8 township in which the road is situated shall have first priority
9 to retain the property or portion of the property. The board
10 shall ~~also~~ notify the township or municipality within which the
11 road is situated ~~—~~ **and** the state transportation department ~~—~~
12 ~~and~~ **of the hearing. The board shall also notify** the department
13 of natural resources if the action concerns any county road or
14 portion of a county road that borders on, crosses, is adjacent
15 to, or ends at a lake or the general course of a stream and the
16 proposed action would result in the loss of public access. If
17 the owner does not reside upon the land or the owner of record or
18 occupant cannot be found within the county in which the land is
19 situated, the notice to the owner of record or occupant of the
20 land shall be served by posting in 3 public places in the
21 township in which the road is situated, and by publication in a
22 newspaper circulated within the county, 30 days before the time
23 of hearing. Notice shall be served upon railroad companies by
24 leaving a copy with the agent in charge of any ticket or freight
25 office of the company operating the railroad, on the railroad
26 line. The department of natural resources and the township or
27 municipality within which the road is situated shall review the

1 petition and determine within 30 days whether the property should
2 be retained as an ingress and egress point. If the road is
3 situated in a township, the township shall have first priority
4 and the department of natural resources shall have second
5 priority to retain the property as an ingress and egress point.
6 If the road is not situated in a township, the department of
7 natural resources shall have first priority to retain the
8 property as an ingress and egress point.

9 (6) Upon the service of the notice required in
10 subsection (5), and before any further proceedings are held, the
11 person by whom the service was made shall make and annex to the
12 notice, or a copy of the notice, an affidavit stating the time
13 and manner of service, which shall be by first-class mail, and by
14 posting and advertising. ~~In addition, if~~ **If** service is upon a
15 railroad company, the affidavit shall ~~so~~ state **this fact** and
16 shall specify the agent upon whom service was made. The notice
17 and affidavit, together with an affidavit of publication if the
18 notice was published, shall be attached to the petition, and the
19 whole shall be present at the time of the hearing upon the
20 petition. The board of county road commissioners may designate,
21 as hearing examiner, an employee to hold the hearing upon the
22 petition. After the hearing, the examiner shall report all
23 findings of fact to the board.

24 (7) The board of county road commissioners or the
25 superintendent or engineer employed by the board shall proceed to
26 view the premises described in the petition and notice, and the
27 board shall ascertain the necessity or advisability of absolutely

1 abandoning and discontinuing the highway pursuant to the
2 petition.

3 (8) Subject to subsection (5), if the board of county road
4 commissioners determines pursuant to this section to relinquish
5 control, discontinue, abandon, or vacate any county road or
6 portion of a county road that borders on, crosses, is adjacent
7 to, or ends at a lake or the general course of a stream and the
8 township, if applicable, or the department of natural resources
9 decides to maintain the road as a public access site, it shall
10 convey by quitclaim deed or relinquish jurisdiction over the
11 property if the interest is nontransferable to the township or
12 the state. If the township obtains the property or jurisdiction
13 over the property as an ingress and egress point and later
14 proposes to transfer the property or jurisdiction over the
15 property, it shall give the department of natural resources first
16 priority to obtain the property or jurisdiction over the
17 property. If the state obtains the property or jurisdiction over
18 the property under this subsection, the property shall be under
19 the jurisdiction of the department of natural resources. The
20 state may retain title to the property, transfer title to a local
21 unit of government, or deed the property to the adjacent property
22 owners. If the state has purchased the property with restricted
23 fund revenue, money obtained from sale of the property shall be
24 returned to that restricted fund. The local unit of government
25 shall either maintain the property as a site of public access or
26 allow it to revert to the adjoining landowners.

27 (9) Subject to subsection (5), if the board of county road

1 commissioners determines pursuant to this section to abandon any
2 county road or portion of a county road to a township, it shall
3 quitclaim deed the property if the interest is nontransferable to
4 the township. The township shall either retain the property or
5 allow it to revert to the adjoining landowners.

6 (10) Within 30 days after final determination upon the
7 petition for absolutely abandoning and discontinuing a highway,
8 the board of county road commissioners shall file with the state
9 transportation commission a full record and return of its
10 proceedings. A determination by the board of county road
11 commissioners under this section is binding for purposes of 1927
12 PA 341, MCL 247.41 to 247.46.

13 (11) The board of county road commissioners may reserve an
14 easement for public utility purposes within the right-of-way of
15 any road absolutely abandoned and discontinued under this section
16 and may, by resolution, extinguish any easement so reserved
17 whenever the easement ceases to be used for public utility
18 purposes.

19 (12) If interest in the property is conveyed or control over
20 the property is relinquished to a local unit or this state under
21 subsection (8), the local unit or this state, as applicable,
22 shall operate and maintain the property so as to prevent and
23 eliminate garbage and litter accumulation, unsanitary conditions,
24 undue noise, and congestion as necessary.

25 (13) If a person shows substantial noncompliance with the
26 requirements of subsection (12), the circuit court may order the
27 local unit or this state to close the road ending in a manner to

1 prevent ingress and egress to the body of water for a period of
2 up to 30 days.

3 (14) If a person shows substantial noncompliance with the
4 requirements of subsection (12) and the circuit court has
5 previously closed the road ending for up to 30 days under
6 subsection (13), the circuit court may order the local unit or
7 this state to close the road ending in a manner to prevent
8 ingress and egress to the body of water for 90 days.

9 (15) If a person shows substantial noncompliance with the
10 requirements of subsection (12) and the circuit court has
11 previously closed the road ending for 90 days under subsection
12 (14), the circuit court may order the local unit or this state to
13 close the road ending in a manner to prevent ingress and egress
14 to the body of water for 180 days.

15 (16) If a person shows substantial noncompliance with the
16 requirements of subsection (12) and the circuit court has
17 previously closed the road ending for 180 days under subsection
18 (15), the circuit court shall order the local unit or this state
19 to show cause why the road ending should not be permanently
20 closed in a manner to prevent ingress and egress to the body of
21 water. Subject to subsection (17), the circuit court shall
22 permanently close the road ending unless the local unit or this
23 state shows cause why the road ending should not be closed.

24 (17) After a road ending is closed under subsection (16), and
25 unless the property has been conveyed or relinquished to the
26 adjacent landowners under subsection (18), the local unit or this
27 state may petition the circuit court to reopen the road ending.

1 The circuit court may order the road ending reopened if the local
2 unit or this state presents a management plan to and posts a
3 performance bond with the circuit court, and the circuit court
4 finds that the management plan and performance bond are adequate
5 to ensure compliance with subsection (12).

6 (18) After a road ending is closed by the circuit court under
7 subsection (16), 1 or more of the adjacent landowners may
8 petition the circuit court to order the local unit or this state
9 to convey any interest in the property that the local unit or
10 this state holds to the adjacent landowners, or, if the interest
11 is nontransferable, to relinquish control over the property to
12 the adjacent landowners.

13 (19) Proceedings under subsection (13), (14), (15), or (16)
14 shall be initiated by application of 7 owners of record title of
15 land in the local unit who own land within 1 mile of the road
16 ending to the circuit court for the county in which the road
17 ending is located. The applicants in the proceedings under
18 subsection (13), (14), (15), (16), (17), or (18) shall give the
19 persons described in subsection (5) notice of the application by
20 registered mail.