



**House  
Legislative  
Analysis  
Section**

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**PUBLIC HEARING FOR ROAD  
CLOSING**

**House Bill 5962 (Substitute H-1)  
First Analysis (5-9-02)**

**Sponsor: Rep. Michael Bishop  
Committee: Transportation**

***THE APPARENT PROBLEM:***

According to committee testimony, for over 10 years a dirt barricade placed by the City of Auburn Hills has closed Tienken Road. Some say that in 1990, the Auburn Hills city council closed part of the road not long after Rochester Hills city officials blamed them for traffic increases, while refusing to widen their own roads. (*Detroit News* 6-1-00) However, a citizen of Auburn Hills contends that he petitioned the Auburn Hills city council to vacate the two-lane dirt road 12 years ago, because heavy truck traffic caused him to fear for his safety when he backed out of his driveway. In any event, Tienken Road connects the cities of Auburn Hills and Rochester Hills in the southeastern corner of Oakland County (not far from the border with Macomb county), and the Tienken Road barricade is on the border of the cities. Auburn Hills dumped the dirt barricade to block the road, either to prove to Rochester Hills that the traffic increase in their city was not due to Auburn Hills drivers, or, perhaps in response to its citizen's petition to vacate the unsafe and unpaved roadway, or maybe both. The dirt berm or barricade that Auburn Hills installed is a part of a now park-like knoll that stretches the length of two football fields, and falls entirely within Auburn Hills, leaving Rochester Hills officials powerless to open the public roadway.

According to the *Detroit News*, the disagreement between the two cities has grown more complicated in the twelve years since the road was closed, because about 250 houses have been built nearby, including a gated community called Heritage in the Hills, a subdivision for residents 55 years and older. To provide fire service to this residential area, the closest fire and emergency vehicles in Rochester Hills must detour three miles because of the barricade, although law enforcement officials in the area disagree about the degree of risk this poses for local residents.

In addition, the emergency rescue and fire prevention officials from Rochester Hills have testified that the

two schools near the closed road--one high school and the other a junior high--cannot be served by the police and fire department in a timely manner, since detours around the barrier are necessary. They have expressed concern that their emergency preparedness plans, developed after the Columbine school shooting incident, reveal the need to remove the barricade in order to ensure the safety of the schoolchildren in the event of a serious fire or safety threat.

Currently local governments--counties, townships, cities, and villages--have the right to reasonable control of their highways, streets, alleys and public places under the 1963 Michigan Constitution, Article 7, Section 29. This enables the officials of local units of government to assume responsibility for traffic planning and road improvements within their jurisdictions, unfettered by intervention from the state, or from other units of government. Indeed, according to committee testimony, the Oakland County Road Commission does not take action on local road matters unless the local units of government involved are in agreement about a recommended course of action. However, sometimes local units of government disagree about regional traffic planning needs and an impasse, and then an eventual stalemate, can result when compromise is no longer possible.

Legislation has been proposed in order to provide a dispute resolution mechanism for this stalemate in Oakland County, and others similar to it. A dispute resolution process may be necessary because traffic planning disputes among city officials seem to be increasing as the population growth in townships spurs new unconnected subdivisions to proliferate; and as new cities (often comprising several gated residential areas) become incorporated. A dispute resolution process could create a legal cause of action in a stalemate, in that it would afford those who disagree with a multi-step decision-making process in which court challenges would be possible.

House Bill 5962 (5-8-02)

**THE CONTENT OF THE BILL:**

House Bill 5962 would amend Public Act 296 of 1969, which concerns the transfer of highways between jurisdictions, to allow for a public hearing at the county level of government when a road is closed that serves more than one city or village.

The bill specifies that the board of county commissioners could request that the governing body of a city or village within that county transfer jurisdiction of a road that was once under the jurisdiction of the county road commission back to the county road commission, if the board of county road commissioners made all of the following findings:

- the road had been blocked or closed for more than six months and the city or village cannot demonstrate a compelling need for blocking or closing the road (under the bill the fact that a city or village had jurisdiction over the road at the time of the request would not demonstrate a compelling need for blocking or closing the road);
- the road should not be blocked for purposes of health, safety, and welfare; and,
- the road is used to serve more than one city or village within the county.

Under the bill, the request of the board of county road commissioners for a transfer of jurisdiction would have to be in writing and addressed to the governing body of the city or village that had jurisdiction over the road. If, within 30 days after a written request had been received, the governing body did not consent to the transfer, or did not articulate a legitimate reason for blocking the road, then the board of county road commissioners could initiate proceedings to transfer jurisdiction back to the county road commission.

House Bill 5962 also specifies that if the party requesting transfer demonstrated to the board's satisfaction that the road had not been closed for a legitimate reason, then the party opposing transfer could rebut that argument. After hearing the rebuttal, the board would be required to render a decision in favor of the party requesting the transfer, if the opposing party had been unable to rebut successfully.

MCL 247.855

**FISCAL IMPLICATIONS:**

The House Fiscal Agency notes that when road jurisdiction is transferred from one unit of government to another, liability for the road, including related maintenance costs, would also be transferred. Michigan Transportation Fund revenue applicable to the transferred road, as provided by the Public Act 51 formula, would be transferred as well. These fiscal impacts would affect only the two local units of government transferring road jurisdiction. There would be no fiscal impacts for state or local governments, generally. (5-6-02) BILL WILL ADD MORE ABOUT THE REPORT....

**ARGUMENTS:**

**For:**

When local units of government cannot resolve their differences concerning traffic congestion and regional emergency services, then a regional traffic planning agency should intervene to hear the reasons for the dispute and to make a decision that protects the health and safety of citizens. This legislation would allow the county road commission in Oakland County to schedule a public hearing, and to make a timely decision about the 12-year-old barricade on Tienkin Road.

Generally, the courts are the appropriate place to resolve traffic planning disputes between local units of government. However, when two local units of government have reached a stalemate, then a third party must be called in to resolve the dispute. In this instance, the most reasonable third party to render a decision would be the county road commissioners since the stalemate concerns a road once within the road commission's jurisdiction. The decision of the county road commissioners may well establish a legal cause of action in the courts for the party that disagrees with the commissioners' ruling. Nonetheless, the stalemate would have been broken, and a compromise could then be brokered.

**For:**

Tienkin Road should be re-opened. According to committee testimony, the barricade at the border between Auburn Hills and Rochester Hills presents a risk to the public safety of citizens in the community. The Rochester Hills and Auburn Hills Fire Departments enjoy a close working relationship. Together, they have developed joint automatic first alarm responses, a combined Technical Rescue Team, and they are currently developing a regional Emergency Medical Services system. The barricade

on Tienkin Road has the potential effect of heightening the possibility of a major incident (for example, delaying response should violence erupt at the high school located near the road), and already the barricade impedes the day-to-day operations of the fire and emergency personnel since it obstructs the road that connects the two cities. The barricade forces both departments to respond an extended distance, and then to "back track" in order to assist the other department. This results in longer response times, and it adversely affects the departments' ability to serve the public who are in need of emergency assistance. Opening Tienken Road would facilitate implementation of the joint emergency response agreement between the Auburn Hills and Rochester Hills departments, and the ease of reciprocal service and mutual aid would benefit the residents of both communities.

**Response:**

The police chief for the City of Auburn Hills testified that closing the two-lane road with the barricade does not present a health and safety risk to citizens in the two communities because alternate routes exist to serve them.

**Against:**

Approximately 12 years ago the City of Auburn Hills decided to close part of a residential road under its jurisdiction in the interest of public safety--an action that is fully within the authority of a city that has ownership of a public road. This legislation would establish a process that would reduce the authority of local units of government, threatening the principle of local control that is firmly established in the 1963 Michigan Constitution in Article 7 Section 31 (which prohibits the state from altering a city road), as well as Article 7 Section 29 (which prohibits the state from usurping a city road). Those sections state, respectively: "The legislature shall not vacate or alter any road, street, alley or public place under the jurisdiction of any county, township, city, or village"; and, "Except as otherwise provided in this constitution the right of all counties, townships, cities and villages to the reasonable control of their highways, streets, alleys and public places is hereby reserved to such local units of government."

In addition to violating the principle of local control firmly established in the state constitution, this legislation is unwise because it would violate case law which holds that the legislature may not block a city's right to exercise "reasonable control" over its roads. [(*People v McGraw*, 184 Mich 233, 238 (1915)].

Finally, the legislation would shift responsibility for decision-making to the county road commissioners, and they have indicated through their government affairs representative that they do not wish to assume that authority.

**POSITIONS:**

The Department of Transportation is neutral on the bill. (5-xx-02)

The City of Rochester Hills supports the bill. (5-8-02)

The City of Auburn Hills opposes the bill. (5-8-02)

A representative of the County Road Association of Michigan testified in opposition to the bill. (5-8-02)

The Michigan Municipal League opposes the bill. (5-xx-02)

Analyst: J. Hunault

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.